

Annex 3 – Legal Text
Changes shown in red text

SCHEDULE 2 EXHIBIT 3

PART 1

For use with User's in the categories of (i) Power Stations directly connected to the National Electricity Transmission system, (ii) Embedded Power Stations which are the subject of a Bilateral Embedded Generation Agreement, (iii) Interconnectors directly connected to the National Electricity Transmission system or (iv) where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System

Please note that as the Connect and Manage Arrangements do not apply to Interconnectors, this construction agreement will be adapted accordingly to reflect that, other than in the context of the Cancellation Charge arrangements, it will be based on the form at PART 2

Please note that as the Queue Management Process does not apply to categories (ii) and (iv) above (connections which are subject to the Distribution Queue Management Process) this process will not be included in such Construction Agreements

INDICATIVE

DATED [] 20[17]

NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED (1)

and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE

CONSTRUCTION AGREEMENT

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THIS CONSTRUCTION AGREEMENT is made on the [] day of [] 20[17]

BETWEEN

- (1) National Grid Electricity System Operator Limited a company registered in England with number 11014226 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**The Company**", which expression shall include its successors and/or permitted assigns); and
- (2) [] a company registered in [] with number [] whose registered office is at [] ("**User**", which expression shall include its successors and/or permitted assigns)

WHEREAS

- (A) Pursuant to the **Transmission Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **National Electricity Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to] [and use of] [modification to its connection to] [or use of] the **National Electricity Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.
- (F) This **Construction Agreement** has been prepared under the **Connect and Manage Arrangements** [and is subject to the **Queue Management Process**].

NOW IT IS HEREBY AGREED as follows:

1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** and in the Bilateral Connection Agreement have the same meanings, interpretations or constructions in this **Construction Agreement**.

"Attributable Works"	those Construction Works identified as such in accordance with the User Commitment Methodology and which are set out in Appendix MM Part 1.
"Authority"	as defined in the CUSC .
"Bilateral Connection Agreement"	the Bilateral Connection Agreement entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the Bilateral Embedded Generation Agreement entered into between the parties on even date herewith.
"Cancellation Charge"	as calculated in accordance with the User Commitment Methodology .

"Charging Date"

the date upon which the **Construction Works** are first **Commissioned** and available for use by the User or if the **Independent Engineer** before, on or after the **Commissioning Programme Commencement Date** shall have certified in writing that the **Transmission Connection Assets**, are completed to a stage where The Company could commence commissioning and by such date the **User's Works** shall not have been so certified then the date falling [] days after the date of such certification, provided that the **Transmission Reinforcement Works** are **Commissioned** and **Seven Year Statement Works** are completed as at that date. In the event that the **Transmission Reinforcement Works** are not so **Commissioned** and/or the **Seven Year Statement Works** are not so completed the **Charging Date** shall be the date on which they are **Commissioned** and/or completed as appropriate. *[Exclude Seven Year Statement Works from this definition if they are not also Enabling Works].*

"Commissioning Programme Commencement Date"

the date specified in the **Construction Programme** for the commencement of the **Commissioning Programme** or any substituted date fixed under the terms of this **Construction Agreement**

"Commissioning Programme"

the sequence of operations/tests necessary to connect the **User's Works** and the **Transmission Connection Asset Works** to the **National Electricity Transmission System** for the purpose of making the **User's Works** available for operation to be determined pursuant to Clause 2.10 of this **Construction Agreement**.

"Completion Date"

[] or such other date as may be agreed in terms of this **Construction**

	Agreement for completion of the Construction Works .
"Connect and Manage Derogation"	the temporary derogation from the NETS SQSS available to The Company under Standard Condition C17 of the Transmission Licence and/or the Relevant Transmission Licensee under Standard Condition D3 of its transmission licence;
"Connected Planning Data"	data required pursuant to the Planning Code which replaces data containing estimated values assumed for planning purposes by validated actual values and updated estimates for the future and by updated forecasts for forecast data items.
"Consents"	in relation to any Works :- <ul style="list-style-type: none"> (a) all such planning and other statutory consents; and (b) all wayleaves, easements, rights over or interests in land or any other consent; or (c) permission of any kind as shall be necessary for the construction of the Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Works when completed.
"Construction Programme"	the agreed programme for the Works to be carried out by or on behalf of The Company and the User set out in detail in Appendix [J] to this Construction Agreement or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this Construction Agreement .
"Construction Site"	the site where the Transmission Connection Asset Works are being undertaken by or on behalf of The Company ;

"Construction Works"	the Transmission Connection Asset Works, Enabling Works, Seven Year Statement Works and One Off Works and such additional works as are required in order to comply with any relevant Consents relating to any such works but excluding for the avoidance of doubt any Third Party Works .
"Dispute Resolution Procedure"	the procedure for referral to arbitration set out in Paragraph 7.4 of the CUSC .
"Enabling Works"	those Transmission Reinforcement Works which are specified in Appendix H Part 1 to this Construction Agreement .
"Event of Default"	any of the events set out in Clause 10 of this Construction Agreement as constituting an event of default.
"Independent Engineer"	<p>the engineer specified in Appendix L to this Construction Agreement. Provided that:-</p> <ul style="list-style-type: none"> (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this Construction Agreement; or (b) where any Independent Engineer appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days; <p>then such engineer as the President of the Institution of Electrical Engineers shall, on the application of either party, nominate shall be the Independent Engineer.</p>
"Key Consents"	those Consents required in respect of the [User's/Developer's] Power Station

which **The Company** has identified as such and which are set out in Appendix MM Part 2.

“Liquidated Damages”

the sums specified in or calculated pursuant to Appendix K to this **Construction Agreement**.

“One Off Works”

the works described in Appendix B1 to this **Construction Agreement**.

“Seven Year Statement Works”

the works set out in Table B7 of the statement prepared by **The Company** pursuant to Standard Condition C11 of the **Transmission Licence** and issued by **The Company** in [] which in **The Company’s** reasonable opinion (and in the absence of the **Connect and Manage Derogation** are required to be completed before the **Completion Date** to ensure that the **National Electricity Transmission System** complies with the requirements of Standard Condition C17 of the **Transmission Licence** and Standard Condition D3 of any **Relevant Transmission Licensee’s** transmission licence prior to the **Connection** of the **User’s Equipment** in terms of Clause 7.1 [or 7.2] of this **Construction Agreement**.

“Term”

the term of this **Construction Agreement** commencing on the date hereof and ending in accordance with Clause 12.

“Third Party Works”

the works to be undertaken on assets belonging to a party other than a Relevant Transmission Licensee and the **User** to enable The Company to provide or as a consequence of the connection to and\or use of the **National Electricity Transmission System** by the **User** as specified in Appendix N;

"Transmission Connection Assets"	the assets specified in Appendix A to the Bilateral Connection Agreement .
"Transmission Connection Asset Works"	the works necessary for construction and installation of the Transmission Connection Assets at the Connection Site specified in Appendix G to this Construction Agreement .
"Transmission Reinforcement Works"	those works other than the Transmission Connection Asset Works Seven Year Statement Works and One Off Works , which in the reasonable opinion of The Company (and in the absence of the Connect and Manage Derogation) are all necessary to extend or reinforce the National Electricity Transmission System to ensure that the National Electricity Transmission System complies with the requirements of Standard Condition C17 of the Transmission Licence and Standard Condition D3 of any Relevant Transmission Licensee's transmission system and which are specified in Appendix H to this Construction Agreement , where Part 1 is the Enabling Works and Part 2 is the Wider Transmission Reinforcement Works .
"Trigger Date"	. [date] as identified in accordance with the User Commitment methodology .
"User Progression Milestones"	the milestones applied in accordance with CUSC Section 16 to demonstrate that a User is progressing with that User's project to the required timescales for that User's project, with the User Progression Milestones for the User being set out in Appendix Q of this Construction Agreement .

“User’s Works” those works necessary for installation of the **User’s Equipment** which are specified in Appendix I to this **Construction Agreement**.

“Wider Transmission Reinforcement Works” those **Transmission Reinforcement Works** which are specified in Appendix H Part 2 to this **Construction Agreement** where Part 2.1 is works required for the **User** and Part 2.2 is works required for wider system reasons.

“Works” the **Construction Works** and the **User’s Works**.

Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following

[Notice of Intent the notice issued by **The Company** pursuant to Clause 7.4.4.

Notice of Reduction the notice issued by **The Company** pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised **Transmission Entry Capacity**.

Preliminary Request the request issued by **The Company** pursuant to Clause 7.4.1.

Reduction Fee the fee payable by the **User** to **The Company** in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the **Charging Statements** as payable on a payment of actual costs basis in respect of a **Modification Application**..

Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the

following (and where the Construction Agreement relates to more than one, for each of the Developers)

[Developer Capacity	the MW figure [<i>for export</i>] specified in the Developer's Data .
Developer	<i>Insert name address and registered number</i> who is party to a BELLA with The Company or the subject of the Request for a Statement of Works .
Developer's Data	the information provided by the [Developer-BELLA] [User in respect of the Developer in the Request for a Statement of Works - <i>relevant embedded medium\small power station</i>] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the User's Distribution System at []]
Notice of Intent	the notice issued by The Company pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by The Company pursuant to Clause 7.4.7 revising the Developer's Capacity for this Construction Agreement and Appendix A to the BELLA .
Preliminary Request	the request issued by The Company pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the User to The Company in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the Charging Statements as payable on a payment of actual costs basis in respect of a Modification Application .

2. CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of this **Construction Agreement** the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local**

Safety Instructions to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.

2.2 Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to the other or the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.

2.3 The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-

2.3.1 All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.

2.3.2 In the event of:-

- (a) the **Consents** not being obtained by the required date; or
- (b) the **Consents** being subject to conditions which affect the dates;
or
- (c) **The Company** wishing to amend the **Construction Works** to facilitate the granting of the **Consents**,

The Company shall be entitled to revise the **Construction Works** (and as a consequence Appendix A to the **Bilateral Connection Agreement**) and all dates specified in this **Construction Agreement** and the charges specified in Appendix B to the **Bilateral Connection Agreement**. For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required.

- 2.3.3** The **User** shall be regularly updated by **The Company** in writing or by such other means as the parties may agree as to progress made by **The Company** from time to time in the obtaining of relevant **Consents** pursuant to its obligations under Clause 2.2 or 2.3 of this **Construction Agreement**.
- 2.4** Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.
- 2.5** Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the provisions of Clause 11 shall apply].
- 2.6** If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** and the provisions of Clause 11 shall apply
- 2.7** Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.
- 2.8** The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to in the case of the **User** the **User's Works** and in the case of **The Company** the **Construction Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. Each party shall deliver to the other party a written report of progress during each calendar quarter within 7 days of the end of that quarter.

Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following

- [“**2.8** The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other’s part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer’s Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer’s Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]
- 2.9** During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User’s Works** but not so as to disrupt or delay the construction and completion of the other’s **Works** on the said sites or the operation of the other’s **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.
- 2.10** Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User’s Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11** If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works**

and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (**One Off Works**), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**), MM (**Attributable Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges and One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change. Provided that where a **User** has elected for the **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.

- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the relevant Secretary of State shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]
- 2.13 [The **Enabling Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between **The Company** and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between **The Company** and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and **Wider Transmission Reinforcement Works** and

each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]

2.15 [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Regeneration Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.16 Third Party Works

2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

2.16.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

2.16.3 Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) ("the "**First User(s)**") as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User's** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

2.16.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company's** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in

this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

2.17 Wider Transmission Reinforcement Works

The Company shall keep the **User** advised as to progress on the **Wider Transmission Reinforcement Works** and shall include information on these in the reports produced pursuant to Clause 2.8.

3. DELAYS

3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's **Works** for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this **Construction Agreement** or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.

3.2 If prior to the **Completion Date** a party (in this Clause 3.2 "the **Affected Party**") shall be delayed in carrying out any of the **Affected Party's Works** (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "**Defaulting Party**") or the **Defaulting Party's** employees, agents, contractors or sub-contractors or by reason of an event of **Force Majeure**, the **Affected Party** shall be entitled to have such later date or dates fixed as the **Commissioning Programme Commencement Date** and/or (as the case may be) the **Completion Date** as may be fair and reasonable in the circumstances provided that it shall have notified the **Defaulting Party** in writing of such act, default or omission or event of **Force Majeure** within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the **Affected Party**. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the **Independent Engineer**. Once the new date or dates are fixed the **Construction Programme** and/or **Commissioning Programme** shall be deemed automatically amended as appropriate.

4. COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

4.1 Each party shall give written notice to the other declaring its readiness to commence the **Commissioning Programme** when this is the case.

4.2 The **Commissioning Programme** shall commence forthwith once both parties have given written notice to the other under Clause 4.1.

- 4.3 The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent Engineer** certifies in writing to that effect.
- 4.4 In the event that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date** **The Company** (if and to the extent that it is responsible for delayed commissioning beyond the **Commissioning Programme Commencement Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date**. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.
- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.
- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this

Construction Agreement upon giving notice in writing to the **User** and the provisions of Clause 11 shall apply.

5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1** Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2** Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the **Site Common Drawings** required under CC 7.5.3 and 7.5.5.
- 5.3** Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1** each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and
- 5.3.2** the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.
- 5.4** Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1** for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;
- 5.4.2** written confirmation as required under CC.5.2(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];

5.4.3 a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.

5.5 If directly connected to the **National Electricity Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

5.6 If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **National Electricity Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

6. INDEPENDENT ENGINEER

The parties agree and shall procure that the **Independent Engineer** shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to him under this **Construction Agreement** by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in his sole discretion considers appropriate. All references to the **Independent Engineer** shall be made in writing by either party with notice to the other being given

contemporaneously as soon as reasonably practicable and in any event within 14 days of the occurrence of the dispute to be referred to the **Independent Engineer**. The parties shall promptly supply the **Independent Engineer** with such documents and information as he may request when considering such question. The **Independent Engineer** shall use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

7. BECOMING OPERATIONAL

- [7.1 If directly connected to the **National Electricity Transmission System** **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** [delete Seven Year Statement Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.] or
- [7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the Enabling Works [and/or works for the **Modification**] being carried out and/or the [New] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **National Electricity Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.]
- 7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Registered Capacity** of the **User's Equipment** is less than []MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Registered Capacity** of the **User's Equipment**.

Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following

[7.4 Transmission Entry Capacity Reduction

- 7.4.1** If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.
- 7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.
- 7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .
- 7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

- 7.4.7** Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.
- 7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.
- 7.5** Where there is a reduction in **Transmission Entry Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.]
- Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following (and where the Construction Agreement relates to more than one, for each of the Developers)***

[7.4 Developer Capacity Reduction

- 7.4.1** If, at any time prior to the **Completion Date The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small\medium power stations* – and/or **CUSC** Paragraphs 6.5.8 or 6.5.5.11], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.
- 7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7** Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of

generating at the **Developer Capacity** or at or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.

- 7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA** and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Reduction Fee** and on such reduction in **Developer Capacity** taking effect the **User** shall pay the **Cancellation Charge** in respect of the reduction such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.”]
- 7.4.10** Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:
- 7.4.10.1** The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.
- 7.4.10.2** Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for**

a **Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **National Electricity Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

7.4.10.3 **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.

7.5 Where there is a reduction in **Developer Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Developer Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1-5 to the **Bilateral Connection Agreement** .

9. PROVISION OF SECURITY

Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on termination of this **Construction Agreement** or a reduction in [~~Transmission~~ **Transmission** Entry Capacity] [**Developer Capacity**] prior to the **Charging Date**.

10. EVENT OF DEFAULT

Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of Clause 11 shall apply.

11. TERMINATION

11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

- (a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; and
- (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**.

11.2 The **User** shall where this **Construction Agreement** terminates prior to the **Charging Date** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

12. TERM

12.1 Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8, 11 or ~~14-17~~ hereof.

12.2 In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in the event that this is prior to the **Charging Date** the **User** the provisions of Clause 11 shall apply.

12.3 The associated [**Bilateral Connection Agreements** or **Agreement to Vary the Bilateral Connection Agreement**] will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.

12.4 Any provisions for payment shall survive termination of this **Construction Agreement**.

13. CUSC

The provisions of Sections 6.6 (Payment), 6.14 (Transfer and Subcontracting), 6.15 (Confidentiality), 6.18 (Intellectual Property), 6.19 (Force Majeure), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.24 (Counterparts), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply mutatis mutandis to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. DISPUTES

14.1 Except as specifically provided for in ~~Clause 14.2 of~~ this **Construction Agreement** any dispute arising under the terms of this **Construction Agreement** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

~~14.2 If there shall be any dispute between the User and The Company as to:-~~

15. VARIATIONS

15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

15.2 **The Company** and the **User** shall effect any amendment required to be made to this **Construction Agreement** by the **Authority** as a result of a change in the **CUSC** or the **Transmission Licence**, an order or direction made pursuant to the **Act** or a **Licence**, or as a result of settling any of the terms hereof. The **User** hereby authorises and instructs **The Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3, 2.11 and 7.4 and **17 and** Paragraph 6.9 of the **CUSC**.

[Users in the capacity of a Directly Connected Distribution System insert the following:

16. Distributed Generation

16.1 In consideration of and recognising the provisions at Clause 16.4 of this **Construction Agreement** and notwithstanding that the liability for the **Cancellation Charge** rests with the **User**, the **User** will within 5 **Business**

Days of receipt of the same provide the **Developer** with a copy of the **Cancellation Charge Secured Amount Statement**.

16.2 Where this **Construction Agreement** is entered into by reference to and provides for the **Construction Works** required as a consequence of more than one **Developer** a **Cancellation Charge, Cancellation Charge Statement** and **Cancellation Charge Secured Amount** will be prepared by reference to each **Developer** and the reference to “**Cancellation Charge**” “**Developer**” and “**Developer Capacity**” in this **Construction Agreement** and **CUSC** Section 15 shall be construed accordingly.

16.3 In the event that the/a **Developer** reduces its **Developer Capacity** and/or terminates its agreement for connection to the **Distribution System** the **User** shall notify **The Company** in writing within 5 **Business Days** of that event.

16.4 In the event of a **Cancellation Charge Shortfall**:

16.4.1 On application by the **User** in writing (which cannot be made prior to the **Shortfall Application Date** and without the conditions at Clause 16.5 having been met), **The Company** shall pay the **Cancellation Charge Shortfall** to the **User** together with interest calculated thereon on a daily basis at **Base Rate** from the date of the payment of the **Cancellation Charge** to **The Company** by the **User** to the date of the payment of the **Cancellation Charge Shortfall** by **The Company** to the **User**.

16.4.2 The **User** shall keep **The Company** advised as to any ongoing process to recover the **Cancellation Charge Shortfall** and any associated interest charges from the **Developer** and notify **The Company** when it has reasonable grounds to believe that it is not practicable to take any further action) to recover the **Cancellation Charge Shortfall** from the **Developer**.

16.4.3 If at any time the **User** subsequently successfully recovers the **Cancellation Charge Shortfall** in full or part from the **Developer**, the **User** shall forthwith notify **The Company** and pay the amount received to **The Company** together with interest calculated thereon on a daily basis at **Base Rate** from the date of the payment of the **Cancellation Charge Secured Amount** to **The Company** by the **User** to the date of the payment of the **Cancellation Charge Shortfall** by the **User** to **The Company**.

16.5 In order for the **User** to make an application for payment of a **Cancellation Charge Shortfall** the following conditions must have been met and evidence of this provided to **The Company** by the **User** with the application.

i) that the **User** asked the **Developer** whether or not it wishes the **User** to elect for the **Fixed Cancellation Charge** and elected accordingly;
and

ii) (in respect of its liability for the **Cancellation Charge** as it relates to this **Construction Agreement**) for each **Security Period** the **User** only sought security from the **Developer** for the amount as set out in the **Cancellation Charge Secured Amount Statement** for that **Security Period**]]

17. QUEUE MANAGEMENT PROCESS

17.1 The **Queue Management Process** shall be incorporated into this **Construction Agreement** and apply between **The Company** and the **User** and Appendix Q to this **Construction Agreement** has been prepared in accordance with the principles set out in **CUSC** Section 16.

17.2 Where in accordance with the **Queue Management Process** the status of the **User's** project at the end of the **Project Milestone Remedy Period** is categorised as "Termination", **The Company** will terminate this **Construction Agreement** by notice in writing (such notice being not less than 10 **Business Days**) and on such termination the provisions of Clause 11 of this **Construction Agreement** shall apply.

17.3 Where in accordance with the **Queue Management Process** there is a variation to the date by which a milestone has to be met **The Company** shall be entitled to revise Appendix Q to this **Construction Agreement** as required to reflect such change.

17.4 Any dispute or difference between **The Company** and the **User** as to whether [a milestone has been met and/or whether the **User's** project shall be categorised as "Termination"] shall be resolved [as if it were an "**Other Dispute**" under the **Dispute Resolution Procedure** provided that references to the **Electricity Arbitration Association** and its rules shall be replaced with references to [] shall be referable by either party to the **Authority**, the parties having first followed by reference to this dispute the "initial discussions" requirement at Paragraph 7.4.1 of the **Dispute Resolution Procedure**.

[18 Distribution Queue Management ¹

The **User** will keep **The Company** advised as to the categorisation of the **[User's project/Developer's Project]** in the **Distribution Queue Management Process** and notify **The Company** as soon as practicable if the categorisation of the **[User's project/Developer's Project]** is changed to "Termination" and if and when, in accordance with that process, the **Distribution Agreements** are terminated.]

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY)
[name])
for and on behalf of)
National Grid Electricity System Operator
Limited)
SIGNED BY)
[name])
for and on behalf of)
[User])

¹ Only include where consag is for a Power Station with a BEGA or for a DNO and associated with Distributed Generation

APPENDIX [B]
ONE OFF WORKS

APPENDIX [G]

TRANSMISSION CONNECTION ASSET WORKS

APPENDIX [H]

TRANSMISSION REINFORCEMENT WORKS

Part 1 Enabling Works

Part 2 Wider Transmission Reinforcement Works

APPENDIX [I] USER'S WORKS

APPENDIX [J]
CONSTRUCTION PROGRAMME

APPENDIX [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

The amount of Liquidated Damages payable by The Company to the User pursuant to this Construction Agreement shall be:

Liquidated Damages under Clause [4] of this Construction Agreement shall be calculated on a daily basis at a rate of £XXXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXXX.

APPENDIX [L]

INDEPENDENT ENGINEER

Company:

Connection site:

Type:

The Independent Engineer will be a Member of the Association of Consulting Engineers (ACE) and shall be agreed between the parties within 120 days of execution of this Construction Agreement or such other period as may be agreed between the parties. Failing agreement it shall be referred to the President of the Institution of Electrical Engineers who shall nominate the Independent Engineer.

APPENDIX [MM]

ATTRIBUTABLE WORKS AND KEY CONSENTS

Part 1

Attributable Works

Part 2

Key Consents

APPENDIX [N]

THIRD PARTY WORKS

APPENDIX [P]

DEVELOPER'S DATA

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

APPENDIX [Q]
QUEUE MANAGEMENT PROCESS

SCHEDULE 2 EXHIBIT 3

PART 2

For use with Users other than in the categories referred to in PART 1

INDICATIVE

DATED [] 200[1]

NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED (1)

and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE

CONSTRUCTION AGREEMENT

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THIS CONSTRUCTION AGREEMENT is made on the [] day of [] 200[1]

BETWEEN

- (1) National Grid Electricity System Operator Limited a company registered in England with number 11014226 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**The Company**", which expression shall include its successors and/or permitted assigns); and
- (2) [] a company registered in [] with number [] whose registered office is at [] ("**User**", which expression shall include its successors and/or permitted assigns)

WHEREAS

- (A) Pursuant to the **Transmission Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **National Electricity Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to] [and use of] [modification to its connection to] [or use of] the **National Electricity Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.
- (F) [This **Construction Agreement** is subject to the **Queue Management Process**].

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** and in the Bilateral Connection Agreement have the same meanings, interpretations or constructions in this **Construction Agreement**.

"Authority"	as defined in the CUSC .
"Bilateral Connection Agreement"	the Bilateral Connection Agreement entered into between the parties on even date herewith.
"Charging Date"	the date upon which the Construction Works are first Commissioned and available for use by the User or if the Independent Engineer before, on or after the Commissioning Programme Commencement Date shall have certified in writing that the Transmission Connection Assets , are completed to a stage where The Company could commence commissioning and by such date the User's Works shall not have been so certified then the date falling [] days after the date of such certification, provided that the Transmission Reinforcement Works are Commissioned and Seven Year Statement Works are completed as at that date. In the event that the Transmission Reinforcement Works are not so Commissioned and/or the Seven Year Statement Works are not so completed the Charging Date shall be the date on which they are Commissioned and/or completed as appropriate.
"Commissioning Programme Commencement Date"	the date specified in the Construction Programme for the commencement of the Commissioning Programme or any substituted date fixed under the terms of this Construction Agreement

“Commissioning Programme”	the sequence of operations/tests necessary to connect the User’s Works and the Transmission Connection Asset Works to the National Electricity Transmission System for the purpose of making the User's Works available for operation to be determined pursuant to Clause 2.10 of this Construction Agreement .
“Completion Date”	[] or such other date as may be agreed in terms of this Construction Agreement for completion of the Construction Works .
“Connected Planning Data”	data required pursuant to the Planning Code which replaces data containing estimated values assumed for planning purposes by validated actual values and updated estimates for the future and by updated forecasts for forecast data items.
“Consents”	<p>in relation to any Works:-</p> <ul style="list-style-type: none"> (a) all such planning and other statutory consents; and (b) all wayleaves, easements, rights over or interests in land or any other consent; or (c) permission of any kind as shall be necessary for the construction of the Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Works when completed.
“Construction Programme”	the agreed programme for the Works to be carried out by The Company and the User set out in detail in Appendix [J] to this Construction Agreement or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this Construction Agreement .

"Construction Site"	the site where the Transmission Connection Asset Works are being undertaken by or on behalf of The Company ;
"Construction Works"	the Transmission Connection Asset Works, Transmission Reinforcement Works, Seven Year Statement Works and One Off Works and such additional works as are required in order to comply with any relevant Consents relating to any such works but excluding for the avoidance of doubt any Third Party Works .
"Dispute Resolution Procedure"	the procedure for referral to arbitration set out in Paragraph 7.4 of the CUSC .
"Event of Default"	any of the events set out in Clause 10 of this Construction Agreement as constituting an event of default.
"Final Sums"	<p>the amount payable by the User on termination of this Construction Agreement being the aggregate from time to time and for the time being of:-</p> <ol style="list-style-type: none"> (1) all The Company Engineering Charges arisen prior to the date of termination; (2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by The Company in respect of any part of the Construction Works carried out prior to the date of termination of this Construction Agreement; (3) fees, expenses and costs properly payable by The Company in respect of, or arising from the

termination by it or any third party of any contract for or relating to the carrying out of any **Construction Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);

- (4) a sum equal to the reasonable costs of removing any **Transmission Connection Assets** and of making good the remaining **Plant** and **Apparatus** following such removal; and
- (5) interest on any such amounts from the date they were paid by The Company to the date of The Company's invoice at 2% over **Base Rate** from time to time and for the time being.

Provided that no sum shall be due in respect of **Final Sums** in respect of fees, expenses and costs associated with (a) the **Seven Year Statement Works** and/or (b) **Transmission Reinforcement Works** and specified in Part 2 of Appendix H.

Any dispute as to the amount of **Final Sums** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

"Independent Engineer"

the engineer specified in Appendix L to this **Construction Agreement**. Provided that:-

- (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this **Construction Agreement**; or
- (b) where any **Independent Engineer** appointed from time to time shall

fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

then such engineer as the President of the Institution of Electrical Engineers shall, on the application of either party, nominate shall be the **Independent Engineer**.

“Liquidated Damages”

the sums specified in or calculated pursuant to Appendix K to this **Construction Agreement**.

“One Off Works”

the works described in Appendix B1 to this **Construction Agreement**.

“Seven Year Statement Works”

the works set out in Table B7 of the statement prepared by **The Company** pursuant to Standard Condition C11 of the **Transmission Licence** and issued by **The Company** in [] which in **The Company’s** reasonable opinion are required to be completed before the **Completion Date** to ensure that the **National Electricity Transmission System** complies with the requirements of Standard Condition C17 of the **Transmission Licence** and Standard Condition D3 of any **Relevant Transmission Licensee’s** transmission licence prior to the **Connection** of the **User’s Equipment** in terms of Clause 7.1 [or 7.2] of this **Construction Agreement**.

“Term”

the term of this **Construction Agreement** commencing on the date hereof and ending in accordance with Clause 12.

"Third Party Works"	the works to be undertaken on assets belonging to a party other than a Relevant Transmission Licensee and the User to enable The Company to provide or as a consequence of the connection to and/or use of the National Electricity Transmission System by the User as specified in Appendix N;
"Transmission Connection Assets"	the assets specified in Appendix A to the Bilateral Connection Agreement .
"Transmission Connection Asset Works"	the works necessary for construction and installation of the Transmission Connection Assets at the Connection Site specified in Appendix G to this Construction Agreement .
"Transmission Reinforcement Works"	those works other than the Transmission Connection Asset Works, Seven Year Statement Works and One Off Works , which in the reasonable opinion of The Company are all necessary to extend or reinforce the National Electricity Transmission System to ensure that the National Electricity Transmission System complies with the requirements of Standard Condition C17 of the Transmission Licence and Standard Condition D3 of any Relevant Transmission Licensee's transmission system in relation to and prior to the connection of the User's Equipment at the Connection Site and which are specified in Appendix H to this Construction Agreement , where Part 1 is works required for the User and Part 2 is works required for wider system reasons.

“User Progression Milestones”

the milestones applied in accordance with **CUSC** Section 16 to demonstrate that a **User** is progressing with that **User’s** project to the required timescales for that **User’s** project, with the **User Progression Milestones** for the **User** being set out in Appendix Q of this **Construction Agreement**.

“User’s Works”

those works necessary for installation of the **User’s Equipment** which are specified in Appendix I to this **Construction Agreement**.

“Works”

the **Construction Works** and the **User’s Works**.

2 CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of this **Construction Agreement** the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2 Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User’s Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to the other, or the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.
- 2.3 The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-

2.3.1 All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.

2.3.2 In the event of:-

- (a) the **Consents** not being obtained by the required date; or
- (b) the **Consents** being subject to conditions which affect the dates; or
- (c) **The Company** wishing to amend the **Construction Works** to facilitate the granting of the **Consents**,

The Company shall be entitled to revise the **Construction Works** (and as a consequence Appendix A to the **Bilateral Connection Agreement**) and all dates specified in this **Construction Agreement** and the charges specified in Appendix B to the **Bilateral Connection Agreement**. For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required.

2.3.3 The **User** shall be regularly updated by **The Company** in writing or by such other means as the parties may agree as to progress made by **The Company** from time to time in the obtaining of relevant **Consents** pursuant to its obligations under Clause 2.2 or 2.3 of this **Construction Agreement**.

2.4.1 The **User** shall be liable to pay to **The Company** as part of Final Sums:-

- (a) all **The Company's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction** excluding any costs associated with the **Seven Year Statement Works** and the works specified in Part 2 of Appendix H.

The **User** acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the **Transmission Connection Asset Works**. This sum shall not include any capital costs incurred by **The Company**, in the acquisition by it of the freehold of any land in England and Wales or the feuhold of any land in Scotland in

relation to **Connection Sites**. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred. The **User** shall pay such sums within 28 (twenty eight) days of the date of **The Company 's** invoice therefor.

2.4.2 Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.

2.5 Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the **User** shall in addition to the payments for which it is liable under Clause 2.4 hereof be liable to pay to **The Company** a sum equal to **The Company 's** estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company's** invoice(s) therefore and (where applicable) on termination where applicable **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and:

- (a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; and
- (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**.

2.6 If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** whereupon the **User** shall in addition to the sums for which it is liable under Clause 2.4 hereof be liable to pay to **The Company** a sum equal to **The Company 's** estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company 's** invoice(s) therefore and (where applicable) on termination **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and;

- (a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; and

- (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**.
- 2.7 Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.
- 2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. Each party shall deliver to the other party a written report of progress during each calendar quarter within 7 days of the end of that quarter.
- 2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.
- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission**

Connection Assets, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.

- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.
- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the relevant Secretary of State shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]
- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear

Site Licence Provisions Agreement being an agreement dated 30 March 1990 between The Company and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in this **Construction Agreement**.]

2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]

2.15 [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Regeneration Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.16 **Third Party Works**

2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

2.16.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.x.3 below, advise the **User** as soon as practicable and in any event by [] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

2.16.3 Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) ("the "**First User(s)**") as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User's** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its

obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

- 2.16.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company's** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

3 DELAYS

- 3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's **Works** for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this **Construction Agreement** or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.
- 3.2 If prior to the **Completion Date** a party (in this Clause 3.2 "the **Affected Party**") shall be delayed in carrying out any of the **Affected Party's Works** (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "**Defaulting Party**") or the **Defaulting Party's** employees, agents, contractors or sub-contractors or by reason of an event of **Force Majeure**, the **Affected Party** shall be entitled to have such later date or dates fixed as the **Commissioning Programme Commencement Date** and/or (as the case may be) the **Completion Date** as may be fair and reasonable in the circumstances provided that it shall have notified the **Defaulting Party** in writing of such act, default or omission or event of **Force Majeure** within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the **Affected Party**. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the **Independent Engineer**. Once the new date or dates are fixed the **Construction Programme** and/or **Commissioning Programme** shall be deemed automatically amended as appropriate.

4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

- 4.1 Each party shall give written notice to the other declaring its readiness to commence the **Commissioning Programme** when this is the case.
- 4.2 The **Commissioning Programme** shall commence forthwith once both parties have given written notice to the other under Clause 4.1.
- 4.3 The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent Engineer** certifies in writing to that effect.
- 4.4 In the event that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date** **The Company** (if and to the extent that it is responsible for delayed commissioning beyond the **Commissioning Programme Commencement Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date**. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.
- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.
- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of

Liquidated Damages pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.

- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User**. In the event of such termination the **User** shall in addition to the amounts for which it is liable under Clause 2.4 to this **Construction Agreement** be liable to **The Company** to pay to **The Company** a sum equal to **The Company's** estimate or revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company's** invoice(s) therefor and on termination (where applicable) **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and:
- (a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; and
 - (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**.

5 APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the **Site Common Drawings** required under CC 7.5.3 and 7.5.5.

- 5.3 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and
 - 5.3.2 the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [2.9 and 6.7] of the **CUSC**.
- 5.4 Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1 for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;
 - 5.4.2 written confirmation as required under CC.5.2(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];
 - 5.4.3 a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.
- 5.5 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

6 INDEPENDENT ENGINEER

The parties agree and shall procure that the **Independent Engineer** shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to him under this **Construction Agreement** by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in his sole discretion considers appropriate. All references to the **Independent Engineer** shall be made in writing by either party with notice to the other being given contemporaneously as soon as reasonably practicable and in any event within 14 days of the occurrence of the dispute to be referred to the **Independent Engineer**. The parties shall promptly supply the **Independent Engineer** with such documents and information as he may request when considering such question. The **Independent Engineer** shall use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

7. BECOMING OPERATIONAL

- 7.1 **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.

8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendix F 1-5 to the **Bilateral Connection Agreement**.

9. CREDIT REQUIREMENTS

Alternate provisions apply depending whether or not the **User** does (9A) or does not (9B) meet **The Company's** required credit rating on signing the

Construction Agreement. Details of the credit requirements are set out in the CUSC.

9A1 PROVISION OF SECURITY

9A.1.1 The User shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9A.4) 28 days after the **Charging Date** the User shall confirm its **The Company Credit Rating** to **The Company** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of losing its **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain its **The Company Credit Rating** for at least 6 months.

9A.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9A.1.1 then **The Company** may require the User forthwith:-

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9A.1.4 hereof.

9A.1.3 In the event of the **User**:-

- (i) not having an **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9A.1.2 above an indicative long term private credit rating,

or if **The Company** becomes aware that:
- (iv) the **User** ceases to have an **The Company Credit Rating**; or

- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the User may not be able to maintain an **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9A.1.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9A.1.4.

9A.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9A.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9A.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** arising in the event of, or which have arisen prior to, termination of this **Construction Agreement**. The security to be provided shall be in an amount not greater than such sums payable on termination (inclusive of any applicable **Value Added Tax** that would be due) and specified in writing by **The Company** to the **User** from time to time as appropriate. Such security shall be provided by way of:-

- (i) an irrevocable on demand standby **Letter of Credit** or guarantee; or
- (ii) cash held in escrow [**Escrow Account/ Bank Account**]; or
- (iii) any other form included in **The Company's** then current policy and procedure

such letter of credit or guarantee or security to be in a form agreed in writing by **The Company** and to be given by a **Qualifying Bank**, or **Qualifying Company**. Cash deposited in [escrow] shall be deposited with a **Qualifying Bank**. The choice of such security shall be at the discretion of the **User**.

9A.1.5 The **User** shall in addition to providing the requisite security enter into an agreement with **The Company**, which shall be supplemental to this **Construction Agreement** (the "Amending Agreement"). The **Amending Agreement** shall be in such form as **The Company** shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security

and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

9A.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company** whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.

9A.1.7 In the event that the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** shall release the security and provisions to that effect shall be included in the **Amending Agreement**.

Final Sums

9A.2 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

- (a) furnish the **User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
- (b) by written notice to the **User** inform the **User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.

9A.3.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9A.3.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant and Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

9A.3.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**. If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable

estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.

- 9A.4 The obligations to provide security under this Clause 9A shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** when due under the provisions of the **CUSC**.

Or

9B.1 Provision of Security

- 9B.1.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until (subject to Clause 9B.8) 28 days after the **Charging Date** (unless and until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the **User's** obligation to pay **The Company** any and all sums specified by **The Company** in accordance with Clause 9B.2 of this **Construction Agreement** as requiring to be secured in respect of:-

- (a) the **User's** liability to pay **The Company** amounts from time to time due under Clause 2.4 of this **Construction Agreement**; and
- (b) **Final Sums**.

9B.2 Provision of **Bi-annual Estimate** and **Secured Amount Statement**

- 9B.2.1 **The Company** shall provide to the **User** an estimate ("the **Bi-annual Estimate**") in substantially the form set out in Part 2 of Appendix M to this **Construction Agreement** and showing the amounts of all payments required or which may be required to be made by the **User** to **The Company** in respect of **Final Sums** and **The Company Engineering Charges** and other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement** (inclusive of any **Value Added Tax** that would be due) at the following times and in respect of the following periods:-

- (a) forthwith on and with effect from the signing of this **Construction Agreement**, in respect of the period from and including the day of signing of this **Construction Agreement** until the next following 31st March or 30th September (whichever shall first occur); and
- (b) not less than 75 (seventy five) days (or if such day is not a Business Day the next following **Business Day**) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be), until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid.

9B.2.2 Such **Bi-annual Estimate** shall be accompanied by a statement (in the form of the **Secured Amount Statement** set out in Part 3 of Appendix M to this **Construction Agreement**) ("**Secured Amount Statement**") specifying the aggregate amount to be secured at the beginning of and throughout each such period.

9B.2.3 If **The Company** shall not provide any subsequent **Bi-annual Estimate** and **Secured Amount Statement** by the requisite date, then the **User** shall at the date it is next required to have in full force and effect security and whether by renewal or replacement or otherwise in respect of the following six calendar month period nonetheless provide security in accordance with the provisions of this **Construction Agreement** in the same amount as the amount then in force in respect of the then current six calendar month period. Notwithstanding the foregoing, if **The Company** shall provide the **User** with any **Bi-annual Estimate** and **Secured Amount Statement** later than the date specified in Clause 9B.2.1 of this **Construction Agreement**, then the following shall apply. The **User** shall within 30 (thirty) days of receipt of the said **Secured Amount Statement** procure that to the extent that the amount in respect of which security has been or is to be provided pursuant to this Clause 9B.2.3 in respect of the relevant period ("**the Secured Amount**") falls short of the amount stated in the **Secured Amount Statement** ("**the Required Amount**") the Secured Amount shall be adjusted to the **Required Amount**.

9B.3 Entitlement to Estimate

If **The Company** is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of which the **User** has a liability to **The Company** for payment under any of the provisions of this **Construction Agreement**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the sums due or which may become due or in respect of which the

User has a liability to **The Company** for payment. **The Company** shall also be entitled to send the **User** further invoices for such sums not covered in previous invoices. The **User** shall pay **The Company** all sums so invoiced by **The Company**.

9B.4 Demands not Affected by Disputes

It is hereby agreed between **The Company** and the **User** that if there shall be any dispute between the **User** and **The Company** as to:-

9B.4.1 any amount certified by **The Company** in any **Secured Amount Statement** as requiring at any time and from time to time to be secured; or

9B.4.2 the fairness and reasonableness of **The Company's** estimate; or

9B.4.3 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or

9B.4.4 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9B.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9B.5 If there shall be any dispute as mentioned in Clause 9B.4 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred in the case of Clauses 9B.4.1 and 9B.4.2 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9B.5 shall survive termination) and, in the case of Clauses 9B.4.3 and 9B.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

Final Sums

9B.6 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

- (a) furnish **the User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
- (b) by written notice to **the User** inform **the User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.

9B.7.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9B.7.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall

provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

9B.7.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.

9B.8 The obligations to provide security under this Clause 9 B shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** where due under the provisions of the **CUSC**.

10. EVENT OF DEFAULT

As before alternate provisions apply depending whether or not the User does (10A) or does not (10B) meet The Company's required credit rating on signing this **Construction Agreement**

10A. **Event of Default**

Any of the following events shall constitute an **Event of Default**:-

10A.1 If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company**, or to enter into the **Amending Agreement** pursuant to Clauses 9A.1 or 10A.3 of this **Construction Agreement**.

10A.2 If having entered into the **Amending Agreement** and having provided security satisfactory to **The Company** pursuant to Clauses 9A.1 and 10A.3 of this **Construction Agreement**.

(a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by this **Construction Agreement** as varied by the **Amending Agreement** or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the User shall otherwise be in breach of any of its obligations in respect of security under this **Construction Agreement** as varied by the **Amending Agreement**;

(b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** as varied by the **Amending Agreement** takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;

(c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** as varied by the **Amending Agreement** fails to pay to **The Company** any sum demanded pursuant thereto.

10A.3 If

(i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that

there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**; or

- (ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10A is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which have arisen prior to termination of this **Construction Agreement** and which arise under this **Construction Agreement**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with its then current policy and procedures and in such amount as **The Company** shall specify to the **User** in the aforesaid notice. The **User** shall if required by **The Company**, in addition to providing the requisite security, within a period of 30 days following the date on which **The Company** gives the **User** such notice enter into an **Amending Agreement**. Such **Amending Agreement** shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen and shall be in such form as **The Company** shall reasonably require in line with **The Company's** then current provisions to the like effect in its connection agreements with other parties.

Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10A.3 the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to

The Company of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii), and/or (iii) subsequently occurring.

10A.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.

Or

10B Event of Default

Any of the following events shall constitute an **Event of Default**:-

10B.1 If

- (i) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements) put in place by the **User** in connection with a project for which security under this Clause 10B is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (ii) there is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sum due or to become due to **The Company** within the next following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in either (i) or (ii) or (iii) the **User** fails:-

- (1) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** (as defined in Appendix M) in favour of **The Company** and **Valid** (as defined in Appendix M) at least up to the last day of the **Financial Year** in which the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or
- (2) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

Provided that regarding (i) or (ii) or (iii) if at any time after the putting in place of security under this Clause 10B.1 the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to return security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Clause 10B.1 subsequently occurring.

10B.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clauses 9B.1 or 10B.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.

10B.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount

so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.

10B.4 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clauses 9B.1 or 10B.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.

10B.5 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.

11. TERMINATION ON EVENT OF DEFAULT

11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

(a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; and

(b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**.

11.2 The **User** shall (notwithstanding any longer time for payment which but for such termination the **User** may have for payment pursuant to this **Construction Agreement**) within 14 days from the date of termination pay to **The Company** all amounts already due and owing on the date this **Construction Agreement** so terminates and if this **Construction Agreement** terminates prior to the **Charging Date** the **User** shall be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company**:-

- (1) a sum equal to all liabilities arising under Clause 2.4 of this **Construction Agreement** which have not yet been invoiced by **The Company** to the **User**; and
- (2) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**,

such payments in each case to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in respect of **The Company's** estimate of **Final Sums** in accordance with Clause 9A.3.3. or 9B.7.3.

12. TERM

- 12.1 Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8, **11** or ~~14-17~~ hereof.
- 12.2 In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in the event that this is prior to the **Charging Date** the **User** shall in addition to the amounts for which it is liable under Clause 2.4 hereof be liable to pay to **The Company Final Sums** and the provisions of Clause 11 shall apply.
- 12.3 The associated [**Bilateral Connection Agreements** or **Agreement to Vary the Bilateral Connection Agreement**] will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.
- 12.4 Any provisions for payment shall survive termination of this Construction Agreement.

13. CUSC

The provisions of Sections 6.6 (Payment), 6.14 (Transfer and Subcontracting), 6.15 (Confidentiality), 6.18 (Intellectual Property), 6.19 (Force Majeure), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.24 (Counterparts), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply mutatis mutandis to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. DISPUTES

Except as specifically provided for in this **Construction Agreement** any dispute arising under the terms of this **Construction Agreement** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

15. VARIATIONS

- 15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

- 15.2 **The Company** and the **User** shall effect any amendment required to be made to this **Construction Agreement** by the **Authority** as a result of a change in the **CUSC** or the **Transmission Licence**, an order or direction made pursuant to the **Act** or a **Licence**, or as a result of settling any of the terms hereof. The **User** hereby authorises and instructs **The Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.
- 15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3, 2.11 and 7.4 and 17 and Paragraph 6.9 of the **CUSC**.

17. QUEQUE MANAGEMENT PROCESS

- 17.1 The **Queue Management Process** shall be incorporated into this **Construction Agreement** and apply between **The Company** and the **User** and Appendix Q to this **Construction Agreement** has been prepared in accordance with the principles set out in **CUSC** Section 16.
- 17.2 Where in accordance with the **Queue Management Process** the status of the **User's** project at the end of the **Project Milestone Remedy Period** is categorised as "Termination", **The Company** will terminate this **Construction Agreement** by notice in writing (such notice being not less than 10 **Business Days**) On such termination the **User** shall in addition to the sums for which it is liable under Clause 2.4 hereof be liable to pay to **The Company** a sum equal to **The Company's** estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company's** invoice(s) therefore and (where applicable) on termination **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and;
- (a) the **User** shall remove any of the **User's Equipment** on the **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**; and
 - (b) **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between the **Relevant Transmission Licensee** and the **User**.

17.3 Where in accordance with the **Queue Management Process** there is a variation to the date by which a milestone has to be met **The Company** shall be entitled to revise Appendix Q to this **Construction Agreement** as required to reflect such change.

17.4 Any dispute or difference between **The Company** and the **User** as to whether [a milestone has been met and/or whether the **User's** project shall be categorised as "Termination"] shall be resolved [as if it were an "**Other Dispute**" under the **Dispute Resolution Procedure** provided that references to the **Electricity Arbitration Association** and its rules shall be replaced with references to [] shall be referable by either party to the **Authority**, the parties having first followed by reference to this dispute the "initial discussions" requirement at Paragraph 7.4.1 of the **Dispute Resolution Procedure**.

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY)
[name])
for and on behalf of)
National Grid Electricity System Operator
Limited)

SIGNED BY)
[name])
for and on behalf of)
[User])

APPENDIX [B]
ONE OFF WORKS

APPENDIX [G]
TRANSMISSION CONNECTION ASSET WORKS

APPENDIX [H]
TRANSMISSION REINFORCEMENT WORKS

APPENDIX [J]
CONSTRUCTION PROGRAMME

APPENDIX [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

The amount of Liquidated Damages payable by The Company to the User pursuant to this Construction Agreement shall be:

Liquidated Damages under Clause [4] of this Construction Agreement shall be calculated on a daily basis at a rate of £XXXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXXX.

APPENDIX [L]
INDEPENDENT ENGINEER

Company:

Connection site:

Type:

The Independent Engineer will be a Member of the Association of Consulting Engineers (ACE) and shall be agreed between the parties within 120 days of execution of this Construction Agreement or such other period as may be agreed between the parties. Failing agreement it shall be referred to the President of the Institution of Electrical Engineers who shall nominate the Independent Engineer.

APPENDIX [M]

PART 1

SECURITY ARRANGEMENT

1. DEFINITIONS

In this Appendix M, the following terms have the meanings set out next to them:-

“Bi-annual Estimate” means an estimate pursuant to Clause [9B.2.1] of this Construction Agreement of all payments to be made or which may be required to be made by the User in any relevant period, such estimate to be substantially in the form set out in Part 2 of this Appendix M;

“Bank Account” means a separately designated bank account in the name of The Company at such branch of Barclays Bank PLC, or such branch of any other bank, in the City of London as is notified by The Company to the User, bearing interest from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account, mandated for withdrawal of principal solely by The Company against delivery of a Notice of Drawing for the amount demanded therein and mandated for the transfer of any interest accrued to the Bank Account to such bank account as the User may specify;

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably satisfactory to The Company but in any

case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or such other form as may be reasonably satisfactory to The Company and allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

"Notice of Drawing" means a notice of drawing signed by or on behalf of The Company substantially in the form set out in Part 4 of this Appendix M;

"Performance Bond" means an on first demand without proof or conditions irrevocable performance bond or performance guarantee executed as a deed in a form reasonably satisfactory to The Company but in any case allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

"Qualified Bank" means a City of London branch of a bank, its successors and assigns, which has throughout the validity period of the Performance Bond or Letter of Credit it issues in favour of The Company, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such bank is not during such validity period put

on any credit watch or any similar credit surveillance which gives The Company reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives The Company reasonable cause to have such doubt;

“Qualified Company” a company which is a public company or a private company within the meaning of section 1(3) of the Companies Act 1985 and which is either :

(a) a shareholder of the **User** or any holding company of such shareholder-or

(b) any subsidiary of any such holding company, but only where the subsidiary

(i) demonstrates to **The Company’s** satisfaction that it has power under its constitution to give a **Performance Bond** other than in respect of its subsidiary;

(ii) provides an extract of the minutes of a meeting of its directors recording that the directors have duly concluded that the giving of the **Performance Bond** is likely to promote the success of that subsidiary for the benefit of its members;

(iii) provides certified copies of the authorisation by every holding company of the subsidiary up to and including the holding company of the **User**, of the giving of the **Performance Bond**,

(the expressions “holding company” and “subsidiary” having the respective meanings assigned thereto by section 736, Companies Act 1985 as supplemented by section 144(3), Companies Act 1989) and which has throughout the validity period of the **Performance Bond** it gives in favour of **The Company**, a rating of at least A- in Standard and Poor’s long term debt rating or A3 in Moody’s long term debt rating or such lesser rating which **The Company** may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit watch or any similar credit surveillance procedure which gives **The Company** reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the **Performance Bond** and no other event has occurred which gives **The Company** reasonable cause to have such doubt;

“Secured Amount Statement”

means a statement accompanying the Bi-annual Estimate setting out the amount of the User’s Obligation based on figures contained in the Bi-annual Estimate being the amount for which security shall be provided to The Company pursuant to Clause 9B of this Construction Agreement;

“User’s Obligation” means the User’s obligation to pay under this Construction Agreement:-

(i) all amounts in respect of which the User has a liability to pay to The Company pursuant to Clause 2.4 of this Construction Agreement Agreement;

(ii) Final Sum

“Valid” means valid for payment to be made thereunder against delivery of a Notice of Drawing given within the period stated therein.

2. **SECURITY REQUIREMENT**

The User’s Obligation shall be secured by any one of the following:-

2.1 A Performance Bond or Letter of Credit from a Qualified Bank for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such Performance Bond or Letter of Credit to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M; or

2.2 A cash deposit in a Bank Account at least for the amount stated in the Secured Amount Statement as the estimated amount of the User’s Obligation to be secured, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 3.4 of this Appendix M; or

- 2.3 A Performance Bond from a Qualified Company for the amount stated in the Secured Amount Statement as the estimated amount of the User's Obligation to be secured, such Performance Bond to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M.

3. **GENERAL PROVISIONS**

- 3.1 Any Notice of Drawing to be delivered to Barclays Bank PLC or any other bank at which the Bank Account shall have been opened or a Qualified Bank or a Qualified Company may be delivered by hand, by post or by facsimile transmission.
- 3.2 If the User becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, the User shall so notify The Company in writing as soon as it becomes so aware. If The Company becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, The Company may notify the User to that effect in writing. Where the bank or the company so ceases to be either a Qualified Bank or a Qualified Company (as the case may be) as a consequence of The Company having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out The Company's reasons for having such doubt. The User shall within 21 days of the giving of such notice by The Company or the User whichever is the earlier provide a replacement Performance Bond and/or Letter of Credit from a Qualified Bank or Qualified Company, as

the case may be, and/or provide a cash deposit in the required amount in a Bank Account. From the date the replacement Performance Bond or Letter of Credit or Bank Account cash deposit is effectively and unconditionally provided and Valid, The Company will consent in writing to the security which it replaces being released.

3.3 The following provisions shall govern the issuance, renewal and release of the Performance Bond or Letter of Credit:-

3.3.1 The Performance Bond or Letter of Credit shall be Valid initially from the signing of this Construction Agreement at least to and including the following 31st March or 30th September whichever is the earlier date. Such Performance Bond or Letter of Credit shall be for an amount not less than that stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period specified in the Secured Amount Statement.

3.3.2 On a date which is at least 45 days (or if such day is not a Business Day then on the immediately preceding Business Day) before the next following 31st March or 30th September whichever is the earlier date such Performance Bond or Letter of Credit shall be renewed so as to be Valid for not less than 6 months commencing from the immediately following 1st April or 1st October (as the case may be). Such renewed Performance Bond or Letter of Credit shall be for an amount not less than the amount of the User's Obligation stated in the Secured Amount Statement as the amount to be secured during the period that such renewed Performance Bond or Letter of Credit shall be Valid.

3.3.3 Thereafter, the renewed Performance Bond or Letter of Credit shall be further renewed in like manner every 6 months.

- 3.4 The following provisions shall govern the maintenance of cash deposits in the Bank Account:-
- 3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.
- 3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.
- 3.4.3 If such amount stated in the Secured Amount Statement is smaller than the amount then secured, the cash deposit in the Bank Account shall not be reduced to the amount so stated until the expiry of 7 days after the next following 31st March or 30th September (as the case may be) ("the Release Date").
- 3.4.4 The sum equal to the amount of reduction in the cash deposit in the Bank Account shall be paid by The Company to the User from the Bank Account on the Release Date.

3.4.5 Any interest accruing to the Bank Account shall be for the account of and belong to the User absolutely, and The Company agrees to take any steps required to be taken by it for the release from the Bank Account and payment to the User of such interest as soon as the same shall have been credited to the Bank Account and The Company shall have received notice of such credit.

3.5 Notwithstanding any provision aforesaid:-

3.5.1 The User may provide different securities to The Company at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the aggregate amount required to be secured pursuant to the Secured Amount Statement for any period specified therein.

3.5.2 The User may upon the expiry of at least 14 days prior written notice to The Company, substitute one type of security for another provided that unless The Company shall otherwise agree in writing such substituted security must be Valid from 1st April or 1st October (as the case may be) and committed at least 45 days before the immediately preceding 31st March or 30th September (as the case may be) in the following manner:-

- (a) where a Performance Bond or a Letter of Credit is to substitute for other securities, it must be issued or given at least 45 days before such immediately preceding 31st March or 30th September (as the case may be).
- (b) where a cash deposit in a Bank Account is to substitute for other securities, it must be deposited into the Bank Account at least 45

days before such immediately preceding 31st March or 30th September (as the case may be).

- 3.5.3 Upon request by the User to The Company, securities substituted in the aforesaid manner shall, providing the substitute security shall be Valid, be released on the following 1st April or 1st October (as the case may be). However, where the amount required by the Secured Amount Statement to be secured for any period is less than the amount required to be secured in the preceding period, the substituted security shall not be released until 7 days after the then following 31st March or 30th September (as the case may be).

PART 2

BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT **DATED []**

Amount due and amount which will
or might fall due for the period
commencing on and including
[] and ending on and
including [] in
respect of which security is
required

1. The Company Engineering Charges & expenses
for obtaining Consents pursuant to
to Clause 2.4
2. Final Sums
- [3. One Off Charge]

PART 3

SECURED AMOUNT STATEMENT

CONSTRUCTION AGREEMENT DATED []

Amount in which security is
required for the period
commencing on and including
[] and ending on and
including []

User's Obligation

We hereby certify that the amount to be secured in respect of the User's Obligation is as stated above in respect of the named period.

for and on behalf of
NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED

Duly authorised officer

PART 4

NOTICE OF DRAWING

To [] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

RE: **CONSTRUCTION AGREEMENT DATED []**
PERFORMANCE BOND NO./DATED []/LETTER OF CREDIT NO.
[]/BANK ACCOUNT NO. [] (“THE SECURITY”)

We refer to the above Security in our favour. We hereby demand immediate payment thereunder in the amount of £[].

We require payment to be made by telegraphic transfer to:-

Bank plc

Address:

Sort Code:

Account Name: National Grid Electricity System Operator Limited

Account No:

Yours faithfully,

for and on behalf of
NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED

Duly authorised officer

APPENDIX [N]
THIRD PARTY WORKS

APPENDIX [Q]
QUEUE MANAGEMENT PROCESS

END OF SCHEDULE 2 EXHIBIT 3