



## GENERAL TERMS AND CONDITIONS OF THE IBERDROLA GROUP FOR THE SUPPLY OF EQUIPMENT AND MATERIALS (UNITED KINGDOM)

### 1. PURPOSE OF THE DOCUMENT

This document sets out the general contracting terms and conditions (referred to as the “GTCs”) that govern the contractual relationship between the members of the ScottishPowerGroup or Iberdrola Group that have their domicile and are incorporated under the laws of United Kingdom, and any third party supplier, for the supply of equipment and/or materials to the relevant member(s) of the ScottishPower Group.

### 2. SCOPE OF APPLICATION

**2.1** These GTCs shall apply to any and all contracting of Equipment and Materials and any Associated Services, unless otherwise agreed by the Parties in a Contract. Therefore, any type of standard sale conditions that may be proposed by the Supplier (or which may be implied by trade, custom, practice or course of dealing) are hereby excluded and, for the avoidance of doubt, shall not form part of the Contract.

**2.2** These GTCs are incorporated into and form part of the contractual relationship between the parties in connection with the supply of the Equipment and Materials (and any Associated Services) and shall, together with the other documents that make up the Contract, set out the respective rights and obligations of the parties.

**2.3** These GTCs will apply to any contract awarded pursuant to the relevant tender process, the participation in such a tender process organised by ScottishPower for the presentation of a Bid by the Supplier shall automatically imply the awareness and acceptance by the Bidder of these GTCs in the event of their Bid being successful.

**2.4** Any amendment to these GTCs shall be valid only if set out in the Particular Conditions agreed between the parties. Any amendments to the GTCs agreed by ScottishPower and set out in the Particular

Conditions shall apply only to the Contract and shall not (unless ScottishPower agrees otherwise in writing) extend to any other past, present or future contracts between the parties.

**2.5** For the avoidance of any doubt, the terms of these GTCs shall not apply to any contract that has been signed by authorised representatives of both parties which does not expressly incorporate the terms of these GTCs.

**2.6** This document is available on the Scottish Power.com website in the section “Suppliers”, “Procurement Portal”.

### 3. DEFINITIONS

**3.1** In these GTCs (including in Conditions 1 and 2 above), the following terms shall have the meanings set out below (unless the context requires otherwise):

“**Associated Services**” means those services to be provided by the Supplier that are related or ancillary to the supply of the Equipment and Materials, which services are defined and detailed in the Contract.

“**Availability Notice**” means the document to be issued by the Supplier to inform ScottishPower that the Equipment and Materials or a part thereof is available for immediate collection or delivery (as appropriate).

“**Bid**” means the proposal made by a Bidder in response to a Request for Bid, which shall be binding for the Bidder during the term set out in the Request for Bid, and which shall not constitute a binding contract, document or give rise to any binding obligation or liability on the part of any ScottishPower Group Company unless and until a Contract has been constituted in accordance with the terms of these GTCs.

“**Bidder**” means the individual or entity submitting a Bid.

“**Condition**” means a condition set out in these GTCs.

“**Confidential Information**” has the meaning given to it in Condition 7.1.

“**Contract**” means an agreement between the Parties that sets forth the terms and conditions for contractual relationship between the Parties related to the Supply. (and the performance of any Associated Services). Unless a particular Contract expressly states otherwise, it shall be comprised of

the following documents:

- a) Document that formalises the agreement, be it as a (i) written contract signed by both parties, or (ii) in the form of an order, which is a binding document issued by ScottishPower and accepted by the Supplier. An order is considered as accepted upon the earliest of the following to occur: (i) at the time the Supplier starts to fulfil obligations set out in the order issued by ScottishPower; (ii) through the Supplier issuing confirmation via any method that clearly indicates acceptance of the order; or (iii) where the order relates to a framework agreement that is carried out through supply orders, fifteen (15) days after the order is issued;
- b) Particular Conditions, where applicable;
- c) These GTCs;
- d) Data Processing Annex, where applicable;
- e) Technical Specification;
- f) Quality Plan;
- g) Time Schedule;
- h) ScottishPower's policies and standards that are listed in the Request for Bid or are otherwise notified to the Supplier and as such policies may be updated from time to time), which shall include, as a minimum, the following: ScottishPower's Corporate Responsibility Policies, Code of Ethics for Suppliers; ScottishPower's Health, Safety, Welfare and Environmental Requirements for Suppliers; ScottishPower's Policy on Alcohol and Drugs; ScottishPower's Integrated Management Systems Policy and ScottishPower's Anti-Bribery and Corruption Policy;
- i) Any other documents referred to in these GTCs; and
- j) Bid.

**"Data Processing Annex"** has the meaning given to it in Condition 8.

**"Delay Payment"** has the meaning given to it in Condition 5.5.1.

**"Equipment and Materials"** means all goods, equipment, stock, machinery, apparatuses, components, subcomponents, items, elements, materials, reports, data, presentations, documents, software, materials, and any other assets or items (in any format) provided by the Supplier or on its behalf to ScottishPower under and/or pursuant to the Contract, including (without limitation) those items detailed in the Technical Specification or in any other part of the Contract.

**"Event of Force Majeure"** has the meaning given to it in Condition 12.8.1.

**"Good Industry Practice"** means the exercise of that degree of skill, care, diligence, prudence, efficiency, foresight and timeliness that would reasonably and ordinarily be expected from a skilled, experienced and adequately resourced supplier engaged in the same or a similar type of supply of works and/or services to those described in or pursuant to this Contract.

**"Iberdrola Group"**: the group of companies formed by Iberdrola, S.A. and its subsidiaries (any company or legal entity in respect of which Iberdrola owns, or has the power to vote or exercise a controlling influence with respect to, more than half of the capital or other ownership interest giving holders the right to (1) elect or dismiss the majority of the board of directors or other governing body of that legal entity or (2) holds the majority of voting rights of that legal entity).

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

**"Intellectual Property Rights"** means any copyright,

patent, trade mark or trade name, design rights, database rights, know-how or other similar right of whatever nature, registered or unregistered, present or future, (together with any application for any of the foregoing and any renewals or extensions thereof), whether existing or future and whether existing or conferred under the laws of the United Kingdom or anywhere else in the world.

**"Law"** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body and **"Laws"** shall be construed accordingly.

**"Order"** means the official purchase order issued by ScottishPower to the Supplier in respect of the supply of the Equipment and Materials and the performance of any Associated Services.

**"Particular Conditions"** means the document which sets out the additional terms and conditions, clarifications and amendments to these GTCs and/or to any other documents included in the Contract that have been agreed by the parties in writing in respect of the Contract.

**"Performance Guarantee"** has the meaning given to it in Condition 5.4.

**"Personnel"** means all employees, agents, consultants and contractors of the Supplier and/or of any permitted sub-contractor of the Supplier that are engaged at any time or from time to time in connection with the supply of the Equipment and Materials and/or the performance of any Associated Services.

**"Prices"** means the charges payable by ScottishPower for the supply of the Equipment and Materials and the performance of any Associated Services, as set out in the Contract.

**"Quality Plan"** means the document which details the set of activities, resources and actions that will be taken by the Supplier in connection with the quality management of the Equipment and Materials.

**"Regulatory Bodies"** means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of any ScottishPower Group

Company (including, without limitation, The Office of Gas and Electricity Markets Authority) and **"Regulatory Body"** shall be construed accordingly.

**"Request for Bid"** means the invitation to tender or similar document issued by ScottishPower to a Bidder to take part in a bidding process and which sets out, without limitation, the processes and procedures that the Bidder requires to follow in connection with the bidding process and the documentation that any Bid must include.

**"ScottishPower"** means the relevant ScottishPower Group Company identified in the Accepted Order or Signed Agreement (as applicable).

**"ScottishPower Group"** means Scottish Power UK plc, any subsidiary or holding company from time to time of ScottishPower UK plc and any subsidiary from time to time of a holding company of that company, the terms "holding company" and "subsidiary" being as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee, and any other entity which directly or indirectly controls, is controlled by or is under direct or common control with, ScottishPower from time to time (the term "control" for the purpose of this definition meaning that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise)), and **"ScottishPower Group Company"** and **"ScottishPower Group Companies"** shall be construed accordingly. For the avoidance of any doubt, the definition of ScottishPower Group (and the associated definitions "ScottishPower Group Company" and "ScottishPower Group Companies") shall include, without limitation, (i) ScottishPower and (ii) Iberdrola S.A. and all of its subsidiaries and holding companies from time to time that have their domicile in and/or are incorporated under the laws of United Kingdom.

**"Shipment Authorisation"** means the document to be issued by ScottishPower which authorises the Supplier to prepare or make the shipment, as applicable, of the relevant Equipment and Materials in accordance with the Contract.

**“Shipment Notice”** means the document to be issued by the Supplier to inform ScottishPower that the relevant Equipment and Materials have been dispatched by the Supplier.

**“Supplier”** means the person, firm or company with whom ScottishPower contracts in respect of the supply of the Equipment and Materials (and any Associated Services) as set out in the Accepted Order or Signed Agreement (as applicable).

**“Supply”** means any supply of the Equipment and Materials (and the performance of any Associated Services, if applicable) by or on behalf of the Supplier.

**“Technical Specification”** means the document or set of documents which set out the specific technical or other requirements that the relevant Equipment and Materials and/or Associated Services must comply with.

**“Time Schedule”** means the document that contains the activities, milestones and deadlines the Supplier has to comply with for the fulfilment of the delivery terms specified by ScottishPower.

**“Work Completion Notice”** means the notice to be sent by the Supplier to ScottishPower stating that the Equipment and Materials to be supplied are completed and ready for delivery.

**3.2** Any reference in these GTCs to a statutory provision includes any amendment, extension, consolidation or replacement of the same from time to time.

**3.3** Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**3.4** The Particular Conditions and Technical Specification that comprise part of a Contract shall include the exceptions and variations agreed by and between both parties in writing. In the case of the Technical Specification, such agreed exceptions or variations can also be included in an annex thereto. In the case of the Particular Conditions, such agreed exceptions or variations may (in the case of a Signed Agreement) be reflected within the terms of these GTCs. These documents complement each other so that what is agreed and stipulated in all of them comprises the content of the selected Contract, which will be interpreted by the entirety of the documents comprising it.

**3.5** In the event of a conflict between any of the Contract documents, that which appears earliest on the list in Condition 3.4 shall prevail.

**3.6** The Supplier shall make available all of the required documents that comprise its Bid through the Iberdrola Group's website or through the method described under each Request for Bid. The Supplier must be familiar with the GTCs, and the existence of a Contract means that these GTCs have been fully accepted by the Supplier in their totality along with the obligation to comply with their terms.

**3.7** The entry into force of the Contract shall take place upon its formalisation, whether it is through signing the written contract by both parties or the order's acceptance by the Supplier under the terms set out in these GTC or on such other date as may be agreed between the parties.

## **4. SUPPLY OF EQUIPMENT AND MATERIALS**

### **4.1 GENERAL**

**4.1.1** The Supplier shall be responsible for supplying the Equipment and Materials, together with any Associated Services, in accordance with the terms of the Contract.

**4.1.2** The Supplier shall supply the Equipment and Materials and any Associated Services in strict compliance with all applicable Laws and with all the instructions of ScottishPower or its authorised contractors, consultants or agents.

**4.1.3** The Supplier shall supply the Equipment and Materials and any Associated Services in a timely and professional manner and in any event in accordance with Condition 4.4 and any other specific timescales set out in the Contract or as otherwise notified by ScottishPower to the Supplier from time to time.

**4.1.4** Should the supply of Equipment and Material include the provision of Associated Services, unless expressly stated otherwise in the Contract, the Supplier shall meet the requirements set forth in the terms of the document entitled “General Conditions of the ScottishPower Group for Contracting Works and Services (United Kingdom)”, which is available on the Iberdrola Group's website and, where this Condition 4.1.4 applies, is hereby expressly incorporated by reference into the Contract (the **“Works and Services GTCs”**).

**4.1.5** The Supplier shall be liable for and assume the cost of maintenance, care, handling, and

transportation of all materials, equipment, and tools, as well as any drawings, specifications, information, data and other items provided by or on behalf of ScottishPower and/or any other ScottishPower Group Company (hereinafter, the "**ScottishPower Materials**"). The Supplier shall keep the ScottishPower Materials safe and in good condition at its own risk until they are returned to ScottishPower. Similarly, the Supplier may not dispose of any ScottishPower Materials unless authorised to do so by ScottishPower, and it will use all ScottishPower Materials exclusively following the instructions or written authorisations of ScottishPower.

**4.1.6** The Supplier shall not do, or fail to do, anything that may cause ScottishPower and/or any ScottishPower Group company to lose any licence, authorisation, or permission upon which it relies for the purposes of conducting its business.

**4.1.7** Within the limits set out in the Contract, the Supplier shall supply the Equipment and Materials in a complete unit capable of carrying out the relevant function, as well as the Associated Services in respect of such unit. Unless expressly stated otherwise in the Contract, the Supplier shall supply new and not pre-owned Equipment and Materials.

**4.1.8** The Supplier hereby warrants and undertakes to ScottishPower that:

- a) It has the right, power, capacity, skills, experience and authority to enter into the Contract and to supply the Equipment and Materials and perform the Associated Services;
- b) It shall supply the Equipment and Materials and perform the Associated Services in accordance with all of the terms of the Contract, to the reasonable satisfaction of ScottishPower, in accordance with Good Industry Practice and in compliance with all Laws relevant to the supply of the Equipment and Materials and the provision of the Associated Services;
- c) It shall use Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- d) All Equipment and Materials and Associated Services shall conform with all descriptions and specifications set out in the Contract, and the Equipment and Materials and the Associated Services shall be of satisfactory quality and shall

be fit for any purpose expressly or impliedly made known to the Supplier by ScottishPower;

- e) It shall (having regard to the terms of the Technical Specification) use the best available quality goods, materials, standards and techniques, and ensure that the Equipment and Materials, and all goods and materials supplied and used in the Associated Services or transferred to ScottishPower, shall be free from defects in workmanship, installation and design;
- f) The use by ScottishPower and/or any ScottishPower Group Companies of the Equipment and Materials, the Associated Services and/or any other items provided by or on behalf of the Supplier or are otherwise used by the Supplier in connection with the provision of the Supply under and/or pursuant to the Contract shall not infringe the Intellectual Property Rights of any third party;
- g) It has and shall continue to have all licences, permissions, authorisations, consents and permits required to perform its obligations under the Contract;
- h) It shall implement and observe sound environmental practices and procedures in connection with the supply of the Equipment and Materials and/or the provision of the Associated Services;
- i) It shall observe fair employment practices and policies in relation to any staff that are engaged in the supply of the Equipment and Materials and/or the provision of the Associated Services;
- j) The Supplier (and all staff engaged in the supply of the Equipment and Materials and/or the provision of the Associated Services) shall comply with all rules, policies and procedures (including, without limitation, health and safety practices and anti-corruption practices) notified to the Supplier in connection with the supply of the Equipment and Materials and/or the provision of the Associated Services;
- k) The Supplier shall afford ScottishPower or its duly authorised representatives such access to the Supplier's premises as may be reasonably necessary to enable ScottishPower to satisfy itself that the Supplier is complying with its obligations pursuant to the Contract, including in connection with the quality standards required under this Condition 4.1.8; and



- l) all personnel engaged by it or otherwise made available to deliver any Associated Services are engaged as employees on a Pay-As-You-Earn (PAYE) basis, either directly by it, or by an umbrella company engaged by the Supplier and properly accredited by the FCSA (Freelancer & Contractor Services Association) such that none of any such personnel could be reasonably regarded as providing such Associated Services to ScottishPower through an intermediary within the meaning of the rules contained in Chapter 10 of Part 2 of the Income Tax (Employment and Pensions) Act 2003.

**4.1.9** The Supplier shall neither be relieved of its obligations to provide any of the Equipment and Materials and/or any Associated Services in accordance with the terms of the Contract, nor be entitled to an increase in any of the Prices, as the result of or in connection with any change in any Law which impacts on the performance of the Supplier's obligations under the Contract and which comes into force on or after the effective date of the Contract. Any changes to the Contract that are required as a result of any change in Law shall be documented in accordance with Condition 12.3, provided always, for the avoidance of doubt, there shall be no increase to any Prices and/or the rates of any of the Prices payable by ScottishPower under the Contract.

## **4.2 ORGANISATION OF THE SUPPLIER**

**4.2.1** The Supplier shall act as an independent business and employer while carrying out the Supply and any other activity in relation to the Contract and the Supplier shall be completely responsible for the selection and supervision of its Personnel involved in and dealing with the supply of the Equipment and Materials and in rendering the Associated Services, exercising management and monitoring authority in accordance with current Laws. In particular (but without limitation), the Supplier undertakes to comply with all the provisions set forth in labour legislation, social security, safety and health in the workplace, as well as with environmental legislation, and must make available any documents requested by ScottishPower that proves such requirements are met.

**4.2.2** When the activities involved in the performance of the Contract are associated with the supply of electricity, gas and/or other utilities, the Supplier shall ensure that the performance of such activities complies with all applicable Laws.

**4.2.3** The Supplier shall organise its Personnel

assigned to the performance of the Contract in such a way that their responsibilities, lines of activity and operations are clearly defined at all times and separate from those of ScottishPower.

**4.2.4** The Supplier shall appoint one suitably senior, qualified and experienced person from its organisation to act as the single lead representative before ScottishPower, with whom ScottishPower will principally liaise in connection with any possible variation that may arise with regard to the scope of the Supply.

## **4.3 QUALITY MANAGEMENT**

**4.3.1** The quality management system to be operated by the Supplier shall comprise the set of planned and systematic actions necessary to provide ScottishPower with assurance that the Equipment and Materials shall work and operate satisfactorily under relevant service conditions.

The Supplier's quality management system shall include the Supplier's Quality Plan, which shall specify the set of activities and techniques that make it possible to ensure that specific Equipment and Materials shall meet the applicable requirements.

**4.3.2** Together with the detailed Time Schedule (to be submitted to ScottishPower in accordance with Condition 4.4. below) the Supplier shall submit a detailed Quality Plan. It shall be prepared in accordance with the terms reflected in the aforementioned detailed Time Schedule and with the Quality Plan contained in the Bid (if any).

**4.3.3** The detailed Quality Plan, which shall be subject to ScottishPower's approval, shall comply with at least the following requirements:

- a) Inclusion of the requirements under applicable Laws and, in general, all those set forth in the Contract.
- b) Identification of the elements and materials to be used.
- c) Establishment of a manufacturing, inspection and test programme.
- d) Description of the qualification of Personnel and laboratory.
- e) Definition of storage, handling, conservation and transport conditions.

**4.3.4** The Supplier shall be responsible for carrying out the required inspections and tests on the Equipment and Materials in accordance with the terms of the Quality Plan and the Contract.

**4.3.5** ScottishPower and its representatives shall have access to the Supplier's facilities and those of its suppliers and subcontractors to carry out the relevant quality monitoring activities.

**4.3.6** Accordingly, the Supplier shall notify ScottishPower in writing, with at least ten (10) days prior notice, of the dates programmed for the tests or manufacturing phases previously defined by ScottishPower in the manufacturing, inspection and test programme and which have to be presented by the Supplier to ScottishPower as part of the detailed Quality Plan, according to Condition 4.3.3 above. The definitive confirmation of the relevant date shall be notified by the Supplier with at least three (3) days prior notice. In addition, the Supplier shall provide the name of the person acting as its contact person.

**4.3.7** The Supplier shall supply ScottishPower with the examination and test procedures at least forty-five (45) days prior to the date it is scheduled to be done. Such procedures shall be subject to ScottishPower's approval.

**4.3.8** The Supplier shall provide ScottishPower with all the certificates, test reports, non-conformity reports and notices of major repairs in the shortest possible term after the relevant operation has been performed.

**4.3.9** Once the manufacture of an item of Equipment and Materials has been completed and prior to each shipment, the Supplier shall issue a certificate of compliance with the applicable specifications, codes and standards. This certificate shall be sent to ScottishPower and shall be required for ScottishPower issuing the Shipment Authorisation for the relevant item.

**4.3.10** Based on the documents drawn up within the scope of the detailed Quality Plan and regardless of the documentation supplied as per previous Conditions, the Supplier shall prepare and send to ScottishPower a technical report that shall be sent to ScottishPower, together with the Equipment and Materials, for its approval and filing.

**4.3.11** Once the Work Completion Notice has been received, ScottishPower shall perform a final inspection of the relevant Equipment and Materials or part thereof in order to issue the relevant Shipment Authorisation. In order to perform such final inspection, where applicable, ScottishPower and the Supplier shall follow the procedure set forth in Condition 4.3.

**4.3.12** ScottishPower may require additional tests or examinations besides those laid out in the Contract. Such additional examinations or tests shall be considered, where applicable, as changes, in accordance with the provisions of Condition 12.3.

**4.3.13** If, during the tests, any result fails to comply with the provisions contained in the applicable Technical Specification and/or any other document that is part of the Contract, the Supplier may choose to replace the affected Equipment and Materials or repair it, on its own account and cost, as long as such repair is allowed by applicable Laws and the new delivery schedule meets ScottishPower's requirements.

**4.3.14** Neither the implicit or explicit, inspection, testing acceptance or approval nor the omission of the indication of any defects in the components of the Equipment and Materials by ScottishPower or its representatives shall release the Supplier from any of its responsibilities.

#### **4.4 DELIVERY TERMS AND CONDITIONS**

**4.4.1** The delivery terms and conditions shall be those agreed to and set out in the Contract and/or, where applicable, those notified at any time by ScottishPower to the Supplier in accordance with the Contract.

**4.4.2** Any partial deliveries agreed upon shall be made in accordance with the Time Schedule, where ScottishPower shall reserve the right of accepting advanced, unscheduled, deliveries when considered appropriate.

**4.4.3** The following two Conditions (i.e. Conditions 4.4.4 and 4.4.5) shall not apply for the supply of Equipment and Materials that are readily available in the Supplier's warehouse or where all of the Equipment and Materials will be delivered over a period that is less than three (3) months.

##### **4.4.4**

- a) One month after the Bid acceptance (or, where no Bid was submitted, within one month after effective date of the Contract), the Supplier shall provide a detailed Time Schedule (where applicable, in accordance with the Time Schedule submitted in the Bid), comprising at least the following activities and the relevant dates:

- Information and data to be supplied by ScottishPower.
- Delivery of plans, calculations, inspection procedures, instruction books and other documents of the Supplier for approval.
- Stock of subcontracted raw materials and parts.
- Workshop manufacturing plan and final tests.
- Transport and deliveries.
- Assembly at site.
- Preliminary tests and provisional reception at site and final acceptance.
- Sending of final dossier.

- b) Some of the above activities may not apply, depending on the scope of the supply covered by the Contract.
- c) The delivery sequence shall be logically associated with an ordered assembly sequence.
- (d) The beginning of the Time Schedule shall be the date set out in the Contract or the date specified by ScottishPower to the Supplier.

#### 4.4.5

- (a) On a monthly basis and as otherwise required under the detailed Time Schedule, the Supplier shall send ScottishPower a progress report showing the work carried out during the preceding month (or other relevant period) and a comparison with the agreed plan.
- (b) Such report shall list the components and services included in the scope of the Supply, indicating the anticipated delivery dates.
- c) ScottishPower and its representatives shall have access to the Supplier's facilities and its respective sub-contractors' facilities to carry out any monitoring activity they consider necessary to ensure compliance with the Supplier's planning and delivery obligations.

**4.4.6** The delivery procedures that shall be followed are set out below:

- a) In any event the Supplier shall send to ScottishPower the Work Completion Notice, indicating the Equipment and Materials or part thereof to which the said Work Completion Notice refers.
- b) When the Equipment and Materials or part

thereof has to be removed by ScottishPower from the Supplier's facilities, the Supplier shall issue the Availability Notice, which shall contain the following information:

- i. Contract reference number of ScottishPower.
- ii. Number of packages available, indicating for each package: relevant Equipment and Materials contained, size, weight.
- iii. Estimated value of the goods with regard to storage and transportation insurance.
- iv. Indications to be considered with regard to transportation due to the specifications of the Materials or Equipment.
- v. Reference number of the relevant Equipment and Materials if provided by ScottishPower.
- vi. Specific address of the place of collection of the goods.

- c) When the relevant Equipment and Materials or part thereof is to be delivered by the Supplier to ScottishPower's facilities, the Supplier shall issue the Shipment Notice, indicating the following:

- i. Contract reference number of ScottishPower.
- ii. Number of packages sent, indicating the material contained in each package, as well as the estimated value of the goods for purposes of the storage insurance.
- iii. Reference number of the material if provided by ScottishPower.

- d) The Supplier shall not ship the Equipment and Materials or part thereof until it receives the Shipment Authorisation from ScottishPower. This Shipment Authorisation issued by ScottishPower shall contain at least the following information:

- i. Contract reference number of ScottishPower.
- ii. Name of the Supplier and/or subcontractor, if applicable.
- iii. Authorised Equipment and Materials.
- iv. Signature or signatures of the persons responsible for the acceptance.

In any case, a copy of the Shipment Authorisation shall be attached by the Supplier to the delivery note of each of the items delivered and covered by the relevant



Shipment Authorisation.

**4.4.7** If any Equipment and Materials or part thereof cannot be delivered for any reason once it has been finished, the Supplier shall store it in accordance with Good Industry Practice until it can be delivered, and the storage expenses incurred shall be on the account of the Supplier, as will the risks of loss or damages.

#### **4.5 PACKAGING AND MARKING**

**4.5.1** The Equipment and Materials shall be prepared by the Supplier for transport in accordance with Good Industry Practice, taking as many appropriate precautions as required (for example with regard to maritime transport packaging, etc.).

**4.5.2** The Supplier shall be responsible for any damage resulting from defective or inappropriate packaging.

**4.5.3** All the Equipment and Materials shall be duly marked, referenced and labelled for correct and easy identification and reception. The marking and labels to be put on each piece of Equipment and Materials or part thereof shall be those indicated in the Contract and, in any case, they shall indicate the Contract number.

**4.5.4** ScottishPower reserves the right, for itself or its representatives, to inspect all the packages prepared for a shipment. Such inspections shall not release the Supplier of its responsibility regarding the packaging.

**4.5.5** The Contract shall be permitted to specify the packaging requirements for the requested Equipment and Materials.

**4.5.6** The shipments of Equipment and Materials shall include a delivery note detailing the goods included in the shipment, each with the quantity that is still to be delivered and indicating the Contract number and the relevant item in a highly visible place.

**4.5.7** The Supplier shall ensure that:

- a) the Equipment and Materials are properly packed and secured in such manner as to ensure that they reach their destination in good condition and in compliance with the warranties and undertakings under the Contract; and
- b) the Equipment and Materials are suitably and sufficiently marked, endorsed and labelled with

information and advice necessary to instruct and warn any persons into whose hands the Equipment and Materials may come about any hazards to health and/or safety that are reasonably foreseeable as arising from despatching, handling, using or possessing the Equipment and Materials and also about the necessary precautions to be taken in relation to the Equipment and Materials. If it is not reasonably practicable to label the Equipment and Materials in accordance with this Condition 4.5.7.b), the relevant information and advice must be provided by the Supplier by means of a written notice which accompanies the Equipment and Materials.

**4.5.8** ScottishPower accepts no liability for pallets, containers, cases, drums or any other form of packing material used by the Supplier in supplying the Equipment and Materials.

**4.5.9** The Supplier shall supply the Equipment and Materials on the relevant date(s) and to the relevant location(s) specified by ScottishPower during ScottishPower's normal hours of business, or as otherwise instructed by ScottishPower in writing.

**4.5.10** The Supplier shall not supply the Equipment and Materials in instalments without ScottishPower's prior written consent. Condition 4 shall apply equally in relation to any instalment of Equipment and Materials.

#### **4.6 TRANSPORTATION**

Transportation and delivery of the Equipment and Materials shall be carried out in accordance with the provisions set forth in the Contract or specifically notified by ScottishPower to the Supplier.

- a) Should the transport and delivery of the relevant Equipment and Materials be the responsibility of the Supplier, it shall be carried out in accordance with the requirements of the Contract and under the best conditions of safety and speed.
- b) Should the transport and delivery of the relevant Equipment and Materials be the responsibility of ScottishPower, the delivery shall be deemed to have occurred when the relevant Equipment and Materials is placed in the custody of ScottishPower or its appointed logistics provider. If it is also classified by ScottishPower as "special", due to the size or weight of the relevant Equipment and Materials, the Supplier shall send ScottishPower a description thereof indicating weights, size and any other information required

at least ninety (90) days prior to the foreseen availability date so that ScottishPower can properly organise transportation.

#### **4.7 TRANSFER OF OWNERSHIP AND RISK OF LOSS**

**4.7.1** The title in the Equipment and materials and the risk of loss or damage to the Equipment and Materials shall be understood as transferred from the Supplier to ScottishPower at the time it has been effectively delivered and unloaded at the destination point agreed to in the Contract, and, where applicable, once its set-up and/or configuration by the Supplier is complete and its suitable functioning is proven, as the case may be.

**4.7.2** The Supplier guarantees that all Equipment and Materials it provides to ScottishPower are the absolute and unencumbered property of the Supplier and are not subject to any liens, charges and/or other third party rights of any nature.

#### **4.8 SUPPLY ACCEPTANCE**

**4.8.1** For the purposes of any provisions of the Contract which refer to acceptance of any Supply, accepting the Supply shall take place at the point of delivery, or after the relevant Equipment and Materials being set up and its functioning declared to be suitable by ScottishPower as the case may be. Any approval or acceptance by ScottishPower in connection with any Equipment and Materials supplied and/or any Associated Services performed by or on behalf of the Supplier shall not mean, imply nor be interpreted as a release of the Supplier from any of its obligations and/or liabilities under and/or pursuant to the Contract.

**4.8.2** The Supplier shall provide ScottishPower with all the information or documentation required in accordance with applicable Laws, evidencing the legal importation of the Equipment and Materials of the Supply, and, unless expressly stated to the contrary in the Contract, the Supplier shall be fully responsible for the payment of any taxes, duties, fees, contributions, etc. due as a result of the importation or re-exportation of the relevant goods.

#### **4.9 WARRANTIES AND GUARANTEES**

**4.9.1** The Supplier hereby warrants and guarantees (i) the ownership and title of the Equipment and Materials supplied and the intellectual and industrial property thereof, (ii) the non-existence of both apparent and latent burdens or defects, and (iii) the

correct operation, according with the terms set forth in the following sections. The warranties and guarantees set out in this Condition 4.9 are in addition to all other express obligations and warranties set forth in the Contract, and such other obligations and warranties as are implied by Law, custom and/or usage of trade.

**4.9.2** The warranty and guarantee of ownership and title shall establish that the Equipment and Materials covered by the Supply are owned by the Supplier, transferred free and clear of any kind of encumbrances and are legally and freely transferable. Additionally, it shall guarantee the transfer of the intellectual or industrial property needed for the proper use of the Equipment and Materials included in the Supply.

**4.9.3** Without prejudice to ScottishPower's other rights other rights and/or remedies under and/or pursuant to this Contract, the warranty and guarantee for defects shall allow ScottishPower to choose between either (i) the return or (ii) repair of the Equipment and Material or (iii) a reduction in the price, where the Supplier shall be responsible for any expenses that may arise.

**4.9.4** The warranty and guarantee of operation shall relate to whether the Equipment and Materials of the Supply are adequate for the specified function.

**4.9.5** Without prejudice to ScottishPower's other rights and remedies under and/or pursuant to the Contract, if, during the term of the warranty and guarantee of operation under Condition 4.9.4, ScottishPower notifies the Supplier of a defect, the Supplier shall repair, replace, adjust or modify the relevant Equipment and Materials as required for the fulfilment of the guarantee on its own account. The choice between the alternatives given and the appropriate period for implementing them shall be determined by ScottishPower. The parts of the Equipment and Materials that have been repaired, replaced, adjusted or modified by virtue of the warranty in this clause, shall be covered by the operation warranty for an additional period until the later date of either (i) twelve (12) months from the date on which the defective Equipment or Material become available again or (ii) the end of the initial term of warranty of such Equipment or Material, with the longer term of the two mentioned options being applicable.

**4.9.6** If the Supplier does not carry out any required corrections or repairs within a reasonable time period (which period will be determined by

ScottishPower, acting reasonably) in compliance with the date determined by ScottishPower, ScottishPower shall be authorised (after notifying the Supplier) conduct the corrections or repairs by itself or through a third party, with any related costs and expenses being payable by the Supplier. In any such case, ScottishPower shall be entitled to implement the Performance Guarantee and the Supplier shall also be obliged to reimburse ScottishPower on demand for any and all damages and losses that may have been caused by non-compliance with the Supplier's obligations.

**4.9.7** The parts of the Equipment and Materials that have been repaired, replaced, adjusted or modified by virtue of any guarantee in this Condition 4.9, shall be covered by the operation guarantee.

**4.9.8** The Performance Guarantee given by the Supplier to ScottishPower shall be capable of being used or applied (in full or in part) by ScottishPower in its sole discretion in connection with any exercise by ScottishPower of its rights under this Condition 4 or any other provision of the Contract.

#### **4.10 RIGHTS OF SCOTTISHPOWER WITH REGARDS TO CERTAIN ACTS OF NON-COMPLIANCE**

**4.10.1** If the Supplier fails to supply any Equipment and Materials and/or perform any Associated Services on or by the delivery date required by ScottishPower, ScottishPower shall, without prejudice to its other rights and/or remedies under and/or pursuant to the Contract, be entitled to exercise one or more of the following rights:

- a) terminate the Contract with immediate effect through written notification to the Supplier;
- b) refuse to accept any other supply of Equipment and Materials and/or any Associated Services that the Supplier attempts, expects or intends to make or deliver;
- c) if ScottishPower has paid any sums in advance for Equipment and Materials and/or Associated Services that have not been supplied or performed by the Supplier, require the Supplier to refund such sums to ScottishPower within a period of no more than three (3) days at the date of request by ScottishPower, in the bank account established by ScottishPower;
- d) require the Supplier to reimburse ScottishPower for any additional costs, losses or expenses incurred by ScottishPower and/or any ScottishPower Group Company which are in any way attributable to the Supplier's failure to supply the Equipment and Materials and/or any

Associated Services, including (but not limited to) any additional costs derived from obtaining the supply of the contracted Equipment and Materials and any Associated Services from third parties.

- e) withholding payment under the applicable Contract;
- f) offsetting any amounts due and payable by Supplier to Iberdrola pursuant to any other agreement between Supplier and Iberdrola; and/or
- g) calling the bonds granted by the Supplier

**4.10.2** If the Supplier has performed (or has failed to perform) any aspects of the supply of the Equipment and Materials and/or any Associated Services in a way that does not comply with any of the obligations, commitments, requirements, guarantees and/or warranties set out in the Contract, without prejudice to its other rights and/or remedies, ScottishPower shall be entitled to exercise one or more of the following rights (whether or not it has accepted the Equipment and Materials and/or any Associated Services):

- a) reject any Equipment and Materials (in whole or in part) whether or not ownership has passed to ScottishPower and to return them to the Supplier at the Supplier's own risk and expense;
- b) require the Supplier to repair or replace any rejected Equipment and Materials and/or properly re-perform the relevant Associated Services; and/or
- c) exercise any or all of the rights set out in Conditions 4.10.1.a) to 4.10.1.d).

**4.10.3** These GTCs shall also apply to any substituted, repaired or re-performed Equipment and Materials and Associated Services supplied by the Supplier.

**4.10.4** ScottishPower's rights and remedies under this Condition 4.10 are in addition to its rights and remedies under the remainder of the Contract and/or under any applicable Laws.

#### **4.11 INSURANCE**

**4.11.1.** Without prejudice to its risks, obligations and liabilities under and/or pursuant to the Contract, the Supplier shall maintain in full force and effect for as long as is reasonably required for the purposes of the Contract with reputable insurers authorized to operate in the scope of the Contract and at its own cost, the following insurance cover (having regard to the nature and extent of its obligations under the Contract) including (without limitation):

**4.11.1.1** Compulsory and/or statutory insurances to be in force according to the applicable legislation or statutory requirement.

Notwithstanding the provisions of these general conditions regarding subcontracting, where applicable, these insurances should be required by the Supplier to its subcontractors.

**4.11.1.2** Liability insurance in a broad form, with a minimum insured limit of £5,000,000 per event or series of connected events, including all liabilities related with the performance of the Contract (including, as a minimum, coverage for the liability based on the products delivered and services rendered and for the sudden and accidental pollution) arising out of:

- loss of, damage to or loss of use of property of any third party, including ScottishPower or ScottishPower Group Companies
- bodily and personal injury (including death and/or illness) to any person, even those at the service of Supplier or ScottishPower or ScottishPower Group Companies.

If the scope of the Supply includes the transport of Equipment or Materials under liability of the Supplier, the latter shall contract an appropriate insurance policy which shall include cover for third party damage.

The Supplier shall ensure that all policies of insurance maintained pursuant to this Section 4.11.1.2 must contain a waiver of subrogation in favour of Scottish Power and Scottish Power Group Companies.

**4.11.1.3** Any other insurances expressly required by ScottishPower as set out in any other part of the Contractual Documentation.

**4.11.2** By no later than the commencement of the Contract, the Supplier shall provide evidence (i.e. Insurer/Broker Certificate) that the insurance policies are in full force and effect and that the scope of the insurance cover is in line with that required by this Contract. The supplier undertakes to extend the scope of the insurance if, in the opinion of ScottishPower, it becomes necessary. The fact that the Supplier has sent insurance evidence shall not imply that ScottishPower has approved such insurances.

Should the expiry of any required policy take place during the term of this Contract it shall be necessary

to provide evidence of the renewed policies and prove compliance with the Insurance requirements indicated in the above mentioned sections. In addition, when so required, it shall also provide evidence of payment of the premiums due in respect of any such policies.

The Supplier shall promptly notify ScottishPower of any material modification, renewal or cancellation of the insurance policies and shall provide adequate evidence of the change.

**4.11.3** If the Supplier fails to pay the premiums or provide or maintain any of the insurances which it is required to obtain and maintain under this clause 4.11, ScottishPower shall have the right, but not the obligation, to procure and maintain the required insurance in accordance with this clause 4.11 and the Supplier shall promptly pay the cost thereof on demand and shall furnish all information and assistance as ScottishPower may reasonably require to be furnished in order to acquire and maintain such insurance. Procurement and maintenance of such insurance by ScottishPower under this clause 4.11.3 shall in no way relieve the Supplier of its obligations under clause 4.11.

## **4.12 WORKPLACE HEALTH AND SAFETY**

**4.12.1** The supply of Equipment and Materials shall be conducted in compliance with all Laws in force covering fabrication, production and sales.

**4.12.2** Additionally, the requirements set out for those products and materials subject to specific regulations or standards, relevant ScottishPower standards (NI Standards) or UNE standards must be fulfilled. In particular, and without being exhaustive, all Equipment and Materials must include, as the case may be:

1. Safety details.
2. Operating and maintenance instructions.
3. CE
4. Declaration of conformity.

## **5. ECONOMIC CONDITIONS**

### **5.1. PRICES**

**5.1.1** The Prices payable by ScottishPower for supply of the Equipment and Materials shall be the prices set out in the Contract, which shall, subject to Condition 5.1.5, be the full and exclusive consideration for the supply of the Equipment and Materials and shall be inclusive of all taxes, customs, duties and other public dues and the costs of

package, supply, insurance, carriage, delivery and installation of the Equipment and Materials, unless otherwise agreed in writing by ScottishPower.

**5.1.2** The Prices (if any) payable by ScottishPower for any Associated Services shall be the price set out in the Contract, which shall be the full and exclusive consideration for the performance of any Associated Services. Unless otherwise agreed in writing by ScottishPower, the Prices shall include every cost and expense that the Supplier may directly or indirectly incur in connection with the supply of the Associated Services, including all travel and subsistence costs, royalties, licence fees and other expenses.

**5.1.3** All Prices shall be stated in Pounds Sterling, unless ScottishPower and the Supplier have expressly agreed to use a different currency.

**5.1.4** The Prices shall be broken down into (i) the price of the Equipment and Materials and (ii) the price of the Associated Services.

**5.1.5** All Prices payable by ScottishPower under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"), which shall be payable by ScottishPower in addition to the Prices at the prevailing rate, subject to receipt by ScottishPower of a valid VAT invoice.

**5.1.6** The Prices of the Equipment and Materials shall include, without limitation, the design and engineering, as well as the resulting plans, graphs, instruction books, lists of spare parts and other documents to be supplied by the Supplier.

**5.1.7** The price of Supply shall reflect the modality of transport, packaging and insurance paid by the Supplier up to the installation required by ScottishPower and, in the case of Supplies from outside the United Kingdom, in accordance with the DDP modality given in the Incoterms of the International Chamber of Commerce. Notwithstanding the foregoing, what is indicated in this Condition 5.1.6 in relation to the DDP Incoterms shall not apply to the extent that DPP Incoterms conflict with any other express terms of the Contract (including, but not limited to, the provisions expressly set out in these GTC concerning insurance and transfer of risk and title).

**5.1.8** No increase in the Prices may be made (whether on account of increased material, labour or transport costs, indexation, fluctuation in rates of exchange or otherwise) without the prior written consent of ScottishPower. No amount in addition to

the Prices shall be payable by ScottishPower unless agreed in writing and either (i) signed by authorised representatives of ScottishPower or (ii) confirmed by the issue by ScottishPower of an amendment to the Order.

## **5.2. INVOICING**

**5.2.1** Invoices must be sent in a single original copy to the address indicated in the Contract (or as otherwise notified by ScottishPower to the Supplier from time to time) and with the ScottishPower VAT number indicated therein. In addition to the formal requirements contained in current legislation, all invoices must expressly contain the Contract number to which they correspond, separately detailing the quantities and applicable unit prices, the taxable amount, any applicable retention where appropriate, the type and sum of VAT, the total amount of the invoice and the sum to retain as a Performance Guarantee, all expressed in the currency stipulated in the Contract.

The invoices which include total or partial cancellations of advance payments shall be detailed as follows:

- a. Amount of the Supply excluding taxes
- b. To be deducted: advance payment applied, excluding taxes
- c. Resulting amount
- d. % of VAT of the resulting amount
- e. Amount due
- f. Total of the warranty to withhold from payment

**5.2.2** Under no circumstances may invoices be issued based solely on the signing or agreement of the Contract.

**5.2.3** The date of each invoice shall be after the effective date of receipt by ScottishPower of the relevant Supply by the Supplier, and shall not be prior to the date on which, in accordance with the Contract, the relevant invoice is to be issued. Invoices may only be issued for Equipment and Materials received and registered by ScottishPower in accordance with the relevant Conditions relating to delivery.

**5.2.4** Each invoice must only relate to a single Contract.

**5.2.5** A single invoice shall be issued by the Supplier upon the completion of the Supply.

**5.2.6** For the Supplies to be provided by means of



partial deliveries on a fixed date, an invoice shall be issued after the date of each partial delivery.

**5.2.7** In invoices corresponding to Associated Services, where applicable, the Supplier shall attach the relevant certificates for the services provided, duly accepted by ScottishPower.

**5.2.8** Invoices that do not meet any of the requirements of this Condition 5.2 and/or any other requirements set forth in the Contract shall not be accepted and shall be returned. The partial non-fulfilment of any of the specified obligations shall be considered as a failure to comply with all of them.

**5.2.9** Invoicing can be carried out using an automatic invoicing system, provided that the parties have agreed upon this in the Contract.

**5.2.10** The payment of invoices shall not free or relieve the Supplier from its responsibilities and/or obligations under and/or pursuant to the Contract.

**5.2.11** The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in supplying the Equipment and Materials and providing the Associated Services, and the Supplier shall allow ScottishPower to inspect such records at any time on ScottishPower's reasonable request.

### **5.3 PAYMENTS**

**5.3.1** All payments shall be made by ScottishPower within ninety (90) days following the receipt of the corresponding valid invoice that has been properly rendered in accordance with the Contract. The effective date of payment of the invoice shall be the next payment date established in the ScottishPower Group's administrative calendar after the invoice becomes due. The aforementioned administrative calendar shall establish at least one (1) payment day every month.

**5.3.2** Payments shall only be made only to the named Supplier and via transfer to an open bank account held by the Supplier, be it in the country where the Supplier or the ScottishPower Group Company that has contracted out for the Supply have their registered office, or in the country where the Supply has been delivered. In any event, and if required by ScottishPower, the Supplier shall prove ownership and provide identifying details concerning the bank account to which any payments are to be made. ScottishPower may retain any relevant payment, without incurring any liability, until the

Supplier prove the ownership of the bank account.

**5.3.3** If ScottishPower fails to pay any Prices properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment. This Condition 5.3.3 shall not apply to any invoices, Prices or payments that ScottishPower withholds or disputes in good faith.

**5.3.4** In the event that ScottishPower finds that there is a breach of obligations on the part of the Supplier, and that this may result in joint and several liability, subsidiary liability, or any other direct action against ScottishPower, regardless of whether or not this leads to the termination of the Contract and, as soon as it becomes aware of such circumstances, ScottishPower may (without prejudice to its other rights and remedies under and/or pursuant to the Contract) proceed to withhold all payments that are pending to the Supplier for any reason in a sufficient amount to cover said liabilities and ScottishPower may pay or settle such liabilities from any withheld sums

**5.3.5** ScottishPower's rights of retention and payment under Condition 5.3.4 shall extend to any damages resulting from the Supplier's breach referred to above, or any other case in which liability could be attributed to and/or made against any ScottishPower Group Company.

**5.3.6** The Supplier shall not be entitled to assert any credit, set-off or counterclaim against ScottishPower in order to justify withholding payment of any amount due by the Supplier to ScottishPower. ScottishPower may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by ScottishPower to the Supplier.

**5.3.7** Payment of the Prices does not imply that ScottishPower acknowledges or considers that the Supplier has complied with all of its obligations under the Contract, nor that ScottishPower renounces or waives any of its rights and/or remedies under and/or pursuant to the Contract. ScottishPower expressly reserves the exercise of such rights and/or remedies without prejudice to any payment made.

**5.3.8** ScottishPower shall be entitled to withhold from payments the corresponding taxes under current legislation, meaning that the Supplier must

prove or certify, as the case may be, prior to payment of the invoice, any exemptions or percentage reductions of the withholding, for reasons of residence or any other circumstance that allows it to benefit from a more favourable treatment.

**5.3.9** In no case shall payments be made to a Supplier that is not current with its tax or social security obligations unless and until the Supplier resolves the issue.

#### **5.4 PERFORMANCE GUARANTEE**

**5.4.1** The Supplier and ScottishPower agree that for each payment made pursuant to the Contract which is not considered an advance payment, ScottishPower shall withhold 10% (ten percent) of the relevant sum as a performance guarantee by the Supplier of its obligations under the Contract (the "**Performance Guarantee**").

**5.4.2** Prior to the commencement of Supply under the Contract, ScottishPower may agree to replace the withholdings under Condition 5.4.1 by the submission, at the time of the commencement of the Supply and as a security deposit, of a bank guarantee for an amount equal to 10% (ten per cent) (or such other percentage as ScottishPower may determine) of the total Price of the Supply, issued by an entity acceptable to ScottishPower. The costs and expenses associated with the provision of any such bank guarantee will be borne solely by the Supplier.

**5.4.3** Any bank guarantee that is provided by the Supplier pursuant to Condition 5.4.2 must be in a form prescribed or approved by ScottishPower, provided that in any case the terms of the bank guarantee must expressly state:

- Its irrevocable and unconditional nature, excluding the benefit of division, order and excuse.
- Its nature of guarantee of first demand, payable within a maximum period of five days following the request made by ScottishPower.
- the period of validity required by ScottishPower, which shall, as a minimum, be a period that is in line with the duration of the Contract plus an additional 12 months.
- It shall be subject to Scottish law and the jurisdiction of the Courts of Scotland.

**5.4.4** Any bank guarantee provided by the Supplier under Condition 5.4.2 shall only be cancelled after ScottishPower has issued its written consent.

#### **5.5 LIQUIDATED DAMAGES FOR DELAYS**

**5.5.1** The Time Schedule and any other performance deadlines notified by ScottishPower pursuant to Condition 4 are an essential part of the Contract. Without prejudice to ScottishPower's other rights and remedies under and/or pursuant to the Contract and/or at law, should the Supplier fail to fulfil such Time Schedule or performance deadlines so established in and/or pursuant to the Contract, the Supplier shall pay to ScottishPower, as a liquidated damages payment in respect of the delay (the "**Delay Payment**"), an amount equal to one percent (1%) of the final total Price of the supply of the Equipment and Materials and any Associated Services (defined as the initially agreed Prices plus any adjustments or reviews carried out according with the terms of the Contract resulting from modifications, extraordinary work, revision of prices, or any other reason) for each full calendar week of delay.

**5.5.2** Without prejudice to ScottishPower's other rights and remedies under and/or pursuant to the Contract and/or at law, the aggregate amount of any Delay Payment(s) due to ScottishPower pursuant to Condition 5.5.1 shall never exceed fifteen percent (15%) of the final total Price of the supply of the Equipment and Materials (and the performance of any Associated Services).

**5.5.3** Regardless of the application of any Delay Payment pursuant to Condition 5.5.1, should any part of the supply of the Equipment and Materials (and the performance of any Associated Services) not be completed within the timelines set out in or pursuant to the Contract, any loss, damages, claim or action suffered or incurred by ScottishPower to a third party due to breach of applicable contractual commitments to third parties, which are directly related to the relevant supply of the Equipment and Materials (and the performance of any Associated Services), shall be fully met by the Supplier.

**5.5.4** Notwithstanding Condition 5.5.1 and without prejudice to ScottishPower's other rights and remedies under and/or pursuant to the Contract and/or at law, if the damages, costs, expenses, losses and/or other liabilities suffered or incurred by ScottishPower as a result of any delay by the Supplier can be quantified and they represent an amount that is higher than the Delay Payment calculated in accordance with Condition 5.5.1, ScottishPower may request payment of the Delay Payment pursuant to Condition 5.5.1 or require the Supplier to indemnify and keep ScottishPower indemnified from and against

all such damages, costs, expenses, losses and/or other liabilities.

**5.5.5** This Condition 5.5 is without prejudice to any other liquidated damages applicable to the Supplier's supply of the Equipment and Materials (and the performance of any Associated Services) that are set out in any other part of the Contract.

The Delay Liquidated Damages shall apply and be due immediately upon the Supplier failure to comply with the Time Schedule or the established deadlines.

**5.5.6** ScottishPower is allowed to deduct any Delay Payment(s) due from the payment of any invoices.

**5.5.7** Where any Delay Payments, service credits and/or liquidated damages payments are due or payable by the Supplier (and/or are applied by ScottishPower to reduce any Prices that are payable to the Supplier) in accordance with the terms of the Contract in connection with any breach and/or failure by the Supplier, the parties acknowledge and agree that:

- a) the amount(s) and/or rate(s) of the relevant Delay Payments, service credits and/or liquidated damages payments (as applicable) that are set out in or are applied pursuant to the Contract: i) do not constitute a penalty; ii) represent a reasonable, proportionate and legitimate adjustment to the Prices to reflect the reduced value to ScottishPower and/or other ScottishPower Group Companies of the relevant Services provided by the Supplier as a result of the relevant breach and/or failure by the Supplier; and iii) in any event (and without prejudice to Condition 5.5.7b), are proportionate to the legitimate commercial interest of ScottishPower in ensuring that the Supplier performs the relevant obligation in accordance with the terms of the Contract, and include, without limitation, a genuine pre-estimate of the minimum amount of the Losses that will be suffered or incurred by ScottishPower and/or other ScottishPower Group Companies as a result of the relevant breach or failure by the Supplier; and
- b) unless expressly stated to the contrary in the Contract, the payment or application of any Delay Payments, service credits and/or liquidated damages payments shall not be ScottishPower's sole or exclusive remedy in connection with the relevant breach or failure by the Supplier.

## **5.6 TAXES**

**5.6.1** All the taxes, levies, compensation quotas, contributions, public prices or fees, duties and other costs or charges resulting from or in connection with the performance of the Supplier's obligations under and/or pursuant to the Supplier shall be on the account of the Supplier, except for value added tax that is properly due by ScottishPower in accordance with Condition 5.1.5.

**5.6.2** The Supplier shall provide ScottishPower with all the information or documentation required in accordance with applicable Laws, evidencing the legal importation of all Equipment and Materials, and (unless expressly stated to the contrary in the Contract) the Supplier shall be fully responsible for the payment of any taxes, duties, fees, contributions, etc. due as result of any importation or re-exportation of any Equipment and Materials.

**5.6.3** ScottishPower and the Supplier shall co-operate on obtaining the exemptions and other tax benefits that apply to the Supply and they shall further undertake to jointly establish, together with ScottishPower, the best way for the determination thereof. Where the Supplier was aware (or should have been aware, using Good Industry Practice) that any tax benefit applicable to the supply of the Equipment and Materials (and the performance of any Associated Services) was being claimed by any ScottishPower Group Company and, due to the lack of diligence or any other reason attributable to the Supplier, the relevant ScottishPower Group Company loses such tax benefit, ScottishPower shall be entitled (but not bound) to discount the financial amount of such anticipated benefit from the Prices payable to the Supplier.

## **6. ASSIGNMENT AND SUBCONTRACTING**

**6.1** Neither the Contract nor any part of the Contract nor any of the Supplier's rights, interests or obligations hereunder shall be assigned, subcontracted, novated or otherwise transferred by the Supplier without the prior written approval of ScottishPower. For the avoidance of any doubt, ScottishPower's prior approval shall be required with regards to both (i) the identity of the proposed transferee and (ii) the proposed scope of the supply of the Equipment and Materials (and the performance of any Associated Services) to be transferred. Any proposed assignee or subcontractor shall have to prove and give evidence of the fulfilment of and compliance with relevant and

required technical qualification for carrying out the subcontracted work, if so requested by ScottishPower.

**6.2** ScottishPower shall be permitted to assign, sub-contract, novate or otherwise transfer all or any of part of the Contract and/or all or any of its rights, obligations or interests hereunder to (i) any other ScottishPower Group Company on providing written notice to the Supplier (and without the consent of the Supplier) or (ii) to any other person with the consent of the Supplier (such consent not to be unreasonably withheld or delayed).

**6.3** Without prejudice to Condition 6.5, the Supplier shall expressly state in the contract or other documentation executed with a permitted assignee or sub-contractor the latter's obligation to comply with all the requirements set forth in the Contract, including, without limitation, the terms of these GTCs and the Technical Specification, and ScottishPower's right to have access to the assignee's or the subcontractor's facilities, personnel, information and documentation in order to verify its compliance with the applicable requirements. In addition, the Supplier shall expressly include in the contract or other documentation executed with the subcontractor the latter's waiver of any action against ScottishPower derived from the Contract or from the subcontracting agreement.

**6.4** Should the Supplier wish to subcontract all or any part of the supply of the Equipment and Materials (and the performance of any Associated Services) beyond the scope of any sub-contracting that has previously been approved by ScottishPower pursuant to Condition 6.1 or is set out in the Contract, or wishes to appoint any new sub-contractors, it shall require prior written approval from ScottishPower. Without prejudice to ScottishPower's right to reject any proposed sub-contractor at ScottishPower's discretion, any proposed sub-contractor shall have to prove and give evidence of its compliance with relevant and required technical qualifications for carrying out the subcontracted supply of the Equipment and Materials (and the performance of any Associated Services), if so requested by ScottishPower.

**6.5** The Supplier shall be the only party to which ScottishPower is responsible (in accordance with the terms of the Contract) in connection with the supply of the Equipment and Materials (and the performance of any Associated Services).

**6.6** In the event that ScottishPower provides its

prior written consent to any proposed sub-contracting by the Supplier in accordance with this Condition 6, the Supplier acknowledges and agrees that such consent shall not relieve the Supplier from any of its obligations under and/or pursuant to the Contract and the Supplier shall remain responsible for all acts and omissions of its permitted sub-contractors and all Personnel, whose acts and omissions shall be deemed to be acts and omissions of the Supplier. An obligation on the Supplier under and/or pursuant to the Contract to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all sub-contractors and Personnel also do, or refrain from doing, such act or thing.

**6.7** In the event that ScottishPower consents to any sub-contracting request by the Supplier, such approval shall be understood as continuing for the term indicated in the request, and any changes (in terms of time frame, company, subcontracted services, region, etc.) shall require an additional prior and express authorisation by ScottishPower. Notwithstanding the foregoing, ScottishPower may rescind any authorisation at any time, by simply communicating this to the Supplier in the manner described in these GTCs.

**6.8** Should the Supplier subcontract or assign Associated Services in accordance with this Condition 6, it shall require the subcontractors or assignees to comply with all the provisions set forth in applicable Laws and standards concerning social security and workplace safety and hygiene, as well as environmental legislation providing ScottishPower with all the relevant certifying documentation evidencing such compliance. The Supplier shall obtain from the relevant subcontractor or assignee written confirmation of awareness of its provision, which shall be sent to ScottishPower on or before the date on which the subcontractor or assignee starts executing its work. Even if ScottishPower does not demand this confirmation, the Supplier remains responsible for providing it.

**6.9** The Supplier shall not accept the any incentive or inducement from a potential sub-contractor to be appointed as a subcontractor in connection with the Contract, as sub-contractors must be chosen solely based upon the objective criteria of technical solvency and ultimate service quality to be provided to ScottishPower. Any such incentive or inducement shall be rejected and notified to ScottishPower using the Supplier Code of Ethics Mailbox available in the website. Non-compliance with the obligation described in this Condition 6.9 shall be considered non-compliance with the

Suppliers' Code of Ethics.

**6.10** In any case, the Supplier will be liable for the provision of Equipment and Materials and the performance of any Associated Services by its subcontractors. In case of any of subcontractors making a claim, judicially or extra-judicially, or announcing their intention to do so, by any means, against ScottishPower, ScottishPower will be entitled (without prejudice to its other rights and/or remedies under and/or pursuant to the Contract or at law) to withhold and use any amounts or guarantees, and any amounts owed to the Supplier, in order to cover the principal amount claimed by such sub-contractors plus any other reasonable amounts incurred or budgeted for expenses and costs that could arise, and to direct said retained sums to the payment of the claimed amounts.

## **7. CONFIDENTIAL INFORMATION**

**7.1** The Supplier undertakes to maintain in the strictest confidence:

- (i) all information obtained from SCOTTISHPOWER and/or any SCOTTISHPOWER Group Company or third parties (whether verbally or in writing and in any format) regarding the Contract, and/or any other activity of SCOTTISHPOWER and/or any SCOTTISHPOWER Group Company (including, without limitation, the Request for Bid, the Bid, the Contract and any other information relating to SCOTTISHPOWER's and/or any SCOTTISHPOWER Group Company's respective customers, personnel, contractors, business and/or activities and any Company Data or personal data, as defined below); and
- (ii) all information created, developed or formulated from any of the information referred to in Condition 7.1(i),

together, the "**Confidential Information**".

For the purpose of the Contract, "**Company Data**" means any information that relates to the operation or functionality of plants, factories, networks, or grids of SCOTTISHPOWER or its affiliates or to which the SCOTTISHPOWER or its affiliates have access, including, without limitation, infrastructure information and internal financial information.

Confidential Information is considered to be "Protected Information" for the purpose of implementing the necessary cyber-security and

information protection measures set forth in Condition 9 of these GTCs.

The Supplier and its Representatives (as defined below) may have access to commercially sensitive information which could give a competitive advantage, where applicable, to market regulated power sales companies. Therefore, unless SCOTTISHPOWER expressly advises the Supplier otherwise, the disclosure of such information by the Supplier and/or any of its Representatives to any of these companies (whether or not they belong to SCOTTISHPOWER Group) is prohibited. The purpose of this Condition is to comply, where applicable, with the provisions of the Code of Incompatible Activities for the SCOTTISHPOWER Group companies with regulated activities published on the [www.SCOTTISHPOWER.com](http://www.SCOTTISHPOWER.com) corporate website.

The following will not be considered Confidential Information:

- i. if it is in the public domain on the disclosure date by SCOTTISHPOWER or later becomes so without any non-compliance with this Condition 7 on the part of the Supplier;
- ii. if it is known to or is legally in the possession of the Supplier, without any restriction or obligation of confidentiality regarding it, before the disclosure date by SCOTTISHPOWER;
- iii. if it is legitimately obtained from a third party not subject to obligations of confidentiality; or
- iv. if it is developed independently by the Supplier without using Confidential Information.

**7.2** Should the Supplier be legally required to disclose any Confidential Information by any competent judicial or administrative authority (including but not limited to, oral questions, interrogations, requests for Confidential Information or documents, civil, administrative or criminal investigations or similar proceedings), it shall immediately and prior to disclosing any Confidential Information, communicate such requirement and the relevant information to SCOTTISHPOWER in writing, such that SCOTTISHPOWER may initiate relevant actions, including seeking an appropriate protective order, aimed at preventing, whenever legally possible, the disclosure of such Confidential Information or waive compliance with this provision.



**7.3** If in the absence of a protective order or the receipt of a waiver hereunder, Supplier is nonetheless advised by legal counsel that it is legally compelled to disclose such information, Supplier shall furnish only that part of the Confidential Information that, in the opinion of its legal advisers, it is obliged to disclose, and will use its best efforts to ensure the Confidential Information disclosed is treated confidentially, including making any applications or requests, for confidential treatment in the event that SCOTTISHPOWER has no standing to make such application or request.

In the absence of specific instruction by the competent authority regarding the part of the Confidential Information that must be disclosed by legal imperative, any decision on this must be taken by the Supplier after consultation with SCOTTISHPOWER.

**7.4** Supplier may only disclose Confidential Information to its Representatives provided that (i) the disclosure is necessary to carry out Supplier's obligations under the Contract, and (ii) such Representatives are bound by the same confidentiality obligations set forth in the Contract and (iii) Supplier shall remain responsible for any breach of the obligations set forth in the Contract to the same extent as if Supplier caused such breach.

**7.5.** The Supplier guarantees and undertakes (i) that the Confidential Information to which it and/or its Representatives (as defined below) has access will be protected with adequate security measures to prevent the Confidential Information from being disclosed to third parties, including, but not limited to, in accordance with the provisions of Condition 9 below; and (ii) that it shall have and shall ensure that its Representatives exercise the degree of care and take the actions necessary to comply with the confidentiality obligations imposed under this Condition 7.

**7.6** The confidentiality obligations described in this Condition 7 shall remain in force indefinitely.

**7.7** The Supplier shall be liable for any breach of the confidentiality obligations set forth in the Contract by any of its shareholders, administrators, Personnel, assignees, subcontractors or professional advisers (hereinafter, its "**Representatives**") who have had access to the Confidential Information. SCOTTISHPOWER reserves the right to take pertinent legal actions to defend its interests regarding the breach of confidentiality.

**7.8** The Supplier will indemnify SCOTTISHPOWER for all losses, claims damages, expenses and costs suffered or incurred by SCOTTISHPOWER and/or any SCOTTISHPOWER Group Company arising directly or indirectly from the breach by the Supplier and/or by any of its Representatives of the confidentiality obligations provided for in this Condition 7 or the disclosure or unauthorised use of the Confidential Information.

## **8. PROTECTING PERSONAL DATA**

For the purposes of the Contract, the term "**personal data**" means any information or data stored, processed or transmitted by the Iberdrola Group that relates to a particular identified or identifiable living individual or any other meaning or definition according to applicable data protection legislation.

Personal data are considered to be "Protected Information" for the purpose of implementing the necessary cyber-security and information protection measures set forth in these GTCs.

The personal data of the representatives of the Parties and those of the designated persons of contact who may take part in the Contract, shall be processed, respectively, by each Party, acting independently as data controller. Such data shall be processed for the purposes of complying with the rights and obligations derived from the Contract. The legal basis of such processing is the performance of this Contract and the compliance with any legal obligations of the Parties.

The personal data shall be stored for as long as the contractual relationship established herein is in force, and thereafter, such data shall be duly blocked, until the expiry of the statute of limitation of any available legal actions. The data shall be only processed by the Parties, and those third parties to which they are by law or contract obliged to disclose (such being the case of third parties that are services providers entrusted with any service connected with management or performance of the Contract).

The data subject may exercise, in the terms established in the applicable laws, the rights of access, rectification and erasure, as well as the rights of restriction to processing, to object and to data portability, by means of serving a written notice to each Party to the addresses indicated in the contract and, in the case of Iberdrola, also by serving the communication to its data protection officer at the e-mail address: [pwilkes@scottishpower.com](mailto:pwilkes@scottishpower.com). Where the rights of the individuals are not properly satisfied,

the data subject has the right to lodge a claim with the Spanish supervisory authority, that is, the Agencia Española de Protección de Datos, or with any other competent control authority.

Each Party expressly agrees to inform their employees and other contact persons of the terms of this clause, and shall holding the other party harmless and indemnify it from any damages arising from the breach of this obligation.

**8.1 Access by the Supplier, its Personnel or subcontractors to personal data that is under the management and control of ScottishPower.**

**OPTION 1: NO ACCESS TO PERSONAL DATA**

**8.1.1** Apart from the data of the Parties representative and the personal data of the contact person mentioned before, in the event that the performance of the Contract by the Supplier does not does not involve and/or necessitate the Supplier or any of the Supplier's Personnel having any access to personal data that is under the control of ScottishPower and/or any ScottishPower Group Company, the Supplier is expressly prohibited from such access in the event it were to accidentally be able to access said personal data.

The Supplier undertakes and attests to having informed its Personnel and subcontractors about the following requirements, and shall retain evidence and confirmation of compliance with this requirement:

- a) The prohibition against accessing personal data while conducting work for ScottishPower.
- b) The obligation to inform ScottishPower of any security incident related to the Contract that could or does give rise to eventual access to personal data.
- c) The duty for those who may eventually have access to keep any personal data confidential, which must also remain so after the Contract has ended, and not to use it for any purpose whatsoever.

Notwithstanding the foregoing, if, as a result of any security incident or if it is required or inevitable for the purposes of performing the Contract, the Personnel of the Supplier or its subcontractors were to access or handle Personal Data that is under the control of ScottishPower and/or any ScottishPower Group Company, the Supplier commits to

immediately inform ScottishPower of such access or handling, which shall be regulated by what is set out in "Option 2" in Condition 8.1.2 below.

**OPTION 2: HAVING ACCESS TO PERSONAL DATA**

**8.1.2** Apart from the data of the Parties representative and the personal data of the contact person mentioned before, when processing and/or handling any personal data that is under the control of ScottishPower and/or any ScottishPower Group Company that the Supplier and/or any of its Personnel has access to as a result of or in connection with the performance of the Contract, the Supplier must comply with (i) applicable laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes and/or rules of court relating to the processing of personal data and/or privacy and (ii) the terms of ScottishPower's Annex relating to the processing of personal data (as advised by ScottishPower to the Supplier from time to time) (the "Data Processing Annex").

**8.2 Processing by ScottishPower of Supplier personal data**

Apart from the data of the Parties representative and the personal data of the contact person mentioned before, in the event that ScottishPower and/or any ScottishPower Group Company processes and/or handles the personal data of the Supplier, its subcontractors and/or any of the Supplier's Personnel for specific, explicit and legitimate purposes such as managing building security and access control, compliance with the legislation on workplace risk prevention and management, as well as contracting paperwork, the Supplier undertakes that it shall comply with the principles and legality of personal data processing under applicable laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes and/or rules of court relating to the processing of personal data and/or privacy and any other applicable laws and, in particular, declares and undertakes:

- a. That the information given concerning the situation in the Social Security system (entry, removal, travel inside and outside of the European Community), legal situation in the United Kingdom, passport, work permit and residence), fitness for work, training, qualification, delivery of personal protective equipment and information on occupational hazard prevention for workers is all correct and true.

- b. That it commits to keeping such information updated throughout the duration of the Contract duration in such a way as to accurately reflect the current situation.
- c. That, prior to providing personal data to ScottishPower:
  - (i) It has informed its Personnel, subcontractors and subcontracting employees and has legitimized them in accordance with the applicable legislation, indicating that such personal data will be processed by Iberdrola for the purposes indicated in this clause 8.2 and pointing out also the potential assignment of personal data as a consequence of the application of the legislation in force; that the legal basis of the processing is the fulfilment of the Contract, the legal obligations of Iberdrola and the legitimate interest of Iberdrola in guaranteeing the security of its facilities.
  - (ii) It has informed its Personnel and subcontracting employees that: (i) the personal data shall be stored for as long as the contractual relationship established herein is in force, and thereafter, such data shall be duly blocked, until the expiry of the statute of limitation of any available legal actions; and (ii) they may exercise its rights free of charge, attaching a copy of the identity document or equivalent accreditation document, by contacting to data protection officers indicated in this Condition 8

## 9. CYBER-SECURITY AND INFORMATION SECURITY

The Cyber-security conditions set out in this section are applicable to the supply of all works, services, equipment and materials and to the performance of the Supplier's obligations under and/or pursuant to the Contract.

**9.1 "Cyber-infrastructure"** means the electronic information and communication systems and services, as well as the information contained therein. These systems, both those housed within the facilities as well as those that are cloud-based, be they proprietary or third-party, in any manner, are comprised of hardware and software for processing (creating, accessing, modifying and destroying), storing (on magnetic, electronic or other formats) and sending (shared use and

distribution) information, or any combination of said elements that include any type of electronic device such as, without limitation, standard computers (desktop/laptop) with internet connections, digital storage methods used on computers (e.g. hard drives), mobiles, smartphones, personal digital assistants, data storage media, digital and video cameras (including CCTV), GPS systems, etc.

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

**9.2** When the Supplier is expressly authorised by SCOTTISHPOWER to subcontract, the Supplier undertakes that the sub-contractor shall assume the same obligations assumed by the Supplier under this Condition, and in any case, the Supplier shall be liable for any breach by the sub-contractor or its personnel of the obligations established here concerning cyber-security and information security and privacy.

**9.3** Data or information related to the Contract that is property of SCOTTISHPOWER and/or any SCOTTISHPOWER Group Company or the Cyber-infrastructure elements provided to the Supplier by SCOTTISHPOWER and/or any SCOTTISHPOWER Group Company, shall only be processed and used by Supplier for the purpose of fulfilling the obligations contained within the Contract and for no other purpose whatsoever.

The Supplier shall ensure compliance with all applicable data protection, privacy and security laws and regulations and shall not place SCOTTISHPOWER, by act or omission, in a situation of non-compliance.

**9.4** The Supplier must, at all times, know the level of information protection that should be afforded to the Protected Information as the

corresponding standards and applicable laws and regulations, and it shall adopt the technical and organizational security measures adequate thereto.

Supplier shall, at least, maintain technical and organizational security measures consistent with the type of Protected Information being processed and the services being provided by Supplier, to secure Protected Information, which measures shall implement industry accepted protections which include physical, electronic and procedural safeguards to protect the Protected Information supplied to Supplier against any Data Security Breach or other security incident, and any security requirements, obligations, specifications or event reporting procedures set forth in the Contract. As part of such security measures, Supplier shall provide a secure environment for all Protected Information and any hardware and software (including servers, network, and data components) to be provided or used by Supplier as part of its performance under the Contract on which Protected Information is contained to the extent the same is located on Supplier's premises.

For the purpose of the Contract, "**Data Security Breach**" means: (A) the loss or misuse (by any means) of Protected Information; (B) the inadvertent, unauthorized and/or unlawful Processing, corruption, modification, transfer, sale or lease of Protected Information; or (C) any other act or omission that compromises the security, confidentiality, or integrity of Protected Information.

The Supplier is not authorised to disclose, provide direct or indirect access to the Protected Information or provide it to a third party, including affiliates, even for storage purposes. The Supplier is also not authorised to provide the capacity to decrypt encrypted passwords. Should intervention by a third party be necessary, express written authorisation from SCOTTISHPOWER indicating its purpose must be obtained, and the third party will be required to fulfil the same obligations that are required of the Supplier.

- 9.5** If, in order to fulfil the purpose of the Contract, SCOTTISHPOWER makes available to the Supplier's Personnel or its subcontractors

or subsidiaries any electronic devices or other computerised media or resources, or it provides a SCOTTISHPOWER email account or credentials for accessing applications, internet connectivity, or other Cyber-infrastructure elements of SCOTTISHPOWER, the Supplier shall be responsible for ensuring that Personnel and subcontractors are informed and expressly commits to comply with the security and acceptable use conditions established by SCOTTISHPOWER, which shall be provided in a separate appendix. The Supplier shall retain the documents that prove compliance with these duties and shall deliver them to SCOTTISHPOWER upon request.

- 9.6** When the scope of the Contract implies the use or connection of the Supplier's cyber-infrastructure to that of SCOTTISHPOWER, SCOTTISHPOWER shall make available reasonable physical, technical and administration security measures to protect itself and to help prevent any data Security Breach or other security incident from taking place in respect of its own Cyber-infrastructure.

1. The connection between SCOTTISHPOWER's and the Supplier's network is not permitted, unless expressly agreed to in the Contract, in which case it must be done by establishing encrypted and authenticated virtual private networks, and the number of interconnection points between the two networks must be the minimum that is compatible with the required level of availability. The connection with the Supplier's network shall be removed as soon as there is no need for it.

Direct user connections from the Supplier to SCOTTISHPOWER's network are not permitted. If necessary, they will set up only after SCOTTISHPOWER has authorised it and only for the agreed upon duration.

2. If the Contract is fully or partially carried out at the Supplier's facilities, the Supplier must establish the mechanisms and procedures for physical access to said facilities so as to prevent unauthorised personnel from accessing the Cyber-infrastructure or Protected Information

during the time in which the Supplier has access to Protected Information.

3. The Supplier shall establish the mechanisms and procedures for identifying, authenticating and controlling logical access necessary to prevent unauthorised personnel from accessing its Cyber-infrastructure elements and SCOTTISHPOWER's Protected Information, and, in particular:

- a. Supplier will have procedures based on the principle of least privilege when granting, assigning and withdrawing authorized access and permissions to Personnel of the Supplier or its subcontractors including privileged users or administration taking into account the need for, the use of and the confidentiality of the data and resources to perform their tasks;
- b. Supplier will maintain an updated inventory of the access and permissions granted and will withdraw access permissions from its Personnel who cease working within a period of less than 24 hours in order to comply with the purposed defined in the Contract. Credentials must always be encrypted when stored and transmitted;
- c. It shall have policies and procedures that ensure the strength of the passwords and that they are updated regularly. Passwords shall be changed during the installation processes of new hardware or software, and in particular, the Supplier's default passwords will be changed;

4. The Supplier shall implement the technical and organisational measures necessary to ensure operational continuity under the service level agreements adopted for the Contract (including but not limited to contingency plans, backup and recovery procedures). In particular:

- a. The Supplier shall make backup copies of the Protected Information as frequently as is required for the performance of the Contract and according to the nature of the data, establishing the appropriate procedures and mechanisms to ensure that the data can be retrieved,

that only authorised Supplier's Personnel obtain them and that they are transferred and stored in such a way as to prevent access or manipulation by unauthorised persons.

- b. The same security measures shall apply to backups as to the original Protected Information.
5. In the event access has been expressly authorised by SCOTTISHPOWER to use the Supplier's own computing equipment for accessing SCOTTISHPOWER's and/or any SCOTTISHPOWER Group Company's Cyber-infrastructure, the Supplier shall guarantee and undertake that there are adequate security measures to protect the stationary or portable computing equipment and mobile devices used to access such Cyber-infrastructure or for storing, processing or transmitting the Protected Information, including but not limited to:
    - a. Automatic locking if the device is left unattended for a certain period of time. User authentication will be required for unlocking.
    - b. Protection against malicious software and known vulnerabilities.
    - c. Updating the operating system as often as the Supplier requires.

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

The Supplier shall maintain an action procedure should the equipment or device be lost or stolen, ensuring, insofar as possible that the event be communicated promptly, Protected Information regarding SCOTTISHPOWER be deleted safely in accordance with recognised standards, and access to



SCOTTISHPOWER's systems or systems containing SCOTTISHPOWER's data be suspended.

Before equipment is reused or replaced, the Supplier must protect, or if applicable remove, all of the information stored on it, ensuring that unauthorised personnel cannot access or recover it.

6. The Supplier shall establish adequate procedures to guarantee protection against loss or unauthorised processing of files, computer media and paper documents containing information related to the Contract and guarantee that they are destroyed when the reasons for their creation no longer apply. Extracting data from a file and downloading it to a server or delivering it electronically is considered equivalent to the computer media for the purposes of complying with these measures.

SCOTTISHPOWER may solicit information concerning any processing of Protected Information by the Supplier. In these cases the Supplier must apply security measures according to the sensitivity of the information that they contain.

7. The Supplier shall include security measures appropriate to the nature of the information processed in developing, maintaining and testing the equipment that will be used in fulfilling the Contract. The Supplier will adopt secure code development standards and ensure that no real data is used in test environments. If absolutely necessary, SCOTTISHPOWER's express authorisation will be required and the same security measures required for the work environment will be applied to these test environments.

- 9.7 When the scope of the Contract includes the supply of equipment and/or materials, the Supplier shall prove that best security practices and standards have been applied for the design, fabrication, maintenance, and, where applicable, installation of the supplied equipment and/or materials, including its components.

For any such equipment and/or materials with information processing capacity or network connectivity options:

- a. The Supplier shall provide evidence or certificates that guarantee design security, firmware/software updates and malware protection.
- b. The Supplier shall conduct periodic analyses of vulnerabilities and inform SCOTTISHPOWER about any necessary updates, especially those that affect security.
- c. All internet connected devices shall be protected with adequately complex passwords that can be changed by SCOTTISHPOWER.
- d. The configuration of devices, equipment and materials shall be adjustable exclusively according to SCOTTISHPOWER's needs, and any unnecessary functionality deactivated. Should the Supplier conduct any configuration, documentation to that effect shall be provided.

- 9.8 The Supplier shall implement a procedure to notify of and manage any Data Security Breach or security incidents, which it will disclose among its Personnel, and will act with special diligence in those cases involving critical elements of SCOTTISHPOWER's Cyber-infrastructure or Protected Information or when the reputation or legal responsibility of SCOTTISHPOWER and/or any SCOTTISHPOWER Group Company or the interests of the persons whose information is processed may be affected.

The Supplier shall immediately notify SCOTTISHPOWER of the existence of any security incident always within a maximum period of 24 hours after becoming aware of it, or if shorter, the shortest legal period, and shall assist and cooperate with SCOTTISHPOWER in terms of any necessary communication to third parties and other reasonable measures to remedy the situation when SCOTTISHPOWER requests it or as required by law.

Merely by way of example, the Supplier shall notify SCOTTISHPOWER the following:

- a. Access or attempts to access systems, equipment, applications, files, repositories,

- devices etc. by unauthorised persons or programs.
- b. Disclosing or compromising protected Information including but not limited to credentials, authentication or encryption data.
- c. Total or partial loss of data or information for any reason.
- d. Uncontrolled distribution: sending information to people who should not receive it.
- e. Loss or removal of computer equipment or storage media, files, repositories or part of their contents.
- f. Attacks caused by viruses / malicious software that may affect the exchange of information between the Supplier and SCOTTISHPOWER.
- g. Others: any irregularity or deficiency detected regarding compliance with the safety criteria indicated in this section.

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

- 9.9** Once the Supplier's contractual performance has been completed, or in the event of a termination of the Contract, the Supplier shall return to SCOTTISHPOWER or securely destroy, at SCOTTISHPOWER choice, all information owned by SCOTTISHPOWER that may be in its possession, as well as any media or document that includes Protected Information. Should information destruction be selected, the Supplier shall provide its corresponding certification by following recognised standards for doing so.

Furthermore, all equipment, devices and storage media owned by SCOTTISHPOWER shall be returned and any potential connectivity to SCOTTISHPOWER's Cyber-infrastructure will be suspended. The same shall occur whenever the infrastructure elements or information are no longer needed for the performance of the Supplier's obligations under the Contract.

If the Supplier is required by applicable law to retain SCOTTISHPOWER's Protected Information, it shall keep both the Protected Information and the items that contain it duly protected and only for the time necessary in accordance with applicable laws and

regulations. Once said period has lapsed, they will be destroyed or returned to SCOTTISHPOWER, at SCOTTISHPOWER choice, as will any media or documents containing any such data and no copy of the information will be kept.

- 9.10** At SCOTTISHPOWER's request, the Supplier shall provide evidence of security assessments or audits. SCOTTISHPOWER shall have the right to conduct independent audits and/or inspections of the Supplier's security measures at its data processing facilities and any cloud storage services. Such audits or inspections shall be conducted by SCOTTISHPOWER or by a representative or audit agency approved by SCOTTISHPOWER. The Supplier undertakes to comply with the possible plan of action that may result from said audits.

- 9.11** The Supplier shall provide SCOTTISHPOWER with reasonable and timely support in responding to any request, complaint or other communications received by any individual, government, governmental agency, regulatory authority or other bodies that may have an interest in the use, leakage, disclosure or misuse of any data or information related to the Contract, included Protected Information, insofar as they comply with the processing the data or information by the Supplier.

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

- 9.12** To the extent that Supplier is afforded regular access in any way to "Cardholder Data" as defined below and for so long as it has such access, the following requirements shall apply with respect to the Cardholder Data:

- a. Supplier represents that it is presently in compliance, and will remain in compliance with the Payment Card Industry Data Security Standard ("**PCI Standard**"), and all updates to PCI Standard, developed and published jointly by American Express, Discover, MasterCard and Visa ("**Payment Card Brands**") for protecting individual credit and debit card account numbers ("**Cardholder Data**").
- b. Supplier acknowledges that Cardholder Data is owned exclusively by

SCOTTISHPOWER, credit card issuers, the relevant Payment Card Brand, and entities licensed to process credit and debit card transactions on behalf of SCOTTISHPOWER, and further acknowledges that such Cardholder Data may be used solely to assist the foregoing parties in completing a transaction, supporting a loyalty program, providing fraud control services, or for other uses specifically required by law, the operating regulations of the Payment Card Brands, or the Contract.

- c. To the extent Cardholder Data is regularly maintained on the premises or property of Supplier, Supplier shall maintain a business continuity plan addressing the possibility of a potential disruption of service, disaster, failure or interruption of its ordinary business process, which business continuity plan provides for appropriate back-up facilities to ensure Supplier can continue to fulfil its obligations under the Contract.
- d. Supplier agrees that, in the event of a Data Security Breach or other security incident arising out of or relating to Supplier's premises or equipment contained thereon, Supplier shall afford full cooperation and access to Supplier's premises, books, logs and records by a designee of the Payment Card Brands to the extent necessary to perform a thorough security review and to validate Supplier's compliance with the PCI Standards; provided, that such access that be provided during regular business hours and in such a manner so as to minimize the disruption of Supplier's operations.

## **10. SUSPENSION AND TERMINATION**

### **10.1 CONTRACT SUSPENSION**

Iberdrola may, by written notice, direct Supplier to suspend performance of any or all of the Supply pursuant to any Contract for a specified period of time.

If such suspension is caused by the default of Supplier or any other cause that allows Iberdrola to terminate the Contract, Iberdrola (without prejudice to its rights under clause 10.2, which shall subsist during any period of suspension) shall not be obliged to pay the prices and/or any other costs, fees, charges or other amounts to the Supplier during any period of suspension.

If such suspension is not caused by the default of Supplier, Supplier will be compensated an equitable amount for all Supply satisfactorily performed by Supplier as of the date of such suspension in accordance with the payment terms of the applicable Contract, and any other equitable amounts directly related to the Supply performed prior to suspension, provided that such amounts are reasonably documented by Supplier and accepted by Iberdrola.

Upon receipt of such notice to suspend, Supplier shall: (i) suspend its performance of the Supply, (ii) place no further orders in connection with the Supply, (iii) suspend all orders related to the Supply, (iv) protect and maintain the Supply, and (v) otherwise mitigate Iberdrola's costs and liabilities for those portions of the Supply suspended. Supplier shall promptly resume the Supply upon receipt of instructions from Iberdrola to do so, subject to equitable adjustments to the schedule and cost for performing the Supply, as may be agreed to by the Parties

Supplier recognizes and accepts that the exercise of the suspension right in accordance with this Section 10.1 by Iberdrola shall not give right to Supplier to any additional payment or compensation pursuant to the Contract.

### **10.2 CONTRACT TERMINATION**

**10.2.1** Without prejudice to ScottishPower's rights of termination under Condition 10.2.2, the Contract may be terminated, wholly or partially, by mutual agreement between the parties. Should this occur, the parties shall agree and sign a termination agreement that shall stipulate the payment for completed work, or any that stands at an advanced state as at the date of the request from either party to terminate by mutual agreement.

**10.2.2** The Contract can be fully or partially terminated by ScottishPower (without the Supplier being able to seek compensation, damages or liability from ScottishPower and/or any ScottishPower Group Company) by providing notice to the Supplier in any of the following cases:

- a) Breach or non-compliance on the part of the Supplier of any of its obligations and/or duties under and/or pursuant to the Contract;
- b) Where there are delays in the supply of the Equipment and Materials and/or any Associated Services and Materials caused by the Supplier that permit the application of Delay Payments on three or more occasions;

- c) Where, for reasons attributable to the Supplier, the Supply is suspended or stopped or there is no continuity or due diligence in the supply thereof, including when such events are due to strikes or conflicts whether or not they are beyond the scope of the Supplier's company;
- d) Dissolution, transformation, merger, takeover or any other structural modification to the company, change of control, fundamental change to the corporate purpose, reduction of capital or death of the Supplier;
- e) If an Insolvency Event occurs in relation to the Supplier;
- f) Where compliance with the Contract would involve a conflict of interest for the Supplier or for ScottishPower;
- g) Where the Supplier contracts with companies that compete with ScottishPower or any ScottishPower Group Company;
- h) Where so ordered by any administrative or judicial authority or legally required by any third party;
- i) By the unilateral requirement of ScottishPower, through written notification to the Supplier with a prior notice period of not less than fourteen (14) days, without the need for any justification whatsoever;
- j) The draw-down of any or all of the assets and/or businesses of the Supplier, as well as ceasing or the threat to cease its business activity;
- k) If ScottishPower, acting reasonably, considers any conduct, act or omission of the Supplier (or its Personnel or sub-contractors) to be harmful to the interests and/or reputation of ScottishPower, so that it affects compliance with the Iberdrola Suppliers' Code of Ethics;
- l) In the event the credit rating or financial position of the Supplier reduces below the relevant level required by ScottishPower; and/or
- m) Should there be substantial changes in the financial, monetary or debt markets, decreases in the credit ratings or similar circumstances that could affect the liquidity, solvency or asset situation of ScottishPower.

Whenever one of the above causes occurs, ScottishPower shall be able to fully or partially terminate the Contract (immediately or on such period of notice as ScottishPower may notify) and ScottishPower must notify this to the Supplier. Such an early termination will not give rise to any compensation or damages or other payment in favour of the Supplier.

**10.2.3** Upon receiving any notification of

termination from ScottishPower, the Supplier will stop all work and activities connected to the Supply or, if applicable, it will follow the instructions given by ScottishPower regarding the termination of works in progress. Additionally, at the request of ScottishPower, the Supplier shall return or deliver to ScottishPower all documents, information and any other material it possesses and that contains Protected Information, being likewise obligated to compensate ScottishPower for any damage or harm that ScottishPower and/or any ScottishPower Group Company suffers as a result of non-compliance by the Supplier and early termination of the Contract.

**10.2.4** The parties do not intend that expiry or termination of the Contract shall give rise to a relevant transfer pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). In the event that any person employed or engaged by the Supplier (or the Supplier's sub-contractors or agents) claims that his or her contract of employment has transferred to any ScottishPower Group Company (or any replacement supplier) pursuant to TUPE (or any legislation in any jurisdiction having similar or equivalent effect to TUPE) on termination or expiry of the Contract (or at any other time), the Supplier shall indemnify and keep the relevant ScottishPower Group Company fully indemnified on demand against any claims, actions, demands or proceedings brought against any ScottishPower Group Company or any replacement supplier by any such persons and any losses, liabilities, damages, costs, charges and expenses suffered or incurred by any ScottishPower Group Company or any replacement supplier in connection with the employment and/or termination of employment of such persons, whether arising before, on or after termination or expiry of the Contract.

**10.2.5** Expiry or termination of the Contract for whatever reason shall not affect the accrued rights of the parties at the date of expiry or termination and, in particular (but without limitation), the right to recover damages. After expiry or termination of the Contract, the provisions of the Contract that expressly or implicitly are intended to survive expiry or termination of the Contract shall remain in force.

## **11. LIABILITY**

The Supplier is solely liable to Iberdrola for the due execution of the Contract, including any duty to repair damages and give compensation for any harm that may result. The approval by Iberdrola of documents or proposals prepared by the Supplier or its Personnel in fulfilling the Contract, or carrying out

reviews, tests or trials, while still to Iberdrola's satisfaction, shall not free the Supplier from its liability nor mean that said responsibility is shared by Iberdrola.

The recommendations or observations formulated by Iberdrola during Contract execution or any reviews, tests or trials shall not exempt the Supplier from such liability or have it lessened, nor excuse the Supplier from complying with the terms of the Contract, except for those cases in which Iberdrola demanded the pursuit of said recommendations or observations and with the express reservation of the Supplier regarding compliance.

A strike during Contract execution shall never constitute an exculpatory reason for liabilities.

The contractual risks, obligations and responsibilities of the Supplier are not limited by taking out the insurance policies referred to in these GTC, and as a result, the amount and scope of the duties and responsibilities that arise from taking on such risks shall not be reduced in any way by the named insurance policies or failure to contract or have sufficient coverage for them to the detriment of Iberdrola or third parties.

Supplier specifically and expressly agrees to indemnify, defend, and hold harmless Iberdrola and its officers, directors, Personnel and agents (hereinafter collectively "Indemnitees") against and from any and all claims, demands, suits, losses, costs and damages of every kind and description, including attorneys' fees and/or litigation expenses, brought or made against or incurred by any of the Indemnitees to the extent resulting from or arising out of any acts or omissions of Supplier, its employees, agents, representatives or subcontractors of any tier, their employees, agents or representatives in the performance or non-performance of Supplier's obligations under Contract or in any way related to a Supply.

The indemnity obligations under this Section 12.1 shall include without limitation:

- a. Loss of or damage to any property of Iberdrola, Supplier or any third party; and
- b. Bodily or personal injury to, or death of any person(s), including employees of Iberdrola, or of Supplier or its subcontractors of any tier.

The invalidity, in whole or part, of any of the foregoing paragraphs will not affect the remainder of

such paragraph or any other paragraph in this Section. Supplier's indemnity obligation under this Section shall not extend to any liability to the extent caused by the sole gross negligence or wilful misconduct of any of the Indemnitees.

## **12. OTHER PROVISIONS**

### **12.1 Sanctions**

Neither the Supplier, its subsidiaries nor to the knowledge of the Supplier, any of their employees, directors, officers or agents or any persons acting on their behalf (the "**Related Persons**") are currently or can reasonably expected to be in the future the subject of (a) any U.S. sanctions administered or enforced by the Office of Foreign Assets Control of the U.S Department of the Treasury ("**OFAC**") or (b) any measures equivalent to such OFAC measures administered or enforced by (i) the European Union, (ii) Her Majesty's Treasury, (iii) the U.S. government or (iv) the United Nations Security Council (collectively, "**Sanctions**"), nor is the Supplier located, organized or resident in a country or territory that is the subject of Sanctions.

Notwithstanding anything in the Contract to the contrary, in the event that the Supplier or any of the Related Persons are subject of any Sanctions: (i) the Supplier shall immediately notify Iberdrola; (ii) ScottishPower shall have the right to unilaterally terminate the Contract without any damages or compensation being due to the Supplier and (iii) the Supplier shall defend, indemnify and hold harmless ScottishPower against any and all costs, damages, losses, liabilities, expenses, judgments, fines, settlements and any other amounts of any nature, including reasonable attorneys' fees, arising from, caused by or related to the Supplier or any of the Related Persons being subject of any Sanctions.

### **12.2 COMMUNICATIONS**

All notifications, requests and other communications that must occur between the parties shall be done in writing and be considered complete, if they are, primarily, supplied using a sure communication informatics system implemented by ScottishPower for such a purpose and that provides adequate warranties over the validity and the propriety of the provided information. Otherwise, the communications shall be (i) delivered personally, (ii) sent by fax or email (with receipt confirmation), or (iii) sent by mail (with delivery confirmation) to the address given for each party in the Contract, being obligated to give warranty notice of any address



change or transfer.

### **12.3 AMENDMENTS**

**12.3.1** ScottishPower may request a change to the timing, nature, description or extent of the supply of the Equipment and Materials (and the performance of any Associated Services) at any time. Any change that is agreed in writing and signed by both parties shall be subject to the terms of the Contract.

**12.3.2** Except as expressly provided to the contrary in the Contract, no variation to the Contract shall be binding upon the parties unless made in writing and signed by authorised representatives of each of the parties.

### **12.4 INDUSTRIAL AND INTELLECTUAL PROPERTY**

The Supplier recognises that Iberdrola is and shall remain the exclusive owner of the industrial and intellectual property rights that arise from Contract execution, for an unlimited period and globally, with the power to cede it to third parties, and pursue any means of exploitation, support or diffusion methods. Therefore, the Supplier shall provide any documents needed for effective transfer of rights as a function of this clause, following applicable legislation at all times and/or in all regions, and for inscription in any patent office or intellectual property registry.

The Supplier warrants authorship and originality of the results of industrial and intellectual property that may arise from Contract execution, as well as the peaceful enjoyment of rights that are bestowed through this document, stating that no commitments or levies of any kind are or shall be contracted contingent to it. The Supplier shall hold Iberdrola harmless from all claims that may arise from a third party with respect to authorship, originality or ownership of the rights bestowed upon Iberdrola through this document, being liable to Iberdrola for all actions or claims that may be asserted.

Iberdrola shall have the right to name the attorneys or solicitors it wants as representation and defence in legal actions or administrative proceedings that come up in this regard, and the Supplier shall handle all expenses, allowances and fees that must be paid to these professionals.

The endorsement of the Contract does not imply the cession of any intellectual or industrial property rights owned by IBERDROLA, unless there is express written authorisation. Any use, publication or printing by the Supplier of the trade names, trademarks, emblems,

logotypes, or any other distinctive symbol of Iberdrola or its partners shall require prior approval in writing by Iberdrola.

### **12.5 CODES AND STANDARDS**

**12.5.1** Without prejudice to the Supplier's other obligations under and/or pursuant to the Contract, as a general rule and except as expressly specified otherwise in the Contract, the Equipment and Materials and any Associated Services will be designed, manufactured, inspected, tested and supplied in accordance with the Laws, codes, standards, and regulations in force in the United Kingdom.

**12.5.2** The Supplier shall follow Good Industry Practice for the design, manufacturing, inspection and test processes with regard to any supply not regulated by the applicable Laws, codes, standards or regulations.

### **12.6 LANGUAGE AND UNITS OF MEASURE**

**12.6.1** The Contract, all of the documents, plans and notifications by and between the Supplier and ScottishPower and the instructions and specifications shall be in English.

**12.6.2** International Measurement System units shall be used in all of the documents and plans, and all of the recording or indexing instruments shall be graduated without exception in units of the aforementioned system.

### **12.7 LICENCES, PERMITS AND AUTHORISATIONS**

**12.7.1** Each party shall obtain and maintain, on its own account, the licences, permits and authorisations required to fulfil its contractual obligations, save to the extent that other specific obligations regarding the obtaining and/or maintaining of any particular licences, permits and/or authorisations are set out elsewhere in the Contract.

**12.7.2** Each party shall provide the other with reasonable assistance for obtaining and maintaining such licences, permits and authorisations. In particular, the Supplier shall supply ScottishPower with information and documents such as plans, diagrams, calculations, etc. that may be required by the competent bodies to authorise the commissioning of the facility to which the Equipment and Materials and/or any Associated Services relate and/or are incorporated.

**12.7.3** In cases of importation (and unless expressly stated to the contrary in any other provision of the Contract), the Supplier, regardless of the established delivery condition, shall obtain and maintain, on its own account, any exportation and importation licences, permits and authorisations required by any governmental authority in its respective countries.

## **12.8 FORCE MAJEURE**

**12.8.1** For the purposes of these GTCs, an "Event of Force Majeure" is an event that:

- (a) is beyond the affected party's reasonable control;
- (b) could not reasonably have been provided against by the affected party prior to its occurrence or reasonably anticipated by the party prior to entering into this Contract;
- (c) is not the result of the fault or negligence of either of the parties;
- (d) having arisen could not reasonably have been avoided or overcome by the affected party; and
- (e) is not attributable to either party.

This may include events or circumstances of the kind listed below (provided always, for the avoidance of doubt, that such events or circumstances shall only constitute Events of Force Majeure to the extent that the each of the conditions in Conditions 12.8.1(a) to 12.8.1(e) are satisfied):

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign or public enemies;
- (ii) rebellion, terrorism or threats of terrorism, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by persons other than the personnel and other employees of the Party claiming such Event of Force Majeure;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity;
- (v) natural catastrophes or disasters such as earthquake, landslide, drought, cyclones, typhoons, hurricane, tsunamis, perils of sea, lightning, induction caused by lightning, fire,

subsidence, mud flow, other earth or water movement, floods, epidemic or volcanic activity;

- (vi) protester action, theft or attempted theft, malicious mischief, vandalism, illegal blockade;
- (vii) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and/or
- (viii) aviation and maritime disasters.

**12.8.2** The five conditions referred to in Conditions 12.8.1(a) to 12.8.1(e) must be met for the relevant event or circumstance to be considered as an Event of Force Majeure. Economic difficulties of either of the parties (or their sub-contractors), foreseeable adverse weather, any industrial dispute relating to the Supplier, the Personnel or the Supplier's sub-contractors and/or agents and/or any other failure in the Supplier's own supply chain shall not be deemed to be an Event of Force Majeure.

**12.8.3** In all cases of an Event of Force Majeure, the affected party shall notify the other party in writing no later than seven (7) days from the day that the Event of Force Majeure occurs and using all means and documentation it has available.

**12.8.4** The party claiming that an Event of Force Majeure has taken place shall have the burden of proof of establishing that an Event of Force Majeure has actually taken place.

**12.8.5** Neither party shall be liable to the other for any total or partial failure, including interruption or delay, in the performance of its respective duties or obligations under the Contract if such failure arises from or is attributable to an Event of Force Majeure. As soon as possible, the parties shall conduct good faith negotiations in order to proceed with the performance of the Contract. In any case, the party affected by the Event of Force Majeure event must pursue any reasonable effort to mitigate the effects of said cause in order to enable the ongoing performance of the Contract.

**12.8.6** ScottishPower shall be entitled to terminate all or part of the Contract (without ScottishPower having any liability to the Supplier) with immediate effect by notifying the Supplier in the event that an Event of Force Majeure event affects the Supplier's performance of all or any significant part of the Equipment and Materials under the Contract for a period of 7 days or more.

**12.8.7** Should the parties not reach an agreement regarding the application of an Event of Force Majeure, the situation shall be resolved in accordance with Condition 12.9 below.

## **12.9 SEVERABILITY**

**12.9.1** If any Condition, sub-Condition or other provision of these GTCs or the Contract is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, provisions and conditions of the Contract shall nevertheless remain in force and effect. Upon such determination, the parties shall negotiate in good faith with a view to agreeing amendments to these GTCs or the Contract so as to achieve the original intention of the parties to the fullest extent permitted by law, with the aim that the object of the Contract is fulfilled to the extent possible.

**12.9.2** Any right, term or conditions of these GTCs or the Contract may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by the party waiving such right, term or condition. Notwithstanding the foregoing, no failure or delay by any party in exercising any right hereunder shall be interpreted as a waiver thereof, nor shall any single or partial exercise preclude any other further exercise thereof or the exercise of any other right hereunder, nor shall it in any way affect the validity of the Contract. The exercise of rights or options contained in the Contract by one of the parties shall not impede or limit the exercise of any other right that may also be contained in the Contract.

## **12.10 APPLICABLE LAW AND JURISDICTION**

**12.10.1** Where the primary place of performance of the Contract is Scotland, these GTCs and the Contract shall be governed by the law of Scotland and the Scottish courts shall have exclusive jurisdiction in relation to any matters arising in respect of this Contract. Where the primary place of performance of the Contract is anywhere other than Scotland, these GTCs and the Contract shall be governed by the law of England and the English courts shall have exclusive jurisdiction in relation to any matters arising in respect of this Contract.

**12.10.2** Where a party considers that a dispute exists (the "Dispute") that party shall give formal written notice to the other party of the existence of the Dispute.

**12.10.3** All Disputes between the parties shall be in the first instance referred by the Parties to their relevant respective representatives for resolution.

**12.10.4** If any Dispute cannot be resolved by the parties' relevant representatives within thirty (30) working days after the date of referral under Condition 12.10.2, the dispute shall be definitively resolved pursuant to the Condition 12.10.1.

## **12.11 CORPORATE SOCIAL RESPONSIBILITY OF THE SUPPLIER**

**12.11.1** The Supplier must ensure that the following measures are followed within its organisation in the performance of its obligations under the Contract:

- (a) promote good practices, which foster and promote respect for human rights;
- (b) avoid complicity – in any form – in human rights abuses;
- (c) respect the freedom to join unions or the right of workers to engage in collective bargaining, subject to legal requirements existing under the law governing the Contract;
- (d) eliminate all types or sorts of forced and compulsory labour, understood to be all types of work or service demanded from an individual under the threat of any sort of punishment. Work should be obtained from the individual freely and voluntarily;
- (e) avoid any type of child labour in its organisation, respecting minimum contracting ages in accordance with applicable, in force legislation, and possess suitable and reliable means for the verification of employees' age;
- (f) eliminate all discriminatory practices with respect to employment and occupation. To this effect, any distinction, exclusion or preference based on race, colour, gender, religion, political opinion, national or social origin, whose consequence is the nullifying or altering of equality with respect to opportunities or work in one's employment and occupation, shall be considered to constitute discrimination;
- (g) maintain a preventative focus in the face of environmental issues in order to achieve sustainable development, limiting activities which may negatively impact the environment; and

(h) without prejudice to Condition 12.12 combat corruption in all of its forms, including extortion and bribery. To this effect, corruption will be understood to be the abuse of power with which one has been entrusted for private gain.

**12.11.2** Without prejudice to Condition 4.1.8.b), the Supplier agrees to comply with all applicable legislation in force which is linked to the provisions set out in this Condition 12.11.

**12.11.3** The Supplier agrees to notify ScottishPower with regard to any situation in which a breach of the aforementioned principles is identified by the Supplier, as well as with regard to the plan to remedy such a breach. The Supplier shall also provide a plan for the remedy of any breach of the aforementioned principles that is identified by ScottishPower. In the event that corrective plans are not implemented, ScottishPower reserves the right to terminate the Contract.

**12.11.4** Where the Supplier, in the performance of its obligations under the Contract is authorised by ScottishPower to sub-contract any of its obligations, the Supplier must ensure that all of its sub-contractors provide commitments to the Supplier that are substantially the same as those set out in this Condition 12.11.

**12.11.5** The Supplier will, at all times during the period in which the Contract is in force, permit ScottishPower to review the degree of compliance with the principles established in this Condition 12.11.

## **12.12 PREVENTION OF CORRUPTION**

**12.12.1** Each Party shall:

- a) comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); and
- b) have and shall maintain in place throughout the term of the Contract, and enforce where appropriate, its own policies and procedures to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.

**12.12.2** The Supplier shall:

- a) promptly report to ScottishPower any request

or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and

- b) immediately notify ScottishPower if a foreign public official exerts a direct or indirect influence over the performance of the Contract.

**12.12.3** The Supplier shall not:

- a) offer or agree to give any person working for or engaged by ScottishPower or any other ScottishPower Group Company any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to the Contract, or any other agreement between the Supplier and ScottishPower or any ScottishPower Company, including its award to the Supplier and any of the rights and obligations contained within it; nor
- b) enter into the Contract if it has knowledge that, in connection with it, any money has been, or shall be, paid to any person working for or engaged by ScottishPower or any other ScottishPower Group Company by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to ScottishPower and has been approved by ScottishPower before agreement of the Contract.

**12.12.4** The Supplier shall ensure that any person associated with the Supplier who is performing Associated Services in connection with the Contract 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 Condition 12.12 and the Supplier shall ensure the compliance by such persons with such terms.

**12.12.5** In the event of a breach of this Condition 12.12 by the Supplier, ScottishPower may (without prejudice to its other rights under the Contract and/or at law):

- a) terminate the Contract immediately by written notice, and/or
- b) withhold payment of all or any part of the Charges; and/or
- c) suspend the Contract at any time and without liability for such time period as required by

ScottishPower.

**12.12.6** The Supplier shall indemnify and keep indemnified ScottishPower and all ScottishPower Group Companies from and against all Losses, liabilities, damages, judgements, penalties, fines, costs, charges and expenses (including legal expenses) incurred by reason of any breach of this Condition 12.12 by the Supplier or any of the Supplier's Personnel. This Condition 12.12.6 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the Supplier and/or any person working for the Supplier and/or any third party retained by the Supplier.

**12.12.7** For the purpose of this Condition 12.12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Condition 12.12 a person associated with the Supplier includes but is not limited to any subcontractor or agent of the Supplier.

**12.12.8** Any dispute relating to the interpretation of this Condition 12.12 shall be determined solely by ScottishPower and ScottishPower's decision shall be final and conclusive except in the event of manifest error.

### **12.13 PREVENTION OF MODERN SLAVERY**

**12.13.1** The Supplier represents and warrants to ScottishPower that:

- a) it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking, including any activity or practice that would constitute an offence under s.1, s.2 and s.4 of the Modern Slavery Act 2015, if carried out in the UK ("slavery and human trafficking");
- b) all employees and agency workers of the Supplier are paid in compliance with all applicable employment laws and minimum wage requirements;
- c) it will take reasonable steps to prevent slavery and human trafficking in connection with the Supplier's business;

d) it will include in its contracts with its subcontractors and suppliers in connection with the Contract slavery and human trafficking provisions that are at least as onerous to the subcontractor or supplier as those set out in the Contract; and

e) it will respond to all reasonable requests for information required by ScottishPower for the purposes of completing ScottishPower's annual anti-slavery and human trafficking statement.

**12.13.2** The Supplier will permit ScottishPower and its third party representatives, on reasonable notice during normal business hours, but without notice if there are reasonable grounds to suspect an instance of slavery and human trafficking, to access and take copies of records and any other information held at the premises and to meet with personnel and more generally to audit compliance with its obligations under this Condition 12.12. The Supplier shall give all necessary assistance to the conduct of such audits during the term of the Contract.

**12.13.3** Any instances of slavery and human trafficking connected to the Supplier will entitle ScottishPower to immediately terminate the Contract on providing notice to the Supplier (and without any liability by ScottishPower to the Supplier).

### **12.14 ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties with respect to the subject matter of the Contract to the exclusion of any other terms and conditions. The Contract supersedes and replaces any prior written or oral agreements, representations (excluding fraudulent or negligent misrepresentation) and undertakings between the parties.

### **12.15 SCOTTISHPOWER GROUP COMPANIES**

The Contract is entered into by ScottishPower for its own benefit and for the benefit of all of the ScottishPower Group Companies. The Parties agree that:

- a) each ScottishPower Group Company shall have the benefit of (and may rely on and enforce) the terms of the Contract as if it were a party to the Contract, including, but not limited to, the benefit of all licences, warranties, undertakings and indemnities granted in favour of ScottishPower under the Contract;



- b) ScottishPower shall be entitled to enforce the relevant terms of the Contract on behalf of any ScottishPower Group Company, and to recover any losses or liabilities suffered and/or incurred by any ScottishPower Group Company in connection with the Contract on behalf of any ScottishPower Group Company; and
- c) each ScottishPower Group Company shall also be entitled to rely on and enforce the terms of the Contract as if it were a party to the Contract, provided that there shall be no double-recovery of the same losses by both ScottishPower and any other ScottishPower Group Company pursuant to this Condition 12.15.

#### **12.16 THIRD PARTY RIGHTS**

Subject to Conditions 10.2.4 and 12.15, a person who is not a party to the Contract has no right to enforce any term of the Contract, whether pursuant to applicable legislation relating to the rights of third parties under contract or otherwise.

#### **12.17 STATUS**

The Supplier is an independent contractor and nothing in the Contract shall create any employment, joint venture or similar relationship between the parties or render the Supplier an agent or partner of ScottishPower or any other ScottishPower Group Company and the Supplier shall not hold itself out as such. The Supplier shall not have any right or power to bind ScottishPower and/or any other ScottishPower Group Company to any obligation.

#### **12.18 ENVIRONMENTAL CONDITIONS**

The Supplier undertakes to fulfill as many duties as fall to it by application of current environmental legislation, notwithstanding any modifications which may take place in the future concerning this area. In particular, the Supplier must comply with environmental legislation concerning packaging, labeling and return of packaging of products, and transport of hazardous substances and preparations. These examples are provided as illustrative, not exhaustive.

As far as possible, the Supplier must supply products or materials with ecologically-sound labeling, and must reuse and recycle waste resulting from the products or materials supplied.