

SECTION 15

USER COMMITMENT METHODOLOGY

1. Where (a) a **Construction Agreement** and/or a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** between a **User** in the categories specified below and **The Company** is terminated or (b) there is a reduction in **Transmission Entry Capacity** by or in respect of such **User** or (c) there is a reduction in **Developer Capacity** in a **Construction Agreement** prior to the **Charging Date**, such **User** shall be liable to pay to **The Company** the **Cancellation Charge** calculated and applied in accordance with this Section 15 PART ONE.

2. The **Cancellation Charge** is payable by **Users** in the categories of
 - (a) a **Power Station** directly connected to the **National Electricity Transmission System** who are parties to a **Bilateral Connection Agreement** with **The Company**;
 - (b) an **Embedded Power Station** who is party to a **Bilateral Embedded Generation Agreement** with **The Company**;
 - (c) a **Distribution System** directly connected to the **National Electricity Transmission System** where a **Construction Agreement** is associated with **Distributed Generation**and reference to **User** in this Section 15 shall be interpreted accordingly.

For the avoidance of doubt this schedule does not apply to **Users** other than those described above.

For the avoidance of doubt for **Users** in the case of category (c) above the **Cancellation Charge** does not apply after the **Charging Date**.

For information, for **Users** other than **Users** in the categories to which this Section 15 applies, the liability for, and security requirements in respect of **Final Sums**, which are due on termination of a **Construction Agreement** are

set out in the **Construction Agreement** (and in the proforma attached at **CUSC** Schedule 2, Exhibit 3).

For the avoidance of doubt, **Termination Amounts** will also apply in addition to the **Cancellation Charge** in respect of **Transmission Connection Assets**.

3. **The Company** shall apply and calculate the **Cancellation Charge** in accordance with this Section 15 PART ONE.
4. This Section 15 also sets out in PART TWO the level of, and arrangements for, security required in respect of the **Cancellation Charge**.
5. **The Company** shall apply and calculate the **Cancellation Charge Secured Amount** in accordance with this Section 15 PART TWO.

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PART ONE

1 CANCELLATION CHARGE

1.1 The **Cancellation Charge** payable shall be calculated in accordance with PART ONE of this Section 15.

1.2 Value Added Tax will be payable on any **Cancellation Charge**.

2 Completion Date and Trigger Date

2.1 In making an **Offer** to a **User The Company** will consider the **Construction Works** and **Construction Programme** associated with that **Offer** and taking into account the nature and programming of the **Construction Works** and the **Consents** associated with this will identify dates in the **Construction Agreement** as the **Completion Date** for the works and the **Trigger Date**.

2.2 The **Trigger Date** will be (a) the 1 April which is not less than four calendar years prior to the **Completion Date** or (b) where the **Completion Date** is less than four calendar years prior to the **Completion Date**, the date of the **Construction Agreement**.

Changes to Construction Programme or Construction Works or Transmission Entry Capacity or Developer Capacity

2.3 Where the **Construction Programme** or the **Construction Works** or **Transmission Entry Capacity** or **Developer Capacity** subsequently change from that in the original **Construction Agreement** the following principles will apply in respect of reassessing the **Trigger Date** and the **Cancellation Charge**.

2.4 Where such change is as a result of **The Company's** exercise of its rights under the **Construction Agreement** then:

- (i) Where there is a delay to the **Completion Date** and the **Trigger Date** has not passed, the **Trigger Date** will be by reference to the revised **Completion Date**;
- (ii) Where there is a delay to the **Completion Date** and the **Trigger Date** has passed, the **Trigger Date** will be revised by reference to the revised

Completion Date and the profile of the **Cancellation Charge** adjusted accordingly.

- (iii) a change in the **Attributable Works** after the **Trigger Date** has passed will not adjust the profile of the **Cancellation Charge** unless the **Completion Date** has also changed in which case (ii) above will apply.

2.5 Where such change is as a result of the **User's** request then notwithstanding any change in the **Construction Works** or **Completion Date** or **Attributable Works** the **Cancellation Charge** will not be adjusted downwards but will be held at that level and will increase from that level in line with the new **Construction Programme**.

3 Calculation of Cancellation Charge

3.1 The **Cancellation Charge** is a **User's** liability to **The Company** on termination of a **Construction Agreement**, **Disconnection** or a reduction in **Transmission Entry Capacity** or, prior to the **Charging Date**, a reduction in **Developer Capacity**.

3.2 This calculation of the **Cancellation Charge** is different:

- (a) where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before the **Trigger Date** (Paragraph 3.3); or
- (b) where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced on or after the **Trigger Date** but before the **Charging Date** (Paragraphs 3.4 to 3.8); or
- (c) where the **Transmission Entry Capacity** is reduced after the **Charging Date** (Paragraph 3.9).

Where the Construction Agreement is terminated or Transmission Entry Capacity or Developer Capacity is reduced before the Trigger Date

3.3 Should a **Construction Agreement** be terminated, or **Transmission Entry Capacity** be reduced or **Developer Capacity** be reduced on or before the **Trigger Date** a **User** shall be liable to pay the **Cancellation Charge** calculated as follows and which results in a £/MW figure:

Cancellation Charge (CC) = Reduction in TEC or Developer Capacity x CC_t

Where:

- *TEC/Developer Capacity expressed in MW.*
- *termination of Construction Agreement equates to a reduction in TEC or Developer Capacity to zero*
- *CC_t which varies according to the number of [Financial Years] from the date of the Construction Agreement:*
 - *In up to the end of the first Financial Year (i.e. t =1) CC_t = (£1000/MW)*
 - *Where t = 2, CC_t = (£2000/MW)*
 - *Where t ≥ 3 up to Trigger Date, CC_t = (£3000/MW)*

Where the Construction Agreement is terminated or Transmission Entry Capacity or Developer Capacity is reduced on or after the Trigger Date but before the Charging Date

- 3.4 Where a **Construction Agreement** is terminated or **Transmission Entry Capacity** is reduced or **Developer Capacity** is reduced prior to the **Charging Date** but on or after the **Trigger Date** a **User** shall be liable to pay the **Cancellation Charge** calculated as follows.

Local Cancellation Amount and Wider Cancellation Amount

- 3.5 In the case of the **Local Cancellation Amount**, this will be calculated on the basis of the **Fixed Local Cancellation Amount** or **Final Sums**. The **User** shall make this choice at the time of its **Connection Application**, **Use of System Application** or **Modification Application** but can change between them prior to acceptance of the **Connection Offer**, **Use of System Offer** or **Modification Offer** and on application to **The Company** (will shall be deemed to be a **Modification Application** by the **User**) can change from **Final Sums** to **Fixed Local Cancellation Amount** at any time prior to the **Trigger Date** .

- 3.6 **Fixed Local Cancellation Amount**

The **Fixed Local Cancellation Amount** is calculated by reference to the **Attributable Works** as specified in Appendix MM of the **Construction Agreement** as follows and results in a £/MW figure which is fixed and not subject to any further specific adjustment, reconciliation or credit should any **Transmission** assets be reused:

Attributable Works Capital Cost x Asset Reuse Factor x Strategic Investment Factor

Where the **Attributable Works Capital Cost** is the fair and reasonable estimate by **The Company** in respect of **Attributable Works** in England and Wales and the **Relevant Transmission Licensee** in respect of **Attributable Works** elsewhere the fees, expenses and costs (excluding costs on account of interest charges to be incurred) of whatever nature reasonably and properly incurred or due in respect of the **Attributable Works**.

Where the **Asset Reuse Factor** is the factor representing the potential for reuse of the **Attributable Works** as determined by **The Company** in England and Wales or the **Relevant Transmission Licensee** elsewhere and set out in the **Cancellation Charge Statement**:

Where the **Strategic Investment Factor** is a discount factor calculated for the **Attributable Works** as a ratio of the **Transmission Entry Capacity/Developer capacity** sharing those **Attributable Works** against the capability of the **Transmission** assets as determined by **The Company** in England and Wales or the **Relevant Transmission Licensee** elsewhere and set out in the **Cancellation Charge Statement**.

3.7 **Final Sums**

Final Sums is the aggregate of the amounts due and payable by reference to the **Attributable Works** as more specifically referred to in the **Construction Agreement** and in the context of a reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date** shall be [].

On termination of the **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date** the **User** shall pay to **The Company** on account of the **Final Sums** component of the **Cancellation Charge** a sum equal to the estimate of **Final Sums** shown in the **Cancellation Charge Statement** for the period in which the termination or reduction in **Transmission Entry Capacity** or **Developer Capacity** occurs.

For the purposes of calculating this initial payment on account of **Final Sums** only, the estimate of **Final Sums** will be adjusted by the **Asset Reuse Factor**.

The sums paid by a **User** in respect of the **Final Sums** component of the **Cancellation Charge** shall be reconciled by **The Company** as soon as reasonably practicable after the date of termination of the **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** **The Company** in accordance with the provisions in the **Construction Agreement**.

- 3.8 The **Wider Cancellation Amount** is the **Zonal Unit Amount** per MW of reduction in **TEC** (£/MW) by reference to the **Generation Zone** in which the **Power Station** is to be located as set out in the **Cancellation Charge Statement** and calculated by reference to the **Wider Cancellation Amount Statement** for the **Financial Year** in which notice of reduction in **Transmission Entry Capacity** or **Developer Capacity** is given and/or notice of **Disconnection** is given or where notice is not given the **Financial Year** in which the reduction in **Transmission Entry Capacity** or **Developer Capacity** or **Disconnection** occurs.

Where

Termination of a **Construction Agreement** or **Disconnection** equate to a reduction in **TEC** to zero.

Zonal Unit Amount = **Load Related Boundary Capex** apportioned to **Boundaries** by **Boundary (LR) Level** and **Non Load related Boundary Capex** apportioned to **Boundaries** by **Boundary (NLR) Level**, summated and multiplied by **Boundary Non Compliance Factors** and then mapped to **Generation Zones** and divided by **pre and post commissioning charging base**, excluding those **Power Stations** in respect of which a **Construction Agreement** has terminated or **The Company** has been notified of a reduction in the **Transmission Entry Capacity** or **Developer Capacity** or **Disconnection** within the period in question.

Where **Load Related Boundary Capex** is the capex required to increase capability in the network as determined by **The Company** in the case of England and Wales and elsewhere the **Relevant Transmission Licensees** for

a given **Financial Year**, excluding any **Attributable Works Capital Cost**, multiplied by the **User Risk Factor** and the **Global Asset Reuse Factor**, as set out in the **Wider Cancellation Amount Statement**.

Where **Non Load Related Boundary Capex** is the capex required to maintain capability in the network as determined by **The Company** in the case of England and Wales and elsewhere the **Relevant Transmission Licensees** for a given **Financial Year**, excluding any **Attributable Works Capital Cost**, multiplied by the **User Risk Factor** and the **Global Asset Reuse Factor**, as set out in the **Wider Cancellation Amount Statement**.

Where the **User Risk Factor** is the share of total risk between generation and consumers, set at 50%.

Where the **Global Asset Reuse Factor** for a given **Financial Year** is as set out in the **Wider Cancellation Amount Statement**

Where each **Boundary**/the **Boundaries** are as detailed in section 8 of the **Seven Year Statement**.

Where **Boundary (LR) Level** is the theoretical length of each **Boundary** as determined by **The Company** multiplied by the increase in required capability on that **Boundary** over the forthcoming four year period, as set out in the **Seven Year Statement**.

Where **Boundary (NLR) Level** is the theoretical length of each **Boundary** as determined by **The Company** multiplied by the available capability on that **Boundary** in the year in question, as set out in the **Seven Year Statement**.

Where **Boundary Non Compliance Factors** are the ratio between the available capability and required capability on each **Boundary** as detailed in section 8 of the **Seven Year Statement**, capped at 100%.

Where **Generation Zones** are (a) as defined in the **Seven Year Statement** for the **Financial Year** in which the termination or reduction in **Transmission Entry Capacity** or reduction in **Developer Capacity** occurs prior to the **Charging Date** (or where not so defined as set out in the relevant

Cancellation Charge Statement) or (b) as defined in the **Seven Year Statement** for the **Financial Year** in which the notice of **Disconnection** or reduction in **Transmission Entry Capacity** occurs on or after the **Charging Date**.

Where the **pre and post commissioning charging base** is the total amount of generation in MW connected to the **National Electricity Transmission System** (excluding **Distributed Generation** without **Transmission Entry Capacity**) in the year in question and the total amount of generation in MW planned to connect to the **National Electricity Transmission System** (that has either a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement**) in the year in question as set out in the **Wider Cancellation Amount Statement**.

3.9 In such case the **Cancellation Charge** is calculated as follows:

Cancellation Charge = (a)(i) or (a)(ii) and (b)

(a) *Local Cancellation Amount*
= (i) *Fixed Local CAM_t*

Where:

- *Termination of Construction Agreement equates to reduction in TEC or Developer Capacity to zero*
- *Fixed Local CAM = Fixed Local CAM x reduction in TEC or Developer Capacity*
- *Fixed Local CAM_t which varies according to the number of [Financial Years] from the Charging Date:*
 - *In the year up to 1 FY prior to the Charging Date (t=0) Fixed Local CAM = Fixed Local CAM x 100%,*
 - *Where t=- more than 1 but less than 2 FY, Fixed Local CAM = Fixed Local CAM x 75%;*
 - *Where t=- more than 2 but less than 3 FY, Fixed Local CAM = Fixed Local CAM x 50%; and*
 - *Where t=- more than 3 but less than 4 FY, Fixed Local CAM = Fixed Local CAM x 25%.*

OR

(ii) = *Final Sums*

AND

(b) = *Wider CAM_{t=}*

Where:

- *Termination of Construction Agreement equates to reduction in TEC or Developer Capacity to zero*
- *Wider CAM = Zonal Unit Amount x reduction in TEC or Developer Capacity.*
- *Wider CAM_t which varies according to the number of full Financial Years from the Charging Date:*
 - *In the FY of/prior? to the Charging Date (t=0) Wider CAM = Wider CAM x 100%,*
 - *Where t=- FY 1/2 from the Charging Date, Wider CAM = Wider CAM x 75%;*
 - *Where t=-FY 2/3 from the Charging Date, Wider CAM = Wider CAM x 50%; and*
 - *Where t=-FY 3/4 from the Charging Date, Wider CAM = Wider CAM x 25%.*

Where the Transmission Entry Capacity is reduced after the Charging Date

- 3.9 Except as provided for in Paragraph 3.10, the **Cancellation Charge** payable on notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** after the **Charging Date** is calculated as follows by reference to the **Zonal Unit Amount** for the **Financial Year** in which the notice is given:

Cancellation Charge

Wider CAM_t =

Where:

- *Disconnection equates to reduction in TEC to zero*
- *Wider CAM = Zonal Unit Amount for year in which notice of disconnection or reduction is given x reduction in TEC.*
- *Wider CAM_t which varies according to the number of full Financial Years notice given:*
 - *where less than 1 full Financial Years notice is given (t=0) Wider CAM = Wider CAM x 100%,*
 - *where more than 1 but less than 2 full Financial Years notice is given, Wider CAM = Wider CAM x 75%;*
 - *where more than 2 but less than 3 full Financial Years notice is given, Wider CAM = Wider CAM x 50%; and*
 - *where more than 3 but less than 4 full Financial Years notice is given, Wider CAM = Wider CAM x 25%.*
 - *where more than 4 full Financial Years notice is given in the notice, Wider CAM = Wider CAM x 0%.*

- 3.10 In the case of **Transitional CMP 192 Commissioned User's** who give notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** on or after the **CMP 192 Implementation Date** but prior to the **Transitional CMP**

192 Commissioned User's Notice Date to take effect no later than the **Transitional CMP 192 Commissioned User's Cut Off Date** the **Cancellation Charge** payable on notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** after the **Charging Date** is calculated as follows:

Cancellation Charge =

(a) *where the notice period is less than the **Full TEC Reduction Notice Period***

*(i) in relation to positive zones, a sum equal to the difference between the **Transmission Network Use of System Charges** due for the **Financial Year** in which reduction in **Transmission Entry Capacity** takes effect or termination occurs (as appropriate) and the **Transmission Network Use of System Charges** due for the **Financial Year** preceding the **Financial Year** in which the reduction in **Transmission Entry Capacity** takes effect or termination occurs (as appropriate); and*

(ii) in relation to negative zones, zero; or

(b) *where the notice period is equal to or greater than the **Full TEC Reduction Period**, zero.*

For the avoidance of doubt, the provisions of **CUSC**, as applied prior to the **CMP 192 Implementation Date**, shall apply in respect of any **User's** who give notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** in respect of **Commissioned Power Stations** prior to the **CMP 192 Implementation Date**

4 **Wider Cancellation Amount Statement**

4.1 By not later than 31 January prior to the start of each **Financial Year** **The Company** will publish a statement showing;

(a) the **Zonal Unit Amount** by **Generation Zone** for that **Financial Year**;

(b) the **Total TO Capex** for that **Financial Year**

- (c) a forecast of the **Total TO Capex** for the following three **Financial Years**
- (d) the **Global Asset Reuse Factor** for that **Financial Year**;
- (e) the **Boundary Non Compliance Factors** for that **Financial Year**;
- (f) a forecast of the **Zonal Unit Amount** by **Generation Zone** for the following three **Financial Years**.

Where the **Total TO Capex** is the forecast of the **Load Related Boundary Capex** and **Non Load Related Boundary Capex** as determined by [The **Company** in the case of England and Wales and elsewhere the **Relevant Transmission Licensees** for a given **Financial Year**, excluding the **Attributable Works Capital Cost**.

5 **Notification of Local Cancellation Amount**

- 5.1 Where a **User** has elected for the **Local Cancellation Amount** to be on the basis of **Final Sums**, **The Company** shall provide each **User** with a fair and reasonable estimate of **Final Sums** with an **Offer** and thereafter in accordance with Clause 6.
- 5.2 Where a **User** has elected for the **Local Cancellation Amount** to be on the basis of the **Fixed Local Cancellation Amount**, **The Company** shall provide the **User** with a fair and reasonable estimate of the **Fixed Local Cancellation Amount** with an **Offer**. **The Company** shall provide the **User** with further estimates of the **Fixed Local Cancellation Amount** in accordance with Clause 6 until **The Company** notifies the **User** of the **Fixed Local Cancellation Amount** (which shall not be less than 6 months prior to the **Trigger Date**). After the **Trigger Date**, **The Company** shall continue to provide the **User** with a statement of the **Cancellation Charge** in accordance with Clause 6.

6 **Cancellation Charge Statement**

- 6.1 **The Company** shall issue a **Cancellation Charge Statement** to a **User** prior to the **Charging Date** at the following times and in respect of the following periods:-
 - (i) Forthwith on and with effect from the signing of the **Construction Agreement**, in respect of the period from and including the day of

signing of the **Construction Agreement** until the next following 30th September or 31st March, whichever is the earlier; and thereafter

- (ii) not less than 75 (seventy five) days (or if such day is not a **Business Day** the next following **Business Day**) prior to each 30th September and 31st March thereafter in respect of the period of six calendar months commencing on the immediately following 1st October or 1st April (as the case may be), until the earlier of the termination of the relevant **Construction Agreement** or the **Charging Date**.

6.2 **The Company** shall issue a **Cancellation Charge Statement** to a **User** (except in the case of a **User** in the category of a **Distribution System** directly connected to the **National Electricity Transmission System**) after the **Charging Date** at the following times and in respect of the following periods:-

- (i) not less than 75 (seventy five) days (or if such day is not a **Business Day** the next following **Business Day**) prior to the **Charging Date** in respect of the period from and including the **Charging Date** until the next following 31 March; and thereafter
- (ii) not less than 75 (seventy five) days (or if such day is not a **Business Day** the next following **Business Day**) prior to the 31 March in respect of the **Financial Year** commencing on the immediately following 1st April, until **Disconnection**.

6.3 The **Cancellation Charge Statement** shall show the highest level of **Cancellation Charge** due within the period covered by the **Cancellation Charge Statement**.

7 Cancellation Charge Secured Amount

7.1 Where a **User** has to provide security in accordance with this Section 15 Part TWO such **Cancellation Charge Statement** shall also specify the amount of the **Cancellation Charge** to be secured at the beginning of and throughout that **Security Period**.

- 7.2 The **Cancellation Charge Secured Amount** shall be based on highest level of **Cancellation Charge** due within the period covered by the **Cancellation Charge Secured Amount Statement**.

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PART TWO

1. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT AND CREDIT REQUIREMENTS

2. Each **User** which has a **Construction Agreement** shall provide security in respect of each of its **Construction Agreements** for the **Cancellation Charge Secured Amount** as applied and calculated in accordance with this Section 15 Part TWO:

2.1 in the case of a **User** which meets **The Company Credit Rating** at the date of the **Construction Agreement** in accordance with Paragraph 4; and

2.2 in the case of a **User** which does not meet **The Company Credit Rating** at the date of the **Construction Agreement** or thereafter ceases to meet it, in accordance with Paragraph 5.

3. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT

3.1 Prior to the **Trigger Date** the **Cancellation Charge Secured Amount** is the **Cancellation Charge** for the relevant **Financial Year**.

3.2 On or after the **Trigger Date** until the **Completion Date** the **Cancellation Charge Secured Amount** is that proportion of the **Cancellation Charge** for the relevant **Financial Year** determined as follows:

Prior to (and including) the Key Consents In Place Date	the % of the Cancellation Charge for that Financial Year as set out in the Wider Cancellation Amount Statement .
From the Key Consents In Place Date	the % of the Cancellation Charge for that Financial Year as set out in the Wider Cancellation Amount Statement .

3.3 The **User** shall notify **The Company** once it considers that it has [been granted] [has in place] the **Key Consents** for the [**Power Station**]. **The Company** shall respond [as soon as practicable after such notification] confirming that it is satisfied that this is the case or giving reasons why it is not so satisfied.

4. **PROVISION OF SECURITY WHERE USER MEETS THE COMPANY CREDIT RATING**

4.1 The **User** shall as soon as possible after entering into a **Construction Agreement** and in any event no later than one (1) month after the date of the same confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the [1 April and 1 October each year] until 30 days after the **Charging Date** the **User** shall confirm to **The Company** whether it meets **The Company Credit Rating** (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 no longer meeting **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 meeting **The Company Credit Rating** for at least 12 months.

4.2 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 Paragraph 4.1 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 Paragraph 4.4 below.

4.3 In the event of the **User**:

- (i) not meeting **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 Paragraph 4.2(i) above an indicative long term private credit rating,

or if **The Company** becomes aware that:

- (iv) the **User** ceases to meet **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 **The Company Credit Rating** for at least 12 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Paragraph 4.2(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 Paragraph 4.4.

4.4 The **User** shall within 21 days of the giving of a notice under Paragraph 4.3 or within 30 days of the **User** confirming to **The Company** under Paragraph 4.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **Cancellation Charge Secured Amount** for the relevant **Security Period**.

4.5 The form of security provided shall be of a type set out in Paragraph 6.

4.6 If the facts of circumstances giving rise to the obligation of the **User** to provide the security have ceased, then **The Company** shall release the security.

5. **PROVISION OF SECURITY WHERE USER DOES NOT MEET OR CEASES TO MEET THE COMPANY CREDIT RATING**

5.1 Each **User** hereby agrees that it shall at the date of the relevant **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until 28 days after the **Charging Date** [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 Paragraph 6 to provide security for the **Cancellation Charge Secured Amount**.

6. TYPES OF SECURITY

6.1 The **User** shall from time to time and for the time being as set out in Paragraph 5 to provide security for the **Cancellation Charge Secured Amount** shall be secured by any one of the following:-

6.1.1 A **Performance Bond** or **Letter of Credit** from a **Qualified Bank** for **Cancellation Charge Secured Amount** for a given **Security Period**, such **Performance Bond** or **Letter of Credit** to be **Valid** for at least that given **Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 6.2.3; or

6.1.2 A cash deposit in a **Bank Account** at least for the amount of the **Cancellation Charge Secured Amount** to be secured for a given **Security Period**, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 6.2.4; or

6.1.3 A **Performance Bond** from a **Qualified Company** for the amount of the **Cancellation Charge Secured Amount** to be secured for a given **Security Period**, such **Performance Bond** to be **Valid** for at least that **Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 6.2.3.

6.2. General Provisions regarding Security

6.2.1 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.

6.2.2 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.

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

6.2.3.1 The **Performance Bond** or **Letter of Credit** shall be **Valid** initially for the **First Security Period**. Such **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Cancellation Charge Secured Amount** for that **First Security Period**.

6.2.3.2 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 start of each following **Security Period** such **Performance Bond** or **Letter**

of Credit shall be renewed so as to be **Valid** for not less than such **Security Period** and in the case of the last **Security Period** to be **Valid**, unless **The Company** agrees otherwise, for 45 days after the last day of such **Security Period**. Such renewed **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Cancellation Charge Secured Amount** to be secured during that **Security Period**.

6.2.4 The following provisions shall govern the maintenance of cash deposits in the **Bank Account**:-

6.2.4.1 The amount of the cash deposit to be maintained in the **Bank Account** shall be maintained from the date of the **Construction Agreement** at least to the end of the **First Security Period**. Such cash deposit shall be in the amount of the **Cancellation Charge Secured Amount** to be secured during that **First Security Period**.

6.2.4.2 If the amount of the **Cancellation Charge Secured Amount** to be secured from the start of each **Security Period** is an amount greater than the amount then secured, the cash deposit in the **Bank Account** shall be increased to such greater amount on the date which is 45 days before the start of the given **Security Period**.

6.2.4.3 If the **Cancellation Charge Secured Amount** for a given **Security Period** 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 start of that given **Security Period** (“the **Release Date**”).

6.2.4.4 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**.

6.2.4.5 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.

6.3 Notwithstanding any provision aforesaid:-

6.3.1 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 amount of the **Cancellation Charge Secured Amount** required to be secured for that **Security Period**.

6.3.2 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 the first day of the relevant **Security Period** and committed at least 45 days before this 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 the start of the **Security Period** to which it relates.

(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 the start of the **Security Period** to which it relates.

6.3.3 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 first day of the **Security Period** which the substitute security is securing. However, where the **Cancellation Charge Secured Amount** to be secured for any **Security Period** is less than the amount required to be secured in the preceding **Security Period**, the substituted security shall not be released until 7 days after the start of the **Security Period** that that substitute security is securing.

7 General

7.1 Disputes

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

- (i) the fairness and reasonableness of the estimate of the **Attributable Works Capital Cost**; or
- (ii) the calculation of the **Cancellation Charge**, or
- (iii) as to whether the **User** has [been granted] [has in place] all **Key Consents**; or
- (iv) the amount specified in the **Cancellation Charge Statement** as requiring at any time to be secured; or
- (v) whether there has been an **Event of Default** as provided in **CUSC** Section 5; or
- (vi) the lawfulness or otherwise of any termination or purported termination of the **Construction Agreement**,

such dispute shall, whether **The Company** has recovered or sought to recover payment under any security arrangement or not and without prejudice to **The Company's** right to recover or seek to recover such payment, be dealt with (a) in the case of (i) and (ii) under Section 7 as a **Charging Dispute**, (b) in the case of (iv) be dealt with by referral to the **Independent Engineer** nominated in accordance with the **Construction Agreement** and (c) in the case of the other matters as an **Other Dispute**.

7.2 Disputes and Security Arrangements

Any dispute between the **User** and **The Company** under Paragraph 7.1 above shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Paragraph 5 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.

7.3 **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 the **Cancellation Charge**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the **Cancellation Charge**.

DRAFT

**Proposed Amendments to Section 15 (Part One)CMP 192 (Original)
(Arrangements for Enduring Generation User Commitment) for CMP 192
(alternative 3)**

- 3.5 The **Local Cancellation Amount** is calculated by reference to the **Attributable Works** as specified in Appendix MM of the **Construction Agreement** as follows and results in a £/MW figure which is fixed and not subject to any further specific adjustment, reconciliation or credit should any **Transmission** assets be reused:

Attributable Works Capital Cost x **Asset Reuse Factor** x **Strategic Investment Factor** x **User Risk Factor**

Where the **Attributable Works Capital Cost** is the fair and reasonable estimate by **The Company** in respect of **Attributable Works** in England and Wales and the **Relevant Transmission Licensee** in respect of **Attributable Works** elsewhere the fees, expenses and costs (excluding costs on account of interest charges to be incurred) of whatever nature reasonably and properly incurred or due in respect of the **Attributable Works**.

Where the **Asset Reuse Factor** is the factor representing the potential for reuse of the **Attributable Works** as determined by **The Company** in England and Wales or the **Relevant Transmission Licensee** elsewhere and set out in the **Cancellation Charge Statement**:

Where the **Strategic Investment Factor** is a discount factor calculated for the **Attributable Works** as a ratio of the **Transmission Entry Capacity/Developer capacity** sharing those **Attributable Works** against the capability of the **Transmission** assets as determined by **The Company** in England and Wales or the **Relevant Transmission Licensee** elsewhere and set out in the **Cancellation Charge Statement**.

Where the **User Risk Factor** is the share of total risk between generation and consumers, set at 50%.

**Proposed Amendments to Section 15 (Part Two)CMP 192 (Original)
(Arrangements for Enduring Generation User Commitment) for CMP 192
(alternative 4)**

3. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT

3.1 Prior to the **Trigger Date** the **Cancellation Charge Secured Amount** is the **Cancellation Charge** for the relevant **Financial Year**.

3.2 On or after the **Trigger Date** until the **Completion Date** the **Cancellation Charge Secured Amount** is that proportion of the **Cancellation Charge** for the relevant **Financial Year** determined as follows:

Prior to (and including) the Key Consents In Place Date	the % of the Cancellation Charge for that Financial Year as set out in the Wider Cancellation Amount Statement .
From the Key Consents In Place Date	the % of the Cancellation Charge for that Financial Year as set out in the Wider Cancellation Amount Statement .
From Financial Close	the % of the Cancellation Charge for that Financial Year as set out in the Wider Cancellation Amount Statement .

3.3 The **User** shall notify **The Company** once it considers that it (a) has [been granted] [has in place] the **Key Consents** for the [Power Station] and/or (b) has achieved [financial close] for the Power Station project. **The Company** shall respond [as soon as practicable after such notification] confirming that it is satisfied that this is the case or giving reasons why it is not so satisfied.

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 or (iii) where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System

INDICATIVE

DATED [] 200[1]

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)

and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE

CONSTRUCTION AGREEMENT

CONTENTS

<u>Clause</u>	<u>Title</u>
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
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12	Term
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Appendix B1	One Off Works
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Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme
Appendix K	Liquidated Damages
Appendix L	Independent Engineer

CUSC v1.7

Appendix MM Attributable Works

Appendix N Third Party Works

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

BETWEEN

- (1) National Grid Electricity Transmission plc a company registered in England with number 2366977 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**.
- (G) For the purposes of **CUSC** Section 15 (User Commitment Methodology) the **User** has elected for the **Local Cancellation Amount** to be based on [Final Sums] [the **Fixed Local Cancellation Amount**].

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 [where Part 1.1 is the Sole Attributable Works and Part 1.2 is the Shared Attributable Works].
"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 :- (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

	<p>Connection Asset Works are being undertaken by or on behalf of The Company;</p>
“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.
“Final Sums”	where the User has elected for the Local Cancellation Amount to be calculated on the basis of Final Sums , sum of the Shared Final Sums and the Sole Final Sums .
“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**.

“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 .
“Other Users”	other users whose Appendix MM (Attributable Works) contains the same works as set out in the Attributable Works in 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**.

"Shared Attributable Works"

means the **Attributable Works** set out in Appendix MM Part 2.

"Shared Final Sums"

where the **User** has elected for the **Local Cancellation Amount** to be calculated on the basis of final sums the amount payable by the **User** on termination of this **Construction Agreement** being the attributable share (such share having regard to any **Other User's**) of the aggregate from time to time and for the time being of:-

- (1) 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 **Shared Attributable Works** carried out prior to the date of termination of this **Construction Agreement**;
- (2) 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 **Shared Attributable Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);
- (3) fees, expenses and costs due in accordance with Clause 2.4.1 in respect of the **Shared Attributable Works**; and
- (4) 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.

"Sole Attributable Works"

means the **Attributable Works** set out in Appendix MM Part 1.

"Sole Final Sums"

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:-

- (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 **Sole Attributable 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 **Sole Attributable 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;

- (5) fees, expense and costs due in accordance with Clause 2.4.1 in respect of the **Sole Attributable Works**; and
- (6) 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.

"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 The Company and the User to enable it 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”

the [].

“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.]
<i>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</i>	
[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-relevant embedded medium\small 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 .

2. CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland 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, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, 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 Where the **User** has elected for the **Local Cancellation Amount** to be calculated on the basis of **Final Sums** 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 Agreement** in respect of the **Attributable Works**.

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 relation to **Connection Sites** in England and Wales, in the acquisition by it of the freehold of any land or any **Relevant Transmission Licensee**, in relation to **Connection Sites** in Scotland, in the acquisition by it of the feuhold of any land. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred.

- 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 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 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.

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 Company** or, in the case of **Connection Sites** in Scotland, 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 **Local Cancellation Amount** to be based on the **Fixed Local Cancellation Amount** 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 Secretary of State for Trade and Industry 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 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

2.17.1 **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.

2.17.2. Where a **User** has elected for the **Local Cancellation Amount** to be based on **Final Sums**, to the extent that the **Wider Transmission Reinforcement Works** include the **Attributable Works** and these are undertaken prior to the **Charging Date** sums associated with them shall form part of any **Final Sums** due on termination of this **Construction Agreement** on or before the **Charging Date** and so will be included in the **Cancellation Charge Statement** and in the **Cancellation Charge Secured Amount**.

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**.

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 **Cancellation Charge** and **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** prior to the **Charging Date** the **User** shall be liable 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.

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

[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 **Cancellation Charge** and **Reduction Fee**. 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 the **Developer Capacity** prior to the **Charging Date** the **User** shall be liable 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.

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

The **User** shall provide security to **The Company** in accordance with **CUSC** Section 15 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 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, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and
- (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **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 Company** or the **Relevant Transmission Licensee** (as appropriate) 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.

11.3 Final Sums

11.3.1 Where the **User** has elected for the **Local Cancellation Amount** to be on the basis of **Final Sums**, on termination the **User** shall pay to **The Company** on account of the **Final Sums** component of the **Cancellation Charge** the estimate of **Final Sums** as set out in the **Cancellation Charge Statement** less the **Asset Reduction Factor**. The sum paid on account of **Final Sums** will be subject to adjustment in accordance with Clause 11.3.2 and Clause 11.3.5.

11.3.2 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.

11.3.3 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.

11.3.4 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.

11.3.5 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.

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 or 11 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 to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. DISPUTES

Except as specifically provided for in this **Construction Agreement** and **CUSC** Section 15 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

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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 Paragraph 6.9 of the **CUSC**.

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 Transmission plc)

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

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**APPENDIX [B]
[Part 1]
ONE OFF WORKS**

APPENDIX [G]
TRANSMISSION CONNECTION ASSET WORKS

APPENDIX [H]

TRANSMISSION REINFORCEMENT WORKS

Part 1 Enabling Works

Part 2 Wider Transmission Reinforcement Works

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**APPENDIX [I]
USER'S WORKS**

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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

[w User has elected for the Local cancellation Amount to be on the basis of Final Sums, list works as follows:]

Part 1 **Attributable Works**

Part 1.1 **Sole Attributable Works**

Part 1.2 **Shared Attributable Works**

Part 2 **Key Consents**

[where User has elected for the Local cancellation Amount to be on the basis of the Fixed Local Cancellation Amount, list works:]

Part 1 **Attributable Works**

Part 2 **Key Consents**

1.

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.

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SCHEDULE 2 EXHIBIT 3

PART 2

For use with User's other than in the categories referred to at Part 1

INDICATIVE

DATED [] 200[1]

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)

and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE

CONSTRUCTION AGREEMENT

Current onshore construction agreement inserted here nb will need editing to take out all generation refs

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END OF SCHEDULE 2 EXHIBIT 3