

DATE:

201[●]

NOVATION AGREEMENT RELATING TO THE CUSC AND CUSC AGREEMENTS

Between

NATIONAL GRID ELECTRICITY TRANSMISSION PLC

NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED

and

NATIONAL GRID ELECTRICITY TRANSMISSION PLC ON BEHALF OF THE CUSC PARTIES

Drafting notes:

This does not include provisions governing the ongoing relationship between NGET and NGESO which will be addressed in regulatory terms through the relationship under the System Operator-Transmission Owner Code and otherwise in the business transfer agreement.

TABLE OF CONTENTS

1.	Interpretation	2
2.	CUSC	3
3.	General.....	3
Schedule 1		5
List of CUSC Parties		5

THIS AGREEMENT is made on the [●] day of [●] 20[●]

BETWEEN:

- (1) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC**, a company registered in England under number 02366977, whose registered office is at 1-3 Strand, London, WC2N 5EH (the “**Transferor**”);
- (2) **NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED**, a company registered in England under number 11014226, whose registered office is at 1-3 Strand, London, WC2N 5EH (the “**Transferee**”); and
- (3) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC ON BEHALF OF ALL THE CUSC PARTIES**

(together the “**Parties**” and each a “**Party**”).

RECITALS:

- (A) The Transferor owns the Transmission System (as defined in its Transmission Licence) and currently operates the National Electricity Transmission System.
- (B) Following a decision by the Authority in 2017 that the role of operating the NETS and associated activities (the “**SO Role**”) should be undertaken by a different entity from the Transferor (as owner of the Transmission System), a number of steps have been taken to effect this.
- (C) The Transferor and the Transferee applied to the Authority for consent to the transfer in part of the Transferor’s Transmission Licence to the Transferee with effect from the Transfer Date. The Authority granted this consent on [●].
- (D) The Transferor and the Transferee have also entered into a business transfer agreement, which will come into effect on the Transfer Date to transfer assets and liabilities relating to the SO Role to the Transferee.
- (E) Modifications have been proposed to various industry codes to give effect to the transfer of the SO Role, including a modification to the CUSC proposed by the Transferor, being CUSC Modification Proposals CMP293 and CMP294 (Modifications relating to the transfer of the system operator role from National Grid Electricity Transmission plc to National Grid Electricity System Operator Limited) (“**CMP293 and CMP294**”).
- (F) **CMP293 and CMP294** were approved by the Authority on [●].
- (G) Pursuant to CMP293 and CMP294, the CUSC was modified to grant the Transferor the power to enter into a novation agreement, on behalf of itself and the CUSC Parties, to effect the novation of the CUSC Agreements from the Transferor to the Transferee.
- (H) This novation agreement is entered into by the Transferor on its own behalf and on behalf of the CUSC Parties pursuant to the power referred to in recital (G) and by the Transferee on its own behalf.
- (I) The Parties acknowledge that the Transferor entered into Interface Agreements¹ under the CUSC pursuant to its role as the owner of the Transmission System and that such Interface Agreements shall remain with the Transferor and not be novated as part of this Agreement.

¹ Are there any other agreements that the CUSC Parties would welcome clarifying in this way?

IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, including the recitals, except where the context otherwise requires the following words and expressions shall have the following meanings:

“**CUSC**” means the document designated by the Secretary of State and adopted as the CUSC pursuant to the Transmission Licence as from time to time modified pursuant to the Transmission Licence;

“**CUSC Agreements**” means the CUSC Framework Agreement, all Bilateral Agreements², all Construction Agreements, all Mandatory Services Agreements and all Transmission Related Agreements;

“**CUSC Parties**” means the parties to the CUSC Framework Agreement (except for the Transferor) as at the date of this Agreement, a non-definitive list of whom is included in Schedule 1;

“**Liabilities and Obligations**” means all wholly or partly undischarged or wholly or partly unperformed liabilities and obligations (and all claims arising from them) whenever, whatsoever and howsoever arising in connection with the CUSC Agreements (in each case whether known or unknown, actual, accrued, future, contingent or prospective, and whether arising in statute, contract, tort or otherwise) which immediately before the Transfer Date attach to the Transferor or which after the Transfer Date would have attached to the Transferor in the absence of this Agreement;

“**Rights**” means all rights and benefits (and all claims arising from them) whenever, whatsoever and howsoever arising in connection with the CUSC Agreements (in each case whether known or unknown, actual, accrued, future, contingent or prospective, and whether arising in statute, contract, tort or otherwise) which immediately before the Transfer Date belong to the Transferor or to which the Transferor would have been entitled after the Transfer Date in the absence of this Agreement;

“**Transfer Date**” means the date on which the transmission licence granted to National Grid Electricity Transmission Plc is transferred in part to National Grid Electricity System Operator Limited to reflect the transfer of the SO Role; and

“**Transmission Licence**” means the licence granted pursuant to National Grid Electricity Transmission Plc pursuant section 6(1)(b) of the Electricity Act 1989.

Words and phrases not defined herein and defined in the CUSC shall have the meaning given to them in the CUSC unless the context requires otherwise.

1.2 Headings are used in this Agreement for convenience only and shall not affect its interpretation.

1.3 In this Agreement, unless otherwise stated or the context otherwise requires, references to recitals, schedules, clauses and sub-clauses are, respectively, to recitals, schedules, clauses and sub-clauses of this Agreement.

1.4 Unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and references to any gender shall include all other genders. References to any person include bodies corporate, unincorporated associations, partnerships, governments,

² Are there any other agreements that the CUSC Parties would welcome clarifying in this way?

governmental agencies and departments, statutory bodies or other entities, in each case whether or not having a separate legal personality and shall include such person's successors.

2. CUSC

2.1 Without prejudice to section 6.15.11 of the CUSC and the fact that the Transferor will have received and retain historic data, with effect from the Transfer Date the CUSC Parties shall release the Transferor from the observance, performance and discharge of the Liabilities and Obligations and:

2.1.1 the Transferee shall be entitled to the Rights in place of and to the exclusion of the Transferor;

2.1.2 the Transferee undertakes and covenants with the CUSC Parties to assume, observe, perform, discharge and be bound by the Liabilities and Obligations in place of and to the exclusion of the Transferor; and

2.1.3 the CUSC Parties shall accept the observance, performance and discharge of the Liabilities and Obligations and the assumption of the Rights by the Transferee in place and to the exclusion of the Transferor;

as if the Transferee had at all times been a party to the CUSC Agreements and the CUSC Agreements shall be read and construed accordingly.

2.2 The Parties agree and acknowledge that as the Transferee is taking on the SO Role in place of the Transferor (a) all things done by the Transferor pursuant to and in the context of the CUSC and the CUSC Agreements before the Transfer Date shall be deemed from the Transfer Date to have been performed not by the Transferor but by the Transferee and (b) all things received by the Transferor pursuant to and in the context of the CUSC and the CUSC Agreements before the Transfer Date shall be deemed (to the extent legally permitted) from the Transfer Date to have been received not by the Transferor but by the Transferee .

2.3 This Agreement shall be treated as constituting all actions, confirmations, consents and undertakings required of the CUSC Parties, the Transferor and the Transferee under the CUSC Agreements for the purpose of giving effect to the novation.

3. General

3.1 Each Party, from time to time on being required to do so by or on behalf of another Party, shall promptly and at its own cost and expense do or procure the doing of all such acts or execute or procure the execution of all such documents in such form as the Party which has required it may reasonably consider necessary for giving full effect to this Agreement and securing to that Party the full benefit of the rights, powers and remedies conferred upon that Party in this Agreement.

3.2 In addition to the rights of the CUSC Parties, nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

3.3 This Agreement and any non-contractual rights or obligations arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales to settle any dispute which may arise out of or in connection with this Agreement or its subject matter.

Signed by the Parties or their duly authorised representatives on the date first above written.

The common seal of) Seal:
NATIONAL GRID ELECTRICITY)
TRANSMISSION PLC LIMITED
was affixed to this deed)
in the presence of:)
.....)
Authorised Signatory)

Member of Board Sealing Committee

The common seal of) Seal:
NATIONAL GRID ELECTRICITY SYSTEM)
OPERATOR LIMITED
was affixed to this deed)
in the presence of:)
.....)
Authorised Signatory)

Member of Board Sealing Committee

The common seal of) Seal:
NATIONAL GRID ELECTRICITY)
TRANSMISSION PLC ON BEHALF OF ALL
OF THE CUSC PARTIES
was affixed to this deed)
in the presence of:)
.....)
Authorised Signatory)

Member of Board Sealing Committee

SCHEDULE 1

[List of CUSC Parties]