

# Stage 08: Code Administrator Consultation (following Authority send-back)

Connection and Use of System Code

## CMP223 'Arrangements for Relevant Distributed Generators Under the Enduring Generation User Commitment'

### Volume 2 Draft Legal Text

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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
07	Workgroup Report following send -back
<b>08</b>	<b>Code Administrator Consultation</b>
09	Draft CUSC Modification Report
10	Final CUSC Modification Report

## Contents

1	Original.....	3
2	WACM1.....	140
3	WACM2.....	224
4	WACM3.....	272
5	WACM4.....	390

## About this document

This document contains the amended draft Legal Text for CMP223 alongside the Code Administrator Consultation (Volume 1) following Authority send-back.

## Document Control

Version	Date	Author	Change Reference
1.0	01/04/2015	Code Administrator	Code Administrator Consultation to Industry following Authority send-back



### Any Questions?

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## **CMP 223 (Arrangements for Relevant Distributed Generators under the Enduring User Commitment) (Original): Summary Sheet of Proposed Amendments**

### **1. Overview of Changes**

- 1.1 The changes in the legal drafting that are being proposed to implement CMP 223 consist in changing the arrangements for the “Cancellation Charge” so that (a) in the context of Distributed Generation the liability and security for the Cancellation Charge rests with that Distributed generation and not with the DNO and (b) provide a separate % determining the Cancellation Secured Amount for Distributed Generation) .
- 1.2 In summary the drafting consists of changes to:
  1. Edits to CUSC Section 1
  2. Edits to CUSC Section 5 (by summary)
  3. Edits to CUSC Section 6 (by summary)
  4. Edits to CUSC Section 10 (houses the transitional provisions that apply to those Users or prospective Users)
  5. Edits to CUSC Section 11 (by summary)
  6. Edits to CUSC Section 15 (User Commitment Methodology).
  7. Edits to CUSC Exhibit J (Modification Offer) (by summary)
  8. Edits to CUSC Exhibit Q (BELLA Application) (by summary)
  9. Edits to CUSC Exhibit R (BELLA Offer)
  10. Edits to CUSC Exhibit U (Request for a Statement of Works) (by summary)
  11. Edits to CUSC Schedule 2 Exhibit 3 (Construction Agreement)
  12. Edits to CUSC Schedule 2 Exhibit 5 (BELLA)
  13. Introduces a new exhibit to Schedule 2, Exhibit 7(Bilateral Cancellation Charge Agreement).

**CUSC - SECTION 1**

**APPLICABILITY OF SECTIONS AND RELATED  
AGREEMENTS STRUCTURE**

**CONTENTS**

- 1.1 Introduction
- 1.2 Applicability
- 1.3 Bilateral Agreements, Construction Agreements and Mandatory Services Agreements
- 1.4 Connect and Manage Arrangements
- 1.5 OTSDUW arrangements
- 1.6 Categories of Use Without Bilateral Agreements
- 1.7 Bella Application
- 1.8 Authority's Right to Determine in Respect of a Bella

CUSC - SECTION 1

APPLICABILITY OF SECTIONS AND RELATED AGREEMENTS STRUCTURE

1.1 INTRODUCTION

- 1.1.1 The **CUSC** is divided into different sections, including sections dealing specifically with **Connection** to and **Use of System**, the provision of **Balancing Services**, **Interconnectors** and other sections of more general application.
- 1.1.2 Compliance with the various sections by a **User** is dependent on the nature of that **User's** connection and/or use in any given instance. A **User** may be party to the **CUSC** in a number of different categories.
- 1.1.3 This Section also deals with the requirement for a **User** to enter into **Bilateral Agreements**, **Construction Agreements** and **Mandatory Services Agreements**.
- 1.1.4 The **CUSC** and the proforma **Bilateral Agreements** set out as Exhibits 1, 2 and 5 of Schedule 2 are drafted to reflect the standard terms in relation to **The Company's** charges (an indicative price agreement). Where a **User** chooses to have a different charging option, where provided for in the **Charging Statements** current at the time of application for the relevant **Bilateral Agreement**, that **Bilateral Agreement** will provide for the specific terms relating to the charging option and for the relevant paragraphs of Section 2 to apply (or be disapplied) subject to those specific terms. This may lead to the areas covered by the relevant **Bilateral Agreement** being wider in certain circumstances.

1.2 APPLICABILITY

- 1.2.1 Each **User** is required to comply with the various Sections of the **CUSC** as provided for in this Section 1. Each Section may contain further detail in relation to particular categories of connection and/or use.
- 1.2.2 The different categories of connection and/or use reflect the types of utilisation which can exist. For example a **User** could have a directly connected **Power Station** and also be acting as a **Supplier**. In that case that **User** will need to comply in relation to two categories of connection and/or use, and its obligations in relation to each will differ.
- 1.2.3 Section 1, Sections 5 to 8 and 11 of the **CUSC** apply to all categories of connection and/or use, and therefore should be

**CMP223 ORIGINAL**

complied with by all **Users**, subject as specifically provided in those Sections. Section 4 of the **CUSC** applies to **Users** who provide **Balancing Services** to **The Company**, and contains its own provisions on applicability to such **Users**.

1.2.4 In relation to Sections 2, 3, 9 and 15 the following table sets out the applicability of those Sections in addition to those Sections referred to in Paragraph 1.2.3:

	<b>Categories</b>	<b>Applicable Sections</b>
1.	<b>Power Station</b> directly connected to the <b>GB Transmission System</b>	2 and 3 and 15
2.	<b>Non-Embedded Customer Site</b>	2 only
3.	<b>Distribution System</b> directly connected to the <b>GB Transmission System</b>	2 only and, where a <b>Construction Agreement</b> is associated with <b>Distributed Generation</b> , 15
4.	<b>Suppliers</b>	3 only
5.	<b>Embedded Power Station</b> except those which are the subject of a <b>BELLA</b>	3 only and, where the subject of a <b>BEGA</b> , 15
6.	<b>Small Power Station Trading Parties</b>	3 only
7.	<b>Interconnector User</b>	9 Part II only
8.	<b>Interconnector Error Administrator</b>	9 Part II only
9.	<b>Interconnector Owner</b>	9 Part I only
10.	<b>Distribution Interconnector Owner</b>	3 Only
11.	<b>Embedded Exemptable Large Power Stations</b> whose <b>Boundary Point Metering System</b> is either <b>SMRS</b> registered or is registered in <b>CMRS</b> by a <b>User</b> who is responsible for the <b>Use of System Charges</b> associated with the <b>BM Unit</b> registered in <b>CMRS</b>	<del>15 only</del>
12.	<u><b>Relevant Embedded Medium Power Stations and Relevant Embedded Small Power Stations with an Associated DNO Construction Agreement.</b></u>	<u>15 only</u>

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## CMP223 ORIGINAL

**Users**, when making a **Connection Application** or **Use of System Application** (in each case in the form of the relevant exhibit), should identify the category for which they are applying.

- 1.2.5 Each **Bilateral Agreement, Use of System Supply Confirmation Notice** or **Use of System Interconnector Confirmation Notice**, will set out the category of connection and/or use to which it relates.
- 1.2.6 Where a Paragraph states a category of connection and/or use, or type of **User**, to which that Paragraph (or part of that Paragraph) applies, the application of that Paragraph (or part of Paragraph) shall be limited to the **User** in relation to that category of connection and/or use, or type of **User**, described.
- 1.2.7 Where a Paragraph does not state a category of connection and/or use, or type of **User**, to which that Paragraph (or some part of that Paragraph) applies, that Paragraph (or part of the Paragraph) shall apply to all types of **Users** and categories of connection and/or use.
- 1.2.8 Where a Paragraph is stated “as between **The Company** and that **User**”, rights and obligations under that Paragraph shall arise only between **The Company** and each **User** individually to whom that Paragraph applies. Accordingly, no **User** shall enjoy any rights nor incur any obligations against any other **User** pursuant to the terms of any such Paragraph.
- 1.2.9 Notwithstanding any other provision of this **Code**, where a **User** owns or operates an **Exemptable Embedded Large Power Station** which is **Embedded** in part of a **Distribution System** or the **System** of any other **User** where and to the extent that such part of the system in which the **Exemptable Embedded Large Power Station** is **Embedded** is not directly or indirectly connected to the **GB Transmission System**, that **User** need not comply with paragraphs 1.3, 1.7, 6.3.6 and 6.3.7 in respect of that **Exemptable Embedded Large Power Station**.

### 1.3 BILATERAL AGREEMENTS, CONSTRUCTION AGREEMENTS AND MANDATORY SERVICES AGREEMENTS

#### 1.3.1 Bilateral Agreements

- (a) Each **User** in respect of each category of connection and/or use with a direct connection to the **GB Transmission System** shall enter into and comply with a **Bilateral Connection Agreement** in relation to such connection and/or use as identified in Paragraph 1.3.1(d).



**CMP223 ORIGINAL**

(b) Each **User** in respect of each category of connection and/or use with an **Embedded Power Station** (except those which are the subject of a **BELLA**) and/or in relation to a **Small Power Station Trading Party** and/or a **Distribution Interconnector** shall enter into and comply with a **Bilateral Embedded Generation Agreement** in relation to such use as identified in Paragraph 1.3.1(d).

(c) Each **User** in respect of its **Embedded Exemptable Large Power Station** whose **Boundary Point Metering System** is registered in **SMRS** or is registered in **CMRS** by another **User** who is responsible for the **Use of System Charges** associated with the **BM Unit** registered in **CMRS** shall enter into and comply with a **BELLA** as identified in Paragraph 1.3.1(e).

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(d) Each Relevant Embedded Small Power Station or Relevant Embedded Medium Power Station where there is an Associated DNO Construction Agreement shall enter into and comply with a Bilateral Cancellation Charge Agreement as identified in Paragraph 1.3.1(e).

(e) Exhibits 1, 2, 5 and 7 in Schedule 2 to the **CUSC** contain the forms of **Bilateral Agreements** contemplated to be entered into pursuant to this Paragraph 1.3, being:

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(i) Exhibit 1 – **Bilateral Connection Agreement**: direct connection to the **GB Transmission System (Power Station** directly connected to the **GB Transmission System, Distribution System** directly connected to the **GB Transmission System, Non-Embedded Customer Site** and/or **Interconnector**);

(ii) Exhibit 2 – **Bilateral Embedded Generation Agreement**: embedded use of system (**Embedded Power Station** (except those which are the subject of a **BELLA**) and/or in relation to a **Small Power Station Trading Party** and/or **Distribution Interconnector**);

(iii) Exhibit 5 – **BELLA**: provisions associated with such **Embedded Exemptable Large Power Stations** who have no rights and obligations under Section 3 of the **CUSC**.

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(iv) Exhibit 7– Bilateral Cancellation Charge Agreement.

1.3.2 Construction Agreements

Each **User** who wishes to construct or modify a direct connection to the **GB Transmission System** or commence or modify use by his **Embedded Power Station** or **Distribution Interconnector**, or any **Distributor** who wishes to connect a **Relevant Embedded Medium Power Station** or **Relevant Embedded Small Power Station** to his system shall enter into and comply with a **Construction Agreement** in respect of any construction works required as a result of that connection or **Modification**, together with a **Bilateral Agreement** as identified in Paragraph 1.3.1 or, as appropriate, an agreement to vary such **Bilateral Agreement**. In any case under the **OTSDUW Arrangements**, paragraph 1.5 applies to such **Construction Agreement**.

1.3.3 Mandatory Services Agreements

- (a) **The Company** and each **User** if a **Generator** shall, as between **The Company** and that **User**, in respect of the **Generating Units, DC Converters** and **Power Park Modules** from which that **User** is required to provide the **Mandatory Ancillary Services** in accordance with the **Grid Code**, enter into and comply with a **Mandatory Services Agreement** where applicable in accordance with Paragraph 1.3.3(b) in a form to be agreed between **The Company** and that **User** but based substantially on the form set out in Exhibit 4 in Schedule 2 (with necessary changes to enable the operation of those provisions, and those in Section 4 and Schedule 3 where the **Generating Units, DC Converters** or **Power Park Modules** (as the case may be) are not registered as **BM Unit(s)**).
- (b) Each **User** and **The Company** shall, as between **The Company** and that **User**, not later than 6 months (or such lesser time as may be agreed) prior to the expected **Commissioning Programme Commencement Date**, have entered into a **Mandatory Services Agreement** providing for payment for **Mandatory Ancillary Services** to be supplied by the **User** to **The Company**. In the event of a **Mandatory Services Agreement** not having been entered into by the said date, either party shall be entitled to initiate the procedure for resolution of the issue as an **Other**

## CMP223 ORIGINAL

**Dispute** in accordance with Paragraph 7.4 to settle the terms of the said **Mandatory Services Agreement**. **The Company** shall not **Energise** the **User's Equipment** or in the case of an **Embedded Power Station** issue an **Operational Notification** until the said **Mandatory Services Agreement** shall have been entered into by both parties.

### 1.3.4 General Provisions

- (a) **Bilateral Agreements** and **Construction Agreements** which are entered into between **The Company** and **Users** shall be in or substantially in the relevant exhibited form of **Bilateral Agreement** and/or **Construction Agreement** unless the parties thereto agree otherwise.
- (b) Each and every **Bilateral Agreement**, **Mandatory Services Agreement** and **Construction Agreement** entered into by a **User** and in force from time to time shall constitute a separate agreement governed by the terms of the **CUSC** and will be read and construed accordingly. For the avoidance of doubt no **User** shall enjoy any rights nor incur any obligations against any other **User** pursuant to the terms of any **Bilateral Agreement**, **Mandatory Services Agreement** or **Construction Agreement**.

## 1.4 CONNECT AND MANAGE ARRANGEMENTS

1.4.1 Any **Offer** or **Modification Offer** made to an **Applicant** or **User** in the category of:

- (a) a **Power Station** directly connected to the **National Electricity Transmission System**; or
- (b) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement** or a **Bilateral Embedded Licence Exemptable Large Power Station Agreement**; or
- (c) where such **Offer** or **Modification Offer** is associated with **Distributed Generation**, a **Distribution System** directly connected to the **National Electricity Transmission System**,

shall be offered on the basis of the **Connect and Manage Arrangements**.

### 1.4.2 Transitional Arrangements

## CMP223 ORIGINAL

The **Company** shall as soon as reasonably practical after the **Connect and Manage Implementation Date** and in any event by the end of the **Connect and Manage Transition** issue:

- (a) a revised **Offer** on the basis of the **Connect and Manage Arrangements** as regards any **Offer** issued but not accepted pursuant to the **Interim Connect and Management Arrangements**
- (b) an offer to vary each **Existing ICM Construction Agreement** such that it is in a form and on terms consistent with a **Construction Agreement** entered into on the basis of the **Connect and Manage Arrangements**; and/or
- (c) a **Modification Offer** as regards any **Bilateral Agreement** entered into on the basis of the **Interim Connect and Manage Arrangements** which would require amendments in order to comply with the **Connect and Management Arrangements**,

in each case on terms no less advantageous than those contained in offers made or agreements entered into pursuant to the **Interim Connect and Manage Arrangements**. The **Applicant** or **User** (as appropriate) shall be entitled to accept such a proposal or continue with its existing arrangements.

## 1.5 OTSDUW ARRANGEMENTS

- 1.5.1 Any **Offer** or **Modification Offer** made to an **Applicant** in respect of a **New Connection Site** located in **Offshore Waters** shall, unless the **Applicant** indicates otherwise, be made on the assumption that the **User** (following agreement with **The Company**) will undertake **Offshore Transmission System Development User Works** (including construction and installation). For the avoidance of doubt, this shall not prevent the **Applicant** and **The Company** from agreeing (prior to signing the **Construction Agreement**) that the scope of **OTSDUW** will be narrower than that set out in the **Offer** or that **OTSDUW** will not be undertaken by the **User**.
- 1.5.2 Provisions of the **CUSC** which apply in relation to **OTSDUW** and **OTSUA**, and/or a **Transmission Interface Site**, shall (in any particular case) apply up to the **OTSUA Transfer Time**, whereupon such provisions shall (without prejudice to any prior non-compliance) cease to apply, without prejudice to the continuing application of provisions of the **CUSC** applying in relation to the relevant **Offshore Transmission System** and/or **Connection Site**.

## **CMP223 ORIGINAL**

### **1.6 CATEGORIES OF USE WITHOUT BILATERAL AGREEMENTS**

- 1.6.1 Three categories of use of the **GB Transmission System** do not require a **Bilateral Agreement** to be entered into as all the relevant provisions are included in the **CUSC** itself. These relate to **Suppliers, Interconnector Users** and **Interconnector Error Administrators** who in those categories of connection and/or use have no physical presence on the system. Further provisions on this are contained in Section 3 and Section 9 Part II.

### **1.7 BELLA APPLICATION**

- 1.7.1 A **User** in respect of its **Embedded Exemptable Large Power Station** whose **Boundary Point Metering System** is registered in **SMRS** (or who intends to so register) or in **CMRS** by a **User** who is responsible for the **Use of System Charges** associated with the **BM Unit** registered in **CMRS** (or who intends to so register), shall complete and submit to **The Company** a **BELLA Application** and comply with the terms thereof.
- 1.7.2 **The Company** shall make a **BELLA Offer** to that **User** as soon as practicable after receipt of the **BELLA Application** and (save where the **Authority** consents to a longer period) in any event not more than 3 months after receipt by **The Company** of the effective **BELLA Application**. The **BELLA Offer** shall be in the form of a **BELLA**.
- 1.7.3 The **BELLA Offer** shall remain open for acceptance for 3 months from its receipt by that **User** unless either that **User** or **The Company** makes an application to the **Authority** under Paragraph 1.7 of the **CUSC**, in which event the **BELLA Offer** shall remain open for acceptance until 14 days after any determination by the **Authority** pursuant to such application.
- 1.7.4 Upon acceptance of the **BELLA Offer** (as offered by **The Company** or determined by the **Authority**) by the **User** and execution by **The Company**, the **User's** rights and obligations pursuant thereto shall commence in accordance with its terms. Such rights and obligations shall continue until the **BELLA** is terminated.
- 1.7.5 A **User** who is required by this Paragraph 1.7 to submit a **BELLA Application** shall not energise or operate its **Embedded Exemptable Large Power Station** until it has entered into a **BELLA** with **The Company** and until **The Company** has issued the **User** with an **Operational Notification** in accordance with the terms of the **BELLA**.

**1.8 AUTHORITY'S RIGHT TO DETERMINE IN RESPECT OF A BELLA**

- 1.8.1 If, after a period which appears to the **Authority** to be reasonable for the purpose, **The Company** or the **User** have failed to enter into a **BELLA** in respect of the **Embedded Exemptable Large Power Station** either **The Company** or the **User** may apply to the **Authority** for the **Authority** to settle any terms of the **BELLA Offer** in dispute.
- 1.8.2 Upon such application, the **Authority**, pursuant to section 7 (3) (c) of the **Act**, may settle any terms in dispute between **The Company** and the **User** in respect of such **BELLA** in such manner as appears to the **Authority** to be reasonable having (in so far as relevant) regard in particular to the following considerations:
- (a) that the performance by **The Company** of its obligations under the **BELLA** should not cause it to be in breach of those provisions referred to at paragraph 5 of Standard Condition C8 of the **Transmission Licence**;
  - (b) that any methods by which **The Company's** transmission system is connected to any other **System** for the transmission or distribution of electricity accord (insofar as applicable to **The Company**) with the **Grid Code**, the **STC** and the **Distribution Code**;
  - (c) that the terms and conditions of the **BELLA** so settled by the **Authority** and of any other agreements entered into by **The Company** pursuant to Paragraph 1.7 should be in as similar a form as is practicable.
- 1.8.3 Where the **Authority** settles any terms in dispute, the **User** and **The Company** shall forthwith enter into the **BELLA** as settled.
- 1.8.4 If either the **User** or **The Company** proposes to vary the terms of the **BELLA** in a manner provided for under such agreement, the **Authority** may, at the request of **The Company** or the **User**, settle any dispute relating to such variation in such manner as appears to the **Authority** to be reasonable.

**END OF SECTION 1**

## Changes to CUSC Section 5 (Events of Default, Deenergisation and Disconnection)

Amend CUSC Paragraph 5.4.6 and CUSC Paragarapgh 5.4.7 as follows

### 5.4.6 Specific Events of Default

#### Events of Default

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

(a) If the breach which led to any **Deenergisation** pursuant to this Paragraph 5.4 remains unremedied at the expiry of at least 6 months after the date of such **Deenergisation**, **The Company** may declare by notice in writing to the **User** that such breach has become an **Event of Default** provided that:

(i) all disputes arising out of the subject-matter of this Paragraph 5.4 which are referred to the **Dispute Resolution Procedure** have been finally determined in favour of **The Company**; and

(ii) any reference to the **Authority** pursuant to Paragraph 5.4.5(b) hereof has then been finally determined in favour of **The Company** or any terms settled pursuant to such procedure have not been accepted by the **User**.

(b) If any or all of the **Events of Default** in Paragraph 5.3.1 has or have occurred.

#### Security Event of Default - User Meets The Company Credit Rating

5.4.6.2 In the case where a **User** meets **The Company Credit Rating** on signing a **Bilateral Agreement** any of the following events shall constitute an **Event of Default**:-

(a) If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory

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to **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.2(c) or Section 15 of the **CUSC**.

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(b) If having provided security satisfactory to **The Company** pursuant to Part III of Section 2 and Paragraph 5.4.6.2(c) or Section 15 of the **CUSC**:

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(i) 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 the **CUSC** (or the relevant **Bilateral Connection 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;

(ii) any party who may at any time be providing security to **The Company** pursuant to the provisions of the **CUSC** (or the relevant **Bilateral Agreement**) fails to pay to **The Company** any sum demanded pursuant thereto.

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(c) (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 12 months, in terms of or on termination of the relevant **Bilateral Agreements**; or

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(ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Agreement**) (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a

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project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal 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 one million) or such greater figure specified in any **Bilateral 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 re-financed by the **User** within a period of 28 days following the date upon which it was so declared due and payable,

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and in any of (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 the relevant **Bilateral Agreement** and which arise under the **CUSC**. 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.

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Provided that (in relation to Paragraphs (i) or (ii) or (iii) above) if at any time after the putting in place of security under this Paragraph 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.

Security Event of Default - User Does Not Meet The Company Credit Rating

5.4.6.3 In the case where a **User** does not meet **The Company Credit Rating** on signing a **Bilateral Agreement** any of the following events shall constitute an **Event of Default**:-

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(a) (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 unsecured sums due or to become due to **The Company** within the next period of 12 months, in terms of or on termination of the relevant **Bilateral Agreements**; or

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(ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Agreement**), (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal of the advances under such arrangement immediately due and payable; or

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(iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 (pounds sterling one million) or such greater amount specified in any **Bilateral 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**

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or refinanced by the **User** within a period of 28 days following the date upon which it was so declared due and payable.

And in any one of (i) or (ii) or (iii) the **User** fails:-

- (aa) 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 a **Letter of Credit** in favour of **The Company** and **Valid** 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
- (bb) 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 any one of (i) or (ii) or (iii) if at any time after the putting in place of security under this Paragraph 5.4.6.3(a) 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 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) in this Paragraph 5.4.6.3(a) subsequently occurring.

- (b) 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 Part III of Section 2 or Paragraph 5.4.6.3(a) or Section 15 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 Paragraph 2.22.
- (c) 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.
- (d) If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.3(a) or Section 15 fails to pay **The Company** any sum demanded in any **Notice of Drawing** pursuant thereto.

#### 5.4.7 Specific Event of Default Disconnection

Once **The Company** has given a valid notice of an event of default pursuant to Paragraph 5.4.6 provided that the **Event of Default** is continuing **The Company** may give notice of termination to that **User** whereupon the relevant **Bilateral Agreement** or right to use the system shall terminate and:

- (a) **The Company** shall in relation to such an **Event of Default** of a **User** in relation to a **Connection Site**:

- (i) **Disconnect all the User's Equipment at the Connection Site; and**
- (ii) the **User** concerned shall remove any of the **User's Equipment**:
  - (aa) in the case of **Connection Sites** in England and Wales, on **The Company's** or, in the case of **Connection Sites** in Scotland, on the **Relevant Transmission Licensee's** land (as appropriate) within six (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 relevant **User**; or
  - (bb) in the case of **Connection Sites Offshore**, on or adjacent to the **Relevant Transmission Licensee's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**; and
  - (iii) 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 land of the **User** concerned within 6 months or such longer period as may be agreed between the **User** and **The Company** or the **Relevant Transmission Licensee** (as appropriate); and,
  - (iv) in the case of **Connection Sites Offshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes any of the **Transmission Connection Assets** on or adjacent to the **User's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**.

Such **User** shall (notwithstanding any longer time for payment which but for such termination the **User** may have for payment pursuant to the **CUSC** or the relevant **Bilateral Agreement**) within 14 days from the date of termination pay to **The Company** all amounts due and owing on the date of such termination and be liable to pay to **The Company Termination Amounts** applicable to the **Connection Site** and, in the case of

a **User** in the category of a **Power Station** directly connected to the **National Electricity Transmission System** the **Cancellation Charge**, such payments to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof;

- (b) (i) **The Company** shall request the owner of any **Distribution System** to which the **User** is connected to **Disconnect** all the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the site of connection;
- (ii) **The Company** shall in relation to such an event of default of a **User** acting as a **Supplier** request the owner of the **Distribution System** to which any of that **User's Customer's** are connected to **Disconnect** such **User's Customer's**;
- (iii) **The Company** shall in relation to such an **Event of Default** of a **User** acting as an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transfer of power across the **Interconnector** by or on behalf of that **Interconnector User**; and

the **User** shall be obliged to pay to **The Company** forthwith the **Use of System Charges** due under the **CUSC** or the relevant **Bilateral Agreement** up to the end of the **Financial Year** in which **Termination** occurs and, in the case of a **User** with a **Bilateral Embedded Generation Agreement** or **BELLA** or **Bilateral Cancellation Charge Agreement** the **Cancellation Charge**.

## Changes to CUSC Section 6 (General Provisions)

Amend CUSC Paragraph 6.5.1 to Paragraph 6.5. as follows

### 6.5 OBLIGATIONS OF USERS WHO OWN OR OPERATE DISTRIBUTION SYSTEMS

#### 6.5.1

- (a) Any **User** who owns or operates a **Distribution System** shall not **Energise** the connection between a **Relevant Embedded Medium Power Station** or a **Relevant Embedded Small Power Station** and its **Distribution System** nor permit the use of its **Distribution System** by the same until:
- (i) **The Company** has confirmed to the **User** that those works set out in the relevant **Construction Agreement** have been completed,
  - (ii) the **User** has confirmed to **The Company** that the requirements of the **Grid Code** which relate to the **Power Station** and any additional **Site Specific Requirements**, as set out in the **User's Bilateral Agreement** have been complied with, and
  - (iii) the process in Paragraph 6.5.5 has been completed to **The Company's** reasonable satisfaction.

Any **User** who owns or operates a **Distribution System** shall not **Energise** the connection between an **Embedded Medium Power Station** (other than a **Relevant Embedded Medium Power Station**, where the provisions above shall apply) or an **Embedded Small Power Station** (other than a **Relevant Embedded Medium Power Station**, where the provisions above shall apply) which is the subject of a **Bilateral Agreement** and its **Distribution System** nor permit the use of its **Distribution System** by the same until **The Company** has confirmed to the **User** who owns or operates the relevant **Distribution System** that the person owning or operating the plant has where required completed the **Use of System Application (Generators)** and has entered into a **Bilateral Embedded Generation Agreement** in the appropriate form with **The Company**.

Any **User** who owns or operates a **Distribution System** shall not **Energise** the connection between a **Large Power Station** (other than an **Embedded Exemptable Large Power Station** where the provisions of Paragraph 6.5.1(b) and (c) apply) and its **Distribution System** nor permit the use of its **Distribution System** by the same until the person owning or operating the **Large Power Station** has entered into a **Bilateral Embedded Generation Agreement** in the appropriate form with **The Company** and (if such person is not already a party to **CUSC**) has entered into an **Accession Agreement**.

- (b) Any **User** who owns or operates a **Distribution System** shall not **Energise** the connection between any **Embedded Exemptable Large Power Station** and its **Distribution System** nor permit the use of its **Distribution System** by the same until the person who owns or operates the relevant **Embedded Exemptable Large Power Station** has (if such person is not already a party to the **CUSC**) entered into an **Accession Agreement**, and until **The Company** has confirmed to the **User** that any **Construction Works** associated with the **Embedded Exemptable Large Power Station** listed in the relevant **Construction Agreement** have been completed.
- (c) Without prejudice to Paragraph 6.5.1(b), any **User** who owns or operates a **Distribution System** shall use its best endeavours to procure that any person who owns or operates an **Embedded Exemptable Large Power Station** and with whom the **User** has an agreement for connection to or use of the **User's Distribution System** shall (if such person is not already a party to the **CUSC**) enter into an **Accession Agreement**.
- (d) Sub-paragraphs (b) and (c) do not apply to any **User** who owns or operates a **Distribution System** in relation to an **Embedded Exemptable Large Power Station** which is **Embedded** in a part of the **User's Distribution System** that is not directly or indirectly connected to the **National Electricity Transmission System** in respect of that **Embedded Exemptable Large Power Station**.

Deleted: Transmission Reinforcement

- 6.5.2 Any **User** who owns or operates a **Distribution System** shall not **Energise** the connection between any **Customer** of another **Authorised Electricity Operator** connected to such **Distribution System** if the **Authorised Electricity Operator** is responsible for **Demand (Active Power)** being supplied to such



**Customer** pursuant to the **Balancing and Settlement Code** unless such **Authorised Electricity Operator** has first submitted a **Use of System Application**, has received a **Use of System Offer Notice** which has been accepted by the **User**, and (if the **Authorised Electricity Operator** is not already a party to the **CUSC Framework Agreement**) has become a party to the **CUSC Framework Agreement**.

- 6.5.3 **The Company** shall notify the relevant owner or operator of the **Distribution System** in writing as soon as the conditions set out in Paragraph 6.5.1 and Paragraph 6.5.2 have been satisfied in any particular case together with, if appropriate, a copy of any list provided under Paragraph 3.5. **The Company** undertakes to each **CUSC Party** that, for so long as it is the case, **The Company** shall from time to time forthwith upon receipt of any written request from that **CUSC Party** to do so, confirm in writing to any person specified in such request that that **CUSC Party** is a party to the **CUSC Framework Agreement** and any **Bilateral Agreement** specified in such request.
- 6.5.4 Each owner or operator of a **Distribution System** shall **De-energise** the connection equipment of any such **User** the subject of Paragraph 6.5.1 or **Customer** the subject of Paragraph 6.5.2 as soon as reasonably practicable following the instruction of **The Company** in accordance with the terms of the **CUSC**. **The Company** shall reimburse such owner or operator any expense incurred in relation to such act of **De-energisation**, if any, and shall indemnify such owner or operator against any liability, loss or damage suffered by it as a result of such **De-energisation**. Details of any circumstances likely to lead to such a **De-energisation** shall be notified promptly by **The Company** to the said owner or operator. The owner or operator of a **Distribution System** shall promptly notify **The Company** when the connection equipment of any **User** or **Customer** the subject of Paragraph 6.5.1 or 6.5.2 is **De-energised** or **Disconnected** from its **Distribution System** or ceases to use its **Distribution System** as the case may be following the instruction of **The Company** in accordance with the terms of the **CUSC**.

## 6.5.5 Statement of Works

- 6.5.5.1 Any **User** who owns or operates a **Distribution System** shall as soon as reasonably practicable upon receipt of a request for a connection to and / or for the use of that **User's Distribution System** from a **Relevant Embedded Medium Power Station** or a **Relevant Embedded Small Power Station** submit to **The Company** a **Request for a Statement of Works**. Such a submission by a **User** who owns or operates a **Distribution System** of a **Request for a Statement of Works** will be substantially in the form of Exhibit U.
- 6.5.5.2 The **Request for a Statement of Works** must include the Technical Information in respect of such **Power Station** and its proposed date of connection to and / or for the use of the **Distribution System**.
- 6.5.5.3 **The Company** will within 28 days of the submission of a **Request for a Statement of Works** respond in writing to the **User** who owns or operates a **Distribution System** with a **Statement of Works** substantially in the form of **Exhibit V**. The **User** who owns or operates a **Distribution System** shall forward such **Statement of Works** to the **Power Station** as soon as reasonably practicable.
- 6.5.5.4 The **User** who owns or operates a **Distribution System** shall have 90 **Business Days** from such notification under Paragraph 6.5.5.3 to return to **The Company** a completed and signed **Confirmation of Project Progression**, in the form attached to the **Statement of Works** together with the appropriate fee. The **User** who owns or operates a **Distribution System** shall forward a copy of such **Confirmation of Project Progression** to the **Power Station** as soon as reasonably practicable.
- 6.5.5.5 The **Confirmation of Project Progression** together with the information included in the **Request for a Statement of Works**, and any further details as may be required by **The Company** shall be deemed to be a **Modification Application** for the purposes of the **Charging Statements** and Paragraphs 1.3.2, 6.9.2, 6.9.4 and 6.10 of the **CUSC** which shall apply thereto.
- 6.5.5.6 Where **The Company** believes the **Power Station** has no significant impact on the **National Electricity Transmission System** (for avoidance of doubt, such significant impact involves either party in an expenditure of more than £10,000) or the **Statement of Works** indicates that no works are required nor any **Site Specific Requirements** are necessary, the

**Statement of Works** completes the process required for in respect of the **Request for a Statement of Works** for the purposes of Paragraph 6.5.1(a)(i) and the **User** who owns or operates a **Distribution System** may **Energise** the connection of the **Power Station** or permit the use of its **Distribution System** by the **Power Station**.

- 6.5.5.7 Where **The Company** believes the **Power Station** has a significant impact on the **National Electricity Transmission System** (for avoidance of doubt, such significant impact involves either party in an expenditure of more than £10,000) and the **Statement of Works** indicates that works are required and/or **Site Specific Requirements** are necessary, should the **User** who owns or operates a **Distribution System** fail to return to **The Company** a signed and completed **Confirmation of Project Progression** (together with the appropriate fee) within 90 **Business Days** from such notification under Paragraph 6.5.5.3, the **Request for a Statement of Works** shall be deemed withdrawn and the **User** who owns or operates a **Distribution System** shall not energise the connection of nor permit the use of its **Distribution System** by the **Power Station** that was the subject of the **Request for a Statement of Works** in the manner described in the **Request for a Statement of Works**.
- 6.5.5.8 The **User** who owns or operates a **Distribution System** shall notify **The Company** in writing if the proposed date of connection or any other of the details included in or provided pursuant to the **Request for a Statement of Works** for such **Power Station** for which a **Request for a Statement of Works** has been submitted, changes and the **User** who owns or operates a **Distribution System** shall (except where **The Company** agrees in writing that a revised **Statement of Works** is not reasonably required) submit a revised **Request for a Statement of Works**
- 6.5.5.9 If **The Company** has notified the **User** that no works are required on the **National Electricity Transmission System** pursuant to Paragraph 6.5.5.3, **The Company** may notify the **User** in writing within 28 days of the submission of a **Request for a Statement of Works** that **Site Specific Requirements** are necessary at the site of connection of the **Power Station**. Any **Site Specific Requirements** notified to the **User** shall be incorporated through an agreement to vary the **Bilateral Agreement** between **The Company** and the **User** for the appropriate **Grid Supply Point** of such **User**.
- 6.5.5.10 If **Site Specific Requirements** are necessary and a **Modification Application** has been submitted pursuant to Paragraph 6.5.5.4, then any such **Site Specific Requirements** shall be included in the **Modification Offer**.

**CMP223 ORIGINAL**

6.5.5.11 The **User** shall notify **The Company** in writing if the proposed date of connection for such **Power Station** for which a **Request for a Statement of Works** has been submitted changes and shall submit a revised **Request for a Statement of Works**.

6.5.5.12 **The Bilateral Cancellation Charge Agreement**

6.5.5.12.1 The **Modification Offer** made by **The Company** in response to the deemed **Modification Application** made by the **User** pursuant to **CUSC** Paragraph 6.5.5 shall include a **Bilateral Cancellation Charge Agreement** and (except where they are already a **CUSC Party**) an **Accession Agreement** for each **Relevant Embedded Small Power Station** and/or **Relevant Embedded Medium Power Station** that is the subject of the **Statement of Works**.

6.5.5.12.2 The **User** shall forward the **Bilateral Cancellation Charge Agreement** and **Accession Agreement** to the **Relevant Embedded Small Power Station** and/or **Relevant Embedded Medium Power Station** and shall use its reasonable endeavours to procure that such **Relevant Embedded Small Power Station** and/or **Relevant Embedded Medium Power Station** enters in to the **Bilateral Cancellation Charge Agreement** and **Accession Agreement** such that the **User** can return these signed agreements with its acceptance of the **Modification Offer**.

**CMP223 ORIGINAL**

**CUSC - SECTION 10**

**~~NOT USED~~**

**TRANSITION ISSUES**

**CONTENTS**

**Part 1 CUSC MODIFICATION PROPOSAL 223 (ORIGINAL) 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 **CMP 223**.

10.1.2 **CMP 223** affects (a) **Users** in the category of a **Distribution System** directly connected to the **National Electricity Transmission System** where there is an **Associated DNO Construction Agreement** and (b) **User's** in the category of an **Embedded Power Station** which are the subject of a **Bilateral Embedded Generation Agreement** or **BELLA** and where there is an **Associated DNO Construction Agreement** and (c) **Users** in the category of a **Relevant Embedded Small Power Station** or **Relevant Embedded Medium Power Station** and where there is an **Associated DNO Construction Agreement** and references to **User** in this Section 10 shall be construed accordingly.

10.1.3 This Section sets out the arrangements such that by the **CMP 223 Transition Period End Date**:

- (a) **Existing Associated DNO Construction Agreements** have been amended in line with the provisions introduced under **CMP 223**;
- (b) **Existing BELLAs** and **Existing BEGA Construction Agreements** have been amended in line with the provisions introduced under **CMP 223** and in respect of these **Users** any required security arrangements have been put in place for the start of the **CMP 223 Security Period**;
- (c) **Users** in the category of a **Relevant Embedded Small Power Station** or **Relevant Embedded Medium Power Station** where there is an **Existing Associated DNO Construction Agreement** have entered into a **Bilateral Cancellation Charge Agreement** and any required security arrangements have been put in place for the start of the **CMP 223 Security Period**.

10.1.4 This Section 10 comprises:

- (a) this Introduction; and
- (b) **CMP 223** transition issues.

10.1.5 The provisions of the **Post CMP 223 CUSC** 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 223 Transition Period End Date** to achieve the objectives at 10.1.3) in respect of the

Users until the CMP 223 Transition Period End Date. Any termination of an Existing Associated DNO Construction Agreement or Existing BEGA Construction Agreement or reduction in Transmission Entry Capacity or Developer Capacity which takes effect on or prior to the CMP 223 Transition Period End Date shall therefore be dealt with, and the rights and obligations of The Company and the User to each other, shall be as provided for in the Existing Associated DNO Construction Agreement or Existing BEGA Construction Agreement.

10.1.6 In this Section 10:

- (a) the term “Applicants”; shall mean Users who apply for an offer of a type referred to in (k) during the CMP 223 Transition Period;
- (b) the term “CMP 223”, shall mean CUSC Modification Proposal 223 (Arrangements for Relevant Distributed Generators under the Enduring Generation User Commitment);
- (c) the term “CMP 223 Implementation Date” shall mean the Implementation Date for CMP 223;
- (d) the term “CMP 223 Security Period” shall mean the Security Period immediately following the CMP 223 Transitional Period End Date;
- (e) the term “CMP 223 Transition Period End Date” shall mean the day before the day of the first Security Period which is not less than 6 months from the CMP 223 Implementation Date;
- (f) the term “CMP 223 Transition Period” means the period from the CMP 223 Implementation Date ending on and including the CMP 223 Transition Period End Date and is the period with which this Section 10 deals;
- (g) the term “Existing Associated DNO Construction Agreement”, shall mean an Associated DNO Construction Agreement where the Construction Works will not be completed prior to the CMP 223 Transition Period End Date;

- (h) the term “Existing BEGA Construction Agreement”, shall mean a Construction Agreement with a User who is party to a Bilateral Embedded Generation Agreement where the Construction Works will not be completed prior to the CMP 223 Transition Period End Date;
- (i) the term “Existing BELLAs”, shall mean a BELLA with a User where the Construction Works under the Associated DNO Construction Agreement will not be completed prior to the CMP 223 Transition Period End Date;
- (j) the term “Existing Relevant Embedded Power Stations”, shall mean a Relevant Embedded Small Power Station or Relevant Embedded Medium Power Station which is the subject of an Associated DNO Construction Agreement where the Construction Works will not be completed prior to the CMP 223 Transition Period End Date;
- (k) the term “New Applications”, shall mean a Request for a Statement of Works or Modification Application associated with Distributed Generation or Use of System Application by a User or prospective User or a Modification Application to vary any such agreements made during the CMP 223 Transition Period;
- (l) the term “Outstanding Applications”, shall mean an offer of a type referred to in (k) where the application was made prior to the CMP 223 Implementation Date;
- (m) the term “Outstanding Offers”, shall mean an offer of a type referred to in (k) where the application was made prior to the CMP 223 Implementation Date which has not been accepted at the CMP 223 Implementation Date but is still capable of being accepted..

10.1.7 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.

## **10.2 CMP 223 TRANSITION**

### **Existing Associated DNO Construction Agreements**

- 10.2.1 As at and from the **CMP 223 Transition Period End Date** each **Associated DNO Construction Agreement** (where associated with a **Bilateral Embedded Generation Agreement**) shall be read as if amended in a manner consistent with the amendments introduced by **CMP 223** and reflecting that the liability for the **Cancellation Charge** and security arrangements required in respect of this are now the obligations of **Distributed Generation** rather than the **User**.**
- 10.2.2 The **Company** shall offer to amend each **Existing Associated DNO Construction Agreement** (where associated with developers of **Relevant Embedded Power Stations**) such that it is consistent at the **CMP 223 Transition Period End Date** with the amendments introduced by **CMP 223** and reflecting that the liability for the **Cancellation Charge** and security arrangements required in respect of this are now the obligations of the developer rather than the **User**.**
- 10.2.3 The **Company** shall make the offer referred to at Paragraph 10.2.2 to each **User** as soon as reasonably practicable after the **CMP 223 Implementation Date**.**
- 10.2.4 If **The Company** and a **User** fail to agree changes to each of their **Existing Associated DNO Construction Agreements** either such person may refer the matter to the **Authority** under Standard Condition C9 Paragraph 4 of the **Transmission Licence**.**
- 10.2.5 In respect of each **Existing Associated DNO Construction Agreement**, a **User** shall as soon as practicable after [and in any event within [20 **Business Days** (or such later date as **The Company** shall agree) of] the **CMP 223 Implementation Date****

## **CMP223 ORIGINAL**

confirm to **The Company** the name and address of each Developer of an **Existing Relevant Embedded Power Station**.

10.2.6 In a form consistent with that introduced by **CMP 223** at **CUSC** Schedule 2 Exhibit 7 (Bilateral Cancellation Charge Agreement), with each offer to a **User** **The Company** shall include a **Bilateral Cancellation Charge Agreement** and, where not already a **CUSC Party**, a **CUSC Accession Agreement** for each developer notified to **The Company** under Paragraph 10.2.5.

10.2.7 In the event that a developer does not (a) enter into the **Bilateral Cancellation Charge Agreement** and, where not already a **CUSC Party**, a **CUSC Accession Agreement** by the **CMP 223 Transition Period End Date** or (b) does not by the **CMP 223 Transition Period End Date** have any necessary security arrangement in place ready for the start of the **CMP 223 Security Period** the **Associated DNO Construction Agreement** shall terminate with immediate effect on the **CMP 223 Transition Period End Date**.

### **Existing BEGA Construction Agreements**

10.2.8 **The Company** shall offer to amend each **Existing BEGA Construction Agreement** such that it is consistent at the **CMP 223 Transition Period End Date** with the amendments introduced by **CMP 223**.

10.2.9 **The Company** shall make the offer to each **User** as soon as reasonably practicable after the **CMP 223 Implementation Date**.

10.2.10 If **The Company** and a **User** fail to agree changes to each of their **Existing BEGA Construction Agreements** either such person may refer the matter to the **Authority** under Standard Condition C9 Paragraph 4 of the **Transmission Licence**.

10.2.11 In respect of the **CMP 223 Security Period**, the **Cancellation Charge Statement** sent in respect of an **Existing BEGA Construction Agreement** shall reflect the changes in liability and security regarding **Attributable Works** introduced by **CMP 223** in respect of such **Users**.

### **Existing BELLAs**

10.2.12 **The Company** shall offer to amend each **Existing BELLA** such that it is consistent at the **CMP 223 Transition Period End**

**Date with the amendments introduced by CMP 223 to CUSC Schedule 2 Exhibit 5 (BELLA).**

10.2.13 **The Company shall make the offer to each User as soon as reasonably practicable after the CMP 223 Implementation Date.**

10.2.14 **If The Company and a User fail to agree changes to each of their Existing BELLA either such person may refer the matter to the Authority under Standard Condition C9 Paragraph 4 of the Transmission Licence.**

10.2.15 **In respect of the CMP 223 Security Period, The Company shall as soon as practicable and in any event not less than 75 Business Days prior to the CMP 223 Security Period prepare and send to each User in respect of an Existing BELLA a Cancellation Charge Statement for the CMP 223 Security Period.**

10.2.16 **Each User with an Existing BELLA shall put security arrangements in place in accordance with CUSC Section 15 in respect of the Existing BELLA for the CMP 223 Security Period such security arrangements to be effective from the start of the CMP 223 Security Period.**

#### **Existing Relevant Embedded Power Stations**

10.2.17 **In respect of the CMP 223 Security Period, The Company shall as soon as practicable and in any event not less than 75 Business Days prior to the CMP 223 Security Period prepare and send to each User in respect of a Bilateral Cancellation Charge Agreement a Cancellation Charge Statement for the CMP 223 Security Period.**

10.2.18 **Each User with a Bilateral Cancellation Charge Agreement shall put security arrangements in place in respect of the Bilateral Cancellation Charge Agreement for the CMP 223 Security Period in accordance with CUSC Section 15 with such security arrangements to be effective from the start of the CMP 223 Security Period.**

#### **Outstanding Applications and New Applications**

10.2.19 **The Company shall make Offers such that prior to the CMP 223 Transition Period End Date the arrangements for security**

**CMP223 ORIGINAL**

and liability within the agreements are consistent with those under the **Pre CMP 223 CUSC** but such that on **CMP 223 Transition Period End Date** the arrangements for security and liability within the agreements are consistent with those under the **Post CMP 223 CUSC** and shall to the extent practicable make such **Offers** within the original or standard timescales.

END OF SECTION 10

## CMP223 ORIGINAL

Changes to CUSC Section 11 (Interpretation and Definitions)

New definitions to be added at CUSC Section 11

**“Associated DNO Construction Agreement”**

**a Construction Agreement between The Company and a User in the category of a Distribution System directly connected to the National Electricity Transmission System in respect of works required on the National Electricity Transmission System as a consequence of the connection of Distributed Generation to the Distribution System;**

**“Bilateral Cancellation Charge Agreement”**

**an agreement between The Company and a Relevant Embedded Small Power Station or Relevant Embedded Medium Power Station in respect of the payment of and security arrangements required in respect of the Cancellation Charge, a form of which is set out in Exhibit 7 to Schedule 2;**

Amends to definitions at CUSC Section 11

**“Attributable Works”**

those components of the **Construction Works** which are required (a) to connect a **Power Station** which is to be connected at a **Connection Site** to the nearest suitable **MITS Node**; or (b) in respect of an **Embedded Power Station** from the relevant **Grid Supply Point** to the nearest suitable **MITS Node**

(and in any case above where the **Construction Works** include a **Transmission** substation that once constructed will become the **MITS Node**, the **Attributable Works** will include such **Transmission** substation) and which in relation to a particular **User** are as specified in, *as appropriate*, its **Construction Agreement or BELLA or Bilateral Cancellation Charge Agreement**;

**"Bilateral Agreement"**

in relation to a **User**, a **Bilateral Connection Agreement** or a **Bilateral Embedded Generation Agreement**, or a **BELLA** or a **Bilateral Cancellation Charge Agreement** between **The Company** and the **User**;

## CMP223 ORIGINAL

“Cancellation Charge”	the charge payable by certain <b>Users</b> in the event of termination of a <b>Bilateral Connection Agreement</b> or <b>Bilateral Embedded Generation Agreement</b> or <b>Construction Agreement</b> or <b>BELLA</b> or a <b>Bilateral Cancellation Charge Agreement</b> or <b>Associated DNO Construction Agreement</b> or a reduction in <b>Transmission Entry Capacity</b> or a reduction in <b>Developer Capacity</b> as calculated in accordance with the <b>User Commitment Methodology</b> ;
“Developer Capacity”	the MW figure as specified as such by a <b>User</b> in a <b>BELLA</b> or in a <b>Bilateral Cancellation Charge Agreement</b> and in each case reflected in the <b>Associated DNO Construction Agreement</b> <del>entered into between <b>The Company</b> and a <b>User</b> in the category of a <b>Distribution System</b> directly connected to the <b>National Electricity Transmission System</b> as a consequence of a <b>Request for a Statement of Works</b>;</del>
“Key Consents”	those <b>Consents</b> a <b>User</b> requires in respect of its <b>Power Station</b> project which are identified by <b>The Company</b> as key for the purposes of Part Three of the <b>User Commitment Methodology</b> and in relation to a particular <b>User</b> as defined in, <i>as appropriate</i> , its <b>Construction Agreement</b> , <b>BELLA</b> or <b>Bilateral Cancellation Charge Agreement</b> ;
“Trigger Date”	as identified by <b>The Company</b> in accordance with Part Two of the <b>User Commitment Methodology</b> and in relation to a particular <b>User</b> as defined in, <i>as appropriate</i> , its <b>Construction Agreement</b> , <b>BELLA</b> or <b>Bilateral Cancellation Charge Agreement</b> ;

**CUSC SECTION 15**

**USER COMMITMENT METHODOLOGY**

**CONTENTS**

- Part One      Introduction**
  
- Part Two      Calculation of Cancellation Charge**
  
- Part Three    Calculation of Cancellation Charge Secured Amount and Credit Requirements**
  
- Part Four    Reconciliation of Actual Attributable Works Cancellation Charge**

**PART ONE INTRODUCTION**

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

2 The **Cancellation Charge** is payable by **Users** on termination of agreements with and reductions in **Transmission Entry Capacity** or **Developer Capacity** in respect of **Users** in the categories of

(a) a **Power Station** directly connected to the **National Electricity Transmission System** in respect of which there is a **Bilateral Connection Agreement** with **The Company**;

(b) an **Embedded Power Station** in respect of which there is a **Bilateral Embedded Generation Agreement** with **The Company**;

(c) **Distributed Generation** in respect of which there is a **BELLA** or **Bilateral Cancellation Charge Agreement** with **The Company**,

and reference to **User** in this Section 15 shall be interpreted accordingly.

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

For the avoidance of doubt in respect of **Users** in the category of a **Distribution System** directly connected to the **National Electricity Transmission System** which has an **Associated DNO Construction Agreement** with **The Company** such **Associated DNO Construction Agreement** will contain the necessary elements to enable (and information it in will be used for the purposes of) the calculation of the **Cancellation Charge** but it will not provide for payment of the **Cancellation Charge**. In such case the

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- Deleted: directly connected to the **National Electricity Transmission System**
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**CMP223 ORIGINAL**

**Cancellation Charge** will be payable by the associated **User** in category (b) or (c) above.

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For the avoidance of doubt in the case of **Distributed Generation** (other than an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement**) the **Cancellation Charge** does not apply for reductions in **Developer Capacity** on or after the **Charging Date** or termination on or after the **Charging Date**.

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For information, for **Users** (other than **Users** in the categories to which this Section 15 applies and **User's** directly connected to the **National Electricity Transmission System with a Construction Agreement associated with Distributed Generation**) the liability for and security requirements in respect of **Final Sums**, which are due on termination of a **Construction Agreement** are as set out in the **Construction Agreement** (and in the proforma attached at **CUSC** Schedule 2, Exhibit 3).

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

- 3 The **Company** shall apply and calculate the **Cancellation Charge** in accordance with Part Two of this Section 15.

The **Cancellation Charge** is made up of a number of components: the "**Pre Trigger Amount**", "**Attributable Works Cancellation Charge**" and "**Wider Cancellation Charge**" which apply at different stages.

- 4 As provided for at Paragraph 3.5, the **Attributable Works Cancellation Charge** can be (at the **User's** election in accordance with Paragraph 7) on the basis of the **Fixed Cancellation Charge** (Paragraph 3.6) rather than the **Actual Attributable Works Cancellation Charge** (Paragraph 3.7).

- 5 This Section 15 also sets out in Part Three the level of, and arrangements for, security required in respect of the **Cancellation Charge**.

## CMP223 ORIGINAL

- 6 The **Company** shall apply and calculate the **Cancellation Charge Secured Amount** in accordance with this Section 15 Part Three.
- 7 This Section 15 also sets out in Part Four the reconciliation process in respect of the **Actual Attributable Works Cancellation Charge**.
- 8 For reference a number of terms used in this Section 15 are defined within this Section 15.
- 9 For the purposes of this section 15, unless the context otherwise requires, reference to “Construction Agreement” shall include an “Associated DNO Construction Agreement”.

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## PART TWO CALCULATION OF CANCELLATION CHARGE

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- 1.1 The **Cancellation Charge** payable shall be calculated in accordance with this Part Two of Section 15.
- 1.2 Value Added Tax will be payable on any **Cancellation Charge**.
- 2 **Completion Date and Trigger Date**
- 2.1 In making an **Offer** to a **User** (including the Offer of an Associated DNO Construction Agreement) 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**.
- 2.2 The **Trigger Date** will be (a) the 1 April which is three **Financial Years** prior to the start of the **Financial Year** in which the **Charging Date** occurs or (b) where the **Charging Date** is less than three **Financial Years** from the date of the **Construction Agreement**, the date of the **Construction Agreement** (in which case the **Financial Year** in which such date falls is the relevant **Financial Year** within the **Cancellation Charge Profile** working back from the **Charging Date**).
- 2.3 The **Trigger Date** is the date from which the **Wider Cancellation Charge** applies and the date from which, in the case of the **Fixed Cancellation Charge**,

## CMP223 ORIGINAL

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

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

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

- (i) Where there is a delay to the **Completion Date** and the **Trigger Date** has not passed, the **Trigger Date** will be 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.
- (iii) In the case of a **Fixed Cancellation Charge**, a change in the **Attributable Works** will not adjust the **Cancellation Charge Profile** unless the **Completion Date** has also changed in which case (ii) above will apply.

2.4.3 Where a change is as a result of the **User's** request then, notwithstanding any change in the **Completion Date**;

- (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 Calculation of Cancellation Charge

3.1 The **Cancellation Charge** is the charge due to **The Company** by a **User** on termination of a **Construction Agreement**, **Disconnection** or a reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date** and **Disconnection** or a reduction in **Transmission Entry Capacity** on or after the **Charging Date**.

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

- (a) where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before the **Trigger Date** (the “**Pre Trigger Amount**” or “**Actual Attributable Works Cancellation Charge**”) (Paragraphs 3.6.1 and 3.7);
- (b) 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** (the “**Fixed Attributable Works Cancellation Charge**” or “**Actual Attributable Works Cancellation Charge**” and the “**Wider Cancellation Charge**”) (Paragraphs 3.5 to 3.8);
- (c) depending whether the **Attributable Works Cancellation Charge** is a **Fixed Cancellation Charge** or **Actual Attributable Works Cancellation Charge** (Paragraphs 3.5 to 3.7);

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## CMP223 ORIGINAL

- (d) where the **Transmission Entry Capacity** is reduced or **Disconnection** occurs on or after the **Charging Date** (the "**Wider Cancellation Charge**") (Paragraph 3.8).

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

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

***Cancellation Charge = Attributable Works Cancellation Charge***

### 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 plus Wider Cancellation Charge***

The following Paragraphs set out in detail the **Attributable Works Cancellation Charge** and **Wider Cancellation Charge** and Paragraph 3.7 sets out the above calculation by formula.

### 3.5 Attributable Works Cancellation Charge

The **Attributable Works Cancellation Charge** can be either the **Fixed Cancellation Charge** or **Actual Attributable Works Cancellation Charge**.

### 3.6 Fixed Cancellation Charge

## CMP223 ORIGINAL

The calculation of the **Fixed Cancellation Charge** is different where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before (“**Pre Trigger Amount**”) or on or after the **Trigger Date** (“**Fixed Attributable Works Cancellation Charge**”).

### 3.6.1 Pre Trigger Amount

Should a **Construction Agreement** be terminated, or **Transmission Entry Capacity** be reduced or **Developer Capacity** be reduced before the **Trigger Date** the **Fixed Cancellation Charge** is the **Pre Trigger Amount** calculated as a £/MW figure by reference to the **Cancellation Charge Profile** and derived in accordance with the formula at Paragraph 3.9 and set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 7:

### 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 x (1 – Local Asset Reuse Factor) x Strategic Investment Factor x 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*

## CMP223 ORIGINAL

*Notification of Fixed Cancellation Charge* by reference to which an election is made in accordance with Paragraph 6.

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 6.

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 6.

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 6.

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 6.

- 3.6.3** The **Pre Trigger Amount** and the **Attributable Works Cancellation Amount** (and the factors used in deriving this) and the **Cancellation Charge Profile** are fixed at the time an election is made in accordance with Paragraph 7 and the **Pre Trigger Amount** and **Attributable Works Cancellation Amount** are not

## CMP223 ORIGINAL

subject to any further specific adjustment, reconciliation or credit should any of the **Transmission** assets resulting from the **Attributable Works** be reused or of benefit to other **Users**.

### 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 **Local Asset Reuse Factor**, the **Strategic Investment Factor** and the **Distance Factor** as calculated in paragraph 3.6.2, of the **Attributable Works** and any of the resulting **Transmission** assets.

3.7.2 In the case of the **Actual Attributable Works Cancellation Charge**, on termination of the **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the **Actual Attributable Works Cancellation Charge** and so (a) in the case of termination, the **User** shall pay to **The Company** on account of the **Actual Attributable Works Cancellation Charge** a sum equal to the estimate of **Actual Attributable Works Cancellation Charge** as shown in the **Cancellation Charge Statement** for the period in which the termination occurs and (b) in the case of a reduction in **Transmission Entry Capacity** or **Developer Capacity**, a sum by reference to



## CMP223 ORIGINAL

the MW reduction based on the £/MW figure derived from the estimate of **Actual Attributable Works Cancellation Charge** as shown in the **Cancellation Charge Statement** for the period in which the termination occurs. These will then be subject to reconciliation in accordance with this Section 15 Part Four.

### 3.8 Wider Cancellation Charge

The **Wider Cancellation Charge** results in a £/MW charge calculated as follows:

***Zonal Unit Amount*** x (MW of reduction in **Transmission Entry Capacity** or **Developer Capacity**) x **Cancellation Charge Profile**

The **Zonal Unit Amount** is a £/MW figure calculated by reference to the **Generation Zone** in which the **Power Station** is to be located as set out in the **Cancellation Charge Statement**. It is calculated by reference to the **Annual Wider Cancellation Charge Statement** for the **Financial Year** in which notice of reduction in **Transmission Entry Capacity** or **Developer Capacity** is given and/or notice of **Disconnection** is given or, where in the case of an **Event of Default** where notice is not given, the **Financial Year** in which the reduction in **Transmission Entry Capacity** or **Developer Capacity** or **Disconnection** occurs.

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

*Where **Load Related Boundary Capex** is the capex required to increase capability in the network as determined by The Company for a given Financial Year, excluding any Attributable Works Capital Cost, multiplied by the User*

**CMP223 ORIGINAL**

**Risk Factor and the Global Asset Reuse Factor**, as set out in the **Annual Wider Cancellation Charge Statement**.

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

Where the **User Risk Factor** is the share of total risk between generation and consumers, set at 0.5.

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

Where the **Boundaries** are as detailed in Section 8 of the **Seven Year Statement**.

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

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

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

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

## CMP223 ORIGINAL

reduction in **Transmission Entry Capacity** occurs on or after the **Charging Date**.

Where the **Wider User Commitment Liability Base** is the total amount of generation in MW liable for the **Wider Cancellation Charge** in the year in question and the total amount of generation in MW which will become liable for the **Wider Cancellation Charge** in the year in question and set out in the **Annual Wider Cancellation Charge Statement**.

Where the **Cancellation Charge Profile** is the profile derived in accordance with the formula at Paragraph 3.10 or 3.11, as appropriate.

### 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<sub>t</sub>*

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<sub>t</sub> 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<sub>t</sub> = (£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<sub>t</sub> = (£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<sub>t</sub> = (£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.*

**3.10 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** a **User** shall pay the **Cancellation Charge** calculated as follows:

*Cancellation Charge = the sum of (a) Fixed Attributable Works Cancellation Charge or Actual Attributable Works Cancellation Charge and (b) Wider Cancellation Charge*

- (a) *Either the Actual Attributable Works Charge or, where on the Fixed Attributable Works Cancellation Charge, a charge calculated as follows:*

Where:

- *Termination of Construction Agreement equates to reduction in Transmission Entry Capacity or Developer Capacity to zero*
- *Fixed Attributable Works Cancellation Charge = Attributable Works Cancellation Amount x MW reduction in Transmission Entry Capacity or Developer Capacity x Cancellation Charge Profile<sub>t</sub>*
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years working back from the Charging Date to the Trigger Date:*
  - *In the Financial Year in which the Charging Date occurs (t=0), Cancellation Charge Profile = 1.0,*
  - *In the Financial Year which is 1 Financial Year prior to the Financial Year in which the Charging Date occurs (t=1), Cancellation Charge Profile = 0.75;*
  - *In the Financial Year which is 2 Financial Years prior to the Financial Year in which the Charging Date occurs (t=2), Cancellation Charge Profile = 0.5; and*
  - *In the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs (t=3), Cancellation Charge Profile, = 0.25.*

**AND**

- (b) *Wider Cancellation Charge*

Where:

- *Termination of Construction Agreement equates to reduction in Transmission Entry Capacity or Developer Capacity to zero*

## CMP223 ORIGINAL

- *Wider Cancellation Charge = Zonal Unit Amount x reduction in Transmission Entry Capacity or Developer Capacity x Cancellation Charge Profile<sub>t</sub>*
- *Cancellation Charge Profile<sub>t</sub>, which varies according to the number of Financial Years working back from the Charging Date to the Trigger Date:*
  - *In the Financial Year in which the Charging Date occurs (t=0), Cancellation Charge Profile = 1.0,*
  - *In the Financial Year which is 1 Financial Year prior to the Financial Year in which the Charging Date occurs (t=1), Cancellation Charge Profile = 0.75;*
  - *In the Financial Year which is 2 Financial Years prior to the Financial Year in which the Charging Date occurs (t=2), Cancellation Charge Profile = 0.5; and*
  - *In the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs (t=3), Cancellation Charge Profile = 0.25.*

### 3.11 Where the Transmission Entry Capacity is reduced or Notice of Disconnection is given on or after the Charging 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 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<sub>t</sub>.*
- *Cancellation Charge Profile<sub>t</sub>, which varies according to the number of Financial Years notice given from the 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 Financial Years prior to the Financial Year in which such notice is to take effect (t=2), Wider Cancellation Charge = zero.*

## CMP223 ORIGINAL

### 4 Annual Wider Cancellation Charge Statement

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

- (a) the **Zonal Unit Amount** by **Generation Zone** for that **Financial Year**;
- (b) the **Wider User Commitment Liability Base** for that **Financial Year**;
- (c) the **Total TO Capex** for that **Financial Year** (*where the **Total TO Capex** is the forecast of the **Load Related Boundary Capex** and **Non Load Related Boundary Capex** for a given **Financial Year**, excluding the total **Attributable Works Capital Cost***);
- (d) a forecast of the **Total TO Capex** for the following three **Financial Years**;
- (e) the **Global Asset Reuse Factor** for that **Financial Year**;
- (f) the **Boundary Non Compliance Factors** for that **Financial Year**;
- (g) a forecast of the **Zonal Unit Amount** by **Generation Zone** for the following three **Financial Years**;
- (h) the % of the **Cancellation Charge** that is required to be secured prior to (and including) and after the **Key Consents in Place Date**.

4.2 In the event that for any **Financial Year** it is proposed to change the **Global Asset Reuse Factor** or the % of the **Cancellation Charge** that is required to be secured prior to (and including) and after the **Key Consents in Place Date** from that set out in the **Annual Wider Cancellation Charge Statement** for the previous **Financial Year**, **The Company** shall not make such change without first consulting on the change (and its provision in electronic form on the Website and in electronic mails to **CUSC Parties** and such other persons who have supplied relevant details shall meet this requirement).

### 5. Statement of Cancellation Charge

5.1 With an **Offer** or a **BELLA** or a **Bilateral Cancellation Charge Agreement** included with the **Offer** of an **Associated DNO Construction Agreement** **The Company** shall provide each **User** with an indicative profile of the estimated

## CMP223 ORIGINAL

spend in respect of the **Attributable Works** and a **Notification of Fixed Cancellation Charge**.

### 5.2 Cancellation Charge Statement

**5.2.1** 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** or the **BELLA** or the **Bilateral Cancellation Charge 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 **BELLA** or the **Bilateral Cancellation Charge Agreement** or the **Charging Date**.

**5.3** 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**.

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

### 5.5 Estimating the Actual Attributable Works Cancellation Charge

## CMP223 ORIGINAL

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**.

### 6 Electing for the Fixed Cancellation Charge

6.1 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**.

6.2 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**.

### 7 Cancellation Charge Secured Amount Statement

7.1 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**.

7.2 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**.



**PART THREE**

**1. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT AND CREDIT REQUIREMENTS**

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

2.1 in the case of a **User** which meets **The Company Credit Rating** at the date of, as appropriate, the **Construction Agreement** or the **BELLA** or the **Bilateral Cancellation Charge Agreement** in accordance with Paragraph 4; and

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

**3. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT**

3.1 Prior to the **Trigger Date** the **Cancellation Charge Secured Amount** is the **Cancellation Charge** as set out in the **Cancellation Charge Statement** for the relevant **Security Period**.

3.2 On or after the **Trigger Date** until the **Charging Date** the **Cancellation Charge Secured Amount** is that percentage of the figure shown as the **Cancellation Charge** in the **Cancellation Charge Statement** for the relevant **Security Period** determined as follows:

<u>For Users in category (a) as per Section 15 Part One Paragraph 2</u>	
Prior to (and including) the <b>Key</b>	the % for that <b>Financial Year</b> <u>for Users of</u>

**CMP223 ORIGINAL**

<b>Consents In Place Date</b>	<u>that category</u> as set out in the <b>Annual Wider Cancellation Charge Statement</b> .
From the <b>Key Consents In Place Date</b>	the % for that <b>Financial Year</b> <u>for Users of that category</u> as set out in the <b>Annual Wider Cancellation Charge Statement</b> .
<u>For Users in categories (b) and (c) as per Section 15 Part One Paragraph 2</u>	
<u>Prior to (and including) the Key Consents In Place Date</u>	<u>the % for that Financial Year for Distributed Generation of that category as set out in the Annual Wider Cancellation Charge Statement.</u>
<u>From the Key Consents In Place Date</u>	<u>the % for that Financial Year for Distributed Generation of that category as set out in the Annual Wider Cancellation Charge Statement.</u>

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

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

**4.1** The **User** shall as soon as possible after entering into a **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or BELLA or Bilateral Cancellation Charge Agreement and in any event no later than one (1) month after the date of the same confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the 1 April and 1 October each year until 30 days after the **Charging Date** the **User** shall confirm to **The Company** whether it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within

## CMP223 ORIGINAL

a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of no longer meeting **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain meeting **The Company Credit Rating** for at least 12 months.

4.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Paragraph 4.1 then **The Company** may require the **User** forthwith:

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Paragraph 4.4 below.

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

- (i) not meeting **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Paragraph 4.2(i) above an indicative long term private credit rating,

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

- (iv) the **User** ceases to meet **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain **The Company Credit Rating** for at least 12 months; or

**CMP223 ORIGINAL**

(vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Paragraph 4.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Paragraph 4.4.

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

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

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

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

5.1 Each **User** hereby agrees that it shall at the date of the relevant **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or **BELLA** or **Bilateral Cancellation Charge Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until 28 days after the **Charging Date** maintain or procure that there is maintained in full force and effect (including by renewal or replacement) a security arrangement from time to time and for the time being as set out in Paragraph 6 to provide security for the **Cancellation Charge Secured Amount**.

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

- (i) the fairness and reasonableness of the estimate of the **Attributable Works Cancellation Charge**; or
- (ii) the calculation of the **Cancellation Charge**, or

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## CMP223 ORIGINAL

- (iii) whether there has been an **Event of Default** as provided in **CUSC** Section 5; or
- (iv) the lawfulness or otherwise of any termination or purported termination of the **Construction Agreement** or **BELLA** or **Bilateral Cancellation Charge Agreement**,

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to this **CUSC** Section 15 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.

## 6. TYPES OF SECURITY

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

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

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

6.1.3 A **Performance Bond** from a **Qualified Company** for the amount of the **Cancellation Charge Secured Amount** to be secured for a given **Security Period**, such **Performance Bond** to be **Valid** for at least that

## CMP223 ORIGINAL

**Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 6.2.3.

### 6.2 General Provisions regarding Security

**6.2.1** Any **Notice of Drawing** to be delivered to Barclays Bank PLC or any other bank at which the **Bank Account** shall have been opened or a **Qualified Bank** or a **Qualified Company** may be delivered by hand, by post or by facsimile transmission.

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

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

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

**6.2.3.2** On a date which is at least 45 days (or if such day is not a **Business Day** then on the immediately preceding **Business Day**) before the start of each following **Security Period** such **Performance Bond** or **Letter of Credit** shall be renewed so as to be **Valid** for not less than such **Security Period** and in the case of the last **Security Period** to be **Valid**, unless **The Company** agrees otherwise, for 45 days after the last day of such **Security Period**. Such renewed **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Cancellation Charge Secured Amount** to be secured during that **Security Period**.

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

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

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

**6.2.4.3** If the **Cancellation Charge Secured Amount** for a given **Security Period** is smaller than the amount then secured, the

**User's** cash deposit in the **Bank Account** in respect of the **Security Amount** shall not be reduced to the amount so stated until the expiry of 7 days after the start of that given **Security Period** ("the **Release Date**").

**6.2.4.4** The sum equal to the amount of reduction in the **User's** cash deposit in the **Bank Account** in respect of the **Security Amount** shall be paid by **The Company** to the **User** from the **Bank Account** on the **Release Date**.

**6.2.4.5** Any interest accruing in respect of the **User's** cash deposit in the **Bank Account** in respect of the **Security Amount** 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** (or any other bank account in the name of **The Company** in which such interest is held) and payment to the **User** of such interest as soon as **The Company** shall have received notice from the **User** requesting such payment.

**6.2.4.6** For the avoidance of doubt, the **User's** cash deposit in the **Bank Account** shall remain the sole property and entitlement of the **User** until such time when (and to such extent as) the **Company** exercises its right of set off against the **User's** cash deposit in accordance with the terms of the **CUSC**, and the **User** shall have no right to have the cash deposit returned to it for so long as it is under any prospective or contingent liability to the **Company**.

**6.3** Notwithstanding any provision aforesaid:-

**6.3.1** The **User** may provide different securities to **The Company** at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the amount of the **Cancellation Charge Secured Amount** required to be secured for that **Security Period**.



**6.3.2** The **User** may upon the expiry of at least 14 days prior written notice to **The Company**, substitute one type of security for another provided that unless **The Company** shall otherwise agree in writing such substituted security must be **Valid** from the first day of the relevant **Security Period** and committed at least 45 days before this in the following manner:-

- (a) where a **Performance Bond** or a **Letter of Credit** is to substitute for other securities, it must be issued or given at least 45 days before the start of the **Security Period** to which it relates.
- (b) where a cash deposit in a **Bank Account** is to substitute for other securities, it must be deposited into the **Bank Account** at least 45 days before the start of the **Security Period** to which it relates.

**6.3.3** Upon request by the **User** to **The Company**, securities substituted in the aforesaid manner shall, providing the substitute security shall be **Valid**, be released on the first day of the **Security Period** which the substitute security is securing. However, where the **Cancellation Charge Secured Amount** to be secured for any **Security Period** is less than the amount required to be secured in the preceding **Security Period**, the substituted security shall not be released until 7 days after the start of the **Security Period** that that substitute security is securing.

**PART FOUR RECONCILIATION OF ACTUAL ATTRIBUTABLE WORKS CANCELLATION CHARGE**

1. As soon as practicable and in any event within 60 days of the date, as appropriate, of termination of the **Construction Agreement** or **BELLA or Cancellation Charge Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** **The Company** shall:
  - (a) furnish the **User** with a statement showing a revised estimate of the **Actual Attributable Works Cancellation Charge** and will provide as soon as practicable evidence of such having been incurred; and
  - (b) furnish the **User** with justification of and supporting information in respect of its assessment of the actual or potential for reuse and any strategic benefits of the **Attributable Works** and any of the resulting **Transmission** assets.
  
2. As soon as reasonably practicable after termination of this **Construction Agreement** or **BELLA or Cancellation Charge Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** and in any event within 12 months of such event **The Company** shall provide the **User** with a final statement of the **Actual Attributable Works Cancellation Charge**. If the **Actual Attributable Works Cancellation Charge** is greater than the payments made by the **User** in respect of **The Company's** estimate(s) of the **Actual Attributable Works Cancellation Charge** 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) to the date of the final statement of the **Actual Attributable Works Cancellation Charge** and final invoice for the **Attributable Works Cancellation Charge**. If the **Actual Attributable Works Cancellation Charge** is less than the payments made by the **User** in respect of **The Company's** estimate(s) of the **Actual Attributable Works Cancellation Charge** **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 the **Actual**

| **CMP223 ORIGINAL**

**Attributable Works Cancellation Charge** to the date of reimbursement by  
**The Company** of the said excess paid.

**CMP223 ORIGINAL**

**SCHEDULE 2 - EXHIBIT 5**

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

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ \_\_\_\_\_ ] (2)**

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**THE CONNECTION AND USE OF SYSTEM CODE**

**BELLA**

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**[EMBEDDED EXEMPTABLE LARGE POWER STATION WHICH IS SMRS REGISTERED]**

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

**Reference:[ \_\_\_\_\_ ]**

CONTENTS

- 1. Definitions, Interpretation and Construction
- 2. Conditions Precedent and Commencement
- 3. The Site of Connection to the Distribution System
- 4. Outages
- 5. Grid Code Matters
- 6. Operational Notification
- 7. Compliance with Site Specific Technical Conditions
- 8. Term
- 9. Variations

~~10.~~ General Provisions

Deleted: 10. Restrictive Trade Practices Act[  
11

~~11.~~ Wider Transmission Reinforcement Works

Deleted: 12

~~12.~~ Cancellation Charge

Appendix A The Site of Connection and User's Data

Appendix F1 Site Specific Technical Conditions - Agreed Balancing Services

Appendix F2 [Not Used]

Appendix F3 Site Specific Technical Conditions - Special Automatic Facilities

Appendix F4 Site Specific Technical Conditions Protection and Control Relay Settings, Fault Clearance Times

Appendix F5 Site Specific Technical Conditions - Other

Appendix H Construction Works

Deleted: Transmission Reinforcement Works

Appendix MM Attributable Works and Key Consents

**CMP223 ORIGINAL**

THIS **BELLA** is made on the [ ] day of [ ] 200[ ].

**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** is required to prepare a Connection and Use of System Code (**CUSC**).
- (B) The **User** has applied in the capacity of an **EELPS** whose **Boundary Point Metering System** is [to be] registered in **SMRS** or in **CMRS** by a **User** who is responsible for the **Use of System Charges** associated with the **BM Unit** [to be] registered in **CMRS**.
- (C) The **User** has made a **BELLA Application** and **The Company** is required to make a **BELLA Offer** in accordance with Paragraph 1.5.2 of the **CUSC**.
- (D) This **Offer** has been made on the basis of the **Connect and Manage Arrangements**.

**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** have the same meanings, interpretations or constructions in this **BELLA** and the following term(s) shall have the meaning(s) set out below:

<b><u>Attributable Works</u></b>	<u>those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1.</u>
<b><u>Cancellation Charge</u></b>	<u>as calculated in accordance with the <b>User Commitment Methodology</b>.</u>
<b><u>Charging Date</u></b>	<u>as defined as such in the <b>Associated DNO Construction Agreement</b>.</u>
<b><u>Construction Works</u></b>	<u>the works which are the subject of the <b>Associated DNO Construction Agreement</b> and which are required to be</u>

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	<u>completed prior to the User's Equipment being Energised and specified in Appendix H Part 1.</u>	
<b>DNO</b>	name address and registered number of owner/operator of the distribution network to which user is to connect.	
<b>Associated DNO Construction Agreement</b>	the agreement between <b>The Company</b> and the <b>DNO</b> for <u>the Construction Works</u> as a consequence of the <b>User's</b> connection to the <b>Distribution System</b> .	Deleted: Transmission Reinforcement Works Deleted: Enabling Wor... [1]
<b>Key Consents</b>	<u>those Consents required in respect of the User's Power Station which The Company has identified as such and which are set out in Appendix MM Part 2.</u>	
<b>Notice of Reduction</b>	the notice of that name given by <b>The Company</b> to the <b>DNO</b> and the <b>User</b> pursuant to Clause 7 of the <u>Associated DNO Construction Agreement</u> .	
<b>Notice of Reduction Effective Date</b>	the date the amendments proposed by the <b>Notice of Reduction</b> take effect.	Deleted: Transmission Reinforcement Works ... [2]
<b>Trigger Date</b>	<u>[ ] as identified in accordance with the User Commitment Methodology by reference to the Charging Date.</u>	
<b>Developer Capacity</b>	the MW [export] figure specified in the <b>User's Data</b> .	Deleted: User's
<b>User's Data</b>	the data submitted by the <b>User</b> and set out in Appendix A to the <b>BELLA</b> against which the effect on the <b>National Electricity Transmission System</b> of the <b>User's</b> connection to the <b>Distribution System</b> has been assessed.	Deleted: Wider Transmission Reinforcement Works ... [3]

**2. CONDITIONS PRECEDENT AND COMMENCEMENT**

2.1 The rights and obligations of the **User** and **The Company** pursuant to this **BELLA** are subject to the following conditions precedent having been fulfilled before such rights and obligations arise:

2.1.1 the **User** having provided (in a form reasonably satisfactory to **The Company**) proof of having entered into a **Distribution Agreement** with the owner/operator of the **Distribution System**; and

2.1.2 of the acceptance by the owner/operator of the **Distribution System** of any necessary **Modification Offer** relevant to the **Embedded Power Station**;

2.1.3 **The Company** and / or the **Users** as appropriate having received the derogations [if any] required in respect of the Grid Code.

## CMP223 ORIGINAL

2.2 If the conditions precedent have not been fulfilled, in the case of 2.1.1 and 2.1.3 within 6 months of the date hereof, and in the case of 2.1.2 within 3 months of the date of receipt by the owner/operator of the **Distribution System** of the **Modification Offer**, **The Company** or the **User** may rescind this **BELLA** by giving to the other notice to that effect in which event all rights and liabilities of the parties hereunder and under the **CUSC** in relation to this **Embedded Power Station** shall cease.

2.3 This **BELLA** shall commence on [                      ].

2.4 It is a condition of this **Agreement** that the **Embedded Exemptable Large Power Station** is **SMRS** registered (or **CMRS** registered by a **Supplier**) in the **BSC**. If, at any time the **Embedded Exemptable Large Power Station** ceases to be **SMRS** registered (or **CMRS** registered by a **Supplier**) and becomes **CMRS** registered other than by a **Supplier** then the **User** hereby undertakes to forthwith apply for and enter into a **Bilateral Embedded Generation Agreement**.

### 3. THE SITE OF CONNECTION TO THE DISTRIBUTION SYSTEM

The site of **Connection** of the **EELPS** to the **Distribution System** to which this **BELLA** relates is more particularly described in Appendix A.

### 4. OUTAGES

Subject to the provisions of the **Grid Code**, **The Company** and the **User** shall be entitled to plan and execute outages of parts of, in the case of **The Company**, the **National Electricity Transmission System** or **Transmission Plant** or **Transmission Apparatus** and in the case of the **User**, its **System** or **Plant** or **Apparatus**, at any time and from time to time.

### 5 GRID CODE MATTERS

5.1 Paragraph 6.3 of the **CUSC** applies in respect of this **Embedded Exemptable Large Power Station** as amended in accordance with the following provisions of this Clause 5.

5.2 The provisions in BC1 and BC2 of the **Grid Code** provide that compliance is only required with such provisions in respect of those **Generating Units** at an **Embedded Exemptable Large Power Station** where **The Company** reasonably requires such compliance and has specified such a requirement in respect of such **Generating Units** in the **BELLA**.

[5.2 **The Company** and the **User** hereby agree that compliance by the **User** in respect of this **Embedded Exemptable Large Power Station** with the provisions of BC1 and BC2



## CMP223 ORIGINAL

of the **Grid Code** are reasonably required and therefore the provisions of BC1 and BC2 shall apply and be complied with by the **User** so far as applicable to it. Therefore, the provisions in BC1 and BC2 in respect of **Generating Units** and **Generating Unit Data** shall apply to and be complied with by the **User**. For the purposes of the **Grid Code** the **User** shall be treated as a **BM Participant**.

[5.2 **The Company** does not require compliance by the **User** in respect of this **Embedded Exemptable Large Power Station** with the provisions of BC1 and BC2]

*[Note: which alternative of Clause 5.2 will apply will depend upon whether or not The Company reasonably requires compliance with these Grid Code obligations. Please note that the User has a right to ask the Authority to determine on these matters.]*

### 6. OPERATIONAL NOTIFICATION

Subject to the provisions of Clause 2.1 having been fulfilled, and subject, if **The Company** so requires, to the **Construction Works in the Associated DNO Construction Agreement**, being carried out and to notification by the **User** that the site of connection of the **User's Equipment** to the **Distribution System** is operational, **The Company** shall forthwith notify ("**Operational Notification**") the **User** in writing that it may energise its **Equipment**.

Deleted: Enabling

Deleted: [and/or works for any Modification Offer

Deleted: ]

### 7. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

7.1 The site specific technical conditions applying to the site of **Connection** are set out in Appendices F1 to F5 to this **BELLA** as modified from time to time in accordance with Paragraph 6.9 of the **CUSC**.

7.2 **The Company** and the **User** shall operate respectively the **National Electricity Transmission System** and the **User System** with the special automatic facilities and schemes set out in Appendix F3 to this **BELLA**.

7.3 The **User** shall ensure that the **User's Equipment** complies with the site specific technical conditions set out in Appendix F4 to this **BELLA**.

7.4 The **User** shall use all reasonable endeavours to ensure that the **User's Equipment** shall continue to comply with the site specific technical conditions set out in Appendix F5 of this **BELLA**.

7.5 If the **User** or **The Company** wishes to modify alter or otherwise change the site specific technical conditions or the manner of their operation under Appendix F1, F3, F4 or F5 to this **BELLA** this shall be deemed to be a **Modification** for the purposes of the **CUSC**.

## CMP223 ORIGINAL

### 8. TERM

8.1 Subject to the provisions for earlier termination set out in **CUSC** and Clause 8.2 and Clause 8.3 below, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** at the site of **Connection** as provided in Section 5 of **CUSC**.

8.2 This **BELLA** shall terminate on the earlier of

(a) the **Notice of Reduction Effective Date** where as a result of the **Notice of Reduction** the **User** is no longer an **Embedded Exemptable Large Embedded Power Station**.

(b) termination of the **Associated DNO Construction Agreement** pursuant to Clause 7.4.10.2 of the **Associated Construction Agreement** and provided that the **Bilateral Connection Agreement** between the **DNO** and **The Company** has, where required by **The Company**, been amended to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**

8.3 The Company shall be entitled to terminate this BELLA forthwith in the event that the Associated DNO Construction Agreement is terminated prior to the Charging Date.

8.4 Once any of the Events of Default in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the CUSC has occurred and is continuing The Company may give notice of termination to the User whereupon this BELLA shall forthwith terminate.

### 9. VARIATIONS

9.1 Subject to 9.2, 9.3, 9.4, 9.5 and 9.6, no variation to this BELLA shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

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9.2 **The Company** and the **User** shall effect any amendment required to be made to this **BELLA** 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.

**CMP223 ORIGINAL**

9.3 If 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 Construction Works] to reflect a change in such works in the Associated DNO Construction Agreement, Appendix H shall be automatically amended to reflect the change. Provided that where a User has elected for the Actual Attributable Works Cancellation Charge to be based on the Fixed Attributable Works Cancellation Charge the Attributable Works can only be changed after the Trigger Date as provided for in CUSC Section 15.

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Deleted: Reinforcement

9.4 Appendix A shall be automatically amended to reflect any **Notice of Reduction** on the **Notice of Reduction Effective Date**.

9.5 On a change to the works or programme in the Associated DNO Construction Agreement The Company shall be entitled to amend the Trigger Date and Cancellation Charge in accordance with the principles in CUSC section 15 Part Two.

9.6 9.6 Where there is a change to the “developer capacity” (as specified in the Associated DNO Construction Agreement) The Company after first notifying the User of its intention to do so shall be entitled to amend the Developer Capacity so that it reflects the “developer capacity” in the Associated DNO construction Agreement.

**10. GENERAL PROVISIONS**

Paragraph 6.10 and Paragraphs 6.12 to 6.26 of the **CUSC** are incorporated into this **BELLA** *mutatis mutandis*.

**11. WIDER TRANSMISSION REINFORCEMENT WORKS**

**The Company** shall keep the User informed as to its progress on the **Wider Transmission Reinforcement Works**.

**12. CANCELLATION CHARGE**

12.1 On a reduction in Developer Capacity prior to the Charging Date, on the date the reduction in Developer Capacity takes effect the User shall be liable to pay the Cancellation Charge to The Company such payment to be made within 14 days of the date of The Company’s invoice in respect thereof.

12.2 On termination of this BELLA or the Associated DNO Construction Agreement prior to the Charging Date, the User shall be liable to pay the Cancellation Charge to The Company such payment to be made within 14 days of the date of The Company’s invoice in respect thereof.

12.3 Where required to do so under CUSC Section 15, the User shall provide The Company with security arrangements in accordance with CUSC Section 15 Part Three in respect

Deleted: 10. RESTRICTIVE TRADE PRACTICES ACT  
Any restriction or information provision (as each of those terms are defined or construed in Section 43(1) of the Restrictive Trade Practices Act 1976) contained in this BELLA shall not take effect or shall cease to have effect:  
10.1.1 if a copy of this BELLA is not provided to the Department of Trade and Industry (“DTI”) within 28 days of the date of this; or  
10.1.2 if, within 28 days of the provision of that copy to the DTI, the DTI gives notice of objection to the party providing it.  
11

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**CMP223 ORIGINAL**

of the User's obligations to pay the Cancellation Charge to The Company on a reduction in Developer Capacity or termination of this BELLA or the Associated DNO Construction Agreement prior to the Charging Date.

**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 A**

**THE SITE OF CONNECTION AND USER'S DATA**

**SITE[s] OF CONNECTION**

**Company:**

**Site[s] of Connection:**

**Size of Power Station:**

**Owner[s] / Operator[s] of Distribution System:**

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

**CMP223 ORIGINAL**

**APPENDIX F1**

**SITE SPECIFIC TECHNICAL CONDITIONS:**

**AGREED BALANCING SERVICES**

**CMP223 ORIGINAL**

**APPENDIX F2**

**[NOT USED]**

**CMP223 ORIGINAL**

**APPENDIX F3**

**SITE SPECIFIC TECHNICAL CONDITIONS:**

**SPECIAL AUTOMATIC FACILITIES**



**CMP223 ORIGINAL**

**APPENDIX F4**

**SITE SPECIFIC TECHNICAL CONDITIONS: PROTECTION**

**AND CONTROL RELAY SETTINGS**

**FAULT CLEARANCE TIMES**

**CMP223 ORIGINAL**

**APPENDIX F5**

**SITE SPECIFIC TECHNICAL CONDITIONS:**

**OTHER**

APPENDIX H

CONSTRUCTION WORKS

Deleted: TRANSMISSION  
REINFORCEMENT

END OF SCHEDULE 2 - EXHIBIT 5

Page 4: [1] Deleted		National Grid	21/03/2014 12:21:00
<b>Enabling Works</b>	those elements of the <b>Transmission Reinforcement Works</b> which are required to be completed prior to the <b>User's Equipment</b> being <b>Energised</b> and specified in Appendix H Part 1.		
Page 4: [2] Deleted		National Grid	21/03/2014 12:21:00
<b>Transmission Reinforcement Works</b>	those works which in the reasonable opinion of <b>The Company</b> are necessary to extend or reinforce the <b>National Electricity Transmission System as a consequence of the User's Equipment</b> being <b>Energised</b> specified in Appendix H.		
Page 4: [3] Deleted		National Grid	21/03/2014 12:21:00
<b>Wider Transmission Reinforcement Works</b>	those elements of the <b>Transmission Reinforcement Works</b> which are not required to be completed prior to the <b>User's Equipment</b> being <b>Energised</b> and specified in Appendix H Part 2.		

**SCHEDULE 2 EXHIBIT 3**

**PART 1**

*For use with User's in the categories of (i) Power Stations directly connected to the National Electricity Transmission system, (ii) Embedded Power Stations which are the subject of a Bilateral Embedded Generation Agreement or (iii) ~~an Associated~~ DNO Construction Agreement*

*Deleted: where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System*

**INDICATIVE**

**DATED [ ] 200[1]**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ ] (2)**

---

**THE CONNECTION AND USE OF SYSTEM CODE**

**CONSTRUCTION AGREEMENT**

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**CONTENTS**

<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
2	Carrying out of the Works
3	Delays
4	Commissioning Programme and Liquidated Damages
5	Approval to Connect/Energise/Become Operational
6	Independent Engineer
7	Becoming Operational
8	Compliance with Site Specific Technical Conditions
9	Provision of Security
10	Event of Default
11	Termination
12	Term
13	CUSC
14	Disputes
15	Variations
<b><u>[16]</u></b>	<b><u><a href="#">Distributed Generation</a></u></b>
Appendix B1	One Off Works
Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme

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[1 Associated DNO Construction Agreement only](#)

**CMP223 ORIGINAL**

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- Appendix K Liquidated Damages
- Appendix L Independent Engineer
- Appendix MM Attributable Works and Key Consents
- Appendix N Third Party Works

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

**BETWEEN**

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

**WHEREAS**

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

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



**1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

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

“Attributable Works”	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1. <sup>2</sup>
"Authority"	as defined in the <b>CUSC</b> .
“Bilateral Connection Agreement”	the <b>Bilateral Connection Agreement</b> entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the <b>Bilateral Embedded Generation Agreement</b> entered into between the parties on even date herewith.
["Cancellation Charge"]	as calculated in accordance with the <b>User Commitment Methodology</b> . <sup>3</sup>

<sup>2</sup> Not used in an associated DNO Construction Agreement

<sup>3</sup> Not used in an Associated DNO Construction Agreement

"Charging Date"

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

"Commissioning Programme Commencement Date"

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

"Commissioning Programme"

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

"Completion Date"

[ ] or such other date as may be

v1.9 – 9 January 2014

	agreed in terms of this <b>Construction Agreement</b> for completion of the <b>Construction Works</b> .
"Connect and Manage Derogation"	the temporary derogation from the <b>NETS SQSS</b> available to <b>The Company</b> under Standard Condition C17 of the <b>Transmission Licence</b> and/or the <b>Relevant Transmission Licensee</b> under Standard Condition D3 of its transmission licence;
"Connected Planning Data"	data required pursuant to the <b>Planning Code</b> 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 <b>Works</b> :-  (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 <b>Works</b> and for commencement and carrying on of any activity proposed to be undertaken at or from such <b>Works</b> when completed.
"Construction Programme"	the agreed programme for the <b>Works</b> to be carried out by <b>The Company</b> and the <b>User</b> set out in detail in Appendix [J] to this <b>Construction Agreement</b> or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this <b>Construction Agreement</b> .
"Construction Site"	the site where the <b>Transmission Connection Asset Works</b> are being

v1.9 – 9 January 2014

undertaken by or on behalf of **The Company**;

- "Construction Works" the **Transmission Connection Asset Works, Enabling Works, Seven Year Statement Works and One Off Works** and such additional works as are required in order to comply with any relevant **Consents** relating to any such works but excluding for the avoidance of doubt any **Third Party Works**.
- "Dispute Resolution Procedure" the procedure for referral to arbitration set out in Paragraph 7.4 of the **CUSC**.
- "Enabling Works" those **Transmission Reinforcement Works** which are specified in Appendix H Part 1 to this **Construction Agreement**.
- "Event of Default" any of the events set out in Clause 10 of this **Construction Agreement** as constituting an event of default.
- "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,

v1.9 – 9 January 2014

nominate shall be the **Independent Engineer**.

["Key Consents"]

those **Consents** required in respect of the [User's/Developer's] **Power Station** which **The Company** has identified as such and which are set out in Appendix MM Part 2.<sup>4</sup>

"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 (and in the absence of the **Connect and Manage Derogation** are required to be completed before the **Completion Date** to ensure that the **National Electricity Transmission System** complies with the requirements of Standard Condition C17 of the **Transmission Licence** and Standard Condition D3 of any **Relevant Transmission Licensee's** transmission licence prior to the **Connection** of the **User's Equipment** in terms of Clause 7.1 [or 7.2] of this **Construction Agreement**.

"Term"

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

<sup>4</sup> Not used in an associated DNO Construction Agreement

"Third Party Works"	the works to be undertaken on assets belonging to a party other than <b>The Company</b> and the <b>User</b> to enable it to provide or as a consequence of the connection to and/or use of the <b>National Electricity Transmission System</b> by the <b>User</b> as specified in Appendix N;
"Transmission Connection Assets"	the assets specified in Appendix A to the <b>Bilateral Connection Agreement</b> .
"Transmission Connection Asset Works"	the works necessary for construction and installation of the <b>Transmission Connection Assets</b> at the <b>Connection Site</b> specified in Appendix G to this <b>Construction Agreement</b> .
"Transmission Reinforcement Works"	those works other than the <b>Transmission Connection Asset Works Seven Year Statement Works</b> and <b>One Off Works</b> , which in the reasonable opinion of <b>The Company</b> (and in the absence of the <b>Connect and Manage Derogation</b> ) are all necessary to extend or reinforce the <b>National Electricity Transmission System</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee's</b> transmission system and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is the <b>Enabling Works</b> and Part 2 is the <b>Wider Transmission Reinforcement Works</b> .
["Trigger Date"]	[date] as identified in accordance with the <b>User Commitment methodology</b> . <sup>5</sup>

<sup>5</sup> [Not used in an associated DNO Construction Agreement](#)

“User’s Works”	those works necessary for installation of the <b>User’s Equipment</b> which are specified in Appendix I to this <b>Construction Agreement</b> .
“Wider Transmission Reinforcement Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 2 to this <b>Construction Agreement</b> where Part 2.1 is works required for the <b>User</b> and Part 2.2 is works required for wider system reasons.
“Works”	the <b>Construction Works</b> and the <b>User’s Works</b> .

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

[Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised <b>Transmission Entry Capacity</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application..</b>

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following (and where the Construction Agreement relates to more than one, for each of the Developers)*

[Developer Capacity	the MW figure [ <i>for export</i> ] specified in the <b>Developer's Data</b> .
Developer	<i>Insert name address and registered number</i> who is party to a <b>BELLA</b> with <b>The Company</b> or the subject of the <b>Request for a Statement of Works</b> .
Developer's Data	the information provided by the <b>[Developer-BELLA]</b> <b>[User]</b> in respect of the <b>Developer</b> in the <b>Request for a Statement of Works-relevant embedded medium\small power station</b> ] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the <b>User's Distribution System</b> at [ ]]
Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 revising the <b>Developer's Capacity</b> for this <b>Construction Agreement</b> and Appendix A to the <b>BELLA</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a



**Modification Application.**

**2. CARRYING OUT OF THE WORKS**

- 2.1** Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2** Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.
- 2.3** The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-
- 2.3.1** All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.
- 2.3.2** In the event of:-

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

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

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

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

**2.5** Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the provisions of Clause 11 shall apply.

**2.6** If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** and the provisions of Clause 11 shall apply

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

capable of being **Commissioned** in accordance with the **Construction Programme**.

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

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

- [“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

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

- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (**One Off Works**), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**), [MM (**Attributable Works**)]<sup>6</sup> 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 **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.<sup>7</sup>]
- 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

<sup>6</sup> Do not include reference where it is an Associated DNO Construction Agreement

<sup>7</sup> Do not include reference where it is an Associated DNO Construction Agreement

for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]

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

**2.14** [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and **Wider Transmission Reinforcement Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]

**2.15** [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

## **2.16 Third Party Works**

**2.16.1** The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

**2.16.2** Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this

v1.9 – 9 January 2014

is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [ ] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

**2.16.3** Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) (“the “**First User(s)**”) as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User’s** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

**2.16.4** In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company’s** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company’s** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [ ] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

## **2.17 Wider Transmission Reinforcement Works**

**The Company** shall keep the **User** advised as to progress on the **Wider Transmission Reinforcement Works** and shall include information on these in the reports produced pursuant to Clause 2.8.

## **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

v1.9 – 9 January 2014

the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.

- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [ ] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and the provisions of Clause 11 shall apply.

## 5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the

v1.9 – 9 January 2014



parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the **Site Common Drawings** required under CC 7.5.3 and 7.5.5.

**5.3** Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-

**5.3.1** each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and

**5.3.2** the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.

**5.4** Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:

**5.4.1** for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;

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

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

**5.5** If directly connected to the **National Electricity Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent**

**Engineer.** The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

**5.6** If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **National Electricity Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

## **6. INDEPENDENT ENGINEER**

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

in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

## **7. BECOMING OPERATIONAL**

[7.1 If directly connected to the **National Electricity Transmission System** **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** [delete Seven Year Statement Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.] or

[7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the Enabling Works [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **National Electricity Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.]

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Registered Capacity** of the **User's Equipment** is less than [ ]MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Registered Capacity** of the **User's Equipment**.

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

### **[7.4 Transmission Entry Capacity Reduction<sup>8</sup>**

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be

<sup>8</sup> Not used in an Associated DNO Construction Agreement

such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.

- 7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.
- 7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .
- 7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7** Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** will be such that it

will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.

**7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.

**7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.

**7.5** Where there is a reduction in **Transmission Entry Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.]

***Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following***

**[7.4 Developer Capacity Reduction**

- 7.4.1** If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.
- 7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.

7.4.7 Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.

7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA or Appendix P of the associated Bilateral Cancellation Charge Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA or Appendix P of the associated Bilateral Cancellation Charge Agreement** and the date they take effect shall be as set out in the **Authority's** determination.

7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA or Appendix P of the associated Bilateral Cancellation Charge Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Reduction Fee** [and on such reduction in **Developer Capacity** taking effect the **User** shall pay the **Cancellation Charge** in respect of the reduction such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**<sup>9</sup>.”]

7.4.10 Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable**

<sup>9</sup> Does not apply in an Associated DNO Construction Agreement

**CMP223 ORIGINAL**

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**Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

**7.4.10.1** The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station** and with such agreement to vary The Company will provide a **Bilateral Cancellation Charge Agreement** and **Accession Agreement** in similar manner to that envisaged at **CUSC Paragraph 6.5.5.12**.

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**7.4.10.2** Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for a Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **National Electricity Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

**7.4.10.3** **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC Paragraph 6.5** as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC 6.5.5**, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC Paragraph 6.5.5.5**, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC Paragraph 6.5.5.8** by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC Paragraph 6.5** shall apply on that basis.

**7.5** Where there is a reduction in **Developer Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Developer Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment

v1.9 – 9 January 2014



to be made within 14 days of the date of **The Company's** invoice in respect thereof.<sup>10</sup>

## **8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS**

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1-5 to the **Bilateral Connection Agreement** .

## **9. PROVISION OF SECURITY**

Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on termination of this **Construction Agreement** or a reduction in **[Transmission Entry Capacity] [Developer Capacity]** prior to the **Charging Date**.<sup>11</sup>

## **10. EVENT OF DEFAULT**

Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of Clause 11 shall apply.

## **11. TERMINATION**

**11.1** On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

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

<sup>10</sup> Not relevant in an associated DNO Construction Agreement

<sup>11</sup> Not relevant in an Associated DNO Construction Agreement

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

**11.2** The **User** shall where this **Construction Agreement** terminates prior to the **Charging Date** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.<sup>12</sup>

## 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] [BELLA or Bilateral Cancellation Charge Agreement or BEGA]**<sup>13</sup> **[Associated DNO Construction Agreement]**<sup>14</sup> and in the event that this is prior to the **Charging Date** the **User** the provisions of Clause 11 shall apply.

**12.3** The associated **[Bilateral Connection Agreements or Agreement to Vary the Bilateral Connection Agreement]** will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.

**12.4** Any provisions for payment shall survive termination of this **Construction Agreement**.

## 13. CUSC

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

<sup>12</sup> Not relevant in an Associated DNO Construction Agreement

<sup>13</sup> only relevant in an Associated DNO Construction Agreement

<sup>14</sup> Only relevant in Consag with generator with a BEGA

## 14. DISPUTES

14.1 Except as specifically provided for in Clause 14.2 of 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**.

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

## 15. VARIATIONS

15.1 Subject to Clause 15.2, 15.3 and 15.4<sup>15</sup> 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**.

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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**.

15.4 Where there is a change to the “developer capacity” (as specified in the associated **BELLA** or **Bilateral Cancellation Charge Agreement**) **The Company** after first notifying the **User** of its intention to do so shall be entitled to amend the **Developer Capacity** so that it reflects the “developer capacity” in the associated **BELLA** or **Bilateral Cancellation Charge Agreement**]

## 16. Distributed Generation<sup>16</sup>

The rights and obligations of the **User** and **The Company** pursuant to this **Construction Agreement** are subject to the **Developer** having entered into, as appropriate, a **BELLA** or **Bilateral Cancellation Charge Agreement** before such rights and obligations arise. In the event that the **BELLA** or **Bilateral Cancellation Charge Agreement** have not been entered into by *[insert date]* then the **User** or **The Company** may terminate this **Construction Agreement**.]

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<sup>15</sup> 15.4 relevant for Associated DNO Construction Agreement in respect of **BELLA** or Relevant Small and Medium Power Stations only

<sup>16</sup> 15.4 relevant for Associated DNO Construction Agreement in respect of **BELLA** or Relevant Small and Medium Power Stations only

**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**

v1.9 – 9 January 2014

**APPENDIX [H]**

**TRANSMISSION REINFORCEMENT WORKS**

**Part 1            Enabling Works**

**Part 2            Wider Transmission Reinforcement Works**

v1.9 – 9 January 2014

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



**APPENDIX [J]**  
**CONSTRUCTION PROGRAMME**

v1.9 – 9 January 2014

**APPENDIX [K]**  
**LIQUIDATED DAMAGES**

Company:

Connection site:

Type:

---

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

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

**APPENDIX [L]**

**INDEPENDENT ENGINEER**

Company:

Connection site:

Type:

---

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

[APPENDIX [MM]

**ATTRIBUTABLE WORKS AND KEY CONSENTS**

**Part 1**

**Attributable Works**

**Part 2**

**Key Consents<sup>17</sup>**

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<sup>17</sup> [Not relevant in an Associated DNO Construction Agreement](#)

**APPENDIX [N]**  
**THIRD PARTY WORKS**

v1.9 – 9 January 2014

**APPENDIX [P]**

**DEVELOPER'S DATA**

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

**CMP223 ORIGINAL**

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**SCHEDULE 2 EXHIBIT 3**

**PART 2**

v1.9 – 9 January 2014

## CMP223 ORIGINAL

Changes to CUSC Exhibit U (Request for a Statement of Works)

1. New paragraph to be added as follows and subsequent paragraphs renumbered accordingly:
  12. Please note that the **Modification Offer** will include a **Bilateral Cancellation Charge Agreement** which will need to be entered into with **The Company** by the developer of the **Embedded Power Station** which is the subject of this **Request for a Statement of Works Statement**.
2. The following shall be deleted and the subsequent points renumbered according
  - ~~5. We confirm that we do/do not meet the Approved Credit Rating and The Company Credit Rating.~~



**CMP223 ORIGINAL**

Changes to CUSC Exhibit R (BELLA Offer)

New paragraph to be added as follows:

9. Please note that under the terms of the **Associated DNO Construction Agreement**, that **Associated DNO Construction Agreement** will not come into effect until this **BELLA** is accepted and that on acceptance of the **BELLA** security arrangements will need to be put in place for the **First Security Period**.

## CMP223 ORIGINAL

Changes to CUSC Exhibit Q (BELLA Application)

Edits to paragraph 10 as follows:

10. **The Company's** offer will be based to the extent appropriate upon its standard form terms for a **BELLA**. The **Applicant** should bear in mind **The Company** standard form terms (including liability and security arrangements in respect of the **Cancellation Charge**) when making this application.

## CMP223 ORIGINAL

Changes to CUSC Exhibit J (Modification Offer)

New paragraph to be added as follows:

10. Please note that this offer includes a **Bilateral Cancellation Charge Agreement** which needs to be entered into with **The Company** by the developer of the **Embedded Power Station** associated with this offer. Please send the **Bilateral Cancellation Charge Agreement** to the developer as soon as practicable and return it to **The Company**, preferably, with the acceptance of this offer. Please note that the terms of the **Associated DNO Construction Agreement** which forms part of this offer will not come into effect until this **Bilateral Cancellation Charge Agreement** is entered in to. [*where in response to a Request for a Statement of Works only*]

**DATED [ ]**

**1**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ ] (2)**

---

**THE CONNECTION AND USE OF SYSTEM CODE  
BILATERAL CANCELLATION CHARGE AGREEMENT**

---

**RELEVANT EMBEDDED MEDIUM POWER STATION OR RELEVANT EMBEDDED SMALL  
POWER STATION WHERE THERE IS AN ASSOCIATED DNO CONSTRUCTION AGREEMENT**

**Reference:**

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<sup>1</sup> Please note that under the terms of the **Associated DNO Construction Agreement**, that **Associated DNO Construction Agreement** will not come into effect until this agreement is accepted and that on acceptance of this agreement security arrangements will need to be put in place for the **First Security Period**.

**CONTENTS**

- 1. Definitions, Interpretation, Construction and Effectiveness**
  - 2. Conditions Precedent and Commencement**
  - 3. Cancellation Charge**
  - 4. Term**
  - 5. Variations**
  - 6. General Provisions**
- Appendix H Construction Works**
- Appendix MM Attributable Works and Key Consents**
- Appendix P Developer's Data**

## CMP223 ORIGINAL

This **BILATERAL CANCELLATION CHARGE AGREEMENT** is made on the [ ] day of [ ] 20

### BETWEEN

- (1) **NATIONAL GRID ELECTRICITY TRANSMISSION plc** a company registered in England and Wales 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** is required to prepare a Connection and Use of System Code ("**CUSC**").
- (B) The **User's Power Station** is a **[Relevant Embedded Small Power Station] [Relevant Embedded Medium Power Station]** in respect of which **The Company** has issued a **Statement of Works** and the **DNO** has returned a completed and signed **Confirmation of Project Progression**.
- (C) It is a condition of the resulting **Offer** to the **DNO** of the **Associated DNO Construction Agreement** that the **User** enters into a **Bilateral Cancellation Charge Agreement** (the "**Bilateral Cancellation Charge Agreement**") in respect of the **User's** obligations to pay and provide security arrangements for the **Cancellation Charge** in respect of a reduction in **Developer Capacity** or termination of this **Bilateral Cancellation Charge Agreement** or the **Associated DNO Construction Agreement** prior to the **Charging Date**.
- (D) As at the date hereof, **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). This **Bilateral Cancellation Charge Agreement** is entered into pursuant to the **CUSC** and shall be read as being governed by it.

**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** have the same meanings, interpretations or constructions in this **Bilateral Cancellation Charge Agreement** and the following term(s) shall have the meaning(s) set out below:

<b>Attributable Works</b>	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1.
<b>Cancellation Charge</b>	as calculated in accordance with the <b>User Commitment Methodology</b> .
<b>Charging Date</b>	as defined as such in the <b>Associated DNO Construction Agreement</b> .
<b>Construction Works</b>	the works which are the subject of the <b>Associated DNO Construction Agreement</b> .
<b>Developer Capacity</b>	[ ] being the MW figure for export by the <b>User</b> as provided in the <b>User's Data</b> .
<b>DNO</b>	[ ] (company number) whose registered office is at [ ].
<b>Associated DNO Construction Agreement</b>	the agreement between <b>The Company</b> and the <b>DNO</b> (reference number: ) for the <b>Construction Works</b> as a consequence of the <b>User's</b> connection to the <b>Distribution System</b> .
<b>DNO Modification Application</b>	the <b>Modification Application</b> made by the <b>DNO</b> to <b>The Company</b> as a consequence of the <b>Statement of Works</b> process.
<b>DNO Modification Offer</b>	the <b>Modification Offer</b> (comprising the <b>Associated DNO Construction Agreement</b> ) made by <b>The Company</b> to the <b>DNO</b> as a consequence of the as a consequence of the <b>Statement of Works</b> process.
<b>Key Consents</b>	those <b>Consents</b> required in respect of the <b>User's Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2.
<b>Trigger Date</b>	[ ] as identified in accordance with the <b>User Commitment Methodology</b> by reference to the <b>Charging Date</b> .

**User's Data** the information provided and set out in Appendix P to this **Bilateral Cancellation Charge Agreement** and reflected in the **Associated DNO Construction Agreement**.

## **2. CONDITIONS PRECEDENT AND COMMENCEMENT**

2.1 The rights and obligations of the **User** and **The Company** pursuant to this **Bilateral Cancellation Charge Agreement** are subject to the acceptance by the **DNO** of the **Modification Offer** relevant to the [Relevant Embedded Small Power Station] [Relevant Embedded Medium Power Station].

2.2 If the condition precedent has not been fulfilled within 3 months of the date of receipt by the **DNO** of the **DNO Modification Offer** **The Company** or the **User** may rescind this **Bilateral Cancellation Charge Agreement** by giving to the other notice to that effect in which event all rights and liabilities of the parties hereunder and under the **CUSC** in relation to this [Relevant Embedded Small Power Station] [Relevant Embedded Medium Power Station] shall cease.

2.3 Notwithstanding the acceptance by the **DNO** of the **DNO Modification Offer** **The Company** will not undertake any works under the terms of the **Associated DNO Construction Agreement** prior to the commencement of this **Bilateral Cancellation Charge Agreement**.

2.4 This **Bilateral Cancellation Charge Agreement** shall commence on the date hereof.

## **3. CANCELLATION CHARGE**

3.1 On a reduction in **Developer Capacity** prior to the **Charging Date**, on the date the reduction in **Developer Capacity** takes effect the **User** shall be liable to pay the **Cancellation Charge** to **The Company** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

3.2 On termination of this **Bilateral Cancellation Charge Agreement** or the **Associated DNO Construction Agreement** prior to the **Charging Date**, the **User** shall be liable to pay the **Cancellation Charge** to **The Company** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

3.3 Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on a reduction in **Developer Capacity** or termination of this **Bilateral Cancellation Charge Agreement** or the **Associated DNO Construction Agreement** prior to the **Charging Date**.

## **4. TERM**



4.1 Subject to the provisions for earlier termination set out in **CUSC** and Clause 4.2, this **Bilateral Cancellation Charge Agreement** shall terminate on the earlier of:

- (a) termination of the **Associated DNO Construction Agreement**;
- (b) the date that is [28 days] after the **Charging Date**.

4.2 Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Bilateral Cancellation Charge Agreement** shall forthwith terminate.

## **5. VARIATIONS**

5.1 Subject to Clauses 5.2 to 5.5 below no variation to this **Bilateral Cancellation Charge Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

5.2 **The Company** and the **User** shall effect any amendment required to be made to this **Bilateral Cancellation Charge 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.

5.3 If it is necessary for **The Company** to, or **The Company** in its reasonable discretion wishes to, make any addition to or omission from or amendment to the **Construction Works** to reflect a change in such works in the **Associated DNO Construction Agreement** Appendix H and consequently Appendix MM (Attributable Works and Key Consents) shall be automatically amended to reflect the change. Provided that where a **User** has elected for the **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.

5.4 On a change to the works or programme in the **Associated DNO Construction Agreement** **The Company** shall be entitled to amend the **Trigger Date** and **Cancellation Charge** in accordance with the principles in **CUSC** Section 15 Part Two.

**CMP223 ORIGINAL**

5.5 Where there is a change to the “developer capacity” (as specified in the **Associated DNO Construction Agreement**) **The Company** after first notifying the **User** of its intention **to do so** shall be entitled to amend the **Developer Capacity** so that it reflects the “developer capacity” in the **Associated DNO construction Agreement**.

**6. GENERAL PROVISIONS**

Paragraph 6.10 and Paragraphs 6.12 to 6.26 of the **CUSC** are incorporated into this **Bilateral Cancellation Charge Agreement** *mutatis mutandis*.

**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 )  
**[ ]** )

**CMP223 ORIGINAL**

**APPENDIX H CONSTRUCTION WORKS**

**APPENDIX MM ATTRIBUTABLE WORKS AND KEY CONSENTS**

**APPENDIX P USER'S DATA**

**END OF SCHEDULE 2 –EXHIBIT 7**



## **CMP 223 (Arrangements for Relevant Distributed Generators under the Enduring User Commitment) (WACM1): Summary Sheet of Proposed Amendments**

### **1. Overview of Changes**

- 1.1 The changes in the legal drafting that are being proposed to implement CMP 223 consist in (a) changing the Cancellation Charge arrangements between The Company and DNOs such that the Cancellation Secured Amount required of directly connected generation can be reflected in arrangements with DNO's in respect of Distributed Generation with an Associated DNO Construction Agreement and (b) provide a separate % determining the Cancellation Secured Amount for Distributed Generation.
- 1.2 In summary the drafting consists of changes to:
  1. edits to CUSC Section 6 (General Provisions)
  2. CUSC Section 10 (houses the transitional provisions that apply to those Users or prospective Users)
  3. edits to CUSC Section 11 (Definitions)
  4. edits to CUSC Section 15 (User Commitment Methodology)
  5. edits Schedule 2 Exhibit 3 (Construction Agreement)

## Changes to CUSC Section 6 (General Provisions)

Add the following as CUSC Paragraph 6.5.5A (Report on Distributed Generation) at end of CUSC Paragraph 6.5.5.5 and the Contents Page for that Section 6 amended accordingly.

### 6.5.5A Report on Distributed Generation

Within one month of the end of a **Financial Year**, each **User** who owns or operates a **Distribution System** shall send a written report [(in a format specified by **The Company**)] to **The Company** in respect of **Distributed Generation** which is yet to connect to its **Distribution System** or which has been **Energised** during that **Financial Year** detailing the following information by reference to each category of **Distributed Generation**:

- (a) number of **Distribution Agreements** terminated;
- (b) any reduction in, as appropriate, **Developer Capacity** or **Transmission Entry Capacity**;
- (c) whether such termination or reduction occurred prior to (and including) or after the **Key Consents in Place Date**.

WACM1  
WACM2

CUSC - SECTION 10

NOT USED

TRANSITION ISSUES

CONTENTS

Part 1 CUSC MODIFICATION PROPOSAL 223 (WACM1 and WACM2)  
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 **CMP 223**. For the purposes of this Section 10 the version of the **CUSC** as amended by **CMP 223** shall be referred to as the “**Post CMP 223 CUSC**” and the version of the **CUSC** prior to amendment by **CMP 223** shall be referred to as the “**Pre CMP 223 CUSC**”.

10.1.2 **CMP 223** affects **Users** in the category of (a) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement** and (b) a **Distribution System** directly connected to the **National Electricity Transmission System** where there is an **Associated DNO Construction Agreement** and references to **User** in this Section 10 shall be construed accordingly.

10.1.3 This Section sets out the arrangements such that by the **CMP 223 Transition Period End Date**:

- (a) **Existing Associated DNO Construction Agreements** have been amended in line with the provisions introduced under **CMP223**;
- (b) The **Cancellation Charge Secured Amount Statement** issued by **The Company** for the **CMP 223 Security Period** in respect of **Existing Associated DNO Construction Agreements** and **Existing BEGA Construction Agreements** reflects the adjusted % introduced under **CMP223**;
- (c) Where an **Existing Associated DNO Construction Agreement** provides for more than one of a **Relevant Embedded Small Power Station** and/or **Relevant Embedded Medium Power Station** and/or **Embedded Large Power Station** which is the subject of a **BELLA**, **Users** have received the necessary information in respect of the **Cancellation Charge** and the **Cancellation Charge Secured Amount** in respect of each such project.

10.1.4 This Section 10 comprises:

\_\_\_\_\_ (a) this Introduction; and

\_\_\_\_\_ (b) **CMP 223** transition issues.

10.1.5 The provisions of the **Post CMP 223 CUSC** shall be suspended (except as specifically provided for in this Section 10 and for the purposes of interpretation and definitions and for enabling the doing of anything which may require to be done in relation to



but in advance of the **CMP 223 Transition Period End Date** to achieve the objectives at 10.1.4) in respect of the **Users** until the **CMP 223 Transition Period End Date**. Any termination of an **Existing Associated DNO Construction Agreement** or **Existing BEGA Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** which takes effect prior to or on the **CMP 223 Transition Period End Date** shall therefore be dealt with, and the rights and obligations of **The Company** and the **User** to each other, shall be as provided for in the **Existing Associated DNO Construction Agreement** or **Existing BEGA Construction Agreement**.

10.1.6 In this Section 10:

- (a) the term “**Applicants**”; shall mean **Users** who apply for an offer of a type referred to in (j) during the **CMP 223 Transition Period**;
- (b) the term “**CMP 223**”, shall mean **CUSC Modification Proposal 223** (Arrangements for Relevant Distributed Generators under the Enduring Generation User Commitment);
- (c) the term “**CMP 223 Implementation Date**”, shall mean the **Implementation Date** for **CMP 223**;
- (d) the term “**CMP 223 Security Period**”, shall mean the **Security Period** immediately following the **CMP 223 Transitional Period End Date**;
- (e) the term “**CMP 223 Transition Period End Date**” shall mean the day before the day of the first **Security Period** which is not less than 6 months from the **CMP 223 Implementation Date**;
- (f) the term “**CMP 223 Transition Period**”, shall mean the period from the **CMP 223 Implementation Date** ending on and including the **CMP 223 Transition Period End Date** and is the period with which this Section 10 deals;
- (g) the term “**Existing Associated DNO Construction Agreement**”, shall mean an **Associated DNO Construction Agreement** where the **Construction Works** will not be completed prior to the **CMP 223 Transition Period End Date**;

- (h) the term “Existing BEGA Construction Agreement”, shall mean a Construction Agreement with a User who is party to a Bilateral Embedded Generation Agreement where the Construction Works under this or the Associated DNO Construction Agreement will not be completed prior to the CMP 223 Transition Period End Date ;
- (i) the term “Existing Construction Agreement”, shall mean, as appropriate, an Existing Associated DNO Construction Agreement or an Existing BEGA Construction Agreement;
- (j) the term “New Applications”, shall mean a Request for a Statement of Works or Modification Application associated with Distributed Generation or Use of System Application by a User or prospective User or a Modification Application to vary any such agreements made during the CMP 223 Transition Period;
- (k) the term “Outstanding Applications”, shall mean an offer of a type referred to in (j) where the application was made prior to the CMP 223 Implementation Date;
- (l) the term “Outstanding Offers”, shall mean an offer to a User or prospective User of a type referred to in (j) which has not been accepted at the CMP 223 Implementation Date but is still capable of being accepted.

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.

**10.2 CMP 223 TRANSITION**

**Existing Construction Agreements**

**10.2.1 The Company shall offer to amend each Existing Associated DNO Construction Agreement such that it is consistent at the CMP 223 Transition Period End Date with the amendments introduced by CMP 223.**

**10.2.2 The Company shall make the offer in respect of each Existing Associated DNO Construction Agreement to each User as soon as reasonably practicable after the CMP 223 Implementation Date.**

**10.2.3 If The Company and a User fail to agree changes to an Existing Associated DNO Construction Agreement either such person may refer the matter to the Authority under Standard Condition C9 Paragraph 4 of the Transmission Licence.**

**10.2.4 In respect of the CMP 223 Security Period, the Cancellation Charge Secured Amount Statement sent to each User with an Existing Associated DNO Construction Agreement or Existing BEGA Construction Agreement shall reflect the provisions introduced by CMP 223 and each such User shall put security arrangements in place in accordance with CUSC Section 15 such security arrangements to be effective from the start of the CMP 223 Security Period.**

**Outstanding Applications and New Applications**

**10.2.5 The Company shall make Offers such that prior to the CMP 223 Transition Period End Date the arrangements for security and liability within the agreements are consistent with those under the Pre CMP 223 CUSC but such that on CMP 223 Transition Period End Date the arrangements for security and liability within the agreements are consistent with those under the Post CMP 223 CUSC and shall to the extent practicable make such Offers within the original or standard timescales.**

END OF SECTION 10

## WACM1

### Changes to CUSC Section 11 (Interpretation and Definitions)

#### 1. New definitions to be added at CUSC Section 11

**“Associated DNO Construction Agreement”**

**a Construction Agreement between The Company and a User in the category of a Distribution System directly connected to the National Electricity Transmission System in respect of works required on the National Electricity Transmission System as a consequence of the connection of Distributed Generation to the Distribution System;**

**“Cancellation Charge Shortfall”**

**the difference between (a) the Cancellation Charge Secured Amount (or such higher sum as paid by the Developer to the User in respect of the Cancellation Charge) and (b) the Cancellation Charge payable by the User;**

**“Insolvency Proceedings”**

**shall mean any action or step taken:**

- (a) for the administration, winding up, dissolution or bankruptcy of the Developer; or**
- (b) for the appointment of a receiver or administrative receiver in respect of any of the Developer’s assets; or**
- (c) for making a proposal to any of the Developer’s creditors with a view to avoiding insolvency; or**
- (d) for the taking of possession by anyone with an interest in any asset of the Developer; or**
- (e) any analogous procedure or step is taken in any jurisdiction in relation to any matter referred to in clause (a) to (d) (inclusive) above;**

**“Shortfall Action Threshold Amount”**

**means the amount as notified by the Authority to The Company from time to time;**

**“Shortfall Application Date”**

**shall mean, as appropriate:**

**1.**

- (a) the date by which the User has**

- issued and served court proceedings on the **Developer** for the recovery of the **Cancellation Charge Shortfall**; or
- (b) the date by which the **User** has instigated **Insolvency Proceedings** against the **Developer** for the recovery of the **Cancellation Charge Shortfall**; or
- (c) where the **Developer** is the subject of **Insolvency Proceedings** instigated other than by the **User**, the date by which the **User** has submitted its claim for the **Cancellation Charge Shortfall** under these; or
2. such date (being an alternative to the dates in 1 above) as approved by the **Authority** following a request from the **User**; or
3. where the **Cancellation Charge Shortfall** is less than the **Shortfall Action Threshold Amount** and the **User** has undertaken all preparatory steps necessary to undertake the activity in 1 above; the date which is 30 days (or the first **Business Day** following this) from the date of payment of the **Cancellation Charge** by the **User**;

2. Amends to definitions at CUSC Section 11

“**Distributed Generation**”

means for the purposes of the **Connect and Manage Arrangements**, **Section 6** and Section 15 of the **CUSC**;

- (a) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement**;
- (b) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Licence Exemptable Large Power Station Agreement**;
- (c) a **Relevant Embedded Medium Power Station**;
- (d) a **Relevant Embedded Small Power Station**.

**CUSC SECTION 15**

**USER COMMITMENT METHODOLOGY**

**CONTENTS**

- Part One      Introduction**
  
- Part Two      Calculation of Cancellation Charge**
  
- Part Three    Calculation of Cancellation Charge Secured Amount and Credit Requirements**
  
- Part Four    Reconciliation of Actual Attributable Works Cancellation Charge**

**PART ONE INTRODUCTION**

- 1 Where (a) a **Construction Agreement** and/or a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** between a **User** in respect of the categories specified below and **The Company** is terminated or (b) there is a reduction in **Transmission Entry Capacity** by or in respect of such **User** or (c) there is a reduction in **Developer Capacity** in a **Construction Agreement** prior to the **Charging Date**, such **User** shall pay to **The Company** the **Cancellation Charge** calculated and applied in accordance with Part Two of this Section 15
  
- 2 The **Cancellation Charge** is payable by **Users** on termination of agreements with and reductions in **Transmission Entry Capacity** or **Developer Capacity** in respect of **Users** in the categories of
  - (a) a **Power Station** directly connected to the **National Electricity Transmission System** in respect of which there is a **Bilateral Connection Agreement** with **The Company**;
  
  - (b) an **Embedded Power Station** in respect of which there is a **Bilateral Embedded Generation Agreement** with **The Company**;
  
  - (c) a **Distribution System** directly connected to the **National Electricity Transmission System** in respect of which there is a **Construction Agreement** associated with **Distributed Generation**and reference to **User** in this Section 15 shall be interpreted accordingly.

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

For the avoidance of doubt in respect of **Users** in the case of category (b) above where **The Company** has an associated **Construction Agreement** with a **User** in the category of (c) above, the **Cancellation Charge** payable by a **User** in category (b) above will not include the **Attributable Works Cancellation Charge** component of the **Cancellation Charge**. In such case

**WACM1**  
**WACM2**

the **Attributable Works Cancellation Charge** component of the **Cancellation Charge** will be payable by the associated **User** in category (c) above.

For the avoidance of doubt in the case of:

- (i) **Users** in the case of category (c) above; and
- (ii) **Distributed Generation** (other than an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement**),

the **Cancellation Charge** does not apply for reductions in **Developer Capacity** on or after the **Charging Date** or termination on or after the **Charging Date**.

For information, for **Users** other than **Users** in the categories to which this Section 15 applies, the liability for and security requirements in respect of **Final Sums**, which are due on termination of a **Construction Agreement** are as set out in the **Construction Agreement** (and in the proforma attached at **CUSC** Schedule 2, Exhibit 3).

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

- 3** The **Company** shall apply and calculate the **Cancellation Charge** in accordance with Part Two of this Section 15.

The **Cancellation Charge** is made up of a number of components: the “**Pre Trigger Amount**”, “**Attributable Works Cancellation Charge**” and “**Wider Cancellation Charge**” which apply at different stages.

- 4** As provided for at Paragraph 3.5, the **Attributable Works Cancellation Charge** can be (at the **User’s** election in accordance with Paragraph 7) on the basis of the **Fixed Cancellation Charge** (Paragraph 3.6) rather than the **Actual Attributable Works Cancellation Charge** (Paragraph 3.7).
- 5** This Section 15 also sets out in Part Three the level of, and arrangements for, security required in respect of the **Cancellation Charge**.



**WACM1**  
**WACM2**

- 6     **The Company** shall apply and calculate the **Cancellation Charge Secured Amount** in accordance with this Section 15 Part Three.
- 7     This Section 15 also sets out in Part Four the reconciliation process in respect of the **Actual Attributable Works Cancellation Charge**.
- 8     For reference a number of terms used in this Section 15 are defined within this Section 15.

**9     Distributed Generation**

**Users in the category of (c) above are liable for the Cancellation Charge (or where the Distributed Generation has a Bilateral Embedded Generation Agreement, the Attributable Works Cancellation Charge component of the Cancellation Charge) on a reduction in Developer Capacity (or in the case of Distributed Generation with a Bilateral Embedded Generation Agreement) Transmission Entry Capacity and/or termination of the Construction Agreement between The Company and the User. Given this such Users will have arrangements in place with the Distributed Generation for reimbursement by the Distributed Generation of the Cancellation Charge and recognising this there are specific payment arrangements between the User and The Company provided for in the Construction Agreement between the User and The Company.**

## **PART TWO CALCULATION OF CANCELLATION CHARGE**

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

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

### **2 Completion Date and Trigger Date**

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

2.2 The **Trigger Date** will be (a) the 1 April which is three **Financial Years** prior to the start of the **Financial Year** in which the **Charging Date** occurs or (b) where the **Charging Date** is less than three **Financial Years** from the date of the **Construction Agreement**, the date of the **Construction Agreement** (in which case the **Financial Year** in which such date falls is the relevant **Financial Year** within the **Cancellation Charge Profile** working back from the **Charging Date**).

2.3 The **Trigger Date** is the date from which the **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 Changes to Construction Programme or Construction Works or Transmission Entry Capacity or Developer Capacity**

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

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

- (i) Where there is a delay to the **Completion Date** and the **Trigger Date** has not passed, the **Trigger Date** will be 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.
- (iii) In the case of a **Fixed Cancellation Charge**, a change in the **Attributable Works** will not adjust the **Cancellation Charge Profile** unless the **Completion Date** has also changed in which case (ii) above will apply.

2.4.3 Where a change is as a result of the **User's** request then, notwithstanding any change in the **Completion Date**;

- (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 Calculation of Cancellation Charge

3.1 The **Cancellation Charge** is the charge due to **The Company** by a **User** on termination of a **Construction Agreement**, **Disconnection** or a reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date** and **Disconnection** or a reduction in **Transmission Entry Capacity** on or after the **Charging Date**.

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

- (a) where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before the **Trigger Date** (the “**Pre Trigger Amount**” or “**Actual Attributable Works Cancellation Charge**”) (Paragraphs 3.6.1 and 3.7);
- (b) 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** (the “**Fixed Attributable Works Cancellation Charge**” or “**Actual Attributable Works Cancellation Charge**” and the “**Wider Cancellation Charge**”) (Paragraphs 3.5 to 3.8);
- (c) depending whether the **Attributable Works Cancellation Charge** is a **Fixed Cancellation Charge** or **Actual Attributable Works Cancellation Charge** (Paragraphs 3.5 to 3.7);
- (d) where the **Transmission Entry Capacity** is reduced or **Disconnection** occurs on or after the **Charging Date** (the “**Wider Cancellation Charge**”) (Paragraph 3.8).

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

## WACM1

## WACM2

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

***Cancellation Charge = Attributable Works Cancellation Charge***

### 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 plus Wider Cancellation Charge***

The following Paragraphs set out in detail the **Attributable Works Cancellation Charge** and **Wider Cancellation Charge** and Paragraph 3.7 sets out the above calculation by formula.

### 3.5 **Attributable Works Cancellation Charge**

The **Attributable Works Cancellation Charge** can be either the **Fixed Cancellation Charge** or **Actual Attributable Works Cancellation Charge**.

### 3.6 **Fixed Cancellation Charge**

The calculation of the **Fixed Cancellation Charge** is different where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before (“**Pre Trigger Amount**”) or on or after the **Trigger Date** (“**Fixed Attributable Works Cancellation Charge**”).

#### 3.6.1 **Pre Trigger Amount**

Should a **Construction Agreement** be terminated, or **Transmission Entry Capacity** be reduced or **Developer Capacity** be reduced before the **Trigger Date** the **Fixed Cancellation Charge** is the **Pre Trigger Amount** calculated as a £/MW figure by reference to the **Cancellation Charge Profile** and derived in accordance with the formula at Paragraph 3.9 and set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 7:

### 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 x (1 – Local Asset Reuse Factor) x Strategic Investment Factor x 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 6.

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 6.

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 6.

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 6.

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 6.

**3.6.3** The **Pre Trigger Amount** and the **Attributable Works Cancellation Amount** (and the factors used in deriving this) and the **Cancellation Charge Profile** are fixed at the time an election is made in accordance with Paragraph 7 and the **Pre Trigger Amount** and **Attributable Works Cancellation Amount** are not subject to any further specific adjustment, reconciliation or credit should any of the **Transmission** assets resulting from the **Attributable Works** be reused or of benefit to other **Users**.

### **3.7 Actual Attributable Works Cancellation Charge**

## WACM1

## WACM2

**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 **Local Asset Reuse Factor**, the **Strategic Investment Factor** and the **Distance Factor** as calculated in paragraph 3.6.2, of the **Attributable Works** and any of the resulting **Transmission** assets.

**3.7.2** In the case of the **Actual Attributable Works Cancellation Charge**, on termination of the **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the **Actual Attributable Works Cancellation Charge** and so (a) in the case of termination, the **User** shall pay to **The Company** on account of the **Actual Attributable Works Cancellation Charge** a sum equal to the estimate of **Actual Attributable Works Cancellation Charge** as shown in the **Cancellation Charge Statement** for the period in which the termination occurs and (b) in the case of a reduction in **Transmission Entry Capacity** or **Developer Capacity**, a sum by reference to the MW reduction based on the £/MW figure derived from the estimate of **Actual Attributable Works Cancellation Charge** as shown in the **Cancellation Charge Statement** for the period in which the termination occurs. These will then be subject to reconciliation in accordance with this Section 15 Part Four.



### 3.8 Wider Cancellation Charge

The **Wider Cancellation Charge** results in a £/MW charge calculated as follows:

***Zonal Unit Amount*** x (MW of reduction in **Transmission Entry Capacity** or **Developer Capacity**) x **Cancellation Charge Profile**

The **Zonal Unit Amount** is a £/MW figure calculated by reference to the **Generation Zone** in which the **Power Station** is to be located as set out in the **Cancellation Charge Statement**. It is calculated by reference to the **Annual Wider Cancellation Charge Statement** for the **Financial Year** in which notice of reduction in **Transmission Entry Capacity** or **Developer Capacity** is given and/or notice of **Disconnection** is given or, where in the case of an **Event of Default** where notice is not given, the **Financial Year** in which the reduction in **Transmission Entry Capacity** or **Developer Capacity** or **Disconnection** occurs.

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

*Where **Load Related Boundary Capex** is the capex required to increase capability in the network as determined by The Company for a given Financial Year, excluding any Attributable Works Capital Cost, multiplied by the User Risk Factor and the Global Asset Reuse Factor, as set out in the Annual Wider Cancellation Charge Statement.*

*Where **Non Load Related Boundary Capex** is the capex required to maintain capability in the network as determined by The Company for a given Financial*

**WACM1**  
**WACM2**

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

*Where the **User Risk Factor** is the share of total risk between generation and consumers, set at 0.5.*

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

*Where the **Boundaries** are as detailed in Section 8 of the **Seven Year Statement**.*

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

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

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

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

Where the **Wider User Commitment Liability Base** is the total amount of generation in MW liable for the **Wider Cancellation Charge** in the year in question and the total amount of generation in MW which will become liable for the **Wider Cancellation Charge** in the year in question and set out in the **Annual Wider Cancellation Charge Statement**.

Where the **Cancellation Charge Profile** is the profile derived in accordance with the formula at Paragraph 3.10 or 3.11, as appropriate.

### 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<sub>t</sub>*

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<sub>t</sub> 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<sub>t</sub> = (£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<sub>t</sub> = (£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<sub>t</sub> = (£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.*

**WACM1**  
**WACM2**

**3.10 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** a **User** shall pay the **Cancellation Charge** calculated as follows:

*Cancellation Charge = the sum of (a) Fixed Attributable Works Cancellation Charge or Actual Attributable Works Cancellation Charge and (b) Wider Cancellation Charge*

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

Where:

- *Termination of Construction Agreement equates to reduction in Transmission Entry Capacity or Developer Capacity to zero*
- *Fixed Attributable Works Cancellation Charge = Attributable Works Cancellation Amount x MW reduction in Transmission Entry Capacity or Developer Capacity x Cancellation Charge Profile<sub>t</sub>*
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years working back from the Charging Date to the Trigger Date:*
  - *In the Financial Year in which the Charging Date occurs (t=0), Cancellation Charge Profile = 1.0,*
  - *In the Financial Year which is 1 Financial Year prior to the Financial Year in which the Charging Date occurs (t=1), Cancellation Charge Profile = 0.75;*
  - *In the Financial Year which is 2 Financial Years prior to the Financial Year in which the Charging Date occurs (t=2), Cancellation Charge Profile = 0.5; and*
  - *In the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs (t=3), Cancellation Charge Profile, = 0.25.*

**AND**

(b) *Wider Cancellation Charge*

Where:

- *Termination of Construction Agreement equates to reduction in Transmission Entry Capacity or Developer Capacity to zero*

- *Wider Cancellation Charge = Zonal Unit Amount x reduction in Transmission Entry Capacity or Developer Capacity x Cancellation Charge Profile<sub>t</sub>*
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years working back from the Charging Date to the Trigger Date:*
  - *In the Financial Year in which the Charging Date occurs (t=0), Cancellation Charge Profile = 1.0,*
  - *In the Financial Year which is 1 Financial Year prior to the Financial Year in which the Charging Date occurs (t=1), Cancellation Charge Profile = 0.75;*
  - *In the Financial Year which is 2 Financial Years prior to the Financial Year in which the Charging Date occurs (t=2), Cancellation Charge Profile = 0.5; and*
  - *In the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs (t=3), Cancellation Charge Profile = 0.25.*

### 3.11 Where the Transmission Entry Capacity is reduced or Notice of Disconnection is given on or after the Charging 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 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<sub>t</sub>.*
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years notice given from the 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 Financial Years prior to the Financial Year in which such notice is to take effect (t=2), Wider Cancellation Charge = zero.*

WACM1  
| WACM2

#### 4 Annual Wider Cancellation Charge Statement

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

- (a) the **Zonal Unit Amount** by **Generation Zone** for that **Financial Year**;
- (b) the **Wider User Commitment Liability Base** for that **Financial Year**;
- (c) the **Total TO Capex** for that **Financial Year** (*where the **Total TO Capex** is the forecast of the **Load Related Boundary Capex** and **Non Load Related Boundary Capex** for a given **Financial Year**, excluding the total **Attributable Works Capital Cost***);
- (d) a forecast of the **Total TO Capex** for the following three **Financial Years**;
- (e) the **Global Asset Reuse Factor** for that **Financial Year**;
- (f) the **Boundary Non Compliance Factors** for that **Financial Year**;
- (g) a forecast of the **Zonal Unit Amount** by **Generation Zone** for the following three **Financial Years**;
- (h) the % of the **Cancellation Charge** that is required to be secured prior to (and including) and after the **Key Consents in Place Date**.

4.2 In the event that for any **Financial Year** it is proposed to change the **Global Asset Reuse Factor** or the % of the **Cancellation Charge** that is required to be secured prior to (and including) and after the **Key Consents in Place Date** from that set out in the **Annual Wider Cancellation Charge Statement** for the previous **Financial Year**, **The Company** shall not make such change without first consulting on the change (and its provision in electronic form on the Website and in electronic mails to **CUSC Parties** and such other persons who have supplied relevant details shall meet this requirement).

#### 5. Statement of Cancellation Charge

5.1 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**.

## 5.2 Cancellation Charge Statement

5.2.1 **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**.

5.3 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**.

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

## 5.5 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



## WACM1

## WACM2

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**.

### 6 Electing for the Fixed Cancellation Charge

6.1 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**.

6.2 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**.

### 7 Cancellation Charge Secured Amount Statement

7.1 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**.

7.2 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**.

**PART THREE**

**1. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT AND CREDIT REQUIREMENTS**

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

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

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

**3. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT**

3.1 Prior to the **Trigger Date** the **Cancellation Charge Secured Amount** is the **Cancellation Charge** as set out in the **Cancellation Charge Statement** for the relevant **Security Period**.

3.2 On or after the **Trigger Date** until the **Charging Date** the **Cancellation Charge Secured Amount** is that percentage of the figure shown as the **Cancellation Charge** in the **Cancellation Charge Statement** for the relevant **Security Period** determined as follows:

<a href="#"><u>For Users in category (a) as per Section 15 Part One Paragraph 2</u></a>	
Prior to (and including) the <b>Key Consents In Place Date</b>	the % for that <b>Financial Year</b> as set out in the <b>Annual Wider Cancellation Charge Statement</b> .

From the <b>Key Consents In Place Date</b>	the % for that <b>Financial Year</b> as set out in the <b>Annual Wider Cancellation Charge Statement</b> .
<u>For Users in categories (b) and (c) as per Section 15 Part One Paragraph 2</u>	
<u>Prior to (and including) the <b>Key Consents In Place Date</b></u>	<u>the % for that <b>Financial Year</b> for <b>Distributed Generation</b> as set out in the <b>Annual Wider Cancellation Charge Statement</b>.</u>
<u>From the <b>Key Consents In Place Date</b></u>	<u>the % for that <b>Financial Year</b> for <b>Distributed Generation</b> as set out in the <b>Annual Wider Cancellation Charge Statement</b>.</u>

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

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

4.1 The **User** shall as soon as possible after entering into a **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** and in any event no later than one (1) month after the date of the same confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the 1 April and 1 October each year until 30 days after the **Charging Date** the **User** shall confirm to **The Company** whether it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of no longer meeting **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The**

**WACM1**  
**WACM2**

**Company** reasonable cause to believe that the **User** may not be able to sustain meeting **The Company Credit Rating** for at least 12 months.

**4.2** In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Paragraph 4.1 then **The Company** may require the **User** forthwith:

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Paragraph 4.4 below.

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

- (i) not meeting **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Paragraph 4.2(i) above an indicative long term private credit rating,

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

- (iv) the **User** ceases to meet **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain **The Company Credit Rating** for at least 12 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Paragraph 4.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Paragraph 4.4.

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

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

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

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

**5.1** Each **User** hereby agrees that it shall at the date of the relevant **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until 28 days after the **Charging Date** maintain or procure that there is maintained in full force and effect (including by renewal or replacement) a security arrangement from time to time and for the time being as set out in Paragraph 6 to provide security for the **Cancellation Charge Secured Amount**.

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

- (i) the fairness and reasonableness of the estimate of the **Attributable Works Capital Charge**; or
- (ii) the calculation of the **Cancellation Charge**, or
- (iii) whether there has been an **Event of Default** as provided in **CUSC** Section 5; or

## WACM1

## WACM2

- (iv) the lawfulness or otherwise of any termination or purported termination of the **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 this **CUSC** Section 15 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.

## 6. TYPES OF SECURITY

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

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

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

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

## 6.2 General Provisions regarding Security

**6.2.1** Any **Notice of Drawing** to be delivered to Barclays Bank PLC or any other bank at which the **Bank Account** shall have been opened or a **Qualified Bank** or a **Qualified Company** may be delivered by hand, by post or by facsimile transmission.

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

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

**6.2.3.1** The **Performance Bond** or **Letter of Credit** shall be **Valid** initially for the **First Security Period**. Such **Performance**

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

**6.2.3.2** On a date which is at least 45 days (or if such day is not a **Business Day** then on the immediately preceding **Business Day**) before the start of each following **Security Period** such **Performance Bond** or **Letter of Credit** shall be renewed so as to be **Valid** for not less than such **Security Period** and in the case of the last **Security Period** to be **Valid**, unless **The Company** agrees otherwise, for 45 days after the last day of such **Security Period**. Such renewed **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Cancellation Charge Secured Amount** to be secured during that **Security Period**.

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

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

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

**6.2.4.3** If the **Cancellation Charge Secured Amount** for a given **Security Period** is smaller than the amount then secured, the **User's** cash deposit in the **Bank Account** in respect of the



**Security Amount** shall not be reduced to the amount so stated until the expiry of 7 days after the start of that given **Security Period** (“the **Release Date**”).

**6.2.4.4** The sum equal to the amount of reduction in the **User’s** cash deposit in the **Bank Account** in respect of the **Security Amount** shall be paid by **The Company** to the **User** from the **Bank Account** on the **Release Date**.

**6.2.4.5** Any interest accruing in respect of the **User’s** cash deposit in the **Bank Account** in respect of the **Security Amount** 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** (or any other bank account in the name of **The Company** in which such interest is held) and payment to the **User** of such interest as soon as **The Company** shall have received notice from the **User** requesting such payment.

**6.2.4.6** For the avoidance of doubt, the **User’s** cash deposit in the **Bank Account** shall remain the sole property and entitlement of the **User** until such time when (and to such extent as) the **Company** exercises its right of set off against the **User’s** cash deposit in accordance with the terms of the **CUSC**, and the **User** shall have no right to have the cash deposit returned to it for so long as it is under any prospective or contingent liability to the **Company**.

**6.3** Notwithstanding any provision aforesaid:-

**6.3.1** The **User** may provide different securities to **The Company** at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not less than the amount of the **Cancellation Charge Secured Amount** required to be secured for that **Security Period**.

**6.3.2** The **User** may upon the expiry of at least 14 days prior written notice to **The Company**, substitute one type of security for another provided that unless **The Company** shall otherwise agree in writing such substituted security must be **Valid** from the first day of the relevant **Security Period** and committed at least 45 days before this in the following manner:-

(a) where a **Performance Bond** or a **Letter of Credit** is to substitute for other securities, it must be issued or given at least 45 days before the start of the **Security Period** to which it relates.

(b) where a cash deposit in a **Bank Account** is to substitute for other securities, it must be deposited into the **Bank Account** at least 45 days before the start of the **Security Period** to which it relates.

**6.3.3** Upon request by the **User** to **The Company**, securities substituted in the aforesaid manner shall, providing the substitute security shall be **Valid**, be released on the first day of the **Security Period** which the substitute security is securing. However, where the **Cancellation Charge Secured Amount** to be secured for any **Security Period** is less than the amount required to be secured in the preceding **Security Period**, the substituted security shall not be released until 7 days after the start of the **Security Period** that that substitute security is securing.

**PART FOUR RECONCILIATION OF ACTUAL ATTRIBUTABLE WORKS  
CANCELLATION CHARGE**

1. As soon as practicable and in any event within 60 days of the date, as appropriate, of termination of the **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** **The Company** shall:
  - (a) furnish the **User** with a statement showing a revised estimate of the **Actual Attributable Works Cancellation Charge** and will provide as soon as practicable evidence of such having been incurred; and
  - (b) furnish the **User** with justification of and supporting information in respect of its assessment of the actual or potential for reuse and any strategic benefits of the **Attributable Works** and any of the resulting **Transmission** assets.
  
2. As soon as reasonably practicable after termination of this **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** and in any event within 12 months of such event **The Company** shall provide the **User** with a final statement of the **Actual Attributable Works Cancellation Charge**. If the **Actual Attributable Works Cancellation Charge** is greater than the payments made by the **User** in respect of **The Company's** estimate(s) of the **Actual Attributable Works Cancellation Charge** 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) to the date of the final statement of the **Actual Attributable Works Cancellation Charge** and final invoice for the **Attributable Works Cancellation Charge**. If the **Actual Attributable Works Cancellation Charge** is less than the payments made by the **User** in respect of **The Company's** estimate(s) of the **Actual Attributable Works Cancellation Charge** **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 the **Actual Attributable Works Cancellation Charge** to the date of reimbursement by **The Company** of the said excess paid.

WACM1  
| WACM2

**WACM1**

**SCHEDULE 2 EXHIBIT 3**

**PART 1**

*For use with User's in the categories of (i) Power Stations directly connected to the National Electricity Transmission system, (ii) Embedded Power Stations which are the subject of a Bilateral Embedded Generation Agreement or (iii) where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System*

**INDICATIVE**

**DATED [ ] 200[1]**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ ] (2)**

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**THE CONNECTION AND USE OF SYSTEM CODE**

**CONSTRUCTION AGREEMENT**

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v1.9 – 9 January 2014

## WACM1

### CONTENTS

<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
2	Carrying out of the Works
3	Delays
4	Commissioning Programme and Liquidated Damages
5	Approval to Connect/Energise/Become Operational
6	Independent Engineer
7	Becoming Operational
8	Compliance with Site Specific Technical Conditions
9	Provision of Security
10	Event of Default
11	Termination
12	Term
13	CUSC
14	Disputes
15	Variations
<u>16</u>	<u>Distributed Generation</u>
Appendix B1	One Off Works
Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme
Appendix K	Liquidated Damages

**WACM1**

Appendix L Independent Engineer

Appendix MM Attributable Works and Key Consents

Appendix N Third Party Works

## WACM1

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

### BETWEEN

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

### WHEREAS

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

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

v1.9 – 9 January 2014



## WACM1

### 1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

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

“Attributable Works”	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1.
"Authority"	as defined in the <b>CUSC</b> .
“Bilateral Connection Agreement”	the <b>Bilateral Connection Agreement</b> entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the <b>Bilateral Embedded Generation Agreement</b> entered into between the parties on even date herewith.
“Cancellation Charge”	as calculated in accordance with the <b>User Commitment Methodology</b> .

## WACM1

"Charging Date"

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

"Commissioning Programme Commencement Date"

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

"Commissioning Programme"

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

"Completion Date"

[ ] or such other date as may be

v1.9 – 9 January 2014

## WACM1

	agreed in terms of this <b>Construction Agreement</b> for completion of the <b>Construction Works</b> .
"Connect and Manage Derogation"	the temporary derogation from the <b>NETS SQSS</b> available to <b>The Company</b> under Standard Condition C17 of the <b>Transmission Licence</b> and/or the <b>Relevant Transmission Licensee</b> under Standard Condition D3 of its transmission licence;
"Connected Planning Data"	data required pursuant to the <b>Planning Code</b> 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 <b>Works</b> :-  (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 <b>Works</b> and for commencement and carrying on of any activity proposed to be undertaken at or from such <b>Works</b> when completed.
"Construction Programme"	the agreed programme for the <b>Works</b> to be carried out by <b>The Company</b> and the <b>User</b> set out in detail in Appendix [J] to this <b>Construction Agreement</b> or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this <b>Construction Agreement</b> .
"Construction Site"	the site where the <b>Transmission Connection Asset Works</b> are being

v1.9 – 9 January 2014

## WACM1

	undertaken by or on behalf of <b>The Company</b> ;
“Construction Works”	the <b>Transmission Connection Asset Works, Enabling Works, Seven Year Statement Works and One Off Works</b> and such additional works as are required in order to comply with any relevant <b>Consents</b> relating to any such works but excluding for the avoidance of doubt any <b>Third Party Works</b> .
“Dispute Resolution Procedure”	the procedure for referral to arbitration set out in Paragraph 7.4 of the <b>CUSC</b> .
“Enabling Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 1 to this <b>Construction Agreement</b> .
“Event of Default”	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
“Independent Engineer”	the engineer specified in Appendix L to this <b>Construction Agreement</b> . Provided that:-  (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this <b>Construction Agreement</b> ; or  (b) where any <b>Independent Engineer</b> 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,

v1.9 – 9 January 2014

## WACM1

	nominate shall be the <b>Independent Engineer</b> .
“Key Consents”	those <b>Consents</b> required in respect of the <b>[User’s/Developer’s] Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2.
“Liquidated Damages”	the sums specified in or calculated pursuant to Appendix K to this <b>Construction Agreement</b> .
“One Off Works”	the works described in Appendix B1 to this <b>Construction Agreement</b> .
Seven Year Statement Works”	the works set out in Table B7 of the statement prepared by <b>The Company</b> pursuant to Standard Condition C11 of the <b>Transmission Licence</b> and issued by <b>The Company</b> in [ ] which in <b>The Company’s</b> reasonable opinion (and in the absence of the <b>Connect and Manage Derogation</b> are required to be completed before the <b>Completion Date</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission licence prior to the <b>Connection</b> of the <b>User’s Equipment</b> in terms of Clause 7.1 [or 7.2] of this <b>Construction Agreement</b> .
“Term”	the term of this <b>Construction Agreement</b> commencing on the date hereof and ending in accordance with Clause 12.

v1.9 – 9 January 2014

## WACM1

“Third Party Works”	the works to be undertaken on assets belonging to a party other than <b>The Company</b> and the <b>User</b> to enable it to provide or as a consequence of the connection to and/or use of the <b>National Electricity Transmission System</b> by the <b>User</b> as specified in Appendix N;
“Transmission Connection Assets”	the assets specified in Appendix A to the <b>Bilateral Connection Agreement</b> .
“Transmission Connection Asset Works”	the works necessary for construction and installation of the <b>Transmission Connection Assets</b> at the <b>Connection Site</b> specified in Appendix G to this <b>Construction Agreement</b> .
“Transmission Reinforcement Works”	those works other than the <b>Transmission Connection Asset Works Seven Year Statement Works</b> and <b>One Off Works</b> , which in the reasonable opinion of <b>The Company</b> (and in the absence of the <b>Connect and Manage Derogation</b> ) are all necessary to extend or reinforce the <b>National Electricity Transmission System</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission system and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is the <b>Enabling Works</b> and Part 2 is the <b>Wider Transmission Reinforcement Works</b> .
“Trigger Date”	[date] as identified in accordance with the <b>User Commitment methodology</b> .

## WACM1

“User’s Works”	those works necessary for installation of the <b>User’s Equipment</b> which are specified in Appendix I to this <b>Construction Agreement</b> .
“Wider Transmission Reinforcement Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 2 to this <b>Construction Agreement</b> where Part 2.1 is works required for the <b>User</b> and Part 2.2 is works required for wider system reasons.
“Works”	the <b>Construction Works</b> and the <b>User’s Works</b> .
<i>Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following</i>	
[Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised <b>Transmission Entry Capacity</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application</b> .

v1.9 – 9 January 2014

## WACM1

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following (and where the Construction Agreement relates to more than one, for each of the Developers)*

[Developer Capacity]	the MW figure [ <i>for export</i> ] specified in the <b>Developer's Data</b> .
Developer	<i>Insert name address and registered number who is party to a BELLA with The Company or the subject of the Request for a Statement of Works.</i>
Developer's Data	the information provided by the [Developer-BELLA] [User in respect of the Developer in the Request for a Statement of Works- <i>relevant embedded medium\small power station</i> ] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the User's Distribution System at [ ]]
Notice of Intent	the notice issued by The Company pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by The Company pursuant to Clause 7.4.7 revising the Developer's Capacity for this Construction Agreement and Appendix A to the BELLA.
Preliminary Request	the request issued by The Company pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the User to The Company in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the Charging Statements as payable on a payment of actual costs basis in respect of a

v1.9 – 9 January 2014



**Modification Application.**

**2. CARRYING OUT OF THE WORKS**

- 2.1** Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2** Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.
- 2.3** The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-
- 2.3.1** All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.
- 2.3.2** In the event of:-

## WACM1

- (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 Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.
- 2.5 Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the provisions of Clause 11 shall apply].
- 2.6 If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** and the provisions of Clause 11 shall apply
- 2.7 Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as

v1.9 – 9 January 2014

## WACM1

shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.

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

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

- [“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

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

v1.9 – 9 January 2014

## WACM1

- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (**One Off Works**), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**), MM (**Attributable Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change. Provided that where a **User** has elected for the **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.
- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the Secretary of State for Trade and Industry shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said

v1.9 – 9 January 2014

## WACM1

application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]

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

**2.14** [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and **Wider Transmission Reinforcement Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]

**2.15** [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

### **2.16 Third Party Works**

**2.16.1** The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

**2.16.2** Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [ ] of the **Third Party Works** and

v1.9 – 9 January 2014

## WACM1

shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

**2.16.3** Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) (“the **First User(s)**”) as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User’s** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

**2.16.4** In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company’s** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company’s** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [ ] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

## 2.17 Wider Transmission Reinforcement Works

**The Company** shall keep the **User** advised as to progress on the **Wider Transmission Reinforcement Works** and shall include information on these in the reports produced pursuant to Clause 2.8.

## 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**

v1.9 – 9 January 2014

## WACM1

(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

v1.9 – 9 January 2014

## WACM1

the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.

- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [ ] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and the provisions of Clause 11 shall apply.

## 5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC

v1.9 – 9 January 2014



## WACM1

7.4.8 and 7.4.11 and likewise the Site **Common Drawings** required under CC 7.5.3 and 7.5.5.

**5.3** Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-

**5.3.1** each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and

**5.3.2** the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.

**5.4** Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:

**5.4.1** for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;

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

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

**5.5** If directly connected to the **National Electricity Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type

v1.9 – 9 January 2014

## WACM1

test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

**5.6** If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **National Electricity Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

## 6. INDEPENDENT ENGINEER

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

v1.9 – 9 January 2014

## WACM1

any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

### 7. BECOMING OPERATIONAL

[7.1 If directly connected to the **National Electricity Transmission System** **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** [delete Seven Year Statement Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.] or

[7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the Enabling Works [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **National Electricity Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.]

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Registered Capacity** of the **User's Equipment** is less than [ ]MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Registered Capacity** of the **User's Equipment**.

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

#### [7.4 Transmission Entry Capacity Reduction

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry**

v1.9 – 9 January 2014

## WACM1

**Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.

7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.

7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .

7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

7.4.7 Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry**

v1.9 – 9 January 2014

## WACM1

**Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.

7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.

7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.

7.5 Where there is a reduction in **Transmission Entry Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.]

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

### [7.4 Developer Capacity Reduction

## WACM1

- 7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations* – and/or **CUSC** Paragraphs 6.5.8 or 6.5.5.11], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.
- 7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7 Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure

v1.9 – 9 January 2014

## WACM1

proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.

**7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA** and the date they take effect shall be as set out in the **Authority's** determination.

**7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Reduction Fee** and on such reduction in **Developer Capacity** taking effect the **User** shall pay the **Cancellation Charge** in respect of the reduction such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.”]

**7.4.10** Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

**7.4.10.1** The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

## WACM1

**7.4.10.2** Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for a Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **National Electricity Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

**7.4.10.3** **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.

**7.5** Where there is a reduction in **Developer Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Developer Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

## **8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS**

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1-5 to the **Bilateral Connection Agreement** .

## **9. PROVISION OF SECURITY**



## WACM1

Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on termination of this **Construction Agreement** or a reduction in **[Transmission Entry Capacity]** **[Developer Capacity]** prior to the **Charging Date**.

### 10. EVENT OF DEFAULT

Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of Clause 11 shall apply.

### 11. TERMINATION

11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

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

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

11.2 The **User** shall where this **Construction Agreement** terminates prior to the **Charging Date** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

### 12. TERM

v1.9 – 9 January 2014

## WACM1

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

## 13. CUSC

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

## 14. DISPUTES

- 14.1 Except as specifically provided for in Clause 14.2 of 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**.
- 14.2 If there shall be any dispute between the **User** and **The Company** as to:-

## 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

## WACM1

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**.

[Users in the capacity of a Directly Connected Distribution System insert the following:

### **16. Distributed Generation**

**16.1** In consideration of and recognising the provisions at Clause 16.4 of this **Construction Agreement** and notwithstanding that the liability for the **Cancellation Charge** rests with the **User**, the **User** will within **5 Business Days** of receipt of the same provide the **Developer** with a copy of the **Cancellation Charge Secured Amount Statement**.

**16.2** Where this **Construction Agreement** is entered into by reference to and provides for the **Construction Works** required as a consequence of more than one **Developer** a **Cancellation Charge**, **Cancellation Charge Statement** and **Cancellation Charge Secured Amount** will be prepared by reference to each **Developer** and the reference to “**Cancellation Charge**” “**Developer**” and “**Developer Capacity**” in this **Construction Agreement** and **CUSC** Section 15 shall be construed accordingly.

**16.3** In the event that the/a **Developer** reduces its **Developer Capacity** and/or terminates its agreement for connection to the **Distribution System** the **User** shall notify **The Company** in writing within **5 Business Days** of that event.

**16.4** In the event of a **Cancellation Charge Shortfall**:

**16.4.1** On application by the **User** in writing (which cannot be made prior to the **Shortfall Application Date** and without the conditions at Clause 16.5 having been met), **The Company** shall pay the **Cancellation Charge Shortfall** to the **User** together with interest calculated thereon on a daily basis at **Base Rate** from the date of the payment of the **Cancellation Charge** to **The Company** by the **User** to the date of the payment of the **Cancellation Charge Shortfall** by **The Company** to the **User**.

**16.4.2** The **User** shall keep **The Company** advised as to any ongoing process to recover the **Cancellation Charge Shortfall** and any associated interest charges from the **Developer** and notify **The Company** when it has reasonable grounds to believe that it is not practicable to take any further action) to recover the **Cancellation Charge Shortfall** from the **Developer**.

v1.9 – 9 January 2014

**WACM1**

16.4.3 If at any time the **User** subsequently successfully recovers the **Cancellation Charge Shortfall** in full or part from the **Developer**, the **User** shall forthwith notify **The Company** and pay the amount received to **The Company** together with interest calculated thereon on a daily basis at **Base Rate** from the date of the payment of the **Cancellation Charge Secured Amount** to **The Company** by the **User** to the date of the payment of the **Cancellation Charge Shortfall** by the **User** to **The Company**.

16.5 In order for the **User** to make an application for payment of a **Cancellation Charge Shortfall** the following conditions must have been met and evidence of this provided to **The Company** by the **User** with the application.

- i) that the **User** asked the **Developer** whether or not it wishes the **User** to elect for the **Fixed Cancellation Charge** and elected accordingly; and
- ii) (in respect of its liability for the **Cancellation Charge** as it relates to this **Construction Agreement**) for each **Security Period** the **User** only sought security from the **Developer** for the amount as set out in the **Cancellation Charge Secured Amount Statement** for that **Security Period**

**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]** )

**WACM1**

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

v1.9 – 9 January 2014

**WACM1**

**APPENDIX [G]**

**TRANSMISSION CONNECTION ASSET WORKS**

v1.9 – 9 January 2014

**WACM1**

**APPENDIX [H]**

**TRANSMISSION REINFORCEMENT WORKS**

**Part 1            Enabling Works**

**Part 2            Wider Transmission Reinforcement Works**

v1.9 – 9 January 2014

**WACM1**

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

v1.9 – 9 January 2014



**WACM1**

**APPENDIX [J]**  
**CONSTRUCTION PROGRAMME**

v1.9 – 9 January 2014

**WACM1**

**APPENDIX [K]**

**LIQUIDATED DAMAGES**

Company:

Connection site:

Type:

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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 £XXXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXXX.

v1.9 – 9 January 2014

**WACM1**

**APPENDIX [L]**

**INDEPENDENT ENGINEER**

Company:

Connection site:

Type:

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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.

v1.9 – 9 January 2014

**WACM1**

**APPENDIX [MM]**

**ATTRIBUTABLE WORKS AND KEY CONSENTS**

**Part 1**

**Attributable Works**

**Part 2**

**Key Consents**

v1.9 – 9 January 2014

WACM1

**APPENDIX [N]**  
**THIRD PARTY WORKS**

v1.9 – 9 January 2014

**WACM1**

**APPENDIX [P]**

**DEVELOPER'S DATA**

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

v1.9 – 9 January 2014

WACM1

**SCHEDULE 2 EXHIBIT 3**

**PART 2**

v1.9 – 9 January 2014





## **CMP 223 (Arrangements for Relevant Distributed Generators under the Enduring User Commitment) (WACM2): Summary Sheet of Proposed Amendments**

### **1. Overview of Changes**

1.1 The changes in the legal drafting that are being proposed to implement CMP 223 consist in (a) changing the Cancellation Charge arrangements between The Company and DNOs such that the Cancellation Secured Amount required of directly connected generation can be reflected in arrangements with DNO's in respect of Distributed Generation and (b) provide a separate % determining the Cancellation Secured Amount for Distributed Generation.

1.2 In summary the drafting consists of changes to:

1. Edits to CUSC Section 6 (General Provisions). These are the same as for CMP 223 WACM1.
2. CUSC Section 10 (houses the transitional provisions that apply to those Users or prospective Users). These are the same as for CMP 223 WACM1.
3. Edits to CUSC Section 11 (Definitions)
4. Edits to CUSC Section 15 (User Commitment Methodology). These are the same as for CMP 223 WACM1
5. Edits Schedule 2 Exhibit 3 (Construction Agreement).

## WACM2

### Changes to CUSC Section 11 (Interpretation and Definitions)

#### 1. New definitions to be added at CUSC Section 11

**“Associated DNO Construction Agreement”**

**a Construction Agreement between The Company and a User in the category of a Distribution System directly connected to the National Electricity Transmission System in respect of works required on the National Electricity Transmission System as a consequence of the connection of Distributed Generation to the Distribution System;**

**“Cancellation Charge Shortfall”**

**the difference between (a) the Cancellation Charge Secured Amount (or such higher sum as paid by the Developer to the User in respect of the Cancellation Charge) and (b) the Cancellation Charge payable by the User;**

**“Insolvency Proceedings”**

**shall mean any action or step taken:**

- (a) for the administration, winding up, dissolution or bankruptcy of the Developer; or**
- (b) for the appointment of a receiver or administrative receiver in respect of any of the Developer’s assets; or**
- (c) for making a proposal to any of the Developer’s creditors with a view to avoiding insolvency; or**
- (d) for the taking of possession by anyone with an interest in any asset of the Developer; or**
- (e) any analogous procedure or step is taken in any jurisdiction in relation to any matter referred to in clause (a) to (d) (inclusive) above.**

**“Shortfall Action Threshold Amount”**

**means the amount as notified by the Authority to The Company from time to time;**

**“Shortfall Recovery Minimum Steps”**

**shall mean the User:**

- (a) issuing and serving court proceedings on the Developer for the recovery of the Cancellation Charge**

- Shortfall; or
- (b) except where the Developer is already the subject of Insolvency Proceedings, instigating Insolvency Proceedings against the Developer for the recovery of the Cancellation Charge Shortfall;
  - (c) where the Developer is already the subject of Insolvency Proceedings, submitting a claim for the Cancellation Charge Shortfall under these; or
  - (d) any alternative steps agreed by the Authority following a request from the User (of which the User will notify The Company of upon such agreement).

2. Amends to definitions at CUSC Section 11

**“Distributed Generation”**

means for the purposes of the **Connect and Manage Arrangements**, **Section 6** and **Section 15** of the **CUSC**;

- (a) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement**;
- (b) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Licence Exemptable Large Power Station Agreement**;
- (c) a **Relevant Embedded Medium Power Station**;
- (d) a **Relevant Embedded Small Power Station**.

WACM2

**SCHEDULE 2 EXHIBIT 3**

**PART 1**

*For use with User's in the categories of (i) Power Stations directly connected to the National Electricity Transmission system, (ii) Embedded Power Stations which are the subject of a Bilateral Embedded Generation Agreement or (iii) where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System*

**INDICATIVE**

**DATED [ ] 200[1]**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ ] (2)**

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**THE CONNECTION AND USE OF SYSTEM CODE**

**CONSTRUCTION AGREEMENT**

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v1.9 – 9 January 2014

## WACM2

### CONTENTS

<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
2	Carrying out of the Works
3	Delays
4	Commissioning Programme and Liquidated Damages
5	Approval to Connect/Energise/Become Operational
6	Independent Engineer
7	Becoming Operational
8	Compliance with Site Specific Technical Conditions
9	Provision of Security
10	Event of Default
11	Termination
12	Term
13	CUSC
14	Disputes
15	Variations
<u>16</u>	<u>Distributed Generation</u>
Appendix B1	One Off Works
Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme
Appendix K	Liquidated Damages

## **WACM2**

Appendix L	Independent Engineer
Appendix MM	Attributable Works and Key Consents
Appendix N	Third Party Works

## WACM2

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

### BETWEEN

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

### WHEREAS

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

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

## WACM2

### 1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

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

“Attributable Works”	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1.
"Authority"	as defined in the <b>CUSC</b> .
“Bilateral Connection Agreement”	the <b>Bilateral Connection Agreement</b> entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the <b>Bilateral Embedded Generation Agreement</b> entered into between the parties on even date herewith.
“Cancellation Charge”	as calculated in accordance with the <b>User Commitment Methodology</b> .



## WACM2

"Charging Date"

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

"Commissioning Programme Commencement Date"

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

"Commissioning Programme"

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

"Completion Date"

[ ] or such other date as may be

v1.9 – 9 January 2014

## WACM2

	agreed in terms of this <b>Construction Agreement</b> for completion of the <b>Construction Works</b> .
"Connect and Manage Derogation"	the temporary derogation from the <b>NETS SQSS</b> available to <b>The Company</b> under Standard Condition C17 of the <b>Transmission Licence</b> and/or the <b>Relevant Transmission Licensee</b> under Standard Condition D3 of its transmission licence;
"Connected Planning Data"	data required pursuant to the <b>Planning Code</b> 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 <b>Works</b> :-  (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 <b>Works</b> and for commencement and carrying on of any activity proposed to be undertaken at or from such <b>Works</b> when completed.
"Construction Programme"	the agreed programme for the <b>Works</b> to be carried out by <b>The Company</b> and the <b>User</b> set out in detail in Appendix [J] to this <b>Construction Agreement</b> or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this <b>Construction Agreement</b> .
"Construction Site"	the site where the <b>Transmission Connection Asset Works</b> are being

v1.9 – 9 January 2014

## WACM2

	undertaken by or on behalf of <b>The Company</b> ;
“Construction Works”	the <b>Transmission Connection Asset Works, Enabling Works, Seven Year Statement Works and One Off Works</b> and such additional works as are required in order to comply with any relevant <b>Consents</b> relating to any such works but excluding for the avoidance of doubt any <b>Third Party Works</b> .
“Dispute Resolution Procedure”	the procedure for referral to arbitration set out in Paragraph 7.4 of the <b>CUSC</b> .
“Enabling Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 1 to this <b>Construction Agreement</b> .
“Event of Default”	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
“Independent Engineer”	the engineer specified in Appendix L to this <b>Construction Agreement</b> . Provided that:-  (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this <b>Construction Agreement</b> ; or  (b) where any <b>Independent Engineer</b> 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,

v1.9 – 9 January 2014

## WACM2

	nominate shall be the <b>Independent Engineer</b> .
“Key Consents”	those <b>Consents</b> required in respect of the <b>[User’s/Developer’s] Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2.
“Liquidated Damages”	the sums specified in or calculated pursuant to Appendix K to this <b>Construction Agreement</b> .
“One Off Works”	the works described in Appendix B1 to this <b>Construction Agreement</b> .
Seven Year Statement Works”	the works set out in Table B7 of the statement prepared by <b>The Company</b> pursuant to Standard Condition C11 of the <b>Transmission Licence</b> and issued by <b>The Company</b> in [ ] which in <b>The Company’s</b> reasonable opinion (and in the absence of the <b>Connect and Manage Derogation</b> are required to be completed before the <b>Completion Date</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission licence prior to the <b>Connection</b> of the <b>User’s Equipment</b> in terms of Clause 7.1 [or 7.2] of this <b>Construction Agreement</b> .
“Term”	the term of this <b>Construction Agreement</b> commencing on the date hereof and ending in accordance with Clause 12.

v1.9 – 9 January 2014

## WACM2

“Third Party Works”	the works to be undertaken on assets belonging to a party other than <b>The Company</b> and the <b>User</b> to enable it to provide or as a consequence of the connection to and/or use of the <b>National Electricity Transmission System</b> by the <b>User</b> as specified in Appendix N;
“Transmission Connection Assets”	the assets specified in Appendix A to the <b>Bilateral Connection Agreement</b> .
“Transmission Connection Asset Works”	the works necessary for construction and installation of the <b>Transmission Connection Assets</b> at the <b>Connection Site</b> specified in Appendix G to this <b>Construction Agreement</b> .
“Transmission Reinforcement Works”	those works other than the <b>Transmission Connection Asset Works Seven Year Statement Works</b> and <b>One Off Works</b> , which in the reasonable opinion of <b>The Company</b> (and in the absence of the <b>Connect and Manage Derogation</b> ) are all necessary to extend or reinforce the <b>National Electricity Transmission System</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission system and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is the <b>Enabling Works</b> and Part 2 is the <b>Wider Transmission Reinforcement Works</b> .
“Trigger Date”	[date] as identified in accordance with the <b>User Commitment methodology</b> .

## WACM2

“User’s Works”	those works necessary for installation of the <b>User’s Equipment</b> which are specified in Appendix I to this <b>Construction Agreement</b> .
“Wider Transmission Reinforcement Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 2 to this <b>Construction Agreement</b> where Part 2.1 is works required for the <b>User</b> and Part 2.2 is works required for wider system reasons.
“Works”	the <b>Construction Works</b> and the <b>User’s Works</b> .
<i>Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following</i>	
[Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised <b>Transmission Entry Capacity</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application..</b>

v1.9 – 9 January 2014

## WACM2

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following (and where the Construction Agreement relates to more than one, for each of the Developers)*

[Developer Capacity]	the MW figure [ <i>for export</i> ] specified in the <b>Developer's Data</b> .
Developer	<i>Insert name address and registered number who is party to a BELLA with The Company or the subject of the Request for a Statement of Works.</i>
Developer's Data	the information provided by the [Developer-BELLA] [User in respect of the Developer in the Request for a Statement of Works- <i>relevant embedded medium\small power station</i> ] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the User's Distribution System at [ ]]
Notice of Intent	the notice issued by The Company pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by The Company pursuant to Clause 7.4.7 revising the <b>Developer's Capacity</b> for this <b>Construction Agreement</b> and Appendix A to the <b>BELLA</b> .
Preliminary Request	the request issued by The Company pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the User to The Company in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a

v1.9 – 9 January 2014

**Modification Application.**

**2. CARRYING OUT OF THE WORKS**

- 2.1** Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2** Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.
- 2.3** The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-
- 2.3.1** All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.
- 2.3.2** In the event of:-



## WACM2

- (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** Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.
- 2.5** Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the provisions of Clause 11 shall apply].
- 2.6** If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** and the provisions of Clause 11 shall apply
- 2.7** Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as

v1.9 – 9 January 2014

## WACM2

shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.

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

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

- [“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

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

v1.9 – 9 January 2014

## WACM2

- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (**One Off Works**), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**), MM (**Attributable Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change. Provided that where a **User** has elected for the **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.
- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the Secretary of State for Trade and Industry shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said

v1.9 – 9 January 2014

## WACM2

application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]

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

**2.14** [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and **Wider Transmission Reinforcement Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]

**2.15** [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

### **2.16 Third Party Works**

**2.16.1** The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

**2.16.2** Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [ ] of the **Third Party Works** and

v1.9 – 9 January 2014

## WACM2

shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

**2.16.3** Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) (“the **First User(s)**”) as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User’s** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

**2.16.4** In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company’s** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company’s** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [ ] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

## 2.17 Wider Transmission Reinforcement Works

**The Company** shall keep the **User** advised as to progress on the **Wider Transmission Reinforcement Works** and shall include information on these in the reports produced pursuant to Clause 2.8.

## 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**

v1.9 – 9 January 2014

## WACM2

(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

v1.9 – 9 January 2014

## WACM2

the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.

- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [ ] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and the provisions of Clause 11 shall apply.

## 5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.
- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC

v1.9 – 9 January 2014

## WACM2

7.4.8 and 7.4.11 and likewise the Site **Common Drawings** required under CC 7.5.3 and 7.5.5.

**5.3** Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-

**5.3.1** each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and

**5.3.2** the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.

**5.4** Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:

**5.4.1** for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;

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

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

**5.5** If directly connected to the **National Electricity Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type

v1.9 – 9 January 2014



## WACM2

test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

**5.6** If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **National Electricity Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

## 6. INDEPENDENT ENGINEER

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

v1.9 – 9 January 2014

## WACM2

any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

### 7. BECOMING OPERATIONAL

[7.1 If directly connected to the **National Electricity Transmission System** **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** [delete Seven Year Statement Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational**.] or

[7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the Enabling Works [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **National Electricity Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company**.]

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Registered Capacity** of the **User's Equipment** is less than [ ]MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Registered Capacity** of the **User's Equipment**.

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

#### [7.4 Transmission Entry Capacity Reduction

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry**

v1.9 – 9 January 2014

## WACM2

**Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.

**7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.

**7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

**7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .

**7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

**7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.

**7.4.7** Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry**

v1.9 – 9 January 2014

## WACM2

**Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.

7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.

7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.

7.5 Where there is a reduction in **Transmission Entry Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.]

***Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following***

### [7.4 Developer Capacity Reduction

## WACM2

- 7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations* – and/or **CUSC** Paragraphs 6.5.8 or 6.5.5.11], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.
- 7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7 Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure

v1.9 – 9 January 2014

## WACM2

proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.

**7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA** and the date they take effect shall be as set out in the **Authority's** determination.

**7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Reduction Fee** and on such reduction in **Developer Capacity** taking effect the **User** shall pay the **Cancellation Charge** in respect of the reduction such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.”]

**7.4.10** Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

**7.4.10.1** The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

## WACM2

**7.4.10.2** Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for a Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **National Electricity Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.

**7.4.10.3** **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.

**7.5** Where there is a reduction in **Developer Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Developer Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

## **8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS**

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1-5 to the **Bilateral Connection Agreement** .

## **9. PROVISION OF SECURITY**

## WACM2

Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on termination of this **Construction Agreement** or a reduction in **[Transmission Entry Capacity]** **[Developer Capacity]** prior to the **Charging Date**.

### 10. EVENT OF DEFAULT

Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of Clause 11 shall apply.

### 11. TERMINATION

11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

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

11.2 The **User** shall where this **Construction Agreement** terminates prior to the **Charging Date** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

### 12. TERM

v1.9 – 9 January 2014



## WACM2

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

## 13. CUSC

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

## 14. DISPUTES

- 14.1** Except as specifically provided for in Clause 14.2 of 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**.
- 14.2** If there shall be any dispute between the **User** and **The Company** as to:-

## 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

## WACM2

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**.

*[User's in the capacity of a Directly Connected Distribution System insert the following:*

### **16. Distributed Generation**

**16.1** In consideration of and recognising the provisions at Part One Paragraph 9 of **CUSC** Section 15 and Clause 16.4 of this **Construction Agreement** and notwithstanding that the liability for the **Cancellation Charge** rests with the **User**, the **User** will within 5 **Business Days** of receipt of the same provide the **Developer** with a copy of the **Cancellation Charge Secured Amount Statement**.

**16.2** Where this **Construction Agreement** is entered into by reference to and provides for the **Construction Works** required as a consequence of more than one **Developer** a **Cancellation Charge**, **Cancellation Charge Statement** and **Cancellation Charge Secured Amount** will be prepared by reference to each **Developer** and the reference to "**Cancellation Charge**" "**Developer**" and "**Developer Capacity**" in this **Construction Agreement** and **CUSC** Section 15 shall be construed accordingly.

**16.3** In the event that the/a **Developer** reduces its **Developer Capacity** and/or terminates its agreement for connection to the **Distribution System** the **User** shall notify **The Company** in writing within 5 **Business Days** of that event.

**16.4** Provided that the conditions at Clause 16.5 have been met then where, a **Cancellation Charge** is due and payable:

**16.4.1** the **User** will notify **The Company** of a **Cancellation Charge Shortfall** in writing and as soon as practicable after receipt of an invoice in respect of the **Cancellation Charge**.

**16.4.2** where the **User** has notified **The Company** of a **Cancellation Charge Shortfall** the **User** will make a payment to **The Company** on account of the **Cancellation Charge** of an amount equal to the **Cancellation Charge Secured Amount**.

**16.4.3** the **User** will make reasonable efforts and take reasonable steps to recover the **Cancellation Charge Shortfall** and any associated interest charges from the **Developer** in a timely manner and as soon as practicable.

v1.9 – 9 January 2014

## WACM2

16.4.4 Where the **User** successfully recovers the **Cancellation Charge Shortfall** in full or in part from the **Developer**, the **User** shall forthwith pay the amount received to **The Company** together with interest calculated thereon on a daily basis at **Base Rate** from the date of the payment of the **Cancellation Charge Secured Amount** to **The Company** by the **User** to the date of the payment of the amount received by the **User** to **The Company**.

16.4.5 Where:

- (a) the **Cancellation Charge Shortfall** is less than the **Shortfall Action Threshold Amount** and the **User** has undertaken all preparatory steps sufficient to be able to take the **Shortfall Recovery Minimum Steps**; or
- (b) the **Cancellation Charge Shortfall** is greater than the **Shortfall Action Threshold Amount** but the **User** has reasonable grounds to believe that it is not practicable to take any action (or to take any further action) to recover the **Cancellation Charge Shortfall** from the **Developer** (which shall in any event be not be less than the **Shortfall Recovery Minimum Steps**) and notifies **The Company** in writing giving its reasons and setting out in detail the efforts made and steps taken to recover the **Cancellation Charge Shortfall** from the **Developer**.

then **The Company** shall reduce the **Cancellation Charge** accordingly to reflect this.

16.4.6 **The Company** shall not take any action against the **User** in respect of the recovery of the **Cancellation Charge Shortfall** without having first given not less than 5 **Business Days** notice and on the grounds that the **Cancellation Charge Shortfall** is greater than the **Shortfall Action Threshold Amount** and **The Company** reasonably believes that the **User** is not taking reasonable and timely steps to recover the **Cancellation Charge Shortfall** from the **Developer** and the **Authority** has not agreed to this.

16.5 For the provisions of Clause 16.4 to apply the following conditions must have been met and evidence of this provided to **The Company**.

- (i) that the **User** asked the **Developer** whether or not it wishes the **User** to elect for the **Fixed Cancellation Charge** and elected accordingly; and
- (ii) (in respect of its liability for the **Cancellation Charge** as it relates to this **Construction Agreement**) for each **Security**

v1.9 – 9 January 2014

**WACM2**

**Period the User only sought security from the Developer for the amount as set out in the Cancellation Charge Secured Amount Statement for that Security Period]**

**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]** )

**WACM2**

**APPENDIX [B]  
ONE OFF WORKS**

v1.9 – 9 January 2014

**WACM2**

**APPENDIX [G]**

**TRANSMISSION CONNECTION ASSET WORKS**

v1.9 – 9 January 2014

**WACM2**

**APPENDIX [H]**

**TRANSMISSION REINFORCEMENT WORKS**

**Part 1            Enabling Works**

**Part 2            Wider Transmission Reinforcement Works**

v1.9 – 9 January 2014

**WACM2**

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

v1.9 – 9 January 2014



**WACM2**

**APPENDIX [J]**  
**CONSTRUCTION PROGRAMME**

v1.9 – 9 January 2014

**WACM2**

**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 £XXXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXXX.

v1.9 – 9 January 2014

**WACM2**

**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.

v1.9 – 9 January 2014

**WACM2**

**APPENDIX [MM]**

**ATTRIBUTABLE WORKS AND KEY CONSENTS**

**Part 1**

**Attributable Works**

**Part 2**

**Key Consents**

v1.9 – 9 January 2014

WACM2

**APPENDIX [N]**  
**THIRD PARTY WORKS**

v1.9 – 9 January 2014

**WACM2**

**APPENDIX [P]**

**DEVELOPER'S DATA**

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

v1.9 – 9 January 2014

**WACM2**

**SCHEDULE 2 EXHIBIT 3**

**PART 2**

v1.9 – 9 January 2014





## **CMP 223 (Arrangements for Relevant Distributed Generators under the Enduring User Commitment) (WACM3): Summary Sheet of Proposed Amendments**

### **1. Overview of Changes**

1.1 The changes in the legal drafting that are being proposed to implement CMP 223 consist in (a) changing the Cancellation Charge arrangements between The Company and DNOs such that the Cancellation Secured Amount required of directly connected generation is reflected in arrangements with BELLAs and DNOs in respect of Distributed Generation and (b) provide a separate % determining the Cancellation Secured Amount for BELLAs and Relevant Embedded Small Power Stations or Relevant Embedded Medium Power Stations (c) changing the Cancellation Charge arrangements such that where there is a BEGA or BELLA the Cancellation Charge is payable under the BEGA or BELLA arrangements rather than through the DNO Construction Agreement.

1.2 In summary the drafting consists of changes to:

1. Edits to CUSC Section 1
2. Edits to CUSC Section 5 (summary)
3. Edits to CUSC Section 6 (General Provisions)
4. CUSC Section 10 (houses the transitional provisions that apply to those Users or prospective Users).
5. Edits to CUSC Section 11 (summary)
6. Edits to CUSC Section 15 (User Commitment Methodology).
7. Edits to CUSC Exhibit Q (BELLA Application) (by summary)
8. Edits to CUSC Exhibit R (BELLA Offer) (by summary)
9. Edits to CUSC Schedule 2 Exhibit 3 (Consag)
10. Edits to CUSC Schedule 2 Exhibit 5 (BELLA)

**WACM3**  
**WACM4**

Changes to CUSC Section 1 (Applicability of Sections and Related Agreements Structure)

Amend row 11 of the table at Paragraph 1.2.4 as follows:

11.	<b>Embedded Exemptable Large Power Stations</b> whose <b>Boundary Point Metering System</b> is either <b>SMRS</b> registered or is registered in <b>CMRS</b> by a <b>User</b> who is responsible for the <b>Use of System Charges</b> associated with the <b>BM Unit</b> registered in <b>CMRS</b>	<del>None-15</del> <u>only</u>
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## Changes to CUSC Section 5 (Events of Default, Deenergisation and Disconnection)

Amend CUSC Paragraph 5.4.6 and CUSC Paragraph 5.4.7 as follows

### 5.1.6 Specific Events of Default

#### Events of Default

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

(a) If the breach which led to any **Deenergisation** pursuant to this Paragraph 5.4 remains unremedied at the expiry of at least 6 months after the date of such **Deenergisation**, **The Company** may declare by notice in writing to the **User** that such breach has become an **Event of Default** provided that:

(i) all disputes arising out of the subject-matter of this Paragraph 5.4 which are referred to the **Dispute Resolution Procedure** have been finally determined in favour of **The Company**; and

(ii) any reference to the **Authority** pursuant to Paragraph 5.4.5(b) hereof has then been finally determined in favour of **The Company** or any terms settled pursuant to such procedure have not been accepted by the **User**.

(b) If any or all of the **Events of Default** in Paragraph 5.3.1 has or have occurred.

#### Security Event of Default - User Meets The Company Credit Rating

#### 5.4.6.2 In the case where a **User** meets **The Company Credit Rating** on signing a **Bilateral Connection Agreement** any of the following events shall constitute an **Event of Default**:-

(a) 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** pursuant to Part III of Section 2 or Paragraph 5.4.6.2(c) or Section ~~14-15~~ of the **CUSC**.

(b) If having provided security satisfactory to **The Company** pursuant to Part III of Section 2 and Paragraph 5.4.6.2(c) or Section ~~14-15~~ of the **CUSC**:

(i) 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 the **CUSC** (or the relevant **Bilateral Connection 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;

(ii) any party who may at any time be providing security to **The Company** pursuant to the provisions of the **CUSC** (or the relevant **Bilateral Connection Agreement**) fails to pay to **The Company** any sum demanded pursuant thereto.

(c) (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 12 months, in terms of or on termination of the relevant **Bilateral Connection Agreements**; or

(ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Connection Agreement**) (an event of default being

for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal 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 one million) or such greater figure specified in any **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 re-financed by the **User** within a period of 28 days following the date upon which it was so declared due and payable,

and in any of (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 the relevant **Bilateral Connection Agreement** and which arise under the **CUSC**. 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.

Provided that (in relation to Paragraphs (i) or (ii) or (iii) above) if at any time after the putting in place of security under this Paragraph 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.

Security Event of Default - User Does Not Meet The Company Credit Rating

5.4.6.3 In the case where a **User** does not meet **The Company Credit Rating** on signing a **Bilateral Connection Agreement** any of the following events shall constitute an **Event of Default**:-

- (a) (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 unsecured sums due or to become due to **The Company** within the next period of 12 months, in terms of or on termination of the relevant **Bilateral Connection Agreements**; or
- (ii) an event of default has occurred under any banking arrangements (as may be more particularly described in the relevant **Bilateral Connection Agreement**), (an event of default being for these purposes anything defined as such in such banking arrangements) put in place by the **User** in connection with a project for which security under this **CUSC** is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principal 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 one million) or such greater amount

specified in any **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 by the **User** within a period of 28 days following the date upon which it was so declared due and payable.

And in any one of (i) or (ii) or (iii) the **User** fails:-

- (aa) 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 a **Letter of Credit** in favour of **The Company** and **Valid** 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
- (bb) 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 any one of (i) or (ii) or (iii) if at any time after the putting in place of security under this Paragraph 5.4.6.3(a) 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 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) in this Paragraph 5.4.6.3(a) subsequently occurring.

- (b) 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 Part III of Section 2 or Paragraph 5.4.6.3(a) or Section 15 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 Paragraph 2.22.
- (c) 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.
- (d) If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Part III of Section 2 or Paragraph 5.4.6.3(a) or Section 15 fails to pay **The Company** any sum demanded in any **Notice of Drawing** pursuant thereto.

#### 5.1.7 Specific Event of Default Disconnection



Once **The Company** has given a valid notice of an event of default pursuant to Paragraph 5.4.6 provided that the **Event of Default** is continuing **The Company** may give notice of termination to that **User** whereupon the relevant **Bilateral Agreement** or right to use the system shall terminate and:

(a) **The Company** shall in relation to such an **Event of Default** of a **User** in relation to a **Connection Site**:

- (i) **Disconnect** all the **User's Equipment** at the **Connection Site**; and
- (ii) the **User** concerned shall remove any of the **User's Equipment**:
  - (aa) in the case of **Connection Sites** in England and Wales, on **The Company's** or, in the case of **Connection Sites** in Scotland, on the **Relevant Transmission Licensee's** land (as appropriate) within six (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 relevant **User**; or
  - (bb) in the case of **Connection Sites Offshore**, on or adjacent to the **Relevant Transmission Licensee's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**; and
  - (iii) 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 land of the **User** concerned within 6 months or such longer period as may be agreed between the **User** and **The Company** or the **Relevant Transmission Licensee** (as appropriate); and,
  - (iv) in the case of **Connection Sites Offshore**, **The Company** shall procure that the **Relevant Transmission Licensee** removes any of the **Transmission Connection Assets** on or adjacent to the **User's Offshore Platform** within a period agreed between the **User** and the **Relevant Transmission Licensee**.

Such **User** shall (notwithstanding any longer time for payment which but for such termination the **User** may have for payment pursuant to the **CUSC** or the relevant **Bilateral Agreement**) within 14 days from the date of termination pay to **The Company** all amounts due and owing on the date of such termination and be liable to pay to **The Company Termination Amounts** applicable to the **Connection Site** and, in the case of a **User** in the category of a **Power Station** directly connected to the **National Electricity Transmission System** the **Cancellation Charge**, such payments to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof;

- (b) (i) **The Company** shall request the owner of any **Distribution System** to which the **User** is connected to **Disconnect** all the **User's Equipment** or equipment for which the **User** is responsible (as defined in Section K of the **Balancing and Settlement Code**) at the site of connection;
- (ii) **The Company** shall in relation to such an event of default of a **User** acting as a **Supplier** request the owner of the **Distribution System** to which any of that **User's Customer's** are connected to **Disconnect** such **User's Customer's**;
- (iii) **The Company** shall in relation to such an **Event of Default** of a **User** acting as an **Interconnector User** or **Interconnector Error Administrator** request the relevant **Interconnector Owner** to cease or procure the cessation of the transfer of power across the **Interconnector** by or on behalf of that **Interconnector User**; and

the **User** shall be obliged to pay to **The Company** forthwith the **Use of System Charges** due under the **CUSC** or the relevant **Bilateral Agreement** up to the end of the **Financial Year** in which **Termination** occurs and, in the case of a **User** with a **Bilateral Embedded Generation Agreement** or **BELLA** the **Cancellation Charge**.

## Changes to CUSC Section 6 (General Provisions)

Add the following as CUSC Paragraph 6.5.5A (Report on Distributed Generation) at end of CUSC Paragraph 6.5.5.5 and the Contents Page for that Section 6 amended accordingly.

### 6.5.5A Report on Distributed Generation

Within one month of the end of a **Financial Year**, each **User** who owns or operates a **Distribution System** shall send a written report [(in a format specified by **The Company**)] to **The Company** in respect of **Distributed Generation** which is yet to connect to its **Distribution System** or which has been **Energised** during that **Financial Year** detailing the following information by reference to each category of **Distributed Generation**:

- (a) number of **Distribution Agreements** terminated;
- (b) any reduction in, as appropriate, **Developer Capacity** or **Transmission Entry Capacity**;
- (c) whether such termination or reduction occurred prior to (and including) or after the **Key Consents in Place Date**.

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WACM4

**CUSC - SECTION 10**

**NOT USED**

**TRANSITION ISSUES**

**CONTENTS**

**Part 1 CUSC MODIFICATION PROPOSAL 223 (WACM3) 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 **CMP 223**. For the purposes of this Section 10 the version of the **CUSC** as amended by **CMP 223** shall be referred to as the “**Post CMP 223 CUSC**” and the version of the **CUSC** prior to amendment by **CMP 223** shall be referred to as the “**Pre CMP 223 CUSC**”.

10.1.2 **CMP 223** affects **Users** in the category of (a) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement** or **BELLA** and where there is an **Existing Associated DNO Construction Agreement** and (b) a **Distribution System** directly connected to the **National Electricity Transmission System** where there is an **Existing Associated DNO Construction Agreement** and references to **User** in this Section 10 shall be construed accordingly.

10.1.3 This Section sets out the arrangements such that by the **CMP 223 Transition Period End Date**:

- (a) **Existing Associated DNO Construction Agreements** have been amended in line with the provisions introduced under **CMP223**;
- (b) The **Cancellation Charge Secured Amount Statement** issued by **The Company** in respect of **Existing DNO Construction Agreements** reflects the adjusted % introduced under **CMP223**;
- (c) Where an **Existing Associated DNO Construction Agreement** provides for more than one of a **Relevant Embedded Small Power Station** and/or **Relevant Embedded Medium Power Station**, **Users** have received the necessary information in respect of the **Cancellation Charge** and the **Cancellation Charge Secured Amount** in respect of each such project;
- (d) **Existing BELLAs** and **BEGA Construction Agreements** have been amended in line with the provisions introduced under **CMP223** and any required security arrangements have been put in place for the start of the **CMP 223 Security Period**.

10.1.4 This Section 10 comprises:

(a) this Introduction; and

(b) **CMP 223** transition issues.

10.1.5 The provisions of the **Post CMP 223 CUSC** shall be suspended (except as specifically provided for in this Section 10, for the purposes of interpretation and definitions and for enabling the doing of anything which may require to be done in relation to but in advance of the **CMP 223 Transition Period End Date** to achieve the objectives at 10.1.4) in respect of the **Users** until the **CMP 223 Transition Period End Date**. Any termination of an **Existing Associated DNO Construction Agreement** or **Existing BEGA Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** which takes effect prior to or on the **CMP 223 Transition Period End Date** shall therefore be dealt with, and the rights and obligations of **The Company** and the **User** to each other, shall be as provided for in the **Existing Associated DNO Construction Agreement** or **Existing BEGA Construction Agreement**.

10.1.6 In this Section 10:

- (a) the term “**Applicants**”; shall mean **Users** who apply for an offer of a type referred to in (k) during the **CMP 223 Transition Period**;
- (b) the term “**CMP 223**”, shall mean **CUSC Modification Proposal 223** (Arrangements for Relevant Distributed Generators under the Enduring Generation User Commitment);
- (c) the term “**CMP 223 Implementation Date**”, shall mean the **Implementation Date** for **CMP 223**;
- (d) the term “**CMP 223 Security Period**”, shall mean the **Security Period** immediately following the **CMP 223 Transitional Period End Date**;
- (e) the term “**CMP 223 Transition Period End Date**” shall mean the day before the day of the first **Security Period** which is not less than 6 months from the **CMP 223 Implementation Date**;
- (f) the term “**CMP 223 Transition Period**”, shall mean the period from the **CMP 223 Implementation Date** ending on and including the **CMP 223 Transition Period End Date** and is the period with which this Section 10 deals;
- (g) the term “**Existing Associated DNO Construction Agreement**”, shall mean an **Associated DNO Construction Agreement** where the **Construction Works** will not be

completed prior to the **CMP 223 Transition Period End Date**;

(h) the term “**Existing BEGA Construction Agreement**”, shall mean a **Construction Agreement** with a **User** who is party to a **Bilateral Embedded Generation Agreement** where the **Construction Works** with that **User** or under the **Associated DNO Construction Agreement** will not be completed prior to the **CMP 223 Transition Period End Date** ;

(i) the term “**Existing BELLA**”, shall mean a **BELLA** with a **User** where the **Construction Works** under the **Associated DNO Construction Agreement** will not be completed prior to the **CMP 223 Transition Period End Date**;

(j) the term “**Existing Relevant Embedded Power Station**”, shall mean a **Relevant Embedded Small Power Station** or **Relevant Embedded Medium Power Station** which is the subject of an **Existing Associated DNO Construction Agreement**;

(k) the term “**New Applications**”, shall mean a **Request for a Statement of Works or Modification Application** associated with **Distributed Generation** or **Use of System Application** by a **User** or prospective **User** or a **Modification Application** to vary any such agreements made during the **CMP 223 Transition Period**;

(l) the term “**Outstanding Applications**”, shall mean an offer of a type referred to in (k) where the application was made prior to the **CMP 223 Implementation Date**;

(m) the term “**Outstanding Offers**”, shall mean an offer to a **User** or prospective **User** of a type referred to in (k) which has not been accepted at the **CMP 223 Implementation Date** but is still capable of being accepted.

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.

## **10.2 CMP 223 TRANSITION**

### **Existing Associated DNO Construction Agreements**

- 10.2.1 As at and from the **CMP 223 Transition Period End Date** each **Associated DNO Construction Agreement** (where associated with a **Bilateral Embedded Generation Agreement** or **BELLA**) shall be read as if amended in a manner consistent with the amendments introduced by **CMP 223** and reflecting that the liability for the **Cancellation Charge** and security arrangements required in respect of this are now the obligations of **Distributed Generation** rather than the **User**.
- 10.2.2 The **Company** shall offer to amend each **Existing Associated DNO Construction Agreement** (where associated with **Existing Relevant Embedded Power Stations**) such that it is consistent at the **CMP 223 Transition Period End Date** with the amendments introduced by **CMP 223**.
- 10.2.3 The **Company** shall make the offer to each **User** in respect of each **Existing Associated DNO Construction Agreement** (where associated with **Existing Relevant Embedded Power Stations**) as soon as reasonably practicable after the **CMP 223 Implementation Date**.
- 10.2.4 If **The Company** and a **User** fail to agree changes to an **Existing Associated DNO Construction Agreement** either such person may refer the matter to the **Authority** under Standard Condition C9 Paragraph 4 of the **Transmission Licence**.
- 10.2.5 In respect of the **CMP 223 Security Period**, the **Cancellation Charge Secured Amount Statement** sent in respect of an **Existing Associated DNO Construction Agreement** (where associated with developers of **Existing Relevant Embedded Power Stations**) shall reflect the provisions introduced by **CMP 223**.

### **Existing BEGA Construction Agreements**



- 10.2.6 The Company shall offer to amend each Existing BEGA Construction Agreement such that it is consistent at the CMP 223 Transition Period End Date with the amendments introduced by CMP 223.
- 10.2.7 The Company shall make the offer to each User in respect of each Existing BEGA Construction Agreement as soon as reasonably practicable after the CMP 223 Implementation Date.
- 10.2.8 If The Company and a User fail to agree changes to an Existing BEGA Construction Agreement either such person may refer the matter to the Authority under Standard Condition C9 Paragraph 4 of the Transmission Licence.
- 10.2.9 In respect of the CMP 223 Security Period, the Cancellation Charge Statement sent in respect of an Existing BEGA Construction Agreement shall reflect the changes in liability and security regarding Attributable Works introduced by CMP 223 in respect of such Users and each User shall put security arrangements in place in accordance with CUSC Section 15 for the CMP 223 Security Period such security arrangement to be effective from the start of the CMP 223 Security Period

**Existing BELLAs**

- 10.2.10 The Company shall offer to amend each Existing BELLA such that it is consistent at the CMP 223 Transition Period End Date with the amendments introduced by CMP 223 to CUSC Schedule 2 Exhibit 5 (BELLA).
- 10.2.11 The Company shall make the offer to each User in respect of an Existing BELLA as soon as reasonably practicable after the CMP 223 Implementation Date.
- 10.2.12 If The Company and a User fail to agree changes to an Existing BELLA either such person may refer the matter to the Authority under Standard Condition C9 Paragraph 4 of the Transmission Licence.
- 10.2.13 In respect of the CMP 223 Security Period, The Company shall as soon as practicable and in any event not less than 75 Business Days prior to the CMP 223 Security Period prepare and send to each User in respect of an Existing BELLA a Cancellation Charge Statement for the CMP 223 Security Period.

10.2.14 Each **User** with an **Existing BELLA** shall put security arrangements in place in accordance with **CUSC** Section 15 in respect of the **Existing BELLA** for the **CMP 223 Security Period** such security arrangements to be effective from the start of the **CMP 223 Security Period**.

***Outstanding Applications and New Applications***

10.2.15 **The Company** shall make **Offers** such that prior to the **CMP 223 Transition Period End Date** the arrangements for security and liability within the agreements are consistent with those under the **Pre CMP 223 CUSC** but such that on **CMP 223 Transition Period End Date** the arrangements for security and liability within the agreements are consistent with those under the **Post CMP 223 CUSC** and shall to the extent practicable make such **Offers** within the original or standard timescales.

END OF SECTION 10

## WACM3

### Changes to CUSC Section 11 (Interpretation and Definitions)

#### 1. New definitions to be added at CUSC Section 11

**“Associated DNO Construction Agreement”**

**a Construction Agreement between The Company and a User in the category of a Distribution System directly connected to the National Electricity Transmission System in respect of works required on the National Electricity Transmission System as a consequence of the connection of Distributed Generation to the Distribution System;**

**“Cancellation Charge Shortfall”**

**the difference between (a) the Cancellation Charge Secured Amount (or such higher sum as paid by the Developer to the User in respect of the Cancellation Charge) and (b) the Cancellation Charge payable by the User;**

**“Insolvency Proceedings”**

**shall mean any action or step taken:**

- (a) for the administration, winding up, dissolution or bankruptcy of the Developer; or**
- (b) for the appointment of a receiver or administrative receiver in respect of any of the Developer’s assets; or**
- (c) for making a proposal to any of the Developer’s creditors with a view to avoiding insolvency; or**
- (d) for the taking of possession by anyone with an interest in any asset of the Developer; or**
- (e) any analogous procedure or step is taken in any jurisdiction in relation to any matter referred to in clause (a) to (d) (inclusive) above;**

**“Shortfall Action Threshold Amount”**

**means the amount as notified by the Authority to The Company from time to time;**

**“Shortfall Recovery Minimum Steps”**

**shall mean the User:**

- (a) issuing and serving court proceedings on the Developer for the recovery of the Cancellation Charge Shortfall; or**

- (b) except where the Developer is already the subject of Insolvency Proceedings, instigating Insolvency Proceedings against the Developer for the recovery of the Cancellation Charge Shortfall;
- (c) where the Developer is already the subject of Insolvency Proceedings, submitting a claim for the Cancellation Charge Shortfall under these; or
- (d) any alternative steps agreed by the Authority following a request from the User (of which the User will notify The Company of upon such agreement).

2. Amends to definitions at CUSC Section 11

**“Attributable Works”**

those components of the **Construction Works** which are required (a) to connect a **Power Station** which is to be connected at a **Connection Site** to the nearest suitable **MITS Node**; or (b) in respect of an **Embedded Power Station** from the relevant **Grid Supply Point** to the nearest suitable **MITS Node**

(and in any case above where the **Construction Works** include a **Transmission** substation that once constructed will become the **MITS Node**, the **Attributable Works** will include such **Transmission** substation) and which in relation to a particular **User** are as specified in, as appropriate, its **Construction Agreement or BELLA;**

**“Cancellation Charge”**

the charge payable by certain **Users** in the event of termination of a **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or **Construction Agreement** or **BELLA** or **Associated DNO Construction Agreement** or a reduction in **Transmission Entry Capacity** or a reduction in **Developer Capacity** as calculated in accordance with the **User Commitment Methodology;**

**“Developer Capacity”**

the MW figure as specified as such by a **User** in a **BELLA** (and reflected in the) or in **a an Associated DNO Construction**

~~Agreement entered into between The Company and a User in the category of a Distribution System directly connected to the National Electricity Transmission System as a consequence of a Request for a Statement of Works;~~

“Distributed Generation”

means for the purposes of the **Connect and Manage Arrangements**, **Section 6** and Section 15 of the **CUSC**;

- (a) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement**;
- (b) an **Embedded Power Station** which is the subject of a **Bilateral Embedded Licence Exemptable Large Power Station Agreement**;
- (c) a **Relevant Embedded Medium Power Station**;
- (d) a **Relevant Embedded Small Power Station**.

“Key Consents”

those **Consents** a **User** requires in respect of its **Power Station** project which are identified by **The Company** as key for the purposes of Part Three of the **User Commitment Methodology** and in relation to a particular **User** as defined in, **as appropriate**, its **Construction Agreement** or **BELLA**;

“Trigger Date”

as identified by **The Company** in accordance with Part Two of the **User Commitment Methodology** and in relation to a particular **User** as defined in, **as appropriate**, its **Construction Agreement** or **BELLA**;

**WACM3  
WACM4**

**CUSC SECTION 15**

**USER COMMITMENT METHODOLOGY**

**CONTENTS**

- Part One      Introduction**
  
- Part Two      Calculation of Cancellation Charge**
  
- Part Three    Calculation of Cancellation Charge Secured Amount and Credit Requirements**
  
- Part Four    Reconciliation of Actual Attributable Works Cancellation Charge**

**PART ONE INTRODUCTION**

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

2 The **Cancellation Charge** is payable by **Users** on termination of agreements with and reductions in **Transmission Entry Capacity** or **Developer Capacity** in respect of **Users** in the categories of

(a) a **Power Station** directly connected to the **National Electricity Transmission System** in respect of which there is a **Bilateral Connection Agreement** with **The Company**;

(b) an **Embedded Power Station** in respect of which there is a **Bilateral Embedded Generation Agreement** with **The Company**;

(c) an Embedded Power Station in respect of which there is a BELLA with The Company;

~~(c)~~(d) a **Distribution System** directly connected to the **National Electricity Transmission System** in respect of which there is an Associated DNO Construction Agreement associated with Distributed Generation (other than in respect of an Embedded Power Station which is the subject of a Bilateral Embedded Generation Agreement or BELLA)

and reference to **User** in this Section 15 shall be interpreted accordingly.

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

**WACM3**  
**WACM4**

For the avoidance of doubt ~~where there is an **Associated DNO Construction Agreement** in respect of **Users** in the case of category (b) above where **The Company** has an associated **Construction Agreement** with a **User** in respect of **Distributed Generation** in the category of (eb) and (c) above, such **Associated DNO Construction Agreement** will contain the necessary elements to enable (and information it in will be used for the purposes of) the calculation of the **Cancellation Charge** payable by a **User** in category (b) above will not include the **Attributable Works Cancellation Charge** component of the **Cancellation Charge** but it will not provide for payment of the **Cancellation Charge**. In such case the **Attributable Works Cancellation Charge** component of the **Cancellation Charge** will be payable by the associated **User** in category of, as appropriate, (eb) or (c) above.~~

For the avoidance of doubt in the case of:

- (i) **Users** in the case of category (ed) above; and
- (ii) **Distributed Generation** (other than an **Embedded Power Station** which is the subject of a **Bilateral Embedded Generation Agreement**),

the **Cancellation Charge** does not apply for reductions in **Developer Capacity** on or after the **Charging Date** or termination on or after the **Charging Date**.

For information, for **Users** other than **Users** in the categories to which this Section 15 applies, the liability for and security requirements in respect of **Final Sums**, which are due on termination of a **Construction Agreement** are as set out in the **Construction Agreement** (and in the proforma attached at **CUSC** Schedule 2, Exhibit 3).

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

- 3** **The Company** shall apply and calculate the **Cancellation Charge** in accordance with Part Two of this Section 15.



**WACM3**  
**WACM4**

The **Cancellation Charge** is made up of a number of components: the “**Pre Trigger Amount**”, “**Attributable Works Cancellation Charge**” and “**Wider Cancellation Charge**” which apply at different stages.

4 As provided for at Paragraph 3.5, the **Attributable Works Cancellation Charge** can be (at the **User’s** election in accordance with Paragraph 7) on the basis of the **Fixed Cancellation Charge** (Paragraph 3.6) rather than the **Actual Attributable Works Cancellation Charge** (Paragraph 3.7).

5 This Section 15 also sets out in Part Three the level of, and arrangements for, security required in respect of the **Cancellation Charge**.

6 **The Company** shall apply and calculate the **Cancellation Charge Secured Amount** in accordance with this Section 15 Part Three.

7 This Section 15 also sets out in Part Four the reconciliation process in respect of the **Actual Attributable Works Cancellation Charge**.

8 For reference a number of terms used in this Section 15 are defined within this Section 15.

9 For the purposes of this section 15, unless the context otherwise requires, reference to “**Construction Agreement**” shall include an “**Associated DNO Construction Agreement**”.

**10 Distributed Generation**

Users in the category of (d) above are liable for the **Cancellation Charge** on a reduction in **Developer Capacity** in and/or termination of the **Construction Agreement** between **The Company** and the **User**. Given this such **Users** will have arrangements in place with such **Distributed Generation** for reimbursement by such **Distributed Generation** of the **Cancellation Charge** and recognising this there are specific payment arrangements between the **User** and **The Company** provided for in the **Construction Agreement** between the **User** and **The Company**.

## **PART TWO CALCULATION OF CANCELLATION CHARGE**

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

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

### **2 Completion Date and Trigger Date**

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

2.2 The **Trigger Date** will be (a) the 1 April which is three **Financial Years** prior to the start of the **Financial Year** in which the **Charging Date** occurs or (b) where the **Charging Date** is less than three **Financial Years** from the date of the **Construction Agreement**, the date of the **Construction Agreement** (in which case the **Financial Year** in which such date falls is the relevant **Financial Year** within the **Cancellation Charge Profile** working back from the **Charging Date**).

2.3 The **Trigger Date** is the date from which the **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 Changes to Construction Programme or Construction Works or Transmission Entry Capacity or Developer Capacity**

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

**WACM3**  
**WACM4**

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

- (i) Where there is a delay to the **Completion Date** and the **Trigger Date** has not passed, the **Trigger Date** will be 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.
- (iii) In the case of a **Fixed Cancellation Charge**, a change in the **Attributable Works** will not adjust the **Cancellation Charge Profile** unless the **Completion Date** has also changed in which case (ii) above will apply.

**2.4.3** Where a change is as a result of the **User's** request then, notwithstanding any change in the **Completion Date**;

- (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 Calculation of Cancellation Charge

3.1 The **Cancellation Charge** is the charge due to **The Company** by a **User** on termination of a **Construction Agreement**, **Disconnection** or a reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date** and **Disconnection** or a reduction in **Transmission Entry Capacity** on or after the **Charging Date**.

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

- (a) where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before the **Trigger Date** (the “**Pre Trigger Amount**” or “**Actual Attributable Works Cancellation Charge**”) (Paragraphs 3.6.1 and 3.7);
- (b) 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** (the “**Fixed Attributable Works Cancellation Charge**” or “**Actual Attributable Works Cancellation Charge**” and the “**Wider Cancellation Charge**”) (Paragraphs 3.5 to 3.8);
- (c) depending whether the **Attributable Works Cancellation Charge** is a **Fixed Cancellation Charge** or **Actual Attributable Works Cancellation Charge** (Paragraphs 3.5 to 3.7);
- (d) where the **Transmission Entry Capacity** is reduced or **Disconnection** occurs on or after the **Charging Date** (the “**Wider Cancellation Charge**”) (Paragraph 3.8).

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

## **WACM3**

### **WACM4**

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

***Cancellation Charge = Attributable Works Cancellation Charge***

#### **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 plus Wider Cancellation Charge***

The following Paragraphs set out in detail the **Attributable Works Cancellation Charge** and **Wider Cancellation Charge** and Paragraph 3.7 sets out the above calculation by formula.

#### **3.5 Attributable Works Cancellation Charge**

The **Attributable Works Cancellation Charge** can be either the **Fixed Cancellation Charge** or **Actual Attributable Works Cancellation Charge**.

#### **3.6 Fixed Cancellation Charge**

The calculation of the **Fixed Cancellation Charge** is different where the **Construction Agreement** is terminated or **Transmission Entry Capacity** or **Developer Capacity** is reduced before (“**Pre Trigger Amount**”) or on or after the **Trigger Date** (“**Fixed Attributable Works Cancellation Charge**”).

##### **3.6.1 Pre Trigger Amount**

## WACM3 WACM4

Should a **Construction Agreement** be terminated, or **Transmission Entry Capacity** be reduced or **Developer Capacity** be reduced before the **Trigger Date** the **Fixed Cancellation Charge** is the **Pre Trigger Amount** calculated as a £/MW figure by reference to the **Cancellation Charge Profile** and derived in accordance with the formula at Paragraph 3.9 and set out in the **Notification of Fixed Cancellation Charge** by reference to which an election is made in accordance with Paragraph 7:

### 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 x (1 – Local Asset Reuse Factor) x Strategic Investment Factor x 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 6.*

*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 6.*

## WACM3 WACM4

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 6.

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 6.

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 6.

**3.6.3** The **Pre Trigger Amount** and the **Attributable Works Cancellation Amount** (and the factors used in deriving this) and the **Cancellation Charge Profile** are fixed at the time an election is made in accordance with Paragraph 7 and the **Pre Trigger Amount** and **Attributable Works Cancellation Amount** are not subject to any further specific adjustment, reconciliation or credit should any of the **Transmission** assets resulting from the **Attributable Works** be reused or of benefit to other **Users**.

### **3.7 Actual Attributable Works Cancellation Charge**

**WACM3**  
**WACM4**

**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 **Local Asset Reuse Factor**, the **Strategic Investment Factor** and the **Distance Factor** as calculated in paragraph 3.6.2, of the **Attributable Works** and any of the resulting **Transmission** assets.

**3.7.2** In the case of the **Actual Attributable Works Cancellation Charge**, on termination of the **Construction Agreement** or reduction in **Transmission Entry Capacity** or **Developer Capacity** prior to the **Charging Date**, **The Company** shall be entitled to invoice the **User** for a sum equal to **The Company's** fair and reasonable estimate of the **Actual Attributable Works Cancellation Charge** and so (a) in the case of termination, the **User** shall pay to **The Company** on account of the **Actual Attributable Works Cancellation Charge** a sum equal to the estimate of **Actual Attributable Works Cancellation Charge** as shown in the **Cancellation Charge Statement** for the period in which the termination occurs and (b) in the case of a reduction in **Transmission Entry Capacity** or **Developer Capacity**, a sum by reference to the MW reduction based on the £/MW figure derived from the estimate of **Actual Attributable Works Cancellation Charge** as shown in the **Cancellation Charge Statement** for the period in which the termination occurs. These will then be subject to reconciliation in accordance with this Section 15 Part Four.



## WACM3 WACM4

### 3.8 Wider Cancellation Charge

The **Wider Cancellation Charge** results in a £/MW charge calculated as follows:

***Zonal Unit Amount*** x (MW of reduction in **Transmission Entry Capacity** or **Developer Capacity**) x **Cancellation Charge Profile**

The **Zonal Unit Amount** is a £/MW figure calculated by reference to the **Generation Zone** in which the **Power Station** is to be located as set out in the **Cancellation Charge Statement**. It is calculated by reference to the **Annual Wider Cancellation Charge Statement** for the **Financial Year** in which notice of reduction in **Transmission Entry Capacity** or **Developer Capacity** is given and/or notice of **Disconnection** is given or, where in the case of an **Event of Default** where notice is not given, the **Financial Year** in which the reduction in **Transmission Entry Capacity** or **Developer Capacity** or **Disconnection** occurs.

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

*Where **Load Related Boundary Capex** is the capex required to increase capability in the network as determined by The Company for a given Financial Year, excluding any Attributable Works Capital Cost, multiplied by the User Risk Factor and the Global Asset Reuse Factor, as set out in the Annual Wider Cancellation Charge Statement.*

*Where **Non Load Related Boundary Capex** is the capex required to maintain capability in the network as determined by The Company for a given Financial*

**WACM3**  
**WACM4**

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

*Where the **User Risk Factor** is the share of total risk between generation and consumers, set at 0.5.*

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

*Where the **Boundaries** are as detailed in Section 8 of the **Seven Year Statement**.*

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

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

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

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

## WACM3 WACM4

Where the **Wider User Commitment Liability Base** is the total amount of generation in MW liable for the **Wider Cancellation Charge** in the year in question and the total amount of generation in MW which will become liable for the **Wider Cancellation Charge** in the year in question and set out in the **Annual Wider Cancellation Charge Statement**.

Where the **Cancellation Charge Profile** is the profile derived in accordance with the formula at Paragraph 3.10 or 3.11, as appropriate.

### 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<sub>t</sub>*

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<sub>t</sub> 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<sub>t</sub> = (£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<sub>t</sub> = (£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<sub>t</sub> = (£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.*

**WACM3**  
**WACM4**

**3.10 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** a **User** shall pay the **Cancellation Charge** calculated as follows:

*Cancellation Charge = the sum of (a) Fixed Attributable Works Cancellation Charge or Actual Attributable Works Cancellation Charge and (b) Wider Cancellation Charge*

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

Where:

- *Termination of Construction Agreement equates to reduction in Transmission Entry Capacity or Developer Capacity to zero*
- *Fixed Attributable Works Cancellation Charge = Attributable Works Cancellation Amount x MW reduction in Transmission Entry Capacity or Developer Capacity x Cancellation Charge Profile<sub>t</sub>*
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years working back from the Charging Date to the Trigger Date:*
  - *In the Financial Year in which the Charging Date occurs (t=0), Cancellation Charge Profile = 1.0,*
  - *In the Financial Year which is 1 Financial Year prior to the Financial Year in which the Charging Date occurs (t=1), Cancellation Charge Profile = 0.75;*
  - *In the Financial Year which is 2 Financial Years prior to the Financial Year in which the Charging Date occurs (t=2), Cancellation Charge Profile = 0.5; and*
  - *In the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs (t=3), Cancellation Charge Profile, = 0.25.*

**AND**

*(b) Wider Cancellation Charge*

Where:

- *Termination of Construction Agreement equates to reduction in Transmission Entry Capacity or Developer Capacity to zero*

**WACM3**  
**WACM4**

- *Wider Cancellation Charge = Zonal Unit Amount x reduction in Transmission Entry Capacity or Developer Capacity x Cancellation Charge Profile<sub>t</sub>*
  
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years working back from the Charging Date to the Trigger Date:*
  - *In the Financial Year in which the Charging Date occurs (t=0), Cancellation Charge Profile = 1.0,*
  - *In the Financial Year which is 1 Financial Year prior to the Financial Year in which the Charging Date occurs (t=1), Cancellation Charge Profile = 0.75;*
  - *In the Financial Year which is 2 Financial Years prior to the Financial Year in which the Charging Date occurs (t=2), Cancellation Charge Profile = 0.5; and*
  - *In the Financial Year which is 3 Financial Years prior to the Financial Year in which the Charging Date occurs (t=3), Cancellation Charge Profile = 0.25.*

**3.11 Where the Transmission Entry Capacity is reduced or Notice of Disconnection is given on or after the Charging 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 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<sub>t</sub>.*
  
- *Cancellation Charge Profile<sub>t</sub> which varies according to the number of Financial Years notice given from the 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 Financial Years prior to the Financial Year in which such notice is to take effect (t=2), Wider Cancellation Charge = zero.*

**WACM3**  
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**WACM4**

**4 Annual Wider Cancellation Charge Statement**

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

- (a)** the **Zonal Unit Amount** by **Generation Zone** for that **Financial Year**;
- (b)** the **Wider User Commitment Liability Base** for that **Financial Year**;
- (c)** the **Total TO Capex** for that **Financial Year** (*where the **Total TO Capex** is the forecast of the **Load Related Boundary Capex** and **Non Load Related Boundary Capex** for a given **Financial Year**, excluding the total **Attributable Works Capital Cost***);
- (d)** a forecast of the **Total TO Capex** for the following three **Financial Years**;
- (e)** the **Global Asset Reuse Factor** for that **Financial Year**;
- (f)** the **Boundary Non Compliance Factors** for that **Financial Year**;
- (g)** a forecast of the **Zonal Unit Amount** by **Generation Zone** for the following three **Financial Years**;
- (h)** the % of the **Cancellation Charge** that is required to be secured prior to (and including) and after the **Key Consents in Place Date**.

**4.2** In the event that for any **Financial Year** it is proposed to change the **Global Asset Reuse Factor** or the % of the **Cancellation Charge** that is required to be secured prior to (and including) and after the **Key Consents in Place Date** from that set out in the **Annual Wider Cancellation Charge Statement** for the previous **Financial Year**, **The Company** shall not make such change without first consulting on the change (and its provision in electronic form on the Website and in electronic mails to **CUSC Parties** and such other persons who have supplied relevant details shall meet this requirement).

**5. Statement of Cancellation Charge**

**5.1** With an **Offer** or a **BELLA** **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**.

## **5.2 Cancellation Charge Statement**

**5.2.1 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** or the BELLA, 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 BELLA or the **Charging Date**.

**5.3** 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**.

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

## **5.5 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



## WACM3 WACM4

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**.

### 6 Electing for the Fixed Cancellation Charge

6.1 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 the BELLA** 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**.

6.2 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**.

### 7 Cancellation Charge Secured Amount Statement

7.1 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**.

7.2 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**.

**PART THREE**

**1. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT AND CREDIT REQUIREMENTS**

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

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

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

**3. CALCULATION OF CANCELLATION CHARGE SECURED AMOUNT**

3.1 Prior to the **Trigger Date** the **Cancellation Charge Secured Amount** is the **Cancellation Charge** as set out in the **Cancellation Charge Statement** for the relevant **Security Period**.

3.2 On or after the **Trigger Date** until the **Charging Date** the **Cancellation Charge Secured Amount** is that percentage of the figure shown as the **Cancellation Charge** in the **Cancellation Charge Statement** for the relevant **Security Period** determined as follows:

<u>For Users in category (a) as per Section 15 Part One Paragraph 2</u>	
Prior to (and including) the <b>Key Consents In Place Date</b>	the % for that <b>Financial Year</b> <u>for Users in that category</u> as set out in the <b>Annual Wider Cancellation Charge Statement</b> .

**WACM3  
WACM4**

From the <b>Key Consents In Place Date</b>	the % for that <b>Financial Year</b> <u>for Users in that category</u> as set out in the <b>Annual Wider Cancellation Charge Statement</b> .
<u>For Users in category (b) and (c) and (d) as per Section 15 Part One Paragraph 2</u>	
<u>Prior to (and including) the Key Consents In Place Date</u>	<u>the % for that Financial Year for Distributed Generation in that category as set out in the Annual Wider Cancellation Charge Statement.</u>
<u>From the Key Consents In Place Date</u>	<u>the % for that Financial Year for Distributed Generation in that category as set out in the Annual Wider Cancellation Charge Statement.</u>

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

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

**4.1** The **User** shall as soon as possible after entering into a **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or BELLA and in any event no later than one (1) month after the date of the same confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the 1 April and 1 October each year until 30 days after the **Charging Date** the **User** shall confirm to **The Company** whether it meets **The Company Credit Rating** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of no longer meeting **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure

**WACM3**  
**WACM4**

which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain meeting **The Company Credit Rating** for at least 12 months.

**4.2** In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Paragraph 4.1 then **The Company** may require the **User** forthwith:

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Paragraph 4.4 below.

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

- (i) not meeting **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Paragraph 4.2(i) above an indicative long term private credit rating,

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

- (iv) the **User** ceases to meet **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain **The Company Credit Rating** for at least 12 months; or

**WACM3**  
**WACM4**

- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Paragraph 4.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Paragraph 4.4.

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

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

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

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

5.1 Each **User** hereby agrees that it shall at the date of the relevant **Construction Agreement** and/or **Bilateral Connection Agreement** or **Bilateral Embedded Generation Agreement** or **BELLA** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until 28 days after the **Charging Date** maintain or procure that there is maintained in full force and effect (including by renewal or replacement) a security arrangement from time to time and for the time being as set out in Paragraph 6 to provide security for the **Cancellation Charge Secured Amount**.

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

- (i) the fairness and reasonableness of the estimate of the **Attributable Works Capital-Cancellation Charge**; or
- (ii) the calculation of the **Cancellation Charge**, or

## WACM3

## WACM4

- (iii) whether there has been an **Event of Default** as provided in **CUSC** Section 5; or
- (iv) the lawfulness or otherwise of any termination or purported termination of the **Construction Agreement** or **BELLA**,

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to this **CUSC** Section 15 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.

## 6. TYPES OF SECURITY

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

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

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

6.1.3 A **Performance Bond** from a **Qualified Company** for the amount of the **Cancellation Charge Secured Amount** to be secured for a given **Security Period**, such **Performance Bond** to be **Valid** for at least that

**WACM3**  
**WACM4**

**Security Period** and to be renewed periodically where applicable in the manner stated in paragraph 6.2.3.

**6.2 General Provisions regarding Security**

**6.2.1** Any **Notice of Drawing** to be delivered to Barclays Bank PLC or any other bank at which the **Bank Account** shall have been opened or a **Qualified Bank** or a **Qualified Company** may be delivered by hand, by post or by facsimile transmission.

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

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

**WACM3**  
**WACM4**

- 6.2.3.1** The **Performance Bond** or **Letter of Credit** shall be **Valid** initially for the **First Security Period**. Such **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Cancellation Charge Secured Amount** for that **First Security Period**.
- 6.2.3.2** On a date which is at least 45 days (or if such day is not a **Business Day** then on the immediately preceding **Business Day**) before the start of each following **Security Period** such **Performance Bond** or **Letter of Credit** shall be renewed so as to be **Valid** for not less than such **Security Period** and in the case of the last **Security Period** to be **Valid**, unless **The Company** agrees otherwise, for 45 days after the last day of such **Security Period**. Such renewed **Performance Bond** or **Letter of Credit** shall be for an amount not less than the **Cancellation Charge Secured Amount** to be secured during that **Security Period**.
- 6.2.4** The following provisions shall govern the maintenance of cash deposits in the **Bank Account**:-
- 6.2.4.1** The amount of the **User's** cash deposit to be maintained in the **Bank Account** shall be maintained by the **User** from the date of the **Construction Agreement** at least to the end of the **First Security Period**. Such cash deposit shall be in the amount of the **Cancellation Charge Secured Amount** to be secured during that **First Security Period**.
- 6.2.4.2** If the amount of the **Cancellation Charge Secured Amount** to be secured from the start of each **Security Period** is an amount greater than the amount then secured, the **User's** cash deposit in the **Bank Account** in respect of the **Security Amount** shall be increased by the **User** to such greater amount on the date which is 45 days before the start of the given **Security Period**.



**WACM3**  
**WACM4**

**6.2.4.3** If the **Cancellation Charge Secured Amount** for a given **Security Period** is smaller than the amount then secured, the **User's** cash deposit in the **Bank Account** in respect of the **Security Amount** shall not be reduced to the amount so stated until the expiry of 7 days after the start of that given **Security Period** ("the **Release Date**").

**6.2.4.4** The sum equal to the amount of reduction in the **User's** cash deposit in the **Bank Account** in respect of the **Security Amount** shall be paid by **The Company** to the **User** from the **Bank Account** on the **Release Date**.

**6.2.4.5** Any interest accruing in respect of the **User's** cash deposit in the **Bank Account** in respect of the **Security Amount** 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** (or any other bank account in the name of **The Company** in which such interest is held) and payment to the **User** of such interest as soon as **The Company** shall have received notice from the **User** requesting such payment.

**6.2.4.6** For the avoidance of doubt, the **User's** cash deposit in the **Bank Account** shall remain the sole property and entitlement of the **User** until such time when (and to such extent as) the **Company** exercises its right of set off against the **User's** cash deposit in accordance with the terms of the **CUSC**, and the **User** shall have no right to have the cash deposit returned to it for so long as it is under any prospective or contingent liability to the **Company**.

**6.3** Notwithstanding any provision aforesaid:-

**6.3.1** The **User** may provide different securities to **The Company** at any one time, each securing a different amount, provided that the aggregate amount secured by such securities shall be not

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

**6.3.2** The **User** may upon the expiry of at least 14 days prior written notice to **The Company**, substitute one type of security for another provided that unless **The Company** shall otherwise agree in writing such substituted security must be **Valid** from the first day of the relevant **Security Period** and committed at least 45 days before this in the following manner:-

(a) where a **Performance Bond** or a **Letter of Credit** is to substitute for other securities, it must be issued or given at least 45 days before the start of the **Security Period** to which it relates.

(b) where a cash deposit in a **Bank Account** is to substitute for other securities, it must be deposited into the **Bank Account** at least 45 days before the start of the **Security Period** to which it relates.

**6.3.3** Upon request by the **User** to **The Company**, securities substituted in the aforesaid manner shall, providing the substitute security shall be **Valid**, be released on the first day of the **Security Period** which the substitute security is securing. However, where the **Cancellation Charge Secured Amount** to be secured for any **Security Period** is less than the amount required to be secured in the preceding **Security Period**, the substituted security shall not be released until 7 days after the start of the **Security Period** that that substitute security is securing.

**PART FOUR RECONCILIATION OF ACTUAL ATTRIBUTABLE WORKS  
CANCELLATION CHARGE**

1. As soon as practicable and in any event within 60 days of the date, as appropriate, of termination of the **Construction Agreement** or BELLA or reduction in **Transmission Entry Capacity** or **Developer Capacity** **The Company** shall:
  - (a) furnish the **User** with a statement showing a revised estimate of the **Actual Attributable Works Cancellation Charge** and will provide as soon as practicable evidence of such having been incurred; and
  - (b) furnish the **User** with justification of and supporting information in respect of its assessment of the actual or potential for reuse and any strategic benefits of the **Attributable Works** and any of the resulting **Transmission** assets.
  
2. As soon as reasonably practicable after termination of this **Construction Agreement** or BELLA or reduction in **Transmission Entry Capacity** or **Developer Capacity** and in any event within 12 months of such event **The Company** shall provide the **User** with a final statement of the **Actual Attributable Works Cancellation Charge**. If the **Actual Attributable Works Cancellation Charge** is greater than the payments made by the **User** in respect of **The Company's** estimate(s) of the **Actual Attributable Works Cancellation Charge** 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) to the date of the final statement of the **Actual Attributable Works Cancellation Charge** and final invoice for the **Attributable Works Cancellation Charge**. If the **Actual Attributable Works Cancellation Charge** is less than the payments made by the **User** in respect of **The Company's** estimate(s) of the **Actual Attributable Works Cancellation Charge** **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 the **Actual**

**WACM3**  
**WACM4**

**Attributable Works Cancellation Charge** to the date of reimbursement by  
**The Company** of the said excess paid.

**WACM3**  
**WACM4**

Changes to CUSC Exhibit Q (BELLA Application)

Edits to paragraph 10 as follows:

10. **The Company's** offer will be based to the extent appropriate upon its standard form terms for a **BELLA**. The **Applicant** should bear in mind **The Company** standard form terms (including liability and security arrangements in respect of the **Cancellation Charge**) when making this application.

**WACM3**  
**WACM4**

Changes to CUSC Exhibit R (BELLA Offer)

New paragraph to be added as follows:

9. Please note that under the terms of the **Associated DNO Construction Agreement**, that **Associated DNO Construction Agreement** will not come into effect until this **BELLA** is accepted and that on acceptance of the **BELLA** security arrangements will need to be put in place for the **First Security Period**.

WACM3

**SCHEDULE 2 EXHIBIT 3**

**PART 1**

For use with User's in the categories of (i) Power Stations directly connected to the National Electricity Transmission system, (ii) Embedded Power Stations which are the subject of a Bilateral Embedded Generation Agreement or (iii) ~~where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System~~ an Associated DNO Construction Agreement

**INDICATIVE**

**DATED [ ] 200[1]**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ ] (2)**

---

**THE CONNECTION AND USE OF SYSTEM CODE**

**CONSTRUCTION AGREEMENT**

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v1.9 – 9 January 2014

## WACM3

### CONTENTS

<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
2	Carrying out of the Works
3	Delays
4	Commissioning Programme and Liquidated Damages
5	Approval to Connect/Energise/Become Operational
6	Independent Engineer
7	Becoming Operational
8	Compliance with Site Specific Technical Conditions
9	Provision of Security
10	Event of Default
11	Termination
12	Term
13	CUSC
14	Disputes
15	Variations
<u>16</u>	<u>Distributed Generation<sup>1</sup></u>
Appendix B1	One Off Works
Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme

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<sup>1</sup>Only an Associated DNO Construction Agreement where associated with a Relevant Embedded Small Power Station or a Relevant Embedded Medium Power Station



### **WACM3**

Appendix K	Liquidated Damages
Appendix L	Independent Engineer
Appendix MM	Attributable Works and Key Consents
Appendix N	Third Party Works

### WACM3

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

### BETWEEN

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

### WHEREAS

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

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

## WACM3

### 1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

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

“Attributable Works”	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1. <sup>2</sup>
"Authority"	as defined in the <b>CUSC</b> .
“Bilateral Connection Agreement”	the <b>Bilateral Connection Agreement</b> entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the <b>Bilateral Embedded Generation Agreement</b> entered into between the parties on even date herewith.
“Cancellation Charge”	as calculated in accordance with the <b>User Commitment Methodology</b> . <sup>3</sup>

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<sup>2</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

<sup>3</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

## WACM3

"Charging Date"

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

"Commissioning Programme Commencement Date"

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

"Commissioning Programme"

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

"Completion Date"

[ ] or such other date as may be

v1.9 – 9 January 2014

## WACM3

	agreed in terms of this <b>Construction Agreement</b> for completion of the <b>Construction Works</b> .
"Connect and Manage Derogation"	the temporary derogation from the <b>NETS SQSS</b> available to <b>The Company</b> under Standard Condition C17 of the <b>Transmission Licence</b> and/or the <b>Relevant Transmission Licensee</b> under Standard Condition D3 of its transmission licence;
"Connected Planning Data"	data required pursuant to the <b>Planning Code</b> 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 <b>Works</b> :-  (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 <b>Works</b> and for commencement and carrying on of any activity proposed to be undertaken at or from such <b>Works</b> when completed.
"Construction Programme"	the agreed programme for the <b>Works</b> to be carried out by <b>The Company</b> and the <b>User</b> set out in detail in Appendix [J] to this <b>Construction Agreement</b> or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this <b>Construction Agreement</b> .
"Construction Site"	the site where the <b>Transmission Connection Asset Works</b> are being

v1.9 – 9 January 2014

## WACM3

	undertaken by or on behalf of <b>The Company</b> ;
“Construction Works”	the <b>Transmission Connection Asset Works, Enabling Works, Seven Year Statement Works and One Off Works</b> and such additional works as are required in order to comply with any relevant <b>Consents</b> relating to any such works but excluding for the avoidance of doubt any <b>Third Party Works</b> .
“Dispute Resolution Procedure”	the procedure for referral to arbitration set out in Paragraph 7.4 of the <b>CUSC</b> .
“Enabling Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 1 to this <b>Construction Agreement</b> .
“Event of Default”	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
“Independent Engineer”	the engineer specified in Appendix L to this <b>Construction Agreement</b> . Provided that:-  (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this <b>Construction Agreement</b> ; or  (b) where any <b>Independent Engineer</b> 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,

v1.9 – 9 January 2014

## WACM3

	nominate shall be the <b>Independent Engineer</b> .
“Key Consents”	those <b>Consents</b> required in respect of the <b>[User’s/Developer’s] Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2. <sup>4</sup>
“Liquidated Damages”	the sums specified in or calculated pursuant to Appendix K to this <b>Construction Agreement</b> .
“One Off Works”	the works described in Appendix B1 to this <b>Construction Agreement</b> .
“Seven Year Statement Works”	the works set out in Table B7 of the statement prepared by <b>The Company</b> pursuant to Standard Condition C11 of the <b>Transmission Licence</b> and issued by <b>The Company</b> in [ ] which in <b>The Company’s</b> reasonable opinion (and in the absence of the <b>Connect and Manage Derogation</b> are required to be completed before the <b>Completion Date</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission licence prior to the <b>Connection</b> of the <b>User’s Equipment</b> in terms of Clause 7.1 [or 7.2] of this <b>Construction Agreement</b> .
“Term”	the term of this <b>Construction Agreement</b> commencing on the date hereof and ending in accordance with Clause 12.

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<sup>4</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or a BELLA

### WACM3

“Third Party Works”	the works to be undertaken on assets belonging to a party other than <b>The Company</b> and the <b>User</b> to enable it to provide or as a consequence of the connection to and/or use of the <b>National Electricity Transmission System</b> by the <b>User</b> as specified in Appendix N;
“Transmission Connection Assets”	the assets specified in Appendix A to the <b>Bilateral Connection Agreement</b> .
“Transmission Connection Asset Works”	the works necessary for construction and installation of the <b>Transmission Connection Assets</b> at the <b>Connection Site</b> specified in Appendix G to this <b>Construction Agreement</b> .
“Transmission Reinforcement Works”	those works other than the <b>Transmission Connection Asset Works Seven Year Statement Works</b> and <b>One Off Works</b> , which in the reasonable opinion of <b>The Company</b> (and in the absence of the <b>Connect and Manage Derogation</b> ) are all necessary to extend or reinforce the <b>National Electricity Transmission System</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission system and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is the <b>Enabling Works</b> and Part 2 is the <b>Wider Transmission Reinforcement Works</b> .
“Trigger Date”	[date] as identified in accordance with the <b>User Commitment methodology</b> . <sup>5</sup>

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<sup>5</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA



## WACM3

“User’s Works”	those works necessary for installation of the <b>User’s Equipment</b> which are specified in Appendix I to this <b>Construction Agreement</b> .
“Wider Transmission Reinforcement Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 2 to this <b>Construction Agreement</b> where Part 2.1 is works required for the <b>User</b> and Part 2.2 is works required for wider system reasons.
“Works”	the <b>Construction Works</b> and the <b>User’s Works</b> .

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

[Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised <b>Transmission Entry Capacity</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application..</b>

## WACM3

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following (and where the Construction Agreement relates to more than one, for each of the Developers)*

[Developer Capacity]	the MW figure [ <i>for export</i> ] specified in the <b>Developer's Data</b> .
Developer	<i>Insert name address and registered number who is party to a <b>BELLA</b> with <b>The Company</b> or the subject of the <b>Request for a Statement of Works</b>.</i>
Developer's Data	the information provided by the [ <b>Developer-BELLA</b> ] [ <b>User</b> in respect of the <b>Developer</b> in the <b>Request for a Statement of Works-relevant embedded medium\small power station</b> ] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the <b>User's Distribution System</b> at [ ]]
Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 revising the <b>Developer's Capacity</b> for this <b>Construction Agreement</b> and Appendix A to the <b>BELLA</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a

v1.9 – 9 January 2014

**Modification Application.**

**2. CARRYING OUT OF THE WORKS**

- 2.1** Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2** Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.
- 2.3** The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-
- 2.3.1** All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.
- 2.3.2** In the event of:-

## WACM3

- (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** Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.
- 2.5** Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the provisions of Clause 11 shall apply].
- 2.6** If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** and the provisions of Clause 11 shall apply
- 2.7** Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as

v1.9 – 9 January 2014

## WACM3

shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.

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

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

- [“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

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

v1.9 – 9 January 2014

## WACM3

- 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**), <sup>6</sup>[MM (**Attributable Works**)]<sup>6</sup> 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. <sup>7</sup>[Provided that where a **User** has elected for the **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.]<sup>7</sup>
- 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

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<sup>6</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or a BELLA

<sup>7</sup> Not used in an Associated DNO construction Agreement associated with a BEGA or BELLA

## WACM3

for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]

- 2.13 [The **Enabling Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between **The Company** and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between **The Company** and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and **Wider Transmission Reinforcement Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [The **Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.
- 2.16 **Third Party Works**
- 2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.

## WACM3

**2.16.2** Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [ ] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

**2.16.3** Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) (“the **First User(s)**”) as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User’s** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

**2.16.4** In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company’s** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company’s** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [ ] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

## 2.17 Wider Transmission Reinforcement Works

**The Company** shall keep the **User** advised as to progress on the **Wider Transmission Reinforcement Works** and shall include information on these in the reports produced pursuant to Clause 2.8.

## 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



## WACM3

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**.

v1.9 – 9 January 2014

## WACM3

- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.
- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [ ] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and the provisions of Clause 11 shall apply.

## 5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.

v1.9 – 9 January 2014

## WACM3

- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the Site **Common Drawings** required under CC 7.5.3 and 7.5.5.
- 5.3 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and
- 5.3.2 the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.
- 5.4 Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1 for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;
- 5.4.2 written confirmation as required under CC.5.2(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];
- 5.4.3 a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.
- 5.5 If directly connected to the **National Electricity Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been

v1.9 – 9 January 2014

## WACM3

considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

5.6 If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **National Electricity Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

## 6. INDEPENDENT ENGINEER

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

v1.9 – 9 January 2014

## WACM3

acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

### 7. BECOMING OPERATIONAL

[7.1 If directly connected to the **National Electricity Transmission System The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** [delete Seven Year Statement Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational.**] or

[7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the Enabling Works [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **National Electricity Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company.**]

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Registered Capacity** of the **User's Equipment** is less than [ ]MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Registered Capacity** of the **User's Equipment**.

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

#### [7.4 **Transmission Entry Capacity Reduction**<sup>8</sup>

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports

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<sup>8</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA

## WACM3

provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.

- 7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.
- 7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .
- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity**

## WACM3

**Transmission System** at the level of the **Transmission Entry Capacity The Company** shall notify the **User** accordingly.

- 7.4.7 Where notwithstanding the **User's** response to the **Notice of Intent The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.
- 7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.
- 7.5 Where there is a reduction in **Transmission Entry Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** the **User** shall pay to **The Company** the

## WACM3

**Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.]

**Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following**

### [7.4 Developer Capacity Reduction

- 7.4.1** If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.
- 7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

v1.9 – 9 January 2014



### WACM3

- 7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7** Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.
- 7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA** and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Reduction Fee** [and on such reduction in **Developer Capacity** taking effect the **User** shall pay the **Cancellation Charge** in respect of the reduction such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.<sup>29</sup>
- 7.4.10** Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable**

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<sup>29</sup> Not used in an Associated DNO Construction Agreement where associated with a BELLA

## WACM3

**Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

- 7.4.10.1** The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.
- 7.4.10.2** Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for a Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **National Electricity Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.
- 7.4.10.3** **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.
- 7.5** Where there is a reduction in **Developer Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Developer Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.<sup>10</sup>

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<sup>10</sup> Not used in an Associated DNO Construction Agreement where associated with a BELLA

## WACM3

### 8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1-5 to the **Bilateral Connection Agreement** .

### 9. PROVISION OF SECURITY

Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on termination of this **Construction Agreement** or a reduction in **[Transmission Entry Capacity]** **[Developer Capacity]** prior to the **Charging Date**. <sup>11</sup>

### 10. EVENT OF DEFAULT

Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of Clause 11 shall apply.

### 11. TERMINATION

11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

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

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<sup>11</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

## WACM3

or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

**11.2** The **User** shall where this **Construction Agreement** terminates prior to the **Charging Date** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.<sup>12</sup>

## 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] [Bilateral Embedded Generation Agreement] [BELLA] [Associated DNO Construction Agreement]**<sup>13</sup> and in the event that this is prior to the **Charging Date** the **User** the provisions of Clause 11 shall apply.

**12.3** The associated **[Bilateral Connection Agreements or Agreement to Vary the Bilateral Connection Agreement]** will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.

**12.4** Any provisions for payment shall survive termination of this **Construction Agreement**.

## 13. CUSC

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

## 14. DISPUTES

**14.1** Except as specifically provided for in Clause 14.2 of 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**.

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<sup>12</sup> Not used in an **Associated DNO Construction Agreement** where associated with a **BEGA** or **BELLA**

<sup>13</sup> Edit as appropriate

## WACM3

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

### 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**.

[15.4 Where there is a change to the “developer capacity” (as specified in the associated **BELLA**) **The Company** after first notifying the **User** of its intention to do so shall be entitled to amend the **Developer Capacity** so that it reflects the “developer capacity” in the associated **BELLA**.]<sup>14</sup>

### 16. Distributed Generation<sup>15</sup>

The rights and obligations of the **User** and **The Company** pursuant to this **Construction Agreement** are subject to the **Developer** having entered into a **BELLA** before such rights and obligations arise. In the event that the **BELLA** has not been entered into by [insert date] then the **User** or **The Company** may terminate this **Construction Agreement**.

### 16. Distributed Generation<sup>16</sup>

16.1 In consideration of and recognising the provisions at Part One Paragraph 9 of **CUSC** Section 15 and Clause 16.4 of this **Construction Agreement** and notwithstanding that the liability for the **Cancellation Charge** rests with the **User**, the **User** will within 5 **Business Days** of receipt of the same provide

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<sup>14</sup> Used in an Associated DNO Construction Agreement where associated with a **BELLA**

<sup>15</sup> Used in an Associated DNO Construction Agreement where associated with a **BELLA**

<sup>16</sup> Used in an Associated DNO Construction Agreement where associated with a Relevant Embedded Small power Station or Relevant Embedded Medium Power Station

## WACM3

the **Developer** with a copy of the **Cancellation Charge Secured Amount Statement**.

**16.2** Where this **Construction Agreement** is entered into by reference to and provides for the **Construction Works** required as a consequence of more than one **Developer** a **Cancellation Charge, Cancellation Charge Statement** and **Cancellation Charge Secured Amount** will be prepared by reference to each **Developer** and the reference to "**Cancellation Charge**" "**Developer**" and "**Developer Capacity**" in this **Construction Agreement** and **CUSC** Section 15 shall be construed accordingly.

**16.3** In the event that the/a **Developer** reduces its **Developer Capacity** and/or terminates its agreement for connection to the **Distribution System** the **User** shall notify **The Company** in writing within 5 **Business Days** of that event.

**16.4** Provided that the conditions at Clause 16.5 have been met then where, a **Cancellation Charge** is due and payable:

**16.4.1** the **User** will notify **The Company** of a **Cancellation Charge Shortfall** in writing and as soon as practicable after receipt of an invoice in respect of the **Cancellation Charge**.

**16.4.2** where the **User** has notified **The Company** of a **Cancellation Charge Shortfall** the **User** will make a payment to **The Company** on account of the **Cancellation Charge** of an amount equal to the **Cancellation Charge Secured Amount**.

**16.4.3** the **User** will make reasonable efforts and take reasonable steps to recover the **Cancellation Charge Shortfall** and any associated interest charges from the **Developer** in a timely manner and as soon as practicable.

**16.4.4** Where the **User** successfully recovers the **Cancellation Charge Shortfall** in full or in part from the **Developer**, the **User** shall forthwith pay the amount received to **The Company** together with interest calculated thereon on a daily basis at **Base Rate** from the date of the payment of the **Cancellation Charge Secured Amount** to **The Company** by the **User** to the date of the payment of the amount received by the **User** to **The Company**.

**16.4.5** Where:

(a) the **Cancellation Charge Shortfall** is less than the **Shortfall Action Threshold Amount** and the **User** has undertaken all preparatory steps sufficient to be able to take the **Shortfall Recovery Minimum Steps**; or

v1.9 – 9 January 2014

**WACM3**

(b) the Cancellation Charge Shortfall is greater than the Shortfall Action Threshold Amount but the User has reasonable grounds to believe that it is not practicable to take any action (or to take any further action) to recover the Cancellation Charge Shortfall from the Developer (which shall in any event be not be less than the Shortfall Recovery Minimum Steps) and notifies The Company in writing giving its reasons and setting out in detail the efforts made and steps taken to recover the Cancellation Charge Shortfall from the Developer.

then The Company shall reduce the Cancellation Charge accordingly to reflect this.

16.4.6 The Company shall not take any action against the User in respect of the recovery of the Cancellation Charge Shortfall without having first given not less than 5 Business Days notice and on the grounds that the Cancellation Charge Shortfall is greater than the Shortfall Action Threshold Amount and The Company reasonably believes that the User is not taking reasonable and timely steps to recover the Cancellation Charge Shortfall from the Developer and the Authority has not agreed to this.

16.5 For the provisions of Clause 16.4 to apply the following conditions must have been met and evidence of this provided to The Company.

(i) that the User asked the Developer whether or not it wishes the User to elect for the Fixed Cancellation Charge and elected accordingly; and

(ii) (in respect of its liability for the Cancellation Charge as it relates to this Contruction Agreement) for each Security Period the User only sought security from the Developer for the amount as set out in the Cancellation Charge Secured Amount Statement for that Security Period]

**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 )

**WACM3**

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



**WACM3**

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

v1.9 – 9 January 2014

**WACM3**

**APPENDIX [G]**

**TRANSMISSION CONNECTION ASSET WORKS**

v1.9 – 9 January 2014

**WACM3**

**APPENDIX [H]**

**TRANSMISSION REINFORCEMENT WORKS**

**Part 1            Enabling Works**

**Part 2            Wider Transmission Reinforcement Works**

v1.9 – 9 January 2014

**WACM3**

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

v1.9 – 9 January 2014

**WACM3**

**APPENDIX [J]**  
**CONSTRUCTION PROGRAMME**

v1.9 – 9 January 2014

**WACM3**

**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 £XXXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXXX.

v1.9 – 9 January 2014

**WACM3**

**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.

v1.9 – 9 January 2014

WACM3

APPENDIX [MM]<sup>17</sup>

**ATTRIBUTABLE WORKS AND KEY CONSENTS**

Part 1

**Attributable Works**

Part 2

**Key Consents**

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<sup>17</sup> Not used in an Associated DNO Construction Agreement associated with a BEGA or BELLA



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**APPENDIX [N]**  
**THIRD PARTY WORKS**

v1.9 – 9 January 2014

**WACM3**

**APPENDIX [P]**

**DEVELOPER'S DATA**

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

v1.9 – 9 January 2014

**WACM3**

**SCHEDULE 2 EXHIBIT 3**

**PART 2**

v1.9 – 9 January 2014

SCHEDULE 2 - EXHIBIT 5

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

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)

and

[ \_\_\_\_\_ ] (2)

---

THE CONNECTION AND USE OF SYSTEM CODE

BELLA

---

[EMBEDDED EXEMPTABLE LARGE POWER STATION WHICH IS SMRS REGISTERED]

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

Reference:[ \_\_\_\_\_ ]

CONTENTS

1. Definitions, Interpretation and Construction
2. Conditions Precedent and Commencement
3. The Site of Connection to the Distribution System
4. Outages
5. Grid Code Matters
6. Operational Notification
7. Compliance with Site Specific Technical Conditions
8. Term
9. Variations
- ~~10. Restrictive Trade Practices Act~~
- ~~4110.~~ 4110. General Provisions
- ~~4211.~~ 4211. Wider Transmission Reinforcement Works
- ~~12.~~ 12. Cancellation Charge
- Appendix A The Site of Connection and User's Data
- Appendix F1 Site Specific Technical Conditions - Agreed Balancing Services
- Appendix F2 [Not Used]
- Appendix F3 Site Specific Technical Conditions - Special Automatic Facilities
- Appendix F4 Site Specific Technical Conditions Protection and Control Relay Settings, Fault Clearance Times
- Appendix F5 Site Specific Technical Conditions - Other
- Appendix H ~~Transmission Reinforcement Works~~ Construction Works
- Appendix MM Attributable Works and Key Consents

**WACM3**  
**WACM4**

THIS **BELLA** is made on the [ ] day of [ ] 200[ ].

**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** is required to prepare a Connection and Use of System Code (**CUSC**).
- (B) The **User** has applied in the capacity of an **EELPS** whose **Boundary Point Metering System** is [to be] registered in **SMRS** or in **CMRS** by a **User** who is responsible for the **Use of System Charges** associated with the **BM Unit** [to be] registered in **CMRS**.
- (C) The **User** has made a **BELLA Application** and **The Company** is required to make a **BELLA Offer** in accordance with Paragraph 1.5.2 of the **CUSC**.
- (D) This **Offer** has been made on the basis of the **Connect and Manage Arrangements**.

**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** have the same meanings, interpretations or constructions in this **BELLA** and the following term(s) shall have the meaning(s) set out below:

<b><u>Attributable Works</u></b>	<b><u>those Construction Works identified as such in accordance with the User Commitment Methodology and which are set out in Appendix MM Part 1.</u></b>
<b><u>Cancellation Charge</u></b>	<b><u>as calculated in accordance with the User Commitment Methodology.</u></b>
<b><u>Charging Date</u></b>	<b><u>as defined as such in the Associated DNO Construction Agreement.</u></b>
<b><u>Construction Works</u></b>	<b><u>the works which are the subject of the Associated DNO Construction Agreement and which are required to be</u></b>

	<u>completed prior to the <b>User's Equipment</b> being <b>Energised</b> and specified in Appendix H Part 1.</u>
<b>DNO</b>	name address and registered number of owner/operator of the distribution network to which user is to connect.
<u><b>Associated DNO Construction Agreement</b></u>	the <u><b>Construction Agreement</b></u> between <b>The Company</b> and the <b>DNO</b> for <u>the <b>Construction Works Transmission Reinforcement Works</b></u> as a consequence of the <b>User's</b> connection to the <b>Distribution System</b> .
<u><b>Enabling Works</b></u>	those elements of the <u><b>Transmission Reinforcement Works</b></u> which are required to be completed prior to the <u><b>User's Equipment</b> being <b>Energised</b></u> and specified in Appendix H Part 1.
<u><b>Key Consents</b></u>	<u>those <b>Consents</b> required in respect of the <b>User's Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2.</u>
<b>Notice of Reduction</b>	the notice of that name given by <b>The Company</b> to the <b>DNO</b> and the <b>User</b> pursuant to Clause 7 of the <u><b>Associated DNO Construction Agreement</b></u> .
<b>Notice of Reduction Effective Date</b>	the date the amendments proposed by the <b>Notice of Reduction</b> take effect.
<u><b>Transmission Reinforcement Works</b></u>	<del>those works which in the reasonable opinion of <b>The Company</b> are necessary to extend or reinforce the <b>National Electricity Transmission System</b> as a consequence of the <b>User's Equipment</b> being <b>Energised</b> specified in Appendix H.</del>
<u><b>Trigger Date</b></u>	<u>[ ] as identified in accordance with the <b>User Commitment Methodology</b> by reference to the <b>Charging Date</b>.</u>
<u><b>User's Developer Capacity</b></u>	the MW [export] figure specified in the <b>User's Data</b> .
<b>User's Data</b>	the data submitted by the <b>User</b> and set out in Appendix A to the <b>BELLA</b> against which the effect on the <b>National Electricity Transmission System</b> of the <b>User's</b> connection to the <b>Distribution System</b> has been assessed.
<u><b>Wider Transmission Reinforcement Works</b></u>	<del>those elements of the <b>Transmission Reinforcement Works</b> which are not required to be completed prior to the <b>User's Equipment</b> being <b>Energised</b> and specified in Appendix H Part 2.</del>

**WACM3**  
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**2. CONDITIONS PRECEDENT AND COMMENCEMENT**

2.1 The rights and obligations of the **User** and **The Company** pursuant to this **BELLA** are subject to the following conditions precedent having been fulfilled before such rights and obligations arise:

2.1.1 the **User** having provided (in a form reasonably satisfactory to **The Company**) proof of having entered into a **Distribution Agreement** with the owner/operator of the **Distribution System**; and

2.1.2 of the acceptance by the owner/operator of the **Distribution System** of any necessary **Modification Offer** relevant to the **Embedded Power Station**;

2.1.3 **The Company** and / or the **Users** as appropriate having received the derogations [if any] required in respect of the Grid Code.

2.2 If the conditions precedent have not been fulfilled, in the case of 2.1.1 and 2.1.3 within 6 months of the date hereof, and in the case of 2.1.2 within 3 months of the date of receipt by the owner/operator of the **Distribution System** of the **Modification Offer**, **The Company** or the **User** may rescind this **BELLA** by giving to the other notice to that effect in which event all rights and liabilities of the parties hereunder and under the **CUSC** in relation to this **Embedded Power Station** shall cease.

2.3 This **BELLA** shall commence on [                      ].

2.4 It is a condition of this **Agreement** that the **Embedded Exemptable Large Power Station** is **SMRS** registered (or **CMRS** registered by a **Supplier**) in the **BSC**. If, at any time the **Embedded Exemptable Large Power Station** ceases to be **SMRS** registered (or **CMRS** registered by a **Supplier**) and becomes **CMRS** registered other than by a **Supplier** then the **User** hereby undertakes to forthwith apply for and enter into a **Bilateral Embedded Generation Agreement**.

**3. THE SITE OF CONNECTION TO THE DISTRIBUTION SYSTEM**

The site of **Connection** of the **EELPS** to the **Distribution System** to which this **BELLA** relates is more particularly described in Appendix A.

**4. OUTAGES**

Subject to the provisions of the **Grid Code**, **The Company** and the **User** shall be entitled to plan and execute outages of parts of, in the case of **The Company**, the **National Electricity Transmission System** or **Transmission Plant** or **Transmission**



**WACM3**  
**WACM4**

**Apparatus** and in the case of the **User**, its **System** or **Plant** or **Apparatus**, at any time and from time to time.

**5 GRID CODE MATTERS**

5.1 Paragraph 6.3 of the **CUSC** applies in respect of this **Embedded Exemptable Large Power Station** as amended in accordance with the following provisions of this Clause 5.

5.2 The provisions in BC1 and BC2 of the **Grid Code** provide that compliance is only required with such provisions in respect of those **Generating Units** at an **Embedded Exemptable Large Power Station** where **The Company** reasonably requires such compliance and has specified such a requirement in respect of such **Generating Units** in the **BELLA**.

[5.2 **The Company** and the **User** hereby agree that compliance by the **User** in respect of this **Embedded Exemptable Large Power Station** with the provisions of BC1 and BC2 of the **Grid Code** are reasonably required and therefore the provisions of BC1 and BC2 shall apply and be complied with by the **User** so far as applicable to it. Therefore, the provisions in BC1 and BC2 in respect of **Generating Units** and **Generating Unit Data** shall apply to and be complied with by the **User**. For the purposes of the **Grid Code** the **User** shall be treated as a **BM Participant**.

[5.2 **The Company** does not require compliance by the **User** in respect of this **Embedded Exemptable Large Power Station** with the provisions of BC1 and BC2]

*[Note: which alternative of Clause 5.2 will apply will depend upon whether or not **The Company** reasonably requires compliance with these **Grid Code** obligations. Please note that the **User** has a right to ask the **Authority** to determine on these matters.]*

**6. OPERATIONAL NOTIFICATION**

Subject to the provisions of Clause 2.1 having been fulfilled, and subject, if **The Company** so requires, to the **Enabling-Construction Works** ~~[and/or works for any Modification-Offer]~~ in the **Associated DNO Construction Agreement** being carried out and to notification by the **User** that the site of connection of the **User's Equipment** to the **Distribution System** is operational, **The Company** shall forthwith notify ("**Operational Notification**") the **User** in writing that it may energise its **Equipment**.

**7. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS**

**WACM3**  
**WACM4**

- 7.1 The site specific technical conditions applying to the site of **Connection** are set out in Appendices F1 to F5 to this **BELLA** as modified from time to time in accordance with Paragraph 6.9 of the **CUSC**.
- 7.2 **The Company** and the **User** shall operate respectively the **National Electricity Transmission System** and the **User System** with the special automatic facilities and schemes set out in Appendix F3 to this **BELLA**.
- 7.3 The **User** shall ensure that the **User's Equipment** complies with the site specific technical conditions set out in Appendix F4 to this **BELLA**.
- 7.4 The **User** shall use all reasonable endeavours to ensure that the **User's Equipment** shall continue to comply with the site specific technical conditions set out in Appendix F5 of this **BELLA**.
- 7.5 If the **User** or **The Company** wishes to modify alter or otherwise change the site specific technical conditions or the manner of their operation under Appendix F1, F3, F4 or F5 to this **BELLA** this shall be deemed to be a **Modification** for the purposes of the **CUSC**.

**8. TERM**

8.1 Subject to the provisions for earlier termination set out in **CUSC** and Clause 8.2 and Clause 8.3 below, this **BELLA** shall continue until all of the **User's** equipment is **Disconnected** from the relevant **Distribution System** at the site of **Connection** as provided in Section 5 of **CUSC**.

8.2 This **BELLA** shall terminate on the earlier of

(a) the **Notice of Reduction Effective Date** where as a result of the **Notice of Reduction** the **User** is no longer an **Embedded Exemptable Large Embedded Power Station**.

(b) termination of the Associated DNO Construction Agreement pursuant to Clause 7.4.10.2 of the Associated Construction Agreement and provided that the **Bilateral Connection Agreement** between the **DNO** and **The Company** has, where required by **The Company**, been amended to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**

8.3 **The Company** shall be entitled to terminate this **BELLA** forthwith in the event that the **Associated DNO Construction Agreement** is terminated prior to the **Charging Date**.

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**WACM4**

8.4 Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **BELLA** shall forthwith terminate.

9. VARIATIONS

9.1 Subject to 9.2, 9.3, 9.4, 9.5 and 9.46, no variation to this **BELLA** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **User**.

9.2 **The Company** and the **User** shall effect any amendment required to be made to this **BELLA** 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.

9.3 If 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 Construction Reinforcement Works~~ to reflect a change in such works in the Associated DNO Construction Agreement, Appendix H shall be automatically amended to reflect the change. Provided that where a User has elected for the Actual Attributable Works Cancellation Charge to be based on the Fixed Attributable Works Cancellation Charge the Attributable Works can only be changed after the Trigger Date as provided for in CUSC Section 15.

9.4 Appendix A shall be automatically amended to reflect any **Notice of Reduction** on the **Notice of Reduction Effective Date**;

9.5 On a change to the works or programme in the Associated DNO Construction Agreement The Company shall be entitled to amend the Trigger Date and Cancellation Charge in accordance with the principles in CUSC section 15 Part Two.

~~9.59.6~~ 9.6 ~~Where there is a change to the “developer capacity” (as specified in the Associated DNO Construction Agreement) The Company after first notifying the User of its intention to do so shall be entitled to amend the Developer Capacity so that it reflects the “developer capacity” in the Associated DNO construction Agreement.~~

~~10. RESTRICTIVE TRADE PRACTICES ACT~~

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

~~10.1.1 if a copy of this **BELLA** is not provided to the Department of Trade and Industry (“DTI”) within 28 days of the date of this; or~~

**WACM3**  
**WACM4**

~~10.1.2 if, within 28 days of the provision of that copy to the DTI, the DTI gives notice of objection to the party providing it.~~

**4110. GENERAL PROVISIONS**

Paragraph 6.10 and Paragraphs 6.12 to 6.26 of the **CUSC** are incorporated into this **BELLA** *mutatis mutandis*.

**4211. WIDER TRANSMISSION REINFORCEMENT WORKS**

The **Company** shall keep the User informed as to its progress on the **Wider Transmission Reinforcement Works**.

**12. CANCELLATION CHARGE**

~~12.1 On a reduction in **Developer Capacity** prior to the **Charging Date**, on the date the reduction in **Developer Capacity** takes effect the **User** shall be liable to pay the **Cancellation Charge to The Company** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.~~

~~12.2 On termination of this **BELLA** or the **Associated DNO Construction Agreement** prior to the **Charging Date**, the **User** shall be liable to pay the **Cancellation Charge to The Company** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.~~

~~12.3 Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge to The Company** on a reduction in **Developer Capacity** or termination of the **Associated DNO Construction Agreement** prior to the **Charging Date**.~~

**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 )

**WACM3**

**WACM4**

SIGNED BY )

*[name]* )

for and on behalf of )

[User] )

**APPENDIX A**

**THE SITE OF CONNECTION AND USER'S DATA**

**SITE[s] OF CONNECTION**

**Company:**

**Site[s] of Connection:**

**Size of Power Station:**

**Owner[s] / Operator[s] of Distribution System:**

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

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APPENDIX F1

SITE SPECIFIC TECHNICAL CONDITIONS:

AGREED BALANCING SERVICES



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**APPENDIX F2**

**[NOT USED]**

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**APPENDIX F3**

**SITE SPECIFIC TECHNICAL CONDITIONS:**

**SPECIAL AUTOMATIC FACILITIES**

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**APPENDIX F4**

**SITE SPECIFIC TECHNICAL CONDITIONS: PROTECTION**

**AND CONTROL RELAY SETTINGS**

**FAULT CLEARANCE TIMES**

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APPENDIX F5

SITE SPECIFIC TECHNICAL CONDITIONS:

OTHER

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APPENDIX H

~~TRANSMISSION REINFORCEMENT~~CONSTRUCTION WORKS

END OF SCHEDULE 2 - EXHIBIT 5



## **CMP 223 (Arrangements for Relevant Distributed Generators under the Enduring User Commitment) (WACM4): Summary Sheet of Proposed Amendments**

### **1. Overview of Changes**

- 1.1 The changes in the legal drafting that are being proposed to implement CMP 223 consist in (a) changing the Cancellation Charge arrangements between The Company and DNOs such that the Cancellation Secured Amount required of directly connected generation is reflected in arrangements with BELLAs and DNOs in respect of Distributed Generation and (b) provide a separate % determining the Cancellation Secured Amount for BELLAs and Relevant Embedded Small Power Stations or Relevant Embedded Medium Power Stations (c) changing the Cancellation Charge arrangements such that where there is a BEGA or BELLA the Cancellation Charge is payable under the BEGA or BELLA arrangements rather than through the DNO Construction Agreement.
- 1.2 The changes are the same as that for WACM3 apart from the changes to CUSC Schedule 2 Exhibit 3
- 1.3 In summary the drafting consists of changes to:
  1. Edits to CUSC Section 1
  2. Edits to CUSC Section 5 (summary)
  3. Edits to CUSC Section 6 (summary)
  4. CUSC Section 10 (houses the transitional provisions that apply to those Users or prospective Users).
  5. Edits to CUSC Section 11 (summary)
  6. Edits to CUSC Section 15 (User Commitment Methodology).
  7. Edits to CUSC Exhibit Q (BELLA Application) (by summary)
  8. Edits to CUSC Exhibit R (BELLA Offer) (by summary)
  9. Edits to CUSC Schedule 2 Exhibit 3 (Consag)
  10. Edits to CUSC Schedule 2 Exhibit 5 (BELLA)

WACM4

**SCHEDULE 2 EXHIBIT 3**

**PART 1**

*For use with User's in the categories of (i) Power Stations directly connected to the National Electricity Transmission system, (ii) Embedded Power Stations which are the subject of a Bilateral Embedded Generation Agreement or (iii) ~~where, associated with Distributed Generation, a Distribution System directly connected to the National Electricity Transmission System~~ an Associated DNO Construction Agreement*

**INDICATIVE**

**DATED [ ] 200[1]**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)**

**and**

**[ ] (2)**

---

**THE CONNECTION AND USE OF SYSTEM CODE**

**CONSTRUCTION AGREEMENT**

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v1.9 – 9 January 2014



## WACM4

### CONTENTS

<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
2	Carrying out of the Works
3	Delays
4	Commissioning Programme and Liquidated Damages
5	Approval to Connect/Energise/Become Operational
6	Independent Engineer
7	Becoming Operational
8	Compliance with Site Specific Technical Conditions
9	Provision of Security
10	Event of Default
11	Termination
12	Term
13	CUSC
14	Disputes
15	Variations
<u>16</u>	<u>Distributed Generation<sup>1</sup></u>
Appendix B1	One Off Works
Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme

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<sup>1</sup>Only an Associated DNO Construction Agreement where associated with a Relevant Embedded Small Power Station or a Relevant Embedded Medium Power Station

**WACM4**

Appendix K	Liquidated Damages
Appendix L	Independent Engineer
Appendix MM	Attributable Works and Key Consents
Appendix N	Third Party Works

## WACM4

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

### BETWEEN

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

### WHEREAS

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

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

## WACM4

### 1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

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

“Attributable Works”	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1. <sup>2</sup>
"Authority"	as defined in the <b>CUSC</b> .
“Bilateral Connection Agreement”	the <b>Bilateral Connection Agreement</b> entered into between the parties on even date herewith.
"Bilateral Embedded Generation Agreement"	the <b>Bilateral Embedded Generation Agreement</b> entered into between the parties on even date herewith.
“Cancellation Charge”	as calculated in accordance with the <b>User Commitment Methodology</b> . <sup>3</sup>

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<sup>2</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

<sup>3</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

## WACM4

"Charging Date"

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

"Commissioning Programme Commencement Date"

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

"Commissioning Programme"

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

"Completion Date"

[ ] or such other date as may be

v1.9 – 9 January 2014

## WACM4

	agreed in terms of this <b>Construction Agreement</b> for completion of the <b>Construction Works</b> .
"Connect and Manage Derogation"	the temporary derogation from the <b>NETS SQSS</b> available to <b>The Company</b> under Standard Condition C17 of the <b>Transmission Licence</b> and/or the <b>Relevant Transmission Licensee</b> under Standard Condition D3 of its transmission licence;
"Connected Planning Data"	data required pursuant to the <b>Planning Code</b> 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 <b>Works</b> :-  (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 <b>Works</b> and for commencement and carrying on of any activity proposed to be undertaken at or from such <b>Works</b> when completed.
"Construction Programme"	the agreed programme for the <b>Works</b> to be carried out by <b>The Company</b> and the <b>User</b> set out in detail in Appendix [J] to this <b>Construction Agreement</b> or as amended from time to time pursuant to Clauses 2.3 and 3.2 of this <b>Construction Agreement</b> .
"Construction Site"	the site where the <b>Transmission Connection Asset Works</b> are being

v1.9 – 9 January 2014

## WACM4

	undertaken by or on behalf of <b>The Company</b> ;
“Construction Works”	the <b>Transmission Connection Asset Works, Enabling Works, Seven Year Statement Works and One Off Works</b> and such additional works as are required in order to comply with any relevant <b>Consents</b> relating to any such works but excluding for the avoidance of doubt any <b>Third Party Works</b> .
“Dispute Resolution Procedure”	the procedure for referral to arbitration set out in Paragraph 7.4 of the <b>CUSC</b> .
“Enabling Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 1 to this <b>Construction Agreement</b> .
“Event of Default”	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
“Independent Engineer”	the engineer specified in Appendix L to this <b>Construction Agreement</b> . Provided that:-  (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this <b>Construction Agreement</b> ; or  (b) where any <b>Independent Engineer</b> 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,

v1.9 – 9 January 2014

## WACM4

	nominate shall be the <b>Independent Engineer</b> .
“Key Consents”	those <b>Consents</b> required in respect of the <b>[User’s/Developer’s] Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2. <sup>4</sup>
“Liquidated Damages”	the sums specified in or calculated pursuant to Appendix K to this <b>Construction Agreement</b> .
“One Off Works”	the works described in Appendix B1 to this <b>Construction Agreement</b> .
Seven Year Statement Works”	the works set out in Table B7 of the statement prepared by <b>The Company</b> pursuant to Standard Condition C11 of the <b>Transmission Licence</b> and issued by <b>The Company</b> in [ ] which in <b>The Company’s</b> reasonable opinion (and in the absence of the <b>Connect and Manage Derogation</b> are required to be completed before the <b>Completion Date</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission licence prior to the <b>Connection</b> of the <b>User’s Equipment</b> in terms of Clause 7.1 [or 7.2] of this <b>Construction Agreement</b> .
“Term”	the term of this <b>Construction Agreement</b> commencing on the date hereof and ending in accordance with Clause 12.

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<sup>4</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or a BELLA



## WACM4

“Third Party Works”	the works to be undertaken on assets belonging to a party other than <b>The Company</b> and the <b>User</b> to enable it to provide or as a consequence of the connection to and/or use of the <b>National Electricity Transmission System</b> by the <b>User</b> as specified in Appendix N;
“Transmission Connection Assets”	the assets specified in Appendix A to the <b>Bilateral Connection Agreement</b> .
“Transmission Connection Asset Works”	the works necessary for construction and installation of the <b>Transmission Connection Assets</b> at the <b>Connection Site</b> specified in Appendix G to this <b>Construction Agreement</b> .
“Transmission Reinforcement Works”	those works other than the <b>Transmission Connection Asset Works Seven Year Statement Works</b> and <b>One Off Works</b> , which in the reasonable opinion of <b>The Company</b> (and in the absence of the <b>Connect and Manage Derogation</b> ) are all necessary to extend or reinforce the <b>National Electricity Transmission System</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of Standard Condition C17 of the <b>Transmission Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee’s</b> transmission system and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is the <b>Enabling Works</b> and Part 2 is the <b>Wider Transmission Reinforcement Works</b> .
“Trigger Date”	[date] as identified in accordance with the <b>User Commitment methodology</b> . <sup>5</sup>

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<sup>5</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

## WACM4

“User’s Works”	those works necessary for installation of the <b>User’s Equipment</b> which are specified in Appendix I to this <b>Construction Agreement</b> .
“Wider Transmission Reinforcement Works”	those <b>Transmission Reinforcement Works</b> which are specified in Appendix H Part 2 to this <b>Construction Agreement</b> where Part 2.1 is works required for the <b>User</b> and Part 2.2 is works required for wider system reasons.
“Works”	the <b>Construction Works</b> and the <b>User’s Works</b> .

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

[Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 including a revised Appendix C specifying the revised <b>Transmission Entry Capacity</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a <b>Modification Application..</b>

## WACM4

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following (and where the Construction Agreement relates to more than one, for each of the Developers)*

[Developer Capacity]	the MW figure [ <i>for export</i> ] specified in the <b>Developer's Data</b> .
Developer	<i>Insert name address and registered number who is party to a <b>BELLA</b> with <b>The Company</b> or the subject of the <b>Request for a Statement of Works</b>.</i>
Developer's Data	the information provided by the [ <b>Developer-BELLA</b> ] [ <b>User</b> in respect of the <b>Developer</b> in the <b>Request for a Statement of Works-relevant embedded medium\small power station</b> ] and set out in Appendix [P].
Developer's Project	the connection of a [xMW wind farm\power station to the <b>User's Distribution System</b> at [ ]]
Notice of Intent	the notice issued by <b>The Company</b> pursuant to Clause 7.4.4.
Notice of Reduction	the notice issued by <b>The Company</b> pursuant to Clause 7.4.7 revising the <b>Developer's Capacity</b> for this <b>Construction Agreement</b> and Appendix A to the <b>BELLA</b> .
Preliminary Request	the request issued by <b>The Company</b> pursuant to Clause 7.4.1.
Reduction Fee	the fee payable by the <b>User</b> to <b>The Company</b> in respect of the agreement to vary issued pursuant to Clause 7.4.9 such fee being calculated on the same basis as that set out in the <b>Charging Statements</b> as payable on a payment of actual costs basis in respect of a

v1.9 – 9 January 2014

**Modification Application.**

**2. CARRYING OUT OF THE WORKS**

- 2.1** Forthwith following the date of this **Construction Agreement** (i) in respect of **Connection Sites** in England and Wales **The Company** and the **User** shall agree the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**; and (ii) in respect of **Connection Sites** in Scotland the **User** shall agree with the **Relevant Transmission Licensee** the **Safety Rules** and **Local Safety Instructions** to apply during the **Construction Programme** and **Commissioning Programme**. Failing agreement within three months of the date of this **Construction Agreement** the matter shall be referred to the **Independent Engineer** for determination in accordance with Clause 6 of the **Construction Agreement**.
- 2.2** Subject to Clauses 2.3 and 2.4 of this **Construction Agreement** forthwith following the date of this **Construction Agreement** **The Company** shall use its best endeavours to obtain in relation to the **Construction Works**, and the **User** shall use its best endeavours to obtain in relation to the **User's Works**, all **Consents**. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each party shall, so far as it is legally able to do so, grant to, in relation to **Connection Sites** in England and Wales, the other, or in relation to **Connection Sites** in Scotland, the **Relevant Transmission Licensee**, all such wayleaves, easements, servitude rights, rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the **Relevant Transmission Licensee** in order to enable the **Works** to be expeditiously completed and to enable that other to carry out its obligations to the other under this **Construction Agreement** and in all cases subject to such terms and conditions as are reasonable.
- 2.3** The following additional provisions shall apply in respect of the **Consents** and **Construction Works**:-
- 2.3.1** All dates specified in this **Construction Agreement** are subject to **The Company** obtaining **Consents** for the **Construction Works** in a form acceptable to it within the time required to carry out the **Construction Works** in accordance with the **Construction Programme**.
- 2.3.2** In the event of:-

## WACM4

- (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** Paragraphs 11.2.3 to 11.2.5 of the **CUSC** relating to **Consents** shall apply to the **Construction Agreement** as if set out here in full.
- 2.5** Prior to the commencement of the **Transmission Connection Asset Works** the **User** shall have the right to terminate this **Construction Agreement** upon giving not less than 7 (seven) days notice in writing to **The Company**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.5 the provisions of Clause 11 shall apply].
- 2.6** If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement** and the provisions of Clause 11 shall apply
- 2.7** Both parties shall be entitled to contract or sub-contract for the carrying out of their respective parts of the **Works** (which in the case of **The Company** shall include work carried out by a **Relevant Transmission Licensee** or its contractors or sub-contractors). The **User** or any contractor on its behalf shall be responsible for commencing and for carrying out the **User's Works** to such stage of completion as shall render them capable of being **Commissioned** in accordance with the **Construction Programme** and **The Company** or any contractor on its behalf shall be responsible for commencing and carrying out the **Construction Works** to such stage of completion as

v1.9 – 9 January 2014

## WACM4

shall render them capable of being **Commissioned** in accordance with the **Construction Programme**.

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

*Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following*

- [“2.8 The parties shall continuously liaise throughout the **Construction Programme** and **Commissioning Programme** and each shall provide to the other all information relating to its own **Works** reasonably necessary to assist the other in performance of that other's part of the **Works**, and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be on-site meetings between representatives of the parties at intervals to be agreed between the parties. The **User** shall also provide to **The Company** such information as **The Company** shall reasonably request and which the **User** is entitled to disclose in respect of the **Developer's Project**. Each party shall deliver to the other party where requested a written report of progress during each calendar quarter (including in the case of the **User** progress on the **Developer's Project** to the extent that the **User** has such information and is entitled to disclose it) within 7 days of the end of that quarter.”]

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

v1.9 – 9 January 2014

## WACM4

- 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**), <sup>6</sup>[MM (**Attributable Works**)]<sup>6</sup> 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. <sup>7</sup>[Provided that where a **User** has elected for the **Actual Attributable Works Cancellation Charge** to be based on the **Fixed Attributable Works Cancellation Charge** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15.]<sup>7</sup>
- 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

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<sup>6</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or a BELLA

<sup>7</sup> Not used in an Associated DNO construction Agreement associated with a BEGA or BELLA

## WACM4

for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with **The Company** as to its construction and operational requirements and shall ensure that the said application meets **The Company's** requirements. **The Company** shall provide the **User** with all information reasonably required by it in relation to the application and the **User** shall ensure that all requirements of **The Company** are incorporated in the application for deemed planning consent.]

- 2.13 [The **Enabling Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between **The Company** and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between **The Company** and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and **Wider Transmission Reinforcement Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [The **Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.
- 2.16 **Third Party Works**
- 2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.



## WACM4

**2.16.2** Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.16.3 below, advise the **User** as soon as practicable and in any event by [ ] of the **Third Party Works** and shall be entitled to revise Appendix N and as a consequence the **Construction Programme** as necessary to reflect this.

**2.16.3** Where **Third Party Works** are likely to be **Modifications** required to be made by another user(s) (“the **First User(s)**”) as a consequence of **Modifications** to the **National Electricity Transmission System** to be undertaken by **The Company** under this **Construction Agreement** **The Company** shall as soon as practicable after the date hereof issue the notification to such **First User’s** in accordance with **CUSC** Paragraph 6.9.3.1. The **User** should note its obligations under **CUSC** Paragraph 6.10.3 in respect of the costs of any **Modifications** required by the **First User(s)**.

**2.16.4** In the event that the **Third Party Works** have not been completed by the date specified in the **Construction Programme** or, in **The Company’s** reasonable opinion are unlikely to be completed by such date, **The Company** shall be entitled to revise the **Construction Programme** as necessary to reflect such delay and also, where **The Company** considers it necessary to do so, shall be entitled to revise the **Construction Works** (and as a consequence Appendices A and B to the **Bilateral Connection Agreement**). For the avoidance of doubt such revisions shall be at **The Company’s** absolute discretion and the consent of the **User** is not required. Further, in the event that the **Third Party Works** have not been completed by [ ] **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and in this event the provisions of Clause 11 of this **Construction Agreement** shall apply.

## 2.17 Wider Transmission Reinforcement Works

**The Company** shall keep the **User** advised as to progress on the **Wider Transmission Reinforcement Works** and shall include information on these in the reports produced pursuant to Clause 2.8.

## 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

## WACM4

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**.

v1.9 – 9 January 2014

## WACM4

- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.
- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by [ ] to a stage where the **User** is ready to commence the **Commissioning Programme**, **The Company** shall have the right to terminate this **Construction Agreement** upon giving notice in writing to the **User** and the provisions of Clause 11 shall apply.

## 5. APPROVAL TO CONNECT/ENERGISE/BECOME OPERATIONAL

- 5.1 Not later than 4 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.7 and 7.4.10 and likewise the **Site Common Drawings** required under CC 7.5.2 and 7.5.4 and, if necessary, **Gas Zone Diagrams** referred to in CC 7.4.9 and 7.4.12.

v1.9 – 9 January 2014

## WACM4

- 5.2 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 7.4.8 and 7.4.11 and likewise the Site **Common Drawings** required under CC 7.5.3 and 7.5.5.
- 5.3 Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties:-
- 5.3.1 each party shall submit to the other data within its possession needed to enable the completion of Appendices F3 and F4 to the **Bilateral Connection Agreement**; and
- 5.3.2 the **User** shall submit to **The Company** evidence satisfactory to **The Company** that the **User's Equipment** complies or will on completion of the **User's Works** comply with Clause 8 of this **Construction Agreement** and Paragraphs [1.3.3(b), 2.9 and 6.7] of the **CUSC**.
- 5.4 Not later than 8 weeks prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties each party shall submit to the other:
- 5.4.1 for the **Connection Site** information to enable preparation of **Site Responsibility Schedules** complying with the provisions of Appendix 1 to the **Connection Conditions** together with a list of managers who have been duly authorised by the **User** to sign such **Site Responsibility Schedules** on the **User's** behalf;
- 5.4.2 written confirmation as required under CC.5.2(g) that the list of **Safety Co-ordinators** are authorised and competent [and a list of persons appointed pursuant to **Grid Code** CC5.2(m)];
- 5.4.3 a list of the telephone numbers for the facsimile machines referred to in CC6.5.9.
- 5.5 If directly connected to the **National Electricity Transmission System** not later than 3 months prior to the expected **Commissioning Programme Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** and the statement submitted by the **User** shall in addition contain relevant **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**, all relevant **Connection Conditions** applicable to the **User** have been

v1.9 – 9 January 2014

## WACM4

considered and complied with. If **The Company** considers that it is necessary, it will require this latter report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria specified in CC6.

5.6 If embedded not later than 3 months prior to the **Charging Date** or by such other time as may be agreed between the **Parties** the **User** shall submit to **The Company** a statement of readiness to use the **National Electricity Transmission System** together with **Connected Planning Data** and a report certifying to **The Company** that, to the best of the information, knowledge and belief of the **User**:-

- (i) all relevant **Connection Conditions** applicable to the **User** have been considered;
- (ii) CC 6 insofar as it is applicable to the **User** has been complied with; and
- (iii) the site-specific conditions set out in Appendices [F1, F3, F4] and [F5] to the **Bilateral Embedded Generation Agreement** have been complied with.

If **The Company** considers that it is necessary, it will require this report to be prepared by the **Independent Engineer**. The report shall incorporate if requested by **The Company** type test reports and test certificates produced by the manufacturer showing that the **User's Equipment** meets the criteria.

## 6. INDEPENDENT ENGINEER

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

v1.9 – 9 January 2014

## WACM4

acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

### 7. BECOMING OPERATIONAL

[7.1 If directly connected to the **National Electricity Transmission System The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** during the course of and in accordance with the **Commissioning Programme** and thereafter upon compliance by the **User** with the provisions of Clause 5 and provided (1) the **Construction Works** excluding the **Seven Year Statement Works** [delete Seven Year Statement Works under the Connect and Manage Arrangements if these are not Enabling Works] shall be **Commissioned** and (2) [the **Seven Year Statement Works** and **Third Party Works** shall be completed **The Company** shall forthwith notify the **User** in writing that the **Connection Site** shall become **Operational.**] or

[7.2 If **Embedded** upon compliance by the **User** with the provisions of Clauses 5.1, 5.2 and 5.3 and subject, if **The Company** so requires, to the Enabling Works [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **National Electricity Transmission System**. It is an express condition of this **Construction Agreement** that in no circumstances, will the **User** use or operate the **User's Equipment** without receiving the **Operational Notification** from **The Company.**]

7.3 If, on completion of the **User's Works** in accordance with the terms of this **Construction Agreement** the **Registered Capacity** of the **User's Equipment** is less than [ ]MW, **The Company** shall automatically have the right to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the actual **Registered Capacity** of the **User's Equipment**.

*Users in the capacity of a Directly Connected Power Station or Embedded Power Station (other than those who are a BELLA) insert the following*

#### [7.4 **Transmission Entry Capacity Reduction**<sup>8</sup>

7.4.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports

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<sup>8</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA

## WACM4

provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.

- 7.4.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and / or data provided by the **User** to **The Company** to reflect this.
- 7.4.3 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .
- 7.4.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.4.6 In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **User's Equipment** will be such that it will be capable of exporting power onto the **National Electricity**

## WACM4

**Transmission System** at the level of the **Transmission Entry Capacity The Company** shall notify the **User** accordingly.

- 7.4.7 Where notwithstanding the **User's** response to the **Notice of Intent The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.
- 7.4.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix C of the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**] and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and [**Bilateral Connection Agreement**] [**Bilateral Embedded Generation Agreement**]. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.
- 7.5 Where there is a reduction in **Transmission Entry Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** the **User** shall pay to **The Company** the



## WACM4

**Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.]

**Users in the capacity of a Directly Connected Distribution System where works are required in respect of a BELLA or a Relevant Embedded Medium Power Station or a Relevant Embedded Small Power Station insert the following**

### [7.4 Developer Capacity Reduction

- 7.4.1** If, at any time prior to the **Completion Date** **The Company** reasonably believes from the reports provided by the **User** pursuant to Clause 2.8 and Clause 5 of this **Construction Agreement** [*in the case of relevant embedded small/medium power stations – and/or CUSC Paragraphs 6.5.8 or 6.5.5.11*], the commissioning process generally or otherwise that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity**, **The Company** shall advise the **User** accordingly in writing setting out its reasons and seeking clarification of the position from the **User**.
- 7.4.2** The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and /or data provided by the **User** to **The Company** to reflect this.
- 7.4.3** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.2 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.4** In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **Developer's Equipment** will be such that it will not reasonably be capable of generating at the **Developer Capacity** , **The Company** shall inform the **User** and the **Developer** in writing that it intends to amend the **Developer Capacity** in this **Construction Agreement** [and the associated **BELLA**] to reflect the whole MW figure that it reasonably believes the **Developer's Equipment** will be capable of generating at.
- 7.4.5** The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that the **Developer's Equipment** will be capable of generating at the **Developer Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.

v1.9 – 9 January 2014

## WACM4

- 7.4.6** In the event that **The Company** is satisfied from the information provided in accordance with Clause 7.4.5 by the **User** that the **Developer's Equipment** will be such that it will be capable of generating at the **Developer Capacity** **The Company** shall notify the **User** accordingly.
- 7.4.7** Where notwithstanding the **User's** response **The Company** remains of the view that the **Developer's Equipment** will be such that it will not be capable of generating at the **Developer Capacity** or at or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in Clause 7.4.5 above **The Company** will issue the **Notice of Reduction** to the **User** and the **Developer** and will send a copy of the same to the **Authority**.
- 7.4.8** Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and the **Developer Capacity** in this **Construction Agreement** [and Appendix A of the associated **BELLA**] shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments to Appendix A of the associated **BELLA** and the date they take effect shall be as set out in the **Authority's** determination.
- 7.4.9** After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as it requires as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and as a consequence to the [**Bilateral Connection Agreement** or **Agreement to Vary**] [and **BELLA**]. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** [and **BELLA**] to the **Authority**, the date of determination) of such amendments by way of agreement(s) to vary. The agreement to vary will also provide for payment by the **User** of the **Reduction Fee** [and on such reduction in **Developer Capacity** taking effect the **User** shall pay the **Cancellation Charge** in respect of the reduction such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of Standard Condition C9 Paragraph 4 of the **Transmission Licence**.]<sup>9</sup>
- 7.4.10** Where as a result of the reduction in the **Developer Capacity** effected by the **Notice of Reduction** the **Developer** is no longer an **Embedded Exemptable**

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<sup>9</sup> Not used in an Associated DNO Construction Agreement where associated with a BELLA

## WACM4

**Large Power Station** and as a result the **BELLA** is to be terminated as provided for in the **BELLA** then the following provisions shall apply:

- 7.4.10.1** The agreement to vary referred to in Clause 7.4.9 above shall also provide for such amendments as are necessary to the **Construction Agreement** and [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer to be party to a **BELLA** but is a **Relevant Embedded Small Power Station**.
- 7.4.10.2** Where **The Company** determines that the reduction in the **Developer Capacity** effected by the **Notice of Reduction** is such that if a **Request for a Statement of Works** had been made by the **User** on the basis of that reduced **Developer Capacity** on the same date as, but instead of, the **Developer's** application for the **BELLA** then no works would have been required on the **National Electricity Transmission System** then **The Company** shall be entitled to terminate this **Construction Agreement** and the provisions of Clause 11 shall apply. In such case **The Company** shall be entitled to make such amendments as are necessary to the [**Bilateral Connection Agreement** or **Agreement to Vary**] to reflect the fact that the **Developer** is no longer party to a **BELLA** but is a **Relevant Embedded Small Power Station**.
- 7.4.10.3** **The Company** and the **User** shall treat the **Developer** as if it had been a **Relevant Embedded Small Power Station** at the time of its application for a **BELLA** and for the purposes of **CUSC** Paragraph 6.5 as if a) the **Developer's** application for the **BELLA** had been a **Request for a Statement of Works** under **CUSC** 6.5.5, b) this **Construction Agreement** had been entered into as a result of the **Modification Application** referred to in **CUSC** Paragraph 6.5.5.5, c) the **Notice of Reduction** is a revised **Request for a Statement of Works** from the **User** under **CUSC** Paragraph 6.5.5.8 by reference to the reduction in the **Developer Capacity** effected by the **Notice of Reduction** and d) the agreement to vary referred to in Clause 7.4.10.1 or 7.4.10.2 as **The Company's** response to the **User's** revised **Request for a Statement of Works** and the provisions of **CUSC** Paragraph 6.5 shall apply on that basis.
- 7.5** Where there is a reduction in **Developer Capacity** under Clause 7.4 prior to the **Charging Date**, on such reduction in **Developer Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.<sup>10</sup>

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<sup>10</sup> Not used in an Associated DNO Construction Agreement where associated with a BELLA

## WACM4

### 8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

The **User** shall ensure that on the **Completion Date** the **User's Equipment** complies with the site specific technical conditions set out in Appendices F1-5 to the **Bilateral Connection Agreement** .

### 9. PROVISION OF SECURITY

Where required to do so under **CUSC** Section 15, the **User** shall provide **The Company** with security arrangements in accordance with **CUSC** Section 15 Part Three in respect of the **User's** obligations to pay the **Cancellation Charge** to **The Company** on termination of this **Construction Agreement** or a reduction in **[Transmission Entry Capacity]** **[Developer Capacity]** prior to the **Charging Date**. <sup>11</sup>

### 10. EVENT OF DEFAULT

Once any of the **Events of Default** in Paragraph 5.3.1 and/or Paragraph 5.4.6.2 and/or Paragraph 5.4.6.3 of the **CUSC** has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of Clause 11 shall apply.

### 11. TERMINATION

11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:

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

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<sup>11</sup> Not used in an Associated DNO Construction Agreement where associated with a BEGA or BELLA

## WACM4

or such longer period as may be agreed between **The Company** or the **Relevant Transmission Licensee** (as appropriate) and the **User**.

**11.2** The **User** shall where this **Construction Agreement** terminates prior to the **Charging Date** be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.<sup>12</sup>

## 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] [Bilateral Embedded Generation Agreement] [BELLA] [Associated DNO Construction Agreement]**<sup>13</sup> and in the event that this is prior to the **Charging Date** the **User** the provisions of Clause 11 shall apply.

**12.3** The associated **[Bilateral Connection Agreements or Agreement to Vary the Bilateral Connection Agreement]** will automatically terminate upon termination of this **Construction Agreement** prior to the **Charging Date**.

**12.4** Any provisions for payment shall survive termination of this **Construction Agreement**.

## 13. CUSC

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

## 14. DISPUTES

**14.1** Except as specifically provided for in Clause 14.2 of 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**.

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<sup>12</sup> Not used in an **Associated DNO Construction Agreement** where associated with a **BEGA** or **BELLA**

<sup>13</sup> Edit as appropriate

## WACM4

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

### 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**.

[15.4 Where there is a change to the “developer capacity” (as specified in the associated **BELLA**) **The Company** after first notifying the **User** of its intention to do so shall be entitled to amend the **Developer Capacity** so that it reflects the “developer capacity” in the associated **BELLA**.]<sup>14</sup>

### 16. Distributed Generation<sup>15</sup>

The rights and obligations of the **User** and **The Company** pursuant to this **Construction Agreement** are subject to the **Developer** having entered into a **BELLA** before such rights and obligations arise. In the event that the **BELLA** has not been entered into by [insert date] then the **User** or **The Company** may terminate this **Construction Agreement**.]

### 16. Distributed Generation<sup>16</sup>

16.1 In consideration of and recognising the provisions at Clause 16.4 of this **Construction Agreement** and notwithstanding that the liability for the **Cancellation Charge** rests with the **User**, the **User** will within 5 **Business Days** of receipt of the same provide the **Developer** with a copy of the **Cancellation Charge Secured Amount Statement**.

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<sup>14</sup> Used in an Associated DNO Construction Agreement where associated with a **BELLA**

<sup>15</sup> Used in an Associated DNO Construction Agreement where associated with a **BELLA**

<sup>16</sup> Used in an Associated DNO Construction Agreement where associated with a Relevant Embedded Small power Station or Relevant Embedded Medium Power Station

## WACM4

16.2 Where this Construction Agreement is entered into by reference to and provides for the Construction Works required as a consequence of more than one Developer a Cancellation Charge, Cancellation Charge Statement and Cancellation Charge Secured Amount will be prepared by reference to each Developer and the reference to "Cancellation Charge" "Developer" and "Developer Capacity" in this Construction Agreement and CUSC Section 15 shall be construed accordingly.

16.3 In the event that the/a Developer reduces its Developer Capacity and/or terminates its agreement for connection to the Distribution System the User shall notify The Company in writing within 5 Business Days of that event.

16.4 In the event of a Cancellation Charge Shortfall:

16.4.1 On application by the User in writing (which cannot be made prior to the Shortfall Application Date and without the conditions at Clause 16.5 having been met), The Company shall pay the Cancellation Charge Shortfall to the User together with interest calculated thereon on a daily basis at Base Rate from the date of the payment of the Cancellation Charge to The Company by the User to the date of the payment of the Cancellation Charge Shortfall by The Company to the User.

16.4.2 The User shall keep The Company advised as to any ongoing process to recover the Cancellation Charge Shortfall and any associated interest charges from the Developer and notify The Company when it has reasonable grounds to believe that it is not practicable to take any further action) to recover the Cancellation Charge Shortfall from the Developer.

16.4.3 If at any time the User subsequently successfully recovers the Cancellation Charge Shortfall in full or part from the Developer, the User shall forthwith notify The Company and pay the amount received to The Company together with interest calculated thereon on a daily basis at Base Rate from the date of the payment of the Cancellation Charge Secured Amount to The Company by the User to the date of the payment of the Cancellation Charge Shortfall by the User to The Company.

16.5 In order for the User to make an application for payment of a Cancellation Charge Shortfall the following conditions must have been met and evidence of this provided to The Company by the User with the application.

i) that the User asked the Developer whether or not it wishes the User to elect for the Fixed Cancellation Charge and elected accordingly; and

v1.9 – 9 January 2014

**WACM4**

ii) (in respect of its liability for the **Cancellation Charge** as it relates to this **Construction Agreement**) for each **Security Period** the **User** only sought security from the **Developer** for the amount as set out in the **Cancellation Charge Secured Amount Statement** for that **Security Period**)

**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]** )



**WACM4**

**APPENDIX [B]  
ONE OFF WORKS**

v1.9 – 9 January 2014

**WACM4**

**APPENDIX [G]**

**TRANSMISSION CONNECTION ASSET WORKS**

v1.9 – 9 January 2014

**WACM4**

**APPENDIX [H]**

**TRANSMISSION REINFORCEMENT WORKS**

**Part 1            Enabling Works**

**Part 2            Wider Transmission Reinforcement Works**

v1.9 – 9 January 2014

**WACM4**

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

v1.9 – 9 January 2014

**WACM4**

**APPENDIX [J]**  
**CONSTRUCTION PROGRAMME**

v1.9 – 9 January 2014

**WACM4**

**APPENDIX [K]**

**LIQUIDATED DAMAGES**

Company:

Connection site:

Type:

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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 £XXXXXX per week subject to the limit that the total Liquidated Damages payable by The Company to the User under this Clause shall not exceed £XXXXXX.

v1.9 – 9 January 2014

**WACM4**

**APPENDIX [L]**

**INDEPENDENT ENGINEER**

Company:

Connection site:

Type:

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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.

v1.9 – 9 January 2014

WACM4

APPENDIX [MM]<sup>17</sup>

**ATTRIBUTABLE WORKS AND KEY CONSENTS**

Part 1

**Attributable Works**

Part 2

**Key Consents**

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<sup>17</sup> Not used in an Associated DNO Construction Agreement associated with a BEGA



**WACM4**

**APPENDIX [N]**  
**THIRD PARTY WORKS**

v1.9 – 9 January 2014

**WACM4**

**APPENDIX [P]**

**DEVELOPER'S DATA**

Power Station

Location of Power station

Connection Site (GSP)

Site of Connection

Agreement Reference

[Insert details equivalent to data listed in part 1 of the planning code]

Anticipated date when Power Station's connection to use of the Distribution System will be energised.

v1.9 – 9 January 2014

**WACM4**

**SCHEDULE 2 EXHIBIT 3**

**PART 2**

v1.9 – 9 January 2014