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## **Appendix 2: Memorandum of Understanding between WPD and npower**

### **MEMORANDUM OF UNDERSTANDING**

**between**

**Western Power Distribution ( WPD) plc**

**and**

**npower Limited (npower)**

#### **Basic outline**

- This Memorandum of Understanding sets out in basic outline the principles that the parties have provisionally agreed, subject to contract, for South Wales and npower. Both parties acknowledge that this Memorandum of Understanding is not legally binding except as specifically set out below.
- During the term of this Memorandum of Understanding the parties will negotiate in good faith (including entering into any further formal legal agreement with each other (the “Agreement”)).
- Any Agreement will set out in detail any agreed legally binding terms of this arrangement.
- The Agreement (if any) once duly approved and executed shall supersede this Memorandum of Understanding.
- Either party may at any time withdraw from negotiations with each other without incurring any liability to the other party.

#### **Proposed Arrangements**

- The basic outline principles to be included in any Agreement include the provisions specified as below along with such other matters as may be agreed between the parties in order to conclude any Agreement.
1. This Memorandum of Understanding solely relates to co-operation in respect of the Western Power Distribution (WPD) Tier 2 Low Carbon Networks Fund project in South Wales submitted to Ofgem in July 2010 ( “the Project” ). The Project involves monitoring of demands, voltages and power quality at HV/LV distribution substations, voltage only at the premises of customers ( of any electricity and/or gas supplier) situated at end of LV feeders. Metered HV or low voltage generation connected to the monitored substations may also be included.

2. npower have previously agreed to be named as an external collaborator in the project.
3. The Project has passed Ofgem's Initial Screening process and WPD's full submission has to be received by 3<sup>rd</sup> September 2010. Following appraisal Ofgem will announce their decision on approval / rejection by early December 2010.
- 4 In the event that the Project is approved by Ofgem, npower and WPD shall use their respective reasonable endeavours to comply with the following (but without creating any legally binding obligation to do so within this Memorandum of Understanding (except in relation to 4(d) and 4 (e) below);-
  - a) WPD will provide npower with the postcodes of substations that are to be monitored under the project.
  - b) npower will advise WPD of CERT / CESP activities or Feed in Tariff generation which it is supporting in that postcode area, such as to enable WPD to compare loading and voltage impacts on its network with other sites.
  - c) Where npower are supporting installation of low voltage generation under Feed in Tariff arrangements in the above postcode areas it will seek permission for generation output metering to be fed to WPD as part of the project. npower and WPD will agree those which will be monitored by WPD, and WPD shall meet the agreed additional cost of the metering installation and communications that are necessary to undertake the project.
  - d) WPD and npower agree that information passed from npower to WPD and which identifies individual customers shall be kept confidential and not disclosed to third parties, and both parties shall fully comply with the principles of the Data Protection Act and in particular WPD shall comply and be legally bound by with npower's data protection policy a copy of which is included within the Schedule.
  - e) WPD and npower agree that any intellectual property rights generated through those elements of the Project that are funded from the Low Carbon Networks Fund are subject to the default IPR provisions of the Ofgem Low Carbon Networks Fund Governance Document version 3 dated 22<sup>nd</sup> July 2010

## **5 Legal status of memorandum**

- Unless and until any Agreement is approved and executed between the parties then apart from Sections 4 (d) and 4 (e) and 8 this Memorandum of Understanding is not intended to and shall not create any legal obligations

between the parties. For the avoidance of doubt, there is no legal obligation on either party to enter into any Agreement.

- The parties agree and acknowledge that all negotiations and correspondence regarding this Memorandum of Understanding shall be subject to contract.
- Sections 4 (d) and 4 (e) and 8 inclusive are intended to be legally binding and to create contractual obligations between the parties with immediate effect.

## 6. Confidentiality

- Both parties acknowledge they have entered into a confidentiality agreement dated [xx].

## 7. Term and termination

- This Memorandum of Understanding shall continue in full force and effect until [xx] or until signature of any Agreement (if sooner) or such other date as the parties may otherwise agree. Both parties acknowledge that either party may immediately terminate this Memorandum of Understanding by notice to the other party without incurring any liability.

## 8. Miscellaneous

**Announcements and Publicity:** Neither party shall make any public disclosures or announcements regarding this Memorandum or its subject matter without the prior written consent of the other party.

- **Costs and Expenses:** Each party shall be responsible for its own costs in relation to all matters arising out of this Memorandum of Understanding.
- **General Assignment:** This Memorandum of Understanding is personal to the parties and neither this Memorandum of Understanding nor any rights, licences or obligations under it may be assigned by either party without the prior written approval of the other party.
- **Headings:** The headings in the Memorandum of Understanding are for reference purposes only and are not intended to be taken into account in the interpretation of the provisions of this Memorandum of Understanding.
- **Notices:** All notices under this Memorandum of Understanding shall be in writing and all such notices shall be deemed to have been duly given when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or on the tenth business day following mailing, if mailed by airmail, postage

prepaid in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

- **Governing law:** This Memorandum of Understanding and all matters arising from it and any dispute resolutions referred to below shall be governed by and construed in accordance with English law
- **Jurisdiction:** The parties submit to the exclusive jurisdiction of the English courts.

Signed PJ West

Date 2/9/2010

PHILIP WEST. (Print name)

For Western Power Distribution (South Wales) plc whose Registered number is 2366985 and Registered office Avonbank, Feeder Road, Bristol, BS2 0TB

Signed Alcaudwell

Date 1/9/2010

ANNE CAUDWELL (Print name)

For npower Limited Registered number 3653277, Registered Office: Windmill Hill Business Park, Whitehill Way, Swindon SN5 6PB

## **Schedule**

### **Data Protection**

- 1 In this Schedule, “**DPA**” means the Data Protection Act 1998 and associated regulations.
- 2 In this Schedule , “**Data**”, “**Data Processor**”, “**Data Controller**”, “**Data Subject**”, “**Personal Data**” and “**Process**” shall have the same meanings as in the DPA.
- 3 All Data and intellectual property rights in and to the Data are and will remain the property of npower.
- 4 WPD shall treat all Data as strictly confidential, will keep it safely and will not use it or disclose it except as otherwise expressly agreed in writing in advance with npower.
- 5 WPD shall on npower’s request deliver up to npower or permit npower to inspect any such Data immediately. WPD shall return promptly to npower(together with all copies) any and all Data at npower’s request.
- 6 WPD shall notify npower immediately if it comes to its attention that any Data of any kind has been used without npower’s prior written authority.
- 7 To the extent that the Data contains any Personal Data, WPD agrees and acknowledges that npower is the Data Controller in respect of such Personal Data and that in relation to such Personal Data WPD shall:
  - 7.1 maintain and Process such Personal Data strictly in accordance with npower’s instructions from time to time;
  - 7.2 ensure that only such of WPD’s Personnel who are required to have access to such Personal Data shall have access to such Personal Data only for the purposes approved by npower and WPD shall ensure that all such WPD Personnel are aware of the data protection laws and have received suitable training in the care and handling of any such Personal Data;
  - 7.3 maintain and Process such Personal Data only in accordance with all applicable laws and regulations, including without limitation, the DPA;
  - 7.4 assist npower with all subject access requests, which may be received from the Data Subjects of such Personal Data; and
  - 7.5 not use such Personal Data for any purpose other than as permitted expressly in writing by npower.
- 8 WPD shall:
  - 8.1 not use such Personal Data for any purpose, which may be inconsistent with those notified to the Data Subjects on or before the time of collection;
  - 8.2 not disclose such Personal Data to a third party in any circumstances other than at the specific request of npower;
  - 8.3 allow its Data processing facilities, procedures and documentation to be submitted for scrutiny by the auditors or professional advisers of npower in order to ascertain compliance with the relevant laws of the United Kingdom

- including without limitation, the DPA, the terms of this Memorandum of Understanding;
- 8.4 not transfer any Personal Data outside the countries of the European Economic Area, without and only to the extent of any express written consent of the relevant Data Subject and npower (which may be refused at npower's sole discretion);
  - 8.5 as soon as practicable, notify npower of any breach or alleged breach of the DPA by WPD or the WPD Personnel (such notification to include the provision of information by WPD to npower as to how it has or is proposing to deal with any such breach or alleged breach of the DPA);
  - 8.6 as soon as practicable, notify npower of any notice or communication concerning the DPA received from any person (including any Data Subject) or any regulatory authority (including the Information Commissioner or its successor); and
  - 8.7 provide all reasonable assistance to npower in relation to any investigation conducted by npower with respect to any notification received by npower from WPD and in relation to any other relevant matters concerning the DPA (which shall include the provision of all relevant information by WPD to npower and where necessary the implementation of any new procedures or processes by WPD to ensure compliance with the DPA, and the terms of this Memorandum of Understanding.
- 9 WPD warrants and represents that it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access, loss, destruction, theft, use or disclosure of the Personal Data.
  - 10 WPD shall procure that all WPD Personnel are aware of and comply with the obligations contained in this Schedule.
  - 11 WPD shall ensure that it obtains the prior written consent of npower prior to appointing an agent, sub-agent, contractor or third party to assist in the performance of WPD's obligations under this Memorandum of Understanding. WPD shall procure that such agent, sub-agent, contractor or third party enters into a written agreement with WPD such written agreement to impose the same obligations to comply with the DPA as set out in this Schedule.
  - 12 Upon termination or expiry of this Memorandum of Understanding WPD shall return npower all Data (including any Personal Data) in its possession or control and shall ensure that any copies of such Data (including any Personal Data) in WPD's possession or control is securely destroyed or deleted (as appropriate) in accordance with npower's instructions and shall provide npower with any and all such evidence as npower shall reasonably require to enable npower to ensure that WPD has complied with its obligations under this paragraph 12 of this Schedule.
  - 13 WPD hereby agrees to fully indemnify and keep fully indemnified npower (and its associated companies, directors, officers and employees) immediately on demand against any loss (including loss of profits, reputation and goodwill), liability, damage, expense, claim, fine, demand, proceeding, charge, expense or cost directly or indirectly suffered or incurred by npower (or its associated companies, directors, officers and

employees) as a result of a breach of this Schedule either by WPD or by WPD Personnel.

- 14 WPD hereby agrees that customers of npower shall be entitled to enforce the rights and obligations imposed on WPD under this Schedule.
- 15 This Schedule shall continue after termination or expiry of the Memorandum of Understanding.