

Stage 03: Workgroup Report

Connection and Use of System Code (CUSC)

CMP219 'CMP192 Post Implementation Clarifications'

This proposal seeks to modify the CUSC to address drafting issues identified following the implementation of CMP192 (Arrangements for Enduring Generation User Commitment).

This document contains the conclusions of the Workgroup which formed in June 2013.

Published on: 19 September 2013



The Workgroup concludes:

that CMP219 better meets the Applicable CUSC Objectives and so should be implemented.



High Impact:

None



Medium Impact:

None



Low Impact:

Generators

What stage is this document at?

01	Initial Written Assessment
02	Workgroup Consultation
03	Workgroup Report
04	Code Administrator Consultation
05	Draft CUSC Modification Report
06	Final CUSC Modification Report

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Any Questions?

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About this document

This document is the Workgroup Report which includes responses from the Workgroup Consultation and the final conclusions of the Workgroup, including the Workgroup Vote.

Document Control

Version	Date	Author	Change Reference
0.1	10 September 2013	Code Administrator	Draft to Workgroup
0.2	19 September 2013	Code Administrator	For Submission to CUSC Panel.

1 Summary

- 1.1 This document summarises the deliberations of the Workgroup and describes the CMP219 Modification Proposal.
- 1.2 CMP219 was proposed by National Grid and submitted to the CUSC Modifications Panel for their consideration on 31 May 2013. The Panel determined that the proposal should be considered by a Workgroup and that they should report back to the CUSC Modifications Panel following a period of 4 weeks for the Workgroup Consultation. The Panel also agreed that it should be progressed under the Self-Governance route, meaning that the CUSC Panel would make a determination on whether CMP219 is approved, rather than the Authority. A Self-Governance Statement was sent to the Authority on 3 June 2013 and is included within Annex 4 of this report.
- 1.3 The Workgroup met on 18 June 2013 and the members accepted the Terms of Reference. A copy of the Terms of Reference is provided in Annex 1. The Workgroup considered the issues raised by CMP219 and worked through the Terms of Reference.
- 1.4 The Workgroup debated whether CMP219 would satisfy the Self-Governance criteria. The Workgroup's view is that CMP219 meets the Self-Governance criteria.
- 1.5 The Workgroup Consultation was published on 9 July 2013 and closed on 6 August 2013. Three responses were received. These can be found in Annex 5 of this report.
- 1.6 A final Workgroup meeting was held on 3 September 2013 and the Workgroup Members voted unanimously that CMP219 better facilitates the Applicable CUSC Objectives and so should be implemented. Further details of the vote can be found in Section 7.
- 1.7 The Workgroup Report has been prepared in accordance with the Terms of the CUSC. An electronic copy can be found on the National Grid Website, www.nationalgrid.com/uk/Electricity/Codes/, along with the CUSC Modification Proposal Form.

2 Why Change?

- 2.1 Following implementation of CMP192 (Arrangements for Enduring Generation User Commitment) on 30 March 2012 and the proposal taking effect on 1 April 2013, it was identified that the legal text needed refining to correct and clarify minor drafting issues.
- 2.2 Additionally, the text and definitions regarding CMP192 transitional arrangements have become redundant as the transitional arrangements have been completed by National Grid and are no longer needed.



Where can I find more information on CMP192?

Documentation for CMP192 can be accessed at the National Grid website at http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/amendment_archive/151-200/

3 Solution

- 3.1 CMP219 seeks to correct minor errors identified in the legal text for CMP192 and to provide clarification on points that were contained in the Final Report for CMP192 but were not apparent in the legal text.
- 3.2 A number of the changes relate to typographical errors, renumbering of paragraphs, clarification of text and the removal of redundant text.
- 3.3 Other changes relate to errors identified where certain arrangements were intended by the CMP192 Workgroup, but were subsequently omitted from the legal drafting for the new CUSC Section 15. These are explained in more detail in Section 4.

4 Summary of Workgroup Discussions

Presentation of Proposal

- 4.1 The Proposer of CMP219 presented the proposal to the Workgroup at the first meeting and the background to why it had been raised. The Proposer outlined the defects that had been identified, namely typographical errors, numbering inconsistencies, redundant text and unintended omissions in the legal text for CMP192.
- 4.2 For Issue 5, as outlined in the Proposal Form, the Proposer explained that the intention of CMP192 was that Users on both Fixed and Actual liabilities would be treated in the same way when they choose to delay their commissioning date (see Figures 1 and 2 below), i.e the cancellation charge profile would not be adjusted downwards, but would be held at the current level. However, the drafting is such that it is silent for Users on Actual and only specifically addresses Users on Fixed.
- 4.3 The Workgroup noted that smaller companies do not generally have a Parent Company Guarantee to cover any securities that they may be required to provide. Therefore they must have the security raised in some other way, such as via a Letter of Credit from a financial institution or through putting up sufficient funds to cover 100% of the potential liability, which in turn affects the materiality. It was noted that security is only at risk if there is a delay or cancellation, otherwise the materiality is the cost of obtaining sufficient security for a defined period of time. The Workgroup agreed that the issue of levels of appropriate security is not in the remit of this proposal as it does not address the same defect.

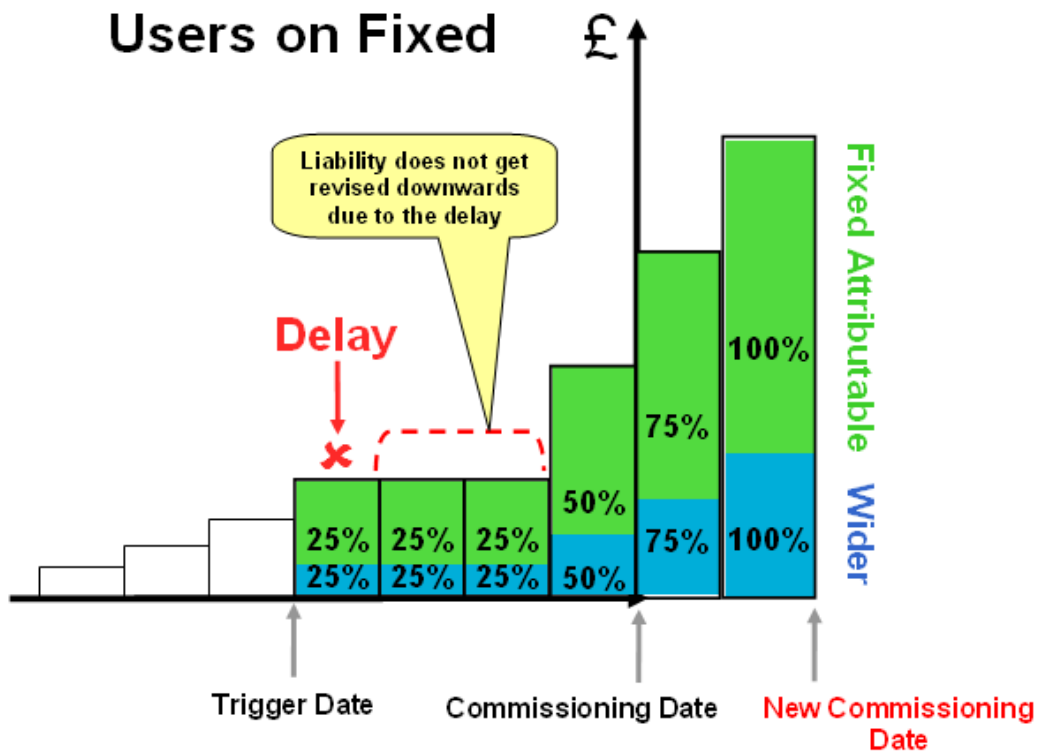


Figure 1

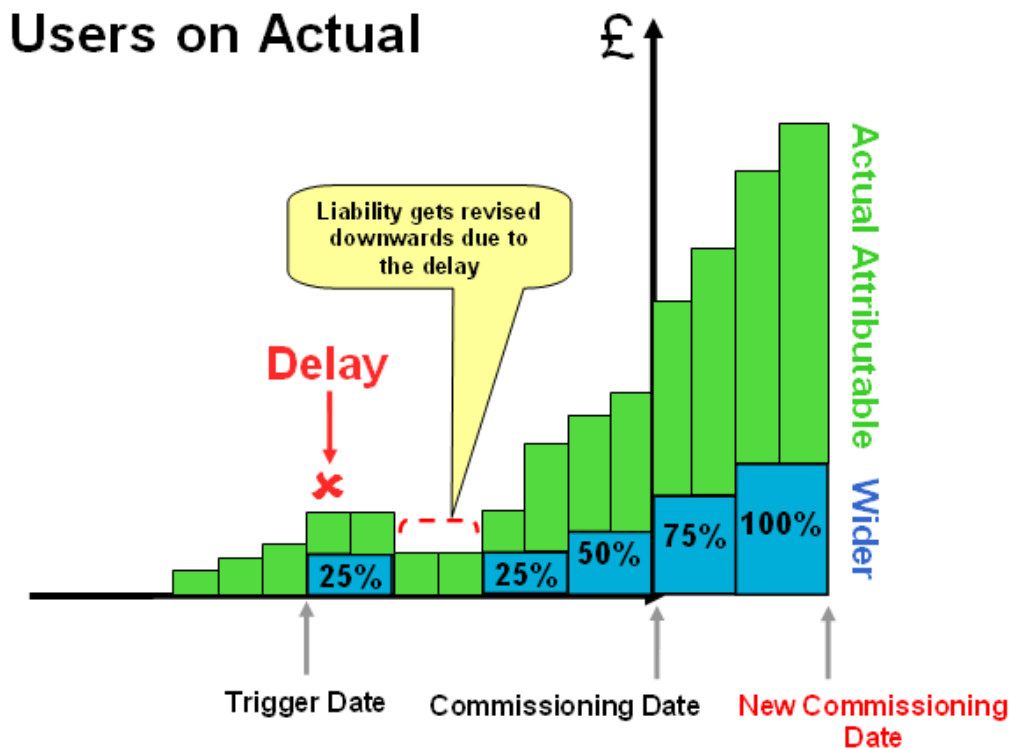


Figure 2

4.4 The Proposer explained Issue 6 as described in the proposal. Users on Fixed liabilities have a generic liability pre-trigger date of either £1,2,3/kW depending upon year. It was intended that this be capped at the first cancellation charge profile year, i.e. 25% of the Attributable Works Cancellation Amount. The methodology implemented as a result of CMP192 only applies this cap to the year normally preceding the trigger date, i.e. £3/kW and not to the years where this amount is £1/kW and £2/kW as shown in the figure below.

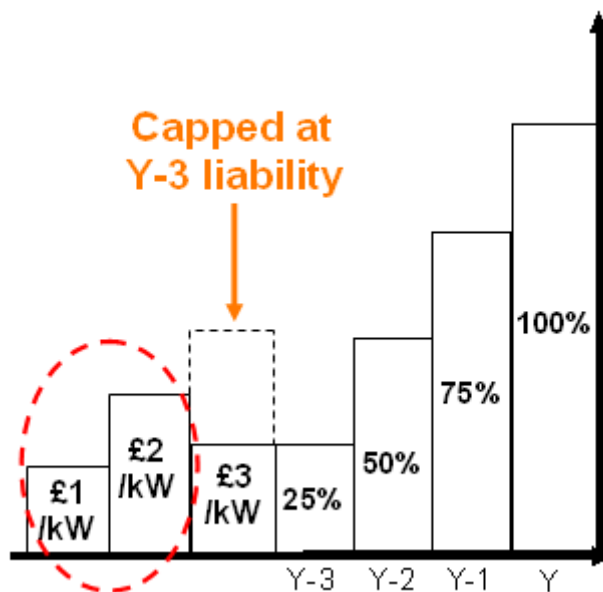


Figure 3

- 4.5 The Proposer noted that this is currently only relevant to Users who had a signing on date of 1 April 2012 or after, as those who signed prior to that date are already on £3/kW.
- 4.6 One Workgroup Member advised that they were already receiving this reduction in their required liability, and it was confirmed that National Grid are seeking to work to the intent of CMP192 on an individual project basis, as far as possible. The Proposer advised that the effect of this change is small due to the number of Users affected, and the fact that the intention of CMP192 is already being adhered to.

Terms of Reference:

a) Analyse the materiality associated with issues 5 and 6, described in the modification proposal form.

- 4.7 In the first meeting the Proposer presented analysis to illustrate the materiality of the proposal with respect to issue 5. If a user on Actual delays their commissioning date by 1 year at any stage after the Trigger Date then it results in a reduction of 25% of the Wider Liability for 1 year. This increases to up to 100% if the delay is 4 years or more. This is due to the Cancellation Charge Profile where year on year change is 25%, building up to 100% in the commissioning year.
- 4.8 The materiality associated with the proposed change is dependant on a number of factors. The group noted that there is only a material effect if one or more users choose to delay their projects. They would also have to be on the Actual liability, be after the Trigger Date and not have a sufficient credit rating or parent company guarantee to cover the increase in that year. If any of these conditions is not met, the materiality of the proposal would be zero.
- 4.9 Should a user who meets all of the above criteria decide to delay their commissioning date, they would incur a cost to obtain security for the extra period due to the delay. In the tables below, the costs of obtaining the security are shown for a small and a large generator for both a 1 year delay and a 4 year delay. A figure of 4% of the security amount was used to estimate the cost of obtaining a letter of credit from a financial institution, this was taken from the CMP192 workgroup report.

1 year delay –

Generator Size	Cost of obtaining Security at 4% (£/MW)		
	Zone 1	Zone 4	Zone 15
100MW	£29,221.20	£16,358.15	£342.67
1500MW	£438,318.00	£245,372.25	£5,140.05

4 year delay –

Generator Size	Cost of obtaining Security at 4% (£/MW)		
	Zone 1	Zone 4	Zone 15
100MW	£116,884.80	£65,432.60	£1,370.68
1500MW	£1,753,272.00	£981,489.00	£20,560.20

The above figures have been calculated using the Wider Zonal Unit Liability data in the 2013/14 Wider Cancellation Charge Statement.

- 4.10 The Proposer presented analysis to illustrate the materiality of issue 6. The proposer noted that this change would only affect users who were both on Fixed liability and also who had signed Connection Agreements after 1st April 2012, assuming that the proposal is implemented in time for the 1st April 2014. Any users who had signed before this date would be on either the £3/kW liability or the Cancellation Charge Profile liability by 1st April 2014, and hence would be unaffected.
- 4.11 The proposer presented data from the latest Securities statements for the period of April-October 2013. This showed that of the 285 projects currently with signed connection agreements, the number of users on Fixed liability was 56, and out of these projects the number of projects who would be affected by the proposal is 16.
- 4.12 In terms of amounts, the liabilities for the 56 users on Fixed is approximately £71m for 2013/4. The overall benefit in reduced securities for those affected projects is approximately £4m.

b) Provide an opinion regarding progressing the modification through Self-Governance.

- 4.13 The Workgroup considered whether it was appropriate for CMP219 to follow the Self-Governance process. The group agreed that whilst some of the changes discussed could be considered material, their effect was dealt with under CMP192 which the Authority had already made a decision on. CMP219 is simply clarifying and correcting the errors that have been identified following the implementation of CMP192. The analysis presented to the group demonstrated that any further impact would be minimal. Therefore the Workgroup agreed that it is appropriate for CMP219 to be treated as Self-Governance.
- 4.14 Two respondents to the Workgroup Consultation agreed with this approach. The other respondent did not answer this question.

c) Review the proposed legal text

- 4.15 The Workgroup discussed the proposed changes to the legal text. In the first meeting the Workgroup agreed that the text provided clarity and was in line with the defect and solution outlined in the proposal. In the second meeting, the group discussed some further changes that had been suggested by respondents to the Workgroup Consultation. The proposed legal text can be found in Annex 6.
- 4.16 One respondent raised some issues arising from CMP192 in relation to Distribution Network Operators (DNOs) and embedded arrangements as they believe that there is a disparity in the security arrangements. The Workgroup agreed that this is a valid issue, but that it does not fall within the scope of CMP219 and therefore cannot be dealt with as part of this process.
- 4.17 Another respondent suggested a number of further changes in order to provide more clarity. The group discussed each of these changes and agreed with the majority of suggestions. The group felt that the other suggested revisions were not necessary or instead agreed alternative wording in order to make the wording clearer. The revised draft legal text is contained in Annex 6 of this document.

Workgroup Alternative CUSC Modifications

4.18 The Workgroup did not propose any Workgroup Alternative CUSC Modifications to the original proposal.

5 Impacts

Impact on the CUSC

- 5.1 CMP219 requires amendments to the following parts of the CUSC:
- Section 10
 - Section 11
 - Section 15
 - Schedule 2, Exhibit 3
 - Schedule 2, Exhibit 3A
 - Exhibit MM3
- 5.2 The text required to give effect to the Original Proposal is contained in Annex 6 of this document.

Impact on Greenhouse Gas Emissions

- 5.3 Neither the proposer nor the Workgroup identified any material impact on Greenhouse Gas emissions.

Impact on Core Industry Documents

- 5.4 Neither the proposer nor the Workgroup identified any impacts on Core Industry Documents.

Impact on other Industry Documents

- 5.5 CUSC Section 15 (CMP 192) User Commitment Methodology – Guidance and Implementation Document. Section 6 of the document will be updated to clarify the pre-Trigger date liability for Fixed users covered in paragraph 4.4 of this report, to coincide with the implementation of this Proposal if approved.

6 Proposed Implementation

- 6.1 If approved, the Code Administrator proposes that CMP219 should be implemented 10 Working Days after the Appeal Window has closed following the CUSC Panel Determination, pending any appeals received. The Workgroup agreed with this view, as did the respondents to the Workgroup Consultation that answered this question.

7 The Case for Change

Workgroup Conclusion

7.1 The Workgroup believe that the Terms of Reference have been fulfilled and that CMP219 has been fully considered. As no Workgroup Alternative CUSC Modifications were raised, the Workgroup vote was only on the CMP219 original proposal versus the baseline. On 3rd September 2013 the Workgroup voted unanimously that CMP219 better facilitates the Applicable CUSC Objectives. One Workgroup Member was unable to attend the meeting and therefore was unable to cast a vote. Details of the vote can be found in the tables below.

7.2 For reference the CUSC Objectives are:

- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; and
- (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.
- (c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

Whether each proposal (Original and any WACMs) better facilitates ACOs.

	(a)	(b)	(c)	Overall
Garth Graham	Yes. It satisfies efficient discharge of the licence as it improves clarity and helps industry understanding.	Yes. It improves industry understanding of Section 15 of the CUSC as it clarifies the treatment of Users.	Neutral.	Yes.
Paul Mott	Yes. It is not efficient to have ambiguity, so this proposal better meets this objective.	Yes. It removes the scope for unintended discrimination between 'fixed' and 'actual'.	Neutral.	Yes.
Jen Daws	Same view as Paul Mott.	Same view as Paul Mott.	Neutral.	Yes.
Carlo Polacco	Yes. It improves clarity and therefore is more efficient.	Yes, it brings in fair rules for the industry.	Neutral.	Yes.
Tushar Singh	Yes. It improves clarity and better facilitates industry understanding.	Yes. It removes the ambiguity for users and discrimination between the categories of Users.	Neutral.	Yes.

Which option BEST facilitates achievement of the ACOs? (inc. CUSC baseline)

Name	Preference
Garth Graham	CMP219
Paul Mott	CMP219
Jen Daws	CMP219
Carlo Polacco	CMP219
Tushar Singh	CMP219

7.3 The proposer considers that CMP219 would better facilitate the following Applicable CUSC Objectives.

- (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence;

The proposal satisfies the above objective, in that it improves the clarity of the User Commitment Methodology, and therefore better facilitates industry understanding about the methodology which will increase efficiency.

- (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

The proposal satisfies the above objective, in that it clarifies that both categories of users i.e. users on 'fixed' and 'actual' liabilities will be treated in the same way if the delay in commissioning is caused by the user. This removes the scope for discrimination between the two categories and facilitates competition.

TERMS OF REFERENCE FOR CMP 219 WORKGROUP

Responsibilities

1. The Workgroup is responsible for assisting the CUSC Modifications Panel in the evaluation of CUSC Modification Proposal CMP219 “CMP192 Post Implementation Clarifications” tabled by National Grid at the Modifications Panel meeting on 31st May 2013.
2. The proposal must be evaluated to consider whether it better facilitates achievement of the Applicable CUSC Objectives. These can be summarised as follows:
 - (a) the efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
 - (b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;
 - (c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.
3. It should be noted that additional provisions apply where it is proposed to modify the CUSC Modification provisions, and generally reference should be made to the Transmission Licence for the full definition of the term.

Scope of work

4. The Workgroup must consider the issues raised by the Modification Proposal and consider if the proposal identified better facilitates achievement of the Applicable CUSC Objectives.
5. In addition to the overriding requirement of paragraph 4, the Workgroup shall consider and report on the following specific issues:
 - a) Analyse the materiality associated with issues 5 and 6, described in the modification proposal form
 - b) Provide its opinion regarding progressing the modification through self-governance
 - c) Review the revisions to legal text

6. The Workgroup is responsible for the formulation and evaluation of any Workgroup Alternative CUSC Modifications (WACMs) arising from Group discussions which would, as compared with the Modification Proposal or the current version of the CUSC, better facilitate achieving the Applicable CUSC Objectives in relation to the issue or defect identified.
7. The Workgroup should become conversant with the definition of Workgroup Alternative CUSC Modification which appears in Section 11 (Interpretation and Definitions) of the CUSC. The definition entitles the Group and/or an individual member of the Workgroup to put forward a WACM if the member(s) genuinely believes the WACM would better facilitate the achievement of the Applicable CUSC Objectives, as compared with the Modification Proposal or the current version of the CUSC. The extent of the support for the Modification Proposal or any WACM arising from the Workgroup's discussions should be clearly described in the final Workgroup Report to the CUSC Modifications Panel.
8. Workgroup members should be mindful of efficiency and propose the fewest number of WACMs possible.
9. All proposed WACMs should include the Proposer(s)'s details within the final Workgroup report, for the avoidance of doubt this includes WACMs which are proposed by the entire Workgroup or subset of members.
10. There is an obligation on the Workgroup to undertake a period of Consultation in accordance with CUSC 8.20. The Workgroup Consultation period shall be for a period of 4 weeks as determined by the Modifications Panel.
11. Following the Consultation period the Workgroup is required to consider all responses including any WG Consultation Alternative Requests. In undertaking an assessment of any WG Consultation Alternative Request, the Workgroup should consider whether it better facilitates the Applicable CUSC Objectives than the current version of the CUSC.

As appropriate, the Workgroup will be required to undertake any further analysis and update the original Modification Proposal and/or WACMs. All responses including any WG Consultation Alternative Requests shall be included within the final report including a summary of the Workgroup's deliberations and conclusions. The report should make it clear where and why the Workgroup chairman has exercised his right under the CUSC to progress a WG Consultation Alternative Request or a WACM against the majority views of Workgroup members. It should also be explicitly stated where, under these circumstances, the Workgroup chairman is employed by the same organisation who submitted the WG Consultation Alternative Request.

12. The Workgroup is to submit its final report to the Modifications Panel Secretary on 21 August 2013 for circulation to Panel Members. The final report conclusions will be presented to the CUSC Modifications Panel meeting on 30 August 2013.

Membership

13. It is recommended that the Workgroup has the following members:

Role	Name	Representing
Chairman	Adam Sims	National Grid
National Grid Representative*	Tushar Singh	National Grid
Industry Representatives*	Garth Graham	SSE
	Ane Landaluze	Scottish Power Renewables
	Paul Mott	EDF
	Carlo Polacco	AES Electric Ltd
	Jen Daws	EON
Authority Representatives	Vanja Munerati	Ofgem
Technical secretary	Emma Clark	Code Administrator

NB: A Workgroup must comprise at least 5 members (who may be Panel Members). The roles identified with an asterisk in the table above contribute towards the required quorum, determined in accordance with paragraph 14 below.

14. The chairman of the Workgroup and the Modifications Panel Chairman must agree a number that will be quorum for each Workgroup meeting. The agreed figure for CMP219 is that at least 5 Workgroup members must participate in a meeting for quorum to be met.
15. A vote is to take place by all eligible Workgroup members on the Modification Proposal and each WACM. The vote shall be decided by simple majority of those present at the meeting at which the vote takes place (whether in person or by teleconference). The Workgroup chairman shall not have a vote, casting or otherwise]. There may be up to three rounds of voting, as follows:
- Vote 1: whether each proposal better facilitates the Applicable CUSC Objectives;
 - Vote 2: where one or more WACMs exist, whether each WACM better facilitates the Applicable CUSC Objectives than the original Modification Proposal;
 - Vote 3: which option is considered to BEST facilitate achievement of the Applicable CUSC Objectives. For the avoidance of doubt, this vote should include the existing CUSC baseline as an option.

The results from the vote and the reasons for such voting shall be recorded in the Workgroup report in as much detail as practicable.

16. It is expected that Workgroup members would only abstain from voting under limited circumstances, for example where a member feels that a proposal has been insufficiently developed. Where a member has such concerns, they should raise these with the Workgroup chairman at the earliest possible opportunity and certainly before the Workgroup vote takes

place. Where abstention occurs, the reason should be recorded in the Workgroup report.

17. Workgroup members or their appointed alternate are required to attend a minimum of 50% of the Workgroup meetings to be eligible to participate in the Workgroup vote.
18. The Technical Secretary shall keep an Attendance Record for the Workgroup meetings and circulate the Attendance Record with the Action Notes after each meeting. This will be attached to the final Workgroup report.
19. The Workgroup membership can be amended from time to time by the CUSC Modifications Panel.

Appendix: Indicative Workgroup Timetable

The following timetable is indicative for the CMP219 Workgroup.

31 May 2013	Proposal presented to CUSC Panel
4 June 2013	Send out draft Terms of Reference and Workgroup nominations
18 June 2013	Workgroup meeting
28 June 2013	Workgroup Consultation issued to Workgroup
5 July 2013	Deadline for comments
8 July 2013	Issue Workgroup Consultation for 4 weeks
5 August 2013	Workgroup Consultation closes
W/C 5 August 2013	Post-Consultation Workgroup meeting
13 August 2013	Circulate draft Workgroup Report
20 August 2013	Deadline for comments on Workgroup Report
21 August 2013	Submit Workgroup Report to Panel Secretary
30 August 2013	Present Workgroup Report to CUSC Panel
3 September 2013	Issue Code Administrator Consultation for 3 weeks
24 September 2013	Code Administrator Consultation closes
30 September 2013	Issue draft Final Modification Report to industry for 1 week
7 October 2013	Deadline for comment
17 October 2013	Issue draft Final Modification Report with Panel papers
25 October 2013	Panel Determination Vote. Appeal Window opens.
15 November 2013	Appeal Window Closes
2 December 2013	Implementation

CUSC Modification Proposal Form CMP219

Connection and Use of System Code (CUSC)

Title of the CUSC Modification Proposal
CMP192 Post Implementation Clarifications
Submission Date
22 May 2013
Description of the Issue or Defect that the CUSC Modification Proposal seeks to address
<p>CMP192 ‘Arrangements for Enduring Generation User Commitment’ introduced Enduring User Commitment arrangements for generators in the CUSC from 1 April 2013. Following implementation, it was identified that the legal text needs refining to correct and/or clarify minor drafting issues. Additionally, the text and definitions regarding CMP192 transitional arrangements have become redundant as the transitional arrangements have been completed by National Grid and are no longer needed beyond 31 March 2013.</p> <p>The issues which this proposal aims to address are as follows:</p> <ol style="list-style-type: none">(1) Typographical errors in Section 15, Part 2, paragraph 2.1 and 3.11, and Schedule 2, Exhibits 3 and 3A, paragraph 2.11.(2) Numbering inconsistencies in Section 15, Part 2.(3) Redundant text regarding transitional arrangements in Sections 10, 11 and 15.(4) Paragraph 3.7.1 in Section 15, Part 2 states that for the calculation of Actual Attributable liability, takes ‘potential for reuse’ and ‘strategic benefits’ into consideration. However, it does not specify the actual inputs used by National Grid in the calculation, namely the Strategic Investment Factor (SIF) and the Local Asset Reuse Factor (LARF).(5) The intention of the original CMP 192 modification was that users on both ‘fixed’ and ‘actual’ liabilities would be treated in the same way when they choose to delay their commissioning date, i.e. the cancellation charge profile would not be adjusted downwards, but would be held at the current level. The current drafting in Section 15, Part 2, paragraph 2.4.3 states that ‘fixed’ users will be treated in this way, whilst it remains silent on ‘actual’ users.(6) For users on fixed liabilities the User Commitment methodology intended that prior to the Trigger date, the liability will be lower of the pre Trigger date and post Trigger date amounts. However, the text in Section 15, Part 2, paragraph 3.9 states that this is applicable only for one year before the Trigger date, when the intent was that it should be applicable for all the years before the Trigger date.(7) The implementation of User Commitment methodology modified Schedule 2, Exhibits 3 and 3A and this inadvertently led to removal of text regarding security arrangements for non-generation users, i.e. relevant text in paragraph 9, and Appendix M.

Description of the CUSC Modification Proposal

This proposal seeks to raise a housekeeping modification to make the necessary changes to the CUSC to refine the legal text related to CMP192 to further clarify the User Commitment Methodology. This would address ambiguities and redundancies in the CUSC regarding CMP192 legal text and reduce the scope for misinterpretation.

It is proposed that the issues described in the previous section are addressed as follows -

- Issues (1), (2) and (3) will be resolved by correcting the typographical errors and numbering inconsistencies, and removing the redundant text related to transitional arrangements.
- Issue (4) will be addressed by including Local Asset Reuse Factor (LARF) and Strategic Investment Factor (SIF) in the context of 'potential for reuse' and 'strategic benefits' respectively, in CUSC Section 15, Part 2, paragraph 3.7.1. Both LARF and SIF have been defined in the CMP 192 Final CUSC Modification Report in paragraphs 3.33-3.36 and 4.168, and have been used by National Grid for this purpose.
- Issue (5) will be dealt by modifying text in Section 15, Part 2, paragraph 2.4.3, to reflect that both 'fixed' and 'actual' users are treated in the same way. This is in accordance with original intent of the User commitment methodology as discussed in paragraphs 3.41 and 4.69 of the CMP 192 Final CUSC Modification Report.
- Issue (6) will be addressed by inclusion of additional text in Section 15, Part 2, paragraph 3.9 to clarify that for users on 'Fixed' liabilities, the liability will be the lower of pre Trigger date amount and post Trigger date amount, for all the years prior to the Trigger date. This is in accordance with paragraph 10.79 of the CMP192 Final CUSC Modification Report.
- Issue (7) will be addressed by adding back the text regarding security arrangements relevant to non-generation users in CUSC Schedule 2, Exhibits 3 and 3A, paragraph 9 and Appendix M, as it existed, prior to CMP 192 implementation.

Impact on the CUSC

The following changes will take place as part of this modification proposal –

- 1) Remove text from Section 10 which covers CMP192 transitional arrangements.
- 2) Remove following definitions in Section 11 related to CMP192 transitional arrangements, as they have become irrelevant post 31/03/2013 –
 - Transitional CMP192 Commissioned Users
 - Transitional CMP192 Commissioned User's Cut Off Date
 - Transitional CMP192 Commissioned User's Notice Date
 - Transitional CMP192 Non-Commissioned Users
- 3) Following changes need to be made to Section 15 –
 - Part 2, paragraph 3.7.1 – The Actual Attributable Works liability refers to 'potential for reuse' and 'strategic benefits'. National Grid uses 'Local Asset Re-use Factor (LARF)' and 'Strategic Investment Factor (SIF)' which correspond to these two criteria respectively, in the liability calculation. The LARF and SIF are not explicitly mentioned in the paragraph and need to be included.
 - Part 2, paragraph 3.11 – Change 'Charging Date' to 'Notification date'
 - Part 2, paragraph 3.12 – remove this paragraph as it covers Transitional CMP 192 Commissioned Users.
 - Correct typographical errors and numbering inconsistencies.
 - Part 2, paragraph 2.4.3 – remove '*in the case of a Fixed Cancellation Charge*' from the paragraph.
 - Part 2, paragraph 3.9 – include 'lower of' in years $t=1$ and $t=2$.
- 4) Following changes need to be made to CUSC Schedule 2, Exhibit 3 (Construction Agreement) and Exhibit 3A (Offshore Construction Agreement) –

- Paragraph 2.11 refers to 'Local Cancellation Amount' and 'Fixed Local Cancellation Charge Methodology'. As these terms are not defined in CUSC Section 11, they will be replaced by 'Actual Attributable Works Cancellation Charge' and 'Fixed Attributable Works Cancellation Charge Methodology'.
- Relevant text in old Exhibits 3 and 3A, paragraph 9 and Appendix M need to be retained for non generation users for whom CMP192 arrangements don't apply.

Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse Gas Emissions? Yes / No

No

Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information

BSC

Grid Code

STC

Other (please specify)

CUSC Section 15 (CMP192) User Commitment Methodology – Guidance and Implementation Document.

Urgency Recommended: Yes / No

No

Justification for Urgency Recommendation

N/A

Self-Governance Recommended: Yes / No

Yes

Justification for Self-Governance Recommendation

This proposal seeks to tidy-up the legal text related to CMP192 to improve clarity. The majority of the issues being addressed, fall in the non-material category and where issues are material, the changes to the legal text reflect the original intention of the CMP192 workgroup and do not propose anything new.

Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews?

There are no ongoing Significant Code Reviews that we believe have an impact on this proposal.

Impact on Computer Systems and Processes used by CUSC Parties:

None identified.

Details of any Related Modification to Other Industry Codes

None identified.

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives:

Please tick the relevant boxes and provide justification:

(a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

The proposal satisfies the above objective, in that it improves the clarity of the User Commitment Methodology, and therefore better facilitates industry understanding about the methodology which will increase efficiency.

(b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity.

The proposal satisfies the above objective, in that it clarifies that both categories of users i.e. users on 'fixed' and 'actual' liabilities will be treated in the same way if the delay in commissioning is caused by the user. This removes the scope for discrimination between the two categories and facilitates competition.

(c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.

These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1.

Objective (c) was added in November 2011. This refers specifically to European Regulation

2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

Additional details

Details of Proposer: (Organisation Name)	National Grid Electricity Transmission Plc
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Tushar Singh National Grid Electricity Transmission Plc 01926 656829 tushar.singh@nationalgrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Adam Sims National Grid Electricity Transmission Plc 01926 655292 adam.sims@nationalgrid.com
Attachments (Yes/No): No.	

Annex 3 - Workgroup Attendance Register

Name	Organisation	Role	18/6/13 Attended?	3/9/13 Attended?
Adam Sims	National Grid	Chairman	Yes	Yes
Emma Clark	National Grid	Technical Secretary	Yes	Yes
Tushar Singh	National Grid	National Grid representative	Yes	Yes
Vanja Munerati	Ofgem	Authority Representative	Yes - teleconference	Yes – teleconference
Paul Mott	EDF	Workgroup Member	Yes	Yes – teleconference
Garth Graham	SSE	Workgroup Member	Yes - teleconference	Yes – teleconference
Ane Landaluze	Scottish Power	Workgroup Member	Yes	No
Carlo Polacco	AES Electric Ltd	Workgroup Member	Yes	Yes
Jen Daws	E.ON	Workgroup Member	Yes	Yes - teleconference

Annex 4 – Self-Governance Statement

Abid Sheikh
Licensing and Industry Codes
Ofgem
3rd Floor
Cornerstone
107 West Regent Street
Glasgow
G2 2BA
(By Email)

Emma Clark
CUSC Modifications Panel
Secretary
Emma.clark2@nationalgrid.com
Direct tel +44 (0)1926 655223

3 June 2013
Reference: CMP219 Self-Governance Statement

www.nationalgrid.com

Dear Abid,

This is the CUSC Modifications Panel's Self-governance Statement to the Authority for CUSC Modification Proposal CMP219 (CMP192 Post Implementation Clarifications). National Grid has prepared this Self-governance Statement on behalf of the CUSC Modifications Panel and submits it to you in accordance with CUSC Section 8.25.1.

On 31 May 2013 the CUSC Modifications Panel considered CMP219 and agreed that it meets the Self-governance criteria.

As such, CMP219 is unlikely to discriminate between different classes of CUSC Parties and is unlikely to have a material effect on:

- i) Existing or future electricity customers;
- ii) Competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution or supply of electricity,
- iii) The operation of the National Electricity Transmission System
- iv) Matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies
- v) The CUSC's governance procedures or the CUSC's modification procedures

The CUSC Modifications Panel believe that whilst there is the potential for materiality in the Proposal, these issues were the intention of CMP192 and therefore CMP219 is not introducing any new material issues, but instead correcting the omissions in the legal text of CMP192. It was agreed that this should be discussed further by a Workgroup.

The proposed timetable for the progression of CMP219 is as follows:

31 May	Proposal presented to CUSC Panel
4 June	Send out draft Terms of Reference and Workgroup nominations
W/C 17 June	Workgroup meeting
24 June	Workgroup Consultation issued to Workgroup
1 July	Deadline for comments
3 July	Issue Workgroup Consultation for 4 weeks
31 July	Workgroup Consultation closes
W/C 5 August	Post-Consultation Workgroup meeting
13 August	Circulate draft Workgroup Report
20 August	Deadline for comments on Workgroup Report
21 August	Submit Workgroup Report to Panel Secretary
30 August	Present Workgroup Report to CUSC Panel
3 September	Issue Code Administrator Consultation for 3 weeks
24 September	Code Administrator Consultation closes
30 September	Issue draft Final Modification Report to industry for 1 week
7 October	Deadline for comment
17 October	Issue draft Final Modification Report with Panel papers
25 October	Panel Determination Vote. Appeal Window opens.
15 November	Appeal Window Closes
2 December	Implementation

The CMP219 form is available at

<http://www.nationalgrid.com/uk/Electricity/Codes/systemcode/amendments/currentamendmentproposals/>.

If you require any further information please do not hesitate to contact me.

Yours Sincerely,

Emma Clark
CUSC Modifications Panel Secretary.

Annex 5 – Workgroup Consultation Responses

Three responses were received to the CMP219 Workgroup Consultation:

Respondent:	Paul Mott
Company Name:	EDF Energy
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	<p>We understand the basis of CMP219, and agree that the intent of CMP192, as per the final modification report, was not fully correctly captured in the legal text for that modification, leading to some ambiguities and potential for mis-application of the modification when certain future scenarios come to pass, compared to the FMR on which Ofgem's, and Panel's, decision was essentially based. We agree also that the proposal better facilitates competition in that it ensures that different categories of users i.e. users on 'fixed' and 'actual' liabilities will, as intended in the FMR, be treated in the same way. This removes the scope for unintended discrimination between the two categories, and so better facilitates competition (applicable CUSC objective b).</p> <p>We also agree that it would be tidy to remove, now, the time-expired text regarding the transitional arrangements.</p>
Do you believe that CMP219 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	The only relevant Applicable CUSC objective is (b), better facilitation of competition in generation and supply, and it would be better met if this modification were passed, for the reasons outlined in the preceding answer.
Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.	Yes, CMP219 can be implemented 10 Working Days after the Appeal Window has closed following the CUSC Panel Determination, pending any appeals received, as recommended by both the Workgroup and National Grid in its mod proposal
Do you believe that there are any other errors as a result of the implementation of CMP192 that have not been identified?	No
Do you agree that CMP219 should be progressed as Self-	Yes. The majority of the issues being addressed, fall in the non-material category and where issues are of (modest) materiality,

Governance? Please provide your reasoning for your view.	the changes to the legal text do reflect the original intention of the CMP192 Workgroup / final modification report, and do not propose anything new.
Do you have any other comments?	No
Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?	No

Respondent:	Claire Campbell Claire.campbell@sppowersystems.com 0151 609 2359
Company Name:	SP Manweb Plc / SP Distribution
Please express your views regarding the Workgroup Consultation, including rationale. (Please include any issues, suggestions or queries)	
Do you believe that CMP219 better facilitates the Applicable CUSC Objectives? Please include your reasoning.	For reference, the Applicable CUSC objectives are: (a) the efficient discharge by the licensee of the obligations imposed upon it under the Act and by this licence; (b) facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity. (c) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency.
Do you support the proposed implementation approach? If not, please state why and	

<p>provide an alternative suggestion where possible.</p>	
<p>Do you believe that there are any other errors as a result of the implementation of CMP192 that have not been identified?</p>	<p>The current defined CMP192 rules do not appear to have been established with DNO connected generation in mind.</p> <p>We believe through direct experience in Mid Wales that the implications of CMP192 for Distribution Network Operators (DNOs) and their customers have been overlooked in the implementation of CMP192.</p> <p>There is a disparity in the security arrangements for customers connecting directly to the transmission network compared to those that are considered to impact upon the transmission system when connecting to the distribution network.</p> <p>Transmission connected generation benefits fully by only having to provide security to NGET for the reduced security amount (although they remain liable for 100% of the liability).</p> <p>DNOs have a direct contractual relationship with NGET and are liable to NGET for the full liability of the “attributable” (and in some cases the “wider”) transmission works required for generators connecting to the distribution network.</p> <p>DNOs do not benefit from the same safety net that is written into the NGET price control arrangements. If a distribution connected project fails to proceed and terminates its contract with the DNO, the DNO will terminate its agreement with NGET, who would in turn seek to recover the full liability amount from the DNO rather than from the embedded generator. In the absence of a suitable recovery mechanism, our position is to mitigate risk by seeking security from the embedded generator for the entire CMP192 liability.</p> <p>Furthermore CMP192 does not give consideration to the complex arrangement that has emerged in Mid-Wales (multiple contracted parties within one bilateral connection and construction agreement between NGET and SP Manweb (SPM)). The shortcomings of CMP192 leave SPM with a potential liability that it has no way of covering off through its existing funding arrangements established under its current price control, under its proposed RIIO-ED1 arrangements or under its existing connection agreements</p>

	<p>with NGET.</p> <p>In the event of a partial termination (one or more contracted party with SPM terminating) SPM may be faced with a reconciliation process leaving an outstanding balance which we have no means to recover unlike NGET. The only means currently available to manage this risk is recover any shortfall from the remaining contracted parties.</p> <p>SP Manweb/SP Distribution believes that these shortfalls of CMP192 need to be reviewed urgently and a remedial solution derived.</p>
<p>Do you agree that CMP219 should be progressed as Self-Governance? Please provide your reasoning for your view.</p>	
<p>Do you have any other comments?</p>	
<p>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</p>	<p><i>If yes, please complete a WG Consultation Alternative Request form, available on National Grid's website, and return to the above email address with your completed Workgroup Consultation response proforma.</i></p>

<p>Respondent:</p>	<p><i>Allan Kelly</i></p> <p><i>T: 0141 614 3075 / 07734 396802</i></p> <p><i>E: allan.kelly@scottishpower.com</i></p>
<p>Company Name:</p>	<p><i>Scottish Power Renewables</i></p>
<p>Please express your views regarding the Workgroup Consultation, including rationale.</p> <p>(Please include any issues, suggestions or queries)</p>	<p>ScottishPower Renewables welcomes this workgroup consultation which aims to clarify aspects of the recently introduced CMP192 User Commitment arrangements. We believe there are some areas where the proposed amendments could be further improved, and we have commented appropriately in our response below.</p> <p>We also believe that there are further areas of clarification of the arrangements that should be addressed soon, as well as some more significant areas where the arrangements could be developed further and we will be happy to contribute to this work in due course.</p>

<p>Do you believe that CMP219 better facilitates the Applicable CUSC Objectives? Please include your reasoning.</p>	<p>Yes, as the proposed amendments seek to improve clarity and remove uncertainty in the arrangements which will help in facilitating effective competition in the generation of electricity.</p>
<p>Do you support the proposed implementation approach? If not, please state why and provide an alternative suggestion where possible.</p>	<p>Yes – the proposed changes should be implemented as soon as possible.</p>
<p>Do you believe that there are any other errors as a result of the implementation of CMP192 that have not been identified?</p>	<p>Yes. We believe there are still several areas of the codified arrangements that require further development or clarity or expansion.</p>
<p>Do you agree that CMP219 should be progressed as Self-Governance? Please provide your reasoning for your view.</p>	<p>Yes.</p>
<p>Do you have any other comments?</p>	<p>Yes. We believe there are some areas where the proposed amendments could be further improved, and we have commented on this below. The proposed WG amendments are mainly clarifications and corrections in drafting and our suggestions are made on this same basis and aim to help further improve clarity.</p> <p><i>Paragraph 2.3: We believe this could be clarified by stating that “for the avoidance of doubt, prior to the Trigger date, the Attributable Works Cancellation Charge and in the case of the Fixed Cancellation Charge, the Pre-Trigger Amount, apply.”</i></p> <p><i>Para 2.4.2(ii): although this is not covered by the proposed amendments, we suggest that the meaning of “..revised by reference ..” is not clear and nor is the reference to “... and the Cancellation Charge”.</i></p> <p><i>Paras 2.4.3(i) and (ii): similarly to the above comment, we suggest that the meaning of “..revised by reference ..” is not clear and this should be clarified.</i></p> <p><i>Para 3.7.1: at the end of line 10, „of” should be „or”.</i></p> <p><i>Para 3.9:</i></p>

	<p><i>We suggest that the calculation should be:</i></p> <p><i>Reduction in Transmission capacity or Reduction in Developer Capacity x Pre Trigger Amount;</i></p> <p><i>The first bullet point should be amended to:</i></p> <p><i>Transmission Entry Capacity and Developer capacity expressed in MW;</i></p> <p><i>In the three sub-bullet points of the third main bullet point, „or“ should be replaced with „and“;</i></p> <p><i>Para 3.11:</i></p> <p><i>We suggest that “and/or” should be “or”;</i></p> <p><i>In the third sub-bullet point of the third main bullet point “...two...” should be replaced by “...two or more..”.</i></p> <p><i>Para 5.2.1(ii): the last „or“ should be replaced by „and“.</i></p> <p><i>Schedule 2 Exhibit 3, part 1, para 2.11: we are unsure of the intention behind the use of „automatically“ and suggest that it should be deleted and “and issued to the User” inserted after “,,,” reflect the change.”</i></p>
<p>Do you wish to raise a WG Consultation Alternative Request for the Workgroup to consider?</p>	<p>No.</p>

Only the relevant paragraphs in each section is illustrated. Contents and re-numbering will be amended accordingly. For ease of reference, additional text is highlighted in blue and deleted text is shown in ~~red strikethrough~~.

Section 10 Transition Issues

CUSC - SECTION 10

NOT USED

TRANSITION ISSUES

CONTENTS

~~Part 1 CUSC MODIFICATION PROPOSAL 192 TRANSITION~~

~~Part 1~~

~~10.1 INTRODUCTION~~

~~10.1.1 This Section 10 deals with issues arising out of the transition associated with the approval and implementation of CUSC Modification Proposal 192 (Arrangements for Enduring Generation User Commitment) which introduces new arrangements for liability in the event of termination and/or reduction in Transmission Entry Capacity and Developer Capacity prior to the Charging Date and for the security associated with this and new arrangements for liability in the event of Disconnection or reduction in Transmission Entry Capacity on or after the Charging Date. For the purposes of this Section 10 the version of the CUSC as amended by CMP 192 shall be referred to as the “Post CMP 192 CUSC” and the version of the CUSC prior to amendment by CMP 192 shall be referred to as the “Pre CMP 192 CUSC”.~~

~~10.1.2 CMP 192 affects User’s in the categories of Power Stations directly connected (or to be directly connected) to the National Electricity Transmission System, Embedded Power Stations with a Bilateral Embedded Generation Agreement and a Distribution System directly connected to the National Electricity Transmission System where a Construction Agreement is associated with Distributed Generation.~~

~~10.1.3 The arrangements for transition of Users who are Transitional CMP 192 Commissioned User's is addressed through the calculation of the Cancellation Charge. This section 10 sets out the arrangements for transition of User's who are Transitional CMP 192 Non-Commissioned User's and references to User in this Section 10 shall be construed accordingly.~~

~~10.1.4 The Section sets out the arrangements such that by the CMP 192 Transition Period End Date:~~

~~The Company has provided each User with the necessary information in respect of the Cancellation Charge and the Cancellation Charge Secured Amount;~~

~~User's have Construction Agreements that provide for liability and security for the Cancellation Charge in accordance with CMP 192; and~~

~~the security arrangements in respect of the Cancellation Charge Secured Amount are in place as required under CUSC Section 15.~~

~~10.1.5 This Section 10 comprises:~~

~~—— (a) —— this Introduction; and~~

~~—— (b) —— CMP 192 transition issues.~~

~~10.1.6 The provisions of the Post CMP 192 CUSC introduced by CMP 192 shall be suspended (except as specifically provided for in this Section 10 and for enabling the doing of anything which may require to be done in relation to but in advance of the CMP 192 Transition Period End Date to achieve the objectives at 10.1.4) in respect of the Users until the CMP 192 Transition Period End Date. Any termination of an Existing Construction Agreement or reduction in Transmission Entry Capacity or Developer Capacity which takes effect prior to the CMP 192 Transition Period End Date shall therefore be dealt, and the rights and obligations of The Company and the User to each other, shall be as provided for in the Existing Construction Agreement.~~

~~10.1.7 In this Section 10:~~

~~(a) —— the term "Applicants"; shall mean Users (or prospective Users) who apply during the CMP 192 Transition Period for connection to and/or use of the National Electricity Transmission System;~~

~~(b) —— the terms "Cancellation Charge Statement" and "Cancellation Charge Secured Amount Statement" shall mean as defined in the Post CMP 192 CUSC;~~

~~(c) —— the term "CMP 192", shall mean CUSC Modification Proposal 192 (Arrangements for Enduring Generation User Commitment);~~

~~(d) —— the term "CMP 192 Implementation Date" shall mean the Implementation Date for CMP192;~~

~~(e) —— the term "CMP 192 Transition Period End Date" shall mean the 31 March which is not less than 12 months from the CMP 192 Implementation Date;~~

~~(f) — the term “CMP 192 Transition Period” means the period from the CMP 192 Implementation Date ending on and including the CMP 192 Transition Period End Date and is the period with which this Section 10 deals;~~

~~(g) — the term “CMP 192 Transition Process Plan” shall mean the detailed process and plan to be published by The Company setting out the timeline and processes to prepare the necessary amendments to or preparation of new Construction Agreements such that these are agreed prior to prior to CMP 192 Transition Period End Date and such that any security arrangements in respect of the Cancellation Charge Secured Amount are in place not less than 45 days prior to the CMP 192 Transition Period End Date.~~

~~(h) — the term “Existing Construction Agreement”, shall mean a Construction Agreement associated with a Bilateral Connection Agreement or Bilateral Embedded Generation Agreement or any agreement to vary the same but pursuant to which the User is not yet connected to and/or using the National Electricity Transmission System at the CMP 192 Implementation Date or entered into between The Company and the User prior to the CMP 192 Implementation Date or following acceptance of an Outstanding Offer after the CMP 192 Implementation Date;~~

~~(i) — the term “New Applications”, shall mean a Connection Application or Use of System Application by a User or prospective User for connection to and/or use of the National Electricity Transmission System or a Modification Application to vary any agreements in respect of connection and/or use made during the CMP 192 Transition Period;~~

~~(j) — the term “Outstanding Applications”, shall mean an offer yet to be made to a User or prospective User of a Construction Agreement and the associated Bilateral Connection Agreement or Bilateral Embedded Generation Agreement or any agreement to vary the same at the CMP 192 Implementation Date but where the application was made prior to the CMP 192 Implementation Date;~~

~~(k) — the term “Outstanding Offers”, shall mean an offer to a User or prospective User of a Construction Agreement and the associated Bilateral Connection Agreement or Bilateral Embedded Generation Agreement or any agreement to vary the same which has not been accepted at the CMP 192 Implementation Date but is still capable of being accepted;~~

~~(l) — the term “Transitional CMP 192 Non-Commissioned User” shall mean a User with an Existing Construction Agreement or User or a prospective User who has an Outstanding Application or makes a New Application.~~

~~10.1.8 Without prejudice to any specific provision under this Section 10 as to the time within which or the manner in which The Company or a User should perform its obligations under this Section 10, where The Company or a User is required to take any step or measure under this Section 10, such requirement shall be construed as including any obligation to:~~

~~(a) — take such step or measure as quickly as reasonably practicable; and~~

~~(b) — do such associated or ancillary things as may be necessary to complete such step or measure as quickly as reasonably practicable.~~

~~10.1.9 As soon as practicable after the CMP 192 Implementation Date and in any event (unless the Authority) agrees otherwise within 1 month of the same The Company shall publish the CMP 192 Transition Process Plan.~~

~~CMP 192 TRANSITION~~

~~Existing Construction Agreements~~

~~10.2.1 The Company shall offer to amend each Existing Construction Agreement such that it will be substantially in the form of that set out in, as appropriate, Schedule 2, Exhibit 3 Part 1 and Exhibit 3A and consistent at the CMP Transition Period End Date with the amendments introduced by CMP 192.~~

~~10.2.2 The Company shall make the offer to each User as soon as reasonably practicable after the CMP 192 Implementation Date and in accordance with the CMP 192 Transition Process Plan.~~

~~10.2.3 If The Company and a User fail to agree changes to each of their Existing Construction Agreements either such person may refer the matter to the Authority under Standard Condition G9 Paragraph 4 of the Transmission Licence. If the changes in dispute to be settled by the Authority have not been settled by the date 45 days prior to the CMP 192 Transition Period End Date, the User and The Company must enter into the agreement in respect of the changes offered by The Company to the User pursuant to Paragraph 10.2.1 with the obligation to make any variation required as a result of the Authority's determination.~~

~~10.2.4 The Company shall as soon as practicable and in any event by in accordance with the CMP 192 Transition Process Plan prepare and send to each User in respect of each Existing Construction Agreement a Cancellation Charge Statement in respect of the period from the day after the CMP 192 Transitional Period End Date to the next following 31 March or 30 September (whichever is the earlier).~~

~~10.2.5 In the case of the Cancellation Charge Secured Amount the User shall put security arrangements in place in respect of the Existing Agreements in accordance with CUSC Section 15 in accordance with the CMP 192 Transition Process Plan with such security arrangements to be effective from the day after the CMP 192 Transition Period End Date to the next following 31 March or 30 September (whichever is the earlier).~~

~~Outstanding Applications and New Applications~~

~~10.2.6 The Company shall make Offers such that prior to the CMP 192 Transition Period End Date the arrangements for security and liability within the agreements are consistent with those under the~~

~~Pre CMP 192 CUSC but such that on CMP 192 Transition Period End Date the arrangements for security and liability within the agreements are consistent with those under the Post CMP 192 CUSC and shall to the extent practicable make such Offers within the original or standard timescales.~~

~~END OF SECTION 10~~

Section 11 Interpretations and Definitions

~~“CMP192 Implementation Date” means the Implementation Date for CUSC Modification Proposal 192 (Arrangements for Enduring Generation User Commitment);~~

~~“Transitional CMP 192 Commissioned User’s” means User’s whose Power Stations are Commissioned on or prior to the CMP 192 Implementation Date;~~

~~“Transitional CMP 192 Commissioned User’s Cut Off Date” the 31 March which is no more than 4 years after the CMP192 Implementation Date;~~

~~“Transitional CMP 192 Commissioned User’s Notice Date” the date which is 6 months after the CMP192 Implementation Date;~~

~~“Transitional CMP 192 Non-Commissioned User’s” User’s or prospective User’s as more specifically defined within and the subject of CUSC Section 10 Part 1 (Transitional Arrangements in respect of CMP 192);~~

Section 15 User Commitment Methodology

PART TWO CALCULATION OF CANCELLATION CHARGE

2 Completion Date and Trigger Date

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

2.3 The Trigger Date is the date from which the ~~Attributable Works Cancellation Charge~~ Wider Cancellation Charge applies and the date from which, in the case of the Fixed Cancellation Charge, the Fixed Attributable Works Cancellation Charge rather than the Pre Trigger Amount applies. Prior to the Trigger Date, only the Attributable Works Cancellation Charge applies, or in case of the Fixed Cancellation Charge, the Pre Trigger Amount applies.

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

- (i) Where there is a delay to the Completion Date and the Trigger Date has not passed, the Trigger Date will be revised by reference to the revised Completion Date. The period for which the Pre Trigger Amount applies, will be adjusted to reflect the new Trigger Date;
- (ii) Where there is a delay to the Completion Date and the Trigger Date has passed, the Trigger Date will be revised by reference to the revised Completion Date and the Cancellation Charge (including the Cancellation Charge Profile) will be adjusted to reflect the revised date.

2.4.3 Where a change is as a result of the User's request then, ~~in the case of a Fixed Cancellation Charge, notwithstanding any change in the Construction Works or Completion Date or Attributable Works the Cancellation Charge Profile will not be adjusted downwards but will~~

~~be held at that level and will increase from that level in line with any new Construction Programme;~~

- (i) Where there is a delay to the **Completion Date** and the **Trigger Date** has not passed, the **Trigger Date** will be revised by reference to the revised **Completion Date**. The period for which the **Pre Trigger Amount** applies, will be adjusted to reflect the new **Trigger Date**;
- (ii) Where there is a delay to the **Completion Date** and the **Trigger Date** has passed, the **Trigger Date** will not be revised by reference to the revised **Completion Date** and the **Cancellation Charge** will not be adjusted downwards but will be held at that level and will increase from that level in line with any new **Construction Programme**.

3.4 Where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced on or after the **Trigger Date** but prior to the **Charging Date**

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

Cancellation Charge = Attributable Works Cancellation Charge and plus Wider Cancellation Charge

3.6.2 Fixed Attributable Works Cancellation Charge

Where a **Construction Agreement** is terminated or **Transmission Entry Capacity** is reduced or **Developer Capacity** is reduced on or after the **Trigger Date** but prior to the **Charging Date** the **Fixed Cancellation Charge** is the **Fixed Attributable Works Cancellation Charge** calculated as follows:

Fixed Attributable Works Cancellation Charge = (Attributable Works Cancellation Amount x MW Reduction in Transmission Entry Capacity or Developer Capacity) x Cancellation Charge Profile

Where the **Attributable Works Cancellation Amount** results in a £/MW figure calculated as follows:

(Estimated Attributable Works Capital Cost \times **(1 – Local Asset Reuse Factor)** \times **Strategic Investment Factor** \times **Distance Factor**) / **Transmission Entry Capacity or Developer Capacity**

Where the **Estimated Attributable Works Capital Cost** is the fair and reasonable estimate of the **Attributable Works Capital Cost** for each component within the **Attributable Works** and which is as set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 76.

Where the **Attributable Works** are as specified in Appendix MM of the **Construction Agreement** at the time of the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 76.

Where the **Local Asset Reuse Factor** is the factor representing the potential for reuse of each component within the **Attributable Works** as set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 76.

Where the **Strategic Investment Factor** is a factor calculated for each component within the **Attributable Works** as a ratio of the **Transmission Entry Capacity** and/or **Developer Capacity** sharing those **Attributable Works** against the secured capability of the **Transmission** assets and set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 76.

Where the **Distance Factor** is a factor calculated for each component within the **Attributable Works** as a ratio of distance to the nearest suitable MITS substation and distance to the MITS substation where the **Attributable Works** connect as set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 6. This factor is only valid for components where distance is relevant i.e. cables and overhead lines.

Where the **Cancellation Charge Profile** is the profile derived in accordance with the formula at Paragraph 3.10 and set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 76.

3.7 Actual Attributable Works Cancellation Charge

3.7.1 The **Actual Attributable Works Cancellation Charge** is the **Attributable Works Capital Cost** in respect of each component within the **Attributable Works** at the time at which the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced including (a) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by **The Company** or any third party of any contract for or relating to the carrying out of any of the **Attributable Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**) and (b) a sum equal to the reasonable costs of removing any **Transmission Connection Assets** and of making good the remaining **Plant** and **Apparatus** following such removal and (c) proper and reasonable expenses incurred and or paid or which **The Company** is legally bound to incur or pay in seeking **Consents** for the **Attributable Works** and (d) interest on any such amounts from the date they were paid by **The Company** to the date of **The Company's** invoice at 2% over **Base Rate** from time to time and for the time being provided that in each case **The Company** shall take into account the ~~potential for reuse~~ **Local Asset Reuse Factor**, and the **Strategic Investment Factor** and the **Distance Factor** as calculated in paragraph 3.6.2, ~~any strategic benefits~~ of the **Attributable Works** and any of the resulting **Transmission** assets.

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

Should a **Construction Agreement** be terminated, or **Transmission Entry Capacity** be reduced or **Developer Capacity** be reduced before the **Trigger Date** the **Cancellation Charge** shall be calculated as follows:

Cancellation Charge = Either the Actual Attributable Works Charge or, where on the Fixed Attributable Works Cancellation Charge, a charge calculated as follows:

Reduction in Transmission Entry Capacity or *Reduction in Developer Capacity* x Pre Trigger Amount_t

Where:

- Transmission Entry Capacity /Developer Capacity expressed in MW.
- Termination of Construction Agreement equates to a reduction in Transmission Entry Capacity or Developer Capacity to zero
- Pre Trigger Amount_t which varies according to the number of Financial Years from the date of the Construction Agreement to the Trigger Date:
 - up to the end of the first Financial Year (i.e. t =1), the lower of either (a) Pre Trigger Amount_t = (£1000/MW) or (b) a sum equivalent to the Cancellation Charge (and if not known an estimate of this) which would apply in the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs.
 - Where t = 2, the lower of either (a) Pre Trigger Amount_t = (£2000/MW) or (b) a sum equivalent to the Cancellation Charge (and if not known an estimate of this) which would apply in the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs.
 - Where t ≥ 3 up to Trigger Date, the lower of either (a) Pre Trigger Amount_t = (£3000/MW) or (b) a sum equivalent to the Cancellation Charge (and if not known an estimate of this) which would apply in the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs.

3.11 Where the Transmission Entry Capacity is reduced or Notice of Disconnection is given on or after the Charging Date

~~Except as provided for in Paragraph 3.12, t~~ The **Cancellation Charge** payable on notice of **Disconnection** and/or a reduction in **Transmission Entry Capacity** on or after the **Charging Date** is calculated on a £/MW basis as follows by reference to the **Zonal Unit Amount** for the **Financial Year** in which the notice is given:

Cancellation Charge = Wider Cancellation Charge

Where:

- Disconnection equates to reduction in Transmission Entry Capacity to zero
- Wider Cancellation Charge = Zonal Unit Amount for year in which notice of disconnection or reduction is given x reduction in Transmission Entry Capacity x Cancellation Charge Profile_t.
- Cancellation Charge Profile_t which varies according to the number of Financial Years notice given from the ~~Charging Date~~ date of notification to Disconnection or reduction in Transmission Entry Capacity:

- where notice is given in the Financial Year in which such notice is to take effect ($t=0$) Cancellation Charge Profile = 1,
- where notice is given in the Financial Year prior to the Financial Year in which such notice is to take effect ($t=1$), Cancellation Charge Profile = 0.75,
- where notice is given in the Financial Year which is two or more Financial Years prior to the Financial Year in which such notice is to take effect ($t \geq 2$), Wider Cancellation Charge = zero.

~~3.12 Transitional CMP 192 Commissioned Users~~

~~In the case of Transitional CMP 192 Commissioned Users who give notice of Disconnection and/or a reduction in Transmission Entry Capacity on or after the CMP 192 Implementation Date but prior to the Transitional CMP 192 Commissioned User's Notice Date and such notice of Disconnection and/or a reduction in Transmission Entry Capacity is to take effect no later than the Transitional CMP 192 Commissioned User's Cut Off Date, the Cancellation Charge payable on notice of Disconnection and/or a reduction in Transmission Entry Capacity on or after the Charging Date is calculated as follows:~~

~~Cancellation Charge =~~

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

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

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

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

~~For the avoidance of doubt, the provisions of CUSC, as applied prior to the CMP 192 Implementation Date, shall apply in respect of any Users who give notice of Disconnection and/or~~

~~a reduction in **Transmission Entry Capacity** in respect of **Commissioned Power Stations** prior to the **CMP 192 Implementation Date**.~~

56 Statement of Cancellation Charge

56.1 With an **Offer** **The Company** shall provide each **User** with an indicative profile of the estimated spend in respect of the **Attributable Works** and a **Notification of Fixed Cancellation Charge**.

56.2 Cancellation Charge Statement

56.2.1 **The Company** shall issue a **Cancellation Charge Statement** to a **User** showing the amount of the payment required or which may be required to be made by the **User** to **The Company** in respect of the **Cancellation Charge** prior to the **Charging Date** at the following times and in respect of the following periods:-

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

56.3 If a **User** does not elect for the **Fixed Cancellation Charge** (unless and until a **User** subsequently elects for a **Fixed Cancellation Charge** as provided for at Paragraph 7 or advises **The Company** that it does not wish to receive this) **The Company** shall provide a **Notification of Fixed Cancellation Charge** and an estimate of the **Actual Attributable Works Cancellation Charge** with each **Cancellation Charge Statement**.

56.4 The **Actual Attributable Works Cancellation Charge** shall apply unless and until a **User** elects for a **Fixed Cancellation Charge** in accordance with Paragraph 7.

56.5 Estimating the Actual Attributable Works Cancellation Charge

In the case of the **Actual Attributable Works Cancellation Charge**, the **Cancellation Charge Statement** shall set out a fair and reasonable estimate of the **Actual Attributable Works Cancellation Charge** for the 6 month period and, for the project generally. In addition the 6 month estimate of the **Actual Attributable Works Cancellation Charge** shall, for the purposes of assessing the **Cancellation Charge Secured Amount**, be prorated on a MW basis between those **Users** who share a component within the **Attributable Works**.

67 Electing for the Fixed Cancellation Charge

67.1 To elect for a the **Fixed Cancellation Charge**, a **User** must notify **The Company** to this effect by (a) returning a signed copy of the **Notification of Fixed Cancellation Charge** with its acceptance of the **Construction Agreement** or (b) , where a **User** does not elect at that time, it can elect 45 days (or if such day is not a **Business Day** the next following **Business Day**) prior to each 30 September or 31 March thereafter by returning a signed copy of the **Notification of Fixed Cancellation Charge** as provided with the relevant **Cancellation Charge Statement**.

67.2 Once a **User** has elected for the **Fixed Cancellation Charge**, the **Pre Trigger Amount**, **Attributable Works Amount** and **Cancellation Charge Profile** will then be fixed as that set out in the **Notification of Fixed Cancellation Charge** by reference to which such election was made and a **User** cannot revert to the **Actual Attributable Works Cancellation Charge**.

78 Cancellation Charge Secured Amount Statement

78.1 Where a **User** has to provide security in accordance with Part Three of this Section 15 the **Cancellation Charge Statement** shall be accompanied by the **Cancellation Charge Secured Amount Statement**.

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

SCHEDULE 2 EXHIBIT 3

PART 1

2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (**One Off Works**), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**), MM (**Attributable Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges and One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change. Provided that where a **User** has elected for the ~~Local Cancellation Amount~~ **Actual Attributable Works Cancellation Charge** to be based on the ~~Fixed Local Cancellation Charge Methodology~~ **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.

SCHEDULE 2 EXHIBIT 3

PART 2

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

INDICATIVE

DATED [] 200[1]

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)
and

[] (2)

THE CONNECTION AND USE OF SYSTEM CODE
CONSTRUCTION AGREEMENT

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

CONTENTS

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

BETWEEN

- (1) National Grid Electricity Transmission plc a company registered in England with number 2366977 whose registered office is at 1-3 Strand, London, WC2N 5EH (“**The Company**”, which expression shall include its successors and/or permitted assigns); and
- (2) [] a company registered in [] with number [] whose registered office is at [] (“**User**”, which expression shall include its successors and/or permitted assigns)

WHEREAS

- (A) Pursuant to the **Transmission Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **National Electricity Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to] [and use of] [modification to its connection to] [or use of] the **National Electricity Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in Section 11 of the **CUSC** and in the Bilateral Connection Agreement have the same meanings, interpretations or constructions in this **Construction Agreement**.

"Authority" as defined in the **CUSC**.

"Bilateral Connection Agreement" the **Bilateral Connection Agreement** entered into between the parties on even date herewith.

"Charging Date"

the date upon which the **Construction Works** are first **Commissioned** and available for use by the User or if the **Independent Engineer** before, on or after the **Commissioning Programme Commencement Date** shall have certified in writing that the **Transmission Connection Assets**, are completed to a stage where The Company could commence commissioning and by such date the **User's Works** shall not have been so certified then the date falling [] days after the date of such certification, provided that the **Transmission Reinforcement Works** are **Commissioned** and **Seven Year Statement Works** are completed as at that date. In the event that the **Transmission Reinforcement Works** are not so **Commissioned** and/or the **Seven Year Statement Works** are not so completed the **Charging Date** shall be the date on which they are **Commissioned** and/or completed as appropriate.

"Commissioning Programme Commencement Date"

the date specified in the **Construction Programme** for the commencement of the **Commissioning Programme** or any substituted date fixed under the terms of this **Construction Agreement**

"Commissioning Programme"

the sequence of operations/tests necessary to connect the **User's Works** and the **Transmission Connection Asset Works** to the **National Electricity Transmission System** for the purpose of making the **User's Works** available for operation to be determined pursuant to Clause 2.10 of this **Construction Agreement**.

"Completion Date"

[] or such other date as may be agreed in terms of this **Construction Agreement** for completion of the **Construction Works**.

"Connected Planning Data"

data required pursuant to the **Planning Code** which replaces data containing estimated values assumed for planning purposes by validated actual values and updated estimates for the future and by updated forecasts for forecast data items.

"Consents"

in relation to any **Works**:-

- (a) all such planning and other statutory consents; and
- (b) all wayleaves, easements, rights over or interests in land or any other consent; or
- (c) permission of any kind as shall be necessary for the construction of the **Works** and for commencement and carrying on of any activity proposed to be undertaken at or from such **Works** when completed.

“Construction Programme”

the agreed programme for the **Works** to be carried out by **The Company** and the **User** set out in detail in Appendix [J] to this **Construction Agreement** or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this **Construction Agreement**.

“Construction Site”

the site where the **Transmission Connection Asset Works** are being undertaken by or on behalf of **The Company**;

“Construction Works”

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

“Dispute Resolution Procedure”

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

“Event of Default”

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

“Final Sums”

the amount payable by the **User** on termination of this **Construction Agreement** being the aggregate from time to time and for the time being of:-

- (1) all **The Company Engineering Charges** arisen prior to the date of termination;

- (2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by **The Company** in respect of any part of the **Construction Works** carried out prior to the date of termination of this **Construction Agreement**;
- (3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any **Construction Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);
- (4) a sum equal to the reasonable costs of removing any **Transmission Connection Assets** and of making good the remaining **Plant** and **Apparatus** following such removal; and
- (5) interest on any such amounts from the date they were paid by The Company to the date of The Company's invoice at 2% over **Base Rate** from time to time and for the time being.

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

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

"Independent Engineer"

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

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

the date of this **Construction Agreement**; or

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

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

“Liquidated Damages”

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

“One Off Works”

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

“Seven Year Statement Works”

the works set out in Table B7 of the statement prepared by **The Company** pursuant to Standard Condition C11 of the **Transmission Licence** and issued by **The Company** in [] which in **The Company’s** reasonable opinion are required to be completed before the **Completion Date** to ensure that the **National Electricity Transmission System** complies with the requirements of Standard Condition C17 of the **Transmission Licence** and Standard Condition D3 of any **Relevant Transmission Licensee’s** transmission licence prior to the **Connection** of the **User’s Equipment** in terms of Clause 7.1 [or 7.2] of this **Construction Agreement**.

“Term”

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

“Third Party Works”	the works to be undertaken on assets belonging to a party other than The Company and the User to enable it to provide or as a consequence of the connection to and/or use of the National Electricity Transmission System by the User as specified in Appendix N;
“Transmission Connection Assets”	the assets specified in Appendix A to the Bilateral Connection Agreement .
“Transmission Connection Asset Works”	the works necessary for construction and installation of the Transmission Connection Assets at the Connection Site specified in Appendix G to this Construction Agreement .
“Transmission Reinforcement Works”	those works other than the Transmission Connection Asset Works, Seven Year Statement Works and One Off Works , which in the reasonable opinion of The Company are all necessary to extend or reinforce the National Electricity Transmission System to ensure that the National Electricity Transmission System complies with the requirements of Standard Condition C17 of the Transmission Licence and Standard Condition D3 of any Relevant Transmission Licensee’s transmission system in relation to and prior to the connection of the User’s Equipment at the Connection Site and which are specified in Appendix H to this Construction Agreement , where Part 1 is works required for the User and Part 2 is works required for wider system reasons.
“User’s Works”	those works necessary for installation of the User’s Equipment which are specified in Appendix I to this Construction Agreement .
“Works”	the Construction Works and the User’s Works .

2 CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and

Local Safety Instructions to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.

2.2 Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.

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

2.3.1 All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.

2.3.2 In the event of:-

- (a) the **Consents** not being obtained by the required date; or
- (b) the **Consents** being subject to conditions which affect the dates; or
- (c) **The Company** wishing to amend the **Construction Works** to facilitate the granting of the **Consents**,

The Company shall be entitled to revise the **Construction Works** (and as a consequence Appendix A to the **Bilateral Connection Agreement**) and all dates specified in this **Construction Agreement** and the charges specified in Appendix B to the **Bilateral Connection Agreement**. For the avoidance of doubt such revisions shall be at **The Company 's** absolute discretion and the consent of the **User** is not required.

2.3.3 The **User** shall be regularly updated by **The Company** in writing or by such other means as the parties may agree as to progress made by **The Company** from time to time in the obtaining of relevant **Consents** pursuant to its obligations under Clause 2.2 or 2.3 of this **Construction Agreement**.

2.4.1 The **User** shall be liable to pay to **The Company** as part of Final Sums:-

- (a) all **The Company 's Engineering Charges** accrued; and

- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

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

The **User** acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the **Transmission Connection Asset Works**. This sum shall not include any capital costs incurred by **The Company**, in relation to **Connection Sites** in England and Wales, in the acquisition by it of the freehold of any land or any **Relevant Transmission Licensee**, in relation to **Connection Sites** in Scotland, in the acquisition by it of the feuhold of any land. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred. The **User** shall pay such sums within 28 (twenty eight) days of the date of **The Company 's** invoice therefor.

- 2.4.2 Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.

- 2.5 Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the **User** shall in addition to the payments for which it is liable under Clause 2.4 hereof be liable to pay to **The Company** a sum equal to **The Company 's** estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company's** invoice(s) therefore and (where applicable) on termination where applicable **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and:

- (a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and
- (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

- 2.6 If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** whereupon the **User** shall in addition to the sums for which it is liable under Clause 2.4 hereof be liable to pay to **The Company** a sum equal to **The Company 's** estimate or if applicable revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company 's**

invoice(s) therefore and (where applicable) on termination **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and;

- (a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and
- (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any of the **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

2.7 Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.

2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. Each party shall deliver to the other party a written report of progress during each calendar quarter within 7 days of the end of that quarter.

2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow **The Company** or, in the case of **Connection Sites** in Scotland, the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.

2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt

thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.

- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.
- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the Secretary of State for Trade and Industry shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]
- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between The Company and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of

the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.16 Third Party Works

- 2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.
- 2.16.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.x.3 below, advise the **User** as soon as practicable and in any event by [] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.
- 2.16.3 Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) ("the **First User(s)**") as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User's** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.
- 2.16.4 In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company's** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company's** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

3 DELAYS

- 3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's **Works** for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this **Construction Agreement** or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.
- 3.2 If prior to the **Completion Date** a party (in this Clause 3.2 "the **Affected Party**") shall be delayed in carrying out any of the **Affected Party's Works** (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "**Defaulting Party**") or the **Defaulting Party's** employees, agents, contractors or sub-

contractors or by reason of an event of **Force Majeure**, the **Affected Party** shall be entitled to have such later date or dates fixed as the **Commissioning Programme Commencement Date** and/or (as the case may be) the **Completion Date** as may be fair and reasonable in the circumstances provided that it shall have notified the **Defaulting Party** in writing of such act, default or omission or event of **Force Majeure** within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the **Affected Party**. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the **Independent Engineer**. Once the new date or dates are fixed the **Construction Programme** and/or **Commissioning Programme** shall be deemed automatically amended as appropriate.

4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

- 4.1 Each party shall give written notice to the other declaring its readiness to commence the **Commissioning Programme** when this is the case.
- 4.2 The **Commissioning Programme** shall commence forthwith once both parties have given written notice to the other under Clause 4.1.
- 4.3 The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent Engineer** certifies in writing to that effect.
- 4.4 In the event that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date** **The Company** (if and to the extent that it is responsible for delayed commissioning beyond the **Commissioning Programme Commencement Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date**. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.
- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.
- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.

- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User**. In the event of such termination the **User** shall in addition to the amounts for which it is liable under Clause 2.4 to this **Construction Agreement** be liable to **The Company** to pay to **The Company** a sum equal to **The Company's** estimate or revised estimate of **Final Sums**. The **User** shall pay such sums within 14 (fourteen) days of the date of **The Company's** invoice(s) therefor and on termination (where applicable) **The Company** shall disconnect the **User's Equipment** at the **Connection Site** and:
- (a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and
 - (b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

5 APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the **Site Common Drawings** required under CC 7.5.3 and 7.5.5.
- 5.3 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and
 - 5.3.2 the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [2.9 and 6.7] of the **CUSC**.
- 5.4 Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1 for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection**

Conditions together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;

5.4.2 written confirmation as required under CC.5.2(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];

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

5.5 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

6 INDEPENDENT ENGINEER

The parties agree and shall procure that the **Independent Engineer** shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to him under this **Construction Agreement** by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in his sole discretion considers appropriate. All references to the **Independent Engineer** shall be made in writing by either party with notice to the other being given contemporaneously as soon as reasonably practicable and in any event within 14 days of the occurrence of the dispute to be referred to the **Independent Engineer**. The parties shall promptly supply the **Independent Engineer** with such documents and information as he may request when considering such question. The **Independent Engineer** shall use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

7. BECOMING OPERATIONAL

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

8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

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

9. CREDIT REQUIREMENTS

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

9A1 PROVISION OF SECURITY

9A.1.1 The User shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9A.4) 28 days after the **Charging Date** the User shall confirm its **The Company Credit Rating** to **The Company** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of losing its **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain its **The Company Credit Rating** for at least 6 months.

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

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9A.1.4 hereof.

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

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

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

- (iv) the **User** ceases to have an **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain an **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9A.1.2(i) above a further indicative long term private credit rating,

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

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

- (i) an irrevocable on demand standby **Letter of Credit** or guarantee; or
- (ii) cash held in escrow [**Escrow Account/ Bank Account**]; or
- (iii) any other form included in **The Company's** then current policy and procedure

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

9A.1.5 The **User** shall in addition to providing the requisite security enter into an agreement with **The Company**, which shall be supplemental to this **Construction Agreement** (the "Amending Agreement"). The **Amending Agreement** shall be in such form as **The Company** shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.

9A.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company**

whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.

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

Final Sums

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

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

9A.3.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9A.3.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant and Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound

to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

9A.3.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**. If the **Final Sums** is less than the payments made by the **User** in respect of **The Company's** estimate of **Final Sums** paid by the **User** following termination of this **Construction Agreement** **The Company** shall forthwith pay to the **User** the excess paid together with interest on a daily basis at **Base Rate** for the time being and from time to time from the date of payment of the fair and reasonable estimate of **Final Sums** to the date of reimbursement by **The Company** of the said excess paid.

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

Or

9B.1 Provision of Security

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

and all sums specified by **The Company** in accordance with Clause 9B.2 of this **Construction Agreement** as requiring to be secured in respect of:-

- (a) the **User's** liability to pay **The Company** amounts from time to time due under Clause 2.4 of this **Construction Agreement**; and
- (b) **Final Sums**.

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

9B.2.1 **The Company** shall provide to the **User** an estimate ("the **Bi-annual Estimate**") in substantially the form set out in Part 2 of Appendix M to this **Construction Agreement** and showing the amounts of all payments required or which may be required to be made by the **User** to **The Company** in respect of **Final Sums** and **The Company Engineering Charges** and other expenses in relation to seeking **Consents** referred to in Clause 2.4 of this **Construction Agreement** at the following times and in respect of the following periods:-

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

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

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

amount stated in the **Secured Amount Statement** (“the **Required Amount**”) the Secured Amount shall be adjusted to the **Required Amount**.

9B.3 Entitlement to Estimate

If **The Company** is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of which the **User** has a liability to **The Company** for payment under any of the provisions of this **Construction Agreement**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company’s** fair and reasonable estimate of the sums due or which may become due or in respect of which the **User** has a liability to **The Company** for payment. **The Company** shall also be entitled to send the **User** further invoices for such sums not covered in previous invoices. The **User** shall pay **The Company** all sums so invoiced by **The Company**.

9B.4 Demands not Affected by Disputes

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

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

9B.4.2 the fairness and reasonableness of **The Company’s** estimate; or

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

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

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9B.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company’s** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9B.5 If there shall be any dispute as mentioned in Clause 9B.4 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company’s** right to recover or seek to recover such payment, be referred in the case of Clauses 9B.4.1 and 9B.4.2 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9B.5 shall survive

termination) and, in the case of Clauses 9B.4.3 and 9B.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

Final Sums

9B.6 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

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

9B.7.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

9B.7.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing

agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

9B.7.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

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

9B.8 The obligations to provide security under this Clause 9 B shall continue until either all sums due under this **Construction Agreement** have been paid in full or security arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** where due under the provisions of the **CUSC**.

10. EVENT OF DEFAULT

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

10A. Event of Default

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

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

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

- (a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by this **Construction Agreement** as varied by the **Amending Agreement** or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the User shall otherwise be in breach of any of its obligations in respect of security under this **Construction Agreement** as varied by the **Amending Agreement**;
- (b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** as varied by the **Amending Agreement** takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;
- (c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** as varied by the **Amending Agreement** fails to pay to **The Company** any sum demanded pursuant thereto.

10A.3 If

- (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**; or
- (ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10A is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

and in (i) or (ii) or (iii) the **User** fails, within a period of 7 (seven) days following the date on which **The Company** gives the **User** notice in writing of one or other of the above events occurring to provide **The Company** with such security as **The Company** shall require to cover the **User's** payment obligations to **The Company** arising in the event of or which

have arisen prior to termination of this **Construction Agreement** and which arise under this **Construction Agreement**. The security to be provided shall be in a form satisfactory to **The Company** in accordance with its then current policy and procedures and in such amount as **The Company** shall specify to the **User** in the aforesaid notice. The **User** shall if required by **The Company**, in addition to providing the requisite security, within a period of 30 days following the date on which **The Company** gives the **User** such notice enter into an **Amending Agreement**. Such **Amending Agreement** shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen and shall be in such form as **The Company** shall reasonably require in line with **The Company's** then current provisions to the like effect in its connection agreements with other parties.

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

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

Or

10B **Event of Default**

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

10B.1 If

- (i) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements) put in place by the **User** in connection with a project for which security under this Clause 10B is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
- (ii) there is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any unsecured sum due or to become due to **The Company** within the next following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;
- (iii) any other indebtedness of the **User** for the repayment of borrowed money (in

a principal amount of not less than £1,000,000 pounds sterling or such greater amount specified

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

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

- (1) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** (as defined in Appendix M) in favour of **The Company** and **Valid** (as defined in Appendix M) at least up to the last day of the **Financial Year** in which the event occurs for such amount representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or
- (2) to subsequently provide such cash deposit or renew such **Performance Bond** or **Letter of Credit** (or such renewed **Performance Bond** or **Letter of Credit** provided under this paragraph) not less than 45 days prior to its stated expiry date for such amount representing **The Company's** reasonable estimate of the unsecured sums to become due to **The Company** in the next following **Financial Year** valid at least up to the last day of the next following **Financial Year** and to continue the provision of cash deposit a **Performance Bond** or **Letter of Credit** in a similar manner, to such estimate of unsecured sums.

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

10B.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clauses 9B.1 or 10B.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.

10B.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or

interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.

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

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

11. TERMINATION ON EVENT OF DEFAULT

11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

(a) the **User** shall remove any of the **User's Equipment** on, in relation to **Connection Sites** in England and Wales, **The Company's** or, in relation to **Connection Sites** in Scotland, **Relevant Transmission Licensee's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**; and

(b) in the case of **Connection Sites** in England and Wales, **The Company** shall remove and, in the case of **Connection Sites** in Scotland, **The Company** shall procure that the **Relevant Transmission Licensee** removes, any **Transmission Connection Assets** on the **User's** land within 6 months of the date of termination or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

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

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

(2) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**,

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

12. TERM

- 12.1 Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8 or 11 hereof.
- 12.2 In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in the event that this is prior to the **Charging Date** the **User** shall in addition to the amounts for which it is liable under Clause 2.4 hereof be liable to pay to **The Company Final Sums** and the provisions of Clause 11 shall apply.
- 12.3 The associated [**Bilateral Connection Agreements** or **Agreement to Vary the Bilateral Connection Agreement**] will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.
- 12.4 Any provisions for payment shall survive termination of this Construction Agreement.

13. CUSC

The provisions of Sections 6.6 (Payment), 6.14 (Transfer and Subcontracting), 6.15 (Confidentiality), 6.18 (Intellectual Property), 6.19 (Force Majeure), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.24 (Counterparts), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply to this **Construction Agreement** as if set out in this **Construction Agreement**.

14. DISPUTES

Except as specifically provided for in this **Construction Agreement** any dispute arising under the terms of this **Construction Agreement** shall be referred to arbitration in accordance with the **Dispute Resolution Procedure**.

15. VARIATIONS

- 15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.
- 15.2 **The Company** and the **User** shall effect any amendment required to be made to this **Construction Agreement** by the **Authority** as a result of a change in the **CUSC** or the **Transmission Licence**, an order or direction made pursuant to the **Act** or a **Licence**, or as a result of settling any of the terms hereof. The **User** hereby authorises and instructs **The Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.
- 15.3 **The Company** has the right to vary Appendices in accordance with Clauses 2.3, 2.11 and 7.4 and Paragraph 6.9 of the **CUSC**.

IN WITNESS WHEREOF the hands of the duly authorised representatives of the parties hereto at the date first above written

SIGNED BY)
[name])
for and on behalf of)
National Grid Electricity Transmission plc)

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

APPENDIX [B]
ONE OFF WORKS

APPENDIX [G]

TRANSMISSION CONNECTION ASSET WORKS

APPENDIX [H]

TRANSMISSION REINFORCEMENT WORKS

APPENDIX [J]

CONSTRUCTION PROGRAMME

APPENDIX [K]

LIQUIDATED DAMAGES

Company:

Connection site:

Type:

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

Liquidated Damages under Clause [4] of this Construction Agreement shall be calculated on a daily basis at a rate of £XXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXX.

APPENDIX [L]

INDEPENDENT ENGINEER

Company:

Connection site:

Type:

The Independent Engineer will be a Member of the Association of Consulting Engineers (ACE) and shall be agreed between the parties within 120 days of execution of this Construction Agreement or such other period as may be agreed between the parties. Failing agreement it shall be referred to the President of the Institution of Electrical Engineers who shall nominate the Independent Engineer.

APPENDIX [M]

PART 1

SECURITY ARRANGEMENT

1. DEFINITIONS

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

- “Bi-annual Estimate” means an estimate pursuant to Clause [9B.2.1] of this Construction Agreement of all payments to be made or which may be required to be made by the User in any relevant period, such estimate to be substantially in the form set out in Part 2 of this Appendix M;
- “Bank Account” means a separately designated bank account in the name of The Company at such branch of Barclays Bank PLC, or such branch of any other bank, in the City of London as is notified by The Company to the User, bearing interest from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account, mandated for withdrawal of principal solely by The Company against delivery of a Notice of Drawing for the amount demanded therein and mandated for the transfer of any interest accrued to the Bank Account to such bank account as the User may specify;
- “Letter of Credit” means an irrevocable standby letter of credit in a form reasonably satisfactory to The Company but in any case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or such other form as may be reasonably satisfactory to The Company and allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company’s delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

- “Notice of Drawing” means a notice of drawing signed by or on behalf of The Company substantially in the form set out in Part 4 of this Appendix M;
- “Performance Bond” means an on first demand without proof or conditions irrevocable performance bond or performance guarantee executed as a deed in a form reasonably satisfactory to The Company but in any case allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company’s delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;
- “Qualified Bank” means a City of London branch of a bank, its successors and assigns, which has throughout the validity period of the Performance Bond or Letter of Credit it issues in favour of The Company, a rating of at least A- in Standard and Poor’s long term debt rating or A3 in Moody’s long term debt rating provided that such bank is not during such validity period put on any credit watch or any similar credit surveillance which gives The Company reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives The Company reasonable cause to have such doubt;
- “Qualified Company” a company which is a public company or a private company within the meaning of section 1(3) of the Companies Act 1985 and which is either :
- (a) a shareholder of the **User** or any holding company of such shareholder-or
 - (b) any subsidiary of any such holding company, but only where the subsidiary
 - (i) demonstrates to **The Company’s** satisfaction that it has power under its constitution to give a **Performance Bond** other than in respect of its subsidiary;
 - (ii) provides an extract of the minutes of a meeting of its directors recording that the directors have duly concluded that the giving of the **Performance Bond** is likely to

promote the success of that subsidiary for the benefit of its members;

- (iii) provides certified copies of the authorisation by every holding company of the subsidiary up to and including the holding company of the **User**, of the giving of the **Performance Bond**,

(the expressions “holding company” and “subsidiary” having the respective meanings assigned thereto by section 736, Companies Act 1985 as supplemented by section 144(3), Companies Act 1989) and which has throughout the validity period of the **Performance Bond** it gives in favour of **The Company**, a rating of at least A- in Standard and Poor’s long term debt rating or A3 in Moody’s long term debt rating or such lesser rating which **The Company** may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit watch or any similar credit surveillance procedure which gives **The Company** reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the **Performance Bond** and no other event has occurred which gives **The Company** reasonable cause to have such doubt;

“Secured Amount Statement”

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

“User’s Obligation”

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

- (i) all amounts in respect of which the User has a liability to pay to The Company pursuant to Clause 2.4 of this Construction Agreement Agreement;
- (ii) Final Sum

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

2. **SECURITY REQUIREMENT**

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

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

3. **GENERAL PROVISIONS**

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

Company (as the case may be) as a consequence of The Company having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out The Company's reasons for having such doubt. The User shall within 21 days of the giving of such notice by The Company or the User whichever is the earlier provide a replacement Performance Bond and/or Letter of Credit from a Qualified Bank or Qualified Company, as the case may be, and/or provide a cash deposit in the required amount in a Bank Account. From the date the replacement Performance Bond or Letter of Credit or Bank Account cash deposit is effectively and unconditionally provided and Valid, The Company will consent in writing to the security which it replaces being released.

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

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

3.3.2 On a date which is at least 45 days (or if such day is not a Business Day then on the immediately preceding Business Day) before the next following 31st March or 30th September whichever is the earlier date such Performance Bond or Letter of Credit shall be renewed so as to be Valid for not less than 6 months commencing from the immediately following 1st April or 1st October (as the case may be). Such renewed Performance Bond or Letter of Credit shall be for an amount not less than the amount of the User's Obligation stated in the Secured Amount Statement as the amount to be secured during the period that such renewed Performance Bond or Letter of Credit shall be Valid.

3.3.3 Thereafter, the renewed Performance Bond or Letter of Credit shall be further renewed in like manner every 6 months.

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

3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including

the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.

- 3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.
- 3.4.3 If such amount stated in the Secured Amount Statement is smaller than the amount then secured, the cash deposit in the Bank Account shall not be reduced to the amount so stated until the expiry of 7 days after the next following 31st March or 30th September (as the case may be) ("the Release Date").
- 3.4.4 The sum equal to the amount of reduction in the cash deposit in the Bank Account shall be paid by The Company to the User from the Bank Account on the Release Date.
- 3.4.5 Any interest accruing to the Bank Account shall be for the account of and belong to the User absolutely, and The Company agrees to take any steps required to be taken by it for the release from the Bank Account and payment to the User of such interest as soon as the same shall have been credited to the Bank Account and The Company shall have received notice of such credit.
- 3.5 Notwithstanding any provision aforesaid:-
 - 3.5.1 The User may provide different securities to The Company at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the aggregate amount required to be secured pursuant to the Secured Amount Statement for any period specified therein.
 - 3.5.2 The User may upon the expiry of at least 14 days prior written notice to The Company, substitute one type of security for another provided that unless The Company shall otherwise agree in writing such substituted security must be Valid from 1st April or 1st October (as the case may be) and committed at least 45 days

before the immediately preceding 31st March or 30th September (as the case may be) in the following manner:-

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

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

PART 2

BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT
DATED []

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

1. The Company Engineering Charges & expenses
for obtaining Consents pursuant to
to Clause 2.4
2. Final Sums
- [3. One Off Charge]

PART 3

SECURED AMOUNT STATEMENT

CONSTRUCTION AGREEMENT DATED []

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

User's Obligation

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

for and on behalf of
NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Duly authorised officer

PART 4

NOTICE OF DRAWING

To [] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

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

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

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

Bank plc

Address:

Sort Code:

Account Name: National Grid Electricity Transmission plc

Account No:

Yours faithfully,

for and on behalf of
NATIONAL GRID ELECTRICITY TRANSMISSION PLC

Duly authorised officer

APPENDIX [N]

THIRD PARTY WORKS

END OF SCHEDULE 2 EXHIBIT 3

CUSC - EXHIBIT MM3

NOTIFICATION OF FIXED ATTRIBUTABLE WORKS CANCELLATION CHARGE
DATED []

COMPANY: []

CONNECTION SITE/SITE OF CONNECTION: []

CONSTRUCTION AGREEMENT: []

Fixed Attributable Works Cancellation Charge [£] [£x/MW]

	Pre Trigger Amount	Cancellation Charge Profile	TEC/DC	£/MW
Financial Year [1]				
Financial Year [2]				
Financial Year [3]				
	Attributable Works Cancellation Amount	Cancellation Charge Profile		£/MW
Financial Year [1]	£	%		
Financial Year [2]	£	%		
Financial Year [3]	£	%		
Charging Date/Financial Year [0]	£	%		

Fixed Attributable Works Cancellation Amount based on

Estimated Attributable Works Capital Cost []

Local Asset Reuse Factor [by ref to each component within the Attributable Works] []

Strategic Investment Factor [by ref to each

component within the Attributable Works] []

Distance Factor *[by ref to each relevant component within the Attributable Works] []*

We elect for the **Attributable Works Cancellation Charge** to be calculated on the basis of the **Fixed Cancellation Charge** as set out above.

Signed

for and on behalf of
[User]

Dated []

END OF EXHIBIT MM3