

**DATED** \_\_\_\_\_ **2001**

**THE NATIONAL GRID COMPANY PLC**

**and**

**[** \_\_\_\_\_ **]**

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**THE CONNECTION AND USE OF SYSTEM CODE**

**CUSC ACCESSION AGREEMENT**

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## CUSC ACCESSION AGREEMENT

This **CUSC Accession Agreement** is made on [ ]

BETWEEN:

- (1) **THE NATIONAL GRID COMPANY plc** a company registered in England with number 2366977 whose registered office is at National Grid House, Kirby Corner Road, Coventry CV4 8JY ("**NGC**", which expression shall include its successors and/or permitted assigns); on its own behalf and on behalf of all the other parties to the **CUSC Framework Agreement**; and
- (2) [*Insert name of person wishing to be admitted to the CUSC*] (the "**Party Applicant**") whose principal office is at [ ].

WHEREAS:

- (A) By the **CUSC Framework Agreement** dated [18 September 2001](#) made between the **Original Parties** named therein and as now in force between **CUSC Parties** and by virtue of any **CUSC Accession Agreement** entered into by any **New Party** before the date of this **CUSC Accession Agreement**, the **CUSC Parties** agreed to give effect to and be bound by the **CUSC**.
- (B) The **Party Applicant** has complied with the requirements of the **CUSC** (if any) as to accession and wishes to be admitted as a **CUSC Party**.

- (C) By the **CUSC Framework Agreement** and the provisions of the **CUSC** all **CUSC Parties** authorise **NGC** to sign this **CUSC Accession Agreement** on their behalf.

**IT IS HEREBY AGREED** as follows:

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

**CUSC Framework Agreement** from the date hereof, and the rights and obligations of the **CUSC Parties** shall be construed accordingly.

5 This **CUSC Accession Agreement** and the **CUSC Framework Agreement** shall be read and construed as one document and references (in or pursuant to the **CUSC Framework Agreement**) to the **CUSC Framework Agreement** (howsoever expressed) should be read and construed as reference to the **CUSC Framework Agreement** and this **CUSC Accession Agreement**.

6 If any provision of this **CUSC Accession Agreement** is or becomes invalid, unenforceable or illegal or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction or by any other **Competent Authority** (as defined in the **CUSC**), such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this **CUSC Accession Agreement**, which shall continue in full force and effect notwithstanding the same. The **Party Applicant** and **NGC** (acting on its own behalf and on behalf of each of the other **CUSC Parties**) hereby acknowledge and agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that no rights, powers or benefits are or shall be conferred on any person pursuant to this **CUSC Accession Agreement**, except for such rights, powers or benefits as are expressly conferred on the **CUSC Parties** and the **Party Applicant** in accordance with and subject to its terms.

- 7 This **CUSC Accession Agreement** may be executed in counterparts.
- 8 This **CUSC Accession Agreement** shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the ~~exclusive~~ jurisdiction of the courts of England and Wales and the courts of Scotland only.
- 9 If the **Party Applicant** is not a company incorporated under the Companies Act 1985, as amended, it shall provide to **NGC** an address in ~~England or Wales~~ Great Britain for service of process on its behalf in any proceedings.

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

**CUSC - EXHIBIT B**

**THE CONNECTION AND USE OF SYSTEM CODE  
CONNECTION APPLICATION**

**DIRECTLY CONNECTED POWER STATIONS  
NON EMBEDDED CUSTOMER  
DISTRIBUTION SYSTEM DIRECTLY CONNECTED TO THE  
~~NGC~~GB TRANSMISSION SYSTEM**

**PLEASE STUDY THE FOLLOWING NOTES BEFORE COMPLETING AND SIGNING THE APPLICATION FORM.**

1. The National Grid Company plc (“**NGC**”) requires the information requested in this application form for the purpose of preparing an **Offer** (the “**Offer**”) to enter into an agreement for connection to [and use of] the **NGC-GB Transmission System**. It is essential that the **Applicant** supplies all information requested in the application form and that every effort should be made to ensure that such information should be accurate.

Please note that certain terms used in the application form are defined in the Interpretation and Definitions (contained in Section 11 to the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

2. Where **NGC** considers that any information provided by the **Applicant** is incomplete or unclear, or further information is required, the **Applicant** will be requested to provide further information or clarification. The provision/clarification of this information may impact on **NGC’s** ability to commence preparation of an offer.
3. Should there be any change in the information provided by the **Applicant**, the **Applicant** must immediately inform **NGC** of such a change.
4. **NGC** shall charge the **Applicant**, and the **Applicant** shall pay to **NGC**, **NGC’s** Engineering Charges in relation to the Application. A fee will be charged by **NGC** in accordance with the **Charging Statements**. No application will be considered until such payment has been received.
5. The effective date upon which the application is made shall be the later of the date when **NGC** has received the advance application fee pursuant to Paragraph 4 above or the date when **NGC** is reasonably satisfied that the **Applicant** has completed Sections 1-4. **NGC** shall notify the **Applicant** of such date.
6. **NGC** will make the **Offer** in accordance with the terms of Paragraphs 2.13, 6.9 (Modifications) and Paragraph 6.10 (New Connection Sites) of the **CUSC** and the **Transmission Licence**.
7. **NGC** will make the **Offer** as soon as is reasonably practicable and, in any event, within 3 months of the effective date of the application or such later period as the **Authority** may agree. The **Offer** may, where it is necessary to carry out additional extensive system studies to evaluate more fully the impact of the proposed development, indicate the areas that require more detailed analysis. Before such additional studies are required, the **Applicant** shall indicate whether it wishes **NGC** to undertake the work necessary to proceed to make a revised **Offer** within the three (3) month

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\* Delete if applying for connection only

period or, where relevant the timescale consented to by the **Authority**. To enable **NGC** to carry out any of the above mentioned necessary detailed system studies the **Applicant** may, at the request of **NGC**, be required to provide some or all of the **Detailed Planning Data** listed in Part 2 of the Appendix to the **Planning Code** which is part of the **Grid Code**.

8. In the course of processing the application it may be necessary for **NGC** to consult the appropriate **Public Distribution System Operator(s)** on matters of technical compatibility of the **NGC-GB Transmission System** with their **Distribution System(s)** or to consult the **Relevant Transmission Licensees** to establish the works required on the **GB Transmission System**. On grounds of commercial confidentiality **NGC** shall need authorisation for the release to the **Public Distribution System Operator(s)** or **Relevant Transmission Licensees** of certain information contained in the Application. Any costs incurred by **NGC** in consulting the **Public Distribution System Operator(s)** or **Relevant Transmission Licensees** would be included in the **NGC Charges** for the Application. If it is found by the **Public Distribution System Operator(s)** that any work is required on their **Distribution System(s)**, then it will be for the **Public Distribution System Operator(s)** and the **Applicant** to reach agreement in accordance with Paragraph 6.10.3 of the **CUSC**.
9. If the **Applicant** is not already a **CUSC Party** the **Applicant** will be required as part of this application form to undertake that he will comply with the provisions of the **Grid Code** for the time being in force. Copies of the **Grid Code** and the **CUSC** are available on the National Grid website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk) and the **Applicant** is advised to study them carefully. **Data** submitted pursuant to this application shall be deemed submitted pursuant to the **Grid Code**.
10. **NGC's Offer** will be based upon its standard form terms of **Connection Offer** and the **Charging Statements** issued by **NGC** under Standard Conditions C4 and C67 of ~~**NGC's**~~the **Transmission Licence**. The **Applicant** should bear in mind **NGC's** standard form terms of **Offer** when making this application.
11. In particular, **NGC** prepares **Offers** upon the basis that each party will design, construct, install, control, operate and maintain, in the case of the **User**, the **Plant** and **Apparatus** which he will own and, in the case of **NGC, Transmission Plant and Transmission Apparatus** usually but not necessarily applying the ownership rules set out in Paragraph 2.12 of the **CUSC** (Principles of Ownership). If the **Applicant** wishes **NGC** to carry out any of these matters on the **Applicant's** behalf please contact **NGC** for further details.



12. **Applicants** which are licensed generators should appreciate that they will be required to perform **Mandatory Ancillary Services** to ensure that System Operational Standards can be achieved. This requirement may have implications towards **Plant** specification. You should be satisfied that before an application is made that your intended **Plant** design can meet the requirements. **Applicants** are recommended to contact The National Grid Company plc's Headquarters for further information where our staff will be pleased to help.
13. Please complete this application form in black print and return it together with a cheque for the appropriate application fee to **CUSC Panel Secretary**, The National Grid Company plc, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA (Telephone No. 01926 65 3000).
14. For the most up to date contact details applicants are advised to contact the National Grid website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk).

## NGC - APPLICATION FOR A NEW CONNECTION

**PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM**

### A. DETAILS OF APPLICANT

1. Name: .....

2. Address: .....  
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3. Registered Office/Address (including e-mail address for CUSC notices):  
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Registration Number:  
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4. Name, title and address of contacts for the purposes of this application, giving description of the field of responsibility of each person:  
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5. If **Applicant** is an agent, please give name(s) and address(es) of person(s) for whom the **Applicant** is acting:  
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## NGC - APPLICATION FOR A NEW CONNECTION

PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

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### B. THE PROPOSED POINT OF CONNECTION

1. Please identify (preferably by reference to an extract from an Ordnance Survey Map) the intended location (the “**Connection Site**”) of the **Plant** and **Apparatus** (the “**User Development**”) which it is desired should be connected to the **NGC-GB Transmission System** and where the application is in respect of a proposed **New Connection Site** other than at an existing sub-station. Please specify the proposed location and name of the **New Connection Site** (which name should not be the same as or confusingly similar to the name of any other **Connection Site**) together with details of access to the **Connection Site** including from the nearest main road.

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2. Please provide a plan or plans of the proposed **Connection Site** indicating (so far as you are now able) the position of all buildings, structures, **Plant** and **Apparatus** and of all services located on the **Connection Site**.

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3. Give details of the intended legal estate in the **Connection Site** (to include leasehold and freehold interests and in the case of **Connection Sites** in Scotland legal interests and heritable or leasehold interests including servitudes or other real rights) in so far as you are aware.

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4. Who occupies the **Connection Site** in so far as you are aware?

## NGC - APPLICATION FOR A NEW CONNECTION

**PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM**

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5. If you believe that a new sub-station will be needed, please indicate by reference to the plan referred to in (7) above the **Applicant's** suggested location for it - giving dimensions of the area.

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6. If you are prepared to make available to **NGC** or, for Connection Sites in Scotland, the Relevant Transmission Licensee the land necessary for the said sub-station, please set out brief proposals for ~~NGC their's~~ interest in it including (if relevant) such interest and the consideration to be paid ~~by NGC~~ for it.

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7. Is space available on the **Connection Site** for working storage and accommodation areas for NGC contractors or, for Connection Sites in Scotland, the contractors of the Relevant Transmission Licensee ? If so, please indicate by reference to the plan referred to in (7) above the location of such areas, giving the approximate dimensions of the same.

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8. Please provide details (including copies of any surveys or reports) of the physical nature of land in which you have a legal estate or legal interest at the proposed **Connection Site** including the nature of the ground and the sub-soil including the results of the following tests:-

[NGC to specify]

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## NGC - APPLICATION FOR A NEW CONNECTION

### PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

9. Please give details and provide copies of all existing relevant planning and other consents (statutory or otherwise) relating to the **Connection Site** and the **User Development** and/or details of any pending applications for the same.

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10. Is access to or use of the **Connection Site** for the purposes of installing, maintaining and operating **Plant** and **Apparatus** subject to any existing restrictions? If so, please give details.

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11. If you are aware of them, identify by reference to a plan (if possible) the owners and (if different) occupiers of the land adjoining the **Connection Site**. To the extent that you have information, give brief details of the owner's and occupier's estates and/or interests in such land.

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## NGC - APPLICATION FOR A NEW CONNECTION

**PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM**

### **C. TECHNICAL INFORMATION**

1. Please provide the data listed in Part 1 of the Appendix to the **Planning Code** which are applicable to you. Note: the data concerned form part of the **Planning Code** and **Data Registration Code**. **Applicants** should refer to these sections of the **Grid Code** for an explanation.
2. Please provide a copy of your **Safety Rules** if not already provided to **NGC** .
3. Please indicate any terms which you are prepared to offer for:-
  - (a) Black Start Capability YES/NO
  - (b) Gas Turbine Unit Fast Start YES/NO
  - (c) Synchronous Compensation YES/NO
  - (d) Pumped Storage Unit Spinning-in-Air YES/NO
  - (e) Pumped Storage YES/NO
  - (f) Pumped Storage Plant Fast Start from Standstill YES/NO
  - (g) Demand Reduction YES/NO
  - (h) Adjustment to Pumped Storage Unit Pumping Programme YES/NO
  - (i) Hot Standby YES/NO
4. Please enclose a draft **Interface Agreement** (if applicable).
5. Please confirm your intended **Connection Entry Capacity**.
6. Please confirm the intended **Transmission Entry Capacity**.

## NGC - APPLICATION FOR A NEW CONNECTION

PLEASE ENSURE THAT YOU HAVE STUDIED THE NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM

### D. PROGRAMME

Please provide a suggested construction programme in bar chart form for the construction work necessary to install the **User Development** (not the ~~NGC~~ Transmission Connection **Assets** needing to be installed) indicating the anticipated date when the connection will be required to be made.

## CONNECTION APPLICATION

1. We hereby apply to connect our **Plant and Apparatus** to the ~~NGC~~ **GB** **Transmission System** at a **New Connection Site**. We agree to pay **NGC's** Engineering Charges on the terms specified in the **Notes** to the **Connection Application**.
2. We will promptly inform **NGC** of any change in the information given in this application as quickly as practicable after becoming aware of any such change.
3. If we are not already a **CUSC Party** we undertake for the purposes of this application to be bound by the terms of the **Grid Code** from time to time in force and to sign a **CUSC Accession Agreement**.
4. We authorise the release of certain information, on the grounds of commercial confidentiality, to the appropriate **Public Distribution System Operator(s)** or to the **Relevant Transmission Licensee**, should it be considered necessary.
5. We confirm that we do/do not meet the **NGC Credit Rating**.
6. We confirm that we are applying in the category of [please insert appropriate description from the table in Paragraph 1.2.4 of the **CUSC**].

SIGNED BY                            )  
  )  
  )  
  )

**For and on behalf of the Applicant**

Date: .....

**END OF EXHIBIT B**



**CUSC - EXHIBIT C**

**THE CONNECTION AND USE OF SYSTEM CODE  
CONNECTION OFFER**

**DIRECTLY CONNECTED POWER STATIONS  
NON EMBEDDED CUSTOMER  
DISTRIBUTION SYSTEM DIRECTLY  
CONNECTED TO THE ~~NGC~~GB TRANSMISSION SYSTEM**

The Company Secretary

Date: [                    ]

Dear Sirs

**CONNECTION OFFER - [site] [reference]**

Set out below is our offer for connection [and use of ~~NGC~~the GB Transmission System\*] at [site/substation]. Please note that certain expressions which are used in this **Offer** are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

1. **NGC** offers to enter into a **Bilateral Connection Agreement** and **Construction Agreement** covering the **Connection Site**, reference number [            ]. If you are not already a **CUSC Party** you are required to enter into the enclosed **CUSC Accession Agreement**.
2. It is a condition of this **Offer** that you also enter into an **Interface Agreement** covering the **Connection Site** in a form to be agreed between the parties but substantially in the form of Exhibit O of the complete **CUSC**.
3. It is a condition of this **Offer** that the **Connection Site** is not a nominated site under the “NAECI” (the National Agreement for the Engineering Construction Industry) conditions and will not become one and any agreement for this site will be conditional upon this. In the event that this condition should not be met, **NGC** will be entitled to revise all the dates and charges contained in the **Bilateral Connection Agreement** and **Construction Agreement**.
4. The technical conditions with which you must comply as a term of this **Offer** are set out in the **Grid Code**. Additional technical conditions are set out in the Appendices to the **Bilateral Connection Agreement**. It is your responsibility to ensure that your equipment complies with the requirements of the relevant conditions.
5. This **Offer** is open for acceptance according to the terms of Paragraph 2.13 of the **CUSC** and the **Transmission Licence**. Please note your right to make an application to the **Authority** to settle the terms of the offer pursuant to Standard Condition C~~9~~7 of the **Transmission Licence**.
6. Please note the provisions of Paragraph 6.10.4 of the **CUSC** in respect of interactive offers which, inter alia, allows **NGC** to vary the terms of this **Offer** if a **Connection** or **Modification Offer**, which interacts with this **Offer**, is accepted first. In terms of Paragraph 6.10.4 of the **CUSC**, **NGC**

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\* Delete if connection only.

will advise you of another offer being made by **NGC**, which may interact with your **Offer**.

7. **Please note that in accordance with the obligation in Paragraph 1.3.3 of the CUSC a Mandatory Services Agreement must be entered into not later than 6 months (or such lesser time as may be agreed) prior to the expected Commissioning Programme Commencement Date.**
8. To accept this **Offer**, please sign and return the originals of the [**CUSC Accession Agreement** and] **Bilateral Connection Agreement** [,**Construction Agreement**] attached to this **Offer** as Sections A. **NGC** will then itself countersign these agreements and one original of each will be returned to you for your retention. The agreements are only effective in accordance with their terms once they have been countersigned by **NGC**.
9. All communications in relation to this **Offer** must, in the first instance, be directed to [description].

Yours faithfully

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for and on behalf of  
The National Grid Company plc

**SECTION A**  
**FORM OF BILATERAL CONNECTION AGREEMENT**  
**AND CONSTRUCTION AGREEMENT**  
**[AND CUSC ACCESSION AGREEMENT]**

**END OF EXHIBIT C**

## **CUSC - EXHIBIT D**

### **THE CONNECTION AND USE OF SYSTEM CODE**

#### **USE OF SYSTEM APPLICATION**

**EMBEDDED GENERATOR  
DISTRIBUTION INTERCONNECTOR OWNER  
SMALL POWER STATION TRADING PARTY**

**PLEASE STUDY THE FOLLOWING NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM.**

1. **NGC** requires the information requested in this application form for the purposes of preparing an **Offer** (the "**Offer**") to enter into an agreement for use of the **NGC-GB Transmission System**. It is essential that the **Applicant** should supply all information requested in this application form and that every effort should be made to ensure that such information should be accurate.
2. Please note that certain expressions which are used in this application form are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.
3. Should **NGC** consider that any information provided is incomplete or unclear or should **NGC** require further information in order that it may prepare the **Offer**, the **Applicant** will be requested to provide further information or clarification.
4. Should there be any change in any information provided by the **Applicant** after it has been submitted to **NGC**, the **Applicant** must immediately inform **NGC** of such a change.
5. **NGC** shall charge the **Applicant**, and the **Applicant** shall pay to **NGC**, **NGC's** Engineering Charges in relation to the application. An advance will be charged by **NGC** in accordance with the **Charging Statements**. No application will be considered until such advance has been paid. The balance of the **NGC** Engineering Charges shall be notified and invoiced by **NGC** to the **Applicant** together with a breakdown of such charges and the **Applicant** shall pay the same within 28 days of the date of **NGC's** invoice. In the event that the advance and any other payments exceed the appropriate **NGC** Engineering Charges the excess shall be repaid forthwith to the **Applicant**. If **NGC** does not make an **Offer** to the **Applicant** in accordance with Standard Condition C87 of the **NGC Transmission Licence** otherwise than by reason of withdrawal of the application by the **Applicant**, **NGC** will return the charges to the **Applicant**.

NOTE: Where an agreement is signed but subsequently modified prior to the relevant date for charging set out in the relevant **Bilateral Agreement**, only the original application charges will be refunded as outlined above.

6. The effective date upon which the application is made shall be the later of the date when **NGC** has received the advance application fee pursuant to Paragraph 5 above or the date when **NGC** is reasonably satisfied that the **Applicant** has completed Sections A-D. **NGC** shall notify the **Applicant** of such date.

7. **NGC** will make the **Offer** in accordance with the terms of Paragraph 3.7 (**Use of System Application**) and Paragraph 6.10 (**Modifications and New Connection Sites**) of the **CUSC** and the **Transmission Licence**.
8. **NGC** will make the **Offer** as soon as is reasonably practicable and, in any event, within 28 days of the effective date of the application or such later period as the **Authority** agrees to. The **Offer** may, where it is necessary to carry out additional extensive system studies to evaluate more fully the impact of the proposed development, indicate the areas that require more detailed analysis. Before such additional studies are required, the **Applicant** shall indicate whether it wishes **NGC** to undertake the work necessary to proceed to make a revised **Offer** within the 28 days period or, where relevant the timescale consented to by the **Authority**. To enable **NGC** to carry out any of the above mentioned necessary detailed system studies the **Applicant** may, at the request of **NGC**, be required to provide some or all of the **Detailed Planning Data** listed in Part 2 of the Appendix to the **Planning Code** which is part of the **Grid Code**.
9. In the course of processing your application, it may be necessary for **NGC** to consult the appropriate **Public Distribution System Operator(s)** on matters of technical compatibility of the **NGC-GB Transmission System** with their **Distribution System(s)** or to consult the Relevant Transmission Licensees to establish the works required on the GB Transmission System. On grounds of commercial confidentiality **NGC** shall need your authorisation to the release to the **Public Distribution System Operator(s)** or the Relevant Transmission Licensees of certain information contained in your application. Any costs incurred by **NGC** in consulting the **Public Distribution System Operator(s)** or Relevant Transmission Licensees would be included in the **NGC Charges** for the application. If it is found by the **Public Distribution System Operator(s)** that any work is required on their **Distribution System(s)**, then it will be for the **Public Distribution System Operator(s)** and the **Applicant** to reach agreement in accordance with Paragraph 6.10.3 of the **CUSC**.
10. If the **Applicant** is not already a **CUSC Party** the **Applicant** will be required as part of this application form to undertake that he will comply with the provisions of the **Grid Code** for the time being in force. Copies of the **Grid Code** and the **CUSC** are available on the **NGC** website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk) and the **Applicant** is advised to study them carefully. Further copies are available on payment of **NGC's** copying charge, postage and packing. **Data** submitted pursuant to this application shall be deemed submitted pursuant to the **Grid Code**.
11. **NGC's Offer** will be based to the extent appropriate upon its standard form terms for **Use of System Offer** a copy of which is attached and the **Charging Statements**. The **Applicant** should bear in mind **NGC's**

standard form terms of offer when making this application.

12. In particular please note that **NGC** may require as a condition of the **Offer**, that the **Applicant's Plant** or **Apparatus** should meet or provide some or all of the technical requirements set out in the Appendices of the draft **Bilateral Embedded Generation Agreement** attached to **NGC's** standard form terms of offer and may propose that the **Applicant's Plant** or **Apparatus** should have the capability to provide **Mandatory Ancillary Services**.
13. **Applicants** that are licensed generators should appreciate that they will be required to perform **Mandatory Ancillary Services** to ensure that System Operational Standards can be achieved. This requirement may have implications towards plant specification. You should be satisfied before an application is made that your intended plant design can meet the requirements. **Applicants** are therefore recommended to contact **NGC's** Headquarters for further information where our staff will be pleased to help.
14. Please complete this application form in black print and return it duly signed to **CUSC Panel Secretary**, The National Grid Company plc, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA (Telephone No. 01926 65 3000).
15. For the most up to date contact details applicants are advised to contact the **NGC** website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk).



## APPLICATION FOR USE OF SYSTEM

Please study the notes before completing and signing this application form.

### A. DETAILS OF APPLICANT

1. Name: .....

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2. Address: .....

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3. Registered Office/Address (including e-mail address for CUSC notices):

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4. Name, title and address of contacts for the purposes of this application, giving description of the field of responsibility of each person:

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**Please study the notes before completing and signing this application form.**

- 5 If **Applicant** is an agent, please give name(s) and address(es) of person(s) for whom the **Applicant** is acting:

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**Please study the notes before completing and signing this application form.**

**B THE PROPOSED POINT OF CONNECTION TO A DISTRIBUTION SYSTEM**

1. Please identify (preferably by reference to an extract from Ordnance Survey Map) the intended location of the **Plant** and **Apparatus** (the "User Development") which it is desired should be connected to the **Distribution System**.

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2. If you believe that a new sub-station will be needed, please indicate by reference to a plan your suggested location for it.

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**C. TECHNICAL INFORMATION**

1. Please provide the **Data** listed in Part 1 of the Appendix to the **Planning Code**. Note: the **Data** concerned form part of the **Planning Code** and **Data Registration Code**. **Applicants** should refer to these sections of the **Grid Code** for an explanation.
2. Please provide a copy of your **Safety Rules** if not already provided to **NGC**.
3. Please indicate any terms which you are prepared to offer for:-
  - (a) Black Start Capability
  - (b) Gas Turbine Unit Fast Start
  - (c) Synchronous Compensation
  - (d) Pumped Storage Unit Spinning-in-Air
  - (e) Pumped Storage
  - (f) Pumped Storage Plant Fast Start from Standstill

**Please study the notes before completing and signing this application form.**

- (g) Demand Reduction
- (h) Adjustment to Pumped Storage Unit Pumping Programme
- (i) Hot Standby

4. Please confirm your intended **Transmission Entry Capacity**.

**D. PROGRAMME**

Please provide a suggested construction programme in bar chart form for the construction works necessary to install the User Development indicating the anticipated date when the connection will be required to be made.

## USE OF SYSTEM APPLICATION

Please study the notes before completing and signing this application form.

1. We hereby apply to use the ~~NGC~~GB **Transmission System** from our connection to [                    ] **Distribution System**.
2. We will promptly inform **NGC** of any change in the information given in this application as quickly as practicable after becoming aware of any such change.
3. If we are not already a **CUSC Party** we undertake for the purposes of this application to be bound by the terms of the **Grid Code** from time to time in force and to sign a **CUSC Accession Agreement**.
4. We authorise the release of certain information, on the grounds of commercial confidentiality, to the appropriate **Public Distribution System Operator(s)** or Relevant Transmission Licensees should it be considered necessary.
5. We confirm that we do/do not meet the **Approved Credit Rating** [and **NGC Credit Rating\***].
6. We confirm that we are applying in the category of [please insert appropriate description from table in paragraph 1.2.4 of the **CUSC\***].

Signed:

.....  
For and on behalf of the Applicant

Date:.....

**END OF EXHIBIT D**

---

\* Delete if no associated Construction Works

**CUSC – EXHIBIT E**

**THE CONNECTION AND USE OF SYSTEM CODE**

**USE OF SYSTEM OFFER**

**EMBEDDED GENERATOR  
DISTRIBUTION INTERCONNECTOR OWNER  
SMALL POWER STATION TRADING PARTY**

The Company Secretary

Date: [                    ]

Dear Sirs

**USE OF SYSTEM OFFER  
[SITE OF CONNECTION] [REFERENCE]**

Set out below is our offer for use of [the ~~NGC-GB~~ Transmission System](#) at [site/substation]. Please note that certain expressions which are used in this **Offer** are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

- 1 **NGC** offers to enter into a **Bilateral Embedded Generation Agreement** [and **Construction Agreement**] reference number [                    ] in the form and terms attached as Section A.
- 2 It is a condition of this offer that:
  - (i) if not already a **CUSC** Party you enter into a **CUSC Accession Agreement**;
  - (ii) you satisfy **NGC** that you have entered into a **Distribution Agreement** with the owner/operator of the **Distribution System** for the connection of the **User's Plant** to and the use of such **Distribution System**;
- 3 The technical conditions with which you must comply as a term of this offer are set out in the **Grid Code**. Additional or different technical conditions are set out in the Appendices to the **Bilateral Embedded Generation Agreement**. It is your responsibility to ensure that your equipment complies with the requirements of the relevant conditions.
- 4 This offer is open for acceptance according to the terms of Paragraph 3.7.4 of the **CUSC** and the **Transmission Licence**. Please note your right to make an application to the **Authority** to settle the terms of the offer pursuant to Standard Condition C97 of the **Transmission Licence**.
- 5 Please note the provisions of Paragraph 6.10.4 of the **CUSC** in respect of interactive offers which, inter alia, allows **NGC** to vary the terms of this **Offer** if a **Connection** or **Modification Offer**, which interacts with this **Offer**, is accepted first. In terms of Paragraph 6.10.4 of the **CUSC**, **NGC** will advise

you of another offer being made by **NGC**, which may interact with your **Offer**.

- 6 To accept this offer, please sign and return the originals of the **Bilateral Embedded Generation Agreement** [and **CUSC Accession Agreement**] [and **Construction Agreement**] attached to this offer as Section A. **NGC** will then itself execute the Agreements and one original of each will be returned to you for your retention. The Agreements are only effective in accordance with their terms once they have been countersigned by **NGC**.
- 7 All communications in relation to this **Offer** should, in the first instance, be directed to [Description].                     ].

Yours faithfully

.....  
for and on behalf of  
The National Grid Company Plc



**SECTION A**  
**FORM OF BILATERAL EMBEDDED GENERATION AGREEMENT**  
**AND CONSTRUCTION AGREEMENT**  
**AND CUSC ACCESSION AGREEMENT**

**END OF EXHIBIT E**

**CUSC - EXHIBIT F**

**THE CONNECTION AND USE OF SYSTEM CODE**

**USE OF SYSTEM APPLICATION**

**SUPPLIERS**

**INTERCONNECTOR USERS**

**INTERCONNECTOR ERROR ADMINISTRATOR**

**PLEASE STUDY THE FOLLOWING NOTES BEFORE COMPLETING AND SIGNING THIS APPLICATION FORM.**

1. **NGC** requires the information requested in this application form for the purposes of preparing an **Offer** (the "**Offer**") to allow the **Applicant** to use the **NGC-GB Transmission System**. It is essential that the **Applicant** should supply all information requested in this application form and that every effort should be made to ensure that such information should be accurate.

Please note that certain expressions which are used in this application form are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

2. Should **NGC** consider that any information provided is incomplete or unclear or should **NGC** require further information in order that it may prepare the **Offer**, the **Applicant** will be requested to provide further information or clarification.
3. Should there be any change in any information provided by the **Applicant** after it has been submitted to **NGC**, the **Applicant** must immediately inform **NGC** of such a change.
4. The effective date upon which the application is made shall be the date when **NGC** is reasonably satisfied that the **Applicant** has completed Sections A-D. **NGC** shall notify the **Applicant** of such date.
5. **NGC** will make the **Offer** in accordance with the terms of Paragraph 3.7 OR 9.2.1 (**Use of System Application**) of the **CUSC** and the **Transmission Licence**.
6. **NGC** will make the **Offer** as soon as is reasonably practicable and in any event within 28 days of the effective date of the application or such longer period as the **Authority** agrees to.
7. If the **Applicant** is not already a **CUSC Party** the **Applicant** will be required as part of this application form to undertake that he will comply with the provisions of the **Grid Code** for the time being in force. Copies of the **Grid Code** and the **CUSC** are available on the **NGC** website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk) and the **Applicant** is advised to study them carefully. **Data** submitted pursuant to this application shall be deemed submitted pursuant to the **Grid Code**.
8. **NGC's Offer** will be based to the extent appropriate upon its standard form terms for **Use of System Offer** a copy of which is attached and the **Charging Statements**. The **Applicant** should bear in mind **NGC's**

standard form terms of offer when making this application.

9. Please complete this application form in black print and return it duly signed to, **CUSC Panel Secretary**, The National Grid Company plc, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA (Telephone No. 01926 65 3000).
  
10. For the most up to date contact details applicants are advised to contact the **NGC** website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk).

## APPLICATION FOR USE OF SYSTEM

Please study the notes before completing and signing this application form

### A. DETAILS OF APPLICANT

1. Name: .....

.....

2. Address: .....

.....

.....

3. Registered Office/Address: (including e-mail address for CUSC notices)

.....

.....

.....

.....

4. Name, title and address of contacts for the purposes of this application, giving description of the field of responsibility of each person:

.....

.....

.....

.....

.....

.....

5. If **Applicant** is an agent, please give name(s) and address(es) of person(s) for whom the **Applicant** is acting:

.....

.....

.....

**Please study the notes before completing and signing this application form**

**B DATA REQUIREMENTS**

Please provide the **Data** required under Paragraph [6.17] of the **CUSC** as appropriate upon which our terms of **Offer** of use of system will be based.

.....

.....

.....

**Please study the notes before completing and signing this application form**

### **USE OF SYSTEM APPLICATION**

1. We hereby apply to use the **NGC-GB** Transmission System.
2. We will promptly inform **NGC** of any change in the information given in this **Application** as quickly as practicable after becoming aware of any such change.
3. If we are not already a **CUSC Party** we undertake for the purposes of this **Application** to be bound by the terms of the **Grid Code** from time to time in force and to sign a **CUSC Accession Agreement**.

Signed:

.....  
For and on behalf of the **Applicant**

Date:.....

**END OF EXHIBIT F**

**CUSC – EXHIBIT G**

**USE OF SYSTEM SUPPLY OFFER AND  
CONFIRMATION NOTICE**

**SUPPLIERS**





copy of the **Use of System Offer and Confirmation Notice** to the **User** having completed, signed and dated Part II.

- | 7. The **CUSC Accession Agreement** and use of the **~~NGC—GB~~ Transmission System** pursuant to the **CUSC** as indicated in the **Confirmation Notice** are only effective in accordance with their terms once they have been executed (or signed in the case of the **Confirmation Notice**) and dated by **NGC**.
8. All communications in relation to this **Offer** must, in the first instance, be directed to [description].

Yours faithfully

.....  
for and on behalf of  
The National Grid Company plc

**FORM OF USE OF SYSTEM SUPPLY OFFER AND  
CONFIRMATION NOTICE**

To: [ ] (“**User**”, which expression shall include its successors and/or permitted assigns)

From: The National Grid Company plc

Date: [ ]

1. DEFINITIONS, INTERPRETATIONS AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** have the same meanings, interpretations or constructions in this **Use of System Supply Offer and Confirmation Notice** (the “**Notice**”).

**Part I - Use of System Supply Offer Notice**

2. COMMENCEMENT

Subject to the other terms of this **Notice**, use of the **NGC-GB Transmission System** and the requirement to pay **Use of System Charges** shall commence on the date **NGC** signs and dates Part II of this **Notice**,

3. CREDIT REQUIREMENTS

The amount to be secured by the **User** if Option A in the acknowledgement is deleted is set out in the Appendix to this **Notice**.

4. TERM

Subject to the provisions for earlier termination set out in the **CUSC**, the **User’s** right to use the **NGC-GB Transmission System** pursuant to this **Notice** shall continue until the **User** gives **NGC** a **Use of System Termination Notice** pursuant to Paragraph 3.8 of the **CUSC** or use ceases under the provisions of the **CUSC**.

We acknowledge and agree to the terms set out above.

[ ]

[Name of User]

Date:

Option A: We meet the Approved Credit Rating

Option B: We do not meet the Approved Credit Rating

### **Part II - Use of System Supply Confirmation Notice**

#### CONFIRMATION

We hereby confirm that with effect from the date set out below you can use the **NGCGB -Transmission System** as a **Supplier** in accordance with the terms of the **CUSC** and this **Notice** and are required to pay **Use of System Charges**.

[ ]

The National Grid Company plc

Date:

\_\_\_\_\_

**Appendix**

Amount of **Security Cover** required if Option A deleted: £[            ]

**END OF EXHIBIT G**

**CUSC – EXHIBIT H**

**USE OF SYSTEM INTERCONNECTOR OFFER  
AND CONFIRMATION NOTICE**

**INTERCONNECTOR USER  
INTERCONNECTOR ERROR ADMINISTRATOR**



**Offer and Confirmation Notice** [and execute and return the **CUSC Accession Agreement**]. Subject to providing **Security Cover** in accordance with paragraph 3 above **NGC** will then itself [execute the **CUSC Accession Agreement** and] return a copy of the **Use of System Interconnector Offer and Confirmation Notice** .

7. The [**CUSC Accession Agreement** and] use of the ~~NGC~~ **GB Transmission System** pursuant to the **CUSC** as indicated in the **Confirmation Notice** are only effective in accordance with their terms once they have been signed [(or executed in the case of the **CUSC Accession Agreement**)] and dated by **NGC**.
8. All communications in relation to this **Offer** must, in the first instance, be directed to [description].

Yours faithfully

.....  
for and on behalf of  
The National Grid Company plc



## **FORM OF USE OF SYSTEM INTERCONNECTOR OFFER AND CONFIRMATION NOTICE**

To: [ ] ("**User**", which expression shall include its  
successors and/or permitted assigns)

From: The National Grid Company plc

Date: [ ]

### 1. DEFINITIONS, INTERPRETATIONS AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** have the same meanings, interpretations or constructions in this **Use of System Interconnector Offer and Confirmation Notice** ("**Notice**").

#### **Part I - Use of System Interconnector Offer Notice**

### 2. COMMENCEMENT

Subject to the other terms of this **Notice**, use of the **NGCGB** |  
**Transmission System** as an [**Interconnector User/Interconnector  
Error Administrator**] and the requirement to pay **Use of System  
Charges** shall commence on the date **NGC** signs and dates Part II of this  
**Notice**.

### 3. CREDIT REQUIREMENTS

The amount to be secured by the **User** if Option A in the  
acknowledgement is deleted is set out in the Appendix to this **Notice**.

4. TERM

Subject to the provisions for earlier termination set out in the **CUSC**, the **User's** right to use the **NGC-GB Transmission System** pursuant to this **Notice** shall continue until the **User** gives **NGC** a **Use of System [Interconnector] Termination Notice** pursuant to Paragraph [9.23.1] of the **CUSC** or use ceases under the provisions of the **CUSC**.

We acknowledge and agree to the terms set out above.

[ ]

[Name of User]

Date:

*[Delete one of the following options:]*

Option A: We meet the Approved Credit Rating

Option B: We do not meet the Approved Credit Rating

**Part II - Use of System Interconnector Confirmation Notice**

**CONFIRMATION**

We hereby confirm that with effect from the date set out below you can use the **NGC-GB Transmission System** as an **[Interconnector User / Interconnector Error Administrator]** in accordance with the terms of the **CUSC** and this **Notice**, and are required to pay **Use of System Charges**.

[ ]

The National Grid Company plc

Date:

**Appendix**

The amount of **Security Cover** required if Option A is deleted is: £[            ]

**END OF EXHIBIT H**

## **CUSC - EXHIBIT I**

### **THE CONNECTION AND USE OF SYSTEM CODE**

#### **MODIFICATION APPLICATION**

## MODIFICATION APPLICATION - NOTES

**Please study the following notes before completing and signing this application form.**

1. The National Grid Company plc ("**NGC**") requires the information requested in this application form for the purposes of preparing an offer (the "**Offer**") of a **Construction Agreement** for the construction of a proposed **Modification** and for the variation of the existing **Bilateral Construction Agreement** or **Bilateral Embedded Generation Agreement**] affected by the **Modification**. It is essential that the **Applicant** should supply all information requested in this application form and that every effort should be made to ensure that such information is accurate.

Please note that certain expressions which are used in this application form are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

2. Should **NGC** consider that any information provided is incomplete or unclear or should **NGC** require further information in order that it may prepare the **Offer**, the **Applicant** will be requested to provide further information or clarification.
3. Should there be any change in any information provided by the **Applicant** after it has been submitted to **NGC**, the **Applicant** must immediately inform **NGC** of such a change.
4. **NGC** shall charge the **Applicant** and the **Applicant** shall pay to **NGC** **NGC's** Engineering Charges in relation to the application. A fee will be charged by **NGC** in accordance with the **Transmission Licence Charging Statements**. No application will be considered until such fee has been received.

If **NGC** does not make an **Offer** to the **Applicant** in accordance with the **Transmission Licence** otherwise than by reason of withdrawal of the application by the **Applicant**, **NGC** will return the charges to the **Applicant**.

5. The effective date upon which the application is made shall be the later of the date when **NGC** has received the application fee under Paragraph 4 above and the date when **NGC** is reasonably satisfied that the **Applicant** has completed Sections A-D. **NGC** shall notify the **Applicant** of such

date.

6. **NGC** will make the **Offer** in accordance with the terms of Paragraphs 6.9 (Modification) and 6.10 (**Modifications** and **New Connection Sites**) of the **CUSC** and the **Transmission Licence**.

**Please study the following notes before completing and signing this application form.**

7. **NGC** will make an **Offer** as soon as is reasonably practicable and, in any event, within three (3) months of the effective date of the application or such later period as the **Authority** may agree. The **Offer** may, where it is necessary to carry out additional extensive system studies to evaluate more fully the impact of the proposed development, indicate the areas that require more detailed analysis. Before such additional studies are required, the **Applicant** shall indicate whether it wishes **NGC** to undertake the work necessary to proceed to make a revised **Offer** within the three (3) month period or, where relevant, the timescale consented to by the **Authority**. To enable **NGC** to carry out any of the above mentioned necessary detailed system studies the **Applicant** may, at the request of **NGC**, be required to provide some or all of the **Detailed Planning Data** listed in Part 2 of the Appendix to the **Planning Code** which is part of the **Grid Code**.
8. In the course of processing your application, it may be necessary for **NGC** to consult the appropriate **Public Distribution System Operator(s)** on matters of technical compatibility of the **NGCGB -Transmission System** with their **Distribution System(s)** or to consult the [Relevant Transmission Licensees](#) to establish the works required on the [GB Transmission System](#). On grounds of commercial confidentiality, **NGC** shall need your authorisation to the release to the **Public Distribution System Operator(s)** or [Relevant Transmission Licensees](#) of certain information contained in your application. Any costs incurred by **NGC** in consulting the **Public Distribution System Operator(s)** or [Relevant Transmission Licensees](#) would be included in the **NGC** charges for the **Modification Application**. If it is found by the **Public Distribution System Operator(s)** that any work is required on their **Distribution System(s)**, then it will be for the **Public Distribution System Operator(s)** and the **Applicant** to reach agreement in accordance with Paragraph 6.10.3 of the **CUSC**.
9. Data submitted pursuant to this application shall be deemed submitted pursuant to the **Grid Code**.

10. **NGC's Offer** will, to the extent appropriate, be based upon its standard form terms of **Modification Offer** and the statement of charges issued by **NGC** under Standard Conditions ~~{C4 and C67B}~~ of the **Transmission Licence**. The **Applicant** should bear in mind **NGC's** standard form terms of **Offer** when making this application.
11. **Applicants** who are licensed generators should appreciate that they will be required to perform **Mandatory Ancillary Services** to ensure that System Operational Standards can be achieved. This requirement may have implications towards Plant specification. You should be satisfied before an application is made that your intended Plant design can meet the requirements. **Applicants** are therefore recommended to contact **NGC's** Headquarters for further information where our staff will be pleased to help.
12. Please complete this application form in black print and return it duly signed to **CUSC Panel Secretary**, The National Grid Company plc, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA (Telephone No. 01926 65 3000).
13. For the most up to date contact details applicants are advised to contact the National Grid website at [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk).

**MODIFICATION – APPLICATION**

**Please study the following notes before completing and signing this application form.**

**A. DETAILS OF APPLICANT**

1. Name: .....

.....

2. Address: .....

.....

.....

.....

3. Registered Office/Address (including e-mail address for CUSC notices and Registration Number): .....

.....

.....

.....

.....

.....

.....

.....

4. Name, title and address of contacts for the purposes of this application, giving description of the field of responsibility of each person:

.....

.....

.....



**Please study the following notes before completing and signing this application form.**

- 5 If **Applicant** is an agent, please give name(s) and address(es) of person(s) for whom the **Applicant** is acting:

.....

.....

.....

**Please study the following notes before completing and signing this application form.**

**B THE CONNECTION SITE TO BE MODIFIED**

1. Please identify by name the **Connection Site** at which the **Modification** is to be undertaken.

.....  
.....  
.....

2. Give details of the rights in any additional land which you are proposing to acquire at the **Connection Site** (to include leasehold and freehold interests and in the case of Connection Sites in Scotland legal interests and heritable or leasehold interests including servitudes or other real rights) so as to undertake the **Modification**).

.....  
.....  
.....

3. Is space available on the **Connection Site** for working storage and accommodation areas for **NGC** contractors or, for Connection Sites, in Scotland the contractors of the Relevant Transmission Licensees? If so, please indicate by reference to a plan the location of such areas, giving the approximate dimensions of the same.

.....  
.....  
.....

4. Please provide details (including copies of any surveys or reports) of the physical nature of any additional land the subject to your answer to Question 2 above including the nature of the ground and the sub-soil including the results of the following tests:-

[NGC to specify]

.....

**Please study the following notes before completing and signing this application form.**

- 5 Please give details and provide copies of all existing relevant planning and other consents (statutory or otherwise) held by you relating to the **Connection Site** or the **Modification** and/or details of any pending applications for the same.

.....  
.....

- 6 Please indicate what, if any, of the necessary construction works necessary for the **Modification** you would like **NGC** to conduct upon your behalf.

.....  
.....

**Please study the following notes before completing and signing this application form.**

**C. TECHNICAL INFORMATION**

1. Please provide full details of the proposed **Modification** together with the relevant **Standard Planning Data** as listed in Part 1 of the Appendix to the **Planning Code** to the extent that the data will change from previously submitted Committed Project Planning Data or Connected Planning Data as a result of the proposed **Modification**. Note: the data concerned form part of the **Planning Code** and **Data Registration Code**. **Applicants** should refer to these sections of the **Grid Code** for an explanation.

**D. PROGRAMME**

Please provide a suggested construction programme in bar chart form for the construction works necessary to install the **Modification** (not the **NGC Transmission Connection Assets** needing to be installed) indicating the anticipated date when the connection will be required to be made.

## **MODIFICATION APPLICATION**

**Please study the notes before completing and signing this application form**

1. We hereby apply to modify our connection to the ~~NGC~~ GB **Transmission System** at [            ] **Connection Site.**
  
2. We agree to pay **NGC's** Engineering Charges on the terms specified in the Notes to the **Connection Application.**
  
3. We will promptly inform **NGC** of any change in the information given in this **Application** as quickly as practicable after becoming aware of any such change.
  
4. We authorise the release of certain information, on the grounds of commercial confidentiality, to the appropriate **Public Distribution System Operator(s)** or Relevant Transmission Licensees should it be considered necessary.
  
5. We confirm that we do/do not meet **NGC's Credit Rating/Approved Credit Rating.**

Signed By:

)  
)  
)  
)

For and on behalf of the Applicant

Date.....

**END OF EXHIBIT I**

## **CUSC - EXHIBIT J**

### **THE CONNECTION AND USE OF SYSTEM CODE MODIFICATION OFFER**

The Company Secretary

Date: [                                 ] ]

Dear Sirs

**Modification Offer Dated   (the “Connection Offer”)**

We refer to your application for the **Modification** of the [**Bilateral Connection Agreement**] or [**Bilateral Embedded Generation Agreement**] for [customer/site]. **NGC** started processing the application on [date]. Set out below is **NGC’s Modification Offer** for the **Connection Site**. Please note that certain expressions which are used in this offer are defined in the Interpretation and Definitions (contained in Section 11 of the **CUSC**) and when this occurs the expressions have capital letters at the beginning of each word and are in bold.

1. **NGC** offers to enter into an agreement to vary the [**Bilateral Connection Agreement**] or [**Bilateral Embedded Generation Agreement**] in the form and terms attached (Reference No. [                                 ] ).
2. This offer has been prepared upon the basis that each party will construct, install, control, operate and maintain, in the case of the User, the Plant and Apparatus which it will own, and in the case of NGC, the **Transmission Plant and Transmission Apparatus** applying the ownership rules set out in Paragraph 2.12 of the **CUSC**.
3. [It is a condition of this offer that prior to the relevant date for charging set out in the relevant **Bilateral Agreement** you also [enter into an **Interface Agreement**] or [agreement to vary the existing **Interface Agreement**] covering the **Connection Site** in a form to be agreed between the parties.]
4. [It is a condition of this offer that the **Connection Site** is not a nominated site under the “NAECI” (the National Agreement for the Engineering Construction Industry) conditions and will not become one and any agreement for this site will be conditional upon this. In the event that the condition should not be met, **NGC** will be entitled to revise all the dates and charges contained in the **Bilateral Connection Agreement [and Construction Agreement].**]
5. The technical conditions with which you must comply as a term of this offer are set out in the **Grid Code**. Additional or different technical conditions are set out in the Appendices to the [**Bilateral Connection Agreement**] or [**Bilateral Embedded Generation Agreement**]. It is your responsibility to ensure that your equipment complies with the requirements of the relevant conditions.
6. This offer is open for acceptance according to the terms of Paragraph 6.9 (**Modifications**) of the **CUSC** and the **Transmission Licence**. Please



note your right to make an application to the **Authority** to settle the terms of the **Offer** pursuant to Standard Condition ~~C9~~7 of the **Transmission Licence**.

7. Please note the provisions of Paragraph 6.10.4 of the **CUSC** in respect of interactive offers which, inter alia, allows **NGC** to vary the terms of this offer if a **Connection** or **Modification Offer** which interacts with this offer is accepted first. In terms of Paragraph 6.10.4 of the **CUSC** **NGC** will advise you of another offer being made by **NGC** which may interact with your offer.
8. To accept this offer, please sign and return the [**Construction Agreement**] [**Bilateral Construction Agreement**] and [**Bilateral Embedded Generation Agreement**] attached to this offer as Section A and Section B. **NGC** will then itself countersign these agreements and one original of each will be returned to you for your retention. The agreements are only effective in accordance with their terms once they have been executed by **NGC**.

Yours faithfully

.....

for and on behalf of  
The National Grid Company plc

**SECTION A**  
**FORM OF CONSTRUCTION AGREEMENT**

**SECTION B**  
**FORM OF VARIED BILATERAL AGREEMENT**

**END OF SECTION J**

## **CUSC - EXHIBIT K**

### **THE CONNECTION AND USE OF SYSTEM CODE MODIFICATION NOTIFICATION**

## **MODIFICATION NOTIFICATION**

1. This **Modification Notification** is issued by **NGC** pursuant to Paragraph 6.9 of the **CUSC**. The **User** has certain rights under Paragraph 6.9 of the **CUSC** and is advised to consider whether it wishes to avail itself to such rights upon receipt of this **Modification Notification**.
2. **NGC** proposes to make the **Modification** to the **NGC-GB Transmission System** set out below:-
3. **NGC** reasonably believes that you may have to carry out the following works as a result of the proposed **Modification**:-
4. The latest date upon which you may apply to the **Authority** under Standard Condition **C97** of the **Transmission Licence** is [date: to be supplied by **NGC**, subject to Paragraph 6.9 of the **CUSC**.]

Dated:

Signed for and on behalf of  
The National Grid Company plc

**END OF SECTION K**

**CUSC - EXHIBIT L**

**BI-ANNUAL ESTIMATE FOR BILATERAL AGREEMENT**

**DATED [ ]**

COMPANY: [ ]

CONNECTION SITE: [ ]

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. NGC Engineering Charges and expenses for obtaining Consents pursuant to Clause 2.4;
2. Termination Amounts.

**END OF EXHIBIT L**

**CUSC - EXHIBIT M**

**SECURED AMOUNT STATEMENT**

**BILATERAL AGREEMENT DATED [ ]**

COMPANY: [ ]

CONNECTION SITE: [ ]

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

We hereby certify that the amount to be secured in respect of **[Termination Amounts]** is as stated above in respect of the named period.

for and on behalf of  
**THE NATIONAL GRID COMPANY PLC**

Duly authorised officer

**END OF SECTION M**



**CUSC - EXHIBIT N**

**NOTICE OF DRAWING**

To [ ] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

RE: **BILATERAL 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: The National Grid Company plc

Account No:

Yours faithfully,

for and on behalf of  
**THE NATIONAL GRID COMPANY PLC**

Duly authorised officer

**END OF SECTION N**

**CUSC - EXHIBIT O**

**THE CONNECTION AND USE OF SYSTEM CODE  
INTERFACE AGREEMENTS**

**PART I -**

- A NGC ASSETS ON USER LAND IN ENGLAND AND WALES**  
**B RELEVANT TRANSMISSION LICENSEE ASSETS ON  
USER LAND IN SCOTLAND**

**PART II -**

- A USER ASSETS ON NGC LAND**  
**B USER ASSETS ON RELEVANT TRANSMISSION  
LICENSEE LAND**

**CUSC - EXHIBIT O - PART IA**

**THE CONNECTION AND USE OF SYSTEM CODE  
INTERFACE AGREEMENTS**

**PART IA - NGC ASSETS ON USER LAND**

**CUSC - EXHIBIT O - PART IA**

**INTERFACE AGREEMENT**

Relating to NGC Assets on User Land **in England and Wales**

**CUSC - EXHIBIT O - PART IA**

DATED \_\_\_\_\_ 199[ ]

[ ] (User)

- and -

THE NATIONAL GRID COMPANY plc (NGC)

**INTERFACE AGREEMENT**

Relating to NGC Assets on  
User Land at [ ]

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**INTERFACE AGREEMENT**  
**(ASSET LICENCE FACILITY AGREEMENT)**

**(NGC ASSETS)**

**THIS DEED OF AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 199[ ]

**BETWEEN**

- (1) [ \_\_\_\_\_ ] a company registered in England and Wales (registered number [ \_\_\_\_\_ ]) whose registered office is at [ \_\_\_\_\_ ] (“User”, which expression shall include its successors and/or permitted assigns) ;  
and
- (2) **THE NATIONAL GRID COMPANY plc** a company registered in England with number 2366977 whose registered office is at National Grid House, Kirby Corner Road, Coventry CV4 8JY (“NGC”, which expression shall include its successors and/or permitted assigns)

**WHEREAS**

Certain assets and facilities of NGC are to be installed on property title to which is vested in User; and this Agreement is entered into by the parties to give effect to appropriate arrangements in respect of such assets and the use of assets and facilities.

**NOW IT IS HEREBY AGREED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

In this Agreement, the following words and expressions shall, unless the subject-matter or context otherwise requires or is inconsistent therewith, bear the following meanings:-

“the Act” \_\_\_\_\_ the Electricity Act 1989;

“Affiliate”	in relation to User means any holding company or subsidiary of that Party or any subsidiary of a holding company of User, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of this Agreement as if such section were in force at such date;
“Authority”	the Gas and Electricity Markets Authority established by Section 1 of the Utilities Act 2000;
“Bilateral Agreement”	an agreement entered into between the Parties dated [            ]
“Facility Asset”	an asset specified in Schedule 4;
“Competent Authority”	includes the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;
“Connection Agreement”	the Connection and Use of System Code

gives contractual force by the CUSC Framework Agreement entered into by, among others, the Parties regarding, among other things, the connection of User's Plant and Apparatus (as defined therein) to the ~~NGC~~GB Transmission System (as defined therein) and the use by User of such system;

"Cover" the cover page of this Agreement, which page shall form part of this Agreement;

"Directive" includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority, (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;

"Electricity Generating User's licence granted pursuant to Licence" S.6(1)(a) of the Act;

"Emergency Personnel" in relation to a Party, all employees of that Party who have appropriate knowledge and experience and are recognised by that Party as being able to carry out competently and safely emergency action for the purposes of clause 9;

“Facility Asset”	those assets listed in Schedule 4
“Force Majeure”	in relation to a Party, any event or circumstance which is beyond the reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus which could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament legislation, bye-law, and Directive (not being any order, regulation or directive under Section 32, 33, 34 or 35 of the Act) Provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;
“Good Industry Practice”	the exercise of that degree of skill, diligence, prudence and foresight which

would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

“the Grid Code”

the document or documents produced pursuant to the NGC Transmission Licence, as from time to time revised in accordance with the NGC Transmission Licence;

“High Voltage Lines”

electric lines of a nominal voltage exceeding 132 kilovolts;

“HV”

of a nominal voltage exceeding 650 volts;

“Intellectual Property”

patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same is registered and including applications for registration of any of the same) and rights under licences and consents in relation to any of the same and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;

“Modification”

any alteration to or replacement of such NGC Assets pursuant to clause 3.1 of this Agreement and “Modify” and “Modified”

	shall be construed accordingly;
“User’s Land”	the land described in Schedule 2;
“NGC Assets”	those assets listed in Schedule 1 (including any plinths or other structures (excluding buildings) to or upon which the same are affixed and to or upon which no assets of any other person are affixed and any straps, bolts or other such things for attachment thereto) as any of the same may be Modified pursuant to this Agreement;
“NGC Transmission Licence”	NGC’s licence granted pursuant to Section 6 (1)(b) of the Act;
“Party”	each person for the time being and from time to time party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person;
“Permitted Purpose”	in relation to a Right of Access, the purpose specified in the clause granting such Right of Access;
“Relocation Proposal”	a proposal by User to NGC pursuant to sub-clause 5.1 for the relocation of any of NGC Assets;
“Right of Access”	full right and liberty during the currency of this Agreement to enter *upon and through and remain upon any part of User’s Land

(including where relevant any land over which User enjoys an easement appurtenant to User's land and the use of which by NGC is necessary to enable it to exercise the Right of Access hereby granted) **PROVIDED** to the extent necessary for a Permitted Purpose and subject to the provisions of clause 5;

"Services" in the context of clause 8, the goods and services specified in Schedule 5;

In this Agreement:

- (i) unless the context otherwise requires all references to a particular clause, sub-clause, paragraph or Schedule shall be a reference to that clause, sub-clause, paragraph or Schedule in or to this Agreement;
- (ii) the table of contents and headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (iii) references to the words "include" or "including" are to be construed without limitation to the generality of the preceding words;
- (iv) unless there is something in the subject matter or the context which is inconsistent therewith, any reference to an Act of Parliament or any Section thereof or Schedule thereto, or other provision thereof or any instrument, order or regulation made thereunder shall be construed at the particular time as including a reference to any modification, extension, replacement or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament; and

- (v) references to the masculine shall include the feminine and references in the singular shall include the plural and vice versa and words denoting natural persons shall include companies, corporations and any other legal entity and vice versa.
- (vi) unless otherwise provided to the contrary herein, defined terms used in this Agreement and not defined herein shall have the meaning set forth in the Connection and Use of System Code or the Bilateral Agreement.

## **2. RIGHT TO INSTALL AND RETAIN ASSET**

- 2.1 Subject to sub-clause 5.1, User hereby grants to NGC the right to install and thereafter retain and replace as provided in this Agreement NGC Assets on User's Land in such places as are currently proposed (subject to such variations between the date hereof and the actual date of installation as may be agreed to by User) and such right shall extend to any Modified NGC Assets. User shall maintain any shelter and/or support enjoyed by any NGC Assets at the date of this Agreement or, if later, when relocated on User's Land in accordance with clause 5 and grants to NGC a Right of Access for the purpose of the maintenance, inspection, testing, removal, operation, Modification or repair of any NGC Assets.

## **3. MODIFICATIONS REPLACEMENTS AND ALTERATIONS**

- 3.1 NGC may at its own expense replace or alter any NGC Assets provided that:-
  - 3.1.1 the replacement NGC Assets or the NGC Assets as so altered:-
    - (i) are placed in the same or approximately the same position
    - (ii) fulfil the same or a similar purpose;



- (iii) can, where relevant, be accommodated in and on existing buildings or structures;
- (iv) do not require additional or improved facilities or services from User;
- (v) do not restrict the actual and intended use of User's Land and any equipment thereon or therein to any materially greater extent than the NGC Assets so replaced or altered; and
- (vi) are either of the same or a similar or smaller size or the alteration is effected substantially within the space occupied by such NGC Assets to enable the NGC Assets to be used up to their full capability; and

3.1.2 prior written notification has been given to User.

- 3.2 If any replacement or alteration permitted by clause 3.1 shall require minor alterations or work to the existing buildings or structures housing or supporting NGC Assets in question, such alterations or works may be carried out (with the prior written approval of User (such approval not to be unreasonably withheld or delayed)) but at the cost of NGC.
- 3.3 To the extent that any of the conditions of clause 3.1 are not in User's reasonable opinion met in relation to any replacement or alteration, User may by notice in writing require NGC promptly to remove such replacement or alteration and, if NGC fails to do so, may remove the same itself at the cost and expense of NGC. On such removal, NGC may reinstate the NGC Assets so replaced or altered.

- 3.4 NGC shall, if considering moving, replacing, or altering any of NGC Assets, give due consideration as to whether it shall be operationally practicable, desirable and reasonably economic to move such NGC Assets to (or place the replacement or altered NGC Assets on) its own property.
- 3.5 For the avoidance of doubt it is hereby agreed that any dispute between the Parties regarding this clause shall be determined in accordance with the provisions of Clause 10 of this Agreement

**4. SECURITY AND COMPLIANCE WITH STATUTES etc**

- 4.1 User undertakes to maintain and provide security in relation to NGC Assets in accordance with the arrangements set out in Part I of Schedule 3.
- 4.2 Each Party shall procure that, as between the Parties, all reasonable and necessary steps are taken, as and when necessary or desirable, in co-operation with the other (and, so far as applicable, with any third party), to ensure compliance with the provisions (each such provision or part thereof being in this clause 4 an "Obligation") of:-
- (i) all statutes and Directives applicable to any NGC Assets and/or any part (including the whole) of User's Land;
  - (ii) any statute or Directive which may affect any other property (of whatever nature) of either Party as a result of the existence, nature, location, or manner of operation of any NGC Assets; and
  - (iii) any statute or Directive requiring the reporting of any occurrence relating to or affecting any NGC Assets and/or User's Land (including the Reporting of Injuries Diseases and Dangerous Occurrence Regulations 1985 and the Electricity Supply Regulations 1988).

- 4.3 Each Party shall, so far as it is aware of the same, unless it has reasonable

grounds for believing that the other Party possesses the information, keep the other Party informed of all matters relating to any Obligation or potential Obligation and/or the extent to which such Obligation may be applicable.

4.4 In the event of any dispute as to responsibility, as between the Parties, pursuant to clause 4.2, for compliance with an Obligation, that responsibility shall be allocated, so far as practicable, on the basis that:-

- (i) each Party shall refrain from taking or permitting any act or omission which would prevent compliance with an Obligation; and
- (ii) positive action required in relation to a Party's property as a consequence of the existence, nature, location or manner of operation of that property or any other property of that Party shall be the responsibility of that Party, and, to the extent that such action is required in respect of or affecting any property of the other Party (or property of a third party located in or on that other Party's Land), such action may be taken with the prior approval of that other Party (such approval, subject to (i) above, not to be unreasonably withheld or delayed).

4.5 The provisions for safety co-ordination between the Parties contained in Part II of Schedule 3 shall apply.

## **5. RELOCATIONS**

5.1 At any time and from time to time during the term of this Agreement, User may with the prior written consent of NGC (such consent not to be unreasonably withheld or delayed) require NGC to relocate any NGC Assets either to a different location on the User Land or to NGC's or a third party's land, such consent to be sought and given or refused in accordance with the following procedure:-

5.1.1 User shall serve a written notice on NGC, which notice shall specify:-

- (a) the NGC Assets which User wishes to be relocated;
- (b) the reasons for such wish;
- (c) the proposed new location for such NGC Assets; and
- (d) the timing of the carrying out of such relocation.

5.1.2 NGC shall within one month of receipt of any such notice (or such longer period as shall be reasonably necessary) serve a counter notice stating:-

- (a) whether or not in its reasonable opinion such Relocation Proposal is acceptable to it;
- (b) if the Relocation Proposal is not acceptable to NGC, the grounds for such opinion and the terms of any alternative proposal (the "Alternative Relocation Proposal") covering so far as relevant the matters referred to in items (a) - (d) of clause 5.1.1 which would be acceptable to NGC; and
- (c) in respect of the Relocation Proposal (if accepted) or of any Alternative Relocation Proposal, the costs likely to be incurred in connection with considering the Relocation Proposal or the Alternative Relocation Proposal and effecting the said relocation of the NGC Assets and the proper and reasonable costs of relocating any other equipment that may be necessary as a result of the relocation of those NGC Assets and any consequential losses including payments to third parties incurred as a result of the relocation of those NGC Assets and the proposed manner and timing of payment

of the same by User.

- 5.1.3 If within one month of the date of such counter notice (or such longer period as shall be reasonably necessary) User has not withdrawn the Relocation Proposal and the Parties have not agreed upon it or the Alternative Relocation Proposal (if any) or a variation of either of them (such agreement to include agreement on the costs referred to in item (c) of clause 5.1.2) the matter shall be dealt with in accordance with Clause 10.
- 5.2 Upon approval or settlement of any Relocation Proposal, Alternative Relocation Proposal or variation thereof pursuant to clause 5.1, NGC shall (conditionally upon it being able to obtain all necessary licences and consents which it will use reasonable endeavours to do) relocate or procure the relocation of the relevant NGC Assets as quickly as reasonably practicable (having regard to, amongst other things, technical and operational requirements and to the availability of all necessary licences and consents).
- 5.3 User shall render all reasonable assistance to NGC in connection with such relocation licences and consents and pay to NGC all costs referred to in item (c) of clause 5.1.2 as agreed or settled pursuant to clause 5.1 provided that all reasonable endeavours are used to minimise such costs and in the event that a Relocation Proposal is withdrawn or consent thereto is reasonably withheld pursuant to clause 5.1, User shall pay to NGC all costs reasonably incurred by NGC in connection with considering the Relocation Proposal and any counter notice.
- 5.4 Such of the provisions of this Agreement as are appropriate and relevant (including the provisions of this clause 5), shall continue to apply to any relocated NGC Assets.

## **6. REMOVALS**

- 6.1 In the event that there shall cease to be any Bilateral Agreement relating to any NGC Assets on User's Land NGC shall remove all NGC Assets from User's Land in accordance with the provisions relating thereto contained in the Bilateral Agreement.
- 6.2 Where NGC is obliged to remove any of NGC Assets from User's Land, whether under this Clause 6, and fails to do so in accordance with the relevant provisions, (whether they be contained in this Clause 6, Clause 3 or Clause 5) User shall be entitled to remove those NGC Assets to land belonging to NGC and NGC shall provide all reasonable assistance to enable User safely so to do and shall pay and reimburse to User all costs and expenses reasonably incurred by User in so doing.

## **7. RIGHTS OF ACCESS**

- 7.1 A Right of Access includes the right to bring on to User's Land such vehicles, plant, machinery and maintenance or construction materials as shall be reasonably necessary for the Permitted Purpose.
- 7.2 A Right of Access given to NGC may be exercised by any person, including third party contractors, reasonably nominated from time to time by NGC. To the extent (if any) that any particular authorisation or clearances may be required to be given by User and the procedures for giving and obtaining the same are not for the time being stipulated in arrangements made pursuant to clause 7.3, the same shall be given within a reasonable time from the date of the request therefor, save in the case of emergency in which case it shall be given without delay.
- 7.3 NGC shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable,

to facilitate the safe exercise by it of any Right of Access with the minimum of disruption, disturbance or inconvenience to User. Such arrangements and provisions shall provide for User to have the right to make directions or regulations from time to time in relation to a specified matter. Matters to be covered by such arrangements and/or provision shall include:-

- (i) the identification of any relevant NGC Assets;
- (ii) the particular access routes applicable to the land in question having particular regard for the weight and size limits on those routes;
- (iii) any limitations on times of exercise of a Right of Access;
- (iv) any requirements as to prior notification and as to authorisation or security clearance of individuals exercising such Rights of Access, and procedures for obtaining the same;
- (v) the means of communication between the Parties and all employees and/or contractors who may be authorised from time to time by NGC to exercise a Right of Access of any relevant directions or regulations made by NGC;
- (vi) the identification of and arrangements applicable to Emergency Personnel.
- (vii) Any limitation or restriction on the exercise of such Access Right of Access to the extent that in the circumstances is reasonable

7.4 NGC shall procure that any such arrangements and/or provisions (or directions or regulations issued by User pursuant thereto) made from time to time between the Parties shall be observed and performed by it and all persons authorised by it to exercise any Right of Access.

7.4.1 NGC shall procure that all reasonable steps are taken in the exercise of any Right of Access to:

- (a) avoid or minimise damage to User's Land, or any other property thereon or therein;
- (b) cause as little disturbance and inconvenience as possible to User or other occupier of User's Land.

And shall promptly make good any damage caused to User's Land and/or such other property in the course of the exercise of such rights and shall indemnify User against all actions, claims, proceedings, losses, costs and demands arising out of such exercise.

7.4.2 Subject to clause 7.4.1, all such rights shall be exercisable free of any charge or payment of any kind.

7.5 Subject to any contrary arrangements for the time being made under clause 7.3,

7.5.1 a Right of Access for operation or inspection shall be available without prior notice;

7.5.2 a Right of Access for the purpose of maintenance, testing or repair of HV apparatus granted shall only be exercisable on the giving of at least seven days prior written notice to User except in the case of loss of generation or other emergency (in which event User shall render all possible assistance in procuring that the Right of Access shall be exercisable as soon as possible); and

7.5.3 a Right of Access for the purpose of Modifying any Asset shall be exercisable only after two weeks prior written notice to User.



**8. SERVICES AND USE OF ASSETS**

8.1 Subject as hereinafter provided, in relation to each Facility Asset, User shall, if required by NGC, make the Facility Asset in question available for use by NGC to such extent as is necessary for the purposes of NGC's undertaking but not so as to prejudice the use now or hereafter of such Facility Asset by User for its undertaking.

8.2 Subject as hereinafter provided, in relation to each of the Services, User shall, if required by NGC, provide the same to NGC. Such provision shall be of such a quality and quantity and shall be provided at such times as NGC shall reasonably request. User shall not be required to exceed the level of quality or quantity of the Services as is anticipated by the Parties at the date of this Agreement, unless specifically agreed otherwise between the Parties.

8.3 Where the use of any Facility Asset is made available or such Services are supplied as aforesaid, the Parties shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable between the local personnel employed by each of them in that regard, such arrangements to include:-

8.3.1 the identification of the Facility Asset and/or Services in question including (where relevant) the extent of their availability;

8.3.2 the hours during which such use or provision shall be allowed or made;

8.3.3 any requirements as to notification of use or call for supply or temporary suspension thereof;

8.3.4 any requirements as to authorisation or security clearance of individuals and the procedures for obtaining the same; and

8.3.5 any safety requirements;

8.4 The provision of use of the Facility Asset listed in Schedule 4, Part One and the supply of the Services listed in Schedule 5, Part One shall not be terminated unless User ceases to require the Facility Asset or Services for its own use in which case the supply of the Services or use of the Facility Asset may be terminated by not less than one year's notice in writing;

8.5 The provision of use of the Facility Asset listed in Schedule 4, Part Two and the supply of the Services listed in Schedule 5, Part Two shall continue until terminated by

not less than six months notice in writing by either Party. User shall maintain the Facility Asset in accordance with Good Industry Practice.

## **9. NON-INTERFERENCE**

9.1 User agrees that neither it nor its agents, employees and invitees will interfere in any way with any of NGC Assets without the consent of NGC. For the purposes of this clause "interfere" shall include:

9.1.1 disconnecting or altering the connection of any NGC Assets to any system of cables, foundations, pipes, drains or other media to which it may be connected from time to time or to prevent supply of any substance or thing through such connected system;

9.1.2 affixing or removing any item or substance of any nature whatsoever to or from any NGC Assets;

9.1.3 damaging any NGC Assets;

9.1.4 allowing any other person to interfere with any NGC Assets;

9.1.5 altering any meters or settings on any NGC Assets.

9.1.6 the obstruction of access to any NGC Assets.

9.2 The obligations contained in this clause 9 shall be suspended to the extent that emergency action is taken by Emergency Personnel in good faith to protect the health and safety of persons or to prevent damage to property. All reasonable care shall be taken in the course of such emergency action. When the emergency has ended, any damaged property will be reinstated by NGC, save for damage occurring by reason of lack of reasonable care in the course of the emergency action taken by User which shall be the responsibility of User

## 10. **DISPUTE RESOLUTION**

10.1 Any dispute arising under this Agreement between location managers of the Parties shall, if not resolved within 14 days of first arising, be referred at the instance of either party to the respective Line Managers, or those fulfilling a similar function whether or not so called, of User and NGC who shall use all reasonable endeavours to resolve the matter in dispute within one month.

10.2 Save where expressly stated in this Agreement to the contrary (including the procedure for initial dispute resolution contained in Clause 10.1) and subject to any contrary provision of the Act, any Licence, or the Regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the Parties shall (subject to initial dispute resolution procedures referred to in Clause 1 having been exhausted) be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Supply Industry Arbitration Association in force from time to time.

10.3 Whatever the nationality residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England shall be

the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Acts 1950 (notwithstanding anything in Section 34 thereof) to 1979 (including any modification, extension, replacement or re-enactment thereof for the time being in force) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

10.4 Subject always to sub-clause 10.5 below, if any tariff customer (as defined in Section 22(4) of the Electricity Act 1989) brings any legal proceedings in any court (as defined in the Rules of the Supreme Court 1965 and in the County Courts Act 1984) against one or more parties, any of which is a Party (“the Defendant Contracting Party”) and the Defendant Contracting Party wishes to make a Third Party Claim (as defined in sub-clause 10.5 below) against the other Party (“the Other Party”) which would but for this sub-clause have been a dispute or difference referred to arbitration by virtue of sub-clause 10.3 above then, notwithstanding the provisions of sub-clause 10.3 above which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the tariff customer and the Defendant Contracting Party but also between either or both of them and the Other Party whether by way of third party proceedings (pursuant to the Rules of the Supreme Court 1965 or the County Court Rules 1981) or otherwise as may be ordered by the Court.

10.5 For the purposes of this clause Third Party Claim shall mean:

10.5.1 any claim by a Defendant Contracting Party against the Other Party (whether or not already a party to the legal proceedings) for any contribution

or indemnity; or

10.5.2 any claim by a Defendant Contracting Party against the Other Party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claim by the tariff customer; or

10.5.3 any requirement by a Defendant Contracting Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the tariff customer and the Defendant Contracting Party but also as between either or both of them and the Other Party (whether or not already a party to the legal proceedings).

10.6 Sub-Clause 10.4 above shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the Defendant Contracting Party and the Other Party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim. The tribunal in which any arbitration has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

## **11. GOVERNING LAW AND JURISDICTION**

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law.

11.2 Subject and without prejudice to clause 10 and to clause 11.4 the Parties irrevocably agree that [only](#) the courts of England [and Wales and the courts of](#)

Scotland are to have ~~exclusive~~ jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 11 referred to as “Proceedings”) arising out of or in connection with this Agreement may be brought in such courts.

11.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause 11 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the ~~English~~ courts of England and Wales or the courts of Scotland shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

11.4 For the avoidance of doubt nothing contained in the foregoing provisions of this clause 11 shall be taken as permitting a Party to commence Proceedings in the courts where this Agreement otherwise provides for proceedings to be referred to arbitration.

## 12. **CONFIDENTIALITY**

12.1 For the purposes of this Clause 12 except where the context otherwise requires:

12.1.1 “Authorised Recipient”, in relation to any Protected Information, means any Business Person who, before the Protected Information had been divulged to him by NGC or any subsidiary of NGC, had been informed of the nature and effect of this clause 12 and who requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities;

- 12.1.2 “Business Person” means any person who is a Main Business Person, or a Corporate Functions Person and “Business Personnel” shall be construed accordingly.
- 12.1.3 “Confidential Information” means all data and other information supplied to User under the provisions of this Agreement.
- 12.1.4 “Corporate Functions Person” means any person who:-
- (a) is a director of NGC; or
  - (b) is an employee of NGC or any of its subsidiaries carrying out any administrative, finance or other corporate services of any kind which in part relate to the Main Business; or
  - (c) is engaged as an agent of or adviser to or performs work in relation to or services for the Main Business and the Generation Business;
- 12.1.5 “Generation Business” has the same meaning as in the NGC Transmission Licence;
- 12.1.6 “Main Business” means any of NGC or any of its associates other than the Generation Business;
- 12.1.7 “Main Business Person” means any employee of NGC or any director or employee of its subsidiaries who is engaged solely in the Main Business and “Main Business Personnel” shall be construed accordingly;
- 12.1.8 “Permitted Activities” means activities carried on for the

purposes of the Main Business;

12.1.9 “Protected Information” means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to this Agreement unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information, that the said information is not to be regarded as Protected Information;

## 12.2 Confidentiality for NGC and its Subsidiaries

NGC and its subsidiaries in each of their capacities in this Agreement shall secure that Protected Information is not:-

12.2.1 divulged by Business Personnel to any person unless that person is an Authorised Recipient;

12.2.2 used by Business Personnel for the purposes of obtaining for NGC or any of its subsidiaries or for any other person:-

- (a) any electricity licence; or
- (b) any right to purchase or otherwise require, or to distribute, electricity including by means of an electricity purchase contract (as defined in the NGC Transmission Licence); or
- (c) any contract or arrangement for the supply of electricity to customers or suppliers; or
- (d) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a



supplier; and

12.2.3 used by Business Personnel for the purpose of carrying on any activities other than Permitted Activities except with the consent in writing of the Party to whose affairs such Protected Information relates.

12.3 Nothing in this Clause 12 shall apply:

12.3.1 to any Protected Information which, before it is furnished to Business Personnel is in the public domain;

12.3.2 to any Protected Information which, after it is furnished to Business Personnel:

(a) is acquired by NGC or any subsidiary of NGC in circumstances in which this Clause 12 does not apply; or

(b) is acquired by NGC or any subsidiary of NGC in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or

(c) enters the public domain otherwise than as a result of a breach by NGC or any subsidiary of NGC of its obligations in this Clause 12; or

12.3.3 to the disclosure of any Protected Information to any person if NGC or any subsidiary is required or permitted to make such disclosure to such person:

(a) in compliance with the duties of NGC or any

associate under the Act or any other requirement of a Competent Authority; or

- (b) in compliance with the conditions of the NGC Transmission Licence or any document referred to in the NGC Transmission Licence with which NGC is required to comply; or
- (c) in compliance with any other requirement of law; or
- (d) in response to a requirement of any recognised stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (e) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal; or

12.3.4 to any Protected Information to the extent that NGC or any of its subsidiaries is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code and the Fuel Security Code) with the Party to whose affairs such Protected Information relates

12.4 NGC and its subsidiaries may use all and any information or data supplied to or acquired by it, from or in relation to the other Party to this Agreement in performing Permitted Activities including for the following purposes:

12.4.1 the operation and planning of the ~~NGC~~GB Transmission System;

12.4.2 the calculation of charges and preparation of offers of terms

- for connection to or use of the ~~NGC~~ GB Transmission System;
- 12.4.3 the operation and planning of the Ancillary Services Business (as defined in the NGC Transmission Licence) and the calculation of charges therefor;
- 12.4.4 the operation of the Settlements Business (as defined in the NGC Transmission Licence);
- 12.4.5 the provision of information under ~~the British Grid Systems Agreement and~~ the EdF Protocol;

and may pass the same to subsidiaries of NGC which carry out such activities and the Parties hereto agree to provide all information to NGC and its subsidiaries for such purposes.

- 12.5 NGC undertakes that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither NGC nor any of its subsidiaries shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged to any Business Person
- (a) who has notified NGC or the relevant subsidiary of his intention to become engaged as an employee or agent of any other person (other than of NGC or any subsidiary thereof)
- (b) who is authorised by licence or exemption to generate, transmit or supply electricity, or
- (c) who is to be transferred to the Generation Business save where NGC or such subsidiary could not, in all circumstances reasonably be

expected to refrain from divulging to such Business Person Protected Information which is required for the proper performance of his duties.

12.6 Without prejudice to other provisions of this clause 12 NGC shall procure that any additional copies of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.

12.7 NGC undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is necessary for the proper performance of his duties.

12.8 Confidentiality for User

12.8.1 User hereby undertakes with NGC and its subsidiaries that it shall preserve the confidentiality and secrecy of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes Confidential Information except:

- (a) in the circumstances set out in Clause 12.8.2;
- (b) to the extent expressly permitted by this Agreement;  
or
- (c) with the consent in writing of NGC.

12.8.2 Exceptions: the circumstances referred to in Clause 12.8.1(a) are:

- (a) where the Confidential Information, before it is furnished to User, is in the public domain; or
- (b) where the Confidential Information, after it is furnished to User:

- (i) is acquired by User in circumstances in which this Clause 12 does not apply; or
  - (ii) is acquired by User in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
  - (iii) enters the public domain otherwise than as a result of a breach by User of its obligations in this Clause 12; or
- (c) if User is required or permitted to make disclosure of the Confidential Information to any person:
- (i) in compliance with the duties of User under the Act or any other requirement of a Competent Authority;
  - (ii) in compliance with the conditions of any Licence or any document referred to in any Licence with which User is required to comply;
  - (iii) in compliance with any other requirement of law;
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
  - (v) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other

arbitral process or tribunal.

- (d) where Confidential Information is furnished by User to the employees, directors, agents, lenders, consultants and professional advisers of User in each case on the basis set out in Sub-Clause 12.9

12.9 With effect from the date of this Agreement User shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this Clause 12. These procedures will include:

12.9.1 the Confidential Information will be disseminated within User only on a “need to know” basis;

12.9.2 employees, directors, agents, lenders, consultants and professional advisers of User in receipt of Confidential Information will be made fully aware of User’s obligations of confidence in relation thereto

### **13. TITLE TO ASSETS**

13.1 NGC acknowledges that it does not have and will not acquire any title, right or interest in User’s Land save for such rights as are expressly granted herein or otherwise provided nevertheless that, if according to any rule of law, NGC could acquire any such title, right or interest in any of User’s Land, then such title right or interest shall be held upon trust, insofar as it relates to User’s Land, for User absolutely.

13.2 User agrees that it shall not by any act or default render NGC Assets liable to any distress execution or other legal process, and in the event that NGC Assets shall become so liable, shall forthwith give notice of any such

proceedings to NGC and shall forthwith notify any third party instituting any such process of the ownership of such NGC Assets.

13.3 If User desires to mortgage or charge User's Land or its interest therein on which any NGC Assets are located or to enter into any arrangement which, if made, might affect the rights of NGC expressly granted herein, then User shall ensure that NGC Assets are not and will not be subject to the rights granted therein and are not and will not be affected by the mortgage, legal charge or other agreement or arrangement, and shall give prior written notification thereof to NGC.

13.4 In the event that User shall wish to grant rights over or dispose of any interest in or change the use of User's Land User shall notify NGC of such wish and fully consult NGC in respect thereof and shall not grant such rights or make such disposal or change of use save on terms securing to the reasonable satisfaction of that other the Rights of Access granted in respect of User's Land.

#### **14. LIMITATION OF LIABILITY**

14.1 Subject to sub-clauses 5.3, 6.2, 9.2 and 14.5 and save as provided in this sub-clause 14.1 and sub-clause 14.2 neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach and which resulted from:

14.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

14.1.2 the liability of the other Party to any other person for loss

arising from physical damage to the property of any person.

14.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such and any loss or liability which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

14.3 Subject to sub-clauses 5.3, 6.2, 9.2 and 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:-

14.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

14.3.2 any indirect or consequential loss; or

14.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in sub-clauses 14.1.2 and 14.2.

14.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives in the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable,



its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

14.5 Save as otherwise expressly provided in this Agreement, this clause 14 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause 14 shall exclude or restrict or otherwise prejudice or affect any of:

14.5.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the Electricity Generating Licence, the NGCTransmission Licence or the Electricity Supply Regulations 1988 or any amendment or re-enactment thereof; or

14.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such Licence as aforesaid or otherwise howsoever.

14.6 Each of the sub-clauses of this clause 14 shall:

14.6.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

14.6.2 survive termination of this Agreement.

14.7 Each Party agrees that the Other Party holds the benefit of sub clauses 14.1, 14.2 and 14.3 above for itself and as trustee and agent for its officers,

employees and agents

14.8 Each Party hereby acknowledges and agrees that the provisions of this clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

**15. INTELLECTUAL PROPERTY**

All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers employees, agents or consultants during the currency of this Agreement shall vest in such Party as the sole beneficial owner thereof save where the Parties agree in writing otherwise.

**16. FORCE MAJEURE**

If either Party (the “Non-Performing Party”) shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein the Non-Performing Party’s obligations hereunder shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (i) the Non-Performing Party gives the other Party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence, its expected duration and the particular obligations affected by it, and continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no liabilities of either Party that arose before the Force Majeure

causing the suspension of performance are excused as a result of the Force Majeure;

- (iv) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and
- (v) as soon as practicable after the event which constitutes Force Majeure the Parties shall discuss how best to continue their operations so far as possible in accordance with this Agreement.

## **17. WAIVER**

No delay by or omission of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

## **18. NOTICES**

- 18.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address, telex number or facsimile number of such other Party given in Schedule 6 and marked for the attention of the person so given or to such other address, telex number and/or facsimile number and/or marked for such other attention as such other Party may from time to time specify by notice given in accordance with this clause 20 to the Party giving the relevant notice or other communication to it.

18.2 Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or telex or facsimile, and shall be deemed to have been received:

18.2.1 in the case of delivery by hand, when delivered; or

18.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or

18.2.3 in the case of telex, on the transmission of the automatic answerback of the addressee (where such transmission occurs before 1700 hours on the day of transmission) and in any other case on the day following the day of transmission; or

18.2.4 in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

## 19. **VARIATIONS**

The provisions of Schedules 1, 3, 4, 5 and 6 may be varied from time to time by written memorandum signed by an authorised officer of each of the Parties. Subject thereto no variations to this Agreement shall be effective unless made by way of supplemental deed.

## 20. **OVERRIDING PROVISIONS & GOOD INDUSTRY PRACTICE**

20.1 In the event of any conflict between NGC's or User's obligations hereunder

and their obligations under the Electricity Generating Licence and NGC Transmission Licence, the Act, any direction of the Secretary of State, the Authority or ruling of the Monopolies and Mergers Commission, the Grid Code, under any Connection Agreement or under any Bilateral Agreement, the provisions of the Electricity Generating Licence and NGC Transmission Licence, the Act, the Grid Code, any Connection Agreement or Bilateral Agreement the direction of the Secretary of State, the Authority, or ruling of the Monopolies and Mergers Commission shall prevail and accordingly NGC and User respectively shall not be responsible for any failure to perform their respective obligations hereunder to the extent that any such failure is directly attributable to proper compliance with such provisions, rulings or directions.

20.2 Both parties shall observe their respective obligations hereunder in accordance with Good Industry Practice.

## **21. ASSIGNMENT AND SUB-CONTRACTING**

21.1 The rights and obligations of a Party may not be assigned (otherwise than to an Affiliate or by way of a charge or an assignment by way of security) without the consent of the other Party, such consent not to be unreasonably withheld.

21.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the consent of the other. The sub-contracting by either Party of the performance of any obligations or duties under this Agreement shall not relieve such Party from the liability for performance of such obligation or duty.

## **22. ILLEGALITY AND PARTIAL INVALIDITY**

22.1 If at any time any provision of this Agreement should become or be declared

unlawful, invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall be affected.

- 22.2 If any part of a provision of this Agreement is or becomes or is declared invalid, unlawful, illegal or unenforceable but the rest of such provision would remain valid, lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid, lawful, enforceable and effective but without affecting the meaning of legality, validity or enforceability of any other provision of this Agreement.

**23. TERM AND TERMINATION**

This Agreement shall continue until no NGC Assets are on User's land and no Facility Assets or Services are shared or provided.

**24. REGISTRATION AND MEMORANDUM**

- 24.1 Where any or all of User's Land is registered or NGC's interest therein is subject to compulsory registration at H.M. Land Registry, the parties hereto agree to apply to the Chief Land Registrar for the registration as appropriate of the rights and obligations granted by or contained in this Agreement and User agrees to place on deposit at H.M. Land Registry all relevant Land or Charge Certificates to enable such registration to be effected.
- 24.2 Where any of User's Land is not so registered or subject to compulsory registration, User shall procure within six months of the date hereof that memoranda of this Agreement are endorsed on or otherwise securely attached to the most recent conveyance (in the case of a freehold interest) or the lease under or pursuant to which they hold such land.

## **25. ENTIRE AGREEMENT**

25.1 This Agreement contains the entire agreement between the Parties with respect to the subject-matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the Parties with respect thereto and:

- (i) each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement; but
- (ii) NGC acknowledges that User may have entered or may enter into agreements with any Public Distribution System Operator (as defined in the CUSC) containing similar rights and/or liabilities to those contained in this Agreement affecting User's Land and any assets thereon. User shall, when entering into such agreement with any of the said Distribution System Operator, use reasonable endeavours to avoid conflicts between the provisions thereof and the provisions of this Agreement but in the event of any conflict User shall use all reasonable endeavours to procure that appropriate arrangements are made to settle the same to give full effect (so far as practicable) to the rights and liabilities under this Agreement and under such other agreements as aforesaid. In the event of any dispute as to such conflict and/or arrangements the dispute shall be dealt with in accordance with Clause 10.

IN WITNESS whereof this Agreement has been entered into as a deed the day and year first above written.





**SCHEDULE 2**

USER'S LAND

[                    ]

**SCHEDULE 3**

Part I

Security Details (Cl. 4)

User's Land

[ ]

Plant MV LV Apparatus Safety Co-Ordination Procedures (Cl. 4.5)

[ ]

(1) In this Paragraph:-

“Apparatus” means all equipment in which electrical conductors are used, supported or of which they may form a part;

“Connection Site” shall have the meaning given to it in the Grid Code;

“Safety Rules” means the rules, procedures or current arrangements for and relating to safety co-ordination across boundaries (to permit work to or testing on the System of one of the Parties which, for this to be done safely, requires isolation and/or other precautions on Plant and/ or MV and/or LV Apparatus whether at, adjacent to or remote from the location of the work or testing) which the Parties mutually agree to use their best endeavours to formulate as soon as possible after the date of this Agreement and on the

basis that any dispute as to their content shall be resolved in accordance with the provisions of Clause 10;

“Low Voltage” or “LV” means a voltage not exceeding 250 volts;

“Medium Voltage” or “MV” means a voltage exceeding 250 volts but not exceeding 650 volts;

“Plant” means fixed and moveable items used in the generation and/or supply and/or transmission of electricity, other than Apparatus.

- (2) The Parties will comply with the Safety Rules and any agreed modifications thereto.
- (3) The Parties will arrange for the Safety Rules to be written down and to be implemented by the person or persons responsible on behalf of the relevant Parties for the co-ordination of safety.

**SCHEDULE 4**

**USER OWNED FACILITY ASSETS**

[ ]

**SCHEDULE 5**

**SHARED SERVICES PROVIDED BY USER**

[

]



**CUSC - EXHIBIT O - PART I B**

**THE CONNECTION AND USE OF SYSTEM CODE  
INTERFACE AGREEMENTS**

**PART I B - RELEVANT TRANSMISSION LICENSEE ASSETS ON USER  
LAND IN SCOTLAND**

**CUSC - EXHIBIT O - PART I B**

DATED \_\_\_\_\_ 200[ ]

[ ] (User)

- and -

[Insert name of Relevant Transmission Licensee (RTL)]

**INTERFACE AGREEMENT**

Relating to Relevant Transmission Licensee Assets on  
User Land at [ ]



**I N D E X**

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Schedule 1 RTL Assets on User's Land

Schedule 2 User's Land - Description

Schedule 3 Part I - Security Details

Part II - Plant MV LV Apparatus

Safety Co-ordination Procedures

Schedule 4 User Owned Facility Assets

Schedule 5 Shared Services provided by User

Schedule 6 Addresses, Fax No's etc.

**INTERFACE AGREEMENT**  
**(ASSET LICENCE FACILITY AGREEMENT)**

**(RELEVANT TRANSMISSION LICENSEE ASSETS)**

**THIS DEED OF AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 200[ ]

**BETWEEN**

(1) [ ] a company registered in [ ] (with number [ ] whose registered office is at [ ] (“User”, which expression shall include its successors and/or permitted assigns);  
and

(2) [Insert name of Relevant Transmission Licensee] a company registered in [ ] with number [ ] whose registered office is at [ ] (“RTL”, which expression shall include its successors and/or permitted assigns)]

**WHEREAS**

Certain assets and facilities of the RTL are to be installed on property title to which is vested in User and this Agreement is entered into by the Parties to give effect to appropriate arrangements in respect of such assets and the use of such assets and facilities.

**NOW IT IS HEREBY AGREED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

In this Agreement, the following words and expressions shall, unless the subject-matter or context otherwise requires or is inconsistent therewith, bear the following meanings:-

“Act”	the Electricity Act 1989 as amended by Utilities Act 2000;
“Affiliate”	in relation to User means any holding company or subsidiary of that Party or any subsidiary of a holding company of User, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of this Agreement as if such section were in force at such date;
“Apparatus”	all equipment in which electrical conductors are used, supported or of which they may form a part;
“Authority”	the Gas and Electricity Markets Authority established by Section 1 of the Utilities Act 2000;
“Authorised Electricity Operator”	any person (other than NGC in its capacity as operator of the GB Transmission System) who is authorised to generate, participate in the transmission of, distribute or supply electricity and for the purposes of Standard Condition C4 of the Transmission Licence shall

include any person who has made application to be so authorised which application has not been refused and any person transferring electricity to or from Great Britain across an interconnector or who has made application for use of interconnector which has not been refused;

“Bilateral Connection  
“Agreement”

a Bilateral Connection Agreement entered into between the User and NGC pursuant to the Connection Agreement and dated [        ];

“Competent Authority”

the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister (including the Scottish Ministers), ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;

“Connection Agreement”

the Connection and Use of System Code given contractual force by the CUSC Framework Agreement entered into by, amongst others, the User regarding, amongst other things, the connection of User’s Plant

and Apparatus to the GB Transmission System and the use by the User of such system;

“Connection Site” [ ];

“CUSC Framework Agreement” means the agreement of that title, in the form approved by the Secretary of State, by which the Connection Agreement is made contractually binding between the parties to that agreement, as amended from time to time with the approval of the Secretary of State;

“Customer” a person to whom electrical power is provided (whether or not he is the provider of such electrical power) other than power to meet station demand of that person;

“Directive”

includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority, (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;

“Distribution System”

the system consisting (wholly or mainly) of electric lines owned or operated by any Authorised Electricity Operator and used for the distribution of electricity from grid supply points or generation sets or other entry points to the point of delivery to Customers or Authorised Electricity Operators, and includes any Remote Transmission Assets operated by such Authorised Electricity Operator and any electrical plant and meters owned or operated by the Authorised Electricity Operator in connection with the distribution of electricity, but shall not include any part of the GB Transmission System;

“Emergency Personnel”	in relation to a Party, all employees of that Party who have appropriate knowledge and experience and are recognised by that Party as being able to carry out competently and safely emergency action for the purposes of clause 9;
“Facility Asset”	those assets listed in Schedule 4;
“Force Majeure”	in relation to a Party, any event or circumstance which is beyond the reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus which could not have been



prevented by Good Industry Practice, governmental restraint, Act of Parliament legislation, bye-law, and Directive (not being any order, regulation or directive under Section 32, 33, 34 or 35 of the Act) Provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“Fuel Security Code”

the document of that title designated as such by the Secretary of State as from time to time amended;

“GB Transmission System”

the system consisting (wholly or mainly) of high voltage electric wires owned or operated by transmission licensees within Great Britain and used for the transmission of electricity from one power station to a sub-station or to another power station or between sub-stations or to or from any external interconnection and includes any electrical plant or apparatus or meters owned or operated by any transmission licensee within Great Britain in connection with the transmission of electricity but shall not include

	Remote Transmission Assets;
“Good Industry Practice”	in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
“Grid Code”	the document or documents produced pursuant to standard condition C14 of the NGC Transmission Licence, as from time to time revised in accordance with the NGC Transmission Licence;
“High Voltage Lines”	electric lines of a nominal voltage of or exceeding 132 kilovolts;
“HV”	of a nominal voltage exceeding 650 volts;
“Intellectual Property”	patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same is registered and including applications for registration of any of the same)

and rights under licences and consents in relation to any of the same and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;

“Licence” any licence granted pursuant to Section 6 of the Act;

“Location Managers” [ ];

“Low Voltage” or “LV” means a voltage not exceeding 250 volts;

“Medium Voltage” or “MV” means a voltage exceeding 250 volts but not exceeding 650 volts;

“Modification” any alteration to or replacement of RTL Assets pursuant to clause 3.1 of this Agreement and “Modify” and “Modified” shall be construed accordingly;

“NGC” National Grid Company plc;

“NGC Transmission Licence” the licence granted to NGC under Section 6(1)(b) of the Act;

“Party” each person for the time being and from time to time party to this Agreement and any successor(s) in

	title to, or permitted assign(s) of, such person;
“Permitted Purpose”	means the maintenance, inspection, testing, removal, operation, modification or repair of the RTL Assets;
“Plant”	fixed and moveable items used in the generation and/or supply and/or transmission of electricity other than Apparatus;
“Regulations”	the Electricity Safety Quality and Continuity Regulations 2002 as amended from time to time;
“Relevant Transmission Licensee”	means SP Transmission Limited in south of Scotland and Scottish Hydro-Electric Transmission Limited in north of Scotland;
“Relocation Proposal”	a proposal by User to the RTL pursuant to sub-clause 5.1 for the relocation of any of the RTL Assets;
“Remote Transmission Assets”	any Plant and Apparatus or meters owned by NGC which (a) are embedded in a Distribution System or a user system and which are not directly connected by Plant and/or Apparatus owned by NGC to a sub-station owned by NGC and (b) are by agreement between NGC and such

public distribution system operator or user under the direction and control of such public distribution system operator or user;

“Right of Access”

full right and liberty during the currency of this Agreement to enter upon and through and remain upon any part of User’s Land (including where relevant any land over which User has a right of servitude, wayleave or similar right which benefits the User’s Land and the use of which by the RTL is necessary to enable it to exercise the Right of Access hereby granted) PROVIDED to the extent necessary for a Permitted Purpose and subject to the provisions of clause 5;

“RTL Assets”

those assets listed in Schedule 1 (including any plinths or other structures (excluding buildings) to or upon which the same are affixed and to or upon which no assets of any other person are affixed and any straps, bolts or other such things for attachment thereto) as any of the same may be Modified pursuant to this Agreement;

“RTL Licence”	the licence granted to the RTL under Section 6 of the Act;
“Secretary of State”	has the meaning given to that term in the Act;
“Services”	in the context of Clause 8, the goods and services specified in Schedule 5;
“Site Specific Safety Rules”	means the rules, procedures or current arrangements for and relating to safety co-ordination across boundaries (to permit work to or testing on the system of one of the Parties which, for this to be done safely, requires isolation and/or other precautions on Plant and/ or MV and/or LV Apparatus whether at, adjacent to or remote from the location of the work or testing) which the Parties mutually agree to use their best endeavours to formulate as soon as possible after the date of this Agreement and on the basis that any dispute as to their content shall be resolved in accordance with the provisions of Clause 10;
“User’s Land”	the land described in Schedule 2;
“User’s Licence”	the licence granted to the User under

Section 6 of the Act;

In this Agreement:

- (i) unless the context otherwise requires all references to a particular clause, sub-clause, paragraph or Schedule shall be a reference to that clause, sub-clause, paragraph or Schedule in or to this Agreement;
- (ii) the table of contents and headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (iii) references to the words “include” or “including” are to be construed without limitation to the generality of the preceding words;
- (iv) unless there is something in the subject matter or the context which is inconsistent therewith, any reference to an Act of Parliament or any Section thereof or Schedule thereto, or other provision thereof or any instrument, order or regulation made thereunder shall be construed at the particular time as including a reference to any modification, extension, replacement or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament; and
- (v) references to the masculine shall include the feminine and references in the singular shall include the plural and vice versa and words denoting natural persons shall include companies, corporations and any other legal entity and vice versa.

**2. RIGHT TO INSTALL AND RETAIN ASSET**

2.1 Subject to sub-clause 5.1, User hereby grants to the RTL the right to install and thereafter retain and replace as provided in this Agreement RTL Assets on User's Land in such places as are currently proposed (subject to such variations between the date hereof and the actual date of installation as may be agreed to by User) and such right shall extend to any Modified RTL Assets. User shall maintain any shelter and/or support enjoyed by any RTL Assets at the date of this Agreement or, if later, when relocated on User's Land in accordance with clause 5 and grants to the RTL a Right of Access for the purpose of the maintenance, inspection, testing, removal, operation, Modification or repair of any RTL Assets.

**3. MODIFICATIONS REPLACEMENTS AND ALTERATIONS**

3.1 The RTL may at its own expense replace or alter any RTL Assets provided that:-

3.1.1 the replacement RTL Assets or the RTL Assets as so altered:-

- (i) are placed in the same or approximately the same position;
- (ii) fulfil the same or a similar purpose;
- (iii) can, where relevant, be accommodated in and on existing buildings or structures;
- (iv) do not require additional or improved facilities or services from User;
- (v) do not restrict the actual and intended use of User's Land



and any equipment thereon or therein to any materially greater extent than the RTL Assets so replaced or altered; and

(vi) are either of the same or a similar or smaller size or the alteration is effected substantially within the space occupied by such RTL Assets to enable the RTL Assets to be used up to their full capability; and

3.1.2 prior written notification has been given to User.

3.2 If any replacement or alteration permitted by clause 3.1 shall require minor alterations or work to the existing buildings or structures housing or supporting the RTL Assets in question, such alterations or works may be carried out (with the prior written approval of User (such approval not to be unreasonably withheld or delayed)) but at the cost of the RTL.

3.3 To the extent that any of the conditions of clause 3.1 are not in User's reasonable opinion met in relation to any replacement or alteration, User may by notice in writing require the RTL promptly to remove such replacement or alteration and, if the RTL fails to do so, may remove the same itself at the cost and expense of the RTL. On such removal, the RTL may reinstate the RTL Assets so replaced or altered.

3.4 The RTL shall, if considering moving, replacing, or altering any of the RTL Assets, give due consideration as to whether it shall be operationally practicable, desirable and reasonably economic to move such RTL Assets to (or place the replacement or altered RTL Assets on) its own property.

3.5 For the avoidance of doubt it is hereby agreed that any dispute between the Parties regarding this clause shall be determined in accordance with

the provisions of Clause 10 of this Agreement.

**4. SECURITY AND COMPLIANCE WITH STATUTES etc**

4.1 User undertakes to maintain and provide security in relation to the RTL Assets in accordance with the arrangements set out in Part I of Schedule 3.

4.2 Each Party shall procure that, as between the Parties, all reasonable and necessary steps are taken, as and when necessary or desirable, in co-operation with the other (and, so far as applicable, with any third party), to ensure compliance with the provisions (each such provision or part thereof being in this clause 4 an “Obligation”) of:-

- (i) all statutes and Directives applicable to any RTL Assets and/or any part (including the whole) of User’s Land;
- (ii) any statute or Directive which may affect any other property (of whatever nature) of either Party as a result of the existence, nature, location, or manner of operation of any RTL Assets; and
- (iii) any statute or Directive requiring the reporting of any occurrence relating to or affecting any RTL Assets and/or User’s Land (including the Reporting of Injuries Diseases and Dangerous Occurrence Regulations 1985 and the Regulations).

4.3 Each Party shall, so far as it is aware of the same, unless it has reasonable grounds for believing that the other Party possesses the information, keep the other Party informed of all matters relating to any Obligation or potential Obligation and/or the extent to which such Obligation may be applicable.

4.4 In the event of any dispute as to responsibility, as between the Parties,

pursuant to clause 4.2, for compliance with an Obligation, that responsibility shall be allocated, so far as practicable, on the basis that:-

- (i) each Party shall refrain from taking or permitting any act or omission which would prevent compliance with an Obligation; and
- (ii) positive action required in relation to a Party's property as a consequence of the existence, nature, location or manner of operation of that property or any other property of that Party shall be the responsibility of that Party, and, to the extent that such action is required in respect of or affecting any property of the other Party (or property of a third party located in or on that other Party's land), such action may be taken with the prior approval of that other Party (such approval, subject to (i) above, not to be unreasonably withheld or delayed).

4.5 The provisions for safety co-ordination between the Parties contained in Part II of Schedule 3 shall apply.

## **5. RELOCATIONS**

5.1 At any time and from time to time during the term of this Agreement, User may with the prior written consent of the RTL (such consent not to be unreasonably withheld or delayed) require the RTL to relocate any RTL Assets either to a different location on the User Land or to the RTL's or a third party's land, such consent to be sought and given or refused in accordance with the following procedure:-

5.1.1 User shall serve a written notice on the RTL, which notice shall specify:-

- (a) the RTL Assets which User wishes to be relocated;
- (b) the reasons for such wish;
- (c) the proposed new location for such RTL Assets; and
- (d) the timing of the carrying out of such relocation.

5.1.2 The RTL shall within one month of receipt of any such notice (or such longer period as shall be reasonably necessary) serve a counter notice stating:-

- (a) whether or not in its reasonable opinion such Relocation Proposal is acceptable to it;
- (b) if the Relocation Proposal is not acceptable to the RTL, the grounds for such opinion and the terms of any alternative proposal (the "Alternative Relocation Proposal") covering so far as relevant the matters referred to in items (a) - (d) of clause 5.1.1 which would be acceptable to the RTL; and
- (c) in respect of the Relocation Proposal (if accepted) or of any Alternative Relocation Proposal, the costs likely to be incurred in connection with considering the Relocation Proposal or the Alternative Relocation Proposal and effecting the said relocation of the RTL Assets and the proper and reasonable costs of relocating any other equipment that may be necessary as a result of the relocation of those RTL Assets and any consequential losses including payments to third parties incurred as a result of the relocation of those RTL Assets and the

proposed manner and timing of payment of the same by User.

- 5.1.3 If within one month of the date of such counter notice (or such longer period as shall be reasonably necessary) User has not withdrawn the Relocation Proposal and the Parties have not agreed upon it or the Alternative Relocation Proposal (if any) or a variation of either of them (such agreement to include agreement on the costs referred to in item (c) of clause 5.1.2) the matter shall be dealt with in accordance with Clause 10.
- 5.2 Upon approval or settlement of any Relocation Proposal, Alternative Relocation Proposal or variation thereof pursuant to clause 5.1, the RTL shall (conditionally upon it being able to obtain all necessary licences and consents which it will use reasonable endeavours to do) relocate or procure the relocation of the relevant RTL Assets as quickly as reasonably practicable (having regard to, amongst other things, technical and operational requirements and to the availability of all necessary licences and consents).
- 5.3 User shall render all reasonable assistance to the RTL in connection with such relocation licences and consents and pay to the RTL all costs referred to in item (c) of clause 5.1.2 as agreed or settled pursuant to clause 5.1 provided that all reasonable endeavours are used to minimise such costs and in the event that a Relocation Proposal is withdrawn or consent thereto is reasonably withheld pursuant to clause 5.1, User shall pay to the RTL all costs reasonably incurred by the RTL in connection with considering the Relocation Proposal and any counter notice.
- 5.4 Such of the provisions of this Agreement as are appropriate and

relevant (including the provisions of this clause 5), shall continue to apply to any relocated RTL Assets.

## **6. REMOVALS**

6.1 In the event that there shall cease to be a Bilateral Connection Agreement relating to any RTL Assets on User's Land the RTL shall remove all RTL Assets from User's Land in accordance with the provisions relating thereto contained in the Connection Agreement and the Bilateral Connection Agreement.

6.2 Where the RTL is obliged to remove any of the RTL Assets from User's Land, whether under this Clause 6, and fails to do so in accordance with the relevant provisions, (whether they be contained in this Clause 6, Clause 3 or Clause 5) User shall be entitled to remove those RTL Assets to land belonging to the RTL and the RTL shall provide all reasonable assistance to enable User safely so to do and shall pay and reimburse to User all costs and expenses reasonably incurred by User in so doing.

## **7. RIGHTS OF ACCESS**

7.1 A Right of Access includes the right to bring on to User's Land such vehicles, plant, machinery and maintenance or construction materials as shall be reasonably necessary for the Permitted Purpose.

7.2 A Right of Access given to the RTL may be exercised by any person, including third party contractors, reasonably nominated from time to time by the RTL. To the extent (if any) that any particular authorisation or clearances may be required to be given by User and the procedures for giving and obtaining the same are not for the time being stipulated in arrangements made pursuant to clause 7.3, the same shall be given

within a reasonable time from the date of the request therefor, save in the case of emergency in which case it shall be given without delay.

7.3 The RTL shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable, to facilitate the safe exercise by it of any Right of Access with the minimum of disruption, disturbance or inconvenience to User. Such arrangements and provisions shall provide for User to have the right to make directions or regulations from time to time in relation to a specified matter. Matters to be covered by such arrangements and/or provision shall include:-

- (i) the identification of any relevant RTL Assets;
- (ii) the particular access routes applicable to the land in question having particular regard for the weight and size limits on those routes;
- (iii) any limitations on times of exercise of a Right of Access;
- (iv) any requirements as to prior notification and as to authorisation or security clearance of individuals exercising such Rights of Access, and procedures for obtaining the same;
- (v) the means of communication between the Parties and all employees and/or contractors who may be authorised from time to time by the RTL to exercise a Right of Access of any relevant directions or regulations made by the RTL;
- (vi) the identification of and arrangements applicable to Emergency Personnel.
- (vii) any limitation or restriction on the exercise of such Right of

Access to the extent that in the circumstances is reasonable

7.4 The RTL shall procure that any such arrangements and/or provisions (or directions or regulations issued by User pursuant thereto) made from time to time between the Parties shall be observed and performed by it and all persons authorised by it to exercise any Right of Access.

7.4.1 The RTL shall procure that all reasonable steps are taken in the exercise of any Right of Access to:

- (a) avoid or minimise damage to User's Land, or any other property thereon or therein;
- (b) cause as little disturbance and inconvenience as possible to User or other occupier of User's Land;

and shall promptly make good any damage caused to User's Land and/or such other property in the course of the exercise of such rights and shall indemnify User against all actions, claims, proceedings, losses, costs and demands arising out of such exercise.

7.4.2 Subject to clause 7.4.1, all such rights shall be exercisable free of any charge or payment of any kind.

7.5 Subject to any contrary arrangements for the time being made under clause 7.3,

7.5.1 a Right of Access for operation or inspection shall be available without prior notice;

7.5.2 a Right of Access for the purpose of maintenance, testing or repair of HV Apparatus granted shall only be exercisable on the



giving of at least seven days prior written notice to User except in the case of loss of generation or demand or other emergency (in which event User shall render all possible assistance in procuring that the Right of Access shall be exercisable as soon as possible); and

7.5.3 a Right of Access for the purpose of Modifying any RTL Asset shall be exercisable only after two weeks prior written notice to User.

## **8. SERVICES AND USE OF ASSETS**

8.1 Subject as hereinafter provided, in relation to each Facility Asset, User shall, if required by the RTL, make the Facility Asset in question available for use by the RTL to such extent as is necessary for the purposes of the RTL's undertaking but not so as to prejudice the use now or hereafter of such Facility Asset by User for its undertaking.

8.2 Subject as hereinafter provided, in relation to each of the Services, User shall, if required by the RTL, provide the same to the RTL. Such provision shall be of such a quality and quantity and shall be provided at such times as the RTL shall reasonably request. User shall not be required to exceed the level of quality or quantity of the Services as is anticipated by the Parties at the date of this Agreement, unless specifically agreed otherwise between the Parties.

8.3 Where the use of any Facility Asset is made available or such Services are supplied as aforesaid, the Parties shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable between the local personnel employed by each of them in that regard, such arrangements to

include:-

- 8.3.1 the identification of the Facility Asset and/or Services in question including (where relevant) the extent of their availability;
  - 8.3.2 the hours during which such use or provision shall be allowed or made;
  - 8.3.3 any requirements as to notification of use or call for supply or temporary suspension thereof;
  - 8.3.4 any requirements as to authorisation or security clearance of individuals and the procedures for obtaining the same; and
  - 8.3.5 any safety requirements;
- 8.4 The provision of use of the Facility Asset listed in Schedule 4, Part One and the supply of the Services listed in Schedule 5, Part One shall not be terminated unless User ceases to require the Facility Asset or Services for its own use in which case the supply of the Services or use of the Facility Asset may be terminated by not less than one year's notice in writing;
- 8.5 The provision of use of the Facility Asset listed in Schedule 4, Part Two and the supply of the Services listed in Schedule 5, Part Two shall continue until terminated by not less than six months notice in writing by either Party. User shall maintain the Facility Asset in accordance with Good Industry Practice.

## **9. NON-INTERFERENCE**

- 9.1 User agrees that neither it nor its agents, employees and invitees will

interfere in any way with any of the RTL Assets without the consent of the RTL. For the purposes of this clause “interfere” shall include:

9.1.1 disconnecting or altering the connection of any RTL Assets to any system of cables, foundations, pipes, drains or other media to which it may be connected from time to time or to prevent supply of any substance or thing through such connected system;

9.1.2 affixing or removing any item or substance of any nature whatsoever to or from any RTL Assets;

9.1.3 damaging any RTL Assets;

9.1.4 allowing any other person to interfere with any RTL Assets;

9.1.5 altering any meters or settings on any RTL Assets;

9.1.6 the obstruction of access to any RTL Assets.

9.2 The obligations contained in this clause 9 shall be suspended to the extent that emergency action is taken by Emergency Personnel in good faith to protect the health and safety of persons or to prevent damage to property. All reasonable care shall be taken in the course of such emergency action. When the emergency has ended, any damaged property will be reinstated by the RTL, save for damage occurring by reason of lack of reasonable care in the course of the emergency action taken by User which shall be the responsibility of User.

## **10. DISPUTE RESOLUTION**

10.1 Any dispute arising under this Agreement between Location Managers of the Parties shall, if not resolved within 14 days of first arising, be

referred at the instance of either party to the respective line managers, or those fulfilling a similar function whether or not so called, of User and the RTL who shall use all reasonable endeavours to resolve the matter in dispute within one month.

10.2 Save where expressly stated in this Agreement to the contrary (including the procedure for initial dispute resolution contained in Clause 10.1) and subject to any contrary provision of the Act, any Licence, or the Regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the Parties shall (subject to initial dispute resolution procedures referred to in Clause 1 having been exhausted) be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Supply Industry Arbitration Association in force from time to time.

10.3 Whatever the nationality residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (including any modification, extension, replacement or re-enactment thereof for the time being in force) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

## **11. GOVERNING LAW AND JURISDICTION**

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law.

- 11.2 Subject and without prejudice to clause 10 and to clause 11.4 the Parties irrevocably agree that only the courts of England and Wales and the courts of Scotland are to have jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 11 referred to as “Proceedings”) arising out of or in connection with this Agreement may be brought in such courts.
- 11.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause 11 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts of England and Wales or the courts of Scotland shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.
- 11.4 For the avoidance of doubt nothing contained in the foregoing provisions of this clause 11 shall be taken as permitting a Party to commence Proceedings in the courts where this Agreement otherwise provides for proceedings to be referred to arbitration.

## **12. CONFIDENTIALITY**

- 12.1 For the purposes of this Clause 12 except where the context otherwise requires:

12.1.1 “Authorised Recipient”, in relation to any Protected Information, means any Business Person who, before the Protected Information had been divulged to him by the RTL or any subsidiary of the RTL, had been informed of the nature and

effect of this clause 12 and who requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities;

12.1.2 “Business Person” means any person who is a Licensed Business Person, or a Corporate Functions Person and “Business Personnel” shall be construed accordingly.

12.1.3 “Confidential Information” means all data and other information supplied to User under the provisions of this Agreement.

12.1.4 “Corporate Functions Person” means any person who:-

(a) is a director of the RTL; or

(b) is an employee of the RTL or any of its subsidiaries carrying out any administrative, finance or other corporate services of any kind which in part relate to the Licensed Business; or

(c) is engaged as an agent of or adviser to or performs work in relation to or services for the Licensed Business.

12.1.6 “Licensed Business” means any business or activity of the RTL or any of its associates authorised by its RTL Licence;

12.1.7 “Licensed Business Person” means any employee of the RTL or any director or employee of its subsidiaries who is engaged solely in its Licensed Business and “Licensed Business Personnel” shall be construed accordingly;

12.1.8 “Permitted Activities” means activities carried on for the purposes of the Licensed Business;

12.1.9 “Protected Information” means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to this Agreement unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information, that the said information is not to be regarded as Protected Information.

## 12.2 Confidentiality for the RTL and its Subsidiaries

The RTL and its subsidiaries in each of their capacities in this Agreement shall secure that Protected Information is not:-

12.2.1 divulged by Business Personnel to any person unless that person is an Authorised Recipient;

12.2.2 used by Business Personnel for the purposes of obtaining for the RTL or any of its subsidiaries or for any other person:-

(a) any Licence; or

(b) any right to purchase or otherwise acquire, or to distribute, electricity including by means of an electricity purchase contract (as defined in the NGC Transmission Licence); or

(c) any contract or arrangement for the supply of electricity to customers or suppliers; or

(d) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a supplier.

12.2.3 used by Business Personnel for the purpose of carrying on any

activities other than Permitted Activities except with the consent in writing of the Party to whose affairs such Protected Information relates.

12.3 Nothing in this Clause 12 shall apply:

12.3.1 to any Protected Information which, before it is furnished to Business Personnel is in the public domain;

12.3.2 to any Protected Information which, after it is furnished to Business Personnel:

(a) is acquired by the RTL or any subsidiary of the RTL in circumstances in which this Clause 12 does not apply; or

(b) is acquired by the RTL or any subsidiary of the RTL in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or

(c) enters the public domain otherwise than as a result of a breach by the RTL or any subsidiary of the RTL of its obligations in this Clause 12.

12.3.3 to the disclosure of any Protected Information to any person if the RTL or any subsidiary is required or permitted to make such disclosure to such person:

(a) in compliance with the duties of the RTL or any associate under the Act or any other requirement of a Competent Authority; or

(b) in compliance with the conditions of its RTL Licence or



any document referred to in its RTL Licence with which the RTL is required to comply; or

- (c) in compliance with any other requirement of law; or
- (d) in response to a requirement of any recognised stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
- (e) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal.

12.3.4 to any Protected Information to the extent that the RTL or any of its subsidiaries is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Fuel Security Code) with the Party to whose affairs such Protected Information relates.

12.4 The RTL and its subsidiaries may use all and any information or data supplied to or acquired by it, from or in relation to the other Party to this Agreement in performing its Permitted Activities and may pass the same to subsidiaries of the RTL which carry out such activities and the User hereto agrees to provide all information to the RTL and its subsidiaries for such purpose.

12.5 NGC and its subsidiaries may use all and any information or data supplied to or acquired by it from the RTL pursuant to Clause 12.3.3 in relation to this Agreement in performing its activities under the NGC Transmission Licence including for the following purposes:

12.5.1 the operation and planning of the GB Transmission

System;

12.5.2 the calculation of charges and preparation of offers of terms for connection to or use of the GB Transmission System;

and the User agrees to provide all information to the RTL and its subsidiaries for such purposes.

12.6 The RTL undertakes that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither the RTL nor any of its subsidiaries shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged to any Business Person:

- (a) who has notified the RTL or the relevant subsidiary of his intention to become engaged as an employee or agent of any other person (other than of the RTL or any subsidiary thereof);  
or
- (b) who is authorised by licence or exemption to generate or supply electricity.

12.7 Without prejudice to other provisions of this clause 12 the RTL shall procure that any additional copies of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.

12.8 The RTL undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is

necessary for the proper performance of his duties.

## 12.9 Confidentiality for User

12.9.1 User hereby undertakes with the RTL and its subsidiaries that it shall preserve the confidentiality and secrecy of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes Confidential Information except:

- (a) in the circumstances set out in Clause 12.9.2;
- (b) to the extent expressly permitted by this Agreement; or
- (c) with the consent in writing of the RTL.

12.9.2 Exceptions: the circumstances referred to in Clause 12.9.1(a) are:

- (a) where the Confidential Information, before it is furnished to User, is in the public domain; or
- (b) where the Confidential Information, after it is furnished to User:
  - (i) is acquired by User in circumstances in which this Clause 12 does not apply; or
  - (ii) is acquired by User in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
  - (iii) enters the public domain otherwise than as a result of a breach by User of its obligations in this Clause

12; or

- (c) if User is required or permitted to make disclosure of the Confidential Information to any person:
  - (i) in compliance with the duties of User under the Act or any other requirement of a Competent Authority;
  - (ii) in compliance with the conditions of any Licence or any document referred to in any Licence with which User is required to comply;
  - (iii) in compliance with any other requirement of law;
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
  - (v) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal; or
- (d) where Confidential Information is furnished by User to the employees, directors, agents, lenders, consultants and professional advisers of User in each case on the basis set out in Sub-Clause 12.10.

12.10 With effect from the date of this Agreement User shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this Clause 12. These procedures will include:

12.10.1 the Confidential Information will be disseminated within User

only on a “need to know” basis;

12.10.2 employees, directors, agents, lenders, consultants and professional advisers of User in receipt of Confidential Information will be made fully aware of User’s obligations of confidence in relation thereto.

### **13. TITLE TO ASSETS**

13.1 The RTL acknowledges that it does not have and will not acquire any title, right or interest in User’s Land save for such rights as are expressly granted herein or otherwise provided nevertheless that, if according to any rule of law, the RTL could acquire any such title, right or interest in any of User’s Land, the RTL undertakes to do all that is required to transfer such right or interest to User to ensure that User shall not, by reason of such right or interest arising, have its full rights in such land diminished (and in the interim to hold such rights in trust for User) and shall if requested by User, be obliged forthwith to establish trust arrangements valid under Scottish law so as to ensure that any such right or interest shall be held on behalf of User.

13.2 User agrees that it shall not by any act or default render the RTL Assets liable to any distress execution or other legal process, and in the event that the RTL Assets shall become so liable, shall forthwith give notice of any such proceedings to the RTL and shall forthwith notify any third party instituting any such process of the ownership of such RTL Assets.

13.3 If User desires to mortgage or charge User’s Land or its interest therein on which any RTL Assets are located or to enter into any arrangement which, if made, might affect the rights of the RTL expressly granted herein, then User shall ensure that the RTL Assets are not and will not

be subject to the rights granted therein and are not and will not be affected by the mortgage, legal charge or other agreement or arrangement, and shall give prior written notification thereof to the RTL.

- 13.4 In the event that User shall wish to grant rights over or dispose of any interest in or change the use of User's Land User shall notify the RTL of such wish and fully consult the RTL in respect thereof and shall not grant such rights or make such disposal or change of use save on terms securing to the reasonable satisfaction of that other the Rights of Access granted in respect of User's Land.

#### **14. LIMITATION OF LIABILITY**

- 14.1 Subject to sub-clauses 5.3, 6.2, 9.2 and 14.5 and save as provided in this sub-clause 14.1 and sub-clause 14.2 neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach and which resulted from:

14.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

14.1.2 the liability of the other Party to any other person for loss arising from physical damage to the property of any person.

- 14.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such and any loss or liability

which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

14.3 Subject to sub-clauses 5.3, 6.2, 9.2 and 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:-

14.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

14.3.2 any indirect or consequential loss; or

14.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in sub-clauses 14.1.2 and 14.2.

14.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives in the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

14.5 Save as otherwise expressly provided in this Agreement, this clause 14

insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause 14 shall exclude or restrict or otherwise prejudice or affect any of:

14.5.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the User's Licence, RTL's Licence or the Regulations or any amendment or re-enactment thereof; or

14.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence as aforesaid or otherwise howsoever.

14.6 Each of the sub-clauses of this clause 14 shall:

14.6.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

14.6.2 survive termination of this Agreement.

14.7 Each Party agrees that the other Party holds the benefit of sub clauses 14.1, 14.2 and 14.3 above for itself and as trustee and agent for its officers, employees and agents

14.8 Each Party hereby acknowledges and agrees that the provisions of this clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **15. INTELLECTUAL PROPERTY**



All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers, employees, agents or consultants during the currency of this Agreement shall vest in such Party as the sole beneficial owner thereof save where the Parties agree in writing otherwise.

**16. FORCE MAJEURE**

If either Party (the “Non-Performing Party”) shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein the Non-Performing Party’s obligations hereunder shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (i) the Non-Performing Party gives the other Party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence, its expected duration and the particular obligations affected by it, and continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no liabilities of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and

- (v) as soon as practicable after the event which constitutes Force Majeure the Parties shall discuss how best to continue their operations so far as possible in accordance with this Agreement.

**17. WAIVER**

No delay by or omission of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

**18. NOTICES**

18.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address, telex number or facsimile number of such other Party given in Schedule 6 and marked for the attention of the person so given or to such other address, telex number and/or facsimile number and/or marked for such other attention as such other Party may from time to time specify by notice given in accordance with this clause 18 to the Party giving the relevant notice or other communication to it.

18.2 Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or telex or facsimile, and shall be deemed to have been received:

- 18.2.1 in the case of delivery by hand, when delivered; or
- 18.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or
- 18.2.3 in the case of telex, on the transmission of the automatic answerback of the addressee (where such transmission occurs before 1700 hours on the day of transmission) and in any other case on the day following the day of transmission; or
- 18.2.4 in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

## **19. VARIATIONS**

The provisions of Schedules 1, 3, 4, 5 and 6 may be varied from time to time by written memorandum signed by an authorised officer of each of the Parties. Subject thereto no variations to this Agreement shall be effective unless made by way of supplemental deed.

## **20. OVERRIDING PROVISIONS & GOOD INDUSTRY PRACTICE**

- 20.1 In the event of any conflict between RTL's or User's obligations hereunder and their obligations under the User's Licence and RTL's Licence, the Act, any direction of the Secretary of State, the Authority or ruling of the Competition Commission, the Grid Code, Connection Agreement or the Bilateral Connection Agreement, the provisions of the User's Licence and RTL's Licence, the Act, the Grid Code, the

Connection Agreement or Bilateral Agreement the direction of the Secretary of State, the Authority, or ruling of the Competition Commission shall prevail and accordingly the RTL and User respectively shall not be responsible for any failure to perform their respective obligations hereunder to the extent that any such failure is directly attributable to proper compliance with such provisions, rulings or directions.

20.2 Both parties shall observe their respective obligations hereunder in accordance with Good Industry Practice.

## **21. ASSIGNMENT AND SUB-CONTRACTING**

21.1 The rights and obligations of a Party may not be assigned (otherwise than to an Affiliate or by way of a charge or an assignment by way of security) without the consent of the other Party, such consent not to be unreasonably withheld.

21.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the consent of the other. The sub-contracting by either Party of the performance of any obligations or duties under this Agreement shall not relieve such Party from the liability for performance of such obligation or duty.

## **22. ILLEGALITY AND PARTIAL INVALIDITY**

22.1 If at any time any provision of this Agreement should become or be declared unlawful, invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall be affected.

22.2 If any part of a provision of this Agreement is or becomes or is declared invalid, unlawful, illegal or unenforceable but the rest of such provision would remain valid, lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid, lawful, enforceable and effective but without affecting the meaning of legality, validity or enforceability of any other provision of this Agreement.

**23. TERM AND TERMINATION**

This Agreement shall continue until no RTL Assets are on User's land and no Facility Assets or Services are shared or provided.

**24. REGISTRATION AND MEMORANDUM**

24.1 Where any or all of User's Land is registered or the RTL's interest therein is subject to compulsory registration at the Land Register of Scotland, the parties hereto agree to apply to the Keeper for the registration as appropriate of the rights and obligations granted by or contained in this Agreement and User agrees to place on deposit at the Land Register of Scotland all relevant Land or Charge Certificates to enable such registration to be effected.

24.2 Where any of User's Land is not so registered or subject to compulsory registration, User shall procure within six months of the date hereof that certified copies of any such agreement are attached to the most recent conveyance (in the case of a heritable interest) or the lease under or pursuant to which they hold such land.

**25. ENTIRE AGREEMENT**

25.1 This Agreement contains the entire agreement between the Parties with

respect to the subject-matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the Parties with respect thereto and:

- (i) each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement; but
- (ii) the RTL acknowledges that User may have entered or may enter into agreements with other parties who hold a Licence containing similar rights and/or liabilities to those contained in this Agreement affecting User's Land and any assets thereon. User shall, when entering into such agreement with any such party use reasonable endeavours to avoid conflicts between the provisions thereof and the provisions of this Agreement but in the event of any conflict User shall use all reasonable endeavours to procure that appropriate arrangements are made to settle the same to give full effect (so far as practicable) to the rights and liabilities under this Agreement and under such other agreements as aforesaid. In the event of any dispute as to such conflict and/or arrangements the dispute shall be dealt with in accordance with Clause 10.

IN WITNESS whereof this Agreement has been entered into as a deed the day and year first above written.

**SCHEDULE 1**

RTL ASSETS ON USER LAND

**SCHEDULE 2**

USER'S LAND



**SCHEDULE 3**

Part I

Security Details (Cl. 4.1)

User's Land

Part II

Plant MV LV Apparatus Safety Co-Ordination Procedures (Cl. 4.5)

- (1) The Parties will comply with the Site Specific Safety Rules and any agreed modifications thereto.
- (2) The Parties will arrange for the Site Specific Safety Rules to be written down and to be implemented by the person or persons responsible on behalf of the relevant Parties for the co-ordination of safety.

**SCHEDULE 4**

**USER OWNED FACILITY ASSETS**

PART ONE

PART TWO

**SCHEDULE 5**

**SHARED SERVICES PROVIDED BY USER**

PART ONE

PART TWO

**SCHEDULE 6**

Addresses, Fax Nos etc (Cl. 19.)

[Insert details of Relevant Transmission Licensee]

[        ]

Telephone:  
Facsimile:

[Insert details of User]

[        ]

Telephone:  
Facsimile:

**THE COMMON SEAL** of )  
 )  
**[RELEVANT TRANSMISSION LICENSEE]** )  
was hereunto affixed in the presence of:- )

**THE COMMON SEAL** of )  
[ ] )  
was hereunto affixed in the presence of:- )

**END OF SECTION O PART I B**

**CUSC - EXHIBIT O - PART II [A](#)**

**THE CONNECTION AND USE OF SYSTEM CODE**

**INTERFACE AGREEMENTS**

**PART II [A](#) - USER ASSETS ON NGC LAND**

**CUSC - EXHIBIT O - PART IIA**

**THE CONNECTION AND USE OF SYSTEM CODE**

**INTERFACE AGREEMENT**

**Relating to User Assets on NGC Land**

**CUSC - EXHIBIT O - PART IIA**

DATED \_\_\_\_\_ 199[ ]

(1) THE NATIONAL GRID COMPANY plc (NGC)

- and -

(2)

(User)

**INTERFACE AGREEMENT**

Relating to User Assets on  
NGC Land at [ ]



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**INTERFACE AGREEMENT**  
**(ASSET LICENCE FACILITY AGREEMENT)**  
**(USER ASSETS)**

**THIS DEED OF AGREEMENT** is made on the                      day of                      1997

**BETWEEN**

(1) **THE NATIONAL GRID COMPANY plc** a company registered in England with number 2366977 whose registered office is at National Grid House, Kirby Corner Road, Coventry CV4 8JY (“NGC, which expression shall include its successors and/or permitted assigns); and

(2) [    ] a company registered in England and Wales (registered number [     ] ) whose registered office is at [                      ] (“User”, which expression shall include its successors and/or permitted assigns)

**WHEREAS**

Certain assets and facilities of User are to be installed on property title to which is vested in NGC; and this Agreement is entered into by the Parties to give effect to appropriate arrangements in respect of such assets and the use of assets and facilities.

**NOW IT IS HEREBY AGREED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

In this Agreement, the following words and expressions shall, unless the subject-matter or context otherwise requires or is inconsistent therewith, bear the following meanings:-

“the Act”    the Electricity Act 1989;

- “Affiliate” in relation to User means any holding company or subsidiary of that Party or any subsidiary of a holding company of User, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of this Agreement this Agreement shall be construed as if such section were in force at such date;
- “Authority” the Gas and Electricity Market Authority established by Section 1 of the Utilities Act 2000;
- “Facility Asset” an asset specified in Schedule 4;
- “Competent Authority” includes the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;
- “Connection Agreement” the Connection and Use of System Code given contractual force by the CUSC Framework Agreement entered into by, among others, the Parties regarding, among other things, the connection of User’s Plant and Apparatus (as defined

	therein) to the <del>NGC</del> <u>GB</u> Transmission System (as defined therein) and the use by User of such system;
“Cover”	the cover page of this Deed which shall form part of this Deed;
“Directive”	includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority, (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;
“the Authority”	the Authority General of Electricity Supply appointed for the time being pursuant to Section 1(1) of the Act by the Secretary of State;
“Electricity Generating Licence”	User’s licence granted pursuant to S.6(1)(a) of the Act;
“Emergency Personnel”	in relation to a Party, all employees of that Party who have appropriate knowledge and experience and are recognised by that Party as being able to carry out competently and safely emergency action for the purposes of clause 9;

“Force Majeure”

in relation to a Party, any event or circumstance which is beyond the reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus which could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament legislation, bye-law, and Directive (not being any order, regulation or directive under Section 32, 33, 34 or 35 of the Act) Provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“User Assets”

those assets listed in Schedule 1 (including any plinths or other structures (excluding buildings) to or upon which the same are

affixed and to or upon which no assets of any other person are affixed and any straps, bolts or other such things for attachment thereto) as any of the same may be Modified pursuant to this Agreement;

“Good Industry Practice” the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

“the Grid Code” the document or documents produced pursuant to the NGC Transmission Licence, as from time to time revised in accordance with the NGC Transmission Licence;

“High Voltage Lines” electric lines of a nominal voltage exceeding 132 kilovolts;

“HV” of a nominal voltage exceeding 650 volts;

“Intellectual Property” patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same is registered and including applications for registration of any of the same) and rights under licences and consents in relation to any of the same and all rights or forms of protection of a similar

	nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;
“Modification”	any alteration to or replacement of such User Assets pursuant to clause 3.1 of this Agreement and “Modify” and “Modified” shall be construed accordingly;
“NGC’s Land”	the land described in Schedule 2;
“NGC Transmission Licence”	NGC’s licence granted pursuant to Section 6 (1)(b) of the Act;
“Party”	each person for the time being and from time to time party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person;
“Permitted Purpose”	in relation to a Right of Access, the purpose specified in the clause granting such Right of Access;
“Relocation Proposal”	a proposal by NGC to User pursuant to sub-clause 5.1 for the relocation of any of User Assets;
“Right of Access”	to the provisions of clause 7;
“Services”	in the context of clause 8, the goods and services specified in Schedule 5;





## **2. RIGHT TO INSTALL AND RETAIN ASSET**

2.1 Subject to sub-clause 5.1, NGC hereby grants to User the right to install and thereafter retain and replace as provided in this Agreement User Assets on NGC's Land in such places as are currently proposed (subject to such variations between the date hereof and the actual date of installation as may be agreed to by NGC) and such right shall extend to any Modified User Assets. NGC shall maintain any shelter and/or support enjoyed by any User Assets at the date of this Agreement or, if later, when relocated on NGC's Land in accordance with clause 5 and grants to User a Right of Access for the purpose of the maintenance, inspection, testing, removal, operation, modification or repair of any of User Assets.

## **3. MODIFICATIONS REPLACEMENTS AND ALTERATIONS**

3.1 User may at its own expense replace or alter any User Assets provided that:-

3.1.1 the replacement User Assets or the User Assets as so altered:-

- (i) are placed in the same or approximately the same position;
- (ii) fulfil the same or a similar purpose;
- (iii) can, where relevant, be accommodated in and on existing buildings or structures;
- (iv) do not require additional or improved facilities or services from NGC;
- (v) do not restrict the actual and intended use of NGC's Land and any equipment thereon or therein to any materially greater extent than the User assets so replaced or altered; and

- (vi) are either of the same or a similar or smaller size or the alteration is effected substantially within the space occupied by such User Assets to enable the User Assets to be used up to their full capability; and

3.1.2 prior written notification has been given to NGC.

- 3.2 If any replacement or alteration permitted by clause 3.1 shall require minor alterations or works to the existing buildings or structures housing or supporting the User Asset in question, such alterations or works may be carried out (with the prior written approval of NGC (such approval not to be unreasonably withheld or delayed)) but at the cost of User.
- 3.3 To the extent that any of the conditions of clause 3.1 are not in NGC's reasonable opinion met in relation to any replacement or alteration, NGC may by notice in writing require User promptly to remove such replacement or alteration and, if User fails to do so, may remove the same itself at the cost and expense of User. On such removal, User may reinstate the User Assets so replaced or altered.
- 3.4 User shall, if considering moving, replacing, or altering any User Assets, give due consideration as to whether it shall be operationally practicable, desirable and reasonably economic to move such User Assets to (or place the replacement or altered User Assets on) its own property.
- 3.5 For avoidance of doubt it is hereby agreed that any dispute between the Parties regarding this clause shall be determined in accordance with the provisions of Clause 10 of this Agreement.

#### **4. SECURITY AND COMPLIANCE WITH STATUTES etc**

- 4.1 NGC undertakes to maintain and provide security in relation

to User Assets in accordance with the arrangements set out in Part I of Schedule 3.

4.2 Each Party shall procure that, as between the Parties, all reasonable and necessary steps are taken, as and when necessary or desirable, in co-operation with the other Party (and, so far as applicable, with any third party), to ensure compliance with the provisions (each such provision or part thereof being in this clause 4 an "Obligation") of:-

- (i) all statutes and Directives applicable to any User Assets and/or any part (including the whole) of NGC's Land;
- (ii) any statute or Directive which may affect any other property (of whatever nature) of either Party as a result of the existence, nature, location, or manner of operation of any User Assets; and
- (iii) any statute or Directive requiring the reporting of any occurrence relating to or affecting any User Assets and/or NGC's Land (including the Reporting of Injuries Diseases and Dangerous Occurrence Regulations 1985 and the Electricity Supply Regulations 1988).

4.3 Each Party shall, so far as it is aware of the same, unless it has reasonable grounds for believing that the other Party possesses the information, keep the other Party informed of all matters relating to any Obligation or potential Obligation and/or the extent to which such Obligation may be applicable.

4.4 In the event of any dispute as to responsibility, as between the Parties, pursuant to clause 4.2, for compliance with an Obligation, that responsibility shall be allocated, so far as practicable, on the basis that:-

- (i) each Party shall refrain from taking or permitting any act or omission which would prevent compliance with an Obligation; and
- (ii) positive action required in relation to a Party's property as a consequence of the existence, nature, location or manner of operation of that property or any other property of that Party shall be the responsibility of that Party, and, to the extent that such action is required in respect of or affecting any property of the other Party (or property of a third party located in or on that other Party's Land), such action may be taken with the prior approval of that other Party (such approval, subject to (i) above, not to be unreasonably withheld or delayed).

4.5 The provisions for safety co-ordination between the Parties contained in Part II of Schedule 3 shall apply.

## **5. RELOCATIONS**

5.1 At any time and from time to time during the term of this Agreement, NGC may with the prior written consent of User (such consent not to be unreasonably withheld or delayed) require User to relocate any User Assets either to a different location on the NGC Land or to User's or a third party's land, such consent to be sought and given or refused in accordance with the following procedure:-

5.1.1 NGC shall serve a written notice on User, which notice shall specify:-

- (a) the User Assets which NGC wishes to be relocated;
- (b) the reasons for such wish;
- (c) the proposed new location for such User Assets; and

(d) the timing of the carrying out of such relocation.

5.1.2 User shall within one month of receipt of any such notice (or such longer period as shall be reasonably necessary) serve a counter notice stating:-

(a) whether or not in its reasonable opinion such Relocation Proposal is acceptable to it;

(b) if the Relocation Proposal is not acceptable to User, the grounds for such opinion and the terms of any alternative proposal (the "Alternative Relocation Proposal") covering so far as relevant the matters referred to in items (a) - (d) of clause 5.1.1 which would be acceptable to User; and

(c) in respect of the Relocation Proposal (if accepted) or of any Alternative Relocation Proposal, the costs likely to be incurred in connection with considering the Relocation Proposal or the Alternative Relocation Proposal and effecting the said relocation of the User Assets and the proper and reasonable costs of relocating any other equipment that may be necessary as a result of the relocation of those User Assets and any consequential losses including payments to third parties incurred as a result of the relocation of those User Assets and the proposed manner and timing of payment of the same by NGC.

5.1.3 If within one month of the date of such counter notice (or such longer period as shall be reasonably necessary) NGC has not withdrawn the Relocation Proposal and the Parties have not agreed upon it or the Alternative Relocation Proposal (if any) or a variation of either of

them (such agreement to include agreement on the costs referred to in item (c) of clause 5.1.2) the matter shall be dealt with in accordance with Clause 10.

5.2 Upon approval or settlement of any Relocation Proposal, Alternative Relocation Proposal or variation thereof pursuant to clause 5.1, User shall (conditionally upon it being able to obtain all necessary licences and consents which it will use reasonable endeavours to do) relocate or procure the relocation of the relevant User Assets as quickly as reasonably practicable (having regard to, amongst other things, technical and operational requirements and to the availability of all necessary licences and consents).

5.3 NGC shall render all reasonable assistance to User in connection with such relocation licences and consents and pay to User all costs referred to in item (c) of clause 5.1.2 as agreed or settled pursuant to clause 5.1 provided that all reasonable endeavours are used to minimise such costs and in the event that a Relocation Proposal is withdrawn or consent thereto is reasonably withheld pursuant to clause 5.1, NGC shall pay to User all costs reasonably incurred by User in connection with considering the Relocation Proposal and any counter notice.

5.4 Such of the provisions of this Agreement as are appropriate and relevant (including the provisions of this clause 5), shall continue to apply to any relocated User Assets.

## **6. REMOVALS**

6.1 In the event that there shall cease to be any Supplemental Connection Agreement relating to any User Assets on NGC's Land User shall remove all

User Assets from NGC's Land in accordance with the provisions relating thereto contained in the Supplemental Connection Agreement.

- 6.2 Where User is obliged to remove any User Assets from NGC's Land, under this Clause 6, and fails to do so in accordance with the relevant provisions, (whether they be contained in this clause 6, clause 3 or clause 5) NGC shall be entitled to remove those User Assets to land belonging to User and User shall provide all reasonable assistance to enable NGC safely so to do and shall pay and reimburse to NGC all costs and expenses reasonably incurred by NGC in so doing.

## **7. RIGHTS OF ACCESS**

- 7.1 A Right of Access includes the right to bring on to NGC's Land such vehicles, plant, machinery and maintenance or construction materials as shall be reasonably necessary for the Permitted Purpose.
- 7.2 A Right of Access given to User may be exercised by any person, including third party contractors, reasonably nominated from time to time by User. To the extent (if any) that any particular authorisation or clearances may be required to be given by NGC and the procedures for giving and obtaining the same are not for the time being stipulated in arrangements made pursuant to clause 7.3, the same shall be given within a reasonable time from the date of the request therefor, save in the case of emergency in which case it shall be given without delay.
- 7.3 User shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable,



to facilitate the safe exercise by it of any Right of Access with the minimum of disruption, disturbance or inconvenience to NGC. Such arrangements and provisions shall provide for NGC to have the right to make directions or regulations from time to time in relation to a specified matter. Matters to be covered by such arrangements and/or provision shall include:-

- (i) the identification of any relevant User Assets;
- (ii) the particular access routes applicable to the land in question having particular regard for the weight and size limits on those routes;
- (iii) any limitations on times of exercise of a Right of Access;
- (iv) any requirements as to prior notification and as to authorisation or security clearance of individuals exercising such Rights of Access, and procedures for obtaining the same;
- (v) the means of communication between the Parties and all employees and/or contractors who may be authorised from time to time by User to exercise a Right of Access of any relevant directions or regulations made by NGC;
- (vi) the identification of and arrangements applicable to Emergency Personnel.
- (vii) Any limitation or restriction on the exercise of such Right of Access to the extent that in the circumstances is reasonable

7.4 User shall procure that any such arrangements and/or provisions (or directions or regulations issued by NGC pursuant thereto) made from time to time between the Parties shall be observed and performed by it and all persons authorised by it to exercise any Right of Access.

7.4.1 User shall procure that all reasonable steps are taken in the exercise of any Right of Access to:-

- (a) avoid or minimise damage to NGC's Land, or any other property thereon or therein;
- (b) cause as little disturbance and inconvenience as possible to NGC or other occupier of NGC's Land.

And shall promptly make good any damage caused to NGC's Land and/or such other property in the course of the exercise of such rights and shall indemnify NGC against all actions, claims, proceedings, losses, costs and demands arising out of such exercise.

7.4.2 Subject to clause 7.4.1, all such rights shall be exercisable free of any charge or payment of any kind.

7.5 Subject to any contrary arrangements for the time being made under clause 7.3,

7.5.1 a Right of Access for operation or inspection shall be available without prior notice;

7.5.2 a Right of Access for the purpose of maintenance, testing or repair of HV apparatus shall only be exercisable on the giving of at least seven days prior written notice to NGC except in the case of loss of generation or other emergency (in which event NGC shall render all possible assistance in procuring that the Right of Access shall be exercisable as soon as possible); and

7.5.3 a Right of Access for the purpose of Modifying any User Assets shall be exercisable only after two weeks prior written notice to NGC.

## **8. SERVICES AND USE OF ASSETS**

- 8.1 Subject as hereinafter provided, in relation to each Facility Asset, NGC shall, if required by User, make the Facility Asset in question available for use by User to such extent as is necessary for the purposes of User's undertaking but not so as to prejudice the use now or hereafter of such Facility Asset by NGC for its undertaking.
- 8.2 Subject as hereinafter provided, in relation to each Services, NGC shall, if required by User, provide the same to User. Such provision shall be of such a quality and quantity and shall be provided at such times as User shall reasonably request. NGC shall not be required to exceed the level of quality or quantity of the Services as are anticipated by the Parties at the date of this Agreement, unless specifically agreed otherwise between the Parties.
- 8.3 Where the use of any Facility Asset is made available or such Services are supplied as aforesaid, the Parties shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable between the local personnel employed by each of them in that regard, such arrangements to include:-
- 8.3.1 the identification of the Facility Asset and/or Services in question including (where relevant) the extent of their availability;
  - 8.3.2 the hours during which such use or provision shall be allowed or made;
  - 8.3.3 any requirements as to notification of use or call for supply or temporary suspension thereof;
  - 8.3.4 any requirements as to authorisation or security clearance of individuals and the procedures for obtaining the same; and

8.3.5 any safety requirements;

8.4 The provision of use of the Facility Asset listed in Schedule 4, Part One and the supply of the Services listed in Schedule 5, Part One shall not be terminated unless User ceases to require the Facility Asset or Services for its own use in which case the supply of the Services or use of the Facility Asset may be terminated by not less than one year's notice in writing;

8.5 The provision of use of the Facility Assets listed in Schedule 4, Part Two and the supply of the Services listed in Schedule 5, Part Two shall continue until terminated by not less than six months notice in writing by either Party. NGC shall maintain the Facility Asset in accordance with Good Industry Practice.

## **9. NON-INTERFERENCE**

9.1 NGC agrees that neither it nor its agents, employees and invitees will interfere in any way with any of User Assets without the consent of User. For the purposes of this clause "interfere" shall include:-

9.1.1 disconnecting or altering the connection of any User Assets to any system of cables, foundations, pipes, drains or other media to which it may be connected from time to time or to prevent supply of any substance or thing through such connected system;

9.1.2 affixing or removing any item or substance of any nature whatsoever to or from any User Assets;

9.1.3 damaging any User Assets;

9.1.4 allowing any other person to interfere with any User Assets;

9.1.5 alter any meters or settings on any User Assets.

9.1.6 the obstruction of access to any User Assets.

9.2 The obligations contained in this clause 9 shall be suspended to the extent that emergency action is taken by Emergency Personnel in good faith to protect the health and safety of persons or to prevent damage to property. All reasonable care shall be taken in the course of such emergency action. When the emergency has ended, any damaged property will be reinstated by User, save for damage occurring by reason of lack of reasonable care in the course of the emergency action taken by NGC which shall be the responsibility of NGC

## **10. DISPUTE RESOLUTION**

10.1 Any dispute arising under this Agreement between location managers of the Parties shall, if not resolved within 14 days of first arising, be referred at the instance of either party to the respective Line Managers, or those fulfilling a similar function whether or not so called, of NGC and User who shall use all reasonable endeavours to resolve the matter in dispute within one month.

10.2 Save where expressly stated in this Agreement to the contrary (including the procedure for initial dispute resolution contained in clause 10.1) and subject to any contrary provision of the Act, any Licence, or the Regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the Parties shall (subject to any relevant initial dispute resolution procedures referred to in Clause 10.1 having been exhausted) be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Supply Industry Arbitration Association in force from time to time.

10.3 Whatever the nationality residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England shall be the

proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Acts 1950 (notwithstanding anything in Section 34 thereof) to 1979 (including any modification, extension, replacement or re-enactment thereof for the time being in force) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

10.4 Subject always to sub-clause 10.5 below, if any tariff customer (as defined in Section 22(4) of the Act) brings any legal proceedings in any court (as defined in the Rules of the Supreme Court 1965 and in the County Courts Act 1984) against one or more parties, any of which is a Party (“the Defendant Contracting Party”) and the Defendant Contracting Party wishes to make a Third Party Claim (as defined in sub-clause 10.5 below) against the other Party (“the Other Party”) which would but for this sub-clause have been a dispute or difference referred to arbitration by virtue of sub-clause 10.3 above then, notwithstanding the provisions of sub-clause 10.3 above which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the tariff customer and the Defendant Contracting Party but also between either or both of them and the Other Party whether by way of third party proceedings (pursuant to the Rules of the Supreme Court 1965 or the County Court Rules 1981) or otherwise as may be ordered by the Court.

10.5 For the purposes of this clause Third Party Claim shall mean:-

10.5.1 any claim by a Defendant Contracting Party against the Other Party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or

10.5.2 any claim by a Defendant Contracting Party against the Other Party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claim by the tariff customer; or

10.5.3 any requirement by a Defendant Contracting Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the tariff customer and the Defendant Contracting Party but also as between either or both of them and the Other Party (whether or not already a party to the legal proceedings).

10.6 Sub-Clause 10.4 above shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the Defendant Contracting Party and the Other Party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim. The tribunal in which any arbitration has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

## **11. GOVERNING LAW AND JURISDICTION**

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law.

11.2 Subject and without prejudice to clause 10 and to clause 11.4 the Parties irrevocably agree that [only](#) the courts of England [and Wales and the courts of Scotland](#) are to have ~~exclusive~~ jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 11 referred to as

“Proceedings”) arising out of or in connection with this Agreement may be brought in such courts.

11.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause 11 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the ~~English~~ courts [of England and Wales or the courts of Scotland](#) shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

11.4 For the avoidance of doubt nothing contained in the foregoing provisions of this clause 11 shall be taken as permitting a Party to commence Proceedings in the courts where this Agreement otherwise provides for proceedings to be referred to arbitration.

## 12. **CONFIDENTIALITY**

12.1 For the purposes of this Clause 12 except where the context otherwise requires:-

12.1.1 “Authorised Recipient”, in relation to any Protected Information, means any Business Person who, before the Protected Information had been divulged to him by NGC or any subsidiary of NGC, had been informed of the nature and effect of this clause 12 and who requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities;

12.1.2 “Business Person” means any person who is a Main Business Person, or a Corporate Functions Person and “Business Personnel” shall be construed accordingly.



12.1.3 “Confidential Information” means all data and other information supplied to User under the provisions of this Agreement.

12.1.4 “Corporate Functions Person” means any person who:-

- (a) is a Authority of NGC; or
- (b) is an employee of NGC or any of its subsidiaries carrying out any administrative, finance or other corporate services of any kind which in part relate to the Main Business; or
- (c) is engaged as an agent of or adviser to or performs work in relation to or services for the Main Business;

12.1.5 “Main Business” means any business of NGC or any of its associates;

12.1.6 “Main Business Person” means any employee of NGC or any Authority or employee of its subsidiaries who is engaged solely in the Main Business and “Main Business Personnel” shall be construed accordingly;

12.1.7 “Permitted Activities” means activities carried on for the purposes of the Main Business;

12.1.8 “Protected Information” means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to this Agreement unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information, that the said information is not to be regarded as Protected Information;

## 12.2 Confidentiality for NGC and its Subsidiaries

NGC and its subsidiaries in each of their capacities in this Agreement shall secure that Protected Information is not:-

12.2.1 divulged by Business Personnel to any person unless that person is an Authorised Recipient;

12.2.2 used by Business Personnel for the purposes of obtaining for NGC or any of its subsidiaries or for any other person:-

- (a) any electricity licence; or
- (b) any right to purchase or otherwise require, or to distribute, electricity including by means of an electricity purchase contract (as defined in the NGC Transmission Licence); or
- (c) any contract or arrangement for the supply of electricity to customers or suppliers; or

- (d) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a supplier; and

12.2.3 used by Business Personnel for the purpose of carrying on any activities other than Permitted Activities except with the consent in writing of the Party to whose affairs such Protected Information relates.

12.3 Nothing in this Clause 12 shall apply: -

12.3.1 to any Protected Information which, before it is furnished to Business Personnel is in the public domain;

12.3.2 to any Protected Information which, after it is furnished to Business Personnel:-

- (a) is acquired by NGC or any subsidiary of NGC in circumstances in which this Clause 12 does not apply; or
- (b) is acquired by NGC or any subsidiary of NGC in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
- (c) enters the public domain otherwise than as a result of a breach by NGC or any subsidiary of NGC of its obligations in this Clause 12; or

12.3.3 to the disclosure of any Protected Information to any person if NGC or any subsidiary is required or permitted to make such disclosure to such person:-

- (a) in compliance with the duties of NGC or any associate under the Act or any other requirement of a Competent Authority; or

**CUSC Implementation**

- (b) in compliance with the conditions of the NGC Transmission Licence or any document referred to in the NGC Transmission Licence with which NGC is required to comply; or
- (c) in compliance with any other requirement of law; or
- (d) in response to a requirement of any recognised stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (e) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal; or

12.3.4 to any Protected Information to the extent that NGC or any of its subsidiaries is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code and the Fuel Security Code) with the Party to whose affairs such Protected Information relates.

12.4 NGC and its subsidiaries may use all and any information or data supplied to or acquired by it, from or in relation to the other Party to this Agreement in performing Permitted Activities including for the following purposes:-

- 12.4.1 the operation and planning of the ~~NGC~~ GB Transmission System;
- 12.4.2 the calculation of charges and preparation of offers of terms for connection to or use of the ~~NGC~~ GB Transmission System;
- 12.4.3 the operation and planning of the Ancillary Services Business (as defined in the NGC Transmission Licence) and the calculation of charges therefor;

12.4.4 the operation of the Settlements Business (as defined in the NGC Transmission Licence);

12.4.5 the provision of information under ~~the British Grid Systems Agreement and~~ the EdF Protocol;

and may pass the same to subsidiaries of NGC which carry out such activities and the Parties hereto agree to provide all information to NGC and its subsidiaries for such purposes.

12.5 NGC undertakes that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither NGC nor any of its subsidiaries shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged to any Business Person

- (a) who has notified NGC or the relevant subsidiary of his intention to become engaged as an employee or agent of any other person (other than of NGC or any subsidiary thereof);
- (b) who is authorised by licence or exemption to generate, transmit or supply electricity.

12.6 Without prejudice to other provisions of this clause 12 NGC shall procure that any additional copies of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.

12.7 NGC undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is necessary for the proper performance of his duties.

12.8 Confidentiality for User

12.8.1 User hereby undertakes with NGC and its subsidiaries that it shall preserve the confidentiality and secrecy of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes Confidential Information except:-

- (a) in the circumstances set out in Clause 12.8.2;
- (b) to the extent expressly permitted by this Agreement; or
- (c) with the consent in writing of NGC.

12.8.2 Exceptions: the circumstances referred to in Clause 12.8.1(a) are:-

- (a) where the Confidential Information, before it is furnished to User, is in the public domain; or
- (b) where the Confidential Information, after it is furnished to User:-
  - (i) is acquired by User in circumstances in which this Clause 12 does not apply; or
  - (ii) is acquired by User in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
  - (iii) enters the public domain otherwise than as a result of a breach by User of its obligations in this Clause 12; or

- (c) if User is required or permitted to make disclosure of the Confidential Information to any person:-
  - (i) in compliance with the duties of User under the Act or any other requirement of a Competent Authority;
  - (ii) in compliance with the conditions of any Licence or any document referred to in any Licence with which User is required to comply;
  - (iii) in compliance with any other requirement of law;
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
  - (v) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal.
- (d) where Confidential Information is furnished by User to the employees, directors, agents, lenders, consultants and professional advisers of User in each case on the basis set out in Sub-Clause 12.9

12.9 With effect from the date of this Agreement User shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this Clause 12. These procedures will include:

12.9.1 the Confidential Information will be disseminated within User only on a “need to know” basis;

12.9.2 employees, Authorities, agents, lenders, consultants and professional advisers of User in receipt of Confidential Information will be made fully aware of User's obligations of confidence in relation thereto

### **13. TITLE TO ASSETS**

13.1 User acknowledges that it does not have and will not acquire any title, right or interest in NGC's Land save for such rights as are expressly granted herein or otherwise provided nevertheless that, if according to any rule of law, User could acquire any such title, right or interest in any of NGC's Land, then such title right or interest shall be held upon trust, insofar as it relates to NGC's Land, for NGC absolutely

13.2 NGC agrees that it shall not by any act or default render User Assets liable to any distress execution or other legal process, and in the event that User Assets shall become so liable, shall forthwith give notice of any such proceedings to User and shall forthwith notify any third party instituting any such process of the ownership of such User Assets.

13.3 If NGC desires to mortgage or charge NGC's Land or its interest therein on which any User Assets are located or to enter into any arrangement which, if made, might affect the rights of User expressly granted herein, then NGC shall ensure that User Assets are not and will not be subject to the rights granted therein and are not and will not be affected by the mortgage, legal charge or other agreement or arrangement, and shall give prior written notification thereof to User.

13.4 In the event that NGC shall wish to grant rights over or dispose of any interest in or change the use of NGC's Land NGC shall notify User of such wish and fully consult User in respect thereof and shall not grant such rights or make such disposal or change of use save on terms securing to the reasonable



satisfaction of that other the Rights of Access granted in respect of NGC's Land.

#### **14. LIMITATION OF LIABILITY**

14.1 Subject to sub-clauses 5.3, 6.2, 9.2, and 14.5 and save as provided in this sub-clause 14.1 and sub-clause 14.2 neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach and which resulted from:-

14.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

14.1.2 the liability of the other Party to any other person for loss arising from physical damage to the property of any person.

14.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such and any loss or liability which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

14.3 Subject to sub-clauses 5.3, 6.2, 9.2, and 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:-

14.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

14.3.2 any indirect or consequential loss; or

14.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in sub-clauses 14.1.2 and 14.2.

14.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives in the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

14.5 Save as otherwise expressly provided in this Agreement, this clause 14 insofar as it excludes or limits liability shall override any other provision in this Agreement

provided that nothing in this clause 14 shall exclude or restrict or otherwise prejudice or affect any of:-

14.5.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the Electricity Generating Licence,

the NGC Transmission Licence or the Electricity Supply Regulations 1988 or any amendment or re-enactment thereof; or

14.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such Licence as aforesaid or otherwise howsoever.

14.6 Each of the sub-clauses of this clause 14 shall:-

14.6.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

14.6.2 survive termination of this Agreement.

14.7 Each Party agrees that the Other Party holds the benefit of sub clauses 14.1, 14.2 and 14.3 above for itself and as trustee and agent for its officers, employees and agents

14.8 Each Party hereby acknowledges and agrees that the provisions of this clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **15. INTELLECTUAL PROPERTY**

All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers employees, agents or consultants during the currency of this Agreement shall vest in such Party as the sole beneficial owner thereof save where the Parties agree in writing otherwise.

## 16. **FORCE MAJEURE**

If either Party (the “Non-Performing Party”) shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein the Non-Performing Party’s obligations hereunder shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:-

- (i) the Non-Performing Party gives the other Party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence, its expected duration and the particular obligations affected by it, and continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no liabilities of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and
- (v) as soon as practicable after the event which constitutes Force Majeure the Parties shall discuss how best to continue their operations so far as possible in accordance with this Agreement.

## 17. **WAIVER**

No delay by or omission of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

**18. NOTICES**

18.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address, telex number or facsimile number of such other Party given in Schedule 6 and marked for the attention of the person so given or to such other address, telex number and/or facsimile number and/or marked for such other attention as such other Party may from time to time specify by notice given in accordance with this clause 18 to the Party giving the relevant notice or other communication to it.

18.2 Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or telex or facsimile, and shall be deemed to have been received:-

18.2.1 in the case of delivery by hand, when delivered; or

18.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or

18.2.3 in the case of telex, on the transmission of the automatic answerback of the addressee (where such transmission occurs before 1700

hours on the day of transmission) and in any other case on the day following the day of transmission; or

18.2.4 in the case of facsimile, on acknowledgment by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

## **19. VARIATIONS**

The provisions of Schedules 1, 3, 4, 5 and 6 may be varied from time to time by written memorandum signed by an authorised officer of each of the Parties. Subject thereto no variations to this Agreement shall be effective unless made by way of supplemental deed.

## **20. OVERRIDING PROVISIONS & GOOD INDUSTRY PRACTICE**

20.1 In the event of any conflict between NGC's or User's obligations hereunder and their obligations under the Electricity Generating Licence and NGC Transmission Licence, the Act, any direction of the Secretary of State, the Authority or ruling of the Monopolies and Mergers Commission, the Grid Code, under any Connection Agreement or under any Bilateral Agreement, the provisions of the Electricity Generating Licence and NGC Transmission Licence, the Act, the Grid Code, any Connection Agreement or Bilateral Agreement, the direction of the Secretary of State, the Authority, or ruling of the Monopolies and Mergers Commission shall prevail and accordingly NGC and User respectively shall not be responsible for any failure to perform their respective obligations hereunder to the extent that any such failure is directly attributable to proper compliance with such provisions, rulings or directions.

20.2 Both parties shall observe their respective obligations hereunder in accordance with Good Industry Practice

## **21. ASSIGNMENT AND SUB-CONTRACTING**

21.1 The rights and obligations of a Party may not be assigned (otherwise than to an Affiliate or by way of a charge or an assignment by way of security) without the consent of the other Party, such consent not to be unreasonably withheld.

21.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the consent of the other. The sub-contracting by either Party of the performance of any obligations or duties under this Agreement shall not relieve such Party from the liability for performance of such obligation or duty.

## **22. ILLEGALITY AND PARTIAL INVALIDITY**

22.1 If at any time any provision of this Agreement should become or be declared unlawful, invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall be affected.

22.2 If any part of a provision of this Agreement is or becomes or is declared invalid, unlawful, illegal or unenforceable but the rest of such provision would remain valid, lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid, lawful, enforceable and effective but without affecting the meaning of legality, validity or enforceability of any other provision of this Agreement.

## **23. TERM AND TERMINATION**

This Agreement shall continue until no User Assets are on NGC's land and no Facility Assets or Services are shared or provided.

## **24. REGISTRATION AND MEMORANDUM**

24.1 Where any or all of NGC's Land is registered or User's interest therein is subject to compulsory registration at H.M. Land Registry, the parties hereto agree to apply to the Chief Land Registrar for the registration as appropriate of the rights and obligations granted by or contained in this Agreement and NGC agrees to place on deposit at H.M. Land Registry all relevant Land or Charge Certificates to enable such registration to be effected.

24.2 Where any of NGC's Land is not so registered or subject to compulsory registration, NGC shall procure within six months of the date hereof that memoranda of this Agreement are endorsed on or otherwise securely attached to the most recent conveyance (in the case of a freehold interest) or the lease under or pursuant to which they hold such land.

## **25. ENTIRE AGREEMENT**

25.1 This Agreement contains the entire agreement between the Parties with respect to the subject-matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the Parties with respect thereto and:-

- (i) each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement; but
- (ii) User acknowledges that NGC may have entered or may enter into agreements with any [Public Distribution System Operator] (as defined in the CUSC) containing similar rights and/or liabilities to those contained in this Agreement affecting NGC's Land and any assets thereon. NGC shall, when entering into such agreement with



any of the said Public Distribution System Operator, use reasonable endeavours to avoid conflicts between the provisions thereof and the provisions of this Agreement but in the event of any conflict NGC shall use all reasonable endeavours to procure that appropriate arrangements are made to settle the same to give full effect (so far as practicable) to the rights and liabilities under this Agreement and under such other agreements as aforesaid. In the event of any dispute as to such conflict and/or arrangements the dispute shall be dealt with in accordance with Clause 10.

IN WITNESS whereof this Agreement has been entered into as a Deed the day and year first above written.

**SCHEDULE 1**

**User Assets on NGC Land**

**SCHEDULE 2**

NGC's Land

[ \_\_\_\_\_ ]

### **SCHEDULE 3**

#### Part I

#### Security Details (Clause 4)

#### NGC's Land



#### Part II

#### Plant MV LV Apparatus Safety Co-Ordination Procedures (Cl.4.5)

(1) In this Paragraph:-

“Apparatus” means all equipment in which electrical conductors are used, supported or of which they may form a part;

“Connection Site” shall have the meaning given to it in the Grid Code;

“Safety Rules” means the rules, procedures or current arrangements for and relating to safety co-ordination across boundaries (to permit work to or testing on the System of one of the Parties which, for this to be done safely, requires isolation and/or other precautions on Plant and/ or MV and/or LV Apparatus whether at, adjacent to or remote from the location of the work or testing) which the Parties mutually agree to use their best endeavours to formulate as soon as

possible after the date of this Agreement and on the basis that any dispute as to their content shall be resolved in accordance with the provisions of Clause 10

“Low Voltage” or “LV” means a voltage not exceeding 250 volts;

“Medium Voltage” or “MV” means a voltage exceeding 250 volts but not exceeding 650 volts;

“Plant” means fixed and moveable items used in the generation and/or supply and/or transmission of electricity, other than Apparatus.

- (2) The Parties will comply with the Safety Rules and any agreed modifications thereto.
- (3) The Parties will arrange for the Safety Rules to be written down and to be implemented by the person or persons responsible on behalf of the relevant Parties for the co-ordination of safety.

**SCHEDULE 4**

**NGC OWNED FACILITY ASSETS**

Part 1

Part 2

**SCHEDULE 5**

**SHARED SERVICES PROVIDED BY NGC**

**Part 1**





**CUSC - EXHIBIT O - PART II [A](#)**

**THE CONNECTION AND USE OF SYSTEM CODE**

**INTERFACE AGREEMENTS**

**PART II [A](#)- USER ASSETS ON NGC LAND**

**CUSC - EXHIBIT O - PART IIA**

**THE CONNECTION AND USE OF SYSTEM CODE**

**INTERFACE AGREEMENT**

**Relating to User Assets on NGC Land**

**CUSC - EXHIBIT O - PART IIA**

DATED \_\_\_\_\_ 199[ ]

(1) THE NATIONAL GRID COMPANY plc (NGC)

- and -

(2)

(User)

**INTERFACE AGREEMENT**

Relating to User Assets on  
NGC Land at [ ]

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**INTERFACE AGREEMENT**  
**(ASSET LICENCE FACILITY AGREEMENT)**  
**(USER ASSETS)**

**THIS DEED OF AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 1997

**BETWEEN**

- (1) **THE NATIONAL GRID COMPANY plc** a company registered in England with number 2366977 whose registered office is at National Grid House, Kirby Corner Road, Coventry CV4 8JY (“NGC, which expression shall include its successors and/or permitted assigns); and
- (2) [ \_\_\_\_\_ ] a company registered in England and Wales (registered number [ \_\_\_\_\_ ]) whose registered office is at [ \_\_\_\_\_ ] (“User”, which expression shall include its successors and/or permitted assigns)

**WHEREAS**

Certain assets and facilities of User are to be installed on property title to which is vested in NGC; and this Agreement is entered into by the Parties to give effect to appropriate arrangements in respect of such assets and the use of assets and facilities.

**NOW IT IS HEREBY AGREED** as follows:-

**1. DEFINITIONS AND INTERPRETATION**

In this Agreement, the following words and expressions shall, unless the subject-matter or context otherwise requires or is inconsistent therewith, bear the following meanings:-

“the Act” \_\_\_\_\_ the Electricity Act 1989;

- “Affiliate” in relation to User means any holding company or subsidiary of that Party or any subsidiary of a holding company of User, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of this Agreement this Agreement shall be construed as if such section were in force at such date;
- “Authority” the Gas and Electricity Market Authority established by Section 1 of the Utilities Act 2000;
- “Facility Asset” an asset specified in Schedule 4;
- “Competent Authority” includes the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;
- “Connection Agreement” the Connection and Use of System Code given contractual force by the CUSC Framework Agreement entered into by, among others, the Parties regarding, among other things, the connection of User’s Plant and Apparatus (as defined

	therein) to the <del>NGC</del> <u>GB</u> Transmission System (as defined therein) and the use by User of such system;
“Cover”	the cover page of this Deed which shall form part of this Deed;
“Directive”	includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority, (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;
“the Authority”	the Authority General of Electricity Supply appointed for the time being pursuant to Section 1(1) of the Act by the Secretary of State;
“Electricity Generating Licence”	User’s licence granted pursuant to S.6(1)(a) of the Act;
“Emergency Personnel”	in relation to a Party, all employees of that Party who have appropriate knowledge and experience and are recognised by that Party as being able to carry out competently and safely emergency action for the purposes of clause 9;



“Force Majeure”

in relation to a Party, any event or circumstance which is beyond the reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus which could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament legislation, bye-law, and Directive (not being any order, regulation or directive under Section 32, 33, 34 or 35 of the Act) Provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“User Assets”

those assets listed in Schedule 1 (including any plinths or other structures (excluding buildings) to or upon which the same are

affixed and to or upon which no assets of any other person are affixed and any straps, bolts or other such things for attachment thereto) as any of the same may be Modified pursuant to this Agreement;

“Good Industry Practice”

the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

“the Grid Code”

the document or documents produced pursuant to the NGC Transmission Licence, as from time to time revised in accordance with the NGC Transmission Licence;

“High Voltage Lines”

electric lines of a nominal voltage exceeding 132 kilovolts;

“HV”

of a nominal voltage exceeding 650 volts;

“Intellectual Property”

patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same is registered and including applications for registration of any of the same) and rights under licences and consents in relation to any of the same and all rights or forms of protection of a similar

	nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;
“Modification”	any alteration to or replacement of such User Assets pursuant to clause 3.1 of this Agreement and “Modify” and “Modified” shall be construed accordingly;
“NGC’s Land”	the land described in Schedule 2;
“NGC Transmission Licence”	NGC’s licence granted pursuant to Section 6 (1)(b) of the Act;
“Party”	each person for the time being and from time to time party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person;
“Permitted Purpose”	in relation to a Right of Access, the purpose specified in the clause granting such Right of Access;
“Relocation Proposal”	a proposal by NGC to User pursuant to sub-clause 5.1 for the relocation of any of User Assets;
“Right of Access”	to the provisions of clause 7;
“Services”	in the context of clause 8, the goods and services specified in Schedule 5;

“Supplemental Connection an agreement entered into between the  
“Agreement” Parties dated [ ]

In this Agreement:-

- (i) unless the context otherwise requires all references to a particular clause, sub-clause, paragraph or Schedule shall be a reference to that clause, sub-clause, paragraph or Schedule in or to this Agreement;
- (ii) the table of contents and headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (iii) references to the words “include” or “including” are to be construed without limitation to the generality of the preceding words;
- (iv) unless there is something in the subject matter or the context which is inconsistent therewith, any reference to an Act of Parliament or any Section thereof or Schedule thereto, or other provision thereof or any instrument, order or regulation made thereunder shall be construed at the particular time as including a reference to any modification, extension, replacement or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament; and
- (v) references to the masculine shall include the feminine and references in the singular shall include the plural and vice versa and words denoting natural persons shall include companies, corporations and any other legal entity and vice versa.
- (vi) unless otherwise provided to the contrary herein, defined terms used in this Agreement and not defined herein shall have the meaning set forth in the Connection and Use of System Code or Bilateral Agreement.

## **2. RIGHT TO INSTALL AND RETAIN ASSET**

2.1 Subject to sub-clause 5.1, NGC hereby grants to User the right to install and thereafter retain and replace as provided in this Agreement User Assets on NGC's Land in such places as are currently proposed (subject to such variations between the date hereof and the actual date of installation as may be agreed to by NGC) and such right shall extend to any Modified User Assets. NGC shall maintain any shelter and/or support enjoyed by any User Assets at the date of this Agreement or, if later, when relocated on NGC's Land in accordance with clause 5 and grants to User a Right of Access for the purpose of the maintenance, inspection, testing, removal, operation, modification or repair of any of User Assets.

## **3. MODIFICATIONS REPLACEMENTS AND ALTERATIONS**

3.1 User may at its own expense replace or alter any User Assets provided that:-

3.1.1 the replacement User Assets or the User Assets as so altered:-

- (i) are placed in the same or approximately the same position;
- (ii) fulfil the same or a similar purpose;
- (iii) can, where relevant, be accommodated in and on existing buildings or structures;
- (iv) do not require additional or improved facilities or services from NGC;
- (v) do not restrict the actual and intended use of NGC's Land and any equipment thereon or therein to any materially greater extent than the User assets so replaced or altered; and

- (vi) are either of the same or a similar or smaller size or the alteration is effected substantially within the space occupied by such User Assets to enable the User Assets to be used up to their full capability; and

3.1.2 prior written notification has been given to NGC.

- 3.2 If any replacement or alteration permitted by clause 3.1 shall require minor alterations or works to the existing buildings or structures housing or supporting the User Asset in question, such alterations or works may be carried out (with the prior written approval of NGC (such approval not to be unreasonably withheld or delayed)) but at the cost of User.
- 3.3 To the extent that any of the conditions of clause 3.1 are not in NGC's reasonable opinion met in relation to any replacement or alteration, NGC may by notice in writing require User promptly to remove such replacement or alteration and, if User fails to do so, may remove the same itself at the cost and expense of User. On such removal, User may reinstate the User Assets so replaced or altered.
- 3.4 User shall, if considering moving, replacing, or altering any User Assets, give due consideration as to whether it shall be operationally practicable, desirable and reasonably economic to move such User Assets to (or place the replacement or altered User Assets on) its own property.
- 3.5 For avoidance of doubt it is hereby agreed that any dispute between the Parties regarding this clause shall be determined in accordance with the provisions of Clause 10 of this Agreement.

#### **4. SECURITY AND COMPLIANCE WITH STATUTES etc**

- 4.1 NGC undertakes to maintain and provide security in relation

to User Assets in accordance with the arrangements set out in Part I of Schedule 3.

4.2 Each Party shall procure that, as between the Parties, all reasonable and necessary steps are taken, as and when necessary or desirable, in co-operation with the other Party (and, so far as applicable, with any third party), to ensure compliance with the provisions (each such provision or part thereof being in this clause 4 an "Obligation") of:-

- (i) all statutes and Directives applicable to any User Assets and/or any part (including the whole) of NGC's Land;
- (ii) any statute or Directive which may affect any other property (of whatever nature) of either Party as a result of the existence, nature, location, or manner of operation of any User Assets; and
- (iii) any statute or Directive requiring the reporting of any occurrence relating to or affecting any User Assets and/or NGC's Land (including the Reporting of Injuries Diseases and Dangerous Occurrence Regulations 1985 and the Electricity Supply Regulations 1988).

4.3 Each Party shall, so far as it is aware of the same, unless it has reasonable grounds for believing that the other Party possesses the information, keep the other Party informed of all matters relating to any Obligation or potential Obligation and/or the extent to which such Obligation may be applicable.

4.4 In the event of any dispute as to responsibility, as between the Parties, pursuant to clause 4.2, for compliance with an Obligation, that responsibility shall be allocated, so far as practicable, on the basis that:-

- (i) each Party shall refrain from taking or permitting any act or omission which would prevent compliance with an Obligation; and
- (ii) positive action required in relation to a Party's property as a consequence of the existence, nature, location or manner of operation of that property or any other property of that Party shall be the responsibility of that Party, and, to the extent that such action is required in respect of or affecting any property of the other Party (or property of a third party located in or on that other Party's Land), such action may be taken with the prior approval of that other Party (such approval, subject to (i) above, not to be unreasonably withheld or delayed).

4.5 The provisions for safety co-ordination between the Parties contained in Part II of Schedule 3 shall apply.

## **5. RELOCATIONS**

5.1 At any time and from time to time during the term of this Agreement, NGC may with the prior written consent of User (such consent not to be unreasonably withheld or delayed) require User to relocate any User Assets either to a different location on the NGC Land or to User's or a third party's land, such consent to be sought and given or refused in accordance with the following procedure:-

5.1.1 NGC shall serve a written notice on User, which notice shall specify:-

- (a) the User Assets which NGC wishes to be relocated;
- (b) the reasons for such wish;
- (c) the proposed new location for such User Assets; and



(d) the timing of the carrying out of such relocation.

5.1.2 User shall within one month of receipt of any such notice (or such longer period as shall be reasonably necessary) serve a counter notice stating:-

(a) whether or not in its reasonable opinion such Relocation Proposal is acceptable to it;

(b) if the Relocation Proposal is not acceptable to User, the grounds for such opinion and the terms of any alternative proposal (the "Alternative Relocation Proposal") covering so far as relevant the matters referred to in items (a) - (d) of clause 5.1.1 which would be acceptable to User; and

(c) in respect of the Relocation Proposal (if accepted) or of any Alternative Relocation Proposal, the costs likely to be incurred in connection with considering the Relocation Proposal or the Alternative Relocation Proposal and effecting the said relocation of the User Assets and the proper and reasonable costs of relocating any other equipment that may be necessary as a result of the relocation of those User Assets and any consequential losses including payments to third parties incurred as a result of the relocation of those User Assets and the proposed manner and timing of payment of the same by NGC.

5.1.3 If within one month of the date of such counter notice (or such longer period as shall be reasonably necessary) NGC has not withdrawn the Relocation Proposal and the Parties have not agreed upon it or the Alternative Relocation Proposal (if any) or a variation of either of

them (such agreement to include agreement on the costs referred to in item (c) of clause 5.1.2) the matter shall be dealt with in accordance with Clause 10.

5.2 Upon approval or settlement of any Relocation Proposal, Alternative Relocation Proposal or variation thereof pursuant to clause 5.1, User shall (conditionally upon it being able to obtain all necessary licences and consents which it will use reasonable endeavours to do) relocate or procure the relocation of the relevant User Assets as quickly as reasonably practicable (having regard to, amongst other things, technical and operational requirements and to the availability of all necessary licences and consents).

5.3 NGC shall render all reasonable assistance to User in connection with such relocation licences and consents and pay to User all costs referred to in item (c) of clause 5.1.2 as agreed or settled pursuant to clause 5.1 provided that all reasonable endeavours are used to minimise such costs and in the event that a Relocation Proposal is withdrawn or consent thereto is reasonably withheld pursuant to clause 5.1, NGC shall pay to User all costs reasonably incurred by User in connection with considering the Relocation Proposal and any counter notice.

5.4 Such of the provisions of this Agreement as are appropriate and relevant (including the provisions of this clause 5), shall continue to apply to any relocated User Assets.

## **6. REMOVALS**

6.1 In the event that there shall cease to be any Supplemental Connection Agreement relating to any User Assets on NGC's Land User shall remove all

User Assets from NGC's Land in accordance with the provisions relating thereto contained in the Supplemental Connection Agreement.

- 6.2 Where User is obliged to remove any User Assets from NGC's Land, under this Clause 6, and fails to do so in accordance with the relevant provisions, (whether they be contained in this clause 6, clause 3 or clause 5) NGC shall be entitled to remove those User Assets to land belonging to User and User shall provide all reasonable assistance to enable NGC safely so to do and shall pay and reimburse to NGC all costs and expenses reasonably incurred by NGC in so doing.

## **7. RIGHTS OF ACCESS**

- 7.1 A Right of Access includes the right to bring on to NGC's Land such vehicles, plant, machinery and maintenance or construction materials as shall be reasonably necessary for the Permitted Purpose.
- 7.2 A Right of Access given to User may be exercised by any person, including third party contractors, reasonably nominated from time to time by User. To the extent (if any) that any particular authorisation or clearances may be required to be given by NGC and the procedures for giving and obtaining the same are not for the time being stipulated in arrangements made pursuant to clause 7.3, the same shall be given within a reasonable time from the date of the request therefor, save in the case of emergency in which case it shall be given without delay.
- 7.3 User shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable,

to facilitate the safe exercise by it of any Right of Access with the minimum of disruption, disturbance or inconvenience to NGC. Such arrangements and provisions shall provide for NGC to have the right to make directions or regulations from time to time in relation to a specified matter. Matters to be covered by such arrangements and/or provision shall include:-

- (i) the identification of any relevant User Assets;
- (ii) the particular access routes applicable to the land in question having particular regard for the weight and size limits on those routes;
- (iii) any limitations on times of exercise of a Right of Access;
- (iv) any requirements as to prior notification and as to authorisation or security clearance of individuals exercising such Rights of Access, and procedures for obtaining the same;
- (v) the means of communication between the Parties and all employees and/or contractors who may be authorised from time to time by User to exercise a Right of Access of any relevant directions or regulations made by NGC;
- (vi) the identification of and arrangements applicable to Emergency Personnel.
- (vii) Any limitation or restriction on the exercise of such Right of Access to the extent that in the circumstances is reasonable

7.4 User shall procure that any such arrangements and/or provisions (or directions or regulations issued by NGC pursuant thereto) made from time to time between the Parties shall be observed and performed by it and all persons authorised by it to exercise any Right of Access.

7.4.1 User shall procure that all reasonable steps are taken in the exercise of any Right of Access to:-

- (a) avoid or minimise damage to NGC's Land, or any other property thereon or therein;
- (b) cause as little disturbance and inconvenience as possible to NGC or other occupier of NGC's Land.

And shall promptly make good any damage caused to NGC's Land and/or such other property in the course of the exercise of such rights and shall indemnify NGC against all actions, claims, proceedings, losses, costs and demands arising out of such exercise.

7.4.2 Subject to clause 7.4.1, all such rights shall be exercisable free of any charge or payment of any kind.

7.5 Subject to any contrary arrangements for the time being made under clause 7.3,

7.5.1 a Right of Access for operation or inspection shall be available without prior notice;

7.5.2 a Right of Access for the purpose of maintenance, testing or repair of HV apparatus shall only be exercisable on the giving of at least seven days prior written notice to NGC except in the case of loss of generation or other emergency (in which event NGC shall render all possible assistance in procuring that the Right of Access shall be exercisable as soon as possible); and

7.5.3 a Right of Access for the purpose of Modifying any User Assets shall be exercisable only after two weeks prior written notice to NGC.

## **8. SERVICES AND USE OF ASSETS**

- 8.1 Subject as hereinafter provided, in relation to each Facility Asset, NGC shall, if required by User, make the Facility Asset in question available for use by User to such extent as is necessary for the purposes of User's undertaking but not so as to prejudice the use now or hereafter of such Facility Asset by NGC for its undertaking.
- 8.2 Subject as hereinafter provided, in relation to each Services, NGC shall, if required by User, provide the same to User. Such provision shall be of such a quality and quantity and shall be provided at such times as User shall reasonably request. NGC shall not be required to exceed the level of quality or quantity of the Services as are anticipated by the Parties at the date of this Agreement, unless specifically agreed otherwise between the Parties.
- 8.3 Where the use of any Facility Asset is made available or such Services are supplied as aforesaid, the Parties shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable between the local personnel employed by each of them in that regard, such arrangements to include:-
- 8.3.1 the identification of the Facility Asset and/or Services in question including (where relevant) the extent of their availability;
  - 8.3.2 the hours during which such use or provision shall be allowed or made;
  - 8.3.3 any requirements as to notification of use or call for supply or temporary suspension thereof;
  - 8.3.4 any requirements as to authorisation or security clearance of individuals and the procedures for obtaining the same; and

8.3.5 any safety requirements;

8.4 The provision of use of the Facility Asset listed in Schedule 4, Part One and the supply of the Services listed in Schedule 5, Part One shall not be terminated unless User ceases to require the Facility Asset or Services for its own use in which case the supply of the Services or use of the Facility Asset may be terminated by not less than one year's notice in writing;

8.5 The provision of use of the Facility Assets listed in Schedule 4, Part Two and the supply of the Services listed in Schedule 5, Part Two shall continue until terminated by not less than six months notice in writing by either Party. NGC shall maintain the Facility Asset in accordance with Good Industry Practice.

## **9. NON-INTERFERENCE**

9.1 NGC agrees that neither it nor its agents, employees and invitees will interfere in any way with any of User Assets without the consent of User. For the purposes of this clause "interfere" shall include:-

9.1.1 disconnecting or altering the connection of any User Assets to any system of cables, foundations, pipes, drains or other media to which it may be connected from time to time or to prevent supply of any substance or thing through such connected system;

9.1.2 affixing or removing any item or substance of any nature whatsoever to or from any User Assets;

9.1.3 damaging any User Assets;

9.1.4 allowing any other person to interfere with any User Assets;

9.1.5 alter any meters or settings on any User Assets.

9.1.6 the obstruction of access to any User Assets.

9.2 The obligations contained in this clause 9 shall be suspended to the extent that emergency action is taken by Emergency Personnel in good faith to protect the health and safety of persons or to prevent damage to property. All reasonable care shall be taken in the course of such emergency action. When the emergency has ended, any damaged property will be reinstated by User, save for damage occurring by reason of lack of reasonable care in the course of the emergency action taken by NGC which shall be the responsibility of NGC

## **10. DISPUTE RESOLUTION**

10.1 Any dispute arising under this Agreement between location managers of the Parties shall, if not resolved within 14 days of first arising, be referred at the instance of either party to the respective Line Managers, or those fulfilling a similar function whether or not so called, of NGC and User who shall use all reasonable endeavours to resolve the matter in dispute within one month.

10.2 Save where expressly stated in this Agreement to the contrary (including the procedure for initial dispute resolution contained in clause 10.1) and subject to any contrary provision of the Act, any Licence, or the Regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the Parties shall (subject to any relevant initial dispute resolution procedures referred to in Clause 10.1 having been exhausted) be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Supply Industry Arbitration Association in force from time to time.

10.3 Whatever the nationality residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England shall be the



proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Acts 1950 (notwithstanding anything in Section 34 thereof) to 1979 (including any modification, extension, replacement or re-enactment thereof for the time being in force) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

10.4 Subject always to sub-clause 10.5 below, if any tariff customer (as defined in Section 22(4) of the Act) brings any legal proceedings in any court (as defined in the Rules of the Supreme Court 1965 and in the County Courts Act 1984) against one or more parties, any of which is a Party (“the Defendant Contracting Party”) and the Defendant Contracting Party wishes to make a Third Party Claim (as defined in sub-clause 10.5 below) against the other Party (“the Other Party”) which would but for this sub-clause have been a dispute or difference referred to arbitration by virtue of sub-clause 10.3 above then, notwithstanding the provisions of sub-clause 10.3 above which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the tariff customer and the Defendant Contracting Party but also between either or both of them and the Other Party whether by way of third party proceedings (pursuant to the Rules of the Supreme Court 1965 or the County Court Rules 1981) or otherwise as may be ordered by the Court.

10.5 For the purposes of this clause Third Party Claim shall mean:-

10.5.1 any claim by a Defendant Contracting Party against the Other Party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or

10.5.2 any claim by a Defendant Contracting Party against the Other Party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claim by the tariff customer; or

10.5.3 any requirement by a Defendant Contracting Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the tariff customer and the Defendant Contracting Party but also as between either or both of them and the Other Party (whether or not already a party to the legal proceedings).

10.6 Sub-Clause 10.4 above shall apply only if at the time the legal proceedings are commenced no arbitration has been commenced between the Defendant Contracting Party and the Other Party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim. The tribunal in which any arbitration has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

## **11. GOVERNING LAW AND JURISDICTION**

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law.

11.2 Subject and without prejudice to clause 10 and to clause 11.4 the Parties irrevocably agree that [only](#) the courts of England [and Wales and the courts of Scotland](#) are to have ~~exclusive~~ jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 11 referred to as

“Proceedings”) arising out of or in connection with this Agreement may be brought in such courts.

11.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause 11 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the ~~English~~ courts [of England and Wales or the courts of Scotland](#) shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

11.4 For the avoidance of doubt nothing contained in the foregoing provisions of this clause 11 shall be taken as permitting a Party to commence Proceedings in the courts where this Agreement otherwise provides for proceedings to be referred to arbitration.

## 12. **CONFIDENTIALITY**

12.1 For the purposes of this Clause 12 except where the context otherwise requires:-

12.1.1 “Authorised Recipient”, in relation to any Protected Information, means any Business Person who, before the Protected Information had been divulged to him by NGC or any subsidiary of NGC, had been informed of the nature and effect of this clause 12 and who requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities;

12.1.2 “Business Person” means any person who is a Main Business Person, or a Corporate Functions Person and “Business Personnel” shall be construed accordingly.

12.1.3 “Confidential Information” means all data and other information supplied to User under the provisions of this Agreement.

12.1.4 “Corporate Functions Person” means any person who:-

- (a) is a Authority of NGC; or
- (b) is an employee of NGC or any of its subsidiaries carrying out any administrative, finance or other corporate services of any kind which in part relate to the Main Business; or
- (c) is engaged as an agent of or adviser to or performs work in relation to or services for the Main Business;

12.1.5 “Main Business” means any business of NGC or any of its associates;

12.1.6 “Main Business Person” means any employee of NGC or any Authority or employee of its subsidiaries who is engaged solely in the Main Business and “Main Business Personnel” shall be construed accordingly;

12.1.7 “Permitted Activities” means activities carried on for the purposes of the Main Business;

12.1.8 “Protected Information” means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to this Agreement unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information, that the said information is not to be regarded as Protected Information;

## 12.2 Confidentiality for NGC and its Subsidiaries

NGC and its subsidiaries in each of their capacities in this Agreement shall secure that Protected Information is not:-

12.2.1 divulged by Business Personnel to any person unless that person is an Authorised Recipient;

12.2.2 used by Business Personnel for the purposes of obtaining for NGC or any of its subsidiaries or for any other person:-

- (a) any electricity licence; or
- (b) any right to purchase or otherwise require, or to distribute, electricity including by means of an electricity purchase contract (as defined in the NGC Transmission Licence); or
- (c) any contract or arrangement for the supply of electricity to customers or suppliers; or

- (d) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a supplier; and

12.2.3 used by Business Personnel for the purpose of carrying on any activities other than Permitted Activities except with the consent in writing of the Party to whose affairs such Protected Information relates.

12.3 Nothing in this Clause 12 shall apply: -

12.3.1 to any Protected Information which, before it is furnished to Business Personnel is in the public domain;

12.3.2 to any Protected Information which, after it is furnished to Business Personnel:-

- (a) is acquired by NGC or any subsidiary of NGC in circumstances in which this Clause 12 does not apply; or
- (b) is acquired by NGC or any subsidiary of NGC in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
- (c) enters the public domain otherwise than as a result of a breach by NGC or any subsidiary of NGC of its obligations in this Clause 12; or

12.3.3 to the disclosure of any Protected Information to any person if NGC or any subsidiary is required or permitted to make such disclosure to such person:-

- (a) in compliance with the duties of NGC or any associate under the Act or any other requirement of a Competent Authority; or

**CUSC Implementation**

- (b) in compliance with the conditions of the NGC Transmission Licence or any document referred to in the NGC Transmission Licence with which NGC is required to comply; or
- (c) in compliance with any other requirement of law; or
- (d) in response to a requirement of any recognised stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (e) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal; or

12.3.4 to any Protected Information to the extent that NGC or any of its subsidiaries is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code and the Fuel Security Code) with the Party to whose affairs such Protected Information relates.

12.4 NGC and its subsidiaries may use all and any information or data supplied to or acquired by it, from or in relation to the other Party to this Agreement in performing Permitted Activities including for the following purposes:-

- 12.4.1 the operation and planning of the ~~NGC~~ GB Transmission System;
- 12.4.2 the calculation of charges and preparation of offers of terms for connection to or use of the ~~NGC~~ GB Transmission System;
- 12.4.3 the operation and planning of the Ancillary Services Business (as defined in the NGC Transmission Licence) and the calculation of charges therefor;

12.4.4 the operation of the Settlements Business (as defined in the NGC Transmission Licence);

12.4.5 the provision of information under ~~the British Grid Systems Agreement and~~ the EdF Protocol;

and may pass the same to subsidiaries of NGC which carry out such activities and the Parties hereto agree to provide all information to NGC and its subsidiaries for such purposes.

12.5 NGC undertakes that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither NGC nor any of its subsidiaries shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged to any Business Person

- (a) who has notified NGC or the relevant subsidiary of his intention to become engaged as an employee or agent of any other person (other than of NGC or any subsidiary thereof);
- (b) who is authorised by licence or exemption to generate, transmit or supply electricity.

12.6 Without prejudice to other provisions of this clause 12 NGC shall procure that any additional copies of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.



12.7 NGC undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is necessary for the proper performance of his duties.

12.8 Confidentiality for User

12.8.1 User hereby undertakes with NGC and its subsidiaries that it shall preserve the confidentiality and secrecy of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes Confidential Information except:-

- (a) in the circumstances set out in Clause 12.8.2;
- (b) to the extent expressly permitted by this Agreement; or
- (c) with the consent in writing of NGC.

12.8.2 Exceptions: the circumstances referred to in Clause 12.8.1(a) are:-

- (a) where the Confidential Information, before it is furnished to User, is in the public domain; or
- (b) where the Confidential Information, after it is furnished to User:-
  - (i) is acquired by User in circumstances in which this Clause 12 does not apply; or
  - (ii) is acquired by User in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
  - (iii) enters the public domain otherwise than as a result of a breach by User of its obligations in this Clause 12; or

- (c) if User is required or permitted to make disclosure of the Confidential Information to any person:-
  - (i) in compliance with the duties of User under the Act or any other requirement of a Competent Authority;
  - (ii) in compliance with the conditions of any Licence or any document referred to in any Licence with which User is required to comply;
  - (iii) in compliance with any other requirement of law;
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
  - (v) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal.
- (d) where Confidential Information is furnished by User to the employees, directors, agents, lenders, consultants and professional advisers of User in each case on the basis set out in Sub-Clause 12.9

12.9 With effect from the date of this Agreement User shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this Clause 12. These procedures will include:

12.9.1 the Confidential Information will be disseminated within User only on a “need to know” basis;

12.9.2 employees, Authorities, agents, lenders, consultants and professional advisers of User in receipt of Confidential Information will be made fully aware of User's obligations of confidence in relation thereto

### **13. TITLE TO ASSETS**

13.1 User acknowledges that it does not have and will not acquire any title, right or interest in NGC's Land save for such rights as are expressly granted herein or otherwise provided nevertheless that, if according to any rule of law, User could acquire any such title, right or interest in any of NGC's Land, then such title right or interest shall be held upon trust, insofar as it relates to NGC's Land, for NGC absolutely

13.2 NGC agrees that it shall not by any act or default render User Assets liable to any distress execution or other legal process, and in the event that User Assets shall become so liable, shall forthwith give notice of any such proceedings to User and shall forthwith notify any third party instituting any such process of the ownership of such User Assets.

13.3 If NGC desires to mortgage or charge NGC's Land or its interest therein on which any User Assets are located or to enter into any arrangement which, if made, might affect the rights of User expressly granted herein, then NGC shall ensure that User Assets are not and will not be subject to the rights granted therein and are not and will not be affected by the mortgage, legal charge or other agreement or arrangement, and shall give prior written notification thereof to User.

13.4 In the event that NGC shall wish to grant rights over or dispose of any interest in or change the use of NGC's Land NGC shall notify User of such wish and fully consult User in respect thereof and shall not grant such rights or make such disposal or change of use save on terms securing to the reasonable

satisfaction of that other the Rights of Access granted in respect of NGC's Land.

#### **14. LIMITATION OF LIABILITY**

14.1 Subject to sub-clauses 5.3, 6.2, 9.2, and 14.5 and save as provided in this sub-clause 14.1 and sub-clause 14.2 neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach and which resulted from:-

14.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

14.1.2 the liability of the other Party to any other person for loss arising from physical damage to the property of any person.

14.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such and any loss or liability which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

14.3 Subject to sub-clauses 5.3, 6.2, 9.2, and 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:-

14.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

14.3.2 any indirect or consequential loss; or

14.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in sub-clauses 14.1.2 and 14.2.

14.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives in the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

14.5 Save as otherwise expressly provided in this Agreement, this clause 14 insofar as it excludes or limits liability shall override any other provision in this Agreement

provided that nothing in this clause 14 shall exclude or restrict or otherwise prejudice or affect any of:-

14.5.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the Electricity Generating Licence,

the NGC Transmission Licence or the Electricity Supply Regulations 1988 or any amendment or re-enactment thereof; or

14.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such Licence as aforesaid or otherwise howsoever.

14.6 Each of the sub-clauses of this clause 14 shall:-

14.6.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

14.6.2 survive termination of this Agreement.

14.7 Each Party agrees that the Other Party holds the benefit of sub clauses 14.1, 14.2 and 14.3 above for itself and as trustee and agent for its officers, employees and agents

14.8 Each Party hereby acknowledges and agrees that the provisions of this clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **15. INTELLECTUAL PROPERTY**

All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers employees, agents or consultants during the currency of this Agreement shall vest in such Party as the sole beneficial owner thereof save where the Parties agree in writing otherwise.

## 16. **FORCE MAJEURE**

If either Party (the “Non-Performing Party”) shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein the Non-Performing Party’s obligations hereunder shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:-

- (i) the Non-Performing Party gives the other Party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence, its expected duration and the particular obligations affected by it, and continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no liabilities of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and
- (v) as soon as practicable after the event which constitutes Force Majeure the Parties shall discuss how best to continue their operations so far as possible in accordance with this Agreement.

## 17. **WAIVER**

No delay by or omission of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

## **18. NOTICES**

18.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address, telex number or facsimile number of such other Party given in Schedule 6 and marked for the attention of the person so given or to such other address, telex number and/or facsimile number and/or marked for such other attention as such other Party may from time to time specify by notice given in accordance with this clause 18 to the Party giving the relevant notice or other communication to it.

18.2 Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or telex or facsimile, and shall be deemed to have been received:-

18.2.1 in the case of delivery by hand, when delivered; or

18.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or

18.2.3 in the case of telex, on the transmission of the automatic answerback of the addressee (where such transmission occurs before 1700



hours on the day of transmission) and in any other case on the day following the day of transmission; or

18.2.4 in the case of facsimile, on acknowledgment by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

## **19. VARIATIONS**

The provisions of Schedules 1, 3, 4, 5 and 6 may be varied from time to time by written memorandum signed by an authorised officer of each of the Parties. Subject thereto no variations to this Agreement shall be effective unless made by way of supplemental deed.

## **20. OVERRIDING PROVISIONS & GOOD INDUSTRY PRACTICE**

20.1 In the event of any conflict between NGC's or User's obligations hereunder and their obligations under the Electricity Generating Licence and NGC Transmission Licence, the Act, any direction of the Secretary of State, the Authority or ruling of the Monopolies and Mergers Commission, the Grid Code, under any Connection Agreement or under any Bilateral Agreement, the provisions of the Electricity Generating Licence and NGC Transmission Licence, the Act, the Grid Code, any Connection Agreement or Bilateral Agreement, the direction of the Secretary of State, the Authority, or ruling of the Monopolies and Mergers Commission shall prevail and accordingly NGC and User respectively shall not be responsible for any failure to perform their respective obligations hereunder to the extent that any such failure is directly attributable to proper compliance with such provisions, rulings or directions.

20.2 Both parties shall observe their respective obligations hereunder in accordance with Good Industry Practice

## **21. ASSIGNMENT AND SUB-CONTRACTING**

21.1 The rights and obligations of a Party may not be assigned (otherwise than to an Affiliate or by way of a charge or an assignment by way of security) without the consent of the other Party, such consent not to be unreasonably withheld.

21.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the consent of the other. The sub-contracting by either Party of the performance of any obligations or duties under this Agreement shall not relieve such Party from the liability for performance of such obligation or duty.

## **22. ILLEGALITY AND PARTIAL INVALIDITY**

22.1 If at any time any provision of this Agreement should become or be declared unlawful, invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall be affected.

22.2 If any part of a provision of this Agreement is or becomes or is declared invalid, unlawful, illegal or unenforceable but the rest of such provision would remain valid, lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid, lawful, enforceable and effective but without affecting the meaning of legality, validity or enforceability of any other provision of this Agreement.

## **23. TERM AND TERMINATION**

This Agreement shall continue until no User Assets are on NGC's land and no Facility Assets or Services are shared or provided.

## **24. REGISTRATION AND MEMORANDUM**

24.1 Where any or all of NGC's Land is registered or User's interest therein is subject to compulsory registration at H.M. Land Registry, the parties hereto agree to apply to the Chief Land Registrar for the registration as appropriate of the rights and obligations granted by or contained in this Agreement and NGC agrees to place on deposit at H.M. Land Registry all relevant Land or Charge Certificates to enable such registration to be effected.

24.2 Where any of NGC's Land is not so registered or subject to compulsory registration, NGC shall procure within six months of the date hereof that memoranda of this Agreement are endorsed on or otherwise securely attached to the most recent conveyance (in the case of a freehold interest) or the lease under or pursuant to which they hold such land.

## **25. ENTIRE AGREEMENT**

25.1 This Agreement contains the entire agreement between the Parties with respect to the subject-matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the Parties with respect thereto and:-

- (i) each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement; but
- (ii) User acknowledges that NGC may have entered or may enter into agreements with any [Public Distribution System Operator] (as defined in the CUSC) containing similar rights and/or liabilities to those contained in this Agreement affecting NGC's Land and any assets thereon. NGC shall, when entering into such agreement with

any of the said Public Distribution System Operator, use reasonable endeavours to avoid conflicts between the provisions thereof and the provisions of this Agreement but in the event of any conflict NGC shall use all reasonable endeavours to procure that appropriate arrangements are made to settle the same to give full effect (so far as practicable) to the rights and liabilities under this Agreement and under such other agreements as aforesaid. In the event of any dispute as to such conflict and/or arrangements the dispute shall be dealt with in accordance with Clause 10.

IN WITNESS whereof this Agreement has been entered into as a Deed the day and year first above written.

**SCHEDULE 1**

**User Assets on NGC Land**

**SCHEDULE 2**

NGC's Land

[ \_\_\_\_\_ ]

### **SCHEDULE 3**

#### **Part I**

#### **Security Details (Clause 4)**

#### **NGC's Land**



#### **Part II**

#### **Plant MV LV Apparatus Safety Co-Ordination Procedures (Cl.4.5)**

(1) In this Paragraph:-

“Apparatus” means all equipment in which electrical conductors are used, supported or of which they may form a part;

“Connection Site” shall have the meaning given to it in the Grid Code;

“Safety Rules” means the rules, procedures or current arrangements for and relating to safety co-ordination across boundaries (to permit work to or testing on the System of one of the Parties which, for this to be done safely, requires isolation and/or other precautions on Plant and/ or MV and/or LV Apparatus whether at, adjacent to or remote from the location of the work or testing) which the Parties mutually agree to use their best endeavours to formulate as soon as

possible after the date of this Agreement and on the basis that any dispute as to their content shall be resolved in accordance with the provisions of Clause 10

“Low Voltage” or “LV” means a voltage not exceeding 250 volts;

“Medium Voltage” or “MV” means a voltage exceeding 250 volts but not exceeding 650 volts;

“Plant” means fixed and moveable items used in the generation and/or supply and/or transmission of electricity, other than Apparatus.

- (2) The Parties will comply with the Safety Rules and any agreed modifications thereto.
- (3) The Parties will arrange for the Safety Rules to be written down and to be implemented by the person or persons responsible on behalf of the relevant Parties for the co-ordination of safety.



**SCHEDULE 4**

**NGC OWNED FACILITY ASSETS**

Part 1

Part 2

**SCHEDULE 5**

**SHARED SERVICES PROVIDED BY NGC**

**Part 1**



**CUSC - EXHIBIT O - PART II B**

**THE CONNECTION AND USE OF SYSTEM CODE**

**INTERFACE AGREEMENTS**

**PART II B- USER ASSETS ON RTL LAND**

**CUSC - EXHIBIT O - PART II B**

DATED \_\_\_\_\_ 200[ ]

(1) [Insert name of Relevant Transmission Licensee (RTL)]

- and -

(2)

(User)

**INTERFACE AGREEMENT**

Relating to User Assets on  
RTL Land at [ ]

**I N D E X**

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“Affiliate”	in relation to User means any holding company or subsidiary of that Party or any subsidiary of a holding company of User, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of this Agreement as if such section were in force at such date;
“Apparatus”	all equipment in which electrical conductors are used, supported or of which they may form a part;
“Authority”	the Gas and Electricity Markets authority established by Section 1 of the Utilities Act 2000;
“Authorised Electricity Operator”	any person (other than NGC in its capacity as operator of the GB Transmission System) who is authorised to generate, participate in the transmission of, distribute or supply electricity and for the purposes of Standard Condition C4 of the Transmission Licence shall include any person who has made application to be so authorised which

application has not been refused and any person transferring electricity to or from Great Britain across an interconnector or who has made application for use of interconnector which has not been refused;

“Bilateral Connection Agreement”

the Bilateral Connection Agreement entered into between the User and NGC pursuant to the Connection Agreement and dated [        ];

“Connection Agreement”

the Connection and Use of System Code given contractual force by the CUSC Framework Agreement entered into by, amongst others, the User regarding, amongst other things, the connection of User’s Plant and Apparatus to the GB Transmission System and the use by the User of such system;

“Competent Authority”

the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister (including the Scottish Ministers), ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom

or the European Community;

“Connection Site” [ ];

“CUSC Framework Agreement” means the agreement of that title, in the form approved by the Secretary of State, by which the Connection Agreement is made contractually binding between the parties to that agreement, as amended from time to time with the approval of the Secretary of State;

“Customer” a person to whom electrical power is provided (whether or not he is the provider of such electrical power) other than power to meet station demand of that person;

“Directive” includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority, (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;

“Distribution System” the system consisting (wholly or

mainly) of electric lines owned or operated by any Authorised Electricity Operator and used for the distribution of electricity from grid supply points or generation sets or other entry points to the point of delivery to Customers or Authorised Electricity Operators, and includes any Remote Transmission Assets operated by such Authorised Electricity Operator and any electrical plant and meters owned or operated by the Authorised Electricity Operator in connection with the distribution of electricity, but shall not include any part of the GB Transmission System;

“Emergency Personnel”

in relation to a Party, all employees of that Party who have appropriate knowledge and experience and are recognised by that Party as being able to carry out competently and safely emergency action for the purposes of clause 9;

“Facility Asset”

those assets listed in Schedule 4

“Force Majeure”

in relation to a Party, any event or circumstance which is beyond the

reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus which could not have been prevented by Good Industry Practice, governmental restraint, Act of Parliament legislation, bye-law, and Directive (not being any order, regulation or directive under Section 32, 33, 34 or 35 of the Act) Provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“Fuel Security Code”

the document of that title designated

as such by the Secretary of State as from time to time amended;

“GB Transmission System”

the system consisting (wholly or mainly) of high voltage electric wires owned or operated by transmission licensees within Great Britain and used for the transmission of electricity from one power station to a sub-station or to another power station or between sub-stations or to or from any external interconnection and includes any electrical plant or apparatus or meters owned or operated by any transmission licensee within Great Britain in connection with the transmission of electricity but shall not include Remote Transmission Assets;

“Good Industry Practice”

in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

“Grid Code”	the document or documents produced pursuant to standard condition C14 of the NGC Transmission Licence, as from time to time revised in accordance with the NGC Transmission Licence;
“High Voltage Lines”	electric lines of a nominal voltage of or exceeding 132 kilovolts;
“HV”	of a nominal voltage exceeding 650 volts;
“Intellectual Property”	patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same is registered and including applications for registration of any of the same) and rights under licences and consents in relation to any of the same and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;
“Licence”	any licence granted pursuant to the Act;
“Location Manager”	[ ];

“Low Voltage” or “LV”	Means a voltage not exceeding 250 volts;
“Medium Voltage” or “MV”	means a voltage exceeding 250 volts but not exceeding 650 volts;
“Modification”	any alteration to or replacement of User Assets pursuant to clause 3.1 of this Agreement and “Modify” and “Modified” shall be construed accordingly;
“NGC”	National Grid Company plc;
“NGC Transmission Licence”	the licence granted to NGC under Section 6(1)(b) of the Act;
“Party”	each person for the time being and from time to time party to this Agreement and any successor(s) in title to, or permitted assign(s) of, such person;
“Permitted Purpose”	means the maintenance, inspection, testing, removal, operation, modification or repair of the User’s Assets;
“Plant”	fixed and moveable items used in the generation and/or supply and/or transmission of electricity other than



“Regulations”	Apparatus; the Electricity Safety Quality and Continuity Regulations 2002 as amended from time to time;
“Relocation Proposal”	a proposal by RTL to the User pursuant to sub-clause 5.1 for the relocation of any of the User Assets;
“Remote Transmission Assets”	any Plant and Apparatus or meters owned by NGC which (a) are embedded in a Distribution System or a user system and which are not directly connected by Plant and/or Apparatus owned by NGC to a sub- station owned by NGC and (b) are by agreement between NGC and such public distribution system operator or user under the direction and control of such public distribution system operator or user;
“Right of Access”	full right and liberty during the currency of this Agreement to enter upon and through and remain upon any part of RTL’s Land (including where relevant any land over which RTL has a right of servitude, wayleave or similar right which benefits the RTL’s Land and the use of which by User is necessary to enable it to exercise the Right of Access hereby granted) PROVIDED

	to the extent necessary for a Permitted Purpose and subject to the provisions of clause 5;
“Relevant Transmission Licensee”	means SP Transmission Limited in south of Scotland and Scottish Hydro-Electric Transmission Limited in north of Scotland;
“RTL’s Land”	the land described in Schedule 2;
“RTL Licence”	the licence granted to the RTL under Section 6 of the Act;
“Secretary of State”	has the meaning given to that term in the Act;
“Services”	In the context of Clause 8, the goods and services specified in Schedule 5;
“Site Specific Safety Rules”	the rules, procedures or current arrangements for and relating to safety co-ordination across boundaries (to permit work to or testing on the System of one of the Parties which, for this to be done safely, requires isolation and/or other precautions on Plant and/ or MV and/or LV Apparatus whether at, adjacent to or remote from the location of the work or testing) which the Parties mutually agree to use

their best endeavours to formulate as soon as possible after the date of this Agreement and on the basis that any dispute as to their content shall be resolved in accordance with the provisions of Clause 10;

“User’s Assets”

those assets listed in Schedule 1 (including any plinths or other structures (excluding buildings) to or upon which the same are affixed and to or upon which no assets of any other person are affixed and any straps, bolts or other such things for attachment thereto) as any of the same may be Modified pursuant to this Agreement;

“User’s Licence”

the licence granted to the User under Section 6 of the Act;

In this Agreement:-

- (i) unless the context otherwise requires all references to a particular clause, sub-clause, paragraph or Schedule shall be a reference to that clause, sub-clause, paragraph or Schedule in or to this Agreement;
- (ii) the table of contents and headings are inserted for convenience only and shall be ignored in construing this Agreement;

- (iii) references to the words “include” or “including” are to be construed without limitation to the generality of the preceding words;
- (iv) unless there is something in the subject matter or the context which is inconsistent therewith, any reference to an Act of Parliament or any Section thereof or Schedule thereto, or other provision thereof or any instrument, order or regulation made thereunder shall be construed at the particular time as including a reference to any modification, extension, replacement or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament; and
- (v) references to the masculine shall include the feminine and references in the singular shall include the plural and vice versa and words denoting natural persons shall include companies, corporations and any other legal entity and vice versa.

## **2. RIGHT TO INSTALL AND RETAIN ASSET**

- 2.1 Subject to sub-clause 5.1, the RTL hereby grants to User the right to install and thereafter retain and replace as provided in this Agreement User Assets on the RTL’s Land in such places as are currently proposed (subject to such variations between the date hereof and the actual date of installation as may be agreed to by the RTL) and such right shall extend to any Modified User Assets. The RTL shall maintain any shelter and/or support enjoyed by any User Assets at the date of this Agreement or, if later, when relocated on the RTL’s Land in accordance with clause 5 and grants to User a Right of Access for the

purpose of the maintenance, inspection, testing, removal, operation, modification or repair of any of User Assets.

### **3. MODIFICATIONS REPLACEMENTS AND ALTERATIONS**

3.1 User may at its own expense replace or alter any User Assets provided that:-

3.1.1 the replacement User Assets or the User Assets as so altered:-

- (i) are placed in the same or approximately the same position;
- (ii) fulfil the same or a similar purpose;
- (iii) can, where relevant, be accommodated in and on existing buildings or structures;
- (iv) do not require additional or improved facilities or services from the RTL;
- (v) do not restrict the actual and intended use of the RTL's Land and any equipment thereon or therein to any materially greater extent than the User Assets so replaced or altered; and
- (vi) are either of the same or a similar or smaller size or the alteration is effected substantially within the space occupied by such User Assets to enable the User Assets to be used up to their full capability; and

3.1.2 prior written notification has been given to the RTL.

- 3.2 If any replacement or alteration permitted by clause 3.1 shall require minor alterations or works to the existing buildings or structures housing or supporting the User Asset in question, such alterations or works may be carried out (with the prior written approval of the RTL (such approval not to be unreasonably withheld or delayed)) but at the cost of User.
- 3.3 To the extent that any of the conditions of clause 3.1 are not in RTL's reasonable opinion met in relation to any replacement or alteration, the RTL may by notice in writing require User promptly to remove such replacement or alteration and, if User fails to do so, may remove the same itself at the cost and expense of User. On such removal, User may reinstate the User Assets so replaced or altered.
- 3.4 User shall, if considering moving, replacing, or altering any User Assets, give due consideration as to whether it shall be operationally practicable, desirable and reasonably economic to move such User Assets to (or place the replacement or altered User Assets on) its own property.
- 3.5 For avoidance of doubt it is hereby agreed that any dispute between the Parties regarding this clause shall be determined in accordance with the provisions of Clause 10 of this Agreement.

#### **4. SECURITY AND COMPLIANCE WITH STATUTES etc**

- 4.1 The RTL undertakes to maintain and provide security in relation to User Assets in accordance with the arrangements set out in Part I of Schedule 3.
- 4.2 Each Party shall procure that, as between the Parties, all reasonable and necessary steps are taken, as and when necessary or desirable, in

co-operation with the other Party (and, so far as applicable, with any third party), to ensure compliance with the provisions (each such provision or part thereof being in this clause 4 an "Obligation") of:-

- (i) all statutes and Directives applicable to any User Assets and/or any part (including the whole) of the RTL's Land;
- (ii) any statute or Directive which may affect any other property (of whatever nature) of either Party as a result of the existence, nature, location, or manner of operation of any User Assets; and
- (iii) any statute or Directive requiring the reporting of any occurrence relating to or affecting any User Assets and/or the RTL's Land (including the Reporting of Injuries Diseases and Dangerous Occurrence Regulations 1985 and the Regulations).

4.3 Each Party shall, so far as it is aware of the same, unless it has reasonable grounds for believing that the other Party possesses the information, keep the other Party informed of all matters relating to any Obligation or potential Obligation and/or the extent to which such Obligation may be applicable.

4.4 In the event of any dispute as to responsibility, as between the Parties, pursuant to clause 4.2, for compliance with an Obligation, that responsibility shall be allocated, so far as practicable, on the basis that:-

- (i) each Party shall refrain from taking or permitting any act or omission which would prevent compliance with an Obligation; and

- (ii) positive action required in relation to a Party's property as a consequence of the existence, nature, location or manner of operation of that property or any other property of that Party shall be the responsibility of that Party, and, to the extent that such action is required in respect of or affecting any property of the other Party (or property of a third party located in or on that other Party's Land), such action may be taken with the prior approval of that other Party (such approval, subject to (i) above, not to be unreasonably withheld or delayed).

4.5 The provisions for safety co-ordination between the Parties contained in Part II of Schedule 3 shall apply.

## **5. RELOCATIONS**

5.1 At any time and from time to time during the term of this Agreement, the RTL may with the prior written consent of User (such consent not to be unreasonably withheld or delayed) require User to relocate any User Assets either to a different location on the RTL Land or to User's or a third party's land, such consent to be sought and given or refused in accordance with the following procedure:-

5.1.1 The RTL shall serve a written notice on User, which notice shall specify:-

- (a) the User Assets which the RTL wishes to be relocated;
- (b) the reasons for such wish;
- (c) the proposed new location for such User Assets; and
- (d) the timing of the carrying out of such relocation.



5.1.2 User shall within one month of receipt of any such notice (or such longer period as shall be reasonably necessary) serve a counter notice stating:-

- (a) whether or not in its reasonable opinion such Relocation Proposal is acceptable to it;
- (b) if the Relocation Proposal is not acceptable to User, the grounds for such opinion and the terms of any alternative proposal (the "Alternative Relocation Proposal") covering so far as relevant the matters referred to in items (a) - (d) of clause 5.1.1 which would be acceptable to User; and
- (c) in respect of the Relocation Proposal (if accepted) or of any Alternative Relocation Proposal, the costs likely to be incurred in connection with considering the Relocation Proposal or the Alternative Relocation Proposal and effecting the said relocation of the User Assets and the proper and reasonable costs of relocating any other equipment that may be necessary as a result of the relocation of those User Assets and any consequential losses including payments to third parties incurred as a result of the relocation of those User Assets and the proposed manner and timing of payment of the same by the RTL.

5.1.3 If within one month of the date of such counter notice (or such longer period as shall be reasonably necessary) the RTL has not withdrawn the Relocation Proposal and the Parties have not agreed upon it or the Alternative Relocation Proposal (if any) or a variation of either of them (such agreement to include

agreement on the costs referred to in item (c) of clause 5.1.2)  
the matter shall be dealt with in accordance with Clause 10.

5.2 Upon approval or settlement of any Relocation Proposal, Alternative Relocation Proposal or variation thereof pursuant to clause 5.1, User shall (conditionally upon it being able to obtain all necessary licences and consents which it will use reasonable endeavours to do) relocate or procure the relocation of the relevant User Assets as quickly as reasonably practicable (having regard to, amongst other things, technical and operational requirements and to the availability of all necessary licences and consents).

5.3 The RTL shall render all reasonable assistance to User in connection with such relocation licences and consents and pay to User all costs referred to in item (c) of clause 5.1.2 as agreed or settled pursuant to clause 5.1 provided that all reasonable endeavours are used to minimise such costs and in the event that a Relocation Proposal is withdrawn or consent thereto is reasonably withheld pursuant to clause 5.1, the RTL shall pay to User all costs reasonably incurred by User in connection with considering the Relocation Proposal and any counter notice.

5.4 Such of the provisions of this Agreement as are appropriate and relevant (including the provisions of this clause 5), shall continue to apply to any relocated User Assets.

## **6. REMOVALS**

6.1 In the event that there shall cease to be a Bilateral Connection Agreement relating to any User Assets on the RTL's Land User shall remove all User Assets from the RTL's Land in accordance with the

provisions relating thereto contained in the Connection Agreement and the Bilateral Connection Agreement.

- 6.2 Where User is obliged to remove any User Assets from the RTL's Land, under this Clause 6, and fails to do so in accordance with the relevant provisions, (whether they be contained in this clause 6, clause 3 or clause 5) the RTL shall be entitled to remove those User Assets to land belonging to User and User shall provide all reasonable assistance to enable the RTL safely so to do and shall pay and reimburse to the RTL all costs and expenses reasonably incurred by the RTL in so doing.

## **7. RIGHTS OF ACCESS**

- 7.1 A Right of Access includes the right to bring on to the RTL's Land such vehicles, plant, machinery and maintenance or construction materials as shall be reasonably necessary for the Permitted Purpose.
- 7.2 A Right of Access given to User may be exercised by any person, including third party contractors, reasonably nominated from time to time by User. To the extent (if any) that any particular authorisation or clearances may be required to be given by the RTL and the procedures for giving and obtaining the same are not for the time being stipulated in arrangements made pursuant to clause 7.3, the same shall be given within a reasonable time from the date of the request therefor, save in the case of emergency in which case it shall be given without delay.
- 7.3 User shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable, to facilitate the safe exercise by it of any Right of Access with the minimum of disruption, disturbance or inconvenience to the RTL. Such arrangements and provisions shall provide for the RTL to have the

right to make directions or regulations from time to time in relation to a specified matter. Matters to be covered by such arrangements and/or provision shall include:-

- (i) the identification of any relevant User Assets;
- (ii) the particular access routes applicable to the land in question having particular regard for the weight and size limits on those routes;
- (iii) any limitations on times of exercise of a Right of Access;
- (iv) any requirements as to prior notification and as to authorisation or security clearance of individuals exercising such Rights of Access, and procedures for obtaining the same;
- (v) the means of communication between the Parties and all employees and/or contractors who may be authorised from time to time by User to exercise a Right of Access of any relevant directions or regulations made by the RTL;
- (vi) the identification of and arrangements applicable to Emergency Personnel.
- (vii) Any limitation or restriction on the exercise of such Right of Access to the extent that in the circumstances is reasonable

7.4 User shall procure that any such arrangements and/or provisions (or directions or regulations issued by the RTL pursuant thereto) made from time to time between the Parties shall be observed and performed by it and all persons authorised by it to exercise any Right of Access.

7.4.1 User shall procure that all reasonable steps are taken in the exercise of any Right of Access to:-

- (a) avoid or minimise damage to the RTL's Land, or any other property thereon or therein;
- (b) cause as little disturbance and inconvenience as possible to the RTL or other occupier of the RTL's Land ;

and shall promptly make good any damage caused to the RTL's Land and/or such other property in the course of the exercise of such rights and shall indemnify the RTL against all actions, claims, proceedings, losses, costs and demands arising out of such exercise.

7.4.2 Subject to clause 7.4.1, all such rights shall be exercisable free of any charge or payment of any kind.

7.5 Subject to any contrary arrangements for the time being made under clause 7.3,

7.5.1 a Right of Access for operation or inspection shall be available without prior notice;

7.5.2 a Right of Access for the purpose of maintenance, testing or repair of HV Apparatus shall only be exercisable on the giving of at least seven days prior written notice to the RTL except in the case of loss of generation or demand or other emergency (in which event the RTL shall render all possible assistance in procuring that the Right of Access shall be exercisable as soon as possible); and

7.5.3 a Right of Access for the purpose of Modifying any User Assets shall be exercisable only after two weeks prior written notice to the RTL.

## **8. SERVICES AND USE OF ASSETS**

8.1 Subject as hereinafter provided, in relation to each Facility Asset, RTL shall, if required by User, make the Facility Asset in question available for use by User to such extent as is necessary for the purposes of User's undertaking but not so as to prejudice the use now or hereafter of such Facility Asset by the RTL for its undertaking.

8.2 Subject as hereinafter provided, in relation to each Services, the RTL shall, if required by User, provide the same to User. Such provision shall be of such a quality and quantity and shall be provided at such times as User shall reasonably request. The RTL shall not be required to exceed the level of quality or quantity of the Services as are anticipated by the Parties at the date of this Agreement, unless specifically agreed otherwise between the Parties.

8.3 Where the use of any Facility Asset is made available or such Services are supplied as aforesaid, the Parties shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable between the local personnel employed by each of them in that regard, such arrangements to include:-

8.3.1 the identification of the Facility Asset and/or Services in question including (where relevant) the extent of their availability;

- 8.3.2 the hours during which such use or provision shall be allowed or made;
  - 8.3.3 any requirements as to notification of use or call for supply or temporary suspension thereof;
  - 8.3.4 any requirements as to authorisation or security clearance of individuals and the procedures for obtaining the same; and
  - 8.3.5 any safety requirements.
- 8.4 The provision of use of the Facility Asset listed in Schedule 4, Part One and the supply of the Services listed in Schedule 5, Part One shall not be terminated unless the RTL ceases to require the Facility Asset or Services for its own use in which case the supply of the Services or use of the Facility Asset may be terminated by not less than one year's notice in writing;
- 8.5 The provision of use of the Facility Assets listed in Schedule 4, Part Two and the supply of the Services listed in Schedule 5, Part Two shall continue until terminated by not less than six months notice in writing by either Party. The RTL shall maintain the Facility Asset in accordance with Good Industry Practice.

## **9. NON-INTERFERENCE**

- 9.1 The RTL agrees that neither it nor its agents, employees and invitees will interfere in any way with any of User Assets without the consent of User. For the purposes of this clause "interfere" shall include:-
- 9.1.1 disconnecting or altering the connection of any User Assets to any system of cables, foundations, pipes, drains or other media to which it may be connected from time to time or to prevent

supply of any substance or thing through such connected system;

9.1.2 affixing or removing any item or substance of any nature whatsoever to or from any User Assets;

9.1.3 damaging any User Assets;

9.1.4 allowing any other person to interfere with any User Assets;

9.1.5 alter any meters or settings on any User Assets;

9.1.6 the obstruction of access to any User Assets.

9.2 The obligations contained in this clause 9 shall be suspended to the extent that emergency action is taken by Emergency Personnel in good faith to protect the health and safety of persons or to prevent damage to property. All reasonable care shall be taken in the course of such emergency action. When the emergency has ended, any damaged property will be reinstated by User, save for damage occurring by reason of lack of reasonable care in the course of the emergency action taken by the RTL which shall be the responsibility of the RTL.

## **10. DISPUTE RESOLUTION**

10.1 Any dispute arising under this Agreement between Location Managers of the Parties shall, if not resolved within 14 days of first arising, be referred at the instance of either party to the respective line managers, or those fulfilling a similar function whether or not so called, of the RTL and User who shall use all reasonable endeavours to resolve the matter in dispute within one month.

10.2 Save where expressly stated in this Agreement to the contrary (including the procedure for initial dispute resolution contained in clause



10.1) and subject to any contrary provision of the Act, any Licence, or the Regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the Parties shall (subject to any relevant initial dispute resolution procedures referred to in Clause 10.1 having been exhausted) be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Supply Industry Arbitration Association in force from time to time.

10.3 Whatever the nationality residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (including any modification, extension, replacement or re-enactment thereof for the time being in force) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

## **11. GOVERNING LAW AND JURISDICTION**

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law.

11.2 Subject and without prejudice to clause 10 and to clause 11.4 the Parties irrevocably agree that only the courts of England and Wales and the courts of Scotland are to have jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 11

referred to as “Proceedings”) arising out of or in connection with this Agreement may be brought in such courts.

11.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause 11 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts of England and Wales or the courts of Scotland shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

11.4 For the avoidance of doubt nothing contained in the foregoing provisions of this clause 11 shall be taken as permitting a Party to commence Proceedings in the courts where this Agreement otherwise provides for proceedings to be referred to arbitration.

## **12. CONFIDENTIALITY**

12.1 For the purposes of this Clause 12 except where the context otherwise requires:-

12.1.1 “Authorised Recipient”, in relation to any Protected Information, means any Business Person who, before the Protected Information had been divulged to him by the RTL or any subsidiary of the RTL, had been informed of the nature and effect of this clause 12 and who requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities;

- 12.1.2 “Business Person” means any person who is a Licensed Business Person, or a Corporate Functions Person and “Business Personnel” shall be construed accordingly.
- 12.1.3 “Confidential Information” means all data and other information supplied to User under the provisions of this Agreement.
- 12.1.4 “Corporate Functions Person” means any person who:-
- (a) is a director of the RTL; or
  - (b) is an employee of the RTL or any of its subsidiaries carrying out any administrative, finance or other corporate services of any kind which in part relate to the Licensed Business; or
  - (c) is engaged as an agent of or adviser to or performs work in relation to or services for the Licensed Business.
- 12.1.5 “Licensed Business” means any business of RTL or any of its associates authorised by its RTL Licence;
- 12.1.6 “Licensed Business Person” means any employee of the RTL or any Authority or employee of its subsidiaries who is engaged solely in its Licensed Business and “Licensed Business Personnel” shall be construed accordingly;
- 12.1.7 “Permitted Activities” means activities carried on for the purposes of the Licensed Business;
- 12.1.8 “Protected Information” means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to this Agreement unless, prior to such information

being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information, that the said information is not to be regarded as Protected Information;

## 12.2 Confidentiality for the RTL and its Subsidiaries

The RTL and its subsidiaries in each of their capacities in this Agreement shall secure that Protected Information is not:-

12.2.1 divulged by Business Personnel to any person unless that person is an Authorised Recipient;

12.2.2 used by Business Personnel for the purposes of obtaining for the RTL or any of its subsidiaries or for any other person:-

(a) any Licence; or

(b) any right to purchase or otherwise acquire, or to distribute, electricity including by means of an electricity purchase contract (as defined in the NGC Transmission Licence); or

(c) any contract or arrangement for the supply of electricity to customers or suppliers; or

(d) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a supplier.

12.2.3 used by Business Personnel for the purpose of carrying on any activities other than Permitted Activities except with the consent in writing of the Party to whose affairs such Protected Information relates.

12.3 Nothing in this Clause 12 shall apply:-

12.3.1 to any Protected Information which, before it is furnished to Business Personnel is in the public domain;

12.3.2 to any Protected Information which, after it is furnished to Business Personnel:-

(a) is acquired by the RTL or any subsidiary of the RTL in circumstances in which this Clause 12 does not apply; or

(b) is acquired by the RTL or any subsidiary of the RTL in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or

(c) enters the public domain otherwise than as a result of a breach by the RTL or any subsidiary of the RTL of its obligations in this Clause 12.

12.3.3 to the disclosure of any Protected Information to any person if the RTL or any subsidiary is required or permitted to make such disclosure to such person:-

(a) in compliance with the duties of the RTL or any associate under the Act or any other requirement of a Competent Authority; or

(b) in compliance with the conditions of its RTL Licence or any document referred to in its RTL Licence with which the RTL is required to comply; or

(c) in compliance with any other requirement of law; or

- (d) in response to a requirement of any recognised stock exchange or regulatory authority or the Panel on Take-overs and Mergers; or
- (e) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal.

12.3.4 to any Protected Information to the extent that the RTL or any of its subsidiaries is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Grid Code and the Fuel Security Code) with the Party to whose affairs such Protected Information relates.

12.4. The RTL and its subsidiaries may use all and any information or data supplied to or acquired by it, from or in relation to the other Party to this Agreement in performing its Permitted Activities and may pass the same to subsidiaries of the RTL which carry out such activities and the User hereto agrees to provide all information to the RTL and its subsidiaries for such purposes.

12.5 NGC and its subsidiaries may use all and any information or data supplied to or acquired by it from the RTL pursuant to Clause 12.3.3 in relation to this Agreement in performing its activities under the NGC Transmission Licence including for the following purposes:

12.5.1 the operation and planning of the GB Transmission System;

12.5.2 the calculation of charges and preparation of offers of terms for connection to or use of the GB Transmission System;

and the User agrees to provide all information to the RTL and its subsidiaries for such purposes.

12.6 The RTL undertakes that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither the RTL nor any of its subsidiaries shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged to any Business Person:

- (a) who has notified the RTL or the relevant subsidiary of his intention to become engaged as an employee or agent of any other person (other than of the RTL or any subsidiary thereof);
- (b) who is authorised by licence or exemption to generate or supply electricity.

12.7 Without prejudice to other provisions of this clause 12 the RTL shall procure that any additional copies of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.

12.8 The RTL undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is necessary for the proper performance of his duties.

#### 12.9 Confidentiality for User

12.9.1 User hereby undertakes with the RTL and its subsidiaries that it shall preserve the confidentiality and secrecy of, and not directly

or indirectly reveal, report, publish, disclose or transfer or use for its own purposes Confidential Information except:-

- (a) in the circumstances set out in Clause 12.9.2;
- (b) to the extent expressly permitted by this Agreement; or
- (c) with the consent in writing of the RTL.

12.9.2 Exceptions: the circumstances referred to in Clause 12.9.1(a) are:-

- (a) where the Confidential Information, before it is furnished to User, is in the public domain; or
- (b) where the Confidential Information, after it is furnished to User:-
  - (i) is acquired by User in circumstances in which this Clause 12 does not apply; or
  - (ii) is acquired by User in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
  - (iii) enters the public domain otherwise than as a result of a breach by User of its obligations in this Clause 12; or
- (c) if User is required or permitted to make disclosure of the Confidential Information to any person:-



- (i) in compliance with the duties of User under the Act or any other requirement of a Competent Authority;
  - (ii) in compliance with the conditions of any Licence or any document referred to in any Licence with which User is required to comply;
  - (iii) in compliance with any other requirement of law;
  - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
  - (v) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal; or
- (d) where Confidential Information is furnished by User to the employees, directors, agents, lenders, consultants and professional advisers of User in each case on the basis set out in Sub-Clause 12.10.

12.10 With effect from the date of this Agreement User shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this Clause 12. These procedures will include:

12.10.1 the Confidential Information will be disseminated within User only on a “need to know” basis;

12.10.2 employees, Authorities, agents, lenders, consultants and professional advisers of User in receipt of Confidential

Information will be made fully aware of User's obligations of confidence in relation thereto.

**13. TITLE TO ASSETS**

- 13.1 User acknowledges that it does not have and will not acquire any title, right or interest in the RTL's Land save for such rights as are expressly granted herein or otherwise provided nevertheless that, if according to any rule of law, User could acquire any such title, right or interest in any of the RTL's Land, then the User undertakes to do all that is required to transfer such right or interest to the RTL to ensure that the RTL shall not, by reason of such right or interest arising, have its full rights in such land diminished (and in the interim to hold such rights in trust for the RTL) and shall if requested by the RTL, be obliged forthwith to establish trust arrangements valid under Scottish law so as to ensure that any such right or interest shall be held on behalf of RTL .
- 13.2 The RTL agrees that it shall not by any act or default render User Assets liable to any distress execution or other legal process, and in the event that User Assets shall become so liable, shall forthwith give notice of any such proceedings to User and shall forthwith notify any third party instituting any such process of the ownership of such User Assets.
- 13.3 If the RTL desires to mortgage or charge RTL's Land or its interest therein on which any User Assets are located or to enter into any arrangement which, if made, might affect the rights of User expressly granted herein, then the RTL shall ensure that User Assets are not and will not be subject to the rights granted therein and are not and will not be affected by the mortgage, legal charge or other agreement or arrangement, and shall give prior written notification thereof to User.

13.4 In the event that the RTL shall wish to grant rights over or dispose of any interest in or change the use of the RTL's Land the RTL shall notify User of such wish and fully consult User in respect thereof and shall not grant such rights or make such disposal or change of use save on terms securing to the reasonable satisfaction of that other the Rights of Access granted in respect of the RTL's Land.

**14. LIMITATION OF LIABILITY**

14.1 Subject to sub-clauses 5.3, 6.2, 9.2, and 14.5 and save as provided in this sub-clause 14.1 and sub-clause 14.2 neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach and which resulted from:-

14.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

14.1.2 the liability of the other Party to any other person for loss arising from physical damage to the property of any person.

14.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such and any loss or liability which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

- 14.3 Subject to sub-clauses 5.3, 6.2, 9.2, and 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:-
- 14.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
  - 14.3.2 any indirect or consequential loss; or
  - 14.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in sub-clauses 14.1.2 and 14.2.
- 14.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives in the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.
- 14.5 Save as otherwise expressly provided in this Agreement, this clause 14 insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause 14 shall exclude or restrict or otherwise prejudice or affect any of:-

14.5.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the User's Licence, the RTL's Licence or the Regulations or any amendment or re-enactment thereof; or

14.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence as aforesaid or otherwise howsoever.

14.6 Each of the sub-clauses of this clause 14 shall:-

14.6.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

14.6.2 survive termination of this Agreement.

14.7 Each Party agrees that the Other Party holds the benefit of sub clauses 14.1, 14.2 and 14.3 above for itself and as trustee and agent for its officers, employees and agents

14.8 Each Party hereby acknowledges and agrees that the provisions of this clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

## **15. INTELLECTUAL PROPERTY**

All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers, employees, agents or consultants during the currency of this

Agreement shall vest in such Party as the sole beneficial owner thereof save where the Parties agree in writing otherwise.

**16. FORCE MAJEURE**

If either Party (the “Non-Performing Party”) shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein the Non-Performing Party’s obligations hereunder shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:-

- (i) the Non-Performing Party gives the other Party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence, its expected duration and the particular obligations affected by it, and continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no liabilities of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and
- (v) as soon as practicable after the event which constitutes Force Majeure the Parties shall discuss how best to continue their

operations so far as possible in accordance with this Agreement.

**17. WAIVER**

No delay by or omission of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

**18. NOTICES**

18.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address, telex number or facsimile number of such other Party given in Schedule 6 and marked for the attention of the person so given or to such other address, telex number and/or facsimile number and/or marked for such other attention as such other Party may from time to time specify by notice given in accordance with this clause 18 to the Party giving the relevant notice or other communication to it.

18.2 Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or telex or facsimile, and shall be deemed to have been received:-

- 18.2.1 in the case of delivery by hand, when delivered; or
- 18.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or
- 18.2.3 in the case of telex, on the transmission of the automatic answerback of the addressee (where such transmission occurs before 1700 hours on the day of transmission) and in any other case on the day following the day of transmission; or
- 18.2.4 in the case of facsimile, on acknowledgment by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

## **19. VARIATIONS**

The provisions of Schedules 1, 3, 4, 5 and 6 may be varied from time to time by written memorandum signed by an authorised officer of each of the Parties. Subject thereto no variations to this Agreement shall be effective unless made by way of supplemental deed.

## **20. OVERRIDING PROVISIONS & GOOD INDUSTRY PRACTICE**

- 20.1 In the event of any conflict between the RTL's or User's obligations hereunder and their obligations under the User's Licence and RTL's Licence, the Act, any direction of the Secretary of State, the Authority or ruling of the Competition Commission, the Grid Code, Connection Agreement or the Bilateral Connection Agreement, the provisions of the User's Licence and RTL's Licence, the Act, the Grid Code, Connection



Agreement or Bilateral Connection Agreement, the direction of the Secretary of State, the Authority, or ruling of the Competition Commission shall prevail and accordingly the RTL and User respectively shall not be responsible for any failure to perform their respective obligations hereunder to the extent that any such failure is directly attributable to proper compliance with such provisions, rulings or directions.

20.2 Both parties shall observe their respective obligations hereunder in accordance with Good Industry Practice

## **21. ASSIGNMENT AND SUB-CONTRACTING**

21.1 The rights and obligations of a Party may not be assigned (otherwise than to an Affiliate or by way of a charge or an assignment by way of security) without the consent of the other Party, such consent not to be unreasonably withheld.

21.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the consent of the other. The sub-contracting by either Party of the performance of any obligations or duties under this Agreement shall not relieve such Party from the liability for performance of such obligation or duty.

## **22. ILLEGALITY AND PARTIAL INVALIDITY**

22.1 If at any time any provision of this Agreement should become or be declared unlawful, invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall be affected.

22.2 If any part of a provision of this Agreement is or becomes or is declared invalid, unlawful, illegal or unenforceable but the rest of such provision would remain valid, lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid, lawful, enforceable and effective but without affecting the meaning of legality, validity or enforceability of any other provision of this Agreement.

**23. TERM AND TERMINATION**

This Agreement shall continue until no User Assets are on the RTL's land and no Facility Assets or Services are shared or provided.

**24. REGISTRATION AND MEMORANDUM**

24.1 Where any or all of the RTL's Land is registered or User's interest therein is subject to compulsory registration at the land register of Scotland, the parties hereto agree to apply to the Chief Land Registrar for the registration as appropriate of the rights and obligations granted by or contained in this Agreement and the RTL agrees to place on deposit at H.M. Land Registry all relevant Land or Charge Certificates to enable such registration to be effected.

24.2 Where any of the RTL's Land is not so registered or subject to compulsory registration, the RTL shall procure within six months of the date hereof that memoranda of this Agreement are endorsed on or otherwise securely attached to the most recent conveyance (in the case of a heritable interest) or the lease under or pursuant to which they hold such land.

**25. ENTIRE AGREEMENT**

25.1 This Agreement contains the entire agreement between the Parties with respect to the subject-matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the Parties with respect thereto and:-

- (i) each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement; but
- (ii) User acknowledges that the RTL may have entered or may enter into agreements with other parties who hold a licence containing similar rights and/or liabilities to those contained in this Agreement affecting the RTL's Land and any assets thereon. The RTL shall, when entering into such agreement with any such party, use reasonable endeavours to avoid conflicts between the provisions thereof and the provisions of this Agreement but in the event of any conflict the RTL shall use all reasonable endeavours to procure that appropriate arrangements are made to settle the same to give full effect (so far as practicable) to the rights and liabilities under this Agreement and under such other agreements as aforesaid. In the event of any dispute as to such conflict and/or arrangements the dispute shall be dealt with in accordance with Clause 10.

IN WITNESS whereof this Agreement has been entered into as a Deed the day and year first above written.

**SCHEDULE 1**

**User's Assets on RTL Land**

**SCHEDULE 2**

RTL's Land

### **SCHEDULE 3**

#### Part I

#### Security Details (Clause 4.1)

#### Part II

#### Plant MV LV Apparatus Safety Co-Ordination Procedures (Cl.4.5)

- (1) The Parties will comply with the Site Specific Safety Rules and any agreed modifications thereto.
- (2) The Parties will arrange for the Site Specific Safety Rules to be written down and to be implemented by the person or persons responsible on behalf of the relevant Parties for the co-ordination of safety.

**SCHEDULE 4**  
**RTL OWNED FACILITY ASSETS**

Part One

Part Two

**SCHEDULE 5**

**SHARED SERVICES PROVIDED BY RTL**

Part One

Part Two



**SCHEDULE 6**

Addresses, Fax Nos etc (Cl. 18.)

[Insert details of RTL]

[       ]

Telephone:

Facsimile:

[Insert details of User]

[       ]

Telephone:

Facsimile:

**THE COMMON SEAL** of )  
**[RELEVANT TRANSMISSION LICENSEE].....** )  
was hereunto affixed in the presence of:- )

**THE COMMON SEAL** of )  
**[** )  
was hereunto affixed in the presence of:- )

**END OF SECTION O PART II B**