



## **CONSULTATION DOCUMENT**

### **CUSC Amendment Proposal CAP131**

#### **User Commitment**

*The purpose of this document is to consult on Amendment Proposal CAP131 with CUSC Parties and other interested Industry members*

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## 1.0 SUMMARY AND VIEWS

### Executive Summary

- 1.1 CAP131 User Commitment was proposed by National Grid and submitted to the Amendments Panel on 29<sup>th</sup> September 2006.
- 1.2 The CAP131 Amendment Proposal applies to TEC Users and seeks to add a new Schedule 4 in the CUSC defining the principles of "User Commitment". The new section would transparently define the charge a TEC User would face in terminating its Construction Agreement and therefore the level to be secured during the Construction Programme for infrastructure works. Other changes would also be made to Section 6 of the CUSC to increase the period existing TEC Users would be required to notify National Grid in advance of reductions to TEC.
- 1.3 During the CUSC Working Group discussions six Alternative Amendments were raised, all of which were deemed by a majority of the Working Group to better facilitate the applicable CUSC objectives when compared to the original amendment proposal. These alternatives are referred to as A1, A2, A3, B1, B2 and B3 with the "A" variants including Section 6 changes and the "B" variants excluding them.

### Working Group Recommendation

- 1.4 All of the Alternative Amendments received some support from the Working Group as better than the current baseline. Alternative Amendment B3 received most support from the Working Group.

### National Grid's View

- 1.5 National Grid believes that Alternative Amendment A1 best facilitates the applicable CUSC objectives.

## 2.0 PURPOSE AND INTRODUCTION

- 2.1 This is a consultation document issued by National Grid under the rules and procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State.
- 2.2 Further to the submission of Amendment Proposal CAP131 and the subsequent evaluation by the CAP131 Working Group, this document seeks views from industry members relating to the Amendment Proposal and the Working Group Alternative Amendment.
- 2.3 CAP131 was proposed by National Grid and submitted to the CUSC Amendments Panel for consideration at the meeting on 29<sup>th</sup> September 2006. The CAP131 Working Group Report was submitted to the CUSC panel meeting on 23<sup>rd</sup> February 2007. Following evaluation by the Working Group, the Amendments Panel determined that CAP131 was appropriate to proceed to wider industry consultation by National Grid.
- 2.4 This consultation document outlines the discussions held by the Working Group and the nature of the CUSC changes that are proposed. Representations received in response to this consultation document will be

included in National Grid's Amendment Report that will be submitted to the Authority for their decision.

- 2.6 This consultation document has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at [www.nationalgrid.com/uk/Electricity/Codes/](http://www.nationalgrid.com/uk/Electricity/Codes/) along with the Working Group Report for CAP131 and the Amendment Proposal form. This document invites views on CAP131 and the closing date is **13<sup>th</sup> April 2007** for responses including any Consultation Alternatives.
- 2.7 CUSC Parties are reminded that any Consultation Alternatives must be submitted by the above closing date and must be in writing and contain sufficient detail in accordance with the requirements within CUSC 8.15.2

### **3.0 PROPOSED AMENDMENT**

- 3.1 This section describes National Grid's original amendment proposal. It was developed following extensive industry feedback received through National Grid's "Managing the GB Queue" consultation, Transmission Price Control Review consultations and also the Ofgem led Access Reform Options Development Group.
- 3.2 Under the existing arrangements, on termination of a Construction Agreement a TEC User is liable for "final sums". These "final sums" are based on the costs incurred by National Grid in undertaking the transmission works to provide the connection to use of system required by that user which effectively are unnecessary as a result of the termination. These costs are therefore uncertain because although estimates are provided, the exact cost due on termination will not be known until after termination. The level of these costs also varies, generally increasing in significant steps during the construction programme as National Grid progresses the works. There is also in this approach a need to associate specific transmission construction works (and therefore the costs associated with these) to a particular user or group of users. This can result in a user, due to the timing of its application or Completion Date and the amount of transmission construction works now generally required to accommodate the level of requested capacity on the transmission system, becoming liable for significant amounts compared with the size and cost of its own development. The level of liability is also subject to change as the transmission construction works change which can be affected by other users.
- 3.3 CAP131 seeks to address perceived CUSC defects in the existing regime that were identified during the above consultation processes and has the following objectives:
- Improve the arrangements for determining (and therefore securing) a user's liability in respect of the costs of infrastructure transmission works by developing a clear and transparent method of calculating these in relation to all users;
  - Adopting an approach to these liabilities that would reduce the overall level, volatility and uncertainty of those liabilities during the life of the project;
  - Improve efficiency in network planning by increasing the notice period for reductions in transmission entry capacity from 5 days to 2 years.

- 3.4 The proposal aims to replace the current arrangements for cost reflective final sums in relation to infrastructure<sup>1</sup> transmission works with a non-refundable liability calculated on the basis of a generic methodology. The proposal also contends that defining a minimum notice period for reductions in TEC would additionally provide earlier information relating to utilisation of the transmission system by existing TEC Users and so provide a better opportunity to reflect this in assessing transmission reinforcements required for new users.
- 3.5 The proposal aims to de-link the project-specific costs of transmission infrastructure investment currently secured by TEC Users through “final sums” and replace this with a generic methodology based on a non-refundable termination charge payable on termination. Based on analysis of capital expenditure projections during the current price control period, it is estimated that on the basis of the sums derived from a multiple of 6 times the prevailing Generation TNUoS tariff, those TEC Users applying for new TEC or increases in TEC will be securing approximately 50% of the costs of investment to accommodate all generation entry forecast between 2007 and 2012. Therefore the proposal is that TEC Users applying within this price control for new TEC or increases in TEC will be liable, depending on the time of termination, for a charge of £1, £2, or £3 per kW or a multiple of 6 times the prevailing Generation TNUoS tariff multiplied by the capacity of the project (subject to a minimum £3/kW tariff to broadly reflect local connection costs). The following paragraphs describe the mechanism and calculation of the level of such charge for new TEC applications or applications to increase TEC.
- 3.6 When an application has been received by National Grid, within 3 months it will make an offer which will include a Completion Date (the date at which the User will be entitled to rights to use the transmission system and will become liable for Generation TNUoS charges). This will be the earliest time, in National Grid’s best view, that the relevant transmission capacity to accommodate this user can be delivered.
- 3.7 The offer will set out the payments due on termination, User Commitment Amounts before the Trigger Date, and Cancellation Amounts between the Trigger Date and Completion Date. The process is described in the Figure 1 below.

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<sup>1</sup> CAP131 only applies to infrastructure works and the modification does not propose any changes to the derivation of connection asset, one-off or advanced services works which will continue to be calculated on a project specific cost-reflective basis using the current methodology as defined in “The Statement of the Connection Charging Methodology” and can be found on the National Grid website.

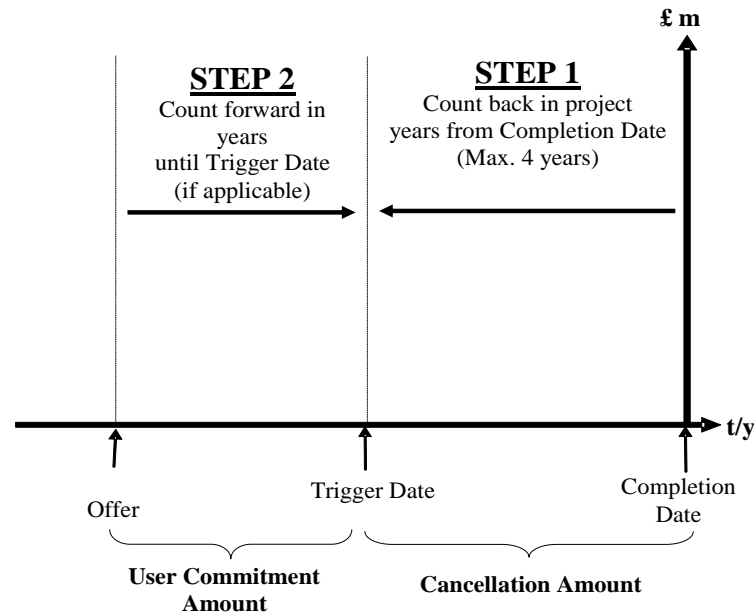


Figure 1: Calculation of Security Timescales

- 3.8 In most cases, it can be expected that following the Trigger Date, the majority of applications for new TEC or increases in TEC will result in a Completion Date within 4 years. It should be noted that under the CAP131 arrangements, National Grid will retain the right in the Construction Agreement to delay the Completion Date owing to unforeseen circumstances beyond its control.
- 3.9 The Trigger Date is defined by the GBSO and specified in the Construction Agreement such that the Completion Date can be achieved. Whilst the intention is to accurately define the Trigger Date at the outset, the date may vary to reflect delays to the construction programme or construction works.
- 3.10 The User Commitment Amount comprises a liability (User Commitment Amount - UCAM) of £1/kW commencing upon signature of the Construction Agreement. This increases by £1/kW for each full year from the signature date, up to the Trigger Date subject to a cap of £3/kW. The User would be liable to pay this sum in the event that its Construction Agreement with National Grid is terminated prior to the Trigger Date. The UCAM will be non-refundable.
- 3.11 Where the delivery of the Completion Date requires construction works and no consents are needed, and the Completion Date is more than 4 full years from the date of the Offer, the User is liable for the UCAM upon signature of the Construction Agreement until 4 full years before the Completion Date. Therefore the Trigger Date for projects with no required consents is 4 full years from the Completion Date. Where the Completion Date is within 4 full years before completion, and no consents are needed, the User will become liable for the Cancellation Amount on signature of the Offer and the UCAM will not apply.

- 3.12 In the event that a TEC User reduces the level of TEC requested prior to the Trigger Date, the TEC User will be liable for the Capacity Reduction Charge, which will be calculated as follows:

$$\text{Capacity Reduction Charge}_t = \text{User Commitment Amount}_t - [\text{TEC}_r \times \text{UCAT}]$$

Where;

- $\text{TEC}_r$  is the revised TEC following TEC reduction
- UCAT is the relevant User Commitment Amount Tariff in year t (i.e. £1/kW, £2/kW £3/kW)

- 3.13 Once the Trigger Date has been reached, the User will become liable for the Cancellation Amount on termination rather than the UCAM and this will be calculated as follows:

$$\text{CancellationAmount}_t = \text{TEC} \times \text{GenTNUoS}_z \times X \times T_t$$

Where;

- Cancellation Amount<sub>t</sub> is the liability due on termination of the Construction Agreement in the relevant full year
- TEC is the higher of the new TEC or CEC or the higher of the increase in TEC or CEC requested (in kW)
- GenTNUoS<sub>z</sub> is the zonal Generation TNUoS tariff applicable to the generation project and published in the Statement of Use of System Charges. If a project is located in a Generation TNUoS Charging Zone which has a negative tariff, or a tariff less than £3/kW, a minimum “floor” value of £3/KW tariff will apply. If a project is not located in a Generation TNUoS Charging Zone (e.g. offshore or island connections), then the appropriate Generation TNUoS tariff will be calculated by National Grid as part of the application process in accordance with the Charging Methodology.
- X is a multiplier and is established by National Grid at the beginning of each Transmission Price Control Period. For current offers and those made during the period April 2007 to April 2012 X will be 6.
- T<sub>t</sub> is a fraction which varies according to the number of full years from the Completion Date to the Trigger Date. In the full year (t) prior to the Completion Date, T=1. In the full year prior to year t (i.e. t-1) T=0.75. In the full year prior to t-1 (i.e. t-2) T=0.5. In the full year prior to t-2 (i.e. t-3) T=0.25.
- $\text{TEC}_r$  is the revised TEC following TEC reduction
- UCAT is the relevant User Commitment Amount Tariff in year t (i.e. £1/kW, £2/kW £3/kW)

- 3.14 The level and profile of the Cancellation Amount (CA) is fixed upon signature of the Construction Agreement using the prevailing Generation TNUoS tariff at the time that the offer is made.

- 3.15 This enables the following calculation:

**CA Year-4**

$$CancellationAmount_{t-3} = TEC * GenTNUoS_z * X * 0.25$$

**CA Year-3**

$$CancellationAmount_{t-2} = TEC * GenTNUoS_z * X * 0.5$$

**CA Year-2**

$$CancellationAmount_{t-1} = TEC * GenTNUoS_z * X * 0.75$$

**CA Year-1**

$$CancellationAmount_t = TEC * GenTNUoS_z * X * 1$$

- 3.16 In the event that a TEC User reduces the level of TEC requested prior to the Completion Date, the TEC User will be liable for the Capacity Reduction Charge, which will be calculated as follows:

$$Capacity\ Reduction\ Charge_t = Cancellation\ Amount_t - [TEC_t \times GenTNUoS_z \times X \times T_t]$$

- 3.17 In the event a connection or increase in capacity can be achieved within four financial years, and construction works are required, then no UCAM will be payable and the applicable Cancellation Amount will be determined according to the above formulas relative to the Completion Date providing there is no Trigger Date.
- 3.18 The original Amendment Proposal suggests that the above User Commitment should also apply to those projects where there are no transmission asset works.
- 3.19 The securities described above can be summarised in Figure 2 below:



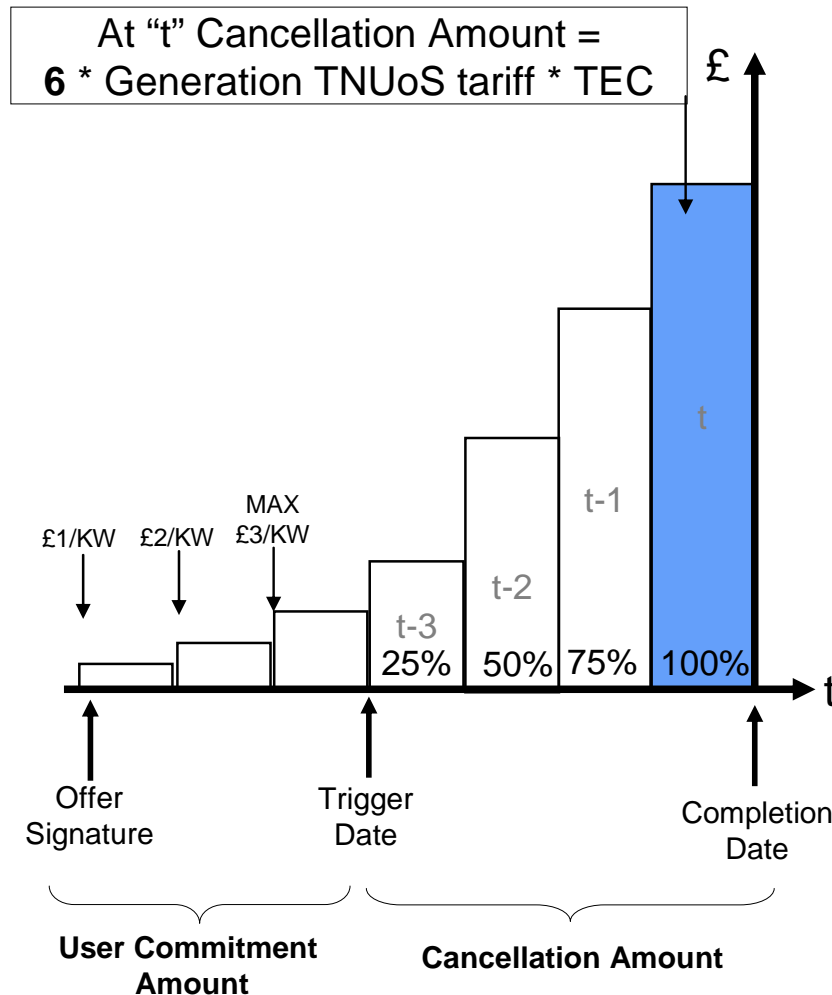


Figure 2: Generic Securities for new TEC or Increases in TEC

- 3.20 The original Amendment proposes that the above User Commitment should also apply to those projects where there are no transmission asset works.
- 3.21 Under the current CUSC provisions a user can reduce its TEC on 5 business days notice prior to the start of a financial year. The following paragraphs describe the proposed change to this. For clarity, this would, as today, only apply to existing TEC Users i.e. those TEC Users that have passed the Completion Date. Notification of a reduction in TEC prior to the Completion Date would incur the Capacity Reduction Charge related to the appropriate percentage of the  $6 * \text{Gen TNUoS} * \text{TEC}$  described in section 3.16 above.
- 3.22 In relation to a decrease in TEC, this aspect of the proposal aims to provide a financial incentive to existing TEC Users to provide National Grid with a number of years notice of reductions in required transmission capacity. The number of years will be derived in accordance with any relevant transmission licence obligation or

provision (if appropriate), but otherwise it will be 2. In the event an existing TEC User reduces TEC without providing National Grid with 2 years notice, the TEC User would be liable to pay 2 times the generation TNUoS tariff (or modulus of the tariff in negative charging zones) multiplied by the reduction in capacity.

- 3.23 An existing TEC User would not be exposed to any liability whatsoever if National Grid is informed in writing of its intention to reduce its TEC at least two full years in advance of the intended TEC reduction date. Following notification of the intended TEC reduction National Grid would as soon as practicable issue a revised Appendix C for the purposes of the relevant Bilateral Agreement reflecting the decrease in the TEC to take effect from the specified future date. After the TEC reduction date, a TEC User's firm transmission access rights for that capacity would be relinquished and the new value of the station TEC would take effect.
- 3.24 Where an intended TEC reduction has not been notified to National Grid with two full years notice, an existing TEC User would become liable to pay the following User Commitment Charge:

$$UserCommitmentCharge = dTEC * |GenTNUoS_z| * Y$$

Where;

- $dTEC$  = The actual reduction in TEC
- $|GenTNUoS_z|$  = Modulus of the Generation TNUoS tariff of the power station in the relevant zone (z) subject to a minimum of £3/KW
- $Y$  = multiplication factor of Generation TNUoS that is to be paid i.e. 2

- 3.25 The User Commitment Charge would become payable as soon as the User notifies National Grid of an intention to reduce TEC without providing 2 full years notice. The TEC User would be invoiced for the outstanding sum.
- 3.26 The User Commitment Charge would be in addition to the Generation TNUoS payments made through normal operation of the power station under current arrangements.

#### 4.0 SUMMARY OF WORKING GROUP DISCUSSIONS

- 4.1 This section summarises the main areas of Working Group discussion. A more detailed review can be found in the Final Working Group Report submitted to the CUSC Panel and this can be downloaded from the National Grid website at the following url:

[http://www.nationalgrid.com/NR/ronlyres/8DAE79C3-FA53-46A6-9802-1AABD70E3C3C/15375/Feb07\\_04.pdf](http://www.nationalgrid.com/NR/ronlyres/8DAE79C3-FA53-46A6-9802-1AABD70E3C3C/15375/Feb07_04.pdf)

## Cost Reflectivity

- 4.2 The Group spent considerable time discussing whether the sums delivered under the generic arrangements would be broadly cost reflective and focused on six areas: User Commitment Amounts; Generation TNUoS tariffs as an investment proxy; the £3/KW tariff floor; multiplier value; shape of Cancellation Amounts; and asset re-use.
- 4.3 The rationale for the non-refundable User Commitment Amount is that all users should provide a reasonable commitment when offers are accepted for connection to and use of the Transmission System. Presently, in most cases cost reflective final sums can be very low or zero until work commences and hence there may be little incentive for TEC Users to fully consider the viability of projects before Bilateral Agreement signature. This could lead to unviable projects being accepted and included in the background against which transmission reinforcements are planned. In addition, the increasing nature of the User Commitment Amount up to £3/kW is designed to incentivise unviable projects to terminate at the earliest possible stage. The Working Group examined evidence presented by National Grid and agreed that the User Commitment Amount is reflective of the costs of obtaining consents and undertaking pre-engineering works.
- 4.4 The Working Group considered in great detail the adequacy of using Generation TNUoS tariffs as a proxy to determine Cancellation Amounts. The analysis included comparison against a number of possible alternative proxies such as tariffs based on different zones or nodes and even a non-locational tariff. The Working Group expressed a number of concerns with the use of the full TNUoS tariff as the investment proxy, details and discussion of which can be found in the Final Working Group report. Perhaps the most significant concern and one that has led to the development of Alternative Amendments A2 and B2 is in relation to the zoning criteria for transmission charging. Parts of the transmission system for which similar reinforcements have been identified may be covered by more than one Generation TNUoS zone. In principle therefore, two TEC Users may be required to provide different levels of security when the actual cost of the reinforcement is the same for each. National Grid provided additional analysis to examine whether cost reflectivity is improved by using larger zones based on those published in the Transmission Price Control Review: Final Proposals on 4<sup>th</sup> December 2006. Whilst some marginal improvement in the overall cost reflectivity was measured, this needs to be weighed against the increase in complexity and derivation of an additional tariff to be used as the investment proxy. National Grid continues to believe that the use of pure Generation TNUoS tariffs subject to a minimum £3/kW is the most appropriate investment proxy and this was supported by a majority of the CAP131 Working Group.
- 4.5 Where Generation TNUoS tariffs are used as an investment proxy it is necessary to define a positive tariff floor for negative and marginally positive charging zones so that the costs of local reinforcements can be

adequately reflected. National Grid presented analysis using a sample of projects in E&W located in marginally positive and negative charging zones which suggested that £3/kW is a reasonable tariff floor to use.

- 4.6 The multiplier value or “X” was also discussed extensively. National Grid provided analysis that suggested X should be set to a value between 11 and 14. National Grid is satisfied that a value of 12 would recover the required CAPEX spend for new entry forecast over the next price control period against the current contracted background. The value of the multiplier should subsequently be reviewed at the beginning of each price control period. The Working Group agreed that on the basis of the evidence presented that 12 is a reasonable approximation.
- 4.7 Analysis was presented to the Working Group by National Grid to examine the profile and build up of the Cancellation Amounts (25% t-4, 50% t-3, 75% t-2, 100% t-1) as against the current cost reflective final sums “s-curves” and the step ups were found to be a reasonable approximation.
- 4.8 The Working Group requested that National Grid examine its assumption that all investment costs are sunk in the event of a project termination given the potential for asset re-use. National Grid presented analysis examining levels of asset re-use using empirical evidence from an England and Wales generation group. The Working Group agreed that asset re-use is extremely difficult to quantify and although the particular analysis performed suggested this was in the region of 14%, the Working Group agreed this could not be reliably applied across other regions. Given the difficulties in forecasting asset re-use, the Working Group concluded that this should not be included in the calculation of a generic charge. The consequence of this is that the value of any asset re-used will essentially be seen as a benefit to all users to the extent that the cost of that asset has been recovered under the generic user commitment called down from the terminating party.

#### **Applicability**

- 4.9 The Working Group considered the categories of parties to whom CAP131 should apply. This included projects with no works, non-TEC change transmission works, projects with long lead times, and embedded generators.
- 4.10 The original Amendment proposed applying the User Commitment Amount to all increases of TEC, even where no transmission works were anticipated. The Working Group felt that applying such a mechanism would not be consistent with cost reflectivity and lead to more complex contractual arrangements where the liability to pay charges would exist outside the current Construction Agreement. On this basis the Working Group agreed that it would not be appropriate to apply such charges to those projects where there were no required works.

- 4.11 The original amendment seeks to apply User Commitment on the basis of the higher of CEC or TEC for a given application. The intent was to capture those applications that request a connection to the main interconnected system in advance of TEC being made available. In such instances where a User is connecting to an *existing* substation connection in advance of TEC being available may be useful because of the opportunity to procure short term access products. The Working Group was concerned with the use of CEC as a commercial product and raised a number of scenarios that would involve National Grid completing transmission works but that do not involve a change to power station TEC. On this basis it was agreed that for simplicity and transparency the generic methodology would apply solely to changes in TEC and that the current cost-reflective final sums methodology would continue to be applied to all other changes.
- 4.12 The Working Group discussed long lead-time projects and in particular whether it was appropriate for projects with Completion Dates far in the future to be required to face a charge on termination. National Grid confirmed that the intention of the original amendment proposal was that the first stage of the generic user commitment would always apply on signature of the Construction Agreement (but that was on the expectation that a Completion Date is provided in that agreement). The alternative of the first stage commitment only applying from the date 7 years ahead of the Completion Date was suggested. Whilst this would be more cost reflective for most projects, there were concerns that this could lead to speculative projects remaining in the queue without an incentive to terminate. On balance, the Working Group agreed that it would be more appropriate for User Commitment to apply only to projects within seven years of the Completion Date.
- 4.13 The applicability of User Commitment to embedded generators was also discussed. The intention had been to apply the generic methodology to all TEC Users including those with a Bilateral Embedded Generation Agreements (BEGA). The Working Group agreed that connection works are to continue to be secured by the DNO using cost reflective final sums and that wider transmission works will be secured by the embedded generator using the generic methodology where applicable.

#### **Trigger Date**

- 4.14 The definition of the “Trigger Date” between the first and second stages of the generic commitment was identified as an issue by the Working Group. The Working Group agreed that the second “Cancellation Amount” stage should be limited to a maximum number of years. National Grid presented analysis to suggest that on a sample of England and Wales projects, an appropriate maximum should be 4 years, but emphasised that there is a significant standard deviation around this number.

- 4.15 In addition to the 4 year maximum, a 'Trigger Date' is required to avoid the over-securitisation of short lead-time projects and National Grid proposed the use of a 'transmission milestone date'. This date would be determined by National Grid on a project specific basis and would, in National Grid's reasonable opinion, best represent a proxy for significant financial commitment being made by the transmission companies. After much deliberation of possible alternatives the Working Group agreed this would be the most appropriate definition.

#### **Capacity Reduction Charge**

- 4.16 For new or incremental TEC the original amendment proposed imposing a Capacity Reduction Charge on power stations that reduce the level of required TEC before the Completion Date (such projects would effectively be treated as partial terminations and exposed to the appropriate generic charge on the difference in capacity levels). The purpose of such a mechanism would be to incentivise the most accurate application for TEC at the outset and to recognise that costs would have been incurred by National Grid on the basis of the higher TEC. In the current environment where capacity is extremely constrained in some areas of the country the temptation may be to apply for higher levels of capacity than is actually required either due to the uncertainty in planning decisions or procured manufacturing equipment, or even the perception that there may be value in holding TEC that could one day be traded.
- 4.17 Some members of the Working Group believed that such a mechanism would actually have the opposite effect to the one intended and drive applicants into withholding the latest information to avoid paying the Capacity Reduction Charge. Indeed, it was argued that new entrants may find it preferable to complete projects with the original TEC only to reduce the level with 2 years notice following Completion, and thereby effectively avoiding the majority of the Capacity Reduction Charge (and instead pay 2 years of TNUoS on the unutilised TEC).
- 4.18 Therefore, the Working Group agreed that there would be no point in implementing a Capacity Reduction Charge unless National Grid had the power to remove TEC from applicants on Completion, if the User had not constructed a power station that was capable of generating up to the requested TEC level. Some members of the Working Group saw the inclusion of such clauses in the Construction Agreement as unnecessarily draconian and outside the scope of the Terms of Reference for CAP131. The disagreement within the Working Group led to the development of Alternatives "A1" which includes reference to the Capacity Reduction Charge and "A3" which removes reference to the Capacity Reduction Charge.

#### **TEC Reduction by Existing Generation**

- 4.19 Investment in the transmission system for TEC Users, whilst triggered by increases in TEC, is required to accommodate those increases against a background of TEC for existing TEC Users. A requirement

for user commitment from new TEC Users and a longer notice period, or cost consequences if the minimum notice is not provided from existing TEC Users promotes better equality of access between new and existing TEC Users requiring both to give more considered thought to their actual long term TEC requirements. In terms of notice it better allows National Grid to take into account the existing TEC User's intentions in its transmission system planning or where notice isn't given to recover costs from that existing TEC User.

- 4.20 National Grid believes that an increase in the minimum period to reduce TEC from 5 days to 2 years is an appropriate balance. It will provide an opportunity for National Grid to more efficiently assess or adjust its transmission reinforcement investment planning for new users but such timescales should not unduly reduce generator flexibility.
- 4.21 In the case where a power station does not provide the notice required, the original Amendment proposes that the power station would be required to pay a sum equal to 2 years of the prevailing transmission charges in lieu of such notice. This would serve to reduce all users transmission charges in the following year and would partially offset the cost of any inefficient transmission investment caused.
- 4.22 The Working Group raised a number of concerns with the proposals for existing generators. Generators noted that it was very difficult to forecast capacity requirements two years ahead and that therefore these proposals represented an additional sunk cost associated with TEC reduction. Some members of the Working Group considered that actually, the proposals could perversely lead to generators retaining TEC reduction information once notice had been given to avoid liabilities and that this would not be in industry best interests. In addition, the Working Group noted that the proposals would not act as an incentive in negative TNUoS charging zones and liabilities in positive charging zones could potentially be avoided if trading capacity without 2 years notice was possible, as currently outlined in the CUSC. The Working Group agreed that replacing the liability to pay a charge if notice was not given with a requirement to provide a minimum 2 years notice but without allowing for earlier reduction on payment of a "charge" would be a better alternative. This suggestion led to the "A" Alternatives discussed later in this document. Some members of the Working Group maintained that the proposals for existing generators would not better facilitate the CUSC objectives and that the proposals for a 2 year notice period or charge in lieu of notice should be omitted. This led to the "B" Alternatives.

#### **Equity of Treatment between New and Existing Generators**

- 4.23 A member of the Working Group argued that not requiring existing generators to provide two years notice of reduction to TEC (the "B" Alternatives) created a substantial imbalance between new and existing generators and that arguably (though the member did not support this), that to preserve equality between new and existing

generators the period of notice to reduce TEC for existing Generators should be increased from 5 business days to six years with a charge based on six times the prevailing TNUoS in lieu of such notice.

- 4.24 The applicability of National Grid's C7 Licence Condition "Prohibition on discriminating between users" was discussed in this context. Paragraph 1 states "In the provision of use of system or in carrying out of works for the purpose of connection to the GB transmission system, the licensee shall not discriminate as between any persons or class or classes of persons". The Working Group agreed that this meant the arrangements did not have to be the same for use of system and new connections and was why enforcement action had not hitherto been undertaken against National Grid in respect of the present arrangements which treat new and existing generators differently. It was the view of the Working Group that the remaining paragraphs in the Licence Condition should not count against implementation of CAP131.
- 4.25 National Grid also believes that the difference in a 2 year notice period and a Cancellation Charge based on six times Generation TNUoS reflects the greater risk of stranded investment caused by new TEC Users as opposed to reductions by existing TEC Users, as in its judgement of the current climate, generators seeking connection to the system were far more likely to terminate than existing generators were to reduce TEC. The Working Group agreed that a significantly increased commitment from existing TEC Users was not an efficient way of covering the risk of inefficient investment, due to the large population of power stations that would face this commitment and the relatively small probability that an existing power station will close.

#### **Assessment of Potential Exposure**

- 4.26 The Working Group discussed the risks associated with moving to a generic user commitment regime.
- 4.27 Based on analysis of capital expenditure projections, the generic methodology on the basis of the amount derived from use of six multiplied by Generation TNUoS, means those parties applying for new TEC or increases in TEC will be securing approximately 50% of the costs of investment to accommodate all generation entry forecast between 2007 and 2012. The Working Group discussed the rationale for the 50% sharing factor given that this increases risks to all Users. National Grid explained that the covering letter to the Ofgem-led Access Reform Options Development Group (ARODG) report dated 9<sup>th</sup> May 2006 had suggested that it may be appropriate to "change the balance of risk borne by consumers...while investment is being completed to accommodate prospective new generation".
- 4.28 National Grid went on to explain that 50% seemed like a reasonable sharing level given the benefits to competition from the lowering of barriers to entry. In addition, National Grid pointed to a possible precedent in the gas industry. Section 2.3(d) of the Incremental Entry



Capacity Release Methodology Statement states “At any terminal, if a minimum quantity of incremental capacity is demanded in a quarter, the net present value of the revenue from bids for Incremental Entry Capacity which would be accepted if a given quantity of Incremental Entry Capacity was released **equals at least 50% of the assumed project value**, then National Grid NTS would seek approval to designate and allocate that quantity of capacity as permanent obligated entry capacity.”

- 4.29 A value of  $X=6$  is therefore proposed in order to share the risk of inefficient investment caused by generation project termination between the TEC Users that introduce the risk and all users.
- 4.30 The Working Group also discussed how the generic arrangements would compare to the present project specific cost reflective regime. National Grid provided analysis based on the current contractual background. For each of these projects, the current cost reflective final sums curve of a project was compared with the generic user commitment profile (based on using the full TNUoS tariff as the investment proxy with a multiple of 12). In each case, the surplus or deficit profile associated with the generic user commitment regime was calculated.
- 4.31 In order to estimate the risks associated with each stage of the generic user commitment, the resultant surplus or deficit profiles were stacked with a common completion date. The results of this analysis are shown below in Figure 3.

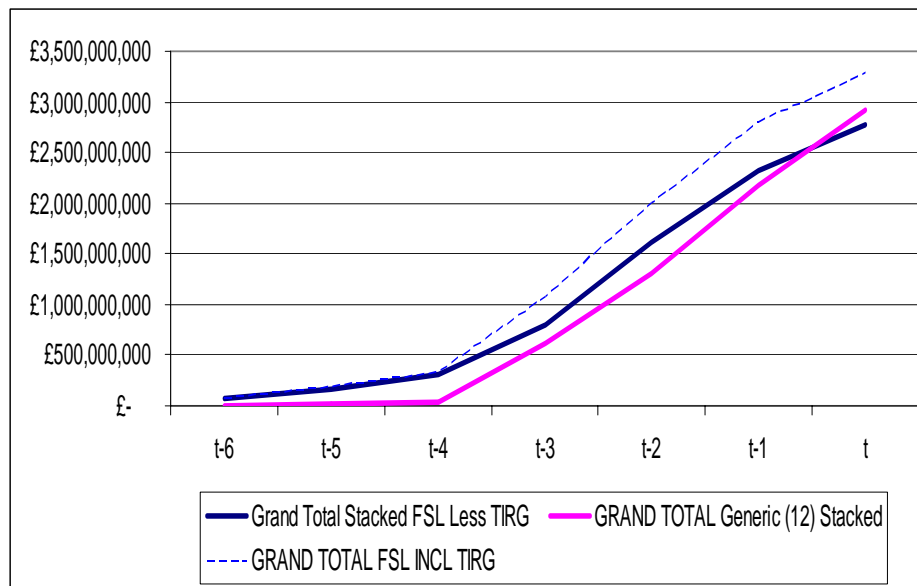


Figure 3: Stacked Cost Reflective Final Sums Curves versus Generic Methodology where the TNUoS multiplier has a value of 12

- 4.32 This graph compares the total level of cost reflective final sums liability for that period with the total level of generic user commitment (based

on  $X=12$ ) for all projects that are due to connect to the transmission system by 2016.

- 4.33 There are a number of large Transmission Investment for Renewable Generation (TIRG) projects in Scotland for which funding has already been agreed by Ofgem. The costs associated with these projects have been split out for clarity. The Working Group agreed that, given the capacity queue, the TIRG reinforcements were likely to be required even if a number of projects terminated.
- 4.34 The graph in Figure 4 below compares the total level of cost reflective final sums liability with the total level of generic user commitment (based on  $X=6$ ) for all projects that are due to connect to the transmission system by 2016. It shows the average project surplus or deficit on termination associated with a move from cost reflective final sums liabilities to the generic methodology. The costs associated with TIRG reinforcements have not been considered as part of this analysis. The graph also shows the range of results associated with one standard deviation.

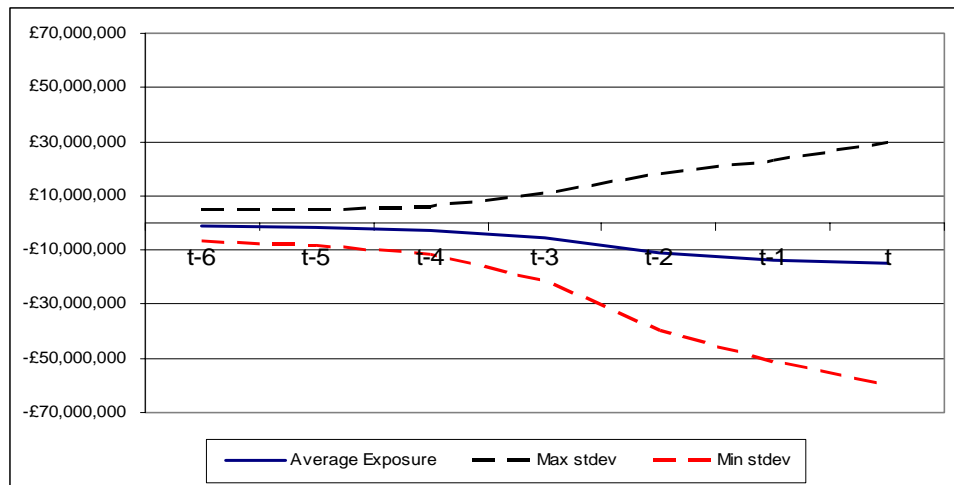


Figure 4: Range of average expected exposure for any given project termination versus current Final Sums (Generation TNUoS multiplier has a value of 6)

- 4.35 The results show that with the TIRG projects removed from the analysis, a value of  $X=6$  means that on average, the generic user commitment would approximately cover costs in the early years (£1/kW, £2/kW and £3/kW), but that in the later years (multiple of TNUoS), the generic user commitment would not cover all potential costs, with this exposure increasing the closer the generation project termination is to the completion of the transmission works. The results also highlight the fact that a generic arrangement may inevitably lead to a surplus or a deficit from actual costs associated with any given project termination, and that this potential surplus or deficit increases the closer the generation project termination is to the completion of the transmission works.

- 4.36 The Working Group agreed that the majority of decisions to pursue or cancel a project would come at the first stage of commitment (£1, £2 or £3/kW) and that the risk of a project termination would reduce towards the completion of the transmission works.

## **5.0 WORKING GROUP ALTERNATIVE AMENDMENTS**

- 5.1 Discussions at the CAP131 Working Group meetings led to six alternative amendments raised by Working Group members. The alternative amendments can be categorised into those that cover new and existing TEC Users (A1, A2 and A3) and those that cover new TEC Users only (B1, B2 and B3). The main features of these amendments are shown in the table below:

A1	A2	A3	B1	B2	B3
National Grid	International Power	Eon	EDF Energy	International Power	Eon
<ul style="list-style-type: none"> <li>• The User Commitment associated with an increase in TEC is set out in the Construction Agreement</li> <li>• User Commitment is only required for an increase in TEC if there is a Construction Agreement</li> <li>• User Commitment for an increase in TEC is based only on TEC (not the higher of CEC or TEC)</li> <li>• Transmission Works associated with non-TEC changes are covered by the existing cost reflective final sums arrangements</li> <li>• User commitment for an increase in TEC is only required within 7 years of the Completion Date</li> <li>• The Trigger Date is a date specified in the Construction Agreement</li> <li>• TEC reduction requirements are described in the CUSC</li> <li>• TEC can only be reduced following a 2 year notice period</li> </ul>					
	<ul style="list-style-type: none"> <li>• The Cancellation Amount investment proxy is calculated using fixed generation zones consistent with investment zones identified as part of the recent TPRC</li> </ul>	<ul style="list-style-type: none"> <li>• If a TEC User reduces TEC prior to the Completion Date, there is no Capacity Reduction Charge</li> </ul>	<ul style="list-style-type: none"> <li>• User Commitment arrangements apply to increases in TEC only and the notice requirements associated with TEC reductions remain unchanged</li> </ul>	<ul style="list-style-type: none"> <li>• User Commitment arrangements apply to increases in TEC only and the notice requirements associated with TEC reductions remain unchanged</li> </ul>	<ul style="list-style-type: none"> <li>• User Commitment arrangements apply to increases in TEC only and the notice requirements associated with TEC reductions remain unchanged</li> </ul>
				<ul style="list-style-type: none"> <li>• The Cancellation Amount investment proxy is calculated using fixed generation zones consistent with investment zones identified as part of the recent TPCR</li> </ul>	<ul style="list-style-type: none"> <li>• If a TEC User reduces TEC prior to the Completion Date, there is no Capacity Reduction Charge</li> </ul>

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**Working Group Alternative A1**

- 5.2 Consideration and debate by the CUSC CAP131 Working Group led National Grid to raise Working Group Alternative A1. The differences from the original amendment are described below.
- 5.3 The User Commitment associated with an increase in TEC should only apply where transmission works are required to deliver this.
- 5.4 The User Commitment associated with an increase in TEC should only apply to TEC, not to the higher of CEC or TEC. Any transmission reinforcement works which are not triggered by a TEC change will be covered by the existing cost reflective final sums liabilities arrangements.
- 5.5 User Commitment for new TEC Users should not apply to TEC Users with Completion Dates more than seven years ahead. If the Completion Date is more than seven years ahead, no user commitment is faced until the Completion Date is within seven years of the present date.
- 5.6 The Trigger Date is a date specified in the Construction Agreement. The Trigger Date moves the level of the applicable security from the User Commitment Amount to the Cancellation Amount. This is a date specified in the Construction Agreement and is defined as the date identified by National Grid which represents when significant expenditure will be required to enable construction for delivery of the transmission capacity requested. Whilst the intention is to accurately define the Trigger Date, the date may change to reflect any change in the construction programme or construction works. In the event of a change in the Trigger Date, National Grid will provide due notice of the change. The profile of the Cancellation Charge will be shifted in tandem with the revised Trigger Date.
- 5.7 The User Commitment for existing TEC Users seeking to reduce TEC should be simplified such that TEC can only be reduced following a 2 year notice period.
- 5.8 The User Commitment for existing TEC Users seeking to reduce TEC should be described in the CUSC. CUSC Section 6.30.1.1 will be changed to read: "Each User shall be entitled to decrease TEC for the Connection Site upon giving the Company not less than 2 years notice in writing."

**Working Group Alternative A2**

- 5.9 Working Group Alternative A2 was raised by International Power who believes that it better fulfils the applicable CUSC objectives.
- 5.10 The main feature of Working Group Alternative A2 is that the Cancellation Amount investment proxy is calculated using re-zoned TNUoS tariffs rather than the full TNUoS tariffs published in the Statement of Use of System charges. In all other respects, Working Group Alternative A2 is the same as Working Group Alternative A1.

## 5.11 The Cancellation Amount will be calculated as follows:

$$CancellationAmount_i = TEC \times GenInvZoneTNUoS_z \times X \times T_i$$

Where;

- GenTNUoS<sub>z</sub> is the Generation Investment Zone TNUoS tariff applicable to the generation project. If a project is located in a Generation Investment Zone TNUoS Charging Zone which has a negative tariff, or a tariff less than £3/kW, a minimum “floor” value of £3/KW tariff will apply. If a project is not located in a Generation Investment Zone TNUoS Charging Zone (e.g. offshore or island connections), then the appropriate Generation Investment Zone TNUoS tariff will be calculated by National Grid as part of the application process.

## 5.12 The Generation Investment Zone TNUoS tariff is calculated according to the National Grid Use of System Charging Methodology, but instead of the zoning criteria contained in the Methodology, the generation zones are fixed to those identified by the Transmission Owners in the recent Transmission Price Control and published in Ofgem’s Final Proposals document. The Generation Investment Zone TNUoS tariffs for 2007/08 are shown in the table below:

<b>Zone</b>	<b>Gen Investment Zone Tariff (£/kW)</b>
South & South West	-3.17
Thames Estuary	0.50
London	0.03
South Wales	-0.51
East of England and Home Counties	0.74
West Midlands	1.73
East Midlands	3.94
North Wales and North West	5.51
Yorkshire & Lincolnshire	5.51
North East	8.97
SPT	13.20
SHETL	19.42

## 5.13 The Generation Investment Zones for England and Wales are shown in Figure 5 below:

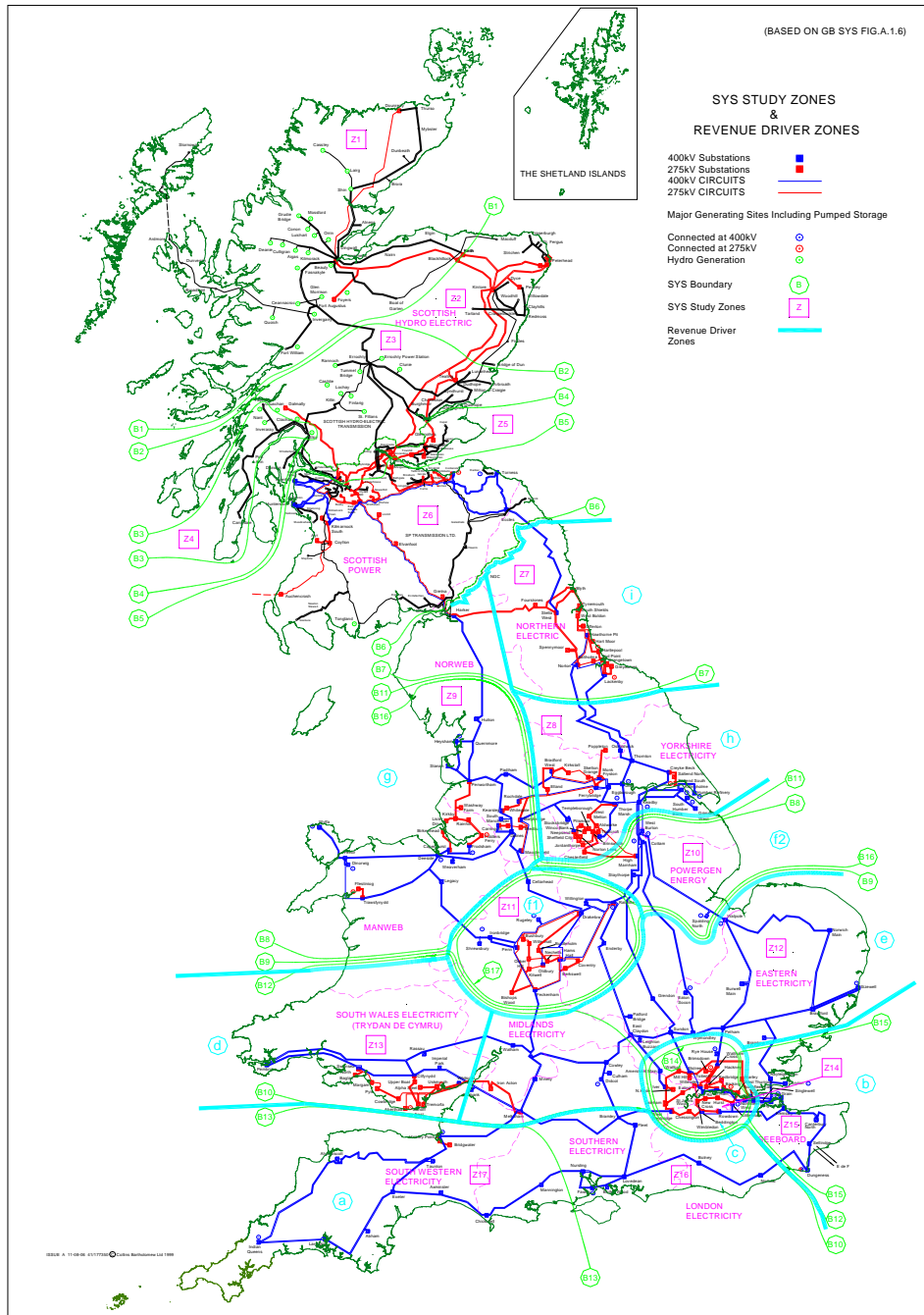


Figure 5: Generation Investment Zones in England and Wales

5.14 The Generation Investment Zones would be calculated annually by National Grid and published on the National Grid website.

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- 5.15 In the event a connection or increase in capacity can be achieved within four years, and construction works are required, then no UCAM will be payable and the applicable Cancellation Amount will be determined according to the above formulas providing there is no Trigger Date.

#### **Working Group Alternative A3**

- 5.16 Working Group Alternative A3 was raised by Eon who believes that it better fulfils the applicable CUSC objectives.
- 5.17 The main feature of Working Group Alternative A3 is that the Capacity Reduction Charge is not applicable. Notification of a reduction in TEC prior to the Completion Date would not incur any charge. In all other respects, Working Group Alternative A3 is the same as Working Group Alternative A1.

#### **Working Group Alternative B1**

- 5.18 Working Group Alternative B1 was raised by EDF Energy who believes that it better fulfils the applicable CUSC objectives.
- 5.19 The main feature of Working Group Alternative B1 is that the User Commitment arrangements apply to new or increases in TEC only; and the notice required from existing TEC Users to reduce TEC remains unaffected. In all other respects, Working Group Alternative B1 is the same as Working Group Alternative A1.

#### **Working Group Alternative B2**

- 5.20 Working Group Alternative B2 was raised by International Power who believes that it better fulfils the applicable CUSC objectives.
- 5.21 Working Group Alternative B2 is essentially a combination of Working Group Alternatives B1 and A2. The User Commitment arrangements apply to new or increases in TEC only, and the Cancellation Amount investment proxy is calculated using generation TNUoS tariffs with zones fixed to the investment zones identified as part of the Transmission Price Control.

#### **Working Group Alternative B3**

- 5.22 Working Group Alternative B4 was raised by Eon who believes that it better fulfils the applicable CUSC objectives.
- 5.23 Working Group Alternative B4 is essentially a combination of Working Group Alternatives B1 and A3. The User Commitment arrangements apply to new or increases in TEC only and the Capacity Reduction Charge is not applicable.



## 6.0 ASSESSMENT AGAINST APPLICABLE CUSC OBJECTIVES

### Proposed Amendment (Original)

- 6.1 The Working Group agreed that Working Group Alternative Amendment A1 would better facilitate the CUSC Objectives when compared with the original amendment proposal and therefore a more detailed assessment against each of the applicable objectives was not performed.

### Working Group Alternative A1

- 6.2 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment A1 would better facilitate the CUSC Objectives. One Working Group member did not agree. The Working Group discussion is described below.

- (a) *the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*

#### Market Signals

Some working group members believe that the non-refundable nature of the CAP131 arrangements would reduce the potential for speculative applications, which would provide more efficient investment signals to National Grid. One working group member believes that the change from cost reflective final sums to a user commitment equivalent to 50% of the average investment cost diluted and reduced the value of the investment signals to National Grid.

One working group member believes that the cost reflective final sums arrangements provide a useful incentive for TEC Users to connect as close to the transmission system as possible, and thereby minimise the investment to be secured. This working group member gave the example of a new TEC User being sited in an area with limited transmission only having to provide a commitment based on zonal TNUoS charges, when the investment required could be much higher, and have a much longer lead time.

Another working group member questioned whether cost reflective final sums provide an incentive to connect as close to the transmission system as possible due to the uncertainty surrounding the level of wider reinforcement required under either the 'first come first served' or 'clustering' approach.

Other working group members believe that TNUoS charges, rather than cost reflective final sums, should provide the locational signal to TEC Users. One working group member believed that if cost reflective final sums are providing a sharper locational signal than TNUoS charges then this supported the case for change since it is not consistent with a 'shallow' charging methodology.

#### Risk Sharing

One working group member was concerned that a move from cost reflective final sums to a generic user commitment based on 50% of the average costs would increase the risk of inefficient investment, the cost of which would be shared by that user and all other users. This working

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group member was concerned that a move to a 50:50 risk share between TEC Users and all users was not justified.

### **Existing TEC Users**

Some working group members believe that replacing the minimum 5 days notice to reduce TEC with 2 years reduces the risk of inefficient transmission investment as National Grid would have more time to react to changes in the planning background. Other working group members believe that it is not possible for existing TEC Users to be able to make decisions on TEC requirements 2 years out and therefore, the 2 year notice period adds costs to existing TEC Users but does not provide a benefit to National Grid.

Some working group members believe that the 2 year notice period for a reduction in TEC incentivises existing TEC Users to hoard TEC for 2 years when they would otherwise release it.

- (b) *facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

### **Project Risk**

The working group agreed that the fixed nature of the user commitment arrangements removes the project risks associated with the volatile final sums arrangements and therefore has a beneficial effect for new projects, allowing decisions to be made based on certain information.

The working group noted that the CAP131 arrangements will impact on existing projects that are seeking a connection to the transmission system. The working group also noted that the user commitment arrangements are based on 50% of the average investment cost and therefore in the majority of cases, the liability faced by a user under the user commitment arrangements will be lower than the liability faced under cost reflective final sums arrangements. Some working group members considered that this would reduce barriers to entry.

One working group member was concerned that whilst the liabilities faced by users would be lower in most cases, it was possible that they would be higher in some circumstances. This working group member was concerned that projects requiring significant reinforcements would be better off, whereas projects requiring minor reinforcements would be worse off, and that this would have a negative impact on competition by encouraging less economic and efficient projects to a reserve future capacity.

### **Transparency**

Some working group members believe that the definition of the arrangements in the CUSC improves transparency for users when compared with the current final sums arrangements.

Some working group members believe that the use of TNUoS tariffs as an investment proxy improves the transparency of the arrangements, since it allows users to easily calculate the user commitment required for any particular potential project.

**Existing Generation**

Some working group members believe that since the transmission system is designed to accommodate new and existing TEC Users, user commitment should be sought from both new and existing TEC Users. Some working group members believe that a requirement to pay 2 years of TNUoS charges prevents users from responding to TNUoS signals and that the cost consequences may impact on competition in the market.

Some working group members believe that the advantages in terms of facilitating effective competition outweigh any concerns with regard to efficiency.

**Working Group Alternative Amendment A2**

- 6.3 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment A2 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment A2 is similar in most aspects to A1, only the Working Group discussions associated with the particular features of A2 are described below.

*(b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

Some working group members believe that using investment zones is more appropriate than TNUoS charging zones since this avoids TEC Users in the same investment zones, triggering similar transmission investments but facing different levels of security.

Some working group members believe that whilst the investment zones are more appropriate for anticipated projects, TNUoS charging zones may be more appropriate for unanticipated projects.

Some working group members believe that the advantages of using investment zones are outweighed by the disadvantages, in terms of reduced transparency, of having a bespoke set of tariffs.

**Working Group Alternative Amendment A3**

- 6.4 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment A3 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment A3 is similar in most aspects to A1, only the Working Group discussions associated with the particular features of A3 are described below.

*(a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*

Some working group members believe that the removal of the Capacity Reduction Charge prior to the Completion Date removes an inappropriate incentive to attempt to withhold information on TEC

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required until after completion and therefore reduces the likelihood of inefficient investment.

Some working group members believe that the Capacity Reduction Charge, and the associated contract management by National Grid to prevent changes after completion, is required to ensure that users provide their best information in terms of TEC at the earliest possible stage to prevent inefficient investment.

*(b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

Some working group members believe that the Capacity Reduction Charge imposes unnecessary costs on project developers acting reasonably. These working group members state that it is not possible to know the exact TEC required at connection application due to the timescales associated with a transmission connection and the likelihood of changes due to the consents process or manufacturers technological development.

Some working group members believe that the Capacity Reduction Charge is required to act as a disincentive for users in a capacity queue to hoard TEC. The working group noted that the link between user commitment and TEC already introduces a disincentive to hoard TEC.

### **Working Group Alternative Amendment B1**

- 6.5 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment B1 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment B1 is similar in most aspects to A1, only the Working Group discussions associated with the particular features of B1 are described below.

*(a) the efficient discharge by the Licensee of the obligations imposed upon it by the act and the Transmission Licence; and*

Some working group members believe that the 2 year notice period for a reduction in TEC incentivises existing TEC Users to hoard TEC for 2 years when they would otherwise release it. Other working group members believe that it is not possible for existing TEC Users to be able to make decisions on TEC requirements 2 years out and therefore, the 2 year notice period adds costs to existing TEC Users but does not provide a benefit to National Grid.

Some working group members believe that replacing the minimum 5 days notice to reduce TEC with 2 years reduces the risk of inefficient transmission investment as National Grid would have more time to react to changes in the planning background.

*(b) facilitating effective competition in generation and supply of electricity and facilitating such competition in the sale, distribution and purchase of electricity.*

Some working group members believe that a requirement to pay 2 years of TNUoS charges prevents users from responding to TNUoS signals and that the cost consequences may impact on competition in the market. Some working group members believe that since the transmission system is designed to accommodate new and existing TEC Users, user commitment should be sought from both new and existing users.

### **Working Group Alternative Amendment B2**

- 6.6 A majority of the Working Group members believe that CAP131 Working Group Alternative Amendment B2 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment B2 is essentially a combination of A1, A2 and B1 the relevant Working Group discussions are captured above.

### **Working Group Alternative Amendment B3**

- 6.7 The Working Group was split on the question of whether CAP131 Working Group Alternative Amendment B3 would better facilitate the CUSC Objectives. Since Working Group Alternative Amendment B3 is essentially a combination of A1, A3 and B1 the relevant Working Group discussions are captured above.

## **7.0 PROPOSED IMPLEMENTATION**

- 7.1 The Working Group propose CAP131 should be implemented in the first April or October to occur at least 6 months after an Authority decision because this reflects the end of a 6 month security period under the current arrangements and provides sufficient time for National Grid to complete the necessary amendments to agreements and for TEC Users to make necessary decisions in light of the new arrangements.
- 7.2 In addition, the Working Group propose that a voluntary move to the generic arrangements should be made available to all TEC Users 10 days after an Authority decision to ensure that the advantages discussed above are not delayed.

## **8.0 IMPACT ON THE CUSC**

- 8.1 CAP131 requires amendments to Section 6 and Definitions of the CUSC, to the Construction Agreement and the addition of a new Schedule "User Commitment Principles". The text required to give effect to the Working Group Alternatives A1, A2, A3, B1, B2 and B3 are contained in Annex 2 of this document.

## **9.0 IMPACT ON INDUSTRY DOCUMENTS**

### **Impact on Core Industry Documents**

- 9.1 CAP131 has no impact upon Core Industry Documents.

### **Impact on other Industry Documents**

- 9.2 The "Interim Generic User Commitment Methodology Statement" (currently available for reference on National Grid's website) would be superseded by CAP131 legal text in the event of approval.

9.3 There would be no impact on other Industry Documents.

## **10.0 WORKING GROUP RECOMMENDATION**

10.1 With the exception of one Working Group member, the Working Group agreed that all of the Alternative Amendments better facilitated the CUSC objectives relative to the current baseline. However the Working Group was divided over which Alternative Amendment best facilitated the overall CUSC objectives. A majority of the Working Group favoured Alternative Amendment B3. All the other Alternative Amendments were supported by at least one Working Group member.

## **11.0 INITIAL VIEW OF THE AMENDMENTS PANEL**

11.1 The Amendments Panel agreed with the findings of the Working Group and did not discuss the proposal further.

## **12.0 INITIAL VIEW OF NATIONAL GRID**

12.1 National Grid believes that Alternative Amendment A1 best facilitates the relevant CUSC objectives.

## **13.0 VIEWS INVITED**

13.1 National Grid is seeking the views of interested parties in relation to the issues raised by Amendment Proposal CAP131 and issues arising from the proposed timescale for implementation of CAP131. Please send your responses to this consultation to National Grid by no later than close of business on **13<sup>th</sup> April 2007**. Please address all comments to the following e-mail address:

Beverley.Viney@uk.ngrid.com

Or alternatively, comments may be addressed to:

Beverley Viney  
Amendments Panel Secretary  
Electricity Codes  
National Grid  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

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**ANNEX 1 - GLOSSARY & ACRONYMS**

BEGA	Bilateral Embedded Generation Agreement
CA	Cancellation Amount
CAPEX	Capital Expenditure
CEC	Connection Entry Capacity
CUSC	Connection and Use of System Code
DNO	Distribution Network Operator
FSL	Final Sums Liability
GBSO	GB System Operator
NTS	National Transmission System (Gas)
Ofgem	Office of Gas and Electricity Markets
SHETL	Scottish Hydro Electric Transmission Limited
SPT	Scottish Power Transmission
SYS	Seven Year Statement
TEC	Transmission Entry Capacity
TIRG	Transmission Investment for Renewable Generation
TNUoS	Transmission Network Use of System
TPCR	Transmission Price Control Review
UCAM	User Commitment Amount
UCAT	User Commitment Amount Tariff

## **ANNEX 2 - PROPOSED LEGAL TEXT TO MODIFY THE CUSC**

For Alternative Amendments A1 to A3 there are three items of relevant legal text:

- New Schedule 4 of the CUSC - User Commitment Principles
- Amended clauses to the Construction Agreement
- New CUSC Definitions and amended CUSC Section 6

For Alternative Amendments B1 to B3 there are two items of relevant legal text:

- New Schedule 4 of the CUSC - User Commitment Principles
- Amended clauses to the Construction Agreement

Please note that the Construction Agreement for Alternative Amendment A1 is identical to Alternative Amendments A2, B1 and B2. Please also note that the Construction Agreement for Alternative Amendment A3 is identical to Alternative Amendment B3 (in addition to the changes required to implement the generic methodology, differences between the A3 and B3 Construction Agreements lie in the Capacity Reduction Charge definition, a new Clause 2.17 and an extended Clause 7.3 in the B3 version).



## **Text to give effect to the Working Group Alternative Amendment A1**

### **New Schedule 4 to the CUSC - User Commitment Principles**

#### **USER COMMITMENT PRINCIPLES for Amendment Alternative A1**

##### **Introduction**

**This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.**

##### **1. CANCELLATION CHARGE**

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

##### **User Commitment Amount**

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

**Value Added Tax** will be payable on the **User Commitment Amount** in each **Cancellation Period**.

### Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * X * T_t$$

Where:

- *Cancellation Amount<sub>t</sub>* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in kW)
- *Generation TNUoS<sub>z</sub>* is either the zonal Generation TNUoS tariff (subject to a minimum £3/kW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T<sub>t</sub>* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

**Value Added Tax** will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

### Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

## Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

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

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

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

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date and the profile of the User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request a revised Appendix R to a **User's Construction Agreement** will be issued by the **Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised **Construction Programme**; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

## 2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

### Pre-Trigger Date

$$\text{Capacity Reduction Charge}_t = \text{User Commitment Amount}_t - (\text{TEC}_r * \text{UCAT}_t)$$

Where;

UCAT is the User Commitment Amount Tariff and is £1/kW in the first 12-month period from signature of the **Construction Agreement**, £2/kW in the following 12-month period and £3/kW thereafter until the **Trigger Date**.

$\text{TEC}_{(r)}$  is the revised TEC following reduction of TEC.

### Post Trigger Date

$$\text{Capacity Reduction Charge}_{(t)} = \text{Cancellation Amount}_{(t)} - (\text{TEC}_{(r)} * \text{GenTNUoS}_{(z)} * X * T_{(t)})$$

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### Amended clauses to the Construction Agreement for Alternative Amendment A1 (and A2, B1 and B2)

(Please note that this version of the Construction Agreement is also applicable to Alternative Amendments A2, B1 and B2 however due to the size of the document it has not been replicated four times)

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**SCHEDULE 2 EXHIBIT 3]**

**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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**Construction Agreement Notes**

- 1 This construction agreement is drafted generically for use in **Offers** for connection to or use of the **GB Transmission System**.
- 2 In the event of termination of this **Construction Agreement** different provisions apply in respect of payments due to **The Company** by a **User** depending on the category of **User**. This Construction Agreement contains the provisions for both **Non TEC Users** who are liable on termination for **Final Sums** and **TEC Users** who are liable on termination for a **Cancellation Charge** in accordance with the **User Commitment Principles** and **Final Sums** in respect of any **One Off Works**
- 3 The definition of **Final Sums** and Clause 2.4 are different (as noted within the text) depending on whether the **User** is a **Non TEC User** or **TEC User**
- 4 Clauses 9, 10 and 11 and Appendix M to this construction agreement are written in the alternative depending on whether the **User** is a **Non TEC User** or **TEC User** and in respect of **TEC Users** whose construction agreement provides for **One off Works** both the provisions relating to **Final Sums** and the **Cancellation Charge** will apply.
- 5 The definition of "**Capacity Reduction Charge**", Clauses [2.16,] [2.17,] [7.3] and Appendix R are only relevant for **TEC Users**.

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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
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14	Disputes
15	Variations
16	Restrictive Trade Practices Act
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Appendix G	Transmission Connection Asset Works
Appendix H	Transmission Reinforcement Works
Appendix I	User's Works
Appendix J	Construction Programme
Appendix K	Liquidated Damages
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Appendix M	Security Arrangements
Appendix N	Third Party Works
Appendix R	Cancellation Charge

**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 **GB 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 **GB Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect or [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.

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

**1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

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

"Authority"	as defined in the <b>CUSC</b> .
"Backstop Date"	the date specified as such in the <b>Construction Programme</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 Amount”	the sum calculated in accordance with the <b>User Commitment Principles</b> payable by the <b>User</b> on termination of this <b>Construction Agreement</b> on or after the <b>Trigger Date</b> such sum being that specified in the Table in Appendix R by reference to the <b>Cancellation Period</b> in which this <b>Construction Agreement</b> is terminated.
“Cancellation Charge”	the <b>User Commitment Amount</b> or <b>Cancellation Amount</b> as appropriate.
“Cancellation Period(s)”	the periods specified as such in Appendix R.
“Capacity Reduction Charge”	the sum calculated in accordance with the <b>User Commitment Principles</b> .
“Charging Date”	the date upon which the <b>Construction Works</b> are first <b>Commissioned</b> and available for use by the User or if the <b>Independent Engineer</b> before, on or after the <b>Commissioning Programme Commencement Date</b> shall have certified in writing that the <b>Transmission Connection Assets</b> , are completed to a stage where The Company could commence commissioning and by such date the <b>User’s Works</b> shall not have been so certified then the date falling [ ] days after the date of such certification, provided that the <b>Transmission Reinforcement Works</b> are <b>Commissioned</b> and <b>Seven Year Statement Works</b> are completed as at that date. In the event that the <b>Transmission Reinforcement Works</b> are not so <b>Commissioned</b> and/or the <b>Seven Year Statement Works</b> are not so completed the <b>Charging Date</b> shall be the date on which they are

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	<b>Commissioned</b> and/or completed as appropriate.
“Commissioning Programme Commencement Date”	the date specified in the <b>Construction Programme</b> for the commencement of the <b>Commissioning Programme</b> or any substituted date fixed under the terms of this <b>Construction Agreement</b>
“Commissioning Programme”	the sequence of operations/tests necessary to connect the <b>User’s Works</b> and the <b>Transmission Connection Asset Works</b> to the <b>GB Transmission System</b> for the purpose of making the <b>User’s Works</b> available for operation to be determined pursuant to Clause 2.10 of this <b>Construction Agreement</b> .
“Completion Date”	[ ] or such other date as may be agreed in terms of this <b>Construction Agreement</b> .
“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> :- <ul style="list-style-type: none"> <li>(a) all such planning and other statutory consents; and</li> <li>(b) all wayleaves, easements, rights over or interests in land or any other consent; or</li> <li>(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.</li> </ul>
“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

	undertaken by or on behalf of <b>The Company</b> ;
"Construction Works"	the <b>Transmission Connection Asset Works, Transmission Reinforcement 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> .
"Event of Default"	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
<b>"Final Sums" (Non TEC Users)</b>	<p>the amount payable by the <b>User</b> on termination of this <b>Construction Agreement</b> being the aggregate from time to time and for the time being of:-</p> <ol style="list-style-type: none"> <li>(1) all <b>The Company Engineering Charges</b> arisen prior to the date of termination;</li> <li>(2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by <b>The Company</b> in respect of any part of the <b>Construction Works</b> carried out prior to the date of termination of this <b>Construction Agreement</b>;</li> <li>(3) fees, expenses and costs properly payable by <b>The Company</b> in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any <b>Construction Works</b> provided it is negotiated on an arms length basis (including any such arising under the <b>STC</b>);</li> <li>(4) a sum equal to the reasonable costs of removing any <b>Transmission Connection Assets</b> and of making good the remaining <b>Plant</b> and <b>Apparatus</b> following such removal;</li> </ol>

- (5) fees, expenses and costs due in accordance with Clause 2.4.1; and
- (6) interest on any such amounts from the date they were paid by The Company to the date of The Company's invoice at 2% over **Base Rate** from time to time and for the time being.

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

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

**["Final Sums" (TEC Users)**

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

- (1) all **The Company Engineering Charges** arisen prior to the date of termination;
- (2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by **The Company** in respect of any part of the **One Off Works** carried out prior to the date of termination of this **Construction Agreement**;
- (3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any **One Off Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);
- (4) fees, expenses and costs due in

accordance with Clause 2.4.1; and

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

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

"Independent Engineer"

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

- (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this **Construction Agreement**; or
- (b) where any **Independent Engineer** appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

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

"Liquidated Damages"

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

"One Off Works"

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

"Seven Year Statement Works"

the works set out in Table B7 of the statement prepared by **The Company** pursuant to Standard Condition C11 of the **Transmission Licence** and issued by **The Company** in [ ] which in **The Company's** reasonable opinion are required to be completed before the **Completion Date** to ensure that the **GB 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

	<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.
"Third Party Works"	the works 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> are necessary to extend or reinforce the <b>GB Transmission System</b> in relation to and prior to the connection of the <b>User's Equipment</b> at the <b>Connection Site</b> and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is works required for the <b>User</b> and Part 2 is works required for wider system reasons.
"Trigger Date"	the date specified as such in Appendix R as it may be amended from time to time under the provisions of this <b>Construction Agreement</b> .
"User Commitment Amount"	the sum calculated in accordance with the <b>User Commitment Principles</b> payable by the <b>User</b> on termination of this <b>Construction Agreement</b> prior to the <b>Trigger Date</b> such sum being that specified in the Table in Appendix R by reference to the <b>Cancellation Period</b> in which this <b>Construction Agreement</b> is terminated.
"User Commitment Principles"	the methodology relating to the application and calculation of the <b>Cancellation Charge</b> and <b>Capacity Reduction Charge</b> set out in <b>CUSC</b> Schedule 4 as it may be amended from time to time.

"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> .
"Works"	the <b>Construction Works</b> and the <b>User's Works</b> .

## 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** [(except the **Trigger Date**)] 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.

[include 2.4.1 where Final Sums apply]

**Non TEC User**

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

- (a) all **The Company 's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

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

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



Or

**TEC User**

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

- (a) all **The Company 's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction Agreement** in respect of the **One Off Works**. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred. ]

[2.4.2] [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 The **User** shall have the right to terminate this **Construction Agreement** [at any time] upon giving not less than 7 (seven) days notice in writing to **The Company**. Upon such termination 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**. Upon such termination 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.

- 2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow **The Company** or, in the case of **Connection Sites** in Scotland, the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.
- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.
- 2.12 [The **User** shall apply to the Secretary of State for Trade and Industry as part of its application under Section 36 of the Act for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. **The Company's** obligations under Clause 2.2 of this **Construction Agreement** shall not require it to obtain planning consent for the said

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

- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between The Company and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works** (and as a consequence), the **Construction Programme** and all dates [(except the **Trigger Date**)] specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [**The Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.
- 2.16 Where **The Company** exercises its rights to change the **Construction Works** or **Construction Programme** pursuant to Clauses 2.3, 2.11, 2.13 or [3.2] **The Company** shall review the appropriateness of the **Trigger Date** in light of such changes. **The Company** shall advise the **User** by notice in writing as soon as practicable as to whether it considers it appropriate in accordance with the principles in the **User Commitment Principles** to revise such **Trigger Date** as a consequence of these changes or believes the **Trigger Date** remains appropriate notwithstanding such changes in either case giving its reasons for its view. Where **The Company** considers a revision is appropriate it shall be entitled to revise the **Trigger Date** (and as a consequence Appendix R) upon [30 days] written notice.

2.17 If at anytime [on or after the **Trigger Date** but] before the [**Completion Date**] the **User** reduces its **Transmission Entry Capacity** from [ ]MW then the **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** such payment to be made within 14 days of the date of **The Company's** invoice thereof.

### 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 and **The Company** as necessary to reflect this.

## 4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

4.1 Each party shall give written notice to the other declaring its readiness to commence the **Commissioning Programme** when this is the case.

4.2 The **Commissioning Programme** shall commence forthwith once both parties have given written notice to the other under Clause 4.1.

4.3 The **Works** shall be deemed to have been **Commissioned** on the date that the **Independent Engineer** certifies in writing to that effect.

- 4.4 In the event that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date** **The Company** (if and to the extent that it is responsible for delayed commissioning beyond the **Commissioning Programme Commencement Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date**. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.
- 4.5 In the event that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date** **The Company** (if and to the extent that it is responsible for delayed completion beyond the **Completion Date**, such responsibility and/or its extent to be determined by the **Independent Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date on which the **Construction Works** are **Commissioned** is later than the **Completion Date**. It is hereby agreed and declared that such **Liquidated Damages** shall cease to be payable in respect of any period after completion of the **Construction Works**.
- 4.6 **Liquidated Damages** payable under Clauses 4.4 and 4.5 of this **Construction Agreement** shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 15th day of each month the party entitled to receive the payment of **Liquidated Damages** shall send to the other party a statement of the **Liquidated Damages** which have accrued due in the previous calendar month. The party receiving such statement shall in the absence of manifest error pay the **Liquidated Damages** shown on the statement within 28 days of the date upon which the statement is received.
- 4.7 Without prejudice to and in addition to the obligation of the **User** pursuant to Clause 2.4 of this **Construction Agreement**, the payment or allowance of **Liquidated Damages** pursuant to this Clause 4 shall be in full satisfaction of **The Company's** liability for failure to perform its obligations by the **Commissioning Programme Commencement Date** and/or the **Completion Date** as appropriate.
- 4.8 In the event that the **User** shall have failed, in circumstances not entitling it to the fixing of a new date as the **Commissioning Programme Commencement Date** pursuant to Clause 3.2, to complete the **User's Works** by the **Backstop Date** 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**. **Upon such termination 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 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 **GB 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 **GB 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 **GB 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** 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**.

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 **Transmission Reinforcement Works** [and/or works for the **Modification**] being carried out and/or the [**New**] **Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **GB 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 Company** reasonably believes from data supplied by the **User** under the planning conditions in the **Grid Code**, reports provided by the **User** pursuant to Clause 2 of this **Construction Agreement** and the commissioning process generally that the **User's Equipment** is such that it will not be capable at the **Completion Date** or within a reasonable period thereafter of generating up to [ ]MW [*Transmission Entry Capacity*];, **The Company** shall automatically have the right, having first informed the **User** in writing (the "**Notice**") that it intends to do so and stating the whole MW figure that it considers appropriate, to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the whole MW figure that it reasonably believes the **User's Equipment** will at or within a reasonable period of time from the **Completion Date** be capable of generating to. The **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** by reference to such reduction such payment to be made within 14 days of the date of **The Company's** invoice thereof. If the **User** reasonably believes that its **User's Equipment** will be capable at or within a reasonable period of time from the **Completion Date** be capable of generating a) at [ ] MW



[Transmission Entry Capacity] or b) at more than the MW figure proposed by **The Company** in the **Notice** or that it has a reasonable explanation as to why this is not the case then the **User** shall within [2] **Business Days** of receipt of the **Notice** (the "**Counter Notice**") advise **The Company** accordingly and within [1] month of receipt of the **Counter Notice** (or such later period as the parties shall agree) the **User** shall prove such fact or provide such explanation to **The Company's** reasonable satisfaction. If **The Company** is not reasonably satisfied and **The Company** and the **User** do not agree what level of MW the **User's Equipment** will be capable of generating to or **The Company** does not accept the **User's** explanation for the difference, either party may promptly refer the matter to an **Independent Engineer** for a decision. Pending the decision of the **Independent Engineer** **The Company** shall be entitled to amend Appendix C in accordance with the **Notice** and if so amended the **User** shall be liable to pay to **The Company** the **Capacity Reduction Charge** such payment to be made within 14 days of the date of **The Company's** invoice 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 Appendix F 1-5 to the **Bilateral Connection Agreement** .

## 9. CREDIT REQUIREMENTS

Alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing the **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**. Details of the credit requirements are set out in the relevant Appendix M

### [Final Sums

#### 9.1 PROVISION OF SECURITY (User meets The Company Credit Rating)

- 9.1.1 The **User** shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9.4) 28 days after the **Charging Date** the **User** shall confirm its **The Company Credit Rating** to **The Company** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of losing its **The Company Credit Rating** or if it

is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain its **The Company Credit Rating** for at least 6 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the **User** forthwith:-

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 In the event of the **User**:-

- (i) not having an **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9.1.2 above an indicative long term private credit rating,

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

- (iv) the **User** ceases to have an **The Company Credit Rating**; or
- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the **User** may not be able to maintain an **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** arising in the event of, or which have arisen prior to, termination of this **Construction Agreement**. The security to be provided shall be in an amount not greater than such sums payable on termination and specified in writing by **The Company** to the **User** from time to time as appropriate. Such security shall be provided by way of:-

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

- 
- (ii) cash held in escrow [**Escrow Account/ Bank Account**]; or
  - (iii) any other form included in **The Company's** then current policy and procedure

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

- 9.1.5 The **User** shall in addition to providing the requisite security enter into an agreement with **The Company**, which shall be supplemental to this **Construction Agreement** (the "Amending Agreement"). The **Amending Agreement** shall be in such form as **The Company** shall reasonably require and shall contain such provisions in relation to the **User's** obligations to provide and maintain security as shall be consequential upon the requirement for security having arisen, in line with **The Company's** then current provisions to the like effect in its agreements with other parties. The **Amending Agreement** shall relate to the procedures required in obtaining and maintaining the security and shall not alter or amend the amount of security required in terms of this **Construction Agreement**.
- 9.1.6 In the event of **The Company's** credit requirements being reviewed at any time **The Company** shall advise the **User** in writing of the new credit requirements and the **User** shall within 30 days of such notification confirm in writing to **The Company** whether it wishes to enter into an **Amending Agreement** to reflect the new credit requirements. Thereafter if the **User** has confirmed it wishes to accept the new credit requirements **The Company** and the **User** shall within 30 days of such notification enter into an **Amending Agreement**.
- 9.1.7 In the event that the facts or circumstances giving rise to the obligations of the **User** to provide the security have ceased, then **The Company** shall release the security and provisions to that effect shall be included in the **Amending Agreement**.

#### **Final Sums**

- 9.2 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:
  - (a) furnish the **User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and
  - (b) by written notice to the **User** inform the **User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.
- 9.3.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated con-

struction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.

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

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

9.4 The obligations to provide security under this Clause 9 shall continue until either all sums due under this **Construction Agreement** have been paid in full or security

arrangements have been put in place by the **User** under the **Bilateral Connection Agreement** in accordance with Section 2 Part III of the **CUSC**. Until such time as the security arrangements are put in place in accordance with Section 2 Part III of the **CUSC** **The Company** shall be entitled to call upon the security put in place under the terms of this **Construction Agreement** for payment of **Termination Amounts** when due under the provisions of the **CUSC**.

Or

#### 9.1 Provision of Security (**User** does not meet **The Company Credit Rating**)

9.1.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until (subject to Clause 9.8) 28 days after the **Charging Date** (unless and until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the **User's** obligation to pay **The Company** any and all sums specified by **The Company** in accordance with Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of:-

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

#### 9.2 Provision of **Bi-annual Estimate** and **Secured Amount Statement**

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

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

9.2.2 Such **Bi-annual Estimate** shall be accompanied by a statement (in the form of the **Secured Amount Statement** set out in Part 3 of Appendix M to this **Construction**

**Agreement**) ("**Secured Amount Statement**") specifying the aggregate amount to be secured at the beginning of and throughout each such period.

- 9.2.3 If **The Company** shall not provide any subsequent **Bi-annual Estimate** and **Secured Amount Statement** by the requisite date, then the **User** shall at the date it is next required to have in full force and effect security and whether by renewal or replacement or otherwise in respect of the following six calendar month period nonetheless provide security in accordance with the provisions of this **Construction Agreement** in the same amount as the amount then in force in respect of the then current six calendar month period. Notwithstanding the foregoing, if **The Company** shall provide the **User** with any **Bi-annual Estimate** and **Secured Amount Statement** later than the date specified in Clause 9.2.1 of this **Construction Agreement**, then the following shall apply. The **User** shall within 30 (thirty) days of receipt of the said **Secured Amount Statement** procure that to the extent that the amount in respect of which security has been or is to be provided pursuant to this Clause 9.2.3 in respect of the relevant period ("**the Secured Amount**") falls short of the amount stated in the **Secured Amount Statement** ("**the Required Amount**") the Secured Amount shall be adjusted to the **Required Amount**.

### 9.3 Entitlement to Estimate

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

### 9.4 Demands not Affected by Disputes

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

- 9.4.1 any amount certified by **The Company** in any **Secured Amount Statement** as requiring at any time and from time to time to be secured; or
- 9.4.2 the fairness and reasonableness of **The Company's** estimate; or
- 9.4.3 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or
- 9.4.4 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9B.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final

resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

- 9.5 If there shall be any dispute as mentioned in Clause 9.4 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred in the case of Clauses 9.4.1 and 9.4.2 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.5 shall survive termination) and, in the case of Clauses 9.4.3 and 9.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

#### **Final Sums**

- 9.6 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

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

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

- 9.7.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon

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

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

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

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

and/or

[Cancellation Charge \_

## 9. PROVISION OF SECURITY (User meets The Company Credit Rating)



9.1.1 The **User** shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the start of each **Cancellation Period** the **User** shall confirm to **The Company** that 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 ceasing to meet **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 **The Company Credit Rating** for at least 12 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the **User** forthwith:-

(i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

(ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 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 Clause 9.1.2 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

*the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating,*

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** in respect of the **Cancellation Charge**. The security to be provided shall be in an amount not greater than such sums payable on termination. Such security shall be provided by way of:-

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

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

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

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

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

9.2 The obligation to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

Or

## 9. PROVISION OF SECURITY (User does not meet **The Company Credit Rating**)

9.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the sums specified in Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of the **User's** liability to pay **The Company** the **Cancellation Charge**.

9.2 The **User** shall provide security at the beginning of and throughout each **Cancellation Period** for the **Cancellation Charge** that would be payable by the **User** in the event of this **Construction Agreement** terminating in such **Cancellation Period**

9.3 Demands not Affected by Disputes

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

9.3.1 whether the amount as requiring at any time to be secured has been calculated in accordance with the **User Commitment Principles**; or

9.3.2 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or

9.3.3 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but

for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9.4 If there shall be any dispute as mentioned in Clause 9.3 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred, in the case of Clause 9.3.1, to the **Independent Engineer** (and for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.4 shall survive termination) and, in the case of Clauses 9.3.2 and 9.3.3, be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

9.5 The obligation to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

## 10. EVENT OF DEFAULT

As before alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing this **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**.

### *[Final Sums and Cancellation Charge]*

#### 10. Event of Default (User meets **The Company Credit Rating**)

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

10.1 If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company**, or to enter into the **Amending Agreement** pursuant to Clauses 9.1 or 10.3 of this **Construction Agreement**.

- 10.2 If having entered into the **Amending Agreement** and having provided security satisfactory to **The Company** pursuant to Clauses 9.1 and 10.3 of this **Construction Agreement**.
- (a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by this **Construction Agreement** as varied by the **Amending Agreement** or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the User shall otherwise be in breach of any of its obligations in respect of security under this **Construction Agreement** as varied by the **Amending Agreement**;
  - (b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** as varied by the **Amending Agreement** takes any action whether by way of proceedings or otherwise designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;
  - (c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** as varied by the **Amending Agreement** fails to pay to **The Company** any sum demanded pursuant thereto.
- 10.3 If
- (i) There is a material adverse change in the financial condition of the **User** such as to give **The Company** reasonable grounds for concluding that there is a substantial probability that the **User** will default in the payment of any sums due or to become due to **The Company** within the next following period of twelve (12) months in terms of or on termination of this **Construction Agreement**; or
  - (ii) an event of default has occurred under any banking arrangements (as such may be more particularly described in the **Bilateral Connection Agreement**) (an event of default being any event described as such in the banking arrangements)] put in place by the **User** in connection with a project for which security under this Clause 10 is required by **The Company** and as a result the banks who are party to such banking arrangement have taken steps to declare the principle of the advances under such arrangement immediately due and payable; or
  - (iii) any other indebtedness of the **User** for the repayment of borrowed money (in a principal outstanding amount of not less than £1,000,000 pounds sterling or such greater amount specified in the **Bilateral Connection Agreement**) has become due and payable prior to the stated date of maturity thereof by reason of any default or breach on the part of the **User** and the amount in question has not been paid by the **User** or refinanced within a period of 28 days following the date upon which it was so declared due and payable

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

Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10.3 the **User** shall produce to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** not being able to make payment to **The Company** of such sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to require security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii), and/or (iii) subsequently occurring.

- 10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

Or

[**Final Sums**

## **10 Event of Default ( User not meet The Company Credit Rating)**

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

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

following period of 12 (twelve) months in terms of or on termination of this **Construction Agreement**;

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

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

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

Provided that regarding (i) or (ii) or (iii) if at any time after the putting in place of security under this Clause 10.1 the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to return security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Clause 10.1 subsequently occurring.

- 10.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.



- 10.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- 10.4 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.5 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

and/or

[Cancellation Charge

#### 10 **Event of Default (User not meet The Company Credit Rating)**

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

- 10.1 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 Clause 9.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.2 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.
- 10.3 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

## 11. **TERMINATION**

- 11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of this Clause 11 shall apply.

11.2 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**.

11.3 The **User** shall be liable forthwith on the date this **Construction Agreement** so terminates to pay to **The Company** [-:

[*Non TEC Users*

(1) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**; such payment to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in accordance with Clause [9.3.3. or 9.7.3]] or]

or

[*TEC Users*

(1) the **Cancellation Charge** and  
(2) a sum equal to **The Company's** fair and reasonable estimate of **Final Sums**; such payments in each case to be made within 14 days of the date of **The Company's** invoice(s) in respect thereof subject to adjustment in respect of **The Company's** estimate of **Final Sums** in accordance with Clause 9A.3.3. or 9B.7.3.]

## 12. TERM

12.1 Subject to the provisions for earlier termination set out in the **CUSC** this **Construction Agreement** shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8 or 11 hereof.

12.2 In addition this **Construction Agreement** shall terminate upon termination of the associated **Bilateral Connection Agreement** and in the event that this is prior to the **Charging Date** the 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), 6.24 (Counterparts), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23

(Jurisdiction), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the **CUSC** shall apply to this **Construction Agreement** as if set out in this **Construction Agreement**.

**14. DISPUTES**

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

**15. VARIATIONS**

15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The 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 and 2.11 and 2.16 and Paragraph 6.9 of the **CUSC**.

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

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

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

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**APPENDIX [J]**

**CONSTRUCTION PROGRAMME**

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**APPENDIX [H]**

**TRANSMISSION REINFORCEMENT WORKS**

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**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.

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**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 £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.

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**APPENDIX [G]**

**TRANSMISSION CONNECTION ASSET WORKS**



**APPENDIX [B]  
[Part 1]**

**ONE OFF WORKS**

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**APPENDIX M**

**FINAL SUMS**

**PART 1**

**SECURITY ARRANGEMENT**

1. **DEFINITIONS**

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

“Bi-annual Estimate” means an estimate pursuant to Clause [9.2.1] of this Construction Agreement of all payments to be made or which may be required to be made by the User in any relevant period, such estimate to be substantially in the form set out in Part 2 of this Appendix M;

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

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably satisfactory to The Company but in any case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or such other form as may be reasonably satisfactory to The Company and allowing for partial drawings and providing for the payment to The

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	Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;
"Notice of Drawing"	means a notice of drawing signed by or on behalf of The Company substantially in the form set out in Part 4 of this Appendix M;
"Performance Bond"	means an on first demand without proof or conditions irrevocable performance bond or performance guarantee executed as a deed in a form reasonably satisfactory to The Company but in any case allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;
"Qualified Bank"	means a City of London branch of a bank, its successors and assigns, which has throughout the validity period of the Performance Bond or Letter of Credit it issues in favour of The Company, a rating of at least A- in Standard and Poor's long term debt rating or A3 in Moody's long term debt rating provided that such bank is not during such validity period put on any credit watch or any similar credit surveillance which gives The Company reasonable cause to doubt that such bank may not be able to maintain the aforesaid rating throughout the validity period and no other event has occurred which gives The Company reasonable cause to have such doubt;
"Qualified Company"	means a company which is a public company or a private company within the meaning of S.1(3) of the Companies Act 1985 and which is either a shareholder of the User or any holding company of such shareholder (the expression holding company having the meaning

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

“Secured Amount Statement”

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

“User's Obligation”

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

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

“Valid”

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

## 2. **SECURITY REQUIREMENT**

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

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

## 3. **GENERAL PROVISIONS**

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

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

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

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

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

- 3.3.3 Thereafter, the renewed Performance Bond or Letter of Credit shall be further renewed in like manner every 6 months.
- 3.4 The following provisions shall govern the maintenance of cash deposits in the Bank Account:-
- 3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.
- 3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.
- 3.4.3 If such amount stated in the Secured Amount Statement is smaller than the amount then secured, the cash deposit in the Bank Account shall not be reduced to the amount so stated until the expiry of 7 days after the next following 31st March or 30th September (as the case may be) ("the Release Date").
- 3.4.4 The sum equal to the amount of reduction in the cash deposit in the Bank Account shall be paid by The Company to the User from the Bank Account on the Release Date.
- 3.4.5 Any interest accruing to the Bank Account shall be for the account of and belong to the User absolutely, and The Company agrees to take any steps required to be taken by it for the release from the Bank Account and payment

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to the User of such interest as soon as the same shall have been credited to the Bank Account and The Company shall have received notice of such credit.

3.5 Notwithstanding any provision aforesaid:-

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

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

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

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

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



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days after the then following 31st March or 30th September (as the case may be).

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**PART 2**

**BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT  
DATED [            ]**

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

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1.            Final Sums

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**PART 3**

**SECURED AMOUNT STATEMENT**

**CONSTRUCTION AGREEMENT DATED [       ]**

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

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User's Obligation

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

for and on behalf of  
**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

Duly authorised officer

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**PART 4**

**NOTICE OF DRAWING**

To [ ] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

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

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

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

Bank plc

Address:

Sort Code:

Account Name: National Grid Electricity Transmission plc

Account No:

Yours faithfully,

for and on behalf of  
**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

Duly authorised officer

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**APPENDIX [N]**

**THIRD PARTY WORKS**

**END OF SCHEDULE 2 EXHIBIT 3**

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**New CUSC Definitions and amended Section 6 of the CUSC for Alternative Amendment A1**

- 6.30.1 Decrease in **Transmission entry Capacity**
- 6.30.1.1 Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site** upon giving **The Company** not less than **25 Business Days** notice in writing ~~prior to 30 March in any Financial Year.~~
- 6.30.1.2 **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.
- 6.30.1.3 The decrease in the **Transmission Entry Capacity** shall take effect **at the end of the TEC Decrease Notice Period** ~~on the first of April following receipt of the notice.~~

## Section 11 (Definitions)

Add new definitions as follows

<b>"Cancellation Charge"</b>	in relation to a particular <b>User</b> as defined in its <b>Construction Agreement</b> ;
<b>"Capacity Reduction Charge"</b>	In relation to a particular <b>User</b> as defined in its <b>Construction Agreement</b> ;
<b>"Non Tec User"</b>	a <b>User</b> who is a) not a <b>TEC User</b> or b) a <b>TEC User</b> where the <b>Construction Works</b> in its <b>Construction Agreement</b> do not relate to the provision of <b>Transmission Entry Capacity</b> or an increase in <b>Transmission Entry Capacity</b> ;
<b>"User Commitment Principles"</b>	the principles applied by <b>The Company</b> in the application and calculation of a <b>User's Cancellation Charge</b> and <b>Capacity Reduction Charge</b> such principles being set out in Schedule 4;
<b>"TEC Decrease Notice Period"</b>	the notice period required pursuant to <b>CUSC Paragraph 6.30.1.1</b> ;

"TEC User"	a <b>User</b> acting in the category of a <b>Power Station</b> directly connected to the <b>GB Transmission System</b> or an <b>Embedded Power Station</b> except those which are the subject of a <b>BELLA</b> or an <b>Interconnector Owner</b> ;

## **Text to give effect to the Working Group Alternative Amendment A2**

### **New Schedule 4 to the CUSC - User Commitment Principles**

#### **USER COMMITMENT PRINCIPLES for Alternative Amendment A2**

##### **Introduction**

**This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.**

##### **1. CANCELLATION CHARGE**

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

##### **User Commitment Amount**

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

**Value Added Tax** will be payable on the **User Commitment Amount** in each **Cancellation Period**.

### Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_{\text{TPCR}} * X * T_t$$

Where:

- *Cancellation Amount<sub>t</sub>* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in kW)
- *Generation TNUoS<sub>TPCR</sub>* is either the zonal Generation TNUoS tariff (subject to a minimum £3/KW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a Generation TNUoS<sub>TPCR</sub> zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T<sub>t</sub>* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

**Value Added Tax** will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

### Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

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## Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

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

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

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

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the **profile of the User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Agreement; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.



## 2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

### Pre-Trigger Date

Capacity Reduction Charge<sub>t</sub> = User Commitment Amount<sub>t</sub> – (TEC<sub>r</sub> \* UCAT<sub>t</sub>)

Where;

UCAT is the User Commitment Amount Tariff and is £1/W in the first 12-month period from signature of the **Construction Agreement**, £2/kW in the following 12-month period and £3/kW thereafter until the **Trigger Date**.

TEC<sub>(r)</sub> is the revised TEC following reduction of TEC.

### Post Trigger Date

Capacity Reduction Charge<sub>(t)</sub> = Cancellation Amount<sub>(t)</sub> – (TEC<sub>(r)</sub> \* GenTNUoS<sub>(TPCR)</sub> \* X \* T<sub>(t)</sub>)

## Amended clauses to the Construction Agreement for Alternative Amendment A2

Please see the **Construction Agreement** in the legal text for **Alternative Amendment A1**

## New CUSC Definitions and amended Section 6 of the CUSC

### 6.30.2 Decrease in **Transmission entry Capacity**

6.30.2.1 Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site** upon giving **The Company** not less than ~~25~~ **Business-days** notice in writing prior to ~~30 March~~ in any **Financial Year**.

6.30.2.2 **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.

6.30.2.3 The decrease in the **Transmission Entry Capacity** shall take effect **at the end of the TEC Decrease Notice Period** ~~on the first of April following receipt of the notice.~~

### Section 11 (Definitions)

Add new definitions as follows

<b>"Cancellation Charge"</b>	in relation to a particular <b>User</b> as defined in its <b>Construction Agreement</b> ;
<b>"Capacity Reduction Charge"</b>	In relation to a particular <b>User</b> as defined in its <b>Construction Agreement</b> ;
<b>"Non Tec User"</b>	a <b>User</b> who is a) not a <b>TEC User</b> or b) a <b>TEC User</b> where the <b>Construction Works</b> in its <b>Construction Agreement</b> do not relate to the provision of <b>Transmission Entry Capacity</b> or an increase in <b>Transmission Entry Capacity</b> ;
<b>"User Commitment Principles"</b>	the principles applied by <b>The Company</b> in the application and calculation of a <b>User's Cancellation Charge</b> and <b>Capacity Reduction Charge</b> such principles being set out in Schedule 4;
<b>"TEC Decrease Notice Period"</b>	the notice period required pursuant to <b>CUSC</b> Paragraph 6.30.1.1;
<b>"TEC User"</b>	a <b>User</b> acting in the category of a <b>Power Station</b> directly connected to the <b>GB Transmission System</b> or an <b>Embedded Power Station</b> except those which are the subject of a <b>BELLA</b> or an <b>Interconnector Owner</b> ;

## **Text to give effect to the Working Group Alternative Amendment A3**

### **New Schedule 4 to the CUSC - User Commitment Principles**

#### **USER COMMITMENT PRINCIPLES for Alternative Amendment A3**

##### **Introduction**

**This section describes the methodology and principles used to calculate the Cancellation Charge associated with User Commitment.**

#### **1. CANCELLATION CHARGE**

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

##### **User Commitment Amount**

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

**Value Added Tax** will be payable on the **User Commitment Amount** in each **Cancellation Period**.

### Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * X * T_t$$

Where:

- *Cancellation Amount<sub>t</sub>* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in KW)
- *Generation TNUoS<sub>z</sub>* is either the zonal Generation TNUoS tariff (subject to a minimum £3/KW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T<sub>t</sub>* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

**Value Added Tax** will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

### Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

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## Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUOS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

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

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

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

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the **profile of the User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Programme; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

**Amended clauses to the Construction Agreement for Alternative Amendment A3 (and Alternative Amendment B3)**

**SCHEDULE 2 EXHIBIT 3]**

**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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## Construction Agreement Notes

- 1 This construction agreement is drafted generically for use in **Offers** for connection to or use of the **GB Transmission System**.
- 2 In the event of termination of this **Construction Agreement** different provisions apply in respect of payments due to **The Company** by a **User** depending on the category of **User** and this Construction Agreement contains the provisions for both **Non TEC Users** who are liable on termination for **Final Sums** and **TEC Users** who are liable on termination for a **Cancellation Charge** in accordance with the **User Commitment Principles** and **Final Sums** in respect of any **One Off Works**
- 3 The definition of **Final Sums** and Clause 2.4 are different (as noted within the text) depending on whether the **User** is a **Non TEC User** or **TEC User**
- 4 Clauses 9, 10 and 11 and Appendix M to this construction agreement are written in the alternative depending on whether the **User** is a **Non TEC User** or **TEC User** and in respect of **TEC Users** whose construction agreement provides for **One off Works** both the provisions relating to **Final Sums** and the **Cancellation Charge** will apply.
- 5 Clause [7.3] and Appendix R are only relevant for **TEC Users**.



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<u>Clause</u>	<u>Title</u>
1	Definitions, Interpretation and Construction
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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
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11	Termination on Event of Default
12	Term
13	CUSC
14	Disputes
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Appendix I	User's Works
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Appendix N	Third Party Works
Appendix R	Cancellation Charge

**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 **GB 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 **GB Transmission System** and pursuant to Standard Condition C8 of the **Transmission Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect **or** [specific recital to reflect that the **Construction Agreement** is an amendment of an existing signed offer pursuant to the **CUSC** amending documents]
- (C) **The Company** and the **User** are parties to the **CUSC Framework Agreement** (being an agreement by which the **CUSC** is made contractually binding between the parties).
- (D) Certain works are required as part of this offer as set out in this **Construction Agreement**.
- (E) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.

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

**1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

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

"Authority"	as defined in the <b>CUSC</b> .
"Backstop Date"	the date specified as such in the <b>Construction Programme</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 Amount"**

the sum calculated in accordance with the **User Commitment Principles** payable by the **User** on termination of this **Construction Agreement** on or after the **Trigger Date** such sum being that specified in the Table in Appendix R by reference to the **Cancellation Period** in which this **Construction Agreement** is terminated.

**"Cancellation Charge"**

the **User Commitment Amount** or **Cancellation Amount** as appropriate.

**"Cancellation Period(s)"**

the periods specified as such in Appendix R

"Charging Date"

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

“Commissioning Programme Commencement Date”	Programme	the date specified in the <b>Construction Programme</b> for the commencement of the <b>Commissioning Programme</b> or any substituted date fixed under the terms of this <b>Construction Agreement</b>
“Commissioning Programme”		the sequence of operations/tests necessary to connect the <b>User’s Works</b> and the <b>Transmission Connection Asset Works</b> to the <b>GB Transmission System</b> for the purpose of making the <b>User’s Works</b> available for operation to be determined pursuant to Clause 2.10 of this <b>Construction Agreement</b> .
“Completion Date”		[ ] or such other date as may be agreed in terms of this <b>Construction Agreement</b> .
“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”		<p>in relation to any <b>Works</b>:-</p> <ul style="list-style-type: none"> <li data-bbox="865 1066 1417 1121">(a) all such planning and other statutory consents; and</li> <li data-bbox="865 1129 1417 1220">(b) all wayleaves, easements, rights over or interests in land or any other consent; or</li> <li data-bbox="865 1228 1417 1409">(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.</li> </ul>
“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 undertaken by or on behalf of <b>The Company</b> ;
“Construction Works”		the <b>Transmission Connection Asset Works</b> , <b>Transmission Reinforcement Works</b> , <b>Seven Year Statement Works</b> and <b>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> .
"Event of Default"	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
<b>["Final Sums" (Non TEC Users)</b>	<p>the amount payable by the <b>User</b> on termination of this <b>Construction Agreement</b> being the aggregate from time to time and for the time being of:-</p> <ol style="list-style-type: none"> <li>(1) all <b>The Company Engineering Charges</b> arisen prior to the date of termination;</li> <li>(2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by <b>The Company</b> in respect of any part of the <b>Construction Works</b> carried out prior to the date of termination of this <b>Construction Agreement</b>;</li> <li>(3) fees, expenses and costs properly payable by <b>The Company</b> in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any <b>Construction Works</b> provided it is negotiated on an arms length basis (including any such arising under the <b>STC</b>);</li> <li>(4) a sum equal to the reasonable costs of removing any <b>Transmission Connection Assets</b> and of making good the remaining <b>Plant</b> and <b>Apparatus</b> following such removal;</li> <li>(5) <b>fees, expenses and costs due in accordance with Clause 2.4.1; and</b></li> <li>(6) 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 <b>Base Rate</b> from time to time and for the time being.</li> </ol>

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

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

“Final Sums” (TEC Users)

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

- (1) all **The Company Engineering Charges** arisen prior to the date of termination;
- (2) fees, expenses and costs (excluding costs on account of interest charges incurred by The Company) of whatever nature reasonably and properly incurred or due by **The Company** in respect of any part of the **One Off Works** carried out prior to the date of termination of this **Construction Agreement**;
- (3) fees, expenses and costs properly payable by **The Company** in respect of, or arising from the termination by it or any third party of any contract for or relating to the carrying out of any **One Off Works** provided it is negotiated on an arms length basis (including any such arising under the **STC**);
- (4) fees, expenses and costs due in accordance with Clause 2.4.1; and
- (5) interest on any such amounts from the date they were paid by **The Company** to the date of **The Company's** invoice at 2% over **Base Rate** from time to time and for the time being.

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

“Independent Engineer”

the engineer specified in Appendix L to this

**Construction Agreement.** Provided that:-

- (a) where the parties fail to agree on a suitable engineer within 120 days of the date of this **Construction Agreement**; or
- (b) where any **Independent Engineer** appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;

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

“Liquidated Damages”

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

“One Off Works”

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

“Seven Year Statement Works”

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

“Term”

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

“Third Party Works”

the works specified in Appendix N.

“Transmission Connection Assets”

the assets specified in Appendix A to the **Bilateral Connection Agreement**.

“Transmission Connection Asset Works”

the works necessary for construction and installation of the **Transmission Connection Assets** at the **Connection Site** specified in Appendix G to this **Construction Agreement**.

"Transmission Works"	Reinforcement	those works other than the <b>Transmission Connection Asset Works, Seven Year Statement Works and One Off Works</b> , which in the reasonable opinion of <b>The Company</b> are necessary to extend or reinforce the <b>GB Transmission System</b> in relation to and prior to the connection of the <b>User's Equipment</b> at the <b>Connection Site</b> and which are specified in Appendix H to this <b>Construction Agreement</b> , where Part 1 is works required for the <b>User</b> and Part 2 is works required for wider system reasons.
"Trigger Date"		the date specified as such in Appendix R as it may be amended from time to time under the provisions of this <b>Construction Agreement</b> .
"User Commitment Amount"		the sum calculated in accordance with the <b>User Commitment Principles</b> payable by the <b>User</b> on termination of this <b>Construction Agreement</b> prior to the <b>Trigger Date</b> such sum being that specified in the Table in Appendix R by reference to the <b>Cancellation Period</b> in which this <b>Construction Agreement</b> is terminated.
"User Commitment Principles"		the methodology relating to the application and calculation of the <b>Cancellation Charge</b> and <b>TEC Reduction Charge</b> set out in <b>CUSC</b> Schedule 4 as it may be amended from time to time.
"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> .
"Works"		the <b>Construction Works</b> and the <b>User's Works</b> .

## 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** [(except the **Trigger Date**)] 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.**

*[include 2.4.1 where Final Sums apply]*

*[Non TEC User]*

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

- (a) all **The Company 's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

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

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

*[TEC User]*

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

- (a) all **The Company 's Engineering Charges** accrued; and
- (b) proper and reasonable out-of-pocket expenses incurred and/or paid or which **The Company** is legally bound to incur or pay

in seeking and obtaining the **Consents** the subject of Clause 2.2 of this **Construction Agreement** in respect of the **One Off Works**. **The Company** shall keep the **User** informed of the level of such charges and expenses being incurred. ]

[2.4.2] [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 The **User** shall have the right to terminate this **Construction Agreement** [at any time] upon giving not less than 7 (seven) days notice in writing to **The Company**. Upon such termination 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**. Upon such termination 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.
- 2.9 During the period of and at the times and otherwise as provided in the **Construction Programme** and the **Commissioning Programme** **The Company** shall allow the **User**, its employees, agents, suppliers, contractors and sub-contractors necessary access to the **Construction Site** and the **User** shall allow **The Company** or, in the case of **Connection Sites** in Scotland, the **Relevant Transmission Licensee** and in either case their employees, agents, suppliers, contractors and sub-contractors necessary access to its site to enable each to carry out the **Transmission Connection Asset Works** and **One Off Works** or **User's Works** but not so as to disrupt or delay the construction and completion of the other's **Works** on the said sites or the operation of the other's **Plant** and **Apparatus** located thereon, such access to be in accordance with any reasonable regulations relating thereto made by the site owner or occupier.
- 2.10 Not later than six months prior to the **Commissioning Programme Commencement Date** **The Company** shall provide the **User** with a draft **Commissioning Programme** for the **Commissioning** of the **Transmission Connection Assets**, and the **User's Equipment**. The

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

- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **Transmission Connection Asset Works** and/or **Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), G (**Transmission Connection Asset Works**) H (**Transmission Reinforcement Works**) and N (**Third Party Works**)] to this **Construction Agreement** (and consequently Appendices [A (**Transmission Connection Assets**) and B (**Connection Charges** and **One Off Charges**)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change.
- 2.12 [The **User** shall apply to the **Secretary of State for Trade and Industry** as part of its application under **Section 36 of the Act** for its generating station, for deemed planning permission in relation to the substation forming part of the **Transmission Connection Asset Works**. The **User** shall use its best endeavours to procure that the said deemed planning permission is so obtained. The **Company's** obligations under **Clause 2.2** of this **Construction Agreement** shall not require it to obtain planning consent for the said substation unless and until the **Secretary of State for Trade and Industry** shall for whatever reason refuse to deem the grant of planning permission in respect of the same. The **User** shall liaise with The **Company** as to its construction and operational requirements and shall ensure that the said application meets The **Company's** requirements. The **Company** shall provide the **User** with all information reasonably required by it in relation to the application

**and the User shall ensure that all requirements of The Company are incorporated in the application for deemed planning consent.]**

- 2.13 [The **Transmission Reinforcement Works** are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between The Company and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works** (and as a consequence), the **Construction Programme** and all dates [(except the **Trigger Date**)] specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and each of the **User** and **The Company** shall accordingly discharge all the duties of clients under the said **Regulations**.]
- 2.15 [The **Company** and the **User** hereby agree and acknowledge that this **Construction Agreement** is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.
- 2.16 Where **The Company** exercises its rights to change the **Construction Works** or **Construction Programme** pursuant to Clauses 2.3, 2.11, 2.13 or [3.2] **The Company** shall review the appropriateness of the **Trigger Date** in light of such changes. **The Company** shall advise the **User** by notice in writing as soon as practicable as to whether it considers it appropriate in accordance with the principles in the **User Commitment Principles** to revise such **Trigger Date** as a consequence of these changes or believes the **Trigger Date** remains appropriate notwithstanding such changes in either case giving its reasons for its view. Where **The Company** considers a revision is appropriate it shall be entitled to revise the **Trigger Date** (and as a consequence Appendix R) upon [30 days] written notice.

### 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 and The Company as necessary to reflect this.**

#### **4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES**

- 4.1 Each party shall give written notice to the other declaring its readiness to commence the Commissioning Programme when this is the case.**
- 4.2 The Commissioning Programme shall commence forthwith once both parties have given written notice to the other under Clause 4.1.**
- 4.3 The Works shall be deemed to have been Commissioned on the date that the Independent Engineer certifies in writing to that effect.**
- 4.4 In the event that the actual date of commencement of the Commissioning Programme is later than the Commissioning Programme Commencement Date The Company (if and to the extent that it is responsible for delayed commissioning beyond the Commissioning Programme Commencement Date, such responsibility and/or its extent to be determined by the Independent Engineer failing agreement between the parties) shall be liable to pay to the User Liquidated Damages for each day that the actual date of commencement of the Commissioning Programme is later than the Commissioning Programme Commencement Date. It is**

**declared and agreed that such Liquidated Damages shall cease to be payable in respect of any period after the date of actual commencement of the Commissioning Programme.**

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

**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 the Backstop Date 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. Upon such termination 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 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 GB 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 GB 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.**

## **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 **GB 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** 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**.
- 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 **Transmission Reinforcement Works** [and/or works for the **Modification**] being carried out and/or the **[New] Connection Site** being **Operational** (any or all as appropriate) **The Company** shall forthwith notify the **User** ("**Operational Notification**") in writing that it has the right to use the **GB 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 **Transmission Entry 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 **Transmission Entry Capacity** of the **User's Equipment**.

## 8. COMPLIANCE WITH SITE SPECIFIC TECHNICAL CONDITIONS

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

## 9. CREDIT REQUIREMENTS

Alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing the **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**. Details of the credit requirements are set out in the relevant Appendix M

### [FINAL SUMS

#### 91 PROVISION OF SECURITY (User meets The Company Credit Rating)

9.1.1 The User shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before 1 April and 1 October in each year until (subject to Clause 9.4) 28 days after the **Charging Date** the User shall confirm its **The Company Credit Rating** to **The Company** (which in the case of a long term private credit rating shall be confirmed by Standard and Poor's or Moody's within a period of 45 days prior to the date of confirmation). The **User** shall inform **The Company** in writing forthwith if it becomes aware of losing its **The Company Credit Rating** or if it is or is likely to be put on credit watch or any similar credit surveillance procedure which may give **The Company** reasonable cause to believe that the **User** may not be able to sustain its **The Company Credit Rating** for at least 6 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the User forthwith:-

- (i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or
- (ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 In the event of the **User**:-

- (i) not having an **The Company Credit Rating**; or
- (ii) having a credit rating below **The Company Credit Rating**; or
- (iii) not having obtained from Standard and Poor's or Moody's within 30 days of the written notification under Clause 9.1.2 above an indicative long term private credit rating,

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

- (iv) the **User** ceases to have an **The Company Credit Rating**; or

- (v) the **User** is put on credit watch or other similar credit surveillance procedure as specified above which may give **The Company** reasonable cause to believe that the User may not be able to maintain an **The Company Credit Rating** for at least 6 months; or
- (vi) the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating,

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** arising in the event of, or which have arisen prior to, termination of this **Construction Agreement**. The security to be provided shall be in an amount not greater than such sums payable on termination and specified in writing by **The Company** to the **User** from time to time as appropriate. Such security shall be provided by way of:-

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

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

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

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

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

#### **Final Sums**

- 9.2 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:

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

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

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

market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.

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

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

Or

#### 9.1 Provision of Security (**User** does not meet **The Company Credit Rating**)

9.1.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall until (subject to Clause 9.8) 28 days after the **Charging Date** (unless and until this **Construction Agreement** shall be terminated and all sums due or which will or might fall due in respect of which security is to be provided shall have been paid) maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the **User's** obligation to pay **The Company** any and all sums specified by **The Company** in accordance with Clause 9.2 of this **Construction Agreement** as requiring to be secured in respect of:-

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

(b) **Final Sums.**

9.2 Provision of **Bi-annual Estimate** and **Secured Amount Statement**

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

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

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

9.2.3 If **The Company** shall not provide any subsequent **Bi-annual Estimate** and **Secured Amount Statement** by the requisite date, then the **User** shall at the date it is next required to have in full force and effect security and whether by renewal or replacement or otherwise in respect of the following six calendar month period nonetheless provide security in accordance with the provisions of this **Construction Agreement** in the same amount as the amount then in force in respect of the then current six calendar month period. Notwithstanding the foregoing, if **The Company** shall provide the **User** with any **Bi-annual Estimate** and **Secured Amount Statement** later than the date specified in Clause 9.2.1 of this **Construction Agreement**, then the following shall apply. The **User** shall within 30 (thirty) days of receipt of the said **Secured Amount Statement** procure that to the extent that the amount in respect of which security has been or is to be provided pursuant to this Clause 9.2.3 in respect of the relevant period (“**the Secured Amount**”) falls short of the amount stated in the **Secured Amount Statement** (“**the Required Amount**”) the Secured Amount shall be adjusted to the **Required Amount**.

9.3 Entitlement to Estimate

If **The Company** is (for whatever reason) unable on any relevant date to calculate precisely any sum due or which has accrued due or in respect of which the **User** has a liability to **The Company** for payment under any of the provisions of this **Construction Agreement**, **The Company** shall be entitled

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

#### 9.4 Demands not Affected by Disputes

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

- 9.4.1 any amount certified by **The Company** in any **Secured Amount Statement** as requiring at any time and from time to time to be secured; or
- 9.4.2 the fairness and reasonableness of **The Company's** estimate; or
- 9.4.3 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or
- 9.4.4 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

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

- 9.5 If there shall be any dispute as mentioned in Clause 9.4 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and without prejudice to **The Company's** right to recover or seek to recover such payment, be referred in the case of Clauses 9.4.1 and 9.4.2 to the **Independent Engineer** (and, for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.5 shall survive termination) and, in the case of Clauses 9.4.3 and 9.4.4 be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

#### **Final Sums**

- 9.6 Within 60 days of the date of termination of this **Construction Agreement** **The Company** shall:
  - (a) furnish the **User** with a further statement showing a revised estimate of **Final Sums** and will provide as soon as practicable evidence of such costs having been incurred; and



- (b) by written notice to **the User** inform **the User** of all capital items which cost **The Company** in excess of £10,000 and in relation to which an amount on account of **Final Sums** shall have been paid and whether **The Company** (1) wishes to retain the said capital items or (2) dispose of them.
- 9.7.1 In respect of all capital items which **The Company** wishes to retain (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) **The Company** shall forthwith reimburse to the **User** the amount paid by the **User** on account of **Final Sums** in respect of the said capital items (including without limitation the amount paid on account of the design, purchase, installation and testing of the said capital item and also associated construction works and interest charges) together with interest calculated thereon on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time provided that in the event that **The Company** wishes to retain any capital item which has been installed but wishes to remove it to storage or to another site then it shall only reimburse to the **User** the cost of the capital item and not the costs of such installation and shall deduct from any reimbursement due to the **User** the costs of removal and/or storage.
- 9.7.2 In respect of all capital items which **The Company** wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for **Transmission Plant** and **Transmission Apparatus**) it shall forthwith (and subject to **The Company** obtaining the consent of the **Authority** under Standard Condition B3 of the **Transmission Licence** if required and/or subject to any **Relevant Transmission Licensee** obtaining the consent of the **Authority** under Standard Condition B3 of its transmission licence) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds **The Company** shall pay to the **User** the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at **Base Rate** for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably incurred and/or paid and/or which **The Company** is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by **The Company** in respect of reinstatement associated with removal of the capital item. **The Company** shall provide the **User** with reasonably sufficient evidence of all such costs and expenses having been incurred. If the **Authority** does not agree to the disposal of the capital item the capital item shall be retained by **The Company** and **The Company** shall reimburse the **User** the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the parties and failing agreement as determined by reference to arbitration in accordance with the **Dispute Resolution Procedure** together with interest thereon calculated on a daily basis from the date of termination of this **Construction Agreement** to the date of payment at **Base Rate** for the time being and from time to time.
- 9.7.3 As soon as reasonably practicable after termination of this **Construction Agreement** **The Company** shall provide the **User** with a statement of and invoice for **Final Sums** together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the **Final Sums** are greater than the payments made by the **User** in respect of **The Company's** estimate(s) of **Final Sums** the **User** shall within 28 days of

the said statement and invoice prepared by **The Company** pay to **The Company** the additional payments due by the **User** together with interest calculated thereon on a daily basis at **Base Rate** for the time being and from time to time from the date of previous payment(s) sums equal to **The Company's** estimate of **Final Sums** to the date of the statement of and invoice for **Final Sums**.

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

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

and/or

[Cancellation Charge \_

## 9. PROVISION OF SECURITY (User meets The Company Credit Rating)

9.1.1 The **User** shall as soon as possible after execution of this **Construction Agreement** and in any event no later than one (1) month after the date of such execution confirm to **The Company** whether it meets **The Company Credit Rating**. Thereafter not less than 75 days before the start of each **Cancellation Period** the **User** shall confirm to **The Company** that 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 ceasing to meet **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 **The Company Credit Rating** for at least 12 months.

9.1.2 In the event that the **User** has elected to provide **The Company** with an indicative credit rating and **The Company** is of the reasonable opinion that the **User** has ceased to comply with the requirements of Clause 9.1.1 then **The Company** may require the **User** forthwith:-

(i) to apply to Standard and Poor's and/or Moody's for a further indicative long term private credit rating; or

(ii) to confirm to **The Company** that it shall provide the security referred to in Clause 9.1.4 hereof.

9.1.3 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 Clause 9.1.2 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

*the **User** has not obtained from Standard and Poor's within 30 days of the written notification by **The Company** under Clause 9.1.2(i) above a further indicative long term private credit rating,*

the **User** shall (where appropriate on receipt of written notification from **The Company**) comply with the terms of Clause 9.1.4.

9.1.4 The **User** shall within 21 days of the giving of a notice under Clause 9.1.3 or within 30 days of the **User** confirming to **The Company** under Clause 9.1.2(ii) that it will provide the security specified below (whichever is the earlier), provide **The Company** with the security specified below to cover the **User's** payment obligations to **The Company** in respect of the **Cancellation Charge**. The security to be provided shall be in an amount not greater than such sums payable on termination. Such security shall be provided by way of:-

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

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

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

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

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

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

9.2 The obligations to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

Or

## 9. **PROVISION OF SECURITY (User does not meet The Company Credit Rating)**

9.1 The **User** hereby agrees that it shall forthwith upon the signing of this **Construction Agreement** provide to **The Company** or procure the provision to **The Company** of, and the **User** shall maintain or procure that there is maintained in full force and effect (including by renewal or replacement), a security arrangement from time to time and for the time being as set out in Appendix M hereto to provide security for the sums specified in Clause 9.2 of this **Construction Agreement** as

requiring to be secured in respect of the **User's** liability to pay **The Company** the **Cancellation Charge**.

9.2 The **User** shall provide security at the beginning of and throughout each **Cancellation Period** for the **Cancellation Charge** that would be payable by the **User** in the event of this **Construction Agreement** terminating in such **Cancellation Period**

9.3 Demands not Affected by Disputes

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

9.3.1 whether the amount as requiring at any time to be secured has been calculated in accordance with the **User Commitment Principles**; or

9.3.2 whether there has been an **Event of Default** (under the **Construction Agreement** or the **CUSC**), or

9.3.3 the lawfulness or otherwise of any termination or purported termination of this **Construction Agreement**

such dispute shall not affect the ability of **The Company** to make demands pursuant to the security arrangement to be provided pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** and to recover the amount or amounts payable thereunder, it being acknowledged by the **User** that but for such being the case **The Company's** security would be illusory by reason of the period of validity of the relevant security being likely to expire or capable of expiring before the final resolution of such dispute. The **User** accordingly covenants with **The Company** that it will not take any action, whether by way of proceedings or otherwise, designed or calculated to prevent, restrict or interfere with the payment to **The Company** of any amount secured under the security arrangement nor seek nor permit nor assist others to do so.

9.5 If there shall be any dispute as mentioned in Clause 9.3 of this **Construction Agreement** the same shall, whether **The Company** shall have terminated this **Construction Agreement** and recovered or sought to recover payment under the security arrangement or not, and

without prejudice to **The Company's** right to recover or seek to recover such payment, be referred, in the case of Clause 9.3.1, to the **Independent Engineer** (and for the avoidance of doubt the provisions of this **Construction Agreement** relating to the **Independent Engineer** for the purposes of this Clause 9.4 shall survive termination) and, in the case of Clauses 9.3.2 and 9.3.3, be dealt with by referral to arbitration in accordance with the **Dispute Resolution Procedure**.

9.5 The obligations to provide security under this Clause 9 shall continue until 45 days after the last day of the last **Cancellation Period** unless **The Company** agrees otherwise.

## 10. EVENT OF DEFAULT

As before alternate provisions apply depending whether or not the **User** does or does not meet **The Company's** required credit rating on signing this **Construction Agreement** and whether the **User's** liability is in respect of **Final Sums** and/or **Cancellation Charge**.

*[Final Sums and Cancellation Charge]*

### 10. Event of Default (User meets The Company Credit Rating)

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

- 10.1 If the **User** fails to provide or procure that there is provided to **The Company** within the requisite time any relevant security satisfactory to **The Company**, or to enter into the **Amending Agreement** pursuant to Clauses 9.1 or 10.3 of this **Construction Agreement**.
- 10.2 If having entered into the **Amending Agreement** and having provided security satisfactory to **The Company** pursuant to Clauses 9.1 and 10.3 of this **Construction Agreement**.
- (a) The **User** thereafter fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required by this **Construction Agreement** as varied by the **Amending Agreement** or to revise or renew such security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required, or if the **User** shall otherwise be in breach of any of its obligations in respect of security under this **Construction Agreement** as varied by the **Amending Agreement**;
  - (b) The **User** or any shareholder (whether direct or indirect) of the **User** or any other party who may at any time be providing security to **The Company** pursuant to the requirements of this **Construction Agreement** as varied by the **Amending Agreement** takes any action whether by way of proceedings or otherwise designed or calculated to

prevent, restrict or interfere with the payment to **The Company** of any amount so secured whether or not there shall be a dispute between the parties;

- (c) Any party who may at any time be providing security to **The Company** pursuant to the provisions of this **Construction Agreement** as varied by the **Amending Agreement** fails to pay to **The Company** any sum demanded pursuant thereto.

10.3 If

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

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

Provided that (in relation to paragraphs (i) or (ii) or (iii) above) if at anytime after the putting in place of security under Clause 10.3 the **User** shall produce



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

- 10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

Or

### [Final Sums

#### 10 Event of Default ( User not meet The Company Credit Rating)

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

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

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

- (1) within a period of 14 (fourteen) days following the date on which **The Company** gives notice of such circumstances to provide to **The Company** a cash deposit in a **Bank Account**, a **Performance Bond** or **Letter of Credit** (as defined in Appendix M) in favour of **The Company** and **Valid** (as defined in Appendix M) at least up to the last day of the **Financial Year** in which the event occurs for such amount

representing **The Company's** reasonable estimate of all unsecured sums to become due to **The Company** in the period up to the end of the **Financial Year** in which the event occurs such sum to be specified in the said notice; or

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

Provided that regarding (i) or (ii) or (iii) if at any time after the putting in place of security under this Clause 10.1 the **User** shall provide to **The Company** evidence to **The Company's** reasonable satisfaction that there is not a substantial probability of the **User** being unable to make payment to **The Company** of any unsecured sums within the next following period of twelve (12) months, **The Company** shall not require the **User** to provide the aforesaid security and shall release any such security then in place. This waiver is without prejudice to **The Company's** right to return security at any time thereafter in the event of any of the circumstances set out in paragraph (i) and/or (ii) and/or (iii) in this Clause 10.1 subsequently occurring.

- 10.2 If the **User** fails to provide or procure that there is provided to **The Company** or at any time fails to maintain or procure that there is maintained in full force and effect the relevant security arrangement required under Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.3 If the **User** or any shareholder (whether direct or indirect) of the **User** takes any action whether by way of proceedings or otherwise designed or calculated to prevent restrict or interfere with the payment to **The Company** of any amount so secured or seeks or permits or assists others to do so, whether or not there shall be a dispute between the parties.
- 10.4 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clauses 9.1 or 10.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.5 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

and/or

[Cancellation Charge

10 **Event of Default (User not meet The Company Credit Rating)**

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

- 10.1 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 Clause 9.1 of and Appendix M to this **Construction Agreement** or to renew or revise such security or to substitute any security with the required replacement security or to maintain or procure that there is maintained in full force and effect any such renewed, revised or substituted security as so required or if the **User** is otherwise in breach of any of its obligations under Appendix M to this **Construction Agreement**.
- 10.2 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.
- 10.3 If any party who may at any time be providing or holding security in favour of **The Company** pursuant to Clause 9.1 of and Appendix M to this **Construction Agreement** fails to pay **The Company** any sum demanded in any Notice of Drawing (as defined in Appendix M) pursuant thereto.
- 10.4 Any of the **Events of Default** in Paragraph 5.3.1 of the **CUSC** have occurred and are occurring.]

## 11. TERMINATION

- 11.1 Once an **Event of Default** pursuant to Clause 10 has occurred and is continuing **The Company** may give notice of termination to the **User** whereupon this **Construction Agreement** shall forthwith terminate and the provisions of this Clause 11 shall apply.
- 11.2 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.

11.3 The User shall be liable forthwith on the date this Construction Agreement so terminates to pay to The Company [-

[Non TEC Users

(1) a sum equal to The Company's fair and reasonable estimate of Final Sums; such payment to be made within 14 days of the date of The Company's invoice(s) in respect thereof subject to adjustment in accordance with Clause [9.3.3. or 9.7.3]] or]

or

[TEC Users

(1) the Cancellation Charge and

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

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

## 12. TERM

12.1 Subject to the provisions for earlier termination set out in the CUSC this Construction Agreement shall continue until terminated in accordance with Clause 2.5, 2.6, 4.8 or 11 hereof.

12.2 In addition this Construction Agreement shall terminate upon termination of the associated Bilateral Connection Agreement and in the event that this is prior to the Charging Date the 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), 6.24 (Counterparts), 6.20 (Waiver), 6.21 (Notices), 6.22 (Third party Rights), 6.23 (Jurisdiction), 6.25 (Governing Law), 6.26 (Severance of Terms), 6.27 (Language) inclusive of the CUSC shall apply to this Construction Agreement as if set out in this Construction Agreement.

## 14. DISPUTES

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

**15. VARIATIONS**

- 15.1 Subject to Clause 15.2 and 15.3 below, no variation to this **Construction Agreement** shall be effective unless made in writing and signed by or on behalf of both **The 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 and 2.11 and 2.16 and Paragraph 6.9 of the **CUSC**.

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

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

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

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

**APPENDIX [H]**  
**TRANSMISSION REINFORCEMENT WORKS**

**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.



**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 £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 [G]**  
**TRANSMISSION CONNECTION ASSET WORKS**

**APPENDIX [B]**  
**[Part 1]**  
**ONE OFF WORKS**

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**APPENDIX M****[FINAL SUMS]****PART 1****SECURITY ARRANGEMENT****1. DEFINITIONS**

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

“Bi-annual Estimate” means an estimate pursuant to Clause [9.2.1] of this Construction Agreement of all payments to be made or which may be required to be made by the User in any relevant period, such estimate to be substantially in the form set out in Part 2 of this Appendix M;

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

“Letter of Credit” means an irrevocable standby letter of credit in a form reasonably satisfactory to The Company but in any case expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No. 500 or

such other form as may be reasonably satisfactory to The Company and allowing for partial drawings and providing for the payment to The Company on demand forthwith on and against The Company's delivery to the issuer thereof of a Notice of Drawing of the amount demanded therein;

"Notice of Drawing" means a notice of drawing signed by or on behalf of The Company substantially in the form set out in Part 4 of this Appendix M;

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

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

“Qualified Company” means a company which is a public company or a private company within the meaning of S.1(3) of the Companies Act 1985 and which is either a shareholder of the User or any holding company of such shareholder (the expression holding company having the meaning assigned thereto by Section 736, Companies Act 1985 as supplemented by Section 144(3), Companies Act 1989) and which has throughout the validity period of the Performance Bond it gives in favour of The Company, a rating of at least A- in Standard and Poor’s long term debt rating or A3 in Moody’s long term debt rating or such lesser rating which The Company may in its absolute discretion allow by prior written notice given pursuant to a resolution of its board of directors for such period and on such terms as such resolution may specify provided that such company is not during such validity period put on any credit watch or any similar credit surveillance procedure which gives The Company reasonable cause to doubt that such company may not be able to maintain the aforesaid rating throughout the validity period of the Performance Bond and no other event has occurred which gives The Company reasonable cause to have such doubt;

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

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“User’s Obligation”	means the User’s obligation to pay under this Construction Agreement:-  (i) all amounts in respect of which the User has a liability to pay to The Company pursuant to Clause 2.4 of this Construction Agreement;  (ii) Final Sum
“Valid”	means valid for payment to be made thereunder against delivery of a Notice of Drawing given within the period stated therein.

## 2. **SECURITY REQUIREMENT**

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

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

### 3. **GENERAL PROVISIONS**

- 3.1 Any Notice of Drawing to be delivered to Barclays Bank PLC or any other bank at which the Bank Account shall have been opened or a Qualified Bank or a Qualified Company may be delivered by hand, by post or by facsimile transmission.
- 3.2 If the User becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, the User shall so notify The Company in writing as soon as it becomes so aware. If The Company becomes aware that the bank issuing the Performance Bond or Letter of Credit ceases to be a Qualified Bank or that the company giving the Performance Bond ceases to be a Qualified Company, The Company may notify the User to that effect in writing. Where the bank or the company so ceases to be either a Qualified Bank or a Qualified Company (as the case may be) as a consequence of The Company having reasonable cause to doubt the continued rating of the said bank or company, such notice shall be accompanied by a statement setting out The Company's reasons for having such doubt. The User shall within 21 days of the giving of such notice by The Company or the User whichever is the earlier provide a replacement Performance Bond and/or Letter of Credit from a Qualified Bank or Qualified Company, as the case may be, and/or provide a cash deposit in the required amount in a Bank Account. From the date the replacement Performance Bond or Letter of Credit or Bank Account cash deposit is effectively and unconditionally provided and Valid, The Company will consent in writing to the security which it replaces being released.
- 3.3 The following provisions shall govern the issuance, renewal and release of the Performance Bond or Letter of Credit:-
- 3.3.1 The Performance Bond or Letter of Credit shall be Valid initially from the signing of this Construction Agreement at least to and including the following 31st March or 30th September whichever is the earlier date. Such Performance Bond or Letter of Credit shall be for an amount not



less than that stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period specified in the Secured Amount Statement.

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

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

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

3.4.1 The amount of the cash deposit to be maintained in the Bank Account shall be maintained from the date of this Construction Agreement at least to and including the following 31st March or 30th September, whichever is the earlier date. Such cash deposit shall be in an amount as stated in the Secured Amount Statement as the amount of the User's Obligation to be secured during the period stated in the Secured Amount Statement.

3.4.2 If the amount stated in the Secured Amount Statement as the amount of the User's Obligation to be secured from the following 1st April to 30th September or from the following 1st October to 31st March (as the case may be) is an amount greater than the amount then secured, the cash deposit in the Bank Account shall be increased to such greater amount on a date which is 45 days before the following 31st March or 30th September (as the case may be) which immediately precedes the commencement of the relevant above mentioned period.

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

before such immediately preceding 31st March or 30th September (as the case may be).

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

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

**PART 2**

**BI-ANNUAL ESTIMATE FOR CONSTRUCTION AGREEMENT**  
**DATED [            ]**

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

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1.            .  
Final Sums

**PART 3**

**SECURED AMOUNT STATEMENT**

**CONSTRUCTION AGREEMENT DATED [ ]**

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

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User's Obligation

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

for and on behalf of  
**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

Duly authorised officer

**PART 4**

**NOTICE OF DRAWING**

To [ ] Bank/Public Limited Company/Limited

copy to:

[date]

Dear Sirs,

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

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

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

Bank plc

Address:

Sort Code:

Account Name: National Grid Electricity Transmission plc

Account No:

Yours faithfully,

for and on behalf of  
**NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

Duly authorised officer

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

**END OF SCHEDULE 2 EXHIBIT 3**

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## New CUSC Definitions and amended Section 6 of the CUSC for Alternative Amendment A3

### i. Decrease in **Transmission entry Capacity**

1. Each **User** shall be entitled to decrease the **Transmission Entry Capacity** for the **Connection Site** upon giving **The Company** not less than ~~25 Business years~~ **Days** notice in writing ~~prior to 30 March in any Financial Year.~~
2. **The Company** shall as soon as practicable after receipt of such notice issue a revised Appendix C for the purposes of the relevant **Bilateral Agreement** reflecting the decrease in the **Transmission Entry Capacity**.
3. The decrease in the **Transmission Entry Capacity** shall take effect **at the end of the TEC Decrease Notice Period** ~~on the first of April following receipt of the notice.~~

### Section 11 (Definitions)

Add new definitions as follows

<b>"Cancellation Charge"</b>	in relation to a particular <b>User</b> as defined in its <b>Construction Agreement</b> ;
<b>"Non Tec User"</b>	a <b>User</b> who is a) not a <b>TEC User</b> or b) a <b>TEC User</b> where the <b>Construction Works</b> in its <b>Construction Agreement</b> do not relate to the provision of <b>Transmission Entry Capacity</b> or an increase in <b>Transmission Entry Capacity</b> ;
<b>"User Commitment Principles"</b>	the principles applied by <b>The Company</b> in the application and calculation of a <b>User's Cancellation Charge</b> and <b>Capacity Reduction Charge</b> such principles being set out in Schedule 4;
<b>"TEC Decrease Notice Period"</b>	the notice period required pursuant to

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	<b>CUSC</b> Paragraph 6.30.1.1;
<b>"TEC User"</b>	a <b>User</b> acting in the category of a <b>Power Station</b> directly connected to the <b>GB Transmission System</b> or an <b>Embedded Power Station</b> except those which are the subject of a <b>BELLA</b> or an <b>Interconnector Owner</b> ;

## **Text to give effect to the Working Group Alternative Amendment B1**

### **New Schedule 4 to the CUSC - User Commitment Principles**

#### **USER COMMITMENT PRINCIPLES for Alternative Amendment B1**

##### **Introduction**

**This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.**

##### **1. CANCELLATION CHARGE**

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

##### **User Commitment Amount**

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

**Value Added Tax** will be payable on the **User Commitment Amount** in each **Cancellation Period**.

### Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * X * T_t$$

Where:

- *Cancellation Amount<sub>t</sub>* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in KW)
- *Generation TNUoS<sub>z</sub>* is either the zonal Generation TNUoS tariff (subject to a minimum £3/KW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T<sub>t</sub>* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

**Value Added Tax** will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

### Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

## Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

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

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

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

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised Construction Programme; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.



## 2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

### Pre-Trigger Date

$$\text{Capacity Reduction Charge}_t = \text{User Commitment Amount}_t - (\text{TEC}_r * \text{UCAT}_t)$$

Where;

UCAT is the User Commitment Amount Tariff and is £1/kW in the first 12-month period from signature of the **Construction Agreement**, £2/kW in the following 12-month period and £3/kW thereafter until the **Trigger Date**.

$\text{TEC}_{(r)}$  is the revised TEC following reduction of TEC.

### Post Trigger Date

$$\text{Capacity Reduction Charge}_{(t)} = \text{Cancellation Amount}_{(t)} - (\text{TEC}_{(r)} * \text{GenTNUoS}_{(z)} * X * T_{(t)})$$

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## Amended clauses to the Construction Agreement for Alternative Amendment B1

Please see the Construction Agreement in Alternative Amendment A1

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## **Text to give effect to the Working Group Alternative Amendment B2**

### **New Schedule 4 to the CUSC - User Commitment Principles**

#### **USER COMMITMENT PRINCIPLES for Alternative Amendment B2**

##### **Introduction**

**This section describes the methodology and principles used to calculate the Cancellation Charge and Capacity Reduction Charge associated with User Commitment.**

##### **1. CANCELLATION CHARGE**

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

##### **User Commitment Amount**

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

**Value Added Tax** will be payable on the **User Commitment Amount** in each **Cancellation Period**.

### Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_{\text{TPCR}} * X * T_t$$

Where:

- *Cancellation Amount<sub>t</sub>* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in kW)
- *Generation TNUoS<sub>TPCR</sub>* is either the zonal Generation TNUoS tariff (subject to a minimum £3/kW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a Generation TNUoS<sub>TPCR</sub> zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T<sub>t</sub>* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

**Value Added Tax** will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

### Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

## Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

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

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

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

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised **Construction Programme**; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.

## 2. CAPACITY REDUCTION CHARGE

Where the decrease takes effect prior to the **Completion Date** in the **Construction Agreement** following which a **User** will receive an **Operational Notification** in respect of such **Transmission Entry Capacity** the **Capacity Reduction Charge** shall be calculated on the following basis:

### Pre-Trigger Date

$$\text{Capacity Reduction Charge}_t = \text{User Commitment Amount}_t - (\text{TEC}_r * \text{UCAT}_t)$$

Where;

UCAT is the User Commitment Amount Tariff and is £1/kW in the first 12-month period from signature of the **Construction Agreement**, £2/kW in the following 12-month period and £3/kW thereafter until the **Trigger Date**.

$\text{TEC}_{(r)}$  is the revised TEC following reduction of TEC.

### Post Trigger Date

$$\text{Capacity Reduction Charge}_{(t)} = \text{Cancellation Amount}_{(t)} - (\text{TEC}_{(r)} * \text{GenTNUoS}_{(\text{TPCR})} * X * T_{(t)})$$

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## Amended clauses to the Construction Agreement for Alternative Amendment B2

Please see the Construction Agreement in the legal text for Alternative Amendment A1

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## **Text to give effect to the Working Group Alternative Amendment B3**

### **New Schedule 4 to the CUSC - User Commitment Principles**

#### **USER COMMITMENT PRINCIPLES for Alternative Amendment B3**

##### **Introduction**

**This section describes the methodology and principles used to calculate the Cancellation Charge associated with User Commitment.**

#### **1. CANCELLATION CHARGE**

Where a **Construction Agreement** between **The Company** and a **TEC User** is terminated such **User** shall be liable under the terms of that **Construction Agreement** to pay to **The Company** the **Cancellation Charge**. In addition a **TEC User** will be liable for final sums (as defined in the **Construction Agreement**) in respect of any **One Off Works** in such **Construction Agreement**.

The **Cancellation Charge** to be payable by the **User** in such circumstances shall be calculated in accordance with principles set out in this Section of the CUSC.

For the avoidance of doubt on termination of a **Construction Agreement** between **The Company** and a **Non TEC User** such **User's** liability is based on payment of **Final Sums** (as provided for in the **Construction Agreement**) rather than **Cancellation Charge**.

The **Cancellation Charge** will be the applicable **User Commitment Amount** in the event that the **Construction Agreement** is terminated prior to the **Trigger Date** or the applicable **Cancellation Amount** in the event that the **Construction Agreement** is terminated on or after the **Trigger Date**. The liability for the **Cancellation Charge** falls away in the event that the **Construction Agreement** is not terminated prior to or on the **Completion Date** in the **Construction Agreement**. The amounts and profile of the **User Commitment Amount** and **Cancellation Amount** throughout the term of the **Construction Agreement** will be specified in a **User's Construction Agreement**.

##### **User Commitment Amount**

Where the **Completion Date** in the **Construction Agreement** is more than seven full years after signature of the **Construction Agreement** (which will be assumed for these purposes to be the last day of the period for accepting the **Offer**) the **User Commitment Amount** will be £0 on termination any time prior to the date seven years before the **Completion Date**.

Where the **Completion Date** in the **Construction Agreement** is more than four full years but less than seven full years after signature of the **Construction Agreement** the total **User Commitment Amount** will be £1/kW on termination during the first full 12-month period, and will increase by £1/kW increments for each following 12-month period until the **Trigger Date** subject to a cap of £3/kW.

Signature of the **Construction Agreement** will be assumed for these purposes to be the last day of the period for accepting the **Offer**).

**Value Added Tax** will be payable on the **User Commitment Amount** in each **Cancellation Period**.

### Cancellation Amount

The **Cancellation Amount** shall apply for each 12-month period up to a maximum of 4 years before the **Completion Date** and will be calculated on the following basis:

$$\text{Cancellation Amount}_t = \text{TEC} * \text{Generation TNUoS}_z * X * T_t$$

Where:

- *Cancellation Amount<sub>t</sub>* is the liability due on termination of a **Construction Agreement** in the full relevant year
- *TEC* is the **Transmission Entry Capacity** requested (in kW)
- *Generation TNUoS<sub>z</sub>* is either the zonal Generation TNUoS tariff (subject to a minimum £3/kW) applicable to the generation project and published in the **Statement of Use of System Charges** or where a generation TNUoS zone does not exist for a given offshore or island location at the time of the **User's** application, the tariff which will be consistent with the Transmission Network Use of System Charging Methodology will be provided by **The Company** to the **User** in the **Offer**).
- *X* is a multiplier and is established by **The Company** at the beginning of each Transmission Price Control Period. For **Offers** made during the period April 2007 to April 2012 it will be six.
- *T<sub>t</sub>* is a fraction which varies according to the number of full years from the **Completion Date** to the **Trigger Date**. In the full 12-month period(t) prior to the **Completion Date** T is equal to 1. In the full 12-month period prior to year t (t-1) T is equal to 75%. In the full 12-month period prior to t-1 (t-2) T is equal to 50%. In the full 12-month period prior to t-2 (t-3) T is equal to 25%.

**Value Added Tax** will be payable on the **Cancellation Amount** in each **Cancellation Period**.

The **Cancellation Amount** will be based on the applicable Generation TNUoS tariff at the time of the **Offer**. Where the period of an Offer crosses a charging year, the applicable Generation TNUoS tariff that will be used shall be the Generation TNUoS tariff prevailing on the last day on which the Offer can be accepted.

### Trigger Date

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 identify a date in Appendix R in the **Construction Agreement** as the **Trigger Date**. The **Trigger Date** will be specified in **Appendix Q** in the **User's Construction Agreement** and will equate to when **The Company** reasonably believes it will incur significant costs in relation to the **Construction Works** associated with that **Offer**.

## Cancellation Charge Profile

Using the above principles **The Company** will identify a trigger date and a **Cancellation Charge** profile showing sums due by reference to termination of the **Construction Agreement** within specified periods based on the **Construction Programme** and **Construction Works** with a **User's Construction Agreement**. The profile and the TNUoS tariff will assume a start on the last day that the **User** could accept the **Offer** and will be specified in Appendix R in a **User's Construction Agreement**.

There may be circumstances where the length of the Construction Programme and the nature of the Construction Works mean that the **Trigger Date** is effectively assumed to be the last day that the User could accept the **Offer**.

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

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

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

- (1) Where there is a delay to the **Completion Date**, and the **Trigger Date** has not passed there will be a corresponding delay to the **Trigger Date** and the profile of the **User Commitment Amount** and the **Cancellation Amount** revised accordingly in line with the above principles. If the **Trigger Date** has already passed, the profile of the **Cancellation Amount** will be revised accordingly on the basis of the above principles by reference to the number of full 12-month periods from the new **Completion Date**.
- (2) Where there is no delay to the **Completion Date**, but the **Construction Works** change, **The Company** will review the appropriateness of the **Trigger Date** and if appropriate, change this. The profile of the **User Commitment Amount** and **Cancellation Amount** will be revised on the principles set out above to reflect the change in **Trigger Date**.
- (3) Where there is a reduction in a **User's Transmission Entry Capacity** the **Cancellation Charge** shall be revised to reflect the reduced MWs.

A revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User** showing the new profile.

Where such change is as a result of the **User's** request then a revised Appendix R to a **User's Construction Agreement** will be issued by **The Company** to the **User**. Notwithstanding any change in the **Construction Works** or **Completion Date**:

- 1) Where the revised **Construction Programme** alters the period of full years between the date of signature of the original **Construction Agreement** and the **Trigger Date** the **User Commitment Amount** will remain at the amount at the time the user requested the change until it is due to rise based on the revised Appendix R reflecting the revised **Construction Programme**; or
- 2) The **Cancellation Amount** will be frozen at the prevailing level and remain at that level for the period of the slippage.



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**Amended clauses to the Construction Agreement for Alternative Amendment B3**

**Please see the Construction Agreement in the legal text for Alternative Amendment A3**

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**ANNEX 3 – AMENDMENT PROPOSAL FORM**

<b>CUSC Amendment Proposal Form</b>	<b>CAP:131</b>
Title of Amendment Proposal: <b>User Commitment for New and Existing Generators</b>	
Description of the Proposed Amendment ( <i>mandatory by proposer</i> ):  This Amendment Proposal adds a new section to the CUSC defining the principles of User Commitment. By “User Commitment”, we mean;	
<ol style="list-style-type: none"> <li>1. defining the monies to be secured by generators for incremental TEC; and</li> <li>2. defining the ongoing liabilities of existing generators to incentivise TEC reduction information.</li> </ol>	
<b><u>1. Security for Incremental Capacity</u></b>	
<p>This aspect of the proposal aims to de-link the project-specific costs of transmission investment currently secured by generators through “final sums” and replace the required securities for incremental transmission with a generic methodology based on a non-refundable termination charge equal to a multiple of the prevailing generation TNUoS tariff (subject to a minimum of £3/kW) in the year before connection. The multiple will be calculated in accordance with any relevant transmission licence obligation or provision (if appropriate), but otherwise it will be 6. The proposal is akin to the spirit of the “Interim Generic Methodology Statement” which can be found on National Grid’s website at the following url:  <a href="http://www.nationalgrid.com/NR/ronlyres/7D3600A1-5149-479C-A4D1-33448D37682C/10282/InterimGenericUserCommitmentMethodologyStatementv1.pdf">http://www.nationalgrid.com/NR/ronlyres/7D3600A1-5149-479C-A4D1-33448D37682C/10282/InterimGenericUserCommitmentMethodologyStatementv1.pdf</a></p>	
<b><u>2. Ongoing Liabilities</u></b>	
<p>This aspect of the proposal aims to provide a financial incentive to generators to provide National Grid with a number of years notice of reductions in required transmission capacity. The number of years will be derived in accordance with any relevant transmission licence obligation or provision (if appropriate), but otherwise it will be 2. In the event a generator reduces TEC without providing National Grid with 2 years notice, the generator would be liable to pay 2 times the generation TNUoS tariff (or modulus of the tariff in negative charging zones) multiplied by the reduction in capacity.</p> <p>If approved, the arrangements would apply to new applications for generation capacity, those applications currently being processed, generators with existing construction agreements and existing generators.</p>	
Description of Issue or Defect that Proposed Amendment seeks to Address ( <i>mandatory by proposer</i> ):	
<p>Recent industry feedback<sup>2</sup> has raised important arguments relating to the appropriateness of the current transmission access regime. The current regime has worked well when primarily accommodating occasional applications for large power stations in dispersed locations. However, BETTA reforms and government incentives to encourage renewable generation has led to a significant queue for transmission capacity clustered in specific areas and for power station granularities that are considerably smaller than those that have been previously observed. A number of defects have been highlighted:</p>	
<ol style="list-style-type: none"> <li>1. Final sums arrangements are not defined in existing commercial frameworks</li> <li>2. The level and volatility of final sums are perceived as a barrier to entry</li> <li>3. There are difficulties in network planning given the volume of connection applications and</li> </ol>	

<sup>2</sup> National Grid’s “Managing the GB Queue Consultation”, Ofgem’s “Access Reform Options Development Group” and arguments made in the Transmission Price Control Review.

## uncertainty in power station closures

The proposer believes that the above issues are addressed through a defined “user commitment” which would provide clearer investment signals. The absence of such a definition may inhibit competition and could lead to inefficient investment signals.

In addressing the first and second defects, this modification proposal suggests replacing the current “final sums” with a generic methodology to promote transparency and certainty. This addresses the perceived barriers to entry and provides more confidence in the firmness of capacity applications.

In addressing the third defect, this modification proposal formally defines the level of liability for existing generators such that financial incentives exist to notify National Grid of an intention to reduce TEC two years ahead.

Additionally the “Interim Generic Methodology” is presently a voluntary arrangement sitting alongside the “Final Sums” method. Formalising the framework in the CUSC would enshrine only the generic methodology which would then become the mandatory arrangement for all parties.

**Impact on the CUSC** (*this should be given where possible*):

The proposal suggests the inclusion of a new section or schedule to be added to the CUSC entitled “User Commitment”. The new section will bring together in one place the calculation and processes applying to the derivation of what has been previously referred to as “final sums” for those seeking incremental capacity, and will define the ongoing liabilities of existing generators to incentivise early notification of reductions in capacity.

In addition to the new section of the CUSC, changes may be applicable in the following areas:

- Removal of references to “Final Sums” and new definitions as required
- CUSC Section 2.14 – Connection Charges
- CUSC Section 3.9.1 – Use of System Charges
- CUSC Section 6.6 - Payment
- CUSC Section 6.30.1 – Decrease in Transmission Entry Capacity
- CUSC Section 6.30.2 – Increase in Transmission Entry Capacity
- CUSC Schedule 2 Exhibit 1 – Bilateral Connection Agreement
- CUSC Schedule 2 Exhibit 3 – Construction Agreement

**Impact on Core Industry Documentation** (*this should be given where possible*):

None

**Impact on Computer Systems and Processes used by CUSC Parties** (*this should be given where possible*):

- Models of financial viability of incremental capacity applications to incorporate non-refundable nature of securities.
- Awareness of 2 years notice of transmission capacity reductions to avoid liability for 2 times the Generation TNUoS tariff.

**Details of any Related Modifications to Other Industry Codes** (*where known*):

None

**Justification for Proposed Amendment with Reference to Applicable CUSC Objectives\*\*** (**mandatory by proposer**):

We believe that the proposed amendment better facilitates Applicable CUSC Objective 4(b) by:

1. Lowering barriers to entry;
2. Reducing speculative connection applications facilitating economic investment;

3. Providing transparency in the Commercial Frameworks of required user commitments;
4. Providing better signals to enable more efficient planning of the transmission system;

We believe that at this stage, the CUSC is the most appropriate location for this commercial framework to enable maximum transparency.

<b>Details of Proposer:</b> Organisation's Name:	Nick Pittarello, National Grid
Capacity in which the Amendment is being proposed: (i.e. CUSC Party, BSC Party or "energywatch")	Transmission Owner
<b>Details of Proposer's Representative:</b> Name: Organisation: Telephone Number: Email Address:	<b>Nick Pittarello</b> <b>National Grid</b> <b>01926-656261</b> <b>Nick.pittarello@uk.ngrid.com</b>
<b>Details of Representative's Alternate:</b> Name: Organisation: Telephone Number: Email Address:	Adam Brown National Grid 01926-655839 <a href="mailto:adam.brown@uk.ngrid.com">adam.brown@uk.ngrid.com</a>
<b>Attachments (Yes/No): No</b> <b>If Yes, Title and No. of pages of each Attachment:</b>	