[CANCELLATION CHARGE – FIXED TERM & FIXED AMOUNT]

**DATED 20**

**[GUARANTOR] (1)**

**in favour of**

**NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED (2)**

|  |
| --- |
| **GUARANTEE AND INDEMNITY** |

**THIS GUARANTEE AND INDEMNITY** is made the day of 20

by **[…………………………….…….]** a company [registered in [ ][[1]](#footnote-1) (No. ………..)] and having its registered office at [………………………… ……………………..…] (herein called the “**Guarantor**”) in favour of **National Grid Electricity System Operator Limited** a company registered in England (No.11014226) having its registered office at 1-3 Strand, London, WC2N 5EH herein called “**The Company**”.

**WHEREAS**

(A) The Company and [ ] a company registered in England (No. [ ]) and having its registered office at [ ] herein called the “**User**” are parties (in the case of the User pursuant to an Accession Agreement dated ….200.) to a document dated 18th September 2001 known as the “CUSC Framework Agreement” (as amended from time to time, the “**CUSC Agreement**”) relating to the connection to and use of the electricity transmission system in Great Britain. Pursuant to the CUSC Agreement, effect is given to a code, also relating to such connection to and use of the electricity transmission system in Great Britain and offshore, known as the “Connection and Use of System Code” (as amended from time to time, the “**CUSC**”).

(B) With reference to the CUSC, The Company and the User have entered into an agreement dated ….201 known as a “Bilateral Connection Agreement” or a “Bilateral Embedded Generation Agreement” (together the “**Bilateral Agreement**”) and have also entered into a Construction Agreement dated ….201relating to certain works to be effected or arranged by The Company (the “**Construction Agreement**”) each as amended from time to time.

(C) The Guarantor is aware of the subject-matter and the terms of the CUSC Agreement, the CUSC, the Bilateral Agreement and the Construction Agreement (together the “**CUSC Documentation**”) and of the User’s obligations thereunder.

(D) The CUSC Documentation requires that the User provides security cover in respect of its liability to pay the Cancellation Charge (as defined in the CUSC Documentation) to The Company pursuant to the terms of the CUSC Documentation.

(E) The Guarantor has agreed to provide this Guarantee in discharge of the User’s obligations to provide such security cover.

**NOW THIS DEED WITNESSETH** **and the Guarantor hereby agrees as follows:**

1. In this Guarantee and Indemnity “**Guaranteed Liabilities**” means all monies which are now, or may in the future become due or owing by the User to The Company howsoever arising under or in connection with the Construction Agreement, in respect of the Cancellation Charge (as defined in the CUSC Documentation) which is required to be secured in accordance with the CUSC Documentation.
2. This Guarantee and Indemnity is effective from [*specify date*] (the “**Effective** **Date**”).
3. It is acknowledged that this Guarantee and Indemnity relates to the User’s obligations under [or pursuant to or in connection with the Construction Agreement] [the CUSC Documentation] and the term **“Guaranteed Liabilities”** shall be construed accordingly.

4 Subject to satisfaction of The Company’s obligations in clause 9.2 the Guarantor irrevocably and unconditionally guarantees to The Company the punctual payment by the User of the Guaranteed Liabilities and that whenever the User does not pay any Guaranteed Liabilities the Guarantor shall within three business days pay such Guaranteed Liabilities to The Company on written demand as if it were the principal debtor and in the currency in which the same falls due for payment.

5.1 The Guarantor agrees to pay interest on demand on each amount demanded under this Guarantee and Indemnity from the date of demand until payment (as well after as before judgment) at the rate applicable to relevant unpaid sums under the CUSC Documentation accruing on a daily basis. Any payment of interest hereunder shall discharge pro tanto the User's obligations to pay interest under the CUSC Documentation in respect of the corresponding Guaranteed Liabilities.

5.2 The Guarantor agrees to pay legal and other costs and expenses (on a full and unqualified indemnity basis) incurred by The Company whether before or after the date of demand on the Guarantor: (i) in enforcing or reasonably endeavouring to enforce the payment of any money due under this Guarantee and Indemnity or otherwise in relation to this Guarantee and Indemnity; and (ii) in resisting or reasonably endeavouring to resist any claims or defences made against The Company in connection with the liabilities or alleged liabilities of the User guaranteed hereunder or any money or benefits received by or any preference or alleged preference given to The Company from or by the User.

6.1 The obligations of the Guarantor under this Guarantee and Indemnity are undertaken by it as a primary obligor and not merely as a surety.

6.2 As a separate and independent primary obligation, without prejudice to Clause 4, the Guarantor unconditionally and irrevocably agrees to keep The Company fully indemnified on demand against all damages, losses, costs and expenses arising from any of the Guaranteed Liabilities not being or ceasing to be valid or enforceable against the User for whatever reason, whether or not known to The Company. The amount of the damage, cost, loss or expense shall be equal to the amount which The Company would otherwise have been entitled to recover.

7. The total amount recoverable by The Company from the Guarantor under this Guarantee and Indemnity in aggregate shall not exceed:

(a) ***[****specify figure* ***];*** plus

(b) all costs, expenses and interest payable by the User under the CUSC Documentation, in relation to the Guaranteed Liabilities; plus

(c) all costs, expenses, interest and other amounts payable by the Guarantor under this Guarantee and Indemnity.

8. The liability of the Guarantor to make payment to The Company shall not be impaired or discharged by reason of any of the following (whether or not the Guarantor has notice thereof):

* + 1. any amendment, variation or waiver (however fundamental) of any provision of any of the CUSC Documentation;
    2. any modification of any of the CUSC Documentation irrespective (provided that such modification is made in accordance with the terms thereof) of whether the User was a party to or in agreement with any such modification;
    3. any indulgence or forbearance shown by The Company towards the User or the Guarantor whether as to payment or time for payment or any arrangement entered into or composition accepted by The Company modifying (by operation of law or otherwise) the rights and remedies of The Company under the CUSC Documentation with regard to payment or time for payment;
    4. any action lawfully taken by any party to any of the CUSC Documentation to determine any of the CUSC Documentation as respects the User or any other party thereto, or as a result of which the User ceases to be a party to any of the CUSC Documentation;
    5. any change in the relationship between the Guarantor and the User;
    6. any disability, legal limitation, incapacity or change in the status or constitution of the User, the Guarantor or The Company;
    7. the bankruptcy, liquidation, dissolution or insolvency of the User or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the User or any of its property;
    8. any third party becoming or ceasing to be a party to any of the CUSC Documentation;
    9. any failure or delay by The Company to assert any of its rights under this Guarantee and Indemnity;
    10. any composition discharge release or other variation of liability entered into with or granted to the User;
    11. the invalidity or unenforceability of the obligations of the User pursuant to any of the CUSC Documentation;
    12. any other act or omission of The Company or any other circumstance which but for this provision might discharge the Guarantor.

9.1 This Guarantee and Indemnity shall:

(a) be in addition to any present or future Collateral Instrument, right or remedy held by or available to The Company; and

(b) not be in any way prejudiced or affected by:

* + - 1. the existence of any Collateral Instrument, rights or remedies; or
      2. any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
      3. The Company dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or
      4. The Company giving time for payment or indulgence or compounding with any person liable for the Guaranteed Liabilities.

9.2 The Company may not make any demand or claim against the Guarantor under this Guarantee and Indemnity without first having demanded payment from the User in respect of the relevant Guaranteed Liabilities. Subject thereto The Company shall not be obliged to make any claim or demand on the User or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Guarantee and Indemnity.

9.3 No action taken or omitted by The Company in connection with any Collateral Instrument or other payment or any variation, amendment, supplement, novation or replacement of any Collateral Instrument shall discharge, reduce, prejudice or affect the Guaranteed Liabilities or liability of the Guarantor under this Guarantee and Indemnity.

9.4 The Company shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Guaranteed Liabilities.

9.5 For the purposes of this clause “**Collateral Instruments**” means notes, bills of exchange, certificates of deposit and other negotiable and non‑negotiable instruments, guarantees, indemnities, policies of insurance, insurance performance bonds and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the User, and includes any document or instrument creating or evidencing an encumbrance, however defined, such as, without limitation, letters of credit**,** deposit deeds, or escrow agreements.

10. The Guarantor shall not, until all its obligations and liabilities hereunder have been fully performed or satisfied, exercise, unless instructed to do so by The Company in which case it shall exercise as instructed:

(a) its rights of subrogation, contribution and indemnity in connection with any payment by the Guarantor pursuant to this Guarantee and Indemnity;

(b) its right to take the benefit of, share in or enforce any security or other guarantee or indemnity for the User obligations held by The Company; and

(c) its right to prove or claim in the bankruptcy, liquidation, dissolution or insolvency of the User or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the User or any of its property.

Any amount recovered as a result of the exercise of such rights shall be paid to The Company on demand, and pending such payment will be held by the Guarantor on trust for The Company. The Guarantor hereby irrevocably appoints The Company as its attorney to perform all or any of the acts required to be performed by the Guarantor under this clause 10, if the Guarantor should fail to perform the same within a reasonable time from the giving of any instruction under this clause 10.

11.1 The Guarantor hereby represents and warrants to The Company that:

(a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

(b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and Indemnity and no limitation on the powers will be exceeded as a result of the Guarantor entering into this Guarantee and Indemnity;

(c) the execution, delivery and performance by the Guarantor of this Guarantee and Indemnity and the performance of its obligations under this Guarantee and Indemnity have been duly authorised by all necessary corporate action and do not contravene or conflict with:

(i) the Guarantor’s memorandum and articles of association or other equivalent constitutional documents; or

(ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is a party or which is binding upon it or any of its assets; or

(iii) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets; and

(d) this Guarantee and Indemnity is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

11.2 The Guarantor acknowledges that The Company has accepted this Guarantee and Indemnity in full reliance on the representations and warranties set out in this clause 11.

12. All payments by the Guarantor under this Guarantee and Indemnity shall be made in full, without set‑off or counterclaim and, subject to clause 13, free and clear of any deductions or withholdings in immediately available, freely transferable, cleared funds for value on the date specified in The Company’s demand to the account notified to the Guarantor by The Company.

13. If at any time the Guarantor is required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Guarantee and Indemnity, the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, The Company receives on the due date and retains (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.

14.1 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee and Indemnity. The Company may only assign its rights under this Guarantee and Indemnity to a person in favour of whom an assignment has been made pursuant to the CUSC Documentation.

14.2 The Company may disclose to a prospective assignee or transferee such information about this Guarantee and Indemnity as The Company thinks fit.

15. The Company’s rights under this Guarantee and Indemnity are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as The Company deems expedient.

16.1 If any provisions of this Guarantee and Indemnity become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

16.2 No failure or delay by The Company in exercising any right or remedy shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.

17. A person who is not a party to this Guarantee and Indemnity (including any employee, officer, agent, representative or sub-contractor of any party) shall not have the right to enforce any term of this Guarantee and Indemnity which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Guarantor and The Company, which agreement must refer to this clause 17.

18.1 Subject to clause 18.2, the Guarantor’s obligations under this Guarantee and Indemnity shall terminate on [ *specify date*] (the “**Termination Date**”) and, subject as aforesaid, no demand may be made by The Company on or after the Termination Date.

18.2 Notwithstanding clause 18.1 above or any release, discharge, termination or settlement between The Company and the Guarantor, the liability of the Guarantor under this Guarantee and Indemnity shall continue in full force and effect (and a demand may be made under this Guarantee and Indemnity) on or following the Termination Date and/or such release discharge, termination or settlement in relation to clauses 5 and 11 of this Guarantee and Indemnity, and in relation to:

(a) any of the Guaranteed Liabilities which have become due on or prior to the Termination Date; and

(b) the Guaranteed Liabilities if any monies paid to The Company in reduction of the indebtedness of the User in respect of the Guaranteed Liabilities have to be repaid by The Company by virtue of any provision or enactment relating to bankruptcy, liquidation, administration, dissolution, insolvency or other analogous event for the time being in force or on any other ground. If that happens the liability of the Guarantor under this Guarantee and Indemnity shall be computed as if such monies had never been paid to The Company at all.

19. Any of:

(i) any Notice of Drawing (as defined in the CUSC Documentation); and

(ii) in the absence of manifest error, any statement of account, signed as correct by an officer of The Company, showing any amount due from the Guarantor under this Guarantee and Indemnity,

shall be binding and conclusive on and against the Guarantor.

20.1 All notices or other communications under or in connection with this Guarantee and Indemnity shall be given in writing or facsimile. Any such notice will be deemed to be given as follows:

(a) if in writing, when delivered or, if later, 2 days after posting if sent by first class post (or 7 days if sent by second class post or 5 days if sent from outside the United Kingdom);

(b) if by facsimile, when received or as evidenced by the notifying party’s facsimile transmission report.

Provided that a notice given in accordance with the above but not received on a “business day” or received after “business hours” shall be deemed to have been received at 9.am on the following “business day”. For the purposes of clause 20.1 a “business day” is a day which is not a Saturday, Sunday or public holiday in London and “business hours” means 9am to 5pm on a business day.

20.2 Subject to Clause 22.6 the address and facsimile number for all notices under or in connection with this Guarantee and Indemnity are as follows, unless the other party has been notified otherwise at least five days before the notice is received:

(a) in the case of the Guarantor:

Address: [ ]

Facsimile Number: [ ]

For the attention of: [ ]

(b) in the case of The Company:

Address: 1-3 Strand

London

WC2N 5EH

Facsimile Number: [ ]

For the attention of: [ ]

20.3 Service of legal proceedings in the manner described in clause 20.1 shall be deemed to constitute good service.

21 Unless the contrary intention appears, a reference in this Guarantee and Indemnity to The Company or Guarantor or the User or a person includes its successors in title, permitted assigns and permitted transferees.

22.1 This Guarantee and Indemnity is governed by and shall be construed in accordance with English law.

22.2 Subject to clauses 22.4 and 22.5, the courts of England have exclusive jurisdiction to settle any disputes arising out of or connected with this Guarantee and Indemnity (including a dispute regarding the existence validity or termination of this Guarantee and Indemnity or the consequences of its nullity) (a “**Dispute**”).

22.3 Subject to clauses 22.4 and 22.5, the parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and accordingly that they will not argue to the contrary.

22.4 This clause 22 is for the benefit of The Company only. As a result and notwithstanding clauses 22.2 and 22.3 it does not prevent The Company from:

22.4.1 taking proceedings relating to a Dispute in any other courts (and the Guarantor waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum); or

22.4.2 referring a Dispute to be finally settled by arbitration under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by two or more arbitrators appointed pursuant to such Rules.

22.5 To the extent allowed by law, The Company may take concurrent proceedings in any number of jurisdictions.

22.6 [The Guarantor authorises and appoints [*name*] of*[legal representatives or related company in England and Wales]* (or such other person being a firm of solicitors in England as they may from time to time substitute by notice to The Company) to accept service of all legal process arising out of or connected with this Guarantee and Indemnity. Service on such person (or substitute) shall be deemed to be service on the Guarantor. Except upon a substitution, the Guarantor shall not revoke any such authority or appointment and shall at all times maintain an agent for service of process in England. If any agent ceases for any reason to be an agent, the Guarantor shall forthwith appoint another agent and advise The Company accordingly.]

22.7 [The Guarantor waives any right of state immunity which it may have in respect of any proceedings or action (which shall include any attachment or arrest prior to judgement and any enforcement proceedings including execution) commenced by The Company against the Guarantor under or in connection with this Guarantee.]

**IN WITNESS** whereof the Guarantor has caused this Guarantee and Indemnity to be executed as its deed but not delivered until the day and year first before written.

[The Common Seal of *[..............................................................]* was

hereunto affixed in the presence of:

*[...............................................]*  Director

*[...............................................]* Director/Company Secretary]

or

[Executed as a Deed by

[ ] acting

by:

*[...............................................]*  Director

*[...............................................]* Director/Company Secretary]

1. Complete. [↑](#footnote-ref-1)