

**AGREEMENT FOR THE PROVISION OF AN ICT  
SYSTEM AND RELATED SERVICES**

between

**[SCOTTISH POWER UK PLC]**

and

**[NOTE – INSERT NAME OF SUPPLIER]**

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## AGREEMENT

### BETWEEN:

- (1) [SCOTTISH POWER UK PLC, a company incorporated in Scotland (Registered Number: SC117120) having its Registered Office at 320 St. Vincent Street, Glasgow, Scotland, G2 5AD] (the "**Company**"); and
- (2) [NOTE – SUPPLIER COMPANY NAME TO BE INSERTED], a company incorporated in [NOTE – PLACE OF REGISTRATION TO BE INSERTED] (Registered Number: [NOTE – REGISTERED NUMBER TO BE INSERTED]) having its Registered Office at [NOTE – REGISTERED OFFICE TO BE INSERTED] (the "**Supplier**"),

together the "Parties" and each a "Party"

### WHEREAS:

- (A) the Supplier is skilled and experienced in the provision of systems and services similar to the System and the Services; and
- (B) in reliance on such skill and experience, the Company has selected the Supplier to provide the System and the Services and the Supplier undertakes to provide the System and the Services on the terms set out in this Agreement.

### NOW THEREFORE IT IS HEREBY AGREED as follows:

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement and the recitals, unless the context otherwise requires, the following expressions shall have the meanings set out below.

**"Additional Services"** means any and all additional services that are to be provided by the Supplier to the Company as set out in a Work Instruction that is executed by both Parties in accordance with Clause 4 (Provision of Additional Services), which shall exclude, for the avoidance of doubt, the Implementation Services and the Core Services;

**"Affected Party"** means the Party seeking to claim relief in respect of a Force Majeure Event;

**"Agreement"** means the clauses of this Agreement together with the Schedule, the Annexes and any other documents expressly incorporated into it (including, without limitation, all Work Instructions);

**"Annex"** means any annex appended to this Agreement, and **"Annexes"** shall be construed accordingly;

**"Change in Law"** means any change in Law (including, but not limited to, the introduction of any new Law, the repeal or replacement of any Law and/or any change to any Law), which impacts on the performance of the Services and which comes into force after the Commencement Date;

**"Charges"** means, as the context requires, the Implementation Charges, the Core Charges and/or the charges payable by the Company for the provision of the relevant Additional Services set out in paragraph 7 of the relevant Work Instruction;

**"Commencement Date"** means the commencement date specified in paragraph 1.1 of Part 1 of the Schedule (Core Services Description) (notwithstanding the date or dates of this Agreement);

**"Company Confidential Information"** has the meaning given to it in Clause 20.1.2;

**"Company Data"** means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - (i) supplied to the Supplier by or on behalf of the Company; or
  - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; and
- (b) any personal data for which the Company is the data controller (as those terms are defined in the Data Protection Legislation);

**"Company Hardware"** means all hardware, equipment, physical assets and other tangible items that are used by or on behalf of the Company and/or any ScottishPower Group Company in connection with the subject matter of this Agreement (including the items identified in paragraph 4.3 of the Core Services Description), but which shall exclude the Transferring Hardware;

**"Core Charges"** means the charges payable by the Company (subject to and in accordance with Clause 8 (Charges and Invoicing)) in consideration for the provision of the Core Services, which charges are set out in paragraph 1 of Schedule Part 4 (Charges);

**"Core Services"** means the services to be provided by the Supplier under and/or pursuant to the Core Services Description with effect from the Go Live Date (or such other date as may be agreed in writing between the Parties);

**"Core Services Description"** means the services description set out in Schedule Part 2 (Core Services Description);

**"COVID-19"** means the novel coronavirus which was first reported as an infectious outbreak in Wuhan, China on 31 December 2019 and subsequently declared by the World Health Organisation as a Public Health Emergency of International Concern and any related strain or mutation of the said novel coronavirus;

**"Data Protection Legislation"** means all applicable laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes and/or rules of court relating to the processing of personal data and/or privacy (including, but not limited to, (a) Regulation (EU) 2016/679 (the **"GDPR"**), (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and (c) any data protection and privacy laws enacted in replacement of (a) or (b) and/or as a result of the GDPR ceasing to have direct effect in the UK (in each case as amended, updated or re-enacted from time to time)), and all applicable guidance and codes of practice issued by the Information Commissioner and/or any other relevant Regulatory Body from time to time;

**"Data Requirements"** has the meaning given to it in Clause 19.1 (Protection of Personal Data);

**"Default"** means (i) any breach of the obligations of the relevant Party (including but not limited to a fundamental breach or breach of a fundamental term) and/or (ii) any other default, act, omission, negligence, misconduct or statement of the relevant Party, its employees, workers, agents or sub-contractors (or their respective employees and/or, in the case of the Supplier, any Supplier Personnel) in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

**"Delay Payments"** means:

- (i) in relation to the Implementation Services, any delay payments that are payable by the Supplier to the Company pursuant to Clause 9.5 (Delays) as set out in paragraph 6 of Schedule Part 1 (Implementation Services and Implementation Plan); and
- (ii) in relation to the Services provided pursuant to each Work Instruction, any delay payments that are payable by the Supplier to the Company pursuant to paragraph 4.3 of the relevant Work Instruction;

**"Deliverables"** means all products, reports, presentations, documentation, software, inventions, designs, information, know-how, specifications, formulae, data, processes, methods, techniques, technology, equipment, goods and other items (in whatever form or format) that are provided by or on behalf of the Supplier to the Company and/or any other ScottishPower Group Company under and/or pursuant to this Agreement, which shall include, without limitation, all deliverables expressly identified in the Implementation Plan, the Specification, the Core Services Description and in each Work Instruction;

**"Dispute"** means any dispute, difference or question of interpretation arising out of or in connection with this Agreement;

**"Draft Work Instruction"** means any draft Work Instruction, substantially in the form specified in Schedule Part 5 (Form of Work Instruction), which is provided by the Company to the Supplier pursuant to Clause 4.1 (Provision of Additional Services);

**"Employee Liabilities"** means all claims, actions, proceedings, orders, demands, complaints, investigations, awards, compensation, damages, tribunal awards, fines, losses, penalties, disbursements, payments made by way of settlement, costs, expenses and legal costs and any other liabilities suffered and/or incurred in connection with any claim or investigation related to the employment and/or engagement (and/or the termination of the employment or engagement) of any Supplier Personnel and/or any former Supplier Personnel, including, but not limited to, in connection with any of the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal payments or compensation;
- (c) payments or compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) payments or compensation for less favourable treatment of part-time workers or fixed term employees;

- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in delict, tort, contract or statute or otherwise; and/or
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Employment Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any equivalent or similar legislation applicable in any jurisdiction;

**"Expiry Date"** means, subject to earlier termination pursuant to Clause 24 (Termination Rights), the expiry date set out in paragraph 1.2 of Schedule Part 2 (Core Services Description) (or such other date as the Parties may agree in writing);

**"Force Majeure Event"** means any event, occurring after the Commencement Date, which affects the performance by a Party of its obligations and which arises from the following acts, events, omissions, happenings or non-happenings: acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster, but which shall not include (i) lack of funds, (ii) foreseeable adverse weather or other similar conditions, (iii) strike or labour disputes between the Supplier and any Supplier Personnel (or between any Supplier Personnel and any of their respective employees) (and whether or not such strikes or labour disputes involve official or unofficial action), (iv) any other failure in the Supplier's supply chain, (v) any Change in Law and/or (vi) any event or circumstance which is within the control of the Affected Party;

**"General Change in Law"** means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) and/or which would affect the supply of services that are the same or similar to the Services to any another customer of the Supplier;

**"Go-Live Date"** means the date, as specified by the Company in writing, on which the Supplier shall commence performance of the Core Services following completion of the Implementation Services to the Company's satisfaction;

**"Good Industry Practice"** means the exercise of the degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a reputable and professional organisation within the relevant industry or business sector;

**"Hardware"** means, as the context requires, the Supplier Hardware, the Company Hardware and/or the Transferring Hardware;

**"Implementation Charges"** means the charges payable by the Company (subject to and in accordance with Clause 8 (Charges and Invoicing)) in consideration for the implementation of the System and the provision of the Implementation Services, which charges are set out in paragraph 2 of Schedule Part 4 (Charges);

**"Implementation Plan"** has the meaning given to it in Schedule Part 1 (Implementation Services and Implementation Plan);

**“Implementation Services”** means the services (including, without limitation, the services described in the Implementation Plan) that the Supplier requires to perform in order to ensure that, by the relevant date(s) specified in Schedule Part 1 (Implementation Services and Implementation Plan) (i) all elements of the System are operational and are compliant with the Specification and (ii) the Supplier can commence provision of the Core Services in accordance with the terms of the Core Services Description;

**“Insolvency Event”** means the occurrence of any of the following events (or any event analogous to any of the following in any jurisdiction) in relation to the relevant party: (a) the party passing a resolution for its winding up or a court of competent jurisdiction making an order for the party to be wound up or dissolved; (b) the appointment of an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the party’s undertaking, assets, rights or revenue; (c) the party entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors; or (d) the party (i) suspending, or threatening to suspend, payment of its debts or being unable to pay its debts as they fall due or admitting inability to pay its debts or (ii) being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (iii) being deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (iv) entering into a trust deed or having a bankruptcy or sequestration order made against it; or (e) (being a partnership) having a judicial factor appointed to it and/or having any partner to whom any element(s) of limbs (a) to (d) of this definition apply, and in the case of (a) or (c) other than for the purposes of a bona fide solvent reorganisation or reconstruction;

**“Intellectual Property Rights” or “IPRs”** means:

- (a) copyright, rights related to or affording protection similar to copyright (including moral rights), rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, service marks, rights in internet domain names and website addresses, goodwill and rights to sue for passing off or unfair competition and other rights in trade names, designs, know-how, trade secrets and other rights in Company Confidential Information or Supplier Confidential Information (as applicable);
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) above that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction and subsisting as at the date of this Agreement or at any other time;

**“Invoicing Procedure”** means the Company’s procedure for the preparation, submission and processing of invoices as notified by the Company to the Supplier from time to time;

**“Key Personnel”** means, in relation to (i) the Implementation Services and/or the Core Services, any person(s) identified as “Key Personnel” in paragraph 7 of the Core Services Description and (ii) in relation to the Additional Services provided pursuant to each Work Instruction, any person(s) identified as “Key Personnel” in paragraph 6 of the relevant Work Instruction;

**“Key Milestone”** means:

- (i) in relation to the Implementation Services, any milestones identified as “Key Milestones” in paragraph 5 of Schedule Part 1 (Implementation Services and Implementation Plan); and
- (ii) in relation to the Additional Services provided pursuant to each Work Instruction, any milestones for the provision of those Services identified as “Key Milestones” in paragraph 4.2 of the relevant Work Instruction;

**“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

**“Losses”** means all losses, liabilities, claims, actions, demands, proceedings, damages, costs, charges and/or expenses (including legal and other professional fees and expenses) made against, suffered and/or incurred by the Company and/or any ScottishPower Group Company;

**“Parent Company Guarantee”** means a parent company guarantee to be delivered by the Supplier pursuant to Clause 5.6;

**“Permitted Disclosees”** has the meaning given to it in Clause 20.8;

**“Personal Data”** has the meaning given to it in the Data Protection Legislation;

**“Personnel”** means all employees, agents, consultants and contractors of a Party and/or of any permitted sub-contractor of a Party;

**“Premises”** means any premises of the Company and/or any other ScottishPower Group Company to which the Supplier and/or any Supplier Personnel are given access in order to enable the Supplier to perform its obligations under this Agreement;

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of any ScottishPower Group Company (including, without limitation, The Office of Gas and Electricity Markets Authority) and **“Regulatory Body”** shall be construed accordingly;

**“Replacement Supplier”** means any supplier appointed by the Company and/or any other ScottishPower Group Company to provide any system(s) or services which are substantially similar to the System and/or any of the Services and which the Company and/or any other ScottishPower Group Company receives or is to receive in substitution for the System and/or any of the Services at any time prior to or following the termination of all or part of this Agreement;

**“Representatives”** means, (i) in relation to the Implementation Services and the Core Services, the Party’s respective representatives as identified in paragraph 5 of the Core Services Description and (ii) in relation to the Additional Services provided pursuant to any Work Instruction, the Party’s respective representatives in connection with that particular Work Instruction as identified in paragraph 5 of the relevant Work Instruction;

**“Schedule”** means the schedule to this Agreement, and a reference to a “Schedule Part” is to a part of that Schedule;

**“ScottishPower Group”** means, together, the Company and (i) any subsidiary or holding company from time to time of the Company and any subsidiary from time to time of a holding company of that company, the terms “holding company” and “subsidiary” being as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee, (ii) any other entity which directly or indirectly controls, is controlled by or is under direct or common control with, the Company from time to time (the term “control” for the purpose of this definition meaning that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise)) and (iii) any other person or entity specifically identified in the Core Services Description as comprising part of the ScottishPower Group for the purposes of this Agreement, and **“ScottishPower Group Company”** and **“ScottishPower Group Companies”** shall be construed accordingly;

**“ScottishPower Licence”** means (i) any licence granted to a member of the ScottishPower Group pursuant to Section 6 of the Electricity Act 1989 (as amended by the Utilities Act 2000 and the Energy Act 2004) to generate, transmit, distribute or supply electricity, or participate in the operation of an electricity interconnector (as appropriate) or (ii) any licence, authority or permission issued in substitution therefor and/or any licence granted to a member of the ScottishPower Group pursuant to Section 7 and/or 7A of the Gas Act 1986 (as amended by the Gas Act 1995, the Utilities Act 2000 and the Energy Act 2004) to transport, operate an interconnector, ship or supply gas (as appropriate) or any licence, authority or permission issued in substitution therefor and (iii) any other licence, authority, consent or permission upon which any member of the ScottishPower Group relies for the purposes of conducting its business;

**“ScottishPower Personal Data”** means any Personal Data that the Supplier is provided with access to, Processes and/or is required to Process in connection with the performance of this Agreement;

**“Service Levels”** means the standards of performance to be achieved by the Supplier in the performance of the relevant Core Services as set out in Schedule Part 3 (Service Levels);

**“Services”** means the services to be provided by the Supplier to the Company under and/or pursuant to this Agreement, which shall include the Implementation Services, the Core Services and all Additional Services and shall include the provision of the System, the Software, the Hardware and all other Deliverables in accordance with the terms of this Agreement;

**“Service Levels”** means the service levels applicable to the Supplier’s provision of the relevant Core Services with effect from the Go-Live Date as set out in Schedule Part 3 (Service Levels);

**“Service Credits”** means any service credit(s) that are due or payable by the Supplier to the Company in connection with any Service Level Failure in accordance with Schedule Part 3 (Service Levels);

**“Service Level Failure”** means any failure by the Supplier to provide all or part of the Services in accordance with any of the Service Level(s);

**“Significant Delay Date”** means:

(i) in relation to the Core Services, any significant delay date associated with a Key Milestone as set out in section 4.4 of the Core Services Description which, if not achieved due to the Supplier's Default, will entitle the Company to terminate all or part of this Agreement pursuant to Clause 9.6 of this Agreement; and

(ii) in relation to the Services provided pursuant to each Work Instruction, any significant delay date associated with a Key Milestone set out in section 4.4 of the relevant Work Instruction which, if not achieved due to the Supplier's Default, will entitle the Company to terminate all or part of this Agreement pursuant to Clause 9.6 of this Agreement;

**“Significant Financial Difficulties”** means an event which would be likely to cause the Company, in the Company's reasonable opinion, to consider that the Supplier (or any guarantor providing a Parent Company Guarantee pursuant to Clause 5.6 (“Guarantor”)) will be unable to continue to carry on its business as a going concern within 3 months of the date upon which the Company became aware of such difficulties, whether the Company has been notified of any such difficulties by the Supplier (or the Guarantor) or has formed such view itself from information available at the time, including (but not limited to) information concerning the Supplier's (and/or the Guarantor's) share price and profit warnings announced (in the case of listed companies), financial information provided by reputable credit referencing agencies and any other publicly available information;

**“Software”** means all of the software that is to be provided by or on behalf of the Supplier under and/or pursuant to this Agreement;

**“Specification”** means the specification of the System set out in Annex A (Specification);

**“Specific Change in Law”** means a Change in Law that relates specifically to the business of the Company and which would not affect the supply of services that are the same or similar to the Services to another customer of the Supplier;

**“Specific Data Requirements”** means the specific data protection requirements set out in Schedule Part 7 (Specific Data Requirements);

**“Specific On-Site Works Requirements”** means the specific on-site minor works requirements (if any) set out in Annex D (Specific On-Site Works Requirements), if Annex D forms part of this Agreement;

**“Supplier Confidential Information”** has the meaning given to it in Clause 20.11;

**“Supplier Hardware”** means all hardware, equipment, physical assets and other tangible items that are used by or on behalf of the Supplier in connection with the provision of the System and/or the Services (including the items identified in paragraph 4.2 of the Core Services Description), but which shall exclude the Company Hardware and the Transferring Hardware;

**“Supplier Personnel”** means all employees, agents, consultants, contractors and sub-contractors of (i) the Supplier, (ii) the Supplier's authorised affiliates and/or (iii) any of the Supplier's authorised sub-contractors, in each case that are engaged at

any time or from time to time in connection with the supply of the Goods and/or the provision of the Services;

**“System”** means the system or systems, comprising (without limitation) the Software and (if applicable) the relevant Hardware, to be provided by the Supplier under and/or pursuant to this Agreement, as more particularly described in the Specification;

**“Transferring Hardware”** means all hardware, equipment, physical assets and other tangible items that are provided by or on behalf of the Supplier in connection with this Agreement and that (i) are paid for by the Company as part of the Charges and/or (ii) on their installation, will form an integral part of any ScottishPower Group Company’s premises, networks or other assets. The Transferring Hardware will include the items listed in paragraph 4.1 of the Core Services Description;

**“VAT”** means value added tax as provided for in the Value Added Tax Act 1994;

**“Variation”** means a formal variation to this Agreement made in accordance with Clause 17 (Variation Procedure), which shall be substantially in the form set out in Schedule Part 8 (Form of Variation);

**“Working Day”** means any day other than a Saturday, Sunday, 25 December, 26 December or 1 January; and

**“Work Instruction”** means any work instruction, substantially in the form set out in Schedule Part 5 (Form of Work Instruction) that is agreed and executed by both Parties in accordance with Clause 4 (Provision of Additional Services) from time to time.

- 1.2. In this Agreement, unless the context otherwise requires:
  - 1.2.1. the singular includes the plural and vice versa;
  - 1.2.2. reference to a gender includes the other gender and the neuter;
  - 1.2.3. references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it.
- 1.3. The words in this Agreement shall bear their natural meanings. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentum.
- 1.4. The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.5. Unless expressly stated to the contrary, wherever the consent of one or more of the Parties is required under this Agreement such consent shall be requested (and, where appropriate, required to be given) in writing.
- 1.6. References in this Agreement to “written” or “writing” shall not include e-mail.
- 1.7. Words denoting persons or bodies corporate shall include natural persons, companies, corporations, firms, partnerships (whether limited or unlimited), joint ventures, trusts, voluntary associations, other incorporated and/or unincorporated

bodies or other entities (in each case, whether or not having separate legal personality) and all such words shall be construed interchangeably in that manner.

- 1.8. References to the Parties shall include their respective successors in title and permitted assigns.
- 1.9. Where the Supplier comprises more than one person or is a partnership, the Parties acknowledge and agree that the obligations, responsibilities and liabilities owed by the Supplier under this Agreement are owed, on a joint and several liability basis, by all of the persons that comprise the Supplier or, where applicable, by all of the partners (at any time or from time to time) in the partnership (and, in the case of a Scottish partnership, also by the partnership itself).
- 1.10. References to Clauses and the Schedule are, unless otherwise provided, references to the clauses of and schedule to this Agreement.
- 1.11. In construing this Agreement, neither the rule known as the ejusdem generis rule nor any similar rule or approach shall apply to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words and accordingly where the words "include" or "including" appear in this Agreement they are construed as meaning without limitation.
- 1.12. If there is any conflict between the Clauses, the Schedule (including any appendices to any Part of the Schedule), the Annexes and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence (listed in descending order of precedence):
  - 1.12.1. the Clauses of this Agreement;
  - 1.12.2. the Schedule and any appendices to any Part of the Schedule;
  - 1.12.3. the Annexes; and
  - 1.12.4. any other document referred to and expressly incorporated into this Agreement.

## 2. COMMENCEMENT AND DURATION

- 2.1. This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with Clause 24 (Termination Rights) and without prejudice to Clause 25 (Consequences of Termination), shall continue until the Expiry Date.
- 2.2. Subject to Clause 24 (Termination Rights), the termination or expiry of any Work Instruction shall not operate to terminate this Agreement.

## 3. PROVISION OF SERVICES

- 3.1. The Supplier shall provide the Implementation Services and the Core Services to the Company in accordance with the terms of this Agreement.

### Implementation Services

- 3.2. Without prejudice to Clause 3.1, the Supplier shall provide the Implementation Services to the Company in accordance with Schedule Part 1 (Implementation Services and Implementation Plan).

#### Core Services

- 3.3. With effect from the Go-Live Date, the Supplier shall provide the Core Services to the Company in accordance with the Core Services Description.
- 3.4. Without prejudice to its other obligations under and/or pursuant to this Agreement, the Supplier shall at all times provide the Core Services in order to meet or exceed the Service Levels.
- 3.5. Without prejudice to the Company's other rights and remedies under and/or pursuant to this Agreement and/or at law, in the event of any Service Level Failure:
- 3.5.1. the Supplier shall take all steps necessary to remedy the relevant Service Level Failure, address the cause of the relevant Service Level Failure and to prevent the relevant Service Level Failure from being repeated;
- 3.5.2. if requested by the Company, the Supplier will provide the Company (within five Working Days of request) with a corrective action plan which explains the steps that the Supplier will be taking pursuant to Clause 3.5.1; and
- 3.5.3. where Schedule Part 3 (Service Levels) specifies that any Service Credits are due by the Supplier in connection with that Service Level Failure, the Company shall recover the relevant Service Credits from the Supplier in accordance with Clause 8.11 (Charges and Invoicing).

#### 4. PROVISION OF ADDITIONAL SERVICES

- 4.1. If the Company at any time wishes to instruct the Supplier to provide any Additional Services, the Company shall notify the Supplier of the details of the proposed Additional Services by sending to the Supplier a Draft Work Instruction, which shall be substantially in the form specified in Part 5 of the Schedule (Form of Work Instruction). Within five (5) Working Days of initial notification by the Company pursuant to this Clause 4.1 (or such other period as the Parties may agree), the Supplier shall (at its own cost) provide to the Company such information as the Company may request in connection with the proposed Additional Services and/or the Draft Work Instruction.
- 4.2. The Parties shall discuss the terms of the Draft Work Instruction and once its terms are agreed between the Parties, authorised representatives of both Parties shall sign a Work Instruction reflecting the agreed details. Each Work Instruction shall take effect from the effective date set out in paragraph 1.1 of that Work Instruction.
- 4.3. For the avoidance of any doubt, the Company shall not be bound to accept any Draft Work Instruction provided by the Supplier. The Supplier shall not unreasonably withhold or delay its agreement to any Draft Work Instruction issued by the Company in accordance with this Clause 4. The Supplier shall use all reasonable endeavours to respond to a Draft Work Instruction within any specific timescale reasonably specified by the Company.
- 4.4. Unless the Parties expressly agree to the contrary in writing, the Supplier shall not be obliged to commence providing any proposed Additional Services and the

Company shall not be obliged to pay any proposed Charges in connection with any Draft Work Instruction unless and until the relevant Work Instruction is signed by authorised representatives of both Parties.

- 4.5. The Parties acknowledge and agree that any ScottishPower Group Company is entitled to instruct the Supplier to provide Additional Services under this Agreement in accordance with the terms of this Clause 4.

## 5. SUPPLIER'S DUTIES

- 5.1. The Supplier shall provide the Services and deliver the Deliverables to the Company's satisfaction and in accordance with the terms of this Agreement (including the Core Services Description) and the relevant Work Instruction(s).

- 5.2. Without prejudice to Clause 7.1 (Quality of Service) and its other obligations under and/or pursuant to this Agreement (including its obligations set out in each Work Instruction), the Supplier shall:

5.2.1. without prejudice to Clauses 3.4 and 3.5, comply with any service levels and/or key performance indicators for provision of the relevant Services that are set out in the Core Services Description and/or the relevant Work Instruction;

5.2.2. provide such general advice, assistance and information in relation to the Services as the Company may reasonably require, and shall comply with all reasonable requests and directions of the Company in connection with the Services, including any instructions by the Company to provide all or part of the Services to any ScottishPower Group Company and/or the Company's or any ScottishPower Group Company's authorised contractors, consultants and/or agents;

5.2.3. without prejudice to Clause 9 (Delays) and Clause 24.1.5 (Termination Rights), comply with any timescales for performance of its obligations as set out in Schedule Part 1 (Implementation Services and Implementation Plan), the Core Services Description, the relevant Work Instruction and/or as may be otherwise be directed by the Company from time to time;

5.2.4. provide the Services at the relevant premises or location(s) specified in the Core Services Description or the relevant Work Instruction (as applicable) and/or at such other premises or locations as the Company may reasonably direct from time to time;

5.2.5. provide the Services during the hours of work specified in the Core Services Description or the relevant Work Instruction (as applicable) and/or during such other hours as the Company may reasonably direct from time to time;

5.2.6. provide and manage all personnel, equipment, tools, plant, materials, vehicles and such other items as are required by the Supplier to provide the Services;

5.2.7. use all reasonable endeavours to promote and protect the interests of the Company and the ScottishPower Group in connection with the Services; and

5.2.8. provide the Company (in a timely manner) with such assistance and

information as the Company may reasonably require in order to perform its obligations under this Agreement.

- 5.3. The Supplier acknowledges and agrees that it has (or shall prior to the date of execution of the relevant Work Instruction have):
- 5.3.1. been afforded all necessary access, information (including details regarding contracts, assets and resources) and support by the Company to enable it to evaluate the Company's requirements in connection with the relevant Services and to develop a solution for provision of those Services in order to meet the Company's requirements; and
- 5.3.2. satisfied itself of all details relating to the nature of the relevant Services.
- 5.4. The Supplier acknowledges and agrees that it shall not be entitled to any additional payment nor be excused from any liability under this Agreement if it has misinterpreted any matter or fact relating to any of the Services.
- 5.5. The Parties acknowledge and agree that the arrangements contemplated in this Agreement do not constitute a commitment by the Company and/or any ScottishPower Group Company to use the Supplier exclusively for the provision of services which are the same as or similar to any of the Services. The Supplier shall co-operate with any reasonable requests made by the Company in connection with the procurement and/or supply of any goods and/or services from any third parties and shall, if so required by the Company, provide such assistance as the Company may reasonably require in connection with such goods and/or services.
- 5.6. If required by the Company, the Supplier shall deliver to the Company a parent company guarantee (either from the Supplier's ultimate parent company or an intermediate parent company acceptable to the Company) in the form set out in Annex B (a "Parent Company Guarantee") on or prior to the Commencement Date.
- 5.7. The Company shall be entitled (at its sole discretion) to terminate this Agreement with immediate effect and without liability to the Supplier in the event that the Company requires a parent company guarantee pursuant to Clause 5.6 and:
- 5.7.1. the Supplier fails to deliver a Parent Company Guarantee to the Company within seven (7) days of the Commencement Date (or such longer period as the Company may agree in writing); or
- 5.7.2. the guarantor under the Parent Company Guarantee:
- 5.7.2.1. is in breach or anticipated breach of the terms of the Parent Company Guarantee;
- 5.7.2.2. terminates or revokes (or purports to terminate or revoke) the Parent Company Guarantee; and/or
- 5.7.2.3. suffers an Insolvency Event,
- and, the Supplier fails to procure a replacement guarantee to the satisfaction of the Company within seven (7) days of the occurrence of the relevant event referred to in Clauses 5.7.2.1 to 5.7.2.3.

5.8. The Supplier:

5.8.1. warrants and undertakes that all Supplier Personnel that are, or will be made available to the Company under this Agreement are engaged as an employee on a Pay-As-You-Earn (PAYE) basis, either directly by the Supplier, or by an umbrella company engaged by the Supplier and properly accredited by the FCSA (Freelancer & Contractor Services Association);

5.8.2. warrants and undertakes that, at all times throughout the duration of this Agreement, none of the Supplier Personnel that are made available to the Company under this Agreement will provide their Services through an intermediary (as defined in the off-payroll working rules contained in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (“**Off-Payroll Working Rules**”)) in such a manner that Off-Payroll Working Rules could apply to the engagement of such Supplier Personnel..

5.9. During the term of this Agreement and following its expiry or termination, the Supplier will promptly notify the Company in writing if the Supplier becomes aware that, or reasonably suspects that, any breach of its obligations in Clause 5.8 has occurred.

5.10. If the Company receives a notice pursuant to Clause 5.9, or otherwise reasonably suspects that the Supplier has breached any of the Supplier’s obligations in Clause 5.8, the Company may either (in its sole discretion):

5.10.1. withhold any monies due to the Supplier under the Agreement; or

5.10.2. instruct the Supplier to immediately remove any Supplier Personnel who are performing and completing the Services in breach of the Supplier’s warranty at Clause 5.8 and, if requested by the Company, to replace such worker with another worker who is engaged as an employee on a Pay-As-You-Earn (PAYE) basis, either directly by the Supplier, or by an umbrella company engaged by the Supplier and properly accredited by the FCSA (Freelancer & Contractor Services Association); or

5.10.3. both 5.10.1 and 5.10.2.

6. COMPANY’S DUTIES

6.1. Without prejudice to the Company’s specific obligations set out in this Agreement and/or in any Work Instruction, the Company shall use its reasonable endeavours to provide the Supplier with such assistance and access to such information (which is under the control of the Company and/or a ScottishPower Group Company) as the Supplier may reasonably require in order to perform its obligations under this Agreement. Subject to Clause 12 (Access to Premises and Safety/Security), the Company shall provide to the Supplier such access to the Premises as the Supplier may reasonably require in order to provide the relevant Services, including such access as may be specifically set out in the Core Services Description or the relevant Work Instruction.

6.2. The Company warrants to the Supplier that it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement.

## 7. QUALITY OF SERVICE

- 7.1. Without prejudice to its other obligations under and/or pursuant to this Agreement, the Supplier warrants and undertakes to the Company that:
- 7.1.1. it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement and that its signatory or signatories to this Agreement are duly authorised to enter into this Agreement for and on behalf of the Supplier;
  - 7.1.2. it shall perform its obligations under and/or pursuant to this Agreement in accordance with Good Industry Practice;
  - 7.1.3. it has the know-how, qualifications, skills, experience and necessary ability to satisfy its obligations under and/or pursuant to this Agreement and (for the avoidance of doubt) shall ensure that its employees and contractors are similarly qualified;
  - 7.1.4. it shall provide independent and unbiased advice to the Company in relation to the Services and the Services shall present an appropriate solution to the Company's requirements set out in this Agreement and the relevant Work Instruction;
  - 7.1.5. in providing the Services, it shall use the best available quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Company, shall be free from defects in workmanship, installation and design;
  - 7.1.6. it shall not do or omit to do anything which may cause the Company and/or any ScottishPower Group Company to lose any ScottishPower Licence, and the Supplier acknowledges that the Company may rely or act on the Services;
  - 7.1.7. the System and all Services and Deliverables provided under and/or pursuant to this Agreement shall conform with the description set out in the Specification, the Core Services Description and/or the relevant Work Instruction (as applicable) and the System, all Services and Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Company;
  - 7.1.8. it has and shall continue to have all licences, permissions, authorisations, consents and permits required to perform its obligations under and/or pursuant to this Agreement;
  - 7.1.9. it shall comply with all Laws applicable to the performance of its obligations under and/or pursuant to this Agreement;
  - 7.1.10. it shall comply with all ScottishPower Group policies, procedures and practice directions relevant to the provision of the Services as notified to the Supplier from time to time, including, without limitation, ScottishPower Group's policies and procedures in relation to health and safety, corporate and social responsibility and anti-bribery/corruption;
  - 7.1.11. the use by the Company and/or any ScottishPower Group Companies of the Deliverables and/or any other items provided by or on behalf of

the Supplier under and/or pursuant to this Agreement shall not infringe the Intellectual Property Rights of any third party;

- 7.1.12. in performing its obligations under and/or pursuant to this Agreement, it shall use a sufficient number of Personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and the performance which they are required to achieve and who shall perform those tasks in a workmanlike and professional manner;
- 7.1.13. all Supplier Personnel shall be engaged by the Supplier under appropriate written contracts during the period in which they are involved in providing Services under and/or pursuant to this Agreement;
- 7.1.14. it shall not enter into any agreement, arrangement or otherwise act in relation to any matter that will, or is likely to, create a conflict of interest with the Supplier's obligations under and/or pursuant to this Agreement;
- 7.1.15. it shall take all reasonable steps to ensure that, in the performance of its obligations under this Agreement, interference with the operations of the Company's and all other ScottishPower Group Companies' businesses (and that of their respective employees or other contractors and suppliers) is kept to a minimum; and
- 7.1.16. except to the extent the Company agrees otherwise in writing, neither the System nor the Software used in the performance of the Services comprise, contain or rely upon any open source software;
- 7.1.17. that no previous or future date change has had or will have any adverse impact on the performance or functionality of the System and/or the Software;
- 7.1.18. that the release of any new Software or upgrade to Software complies with the interface requirements in the Specification, and the Supplier shall notify the Company not less than three months before the release of any new Software or upgrade to Software, and will co-ordinate its activity with the Company to ensure it minimises any disruption to the Services, the Company's ICT environment and/or the operations of the Company's and/or any other ScottishPower Group Company;
- 7.1.19. use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete malicious software from the Software, the System, the Supplier's own systems and all Deliverables provided by or on behalf of the Supplier in connection with this Agreement;
- 7.1.20. it shall hold all materials, plant, equipment and tools, drawings, specifications, information and data supplied by the Company and/or any ScottishPower Group Company to the Supplier ("Company Materials") in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, maintain adequate insurance cover in relation to the Company Materials while in the Supplier's possession and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and

- 7.1.21. it shall comply with the obligations and requirements (if any) that are set out in:
  - 7.1.21.1. Annex E (Information Security Requirements); and
  - 7.1.21.2. Annex F (Business Continuity and Disaster Recovery Requirements).
- 7.2. Subject always to Clause 7.4, if the Supplier provides any Services and/or Deliverables that do not comply with the undertakings and/or warranties set out in this Agreement (including in the relevant Work Instruction), then, without limiting its other rights or remedies, the Company shall be entitled to exercise one or more of the following rights (whether or not it has accepted and/or paid for the relevant Services and/or Deliverables):
  - 7.2.1. to require the Supplier (at the Supplier's own cost) to re-provide, repair, make good or replace any relevant Deliverables and/or re-provide the relevant Services;
  - 7.2.2. to refuse to accept any subsequent provision of the Services and/or Deliverables which the Supplier attempts to make;
  - 7.2.3. withhold payment of any sums in relation to Services and/or Deliverables that have not been provided by the Supplier in accordance with this Agreement;
  - 7.2.4. where the Company has paid any sums in advance in relation to Services and/or Deliverables that have not been provided by the Supplier in accordance with this Agreement, to have such sums immediately refunded by the Supplier; and/or
  - 7.2.5. to require the Supplier to reimburse the Company on demand for any additional Losses which are in any way attributable to the Supplier's failure to provide the Services and/or Deliverables in accordance with this Agreement, including the additional costs of obtaining replacement goods and/or services.
- 7.3. The Supplier shall operate a quality management system which meets the requirements of an appropriate national and/or international standard and any standards specifically referred to in the Core Services Description and/or the relevant Work Instruction, and the Supplier shall ensure that the supply and/or provision of all the Services and the Deliverables is managed and controlled within the operational requirements of such system.
- 7.4. The Company's rights and remedies under this Clause 7 are in addition to its rights and remedies under the remainder of this Agreement and/or any rights and remedies that are implied by statute and/or common law.

## 8. CHARGES AND INVOICING

- 8.1. In consideration of the Supplier carrying out its obligations under this Agreement, the Company shall pay the Charges to the Supplier subject to and in accordance with the terms of this Clause 8, the Invoicing Procedure and (i) in the case of the Implementation Charges and the Core Charges, Schedule Part 4 (Charges) and (ii) in the case of the Charges relating to any Additional Services, paragraph 7 of the relevant Work Instruction.

- 8.2. The relevant Charges shall be payable by the Company from thirty (30) days and within ninety (90) days of receipt of the Supplier's correct invoice properly rendered in accordance with this Agreement, containing (as a minimum) the following information:-
- 8.2.1. a statement summarising the Services to which the invoice relates;
  - 8.2.2. the Company's contract number, purchase order number and (if any) the project number allocated by the Company, each as notified by the Company to the Supplier from time to time;
  - 8.2.3. if requested by the Company, the total amount invoiced by the Supplier and the total amount paid by the Company under this Agreement up to the date of the invoice; and
  - 8.2.4. such other information as the Company may reasonably request (including time sheets or records, receipts and third party invoices) to enable the Company to verify that the sums claimed in the invoice are accurate.
- 8.3. All invoices shall be submitted to the Company at the relevant address specified by the Company for that purpose from time to time.
- 8.4. The Company may choose to pay sums due to the Supplier under this Agreement via the Banks Automated Clearing Services System (BACS) in which event the Supplier shall provide the Company with all relevant banking details. The Company shall not be liable for any late payment charges in the event that the Supplier fails to comply with this Clause 8.4.
- 8.5. The Company may withhold payment against any invoice which is not submitted in accordance with this Agreement or which covers or purports to relate to obligations which have not been performed in accordance with this Agreement or which it disputes for any other valid reason.
- 8.6. Interest shall be payable on the late payment of any undisputed Charges properly invoiced in accordance with this Agreement at the rate of 2% per annum above the base rate for the time being of the Bank of England on the relevant undisputed invoiced amount of the Charges.
- 8.7. The Supplier shall account to HM Revenue & Customs for all taxes and other related liabilities, charges and dues (including PAYE and National Insurance) for which the Supplier (or any of its contractors, agents and/or employees) is or are liable.
- 8.8. The Supplier shall indemnify and keep the Company and all ScottishPower Group Companies indemnified from and against all Losses arising from or incurred by reason of any breach of Clause 8.7 by the Supplier.
- 8.9. Unless stated to the contrary in Schedule Part 4 (Charges) or the relevant Work Instruction (as applicable), the Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable.
- 8.10. The Parties acknowledge and agree that payment of any sums by the Company under this Agreement shall be without prejudice to any claims or rights which the Company may have against the Supplier and shall not constitute any acceptance, admission or waiver by the Company as to the performance by the Supplier of its obligations hereunder.

- 8.11. Any Service Credits that are due by the Supplier to the Company pursuant to Clause 3.5.3 shall (at the Company's option) either (i) be set off against any Charges payable by the Company to the Supplier or (ii) payable by the Supplier as a debt to the Company within 30 days of written demand by the Company.
- 8.12. The Company may retain or set off any amount owed by it to the Supplier against any amount due by the Company to the Supplier under this Agreement. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any amount due by the Supplier to the Company.
- 8.13. Without prejudice to Clause 15 (Audits), the Supplier shall maintain complete and accurate records of all time spent and materials used by the Supplier in providing the Services (including, where required by the Company, completed time sheets in a form approved by the Company), and the Supplier shall allow the Company to inspect such records at any time on the Company's reasonable request.
- 8.14. Except to the extent expressly stated in Schedule Part 4 (Charges) or agreed in writing between authorised representatives of the Parties in accordance with Clause 17 (Variation Procedure), the rates of the Charges set out in Schedule Part 4 (Charges) are fixed for the term of this Agreement and no increase in the rates of any Charges may be made (whether on account of increased material, labour or transport costs, indexation, fluctuations in rate(s) of exchange or otherwise) without the prior written consent of the Company.
- 8.15. For the avoidance of any doubt, except as otherwise expressly provided in this Agreement, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Agreement.
- 8.16. Where any Delay Payments, Service Credits and/or liquidated damages payments are due or payable by the Supplier (and/or are applied by the Company to reduce any Charges that are payable to the Supplier) in accordance with the terms of this Agreement in connection with any Default and/or failure by the Supplier, the parties acknowledge and agree that:
- 8.16.1. the amount(s) and/or rate(s) of the relevant Delay Payments, Service Credits and/or liquidated damages payments (as applicable) that are set out in or are applied pursuant to this Agreement:
- 8.16.1.1. do not constitute a penalty;
- 8.16.1.2. represent a reasonable, proportionate and legitimate adjustment to the Charges to reflect the reduced value to the Company and/or other ScottishPower Group Companies of the relevant Services provided by the Supplier as a result of the relevant Default and/or failure by the Supplier; and
- 8.16.1.3. in any event (and without prejudice to Clause 8.16.2), are proportionate to the legitimate interest of the Company in ensuring that the Supplier performs the relevant obligation in accordance with the terms of this Agreement, and include, without limitation, a genuine pre-estimate of the minimum amount of the Losses that will be suffered or incurred by the Company and/or other ScottishPower Group Companies as a result of the relevant Default or failure by the Supplier; and

- 8.16.2. unless expressly stated to the contrary in the Services Description or the relevant Work Instruction, the payment or application of any Delay Payments, Service Credits and/or liquidated damages payments shall not be the Company's sole or exclusive remedy in connection with the relevant Default or failure by the Supplier.

## 9. DELAYS

- 9.1. If the Supplier becomes aware that there shall be, or is likely to be, any delay in its performance of any Services and/or in meeting any Key Milestones it shall immediately notify the Company of the fact of the delay (or likely delay).
- 9.2. The Supplier shall provide, within three (3) Working Days of its initial notice under Clause 9.1, full, written details of (i) the reasons for the delay, (ii) the consequences of the delay and (iii) the steps that the Supplier shall take to mitigate or minimise the delay. The Supplier shall (unless agreed otherwise in writing between the Parties) deploy additional resources, and take all reasonable steps to eliminate or mitigate the consequences of any delay, which shall include taking the steps identified in the written notice provided under this Clause 9.2 and taking such other steps and actions as the Company may reasonably require in order to eliminate or mitigate the consequences of the delay. Unless otherwise agreed between the Parties in writing, any steps taken by the Supplier to eliminate or mitigate a delay pursuant to this Clause 9 shall be taken at the Supplier's sole cost and expense.
- 9.3. The Supplier shall provide written updates to Company every five (5) Working Days (or such other period as may be agreed between the Parties) on progress with regard to any delay and its consequences.
- 9.4. Without prejudice to its other rights and remedies under and/or pursuant to this Agreement, where there is any delay in the Supplier's performance of any Services and/or any delay in meeting any Key Milestone(s) as a result of the Supplier's Default, the Company may (at its sole option) grant the Supplier an extension of time for performance of the relevant Services and/or meeting the relevant Key Milestone(s). For the avoidance of any doubt, the Supplier shall not be entitled to payment of any additional costs or expenses, and/or to claim any increase in the Charges, in the event that the Company exercises its rights under this Clause 9.4.
- 9.5. Without prejudice to its other rights and remedies under and/or pursuant to this Agreement, in the event that the Supplier fails to meet any Key Milestone due to the Supplier's Default, the Company shall be entitled to require the payment of Delay Payments where the Schedule Part 1 (Implementation Services and Implementation Plan), the Core Services Description and/or the relevant Work Instruction (as applicable) identifies that Delay Payments are payable in respect of the relevant Key Milestone. The Delay Payments shall accrue on a daily basis from the date that the relevant Key Milestone was due to be achieved as set out in or pursuant to Schedule Part 1 (Implementation Services and Implementation Plan), the Core Services Description or the relevant Work Instruction (as applicable) and shall continue to accrue until the date when the relevant Key Milestone is achieved in accordance with this Agreement. For the avoidance of any doubt, Delay Payments shall not be the Company's sole or exclusive remedy in respect of the Supplier's failure to meet any Key Milestone.
- 9.6. Without prejudice to its other rights and remedies under and/or pursuant to this Agreement, in the event that the Supplier fails to meet any Significant Delay Date due to the Supplier's Default, the Company shall be entitled to terminate all or part of the Implementation Services, Core Services, the relevant Work Instruction

and/or all or part of this Agreement in accordance with Clause 24.1.5 (Termination Rights).

9.7. Subject to the Supplier complying with its obligations under Clauses 9.1 to 9.3 above, in the event that any delay in meeting any Key Milestones is a direct result of the Company's Default, the Supplier shall:

9.7.1. not be liable for the payment of Delay Payments in relation to the relevant Key Milestone; and

9.7.2. be permitted an appropriate additional period of additional time (determined by the Company (acting reasonably)) to achieve the relevant Key Milestone.

## 10. HARDWARE, SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS

### 10.1. Supplier Hardware

The Supplier agrees that, throughout the term of this Agreement, it will make available the Supplier Hardware for use by or on behalf of the Company and the ScottishPower Group Companies (together, the "Users") to the extent and for the purposes reasonably required by the Users. The Parties agree that nothing in this Agreement shall operate to transfer ownership of any Supplier Hardware to any of the Users, unless the Parties agree otherwise in writing.

### 10.2. Company Hardware

The Company agrees that, during the term of this Agreement, it will make available to the Supplier such of the Company Hardware as the Supplier reasonably requires to use in order to perform its obligations under this Agreement. The Parties agree that nothing in this Agreement shall operate to transfer ownership of any Company Hardware to the Supplier (or any of its permitted agents or sub-contractors), unless the Parties agree otherwise in writing.

### 10.3. Transferring Hardware

Title in the Transferring Hardware shall pass to the Company upon the earlier of (i) the Transferring Hardware being unloaded at any ScottishPower Group Company's premises and (ii) payment by the Company of the Charges referable to the Transferring Hardware. Risk in the Transferring Hardware shall pass to the Company on signature of a delivery acknowledgement by a member of the Company's Personnel. The Supplier warrants and undertakes that, immediately prior to title in the relevant Transferring Hardware passing to the Company in accordance with this Clause 10.3, all Transferring Hardware are the absolute and unencumbered property of the Supplier and are not subject to any liens, charges and/or other third party rights of any nature.

### Software and Intellectual Property Rights

10.4. The Parties' respective rights, obligations and liabilities in relation to Software and any other Intellectual Property Rights used and/or created in connection with the System, the Services and/or this Agreement are set out in Schedule Part 6 (Software and Intellectual Property Rights).

## 11. PUBLICITY

Without prejudice to Clause 20 (Confidentiality), the Supplier shall not be entitled to publish

any reports, articles, press releases or other documents or information relating to the subject matter of this Agreement without the prior written consent of the Company.

## 12. ACCESS TO PREMISES AND SAFETY/SECURITY

### 12.1. The Company:

- 12.1.1. shall provide the Supplier Personnel with such access to relevant areas of the Premises and at such times as the Company may deem is reasonably required by the Supplier in order to perform the Services;
- 12.1.2. shall provide such access to the Supplier Personnel as licensee only and the Supplier shall vacate the Premises immediately upon the termination or expiry of this Agreement, or earlier, if the Company so requests; and
- 12.1.3. may refuse admission to the Premises and/or direct the Supplier to end the involvement in the provision of the Services of any of the Supplier Personnel whom the Company believes represents a security risk, has been negligent or guilty of misconduct or does not have the required levels of training and expertise or where the Company has other grounds for doing so including, without limitation, any failure by any of the Supplier Personnel to comply with any of the requirements or works rules referred to in Clause 12.2. The decision of the Company pursuant to this Clause 12.1.3 shall be final. For the avoidance of doubt, the Supplier shall ensure that any Supplier Personnel in respect of whom the Company exercises its rights pursuant to this Clause 12.1.3 shall be replaced forthwith by a suitably qualified and experienced member of the Supplier Personnel.

### 12.2. The Supplier shall:

- 12.2.1. ensure that Supplier Personnel comply with all reasonable requirements of the Company concerning conduct at the Premises (including security and health and safety requirements) and ensure that all Supplier Personnel comply with all health safety and welfare policies of Company (as amended and/or updated from time to time) including those concerning (i) Alcohol and Drugs; (ii) Electronic Communications and Computer Use; (iii) Smoking; (iv) Equal Opportunities; (v) Fraud; and (vi) ScottishPower's General Health Safety and Environmental Requirements for Suppliers and their Employees;
- 12.2.2. provide a list of the names of all Supplier Personnel requiring admission to the Premises, specifying the capacities in which they require admission and giving such other particulars as the Company and/or the relevant ScottishPower Group Company may reasonably require. Failure by the Supplier to provide any name a reasonable time before access is required shall entitle the Company to refuse admission to that individual;
- 12.2.3. comply with all work rules and security requirements of the relevant ScottishPower Group Company whilst on its Premises or any other ScottishPower Group Company site and shall procure that all Supplier Personnel do the same. The Company shall as soon as reasonably practicable following a request provide the Supplier with copies of the ScottishPower Group's security procedures; and

- 12.2.4. without prejudice to its other obligations under and/or pursuant to this Agreement, comply with the Specific On-Site Works Requirements (if any).
- 12.3. Either Party shall notify the other as soon as practicable of any health and safety hazards at the Premises of which it becomes aware. The Supplier shall draw these hazards to the attention of the Supplier Personnel and shall instruct those persons in connection with any necessary associated safety measures.

### 13. CONTRACT MANAGEMENT

- 13.1. The Parties respectively appoint (i) the individuals identified as such in the Core Services Description as their Representatives in relation to the Implementation Services and the Core Services and (ii) the individuals identified as such in the Work Instruction as their Representatives in relation to the Additional Services under that Work Instruction.
- 13.2. Each Party may, by written notice to each other Party, revoke or amend the authority of its Representative or appoint a new Representative, provided always that the Supplier may not at any time appoint (i) more than one person to be its Representative in relation to the Implementation Services and the Core Services and (ii) more than one person to be its Representative in relation to the particular Additional Services covered under each Work Instruction. Any change to the Supplier's Representative shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld or delayed.
- 13.3. The Parties' relevant Representatives shall be responsible for the day-to-day management of the Implementation Services, the Core Services and the Services provided under any Work Instruction (as applicable).
- 13.4. In addition to the day to day operational contact between the Parties, the Parties shall hold regular progress meetings ("Progress Meetings") to review the Implementation Services, the Core Services, each Work Instruction and this Agreement generally and to discuss progress of each Work Instruction, their respective levels of satisfaction in respect of the performance by each Party of its obligations and (subject to Clause 17 (Variation Procedure)) to agree any changes necessary to address any areas of dissatisfaction. Progress Meetings shall be attended by the Parties' Representatives, as well as such other individuals as either Party may nominate from time to time.
- 13.5. The time, date and venue of the Progress Meetings shall be agreed by the Parties and the Supplier shall send an agenda to the Company not less than five (5) Working Days in advance of any Progress Meeting, incorporating any relevant reports and such other items as the Company may request. The Company shall chair each Progress Meeting.
- 13.6. The Parties shall ensure that they have at their disposal at the Progress Meetings all information and personnel necessary for a meaningful discussion of the items on the agenda and that they are represented by personnel who have the authority to make decisions on their behalf.
- 13.7. If requested by the Company, the Supplier shall provide the Company with regular reports throughout the term of this Agreement in relation to the progress of the Implementation Services, the Core Services, each Work Instruction and the performance of the Parties' obligations, which shall contain such information as the Company may reasonably request from time to time. Without prejudice to the preceding sentence, the Supplier shall provide, as a minimum, the reports required under paragraph 5 of the Core Services Description and Schedule Part 3 (Service

Levels).

- 13.8. Without prejudice to the generality of Clause 13.7 and to the Supplier's obligations and responsibilities under Clause 25.3 and Clause 25.4, the Supplier will provide a written report to the Company (within ten (10) Working Days of receipt of each such request from the Company) containing the following information (which the Supplier warrants and represents shall be true and accurate as at the date of the report):
- 13.8.1. an anonymised list of the Supplier Personnel engaged in the performance of the Services, identifying which, if any, of those Supplier Personnel the Supplier considers may be in scope of a transfer under the Employment Regulations in the event of termination of all or the relevant part of this Agreement; and
  - 13.8.2. a brief indication of the job function performed by each member of the Supplier Personnel and the proportion of time spent by that member of the Supplier Personnel in performing the Services.

The Supplier shall ensure that it complies with the requirements of the Data Protection Legislation in the provision of reports pursuant to this Clause 13.8.

- 13.9. The Supplier acknowledges that the Key Personnel identified (i) in the Core Services Description are essential to the proper provision of the Implementation Services and the Core Services to the Company and (ii) in each Work Instruction are essential to the proper provision of the Services to the Company pursuant to that Work Instruction. The Supplier shall ensure that all Key Personnel remain engaged in the performance of the relevant Services throughout the term of this Agreement (or throughout the period of performance of the relevant Services, if shorter).
- 13.10. Without prejudice to Clause 13.9, the Supplier shall use all reasonable endeavours to ensure that the role of any Key Personnel is not vacant for any longer than five (5) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 13.11. The Company (acting reasonably) may identify any of the Supplier Personnel as Key Personnel in connection with any Services, who shall then be included on the list of Key Personnel under the Core Services Description or relevant Work Instruction (as applicable). The Company may also require the Supplier to remove any Key Personnel that the Company (acting reasonably) considers in any respect unsatisfactory, subject to the Company providing reasons for such removal.
- 13.12. The Supplier shall not during the term of this Agreement and for twelve (12) months following the termination of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the relevant ScottishPower Group Company any person employed or engaged by any ScottishPower Group Company.

#### 14. SUPPLIER CORPORATE SOCIAL RESPONSIBILITY

- 14.1. The Supplier must ensure that the following measures are followed within its organisation in the performance of its obligations under this Agreement:
- 14.1.1. promote good practices, which foster and promote respect for human rights;

- 14.1.2. avoid complicity – in any form – in human rights abuses;
- 14.1.3. respect the freedom to join unions or the right of workers to engage in collective bargaining, subject to legal requirements existing under the law governing this Agreement;
- 14.1.4. without prejudice to Clause 36 (Prevention of Modern Slavery), eliminate all types or sorts of forced and compulsory labour, understood to be all types of work or service demanded from an individual under the threat of any sort of punishment. Work should be obtained from the individual freely and voluntarily.
- 14.1.5. avoid any type of child labour in its organisation, respecting minimum contracting ages in accordance with applicable, in force legislation, and possess suitable and reliable means for the verification of employees' age;
- 14.1.6. eliminate all discriminatory practices with respect to employment and occupation. To this effect, any distinction, exclusion or preference based on race, colour, gender, religion, political opinion, national or social origin, whose consequence is the nullifying or altering of equality with respect to opportunities or work in one's employment and occupation, shall be considered to constitute discrimination;
- 14.1.7. maintain a preventative focus in the face of environmental issues in order to achieve sustainable development, limiting activities which may negatively impact the environment; and
- 14.1.8. without prejudice to Clause 35 (Prevention of Corruption) combat corruption in all of its forms, including extortion and bribery. To this effect, corruption will be understood to be the abuse of power with which one has been entrusted for private gain.
- 14.2. Without prejudice to Clause 7.1.9 (Quality of Service), the Supplier agrees to comply with all applicable legislation in force which is linked to the provisions set out in this Clause 14.
- 14.3. The Supplier agrees to notify the Company with regard to any situation in which a breach of the aforementioned principles is identified by the Supplier, as well as with regard to the plan to remedy such a breach. The Supplier shall also provide a plan for the remedy of any breach of the aforementioned principles that is identified by the Company. In the event that corrective plans are not implemented, the Company reserves the right to terminate this Agreement.
- 14.4. Where the Supplier, in the performance of its obligations under this Agreement is authorised by the Company to sub-contract any of its obligations, the Supplier must ensure that all of its sub-contractors provide commitments to the Supplier that are substantially the same as set out in this Clause 14.
- 14.5. The Supplier will, at all times during the period in which this Agreement is in force, permit the Company to review the degree of compliance with the principles established in this Clause 14.

## 15. AUDITS

- 15.1. The Supplier shall keep or cause to be kept full and accurate records of all matters relating to the performance of its obligations under this Agreement (the "Records").

The Records shall be maintained in a form suitable for audit purposes, shall be kept separate from any other records of the Supplier and shall be retained for the period required by any applicable statutory provision and in any event during the term of this Agreement and for a period of not less than six (6) years thereafter.

- 15.2. The Company may, on reasonable notice to the Supplier, conduct audits for the purposes of inspecting, reviewing and verifying the Supplier's compliance with its obligations under this Agreement (including, without limitation, pursuant to Clause 35 (Prevention of Corruption)) and/or to meet any other audit or information requirement that may be required by law and/or any Regulatory Body.
- 15.3. The Supplier shall provide the Company (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including (i) all information requested by the Company within the scope of the audit, (ii) access to the Supplier's sites and any other relevant site used by the Supplier in connection with the Services, (iii) access to any systems (including IT systems), infrastructure and/or equipment used by the Supplier (whether exclusively or non-exclusively) in the performance of the Services, and (iv) access to Supplier Personnel.
- 15.4. The Company shall use its reasonable endeavours to ensure that the conduct of any audit carried out pursuant to Clause 15.2 does not unreasonably disrupt the business of the Supplier and shall use its reasonable endeavours to ensure that any such audit is carried out in compliance with any confidentiality obligations owed by the Supplier to any third party, provided that such confidentiality obligations are made known to the Company in advance.

## 16. CHANGE IN LAW

- 16.1. The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Charges as the result of:
  - 16.1.1. a General Change in Law; or
  - 16.1.2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known (or should have been known had the Supplier acted in accordance with Good Industry Practice) at the Commencement Date.
- 16.2. If a Specific Change in Law occurs or will occur during the term of this Agreement (other than those referred to in Clause 16.1.2), the Supplier shall notify the Company of the likely effects of that change, including whether any Change is required to the Services, the Charges or this Agreement and whether any relief from compliance with the Supplier's obligations is required.
- 16.3. As soon as practicable after any notification in accordance with Clause 16.2, the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:
  - 16.3.1. providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;
  - 16.3.2. demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier in its planning for provision of the relevant Services before the Specific Change in Law occurred;

- 16.3.3. giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
  - 16.3.4. demonstrating that any expenditure that has been avoided has been taken into account in amending the Charges.
- 16.4. Any amendment to the Charges or the Services agreed by the Parties pursuant to Clause 16.3 shall not be binding unless and until it is agreed in accordance with the Variation Procedure.

## 17. VARIATION PROCEDURE

- 17.1. At any time during the term of this Agreement the Company may request, and the Supplier may recommend, changes to the Services, any Work Instruction and/or this Agreement (a "Proposed Change"). Any Proposed Change shall be made by submission of a draft Variation by one party to the other in substantially the same form as set out in Schedule Part 8 (Form of Variation).
- 17.2. The Supplier shall investigate the impact of any Proposed Change upon the Services, the relevant Work Instruction(s), the Charges and any other aspect of this Agreement and shall (if required by the Company and at the Supplier's cost) provide the Company with a detailed written report and quotation.
- 17.3. Neither Party shall be obliged to agree to any Proposed Change but neither Party shall withhold or delay its agreement to any Proposed Change unreasonably.
- 17.4. If the Parties agree the terms of any Proposed Change, the Variation (as agreed between the Parties) shall be signed by each of the Parties. This Agreement and/or the relevant Work Instruction shall be deemed to be amended in accordance with the terms of any Variation signed by both Parties with effect from the effective date set out in the Variation.
- 17.5. Until such time as a Variation is signed by both Parties in accordance with Clause 17.4, each Party shall, unless otherwise agreed in writing, continue to perform its obligations set out in this Agreement as if the Proposed Change had not been raised.
- 17.6. Subject always to Clause 16.1, the Supplier undertakes that any proposed amendments to the Charges in connection with any Proposed Change shall be reasonable and proper. The Supplier shall provide to the Company reasonable details in writing of any such proposed amendment to the Charges and shall provide such information as the Company may reasonably require in order to demonstrate that the relevant amendments to the Charges are justifiable and competitive.

## 18. DISPUTES

- 18.1. All Disputes between the Parties shall in the first instance be referred by the Parties to their relevant respective Representatives for resolution. The Parties shall procure that their relevant Representatives meet as soon as possible (and in any event within five (5) Working Days) after any Party identifies that a Dispute exists, to seek to resolve the Dispute.
- 18.2. If any Dispute cannot be resolved by Parties' relevant Representatives within ten (10) Working Days after the date of referral under Clause 18.1, either Party may refer the Dispute to the Parties' respective chief executive officer (or such other

representatives of the Parties with sufficient seniority having regard to the nature of the Dispute).

- 18.3. If the Dispute cannot be resolved by escalation pursuant to Clause 18.2 within ten (10) Working Days after the date of referral under Clause 18.2 then the Company may, at its sole discretion, refer the Dispute to resolution by an expert. The expert shall be agreed between the Parties, or, if the Parties are unable to reach agreement, selected by the President for the time being of the Law Society of Scotland. The expert shall act as an expert and not an arbitrator and the decision of the expert shall be final and binding, save in the case of manifest error.
- 18.4. Where the Company does not exercise its rights pursuant to Clause 18.3 to refer a Dispute to an expert, either party may refer that Dispute for determination by a Court of competent jurisdiction in accordance with Clause 38 (Governing Law and Jurisdiction).
- 18.5. Nothing in this Agreement shall prevent either Party from raising Court proceedings in order to preserve or enforce its proprietary or other rights.

## 19. PROTECTION OF PERSONAL DATA

- 19.1. The Supplier warrants and undertakes to the Company that in the performance of its obligations under this Agreement it shall comply with (i) the provisions of the Data Protection Legislation and (ii) the terms of this Clause 19 and Schedule Part 7 (Specific Data Requirements) (together, the "Data Requirements").
- 19.2. Without prejudice to Clause 19.1, if the Supplier processes any personal data on the Company's behalf when performing its obligations under this Agreement, the Parties record their intention that the Company shall be the data controller and the Supplier shall be a data processor and in any such case the Data Requirements shall apply.
- 19.3. The Supplier shall provide such information as the Company may reasonably request from time to time to evidence and/or demonstrate the Supplier's compliance with the terms of this Clause 19 and/or the Data Protection Requirements.
- 19.4. Words and phrases which are defined in the applicable Data Protection Legislation shall (unless the context requires otherwise) have the same meanings in this Clause 19.
- 19.5. The Company reserves the right to notify the Supplier, at any time and from time to time, of any amendments and/or additions to this Agreement that the Company (in its sole discretion) considers are necessary and/or appropriate in order to (a) enable, ensure and/or facilitate the Company's (and/or any ScottishPower Group Company's) compliance with the Data Protection Legislation and/or (b) ensure that the terms of this Agreement provide the Company (and the ScottishPower Group Companies) with adequate rights and protections in relation to the Supplier's Processing of ScottishPower Personal Data, having regard to the terms of any Data Protection Legislation. Any amendments and/or additions that may be notified by the Company to the Supplier pursuant to this 19.5 shall have effect from the date set out in the relevant notice issued by the Company.

## 20. CONFIDENTIALITY

- 20.1. The Supplier undertakes to maintain in the strictest confidence:
- 20.1.1. all information obtained from the Company and/or any ScottishPower Group Company or third parties (whether verbally or in writing and in any format) regarding this Agreement, the performance of this Agreement and/or any other activity of the Company and/or any ScottishPower Group Company (including, without limitation, any request for bid, the bid, the Agreement and any other information relating the Company's and/or any ScottishPower Group Company's respective customers, personnel, contractors, business and/or activities); and
  - 20.1.2. all information created, developed or formulated from any of the information referred to in Clause 20.1.1.
- together, the "**Company Confidential Information**".
- 20.2. Company Confidential Information is considered to be "Protected Information" for the purpose of implementing Information Security Requirements (if any).
- 20.3. In particular, the Supplier and its Permitted Disclosees (as defined below) may have access to commercially sensitive information which could entail a competitive advantage to companies dedicated to the generation, distribution, transmission and/or supply of electricity or gas in Great Britain. Therefore, unless the Company expressly advises the Supplier otherwise, the disclosure of such information by the Supplier and/or any of its Permitted Disclosees to any of these companies (whether or not they belong to the ScottishPower Group) is prohibited. The purpose of this Clause 20.3 is to comply with the provisions of the Code of Incompatible Activities for the Iberdrola Group companies with regulated activities published on the [www.iberdrola.com](http://www.iberdrola.com) corporate website.
- 20.4. The following will not be considered Company Confidential Information:
- 20.4.1. if it is in the public domain on the disclosure date by the Company or later becomes so without any non-compliance with this Clause 20.4 on the part of the Supplier;
  - 20.4.2. if it is known to or is legally in the possession of the Supplier, without any restriction or obligation of confidentiality regarding it, before the disclosure date by the Company;
  - 20.4.3. if it is legitimately obtained from a third party not subject to obligations of confidentiality; or
  - 20.4.4. if it is developed independently by the Supplier without using Company Confidential Information.

- 20.5. Should the Supplier be legally required to disclose any Company Confidential Information by any competent judicial or administrative authority (including but not limited to, oral questions, interrogations, requests for Company Confidential Information or documents, civil, administrative or criminal investigations or similar proceedings), it shall immediately communicate such requirement and the relevant information to the Company in writing, such that the Company may initiate relevant actions aimed at preventing, whenever legally possible, the disclosure of such Company Confidential Information and the breach of the terms of this Clause 20.
- 20.6. If due to constraints on timescales, the Company is unable to prevent the disclosure of any Company Confidential Information in the circumstances described in Clause 20.5, the Supplier shall provide the relevant authority in question only with that part of the Company Confidential Information that, in the opinion of its legal advisers, it is obliged to disclose, and will use its best efforts to treat the Company Confidential Information disclosed confidentially, informing the Company of the exact part of the Company Confidential Information disclosed. In the absence of specific instruction by the competent authority regarding the part of the Company Confidential Information that must be disclosed by legal imperative, any decision on this must be taken by the Supplier after consultation with the Company.
- 20.7. The Supplier guarantees and undertakes (i) that the Company Confidential Information to which it and/or its Permitted Disclosees (as defined below) has access will be protected with adequate security measures to prevent the Company Confidential Information from being disclosed to third parties, including, but not limited to, in accordance with the provisions of Information Security Requirements (if any); and (ii) that it shall have and shall ensure that its Permitted Disclosees exercise the degree of care and take the actions necessary to comply with the confidentiality obligations imposed under this Clause 20.
- 20.8. The Supplier shall be liable for any breach of the confidentiality obligations set forth in this Agreement by any of its shareholders, administrators, Personnel, assignees, subcontractors or professional advisers (referred to in this Clause 20 as its "**Permitted Disclosees**") who have had access to the Company Confidential Information. The Company reserves the right to take pertinent legal actions to defend its interests regarding the breach of confidentiality.
- 20.9. The Supplier will indemnify the Company for all losses, claims damages, expenses and costs suffered or incurred by the Company and/or any ScottishPower Group Company arising directly or indirectly from the breach by the Supplier and/or by any of its Permitted Disclosees of the confidentiality obligations provided for in this Clause 20 or the disclosure or unauthorised use of the Company Confidential Information.
- 20.10. At the Company's request, the Supplier shall procure that any Supplier Personnel identified by the Company from time to time execute(s) a confidentiality undertaking directly for the Company's benefit, in the form prescribed by the Company.

- 20.11. Except to the extent set out in this Clause 20 or where disclosure is expressly permitted elsewhere in this Agreement, the Company shall treat all confidential and commercially sensitive information relating to the Supplier's proprietary products, services and/or prices ("**Supplier Confidential Information**") as confidential and shall safeguard it accordingly and the Company shall not disclose the Supplier Confidential Information to any other person without the Supplier's prior written consent.
- 20.12. The following will not be considered Supplier Confidential Information:
- 20.12.1. if it is in the public domain on the disclosure date by the Supplier or later becomes so without any non-compliance with Clause 20.11 on the part of the Company;
  - 20.12.2. if it is known to or is legally in the possession of the Company, or any ScottishPower Group Company, without any restriction or obligation of confidentiality regarding it, before the disclosure date by the Company;
  - 20.12.3. if it is legitimately obtained from a third party not subject to obligations of confidentiality; or
  - 20.12.4. if it is developed independently by the Company, or any ScottishPower Group Company, without using Supplier Confidential Information.
- 20.13. Without prejudice to Clause 20.12, Clause 20.11 shall not prevent the Company (and/or any ScottishPower Group Company) from disclosing all or any part of the Supplier Confidential Information to such of the Company's (and/or any ScottishPower Group Company's) officers, employees, suppliers, contractors and/or agents as require to have access to such Supplier Confidential Information in order for the Company (and/or any ScottishPower Group Company) to receive and/or utilise any of the Goods and/or the benefit of all or any part of the Goods, the Deliverables, the Services and/or this Agreement.

## 21. INDEMNITY

- 21.1. Subject (where applicable) to any limitations set out in this Agreement (but without prejudice to the Company's rights or remedies under this Agreement or at law), the Supplier shall indemnify and keep the Company and all ScottishPower Group Companies fully and effectively indemnified from and against all Losses arising from, relating to and/or in connection with:
- 21.1.1. any injury (including death) to or of any persons or loss of or damage to any property which arises out of the negligence, breach of contract or other act, omission or default of the Supplier (including the Supplier Personnel) and/or any injury (including death) to or of any persons or loss of or damage to any property which arises from an event in respect of which the Supplier is required to maintain insurance pursuant to this Agreement;
  - 21.1.2. any breach by the Supplier and/or any Supplier Personnel of the terms of Clauses 19 (Protection of Personal Data), 20 (Confidentiality) and/or the Data Requirements;
  - 21.1.3. any other direct or indirect breach or negligent performance or failure or delay in the Supplier's performance of the Supplier's obligations under and/or pursuant to this Agreement; and/or

- 21.1.4. any breach by the Supplier and/or any Supplier Personnel of any term of this Agreement due to its and/or their wilful misconduct, fraud or fraudulent misrepresentation,

provided, in each case, that the indemnity shall not apply if and to the extent that the relevant Losses have directly arisen from negligence on the part of the Company and/or the relevant ScottishPower Group Company.

- 21.2. Notwithstanding any other provision of this Agreement, the Supplier shall free, relieve and indemnify the Company against all liability for tax (including PAYE) and employer and employee national insurance contributions, and, where applicable, apprenticeship levy, together with all interest, penalties, fines and costs incurred by the Company (including all reasonable legal expenses on an indemnity basis) in the event that HMRC successfully establishes, including where it is so established after the termination of this Agreement, that the Company's engagement with any of Supplier Personnel pursuant to this Agreement constituted deemed employment for the purpose of the Off-Payroll Working Rules.

## 22. LIMITATIONS ON LIABILITY

- 22.1. Neither Party limits or excludes its liability for:

- 22.1.1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or
- 22.1.2. fraud and/or fraudulent misrepresentation by it or its employees; or
- 22.1.3. breach of any obligation as to title implied by statute.

- 22.2. Subject to Clause 22.1, the Supplier's total aggregate liability under this Agreement to the Company:

- 22.2.1. in respect of the indemnities granted by the Supplier in each of Clauses 8.8, 21.1.2, 21.1.4, 25.3 and paragraph 8 of Schedule Part 6 (Software and Intellectual Property Rights), shall be unlimited;
- 22.2.2. in respect of any liability arising from wilful or malicious damage caused by the Supplier and/or any Supplier Personnel, any wilful or malicious act of the Supplier constituting material breach of this Agreement and/or the deliberate refusal of the Supplier to perform the Services, shall be unlimited;
- 22.2.3. for all loss of or damage to Premises, property and/or assets (including technical infrastructure, assets or equipment), and all Losses connected to such loss or damage, shall in no event exceed £5,000,000 for any one event or series of connected events or such other higher amount as may be specified in paragraph 8 of Schedule Part 2; and
- 22.2.4. in respect of all other claims, losses or damages, whether arising from delict, tort (including negligence), breach of contract or otherwise under or in connection with this Agreement in relation to any one event or series of connected events shall not exceed an amount equal to the greater of (i) 125% of the aggregate Charges paid, due or payable in the future by the Company under this Agreement (ii) the amount (if any) specified in paragraph 8 of Schedule Part 2 (Core Services Description).

- 22.3. Subject to Clause 22.1 and without prejudice to the Company's obligation to pay the Charges as and when they properly fall due for payment, the total aggregate liability of the Company and all ScottishPower Group Companies (including all claims, losses or damages, whether arising from delict, tort, negligence, breach of contract or otherwise) under and/or in connection with this Agreement shall not exceed an amount equal to 125% of the aggregate Charges paid by the Company under this Agreement.
- 22.4. Subject to Clauses 22.1, 22.5 and paragraph 8.5 of Schedule Part 6 (Software and Intellectual Property Rights), neither Party shall be liable to the other Party for:
- 22.4.1. any indirect loss, special loss or consequential loss or damage; or
- 22.4.2. any loss of profits, loss of contracts, loss of revenue, loss of business opportunities, or damage to goodwill (whether direct or indirect).
- 22.5. The Supplier acknowledges and agrees that the types of losses that are recoverable by the Company as a direct loss include, but are not limited to:
- 22.5.1. any additional operational and/or administrative costs and expenses suffered or incurred by the Company and/or any ScottishPower Group Company arising from any Supplier's Default;
- 22.5.2. any wasted expenditure, charges rendered unnecessary and/or increased costs or charges that are suffered or incurred by the Company and/or any ScottishPower Group Company arising from any Supplier's Default;
- 22.5.3. any additional costs, expenses and/or liabilities suffered or incurred by the Company and/or any ScottishPower Group Company of procuring replacement services and/or deliverables;
- 22.5.4. any costs, expenses and/or liabilities suffered or incurred by the Company and/or any ScottishPower Group Company arising from any loss of, corruption to, alteration and/or restoration of any Company Data;
- 22.5.5. any regulatory losses, fines, penalties, expenses or other losses that are suffered or incurred by the Company and/or any other ScottishPower Group Company arising from or in connection with a breach of any Laws or an inability to comply with any Laws, and any further or additional costs that are suffered or incurred by the Company and/or any other ScottishPower Group Company in order to meet additional requirements imposed by any relevant Regulatory Body, in each case arising from any Supplier's Default; and/or
- 22.5.6. any anticipated savings which would otherwise have been made by the Company and/or any ScottishPower Group Company.

## 23. INSURANCE

- 23.1. Without limiting any of its other responsibilities or liabilities under and/or pursuant to this Agreement, and except as expressly stated to the contrary in the Core Services Description and/or any Work Instruction, the Supplier shall take out and maintain or procure the maintenance for the term of this Agreement and for no less than twelve (12) months thereafter the following insurances:

- 23.1.1. Employer's Liability Insurance;
- 23.1.2. Public Liability Insurance;
- 23.1.3. Motor Insurance;
- 23.1.4. Product Liability Insurance; and
- 23.1.5. Professional Indemnity insurance,

for such sum and range of cover as shall be prudent and appropriate in all the circumstances, bearing in mind (in particular) the nature and the extent of the Supplier's obligations and/or liabilities under this Agreement (and in any event in compliance with all compulsory statutory insurance requirements), provided always that:

- (a) the minimum sum insured or limit of indemnity (as applicable) under the policy referred to at Clause 23.1.2 shall be £5,000,000 per event or series of connected events; and
  - (b) without prejudice to the remainder of this Clause 23.1, the Supplier shall comply with the specific insurance requirements (if any) set out in paragraph 8 of the Core Services Description.
- 23.2. The Supplier shall provide to the Company, on request, evidence (in a form acceptable to the Company) of the insurances in place pursuant to Clause 23.1 from time to time.
- 23.3. If requested by the Company, the Supplier shall ensure that all policies of insurance maintained pursuant to Clause 23.1:
- 23.3.1. include an express waiver by the insurer of any rights of subrogation; and/or
  - 23.3.2. are extended to indemnify the Company from and against any Losses for which the Supplier may be liable to the Company and/or any ScottishPower Group Company under and/or pursuant to this Agreement.
- 23.4. For the avoidance of any doubt, the risks, obligations and responsibilities of the Supplier under and/or pursuant to this Agreement are not limited to taking out the insurance policies required pursuant to this Clause 23, and, without prejudice to the terms of Clause 22, the Supplier's liability under and/or pursuant to this Agreement shall not be limited or restricted to the amount(s) insured and/or recovered under any insurance policies maintained by the Supplier at any time or from time to time.

## 24. TERMINATION RIGHTS

- 24.1. The Company may terminate all or any part of this Agreement (or any part of the Services) immediately (or on such period of notice as the Company, in its sole discretion, may specify in its notice to the Supplier) and without any liability to the Supplier by giving written notice of termination to the Supplier if:
- 24.1.1. the Supplier is in material Default which is capable of remedy and it has failed to remedy such Default within twenty-one (21) Working Days of receipt of notification of such Default from the Company;

- 24.1.2. the Supplier commits a material Default which is not capable of remedy;
- 24.1.3. an Insolvency Event occurs in relation to the Supplier (and/or, where applicable, the guarantor under any Parent Company Guarantee);
- 24.1.4. a Force Majeure Event occurs which affects all or a substantial part of the performance of the Supplier's and/or the Company's obligations under this Agreement for a continuous period of more than fifteen (15) Working Days;
- 24.1.5. the Supplier fails to achieve any Significant Delay Date as result of the Supplier's Default;
- 24.1.6. a "Critical Service Level Failure" (as defined in paragraph 1.3 of Schedule Part 3 (Service Levels)) occurs;
- 24.1.7. it is entitled to do so pursuant to Clause 5.7 (Supplier's Duties), Clause 35.5 (Prevention of Corruption) and/or any other express provision of this Agreement;
- 24.1.8. the Company (acting reasonably) considers that the Supplier (and/or, where applicable, the guarantor under any Parent Company Guarantee) is experiencing Significant Financial Difficulties;
- 24.1.9. there is a change in the identity of the person that has, directly or indirectly, the power to direct or cause the direction of the management of the policies of the Supplier (whether through the ownership of voting shares, by contract or otherwise);
- 24.1.10. the Supplier transfers or disposes of, or threatens to transfer or dispose of, all or a substantial part of its business or assets;
- 24.1.11. the Supplier ceases or suspends or threatens to cease or suspend all or a substantial part of its business;
- 24.1.12. the Supplier commits any act, omission and/or Default which results in an investigation of any ScottishPower Group Company by any Regulatory Body;
- 24.1.13. the Company becomes aware that the performance by either Party of all or any part of its obligations pursuant to this Agreement, is (or is likely to be) in contravention of any legal, governmental and/or regulatory requirement applicable to either Party;
- 24.1.14. the Supplier commits any act, omission and/or Default which results in a prosecution or a fine being imposed on any ScottishPower Group Company by any Regulatory Body or which the Company believes may or could if the relevant act, omission or Default continued or was repeated lead to the termination or revocation of any ScottishPower Licence or to the imposition of any fine or penalty on any ScottishPower Group Company or any additional conditions being placed on or attaching to any ScottishPower Licence; and/or
- 24.1.15. it is entitled to do so pursuant to any other provision of this Agreement.

- 24.2. The Supplier may terminate the entire Agreement (including the Implementation Services, the Core Services and all Work Instructions) immediately by giving written notice of termination to the Company if:
- 24.2.1. the Company is in material breach of its obligation to pay undisputed Charges by giving the Company ninety (90) days written notice specifying the breach and requiring its remedy. The Supplier's right of termination under this Clause 24.2 shall not apply to non-payment of the Charges by the Company where such non-payment is due to the Company exercising its rights to withhold and/or set-off Charges in accordance with this Agreement; and/or
  - 24.2.2. an Insolvency Event occurs in relation to the Company.
- 24.3. Without prejudice to Clause 24.1, the Company may terminate the entire Agreement (including all Work Instructions) without liability to the Supplier at any time on providing not less than twenty-five (25) Working Days notice to the Supplier.
- 24.4. Without prejudice to Clause 24.1, the Company may terminate all or any part of the Implementation Services, the Core Services and/or all or any part of any specific Work Instruction(s) without liability to the Supplier at any time on providing not less than ten (10) Working Days notice to the Supplier.
- 24.5. Where the Company exercises its rights of termination pursuant to Clause 24.3 and/or 24.4, the Parties acknowledge and agree that Charges shall be paid by the Company only in relation to Services properly performed by the Supplier in accordance with this Agreement up to the effective date of termination.
- 24.6. The Supplier acknowledges and agrees that, in any circumstances where the Company is entitled to terminate all or part of this Agreement and/or any Work Instruction pursuant to this Clause 24, the Company may (at the Company's sole option and with effect from such date as the Company may notify to the Supplier) suspend the Supplier's performance of all or any part of the Services for such period as the Company considers appropriate. The Parties agree that:
- 24.6.1. any exercise by the Company of its rights pursuant to this Clause 24.6 shall be without prejudice to the Company's other rights and remedies under and/or pursuant to this Agreement and/or at law (including, without limitation, the Company's rights to terminate all or any part of this Agreement and/or any Work Instruction at any time in accordance with this Clause 24);
  - 24.6.2. in the event that the Company exercises its rights pursuant to this Clause 24.6, the Supplier shall not be entitled to payment of any Charges (or any other fees, charges and/or expenses) in respect of any Services that are suspended (the "Suspended Services") during the relevant period of suspension; and
  - 24.6.3. the Supplier shall re-commence performance of the Suspended Services with effect from the relevant date (if any) notified to it by the Company.
- 24.7. For the avoidance of any doubt:
- 24.7.1. where the Company terminates the Implementation Services, the Core Services and/or any one or more Work Instructions pursuant to Clause 24.1 and/or Clause 24.4, this shall not affect the continuance in full

force and effect of the remainder of this Agreement and any other Work Instruction;

- 24.7.2. where the Company or the Supplier terminates the entire Agreement in accordance with the terms of this Clause 24, the Implementation Services, the Core Services and all Work Instructions shall also terminate with effect from the date of termination of the entire Agreement; and
- 24.7.3. the Company shall not be obliged to make any payments to the Supplier as a result of or in connection with the suspension, termination or expiry of all or part of this Agreement, except to the extent expressly provided for in this Clause 24.

## 25. CONSEQUENCES OF TERMINATION

- 25.1. If required by the Company, the Supplier shall provide (at no cost to the Company) such reasonable assistance and information as the Company may request in connection with termination of this Agreement and/or any Work Instruction, including, without limitation, any assistance and/or support as the Company may require in connection with any handover of responsibility for provision of services that are the same as or similar to the Services to any ScottishPower Group Company and/or Replacement Supplier.
- 25.2. Without prejudice to the terms of Clause 25.3, the Parties do not intend that expiry or termination of all or any part of this Agreement, the Services and/or any Work Instruction (for whatever reason) shall give rise to a relevant transfer pursuant to the Employment Regulations.
- 25.3. The Supplier shall indemnify and keep indemnified (i) the Company and (ii) each and any ScottishPower Group Company and/or replacement supplier (either, at the option of the Company, directly or through the Company as agent or trustee for the relevant ScottishPower Group Company and/or replacement supplier) on demand from and against all Employee Liabilities, losses, costs, claims, demands, awards, damages, expenses (including, but not limited to, legal fees) and/or any other liabilities which the Company, any ScottishPower Group Company and/or any replacement supplier (as the case may be) suffers or incurs at any time in connection with any Supplier Personnel (or former Supplier Personnel) whether arising before, on or after expiry or termination of all or any part of this Agreement, the Services and/or any Work Instruction (for whatever reason). The scope of the indemnity granted by the Supplier under this Clause 25.3 shall include, but not be limited to, all Employee Liabilities which the Company, any ScottishPower Group Company and/or any replacement supplier (as the case may be) suffers or incurs at any time in connection with:
  - 25.3.1. any claim that is made by any Supplier Personnel against the Company, any ScottishPower Group Company and/or any replacement supplier (as the case may be) during the period of their employment or engagement by the Supplier and/or any sub-contractor of the Supplier;
  - 25.3.2. any claim by any Supplier Personnel (or former Supplier Personnel) that their contract of employment has transferred to the Company, any ScottishPower Group Company and/or any replacement supplier by operation of the Employment Regulations;
  - 25.3.3. any period prior to the date on which the contract of employment of any Supplier Personnel (or former Supplier Personnel) was transferred to

the Company, any ScottishPower Group Company and/or any replacement supplier by operation of the Employment Regulations; and/or

- 25.3.4. the employment and/or the termination of any contract of employment of any Supplier Personnel (or former Supplier Personnel) by the Company, any ScottishPower Group Company or any replacement supplier (as the case may be), including, but not limited to, any amounts paid or payable to any such person in connection with the termination of their employment and/or in connection with their employment up to the date of termination of their employment.
- 25.4. In the event that the Company is notified or otherwise becomes aware or suspects that, notwithstanding the terms of Clause 25.2, the contracts of employment of any Supplier Personnel will or may transfer to the Company, any ScottishPower Group Company and/or any replacement supplier by operation of the Employment Regulations at any time, the Supplier represents, warrants and undertakes to the Company that:
- 25.4.1. it will provide to the Company (within five (5) Working Days of each such request by the Company and in such form as the Company may require) all information that may be requested by the Company in connection with the Supplier Personnel (including, but not limited to, details of their job title and role, the time spent by them in performing the Services, age, period of employment/engagement, employment status, identity of their employer, contractual notice periods and any other terms relating to termination of employment (including redundancy procedures/payments), wages, salaries, pensions and any other employment-related benefits, any outstanding or potential claims or other liabilities relating to them and whether they are on long term absence) and copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment;
- 25.4.2. all information provided by the Supplier pursuant to Clause 25.4.1 shall be true and accurate as at the date it is provided. The Supplier acknowledges and agrees that the Company may disclose all or any part of the information provided by the Supplier pursuant to Clause 25.4.1 to any replacement supplier or potential replacement supplier (whether as part of a tender exercise or otherwise);
- 25.4.3. it will comply with the terms of the Employment Regulations in connection with the transfer or potential transfer of the contracts of employment of any Supplier Personnel to the Company, any ScottishPower Group Company and/or any replacement supplier; and
- 25.4.4. it will provide such information, access, co-operation and assistance as the Company may require to enable and/or assist the Company, any ScottishPower Group Company and/or any replacement supplier to comply with their respective obligations and/or responsibilities under and/or in connection with the Employment Regulations.
- 25.5. The Supplier acknowledges and agrees that the terms of Clause 25.4 are without prejudice to (and do not exclude, restrict, limit or otherwise affect) the scope, nature and/or extent of the Supplier's obligations and/or liabilities under and/or pursuant to Clause 25.3.
- 25.6. On termination or expiry of this Agreement for whatever reason:

- 25.6.1. except where expressly stated to the contrary in this Agreement, the Supplier shall immediately cease using and shall return to the Company all (or such part) of the Company Confidential Information which is in its possession (and the Supplier shall ensure that all of the Supplier Personnel do the same);
  - 25.6.2. the Supplier shall immediately cease using and shall return to the Company (at the Supplier's cost) all Company Hardware and Company Materials which is in its possession (and the Supplier shall ensure that all of the Supplier Personnel do the same);
  - 25.6.3. the Supplier shall immediately cease using and shall return or destroy (at the Company's option) all Company Data and any other material and information which it possesses or controls and was supplied to it by or on behalf of the Company and/or any ScottishPower Group Company in connection with this Agreement (and the Supplier shall ensure that all of the Supplier Personnel do the same); and
  - 25.6.4. solely in the circumstances where the Company terminates all or part of this Agreement pursuant to Clause 24.1 prior to the Go-Live Date, the Supplier shall (if requested by the Company) refund to the Company all Implementation Charges and (if applicable) Core Charges paid by the Company to the Supplier as at the effective date of termination. The Supplier shall pay sums due pursuant to this Clause 25.4.4 within 30 days of request by the Company.
- 25.7. The Supplier acknowledges that it is of the utmost importance to the Company that in the period prior to expiry or termination of all or any part of this Agreement for any reason whatsoever, the supply of the Services shall continue to be provided in accordance with the standards detailed in this Agreement, and where there are no standards applicable to parts of the supply of the Services, such parts of the supply of the Services shall continue to be provided to the same standards to which such supplies of the Services were provided prior to such period and in any event in accordance with Good Industry Practice.
- 25.8. If requested by the Company, the Supplier hereby undertakes to provide assistance to the Company and/or any Replacement Supplier or other third party engaged by the Company to enable or assist with the continued supply of the services that are the same as or similar to the Services following termination or expiry of this Agreement (in whole or in part) and the orderly transfer of supply of such services to the Company and/or to a Replacement Supplier, with the minimum of disruption to the business of the Company.
- 25.9. In order to ensure the smooth handover of the provision of the Services (or services that are the same as or similar to all or part of the Services) to a Replacement Supplier and to minimise any potential disruption to the operations of Company and/or a Replacement Supplier and/or the provision of the relevant services, six (6) Months prior to the expiry of this Agreement or within ten (10) Working Days following the issuance of a notice of termination of all or part of this Agreement, the Supplier shall (if requested by the Company):
- 25.9.1. acting reasonably, agree with the Company and implement an appropriate handover plan; and
  - 25.9.2. provide the Company with all information reasonably requested by the Company in connection with the transition of the relevant services to any ScottishPower Group Company and/or Replacement Supplier(s).

- 25.10. Except as expressly stated to the contrary in this Agreement, the termination of this Agreement or its expiry for whatever reason shall not prejudice or affect any accrued rights or remedies of either Party.
- 25.11. The termination or expiry of this Agreement for whatever reason shall not affect the coming into force or continuation in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiry and, without prejudice to the foregoing generality, the provisions of Clauses 1.2 to 1.11, 5.4, 7, 8.7, 8.8, 8.10, 10, 11, 15, 18, 19, 20, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 38, together with the relevant referring provisions of Clause 1.1 and the relevant referring provisions of the Schedule and the Annexes.

## 26. FORCE MAJEURE

- 26.1. Subject to the remaining provisions of this Clause 26, a Party may claim relief from liability for non-performance of its obligations if and only to the extent that this is due to a Force Majeure Event affecting that Party (the "Affected Party").
- 26.2. The Affected Party shall immediately give the other Party written notice of any claim that a Force Majeure Event has occurred. The notification shall include full details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and the action the Affected Party proposes to take to mitigate its effect.
- 26.3. As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and the Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 26.4. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 26.5. The Affected Party shall not be entitled to relief under this Clause 26 to the extent that it has caused or has substantially contributed to any delay or failure in the performance of its obligations, including any failure to place orders or issue instructions when it ought reasonably to have done so.
- 26.6. Notwithstanding any other provision in this Agreement, the Supplier: (i) agrees that it has entered into this Agreement with full knowledge of and having taken into account the existence, effect and impact of COVID-19, including the measures adopted by acts of government, local government and Regulatory Bodies in relation to this as at the date of this Agreement; (ii) hereby warrants and represents to the Company that COVID-19 does not and will not affect the completion in full of the Supplier's obligations under this Agreement; and (iii) agrees that COVID-19 shall not give rise to, and shall not be considered, a Force Majeure Event for the purposes of this Agreement.

## 27. ALIENATION

- 27.1. The Supplier shall not be permitted to assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights and/or obligations under this Agreement without the prior written consent of the Company.
- 27.2. The Company may, by written notice to the Supplier, sub-contract, assign, novate or otherwise dispose of any or all of its rights and/or obligations under this Agreement to any other ScottishPower Group Company. The Company may, by written notice to the Supplier, sub-contract, assign, novate or otherwise dispose of any or all of its rights and/or obligations under this Agreement to any other party with the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 27.3. Following receipt of notice from the Company under Clause 27.2, the Supplier shall expeditiously execute all forms, agreements and/or other documentation necessary for the sub-contracting, novation, disposal, transfer or assignment/assignation of the Company's rights and/or obligations under this Agreement in accordance with the notice provided by the Company under Clause 27.2.
- 27.4. Without prejudice to Clause 27.3, the Supplier hereby appoints the Company to be its attorney to execute and do any such instrument or thing, and generally to use its name, for the purpose of giving the Company the benefit of Clause 27.2 and effecting any sub-contract, assignation or assignment, novation, disposal or other instrument of transfer required by the Company under Clause 27.3. The Supplier acknowledges that a certificate in writing signed by the Company that any instrument or act falls within the authority conferred by this Clause 27.4 shall be conclusive evidence of such authority.
- 27.5. In the event that the Company provides its prior written consent to any proposed sub-contracting by the Supplier in accordance with Clause 27.1, the Supplier acknowledges and agrees that such consent shall not relieve the Supplier from any of its obligations under and/or pursuant to this Agreement and the Supplier shall remain responsible for all acts and omissions of its permitted sub-contractors and all Supplier Personnel, whose acts and omissions shall be deemed to be acts and omissions of the Supplier. An obligation on the Supplier under and/or pursuant to this Agreement to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Supplier Personnel also do, or refrain from doing, such act or thing.
- 27.6. The Supplier acknowledges and agrees that (in defence of any claims or proceedings raised under this Agreement or otherwise) it shall not be entitled to contend that its liability under and/or pursuant to this Agreement and/or or at law is excluded, reduced or otherwise affected on the grounds that any person acquiring an interest in this Agreement pursuant to Clause 27.2 was not an original party to this Agreement.

## 28. WAIVER AND CUMULATIVE REMEDIES

- 28.1. Any failure to exercise or any delay in exercising a right or remedy by a Party shall not constitute and/or be construed as a waiver of that right or remedy or of any other rights or remedies. The rights and remedies provided to a Party under and/or pursuant to this Agreement may be waived only by written notice by the relevant Party to the other Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to in the notice.
- 28.2. Unless any of the Company's rights or remedies under and/or pursuant to this Agreement are expressly stated to be an exclusive right or remedy, the exercise of such rights and remedies shall be without prejudice to Company's other rights and

remedies.

- 28.3. The Company's rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at law or otherwise under this Agreement. For the avoidance of any doubt, and unless expressly stated to the contrary in this Agreement, no approval, comment, instruction, inspection, statement, notice, consent, advice, action or inaction from or by or on behalf of the Company shall in any way release the Supplier from its obligations under this Agreement and/or limit or discharge the liability of the Supplier to the Company.

## 29. RELATIONSHIP OF THE PARTIES

Each Party is an independent operator and nothing in this Agreement is intended to (i) create a relationship of employment, partnership or joint venture between the Parties or any other legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party or (ii) authorise either Party to act as agent for the other. The Supplier shall not have the authority to make representations for the Company, act in the name or on behalf of the Company or otherwise bind the Company, and shall not hold itself out as having any such authority.

## 30. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court or administrative body of competent jurisdiction, such provision shall be severed without effect to the remaining provisions of this Agreement that are not affected by such invalidity, illegality or unenforceability. If a provision of this Agreement is held to any extent to be invalid, illegal or unenforceable, the Parties shall immediately commence good faith negotiations to remedy that invalidity and to agree any appropriate alternative provisions which achieve, to the greatest extent possible, the economic, legal and commercial objectives of the invalid, illegal or unenforceable provision(s).

## 31. FURTHER ASSURANCES

The Supplier undertakes to the Company that at the request of the Company it shall do all acts and execute all documents which may be necessary to give effect to the meaning and intent of this Agreement.

## 32. ENTIRE AGREEMENT

- 32.1. This Agreement, together with the Work Instructions and any other documents expressly referred to and incorporated into it constitute the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes, cancels and nullifies any previous agreement between the Parties in relation to that subject matter.
- 32.2. For the avoidance of any doubt, this Agreement supersedes (i) any terms and conditions that the Supplier may propose or have proposed, at any time, to apply to the subject matter of this Agreement and/or any of the Services and (ii) any terms and conditions that are annexed to any purchase order issued by the Company in connection with this Agreement and/or any of the Services. No term, condition, limitation, or restriction on use or reliance or assignment or transfer contained in or incorporated into any reports, quotations, or other communications issued by or on behalf of the Supplier shall be valid save to the extent that the same has been expressly incorporated into the terms of this Agreement.

- 32.3. No purported amendment to this Agreement shall be effective unless and until it is set out in a written document that is signed by authorised representatives of both Parties, which, in the case of the Company, shall require signature by two authorised representatives of the Company.

### 33. THIRD PARTY RIGHTS

- 33.1. This Agreement is entered into by the Company for its own benefit and for the benefit of all of the ScottishPower Group Companies. The Parties agree that:
- 33.1.1. each ScottishPower Group Company shall have the benefit of (and may rely on and enforce) the terms of this Agreement as if it were a party to this Agreement, including, but not limited to, the benefit of all licences, warranties, undertakings and indemnities granted in favour of the Company under this Agreement;
  - 33.1.2. the Company shall be entitled to enforce the relevant terms of this Agreement on behalf of any ScottishPower Group Company, and to recover any Losses suffered and/or incurred by any ScottishPower Group Company in connection with this Agreement on behalf of any ScottishPower Group Company;
  - 33.1.3. each ScottishPower Group Company shall also be entitled to rely on and enforce the terms of this Agreement as if it were a party to this Agreement, provided that there shall be no double-recovery of the same Losses by both the Company and any other ScottishPower Group Company pursuant to this Clause 33.1; and
  - 33.1.4. any Losses suffered or incurred by any ScottishPower Group Company will not be treated as being indirect, special or consequential in terms of Clause 22.4 simply because they have been suffered or incurred by a ScottishPower Group Company and not by the Company directly.
- 33.2. Subject to Clause 25.3 and Clause 33.1, a person who is not a party to this Agreement has no right to enforce any term of this Agreement and nothing in this Agreement shall confer on any third party any benefit and/or the right to enforce any term of this Agreement, whether pursuant to the Contract (Third Party Rights) (Scotland) Act 2017, the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 33.3. For the avoidance of any doubt, the Parties may agree to alter, vary, terminate or rescind this Agreement (in accordance with its terms) without the consent of any third party.

### 34. NOTICES

- 34.1. Any notice or other communication required to be given to a party under or in connection with this Agreement must be in writing and must be delivered to the other party personally or sent by prepaid first-class post, recorded delivery post or by commercial courier, to the address notified by the relevant Party for the purposes of this Clause 34. If no address has been so notified by a Party for the purposes of this Clause 34, notices shall be sent to the Party's registered office (if a company) or (in any other case) its principal place of business of the other Party. Any notice sent by post or commercial courier shall be deemed to have been received on the second Working Day after despatch and any notice delivered personally shall be deemed to have been received on the first Working Day after delivery.

- 34.2. In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at the relevant address pursuant to Clause 34.1 and delivered either to that address or into the custody of the postal authorities or the relevant commercial courier (as applicable) as pre-paid first class post, recorded delivery post, or for commercial courier delivery pursuant to Clause 34.1.
- 34.3. For the purposes of this Clause 34, "writing" shall not include e-mails and, for the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by e-mail.

### 35. PREVENTION OF CORRUPTION

- 35.1. Each Party shall:
- 35.1.1. comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("Relevant Requirements"); and
  - 35.1.2. have and shall maintain in place throughout the term of this Agreement, and enforce where appropriate, its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.
- 35.2. The Supplier shall:
- 35.2.1. promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement; and
  - 35.2.2. immediately notify the Company if a foreign public official exerts a direct or indirect influence over the performance of this Agreement.
- 35.3. The Supplier shall not:
- 35.3.1. offer or agree to give any person working for or engaged by the Company or any other ScottishPower Group Company any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Supplier and the Company or any ScottishPower Group Company, including its award to the Supplier and any of the rights and obligations contained within it; nor
  - 35.3.2. enter into this Agreement if it has knowledge that, in connection with it, any money has been, or shall be, paid to any person working for or engaged by the Company or any other ScottishPower Group Company by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Company and has been approved by the Company before execution of this Agreement.
- 35.4. The Supplier shall ensure that any person associated with the Supplier who is performing Services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 35 and the Supplier shall ensure the compliance by such persons with such terms.
- 35.5. In the event of a breach of this Clause 35 by the Supplier, the Company may

(without prejudice to its other rights under this Agreement and/or at law):

- 35.5.1. terminate this Agreement immediately by written notice, and/or
  - 35.5.2. withhold payment of all or any part of the Charges; and/or
  - 35.5.3. suspend this Agreement at any time and without liability for such time period as required by the Company.
- 35.6. The Supplier shall indemnify and keep indemnified the Company and all ScottishPower Group Companies from and against all Losses, liabilities, damages, judgements, penalties, fines, costs, charges and expenses (including legal expenses) incurred by reason of any breach of this Clause 35 by the Supplier or any of the Supplier Personnel. This Clause 35.5 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the Supplier and/or any person working for the Supplier and/or any third party retained by the Supplier.
- 35.7. For the purpose of this Clause 35, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 35 a person associated with the Supplier includes but is not limited to any subcontractor or agent of the Supplier.
- 35.8. Notwithstanding the terms of Clause 18 (Disputes), any Dispute relating to the interpretation of this Clause 35 shall be determined solely by the Company and the Company's decision shall be final and conclusive except in the event of manifest error.

### 36. PREVENTION OF MODERN SLAVERY

- 36.1. The Supplier represents and warrants to the Company that:
- 36.1.1. it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking, including any activity or practice that would constitute an offence under s.1, s.2 and s.4 of the Modern Slavery Act 2015, if carried out in the UK ("slavery and human trafficking");
  - 36.1.2. the Supplier Personnel and all other employees and agency workers of the Supplier are paid in compliance with all applicable employment laws and minimum wage requirements;
  - 36.1.3. it will take reasonable steps to prevent slavery and human trafficking in connection with the Supplier's business;
  - 36.1.4. it will include in its contracts with its subcontractors and suppliers in connection with this Agreement slavery and human trafficking provisions that are at least as onerous to the subcontractor or supplier as those set out in this Agreement; and
  - 36.1.5. it will respond to all reasonable requests for information required by the Company for the purposes of completing the Company's annual anti-slavery and human trafficking statement.

- 36.2. The Supplier will permit the Company and its third party representatives, on reasonable notice during normal business hours, but without notice if there are reasonable grounds to suspect an instance of slavery and human trafficking, to access and take copies of records and any other information held at the premises and to meet with personnel and more generally to audit compliance with its obligations under this Clause 36. The Supplier shall give all necessary assistance to the conduct of such audits during the term of this Agreement.
- 36.3. Any instances of slavery and human trafficking connected to the Supplier will entitle the Company to immediately terminate this Agreement on providing notice to the Supplier (and without any liability by the Company to the Supplier).

### 37. COUNTERPARTS

- 37.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 37.2. Where this Agreement is executed in counterparts, no counterpart shall be effective unless and until each Party has executed and delivered a counterpart to the other Party.

### 38. GOVERNING LAW AND JURISDICTION

- 38.1. This Agreement shall be governed by and construed in accordance with the laws of Scotland and, without prejudice to the terms of Clause 18 (Disputes), each Party hereby irrevocably submits to the exclusive jurisdiction of the Scottish Courts as regards any claim or matter arising out of or in connection with this Agreement including any question or difference concerning the construction, meaning or effect of this Agreement or the rights and liabilities of the Parties under this Agreement.

38.2. The Parties agree that any order or judgement obtained in the Court of competent jurisdiction may be enforced in the Courts of any other jurisdiction.

IN WITNESS WHEREOF these presents consisting of this and the preceding [X] pages [together with the schedule [in X] parts] annexed hereto] are executed [in counterpart] as follows [and DELIVERED on [X]]:-

SUBSCRIBED for and on behalf of  
**[SCOTTISH POWER UK PLC]**

by  
and

at  
on the                    day of                    20

.....  
Authorised Signatory (Control)

.....  
Authorised Signatory (Business)

SUBSCRIBED for and on behalf of

**[NOTE – NAME OF SUPPLIER TO BE INSERTED]**

by  
at

on the                    day of                    20  
in the presence of:-

.....  
Director/Authorised Signatory

Witness.....

Full Name.....

Address.....

**THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING SERVICES AGREEMENT  
BETWEEN THE COMPANY AND THE SUPPLIER [DATED [ X ] and DELIVERED on [X]]**

**SCHEDULE PART 1**

**IMPLEMENTATION SERVICES AND IMPLEMENTATION PLAN**

**1. DEFINITIONS**

In this Schedule Part 1, the following terms shall (unless the context requires otherwise) have the following meanings:

- 1.1. **“Acceptance Criteria”** means the acceptance criteria applicable to the Acceptance Tests as set out in the Testing Procedures;
- 1.2. **“Acceptance Tests”** means the tests to be conducted in connection with the implementation of the System, as described in the Testing Procedures, and **“Acceptance Test”** and **“Acceptance Testing”** shall be construed accordingly;
- 1.3. **“Implementation Plan”** has the meaning given to it in paragraph 2.1 of this Schedule Part 1;
- 1.4. **“Milestone”** means any milestone for completion of the Implementation Services set out in the Implementation Plan; and
- 1.5. **“Testing Procedures”** means the document(s) agreed between the Parties pursuant to paragraph 2.2 of this Schedule Part 1, which sets out the detailed plan and procedures for acceptance testing of the System prior to the Go-Live Date.

**2. IMPLEMENTATION PLAN AND TESTING PROCEDURES**

- 2.1. The project plan for implementation of the System is set out in (or referred to and hereby incorporated by reference in) the Appendix to this Schedule Part 1 (the “Implementation Plan”). Subject to paragraph 3.2 of this Schedule Part 1, the Implementation Plan may be updated from time to time with the written agreement of both Parties. For the avoidance of any doubt, any amendments that may be made to the Implementation Plan pursuant to this paragraph 2.1 from time to time shall not imply or be deemed to be imply that the Company accepts there will be a consequent amendment to any of the Key Milestones.
- 2.2. As soon as reasonably practicable after the Commencement Date (and in any event by the relevant date set out in the Implementation Plan) the Parties shall agree and document the Testing Procedures to be followed in connection with the testing of the System prior to the Go-Live Date. The Parties agree that the Testing Procedures should contain, as a minimum, details of:
  - 2.2.1. the Acceptance Tests to be conducted at each stage during the Implementation Plan (including, as applicable, factory, system, site and user acceptance testing);
  - 2.2.2. the timetable for completion of each of the Acceptance Tests;
  - 2.2.3. the Acceptance Criteria applicable to each of the Acceptance Tests;

- 2.2.4. the Acceptance Test scripts and the specification of any data, including its source, scope, volume and management, and the requirement (if applicable) for relevant Acceptance Test data to be provided by the Company;
- 2.2.5. details of the reports that will be provided by the Supplier in relation to the conduct and outcome of Acceptance Testing;
- 2.2.6. dates and methods by which the Company can inspect Acceptance Test results or witness the Acceptance Tests in order to establish that the Acceptance Criteria have been met; and
- 2.2.7. the re-test procedure and associated timescales.

The Supplier shall have primary responsibility for drafting and compiling the Testing Procedures document(s) for approval by the Company. Neither Party shall unreasonably withhold or delay its approval of the Testing Procedures document(s). Subject to paragraph 3.2 of this Schedule Part 1, the Testing Procedures document may be updated from time to time with the written agreement of both Parties.

### **3. MILESTONES AND MILESTONE DATES**

- 3.1. The Supplier shall perform its obligations so as to achieve each milestone by the associated date.
- 3.2. Changes to the Key Milestones set out in paragraph 5 of this Schedule Part 1 shall only be made in accordance with the Variation Procedure, provided that the Supplier shall not be entitled to postpone any of the Key Milestones using the Variation Procedure.

### **4. ACCEPTANCE TESTING**

- 4.1. When the Supplier has completed the Implementation Services in respect of a Milestone it shall (where required pursuant to the Implementation Plan and/or the Testing Procedures) commence Acceptance Testing in relation to the System (or the relevant part of the System) in accordance with the Testing Procedures. The Company may, in its sole discretion, require the attendance at any Acceptance Test of one or more witnesses appointed by the Company. Before submitting the System (or any part of it) to Acceptance Testing, the Supplier shall subject the System (or the relevant part of the System) to its own internal quality control measures. Without prejudice to its other obligations under and/or pursuant to this Agreement, the Supplier shall provide the Company with such assistance and advice as it shall from time to time require in the process of Acceptance Testing.
- 4.2. Each Party shall bear its own costs in respect of the conduct of Acceptance Testing. However, if the System (or the relevant part of the System) does not meet the Acceptance Criteria applicable to any Acceptance Test, the Company shall (without prejudice to its other rights and remedies under and/or pursuant to this Agreement or at law) be entitled to recover from the Supplier any reasonable additional costs the Company may incur as a direct result of further review or re-testing of the System (or the relevant part of the System) to meet the relevant Acceptance Criteria.
- 4.3. If the Supplier meets the Acceptance Criteria for all Acceptance Tests referable to a Milestone in accordance with the Testing Procedures, the Company shall issue to the Supplier (in such format as the Company may select) a written

acknowledgement of the achievement of the relevant Milestone. Notwithstanding the issuing of any acknowledgement by the Company pursuant to this paragraph 4.3, the Supplier shall remain solely responsible for ensuring that the System and all Services are provided in accordance with this Agreement and that the Service Levels (as appropriate) are met. No rights of personal bar or waiver shall arise as a result of the issue of any such acknowledgement by the Company.

- 4.4. If the Supplier fails to meet all of the Acceptance Criteria for any Acceptance Tests referable to a Milestone in accordance with the Testing Procedures, then subject always to paragraphs 4.5 and 4.6 of this Schedule Part 1, the Supplier shall forthwith implement free of charge such alterations or modifications to the System and/or the Services (or the relevant part of the System and/or the Services) as shall be necessary as soon as possible and, in any event, within fourteen (14) Working Days of the date of the original Acceptance Tests. Subject to paragraphs 4.5 and 4.6 of this Schedule Part 1, the Company shall then repeat the Acceptance Tests (at the Supplier's expense) in accordance with paragraphs 4.1 and 4.2 of this Schedule Part 1, and the provisions of this paragraph 4.4 shall apply mutatis mutandis until the repeat tests are successfully completed.
- 4.5. Subject to paragraph 4.6 of this Schedule Part 1, if the Supplier does not successfully complete any repeat tests conducted pursuant to paragraph 4.4 of this Schedule Part 1 or if in the Company's reasonable opinion any of the Acceptance Tests fail to demonstrate that the System and/or the Services (or the relevant part of the System and/or the Services) complies with the Specification, performs the functions required of it in the Specification and satisfies the Acceptance Criteria, then the Company may by written notice to the Supplier elect at its sole option:-
- 4.5.1. to require the Supplier to supply free of charge (and as soon as reasonably practicable and in accordance with any specific timescales notified to the Supplier by the Company) such additional Implementation Services or items to rectify such defects in or make such alterations to the System and/or the Services (or the relevant part of the System and/or the Services) as may be necessary to enable the System and/or the Services (or the relevant part of the System and/or the Services) to satisfy such requirements;
- 4.5.2. to accept and retain such part or parts of the System and/or the Services as the Company shall in its absolute discretion select at such reduced price and on such terms as may be agreed between the Parties, provided that in the absence of such agreement in respect of such reduced price or terms within fourteen (14) Working Days after the date of such notice, the Company shall be entitled to reject the System and/or the Services in accordance with paragraph 4.5.4 of this Schedule Part 1;
- 4.5.3. to provisionally accept retain and use the whole or any part of the System and/or the Services as the Company may determine, subject to any stated errors, faults or defects notified to the Supplier with such acceptance (which the Supplier shall be required to resolve within the period specified by the Company as a condition of such provisional acceptance); and/or
- 4.5.4. to reject the System and/or the Services (or if appropriate any relevant part or parts of the System and/or the Services) as not being in conformity with this Agreement in which event the Supplier shall be deemed to have committed a non-remediable, material breach of this Agreement.

- 4.6. For the avoidance of any doubt, the Supplier's obligations and the Company's rights and remedies under this paragraph 4 of Schedule Part 1 are without prejudice to the Supplier's obligations and the Company's rights and remedies under and/or pursuant to Clause 9 of this Agreement (Delays) in respect of the Supplier's failure to meet any Key Milestones.

## 5. KEY MILESTONES

The Key Milestones are as follows:

	Key Milestone	Reference to Implementation Plan (for information)	Key Milestone Date
1.	[NOTE - TO BE POPULATED]		

## 6. DELAY PAYMENTS

The Delay Payments applicable to the Key Milestones are as set out in the table below:

No.	Description of Key Milestone	Delay Payments
1.	[NOTE - TO BE POPULATED]	

## 7. SIGNIFICANT DELAY DATES

The Significant Delay Date(s) applicable to the Key Milestones are as set out in the table below:

No.	Description of Key Milestone	Significant Delay Date
1.	[NOTE - TO BE POPULATED]	

**APPENDIX TO SCHEDULE PART 1  
IMPLEMENTATION PLAN**

**[NOTE – IMPLEMENTATION PLAN TO BE INSERTED OR REFERRED TO HERE]**

**SCHEDULE PART 2**  
**CORE SERVICES DESCRIPTION**

1. TERM

1.1 The Commencement Date of this Agreement is **[NOTE – DATE TO BE INSERTED]**.

1.2 The Expiry Date of this Agreement is **[NOTE – DATE TO BE INSERTED]**.

2. DESCRIPTION OF CORE SERVICES

**[NOTE – TO BE INSERTED]**

3. DELIVERABLES

The key Deliverables to be provided by the Supplier in connection with and/or pursuant to the Core Services are set out in the table below:

No.	Description of Deliverable
	<b>[NOTE – DETAILS OF DELIVERABLES TO BE INSERTED, EITHER LISTED HERE OR BY REFERENCE TO ANOTHER DEFINED DOCUMENT]</b>

4. HARDWARE

4.1. Transferring Hardware

The Transferring Hardware shall include the following items

Description of Transferring Hardware
<b>[NOTE – DETAILS OF HARDWARE TO BE TRANSFERRED TO SP'S OWNERSHIP IN CONNECTION WITH THE AGREEMENT TO BE INSERTED HERE]</b>

4.2. Supplier Hardware

The Supplier Hardware shall include the following items

Description of Supplier Hardware
<b>[NOTE – DETAILS OF HARDWARE TO BE USED BY THE SUPPLIER IN THE PERFORMANCE OF THE AGREEMENT (BUT NOT TRANSFERRED TO SP'S OWNERSHIP) IN CONNECTION WITH THE AGREEMENT TO BE INSERTED HERE]</b>

#### 4.3. Company Hardware

The Company Hardware shall include the following items

Description of Company Hardware
[NOTE – DETAILS OF ANY HARDWARE ALREADY OWNED BY SP THAT THE SUPPLIER NEEDS TO USE IN ORDER TO PROVIDE THE SERVICES TO BE INSERTED HERE]

#### 5. CONTRACT MANAGEMENT

The Parties respectively appoint the individuals identified below as their Representatives in relation to the Implementation Services and the Core Services:

<b>Company</b>	[NOTE – NAME AND POSITION OF REPRESENTATIVE TO BE INSERTED – THIS MAY REQUIRE INCLUSION OF DETAILS OF BOTH A CONTRACT MANAGER AND A PROJECT MANAGER]
<b>Supplier</b>	[NOTE – NAME AND POSITION OF REPRESENTATIVE TO BE INSERTED]

#### 6. REPORTS

The reports to be provided by the Supplier to the Company in connection with this Agreement shall include:

Description of Report	Frequency
[NOTE – DETAILS OF THE REQUIRED REPORT TO BE INSERTED HERE]	[NOTE – DETAILS OF THE REQUIRED FREQUENCY OF THE RELEVANT REPORT TO BE INSERTED HERE]

#### 7. KEY PERSONNEL

The Supplier's Key Personnel in relation to the Implementation Services and the Core Services are as follows:

Name	Job Title and Role
[NOTE – NAME AND JOB TITLE OF EACH MEMBER OF THE KEY PERSONNEL TO BE INSERTED]	

#### 8. LIMITATIONS OF LIABILITY

[NOTE – TO BE POPULATED (IF APPLICABLE)]

9. SPECIFIC INSURANCE REQUIREMENTS

**[NOTE – TO BE POPULATED (IF APPLICABLE). IN PARTICULAR, TO CONFIRM ANY CYBER-SECURITY REQUIREMENTS]**

## SCHEDULE PART 3

### SERVICE LEVELS

#### 1. SERVICE LEVELS

- 1.1. The Appendix to this Schedule Part 3 (Service Levels) sets out Service Levels (and the Service Credits) applicable to the Core Services.
- 1.2. The Supplier shall monitor its performance of the Services by reference to the Service Levels and shall send the Company a report detailing the level of service which was achieved in accordance with the provisions of paragraph 3 of this Schedule Part 3.
- 1.3. The level(s) of performance for a Service Level or Service Levels which, if not met by the Supplier, will entitle the Company to terminate all or part of this Agreement (each a "Critical Service Level Failure") are set out in the Appendix to this Schedule Part 3.

#### 2. SERVICE CREDITS

- 2.1. Service Credits shall be calculated in accordance with the Appendix to this Schedule Part 3 payable by the Supplier in accordance with Clauses 3.5.3 (Provision of Services) and 8.11 (Charges and Invoicing).
- 2.2. The Company shall use the reports provided by the Supplier pursuant to paragraph 3 of this Schedule Part 3 to, among other things, verify the calculation and accuracy of the Service Credits
- 2.3. Without prejudice to Clause 3.5 of this Agreement (Provision of Services), both Parties agree that the Service Credits are a reasonable, proportionate and legitimate method of price adjustment to reflect poor performance, and represent a genuine pre-estimate of the amount of the Company's loss resulting from such poor performance by the Supplier.

#### 3. PERFORMANCE MONITORING AND REPORTING

- 3.1. Within five Working Days of the end of each [week]/[month]/[quarter] **[NOTE – MEASUREMENT PERIOD TO BE CONFIRMED]**, the Supplier shall provide a report (a "Service Level Report") to the Company's Representative.
- 3.2. The Service Report shall be in the format required by the Company and shall contain, as a minimum, the following information in respect of the [week]/[month]/[quarter] **[NOTE – MEASUREMENT PERIOD TO BE CONFIRMED]** just ended (each a "Services Period"):
  - 3.2.1. the monitoring which has been performed during the relevant Services Period with a summary of any issues identified by such monitoring;
  - 3.2.2. for each Service Level, the actual performance achieved during the Service Period, and, separately, that achieved during the previous three Service Periods;
  - 3.2.3. a summary of all Service Level Failures that occurred during the Service Period;

- 3.2.4. the level of each Service Failure which occurred;
  - 3.2.5. which Service Failures remain outstanding and progress in resolving them;
  - 3.2.6. for any Severity 1 Service Failure occurring in the Service Period, the cause of the fault and any action being taken to reduce the likelihood of recurrence;
  - 3.2.7. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
  - 3.2.8. the amount of Service Credits accrued in relation to each Service Failure in that Service Period;
  - 3.2.9. a rolling total of the number of Service Failures that have occurred and the amount of Service Credits that have been incurred by the Supplier over the past six months;
  - 3.2.10. such other details as the Company may reasonably require from time to time.
- 3.3. Without prejudice to Clause 15.1 (Audits), the Supplier shall keep appropriate documents and records (e.g. service desk records, Service Failure log, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered and the other requirements to be satisfied. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of twelve months and provide prompt access to such records to the Company upon the Company's request. The records and documents of the Supplier shall be available for inspection by the Company and/or its nominee at any time and the Company and/or its nominee may make copies of any such records and documents.
- 3.4. In addition to the requirement in paragraph 3.3 of this Schedule Part 3 to maintain appropriate documents and records, the Supplier shall provide to the Company such supporting documentation as the Company may reasonably require in order to verify the level of the performance of the Supplier both before and after the Go-Live Date and the calculations of the amount of Service Credits for any specified period.

**APPENDIX TO SCHEDULE PART 3****SERVICE LEVELS AND SERVICE CREDITS**

**[NOTE – SERVICE LEVELS TO BE POPULATED – THE BELOW PROVIDES A SAMPLE TEMPLATE ONLY]**

**1. RESOLUTION OF SERVICE LEVEL FAILURES**

The Supplier shall respond to and resolve Service Level Failures in accordance with the following table.

<b>Severity Level</b>	<b>Definition</b>	<b>Response (for automated response)</b>	<b>Time non-</b>	<b>Resolution Time</b>
Severity 1				
Severity 2				
Severity 3				
Severity 4				

**2. SERVICE LEVELS**

The table below sets out the Service Levels, Service Credits and Critical Service Level Failures applicable to the Supplier's provision of the System and the Services.

**[NOTE – TABLE TO BE INSERTED]**

**SCHEDULE PART 4**

**CHARGES**

1. IMPLEMENTATION CHARGES

1.1. The Charges payable by the Company to the Supplier in connection with the Implementation Services pursuant to and in accordance with the terms of this Agreement shall be calculated in accordance with this paragraph 1 of Schedule Part 4 (Charges).

**[NOTE – DETAILS OF IMPLEMENTATION CHARGES TO BE INSERTED]**

2. CORE CHARGES

2.1. The Charges payable by the Company to the Supplier in connection with the Core Services pursuant to and in accordance with the terms of this Agreement shall be calculated in accordance with this paragraph 2 of Schedule Part 4 (Charges).

**[NOTE – DETAILS OF CORE CHARGES TO BE INSERTED]**

**SCHEDULE PART 5**  
**FORM OF WORK INSTRUCTION**

**WORK INSTRUCTION**

between

**[INSERT NAME OF SCOTTISHPOWER GROUP COMPANY] (the “Company”)**

And

**[INSERT NAME OF SUPPLIER] (the “Supplier”)**

**(together, the “Parties”)**

When signed by both Parties, this Work Instruction forms part of, and is subject to the terms of, the Services Agreement between the Parties dated on or about **[NOTE – INSERT DATE OF AGREEMENT]** (the “Agreement”). Unless the context requires otherwise, capitalised terms in this Work Instruction shall have the same meanings as are given to them in the Agreement.

**1. SERVICE TERM**

- 1.1 The effective date of this Work Instruction is **[NOTE – DATE TO BE INSERTED]**.
- 1.2 Subject to earlier termination pursuant to Clause 24 of the Agreement (Termination Rights), this Work Instruction shall continue from the effective date set out in paragraph 1.1. above until **[NOTE – DATE TO BE INSERTED]**/[the Supplier has completed the provision of all of the Services described this Work Instruction to the Company’s satisfaction].

**2. SERVICE DESCRIPTION**

**[NOTE – TO BE POPULATED]**

**3. DELIVERABLES**

The key Deliverables to be provided by the Supplier in connection with and/or pursuant to the Services described in this Work Instruction are set out in the table below:

No.	Description of Deliverable
	<b>[NOTE – DETAILS OF DELIVERABLES TO BE INSERTED, EITHER LISTED HERE OR BY REFERENCE TO ANOTHER DEFINED DOCUMENT]</b>

**4. PLAN AND KEY MILESTONES**

- 4.1. The detailed project plan for completion of the Services is set out in the document entitled **[NOTE TO – PARTIES TO AGREE AND CONFIRM CORRECT DOCUMENT REFERENCE]**, which is incorporated by reference in this Agreement (as amended with the written agreement of both Parties from time to time) (the “Plan”).

4.2. The Key Milestones (if any) applicable to the provision of the Services are as follows:

No.	Description of Key Milestone	Planned Date for Completion
1.	<i>[NOTE – TO BE POPULATED]</i>	

4.3. The Delay Payments (if any) applicable to the Key Milestones are as set out in the table below:

No.	Description of Key Milestone	Delay Payments
1.	<i>[NOTE – TO BE POPULATED]</i>	

4.4. The Significant Delay Date(s) (if any) applicable to the Key Milestones are as set out in the table below:

No.	Description of Key Milestone	Significant Delay Date
1.	<i>[NOTE – TO BE POPULATED]</i>	

## 5. CONTRACT MANAGEMENT

The Parties respectively appoint the individuals identified below as their key Representatives in relation to the Services provided pursuant to this Work Instruction:

<b>Company</b>	<i>[NOTE – NAME AND POSITION OF REPRESENTATIVE TO BE INSERTED]</i>
<b>Supplier</b>	<i>[NOTE – NAME AND POSITION OF REPRESENTATIVE TO BE INSERTED]</i>

6. KEY PERSONNEL

The Supplier's Key Personnel in relation to the Services provided pursuant to this Work Instruction are as follows:

Name	Job Title and Role
<b>[NOTE – NAME AND JOB TITLE OF EACH MEMBER OF THE KEY PERSONNEL TO BE INSERTED]</b>	

7. CHARGES

7.1. The Charges payable by the Company to the Supplier in connection with the Services described in this Work Instruction pursuant to and in accordance with the terms of this Agreement shall be calculated in accordance with this paragraph 7.

**[NOTE – DETAILS OF THE CHARGES TO BE INSERTED]**

The Company hereby agree to the terms of this Work Instruction:

The Supplier hereby agrees to the terms of this Work Instruction:

\_\_\_\_\_  
*Authorised Signatory (Control)*

\_\_\_\_\_  
*Authorised Signatory*

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*Authorised Signatory (Business)*

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE PART 6

### Software and Intellectual Property Rights

#### 1. DEFINITIONS

In this Schedule Part 6 (Intellectual Property Rights), the following terms shall (unless the context requires otherwise) be attributed the following meanings:

- 1.1. **“Background IPRs”** means, as the context requires, the Company’s Background IPRs and/or the Supplier’s Background IPRs;
- 1.2. **“Company’s Background IPRs”** means all Intellectual Property Rights that were owned by, licensed to and/or created by or on behalf the Company and/or any ScottishPower Group Company: (i) before the Commencement Date; (ii) independently of this Agreement and/or (iii) in connection with and/or pursuant to this Agreement;
- 1.3. **“Contract Specific IPRs”** means:
- 1.3.1. IPRs in and to items created by the Supplier (and/or by any Supplier Personnel and/or any other third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items; and/or
- 1.3.2. IPRs arising as a result of the performance of the Supplier's obligations under this Agreement;
- but which shall not include the Supplier's Background IPRs or the Specially Written Software;
- 1.4. **“Database”** means any database:
- 1.4.1. created and/or used by the Supplier and/or any Supplier in connection with the provision of the Services (including, but not limited to, any register of Hardware and/or Software maintained by the Supplier); and/or
- 1.4.2. supplied to the Supplier by or on behalf of the Company in connection with the provision of the Services,
- which shall include any updates and/or amendments to such databases and all Intellectual Property Rights in and to such databases, but which shall not include any software used to create and/or access such databases;
- 1.5. **“Deposited Software”** means the Software the Source Code of which is to be placed in escrow as listed in Appendix 2 to this Schedule Part 6;
- 1.6. **“Embedded Background IPRs”** means any of the Supplier’s Background IPRs that are embedded in or otherwise form an integral part of the System, the Deliverables and/or the Services or which the Company otherwise reasonably requires to use in order to receive the benefit of this Agreement, the System, the Services and/or any Deliverables;
- 1.7. **“Foreground IPRs”** means all Intellectual Property Rights in and to the Deliverables, excluding the Embedded Background IPRs;

- 1.8. **"IPR Claim"** means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any third party's IPRs arising from (i) the use or possession by the Company and/or any other ScottishPower Group Company of the System, any Deliverables and/or any other materials or items provided by the Supplier under and/or pursuant to this Agreement and/or (ii) the Supplier's performance, or non-performance, of its obligations under and/or pursuant to this Agreement;
- 1.9. **"Licence Terms"** means the licence terms set out in Appendix 1 to this Schedule Part 6;
- 1.10. **"Permitted Purpose"** means use in connection with the Company's and/or any ScottishPower Group's Company's business and/or operations at any time or from from time to time;
- 1.11. **"Specially Written Software"** means any software created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement;
- 1.12. **"Supplier's Background IPRs"** means all Intellectual Property Rights that were owned by the Supplier and/or any Supplier Personnel before the Commencement Date and/or are created by the Supplier and/or any Supplier Personnel independently of this Agreement after the Commencement Date;
- 1.13. **"Supplier Software"** means software which is proprietary to the Supplier, including software which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Appendix 2 to this Schedule Part 6;
- 1.14. **"Third Party Software"** means software which is proprietary to any third party (other than an Affiliate of the Supplier) which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Appendix 2 to this Schedule Part 6; and
- 1.15. **"Use"** means the right to load, execute, store, transmit, display, customise, configure, fix, adapt, modify and copy.

## 2. INTELLECTUAL PROPERTY RIGHTS

- 2.1. Except as expressly set out in this Agreement:
- 2.1.1. the Company shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
- 2.1.1.1. the Supplier Software; or
- 2.1.1.2. the Supplier's Background IPRs,
- and
- 2.1.2. the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Company or its licensors, including:
- 2.1.2.1. the Company Data;
- 2.1.2.2. the Specially Written Software;
- 2.1.2.3. the Contract Specific IPRs;

2.1.2.4. the Databases; and/or

2.1.2.5. the Company's documentation, processes and procedures.

2.2. Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in paragraph 2.1 above, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

### 3. LICENCES GRANTED BY THE SUPPLIER

3.1. The Supplier hereby grants to the Company a licence to Use the Documentation and (without prejudice to paragraphs 4.7 and 5.4 below) the Supplier's Background IPRs on the Licence Terms.

3.2. The Supplier hereby grants to the Company a licence of the Supplier Software on the Licence Terms or, where agreed between the Parties in respect of any particular Supplier Software, on the relevant licence terms applicable to that Supplier Software as set out in Annex C to this Agreement.

3.3. The Supplier hereby:

3.3.1. hereby grants to the Company a licence of the Third Party Software on the Licence Terms; and/or

3.3.2. shall procure that the owners or the authorised licensors of Third Party Software grants a direct licence of the Third Party Software to the Company on (i) the same or substantially similar terms as the Licence Terms or (ii) where agreed between the Parties in respect of any particular Third Party Software, the relevant licence terms applicable to that Third Party Software as set out in Annex C to this Agreement.

3.4. Without prejudice to paragraphs 3.1 to 3.3, the Supplier shall, if requested by the Company, grant or procure the grant to any Replacement Supplier of a licence to Use any Supplier Software, Supplier's Background IPRs or Third Party Software on the relevant terms subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.

### 4. SPECIALLY WRITTEN SOFTWARE AND CONTRACT SPECIFIC IPRS

4.1. Subject to paragraph 4.2, the Supplier hereby assigns to the Company (by way of present and future assignation), with absolute warrandice, title to and all rights and interest in the Contract Specific IPRs and the Specially Written Software and shall procure that the first owner of the Contract Specific IPRs and the Specially Written Software assigns title to and all rights and interest in the Contract Specific IPRs and the Specially Written Software to the Company on the same basis.

4.2. The Parties may, but shall not be bound to, agree to an alternative arrangement for the ownership and licensing of any specific items of Specially Written Software. Such an alternative arrangement may include (without limitation) the Supplier retaining ownership of that item of Specially Written Software but the Company being granted a period of exclusivity in relation to its use and/or the payment of royalties in respect of its use outside of this Agreement. In the event that the Parties agree in writing to an alternative arrangement in relation to any particular Specially Written Software pursuant to this paragraph 4.2, the Parties agree that, as a minimum, (i) the Company will be granted a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit the relevant Specially Written Software and (ii) paragraphs 4.7 and 5.4 shall continue to apply in relation to the relevant Specially Written

Software. For the avoidance of any doubt, in the absence of any written agreement between the Parties in relation to an alternative arrangement pursuant to this paragraph 4.2, the provisions of paragraphs 4.1 and paragraphs 4.3 to 4.8 shall apply in relation to all Specially Written Software.

- 4.3. The assignment under paragraph 4.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Contract Specific IPRs and the Specially Written Software, as appropriate.
- 4.4. The Supplier shall waive and/or procure a waiver of any moral rights in any copyright works assigned to the Company under this Agreement.
- 4.5. If requested to do so by the Company, the Supplier shall without charge to the Company execute all documents and do all such further acts as the Company may require to perfect the assignment under paragraph 4.1 and/or shall procure that the owner of the Contract Specific IPRs and the Specially Written Software does so on the same basis.
- 4.6. The Company shall grant to the Supplier a licence of the Contract Specific IPRs and the Specially Written Software during the term of this Agreement to enable the Supplier to provide the Services.
- 4.7. To the extent that this is necessary to enable the Company to obtain the full benefits of ownership of the Specially Written Software and the Contract Specific IPRs, the Supplier hereby grants to the Company and shall procure that any relevant third party licensor shall grant to the Company a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit the Embedded Background IPRs.
- 4.8. The Supplier will deliver to the Company the Specially Written Software in both Source Code and binary code forms within seven days of their first use in connection with the provision of the Services and shall provide updates of such Source Code on each new release of the Specially Written Software on media that is reasonably acceptable to the Company.

## 5. DATABASES

- 5.1. The Supplier hereby assigns to the Company, with full title guarantee and absolute warrandice, title to and all rights and interest in the Databases or shall procure that the first owner of any Database assigns title to and all rights and interest in the Databases to the Company on the same basis.
- 5.2. The assignment under paragraph 5.1 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Database, as appropriate.
- 5.3. The Supplier shall waive or procure a waiver of any moral rights in the Database assigned to the Company under this Agreement.
- 5.4. To the extent that it is necessary for the Company to obtain the full benefits of ownership of any Database, the Supplier hereby grants to the Company and the other ScottishPower Group Companies and shall procure that any relevant third party licensor shall grant to the Company and the other ScottishPower Group Companies a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to Use, sub-license and/or commercially exploit any Supplier's Background IPRs or IPRs owned by a third party that are embedded in or which are an integral part of a Database.

## 6. LICENCES GRANTED BY THE COMPANY

6.1. The Company hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the term of this Agreement to use:

6.1.1. the Databases;

6.1.2. the Company's documentation, processes and procedures which the Company provides to the Supplier in connection with the provision of the Services;

6.1.3. the Specially Written Software from the date the relevant rights are transferred to the Company in accordance with paragraph 4 of this Schedule Part 6;

6.1.4. the Contract Specific IPRs from the date the relevant rights are transferred to the Company in accordance with paragraph 4 of this Schedule Part 6; and

6.1.5. the Company Data.

in each case solely to the extent that the Supplier requires to use the same in order to provide the Services and for the sole purpose of providing the Services.

6.2. The licence granted in paragraph 6.1:

6.2.1. includes the right to grant sub-licences to permitted sub-contractors provided that any relevant permitted sub-contractor has entered into a confidentiality undertaking with the Supplier on the same or substantially similar terms as set out in Clause 20 (Confidentiality) of this Agreement; and

6.2.2. is granted solely to the extent, for the purposes and for the period necessary to provide the System and the Services in accordance with this Agreement. The Supplier shall not, and shall procure that the permitted sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Company.

6.3. The Supplier shall not have any right to use any of the Company's or any ScottishPower Group Company's names, logos or trade marks on any of its products or services without the Company's prior written consent.

6.4. In the event of the termination or expiry of this Agreement, the licence referred to in paragraph 6.1, any sub-licence granted in accordance with paragraph 6.2 and any licence or right of use granted in accordance with paragraph 6.3 shall terminate automatically and the Supplier shall deliver to the Company all material licensed to the Supplier pursuant to paragraph 6.1 or paragraph 6.3 in the Supplier's possession or control. In the event of a partial termination of this Agreement, the licence referred to in paragraph 6.1, any sub-licence granted in accordance with paragraph 6.2 and any licence or right of use granted in accordance with paragraph 6.3 shall terminate automatically and the Supplier shall deliver to the Company all material licensed to the Supplier pursuant to paragraph 6.1 or paragraph 6.3 in the possession or control of the Supplier and/or any Supplier Personnel to the extent that the Supplier no longer requires to use the same in order to provide the Services.

## 7. ESCROW

- 7.1. If requested by the Company, the Supplier shall (on or prior to the Go-Live Date) deposit the Source Code of such part of the Software that consists of Deposited Software in escrow with NCC (or such other escrow agent as the Company may specify) on the basis of the appropriate standard agreement or (if requested by the Company) on such other terms as the Company, the Supplier and the relevant escrow agent shall agree. The Supplier shall ensure that the deposited version of the Source Code is the current version of the Deposited Software and that the deposited version is kept up-to-date as the Deposited Software is modified or upgraded. The Supplier shall pay the initial storage fees and the annual fees under the escrow agreement and the Company shall pay the release fees.
- 7.2. Where the Supplier is unable to procure compliance with the provisions of paragraph 7.1 in respect of any Third Party Software, it shall provide the Company with written evidence of its inability to comply with these provisions and shall agree with the Company a suitable alternative to escrow that affords the Company the nearest equivalent protection. The Supplier shall be excused from its obligations under paragraph 7.1 only to the extent that the Parties have agreed on a suitable alternative.
- 7.3. In circumstances where the Company obtains the release of the Source Code from escrow, the Supplier hereby grants to the Company a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Code version of the Deposited Software to the extent necessary for the use of the System and the receipt of the Services or any replacement services or the Company's normal business undertakings.

## 8. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 8.1. The Supplier shall at all times on demand indemnify the Company and all other ScottishPower Group Companies, and shall keep the Company and all other ScottishPower Group Companies indemnified, from and against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Company and/or any ScottishPower Group Company in connection with any IPR Claim.
- 8.2. Subject to paragraph 8.3 below, the Company agrees that it shall:
- 8.2.1. notify the Supplier in writing of any IPR Claim;
- 8.2.2. allow the Supplier to conduct all negotiations and proceedings and shall provide the Supplier with such reasonable assistance required by the Supplier, each at the Supplier cost, regarding the IPR Claim; and
- 8.2.3. not, without first consulting with the Supplier, make an admission relating to the IPR Claim.
- 8.3. The Supplier agrees that it shall provide the Company with such security for costs as the Company may reasonably require prior to the Company providing any assistance pursuant to paragraph 8.2 above.
- 8.4. The Supplier undertakes that it shall consider and defend any IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of any ScottishPower Group Company into disrepute.
- 8.5. The Parties acknowledge and agree that the indemnity in paragraph 8 above shall not be subject to the limitations or exclusions of liability set out in Clause 22 (Limitations on Liability).

## APPENDIX 1 TO SCHEDULE PART 6

In this Appendix, the following terms shall (unless the context requires otherwise) have the meaning attributed to them below:

**"Authorised Users"** means any and all of the following persons that require to Use the relevant Software from time to time:

- (a) employee, agent, officer, member, consultant, contractor and/or agent of the Company or any ScottishPower Group Company; and
- (b) any other person that is authorised by the Company;

**"Licensed Materials"** means the Supplier Software, the Third Party Software and (without prejudice to paragraphs 4.7 and 5.4 of Schedule Part 6 (Intellectual Property Rights)) the Supplier's Background IPR;

**"Licensees"** means, together, the Company, the ScottishPower Group Companies and any Replacement Supplier(s) and **"Licensee"** shall be construed accordingly; and

**"Licensor"** means (i) in the case of the Supplier Software and the Supplier's Background IPRs, the Supplier or its relevant Affiliate and (ii) in the case of the Third Party Software, the owner of the Third Party Software.

### 1. Scope of the Licence Terms

This Schedule Part sets out the Licence Terms granted by the Licensor to the Company in respect of the Supplier Software, the Third Party Software and (without prejudice to paragraphs 4.7 and 5.4 of Schedule Part 6 (Intellectual Property Rights)) the Supplier's Background IPR.

### 2. Licence Terms

- 2.1. Each licence granted under the Licence Terms pursuant to paragraph 3 of Schedule Part 6 (Intellectual Property Rights) shall (unless the Parties expressly agree in writing to the contrary) be perpetual, irrevocable, royalty free and non-exclusive and shall allow the Licensees and the Authorised Users to Use the Licensed Materials.
- 2.2. The Company may sub-license, and/or otherwise permit access to the Licensed Materials to any Licensee's third party consultants, contractors and/or agents (including for the avoidance of doubt any Replacement Supplier) provided that:
  - 2.2.1. the sub-licence only authorises the third party to Use the Licensed Materials for the benefit of the Company and/or the relevant ScottishPower Group Company; and
  - 2.2.2. the third party has entered into a confidentiality undertaking with the Company.
- 2.3. The relevant Licensee may copy the Supplier Software, Third Party Software and/or Supplier's Background IPR (as relevant) in order to create an archival copy and a back-up copy of it.
- 2.4. the Company may:
  - 2.4.1. assign, novate or otherwise dispose of all or any of its rights and obligations under the Licence Terms to any other ScottishPower Group Company; and/or
  - 2.4.2. where applicable, transfer the relevant licences to other machines or users.

- 2.5. If a licence under the Licence Terms is novated pursuant to paragraph 2.4.1 above, the rights acquired by the transferee relating to the Use of the Licensed Materials shall not extend beyond those previously enjoyed by the Company.

## APPENDIX 2 TO SCHEDULE PART 6

1. SOFTWARE1.1. Supplier Software

The Supplier Software shall include the following items:

Name of Software	Supplier (if Affiliate of the Supplier)	Purpose	To be deposited in Escrow (Deposited Software)?
[NOTE – DETAILS OF ANY SOFTWARE BEING LICENSED BY THE SUPPLIER (OR ANY OF ITS AFFILIATES) TO SP TO BE INSERTED HERE]			

1.2. Third Party Software

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	To be deposited in Escrow (Deposited Software)?
[NOTE – DETAILS OF ANY SOFTWARE BEING LICENSED BY A THIRD PARTY TO SP TO BE INSERTED HERE]			

1.3. Specially Written Software

The Specially Written Software shall include any programs, codes and software written by or on behalf of the Supplier for use by the Supplier specifically in the provision of the Services (including any modifications or enhancements made to such software during the term of this Agreement) and including (but not limited to) the following types of items:

Type of Software
[NOTE – DESCRIPTION OF ANY BESPOKE OR SPECIALLY WRITTEN SOFTWARE OR COMPONENTS TO BE CREATED BY OR ON BEHALF OF THE SUPPLIER TO BE INSERTED HERE]

1.4. Deposited Software

The Supplier shall deposit the Software identified in the table below as Deposited Software into escrow in accordance with the provisions of paragraph 7 of Schedule Part 6 (Intellectual Property Rights):

Category (Specially Written Software, Supplier Software or Third Party Software)	Supplier	Description	Date Deposited
<b>[NOTE – DETAILS OF ANY SOFTWARE TO BE PLACED IN ESCROW TO BE INSERTED HERE]</b>			

## SCHEDULE PART 7

### SPECIFIC DATA REQUIREMENTS

1. In this Schedule Part 7, the following terms shall have the meanings given to them below:
  - 1.1 **“Data Controller”, “Data Processor”, “Data Subject” “Personal Data”, Personal Data Breach”** and **“Process”** have the meanings given to them in the applicable Data Protection Legislation, except that, for the purposes of this Schedule Part 7, the term “Process” shall be deemed to include both manual and automatic processing;
  - 1.2 **“Processing Particulars”** means details of the (a) the subject matter, duration, nature and purpose of the Processing to be carried out by the Supplier; (b) the type of the ScottishPower Personal Data being Processed; and (c) the categories of Data Subjects, as may be advised by the Company to the Supplier from time to time;
  - 1.3 **“Relevant Personnel”** means those employees of the Supplier and/or of any permitted Sub-processor that are required to have access to and/or to Process the ScottishPower Personal Data in order for the Supplier to perform its obligations under this Agreement;
  - 1.4 **“Sub-processor”** means any sub-contractor, person, party or entity appointed by the Supplier that Processes and/or will be required to Process any ScottishPower Personal Data in connection with the performance of this Agreement
  
2. **COMPANY DATA**
  - 2.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Company Data.
  - 2.2 The Supplier shall not store, copy, disclose, or use the Company Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Company.
  - 2.3 To the extent that the Company Data is held and/or processed by the Supplier, the Supplier shall supply that the Company Data to the Company at any time and from time to time if requested by the Company and in the format requested by the Company.
  - 2.4 The Supplier shall take responsibility for preserving the integrity of the Company Data and preventing the corruption or loss of the Company Data.
  - 2.5 The Supplier shall perform secure back-ups of all the Company Data and shall ensure that up-to-date back-ups are stored off-site (where applicable, in accordance with the requirements set out in Annex F (Business Continuity and Disaster Recovery Requirements)). The Supplier shall ensure that such back-ups are available to the Company at all times upon request and are delivered to the Company not less than once per day.
  - 2.6. The Supplier shall ensure that any system on which the Supplier holds any the Company Data, including back-up data, is a secure system that complies with the Supplier’s security policy and any specific security requirements notified by the Company to the Supplier from time to time.
  - 2.7. If the Company Data is corrupted, lost or sufficiently degraded as a result of the Supplier’s Default so as to be unusable, the Company may:
    - 2.7.1. require the Supplier (at the Supplier’s expense) to restore or procure the restoration of the Company Data to the extent and in accordance with the Company’s

requirements and the Supplier shall do so as soon as practicable but not later than two Working Days; and/or

- 2.7.2. itself restore or procure the restoration of the Company Data, and shall be reimbursed by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the Company's requirements.
- 2.8. If at any time the Supplier suspects or has reason to believe that the Company Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Company immediately and inform the Company of the remedial action the Supplier proposes to take.

## 2. DATA PROTECTION

- 2.1 Subject to paragraph 2.5, the Company shall be the Data Controller and the Supplier shall be a Data Processor in respect of the Processing of the ScottishPower Personal Data in connection with this Agreement (including, without limitation, where the Supplier and/or any Relevant Personnel collect any relevant ScottishPower Personal Data specifically for the purposes of providing the Services), unless the Parties agree otherwise in writing in respect of any particular ScottishPower Personal Data.
- 2.2 Each Party warrants and undertakes to the other Party that it shall comply with all duties and obligations imposed on it pursuant to the Data Protection Legislation in relation to the Processing of Personal Data in connection with this Agreement.
- 2.3 The Supplier warrants and undertakes to the Company that in the performance of its obligations under this Agreement and in the Processing of all ScottishPower Personal Data it shall (a) comply with the Data Protection Legislation, (b) comply with the terms of this Schedule Part 7 and (c) not perform its obligations under this Agreement nor Process any ScottishPower Personal Data in such a way as to cause the Company and/or any other ScottishPower Group Company to breach any of its applicable obligations under the Data Protection Legislation.
- 2.4 The Supplier warrants and undertakes to the Company that it shall:
- 2.4.1 Process the ScottishPower Personal Data only in accordance with the instructions from the Company (which may be specific instructions or instructions of a general nature and which will include instructions given by email) including those set out in this Agreement or as otherwise notified by the Company to the Supplier from time to time (whether by way of a set of Processing Particulars or otherwise);
  - 2.4.2 Process the ScottishPower Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by applicable laws or regulations or by the binding requirement of any regulatory body;
  - 2.4.3 implement appropriate technical and organisational measures to protect the ScottishPower Personal Data against unauthorised or unlawful Processing and against accidental damage, loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the ScottishPower Personal Data and having regard to the nature of the ScottishPower Personal Data to be Processed and shall take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects. These measures shall include, without limitation:
    - (a) where appropriate, the pseudonymisation and/or encryption of ScottishPower Personal Data;
    - (b) measures which ensure the confidentiality, integrity, availability and resilience of all systems that are used to Process ScottishPower Personal Data;
    - (c) measures which enable the Supplier to restore the availability of and access to the ScottishPower Personal Data in a timely manner (and in accordance with any specific timescales advised by the Company) in the event of an incident which affects such availability and/or access; and
    - (d) a process for regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of Processing,

taking into account, in particular, the risks that are presented by Processing, in particular from a Personal Data Breach;

- 2.4.4 without prejudice to its obligations to implement and maintain measures in compliance with paragraph 2.4.3, comply with the Company's security and information security policies and/or procedures as advised to the Supplier from time to time;
- 2.4.5 take all reasonable steps to ensure the trustworthiness and reliability of any Relevant Personnel who have access to the ScottishPower Personal Data;
- 2.4.6 not engage any Sub-processor without the prior written authorisation (whether specific or general) of the Company and the Supplier shall ensure that:
- (a) it undertakes thorough due diligence on the proposed Sub-processor, including a risk assessment of the information governance related practices and processes of the proposed Sub-processor, which will be used by the Supplier to inform any decision on appointing the proposed Sub-processor;
  - (b) it provides the Company with such information as it may require in respect of the Sub-processor including, without limitation, the results of the due diligence referred to in paragraph 2.4.6 (a) above;
  - (c) a written contract is put in place with each Sub-processor that is authorised by the Company pursuant to this paragraph 2.4.6, which places on the Sub-processor obligations in respect of the ScottishPower Personal Data which are materially and substantially equivalent to (and no less onerous than) the obligations set out in this Schedule Part 7; and
  - (d) the Sub-processor's right to Process the ScottishPower Personal Data terminates automatically on expiry or termination of this Agreement for whatever reason.
- 2.4.7 ensure that only such Relevant Personnel who require to have access to the ScottishPower Personal Data in order for the Supplier to perform its obligations under this Agreement shall have access to the ScottishPower Personal Data. The Supplier shall ensure that, prior to being provided with access the ScottishPower Personal Data for the purposes of this Agreement, all Relevant Personnel are (a) informed of the confidential nature of the ScottishPower Personal Data and have undergone training in the law of data protection and in the care and handling of personal data and are bound by obligations of confidentiality which cover the ScottishPower Personal Data and (b) where required by the Company, have had an appropriate criminal record check conducted by the Supplier in respect of them and such check has not disclosed any convictions of a nature that would prevent them from having access to the ScottishPower Personal Data;
- 2.4.8 ensure that the Supplier and the Relevant Personnel do not publish, disclose or divulge any of the ScottishPower Personal Data to any third party (other than to any permitted Sub-processor) unless the Supplier is expressly directed in writing to do so by the Company (in this Agreement or otherwise) or the Supplier is required to do so under applicable law. Where the Supplier is required by law to publish, disclose or divulge any ScottishPower Personal Data, it should notify the Company in writing immediately and before making the disclosure;
- 2.4.9 notify the Company promptly (and in any event within two (2) Working Days) if it or any Sub-processor is subject to an undertaking, information notice, enforcement notice, "stop now" notice or investigation by any regulatory body in connection with data protection or privacy laws;

- 2.4.10 notify the Company promptly (and in any event within two (2) Working Days) if it or any Sub-processor receives a request from a Data Subject (a "SAR") to obtain access to that Data Subject's Personal Data and/or a complaint or request (whether from the Information Commissioner's Office or otherwise) relating to the Company's and/or any ScottishPower Group Company's obligations under the Data Protection Legislation, and shall provide the Company with:
- (a) a copy of the SAR, complaint or request; and
  - (b) reasonable co-operation and assistance in relation to the SAR, complaint or request and the fulfilment of the Company's and/or any Scottish Group Company's obligations under the Data Protection Legislation in respect of such SARs, complaints and/or requests; and
  - (c) ensure that no Personal Data is disclosed by the Supplier and/or any Sub-processor in response to a SAR, complaint or request without the Company's prior written consent;
- 2.4.11 notify the Company promptly (and in any event within 24 hours) upon becoming aware of any confirmed, suspected or threatened data breach (including any Personal Data Breach or any other breach of the Data Protection Legislation and/or this Schedule Part 7) which relates directly or indirectly to this Agreement. The Supplier shall:-
- (i) provide the Company with such information and assistance as the Company may require in relation to the data breach;
  - (ii) take such steps and implement such measures as the Company may direct in order to control and/or mitigate the breach and restore the security of the compromised data;
  - (iii) assist the Company (at the Company's request) to make any notifications to the Information Commissioner's Office and affected Data Subjects; and
  - (iv) not make or permit any announcement to any party in relation to the data breach without the Company's consent, which consent may be subject to conditions at the Company's sole discretion;
- 2.4.12 maintain accurate written records of the Processing it undertakes in connection with this Agreement, together with such other records as the Company may reasonably require and/or as the Supplier is legally required to keep under the Data Protection Legislation, and the Supplier will provide the Company (or its representatives) with access to and copies of such records at any time on the Company's request;
- 2.4.13 permit the Company or its representatives (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Supplier's data processing activities (and/or those of any Sub-processors and/or Relevant Personnel) and the Supplier shall comply with all reasonable requests or directions by the Company to enable the Company to verify and/or procure that the Supplier is in compliance with its obligations under this Agreement;
- 2.4.14 not Process ScottishPower Personal Data outside the European Economic Area without the prior written consent of the Company. Where the Company consents to such Processing outside of the European Economic Area, the Supplier shall comply with such conditions and/or measures in relation to such Processing as the Company may notify to the Supplier;

- 2.4.15 provide the Company with such assistance (in connection with this Agreement) as the Company may reasonably require in connection with the duties imposed on the Company and/or any ScottishPower Group Company under the Data Protection Legislation, without limitation, with respect to security measures, personal data breach notifications, records and data protection impact assessments; and
- 2.4.16 at the Company's discretion and direction, return and/or permanently and securely destroy (so that it is no longer retrievable) all ScottishPower Personal Data held or otherwise Processed by the Supplier, any Sub-processors and/or any Relevant Personnel in connection with this Agreement upon cessation of the performance of its relevant obligations under the Agreement. The Supplier shall ensure that a copy of the personal data is only retained where and to the extent required by applicable law.
- 2.5 The Supplier warrants, undertakes and represents that it shall obtain and maintain during the term of this Agreement all such notifications and consents it is required to maintain under the Data Protection Legislation to enable it to lawfully provide Personal Data to the Company and other ScottishPower Group Companies as required for the performance by the Supplier of its obligations under this Agreement and/or in order to enable the ScottishPower Group Companies to receive the benefit of this Agreement.
- 2.6 Where the performance of this Agreement involves the Supplier, any permitted Sub-processor and/or any Relevant Personnel collecting or obtaining any ScottishPower Personal Data from Data Subjects, the Supplier warrants and undertakes that the Supplier Personal Data will be collected or obtained:
- 2.6.1 in accordance with the terms of the Data Protection Legislation;
- 2.6.2 in a manner which ensures that the Company is able to use the Supplier Personnel for the relevant purposes set out in this Agreement and/or that may be reasonably contemplated by the terms of this Agreement (including, without limitation, by ensuring that appropriate fair processing notices are given to the Data Subjects and, where applicable, that the Data Subject has provided its express, informed consent to the relevant Processing of their Personal Data); and
- 2.6.3 in accordance with all instructions that are issued by the Company in connection with the particular activities, as such instructions may be updated by the Company from time to time.
- 2.3 The Supplier shall provide such assistance as may be requested by the Company in relation to any data protection impact assessments and/or consultations with relevant regulatory bodies that the Company may undertake in connection with its duties under the Data Protection Legislation.
- 2.4 The Supplier shall ensure that all permitted Sub-processors and Relevant Personnel comply with the terms of this Schedule Part 7 and the Data Protection Legislation. Any act, omission, default or breach by any permitted Sub-processor and/or Relevant Personnel shall be deemed to be an act, omission, default or breach by the Supplier for the purposes of this Agreement.
- 2.5 The Supplier's obligations under this Schedule Part 7 do not extend to any Personal Data relating to Supplier's and/or any of its permitted sub-contractor's personnel that are engaged in the performance of the Supplier's obligations under this Agreement that is generated by the Supplier solely for the purposes of its (or its permitted sub-contractor's) internal human resources procedures and records ("**HR Purposes**"). The Supplier acknowledges and agrees that it (or the relevant permitted sub-contractor) is a Data Controller in respect of the Processing of such Personal Data for the HR Purposes and the Supplier undertakes to comply with (and to ensure that its permitted sub-contractors comply with) its obligations under Data Protection Legislation in respect of such Personal Data.

- 2.6 Without prejudice to the Company's other rights or remedies under this Agreement and/or at law and to the Supplier obligations and responsibilities as a Data Processor under and/or pursuant to the Data Protection Legislation, the Supplier shall indemnify and keep the Company and all ScottishPower Group Companies fully and effectively indemnified from and against all losses, liabilities, claims, actions, demands, proceedings, damages, costs, charges and/or expenses (including legal and other professional fees and expenses) made against, suffered and/or incurred by the Company and/or any ScottishPower Group Company arising from, relating to and/or in connection with any breach by the Supplier, any Sub-processor and/or any Relevant Personnel of any of the terms of this Schedule Part 7 and/or the Data Protection Legislation.

## APPENDIX TO SCHEDULE PART 7

In accordance with Schedule Part 7 (Data Requirements), the Supplier must implement appropriate technical and organisational measures to safeguard any ScottishPower Personal Data including, but not limited to, the measures set out in this Appendix to Schedule Part 7 (Specific Data Requirements).

### 1. General Requirements

The measures to be taken by the Supplier in respect of the above shall include, but not be limited to, those set out in this Appendix to this Schedule Part 7 (Specific Data Requirements).

The Supplier must demonstrate to the Company that it has put in place reasonable steps to fulfil the requirements set out in this Appendix to this Schedule Part 7 (Specific Data Requirements).

### 2. Specific Requirements

2.1. The Supplier must put in place, maintain and ensure compliance with throughout the term of this Agreement:

2.1.1. security measures to protect any ScottishPower Personal Data, including (but not limited to):

- 2.1.1.1. a locked and code-access controlled LAN/Computer room;
- 2.1.1.2. ensuring that all offices are secure, with robust controls allowing access only to authorised persons;
- 2.1.1.3. username and password authentication is required to gain access to any company network;
- 2.1.1.4. expressly forbidding the sharing of logins and/or passwords and any other unauthorised access to systems;
- 2.1.1.5. any remote access to systems is to be via secure and auditable gateways; and
- 2.1.1.6. restrictions are placed on persons with access to LAN remotely.

2.1.2. an information security policy is adopted that complies with ISO 27001 including:

- 2.1.2.1. information security and computer use policies within the terms of employment;
- 2.1.2.2. web monitoring and tracking software;
- 2.1.2.3. account lockout and disable on unauthorised login attempt;
- 2.1.2.4. account password restrictions enforced;
- 2.1.2.5. security audit on network;
- 2.1.2.6. desktop lockout policy when machine unattended;
- 2.1.2.7. review business continuity risks;

- 2.1.2.8. carry out comprehensive risk assessment on the handling of personal data;
  - 2.1.2.9. base security measures on the risk assessment; and
  - 2.1.2.10. ensure the above reviews/implementation are controlled by due process overseen by Senior Management with appropriate Governance controls.
- 2.1.3. controls on access to ScottishPower Personal Data taking account of necessity of access and whether read only access is sufficient;
  - 2.1.4. ensure that all agreed procedures relating to the encryption and secure transfer of ScottishPower Personal Data are adhered to at all times and that procedures for protecting the integrity of the ScottishPower Personal Data are followed at all times;
  - 2.1.5. operate standard procedures for investigating breaches of security or the loss or unlawful access to ScottishPower Personal Data ensuring that the relevant ScottishPower Group Company is notified at the earliest opportunity; and
  - 2.1.6. ensure that there are audit trails in place for all its Data Processing equipment and processes.
- 2.2. The Supplier must ensure that its staff are expressly forbidden from using the ScottishPower Personal Data for any purposes outwith this Agreement.
  - 2.3. The Supplier shall be expected to operate and monitor the effectiveness of its security measures to minimise the risk of unauthorised disclosure of the ScottishPower Personal Data. The measures taken must be proportionate to the nature of the data being processed, the consequences of unauthorised disclosure, what measures are available and their respective cost.
  - 2.4. The Supplier must have in place and operate at all times during the term of this Agreement:
    - 2.4.1. clear desk policy and good housekeeping procedures in relation to the regular clearing of ScottishPower Personal Data from printers, equipment, machinery and photocopiers;
    - 2.4.2. a policy which controls the use of mobile phones and other electronic devices in areas where the ScottishPower Personal Data is processed or is accessible to reduce the risk of unauthorised disclosure of that personal data;
    - 2.4.3. robust arrangements for the secure removal and destruction of confidential waste;
    - 2.4.4. monitoring of staff activity to reduce the threat of unauthorised disclosure of the ScottishPower Personal Data; and
    - 2.4.5. any other appropriate measures to safeguard against the unauthorised disclosure of ScottishPower Personal Data necessary to meet local requirements.

## SCHEDULE PART 8

Form of Variation

## VARIATION

between

**[INSERT NAME OF SCOTTISHPOWER GROUP COMPANY]** (the “Company”)

and

**[INSERT NAME OF SUPPLIER]** (the “Supplier”)

(together, the “Parties”)

When signed by both Parties, this Variation amends, with effect from the effective date set out in section [ ] below, the terms of the Services Agreement between the Parties dated on or about **[NOTE – INSERT DATE OF AGREEMENT]** (the “Agreement”). Unless the context requires otherwise, capitalised terms in this Variation shall have the same meanings as are given to them in the Agreement. Save as amended by this Variation, the Agreement shall remain in full force and effect according to its terms.

## 1. BRIEF DESCRIPTION AND RATIONALE

**[NOTE – TO BE INSERTED BY PARTY REQUESTING/RECOMMENDING CHANGE]**

## 2. AGREED AMENDMENTS TO THE AGREEMENT

CLAUSE	AMENDMENT
<b>[NOTE – DETAILS OF AMENDMENTS TO BE AGREED AND INSERTED]</b>	

## 3. AGREED AMENDMENTS TO WORK INSTRUCTION(S)

WORK INSTRUCTION AND PARAGRAPH NUMBER	AMENDMENT
<b>[NOTE – DETAILS OF AMENDMENTS TO BE AGREED AND INSERTED]</b>	

## 4. EFFECTIVE DATE OF VARIATION

The effective date of this Variation is **[NOTE – DATE TO BE INSERTED]**.

The Company hereby agree to the terms of this Variation:

The Supplier hereby agrees to the terms of this Variation:

\_\_\_\_\_  
*Authorised Signatory (Control)*\_\_\_\_\_  
*Authorised Signatory*

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
*Authorised Signatory (Business)*

Print Name:\_\_\_\_\_

Date:\_\_\_\_\_

ANNEX A

Specification

[NOTE – SPECIFICATION OF THE SYSTEM TO BE INSERTED]

**ANNEX B****Form of Parent Company Guarantee****GUARANTEE****BY:**

1. **[NOTE – GUARANTOR COMPANY NAME TO BE INSERTED]**, a company incorporated in **[NOTE – PLACE OF REGISTRATION TO BE INSERTED]** (Registered Number: **[NOTE – REGISTERED NUMBER TO BE INSERTED]**) having its Registered Office at **[NOTE – REGISTERED OFFICE TO BE INSERTED]**;

**IN FAVOUR OF**

2. **[NOTE – SP GROUP COMPANY TO BE CONFIRMED]**, a company incorporated in **[Scotland]/[England]** **[NOTE – DELETE AS APPROPRIATE]** (Registered Number: **[NOTE – REGISTERED NUMBER TO BE INSERTED]**) having its Registered Office at **[NOTE – REGISTERED OFFICE TO BE INSERTED]** (the “Beneficiary”).

**WHEREAS:**

- (A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Guarantee to the Beneficiary.
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Contractor, to guarantee the due performance by the Contractor of all of the Contractor's obligations under the Guaranteed Agreement.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

**1. DEFINITIONS AND INTERPRETATION**

In this Guarantee:

- 1.1. unless defined elsewhere in this Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement; and
- 1.2. the words and phrases below shall have the following meanings:
  - 1.2.1 “Contractor” means [ ] **[NOTE – SUPPLIER'S DETAILS TO BE INSERTED]**
  - 1.2.2 "Guarantee" means this guarantee;
  - 1.2.3 "Guaranteed Agreement" means the Agreement for the Provision of an ICT System and Related Services entered into between the Beneficiary and the Contractor dated **[NOTE – DATE OF AGREEMENT TO BE INSERTED]** and shall include (for the avoidance of any doubt) all Work Instruction(s) agreed pursuant to the Guaranteed Agreement (whether before or after the date(s) of this Guarantee); and
  - 1.2.4 "Guaranteed Obligations" means all obligations of the Contractor to the Beneficiary (and/or any ScottishPower Group Company (as that term is defined in the Guaranteed Agreement) under the Guaranteed Agreement together with all obligations owed by the Contractor to the Beneficiary (and/or

any ScottishPower Group Company) that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.

- 1.3. references to this Guarantee and any provisions of this Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.4. unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5. references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6. the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7. unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8. unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9. unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10. references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Guarantee; and
- 1.11. references to liability are to include any liability whether actual, contingent, present or future.

## **2. GUARANTEE AND INDEMNITY**

- 2.1. The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Contractor will duly and punctually perform all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Beneficiary.
- 2.2. The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Contractor to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3. If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
  - 2.3.1. fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

- 2.3.2. indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement.
- 2.4. As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

### **3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Contractor, or if the Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

### **4. DEMANDS AND NOTICES**

- 4.1. Any demand or notice served by the Beneficiary on the Guarantor under this Guarantee shall be in writing, addressed to:

4.1.1. **[NOTE – TO INSERT ADDRESS OF THE GUARANTOR]**

4.1.2. **[NOTE – TO INSERT THE GUARANTOR'S FAX NUMBER]**

4.1.3. **[NOTE – TO INSERT DETAILS OF THE GUARANTOR'S CONTACT PERSON]**

or such other address or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2. Any notice or demand served on the Guarantor or the Beneficiary under this Guarantee shall be deemed to have been served:

4.2.1. if delivered by hand, at the time of delivery; or

4.2.2. if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3. if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

- 4.3. In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4. Any notice purported to be served on the Beneficiary under this Guarantee shall only be valid when received in writing by the Beneficiary.

## **5. BENEFICIARY'S PROTECTIONS**

- 5.1. The Guarantor shall not be discharged or released from this Guarantee by any arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2. This Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1. it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Guarantee;
- 5.2.2. it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person;
- 5.2.3. if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4. the rights of the Beneficiary against the Guarantor under this Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3. The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4. The Beneficiary shall not be obliged before taking steps to enforce this Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor or any third party, or to take any action whatsoever against the Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in

respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.

- 5.5. The Beneficiary's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6. Any waiver by the Beneficiary of any terms of this Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7. Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6. RIGHTS OF SUBROGATION**

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Guarantee, exercise any rights it may have:

- 6.1. of subrogation and indemnity;
- 6.2. to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and
- 6.3. to prove in the liquidation or insolvency of the Contractor,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Contractor and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

## **7. REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Beneficiary that:

- 7.1. the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.2. the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Guarantee;
- 7.3. the execution and delivery by the Guarantor of this Guarantee and the performance by the Guarantor of its obligations under this Guarantee including, without limitation entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- 7.3.1. the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - 7.3.2. any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - 7.3.3. the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;
- 7.4. all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Guarantee, and to make this Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 7.5. this Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **8. PAYMENTS AND SET-OFF**

- 8.1. All sums payable by the Guarantor under this Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 8.2. The Guarantor shall pay interest on any amount due under this Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to 4% above the base rate of the Bank of England from time to time in force.
- 8.3. The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Guarantee.

## **9. GUARANTOR'S ACKNOWLEDGEMENT**

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Guarantee in reliance upon, nor has it been induced to enter into this Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Guarantee.

## **10. ASSIGNATION**

The Beneficiary shall be entitled to assign or transfer its rights and/or obligations under this Guarantee at any time to any person without the consent of the Guarantor being required and any such assignation, assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

## **11. SEVERANCE**

If any provision of this Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

**12. THIRD PARTY RIGHTS**

- 12.1 This Guarantee is granted by the Guarantor for the benefit of the Beneficiary and all of the ScottishPower Group Companies (as that term is defined in the Guaranteed Agreement). The Parties agree that any ScottishPower Group Company shall have the benefit of and may enforce the terms of this Guarantee as if it were a party hereto and without prejudice to the foregoing generality each such ScottishPower Group Company shall have the benefit of all licences, warranties, undertakings and indemnities granted in favour of the Beneficiary under this Guarantee.
- 12.2 Subject to clause 12.1, a person who is not a party to this Agreement has no right to enforce any term of this Guarantee and nothing in this Guarantee shall confer on any third party any benefit and/or the right to enforce any term of this Agreement, whether pursuant to the Contract (Third Party Rights) (Scotland) Act 2017, Contract (Rights of Third Parties) Act 1999 or otherwise.

**13. GOVERNING LAW**

- 13.1. This Guarantee shall be governed by and construed in all respects in accordance with the laws of Scotland.
- 13.2. The Guarantor irrevocably agrees for the benefit of the Beneficiary that the Courts of Scotland shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 13.3. Nothing contained in this clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 13.4. The Guarantor irrevocably waives any objection which it may have now or in the future to the Courts of Scotland being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

IN WITNESS WHEREOF this Guarantee consisting of this and the [ ] preceding pages have been executed as follows:-

SUBSCRIBED for and on behalf of  
**[NOTE – NAME OF SP GROUP COMPANY TO BE INSERTED]**

by  
and  
at  
on the                    day of                    20  
in the presence of:-

.....  
Authorised Signatory (Control)

Witness.....

Full Name.....

.....  
Authorised Signatory (Business)

Address.....

.....

SUBSCRIBED for and on behalf of  
**[NOTE – NAME OF GUARANTOR TO BE INSERTED]**

by

at

on the                    day of                    20

in the presence of:-

.....  
Director/Authorised Signatory

Witness.....

Full Name.....

Address.....

**ANNEX C**

**Specific Software Licence Terms**

**[NOTE - LICENCE TERMS APPLICABLE TO ANY PARTICULAR ITEMS OF SUPPLIER SOFTWARE OR THIRD PARTY SOFTWARE TO BE INSERTED HERE]**

## ANNEX D

### Specific On-Site Works Requirements

#### 1. Method Statements/Risk Assessments

- 1.1 The Supplier shall, on request from the Company (and, unless agreed otherwise by the Company, at the Supplier's entire expense), prepare and submit to the Company for approval such method statements, risk assessments, permit to work documentation or other documentation as may be required by the Company for the purposes of this Agreement. The Supplier acknowledges and agrees in such circumstances that it shall not affect the provision of the Services and (unless otherwise agreed by the Company) the Company shall not be obliged to make payment to the Supplier pursuant to this Agreement until the Company has issued its written approval to such method statements, risk assessments, permit to work documentation or other documentation, as the case may be.

#### 2. Supplier Passport and Safety Programme

- 2.1 The Supplier shall ensure that, where applicable, all persons engaged by it in connection with this Agreement shall hold (i) a safety passport approved by the Engineering Construction Industry Training Board, (ii) a safety passport approved by the Company and (iii) have been inducted by the Company in relation to the power stations and/or sub-stations, prior to the commencement of this Agreement. At all times while within the power station and/or sub-station all such persons shall wear overalls and all other protective clothing and safety equipment which shall be supplied by the Supplier and which clearly states the name of the Supplier and shall carry and display their power station and/or sub-station passes at all times.
- 19.2 This Agreement shall be carried out in accordance with the safety programme established by the Company. Prior to and in sufficient time to as not to delay performance of this Agreement, the Supplier's nominated representative shall meet with the Company's nominated representative and ensure that the Supplier's safety programme meets or exceeds the requirements of the safety programme established by the Company. If and to the extent that the Supplier's safety programme does not meet the requirements of the Company's safety programme, the Supplier shall immediately (a) alter and amend the Supplier's safety programme in such manner and to such extent as to ensure that the Supplier's safety programme does meet or exceed the requirements of the Company's safety programme and (b) provide a copy of the Supplier's safety programme as so altered and amended to the Company's nominated representative.

#### 3. CDM

**[NOTE – PROVISIONS RELATING TO CDM TO BE INSERTED IF REQUIRED]**

#### 4. DISPUTE RESOLUTION PROCEDURE

**[NOTE – SPECIFIC DISPUTE RESOLUTION PROCEDURE RELATING TO WORKS-RELATED MATTERS TO BE INCLUDED IF REQUIRED]**

#### 5. SUPERINTENDENCE ON SITE

**[NOTE – SPECIFIC REQUIREMENTS RELATING TO SUPERINTENDENCE ON SITE TO BE INCLUDED IF REQUIRED]**

**ANNEX E****Information Security Requirements**

**[NOTE - ANY SPECIFIC INFORMATION SECURITY REQUIREMENTS TO BE SET OUT IN THIS ANNEX]**

**1. INFORMATION SECURITY REQUIREMENTS**

The Information Security Requirements this Annex E are applicable to the supply of all works, services, equipment and materials and to the performance of the Supplier's obligations under and/or pursuant to the Agreement.

**1.1** In this Annex, the following terms shall have the meanings given to them below:

**"Cyber-infrastructure"** means the electronic information and communication systems and services, as well as the information contained therein. These systems, both those housed within the facilities as well as those that are cloud-based, be they proprietary or third-party, in any manner, are comprised of hardware and software for processing (creating, accessing, modifying and destroying), storing (on magnetic, electronic or other formats) and sending (shared use and distribution) information, or any combination of said elements that include any type of electronic device such as, without limitation, standard computers (desktop/laptop) with internet connections, digital storage methods used on computers (e.g. hard drives), mobiles, smartphones, personal digital assistants, data storage media, digital and video cameras (including CCTV), GPS systems, etc.

**"Protected Information"** means any information created, received, transmitted or stored that by its nature or value to the Company and/or any ScottishPower Group Company requires reinforced protection measures, including but not limited to Confidential Information, private or secret information, personal data, credit card data, commercially sensitive information, critical infrastructure information, strategic business information, credentials, encryption data, system and application access logs, or any other information that may be affected by a regulation.

**1.2** In the case of subcontracting by the Supplier duly authorised by the Company, the Supplier undertakes that the sub-contractor shall assume the same obligations assumed by the Supplier under this Annex E, and in any case, the Supplier shall be liable for any breach by the sub-contractor or its personnel of the obligations established here concerning cyber-security and information security.

**1.3** In the event that the data or information related to the Agreement are the property of the Company and/or any ScottishPower Group Company or if the Cyber-infrastructure elements are provided to the Supplier by the Company and/or any ScottishPower Group Company, the Supplier shall process and utilise it for the sole purpose of fulfilling the obligations contained within the Agreement and for no other purpose whatsoever.

**1.4** The Supplier shall ensure compliance with all applicable data security and protection legislation and shall not place the Company, by act or omission, in a situation of non-compliance when any data or information connected with the performance of the Agreement is processed.

**1.5** At all times the Supplier must be aware of the level of information protection related to the Agreement as well as the corresponding standards and applicable laws, and it shall adopt the technical security measures adequate thereto.

**1.6** The Supplier is not authorised to disclose, provide direct or indirect access to the Protected Information or provide it to a third party, even for storage purposes except as specifically permitted by the Agreement. The Supplier is also not authorised to provide the capacity to decrypt encrypted passwords. Should intervention by a third party be necessary, express

written authorisation from the Company indicating its purpose must be obtained, and the third party will be required to fulfil the same obligations that are required of the Supplier.

- 1.7 If, in order to fulfil the object of the Agreement, the Company makes available to the Supplier's Personnel or its subcontractors any electronic devices or other computerised media or resources, or it provides a Company email account or credentials for accessing applications, internet connectivity, or other Cyber-infrastructure elements of the Company, the Supplier shall be responsible for ensuring that said Personnel and subcontractors knowing about and expressly committing to complying with the security and acceptable use conditions established by the Company, which shall be provided in a separate appendix. The Supplier shall guard the documents that accredit compliance with these duties and shall deliver them to the Company upon request.
- 1.8 When the scope of the Agreement implies the use or connection of the Supplier's cyber-infrastructure to that of the Company, the Company shall make available reasonable organisational and technical security measures to protect itself and to help prevent any type of security incident from taking place in respect of its own Cyber-infrastructure.
- 1.9 The connection between the Company's and the Supplier's network is not permitted, unless expressly agreed to in the Agreement, in which case it must be done by establishing encrypted and authenticated virtual private networks, and the number of interconnection points between the two networks must be the minimum that is compatible with the required level of availability. The connection with the Supplier's network shall be removed as soon as there is no need for it.
- 1.10 As a general rule, direct user connections from the Supplier to the Company's network are not permitted. If necessary, they will set up only after the Company has authorised it and only for the agreed upon duration.
- 1.11 If the Agreement is fully or partially carried out at the Supplier's facilities, the Supplier must establish the mechanisms and procedures for physical access to said facilities so as to prevent unauthorised personnel from accessing the infrastructure elements or Protected Information during the time in which the Supplier has access to Protected Information.
- 1.12 The Supplier shall establish the mechanisms and procedures for identifying, authenticating and controlling logical access necessary to prevent unauthorised personnel from accessing its cyber-infrastructure elements and Protected Information, and, in particular:
  - 1.12.1 It will have procedures to assign and withdraw access and permissions that take into account the need for the use and confidentiality of information, so that Personnel of the Supplier or its sub-contractors access only those data and resources that they require to perform their tasks, and it will set up strengthened control mechanisms for privileged users or administrators;
  - 1.12.2 it will maintain an updated inventory of the access and permissions granted and will withdraw access permissions from its Personnel who cease working within a period of under 24 hours in order to comply with the scope of the Agreement. Credentials must always be encrypted when stored and transmitted; and
  - 1.12.3 it shall have policies and procedures that ensure the strength of the passwords and that they are updated regularly. Passwords shall be changed during the installation processes of new hardware or software, and in particular, the Supplier's default passwords will be changed.
- 1.13 The Supplier shall implement the technical and organisational measures necessary to ensure operational continuity under the service level agreements adopted for the Agreement (contingency plans, backup and recovery procedures, etc.). In particular:
  - 1.13.1 the Supplier shall make backup copies of the Protected Information as frequently as is required for the performance of the Agreement and according to the nature of the data, establishing the appropriate procedures and mechanisms to ensure that the data can be retrieved, that only authorised Supplier's Personnel obtain them and that they are transferred and stored in such a way as to prevent access or manipulation by unauthorised persons;
  - 1.13.2 the same security measures shall apply to backups as to the original data;

1.13.3 in the event access has been expressly authorised by the Company to use the Supplier's own computing equipment for accessing the Company's and/or any ScottishPower Group Company's Cyber-infrastructure, the Supplier shall guarantee and undertake that there are adequate security measures to protect the stationary or portable computing equipment and mobile devices used to access such Cyber-infrastructure or for storing, processing or transmitting the Protected Information, including but not limited to:

- (a) Automatic blocking if the device is left unattended for a certain period of time. User authentication will be required for unblocking.
- (b) Protection against malicious software and known vulnerabilities.
- (c) Updating the operating system as often as the Supplier requires.

insofar as is possible the Supplier's Personnel will avoid storing any Protected Information on portable equipment or mobile devices. Should the performance of the Agreement so require, the Company's prior authorisation will be sought and said data must be protected by encryption or any other mechanism that guarantees that the information is not intelligible or manipulable by unauthorised personnel.

- 1.14 The Supplier shall maintain an action procedure should the equipment or device be lost or stolen, ensuring, insofar as is possible that the event be communicated promptly, Protected Information regarding the Company be deleted safely in accordance with recognised standards, and access to the Company's systems or systems containing the Company's data be suspended. Before equipment is reused or replaced, the Supplier must protect, or if applicable remove, all of the information stored on it, ensuring that unauthorised personnel cannot access or recover it.
- 1.15 The Supplier shall establish adequate procedures to guarantee protection against loss or unauthorised processing of files, media and paper documents containing information related to the Agreement and guarantee that they are destroyed when the reasons for their creation no longer apply. Extracting data from a file and putting it on a server or delivering it electronically is considered equivalent to the computer media for the purposes of complying with these measures.
- 1.16 The Company may solicit information concerning any processing of Protected Information by the Supplier. In these cases the Supplier must apply security measures according to the sensitivity of the information that they contain.
- 1.17 The Supplier shall include security measures appropriate to the nature of the information processed in developing, maintaining and testing the equipment that will be used in fulfilling the Agreement. The Supplier will adopt secure code development standards and ensure that no real data is used in test environments. If absolutely necessary, the Company's express authorisation will be required and the same measures specified for performing the work included in the Agreement will be applied to these environments.
- 1.18 Should the Agreement include the supply of equipment and/or materials, the Supplier shall prove that best security practices and standards have been applied for the design, fabrication, maintenance, and, where applicable, installation of the supplied material, including its components. For any such equipment and/or materials with information processing capacity or network connectivity options:
- 1.18.1 the Supplier shall provide evidence or certificates that guarantee design security, firmware/software updates and malware protection;
  - 1.18.2 the Supplier shall conduct periodic analyses of vulnerabilities and inform the Company about any necessary updates, especially those that affect security;
  - 1.18.3 all internet connected devices shall be protected with adequately complex passwords that can be changed by the Company;
  - 1.18.4 the configuration of devices, equipment and materials shall be adjustable exclusively according to the Company's needs, and any unnecessary functionality deactivated. Should the Supplier conduct any configuration, documentation to that effect shall be

provided.

- 1.19 The Supplier shall implement a procedure to notify of and manage security incidents, which it will disclose among its Personnel, and will act with special diligence in those cases involving critical elements of the Company's Cyber-infrastructure or Protected Information or when the reputation or legal responsibility the Company and/or any ScottishPower Group Company or the interests of the persons whose information is processed may be affected.
- 1.20 The Supplier shall immediately notify the Company of the existence of any security incident always within a maximum period of 24 hours after becoming aware of it, or if shorter, the shortest legal period, and shall assist and cooperate with the Company in terms of any necessary communication to third parties and other reasonable measures to remedy the situation when the Company requests it or as required by law. Merely by way of example, the Supplier shall notify the Company of incidents that cause anything related to the following incidents:
- 1.20.1 access or attempts to access systems, equipment, applications, files, containers, devices etc. by unauthorised persons or programs;
  - 1.20.2 disclosing or compromising credentials, authentication or encryption data;
  - 1.20.3 total or partial loss of data or information for any reason;
  - 1.20.4 uncontrolled distribution: sending information to people who should not receive it;
  - 1.20.5 loss or removal of computer equipment or storage media, files or part of their contents;
  - 1.20.6 attacks caused by viruses / malicious software that may affect the exchange of information between the Supplier and the Company; and
  - 1.20.7 others: any irregularity or deficiency detected regarding compliance with the safety criteria indicated in this section.

The Supplier and the Company must agree on the necessary actions, resolution times and follow-up mechanisms insofar as is necessary by the potential impact.

- 1.21 Once the Supplier's contractual performance has been completed, or in the event of a termination of the Agreement, the Supplier shall return to the Company or securely destroy, as the Company chooses, all information owned by the Company or any ScottishPower Group Company that may be in its possession, as well as any media or document that includes Protected Information. Should information destruction be selected, the Supplier shall provide its corresponding certification by following recognised standards for doing so.
- 1.22 Furthermore, all equipment, devices and storage media owned by the Company shall be returned and any potential connectivity to the Company's Cyber-infrastructure will be suspended. The same shall occur whenever the infrastructure elements or information are no longer needed for the performance of the Supplier's obligations under the Agreement.
- 1.23 If the Supplier is bound by the requirements applicable for storing the Company's Protected Information, it shall keep both the Protected Information and the items that contain it duly protected and only for the time necessary in accordance with current regulations. Once said period has lapsed, they will be destroyed or returned to the Company, as the Company chooses, as will any media or documents containing any such data and no copy of the information will be kept.
- 1.24 At the Company's request, the Supplier shall provide evidence of security assessments or audits or, at the Company's request, permit independent audits and / or inspections of the audit measures at its data processing facilities or in cloud storage services regulated by this Annex D. Such audits or inspections shall be conducted by the Company or by a representative or audit agency approved by the Company. The persons in charge of carrying out said audits shall be subject to the duty of professional secrecy (confidentiality) and have the professional qualifications required by current laws. The Supplier undertakes to comply with the possible plan of action that may result from said audits.
- 1.25 The Supplier shall provide the Company with reasonable and timely support in responding to any request, complaint or other communications received by any individual, government,

governmental agency, regulatory authority or other bodies that may have an interest in the use, leakage, disclosure or misuse of any data or information related to the Agreement, insofar as they comply with the processing the data or information by the Supplier.

- 1.26 The Company must be informed in advance of any communication of data that the Supplier must perform pursuant to a legal or judicial provision.

**ANNEX F**

**Business Continuity and Disaster Recovery Requirements**

**[NOTE - ANY SPECIFIC BUSINESS CONTINUITY AND/OR DISASTER RECOVERY REQUIREMENTS TO BE SET OUT IN THIS ANNEX]**

IN WITNESS WHEREOF this Agreement has been executed as follows:-

SUBSCRIBED for and on behalf of

**[SCOTTISH POWER UK PLC]**

by

and

at

on the                    day of                    20

.....  
Authorised Signatory (Control)

.....  
Authorised Signatory (Business)

SUBSCRIBED for and on behalf of

**[NOTE – NAME OF SUPPLIER TO BE INSERTED]**

by

at

on the                    day of                    20

in the presence of:-

.....  
Director/Authorised Signatory

Witness.....

Full Name.....

Address.....