

**[SCHEDULE 2 EXHIBIT 3A]**

**INDICATIVE**

**DATED [ ] 20[ ]**

**NATIONAL ENERGY SYSTEM OPERATOR LIMITED (1)**

**and**

**[ ] (2)**

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**THE CONNECTION AND USE OF SYSTEM CODE**

**OFFSHORE CONSTRUCTION AGREEMENT**

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**THIS CONSTRUCTION AGREEMENT** is made on the [ ] day of [ ] 20[ ]

**BETWEEN**

- (1) The company registered in England with number 11014226 ("**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 **ESO Licence**, **The Company** has prepared a Connection and Use of System Code (**CUSC**) setting out the terms of the arrangements for connection to and use of the **National Electricity Transmission System** and the provision of certain **Balancing Services**.
- (B) The **User** has applied for [connection to and use of] [modification to its connection to] the **National Electricity Transmission System** and pursuant to condition E12 of the **ESO Licence**, **The Company** is required to offer terms in accordance with the **CUSC** in this respect.
- (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** sets out the **Offshore Works Assumptions** used to identify the initial **Onshore Construction Works** and **Construction Programme** and the process whereby this **Construction Agreement** [will be amended to provide for the **Offshore Construction Works**] [may be varied in case of changes to such assumptions].
- (F) This **Construction Agreement** is entered into pursuant to the terms of the **CUSC**.
- (G) The **Queue Management Process** applies to this **Construction Agreement**.

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

## **1.1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

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

"Authority"	as defined in the <b>CUSC</b> .
"Assumed Offshore Tender Process Start Date"	insert date of <b>Offshore Tender Process</b> it is assumed <b>User</b> will enter.
"Attributable Works"	those <b>Construction Works</b> identified as such in accordance with the <b>User Commitment Methodology</b> and which are set out in Appendix MM Part 1.
"Bilateral Connection Agreement"	the <b>Bilateral Connection Agreement</b> entered into between the parties on even date herewith.
"Cancellation Charge"	as calculated in accordance with the <b>User Commitment Methodology</b> .
"Charging Date"	the date upon which the <b>Construction Works</b> (excluding the <b>Wider Transmission Reinforcement Works</b> are first <b>Commissioned</b> and available for use by the <b>User</b> 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 [Transmission Connection Assets] [Transmission Plant and Transmission Apparatus at the Transmission Interface Point <sup>1</sup> ] are completed to a stage where <b>The Company</b> 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>Offshore Transmission Reinforcement Works</b>

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<sup>1</sup> Use where OTSDUW build

	and <sup>2]</sup> the <b>Enabling Works</b> are <b>Commissioned</b> and <b>Network Options Assessment Works</b> are completed as at that date. In the event that the <b>Offshore Transmission Reinforcement Works</b> and <sup>3</sup> the <b>Enabling Works</b> are not so <b>Commissioned</b> and/or the <b>Network Options Assessment Works</b> are not so completed the <b>Charging Date</b> shall be the date on which they are <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 [Transmission Connection Asset Works] [Transmission Plant and Transmission Apparatus at the Transmission Interface Point <sup>4]</sup> to the <b>National Electricity 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> .
“Connect and Manage Derogation”	the temporary derogation from the <b>NETS SQSS</b> available to <b>The Company</b> under condition E7 of the <b>ESO Licence</b> and/or the <b>Relevant Transmission Licensee</b> under Standard Condition D3 of its transmission licence;
“Connected Planning Data”	data required pursuant to the <b>Planning Code</b> which replaces data containing estimated values assumed for planning purposes by validated actual values and

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updated estimates for the future and by updated forecasts for forecast data items.

“Connection Site Specification”

a specification which sets out the following information in relation to the **Connection Site**:

(a) a description of those **OTSUA** that are to be classed as **Transmission Connection Assets** in accordance with the **Statement of the Connection Charging Methodology**;

(b) a clear identification of the boundary between the **OTSUA** and the **User’s Equipment** (ascertained in the absence of agreement to the contrary with the **Relevant Transmission Licensee** by reference to **CUSC** Paragraph 2.12.1);

(c) information reasonably requested by **The Company** in order to complete Appendices F1 to F5 in the **Bilateral Connection Agreement**; and

(d) a description of the technical design and operating criteria which apply to the **User’s Equipment**.

“Consents”

in relation to any **Works**:-

(a) all such planning and other statutory consents; and

(b) all wayleaves, easements, rights over or interests in land or any other consent; or

(c) permission of any kind as shall be necessary for the construction of the **Works** and for commencement and carrying on of any activity proposed to be undertaken at or from such **Works** when completed.

“Construction Programme”

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

"Construction Site" <sup>5</sup>	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>Offshore Construction Works</b> and <sup>6</sup> ] <b>Onshore Construction Works</b> but excluding for the avoidance of doubt any <b>Third Party Works</b>
"Dispute Resolution Procedure"	the procedure for referral to arbitration set out in Paragraph 7.4 of the <b>CUSC</b> .
"Enabling Works"	Those <b>Onshore Transmission Reinforcement Works</b> which are specified in Appendix H1 Part 1 to this <b>Construction Agreement</b> .
"Event of Default"	any of the events set out in Clause 10 of this <b>Construction Agreement</b> as constituting an event of default.
"Independent Engineer"	<p>the engineer specified in Appendix L to this <b>Construction Agreement</b>. Provided that:-</p> <p>(a) where the parties fail to agree on a suitable engineer within 120 days of the date of this <b>Construction Agreement</b>; or</p> <p>(b) where any <b>Independent Engineer</b> appointed from time to time shall fail, refuse or cease to act in the capacity set out herein and no substitute engineer of suitable standing and qualification can be agreed by the parties within 30 days;</p> <p>then such engineer as the President of the Institution of Electrical Engineers shall, on the application of either party, nominate shall be the <b>Independent Engineer</b>.</p>
"Interface Agreement"	the agreement substantially in the form of <b>CUSC</b> Exhibit O [Part IC or Part IIC] to be entered into pursuant to Clause 2.17.

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"Key Consents"	those <b>Consents</b> required in respect of the [User's/Developer's] <b>Power Station</b> which <b>The Company</b> has identified as such and which are set out in Appendix MM Part 2.
"Liquidated Damages"	the sums specified in or calculated pursuant to Appendix K to this <b>Construction Agreement</b> .
"Network Options Assessment Works"	the works set out in the Networks Options Assessment report prepared by <b>The Company</b> pursuant to C13 of the <b>ESO Licence</b> and issued by <b>The Company</b> in [ ] which in <b>The Company's</b> reasonable opinion are required to be completed before the <b>Completion Date</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of condition E7 of the <b>ESO Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee's</b> transmission licence prior to the <b>Connection</b> of the <b>User's Equipment</b> in terms of Clause 7.1 [or 7.2] of this <b>Construction Agreement</b> .
"Offshore Agreement to Vary"	the agreement proposed by <b>The Company</b> to the <b>User</b> pursuant to Clause 1.2.3.
"Offshore Construction Works" <sup>7</sup>	the <b>Transmission Connection Asset Works, Offshore Transmission Reinforcement Works</b> and such additional works as are required in order to comply with any relevant <b>Consents</b> relating to any such works.
"Offshore TO Construction Offer" <sup>8</sup>	the offer to be made to <b>The Company</b> in respect of the <b>Offshore Construction Works</b> pursuant to the <b>System Operator – Transmission Owner Code</b> .
"Offshore Transmission Reinforcement Works" <sup>9</sup>	those works other than the <b>Transmission Connection Asset Works, Onshore Transmission Reinforcement Works, Network Options Assessment Works</b> and

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<sup>7</sup> Delete if OTSDUW Build

<sup>8</sup> Delete if OTSDUW Build

<sup>9</sup> Delete if OTSDUW Build

	<p><b>One Off Works</b>, which in the reasonable opinion of <b>The Company</b> are necessary to extend or reinforce the <b>National Electricity 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 H2 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[; but <b>OTSDUW</b> are excluded from <b>Offshore Transmission Reinforcement Works</b> (and are specified in Appendix I Part 2 and not Appendix H2)].</p>
"Offshore Works Assumptions"	the assumptions set out in Appendix [P] as amended from time to time in accordance with the provisions of this <b>Construction Agreement</b> and/or the <b>CUSC</b>
"One Off Works"	the works described in Appendix B1 to this <b>Construction Agreement</b> .
"Onshore Construction Works"	the <b>Onshore Transmission Reinforcement Works, Network Options Assessment 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.
"Onshore Transmission Reinforcement Works"	those works other than the <b>Transmission Connection Asset Works, [Offshore Transmission Reinforcement Works<sup>10</sup>] [OTSDUW<sup>11</sup>], Network Options Assessment Works</b> and <b>One Off Works</b> , which in the reasonable opinion of <b>The Company</b> (and in the absence of the <b>Connect and Manage Derogation</b> ) are necessary to extend or reinforce the <b>National Electricity Transmission System</b> to ensure that the <b>National Electricity Transmission System</b> complies with the requirements of condition E7 of the <b>ESO Licence</b> and Standard Condition D3 of any <b>Relevant Transmission Licensee's</b> transmission

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	system and which are specified in Appendix H1 to this <b>Construction Agreement</b> , where Part 1 the <b>Enabling Works</b> and Part 2 is the <b>Wider Transmission Reinforcement Works</b> .
OTSDUW Development and Data Timetable	has the meaning given in Clause 17.2.
["Services Capability Specification"]	a specification including, without limitation, information describing the parameters within and to which the services that are to be delivered to <b>The Company</b> through the <b>OTSDUW</b> (and the <b>OTSUA</b> (if any) once transferred to the <b>Relevant Transmission Licensee</b> ) have been planned or are normally capable of being provided including any technical limits that apply.]
"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 to be undertaken on assets belonging to a party other than a <b>Relevant Transmission Licensee</b> and the <b>User</b> to enable <b>The Company</b> to provide or as a consequence of the connection to and/or use of the <b>National Electricity Transmission System</b> by the <b>User</b> as specified in Appendix N;
"Transmission Connection Assets"	the assets specified in Appendix A to the <b>Bilateral Connection Agreement</b> .
"Transmission Connection Asset Works" <sup>12</sup>	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> [but <b>OTSDUW</b> are excluded from <b>Transmission Connection Asset Works</b> (and are specified in Appendix I2 and not Appendix G)] ].

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Transmission Interface Agreement	an agreement of that name entered into pursuant to Section C, Part Three, paragraph 3.2 of the STC
["Transmission Interface Site Specification"]	a specification which sets out the following information-: (a) a description of those <b>OTSUA</b> at the <b>Transmission Interface Site</b> ; (b) a clear identification of the boundary between the <b>OTSUA</b> and the <b>Onshore Transmission System</b> ; and (c) a description of the technical design and operating criteria which apply to the <b>OTSUA</b> (including any reliance on the <b>User's Equipment</b> in respect the minimum technical, design and operational criteria and performance requirements set out or referred to in CC.6.3)]
"Transmission Reinforcement Works"	the <b>Offshore Transmission Reinforcement Works</b> and <b>Onshore Transmission Reinforcement Works</b> .
"Trigger Date"	[date] as identified in accordance with the <b>User Commitment Methodology</b> .
"User Data"	the data set out in Appendix O.
"User Progression Milestones"	the milestones (applied in accordance with <b>CUSC</b> Section 16) for the <b>User's</b> project (excluding any <b>OTSDUW</b> ) as set out in Appendix Q of this <b>Construction Agreement</b> .
"User's Works"	those works necessary for installation of the <b>User's Equipment</b> which are specified in Appendix I [(Part 1)] to this <b>Construction Agreement</b> [and <b>OTSDUW</b> [subject to Clause [1.4] of this <b>Construction Agreement</b> <sup>13</sup> ].
"Wider Transmission Reinforcement Works"	those <b>Onshore Transmission Reinforcement Works</b> which are specified in Appendix H1 Part 2 to this <b>Construction Agreement</b> where Part 2.1 is works required for the <b>User</b> and Part 2.2 is works required for wider system reasons.

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“Works” the **Construction Works** and the **User’s Works**.

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

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

- 1.2.1 The nature, extent of and the timescales associated with the **Onshore Construction Works** are based on the **Offshore Works Assumptions** and **User Data**.
- 1.2.2 The **Offshore Construction Works** will need to be identified and where there are changes from the **Offshore Works Assumptions** and/or **User Data** the nature, extent of and the timescales associated with the **Offshore Construction Works** and as a consequence the **Onshore Construction Works** may need to be amended.
- 1.2.3 **[The Company** [shall] as soon as practicable and (save where the **Authority** consents to a longer period) in any event within 3 months of the receipt of notice from the **Authority** that the **Relevant Transmission Licensee** has been appointed propose to the **User** an agreement to vary this **Construction Agreement** and the **Bilateral Connection Agreement**. This agreement to vary will identify the **Offshore Construction Works** as set out in the **Offshore TO Construction Offer** and shall make such further amendments to the **Construction Agreement** and **Bilateral Connection Agreement** as are necessary as a consequence of this identification and the timing of

the **Offshore Tender Process** on the **Offshore Works Assumptions** and the **Onshore Construction Works** and shall include such terms and conditions as **The Company** in its discretion requires as a consequence of such amendments]. [In the case of **OTSDUW The Company** may as soon as practicable and (save where the **Authority** consents to a longer period) in any event within 3 months of the receipt of notice from the **Authority** that the **Relevant Transmission Licensee** has been appointed propose to the **User** an agreement to vary this **Construction Agreement** and the **Bilateral Connection Agreement** to amend the **Bilateral Connection Agreement** and **Construction Agreement** as necessary to reflect any inconsistencies between the **OTSDUW**, **OTSUA** and **Offshore Works Assumptions**.]

- 1.2.4 The **Offshore Agreement to Vary** will be open for acceptance for a period of three months from receipt. If the **User** does not accept the **Offshore Agreement to Vary** within three months of receipt [or, where the **Offshore Agreement to Vary** has been referred to the **Authority** pursuant to condition E13.5 of the **ESO Licence**, within 14 days after any determination by the **Authority** pursuant to such application] then **The Company** shall be entitled to terminate this **Construction Agreement**.
- 1.2.5 [With effect from acceptance by the **User** of the **Offshore Agreement to Vary** the provisions of this **Construction Agreement** as amended by the **Offshore Agreement to Vary** shall have full force and effect and the provisions of this Sub-Clause 1.2 shall cease to have any further force or effect.]
- 1.2.6 [The rights and obligations of the **User** and **The Company** under this **Construction Agreement** (with the exception of those rights and obligations under or referred to in this Clause 1.2 and Clause 1.3) are subject to the above provisions of this Clause 1.2 (and neither party shall have any rights or obligations under any other provisions of this **Construction Agreement** until the provisions of sub-clause 1.2.5 have been fulfilled)]

OR

[The rights and obligations of the **User** and **The Company** under this **Construction Agreement** (with the exception of those rights and obligations under or referred to in this Clause 1.2 and Clause 1.3) and Clauses 2.2, 2.3 and 2.4, and rights and obligations flowing from those Clauses) are subject to the above provisions of this Clause 1.2.]

- 1.3 The **User** shall confirm that the **User Data** remains the same prior to the start of the **Offshore Tender Process**.

[1.4 Where the **OTSDUW** comprise only the design, planning and/or consenting of (and/or other pre-construction activities relating to) the **[Offshore Transmission System]**, and do not comprise works for construction and installation, direct or indirect references to the **User's Works** shall be deemed to include the **Offshore Construction Works** for the purposes only of (and to the extent so provided in the description of **OTSDUW**) Clauses 2.2, 2.3 and 2.4 of this **Construction Agreement**.]

## 2. CARRYING OUT OF THE WORKS

- 2.1 Forthwith following the date of [the Offshore Agreement to Vary] [this **Construction Agreement**] the User shall agree with the [Relevant Transmission Licensee] [Onshore Transmission Licensee] the Safety Rules and Local Safety Instructions to apply at the [Connection Site] [Transmission Interface Site] during the Construction Programme and Commissioning Programme [and until the **OTSUA Transfer Time**]. Failing agreement within three months of such date 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 [the **Offshore Agreement to Vary**] [this **Construction Agreement**] The **Company** shall use its best endeavours to obtain in relation to the **Construction Works**, excluding the **Wider Transmission Reinforcement 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, the **User** and the [Relevant Transmission Licensee] [Onshore Transmission Licensee] shall, so far as it is legally able to do so, grant to, the other in respect of the [Connection Site] [Transmission Interface Site] all such wayleaves, easements, servitude rights, rights over or interests in land or any other consents reasonably required by the **User** or [Relevant Transmission Licensee] [Onshore Transmission Licensee] in order to enable the **Works** excluding the **Wider Transmission Reinforcement 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** [and **OTSDUW**] excluding the **Wider Transmission Reinforcement 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** excluding the **Wider Transmission Reinforcement Works** [and the **User** obtaining **Consents** for the **OTSDUW**] 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** excluding the **Wider Transmission Reinforcement Works** [or the **User** wishing to amend **OTSDUW**] to facilitate the granting of the **Consents**,

then, in the case of **Construction Works** and **Consents** therefor, **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** in relation to those **Construction Works** 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. [In the case of **OTSDUW** and **Consents** therefore, the **User** shall be entitled to revise the **OTSDUW** (including any changes to the **Offshore Works Assumptions**) and the dates specified in this **Construction Agreement** in relation to **OTSDUW**, in which case the **User** shall propose such revisions to **The Company** and the parties shall (without prejudice to paragraph 6.9.2) agree such amendments to this **Construction Agreement** as are necessary to reflect such revisions. The parties acknowledge that any dispute regarding such amendments shall be referable to and determined by the **Authority** under the provisions of condition E13.5 of the **ESO Licence**, and where such application is made, the parties shall take into account any determination or other direction from the **Authority**.]

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

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

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

**2.5** Prior to the commencement of the **Transmission Connection Asset Works** [**Onshore Transmission Reinforcement Works** or any **One Off Works**] the



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

- 2.6 If the **User** fails to obtain all **Consents** for the **User's Works** having complied with the obligations in Clause 2.2 of this **Construction Agreement** the obligation on the **User** to complete the **User's Works** shall cease and the **User** may by written notice to **The Company** terminate this **Construction Agreement**. In the event of the **User** terminating this **Construction Agreement** in terms of this Clause 2.6 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** excluding the **Wider Transmission Reinforcement 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** excluding the **Wider Transmission Reinforcement 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 where the **User** is undertaking **OTSDUW** such additional information as **The Company** shall require in order to perform its obligations under the **STC** provided that **The Company** shall not request information greater in scope than that which **The Company** would be entitled to receive from a **Relevant Transmission Licensee** were it undertaking the **OTSDUW**,] and shall use all reasonable endeavours to coordinate and integrate their respective part of the **Works**. There shall be 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**] [**Transmission Interface Site**] and the **User** shall allow 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** [**Onshore Transmission Reinforcement Works** or any **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]** **[OTSUA]**, and the **User's Equipment**. The **User** shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed **Commissioning Programme** (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify **The Company** of its approval or, in the event that the **User** reasonably withholds its approval, notify **The Company** of any changes or variations to the proposed commissioning programme recommended by the **User**. If **The Company** does not accept such changes or variations submitted by the **User** any dispute shall be referred to the **Independent Engineer** for determination. The **Commissioning Programme** agreed between the parties or determined by the **Independent Engineer** as the case may be shall be implemented by the parties and their sub-contractors in accordance with its terms.
- 2.11 If at any time prior to the **Completion Date** it is necessary for **The Company** or **The Company** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **[Transmission Connection Asset Works and/or] Transmission Reinforcement Works** and/or the **One Off Works** and/or the **Third Party Works** **The Company** shall notify the **User** in writing of such addition, omission or amendment and Appendices [B1 (One Off Works), [G (Transmission Connection Asset Works)] H (Transmission Reinforcement Works), MM (Attributable Works) and N (Third Party Works)] to this **Construction Agreement** and consequently Appendices [A (Transmission Connection Assets) and B (Connection Charges and One Off Charges)] to the associated **Bilateral Connection Agreement** shall be automatically amended to reflect the change. Provided that where a **User** has elected for the **Local Cancellation Amount** to be based on the **Fixed Local Cancellation Charge Methodology** the **Attributable Works** can only be changed after the **Trigger Date** as provided for in **CUSC** Section 15. [If at any time prior to the **Completion Date** it is necessary for the **User** or the **User** in its reasonable discretion wishes to make any addition to or omission from or amendment to the **OTSDUW** (including any changes to the **Offshore Works Assumptions**), the **User** shall propose such revision to **The Company** and the parties shall (without prejudice to paragraph 6.9.2) agree changes to this **Construction Agreement** as are necessary to reflect such revision. The parties acknowledge that any dispute regarding such amendments shall be referable to and determined by the **Authority** under the provisions of condition E13.5 of the **ESO Licence**, and where such application is made, the parties shall take into account any determination or other direction from the **Authority**.]
- 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 relevant Secretary of State 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 Enabling Works are conditional on British Energy Generation Limited and/or Magnox Electric plc (as the case may be) granting approval to the carrying out of the **Construction Works** in terms of the Nuclear Site Licence Provisions Agreement being an agreement dated 30 March 1990 between **The Company** and Nuclear Electric plc (now called Magnox Electric plc) and an agreement dated 31 March 1996 between The Company and British Energy Generation Limited (and described as such). In the event of British Energy Generation Limited and/or Magnox Electric plc (as the case may be) not granting approval **The Company** shall be entitled to change the **Construction Works**, the **Construction Programme** and all dates specified in this **Construction Agreement**.]
- 2.14 [It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 1994 that the **User** is the only client in respect of the **User's Works** and **The Company** is the only client in respect of the **Construction Works** and 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 Regeneration Act 1996 and sections 104 to 113 of the said Act shall have no application either to the **Construction Works** or the **User's Works** and the parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.
- 2.16 **Third Party Works**
- 2.16.1 The **User** shall be responsible for carrying out or procuring that the **Third Party Works** are carried out and shall carry them out or procure that they are carried out in accordance with the timescales specified in the **Construction Programme**. The **User** shall confirm to **The Company** or, where requested to do so by **The Company**, provide confirmation from the third party that the **Third Party Works** have been completed.
- 2.16.2 Given the nature of these works it may not be possible to fully identify the works required or the third parties they relate to at the date hereof. Where this is the case **The Company** shall, subject to 2.x.3 below, advise the **User** as soon as practicable and in any event by [ ] of the **Third Party Works** and shall be

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

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

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

2.17 Not later than 6 months prior to the **Completion Date** or such other period as the parties shall agree the **User** shall enter into the **Interface Agreement** with the **Relevant Transmission Licensee** to reflect the **Works** excluding the **Wider Transmission Reinforcement Works**<sup>14</sup>. [Not later than 6 months prior to the **Completion Date** or such other period as the parties shall agree the **User** shall enter into an agreement (in similar form to the **Interface Agreement**) with the **Onshore Transmission Licensee** to reflect the **Works** excluding the **Wider Transmission Reinforcement Works** at the **Transmission Interface Site** for the period up to and including the **OTSUA Transfer Time**.<sup>15</sup>]

2.18 In the event that there are any [material] changes to the **Offshore Works Assumptions**] **The Company** shall be entitled to revise the **Construction Works** excluding the **Wider Transmission Reinforcement Works** and **Construction Programme** and as a consequence Appendices A, B, C and F3 to F5 in the **Bilateral Connection Agreement** as necessary to reflect such change. **The Company** shall notify the **User** as soon as practicable upon it becoming aware that it may need to exercise its rights under this Clause and provide the **User** with an indication of the nature and scope of the changes required and the reasons for the same.

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<sup>14</sup> Not OTSDUW Build

<sup>15</sup> Use OTSDUW Build

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

### 3 DELAYS

- 3.1 If either party shall have reason to believe that it is being delayed or will be delayed in carrying out that party's **Works** excluding the **Wider Transmission Reinforcement Works** for any reason (whether it is one entitling it to the fixing of a new date under Clause 3.2 of this **Construction Agreement** or not) it shall forthwith notify the other party in writing of the circumstances giving rise to the delay and of the extent of the actual and/or anticipated delay.
- 3.2 If prior to the **Completion Date** a party (in this Clause 3.2 "the **Affected Party**") shall be delayed in carrying out any of the **Affected Party's Works** (including their commissioning) by reason of any act, default or omission on the part of the other Party (in this Clause the "**Defaulting Party**") or the **Defaulting Party's** employees, agents, contractors or sub-contractors or by reason of an event of **Force Majeure**, the **Affected Party** shall be entitled to have such later date or dates fixed as the **Commissioning Programme Commencement Date** and/or (as the case may be) the **Completion Date** as may be fair and reasonable in the circumstances provided that it shall have notified the **Defaulting Party** in writing of such act, default or omission or event of **Force Majeure** within 28 days of it becoming aware of the occurrence giving rise to the delay together with an estimate of the proposed delay which it will cause the **Affected Party**. In the event of a dispute between the parties over what is or are any fair and reasonable new date or dates to be fixed in the circumstances this shall be promptly referred to and determined by the **Independent Engineer**. Once the new date or dates are fixed the **Construction Programme** and/or **Commissioning Programme** shall be deemed automatically amended as appropriate.

### 4 COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

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

**Engineer** failing agreement between the parties) shall be liable to pay to the **User Liquidated Damages** for each day that the actual date of commencement of the **Commissioning Programme** is later than the **Commissioning Programme Commencement Date**. It is declared and agreed that such **Liquidated Damages** shall cease to be payable in respect of any period after the date of actual commencement of the **Commissioning Programme**.

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

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

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

- 5.2** Not later than 3 months prior to the expected **Commissioning Programme Commencement Date** or by such other time as may be agreed between the parties the parties shall prepare and submit the **Operation Diagrams** required to be prepared and submitted by each of them respectively under CC 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** [and **OTSUA**] 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.
- 5.4.4.** Confirmation of access to the **Electronic Communications Platform** referred to in CC6.5.9 upon access being provided by **The Company**
- 5.4.4** [For the **Transmission Interface Site** information to enable preparation of **Site Responsibility Schedules** between the **User** and the **Onshore Transmission Licensee** for the period up to the **OTSUA Transfer Time** and between the **Onshore Transmission Licensee** and **Relevant Transmission Licensee** for the period from the **OTSUA Transfer Time** complying with the provisions of Appendix 1 to the **Connection Conditions**<sup>16</sup>].
- 5.5** Not later than 3 months prior to the expected **Commissioning Programme**

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<sup>16</sup> Use OTSDUW Build

**Commencement Date** each party shall submit to the other a statement of readiness to complete the **Commissioning Programme** in respect of the **Works** excluding the **Wider Transmission Reinforcement 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.

## 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 them under this **Construction Agreement** by reference to **Good Industry Practice** using their skill, experience and knowledge and with regard to such other matters as the **Independent Engineer** in their 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 they may request when considering such question. The **Independent Engineer** shall use their best endeavours to give their decision upon the question before them as soon as possible following its referral to them. The parties shall share equally the fees and expenses of the **Independent Engineer**. The parties expressly acknowledge that submission of disputes for resolution by the **Independent Engineer** does not preclude subsequent submission of disputes for resolution by arbitration as provided for in the **Dispute Resolution Procedure**. Pending any such submission the parties shall treat the **Independent Engineer's** decision as final and binding.

## 7. BECOMING OPERATIONAL

- 7.1 **The Company** shall connect and **Energise** the **User's Equipment** at the **Connection Site** [and the **OTSUA** at the **Transmission Interface 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 **Wider Transmission Reinforcement Works** and **Network Options Assessment Works** [and the **OTSDUW**] shall be **Commissioned** and (2) the **Network Options Assessment Works** and **Third Party Works** shall be completed. **The**



**Company** shall forthwith notify the **User** in writing that the **Connection Site [Transmission Interface Site<sup>17</sup>]** shall become **Operational**.

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

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

### **7.3 Transmission Entry Capacity Reduction**

- 7.3.1 If, at any time prior to the **Completion Date** **The Company** reasonably believes from data provided by the **User** to **The Company**, the reports provided by the **User** pursuant to Clause 2.8. and Clause 5 of this **Construction Agreement**, the commissioning process under the **Construction Agreement** or otherwise that the **User's Equipment** will be such that it will not be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall advise the **User** accordingly in writing setting out its reasons for this belief, the source of the information giving rise to the concern and seeking clarification from the **User**.
- 7.3.2 The **User** shall respond to **The Company** within 15 **Business Days** of the date of the **Preliminary Request** providing such information or data as is necessary to satisfy **The Company's** concerns set out in the **Preliminary Request** and making any amendments necessary to the report provided by the **User** pursuant to Clause 2.8 and/or data provided by the **User** to **The Company** to reflect this.
- 7.3.3 In the event that **The Company** is satisfied from the information provided in accordance with 7.3.2 by the **User** that the **User's Equipment** is such that it will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.3.4 In the event that the **User** does not respond to the **Preliminary Request** or, notwithstanding the **User's** response, **The Company** remains of the view that the **User's Equipment** will be such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** **The Company** shall inform the **User** in writing that it intends to amend Clause 7 and Appendix C to the **Bilateral Connection Agreement** to reflect the **Transmission Entry Capacity** that it reasonably believes to be the level of power that the **User's Equipment** will be capable of exporting .

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<sup>17</sup> Use OTSDUW Build

- 7.3.5 The **User** shall respond to the **Notice of Intent** within 15 **Business Days** of the date of the **Notice of Intent** explaining why it still reasonably believes that its **User's Equipment** will be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or providing a reasonable explanation as to why this is not the case.
- 7.3.6 In the event that **The Company** is satisfied from the information provided in accordance with 7.3.5 by the **User** that the **User's Equipment** is such that it will be capable of exporting power onto the **National Electricity Transmission System** up to the level of the **Transmission Entry Capacity** **The Company** shall notify the **User** accordingly.
- 7.3.7 Where notwithstanding the **User's** response to the **Notice of Intent** **The Company** remains of the view that the **User's Equipment** is such that it will not reasonably be capable of exporting power onto the **National Electricity Transmission System** at the level of the **Transmission Entry Capacity** or at more than the MW figure proposed by **The Company** in the **Notice of Intent** or the **User** does not provide a response that is satisfactory to **The Company** within the timescale specified in 7.3.5 above **The Company** will issue the **Notice of Reduction** to the **User** and will send a copy of the same to the **Authority**.
- 7.3.8 Unless during such period the matter has been referred by the **User** to the **Authority** for determination by the **Authority** under the provisions of condition E13.5 of the **ESO Licence**, the **Notice of Reduction** shall take effect on the day 15 **Business Days** after the date of the **Notice of Reduction** and Appendix C of the **Bilateral Connection Agreement** shall be amended on that date in the manner set out in the **Notice of Reduction**. Where the matter has been referred the amendments of the **Bilateral Connection Agreement** and the date they take effect shall be as set out in the **Authority's** determination
- 7.3.9 After a **Notice of Reduction** has taken effect **The Company** shall be entitled to make such amendments to this **Construction Agreement** as are reasonably necessary as a result of the reduction in **Transmission Entry Capacity** effected by the **Notice of Reduction** and as a consequence to the **Bilateral Connection Agreement**. **The Company** shall advise the **User** as soon as practicable and in any event within 3 months of the date of the **Notice of Reduction** (or if the matter has been referred by the **User** to the **Authority** for determination, the date of determination) of such amendments by way of offer of an agreement to vary the **Construction Agreement** and **Bilateral Connection Agreement**. This agreement to vary will also provide for payment by the **User** of the **Reduction Fee** where applicable. The parties acknowledge that any dispute regarding this variation shall be referable to and determined by the **Authority** under the provisions of condition E13.5 of the **ESO Licence**.

- 7.4 Where there is a reduction in **Transmission Entry Capacity** under Clause 7.3 prior to the **Charging Date**, on such reduction in **Transmission Entry Capacity** taking effect the **User** shall pay to **The Company** the **Cancellation Charge** such payment to be made within 14 days of the date of **The Company's** invoice in respect thereof.

## 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** [and that the **OTSUA** complies with the site specific technical conditions set out in Appendix OF to this **Construction Agreement**]. The obligation in respect of **OTSUA** shall apply up to the **OTSUA Transfer Time**, whereupon such provisions shall (without prejudice to any prior non-compliance) cease to apply

## 9. PROVISION OF SECURITY

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

## 10. EVENT OF DEFAULT

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

## 11. TERMINATION

- 11.1 On termination of this **Construction Agreement** **The Company** shall disconnect all the **User's Equipment** at the **Connection Site** and:
- (a) where the **Relevant Transmission Licensee** is the owner of the **Offshore Platform** the **User** shall remove any of the **User's Equipment** on the **Offshore Platform** within such period as may be agreed between the **Relevant Transmission Licensee** and the **User**; or
  - (b) where the **User** is the owner of the **Offshore Platform** **The Company** shall procure that the **Relevant Transmission Licensee** removes, any [Transmission Connection Assets] on the **Offshore Platform** within

such period as may be agreed between the **Relevant Transmission Licensee** and the **User**.]

OR

[(a) **The Company** shall disconnect the **OTSUA** at the **Transmission Interface Site**; and

(b) the **User** shall remove any of the **OTSUA** on the **Onshore Transmission Licensee's** land at the **Transmission Interface Site** and **The Company** shall (as appropriate) remove or procure that the **Onshore Transmission Licensee** removes its equipment (if any) from the **User's** land at the **Transmission Interface Site** in each case within such period as may be agreed between **Onshore Transmission Licensee** and the **User**. ]

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

## 12. TERM

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 1, 2.5, 2.6, 4.8, 11 or 18 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** 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), 6.38 (Directions related to national security), inclusive of the **CUSC** shall apply mutatis mutandis 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**, the **ESO Licence** 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 this **Construction Agreement** and Appendices in accordance with Clauses 1, 2.3 and 2.11, 2.13, 2.16, 2.18, 7.3, 18 and Paragraph 6.9 of the **CUSC**.

## 16. RESTRICTIVE TRADE PRACTICES ACT

Any restriction or information provision (as each of those terms are defined or construed in Section 43(1) of the Restrictive Trade Practices Act 1976) contained in this **Construction Agreement** shall not take effect or shall cease to have effect:-

- (a) if a copy of this **Construction Agreement** is not provided to the Department of Trade and Industry ("DTI") within 28 days of the date of this **Construction Agreement**; or
- (b) if, within 28 days of the provision of that copy to the DTI, the DTI gives notice of objection to the party providing it.

*[Clause 17 is to be included where the User is undertaking OTSDUW]*

## 17. Development of Offshore Transmission System Development User Works

- 17.1 To the extent not already provided and, within **three months** of the date of this **Construction Agreement** (or such later date as **The Company** shall agree) the **User** shall provide **The Company** with:
- (a) confirmation of the **OTSDUW** to be undertaken by the **User**;
  - (b) confirmation of the programme for the **OTSDUW** to be undertaken by the **User**; and
  - (c) information equivalent to that provided under Sections B and D of the **Connection Application** but by reference to the **Transmission Interface**

**Site** rather than the **Connection Site**.

Upon any revision to the **Offshore Works Assumptions**, the **User** shall provide updated information under paragraphs (a), (b) and (c) to and the parties shall (without prejudice to paragraph 6.9.2) agree such amendments to this **Construction Agreement** as are necessary to reflect such updated information. The parties acknowledge that any dispute regarding such amendments shall be referable to and determined by the **Authority** under the provisions of condition E13.5 of the **ESO Licence**, and where such application is made, the parties shall take into account any determination or other direction from the **Authority**.

- 17.2 The **User** and **The Company** shall within 3 months of the date of this **Construction Agreement** (or such later date as **The Company** and **User** shall agree) agree a timeline (the **OTSDUW Development and Data Timeline**) detailing the activities to be undertaken by the **User** in order to develop the scope of the **OTSDUW** and (provided for under the **PC**) providing for the exchange of data and information required.
- 17.3 Such data shall take account of **The Company's** obligations to the **Relevant Transmission Licensees** under the **STC** in providing information and data in respect of additions to and changes on the **National Electricity Transmission System** and the need to coordinate the **OTSDUW** with the **Onshore Construction Works** and other works planned on the **National Electricity Transmission System**.
- 17.4 Within six months of the date of this **Construction Agreement** (or such later date as the **The Company** shall agree) the **User** shall provide **The Company** on an initial and indicative basis with:
  - (a) information that would enable the **Relevant Transmission Licensee** to complete the **Connection Site Specification** (advising of any changes from or additions required to the site specific technical conditions set out in Appendices F1 to F5 to the **Bilateral Connection Agreement**) (to the extent practicable given the information and data available to the **User** at that time);
  - (b) information that would enable the **Relevant Transmission Licensee** to complete the **Transmission Interface Site Specification** (advising of any changes from or additions required to the site specific technical conditions set out in Appendix OF to this **Construction Agreement**) (to the extent practicable given the information and data available to the **User** at that time);
  - (c) information that would enable the **Relevant Transmission Licensee** to complete the **Services Capability Specification** (to the extent practicable given the information and data available to the **User** at that time).
- 17.5 Information referred to in Clause 17.4 (a), (b) and (c) shall be developed and amended by the **User** and agreed by **The Company** as the design and detail

of the **OTSDUW** is finalised and such that the information can be provided by **The Company** to the extent practicable to the **Relevant Transmission Licensee** on its appointment and such that the **Connection Site Specification** and **Services Capability Specification** and **Transmission Interface Site Specification** are capable of being finalised on or prior to the **OTSUA Transfer Time**.

- 17.6 Any dispute between **The Company** and the **User** as to the information provided to enable finalisation of the **Connection Site Specification**, **Services Capability Specification** or **Transmission Interface Site Specification** shall be managed in accordance with **CUSC** Section 7 Paragraph 7.4.1 but the reference to **Electricity Arbitration** shall instead be to the **Authority** and the **Authority's** determination of such dispute shall, without prejudice to apply for judicial review of any determination, be final and binding on **The Company** and the **User**.
- 17.7 The **User** shall provide **The Company** with such information and assistance as **The Company** may reasonably require to enable the **Onshore Transmission Licensee** and the **Relevant Transmission Licensee** to have in place a **Transmission Interface Agreement** relating to the **Transmission Interface Site** and an **Interface Agreement** relating to the **Connection Site** in each case from no later than the **OTSUA Transfer Time**.
- 17.8 Taking into account the expected extent of the **OTSUA Commissioning Period** prior to the **OTSUA Transfer Time**, **The Company** and the **User** shall establish, as part of the **OTSDUW Development and Data Timetable**:
- (a) a timetable for the provision of the items required from the **User** pursuant to Clause 5 of this **Construction Agreement**, the **Grid Code** and **CUSC** Paragraphs 2.10 and 2.11 as they relate to the **Connection Site**; and
  - (b) where the **Transmission Interface Site** will be **Operational** prior to the **OTSUA Transfer Time**, by when and to what extent the information referred to in Clause 17.4 (a), (b) and (c) should be in final form prior to the **OTSUA Transfer Time**;
  - (c) where the **Transmission Interface Site** will be **Operational** prior to the **OTSUA Transfer Time**, to what extent and by when the **User** has to comply with the requirements in Appendices OF prior to the **OTSUA Transfer Time**.<sup>18</sup>

## 18. QUEUE MANAGEMENT PROCESS

- 18.1 The **Queue Management Process** shall be incorporated into this **Construction Agreement** and apply between **The Company** and the **User** and Appendix Q to this **Construction Agreement** has been prepared in accordance with the principles set out in **CUSC** Section 16.
- 18.2 Where, in accordance with the **Queue Management Process**,:

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<sup>18</sup> Use OTSDUW Build

- 18.2.1 in the case of any of the **Conditional Progression Milestones**, the status of the **User's** project at the end of the **Project Milestone Remedy Period** is categorised as "Termination", **The Company** will terminate this **Construction Agreement** by notice in writing (such notice being not less than 10 **Business Days**); and
- 18.2.2 in the case of any of the **Construction Progression Milestones**, the status of the **User's** project at the end of the **Project Milestone Remedy Period** is categorised as "Termination", **The Company** may terminate this **Construction Agreement** by notice in writing (such notice being not less than 10 **Business Days**); and
- 18.2.3 on such termination the provisions of Clause 11 of this **Construction Agreement** shall apply.
- 18.3 Where in accordance with the **Queue Management Process** there is a variation to the date by which a **User Progression Milestone** has to be met **The Company** shall revise Appendix Q to this **Construction Agreement** as required to reflect such change.
- 18.4 Any dispute or difference between **The Company** and the **User** on the **Queue Management Process** in respect of this **Construction Agreement** shall be resolved as an **Other Dispute** under the **Dispute Resolution Procedure**.

**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 Energy System Operator )  
Limited )

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



**APPENDIX [B1]  
[Part 1]**

**ONE OFF WORKS**

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

## **APPENDIX [H1]**

### **ONSHORE TRANSMISSION REINFORCEMENT WORKS**

#### **PART 1      Enabling Works**

#### **PART 2      Wider Transmission Reinforcement Works**

## **APPENDIX [H2]**

### **OFFSHORE TRANSMISSION REINFORCEMENT WORKS**

#### **PART 1**

#### **PART 2**

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

PART 1

PART 2

[OTSDUW – the works for the design, consenting, construction and installation of the Offshore Transmission System] [nb to be edited to identify works post offer and limited to consenting and design in case of early OFTO appointment]

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

**APPENDIX [K]**

**LIQUIDATED DAMAGES**

Company:

Connection site:

Type:

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

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

**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 [MM]**

### **ATTRIBUTABLE WORKS AND KEY CONSENTS**

#### **Part 1**

#### **Attributable Works**

#### **Part 2**

#### **Key Consents**

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

## **APPENDIX O**

### **USER DATA**

#### Examples Being

Number of Turbines

Capacity in MW of each Turbine

Manufacturer of Turbines and Machine Type

Reactive Capability of each Turbine

## **APPENDIX P**

### **OFFSHORE WORKS ASSUMPTIONS**

#### Examples Being

Onshore landing point  
Connection to Onshore Transmission System  
Voltage of Cable  
Length of cable  
Assumed ownership of platform  
Assumed tender window  
Assumed preferred bidder decision date  
Assumed start of offshore works build\build programme\completion  
Assumed start of onshore works build\build programme\completion

**APPENDIX [Q]**  
**QUEUE MANAGEMENT PROCESS – USER PROGRESSION MILESTONES**

The table below specifies the dates (derived in accordance with **CUSC** Section16) for the **User Progression Milestones** in respect of the **User's** project and the application of the **Queue Management Process**.

**Conditional Progression Milestones**

<b>Milestone</b>	<b>Date due</b>
<b>M1 – Initiate Planning Consent</b>	
<b>M2 – Secure Consent</b>	
<b>M3 – Land Rights</b>	

**Construction Progression Milestones**

<b>Milestone</b>	<b>Date due</b>
<b>M5 – Contestable Design Works Submission</b>	
<b>M6 – Agree Construction Plan</b>	
<b>M7 – Project Commitment</b>	
<b>M8 – Initiate Construction</b>	

**END OF SCHEDULE 2 EXHIBIT 3A**