

DATED _____ 2008

TBC

and

YORKSHIRE ELECTRICITY DISTRIBUTION PLC

ELECTRICITY ASSET ADOPTION AGREEMENT

for low voltage unmetered connection assets

Version 4.3



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CONTENTS

1.	INTERPRETATION.....	1
2.	COMMENCEMENT AND DURATION.....	6
3.	FORM OF AGREEMENT.....	6
4.	OWNER'S OBLIGATIONS.....	6
5.	DISTRIBUTOR'S OBLIGATIONS.....	8
6.	TESTING OF THE WORKS.....	8
7.	TITLE, ADOPTION AND INDEMNITY.....	9
8.	INDEMNITY.....	10
9.	DEFECTS.....	10
10.	CONNECTION.....	10
11.	GUARANTEE/PERFORMANCE BOND AND CASH SUM.....	11
12.	LOSS OR DAMAGE.....	12
13.	TERMINATION.....	13
14.	INSURANCE.....	14
15.	NON WAIVER.....	14
16.	ENTIRE AGREEMENT AND VARIATION.....	15
17.	GOVERNING LAW.....	15
18.	SAVINGS CLAUSE.....	15
19.	PAYMENT.....	15
20.	ASSIGNMENT.....	15
21.	SUB-CONTRACTING.....	16
22.	ADJUDICATION.....	16
23.	ENFORCEMENT BY THIRD PARTIES.....	17
24.	NOTICES.....	17
	SCHEDULE 1.....	19

Appendix 1	20
SCHEDULE 2	21
SCHEDULE 3	22
SCHEDULE 3	22
SCHEDULE 4	23

“Asset”	means the assets that are the subject of the completed Works which the Owner wants adopted and excluding the Customer’s Installation or any part thereof;
“Civil Engineering Information”	means the information specified in the [Specification] which the Owner is required to provide in relation to the civil engineering aspects of the Assets or the buildings or structures within which they are located;
“Completion and Handover Certificate”	means the notice to be given to the Distributor by the Owner confirming that any Works or part thereof are complete and the associated Asset(s) are ready for Adoption. The notice shall be in the form set out in Schedule 4;
“Connection”	means, the point at which a new Asset is connected to the Distributor’s existing assets or following the prior written agreement of the Distributor;
“Connection Agreement”	means an agreement entered into or to be entered into between the Distributor and the Customer relating to the connection of the Customer’s Installation to the System in the standard form used by the Distributor relevant to the Customer’s Installation at the time of Adoption;
“Consents”	means any conveyance, transfer, lease, deeds of grant, wayleave or other consent or licence required for any substation, overhead or underground electricity lines, any ancillary apparatus and any other plant or equipment required by the Distributor in order to Adopt and/or Maintain the Assets;
“Customer”	means any person connected to or wishing to be connected to the System for the purpose of receiving an electricity supply;
“Customer’s Installation”	means any structures, equipment, lines, appliances or devices (not forming part of the System) used or to be used by the Customer and connected or to be connected to the System at the Exit Point;
“Daily Whereabouts Sheet”	means a report, completed by the Owner in the form set out in Schedule 3 describing the Works to be performed on each day in the following week and the locations at which those Works are to be performed;
“Electricity Supplier”	means a person who is the holder of a licence to supply electricity granted pursuant to section 6(i)(d)

	of the Act or is exempted from holding such a licence;
“Exit Point”	means a point of connection at which a supply of electricity may flow between the System and the Customer’s Installation upon and after Connection;
“Force Majeure”	means any event or circumstance which is beyond the reasonable control of either party and which results in or causes the failure of that party to perform any of its obligations under this Agreement including acts of God, strike, lockout or other industrial disturbance, fuel or raw material shortage, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus (of the System) which could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament, other legislation, bye law and directive (not being any order, regulation or direction under section 32, 33, 34 or 35 of the Act) or the failure of any generator or National Grid Company plc to supply the Distributor with electricity or any deficiency in such supply to the extent that such failure or deficiency or the consequences thereof could not have been prevented by the exercise of Good Industry Practice by the Distributor. Provided that lack of funds shall not be interpreted as a cause beyond that party’s reasonable control;
“Good Industry Practice”	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
“High Voltage Plant Test Results”	means high voltage test plant results in a form to be agreed in writing between the parties as part of the Specification;
“Highway”	means a street as such expression is defined by section 48 of the New Roads and Street Works Act 1991;
“Independent Connections Provider” or “ICP”	means a suitably Accredited independent connections provider under the Lloyd’s NER scheme or a similar scheme of equal standing and

	quality;
“Live Jointing Arrangements”	means such arrangements as the Distributor shall inform the ICP of that facilitate live low voltage cable jointing. The ICP’s performance of such live low voltage cable jointing is to be at the Distributor’s sole discretion;
“Maintain”	means to maintain, repair or replace (as shall reasonably be required by the Distributor) any electrical plant, electric lines, apparatus and/or other equipment and/or materials used in connection with the Works (or part thereof) which have been Adopted which either shall at any time during the Maintenance Period be found to be defective, unsuitable or not in accordance with the Plans and/or Specification or which require preventative maintenance as part of an appropriate maintenance regime, together with the rectification of any defective workmanship in connection with the Assets (or any part thereof) which have been Adopted and Maintenance shall be construed accordingly;
“Maintenance Period”	means the period of 24 months calculated from the date upon which Works are Adopted in accordance with this Agreement. If Works are Adopted in parts then the expression “Maintenance Period” shall mean the period of 24 months calculated from the date upon which the relevant part of the Works is Adopted in accordance with this Agreement;
“Maximum Power”	means the maximum power in kVA or kW referred to in the Approved Design or the required connection capacity of the customer(s);
“Network Access Agreement”	means an agreement entered into by the parties which permits the Owner to carry out live jointing works;
“Party”	means, where the context allows, either the Owner or the Distributor or both;
“Plans”	means the plans set out in the Request;
“Regulations”	includes the Electricity Act 1989 and the Distribution Code and the Electricity Safety, Quality and Continuity Regulations 2002 and the Construction (Design and Management) Regulations 1994 (CDM) and any amendments made thereto by Parliament and any other relevant statute or statutory instrument includes, without limitation, the New Roads and Street Act 1991;

“Request”	means a request for LV mains and service asset connection and adoption in the form set out in Schedule 2;
“Retention Period”	means 60 months from the date of Adoption of the whole of any of the Works;
“Site File”	means the file prepared by the Owner in accordance with clause 4.1.4(e);
“Specifications”	means the specifications published by the Distributor and as set out in Schedule 1;
“System”	means the electrical system of the Distributor of which the Asset will, following Adoption of the Asset, form part. The System shall include any part or parts of the Asset that have been Adopted;
“Technical Information”	means any and all technical information, diagrams and drawings supplied by the Distributor to the Owner or the Owner’s nominee pursuant to clause 5; and
“Works”	means the works to construct the Assets described in the Application for Adoption carried out and completed or to be carried out and completed by or on behalf of the Owner for adoption by the Distributor in accordance with Schedule 2 (Specifications).

1.2 In this Agreement any reference to:-

1.2.1 a "clause" or "a Schedule" or an "Appendix is a reference to a clause or, Schedule to this Agreement;

1.2.2 the word "including" is to be construed without limitation; and

1.2.3 a "person" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.

1.3 Any reference in this Agreement to a statute, statutory instrument, regulation or order shall also be construed as such a reference as amended or re-enacted from time to time.

1.4 Any reference in this Agreement to another agreement or any deed or other instrument shall also be construed as such a reference as the same may have been, or may from time to time be, amended, varied, supplemented or novated.

1.5 Any reference in this Agreement to the masculine shall include the feminine and any reference to the singular shall include the plural and vice versa in each case.

1.6 clause headings are for ease of reference only. Expressions in the singular include the plural and vice versa.

2. **COMMENCEMENT AND DURATION**

This Agreement shall commence on the date hereof and shall continue in force for a period of five years unless terminated earlier in accordance with clause 13.

3. **FORM OF AGREEMENT**

3.1 This Agreement constitutes a framework agreement pursuant to which the Distributor may Adopt Assets constructed by or on behalf of the Owner. For the avoidance of doubt, the Distributor is under no obligation to Adopt Assets constructed by or on behalf of the Owner.

3.2 The acceptance in writing by the Distributor of an Application for Adoption:-

3.2.1 constitutes an acknowledgement by the Distributor that the Assets referred to in the Request and which the Owner proposes to construct should be suitable for Adoption subject to their conformity with the terms of this Agreement. For the avoidance of doubt, the acceptance by the Distributor of such Request shall not constitute an offer to Adopt the Assets referred to in it; and

3.2.2 shall form a separate contract subject to the terms and conditions of this Agreement.

4. **OWNER'S OBLIGATIONS**

4.1 The Owner undertakes:-

4.1.1 to design, construct and complete the Works and/or Asset(s) set out in each Request which is accepted by the Distributor in accordance with clause 3.2:-

(a) in such a manner so as to meet the Customer's Maximum Power and other requirements; and

(b) strictly in accordance with the provisions of this Agreement including, without limitation the Approved Design (as defined in clause 4.1.2), and the Specification;

4.1.2 to submit the design to the Distributor and not to commence the Works until the design of the same is an Approved Design;

4.1.3 to modify the design of the Works, if required to do so by the Distributor by virtue of a written notice to that effect. Where each modification is required other than due to the rectification of a defect in the design, upon receiving such notification the Owner shall submit to the Distributor a quotation quoting a reasonable price for such additional and/or modified Works. The Owner shall, upon acceptance by the Distributor of such quotation, make the required modification and/or additions to the design and Works as soon as reasonable practicable or as otherwise agreed in writing with the Distributor. Should the Distributor not accept the Quotation for the additional and/or modified Works, the Distributor should provide the Owner with the reasons why it has rejected the Quotation and the Owner shall amend the Quotation and resubmit it, such process shall be followed until such time as the Distributor does accept it (if at all). For the avoidance of doubt, any modification of the design of the

Works required as a result of a defect in the design shall be at the Owner's expense;

4.1.4 during the progress of the Works:-

- (a) to complete the Daily Whereabouts Sheet and submit it to the Distributor with such frequency as the Distributor shall specify and in any event at least two working days prior to the proposed commencement date for the works described in such sheet;
- (b) to afford to or procure for the Distributor or its duly authorised agents, servants or contractors, free access to every part of the Works at all times and permit them to inspect and/or test the same together with any and all equipment and materials used or to be used in the Works;
- (c) to give not less than 10 days' prior written notice to the Distributor in order that the Distributor or its duly authorised agents, servants or contractors may witness the completion of such Works and may inspect the completed Works and Assets or such parts thereof as the Owner wishes the Distributor to Adopt;
- (d) to provide upon completion of the Work or any part thereof a Completion and Handover Certificate to the Distributor in the form set out in Schedule 4];
- (e) to provide a Site File for the Works which shall contain:-
 - (i) the Adoption Agreement Form (once the Works are completed and have been Adopted);
 - (ii) the Approved Design;
 - (iii) the Completion and Handover Certificate;
 - (iv) the As Laid Drawings;
 - (v) the electrical test results; and
 - (vi) the Civil Engineering Information
- (f) to comply in all respects with the obligations and requirements of this Agreement, the Approved Design, the Specifications and the Regulations; and
- (g) ensure that no approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Distributor nor any enquiry or inspection which the Distributor may make or have carried out for its benefit or on its behalf, will operate to reduce, extinguish, exclude, limit or modify the Owner's obligation to fulfil its duties and obligations under this Agreement;

4.1.5 to pay to the Distributor in full any monies due to the Distributor from the Owner under this Agreement; and

4.1.6 to the extent it is within the Owner's power to do so, to grant or procure the grant to the Distributor for the purpose of this Agreement all Consents as required by the Distributor and notified to the Owner.

4.2 The Owner warrants:-

4.2.1 it is fully experienced, qualified, equipped, organised and financed to perform its obligations under this Agreement;

4.2.2 the Works shall be provided with reasonable skill and care by properly trained, skilled and experienced personnel who are properly accredited;

4.2.3 the completed Works and Assets are in strict conformity with the Specification, the Regulations, this Agreement and the other documents attached to this Agreement or referred to in it;

4.2.4 the Works have been completed and the Assets constructed in such a manner by or on behalf of the Owner so as to ensure that the Distributor will comply with its obligations under the Regulations upon Adoption of the Assets;

4.2.5 there are no outstanding debts, disputes as to ownership or title in respect of the whole or any part of the Works and/or Assets;

4.2.6 the Assets will be fit for the purpose required by the Distributor; and

4.2.7 it is properly and duly authorised to enter into this Agreement.

5. **DISTRIBUTOR'S OBLIGATIONS**

Following a written request from the Owner, the Distributor shall supply to the Owner or its nominee such Technical Information as the Owner may reasonably require to carry out the design, construction, installation or commissioning of the Works.

6. **TESTING OF THE WORKS**

Upon receipt by the Distributor of:-

6.1 the acceptance of its terms for the provision of non-contestable work;

6.2 a Notice of Completion; and

6.3 the As Laid Drawings for any section of the Works, including any required High Voltage Plant Test Results,

the Owner, where the Distributor permits it in writing to do so (such permission to be granted at the Distributor's sole discretion), will arrange to test the relevant section of the Works strictly in accordance with any requirement in the Network Access Agreement, the Regulations, Live Jointing Arrangements and also in line with good industry practice. The Distributor reserves the right at its sole discretion to carry out any reasonable tests it requires (at the cost of the Owner).

7. **TITLE, ADOPTION AND INDEMNITY**

- 7.1 The Contractor shall prior to Adoption by the Distributor of any Works:-
- 7.1.1 complete, sign and return to the Distributor the Adoption Agreement Form set out in Schedule 1. The Adoption Agreement Form is an offer by the Owner that permits the Distributor to Adopt the Assets set out in that form subject to the terms and conditions set out in this Agreement. With effect from the date upon which the Adoption Agreement Form is counter-signed by the Distributor, the specific Assets in the relevant form shall be Adopted by the Distributor and this Agreement in relation to the relevant Works shall be deemed to be varied by the addition of the specific Adoption Agreement Form which relates to the relevant Works and such Adoption Agreement Form shall, from such date, be part of the contract in relation to such Works;
 - 7.1.2 provide documentary evidence, satisfactory to the Distributor, that the person or persons undertaking the Works were properly Accredited and otherwise possessed the appropriate skills and experience to carry out the Works and performed the Works in accordance with the Network Access Agreement (where appropriate);
 - 7.1.3 provide plot numbers and full postal address of any Customer's Installation and answer promptly any queries the Distributor may have regarding such plot numbers and postal address;
 - 7.1.4 provide the name of any landowner of land over, on or under which the relevant Assets are situated; and
 - 7.1.5 provide in respect of high voltage plant comprising the relevant Assets, the complete set of the High Voltage Plant Test Results in accordance with the Specification.
- 7.2 Adoption of the Assets in the Adoption Agreement Form by the Distributor is subject to:-
- 7.2.1 the Distributor being in receipt of all of the necessary Consents in respect of the Assets from the relevant landowners;
 - 7.2.2 the Distributor obtaining the freehold or a lease of any land upon which any sub-station or other plant or equipment is situated (if applicable);
 - 7.2.3 the Owner paying to the Distributor in full any monies due to the Distributor from the Owner under this Agreement;
 - 7.2.4 the Owner providing to the Distributor such documentary evidence as the Distributor might reasonably request in order for the Distributor to ascertain that the completed Works and Assets including any civil engineering works are in strict conformity with the Specification, the Regulations, this Agreement and the other documents attached to this Agreement or referred to in it;
 - 7.2.5 the Owner provide As Laid Drawings which shall be appended to the Completion and Handover Certificate for each phase of the works;

- 7.2.6 the Owner providing to the Distributor such documentary evidence as the Distributor might require in order to ascertain that the Works have been completed and the Assets constructed in accordance with the Network Access Agreement (where appropriate) and in such a manner by or on behalf of the Owner so as to ensure that the Distributor will be compliant with its obligations under the Regulations upon Adoption of the Assets;
- 7.2.7 the Owner providing to the Distributor such documentary evidence as the Distributor might reasonably require in order to ascertain that there are no outstanding debts, disputes as to ownership or title in respect of the whole or any part of the Works and/or Assets; and
- 7.2.8 the Owner providing to the Distributor such documentary evidence as the Distributor might reasonably require in order to ascertain the Assets will be fit for the purpose required by the Distributor.
- 7.3 Subject to the conditions set out in clause 7.1.1 being met to the Distributor's reasonable satisfaction, the Distributor shall Adopt the Asset(s) set out in the relevant Adoption Agreement Form on the terms and subject to the conditions set out herein, save that the Distributor shall have no responsibility for and accepts no liability whatsoever in respect of such Assets prior to the Adoption Date.
- 7.4 Upon the Adoption Date, and in consideration of the payment by the Distributor to the Owner of one pound (£1), receipt of which is hereby acknowledged by the Owner, the entire unencumbered title to all electrical plant and electric lines (as defined in section 64 of the Act) and all other equipment, apparatus and materials comprising the relevant Assets shall, on such date, vest in the Distributor absolutely free from any charge, lien, or other interest of any kind.
- 7.5 The Owner acknowledges and agrees that commencing on the Adoption Date the relevant Assets or any relevant part thereof will become part of the System.

8. **INDEMNITY**

The Owner shall indemnify in full and hold harmless the Distributor from and against any and all losses, actions, proceedings, costs, claims and demands of whatsoever nature which may be suffered by or be brought, made or threatened against the Distributor arising out of or incidental to any act or default of the Owner in connection with this Agreement or any breakdown, failure or fault in the Assets that have been so Adopted throughout the Maintenance Period.

9. **DEFECTS**

The parties acknowledge and agree that any work required on Adopted Assets may only be performed by the Distributor or its agents or sub-contractors and that neither the Owner, Customer or any third party acting for or on behalf of the former, may correct any defects that may arise in relation to Asset(s) after Adoption (unless requested to do so in writing by the Distributor).

10. **CONNECTION**

10.1 The Works or any section of the Works and the Assets will only be Connected to the System by the Distributor if:-

- 10.1.1 the Distributor has received a Notice of Completion;

- 10.1.2 the Distributor has received the acceptance of its terms for the provision of non-contestable work;
 - 10.1.3 the Distributor has obtained any required Consents;
 - 10.1.4 the Distributor has received the As Laid Drawings;
 - 10.1.5 the Distributor has received any required High Voltage Plant Test Results; and
 - 10.1.6 the Owner has agreed in writing with the Distributor that the relevant Asset may be Connected to the System.
- 10.2 The Works or any section of the Works and the Assets may only be Connected to the System by the Owner if:-
- 10.2.1 the Owner is or employs a properly accredited ICP;
 - 10.2.2 the Owner is a party to and compliant with a Network Access Agreement in relation to any live jointing to be carried out in respect of the Assets;
 - 10.2.3 the Distributor has received a Notice of Completion;
 - 10.2.4 the Distributor has received acceptance of its terms and conditions for the provision of non-contestable work;
 - 10.2.5 the Distributor has obtained any required Consents;
 - 10.2.6 the Distributor has received the relevant As Laid Drawings;
 - 10.2.7 the Distributor has received any required High Voltage Plant Test Results; and
 - 10.2.8 the Distributor has agreed in writing that the relevant Asset may be Connected to the System.
- 10.3 The work involved in connecting the relevant Asset(s) to the System may only be carried out by personnel who are employed or contracted to do so by the Distributor or by a properly Accredited ICP in accordance with the Network Access Agreement (where appropriate). The Owner will use all reasonable endeavours to extend to the Distributor or enforce on its behalf the benefits of any guarantee, condition, or warranty which may be implied in favour of the Owner or which may have been expressly given to the Owner in respect of the Works.

11. GUARANTEE/PERFORMANCE BOND AND CASH SUM

- 11.1 The Owner shall, within seven days of a request by the Distributor, provide one of the forms of security set out below as the Distributor, in its absolute discretion, shall determine (the "Security") and in a form satisfactory to the Distributor;
 - 11.1.1 a sum of money in the amount the Distributor reasonably calculates as being 10% of the cost of the Works (the "Cash Sum"). The Cash Sum less any sums deducted pursuant to clause 11.2 shall be returned to the Owner within 14 days of the end of the Retention Period; or

- 11.1.2 a performance bond for an amount equal to the Cash Sum for the purpose set out in clause 11.2 (the “Performance Bond”), such Performance Bond to be in a form approved by the Distributor and to be for the period of the Works and the Retention Period; or
 - 11.1.3 a parent company guarantee in respect of the obligations of the Owner under this Agreement.
- 11.2 All electrical plant, electrical lines (as defined in section 64 of the Act) and all other equipment, apparatus and materials used and provided by the Owner for the purpose of the Works and labour associated with the installation of such equipment and materials are guaranteed by the Owner against defects in materials and/or workmanship for the Maintenance Period. During the Maintenance Period the Owner shall be responsible for, and shall pay to the Distributor on demand, all costs, fees and expenses incurred and certified as having been incurred by the Distributor in the repair of any defects in such plant, lines, equipment, apparatus and/or materials which are found to be caused by defective materials and/or workmanship or, (at the Distributor’s discretion) in the replacement of any defective equipment or materials, and, in the case of defective labour, in the re-performance of such labour, and the Distributor may deduct or claim such amounts from the Security provided by the Owner.
- 11.3 During the Maintenance Period, the Distributor will give the Owner a reasonable opportunity to inspect any sections of the Adopted Works that require Maintenance. However, if in the opinion of the Distributor, acting reasonably, in the event of an emergency it is not practicable to give the Owner a reasonable opportunity to inspect, the Distributor will arrange for the Owner to be provided with a post rectification report as to the location, nature and extent of the defects rectified.
- 11.4 Clause 11.2 does not apply to any defects which are caused by misuse, accident or neglect by the Distributor, excessive condensation (unless caused by the Owner’s negligence or breach of contract) or omission or failure by the Distributor to carry out routine maintenance in accordance with Good Industry Practice.

12. **LOSS OR DAMAGE**

- 12.1 The liability of either Party for death or personal injury caused by its negligence shall not be limited.
- 12.2 Subject to clauses 8 and 11.2, the liability of either Party (“Party Liable”) in respect of any losses, costs or claims suffered by or made or threatened against the other Party which arise out of the negligence or breach of contract or other act, omission or default of the Party Liable shall be limited to £1,000,000 per event or series of connected events.
- 12.3 Subject to clauses 8 and 11.2, neither Party shall be liable in respect of any indirect, consequential or economic loss including any loss of contract, profit, revenue, goodwill, production or use which arises out of the negligence or breach of contract or other act, omission or default of the Party Liable.

13. **TERMINATION**

- 13.1 The Distributor may terminate this Agreement or any agreement for the adoption of specific Assets made pursuant to it at any time by giving to the Owner not less than 30 days' prior written notice.
- 13.2 A party (the "Non-Defaulting Party") may terminate this Agreement or any agreement for the adoption of specific Assets made pursuant to it with immediate effect by notice to the other party ("Defaulting Party") on or at any time after the occurrence of an event specified in clause 13.3.
- 13.3 The events are:-
- 13.3.1 the Defaulting Party is in material breach of this Agreement and that breach cannot be remedied;
 - 13.3.2 the Defaulting Party is in material breach of an obligation under this Agreement which can be remedied but the Defaulting Party fails to do so within 30 days starting on the day after receipt of notice from the Non-Defaulting Party;
 - 13.3.3 the Defaulting Party stops payment of its debts or ceases or threatens to cease to carry on its business or substantially the whole of its business, or is unable to pay its debts as they fall due or is deemed unable to pay its debts;
 - 13.3.4 the Defaulting Party becomes or is declared insolvent or a resolution is passed for the winding up of the Defaulting Party or the Defaulting Party convenes a meeting of its creditors or makes or proposes to make any arrangement or composition with its creditors or becomes subject to any insolvency procedure in any jurisdiction or any person takes any step to appoint an administrator or a liquidator, an administrative receiver, a receiver, manager, trustee, custodian or analogous officer is appointed in respect of all or any part of its property, undertaking or assets or circumstances arise which entitle the court or any person to appoint a receiver and/or manager or administrative receiver or which entitle the court to make a winding up or bankruptcy order or the Defaulting Party takes or suffer any similar or analogous action in consequence of debt;
 - 13.3.5 if the Defaulting Party (being a natural person) shall die or become mentally incapacitated or (being a partnership or other unincorporated association) shall be dissolved or become subject to any bankruptcy or analogous insolvency procedure in any jurisdiction; or
 - 13.3.6 if any event analogous to those set out in clauses 13.3.3 or 13.3.4 or 13.3.5 shall occur in any jurisdiction in which the Defaulting Party is incorporated or resident or carries on business.
- 13.4 Any termination of this Agreement for whatever reason shall not affect the rights or liabilities which have accrued on or before the date of termination (or expiry).
- 13.5 Upon expiry or termination of this Agreement for any reason the provisions of clauses 3, [6], 8, 9, 10, 12 and 13 shall continue in force without limit of time.

14. **INSURANCE**

- 14.1 Subject to clause 14.2, the Owner shall, prior to commencement of any part of the Works, until the end of the Maintenance Period, insure, in an amount of not less than £10,000,000, against its liability for damage or death or personal injury occurring before Adoption in respect of the whole of the Works to any person (including any employee of the Distributor) or to any property due to or arising out of the execution of the Works. The terms of the policy shall include a provision whereby, in the event of any claim being made against the Distributor in respect of which the Owner would be entitled to an indemnity under the policy, the insurers will indemnify the Distributor in full against any and all such claims and any and all costs, charges and expenses in respect thereof.
- 14.2 The Owner shall, prior to the commencement of any part of the Works, insure and shall maintain insurance until the whole of the Works have been Adopted in an amount of not less than £10,000,000 against its liability in respect of the death of or injury to any person employed by the Owner, its contractors or its sub-contractors for the purposes of the Works. The terms of any such policy shall also include the provision to indemnify the Distributor mentioned in clause 14.1 above, provided always that in respect of any persons employed by any contractor or sub-contractor, the Owner's obligation under this sub-clause shall be satisfied if the contractor or sub-contractor shall have insured against the liability in respect of such persons in such manner that the Distributor is indemnified under the policy, but the Owner shall require such contractor or sub-contractor to produce for the Distributor, when required, the policy, and the receipts for the premiums or other satisfactory evidence of insurance cover.
- 14.3 The Owner will maintain, with reputable insurers carrying on business in the European Union, from the date hereof until twelve years after Adoption of the whole of the Works, professional indemnity insurance in the amount of £2 million pounds (£2,000,000.00) for any one occurrence or series of occurrences arising out of any one event in relation to the Works provided that such insurance is generally available in the market to companies carrying out similar work to the Owner at a commercially realistic cost and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Owner's own claims record or other acts, omissions, matters or things peculiar to the Owner will be deemed to be within the Owner's obligation. The Owner will notify the Distributor in writing from time to time of any change in its professional indemnity insurance arrangements and, within seven days of the Distributor's reasonable request at any time, the Owner will produce for inspection documentary evidence as to its compliance with this clause and that payment has been made in respect of the last preceding premium payable thereunder.
- 14.4 All insurances shall be effected with an insurer and in terms to be approved by the Distributor, such approval not to be unreasonably withheld, and the Owner shall from time to time, when so required by the Distributor, produce the policy and receipts for the premiums or other satisfactory evidence of insurance cover. The Owner shall promptly notify the Distributor of any alteration to the terms of the policy or any amounts for which insurance is provided.

15. **NON WAIVER**

- 15.1 No provision of this Agreement shall be considered waived by either Party except when such waiver is given in writing.

15.2 No delay by or omission of either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other future exercise thereof or the exercise of any other right, power, privilege or remedy.

16. **ENTIRE AGREEMENT AND VARIATION**

16.1 This Agreement contains all the terms that the Parties have agreed in relation to the subject matter of this Agreement and supersedes any prior written or oral agreements representations or undertakings between the Parties relating to such subject matter.

16.2 Neither Party to this Agreement has been induced to enter into this Agreement by a statement or promise which it does not contain save that this clause shall not exclude any liability which one Party would otherwise have to the other in respect of any statements made fraudulently by that Party.

16.3 No variation to this Agreement shall be effective unless in writing signed by a duly authorised officer of each of the Parties.

17. **GOVERNING LAW**

This Agreement shall be governed by and construed in all respects in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.

18. **SAVINGS CLAUSE**

If any provision of this Agreement is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the Commission of the European Communities or by order of the Secretary of State such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

19. **PAYMENT**

19.1 If either Party does not pay any sum payable under this Agreement when due then without prejudice to the other Party's other rights under this Agreement that sum shall bear interest from the due date until payment is made in full, both before and after any judgement at four per cent per annum over National Westminster Bank plc base rate from time to time.

19.2 The Owner shall pay to the Distributor any sum certified as owing to the Distributor under this Agreement (if any) within 14 days of the relevant certificate. In the event of payment not having been made within the 14 day period the Distributor may without further notice deduct from the Cash Sum the certified sum or demand the certified sum be paid under the Performance Bond

20. **ASSIGNMENT**

Neither the Owner nor its successors in title (if any) shall assign any of its rights, benefits or obligations under this Agreement to any third party without the prior written consent of the Distributor.

21. **SUB-CONTRACTING**

The Owner shall not sub-contract any of its obligations without the Distributor's prior written consent under this Agreement (such consent to be given or withheld at the sole discretion of the Distributor).

22. **ADJUDICATION**

22.1 If at any time any question, dispute or difference shall arise between the Distributor and the Owner in relation to this Agreement or in any way connected to the Works, which cannot be settled amicably, either Party shall as soon as is reasonably practicable give to the other notice of the existence of such question, dispute or difference specifying its nature and the point at issue.

22.2 Upon receipt of a notice from the other Party under clause 22.1, the Party serving the notice may require the other Party to attend a meeting to discuss those issues contained in the notice in order to resolve the same (a "Dispute Meeting"). Both Parties may request third parties to attend if the other agrees.

22.3 If a dispute or difference arises under or in connection with this Agreement which has been notified to the other Party in accordance with clause 22.1 and has not been resolved in an Dispute Meeting either Party may, at any time, give written notice to the other Party of its intention to refer such dispute or difference to adjudication and shall within seven days thereafter refer the same to adjudication. The Party referring such dispute shall be called the "Referrer" and the Party responding shall be called the "Respondent".

22.4 Where either Party has given notice of its intention to refer a dispute to adjudication then:-

22.4.1 any agreement by the Parties on the appointment of an adjudicator must be reached and the appointment made in sufficient time so that the dispute or difference can be referred to the adjudicator within seven days of the date of the notice of intention to refer;

22.4.2 if the parties are unable to agree on the appointment of an adjudicator then the Referrer shall make an application to the Institute of Electrical Engineers for the nomination of an adjudicator specifying that a nomination must be made within three days of the application for a nomination;

22.4.3 once a nomination has been received the Referrer shall seek confirmation that the nominated person is willing to act as adjudicator and provide all necessary information in such time as is necessary to secure the appointment of and the referral of the dispute or difference to the adjudicator within seven days of the date of the notice of intention to refer.

22.5 Upon the appointment of the adjudicator, the Parties shall comply with all the directions which he may issue for the purposes of considering the facts and issues in the dispute, unless they can show sufficient cause for not complying.

22.6 The adjudicator shall reach a decision within 28 days of the date of the referral to him or such longer period as is agreed by the Parties in writing after the dispute has been referred.

- 22.7 The adjudicator may extend the period of 28 days by up to 14 days with the Referrer's consent, such consent not to be unreasonably withheld.
- 22.8 The adjudicator shall avoid incurring unnecessary expense.
- 22.9 The Parties may at any time agree to revoke the appointment of the adjudicator. In the event of such revocation the adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. The Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment of fees shall be apportioned.
- 22.10 The adjudicator shall consider any relevant information submitted to him by any of the Parties and shall make available to them any information to be taken into account in reaching his decision.
- 22.11 If requested by one of the Parties the adjudicator shall provide reasons for his decision.
- 22.12 The adjudicator's decision is binding upon the Parties until finally determined by litigation or by agreement.
- 22.13 The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him. The parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination by the adjudicator on how the payment of fees shall be apportioned.
- 22.14 The Parties hereby agree that the adjudicator (including any employee or agent of the adjudicator) appointed in accordance with this clause shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith.

23. **ENFORCEMENT BY THIRD PARTIES**

The Parties do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a Party to it.

24. **NOTICES**

- 24.1 Any notice, demand, certificate or other communication required to be given or sent under this Agreement shall be in writing and either delivered personally or by first class post or facsimile.
- 24.2 A notice or other form of communication shall be deemed to have been served as follows:-
- 24.2.1 if given or delivered personally at the time when given or delivered;
- 24.2.2 if sent by prepaid first class post at the expiration of 48 hours after the document was delivered into the custody of the postal authorities; or
- 24.2.3 if sent by facsimile, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient without error.

In proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing the notice was properly addressed as set out above and delivered into the custody of the postal authorities as a prepaid first class letter as the case may be.

- 24.3 The required address for a Party for the purposes of this clause shall be the address specified at the beginning of this Agreement or such other details within the UK as may have been notified in writing by the Party concerned to the other Party at any time during the continuance of this Agreement and in any event notice served at the registered office for the time being of either Party shall be deemed properly served.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

SCHEDULE 1

Adoption Agreement Form

ICP LTD hereby offers YORKSHIRE ELECTRICITY DISTRIBUTION PLC the assets set out below for adoption by YORKSHIRE ELECTRICITY DISTRIBUTION PLC subject to the terms and conditions of the Adoption Agreement entered into between them and dated 11th September 2006, (the "Adoption Agreement").

ICP LTD hereby acknowledges and agrees that:-

1. it owns the Assets to be constructed as set out below;
2. it hereby grants to YORKSHIRE ELECTRICITY DISTRIBUTION PLC such Consents as it may require in order to Maintain the Assets;
3. the Works will be completed and the Assets constructed in accordance with the approved design and Schedule 2;
4. accurate drawings and all necessary documentation required to ensure the Distributor's compliance with its obligations under the Regulations, any other necessary documentation in respect of the Works and/or the Assets, as requested by the Distributor, will be provided and that with effect from the date of making live all rights in and to the same transfer to the Distributor;
5. it is responsible for errors omissions or discrepancies in drawings and written information provided it to the Distributor. The Owner indemnifies the Distributor against any and all claims, costs, losses and expenses incurred by the Distributor in carrying out any alterations or remedial work including the cost of re-exposure of the Works (including for recording purposes where necessary); and

Unmetered connection programme/scheme name -

YEDL Enquiry Number – ENQ

The parties hereby agree that the Adoption Agreement in relation to the Works specified in this Adoption Agreement Form shall be varied with effect from the date hereof by the addition of this Adoption Agreement Form to [].

The Distributor and the Owner hereby agree that save as specifically varied by this Adoption Agreement Form the Adoption Agreement will apply and will remain in full force and effect.

Words and phrases defined in the Adoption Agreement shall bear the same meaning when used in this Adoption Agreement Form.

IN WITNESS whereof the Distributor and the Owner have entered in to this agreement on 11th September 2006

APPENDIX 1

Specification

All assets shall be installed in accordance with:-

1. reference to agreed and or published specifications including engineering recommendations including G81 guidance documents;
2. the approved design;
3. live jointing requirements documents (for live jointing sites); and
4. [specification].

SCHEDULE 2

Request for Unmetered Connection Works and Asset Adoption

SCHEDULE 3

Daily Whereabouts Sheet

SCHEDULE 4

Completion and Handover Certificate

1. NOTIFICATION OF COMPLETION

This certificate is issued in accordance with the Adoption Agreement between

YEDL/NEDL

and

_____ (Company Name)

at

_____ (Site Location)

I hereby certify that with effect from:-

_____ (Time)

_____ (Date)

the following section of works at the above location has been installed and commissioned in accordance with the agreement and that I have supplied all relevant information and records for the assets involved.

This section of works has now ready to be energized. No further work shall be undertaken on or near this section of works without the written consent of the YEDL/NEDL nominated responsible person or the specified consent within the schedules of a current Network Access Agreement.

I can confirm that I have informed all relevant working parties and supervisors involved on this site that the works specified below is connected and/or energised from the YEDL/NEDL distribution network and that all future work shall be done in accordance with their procedures and agreements.

2. DESCRIPTION OF SECTION OF WORKS

Signed _____

For Independent Connections Provider

3. **ACCEPTANCE OF OPERATIONAL HANDOVER & ADOPTION**

Being the YEDL/NEDL nominated responsible person for this site, I acknowledge receipt of this certificate and confirm that operational responsibility for this section of works has transferred to YEDL/NEDL (delete as appropriate) and is now subject to their operational control and agreed procedures. In accordance with the terms of the Adoption Agreement the assets described in this section of works are adopted.

Signed _____

For YEDL/NEDL (delete as appropriate)

Time _____

Date _____

SIGNED AS A DEED by
YORKSHIRE ELECTRICITY DISTRIBUTION PLC Director

acting by two of its directors or by
a director and its secretary Director/Secretary

SIGNED AS A DEED by
TBC Director

acting by two of its directors or by
a director and its secretary Director/Secretary