

# I<sup>2</sup>EV (My Electric Avenue)

## Principal Contract Template

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*The 'My Electric Avenue' project is the public identity for the Low Carbon Network (LCN) Fund Tier 2 project "I<sup>2</sup>EV." The formal title "I<sup>2</sup>EV" is used for contractual and Ofgem reporting purpose.*

Project Lead(s):	Project Partners:
	

## Version History

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## Final Approval

Date	Version	EA Technology authorisation by	SSEPD authorisation by
30/04/2013	Issue 1.0	Dave A Roberts	Nigel Bessant

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**Form of Agreement**

**between**

**[LEAD/FUNDING DNO NAME]**

**and**

**[3<sup>rd</sup> PARTY LEAD SUPPLIER NAME]**

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## FORM OF AGREEMENT

THIS FORM OF AGREEMENT is executed on the ..... day of ..... 2013

between

[LEAD/FUNDING DNO NAME], a company registered in England and Wales under number [COMPANY NUMBER] having its registered office [ADDRESS] ("the Customer")

and

[3<sup>RD</sup> PARTY LEAD SUPPLIER NAME], a company registered in England and Wales under number [COMPANY NUMBER], having its registered office at [ADDRESS] ("the Supplier").

### BACKGROUND:

- (A) The Customer wishes to undertake a research and development project entitled [PROJECT NAME] pursuant to the Low Carbon Networks Fund which will involve [SHORT PROJECT DESCRIPTION].
- (B) The Customer has been awarded funding for the purposes of the Project in accordance with the Project Direction; and
- (C) The parties have agreed that the Supplier shall procure delivery of the Project on behalf of the Customer with the Customer fulfilling the role of Funding DNO and providing an assurance function as appropriate throughout the delivery.

IT IS THEREFORE HEREBY AGREED as follows:

## 1. Definitions

1.1 For the purposes of this Agreement, the following terms are defined as follows:-.

<b>"Affiliate"</b>	means, with regard to any company, a subsidiary or holding company of that company and any subsidiary of a holding company of that company, "subsidiary" and "holding company" having the meanings ascribed to them under section 1159 of the Companies Act 2006;
<b>"Background Intellectual Property"</b>	means any Intellectual Property, other than Foreground Intellectual Property, which is used in the Project.
<b>"Business Customer"</b>	means any third party company engaged by the Supplier to participate in the Project as a trial participant.
<b>"Change Request"</b>	means a change to a Purchase Order or Work Order as requested by a party in accordance with the change control mechanism as set out in Appendix C;
<b>Commencement Date"</b>	means [INSERT COMMENCEMENT DATE];

<b>“Confidential Information”</b>	means all information, whether or not in writing, relating to a party that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, ought reasonably to be considered as confidential, including, but not limited to: (i) trade secrets (ii) all third party information that a party is required to keep confidential by law or by contract (including personal data); (iii) the existence of Purchase Orders and Work Orders and the contents thereof; and (iv) in relation to the Customer any Intellectual Property Rights licensed to the Supplier for the performance of the Agreement;
<b>“Customer’s Group of Companies”</b>	means the Customer, any Affiliate of the Customer and shall include any joint venture company in which the Customer or any Affiliate owns no less than fifty per cent of the share capital eligible to vote or has the right to appoint or remove no less than half of the board of directors;
<b>“Customer”</b>	means the company within the Customer’s Group of Companies as specified in this Agreement which has engaged the Supplier to provide a System or perform the services in accordance with the terms and conditions of this Agreement;
<b>“Data”</b>	means the data belonging to or provided by the Customer which comes into the Supplier’s possession or control in the course of performing its obligations under this Agreement and includes (without limitation) the Customer’s customer data (eg consumption, inferred data, demographics, behaviour), designs, models, drawings, work notes, reports, specifications, manuscripts, documentation, manuals, samples, prints, photographs, negatives, tapes, discs, software, user guides, written technical guidance information or any other similar items embodied in any intangible or tangible media and all copies of such items. Data shall also include Data generated or utilised in the performance of this Agreement but does not include computer programs;
<b>“Data Protection Strategy”</b>	means document [PROJECT NAME AND DOCUMENT REFERENCE]
<b>“Deliverables”</b>	means any material (including but not including Supplier’s Background Intellectual Property) to be supplied to the Customer under this Agreement;
<b>“Documentation”</b>	means all documents and other written material describing, explaining or assisting in the operational use, technical maintenance and design and development of that supplied hereunder;
<b>“Force Majeure Event”</b>	means in relation to either party any event beyond the reasonable control of the party and which results in or causes the failure of that party to perform any of its obligations under this Agreement, including but not limited to acts of God, fire, explosion, flood, earthquakes, war, riots, acts of terrorism, acts of Government, sabotage, civil commotion or severe weather conditions. For the avoidance of doubt, it is agreed that lack of funds and industrial action taken by the employees, agents or sub-contractors of either party shall not be considered to be a Force Majeure Event;

<b>“Foreground Intellectual Property”</b>	means any Intellectual Property that arises or is obtained or developed by, or by a contractor on behalf of, either party in the course of or in connection with the Project.
<b>“Goods”</b>	means all the items subject to the Purchase Order (or any part thereof) including the Equipment and any ancillary goods to be provided under the terms of this Agreement;
<b>“Intellectual Property Rights” or “IPR”</b>	means patents, copyrights, design rights, trade marks, service marks, know-how, database rights, confidential information and other rights in the nature of intellectual property (whether registered or unregistered) and all applications for the same, anywhere in the world;
<b>“LCN Fund Governance Document”</b>	means, unless stated otherwise the “Low Carbon Networks Fund Governance Document v.6 (12/04/13)” published by Ofgem.
<b>“Ofgem”</b>	means the Office of Gas and Electricity Markets or any subsequently replacement regulatory body with responsibility for regulation of energy networks;
<b>“Product Documentation”</b>	means all specifications, manuals, documents, materials drawings, and other tangible and visually perceptible items, in whatever form or medium, pertaining to the use and operation of the Products;
<b>“Products”</b>	means all the products to be supplied by the Supplier hereunder as specified in the relevant Management & Delivery Document.;
<b>“Project Direction”</b>	means the document [ <b>PROJECT NAME AND DOCUMENT REFERENCE</b> ]
<b>“Public Customer”</b>	means any member of the general public engaged by the Supplier to participate in the Project as a trial participant.
<b>“Purchase Order”</b>	means purchase orders placed from time to time by the Customer for the Products and Services under the terms of this Agreement;
<b>“Services”</b>	means the services to be provided by the Supplier hereunder;
<b>“Supplier’s Team”</b>	means all employees, consultants, agents and subcontractors which it engages in relation to the Project.
<b>“Term”</b>	means the period between the Commencement Date and 31 December 2015 inclusive.

## 2. Term

2.1 This Agreement shall commence on the Commencement Date until expiry of the Term, unless otherwise agreed between the parties or terminated earlier in accordance with clause 20.

2.2 Any extension of the Term shall be completed in accordance with clause 5 (Variation).

## 3. Application of Agreement

3.1 The following documents shall be read as one and shall constitute the entire agreement between the parties with respect to the Project (the "Agreement") and shall prevail over and supersede all prior agreements, understandings, statements, commitments and communications between the parties, whether written or oral. In the event of any inconsistency or ambiguity within the Agreement, the order of precedence shall be as follows:-

- (a) The LCN Fund Governance Document;
- (b) Project Direction;
- (c) This Form of Agreement;
- (d) Management and Delivery Document (Appendix A);
- (e) all other Appendices;
- (f) Any supplementary agreements entered into pursuant to Clause 5 below.

3.2 The Agreement together with any documents expressed by the Agreement to be incorporated herein constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior representations, agreements, negotiations or understandings with respect hereto, whether oral or in writing. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

## 4. Communications

4.1 Day-to-day communications between the parties may be conducted by e-mail. All Notices, requests, consents, approvals and other communications required to be given under the Agreement shall be in writing and sent by first class post, by facsimile or delivered in person, Such notices shall be deemed received:

- (i) if sent by post, on the third business day after posting;
- (ii) if sent by facsimile on the date of dispatch provided that the notice is sent before 5pm on a day which is a business day at the place of receipt and successful dispatch is confirmed by a transmission report; or
- (iii) if delivered in person or by courier, on the date of receipt provided that delivery is made on a day which is a business day at the place of receipt.

4.3 Notices shall be addressed to either party as set out below or to such other address as a party shall have notified the other at least five business days prior to the effective date of such change pursuant to the provisions of this clause.

	<b>SUPPLIER</b>	<b>CUSTOMER</b>
Address	[ADDRESS]	[ADDRESS]
Fax number	[TELEPHONE NUMBER]	[TELEPHONE NUMBER]
For the attention of	[NAME]	[NAME]



## **5. Variation**

- 5.1 No amendment or addition to the provisions of the Agreement shall be binding on the parties unless in writing and signed on behalf of each of the parties by their duly authorised agents.
- 5.2 The control of changes to the Agreement (including any changes to the (Management & Delivery Document shall be via the change control mechanism detailed in Appendix C.

## **6. Supplier's Obligations**

- 6.1 The Supplier shall complete the Project, and such other work as shall be reasonably requested by the Customer from time to time, with all skill and care. The Supplier shall comply fully with the Management & Delivery Document at Appendix A.
- 6.2 If the Supplier subcontracts any element of its obligations under the Agreement, it shall remain responsible for providing those obligations as if it had not subcontracted.
- 6.3 The Supplier shall co-operate with any other contractors providing services to the Customer in general and particular with those specified in the Management & Delivery Document.
- 6.4 The Supplier shall comply with all reasonable instructions of the Customer with regard to the performance of the Agreement.
- 6.5 The Supplier must inform the Customer promptly in writing of any event or circumstance likely to affect its ability to deliver any aspect of this Agreement and/or the Management & Delivery Document and/or the Project Direction.
- 6.6 The Supplier shall notify the Customer of any potential or actual health and safety hazards which may be involved in performing its obligations under the Agreement. The Supplier shall be responsible for timely resolution of any such potential or actual health and safety hazards within the allocated budget of the Project Direction. For avoidance of doubt breach of any health and safety requirement shall be material breach of this Agreement.
  - 6.6.1 The Supplier shall comply with the provisions of the Customer's Responsible Procurement Policy as set out in Appendix E (as may be amended and notified to the Supplier from time to time) ("the Policy"). The Supplier shall notify the Customer at any time during the Term of any changes in the supply chain which will have or could reasonably be foreseen to have an impact on the Supplier's compliance with the Policy. The Customer reserves the right to request additional information regarding such changes and their impact on the goods and services provided under the Agreement and the Supplier's ability to comply with the Policy.
  - 6.6.2 If the Customer determines that the changes made to the supply chain will result in the Supplier being unable to comply with the Policy, the Customer shall notify the Supplier accordingly and if the Supplier is unable or fails to comply with the Policy within 30 days of such notice and such breach is not remediable or if remediable is not remedied within thirty (30) days (or any other period agreed between the parties), then the Customer reserves the right to terminate the Agreement without incurring any costs whatsoever and recover from the Supplier any additional direct costs incurred by the Customer including but not limited to additional costs to the Customer for completing the scope of the Agreement or part thereof so terminated. Monies paid in advance which have not been used or committed by the Supplier at the time of termination shall be refunded to the Customer by the Supplier within twenty eight (28) days of such termination.

6.7 All data transferred by means of an electronic and/or hard copy between the Supplier and the Customer, whether or not it is part of the deliverables or forms part of the deliverables, must be transferred securely ensuring integrity and confidentiality of the data is not compromised. The most appropriate method of transfer must be agreed by both parties depending on the sensitivity and nature of the data and shall be in accordance with the Data Protection Strategy. In the event that there is a loss of any data whatsoever or the data has been mishandled howsoever, then the Supplier is wholly responsible for notifying the Customer in a timely manner and indemnifying the Customer against all losses, costs, expenses, damages, liabilities, demands, claims, actions or proceedings which the Customer may incur as a result of such loss or mishandling.

6.8 The Supplier shall:

- (a) comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) comply with the Customer's Anti-bribery Policy PO-COR-052 Rev 1.01 appended to this agreement at Appendix H, as the Customer may update from time to time (Relevant Policy);
- (d) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and will enforce them where appropriate; and
- (e) promptly report to the Customer 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.

The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods 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 6.7 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

Breach of this clause 6.8 shall be deemed a material breach under clause 19.1.

6.9 The Supplier undertakes to comply with the Customer's security practices and procedures specified in Appendix B.

## 7. LCN Fund Governance

7.1 The parties acknowledge that the Project is subject to and must be undertaken in accordance with the LCN Fund Governance Document and each agree to comply with its terms, including any future amendments thereto save that in accordance with the Project Direction clause 11, IPR shall always be subject to LCN Fund Governance Document v5.

7.2 The parties acknowledge that the Project Direction may be amended or revoked. Any such amendment shall be processed in accordance with the Change Request mechanism detailed in Appendix C. In the event of revocation of the Project Direction or any part thereof the Customer shall have the right to revoke the associated deliverable(s) under this Agreement and the Supplier shall only be entitled to recover costs incurred in connection with the Project up to and including the date of such amendment or revocation to the extent that the Customer is able to recover the same from the Authority. This shall be the Supplier's sole right in respect of any such amendment or revocation.

- 7.3 In the event that any of the events described in paragraphs 3.1110 to 3.114 of Section Two of the LCN Fund Governance Document occurs, the Supplier shall work with the Customer and the Authority to seek a resolution such that the project under this Agreement may continue. In any case the Supplier shall only be entitled to recover costs incurred in connection with the Agreement up to and including the date upon which such event occurs to the extent that the Customer is able to recover the same from the Authority. This shall be the Supplier's sole right in respect of any such event.
- 7.4 The Supplier may use the LCN Fund logo for purposes directly associated with this Agreement but shall not use the Ofgem or Ofgem E-Serve logos in any circumstances.
- 7.5 This Project may be subject to an audit by Ofgem. This will include demonstration that the Project is compliant with the appropriate conditions in the relevant Electricity Distribution Licence, the RIGs, the LCN Fund Governance Document and the Project Direction. This audit may be undertaken by Ofgem, or by a third party appointed at the discretion of Ofgem. The Customer and Supplier agree to furnish the evidence and personnel required to comply with such an audit. For avoidance of doubt the Supplier shall be responsible for provision of evidence against the LCN Fund Governance Document and the Project Direction, the Electricity Distribution Licence and RIGs compliance shall be dealt with by the Customer save that the Customer shall still be provided with supporting evidence on these areas where such evidence can be provided by the Supplier.
- 7.6 LCN Fund IPR Governance shall apply between the Customer and Supplier with the Customer being identified as the DNO and the Supplier as a Participant save that the Supplier shall be responsible for that detailed at SECTION FIVE clause 2.3 of the LCN Fund IPR Governance as if it were the DNO.

## **8. Prices**

- 8.1 The prices payable to the Supplier shall not exceed the total stated in the Project Direction and shall not be subject to variations unless specifically agreed in a Change Request.. The maximum amount of Discretionary Funding that the Customer as Funding DNO can request as additional funding for cost overruns of the project is [**£ VALUE**]. For work to be undertaken by the Customer, payment shall not be made to the Supplier to subsequently be provided back to the Customer.
- 8.2 Prices quoted shall be exclusive of Value Added Tax but shall be deemed to be inclusive of any other form of tax and/or import duties applicable from time to time unless the contrary is expressly stated or is clear from the face of the document on which the price is quoted. Value Added Tax at the appropriate rate where chargeable shall only be paid by the Customer on receipt of a valid Value Added Tax invoice.
- 8.3 Unless otherwise agreed by the parties, the Supplier shall receive no compensation under the Agreement other than through a Purchase Order executed pursuant to the Agreement.
- 8.4 Prices quoted to the Customer shall be inclusive of all applicable expenses. At the Customer's request a breakdown of expenses included in the price shall be provided. No additional payment for expenses shall be provided to the Supplier.
- 8.5 The Customer, in accordance with the Project Direction, is required to provide a DNO Compulsory Contribution. The value of the DNO Compulsory Contribution applicable to this Agreement is [**£ VALUE**]. The Supplier shall cover [**% VALUE**] ([**£ VALUE**]) of the DNO Compulsory Contribution ("the Supplier Compulsory Contribution.") The Supplier Compulsory Contribution shall be paid into the Project bank account in twelve equal instalments to the Customer on a monthly basis in the first year of this Agreement, first payment to be made upon the Commencement Date. For avoidance of doubt failure to make any of the twelve Supplier Compulsory Contribution payments shall be deemed breach of a material term and may be progressed in accordance with Clause 20.1.

## 9. Payment

- 9.1 The Supplier shall send to the Customer as soon as reasonably practicable after supply of Services a Value Added Tax invoice. All invoices must be addressed to the Customer address stipulated in the corresponding Customer Purchase Order. If no address is stated on the Customer's Purchase Order, Invoices are to be submitted by the Supplier to the Customer, **[ADDRESS]**, quoting the relevant order number stated on the Purchase Order. In addition the invoice shall **[PROJECT NAME]**. No invoice shall quote more than one Purchase Order number.
- 9.2 Payments in accordance with this Agreement will be made 14 days after receipt of a correct invoice. Correct payments shall be those payments in accordance with the provisions of the Management & Delivery Document or Purchase Order or Change Request (as the case may be). Where the Supplier has not invoiced the Customer within 12 months of the date in which the relevant payment was due, the Customer shall have no obligation to pay that individual payment and the Supplier's right to require payment shall cease.
- 9.3 Whenever under the Agreement or Management & Delivery Document or Purchase Order or Change Request (as the case may be) any sum of money is recoverable from or payable by the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier, under the Agreement or the Management & Delivery Document or any other Work Order or any other contract with the Customer.
- 9.4 The Customer reserves the right to change to Self Billing or E-Invoicing in the future. The move to Self Billing or E-Invoicing will be implemented by mutual agreement between both parties.
- 9.5 All payments will be made via the Banks Automated Clearance System (BACS). No other method of payment shall be used.
- 9.6 Payment shall only be made once the applicable Condition Precedent as detailed at clause 3 of the Project Direction has been met. No payments shall be made to the Supplier outwith the Condition Precedent nor shall any payments be made by the Supplier to any of its supply chain outwith the Condition Precedent
- 9.7 The Project Direction clause 4 (Compliance) and clause 6 (Project Budget) shall apply under this Agreement with the Funding DNO being read as the Supplier. The Gas and Electricity Markets Authority (the "Authority") shall remain the Authority in application of those clauses. Should Ofgem deem any expenditure Disallowed Expenditure in accordance with clause 4 (Compliance) of the Project Direction then the Supplier shall return such funds to the Customer who in turn shall return such funds to Ofgem.
- 9.8 For the purposes of reporting projected variances in accordance with Clause 9.7 the Project Budget at Appendix G shall be utilised.
- 9.9 The Supplier shall furnish the Customer with an anticipated payment profile against the Project Budget detailed at Appendix G on not less than a quarterly basis (in any case more regularly as necessitated). The Customer reserves the right not to authorise payments where invoices are not consistent with the payment profile provided and no acceptable explanation for variance has been provided by the Supplier. Any invoice submitted that is not consistent with the payment profile provided shall not be deemed a correct invoice in accordance with clause 9.2 until such time as an acceptable explanation for variance is provided.

- 9.10 The Supplier shall ensure that no more than one invoice per month is submitted to the Customer and shall provide the anticipated payment profile in this format. In exceptional circumstance the Customer may approve more than one invoice to be issued in a month, such waiver to be granted in writing by the Customer otherwise the invoice shall not be deemed a correct invoice in accordance with clause 9.2.

## **10. Audit Rights**

- 10.1 The Customer shall be entitled to audit Supplier's records in relation to any matter associated with the Agreement including any Purchase Order or the Management & Delivery Document upon giving seven days notice in writing of its intention to do so. The Supplier shall afford the Customer all reasonable facilities and access to records necessary to perform such audits.

## **11. Assignment**

- 11.1 The Supplier shall not assign, sub contract, transfer, charge or deal in any manner or otherwise dispose of any or all of the Supplier's rights or obligations under this Agreement without the prior written consent of the Customer, provided that such consent shall not be required in relation to the sub-contractors specified in Section 3 of the Management & Delivery Document.
- 11.2 The Customer may at any time assign, sub-contract, transfer, charge or deal in any manner all or any of its rights or obligations under this Agreement.

## **12. Publicity**

- 12.1 No publicity release or announcement relating to the terms or existence of this Agreement or the activities of the Customer under this Agreement may be made by the Supplier without the Customer's prior written consent and save as permitted in this clause.
- 12.2 If any such publicity release or announcement is ongoing it must not be amended without the Customer's prior written consent; and the Customer may withdraw consent to the use of the publicity release or announcement without notice at any time.

## **13. Personnel**

- 13.1 The Supplier shall provide all personnel necessary for the performance of the Agreement. In the event that the Supplier requires to add to or replace a member of the Supplier identified at Appendix B of the Management & Delivery Document for unforeseen reasons, the Supplier will provide the Customer with alternative staff for its approval which must be someone of equal or greater calibre whom (if acceptable to the Customer) will complete the task. The Customer may at its absolute discretion request the removal of the aforesaid personnel assigned to this project in which instance the Supplier will use reasonable endeavours to replace such personnel with someone of equal or greater calibre whom (if approved by the Customer) will complete the task.
- 13.2 The Customer reserves the right to refuse to admit to its premises any member of The Supplier's Team, whose admission would be, in the reasonable opinion of the Customer, undesirable.

- 13.3 The parties shall not for a period of six (6) months from the termination date directly or indirectly solicit or seek to procure (otherwise than by general advertising) the employment of or employ or use the services of, any employee or employees of the other party who carried out any task in relation to the Management & Delivery Document without the prior written consent of the other party.
- 13.4 The Supplier and the Customer shall provide to the employees of other party engaged in the activities covered by the Management & Delivery Document, when required, a suitable temporary place of work and the necessary supplies and amenities comparable to those provided for its own staff of similar status.
- 13.5 Each party shall be responsible for the acts, omissions and defaults of its employees, agents, representatives and sub-contractors as though they were the acts omissions and defaults of its own, subject always to the terms of this Agreement.
- 13.6 The parties agree and acknowledge that the Supplier's personnel providing services to the Customer under this Agreement will remain for all purposes employees of the Supplier. Notwithstanding the previous sentence, if at any time the Customer is for any reason whatsoever considered pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("the Regulations") (or any replacement legislation thereof) to be the employer of:
- a) any staff providing, or who have provided, services to the Customer under the terms of this Agreement; or
  - b) any staff who have historically been responsible wholly or partly for the Services under this Agreement,

the Supplier shall indemnify and hold the Customer harmless in respect to all and any liabilities and costs falling on the Customer in respect of such staff by virtue of the application of the Regulations or otherwise.

## **14. Confidentiality**

- 14.1 Subject to clause 15.2, neither party shall use or disclose any information, (whether verbal or in writing or on magnetic or other media) relating to the other party's marketing or business development, business operations, associations, transactions, financial arrangements or in relation to any activities of either party or any person, firm or company with whom either party has any dealings and which is made available to either party under or in connection with this Agreement ("Confidential Information").
- 14.2 Such Confidential Information or any part thereof may only be disclosed to or used by the Supplier's Team to the extent it needs to know the same for the purposes of performing its obligations under this Agreement. Each party shall keep the Confidential Information secret and confidential and shall ensure that such persons shall comply with substantially similar obligations of confidentiality as set out in this Agreement.
- 14.3 Clause 15.1 shall not apply to Confidential Information to the extent that:
- 14.3.1 is required by law or by any governmental or other regulatory authority acting within the scope of its powers to be disclosed;
  - 14.3.2 is or becomes part of the public domain through no fault of the receiving party;
  - 14.3.3 is known to the receiving party prior to the disclosure by the disclosing party without an obligation to keep such Confidential Information confidential;

- 14.3.4 is subsequently furnished by the disclosing party to a third party without restriction on disclosure or use;
  - 14.3.5 is subsequently obtained by the receiving party from a third party without breach of any obligation of confidentiality owed to any third party or the disclosing party;
  - 14.3.6 is independently developed by the receiving party or a company within the receiving party's group without any breach of this Agreement; or
  - 14.3.7 is approved for public release by the disclosing party and the disclosing party shall give prior written notification of such disclosure to the other party where practicable.
- 14.4 The parties agree that monetary damages would not be a sufficient remedy if either party is in breach of this agreement and the disclosing party will be entitled to seek any legal remedy or relief to prevent any breach, or anticipated breach, by the receiving party. This right shall be in addition to the disclosing party's other rights in law or in equity.
- 14.5 The Customer is required to adhere to strict business separation rules. In so far as the Supplier needs to obtain services with either the generation or supply business of the Customer, be that for installation services or otherwise, it shall ensure that any Confidential Information of the Customer authorised for release is shared equally with other third parties who may be able to provide such services. No bias whatsoever shall be provided to Customer group companies and failure to comply with this Clause 15.6 shall be deemed breach of a material term in accordance with Clause 20.1.

## **15. Data Protection**

- 15.1 Each party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of the Data Protection Act 1998 (the "1998 Act") and the Data Protection Strategy. Where used in this clause 16 the expressions "process" and "personal data" shall bear their respective meanings given in the 1998 Act.
- 15.2 The Supplier shall not process any personal data provided or made available to the Supplier by any company within the Customer's Group of Companies in connection with this Agreement ("Personal Data") for any purpose other than that which is strictly necessary for the performance of its obligations under this Agreement. Without prejudice to the foregoing, the Supplier shall not damage, alter, disclose, lose or destroy any Personal Data unless instructed to do so in writing by the Customer.
- 15.3 Personal Data shall be treated as strictly confidential by the Supplier and the Supplier shall take such technical and organisational security measures to protect Personal Data as may be necessary to ensure compliance in relation thereto with the 1998 Act. Without prejudice to the foregoing, the Supplier shall use reasonable endeavours to ensure that only those of its personnel expressly authorised to have access to Personal Data for the purpose of performing the Supplier's obligations under this Agreement shall have access to Personal Data and that each such personnel undertakes to abide by the obligations of the Supplier regarding Personal Data and contained in this Agreement.
- 15.4 Each party warrants to the other that it holds and has complied with the notification provisions of the 1998 Act (or that it is deemed to have so complied by virtue of paragraph 2 of Schedule 14 to the 1998 Act) in respect of its respective obligations under this Agreement and that performance of its respective obligations hereunder shall not breach or contravene such notification.
- 15.5 The Supplier shall not transfer any Personal Data outside the European Economic Area.

- 15.6 The Supplier shall fully indemnify the Customer against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any loss, damage or distress suffered by any person as a result of the loss, destruction or unauthorised disclosure of, or unauthorised access to, personal data by it or its personnel or as a result of any failure to comply with the provisions of this clause 16. The indemnity given by the Supplier to the Customer pursuant to this sub-clause shall survive for a period of two years following termination.

## **16. Intellectual Property Rights**

- 16.1 The Supplier agrees that, during the course of this agreement, it will not enter into any agreement, arrangement, joint venture, collaboration, competitive project or other dealing whatsoever with any other person or body which would or might affect, conflict with or prejudice this agreement or the rights of the Customer under it, or which would or might prejudice the general objectives of the Project.
- 16.2 Subject to clause 16.3 each party shall give full disclosure to the other of all Background Intellectual Property owned or licensed by it which is relevant to the Project.
- 16.3 All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived).
- 16.4 Subject to clause 16.5, Foreground Intellectual Property shall vest in and be owned absolutely by the party creating or developing it. To the extent that either party sub-contracts performance of the Project, that party shall ensure that any Foreground Intellectual Property arising from the work of its sub-contractor shall be assigned to it absolutely.
- 16.5 To the extent that any Foreground Intellectual Property arises, is obtained, or developed by the parties jointly or otherwise than solely by either party, it shall be jointly owned in equal and undivided shares by the parties. If any such jointly-owned Foreground Intellectual Property is registrable, The Supplier shall be responsible for the filing and prosecution of applications for registration on behalf of the parties and in their joint names in such countries as the parties agree in writing. The Supplier shall be responsible for the maintenance and renewal of any such registrations in such countries, subject to the Customer co-operating in the provision of all necessary assistance, information and instructions and bearing an equal proportion of any fees and costs, including reasonable agents and lawyers fees, in relation to such registrations, provided that:
- (a) if only one party wishes to apply for registration in any country or countries, the party wishing to apply may do so at its sole cost and expense on behalf of both parties and in their joint names, and the party not making such an application shall provide the party making the application with all necessary assistance, information, and instruction;
  - (b) neither party shall amend or abandon any registration in respect of which the parties are jointly registered without the other party's written consent; and
  - (c) the party making an application for registration shall consult with the other party at reasonable intervals concerning the application for and maintenance of such registration.
- 16.6 Each party shall immediately give written notice to the other party of any actual, threatened or suspected infringement of any party's Background Intellectual Property or Foreground Intellectual Property, whether jointly or solely owned, or any unauthorised use of any party's Technology.



## **EXPLOITATION**

16.7 Subject to, but with immediate effect from issue of, the Close Down Report in respect of the Project, The Supplier grants to the Customer:

(a) an irrevocable, royalty-free, worldwide right and licence under the Supplier's rights in any jointly-owned Foreground Intellectual Property arising from or created, produced or developed in the course of the Project, to exploit commercially such jointly-owned Foreground Intellectual Property in connection with the production, manufacture, distribution, marketing, selling, advertising and promotion of the Project, and to sub-license any third party to do the same ((provided always that in the case of a Electricity Distributor (as defined in the LCN Fund Governance Document), this shall be granted royalty-free on an equivalent basis to that of the Customer); and

(b) an irrevocable, royalty-free non-exclusive, worldwide right and licence under the Supplier's Background Intellectual Property, any other Background Intellectual Property and the Supplier's Foreground Intellectual Property for any purpose relating to the Project, and to the extent necessary to enjoy the benefits of the right and licence granted by the Supplier to the Customer under clause 16.7(a), and to sub-license any third party to do the same on reasonable commercial terms (provided always that in the case of a Electricity Distributor (as defined in the LCN Fund Governance Document), this shall be granted royalty-free on an equivalent basis to that of the Customer).

16.8 Subject to, but with immediate effect from issue of, the Close Down Report in respect of the Project, the Customer grants to the Supplier:

(a) an irrevocable, royalty-free, worldwide right and licence under the Customer's rights in any jointly-owned Foreground Intellectual Property arising from or created, produced or developed in the course of the Project, to exploit commercially such jointly-owned Foreground Intellectual Property in connection with the production, manufacture, distribution, marketing, selling, advertising and promotion of the Project, and to sub-license any third party to do the same and

(b) an irrevocable, royalty-free non-exclusive, worldwide right and licence under the Customer's Background Intellectual Property and Foreground Intellectual Property for any purpose relating to the Project, and to the extent necessary to enjoy the benefits of the right and licence granted by the Customer to the Supplier under clause 16.8(a), and to sub-license any third party to do the same on reasonable commercial terms.

## **INFRINGEMENT**

16.9 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the operation of the Agreement.

16.10 Without prejudice to clause 16.9 the Supplier shall immediately give notice in writing to the Customer of any challenge to the Customer's Intellectual Property or any inadvertent disclosure or unauthorised use of such Intellectual Property or know-how which comes to its knowledge. The Supplier shall, at the Customer's expense, give such assistance as is reasonably requested by the Customer to assist the Customer in the prevention of any such infringement, challenge or unauthorised use. The Supplier shall not institute any legal proceedings without the Customer's prior written consent.

## **17. Other Indemnities and Insurance**

- 17.1 During the Term and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with this agreement and shall, upon the Customer's request, produce the insurance certificate giving details of cover.
- 17.2 The Supplier shall indemnify and keep indemnified the Customer against personal injury (including death) to any persons or loss of or damage to any customer or property of the Customer's which may arise out of the act, default or negligence of the Supplier, its sub-contractors, their employees or agents in consequence of the Supplier's obligations under the Agreement or Purchase Order and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto provided that the Supplier shall not be liable for nor be required to indemnify the Customer against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Customer, its employees or contractors (not being the Supplier or employed by the Supplier).
- 17.3 The Customer shall indemnify and keep indemnified the Supplier against personal injury (including death) to any persons or loss of or damage to any property of the Supplier's which may arise out of the act, default or negligence of the Customer, its sub-contractors, their employees or agents in consequence of the Customer's obligations under the Agreement or Purchase Order and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto provided that the Customer shall not be liable for nor be required to indemnify the Supplier against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Supplier, its employees or contractors (not being the Customer or employed by the Customer).
- 17.4 Without thereby limiting their responsibilities under sub-clause 17.2 and 17.3 each party shall insure with a reputable insurance company against all loss of and damage to property and injury to persons (including death) arising out of or in consequence of its obligations under this Agreement and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in sub-clause 17.5 and 17.6. For the avoidance of doubt the parties acknowledge and agree that the provisions of this clause 17 shall have no effect on clause 16.
- 17.5 Notwithstanding any term of this Agreement neither party shall be liable to the other party in contract, tort (including negligence or breach of statutory duty) or otherwise arising in connection to this Agreement for any indirect, special or consequential loss or damage or loss of profits, loss of revenue, loss of opportunity or loss of data.
- 17.6 Except in respect of injury, including death to a person due to negligence for which no limit applies, the liability of the parties under sub-clauses 17.2 and 17.3 as appropriate shall not exceed the total value of the Agreement in respect of any event or series of connected events, and the Supplier's entire liability out of contract or tort is limited to the total value of this Agreement.
- 17.7 In addition to those exemptions detailed at clause 17.6 no cap on liability shall apply to clauses 13.6 and 16.9 of this Agreement, nor to any third party claims, nor to any matters for which the Supplier is insured where the Customer shall receive the full benefit of any such insurance policy.
- 17.8 Nothing in this Agreement shall limit or exclude the liability of the Supplier for breach of the provisions of Section 12 of the Sale of Goods Act 1979, or Section 2 of the Supply of Goods and Services Act 1982 as may be amended from time to time, or for fraudulent misrepresentation or fraud.

17.9 The provisions of this clause 17 shall survive the termination of this Agreement.

## **18. Dispute Resolution**

18.1 All disputes between the parties arising out of or relating to the Agreement shall, in the first instance, be discussed between the senior representatives of the Supplier and the Customer.

18.2 If any dispute cannot be resolved by discussion in accordance with clause 18.1 within a maximum of 14 days after it has been referred under clause 18.1, either party may escalate the dispute to directors of the Supplier and the Customer.

18.3 If any dispute cannot be resolved by discussion in accordance with clause 18.2 within a maximum of 14 days after it has been referred under clause 18.2, either party may escalate the dispute to mediation, the mediation to be conducted by such third party (the "Mediator") as the parties shall reasonably agree between them. The fees of the Mediator shall be borne equally by the parties.

18.4 The decision of the Mediator shall not be binding on the parties, and both parties shall have the right, following the Mediator's decision, to institute proceedings in a court of competent jurisdiction.

## **19. Termination**

19.1 In addition to other remedies at law or equity available to the parties, either party may terminate the Agreement if the other party breaches any material term or covenant of the Agreement; provided, however, that the terminating party must give at least 30 days' prior written notice of its intent to terminate the Agreement for such material breach, and if the other party shall cure such breach during such 30 day period, or if such breach is incapable of being cured within such 30 day period, begin and diligently pursue a course of action reasonably calculated to cure such breach, then the Agreement shall continue without termination or interruption provided that the party not in breach may serve a further 30 days written notice during such remedy period in the event that such course of action is not, in its reasonable opinion, remedying a cure to the material breach.

19.2 If the either Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction, the other Party may terminate the Agreement by notice with immediate effect.

19.3 The Customer may upon giving three months notice in writing, at any time, terminate this Agreement along with the associated Management & Delivery Document and Purchase Order.

19.4 Termination of this Agreement shall not prejudice any right of either party which had arisen on or before the date of termination.

## **20. Rights and Obligations on Termination**

20.1 The provisions of Clauses 7, 9, 10, 11, 14, 15, 16, 17, 18, 20, 22.3, 22.4, 22.5, 22.8, 22.9, shall survive the termination of the Agreement together with such other clauses as are expressly or impliedly intended to survive termination of the Agreement.

- 20.2 In the event that the Agreement or a Purchase Order is terminated as provided for herein, each party shall return to the other party all property belonging to the other party then in its possession which it has no contractual right to retain and make such property available for collection by the other within a reasonable time but in no event later than twenty eight (28) days after termination.
- 20.3 Upon termination of the Agreement for any reason the licence granted in any to the Schedules shall remain unaffected.

## **21. Successful Delivery Reward Criteria AND Discretionary Reward Mechanism**

- 21.1 Work performed under this Agreement will be judged by the Authority against the Successful Delivery Reward Criteria ("SDRC") detailed within the Management & Delivery Document.
- 21.2 The maximum amount of SDRC reward the Supplier shall be eligible for is the value of the Supplier Compulsory Contribution (**[£ VALUE]**).
- 21.3 Any award of SDRC reward shall be entirely at the discretion of the Authority. For avoidance of doubt any request to recover cost overruns will make work performed under this Agreement ineligible for an SDRC reward. Should the Authority decide to award an SDRC reward then the Customer shall pass through the reward in proportion to percentage contributed to the DNO Compulsory Contribution by the Supplier, in this instance 25%.
- 21.4 The Customer shall be required to provide sufficient evidence to the Authority to evaluate the application for SDRC reward. The Supplier shall provide such evidence and support this process throughout all stages as necessary, in any case providing initial draft of such documentation for Customer review. If the Authority does not deem that sufficient evidence has been provided then it will notify the Customer of the same and allow a re-submission. If after the re-submission it is still considered that insufficient evidence has been provided then the application will be rejected.
- 21.5 Should the Supplier have reasonable grounds to believe it shall not meet any of the SDRC then it shall notify the Customer of the same not less than 2 months before the due date of the SDRC and in any case it shall provide earlier notification in accordance with 6.5 as appropriate.
- 21.6 Supplier failure to meet the SDRC shall potentially lead to invocation of Clause 5.4 and/or 5.5 by the Authority. Should no resolution be reached under those Clauses then the event may be deemed a breach of material terms and progressed in accordance with Clause 20.1.
- 21.7 Work performed under this Agreement may at the Authority's discretion be eligible for a Discretionary Reward. Should the Authority award a Discretionary Reward and identify that such reward has been made against this Project that shall be split **[RATIO XX:XX]** between the Customer and the Supplier.
- 21.8 Should the Authority provide a Discretionary Reward against a portfolio of the Customer's Low Carbon Network Fund projects without a specific allocation to this Project then the following mechanism shall apply:
- 21.8.1 The Customer and Supplier shall approach the Authority for further breakdown of the exact amount awarded to this Project. Should such information be provided then Clause 21.7 shall apply, if not the process detailed at Clauses 21.8.2 and 21.8.3 shall apply.
- 21.8.2 The Customer shall calculate in direct proportion to the individual value of the projects in the portfolio a value of Discretionary Reward applicable to this Project.

21.8.3 The Discretionary Reward applicable to this Project (as determined by the Customer in accordance with Clause 21.8.2 above) shall then be split [RATIO XX:XX] between the Customer and the Supplier.

## **22. Miscellaneous**

- 22.1 The headings in the Agreement are for reference purposes only and shall not affect the meaning or construction of the clauses to which they relate.
- 22.2 Unless the context otherwise so requires references to:
- 22.2.1 the Customer and the Supplier include their permitted successors and assigns and shall collectively be referred to in this Agreement as the “parties” and singularly as a “party”;
  - 22.2.2 any statute, subordinate legislation, European directive, international convention or rule or regulation made pursuant to such legislation (“Legislation”) shall be interpreted as a reference to the same as amended and in force from time to time and to any Legislation that varies, modifies or re-enacts or consolidates such Legislation;
  - 22.2.3 any gender include all genders and references to the singular shall include reference to the plural and vice versa;
  - 22.2.4 sub-clauses, clauses, and the Management & Delivery Document are to sub-clauses, clauses, and the Management & Delivery Document of this Agreement;
  - 22.2.5 reference to either party shall include a reference to that party’s employees agents and sub-contractors and reference to the Customer shall include a reference to the Customer’s Group of Companies.
- 22.3 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiation to remedy such invalidity.
- 22.4 The failure of either party to seek redress for violations or to insist upon strict performance of any term, condition or provision of the Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Agreement. A waiver of any default shall not constitute a waiver of any other default. No waiver of any of the terms, conditions or provisions of the Agreement shall be effective unless it is expressed to be a waiver in writing and communicated to the other party in accordance with clause 4.
- 22.5 Except as otherwise expressly provided by the Agreement, all remedies available to either party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 22.6 The Agreement shall be binding on the Customer and the Supplier, and the Supplier's successors and permitted assignees.

- 22.7 Any or all of the Customer's Group Companies present and future shall have a right to enforce any or all of the terms of this Agreement and this Agreement shall confer benefit on each of them; provided that the terms of the Agreement can be varied by the parties without the consent of the Customer's Group Companies other than the Customer. No other third parties shall have any such rights.
- 22.8 Save as specifically stated herein, nothing contained in the Agreement shall, or shall be deemed to, in any way, limit or restrict any rights of the Customer, or any obligations of the Supplier, with respect to the Products and or the Services as may exist or be created by or under common law, statute or equity.
- 22.9 The terms and conditions of this Agreement shall be governed by and construed in accordance with the laws of England, and the parties hereto hereby submit to the exclusive jurisdiction of the English Courts.

### **23. Force Majeure**

- 23.1 A party who becomes aware of a Force Majeure Event which gives rise to or which is likely to give rise to any failure or delay in performing its obligations under this Agreement shall forthwith notify the other party and shall inform the other party of the period for which it is estimated that such failure or delay shall continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event, but otherwise shall not bear any liability or responsibility to the other for the Force Majeure Event.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorised representatives on the date first above written.

Signed for and on behalf of **[LEAD/FUNDING DNO NAME]**

By: \_\_\_\_\_

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

In the presence of:

Title: \_\_\_\_\_

\_\_\_\_\_

Signed for and on behalf of **[3<sup>RD</sup> PARTY LEAD SUPPLIER NAME]**

By: \_\_\_\_\_

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

In the presence of:

Title: \_\_\_\_\_

\_\_\_\_\_

## **Appendix A, Management & Delivery Document**

**[INSERT MANAGEMENT & DELIVERY DOCUMENT]**



## **Appendix B, Extract of the Customer's IT Security Procedures**

**[INSERT EXTRACT FROM CUSTOMERS IT SECURITY PROCEDURES]**

## **Appendix C, Change Request**

**[INSERT CHANGE REQUEST PROCESS AND ASSOCIATED FORMS]**

## **Appendix D, Dependencies**

**[INSERT ANY PROJECT DEPENDENCIES. FOR EXAMPLE, WHERE THE SUPPLIER IS DEPENDENT UPON THE CUSTOMER]**

## **Appendix E, Extract of the Customer's Responsible Procurement Policy**

**[INSERT EXTRACT FROM CUSTOMERS PROCUREMENT POLICY]**

## **Appendix F, Requirements in relation to Public Customers**

**[INSERT CUSTOMERS REQUIREMENTS IN RELATION TO PUBLIC CUSTOMERS]**

## **Appendix G, Project Budget**

**[INSERT PROJECT BUDGET FROM PROJECT DIRECTION]**

## **Appendix H, Anti-Bribery Policy**

**[INSERT CUSTOMERS ANTI-BRIBERY POLICY]**

## **Appendix I, Health & Safety**

**[INSERT CUSTOMERS HEALTH & SAFETY REQUIREMENTS]**