SCHEDULE NINE

TO CONSTRUCTION TERMS

A. PRO FORMA TERMS FOR TO CONSTRUCTION AGREEMENT BETWEEN NGESO AND A TRANSMISSION OWNER UNDERTAKING WORKS WHICH INCLUDE WORKS AT A RELEVANT CONNECTION SITE (OR IN THE CASE OF OTSDUW BUILD AT A TRANSMISSION INTERFACE SITE).

1. **Definitions and Interpretation**

1.1 Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions in this TO Construction Agreement shall have the same meanings, interpretations or constructions as set out in Section J of the Code.

1.2 For the purposes of this TO Construction Agreement,

1.2.1 "**Consents**" means, in relation to any Transmission Construction 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 or Planned Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Transmission Construction Works when completed;

1.3 The Relevant Connection Site (or in the case of OTSDUW Build, prospective Transmission Interface Site) and Works to which this TO Construction Agreement applies shall be as set out in the relevant Appendices to this TO Construction Agreement.

2. **Carrying out of the Works**

2.1 Forthwith following the Effective Date, the Transmission Owner and the User shall agree the Safety Rules and Local Safety Instructions to apply during the TO Construction Programme and TO Commissioning Programme. Failing agreement within three months of the Effective Date, the matter shall be referred to the Independent Engineer for determination in accordance with paragraph 5 of this TO Construction Agreement.

2.2 In relation to a Relevant Connection Site (or in the case of OTSDUW Build, prospective Transmission Interface Site), the Transmission Owner shall, and NGESO shall procure that the User shall, ensure that each other is supplied with a copy of the Safety Rules current from time to time, including any site-specific Safety Rules, and also a copy of the Local Safety Instructions applicable at each Relevant Connection Site (or in the case of OTSDUW Build, prospective Transmission Interface Site) from time to time.

2.3 Subject to paragraphs 2.4 and 2.6 forthwith following the Effective Date, the Transmission Owner shall use its best endeavours to obtain in relation to the Transmission Construction Works and NGESO shall use its best endeavours to procure that the User obtains in relation to the User Works, all Consents. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each Party shall, and NGESO shall procure that the User shall, so far as it is legally able to do so, grant to the other, or the User, all such wayleaves, easements, servitude rights or other rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the User in order to enable the Works to be expeditiously completed and to enable that other to carry out its obligations to the other under this TO Construction Agreement and in all cases subject to such terms and conditions as are reasonable.

2.4 The following additional provisions shall apply in respect of the Consents and Transmission Construction Works:

2.4.1 All dates specified in this TO Construction Agreement are subject to the Transmission Owner obtaining Consents for the Transmission Construction Works in a form acceptable to it and within the time required to carry out the Transmission Construction Works in accordance with the TO Construction Programme.

2.4.2 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 Transmission Owner wishing to amend the Transmission Construction Works to facilitate the granting of the Consents,

the Transmission Owner shall be entitled to revise the Transmission Construction Works (and as a consequence the relevant Appendices of this TO Construction Agreement which set out such Transmission Construction Works and any related charges). For the avoidance of doubt such revisions shall be at the Transmission Owner's absolute discretion and the consent of NGESO is not required.

2.5 The Parties shall regularly update each other in writing or by such other means as the relevant Parties may agree as to progress made by them and, in the case of NGESO, as to progress made by the User from time to time in the obtaining of relevant Consents pursuant paragraphs 2.3 or 2.4.

2.6 NGESO shall be liable to pay to the Transmission Owner:

2.6.1 all of the Transmission Owner's Engineering Charges accrued; and

2.6.2 proper and reasonable out-of-pocket expenses incurred and/or paid or which the Transmission Owner is legally bound to incur or pay,

in seeking and obtaining the Consents the subject of paragraph 2.3 excluding any costs associated with the Seven Year Statement Works and any other works, to the extent that NGESO has paid or is liable to pay such costs under another TO Construction Agreement.

NGESO acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the Transmission Connection Asset Works. This sum shall not include any capital costs incurred by the Transmission Owner in the acquisition by it of the freehold of any land upon which a land charge is payable. The Transmission Owner shall keep NGESO informed of the level of such charges and expenses being incurred. NGESO shall pay such sums within 30 (thirty) days of the date of the Transmission Owner's invoice therefor.

2.7 Paragraphs 2.2, 2.3, 2.4 and 2.5 of Section J of the Code relating to Consents shall apply to the construction arrangements set out in this TO Construction Agreement as if set out here in full.

2.8 NGESO may by written notice to the Transmission Owner terminate this TO Construction Agreement at any time and upon termination prior to the date at which the Transmission Construction Works other than the Wider Transmission Works are Completed NGESO shall in addition to the sums for which it is liable under paragraph 2.6 be liable to pay to the Transmission Owner a sum equal to the Transmission Owner's estimate or if applicable revised estimate of TO Final Sums. NGESO shall pay such sums within 16 (sixteen) days of the date of the Transmission Owner's invoice(s) therefor and (where applicable) on termination the Transmission Owner shall disconnect the User's Equipment at the Relevant Connection Site (or in the case of OTSDUW Build, but only prior to appointment of the nominated Offshore Transmission Owner, the OTSUA at the prospective Transmission interface Site) and:

2.8.1 NGESO shall procure that a User removes any of the User's Equipment (and OTSUA) on the Transmission Owner's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and the User; and

2.8.2 the Transmission Owner shall remove any of the Transmission Connection Assets on the User's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and the User.

2.9 The Transmission Owner shall be entitled to contract or sub-contract for the carrying out of its respective parts of the Works. NGESO shall procure the commencement and carrying out of the User worksto such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme and the Transmission Owner or any contractor on its behalf shall be responsible for commencing and carrying out the Transmission Construction Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme.

2.10 NGESO may, at its discretion, notify the Transmission Owner at any time in writing to discontinue, postpone or otherwise delay all or part of any Works or other activities under this TO Construction Agreement and may direct that the Transmission Owner produce an amended TO Construction Programme and/or TO Commissioning Programme accordingly, as a consequence of:

2.10.1 a User breaching any credit or security requirement pursuant to the CUSC or CUSC Construction Agreement;

2.10.2 a delay or failure by a User or another Joint Project Party to obtain any Consents; or

2.10.3 a delay or failure by another Joint Project Party under and pursuant to any other TO Construction Agreement in respect of the same Construction Project.

2.11 During the period of and at the times and otherwise as provided in the TO Construction Programme and the TO Commissioning Programme the Transmission Owner shall allow the User, its employees, agents, suppliers, contractors and subcontractors and NGESO shall ensure that the User allows (in relation to its sites) the Transmission Owner, its employees, agents, suppliers, contractors and sub-contractors, necessary access to its site to enable each to carry out the Transmission Connection Asset Works and One Off Works or User 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 any 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.

2.12 Not later than six months prior to the Commissioning Programme Commencement Date, the Transmission Owner shall provide NGESO with a draft TO Commissioning Programme for the Commissioning of the Transmission Connection Assets, and the User's Equipment (and in the case of OTSDUW Build, the OTSUA). NGESO 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 Transmission Owner of its approval or, in the event that NGESO reasonably withholds its approval, notify the Transmission Owner of any changes or variations to the proposed commissioning programme recommended by NGESO. If the Transmission Owner does not accept such changes or variation submitted by NGESO any dispute shall be referred to the Independent Engineer for determination. The TO 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.

2.13 If at any time prior to the Completion Date it is necessary for the Transmission Owner or the Transmission Owner in its reasonable discretion wishes to make any addition to or omission from or amendment to its Transmission Connection Asset Works and/or Transmission Reinforcement Works and/or the One Off Works and/or the Third Party Works the Transmission Owner shall notify NGESO in writing of such addition, omission or amendment and the relevant Appendix of this TO Construction Agreement shall be automatically amended to reflect the change.

2.14 Transmission Reinforcement Works are conditional on any relevant nuclear generator granting approval to the carrying out of the Transmission Construction Works in terms of any Nuclear Site Licence Provisions Agreement. In the event of the relevant nuclear generator not granting approval the Transmission Owner shall be entitled to change the Transmission Construction Works, the TO Construction Programme and all dates specified in this TO Construction Agreement.

2.15 It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 2015 that the Transmission Owner is the only client in respect of the Transmission Construction Works and shall accordingly discharge all the duties of a client under the said Regulations.

2.16 The Transmission Owner and NGESO hereby agree and acknowledge that this TO Construction Agreement is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application to any part of the Transmission Construction Works and the Parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.17 Connect And Manage Arrangements. [*connect and manage arrangements only*]. The Transmission Owner shall keep NGESO advised as to progress on the Wider Transmission Reinforcement Works.

3. DELAYS

3.1 If either Party shall have reason to believe that it, another Transmission Owner or, in the case of NGESO a User, is being delayed or will be delayed in carrying out that Party's

or a User's Works (as appropriate) for any reason (whether it is one entitling it to the fixing of a new date under paragraph 3.2 of this TO 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 paragraph 3.2 the "**Affected Party**") shall be delayed in carrying out any of the Affected Party's Works (including their commissioning) by reason of (a) any act, default or omission on the part of the other Party (in this paragraph the "**Defaulting Party**") or of the Defaulting Party's employees, agents, contractors, sub-contractors or, in the case where NGESO is the Defaulting Party, by reason of a delay by the User or (b) any act, default or omission on the part of any Transmission Owner which is not a Party to this TO Construction Agreement or its employees, agents, contractors or subcontractors or (c) 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 date or dates to be fixed in the circumstance this shall be promptly referred to and determined by the Independent Engineer. Once the new date or dates are fixed the TO Construction Programme and/or TO 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 shall have given written notice to the other under paragraph 4.1.

4.3 The Transmission Construction 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 shall be later than the Commissioning Programme Commencement Date the Transmission Owner (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 NGESO 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 Transmission Construction Works are Commissioned is later than the Completion Date the Transmission Owner (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 NGESO Liquidated Damages for each day that the actual date on which the Transmission 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 Transmission Construction Works.

4.6 Liquidated Damages payable under paragraphs 4.4 and 4.5 shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 13th 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 NGESO pursuant to paragraph 2.6 the payment or allowance of Liquidated Damages pursuant to this paragraph 4 shall be in full satisfaction of the Transmission Owner'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 NGESO or a User shall have failed, in circumstances not entitling NGESO to the fixing of a new date as the Commissioning Programme Commencement Date pursuant to paragraph 3.2, to procure that the User complete the User Works by the Construction Backstop Date to a stage where NGESO or such User (as appropriate) is ready to commence the Commissioning Programme, the Transmission Owner shall have the right to terminate this TO Construction Agreement upon giving notice in writing to NGESO. In the event of such termination NGESO shall in addition to the amounts for which it is liable under paragraph 2.6, also be liable to the Transmission Owner to pay a sum equal to the Transmission Owner's estimate or revised estimate of TO Final Sums. NGESO shall pay such sums within 14 (fourteen) days of the date of the Transmission Owner's invoice(s) therefor and on termination (where applicable) The Transmission Owner shall disconnect the User Equipment at the Relevant Connection Site and (a) NGESO shall ensure that the User shall remove any of the User Equipment on the Transmission Owner's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and the User and (b) the Transmission Owner shall remove any Transmission Connection Assets on the User's land within six months of the date of termination or such longer period as may be agreed between the Transmission Owner and the User.

5. INDEPENDENT ENGINEER

In relation to matters raised pursuant to this TO Construction Agreement, the Parties agree and shall procure that the Independent Engineer shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to ~~him~~ them under this TO Construction Agreement by reference to Good Industry Practice using ~~his~~ their skill, experience and knowledge and with regard to such other matters as the Independent Engineer in ~~his~~ 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 16 days of the occurrence of the dispute to be referred to the Independent Engineer. The Parties shall promptly supply the Independent Engineer with such documents and information as ~~he~~ they may request when considering such question. The Independent Engineer shall use ~~his~~ their best endeavours to give ~~his~~ their decision upon the question before ~~him~~ them as soon as possible following its referral to ~~him~~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 in Section H of the Code. Pending any such submission the parties shall treat the Independent Engineer's decision as final and binding.

6. BECOMING OPERATIONAL

6.1 Without prejudice to paragraph 5 and subject to the provisions of this TO Construction Agreement, the Transmission Owner shall assist NGESO in Connecting and Energising the User Equipment at the Relevant Connection Site (or in the case of OTSDUW Build, the OTSUA at the prospective Transmission interface Site) including by:

(a) completing any Works required to be completed by the Transmission Owner at the times and in such manner as set out in the TO Construction Programme; and

(b) completing any operations, tests or other activities required to be completed by the Transmission Owner at the times and in such manner as set out in the Commissioning Programme.

7. TO FINAL SUMS

7.1 Within 58 days of the date of termination of this TO Construction Agreement the Transmission Owner shall:

(a) furnish NGESO with a further statement showing a revised estimate of TO Final Sums and will provide as soon as practicable evidence of such costs having been incurred; and

(b) by written notice to NGESO inform NGESO of all capital items which cost the Transmission Owner in excess of £10,000 and in relation to which an amount on account of TO Final Sums shall have been paid and whether the Transmission Owner (1) wishes to retain the said capital items or (2) dispose of them.

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

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

7.4 As soon as reasonably practicable after termination of this TO Construction Agreement the Transmission Owner shall provide NGESO with a statement of and invoice for the

TO Final Sums together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the TO Final Sums are greater than the payments made by NGESO in respect of the Transmission Owner's estimate(s) of TO Final Sums NGESO shall within 35 days of the said statement and invoice prepared by the Transmission Owner pay to the Transmission Owner the additional payments due by NGESO together with interest calculated thereon on a daily basis at Base Rate for the time being and from time to time from the date of previous payment(s) sums equal to the Transmission Owner's estimate of TO Final Sums to the date of the statement of and invoice for TO Final Sums. If the TO Final Sums is less than the payments made by NGESO in respect of the Transmission Owner's estimate of TO Final Sums paid by NGESO following termination of this TO Construction Agreement the Transmission Owner shall forthwith pay to NGESO the excess paid together with interest on a daily basis at the Base Rate for the time being and from time to time from the date of payment of the fair and reasonable estimate of TO Final Sums to the date of reimbursement by the Transmission Owner of the said excess paid.

7.5 **Provision of Bi-annual Estimate**

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

(a) forthwith and on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur); and

(b) not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be), until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8.

The Transmission Owner shall provide NGESO with all advice and assistance reasonably requested by NGESO in relation to any discussions or correspondence with a User in connection with Bi-annual Estimates.

7.6 **Entitlement to Estimate**

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

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

8. **TERM**

8.1 Subject to the provisions for earlier termination set out in the Code, this TO Construction Agreement shall continue in force unless and until terminated in accordance with paragraphs 2.8, or 4.8.

8.2 Any provisions for payment survive the termination of this TO Construction Agreement.

9. **THE CODE**

9.1 The provisions of:

9.1.1 Section E (Payment);

9.1.2 Section F (Confidentiality);

9.1.3 Section G, paragraphs 5 (Third Party Rights), 6 (Transfer and Sub-contracting), 7 (Intellectual Property), 8 (Force Majeure), 9 (Privilege), 10 (Waiver), 11 (Nominated Representative), 12 (Communications), 13 (Counterparts), 14 (Severance of Terms), 15 (Language), 16 (Data Protection Act), 17 (Jurisdiction), 18 (Governing Law), 19 (No Partnership)

of the Code shall apply to this TO Construction Agreement as if set out in this TO Construction Agreement in full.

10. **DISPUTES**

10.1 Except as specifically provided for in this TO Construction Agreement any dispute arising under the terms of this TO Construction Agreement shall be referred to arbitration in accordance with the terms of Section H of the Code.

11. **VARIATIONS**

11.1 Subject to paragraphs 11.2 and 11.3 below, no variation to this TO Construction Agreement shall be effective unless made in writing and signed by or on behalf of both the Transmission Owner and NGESO.

11.2 The Transmission Owner and NGESO shall effect any amendment required to be made to this TO Construction Agreement by the Authority as a result of a change in the Code or a Licence or an order or direction made pursuant to the Act or a Licence. NGESO hereby authorises and instructs the Transmission Owner to make any such amendments on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

11.3 The Transmission Owner has the right to vary any Appendices to this TO Construction Agreement in accordance with paragraphs 2.4 or 2.13.

[12 **ATTRIBUTABLE WORKS** *where applicable only*]

12.1 The Transmission Owner shall provide to NGESO (in a form agreed between the Transmission Owner and NGESO) the following information at the following times (or such other times as agreed between the Transmission Owner and NGESO):-

(a) by reference to each component of the Attributable Works, forthwith on the Effective Date and then not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter (until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8 or until NGESO notifies the Transmission Owner that it is no longer required):

(i) an estimate of the Attributable Works Capital Cost;

(ii) an estimate of capability in MW;

(iii) an assessment of the actual or potential for reuse and any strategic benefits provided as a percentage of the estimate provided at (i); and

(b) by reference to each component of the Attributable Works, forthwith and on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur) an estimate of the Attributable Works Capital Cost; and

(c) by reference to each component of the Attributable Works, not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be) (until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8 or until NGESO notifies the Transmission Owner that it is no longer required), an estimate of the Attributable Works Capital Cost.

12.2 On termination of this TO Construction Agreement and where requested by NGESO to do so the Transmission Owner shall together with the statements and information provided to NGESO by the Transmission Owner pursuant to paragraphs 7.1 to 7.5 in

respect of the TO Final Sums, provide statements and information in a form agreed between the Transmission Owner and NGESO in respect of the amount within the TO Final Sums which represents the actual Attributable Works Capital Cost of each component within the Attributable Works and also a justification of and supporting information in respect of the Transmission Owners assessment of the actual or potential for reuse and any strategic benefits of the Attributable Works and any of the resulting assets.

12.3 The Transmission Owner shall provide NGESO with all advice and assistance and information reasonably requested by NGESO in relation to any discussions or correspondence with a User in connection with the Attributable Works Capital Cost and assessment of the actual or potential for reuse and any strategic benefits of the Attributable Works and any of the resulting assets including the calculation and/or estimation of the same.

B. PROFORMA TERMS FOR TO CONSTRUCTION AGREEMENT BETWEEN NGESO AND A TRANSMISSION OWNER ONLY UNDERTAKING WORKS WHICH ARE NOT AT A RELEVANT CONNECTION SITE.

1. Definitions and Interpretation

1.1 Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions in this TO Construction Agreement shall have the same meanings, interpretations or constructions as set out in Section J of the Code.

1.2 For the purposes of this TO Construction Agreement,

1.2.1 "**Consents**" means, in relation to any Transmission Construction 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 Transmission Construction Works when completed.

1.3 The Relevant Connection Site and Works to which this TO Construction Agreement applies shall be as set out in the relevant Appendices to this TO Construction Agreement.

2. Carrying out of the Works

2.1 Subject to paragraph 2.2, forthwith following the Effective Date, the Transmission Owner shall use its best endeavours to obtain in relation to the Transmission Construction Works and NGESO shall use its best endeavours to procure that the User obtains in relation to the User Works, all Consents. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each Party shall, and NGESO shall procure that the User shall, so far as it is legally able to do so, grant to the other, or the User, all such wayleaves, easements, servitude rights or other rights over or interests (but not estates as regards land in England and Wales and not heritable or leasehold interests as regards land in Scotland) in land or any other consents reasonably required by the other or the User in order to enable the Works to be expeditiously completed and to enable that other to carry out its obligations to the other under this TO Construction Agreement and in all cases subject to such terms and conditions as are reasonable.

2.2 The following additional provisions shall apply in respect of the Consents and Transmission Construction Works:

2.2.1 All dates specified in this TO Construction Agreement are subject to the Transmission Owner obtaining Consents for the Transmission Construction Works in a form acceptable to it and within the time required to carry out the Transmission Construction Works in accordance with the TO Construction Programme.

2.2.2 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 Transmission Owner wishing to amend the Transmission Construction Works to facilitate the granting of the Consents,

the Transmission Owner shall be entitled to revise the Transmission Construction Works (and as a consequence the relevant Appendices of this TO Construction Agreement which set out such Transmission Construction Works and any related charges). For the avoidance of doubt such revisions shall be at the Transmission Owner's absolute discretion and the consent of NGESO is not required.

2.3 The Parties shall regularly update each other in writing or by such other means as the relevant Parties may agree as to progress made by them and, in the case of NGESO, as to progress made by the User from time to time in the obtaining of relevant Consents pursuant paragraphs 2.1 or 2.2.

2.4 NGESO shall be liable to pay to the Transmission Owner:

2.4.1 all of the Transmission Owner's Engineering Charges accrued; and

2.4.2 proper and reasonable out-of-pocket expenses incurred and/or paid or which the Transmission Owner is legally bound to incur or pay,

in seeking and obtaining the Consents the subject of paragraph 2.1 excluding any costs associated with the Seven Year Statement Works and any other works, to the extent that NGESO has paid or is liable to pay such costs under another TO Construction Agreement.

NGESO acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the Transmission Connection Asset Works. This sum shall not include any capital costs incurred by the Transmission Owner in the acquisition by it of the freehold of any land upon which a land charge is payable. The Transmission Owner shall keep NGESO informed of the

level of such charges and expenses being incurred. NGESO shall pay such sums within 30 (thirty) days of the date of the Transmission Owner's invoice therefor.

2.5 Paragraphs 2.2, 2.3, 2.4 and 2.5 of Section J of the Code relating to Consents shall apply to the construction arrangements set out in this TO Construction Agreement as if set out here in full.

2.6 NGESO may by written notice to the Transmission Owner terminate this TO Construction Agreement at any time and upon termination prior to the date at which the Transmission Construction Works other than the Wider Transmission Reinforcement Works are Completed NGESO shall in addition to the sums for which it is liable under paragraph 2.4 be liable to pay to the Transmission Owner a sum equal to the Transmission Owner's estimate or if applicable revised estimate of TO Final Sums. NGESO shall pay such sums within 16 (sixteen) days of the date of the Transmission Owner's invoice(s) therefor.

2.7 The Transmission Owner shall be entitled to contract or sub-contract for the carrying out of its respective parts of the Works. NGESO shall procure the commencement and carrying out of the User works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme and the Transmission Owner or any contractor on its behalf shall be responsible for commencing and carrying out the Transmission Construction Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme.

2.8 NGESO may, at its discretion, notify the Transmission Owner at any time in writing to discontinue, postpone or otherwise delay all or part of any Works or other activities under this TO Construction Agreement and may direct that the Transmission Owner produce an amended TO Construction Programme accordingly, as a consequence of:

2.8.1 a User breaching any credit or security requirement pursuant to the CUSC or CUSC Construction Agreement;

2.8.2 a delay or failure by a User or another Joint Project Party to obtain any Consents; or

2.8.3 a delay or failure by another Joint Project Party under and pursuant to any other TO Construction Agreement in respect of the same Construction Project.

2.9 If at any time prior to the Completion Date it is necessary for the Transmission Owner or the Transmission Owner in its reasonable discretion wishes to make any addition to or omission from or amendment to its Transmission Reinforcement Works and/or the One Off Works and/or the Third Party Works the Transmission Owner shall notify NGESO in writing of such addition, omission or amendment and the relevant Appendix of this TO Construction Agreement shall be automatically amended to reflect the change.

2.10 Transmission Reinforcement Works are conditional on any relevant nuclear generator granting approval to the carrying out of the Transmission Construction Works in terms of any Nuclear Site Licence Provisions Agreement. In the event of the relevant nuclear generator not granting approval the Transmission Owner shall be entitled to change the Transmission Construction Works, the TO Construction Programme and all dates specified in this TO Construction Agreement.

2.11 It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 2015 that the Transmission Owner is the only client in respect of the Transmission Construction Works and shall accordingly discharge all the duties of a client under the said Regulations.

2.12 The Transmission Owner hereby agrees and acknowledges that this TO Construction Agreement is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application to any part of the Transmission Construction Works and the Parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.13 Connect And Manage Arrangements. [*connect and manage arrangements only]*. The Transmission Owner shall keep NGESO advised as to progress on the Wider Transmission Reinforcement Works.

3. DELAYS

3.1 If either Party shall have reason to believe that it, another Transmission Owner or, in the case of NGESO a User, is being delayed or will be delayed in carrying out that Party's or a User's Works (as appropriate) for any reason (whether it is one entitling it to the fixing of a new date under paragraph 3.2 of this TO 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 paragraph 3.2 the "**Affected Party**") shall be delayed in carrying out any of the Affected Party's Works (including their commissioning) by reason of (a) any act, default or omission on the part of the other Party (in this paragraph the "**Defaulting Party**") or of the Defaulting Party's employees, agents, contractors, sub-contractors or, in the case where NGESO is the Defaulting Party, by reason of a delay by the User or (b) any act, default or omission on the part of any Transmission Owner which is not a Party to this TO Construction Agreement or its employees, agents, contractors or subcontractors or (c) by reason of an event of Force Majeure, the Affected Party shall be entitled to have such later date or dates fixed as 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 date or dates to be fixed in the circumstance this shall be promptly

referred to and determined by the Independent Engineer. Once the new date or dates are fixed the TO Construction Programme shall be deemed automatically amended as appropriate.

4. COMMISSIONING PROGRAMME AND LIQUIDATED DAMAGES

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

4.2 In the event that the actual date on which the Transmission Construction Works are Commissioned is later than the Completion Date the Transmission Owner (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 NGESO Liquidated Damages for each day that the actual date on which the Transmission 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 Transmission Construction Works.

4.3 Liquidated Damages payable under paragraph 4.2 shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 13th 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.

4.4 Without prejudice to and in addition to the obligation of NGESO pursuant to paragraph 2.4 the payment or allowance of Liquidated Damages pursuant to this paragraph 4 shall be in full satisfaction of the Transmission Owner's liability for failure to perform its obligations by the Completion Date.

5. INDEPENDENT ENGINEER

In relation to matters raised pursuant to this TO Construction Agreement, the Parties agree and shall procure that the Independent Engineer shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to ~~him~~ them under this TO Construction Agreement by reference to Good Industry Practice using ~~his~~ their skill, experience and knowledge and with regard to such other matters as the Independent Engineer in ~~his~~ 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 ~~he~~ they may request when considering such question. The Independent Engineer shall use ~~his~~ their best endeavours to give ~~his~~ their decision upon the question before ~~him~~ them as soon as possible following its referral to ~~him~~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 in Section H of the Code. Pending any such submission the parties shall treat the Independent Engineer's decision as final and binding.

6. **TO FINAL SUMS**

6.1 Within 55 days of the date of termination of this TO Construction Agreement the Transmission Owner shall:

(a) furnish NGESO with a further statement showing a revised estimate of TO Final Sums and will provide as soon as practicable evidence of such costs having been incurred; and

(b) by written notice to NGESO inform NGESO of all capital items which cost the Transmission Owner in excess of £10,000 and in relation to which an amount on account of TO Final Sums shall have been paid and whether the Transmission Owner (1) wishes to retain the said capital items or (2) dispose of them.

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

6.3 In respect of all capital items which the Transmission Owner wishes to dispose (other than those which have been, or are proposed to be installed as a replacement for Transmission Plant and Transmission Apparatus) it shall forthwith (and subject to the Transmission Owner obtaining the consent of the Authority under its Transmission Licence if required) sell or procure the sale of the said capital item on an arms-length basis as soon as reasonably practicable. Forthwith upon receipt of the sale proceeds the Transmission Owner shall pay to NGESO the proceeds received from any such sale together with interest thereon calculated on a daily basis from the date of termination to the date of payment at Base Rate for the time being and from time to time less any reasonable costs associated with the sale including the costs and expenses reasonably

incurred and/or paid and/or which the Transmission Owner is legally bound to pay on removing the capital item, any storage charges and any costs reasonably incurred by the Transmission Owner in respect of reinstatement associated with removal of the capital item. the Transmission Owner shall provide NGESO with reasonably sufficient evidence of all such costs and expenses having been incurred. If the Authority does not agree to the disposal of the capital item the capital item shall be retained by the Transmission Owner and the Transmission Owner shall reimburse NGESO the notional current market value in situ of the said capital item as between a willing buyer and a willing seller as agreed between the Parties and failing agreement as determined pursuant to Section H of the Code together with interest thereon calculated on a daily basis from the date of termination of this TO Construction Agreement to the date of payment at Base Rate for the time being and from time to time.

6.4 As soon as reasonably practicable after termination of this TO Construction Agreement the Transmission Owner shall provide NGESO with a statement of and invoice for the TO Final Sums together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the TO Final Sums are greater than the payments made by NGESO in respect of the Transmission Owner's estimate(s) of TO Final Sums NGESO shall within 35 days of the said statement and invoice prepared by the Transmission Owner pay to the Transmission Owner the additional payments due by NGESO together with interest calculated thereon on a daily basis at Base Rate for the time being and from time to time from the date of previous payment(s) sums equal to the Transmission Owner's estimate of TO Final Sums to the date of the statement of and invoice for TO Final Sums. If the TO Final Sums is less than the payments made by NGESO in respect of the Transmission Owner's estimate of Final Sums paid by NGESO following termination of this TO Construction Agreement the Transmission Owner shall forthwith pay to NGESO the excess paid together with interest on a daily basis at the Base Rate for the time being and from time to time from the date of payment of the fair and reasonable estimate of TO Final Sums to the date of reimbursement by the Transmission Owner of the said excess paid.

6.5 **Provision of Bi-annual Estimate**

The Transmission Owner shall provide to NGESO an estimate ("the Bi-annual Estimate") in substantially the form set out in the relevant Appendix to this TO Construction Agreement and showing the amounts of all payments required or which may be required to be made by NGESO to the Transmission Owner in respect of TO Final Sums at the following times and in respect of the following periods:-

(a) forthwith on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur); and

(b) not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing

immediately following 1st April or 1st October (as the case may be), until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 7.

The Transmission Owner shall provide NGESO with all advice and assistance reasonably requested by NGESO in relation to any discussions or correspondence with a User in connection with Bi-annual Estimates.

6.6 **Entitlement to Estimate**

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

7. **TERM**

7.1 Subject to the provisions for earlier termination set out in the Code, this TO Construction Agreement shall continue in force unless and until terminated in accordance with paragraph 2.6.

7.2 Any provisions for payment survive the termination of this TO Construction Agreement.

8. **THE CODE**

8.1 The provisions of:

8.1.1 Section E (Payment);

8.1.2 Section F (Confidentiality);

8.1.3 Section G, paragraphs 5 (Third Party Rights), 6 (Transfer and Sub-contracting), 7 (Intellectual Property), 8 (Force Majeure), 9 (Privilege), 10 (Waiver), 11 (Nominated Representative), 12 (Communications), 13 (Counterparts), 14 (Severance of Terms), 15 (Language), 16 (Data Protection Act), 17 (Jurisdiction), 18 (Governing Law), 19 (No Partnership)

of the Code shall apply to this TO Construction Agreement as if set out in this TO Construction Agreement in full.

9. **DISPUTES**

9.1 Except as specifically provided for in this TO Construction Agreement any dispute arising under the terms of this TO Construction Agreement shall be referred to arbitration in accordance with the terms of Section H of the Code.

10. VARIATIONS

10.1 Subject to paragraphs 10.2 and 10.3 below, no variation to this TO Construction Agreement shall be effective unless made in writing and signed by or on behalf of both the Transmission Owner and NGESO.

10.2 The Transmission Owner and NGESO shall effect any amendment required to be made to this TO Construction Agreement by the Authority as a result of a change in the Code or a Licence or an order or direction made pursuant to the Act or a Licence. NGESO hereby authorises and instructs the Transmission Owner to make any such amendments on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

10.3 The Transmission Owner has the right to vary any Appendices to this TO Construction Agreement in accordance with paragraph 2.9.

[11 ATTRIBUTABLE WORKS *where applicable only*]

11.1 The Transmission Owner shall provide to NGESO (in a form agreed between the Transmission Owner and NGESO) the following information at the following times (or such other times as agreed between the Transmission Owner and NGESO):-

(a) by reference to each component of the Attributable Works, forthwith on the Effective Date and then not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter (until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 7 or until NGESO notifies the Transmission Owner that it is no longer required):

(i) an estimate of the Attributable Works Capital Cost;

(ii) an estimate of capability in MW;

(iii) an assessment of the actual or potential for reuse and any strategic benefits provided as a percentage of the estimate provided at (i); and

(b) by reference to each component of the Attributable Works, forthwith and on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur) an estimate of the Attributable Works Capital Cost; and

(c) by reference to each component of the Attributable Works, not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be) (until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 7 or until NGESO notifies the Transmission Owner that it is no longer required), an estimate of the Attributable Works Capital Cost.

11.2 On termination of this TO Construction Agreement and where requested by NGESO to do so the Transmission Owner shall together with the statements and information provided to NGESO by the Transmission Owner pursuant to paragraphs 6.1 to 6.5 in respect of the TO Final Sums, provide statements and information in a form agreed between the Transmission Owner and NGESO in respect of the amount within the TO Final Sums which represents the actual Attributable Works Capital Cost of each component within the Attributable Works and also a justification of and supporting information in respect of the Transmission Owners assessment of the actual or potential for reuse and any strategic benefits of the Attributable Works and any of the resulting assets.

11.3 The Transmission Owner shall provide NGESO with all advice and assistance and information reasonably requested by NGESO in relation to any discussions or correspondence with a User in connection with the Attributable Works Capital Cost and assessment of the actual or potential for reuse and any strategic benefits of the Attributable Works and any of the resulting assets including the calculation and/or estimation of the same.

C. PRO FORMA TERMS FOR TO CONSTRUCTION AGREEMENT BETWEEN NGESO AND AN OFFSHORE TRANSMISSION OWNER UNDERTAKING WORKS WHICH INCLUDE WORKS AT A RELEVANT CONNECTION SITE.

DATED [ ]

[ ] (1)

and

NGESO (2)

TO CONSTRUCTION AGREEMENT

Reference: [ ]

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

Between

(1) [] a company registered in [ ] with number [ ] whose registered office is at [ ] ("**Transmission Owner**") which expression shall include its successors and/or permitted assigns) and

(2) **NGESO** a company registered in England with number [X] whose registered office is at 1 – 3 Strand, London, WC2N 5EH ("**NGESO**", which expression shall include its successors and/or permitted assigns).

WHEREAS

(A) NGESO has entered into an agreement with the User for connection to the National Electricity Transmission System at the Connection Site (the "Construction Project")

(B) The Transmission Owner has been appointed as for the provision of the Offshore Transmission System to which the User will be connected at the Connection Site.

(C) The Offshore Transmission System is to connect to the Onshore Transmission System at the Transmission Interface Site] [Onshore Distribution System at the Embedded Transmission Interface Site].

(D) NGESO has made an NGESO Connection Application to the Transmission Owner in accordance with Section D Part Two Paragraph 2 of the Code in respect of the Construction Project.

(E) Following such NGESO Connection Application the Transmission Owner is required to make a TO Construction Offer to NGESO in accordance with STC Section D Part Two Paragraph 4 of the Code.

(F) This Agreement sets out the terms of the TO Construction Offer

NOW IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions in this TO Construction Agreement shall have the same meanings, interpretations or constructions as set out in Section J of the Code and the following terms and expressions shall have the meaning set out below:-

Attributable Works	in relation to the User those Transmission Construction Works set out in Appendix X Part 1.
Commissioning Programme	Means as appropriate the TO Commissioning Programme or the TI

	Commissioning Programme.
Completion Date	the date for completion of the Transmission Construction Works as set out in the TO Construction Programme.
Completion Report	the report to be produced by the Transmission Owner pursuant to Clause 6.2 and addressing the matters set out in Appendix S.
Confirmation of Compliance Statement	a statement prepared by the Transmission Owner which states that in the opinion of the Transmission Owner, acting as a reasonable and prudent operator, its Transmission System is compliant with the STC, NETS SQSS [,Distribution Code] and those other standards specified in Appendix O to which it has designed and constructed its Transmission System.
Connection Site	the site of the connection to the National Electricity Transmission System as set out in Appendix A.
Consents	means, in relation to any Transmission Construction Works: (a) all such planning and other statutory consents *[excluding the Crown Estate Lease]*; 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 or Planned Works and for commencement and carrying on of any activity proposed to be undertaken at or from such Transmission Construction Works when completed; [but excluding the OTSDUW Consents.]
[Consents Works	as set out in Appendix [N]]
Construction Backstop Date	the date specified as such in the TO Construction Programme.

Construction Project	[project specific description]
[Crown Estate Lease]	*Edit if User to obtain this*
Effective Date	the date of this TO Construction Agreement.
[Embedded Transmission Counterparty]	means [ ] for the purposes of this TO Construction Agreement.]
[Embedded Transmission Interface Agreement]	the agreement to be entered into by the Transmission Owner and Embedded Transmission Counterparty pursuant to Clause 2.21 of this Construction Agreement and Section C Part Three Paragraph 3.4 of the Code.
[Embedded Transmission Interface Site]	the site of connection between the Offshore Transmission System and the Onshore Distribution System and set out in Appendix B.
[Embedded Transmission Interface Site Works]	as set out in Appendix [Q]
Forecast Offshore Construction Cost	the sum specified in Appendix U.
Initial Connection Site Specification	the initial draft of the Connection Site Specification attached at Appendix F and which is to be developed by the Transmission Owner in accordance with Clause 2.22 into the Connection Site Specification.
[Initial Embedded Transmission Interface Site Specification]	the initial draft of the Embedded Transmission Interface Site Specification attached at Appendix W and to be developed by the Transmission Owner pursuant to Clause 2.23 into the Embedded Transmission Interface Site Specification.
Initial Transmission Interface Site Specification	the initial draft of the Transmission Interface Site Specification attached at Appendix W and to be developed by the Transmission Owner pursuant to Clause 2.24 into the Transmission Interface Site Specification.
Initial Services Capability Specification	the initial draft of the Services Capability Specification attached at Appendix R and to be developed by the Transmission Owner pursuant to Clause 2.19 into the

	Services Capability Specification.
Interface Agreement	the agreement to be entered into between the Transmission Owner and the User as required pursuant to Clause 2.20 of this TO Construction Agreement and Section C Part Three Paragraph 3.1 of the Code.
Liquidated Damages	the sums specified in or calculated pursuant to Appendix K, Part One to this TO Construction Agreement.
Offshore Construction Secured Amount	the sum specified in Appendix U
[Offshore Transmission System Development User Works or OTSDUW]	[those activities to be undertaken by the User set out in Appendix I (Part 2) [preparatory to OFTO Build.]
Offshore Works Criteria	the matters set out in Appendix O.
One Off Works	as set out in Appendix L.
[Onshore Construction Works	means the works to be undertaken by any Joint Project Party [and the Embedded Transmission Counterparty] in respect of the Construction Project.]
[Onshore Distribution System	means [ ] for the purposes of this TO Construction Agreement.]
[Onshore Transmission Owner	means [ ] for the purposes of this TO Construction Agreement.]
[OTSDUW Consents]	[those: (a) planning and other statutory consents; (b) wayleaves, easements, rights over or interests in land or any other consents; or (c) permissions of any kind, if any, set out as such in Appendix I (Part 2).]
[Seven Year Statement Works	as set out in Appendix [M].]
Third Party Works	as set out in Appendix M.

TI Commissioning Programme	the sequence of operations/tests necessary to connect the Transmission Owners Offshore Transmission System to the [Onshore Transmission System at the Transmission Interface Site] [Offshore Distribution System at the Embedded Transmission Interface Site].
TI Commissioning Programme Commencement Date	the date for commencement of the TI Commissioning Programme as set out in the TO Construction Programme.
TO Commissioning Programme	the sequence of operations/tests necessary to connect the Users Works and the Transmission Connection Asset Works to the National Electricity Transmission System for the purpose of making the User's Works available for connection and operation.
TO Commissioning Programme Commencement Date	the date for commencement of the TO Commissioning Programme as set out in the TO Construction Programme.
TO Construction Programme	the programme agreed by the Transmission Owner and NGESO for the carrying out of Transmission Construction Works as set out in Appendix J
TO Event of Default	those events set out in Appendix [T].
TO Liquidated Damages	the sums specified in or calculated pursuant to Appendix K, Part Two to this TO Construction Agreement
Transmission Connection Assets	as set out in Appendix A
Transmission Construction Works	the Transmission Connection Asset Works, Transmission Reinforcement Works, One Off Works and Seven Year Statement Works [(but excluding, for the avoidance of doubt, the OTSDUW)].
Transmission Interface Agreement	the agreement to be entered into by the Transmission Owner and Onshore Transmission Owner pursuant to Clause 2.21 of this Construction Agreement and Section C Part Three Paragraph 3.2 of the Code.
Transmission Interface Site	the site of connection between the Offshore Transmission System and the Onshore Transmission System and set out in Appendix B.

Transmission Interface Site Works	as set out in Appendix Q
Transmission Reinforcement Works	as set out in Appendix H
User	[ ]
User Data	the data in respect of the User's Plant and Apparatus as set out in Appendix P and against which the Transmission Construction Works have been designed.
User's Works	as set out in Appendix I [including the OTSDUW)].
Works	the Transmission Construction Works and User Works [and Transmission Interface Site Works] [Embedded Transmission Interface Site Works].

2. **Carrying out of the Works**

2.1 Forthwith following the Effective Date, the Transmission Owner shall

(i) agree with the User the Safety Rules and Local Safety Instructions to apply during the TO Construction Programme and TO Commissioning Programme. Failing agreement within three months of the Effective Date, the matter shall be referred to the Independent Engineer for determination in accordance with Clause 5 of this TO Construction Agreement; and

(ii) agree with [the Onshore Transmission Owner] [the Embedded Transmission Counterparty] the Safety Rules and Local Safety Instructions to apply during the TO Construction Programme and TI Commissioning Programme. Failing agreement within three months of the Effective Date, the matter shall be referred to the Independent Engineer for determination in accordance with Clause 5 of this Construction Agreement.

2.2 In relation to the Connection Site, the Transmission Owner shall, and NGESO shall procure that the User shall, ensure that each other is supplied with a copy of the Safety Rules current from time to time, including any site-specific Safety Rules, and also a copy of the Local Safety Instructions applicable at each Connection Site from time to time.

2.3 In relation to the [Transmission Interface Site, [the Transmission Owner shall and NGET shall procure that the Onshore Transmission Owner shall]] [Embedded Transmission Interface Site, the Transmission Owner shall and NGET shall procure that the Embedded Transmission Counterparty shall], ensure that each other is supplied with a copy of the Safety Rules current from time to time, including any site-specific Safety

Rules, and also a copy of the Local Safety Instructions applicable at the [Transmission Interface Site] [Embedded Transmission Interface Site] from time to time.

2.4 Subject to paragraphs 2.5 and 2.7 forthwith following the Effective Date, the Transmission Owner shall use its best endeavours to obtain in relation to the Transmission Construction Works and NGESO shall use its best endeavours to procure that the Onshore Transmission Owner obtains in relation to the Transmission Interface Site Works] [procure that the Embedded Transmission Counterparty obtains in relation to the Embedded Transmission Interface Site Works] [and procure that the User obtains in relation to the User Works all Consents. Each shall give advice and assistance to the other to the extent reasonably required by the other in the furtherance of these obligations. Further, each Party shall, and NGESO shall procure that the User [and [Onshore Transmission Owner] [Embedded Transmission Counterparty]] shall, so far as it is legally able to do so, grant to the other, or the User, all such wayleaves, easements, servitude rights or other rights over or interests in land or any other consents reasonably required by the other or the User in order to enable the Works to be expeditiously completed and to enable that other to carry out its obligations to the other under this TO Construction Agreement and in all cases subject to such terms and conditions as are reasonable. [For the avoidance of doubt, the User has already obtained the OTSDUW Consents, and so this paragraph 2.4, and paragraphs 2.5 and 2.7, do not apply in respect of the OTSDUW Consents.]

2.5 The following additional provisions shall apply in respect of the Consents and Transmission Construction Works:

2.5.1 All dates specified in this TO Construction Agreement are subject to the Transmission Owner obtaining Consents for the Transmission Construction Works in a form acceptable to it and within the time required to carry out the Transmission Construction Works in accordance with the TO Construction Programme.

2.5.2 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 Transmission Owner wishing to amend the Transmission Construction Works to facilitate the granting of the Consents,

the Transmission Owner shall be entitled to revise the Transmission Construction Works (and as a consequence the relevant Appendices of this TO Construction Agreement which set out such Transmission Construction Works and [any related charges]). For the avoidance of doubt such revisions shall be as agreed between the Transmission Owner and NGESO and the Transmission Owner shall notify NGESO in writing as soon as practicable of any change setting out the scope of changes and the reasons for the same.

2.6 The Parties shall regularly update each other in writing or by such other means as the relevant Parties may agree as to progress made by them and, in the case of NGESO, as to progress made by the [User] [Onshore Transmission Owner] [Embedded Transmission Counterparty] from time to time in the obtaining of relevant Consents pursuant paragraphs 2.4 or 2.5.

2.7 NGESO shall be liable to pay to the Transmission Owner:

2.7.1 all of the Transmission Owner's Engineering Charges accrued; and

2.7.2 proper and reasonable out-of-pocket expenses incurred and/or paid or which the Transmission Owner is legally bound to incur or pay,

in seeking and obtaining the Consents the subject of paragraph 2.4 excluding any costs associated with the Seven Year Statement Works and any other works, to the extent that NGESO has paid or is liable to pay such costs under another TO Construction Agreement.

NGESO acknowledges these out of pocket ancillary expenses may include planning inquiries or appeals and the capital costs together with reasonable legal and surveyors costs of landowners or occupiers in acquiring permanent easements or other rights in respect of any electric line or underground cable forming part of the Transmission Connection Asset Works. This sum shall not include any capital costs incurred by the Transmission Owner in the acquisition by it of the freehold of any land upon which a land charge is payable. The Transmission Owner shall keep NGESO informed of the level of such charges and expenses being incurred. NGESO shall pay such sums within 30 (thirty) days of the date of the Transmission Owner's invoice therefor.

2.8 Paragraphs 2.2, 2.3, 2.4 and 2.5 of Section J of the Code relating to Consents shall apply to the construction arrangements set out in this TO Construction Agreement as if set out here in full.

2.9 NGESO may by written notice to the Transmission Owner terminate this TO Construction Agreement at any time whereupon NGESO shall in addition to the sums for which it is liable under paragraph 2.7 [except and to the extent that TO Construction Agreement is terminated on the basis of a TO Event of Default] be liable to pay to the Transmission Owner a sum equal to the Transmission Owner's estimate or if applicable revised estimate of TO Final Sums. NGESO shall pay such sums within 16 (sixteen) days of the date of the Transmission Owner's invoice(s) therefor and (where applicable) on termination the Transmission Owner shall disconnect the User's Equipment at the Connection Site and:

2.9.1 [*where the Transmission Owner is the owner of the Offshore Platform]* NGESO shall procure that a User removes any of the User's Equipment on the Offshore Platform within such period as may be agreed between the Transmission Owner and the User; or

2.9.1 [*where the User is the owner of the Offshore Platform*] the Transmission Owner shall remove any of the Transmission Connection Assets on the Offshore Platform within such period as may be agreed between the Transmission Owner and the User.

2.10 The Transmission Owner shall be entitled to contract or sub-contract for the carrying out of its respective parts of the Works. NGESO shall procure the commencement and carrying out of the User Works [and Embedded Transmission Interface Site Works] to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme and the Transmission Owner or any contractor on its behalf shall be responsible for commencing and carrying out the Transmission Construction Works to such stage of completion as shall render them capable of being Commissioned in accordance with the TO Construction Programme.

2.11 NGESO may, at its discretion, notify the Transmission Owner at any time in writing to discontinue, postpone or otherwise delay all or part of any Works or other activities under this TO Construction Agreement and may direct that the Transmission Owner produce an amended TO Construction Programme and/or TO Commissioning Programme and\or TI Commissioning Programme accordingly, as a consequence of:

2.11.1 a User breaching any credit or security requirement pursuant to the CUSC or CUSC Construction Agreement;

2.11.2 a delay or failure by a User or another Joint Project Party [or the Embedded Transmission Counterparty] to obtain any Consents; or

2.11.3 a delay or failure by another Joint Project Party under and pursuant to any other TO Construction Agreement in respect of the same Construction Project; or

[2.11.4 a delay or failure by the Embedded Transmission Counterparty under or pursuant to the Embedded Transmission Bilateral Agreement.]

2.12 During the period of and at the times and otherwise as provided in the TO Construction Programme and the TO Commissioning Programme the Transmission Owner shall allow the User and in either case their employees, agents, suppliers, contractors and subcontractors and NGESOshall ensure that the User allows (in relation to its sites) the Transmission Owner, its employees, agents, suppliers, contractors and sub-contractors, necessary access to [the Offshore Platform] to enable each to carry out the Transmission Connection Asset Works and One Off Works or User Works but not so as to disrupt or delay the construction and completion of the other's Works on the said [Offshore Platform] or the operation of any 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.

2.13 During the period of and at the times and otherwise as provided in the TO Construction Programme and the TI Commissioning Programme the Transmission Owner shall allow [the Onshore Transmission Owner] [the Embedded Transmission Counterparty] and their employees, agents, suppliers, contractors and subcontractors and NGET shall

[ensure that the [Onshore Transmission Owner] [Embedded Transmission Counterparty] allows] the Transmission Owner, its employees, agents, suppliers, contractors and sub-contractors, necessary access to the [[Transmission Interface Site] [Embedded Transmission Interface Site]] to enable each to carry out the Transmission Connection Asset Works and One Off Works or [[Transmission Interface Site Works] [Embedded Transmission Interface Site Works]] but not so as to disrupt or delay the construction and completion of the other's Works on the said [[Transmission Interface Site] [Embedded Transmission Interface Site]] or the operation of any 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.

2.14 Not later than six months prior to

(i) the TO Commissioning Programme Commencement Date, the Transmission Owner shall provide NGESO with a draft TO Commissioning Programme for the Commissioning of the Transmission Connection Assets, and the User's Equipment. NGESO shall, as quickly as practicable and in any event within three months of receipt thereof, determine whether or not to approve the proposed TO Commissioning Programme (which approval shall not be unreasonably withheld or delayed) and shall within such three month period either notify the Transmission Owner of its approval or, in the event that NGESO reasonably withholds its approval, notify the Transmission Owner of any changes or variations to the proposed commissioning programme recommended by NGESO. If the Transmission Owner does not accept such changes or variation submitted by NGESO any dispute shall be referred to the Independent Engineer for determination. The TO 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.

(ii) the TI Commissioning Programme Commencement Date, the Transmission Owner shall provide the Onshore Transmission Owner with a draft TI Commissioning Programme for the Commissioning of the Transmission Owner's Plant and Apparatus to the [[Onshore Transmission System at the Transmission Interface Site] [Onshore Distribution System at the Embedded Transmission Interface Site]]. . [NGESO shall procure that, as quickly as practicable and in any event within three months of receipt thereof, the [[Onshore Transmission Owner] [Embedded Transmission Counterparty] determines whether or not to approve the proposed TI Commissioning Programme and shall within such three month period either notify the Transmission Owner of the [[Onshore Transmission Owners] [Embedded Transmission Counterpartys] approval or, in the event that the [[Onshore Transmission Owner reasonably withholds its approval] [Embedded Transmission Counterparty withholds its approval], notify the Transmission Owner of any changes or variations to the proposed commissioning programme recommended by NGESO] If the Transmission Owner does not accept such changes or variation submitted by NGESO any dispute shall be referred to the Independent Engineer for determination. The TI

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.

2.15 If at any time prior to the Completion Date there is a) a change to the Offshore Works Criteria and/or User Data and it is or the Transmission Owner becomes aware that it may be necessary for the Transmission Owner to make any addition to or omission from or amendment to or b) there is no change to the Offshore Works Criteria and/or User Data but the Transmission Owner in its reasonable discretion wishes to make any addition to or omission from or amendment to its Transmission Connection Asset Works and/or Transmission Reinforcement Works and/or the One Off Works and/or the Third Party Works the Transmission Owner shall as soon as practicable notify NGESO in writing of such addition, omission or amendment citing the reasons for the same [and any implications for the TO Construction Programme and/or [costs] and where the parties so agree the relevant Appendices of this TO Construction Agreement shall be automatically amended to reflect the change.

2.16 The Transmission Reinforcement Works are conditional on any relevant nuclear generator granting approval to the carrying out of the Transmission Construction Works in terms of any Nuclear Site Licence Provisions Agreement. In the event of the relevant nuclear generator not granting approval the Transmission Owner shall be entitled to change the Transmission Construction Works, the TO Construction Programme and all dates specified in this TO Construction Agreement.

2.17 It is hereby agreed and declared for the purposes of the Construction (Design and Management) Regulations 2015 that the Transmission Owner is the only client in respect of the Transmission Construction Works and shall accordingly discharge all the duties of a client under the said Regulations.

2.18 The Transmission Owner and NGESO hereby agree and acknowledge that this TO Construction Agreement is not to be treated as a construction contract within the meaning of section 104 of the Housing Grants, Construction and Re-generation Act 1996 and sections 104 to 113 of the said Act shall have no application to any part of the Transmission Construction Works and the Parties' rights and obligations with regard to matters of dispute resolution and payment procedures are as expressly set out herein.

2.19 Services Capability Specification

The Initial Services Capability Specification shall be developed and amended by the parties by agreement as the design of the Transmission Construction Works is finalised such that the parties can agree the Services Capability Specification by the date specified in the Construction Programme or by such other date as the parties shall agree.

2.20 Interface Agreement

Not later than 6 months prior to the Completion Date or such other period as the Transmission Owner and the User shall agree the Transmission Owner shall enter into the Interface Agreement with the User.

2.21 Transmission Interface Agreement/Embedded Transmission Interface Agreement

By not later than 6 months prior to the Completion Date or such other period as the Transmission Owner and [the Onshore Transmission Owner] [the Embedded Transmission Counterparty] shall agree the Transmission Owner and [the Offshore Transmission Owner] [Embedded Transmission Counterparty] shall enter into the [Transmission Interface Agreement] [Embedded Transmission Interface Agreement].

2.22 Connection Site Specification

The Initial Connection Site Specification shall be developed and amended by the parties by agreement as the design of the Transmission Construction Works is finalised such that the parties can agree the Connection Site Specification not later than the date specified in the Construction Programme or by such other date as the parties shall agree such that it is available as required by Section D Part Two Paragraph 14 of the Code.

2.23 Embedded Transmission Interface Site Specification

The Initial Embedded Transmission Interface Site Specification shall be developed and amended by the parties by agreement as the design of the Transmission Construction Works is finalised such that the parties can agree the Embedded Transmission Interface Site Specification not later than the date specified in the Construction Programme or by such other date as the parties shall agree such that it is available as required by Section D Part Two Paragraph 14 of the Code and in sufficient time for NGESO to finalise any similar arrangements under the Embedded Transmission Bilateral Agreement.

2.24 Transmission Interface Site Specification

The Initial Transmission Interface Site Specification shall be developed and amended by the parties by agreement as the design of the Transmission Construction Works is finalised such that the parties can agree the Transmission Interface Site Specification not later than the date specified in the Construction Programme or by such other date as the parties shall agree such that it is available as required by Section D Part Two Paragraph 14 of the Code.

2.25 Notice of Readiness

In addition to its obligations under Section D Part Two Paragraph 9 of the Code the Transmission Owner shall give notice to NGESO:

25.1 not less than [ ] prior to placing any material contracts for the Transmission Construction Works and shall agree by the date specified for such in the Construction programme those contracts which are to be considered material; and

25.2 when it is ready to commence the Transmission Construction Works,

and shall not place such contract and/or commence the Transmission Construction Works without confirmation from NGESO, given the status on the programmes for the Onshore Construction Works, that it may do so.

[2.26. Embedded Transmission

2.26.1 The Transmission Owner recognises that NGESO will have to enter into the Embedded Transmission Bilateral Agreement and will provide such information and assistance as NGESO shall require in this respect.

2.26.2 In the event that the Embedded Transmission Counterparty proposes changes to the Embedded Transmission Interface Site Works NGESO shall notify the Transmission Owner as soon as practicable and the Transmission Owner shall advise NGESO of any implications for the TO Construction Programme and/or [costs] and where the parties so agree the relevant Appendices of this Construction Agreement shall be automatically amended to reflect the change]

3. **DELAYS**

3.1 If either Party shall have reason to believe that it, another Transmission Owner or, in the case of NGESO a User [or the Embedded Transmission Counterparty], is being delayed or will be delayed in carrying out that Party's or a User's Works [or the Embedded Transmission Interface Site Works] (as appropriate) for any reason (whether it is one entitling it to the fixing of a new date under paragraph 3.2 of this TO 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 paragraph 3.2 the "**Affected Party**") shall be delayed in carrying out any of the Affected Party's Works (including their commissioning) by reason of (a) any act, default or omission on the part of the other Party (in this paragraph the "**Defaulting Party**") or of the Defaulting Party's employees, agents, contractors, sub-contractors or, in the case where NGESO is the Defaulting Party, by reason of a delay by the User or (b) any act, default or omission on the part of any Transmission Owner which is not a Party to this TO Construction Agreement or its

employees, agents, contractors or subcontractors or (c) by reason of an event of Force Majeure [or (d) any act, default or omission on the part of the Embedded Transmission Counterparty or its employees, agents, contractors or subcontractors], the Affected Party shall be entitled to have such later date or dates fixed as the TO Commissioning Programme Commencement Date and/or (as the case may be) TI 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 date or dates to be fixed in the circumstance this shall be promptly referred to and determined by the Independent Engineer. Once the new date or dates are fixed the TO Construction Programme and/or TO Commissioning Programme and/or TI 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 shall have given written notice to the other under paragraph 4.1.

4.3 The Transmission Construction Works and [Transmission Interface Site Works] [Embedded Transmission Interface Site Works] shall be deemed to have been Commissioned on the date agreed by the parties or if not agreed 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 TO Commissioning Programme shall be later than the TO Commissioning Programme Commencement Date the Transmission Owner (if and to the extent that it is responsible for delayed commissioning beyond the TO 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 NGESO Liquidated Damages for each day that the actual date of commencement of the TO Commissioning Programme is later than the TO 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 TO Commissioning Programme.

[4.5 In the event that the actual date of commencement of the TI Commissioning Programme shall be later than the TI Commissioning Programme Commencement Date the Transmission Owner (if and to the extent that it is responsible for delayed commissioning beyond the TI 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 NGESO Liquidated Damages for each day that the actual date of commencement of the TI Commissioning Programme is later than the TI 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 TI Commissioning Programme.]

4.6 In the event that the actual date on which the Transmission Construction Works are Commissioned is later than the Completion Date the Transmission Owner (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 NGESO Liquidated Damages for each day that the actual date on which the Transmission 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 Transmission Construction Works.

4.7 In the event that the actual date on which the Transmission Construction Works are Commissioned is later than the Completion Date (if and to the extent that the Transmission Owner is not 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) NGESO shall be liable to pay to the Transmission Owner TO Liquidated Damages for each day that the actual date on which the Transmission Construction Works are Commissioned is later than the Completion Date. It is hereby agreed and declared that such TO Liquidated Damages shall cease to be payable in respect of any period after completion of the Transmission Construction Works. NGESO's liability for TO Liquidated Damages shall be limited to £1million.

4.8 Liquidated Damages payable under paragraphs 4.4[, 4.5] and 4.6 and TO Liquidated Damages payable under paragraph 4.7 shall accumulate on a daily basis but shall be payable calendar monthly. On or before the 13th 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.

4.9 Without prejudice to and in addition to the obligation of NGESO pursuant to paragraph 2.6 the payment or allowance of Liquidated Damages pursuant to this paragraph 4 shall be in full satisfaction of the Transmission Owner's liability for failure to perform its obligations by the TO Commissioning Programme Commencement Date and/or TI Commissioning Programme Commencement Date and/or the Completion Date as appropriate.

4.10 In the event that NGESO or a User shall have failed, in circumstances not entitling NGESO to the fixing of a new date as the TO Commissioning Programme

Commencement Date pursuant to paragraph 3.2, to procure that the User complete the User Works [or the Embedded Transmission Counterparty completes the Embedded Transmission Interface Site Works] by the Construction Backstop Date to a stage where such User [or such Embedded Transmission Counterparty] (as appropriate) is ready to commence the TO Commissioning Programme, the Transmission Owner shall have the right to terminate this TO Construction Agreement upon giving notice in writing to NGESO. In the event of such termination NGESO shall in addition to the amounts for which it is liable under paragraph 2.7, also be liable to the Transmission Owner to pay a sum equal to the Transmission Owner's estimate or revised estimate of TO Final Sums. NGESO shall pay such sums within 14 (fourteen) days of the date of the Transmission Owner's invoice(s) therefor and on termination (where applicable) The Transmission Owner shall disconnect the User Equipment at the Connection Site and

(a) [*where the offshore platform is owned by the transmission owner*] NGET shall ensure that the User shallremove any of the User Equipment on the Offshore Platform within such period as may be agreed between the Transmission Owner and the User and

(b) [*where the offshore platform is owned by the user*] the Transmission Owner shall remove any Transmission Connection Assets on the Offshore Platform within such period as may be agreed between the Transmission Owner and the User.

5. INDEPENDENT ENGINEER

In relation to matters raised pursuant to this TO Construction Agreement, the Parties agree and shall procure that the Independent Engineer shall act as an expert and not as an arbitrator and shall decide those matters referred or reserved to ~~him~~ them under this TO Construction Agreement by reference to Good Industry Practice using ~~his~~ their skill, experience and knowledge and with regard to such other matters as the Independent Engineer in ~~his~~ 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 16 days of the occurrence of the dispute to be referred to the Independent Engineer. The Parties shall promptly supply the Independent Engineer with such documents and information as ~~he~~ they may request when considering such question. The Independent Engineer shall use ~~his~~ their best endeavours to give ~~his~~ their decision upon the question before ~~him~~ them as soon as possible following its referral to ~~him~~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 in Section H of the Code. Pending any such submission the parties shall treat the Independent Engineer's decision as final and binding.

6. GETTING CONNECTED AND BECOMING OPERATIONAL

6.1 Without prejudice to Paragraph 5 and subject to the provisions of this TO Construction Agreement, the Transmission Owner shall assist NGESO in Connecting and Energising the User Equipment at the Connection Site including by:

(a) completing any Transmission Construction Works required to be completed by the Transmission Owner at the times and in such manner as set out in the TO Construction Programme; and

(b) completing any operations, tests or other activities required to be completed by the Transmission Owner at the times and in such manner as set out in the TO Commissioning Programme and/or TI Commissioning Programme.

6.2 Not later than three months prior to the expected TI Commissioning Programme Commencement Date or such other period as may be agreed the Transmission Owner shall submit to the Onshore Transmission Owner a statement of readiness to complete the TI Commissioning Programme and the Completion Report.

6.3 Subject to Clause 6.2 NGESO shall procure that the Onshore Transmission Owner shallconnect the Transmission Owner's Plant and Apparatus to the Onshore Transmission System at the Transmission Interface Site during the course of and in accordance with the TI Commissioning Programme and thereafter to remain so connected as part of the National Electricity Transmission System and subject to the terms of the Transmission Interface Agreement, Transmission Interface Site Specification and the Code.

[6.4 Subject to Clause 6.2 NGESO shall procure that the Embedded Transmission Counterparty shallconnect the Transmission Owner's Plant and Apparatus to the Onshore Distribution System at the Embedded Transmission Interface Site during the course of and in accordance with the TI Commissioning Programme and thereafter to remain so connected and subject to the terms of the Embedded Transmission Interface Agreement, Embedded Transmission Interface Site Specification and the Code and the Distribution Code.]

7. TO FINAL SUMS

7.1 Within 58 days of the date of termination of this TO Construction Agreement the Transmission Owner shall:

(a) furnish NGESO with a further statement showing a revised estimate of TO Final Sums and will provide as soon as practicable evidence of such costs having been incurred; and

(b) by written notice to NGESO inform NGESO of all capital items which cost the Transmission Owner in excess of £10,000 and in relation to which an amount on account of TO Final Sums shall have been paid and whether the Transmission Owner (1) wishes to retain the said capital items or (2) dispose of them.

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

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

7.4 As soon as reasonably practicable after termination of this TO Construction Agreement the Transmission Owner shall provide NGESO with a statement of and invoice for the TO Final Sums together with evidence of such costs having been incurred and/or paid and/or having been committed to be incurred. If the TO Final Sums are greater than the payments made by NGESO in respect of the Transmission Owner's estimate(s) of TO Final Sums NGESO shall within 35 days of the said statement and invoice prepared by the Transmission Owner pay to the Transmission Owner the additional payments due by NGESO together with interest calculated thereon on a daily basis at Base Rate for the time being and from time to time from the date of previous payment(s) sums equal

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

7.5 **Provision of Bi-annual Estimate**

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

(a) forthwith and on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur); and

(b) not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be), until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8.

The Transmission Owner shall provide NGESO with all advice and assistance reasonably requested by NGESO in relation to any discussions or correspondence with a User in connection with Bi-annual Estimates.

7.6 **Entitlement to Estimate**

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

8. **TERM**

8.1 Subject to the provisions for earlier termination set out in the Code, this TO Construction Agreement shall continue in force unless and until terminated in accordance with paragraphs 2.9, or 4.9.

8.2 Any provisions for payment survive the termination of this TO Construction Agreement.

9. THE CODE

9.1 The provisions of:

9.1.1 Section E (Payment);

9.1.2 Section F (Confidentiality);

9.1.3 Section G, paragraphs 5 (Third Party Rights), 6 (Transfer and Sub-contracting), 7 (Intellectual Property), 8 (Force Majeure), 9 (Privilege), 10 (Waiver), 11 (Nominated Representative), 12 (Communications), 13 (Counterparts), 14 (Severance of Terms), 15 (Language), 16 (Data Protection Act), 17 (Jurisdiction), 18 (Governing Law), 19 (No Partnership)

of the Code shall apply to this TO Construction Agreement as if set out in this TO Construction Agreement in full.

10. DISPUTES AND TO EVENT OF DEFAULT

10.1 Except as specifically provided for in this TO Construction Agreement any dispute arising under the terms of this TO Construction Agreement shall be referred to arbitration in accordance with the terms of Section H of the Code.

10.2 In the event that this TO Construction Agreement is terminated by NGESO as a result of a TO Event of Default then the Transmission Owner shall be liable to pay to NGESO the [Offshore Construction Secured Amount] such payment to be made by the Transmission Owner to NGESO within 14 days of the date of NGESO's invoice therefor.

10.3 In the event of a TO Event of Default, NGESO shall be entitled to issue Notices of Drawing against the Offshore Construction Secured Amount as are necessary to recover:

10.3.1 any unpaid Liquidated Damages payment due from the Transmission Owner in accordance with Clause 4.8 and

10.3.2 any Replacement Offshore Transmission Owner Charges due to NGESO in accordance with Section E of the Code.

11. VARIATIONS

11.1 Subject to paragraphs 11.2 and 11.3 below, no variation to this TO Construction Agreement shall be effective unless made in writing and signed by or on behalf of both the Transmission Owner and NGESO.

11.2 The Transmission Owner and NGESO shall effect any amendment required to be made to this TO Construction Agreement by the Authority as a result of a change in the Code or a Licence or an order or direction made pursuant to the Act or a Licence. NGESO hereby authorises and instructs the Transmission Owner to make any such amendments on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

11.3 [The Transmission Owner has the right to vary any Appendices to this TO Construction Agreement in accordance with paragraphs 2.5, 2.15 and 3.2].

12. ATTRIBUTABLE WORKS

12.1 The Transmission Owner shall provide to NGESO (in a form agreed between the Transmission Owner and NGESO) the following information at the following times (or such other times as agreed between the Transmission Owner and NGESO):-

(a) by reference to each component of the Attributable Works, forthwith on the Effective Date and then not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter (until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8 or until NGESO notifies the Transmission Owner that it is no longer required):

(i) an estimate of the Attributable Works Capital Cost;

(ii) an estimate of capability in MW;

(iii) an assessment of the actual or potential for reuse and any strategic benefits provided as a percentage of the estimate provided at (i); and

(b) by reference to each component of the Attributable Works, forthwith and on and with effect from the Effective Date, in respect of the period from the Effective Date until the next following 31st March or 30th September (whichever shall first occur) an estimate of the Attributable Works Capital Cost; and

(c) by reference to each component of the Attributable Works, not less than 82 (eighty-two) days (or if such day is not a Business Day the next following Business Day) prior to each 31st March and 30th September thereafter in respect of the period of six calendar months commencing on the immediately following 1st April or 1st October (as the case may be) (until this TO Construction Agreement shall be terminated or shall expire in accordance with paragraph 8 or

until NGESO notifies the Transmission Owner that it is no longer required), an estimate of the Attributable Works Capital Cost.

12.2 On termination of this TO Construction Agreement and where requested by NGESO to do so the Transmission Owner shall together with the statements and information provided to NGESO by the Transmission Owner pursuant to paragraphs 7.1 to 7.5 in respect of the TO Final Sums, provide statements and information in a form as agreed between the Transmission Owner and NGESO in respect of the amount within the TO Final Sums which represents the Actual Attributable Works Capital Cost of each component within the Attributable Works and also a justification of and supporting information in respect of the Transmission Owners assessment of the actual or potential for reuse and any strategic benefits of the Attributable Works and any of the resulting assets.

12.3 The Transmission Owner shall provide NGESO with all advice and assistance and information reasonably requested by NGESO in relation to any discussions or correspondence with a User in connection with the Attributable Works Capital Cost and assessment of the actual or potential for reuse and any strategic benefits of the Attributable Works and any of the resulting assets including the calculation and/or estimation of the same.

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

SIGNED BY)

[name])

for and on behalf of)

National Grid Electricity System Operator Limited)

SIGNED BY)

[name])

for and on behalf of)

[Transmission Owner])

APPENDIX A

CONNECTION SITE AND TRANSMISSION CONNECTION ASSETS

APPENDIX B

TRANSMISSION INTERFACE SITE

APPENDIX C

CONNECTION SITE – SITE SPECIFIC TECHNICAL REQUIREMENTS

[requirements to be provided by OFTO for User]

APPENDIX D

TRANSMISSION INTERFACE SITE/EMBEDDED TRANSMISSION INTERFACE SITE – SITE SPECIFIC TECHNICAL DESIGN AND OPERATIONAL REQUIREMENTS

[requirements to be provided by TO for OFTO]

APPENDIX E

TRANSMISSION INTERFACE SITE SPECIFICATION/EMBEDDED TRANSMISSION INTERFACE SITE SPECIFICATION

[draft to be attached]

APPENDIX F

CONNECTION SITE SPECIFICATION

[draft to be attached]

APPENDIX G

TRANSMISSION CONNECTION ASSET WORKS

APPENDIX H

TRANSMISSION REINFORCEMENT WORKS

APPENDIX I

USER WORKS

APPENDIX J

CONSTRUCTION PROGRAMME

APPENDIX K

LIQUIDATED DAMAGES

[Part One- Payable by Transmission Owner

Part Two - Payable by NGESO]

APPENDIX L

ONE OFF WORKS

APPENDIX M

SEVEN YEAR STATEMENT WORKS and ONE OFF WORKS

APPENDIX N

CONSENTS WORKS

APPENDIX O

OFFSHORE WORKS CRITERIA

[List Agreed Criteria Following Tender Including Technical Specification Of Users Equipment, Technical specification of OFTO's plant at transmission interface site and connection site, Site Specific Technical Conditions, Derogations, ownership boundary at connection site and transmission interface site]

APPENDIX P

USER DATA

[CEC and TEC, number, type, rating of machines, including reactive capability]

APPENDIX Q

TRANSMISSION INTERFACE SITE WORKS/EMBEDDED TRANSMISSION INTERFACE SITE

[local works if any required to connect OFTO at Transmission Interface Site/Embedded Transmission Interface Site]

APPENDIX R

INITIAL SERVICES CAPABILITY SPECIFICATION

[Draft to be provided]

APPENDIX S

MATTERS FOR COMPLETION REPORT

[List matters to be included which shall contain

- Confirmation of Compliance Statement;
- type test results\reports;
- confirmation that the signed CUSC Interface Agreement(s) are in place;
- confirmation that the signed Transmission Interface Agreement/Embedded Transmission Interface Agreement is in place;
- confirmation that the signed Transmission Interface Site Specification/Embedded Transmission Site Specification is in place;
- confirmation that the Services Capability Specification is in place;
- confirmation that Safety Rules have been exchanged;
- confirmation that the Connection Site Specification(s) are complete and in place; and,
- confirmation that the Site Responsibility Schedule is complete and in place.]

APPENDIX T
TO Event of Default

[Circumstances in which NGESO terminates and OFTO security can be called upon]

APPENDIX U

TRANSMISSION OWNER [CHARGES\COSTS] [and FORECAST OFFSHORE CONSTRUCTION COST and OFFSHORE CONSTRUCTION SECURED AMOUNT]

[charges for NGESO\pass on to USER]

[amount to be secured by TO]

APPENDIX V

FORM OF BI-ANNUNAL ESTIMATE

[for purposes of clause 7]

APPENDIX W

TRANSMISSION INTERFACE SITE SPECIFICATION/EMBEDDED TRANSMISSION INTERFACE SITE SPECIFCATION

[draft to be provided]

APPENDIX X

ATTRIBUTABLE WORKS