

[SCHEDULE 2 EXHIBIT 3]

INDICATIVE

DATED [] 200[1]

[NATIONAL GRID COMPANY PLC] (1)

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and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE

CONSTRUCTION AGREEMENT

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BETWEEN

- (1) ~~INTERNATIONAL GRID COMPANY plc~~ a company registered in England with number ~~[2366977]~~ whose registered office is at ~~[1-3 Strand, London WC2N 5EH]~~ ("**System Operator**", 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)

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Kirby Corner Road, Coventry
CV4 8JY

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WHEREAS

- (A) Pursuant to the **System Operator Transmission Licence**, ~~the System Operator~~ has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **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 **Transmission System** and pursuant to ~~[Standard Condition C7D]~~ of the **System Operator Transmission Licence**, ~~the System Operator~~ 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 System Operator~~ 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**.

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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**.

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"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.

"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 **Connection Assets**, are completed to a stage where **the System Operator** 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 **Reinforcement Works** are **Commissioned** and **Seven Year Statement Works** are completed as at that date. In the event that the **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.

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"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 **Connection Asset Works** to the

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	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 .	Deleted: NGC
"Completion Date"	[] or such other date as may be agreed in terms of this Construction Agreement .	
"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 <u>the System Operator</u> 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 .	Deleted: NGC Formatted
<u>"Connection Assets"</u>	the assets specified in Appendix A to the Bilateral Connection Agreement .	Deleted: NGC
<u>"Connection Asset Works"</u>	the works necessary for construction and installation of the Connection Assets at	Deleted: NGC

the **Connection Site** specified in Appendix G to this **Construction Agreement**.

"Construction Site"

the site where the **Connection Asset Works** are being undertaken by or on behalf of the **System Operator**;

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"Construction Works"

the **Connection Asset Works**, **Reinforcement Works**, **Seven Year Statement Works** and **One Off Works** and such additional works as are required in order to comply with any relevant **Consents** relating to any such works but excluding for the avoidance of doubt any **Third Party Works**.

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"Dispute Resolution Procedure"

the procedure for referral to arbitration set out in Paragraph 7.4 of the **CUSC**.

"Event of Default"

any of the events set out in Clause 10 of this **Construction Agreement** as constituting an event of default.

"Final Sums"

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:-

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(1) all **System Operator Engineering Charges** arisen prior to the date of termination;

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(2) fees, expenses and costs (excluding costs on account of interest charges incurred by **the System Operator**) of whatever nature reasonably and properly incurred or due by **the System Operator** in respect of any part of the **Construction Works** carried out prior to the date of termination of this **Construction Agreement**;

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(3) fees, expenses and costs properly

payable by the System Operator in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any Construction Works provided it is negotiated on an arms length basis (including any such arising under the code between the System Operator and Transmission Owners);

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(4) a sum equal to the reasonable costs of removing any Connection Assets and of making good the remaining **Plant** and **Apparatus** following such removal; and

(5) interest on any such amounts from the date they were paid by the System Operator to the date of the System Operator's invoice at 2% over Base Rate from time to time and for the time being.

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

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

"Independent Engineer"

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

(a) where the parties fail to agree on a suitable engineer within 120 days of the date of this

Construction Agreement; or

- (b) where any **Independent Engineer** appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

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

“Liquidated Damages”

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

“One Off Works”

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

“Reinforcement Works”

means those works other than the **Connection Asset Works, Seven Year Statement Works and One Off Works**, which in the reasonable opinion of **the System Operator** are necessary to extend or reinforce the **Transmission System** in relation to and prior to the connection of the **User’s Equipment** at [the] **Connection Site** and which are specified in Appendix H to this **Construction Agreement**, where Part 1 is works required for the **User** and Part 2 is works required for wider system reasons.

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“Seven Year Statement Works”

the works set out in Table B7 of the statement prepared by **the System Operator** pursuant to [Condition 10 paragraph 5] of the **System Operator Transmission Licence** and issued by **the System Operator** in [] which in **the**

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System Operator's reasonable opinion are required to be completed before the **Completion Date** to ensure that the **Transmission System** complies with the requirements of [Condition 12] of the System Operator **Transmission Licence** prior to the **Connection** of the **User's Equipment** in terms of Clause 7.1 [or 7.2] of this **Construction Agreement**.

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"Term"

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

"Third Party Works"

the works specified in Appendix N.

"User's Works"

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

"Works"

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

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2. CARRYING OUT OF THE WORKS

2.1 Forthwith following the date of this **Construction Agreement** the System Operator and the **User** shall agree 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**.

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2.2 Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** the System Operator shall use its best endeavours to obtain in relation to the Construction Works, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to the other or the relevant Transmission Owner all such wayleaves,

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easements, rights over or interests (but not estates) in land or any other consents reasonably required by the other or the relevant Transmission Owner 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.

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

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2.3.1 All dates specified in this **Construction Agreement** are subject to the System Operator 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**.

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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 System Operator wishing to amend the Construction Works to facilitate the granting of the **Consents**,

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the System Operator 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 System Operator's absolute discretion and the consent of the **User** is not required.

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2.3.3 The **User** shall be regularly updated by the System Operator in writing or by such other means as the parties may agree as to progress made by the System Operator 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**.

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2.4.1 The **User** shall be liable to pay to the System Operator:-

- (a) all the System Operator's Engineering Charges accrued; and

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- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which the System Operator is legally bound to incur or pay

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

The **User** acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements in respect of any electric line or underground cable forming part of the **Connection Asset Works**. This sum shall not include any capital costs incurred by the System Operator or any Transmission owner in the acquisition by it of the freehold of any land upon which a land charge is payable. The System Operator shall keep the **User** informed of the level of such charges and expenses being incurred. The **User** shall pay such sums within 28 (twenty eight) days of the date of the System Operator's invoice therefor.

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- 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.

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- 2.5 Prior to the commencement of the **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 System Operator. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the **User** shall in addition to the payments for which it is liable under Clause 2.4 hereof be liable to pay to the System Operator a sum equal to the System Operator's estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of the System Operator's invoice(s) therefor on termination where applicable the System Operator shall disconnect the **User's Equipment** at the **Connection Site** and the System Operator and the **User** shall by arrangement between them remove any of the **User's Equipment** and **Connection Assets** on the other party's or the relevant Transmission Owner's land within 6 months of the date of termination or such longer period as may be agreed between the System Operator and the User.

- 2.6 If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to the System Operator terminate this

Construction Agreement whereupon the **User** shall in addition to the sums for which it is liable under Clause 2.4 hereof be liable to pay to the System Operator a sum equal to the System Operator's estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of the System Operator's invoice(s) therefor and (where applicable) on termination the System Operator shall disconnect the **User's Equipment** at the **Connection Site** and the System Operator and the **User** shall by arrangement between them remove any of the **User's Equipment** and **Connection Assets** on the other party's or the relevant Transmission Owner's land within 6 months of the date of termination or such longer period as may be agreed between the System Operator and the User.

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- 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 System Operator shall include work carried out on its behalf by a Transmission Owner). 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 System Operator 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.

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- 2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** the System Operator shall allow the User, its employees, agents, suppliers, contractors and sub-contractors necessary access to the Construction Site and the User shall allow the System Operator its employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the 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

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accordance with any reasonable regulations relating thereto made by the site owner or occupier.

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- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** the System Operator shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the 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 System Operator of its approval or, in the event that the **User** reasonably withholds its approval, notify the System Operator of any changes or variations to the proposed commissioning programme recommended by the **User**. If the System Operator 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.

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- 2.11 If at any time prior to the **Completion Date** it is necessary for the System Operator or the System Operator in its reasonable discretion wishes to make any addition to or omission from or amendment to the Connection Asset Works and/or Reinforcement Works and/or the **One Off Works** and/or the **Third Party Works** the System Operator shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (Connection Asset Works) H (Reinforcement Works) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (Connection Assets) and B (**Connection Charges, One Off Charges** and **Land Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.

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- 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 Connection Asset Works. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. The System Operator'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 System Operator as to its construction and operational requirements and shall ensure that the said application meets the System Operator's requirements. The System Operator shall provide the **User** with all information reasonably required by it

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in relation to the application and the **User** shall ensure that all requirements
of the System Operator are incorporated in the application for deemed
planning consent.]

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- 2.13 [The **Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the Construction Works in terms of the **Nuclear Site Licence Provisions Agreement** being an agreement dated 30 March 1990 between NGC and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between NGC and British Energy Generation Limited (and described as such) and [similar agreements in Scotland]. In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval the System Operator shall be entitled to change the Construction Works, the **Construction Programme** and all dates specified in this **Construction Agreement**.]

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- 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 System Operator is the only client in respect of the Construction Works and each of the **User** and the System Operator shall accordingly discharge all the duties of clients under the said **Regulations**.]

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- 2.15 [The System Operator 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.

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3.3. 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 System Operator (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**.

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4.5 In the event that the actual date on which the Construction Works are **Commissioned** is later than the **Completion Date** the System Operator (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

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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**.

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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 System Operator's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.

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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 System Operator** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User**. In the event of such termination the **User** shall in addition to the amounts for which it is liable under Clause 2.4 to this **Construction Agreement** be liable to **the System Operator** to pay to **the System Operator** a sum equal to **the System Operator's** estimate or revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **the System Operator's** invoice(s) therefor and on termination (where applicable) **the System Operator** shall disconnect the **User's Equipment** at the **Connection Site** and **the System Operator** and the **User** shall by arrangement between them remove any of the **User's Equipment** and **Connection Assets** on the other party's **or the relevant Transmission Owner's land** land within 6 months of the date of termination or such longer period as may be agreed **between the System Operator and the User**.

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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**

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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 System Operator evidence satisfactory to the System Operator 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**.

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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;

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 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

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submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to the System Operator 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 System Operator 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 System Operator type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

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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 System Operator a statement of readiness to use the **Transmission System** together with **Connected Planning Data** and a report certifying to the System Operator that, to the best of the information, knowledge and belief of the **User**:-

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- (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 System Operator 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 System Operator type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

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

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7.2 If **Embedded** upon compliance by the **User** with the provisions of Sub-Clauses 4.1, 4.2 and 4.3 and subject, if **the System Operator** so requires, to the **Reinforcement Works** [and/or works for the **Modification**] being carried out and/or the [New] **Connection Site** being **Operational** (any or all as appropriate) **the System Operator** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **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 System Operator**.

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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 System Operator** 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**.

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8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

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

9. CREDIT REQUIREMENTS

Alternate provisions apply depending whether or not the **User** does (9A) or does not (9B) meet the System Operator's required credit rating on signing the **Construction Agreement**. Details of the credit requirements are set out in the **CUSC**.

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9A1 PROVISION OF SECURITY

9A.1.1 The User shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to the System Operator whether it meets the the System Operator Credit Rating. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9A.4) 28 days after the **Charging Date** the User shall confirm its System Operator Credit Rating to the System Operator (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 System Operator in writing forthwith if it becomes aware of losing its System Operator 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 System Operator reasonable cause to believe that the **User** may not be able to sustain its System Operator Credit Rating for at least 6 months.

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

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

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

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or if the System Operator becomes aware that:

(iv) the **User** ceases to have a **System Operator Credit Rating**; or

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(v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **the System Operator** reasonable cause to believe that the **User** may not be able to maintain **the System Operator Credit Rating** for at least 6 months; or

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(vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **the System Operator** under Clause 9A.1.2(i) above a further indicative long term private credit rating,

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

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

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(i) an irrevocable on demand standby **Letter of Credit** or guarantee; or

(ii) cash held in escrow [**Escrow Account/ Bank Account**]; or

(iii) any other form included in **the System Operator's** then current policy and procedure

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

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9A.1.5The **User** shall in addition to providing the requisite security enter into an agreement with **the System Operator**, which shall be supplemental to this **Construction Agreement** (the "Amending Agreement"). The **Amending Agreement** shall be in such form as **the System Operator** shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **the System Operator's** then

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current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

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

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

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Final Sums

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

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(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 System Operator in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether the System Operator (1) wishes to retain the said capital items or (2) dispose of them.

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9A.3.1 In respect of all capital items which the System Operator wishes to retain (other than those which have been, or are proposed to be installed as a replacement for the System Operator Plant and Apparatus) the System Operator 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 System Operator wishes to retain any capital item which has been installed but wishes to remove it to storage or to

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another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9A.3.2 In respect of all capital items which the System Operator wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for the System Operator Plant and Apparatus) it shall forthwith (and subject to the System Operator obtaining the consent of the **Authority** under [condition 16] of the System Operator Transmission Licence if required) sell or arrange for 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 System Operator 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 System Operator is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by the System Operator in respect of reinstatement associated with removal of the capital item. The System Operator 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 System Operator and the System Operator 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.

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9A.3.3 As soon as reasonably practicable after termination of this **Construction Agreement** the System Operator 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 System Operator's estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by the System Operator pay to the System Operator 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 System Operator'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 System Operator's estimate of **Final Sums** paid by the **User** following termination of this **Construction**

Agreement the System Operator 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 System Operator of the said excess paid.

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

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9B.1 Provision of Security

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

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- (a) the **User's** liability to pay the System Operator amounts from time to time due under Clause 2.4 of this **Construction Agreement**; and

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- (b) **Final Sums**.

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

- 9B.2.1 The System Operator shall provide to the **User** an estimate ("the **Bi-annual Estimate**") in substantially the form set out in Part 2 of Appendix M to this **Construction Agreement** and showing the amounts of all payments required or which may be required to be made by the **User** to the System Operator in respect of **Final Sums** and the System Operator Engineering Charges and

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other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement** at the following times and in respect of the following periods:-

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

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

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

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9B.3 Entitlement to Estimate

If the System Operator is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of

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

9B.4 Demands not Affected by Disputes

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

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

9B.4.2 the fairness and reasonableness of the System Operator's estimate; or

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

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

such dispute shall not affect the ability of the System Operator to make demands pursuant to the security arrangement to be provided pursuant to Clause 9B.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case the System Operator'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 System Operator 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 System Operator of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9B.5 If there shall be any dispute as mentioned in Clause 9B.4 of this **Construction Agreement** the same shall, whether the System Operator shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to the System Operator's right to recover or seek to recover such payment, be referred in the case of Clauses 9B.4.1 and 9B.4.2 to the

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Independent Engineer (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9B.5 shall survive termination) and, in the case of Clauses 9B.4.3 and 9B.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

Final Sums

9B.6 Within 60 days of the date of termination of this **Construction Agreement** ~~the~~ **System Operator** shall:

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(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 System Operator~~ in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether ~~the System Operator~~ (1) wishes to retain the said capital items or (2) dispose of them.

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9B.7.1 In respect of all capital items which ~~the System Operator~~ wishes to retain (other than those which have been, or are proposed to be installed as a replacement for ~~the System Operator Plant and Apparatus~~) ~~the System Operator~~ 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 System Operator~~ 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.

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9B.7.2 In respect of all capital items which ~~the System Operator~~ wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for ~~the System Operator Plant and Apparatus~~) it shall forthwith (and subject to ~~the System Operator~~ obtaining the consent of the **Authority** under [condition 16] of the **System Operator Transmission Licence** if required) sell ~~or arrange for 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 System Operator~~ shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis

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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 System Operator is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by the System Operator in respect of reinstatement associated with removal of the capital item. The System Operator 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 System Operator and the System Operator 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.

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9B.7.3 As soon as reasonably practicable after termination of this **Construction Agreement** the System Operator 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 System Operator's estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by the System Operator pay to the System Operator 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 System Operator's estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

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9B.8 The obligations to provide security under this Clause 9 B shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** the System Operator shall be

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entitled to call upon the security put in place under the terms of this
Construction Agreement for payment of **Termination Amounts** where due
under the provisions of the **CUSC**.

10. EVENT OF DEFAULT

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

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10A. Event of Default

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

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

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

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

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

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(c) Any party who may at any time be providing security to the System Operator pursuant to the provisions of this **Construction Agreement**

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as varied by the **Amending Agreement** fails to pay to the System Operator any sum demanded pursuant thereto.

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10A.3 If

(i) There is a material adverse change in the financial condition of the **User** such as to give the System Operator reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to the System Operator within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**;

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or

(ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10A is required by the System Operator and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or

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(iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

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

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requirement for security having arisen and shall be in such form as the System Operator shall reasonably require in line with the System Operator's then current provisions to the like effect in its connection agreements with other parties.

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Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10A.3 the **User** shall produce to the System Operator evidence to the System Operator's reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to the System Operator of such sums within the next following period of twelve (12) months, the System Operator shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to the System Operator's right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii), and/or (iii) subsequently occurring.

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

Or

10B Event of Default

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

10B.1 If

(i) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements) put in place by the **User** in connection with a project for which security under this Clause 10B is required by the System Operator and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or

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(ii) there is a material adverse change in the financial condition of the **User** such as to give the System Operator reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sum due or to become due to the System Operator within the next following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;

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(iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal amount of not less than £1,000,000 pounds

sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

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

- (1) within a period of 14 (fourteen) days following the date on which the System Operator gives notice of such circumstances to provide to the System Operator a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** (as defined in Appendix M) in favour of the System Operator and **Valid** (as defined in Appendix M) at least up to the last day of the **Financial Year** in which the event occurs for such amount representing the System Operator's reasonable estimate of all unsecured sums to become due to the System Operator in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or

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- (2) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing the System Operator's reasonable estimate of the unsecured sums to become due to the System Operator in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

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

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10B.2 If the **User** fails to provide or procure that there is provided to the System Operator or at any time fails to maintain or procure that there is maintained in

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

10B.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to the System Operator of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.

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

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

11. TERMINATION ON EVENT OF DEFAULT

11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing the System Operator may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the System Operator shall disconnect all the **User's Equipment** at the **Connection Site** and the System Operator and the **User** shall by arrangement between them remove any of the **User's Equipment and Connection Assets** on the other party's or the relevant Transmission Owner's land within 6 months of the date of termination or such longer period as may be agreed between the System Operator and the User.

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

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(1) a sum equal to all liabilities arising under Clause 2.4 of this **Construction Agreement** which have not yet been invoiced by the System Operator to the User; and

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(2) a sum equal to the System Operator's fair and reasonable estimate of **Final Sums**,

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

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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 shall in addition to the amounts for which it is liable under Clause 2.4 hereof be liable to pay to the System Operator **Final Sums** and the provisions of Clause 11 shall apply.

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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), 6.24 (Counterparts), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 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** 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 System Operator and the **User**.

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15.2 The System Operator 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 System Operator 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 System Operator to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

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15.3 The System Operator has the right to vary Appendices in accordance with Clauses 2.3 and 2.11 and Paragraph 6.9 of the **CUSC**.

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16. RESTRICTIVE TRADE PRACTICES ACT

Any restriction or information provision (as each of those terms are defined or construed in Section 43(1) of the Restrictive Trade Practices Act 1976) contained in this **Construction Agreement** shall not take effect or shall cease to have effect:-

- (a) if a copy of this **Construction Agreement** is not provided to the Department of Trade and Industry ("DTI") within 28 days of the date of this **Construction Agreement**; or
- (b) if, within 28 days of the provision of that copy to the DTI, the DTI gives notice of objection to the party providing it.

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 COMPANY plc])

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

APPENDIX [J]

CONSTRUCTION PROGRAMME

APPENDIX [H]

REINFORCEMENT WORKS

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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 [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

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

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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 System Operator to the User under this Clause shall not exceed £XXXXX.

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CONNECTION ASSET WORKS

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APPENDIX [B]

[Part 1]

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APPENDIX [M]

PART 1

SECURITY ARRANGEMENT

1. **DEFINITIONS**

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

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

“Bank Account”

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

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“Letter of Credit”

means an irrevocable standby letter of credit in a form reasonably satisfactory to the System Operator but in any case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or such other form as may be reasonably satisfactory to the System Operator and allowing for partial drawings and providing for the payment to the System Operator on demand forthwith on and against the System Operator’s delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

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“Notice of Drawing”

means a notice of drawing signed by or on behalf of the System Operator substantially in the form set out in Part 4 of this Appendix M;

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“Performance Bond”

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

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“Qualified Bank”

means a City of London branch of a bank, its successors and assigns, which has throughout the

validity period of the Performance Bond or Letter of Credit it issues in favour of the System Operator, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such bank is not during such validity period put on any credit watch or any similar credit surveillance which gives the System Operator reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives the System Operator reasonable cause to have such doubt;

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"Qualified Company"

means a company which is a public company or a private company within the meaning of S.1(3) of the Companies Act 1985 and which is either a shareholder of the User or any holding company of such shareholder (the expression holding company having the meaning assigned thereto by Section 736, Companies Act 1985 as supplemented by Section 144(3), Companies Act 1989) and which has throughout the validity period of the Performance Bond it gives in favour of the System Operator, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating or such lesser rating which the System Operator may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit

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watch or any similar credit surveillance procedure which gives the System Operator reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the Performance Bond and no other event has occurred which gives the System Operator reasonable cause to have such doubt;

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“Secured Amount Statement”

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

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“User’s Obligation”

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

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

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(ii) Final Sum

“Valid”

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

2. **SECURITY REQUIREMENT**

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

- 2.1 A Performance Bond or Letter of Credit from a Qualified Bank for the amount stated in the Secured Amount Statement as the estimated amount of the User's Obligation to be secured, such Performance Bond or Letter of Credit to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M; or
- 2.2 A cash deposit in a Bank Account at least for the amount stated in the Secured Amount Statement as the estimated amount of the User's Obligation to be secured, such cash deposit to be increased or reduced periodically where applicable in the manner stated in paragraph 3.4 of this Appendix M; or
- 2.3 A Performance Bond from a Qualified Company for the amount stated in the Secured Amount Statement as the estimated amount of the User's Obligation to be secured, such Performance Bond to be Valid for at least the period stated in such Secured Amount Statement and to be renewed periodically where applicable in the manner stated in paragraph 3.3 of this Appendix M.

3. **GENERAL PROVISIONS**

- 3.1 Any Notice of Drawing to be delivered to Barclays Bank PLC or any other bank at which the Bank Account shall have been opened or a Qualified Bank or a Qualified Company may be delivered by hand, by post or by facsimile transmission.
- 3.2 If the User becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company

giving the Performance Bond ceases to be a Qualified Company, the User shall so notify the System Operator in writing as soon as it becomes so aware. If the System Operator 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 System Operator 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 System Operator 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 System Operator's reasons for having such doubt. The User shall within 21 days of the giving of such notice by the System Operator 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 System Operator will consent in writing to the security which it replaces being released.

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

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

- 3.3.2 On a date which is at least 45 days (or if such day is not a Business Day then on the immediately preceding Business Day) before the next following 31st March or 30th September whichever is the earlier date such Performance Bond or Letter of Credit shall be renewed so as to be Valid for not less than 6 months commencing from the immediately following 1st April or 1st October (as the case may be). Such renewed Performance Bond or Letter of Credit shall be for an amount not less than the amount of the User's Obligation stated in the Secured Amount Statement as the amount to be secured during the period that such renewed Performance Bond or Letter of Credit shall be Valid.
- 3.3.3 Thereafter, the renewed Performance Bond or Letter of Credit shall be further renewed in like manner every 6 months.
- 3.4 The following provisions shall govern the maintenance of cash deposits in the Bank Account:-
- 3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.
- 3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the

cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.

3.4.3 If such amount stated in the Secured Amount Statement is smaller than the amount then secured, the cash deposit in the Bank Account shall not be reduced to the amount so stated until the expiry of 7 days after the next following 31st March or 30th September (as the case may be) (“the Release Date”).

3.4.4 The sum equal to the amount of reduction in the cash deposit in the Bank Account shall be paid by the System Operator to the User from the Bank Account on the Release Date.

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3.4.5 Any interest accruing to the Bank Account shall be for the account of and belong to the User absolutely, and the System Operator 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 System Operator shall have received notice of such credit.

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3.5 Notwithstanding any provision aforesaid:-

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

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

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

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

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PART 2

BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT

DATED []

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

- | 1. ~~System Operator~~ Engineering Charges & expenses
for obtaining Consents pursuant to
to Clause 2.4
2. Final Sums
- [3. One Off Charge]

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PART 3

SECURED AMOUNT STATEMENT

CONSTRUCTION AGREEMENT DATED []

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

User's Obligation

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

for and on behalf of

[NATIONAL GRID COMPANY PLC]

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Duly authorised officer

PART 4

NOTICE OF DRAWING

To [] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

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

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

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

Bank plc

Address:

Sort Code:

Account Name: [National Grid Company plc]

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Account No:

Yours faithfully,

for and on behalf of

[NATIONAL GRID COMPANY PLC]

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Duly authorised officer

APPENDIX [N]

THIRD PARTY WORKS

END OF SCHEDULE 2 EXHIBIT 3