# SCHEDULE 2 EXHIBIT 3

## PART 1

### *For use with all types of User.*

### *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 the Queue Management Process will not be applied and included in (i) Construction Agreements with an Embedded Power Station relating to a Bilateral Embedded Generation Agreement or (ii) in Construction Agreements with the owner/operator of a Distribution System directly connected to the National Electricity Transmission System where the Construction Agreement is required because of a connection to that Distribution System and the Distribution Queue Management Process applies.*

**INDICATIVE**

**DATED [ ] 20[17]**

**NATIONAL ENERGY SYSTEM OPERATOR LIMITED (1)**

**and**

**[ ] (2)**

**THE CONNECTION AND USE OF SYSTEM CODE**

**CONSTRUCTION AGREEMENT**

CONTENTS

|  |  |
| --- | --- |
| Clause | Title |
| 1 | Definitions, Interpretation and Construction |
| 2 | Carrying out of the Works |
| 3 | Delays |
| 4 | Commissioning Programme and Liquidated Damages |
| 5 | Approval to Connect/Energise/Become Operational |
| 6 | Independent Engineer |
| 7 | Becoming Operational |
| 8 | Compliance with Site Specific Technical Conditions |
| 9 | Provision of Security |
| 10 | Event of Default |
| 11 | Termination |
| 12 | Term |
| 13 | CUSC |
| 14 | Disputes |
| 15 | Variations |
| 16 | Distributed Generation |
| [17 | Queue Management Process] |
| [18 | Distribution Queue Management] |
| Appendix B1 | One Off Works |
| Appendix G | Transmission Connection Asset Works |
| Appendix H | Transmission Reinforcement Works |
| Appendix I | User's Works |
| Appendix J | Construction Programme |
| Appendix K | Liquidated Damages |
| Appendix L | Independent Engineer |
| Appendix MM | Attributable Works and Key Consents |
| Appendix N | Third Party Works |
| Appendix [O][P] | User’s Data/Developer’s Data |
| Appendix Q | Queue Management Process – User Progression Milestones |

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

**BETWEEN**

(1) **The company** registered in England with number 11014226 (**“The Company”** (“**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 **ESO 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 condition E12 of the **ESO 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]**.

(G) This **Construction Agreement** is a [**Gate 1 Agreement**][**Gate 2 Agreement**].

**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**.

|  |  |  |
| --- | --- | --- |
| “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 **Network Options Assessment Works** are completed as at that date. In the event that the **Transmission Reinforcement Works** are not so **Commissioned** and/or the **Network Options Assessment Works** are not so completed the **Charging Date** shall be the date on which they are **Commissioned** and/or completed as appropriate. *[Exclude* ***Network Options Assessment*** *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 condition E7 of the **ESO 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**:-  (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, Network Options Assessment 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. | |
| “Gate 2 Date” | means the date on which the last of the conditions at Clause 1.2 of this Construction Agreement are satisfied *- [include only in Gate 1 Agreements with Reservation*] | |
| “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**. | |
| “Installed Capacity” | the installed capacity provided in the **Original Red Line Boundary** and set out in Appendix [O][P]. | |
| “Key Consents” | those **Consents** required in respect ofthe[**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.** | |
| “Network Options Assessment Works” | the works set out in the **Networks Options Assessment** report prepared by **The Company** pursuant to C13 of the **ESO 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 condition E7 of the **ESO 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**. | |
| “One Off Works” | the works described in Appendix B1 to this **Construction** **Agreement**. | |
|  |  | |
| “Reservation Expiry Date” | [ ] being the date as bilaterally negotiated between **The Company** and the **User** [and which may be extended by agreement between the parties] on which the **Reservation** expires*.[include only in* ***Gate 1 Agreements*** *with* ***Reservation***] | |
|  |  | |
| “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** **Network Options Assessment 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 condition E7 of the **ESO 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) for the **User’s** project asset 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 2.1is 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 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 [*for export*] specified in the **Developer’s Data**. |
| Developer | | *Insert name address and registered number* who is party to a **BELLA** with **The Company** or the subject of the **Transmission Evaluation Application**. |
| Developer’s Data | | the information provided by the [**Developer***-BELLA*][**User** in respect of the **Developer** in the **Transmission Evaluation Application**-*relevant embedded power station*]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**. |
| [*A Gate 1 Agreement with/without Reservation only*]  1.2 GATED Application AND OFFER PRocess – GATE 1 Conditional Clause [AND RESERVATION]  1.2.1 The rights and obligations of the **User** and **The Company** under this **Construction Agreement** [and the [**Bilateral Connection Agreement] [Bilateral Embedded Generation Agreement**]] are conditional on:  1.2.1.1 the **User** making a **Gate 2 Application**;  1.2.1.2 the **Gate 2 Application** meeting the **Gate 2 Criteria**; and  1.2.1.3 the **User** accepting the terms of the [**Gate 2 Offer];** *[and*  *in the case of a* ***BEGA****,*1.2.1.4 the owner/operator of the **Distribution System** accepting the related **Gate 2 Offer**.]  1.2.2 The parties agree and acknowledge that until the **Gate 2 Date**, the rights and obligations of each party pursuant to this **Construction** **Agreement** (other than this Clause 1.2 and Clause 13 – *edit to include any other provisions agreed between the parties as useful to include***)** and the **[Bilateral Connection Agreement] [Bilateral Embedded Generation Agreement]** shall be suspended.  1.2.3 [The parties further agree that the information provided for the purposes of this **Gate 1 Agreement** and set out in the Appendix [O][P] to this **Construction Agreement** being a proposed [**Connection Site] [**Site of Connection**], Completion Date** and requested **[Transmission Entry Capacity** *– edit for other capacity types***]** are indicative only prior to the **Gate 2 Date** and shall not be binding on the parties or confer any commitment by **The Company** to the [**Connection Site**][Site of Connection], **Completion Date** or requested [**Transmission Entry Capacity** – *add other relevant capacity refs as appropriate*] and any reliance on them for any purpose prior to the **Gate 2 Date** is at the **User’s** risk- *no reservation]*. [The parties further agree that the [**Connection Site]** [Site of Connection] and **Completion Date** and [**Transmission Entry Capacity*-****add other relevant capacity refs as appropriate*] as set out in Appendix [O][P] to this **Construction Agreement** have been **Reserved** for the purposes of this connection/use of system and any **Gate 2 Offer** will reflect this position and the requested [**Transmission Entry Capacity-** *add other relevant capacity refs as appropriate*] provided that the **Gate 2 Application** is made prior to the **Reservation Expiry Date** and the **Gate 2 Offer** is accepted- *Reservation only*].  1.2.4 At any time prior to the **Gate 2 Date**, the **User** shall have the right to terminate this **Connection Agreement** by written notice to **The Company** without any liability for any **Cancellation Charge**. This right to terminate shall expire with effect from the **Gate 2 Date**.  1.2.5 With effect from the **Gate 2 Date** the provisions of this **Construction** **Agreement**, as amended by the **Gate 2 Offer** by agreement of the parties, shall be in full force and effect. | | |

## CARRYING OUT OF THE WORKS

### 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**.

### 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.

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

#### 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**.

#### In the event of:-

##### the **Consents** not being obtained by the required date; or

##### the **Consents** being subject to conditions which affect the dates; or

##### **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.

#### 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** andthe 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 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 Attrubutable 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 Re-generation 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 hereofissue 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.

## DELAYS

### 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.

### 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.

## COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

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

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

### The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent** **Engineer** certifies in writing to that effect.

### 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**.

### 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**.

### **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.

### 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** andthe provisions of Clause 11 shall apply.

## APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

### 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.

### 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 S**i**te **Common** **Drawings** required under CC 7.5.3 and 7.5.5.

### 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:-

#### 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

#### 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**.

### 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:

#### 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;

#### 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)];

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

#### Confirmation of access to the **Electronic Communications Platform** referred to in CC6.5.9 upon access being provided by **The Company.**

### 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 embeddednot 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.

## 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 them under this **Construction Agreement** by reference to **Good Industry Practice** using their skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in their 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 they may request when considering such question. The **Independent** **Engineer** shall use their best endeavours to give their decision upon the question before them as soon as possible following its referral to them. 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 **Network Options Assessment Works** [delete  **Network Options Assessment** Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Network Options Assessment 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 theEnabling 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 processunder 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 dateof 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.

* + 1. 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.
    2. 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 .
    3. The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the dateof 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.
    4. 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 condition E13.5 of the **ESO Licence**,the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the dateof 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** fordetermination, 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 condition E13.5 of the **ESO Licence**.

**[7.5** **Compliance with Original Red Line Boundary** *-add only where it’s a* ***Gated Agreement*** *for a direct connection*

If a **User** is not compliant at a **User Progression Milestone** with the **Original Red Line Boundary** (other than as it may be changed under the **Queue Management Guidance**) for one or more technologies, **The Company** shall be entitled to amend the **Construction Agreement** and as a consequence the **Bilateral Connection Agreement** to:

* + 1. reduce the **Installed Capacity** (of each technology that is non-compliant).
    2. remove that technology if the **Installed Capacity** of a technology is reduced to 0 MW.
    3. reduce the [**Transmission Entry Capacity]** [other relevant capacity**]** if the sum of the **Installed Capacity** of all technologies is reduced such that it is less than the [**Transmission Entry Capacity]** [other relevant capacity**]** and such that the [**Transmission Entry Capacity**] [other relevant capacity] is no higher than the sum of the **Installed Capacity** of all technologies.]

[**7.6** Where there is a reduction in **Transmission Entry Capacity** under Clause7.4[or Clause 7.5]prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** 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 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 power stations*– and\or **CUSC** Paragraphs 6.5.8 or 6.5.5.11],the commissioning processgenerally or otherwise that the **Developer’s Equipment** will be such that it will not be capable of generating atthe **Developer** **Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.

* + 1. The **User** shall respond to **The Company** within 15 **Business Days** of the dateof 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.
    2. 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.
    3. 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.
    4. 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.
    5. 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 atthe **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 condition E13.5 of the **ESO Licence**,the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the dateof 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 dateof 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 condition E13.5 of the **ESO Licence**.”]

* + 1. 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 terminatedas provided for in the **BELLA** then the following provisions shall apply:
       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 Power Station**.
       2. Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Transmission Evaluation Application** 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 Power Station**.
       3. **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded 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 **Transmission Evaluation Application** 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 arevised **Transmission Evaluation Application** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction inthe **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 **Transmission Evaluation Application** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.

**7.5** Where there is a reduction in **Developer Capacity** under Clause7.4prior 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 areduction in **[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 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 Agreemen**t.

**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), 6.38 (Directions related to national security) 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 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**, the **ESO Licence** 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 7.5 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 byreference 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 evidenceof this provided to **The Company** by the **User** with the application.

1. 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 **Contruction 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 beenprepared in accordance with the principles set out in **CUSC** Section 16.

17.2 Where, in accordance with the **Queue Management Process**:

17.2.1 in the case of any of the **Conditional Progression Milestones,** 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

17.2.2 in the case of any of the **Construction** **Progression Milestones**, the status of the **User’s** project at the end of the **Project Milestone Remedy Period** is categorised as “Termination”, **The Company** may 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 **User Progression Milestone** has to be met **The Company** shall 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** on the **Queue Management Process** in respect of this **Construction Agreement** shall be resolved as an **Other Dispute** under the **Dispute Resolution Procedure**.

**[18** **Distribution Queue Management [[1]](#footnote-2)**

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 Connection 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 Energy 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**

**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 £XXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXX.

**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 [O][P]**

**[GATE 1 VERSIONS**

**USER’S DATA**

Power Station/other

Location of Power station/other

Connection Site [(provided for indicative purposes only and subject to Clause 1.2)] [Reserved (subject to Clause 1.2]

Indicative Site of Connection [(provided for indicative purposes only and subject to Clause 1.2)] [Reserved subject to Clause 1.2]

Transmission Entry Capacity/ Demand [requested] [Reserved subject to Clause 1.2]

Agreement Reference

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

Date [(provided for indicative purposes only and subject to Clause 1.2)] [Reserved subject to Clause 1.2] when Power Station’s/other connection to\use of the National Electricity Transmission System/Distribution System will be energised.

**DEVELOPER’S DATA**

Power Station

Location of Power station

Connection Site (GSP) [(provided for indicative purposes only and subject to Clause 1.2)] [*Large BEGA and BELLA only* - Reserved subject to Clause 1.2]

Site of Connection [(provided for indicative purposes only and subject to Clause 1.2)] [*Large BEGA and BELLA only* - Reserved subject to Clause 1.2]

Agreement Reference

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

Date [(provided for indicative purposes only and subject to Clause 1.2)] [*Large BEGA and BELLA only* - Reserved subject to Clause 1.2]

when Power Station’s connection to\use of the Distribution System will be energised.

**APPENDIX [O][P]**

**[GATE 2 VERSIONS**

**USER’S DATA**

Power Station/other

Location of Power station/other

Connection Site

Site of Connection

Transmission Entry Capacity/ Demand (as set out in Appendix C of Bilateral Connection Agreement/Bilateral Embedded Generation Agreement)

Agreement Reference

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

Date when Power Station’s/other connection to\use of the National Electricity Transmission System/Distribution System will be energised.

Installed Capacity

**DEVELOPER’S DATA**

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Developer Capcity

Agreement Reference

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

Date when Power Station’s connection to\use of the Distribution System will be energised.

Installed Capacity

**APPENDIX [Q]**

**QUEUE MANAGEMENT PROCESS – USER PROGRESSION MILESTONES**

The table below specifies the dates (derived in accordance with **CUSC** Section16) for the **User Progression Milestones** in respect of the **User’s** project and the application of the **Queue Management Process**.

**Conditional Progression Milestones**

|  |  |
| --- | --- |
| **Milestone** | **Date due** |
| M1 – Initiate Planning Consent |  |
| M2 – Secure Consent |  |
| M3 – Land Rights |  |

**Construction Progression Milestones**

|  |  |
| --- | --- |
| **Milestone** | **Date due** |
| M5 – Contestable Design Works Submission |  |
| M6 – Agree Construction Plan |  |
| M7 – Project Commitment |  |
| M8 – Initiate Construction |  |















**END OF SCHEDULE 2 EXHIBIT 3**

1. Only include where Construction Agreement is for a Power Station with a BEGA or for a DNO and associated with Distributed Generation [↑](#footnote-ref-2)