

**THE SYSTEM OPERATOR
TRANSMISSION OWNER CODE**

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SCHEDULES

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SCHEDULE ONE

THE SYSTEM OPERATOR - TRANSMISSION OWNER CODE

ACCESSION AGREEMENT

- (1) NATIONAL GRID COMPANY PLC; and
- (2) []

**THE SYSTEM OPERATOR - TRANSMISSION OWNER CODE
ACCESSION AGREEMENT**

THIS ACCESSION AGREEMENT is made on []

BETWEEN:

- (1) **NATIONAL GRID COMPANY** plc a company registered in England with number 2366977 whose registered office is at 1-3 Strand, London, WC2N 5EH ("**NGC**"), which expression shall include its successors and/or permitted assigns; on its own behalf and on behalf of all the other parties to the Framework Agreement; and
- (2) [*Insert name of person wishing to be admitted to the STC*] (the "**Party Applicant**") whose principal office is at [].

WHEREAS

- (A) By the Framework Agreement dated [] in force between the Parties and by virtue of any Accession Agreement entered into by any Party before the date of this Accession Agreement, the Parties agreed to give effect to and be bound by the STC.
- (B) The Party Applicant has complied with the requirements of the STC (if any) as to accession and wishes to be admitted as a Party.
- (C) By the Framework Agreement and the provisions of the STC all Parties authorise NGC to sign this Accession Agreement on their behalf.

IT IS HEREBY AGREED as follows:

1. In this Accession Agreement, words and expression defined in or for the purposes of the Framework Agreement and not otherwise defined herein shall have the meanings ascribed thereto under the Framework Agreement.
2. NGC (acting on its own behalf and on behalf of each of the other Parties) hereby admits the Party Applicant as an additional Party under the Framework Agreement with effect from the date of this Accession Agreement on the terms and conditions hereof.
3. The Party Applicant hereby accepts its admission as a Party and undertakes with NGC (acting on its own behalf and on behalf of each of the other Parties) to perform and to be bound by the Framework Agreement as a Party as from the date hereof.
4. For all purposes in connection with the Framework Agreement the Party Applicant shall as from the date hereof be treated as if it has been a signatory of the Framework Agreement from the date hereof, and as if this Accession Agreement were part of the Framework Agreement from the date hereof, and the rights and obligations of the Parties shall be construed accordingly.
5. This Accession Agreement and the Framework Agreement shall be read and construed as one document and references (in or pursuant to the Framework Agreement) to the Framework Agreement (howsoever expressed) should be read and construed as reference to the Framework Agreement and this Accession Agreement.

6. If any provision of this Accession Agreement is or becomes invalid, unenforceable or illegal or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by any other Competent Authority (as defined in the STC), such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Accession Agreement, which shall continue in full force and effect notwithstanding the same. The Party Applicant and NGC (acting on its own behalf and on behalf of each of the other Parties) hereby acknowledge and agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that no rights, powers or benefits are or shall be conferred on any person pursuant to this Accession Agreement, except for such rights, powers or benefits as are expressly conferred on the Parties and the Party Applicant in accordance with and subject to its terms or except for or to the extent provided in the STC.
7. This Accession Agreement may be executed in counterparts.
8. This Accession Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the courts of England and Wales and the courts of Scotland only.
9. If Party Applicant is a company which is incorporated under the Companies Act 1985 (as amended), its address for service shall be its registered office. If the Party Applicant is not a company incorporated under the Companies Act 1985 (as amended) it shall provide to NGC an address in Great Britain for service of process on its behalf in any proceedings, provided that if any such Party Applicant fails at any time to provide such address, such Party Applicant shall be deemed to have appointed NGC as its agent to accept service of process on its behalf until and unless such Party Applicant provides NGC with an alternative address in Great Britain for these purposes.

AS WITNESS the hands of the duly authorised representatives of the parties hereto the day and year first above written.

END OF SCHEDULE ONE

SCHEDULE TWO
LIST OF CODE PROCEDURES

SCHEDULE THREE

INFORMATION AND DATA EXCHANGE SPECIFICATION

This Schedule sets out the information and data permitted to be Disclosed by a Party to a Transmission Owner in accordance with Section F of the Code.

1. Information and Data Exchange During the Transition Period

During the Transition Period, a Party may Disclose to a Transmission Owner such information and data as shall:

- 1.1 be reasonably requested by a relevant Party or Parties for the purpose of Section I and approved by the Authority from time to time; or
- 1.2 otherwise be notified by the Authority from time to time.

2. Information and Data Exchange Other than During the Transition Period

SCHEDULE FOUR

Criteria for Assessing Those Transmission Systems Affected by a Construction Project

SCHEDULE FIVE

NGC CONNECTION APPLICATIONS

1. **Requirements for a NGC Connection Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.1:**

1.1 A NGC Connection Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.1 shall contain the following information:

Proposed New Connection Site

- 1.1.1 The User Application Date.
- 1.1.2 Identification of the intended location of the New Connection Site (preferably by reference to an extract from an ordinance survey map), specifying the name of the New Connection Site together with details of access to the New Connection Site, including from the nearest main road.
- 1.1.3 A plan or plans of the proposed New Connection Site indicated (as far as NGC is able) the position of all buildings, structures, plant and apparatus and of all services located on the New Connection Site.
- 1.1.4 Details of whether the New Connection Site is to be heritable or leasehold (to include details of any servitudes or wayleaves or other property rights) insofar as NGC is aware.
- 1.1.5 The occupier of the New Connection Site so far as NGC is aware.
- 1.1.6 Where a sub-station may be needed, an indication by reference to the plan referred to in sub-paragraph 1.1.3, any location for it suggested by the relevant User, giving dimensions of the area.
- 1.1.7 Where the User is prepared to make available to the Transmission Owner the land necessary for the sub-station referred to in sub-paragraph 1.1.6, brief proposals for the Transmission Owner's interest in it including (if relevant) such interest and the consideration to be paid for it.
- 1.1.8 Whether space is available on the New Connection Site for working storage and accommodation areas for the contractors of the Transmission Owner and, if so, an indication by reference to the plan referred to in sub-paragraph 1.1.3 above the location of such areas, giving approximate dimensions of the same.
- 1.1.9 Details (including copies of any surveys or reports) of the physical nature of land in which the User has an interest (whether heritable or leasehold or by way of a servitude or wayleave or other property right) at the proposed New Connection Site including the nature of the ground and the sub-soil including the results of any tests undertaken by the User in connection with the New Connection.

- 1.1.10 Details and copies of all existing relevant planning and other consents (statutory and otherwise) relating to the New Connection Site and the User Equipment and/or details of any pending applications for the same.
- 1.1.11 Whether access to or use of the New Connection Site for the purposes of installing, maintaining and operating equipment is subject to any existing restrictions and, if so, details of such restrictions.
- 1.1.12 To the extent that NGC is aware of them, identification by reference to a plan (if possible) the owners and (if different) occupiers of the land adjoining the New Connection Site and brief details of the owner's and occupier's respective interests in such land.

Technical Information

- 1.1.13 Standard Planning Data.
- 1.1.14 A copy of the User's Safety Rules.
- 1.1.15 The User's intended Connection Entry Capacity.
- 1.1.16 The User's intended Transmission Entry Capacity.

Programme

- 1.1.17 The User's suggested construction programme in bar chart form for the construction work necessary to install the User Equipment.
- 1.1.18 The date on which NGC wishes the New Connection Site to be made Operational.

2. Requirements for a NGC Connection Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.2:

- 2.1 A NGC Connection Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.2 shall contain the following information:
 - 2.1.1 The User Application Date.
 - 2.1.2 Standard Planning Data.
 - 2.1.3 The User's intended Transmission Entry Capacity.
 - 2.1.4 The date on which NGC wishes the New Connection Site to be made Operational.

3. Requirements for a NGC Connection Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.3:

- 3.1 A NGC Connection Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.3 shall contain the following information:

3.1.1 The User Application Date.

3.1.2 The date on which NGC wishes the New Connection Site to be made Operational.

SCHEDULE SIX

NGC MODIFICATION APPLICATIONS

1. **Requirements for a NGC Modification Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.1:**

1.1 A NGC Modification Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.1 shall contain the following information:

The Connection Site to be Modified

1.1.1 The User Application Date.

1.1.2 Identify by name the Connection Site at which the Modification is to be undertaken.

1.1.3 Details of the rights in any additional land which the User is proposing to acquire at the Connection Site (to include heritable or leasehold interests or by way of a servitude or wayleave or other property right so as to undertake the Modification).

1.1.4 Whether space is available on the Connection Site for working storage and accommodation areas for the contractors of the Transmission Owner and, if so, an indication by reference to a plan the location of such areas, giving approximate dimensions of the same.

1.1.5 Details (including copies of any surveys or reports) of the physical nature of any additional land referred to in sub-paragraph 1.1.3 above including the nature of the ground and the sub-soil including the results of any tests undertaken by the User in connection with the New Connection.

1.1.6 Details and copies of all existing relevant planning and other consents (statutory and otherwise) relating to the Connection Site or the Modification and/or details of any pending applications for the same.

1.1.7 An indication of what, if any, of the necessary construction works necessary for the Modification NGC would like the Transmission Owner to conduct on its behalf (or on behalf of the User).

Technical Information

1.1.8 Full details of the proposed Modification together with relevant Standard Planning Data to the extent that the data will change, as a result of the proposed Modification, from data previously made available to the Transmission Owner.

Programme

- 1.1.9 The User's suggested construction programme in bar chart form for the construction work necessary to install the Modification.
- 1.1.10 The date on which NGC wishes the Modification to be made Operational.
- 2. **Requirements for a NGC Modification Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.2:**
 - 2.1 A NGC Modification Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.2 shall contain the following information:
 - 2.1.1 The User Application Date.
 - 2.1.2 Standard Planning Data.
 - 2.1.3 The User's intended Transmission Entry Capacity.
 - 2.1.4 The date on which NGC wishes the Modification to be made Operational.
- 3. **Requirements for a NGC Modification Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.3:**
 - 3.1 A NGC Modification Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.3 shall contain the following information:
 - 3.1.1 The User Application Date.
 - 3.1.2 The date on which NGC wishes the Modification to be made Operational.

SCHEDULE SEVEN

SYSTEM CONSTRUCTION APPLICATIONS

1. **Requirements for a System Construction Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.2:**
 - 1.1 A System Construction Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.2 shall contain the following information:
 - 1.1.1 The User Application Date.
 - 1.1.2 Identify the location or intended location of any User Plant and Apparatus in relation to which the User Application relates.
 - 1.1.3 Standard Planning Data.
 - 1.1.4 The User's intended Transmission Entry Capacity.
 - 1.1.5 The date on which NGC wishes the System Construction to be made Operational.
2. **Requirements for a System Construction Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.3:**
 - 2.1 A System Construction Application submitted by NGC to a Transmission Owner pursuant to Section D, Part Two, sub-paragraph 2.2.3 shall contain the following information:
 - 2.1.1 The User Application Date.
 - 2.1.2 The date on which NGC wishes the System Construction to be made Operational.

SCHEDULE EIGHT

TO CONSTRUCTION OFFER

1. Requirements of a TO Construction Offer

1.1 Unless otherwise agreed with NGC, a TO Construction Offer shall be signed by the Transmission Owner and shall include the information set out in Transmission Licence Condition D4A and, to the extent that such information does not otherwise require it, shall also include the following:

1.1.1 a description of any Change(s) to its Transmission System required to give effect to the Construction Project;

1.1.2 a description of any associated variation in the Transmission Services to be provided to NGC under Section C, Part One, paragraph 2.1 and including (where appropriate) any new or revised Normal Capability Limits that will apply;

1.1.3 a contract (a "**TO Construction Agreement**") for the construction of those Changes to its Transmission System described in paragraph 1.1.1, which is capable of being entered into by NGC and which binds NGC upon signature, and which shall contain the following:

1.1.3.1 commercial terms in, or substantially in, the form set out in Schedule Nine;

1.1.3.2 a description (in the form of Appendices) of any of the following types of works required to be undertaken by the Transmission Owner to give effect to the Construction Project:

(a) Transmission Connection Asset Works;

(b) Transmission Reinforcement Works;

(c) Seven Year Statement Works;

(d) One Off Works; and

(e) such additional works as are required in order to comply with any relevant Consents in relation to any of the works in (a) - (d) above,

(referred to together as the "**Transmission Construction Works**")

1.1.3.3 Appendices setting out any User Works and Third Party Works, respectively, associated with the Construction Project;

- 1.1.3.4 an Appendix setting out the TO Construction Programme, including the date on which the Transmission Construction Works shall be completed;
 - 1.1.3.5 the Independent Engineer for the purposes of the TO Construction Agreement;
 - 1.1.3.6 the date by which NGC or the User shall have commenced, or shall be ready to commence, the Commissioning Programme;
 - 1.1.3.7 the Completion Date; and
 - 1.1.3.8 such other terms as are or may be appropriate for the purpose of the TO Construction Agreement (including, without limitation, any Liquidated Damages).
- 1.1.4 the likely material effect of Transmission Construction Works on other third parties (not including the User to whose User Application the TO Construction Offer relates);
 - 1.1.5 any Outage(s) forming part of or otherwise associated with the Transmission Owner Construction Works;
 - 1.1.6 a description of any assumptions, technical limitations or works of other Parties which the TO Construction Offer is based upon and which are likely to be associated with the provision of Transmission Services at the Connection Site or New Connection Site or otherwise in relation to the construction of the relevant parts of the Construction Project including (without limitation) any SYS Works proposed for another Party's Transmission System which are required to be undertaken in order for the Transmission Owner to give effect to the TO Construction Offer;
 - 1.1.7 a description of any technical design or operational criteria which the Transmission Owner reasonably considers User Equipment would be required to meet in order for such Transmission Owner to comply with Standard Condition D3 of its Transmission Licence.
- 1.2 In the case of a TO Construction Offer in relation to a New Connection, such TO Construction Offer may contain some or all of the following conditions:
 - 1.2.1 That NGC shall procure that the User enters into an Interface Agreement with the Transmission Owner covering the New Connection Site in a form to be agreed between the Transmission Owner and User but substantially in the form set out in Schedule O of the CUSC.
 - 1.2.2 That the New Connection Site is not a nominated site under the "NAECI" (the National Agreement for the Engineering Construction Industry) conditions and will not become one and any agreement for this site will be conditional upon this.

- 1.3 A TO Construction Offer shall remain open for acceptance by NGC according to the terms of Section D, Part Two, paragraph 5 of the Code.

SCHEDULE NINE

TO CONSTRUCTION TERMS

A. PRO FORMA TERMS FOR TO CONSTRUCTION AGREEMENT BETWEEN NGC AND A TRANSMISSION OWNER UNDERTAKING WORKS WHICH INCLUDE WORKS AT A RELEVANT CONNECTION SITE.

1. Definitions and Interpretation

1.1 Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions in this TO Construction Agreement shall have the same meanings, interpretations or constructions as set out in Section J of the Code.

1.2 For the purposes of this TO Construction Agreement,

1.2.1 "**Consents**" means, in relation to any Transmission Construction 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 or Planned Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Transmission Construction Works when completed;

1.3 The Relevant Connection Site and Works to which this TO Construction Agreement applies shall be as set out in the relevant Appendices to this TO Construction Agreement.

2. Carrying out of the Works

2.1 Forthwith following the Effective Date, the Transmission Owner and the User shall agree the Safety Rules and Local Safety Instructions to apply during the TO Construction Programme and TO Commissioning Programme. Failing agreement within three months of the Effective Date, the matter shall be referred to the Independent Engineer for determination in accordance with paragraph 5 of this TO Construction Agreement.

2.2 In relation to a Relevant Connection Site, the Transmission Owner shall, and NGC shall procure that the User shall, ensure that each other is supplied with a copy of the Safety Rules current from time to time, including any site-specific Safety Rules, and also a copy of the Local Safety Instructions applicable at each Relevant Connection Site from time to time.

- 2.3 Subject to paragraphs 2.4 and 2.6 forthwith following the Effective Date, the Transmission Owner shall use its best endeavours to obtain in relation to the Transmission Construction Works and NGC shall use its best endeavours to procure that the User obtains in relation to the User 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, and NGC shall procure that the User shall, so far as it is legally able to do so, grant to the other, or the User, all such wayleaves, easements, servitude rights or other 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 User 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 TO Construction Agreement and in all cases subject to such terms and conditions as are reasonable.
- 2.4 The following additional provisions shall apply in respect of the Consents and Transmission Construction Works:
- 2.4.1 All dates specified in this TO Construction Agreement are subject to the Transmission Owner obtaining Consents for the Transmission Construction Works in a form acceptable to it and within the time required to carry out the Transmission Construction Works in accordance with the TO Construction Programme.
- 2.4.2 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 Transmission Owner wishing to amend the Transmission Construction Works to facilitate the granting of the Consents,
- the Transmission Owner shall be entitled to revise the Transmission Construction Works (and as a consequence the relevant Appendices of this TO Construction Agreement which set out such Transmission Construction Works and any related charges). For the avoidance of doubt such revisions shall be at the Transmission Owner's absolute discretion and the consent of NGC is not required.
- 2.5 The Parties shall regularly update each other in writing or by such other means as the relevant Parties may agree as to progress made by them and, in the case of NGC, as to progress made by the User from time to time in the obtaining of relevant Consents pursuant paragraphs 2.3 or 2.4.
- 2.6 NGC shall be liable to pay to the Transmission Owner:
- 2.6.1 all of the Transmission Owner's Engineering Charges accrued; and
- 2.6.2 proper and reasonable out-of-pocket expenses incurred and/or paid or which the Transmission Owner is legally bound to incur or pay,

in seeking and obtaining the Consents the subject of paragraph 2.3 excluding any costs associated with the Seven Year Statement Works and any other works, to the extent that NGC has paid or is liable to pay such costs under another TO Construction Agreement.

NGC 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 Transmission Owner in the acquisition by it of the freehold of any land upon which a land charge is payable. The Transmission Owner shall keep NGC informed of the level of such charges and expenses being incurred. NGC shall pay such sums within 30 (thirty) days of the date of the Transmission Owner's invoice therefor.

- 2.7 Paragraphs 2.2, 2.3, 2.4 and 2.5 of Section J of the Code relating to Consents shall apply to the construction arrangements set out in this TO Construction Agreement as if set out here in full.
- 2.8 NGC may by written notice to the Transmission Owner terminate this TO Construction Agreement at any time whereupon NGC shall in addition to the sums for which it is liable under paragraph 2.6 be liable to pay to the Transmission Owner a sum equal to the Transmission Owner's estimate or if applicable revised estimate of TO Final Sums. NGC shall pay such sums within 16 (sixteen) days of the date of the Transmission Owner's invoice(s) therefor and (where applicable) on termination the Transmission Owner shall disconnect the User's Equipment at the Relevant Connection Site and:
- 2.8.1 NGC shall procure that a User removes any of the User's Equipment on the Transmission Owner's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and the User; and
- 2.8.2 the Transmission Owner shall remove any of the Transmission Connection Assets on the User's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and the User.
- 2.9 The Transmission Owner shall be entitled to contract or sub-contract for the carrying out of its respective parts of the Works. NGC or any contractor on its or the User's behalf (as appropriate) shall be responsible for ensuring the commencement and carrying out of the User Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme and the Transmission Owner or any contractor on its behalf shall be responsible for commencing and carrying out the Transmission Construction Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme.
- 2.10 NGC may, at its discretion, notify the Transmission Owner at any time in writing to discontinue, postpone or otherwise delay all or part of any Works or other activities under this TO Construction Agreement and may direct that the Transmission Owner produce an

amended TO Construction Programme and/or TO Commissioning Programme accordingly, as a consequence of:

- 2.10.1 a User breaching any credit or security requirement pursuant to the CUSC or CUSC Construction Agreement;
 - 2.10.2 a delay or failure by NGC, a User or another Joint Project Party to obtain any Consents; or
 - 2.10.3 a delay or failure by another Joint Project Party under and pursuant to any other TO Construction Agreement in respect of the same Construction Project.
- 2.11 During the period of and at the times and otherwise as provided in the TO Construction Programme and the TO Commissioning Programme the Transmission Owner shall allow NGC or the User and in either case their employees, agents, suppliers, contractors and subcontractors and NGC shall allow and ensure that the User allows (in relation to its sites) the Transmission Owner, its 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 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 any 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.
- 2.12 Not later than six months prior to the Commissioning Programme Commencement Date, the Transmission Owner shall provide NGC with a draft TO Commissioning Programme for the Commissioning of the Transmission Connection Assets, and the User's Equipment. NGC 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 Transmission Owner of its approval or, in the event that NGC reasonably withholds its approval, notify the Transmission Owner of any changes or variations to the proposed commissioning programme recommended by NGC. If the Transmission Owner does not accept such changes or variation submitted by NGC any dispute shall be referred to the Independent Engineer for determination. The TO 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.
- 2.13 If at any time prior to the Completion Date it is necessary for the Transmission Owner or the Transmission Owner in its reasonable discretion wishes to make any addition to or omission from or amendment to its Transmission Connection Asset Works and/or Transmission Reinforcement Works and/or the One Off Works and/or the Third Party Works the Transmission Owner shall notify NGC in writing of such addition, omission or amendment and the relevant Appendix of this TO Construction Agreement shall be automatically amended to reflect the change.

- 2.14 Transmission Reinforcement Works are conditional on any relevant nuclear generator granting approval to the carrying out of the Transmission Construction Works in terms of any Nuclear Site Licence Provisions Agreement. In the event of the relevant nuclear generator not granting approval the Transmission Owner shall be entitled to change the Transmission Construction Works, the TO Construction Programme and all dates specified in this TO Construction Agreement.
- 2.15 It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the Transmission Owner is the only client in respect of the Transmission Construction Works and shall accordingly discharge all the duties of a client under the said Regulations.
- 2.16 The Transmission Owner and NGC hereby agree and acknowledge that this TO 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 to any part of the Transmission Construction Works and the Parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

3. DELAYS

- 3.1 If either Party shall have reason to believe that it, another Transmission Owner or, in the case of NGC a User, is being delayed or will be delayed in carrying out that Party's or a User's Works (as appropriate) for any reason (whether it is one entitling it to the fixing of a new date under paragraph 3.2 of this TO 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 paragraph 3.2 the "**Affected Party**") shall be delayed in carrying out any of the Affected Party's Works (including their commissioning) by reason of (a) any act, default or omission on the part of the other Party (in this paragraph the "**Defaulting Party**") or of the Defaulting Party's employees, agents, contractors, sub-contractors or, in the case where NGC is the Defaulting Party, by reason of a delay by the User or (b) any act, default or omission on the part of any Transmission Owner which is not a Party to this TO Construction Agreement or its employees, agents, contractors or subcontractors or (c) 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 date or dates to be fixed in the circumstance this shall be promptly referred to and determined by the Independent Engineer. Once the new date or dates are fixed the TO Construction Programme and/or TO 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 shall have given written notice to the other under paragraph 4.1.
- 4.3 The Transmission Construction 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 shall be later than the Commissioning Programme Commencement Date the Transmission Owner (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 NGC 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 Transmission Construction Works are Commissioned is later than the Completion Date the Transmission Owner (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 NGC Liquidated Damages for each day that the actual date on which the Transmission 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 Transmission Construction Works.
- 4.6 Liquidated Damages payable under paragraphs 4.4 and 4.5 shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 13th 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 NGC pursuant to paragraph 2.6 the payment or allowance of Liquidated Damages pursuant to this paragraph 4 shall be in full satisfaction of the Transmission Owner'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 NGC or a User shall have failed, in circumstances not entitling NGC to the fixing of a new date as the Commissioning Programme Commencement Date pursuant to paragraph 3.2, to procure that the User complete the User Works by the

Construction Backstop Date to a stage where NGC or such User (as appropriate) is ready to commence the Commissioning Programme, the Transmission Owner shall have the right to terminate this TO Construction Agreement upon giving notice in writing to NGC. In the event of such termination NGC shall in addition to the amounts for which it is liable under paragraph 2.6, also be liable to the Transmission Owner to pay a sum equal to the Transmission Owner's estimate or revised estimate of TO Final Sums. NGC shall pay such sums within 14 (fourteen) days of the date of the Transmission Owner's invoice(s) therefor and on termination (where applicable) The Transmission Owner shall disconnect the User Equipment at the Relevant Connection Site and (a) NGC shall, or shall ensure that the User shall, remove any of the User Equipment on the Transmission Owner's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and NGC or the Transmission Owner and the User and (b) the Transmission Owner shall remove any Transmission Connection Assets on the User's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner or NGC and the User.

5. INDEPENDENT ENGINEER

In relation to matters raised pursuant to this TO Construction Agreement, 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 TO 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 16 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 in Section H of the Code. Pending any such submission the parties shall treat the Independent Engineer's decision as final and binding.

6. BECOMING OPERATIONAL

6.1 Without prejudice to paragraph 5 and subject to the provisions of this TO Construction Agreement, the Transmission Owner shall assist NGC in Connecting and Energising the User Equipment at the Relevant Connection Site including by:

- (a) completing any Works required to be completed by the Transmission Owner at the times and in such manner as set out in the TO Construction Programme; and

- (b) completing any operations, tests or other activities required to be completed by the Transmission Owner at the times and in such manner as set out in the Commissioning Programme.

7. TO FINAL SUMS

7.1 Within 58 days of the date of termination of this TO Construction Agreement the Transmission Owner shall:

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

7.2 In respect of all capital items which the Transmission Owner 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 Transmission Owner shall forthwith reimburse to NGC the amount paid by NGC on account of TO 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 TO 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 Transmission Owner 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 NGC the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to NGC the costs of removal and/or storage.

7.3 In respect of all capital items which the Transmission Owner 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 Transmission Owner obtaining the consent of the Authority under its Transmission Licence if required) 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 Transmission Owner shall pay to NGC 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 Transmission Owner is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by the Transmission Owner in respect of reinstatement associated with removal of the capital item. The Transmission Owner shall provide NGC 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 Transmission Owner

and the Transmission Owner shall reimburse NGC 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 pursuant to Section H of the Code together with interest thereon calculated on a daily basis from the date of termination of this TO Construction Agreement to the date of payment at Base Rate for the time being and from time to time.

- 7.4 As soon as reasonably practicable after termination of this TO Construction Agreement the Transmission Owner shall provide NGC with a statement of and invoice for the TO Final Sums together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the TO Final Sums are greater than the payments made by NGC in respect of the Transmission Owner's estimate(s) of TO Final Sums NGC shall within 35 days of the said statement and invoice prepared by the Transmission Owner pay to the Transmission Owner the additional payments due by NGC 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 Transmission Owner's estimate of TO Final Sums to the date of the statement of and invoice for TO Final Sums. If the TO Final Sums is less than the payments made by NGC in respect of the Transmission Owner's estimate of TO Final Sums paid by NGC following termination of this TO Construction Agreement the Transmission Owner shall forthwith pay to NGC the excess paid together with interest on a daily basis at the Base Rate for the time being and from time to time from the date of payment of the fair and reasonable estimate of TO Final Sums to the date of reimbursement by the Transmission Owner of the said excess paid.

7.5 **Provision of Bi-annual Estimate**

The Transmission Owner shall provide to NGC an estimate ("the **Bi-annual Estimate**") in substantially the form set out in the relevant Appendix to this TO Construction Agreement and showing the amounts of all payments required or which may be required to be made by NGC to the Transmission Owner in respect of TO Final Sums and Engineering Charges and other expenses in relation to seeking Consents referred to in paragraph 2.4 at the following times and in respect of the following periods:-

- (a) forthwith and on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur); and
- (b) not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be), until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8.

The Transmission Owner shall provide NGC with all advice and assistance reasonably requested by NGC in relation to any discussions or correspondence with a User in connection with Bi-annual Estimates.

7.6 Entitlement to Estimate

If the Transmission Owner 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 NGC has a liability to the Transmission Owner for payment under any of the provisions of this TO Construction Agreement, the Transmission Owner shall be entitled to invoice NGC for a sum equal to the Transmission Owner's fair and reasonable estimate of the sums due or which may become due or in respect of which NGC has a liability to the Transmission Owner for payment. The Transmission Owner shall also be entitled to send NGC further invoices for such sums not covered in previous invoices. NGC shall pay the Transmission Owner all sums so invoiced by the Transmission Owner.

8. TERM

8.1 Subject to the provisions for earlier termination set out in the Code, this TO Construction Agreement shall continue in force unless and until terminated in accordance with paragraphs 2.8, or 4.8.

8.2 Any provisions for payment survive the termination of this TO Construction Agreement.

9. THE CODE

9.1 The provisions of:

9.1.1 Section E (Payment);

9.1.2 Section F (Confidentiality);

9.1.3 Section G, paragraphs 5 (Third Party Rights), 6 (Transfer and Sub-contracting), 7 (Intellectual Property), 8 (Force Majeure), 9 (Privilege), 10 (Waiver), 11 (Nominated Representative), 12 (Communications), 13 (Counterparts), 14 (Severance of Terms), 15 (Language), 16 (Data Protection Act), 17 (Jurisdiction), 18 (Governing Law), 19 (No Partnership)

of the Code shall apply to this TO Construction Agreement as if set out in this TO Construction Agreement in full.

10. DISPUTES

10.1 Except as specifically provided for in this TO Construction Agreement any dispute arising under the terms of this TO Construction Agreement shall be referred to arbitration in accordance with the terms of Section H of the Code.

11. VARIATIONS

11.1 Subject to paragraphs 11.2 and 11.3 below, no variation to this TO Construction Agreement shall be effective unless made in writing and signed by or on behalf of both the Transmission Owner and NGC.

- 11.2 The Transmission Owner and NGC shall effect any amendment required to be made to this TO Construction Agreement by the Authority as a result of a change in the Code or a Licence or an order or direction made pursuant to the Act or a Licence. NGC hereby authorises and instructs the Transmission Owner to make any such amendments on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.
- 11.3 The Transmission Owner has the right to vary any Appendices to this TO Construction Agreement in accordance with paragraphs 2.4 or 2.13.

B. PROFORMA TERMS FOR TO CONSTRUCTION AGREEMENT BETWEEN NGC AND A TRANSMISSION OWNER ONLY UNDERTAKING WORKS WHICH ARE NOT AT A RELEVANT CONNECTION SITE.

1. Definitions and Interpretation

1.1 Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions in this TO Construction Agreement shall have the same meanings, interpretations or constructions as set out in Section J of the Code.

1.2 For the purposes of this TO Construction Agreement,

1.2.1 "**Consents**" means, in relation to any Transmission Construction 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 Transmission Construction Works when completed;

1.3 The Relevant Connection Site and Works to which this TO Construction Agreement applies shall be as set out in the relevant Appendices to this TO Construction Agreement.

2. Carrying out of the Works

2.1 Subject to paragraph 2.2, forthwith following the Effective Date, the Transmission Owner shall use its best endeavours to obtain in relation to the Transmission Construction Works and NGC shall use its best endeavours to procure that the User obtains in relation to the User 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, and NGC shall procure that the User shall, so far as it is legally able to do so, grant to the other, or the User, all such wayleaves, easements, servitude rights or other 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 User 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 TO Construction Agreement and in all cases subject to such terms and conditions as are reasonable.

2.2 The following additional provisions shall apply in respect of the Consents and Transmission Construction Works:

2.2.1 All dates specified in this TO Construction Agreement are subject to the Transmission Owner obtaining Consents for the Transmission Construction

Works in a form acceptable to it and within the time required to carry out the Transmission Construction Works in accordance with the TO Construction Programme.

2.2.2 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 Transmission Owner wishing to amend the Transmission Construction Works to facilitate the granting of the Consents,

the Transmission Owner shall be entitled to revise the Transmission Construction Works (and as a consequence the relevant Appendices of this TO Construction Agreement which set out such Transmission Construction Works and any related charges). For the avoidance of doubt such revisions shall be at the Transmission Owner's absolute discretion and the consent of NGC is not required.

2.3 The Parties shall regularly update each other in writing or by such other means as the relevant Parties may agree as to progress made by them and, in the case of NGC, as to progress made by the User from time to time in the obtaining of relevant Consents pursuant paragraphs 2.1 or 2.2.

2.4 NGC shall be liable to pay to the Transmission Owner:

2.4.1 all of the Transmission Owner's Engineering Charges accrued; and

2.4.2 proper and reasonable out-of-pocket expenses incurred and/or paid or which the Transmission Owner is legally bound to incur or pay,

in seeking and obtaining the Consents the subject of paragraph 2.1 excluding any costs associated with the Seven Year Statement Works and any other works, to the extent that NGC has paid or is liable to pay such costs under another TO Construction Agreement.

NGC 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 Transmission Owner in the acquisition by it of the freehold of any land upon which a land charge is payable. The Transmission Owner shall keep NGC informed of the level of such charges and expenses being incurred. NGC shall pay such sums within 30 (thirty) days of the date of the Transmission Owner's invoice therefor.

2.5 Paragraphs 2.2, 2.3, 2.4 and 2.5 of Section J of the Code relating to Consents shall apply to the construction arrangements set out in this TO Construction Agreement as if set out here in full.

- 2.6 NGC may by written notice to the Transmission Owner terminate this TO Construction Agreement at any time whereupon NGC shall in addition to the sums for which it is liable under paragraph 2.4 be liable to pay to the Transmission Owner a sum equal to the Transmission Owner's estimate or if applicable revised estimate of TO Final Sums. NGC shall pay such sums within 16 (sixteen) days of the date of the Transmission Owner's invoice(s) therefor.
- 2.7 The Transmission Owner shall be entitled to contract or sub-contract for the carrying out of its respective parts of the Works. NGC or any contractor on its or the User's behalf (as appropriate) shall be responsible for ensuring the commencement and carrying out of the User Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme and the Transmission Owner or any contractor on its behalf shall be responsible for commencing and carrying out the Transmission Construction Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme.
- 2.8 NGC may, at its discretion, notify the Transmission Owner at any time in writing to discontinue, postpone or otherwise delay all or part of any Works or other activities under this TO Construction Agreement and may direct that the Transmission Owner produce an amended TO Construction Programme accordingly, as a consequence of:
- 2.8.1 a User breaching any credit or security requirement pursuant to the CUSC or CUSC Construction Agreement;
 - 2.8.2 a delay or failure by NGC, a User or another Joint Project Party to obtain any Consents; or
 - 2.8.3 a delay or failure by another Joint Project Party under and pursuant to any other TO Construction Agreement in respect of the same Construction Project.
- 2.9 If at any time prior to the Completion Date it is necessary for the Transmission Owner or the Transmission Owner in its reasonable discretion wishes to make any addition to or omission from or amendment to its Transmission Reinforcement Works and/or the One Off Works and/or the Third Party Works the Transmission Owner shall notify NGC in writing of such addition, omission or amendment and the relevant Appendix of this TO Construction Agreement shall be automatically amended to reflect the change.
- 2.10 Transmission Reinforcement Works are conditional on any relevant nuclear generator granting approval to the carrying out of the Transmission Construction Works in terms of any Nuclear Site Licence Provisions Agreement. In the event of the relevant nuclear generator not granting approval the Transmission Owner shall be entitled to change the Transmission Construction Works, the TO Construction Programme and all dates specified in this TO Construction Agreement.
- 2.11 It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the Transmission Owner is the only client in respect of the Transmission Construction Works and shall accordingly discharge all the duties of a client under the said Regulations.

2.12 The Transmission Owner and NGC hereby agree and acknowledge that this TO 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 to any part of the Transmission Construction Works and the Parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

3. **DELAYS**

3.1 If either Party shall have reason to believe that it, another Transmission Owner or, in the case of NGC a User, is being delayed or will be delayed in carrying out that Party's or a User's Works (as appropriate) for any reason (whether it is one entitling it to the fixing of a new date under paragraph 3.2 of this TO 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 paragraph 3.2 the "**Affected Party**") shall be delayed in carrying out any of the Affected Party's Works (including their commissioning) by reason of (a) any act, default or omission on the part of the other Party (in this paragraph the "**Defaulting Party**") or of the Defaulting Party's employees, agents, contractors, sub-contractors or, in the case where NGC is the Defaulting Party, by reason of a delay by the User or (b) any act, default or omission on the part of any Transmission Owner which is not a Party to this TO Construction Agreement or its employees, agents, contractors or subcontractors or (c) by reason of an event of Force Majeure, the Affected Party shall be entitled to have such later date or dates fixed as 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 date or dates to be fixed in the circumstance this shall be promptly referred to and determined by the Independent Engineer. Once the new date or dates are fixed the TO Construction Programme shall be deemed automatically amended as appropriate.

4. **COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES**

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

4.2 In the event that the actual date on which the Transmission Construction Works are Commissioned is later than the Completion Date the Transmission Owner (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 NGC Liquidated Damages for each day that the actual date on which the Transmission 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 Transmission Construction Works.

- 4.3 Liquidated Damages payable under paragraph 4.2 shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 13th 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.
- 4.4 Without prejudice to and in addition to the obligation of NGC pursuant to paragraph 2.4 the payment or allowance of Liquidated Damages pursuant to this paragraph 4 shall be in full satisfaction of the Transmission Owner's liability for failure to perform its obligations by the Completion Date.

5. INDEPENDENT ENGINEER

In relation to matters raised pursuant to this TO Construction Agreement, 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 TO 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 in Section H of the Code. Pending any such submission the parties shall treat the Independent Engineer's decision as final and binding.

6. TO FINAL SUMS

- 6.1 Within 55 days of the date of termination of this TO Construction Agreement the Transmission Owner shall:
- (a) furnish NGC with a further statement showing a revised estimate of TO Final Sums and will provide as soon as practicable evidence of such costs having been incurred; and
 - (b) by written notice to NGC inform NGC of all capital items which cost the Transmission Owner in excess of £10,000 and in relation to which an amount on account of TO Final Sums shall have been paid and whether the Transmission Owner (1) wishes to retain the said capital items or (2) dispose of them.

- 6.2 In respect of all capital items which the Transmission Owner 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 Transmission Owner shall forthwith reimburse to NGC the amount paid by NGC on account of TO 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 TO 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 Transmission Owner 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 NGC 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.
- 6.3 In respect of all capital items which the Transmission Owner 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 Transmission Owner obtaining the consent of the Authority under its Transmission Licence if required) 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 Transmission Owner shall pay to NGC 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 Transmission Owner is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by the Transmission Owner in respect of reinstatement associated with removal of the capital item. the Transmission Owner shall provide NGC 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 Transmission Owner and the Transmission Owner shall reimburse NGC 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 pursuant to Section H of the Code together with interest thereon calculated on a daily basis from the date of termination of this TO Construction Agreement to the date of payment at Base Rate for the time being and from time to time.
- 6.4 As soon as reasonably practicable after termination of this TO Construction Agreement the Transmission Owner shall provide NGC with a statement of and invoice for the TO Final Sums together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the TO Final Sums are greater than the payments made by NGC in respect of the Transmission Owner's estimate(s) of TO Final Sums NGC shall within 35 days of the said statement and invoice prepared by the Transmission Owner pay to the Transmission Owner the additional payments due by NGC 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 Transmission Owner's estimate of TO Final Sums to the date of the statement of and

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

6.5 Provision of Bi-annual Estimate

The Transmission Owner shall provide to NGC an estimate ("the Bi-annual Estimate") in substantially the form set out in the relevant Appendix to this TO Construction Agreement and showing the amounts of all payments required or which may be required to be made by NGC to the Transmission Owner in respect of TO Final Sums at the following times and in respect of the following periods:-

- (a) forthwith on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur); and
- (b) not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing immediately following 1st April or 1st October (as the case may be), until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 7.

The Transmission Owner shall provide NGC with all advice and assistance reasonably requested by NGC in relation to any discussions or correspondence with a User in connection with Bi-annual Estimates.

6.6 Entitlement to Estimate

If the Transmission Owner 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 NGC has a liability to the Transmission Owner for payment under any of the provisions of this TO Construction Agreement, the Transmission Owner shall be entitled to invoice NGC for a sum equal to the Transmission Owner's fair and reasonable estimate of the sums due or which may become due or in respect of which NGC has a liability to the Transmission Owner for payment. The Transmission Owner shall also be entitled to send NGC further invoices for such sums not covered in previous invoices. NGC shall pay the Transmission Owner all sums so invoiced by the Transmission Owner.

7. TERM

- 7.1 Subject to the provisions for earlier termination set out in the Code, this TO Construction Agreement shall continue in force unless and until terminated in accordance with paragraph 2.6.
- 7.2 Any provisions for payment survive the termination of this TO Construction Agreement.

8. THE CODE

8.1 The provisions of:

8.1.1 Section E (Payment);

8.1.2 Section F (Confidentiality);

8.1.3 Section G, paragraphs 5 (Third Party Rights), 6 (Transfer and Sub-contracting), 7 (Intellectual Property), 8 (Force Majeure), 9 (Privilege), 10 (Waiver), 11 (Nominated Representative), 12 (Communications), 13 (Counterparts), 14 (Severance of Terms), 15 (Language), 16 (Data Protection Act), 17 (Jurisdiction), 18 (Governing Law), 19 (No Partnership)

of the Code shall apply to this TO Construction Agreement as if set out in this TO Construction Agreement in full.

9. DISPUTES

9.1 Except as specifically provided for in this TO Construction Agreement any dispute arising under the terms of this TO Construction Agreement shall be referred to arbitration in accordance with the terms of Section H of the Code.

10. VARIATIONS

10.1 Subject to paragraphs 10.2 and 10.3 below, no variation to this TO Construction Agreement shall be effective unless made in writing and signed by or on behalf of both the Transmission Owner and NGC.

10.2 The Transmission Owner and NGC shall effect any amendment required to be made to this TO Construction Agreement by the Authority as a result of a change in the Code or a Licence or an order or direction made pursuant to the Act or a Licence. NGC hereby authorises and instructs the Transmission Owner to make any such amendments on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

10.3 The Transmission Owner has the right to vary any Appendices to this TO Construction Agreement in accordance with paragraph 2.9.

SCHEDULE TEN

CHARGES

PART ONE: TO GENERAL SYSTEM CHARGES

PART TWO: TO SITE-SPECIFIC CHARGES

PART THREE: OTHER CHARGES