

# **A Guide to Security Provision**

**June 2009**

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## **Users' Guide to Security Provision** **As Required by the Construction Agreement**

### **Introduction**

This document has been produced to assist Users with the process of providing security to National Grid Electricity Transmission Plc (NGET) in respect of Final Sums/ Cancellation Charges within the prescribed timescales detailed in Clause 9 of their Construction Agreement. Failure to provide the necessary security by the required date represents an Event of Default and could consequently result in NGET suspending construction works or ultimately giving notice of termination. It is therefore essential that customers understand the processes and issues surrounding this area and in particular any key timescales for putting in place the relevant security. This note does not seek to address security for any other User liabilities to NGET under the CUSC such as Use of System Charges.

### **Final Sums**

Under the existing Final Sums regime, Users are normally required to put security in place forthwith upon signature of the Construction Agreement, and bi-annually thereafter until 28 days after completion of the project. The Secured Amount Statement (Part 3 of the Appendix M in the Construction Agreement) specifies the aggregate amount to be secured at the beginning of and throughout each such security period (a 12 month liability in respect of Shared User Final Sums and a 6 month liability in respect of Sole User Final Sums where applicable). For each bi-annual period, security in accordance with the Construction Agreement, is required to be in place 45 days prior to 30<sup>th</sup> September/ 31<sup>st</sup> March (the "security deadline") – see Appendix 1 for a bi-annual timeline.

### **Interim Generic User Commitment Methodology**

NGET in consultation with the industry has developed an Interim Generic User Commitment Methodology in 2006 which can be found on the National Grid website<sup>1</sup>. The revised methodology is currently available to Users on a voluntary basis. Users requiring more details should contact their NGET Customer Services contact who will be pleased to provide additional information in relation to this interim methodology.

For those Users who have signed onto the Interim Generic User Commitment Methodology, Users are again normally required to put security in place forthwith upon signature of the Construction Agreement, and then annually thereafter until completion of the project (in accordance with the figures specified in Appendix R of the Construction Agreement) – see Appendix 1 for a timeline. Appendix R provides figures for security both before and after the Trigger Date which is detailed in Appendix R. Users should note that in accordance with Appendix M of the Construction Agreement the User must increase its security 30 days prior to the Trigger Date set out in Appendix R.

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<sup>1</sup> See

[http://www.nationalgrid.com/uk/Electricity/GettingConnected/gb\\_agreements/Policies+Guidance/](http://www.nationalgrid.com/uk/Electricity/GettingConnected/gb_agreements/Policies+Guidance/)

### The Company Credit Rating

For either methodology, Users are not required to put security in place if they meet The Company Credit Rating<sup>2</sup>. Should this be the case, the User shall as soon as possible after execution of the Construction Agreement or no later than 1 month after the date of such execution confirm to NGET that it meets The Company Credit Rating. The table in Appendix 2 shows credit rating comparisons for Moody's and Standard & Poor's where NGET will accept the ratings highlighted in green. In accordance with Clause 9 of the Construction Agreement, Users are required to confirm to NGET in writing that they still meet The Company Credit Rating prior to each security period.

### Types of Security

In the event that a User does not meet The Company Credit Rating, security can be provided in four different ways<sup>3</sup> which may be used in any combination and are listed in more detail in this section. These are namely:

- Bank Account
- Letter of Credit
- Performance Bond from a Qualified Bank
- Performance Bond from a Qualified Company i.e. Parent Company Guarantee

Appendix M to the Construction Agreement describes each type of security and the timescales applicable to the provision of security. Highlighted below are some of the administrative steps which need to be considered by Users when providing security to ensure that the appropriate timescales are met.

### Cash (Bank Account)

In order to provide security in the form of cash, it is necessary to have an NGET Bank Account<sup>4</sup> which is opened in the name of The Company. Where a User has multiple projects and wishes to hold cash in Bank Accounts for each, there must be one account opened per project. The process of opening a Bank Account can take up to 15 business days and the transferral of cash into such an account can take up to 3 business days. Users are therefore advised to give NGET at least **18 Business Days** notice prior to the security deadline if they wish to use cash as a means to providing security.

A request to open a Bank Account should be on letter-headed paper, addressed to your relevant NGET Customer Services contact and should include the following details:

- Users' bank branch and address

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<sup>2</sup> As defined in CUSC Section 11.3

<sup>3</sup> As set out in Appendix M to the Construction Agreement

<sup>4</sup> As defined in Appendix M to the Construction Agreement

- Account Name – company name and site name
- Sort Code
- Account Number

The bank branch and account details are required in order for NGET to arrange interest to be paid into this nominated account on a quarterly basis. Once the Bank account has been opened, your NGET Customer Services contact will inform you of the account details in order for the cash to be transferred. NGET will inform you when this payment has been received into the account. Any cash payments or cheques must be cleared prior to the security deadline.

Letters of Credit (LoC)

Appendix M sets out the key requirements of any LoC. These include the Key Criteria set out in Figure 1 below. In addition, the nominated bank issuing the LoC must be a London branch and the LoC must be expressed to be governed by the Uniform Customs and Practice for Documentary Credits 1993 Revision ICC Publication No.500.

A LoC template which meets all of NGET’s requirements under the terms of the CUSC can be found in Appendix 2 of this document. The template requires the User to select either ‘Final Sums’ if they are securing under the existing Final Sums arrangements or ‘Cancellation Charge’ if the User has signed on to the Interim Generic User Commitment Methodology (highlighted yellow in Appendix 3). The form of the LoC must be agreed at least **5 business days** prior to the security deadline.

**Figure 1 – Key Criteria**

Any Letter of Credit, Performance Bond or Parent Company Guarantee must:	
1)	state the beneficiary as National Grid Electricity Transmission Plc
2)	state the site name and agreement reference to which it applies (multiple sites are all to be listed)
3)	allow for partial drawings
4)	provide for payment to The Company on demand forthwith on and against The Company’s delivery of a Notice of Drawing
5)	be valid for a period specified in Appendix M (usually 6 months in the case of Final Sums and 12 months in the case of the Cancellation Charge)
6)	be irrevocable

7)	be marked for the attention of Bridget Kerr at the following address: Customer Services, Floor B3 National Grid House Warwick Technology Park Gallows Hill Warwick Warwickshire CV34 6DA
8)	be issued by a Qualified Bank/ Qualified Company which meets The Company Credit Rating (A- rated Standard and Poor's or A3 Moody's)

#### Performance Bond from a Qualified Bank

Appendix M sets out the key requirements of any Performance Bond. A Performance Bond template which meets all of NGET's requirements under the terms of the CUSC can be found in Appendix 3 of this document. The template requires Users to select either 'Final Sums' or 'Cancellation Charge' depending upon the security methodology to which they are currently signed onto (highlighted yellow in Appendix 4). The Key Criteria listed in Figure 1 above also apply when using a Performance Bond for security. In addition, any performance Bond must be unconditional and must be executed as a deed. The form of the Bond must be agreed at least **5 business days** prior to the security deadline.

#### Parent Company Guarantee (PCG)

Appendix M sets out the key requirements of any Performance Bond to be provided by a Qualified Company (PCG). A PCG template which meets all of NGET's requirements under the terms of the CUSC will be available upon request (to the address listed in Figure 1). The Key Criteria listed in Figure 1 above also apply when using a PCG for security. In addition, any PCG must be unconditional and must be executed as a deed.

A PCG may be provided by a non-UK registered company but this must be accompanied by an independent legal opinion to certify that the PCG is enforceable by NGET. This process can take a considerable amount of time so it is imperative that the process is triggered at least **20 Business Days** prior to the security deadline. This allows time for agreeing the form of the guarantee and obtaining and agreeing the legal opinion. In any event, the form of the Guarantee must be agreed at least **5 business days** prior to the security deadline.

#### Summary and Next Steps

It is hoped that this guide has provided greater transparency and clarity for Users when employing the various types of security. However, should Users require any additional information on any of the aforementioned methods of security or the security process itself then please contact your relevant NGET Customer Services contact. In order to avoid an Event of Default and consequent termination, Users are advised to inform NGET as soon as possible after receiving the Secured Amount Statement, the type of security they wish to use in order to facilitate timely implementation.

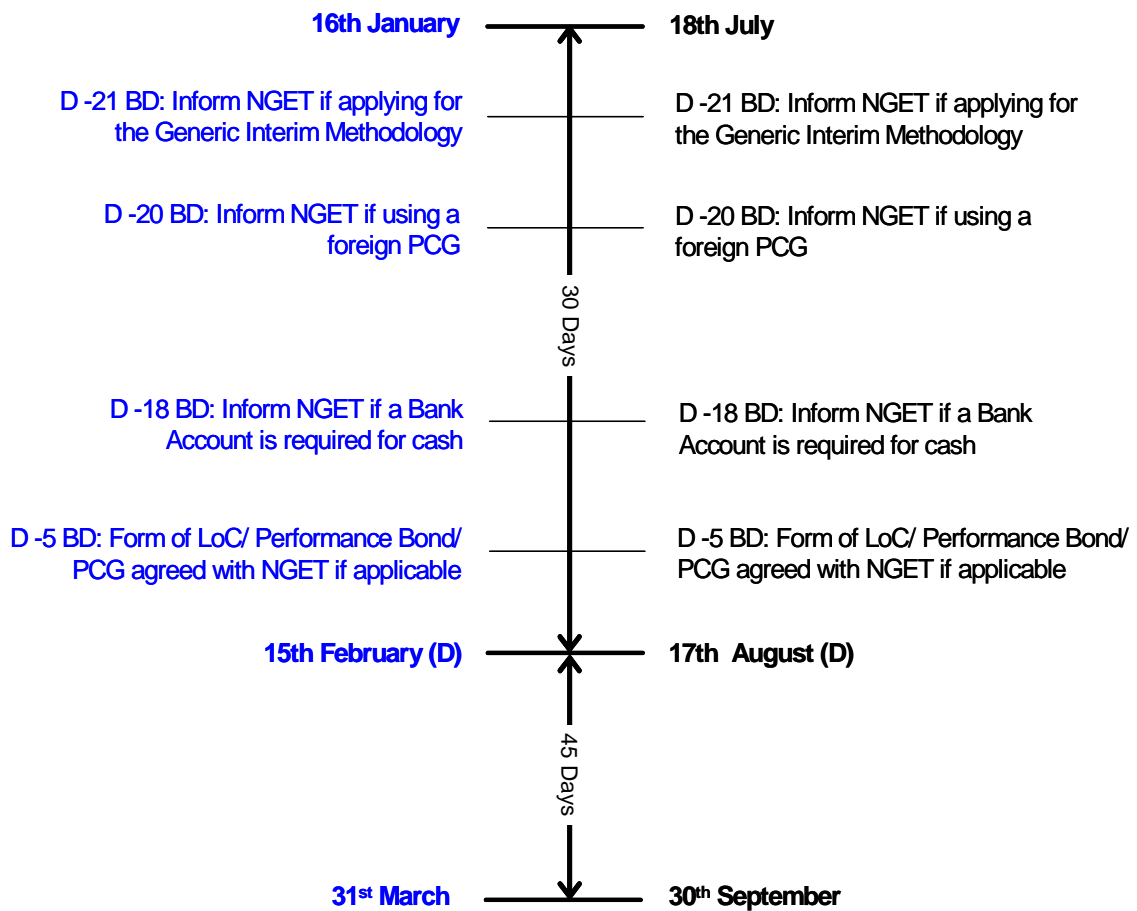
If Users are considering moving on to the Interim Generic User Commitment Methodology prior to the next Final Sums security deadline, they are required to sign an Agreement to Vary. In order to process this application and allow time for the User to sign and get the required level of security in place, NGET advises that Users give at least **21 business days** notice of such an application. However, it is advised that Users provide as much notice as possible.

Users currently on the Interim Generic User Commitment Methodology, who provide security in accordance with Appendix R of the Construction Agreement, will not be required to increase the level of security in place until the next financial year (unless the Trigger Date occurs before that time). These Users will therefore not be receiving security requests from NGET in July.

For Users on the Final Sums regime, Secured Amount Statements for the security period commencing 1<sup>st</sup> October 2009 will be issued in accordance with the Construction Agreement timescales on 15<sup>th</sup> July 2009. Users will then have 30 days in which to put security in place using any of the methods described above in order for all security to be in place by **14<sup>th</sup> August 2009**.

**Appendix 1 – Security Timeline**

This is a timeline showing both the bi-annual timescales for those Users on the Final Sums arrangements (both sides of the timeline) and annual timescales for those Users signed on to the Interim Generic User Commitment Methodology (the left-hand side of the timeline only – highlighted in blue). For each period, security is required to be in place 45 days prior to the 31<sup>st</sup> March/30<sup>th</sup> September which is the security deadline (D). Key latest dates involved in the provision of the various types of security are also included on the timeline.



Key

D = Security Deadline

BD = Business Days

— = Applicable to Users signed on to the Interim Generic User Commitment Methodology



**Appendix 2 - Credit Ratings Comparison Table**

Moody's			Standard & Poor's		
Long Term	Short Term		Long Term	Short Term	
Aaa	P1		AAA	A-1+	
Aa1	P1		AA+	A-1+	
Aa2	P1		AA	A-1+	
Aa3	P1		AA-	A-1+	
A1	P1	P2	A+	A-1+	A-1
A2	P1	P2	A	A-2	A-1
A3	P1	P2	A-	A-2	A-1
Baa1		P2	BBB+	A-2	
Baa2	P3	P2	BBB	A-2	A-3
Baa3	P3		BBB-		A-3
Ba1		NP	BB+	B	
Ba2		NP	BB	B	
Ba3		NP	BB-	B	
B1		NP	B+		
B2		NP	B		
B3		NP	B-		
Caa		NP	CCC+		

Credit Ratings highlighted green in the above table are accepted by National Grid.

### Appendix 3 - LETTER OF CREDIT TEMPLATE

National Grid Electricity Transmission Plc  
National Grid House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

Dear Sirs,

***Irrevocable Standby Letter of Credit No. [       ]***

***Beneficiary: National Grid Electricity Transmission plc***

1. We [Bank] \_\_\_\_\_, of [address ]\_\_\_\_\_ understand that [       ] (the “User”) has entered into a Construction Agreement with you pursuant to the terms of the Connection and Use of System Code (“CUSC”) and the CUSC Framework Agreement brought into effect on 18 September 2001.
2. The CUSC requires that the User provides Security Cover to you by way of, inter alia, a Letter of Credit in respect of the User’s liability to pay, inter alia, [Final Sums] [Cancellation Charge]. Accordingly, we issue this irrevocable Standby Letter of Credit in your favour for a maximum aggregate amount of [£ amount].
3. Following presentation to us on or before [at least 6 months after effective date] (“Expiry Date”) at our offices, the address of which is specified above, of a Notice of Drawing (in the form set out in Annex 1 to this Standby Letter of Credit) we shall on demand pay to you the lesser of the amount specified in the Notice of Drawing and our maximum aggregate liability under paragraph two hereof.
4. Partial drawings are permitted.
5. The presentation of a Notice of Drawing shall be conclusive evidence that the User is in default of its obligations under the CUSC and that the amount claimed is due to you.
6. This Standby Letter of Credit shall become effective on the date hereof (the “Effective Date”). Any Notice of Drawing must be received in writing at this office in conformity with the terms of the Standby Letter of Credit before close of business on the Expiry Date, and after Expiry Date the Standby Letter of Credit shall become null and void whether returned to us for cancellation or not. Any Notice of Drawing received after the close of business of the Expiry Date shall be

ineffective provided that we shall not be released from our obligations on the Expiry Date if the Notice of Drawing has been presented on or before that date.

7. This irrevocable Standby Letter of Credit shall be governed by and construed in accordance with the laws of England and is subject to the Uniform Customs and Practice of Documentary Credits (2007 Revision, International Chamber of Commerce, Paris, France, Publication Number 600) insofar as the same are applicable and not inconsistent with the terms of this irrevocable Standby Letter of Credit. The courts of England shall have jurisdiction to settle any dispute which may arise in relation to this irrevocable Standby Letter of Credit.
8. Any definitions used in this irrevocable Standby Letter of Credit shall bear the meanings attributed to them in the CUSC unless the context requires otherwise.

Yours faithfully

For and on behalf of [Bank]

Authorised Signature(s)

**Annex 1**  
**Notice of Drawing**

To: [Bank]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[date]

Dear Sirs,

Re: Construction Agreement

Dated [            ]

Letter of Credit No. [            ] ("THE SECURITY")

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

We require payment to be made by telegraphic transfer to:

Institution Name:

Address:

Sort Code:

Account Name:        National Grid Electricity Transmission plc

Account No.:

Yours faithfully,

For and behalf of  
National Grid Electricity Transmission plc  
Duly authorised officer

**[FINAL SUMS or CANCELLATION CHARGE – FIXED TERM & FLUCTUATING  
AMOUNT]**

**DATED 20**

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**[GUARANTOR] (1)**

**in favour of**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (2)**

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**GUARANTEE AND INDEMNITY**

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**THIS GUARANTEE AND INDEMNITY** is made the \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_  
by [.....] a company [registered in [ ]<sup>5</sup> (No. ....)] and having its registered office at [.....]  
.....] (herein called the “**Guarantor**”) in favour of **National Grid Electricity Transmission plc** a company registered in England (No. 02366977) having its registered office at 1-3 Strand, London, WC2N 5EH herein called “**The Company**”.

**WHEREAS**

- (A) The Company and [ ] a company registered in England (No. [ ]) and having its registered office at [ ] herein called the “**User**” are parties (in the case of the User pursuant to an Accession Agreement dated ....200.) to a document dated 18<sup>th</sup> September 2001 known as the “CUSC Framework Agreement” (as amended from time to time, the “**CUSC Agreement**”) relating to the connection to and use of the electricity transmission system in Great Britain. Pursuant to the CUSC Agreement, effect is given to a code, also relating to such connection to and use of the electricity transmission system in Great Britain, known as the “Connection and Use of System Code” (as amended from time to time, the “**CUSC**”).
  
- (B) With reference to the CUSC, The Company and the User have entered into an agreement dated ....200. known as a “Bilateral Connection Agreement” or a “Bilateral Embedded Generation Agreement” (together the “**Bilateral Agreement**”) and have also entered into a Construction Agreement dated ....200. (each as amended from time to time, the “**Construction Agreement**”) relating to certain works to be effected or arranged by The Company.
  
- (C) The Guarantor is aware of the subject-matter and the terms of the CUSC Agreement, the CUSC, the Bilateral Agreement and the Construction

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<sup>5</sup> Complete.

Agreement (together the “**CUSC Documentation**”) and of the User’s obligations thereunder.

- (D) The CUSC Documentation requires that the User provides security cover in respect of its liability to pay **Final Sums/Cancellation Charges** (as defined in the CUSC Documentation) to The Company pursuant to the terms of the Construction Agreement.
- (E) The Guarantor has agreed to provide this Guarantee in discharge of the User’s obligations to provide such security cover.

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

- 1 In this Guarantee and Indemnity “**Guaranteed Liabilities**” means all monies which are now, or may in the future become due or owing by the User to The Company howsoever arising under or in connection with the Construction Agreement, in respect of **Final Sums/Cancellation Charges** (as defined in the CUSC Documentation).
- 2 This Guarantee and Indemnity is effective from [**specify date**] (the “**Effective Date**”).
- 3 It is acknowledged that this Guarantee and Indemnity relates to the User’s obligations under or pursuant to or in connection with the Construction Agreement and the term “**Guaranteed Liabilities**” shall be construed accordingly.
- 4 Subject to satisfaction of The Company’s obligations in Clause 9.2, the Guarantor irrevocably and unconditionally guarantees to The Company the punctual payment by the User of the Guaranteed Liabilities and that whenever the User does not pay any Guaranteed Liabilities the Guarantor shall within three business days pay such Guaranteed Liabilities to The Company on written demand as if it were the principal debtor and in the currency in which the same falls due for payment.

- 5.1 The Guarantor agrees to pay interest on demand on each amount demanded under this Guarantee and Indemnity from the date of demand until payment (as well after as before judgment) at the rate applicable to relevant unpaid sums under the CUSC Documentation accruing on a daily basis. Any payment of interest hereunder shall discharge pro tanto the User's obligations to pay interest under the Construction Agreement in respect of the corresponding Guaranteed Liabilities.
- 5.2 The Guarantor agrees to pay legal and other costs and expenses (on a full and unqualified indemnity basis) incurred by The Company whether before or after the date of demand on the Guarantor: (i) in enforcing or reasonably endeavouring to enforce the payment of any money due under this Guarantee and Indemnity or otherwise in relation to this Guarantee and Indemnity; and (ii) in resisting or reasonably endeavouring to resist any claims or defences made against The Company in connection with the liabilities or alleged liabilities of the User guaranteed hereunder or any money or benefits received by or any preference or alleged preference given to The Company from or by the User.
- 6.1 The obligations of the Guarantor under this Guarantee and Indemnity are undertaken by it as a primary obligor and not merely as a surety.
- 6.2 As a separate and independent primary obligation, without prejudice to Clause 4, the Guarantor unconditionally and irrevocably agrees to keep The Company fully indemnified on demand against all damages, losses, costs and expenses arising from any of the Guaranteed Liabilities not being or ceasing to be valid or enforceable against the User for whatever reason, whether or not known to The Company. The amount of the damage, cost, loss or expense shall be equal to the amount which The Company would otherwise have been entitled to recover.
- 7.1 With reference to any demands made on the Guarantor under this Guarantee and Indemnity during any [Relevant Period (as defined below)/Financial Year], the total amount recoverable by The Company



from the Guarantor under this Guarantee and Indemnity in aggregate shall not exceed:

- (a) the Relevant Sum (as defined below); plus
- (b) all costs, expenses and interest payable by the User under the Construction Agreement, in relation to the Guaranteed Liabilities; plus
- (c) all costs, expenses, interest and other amounts payable by the Guarantor under this Guarantee and Indemnity.

7.2 For the purposes of Clause 7.1 above:

(a) **“Relevant Period”** means each of the periods from 1<sup>st</sup> April to 30<sup>th</sup> September in any year, and from 1<sup>st</sup> October in any year to 31<sup>st</sup> March in the following year; and *[delete if Cancellation Charge]*

(b) **“Relevant Sum”** means, *[in respect of each Relevant Period, the sum specified in a Secured Amount Statement (in respect of such Relevant Period) given by The Company to the User under clause 9.2.2 of the Construction Agreement/in respect of each Financial Year, the sum specified in respect of such Financial Year in the relevant column(s) of the Table in Appendix R to the Construction Agreement]*, and the Guarantor shall procure that a copy of *[each such Secured Amount Statement/Appendix R]* is provided to it by the User (provided however that no failure of the Guarantor or User in this respect shall affect the determination of the “Relevant Sum” as set out above).

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

- (a) any amendment, variation or waiver (however fundamental) of any provision of any of the CUSC Documentation;

- (b) any modification of any of the CUSC Documentation irrespective (provided that such modification is made in accordance with the terms thereof) of whether the User was a party to or in agreement with any such modification;
- (c) any indulgence or forbearance shown by The Company towards the User or the Guarantor whether as to payment or time for payment or any arrangement entered into or composition accepted by The Company modifying (by operation of law or otherwise) the rights and remedies of The Company under the CUSC Documentation with regard to payment or time for payment;
- (d) any action lawfully taken by any party to any of the CUSC Documentation to determine any of the CUSC Documentation as respects the User or any other party thereto, or as a result of which the User ceases to be a party to any of the CUSC Documentation;
- (e) any change in the relationship between the Guarantor and the User;
- (f) any disability, legal limitation, incapacity or change in the status or constitution of the User, the Guarantor or The Company;
- (g) the bankruptcy, liquidation, dissolution or insolvency of the User or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the User or any of its property;
- (h) any third party becoming or ceasing to be a party to any of the CUSC Documentation;
- (i) any failure or delay by The Company to assert any of its rights under this Guarantee and Indemnity;

- (j) any composition discharge release or other variation of liability entered into with or granted to the User;
- (k) the invalidity or unenforceability of the obligations of the User pursuant to any of the CUSC Documentation;
- (l) any other act or omission of The Company or any other circumstance which but for this provision might discharge the Guarantor.

9.1 This Guarantee and Indemnity shall:

- (a) be in addition to any present or future Collateral Instrument, right or remedy held by or available to The Company; and
- (b) not be in any way prejudiced or affected by:
  - (i) the existence of any Collateral Instrument, rights or remedies; or
  - (ii) any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
  - (iii) The Company dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or
  - (iv) The Company giving time for payment or indulgence or compounding with any person liable for the Guaranteed Liabilities.

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

means of payment now or in future held by or available to it before enforcing this Guarantee and Indemnity.

- 9.3 No action taken or omitted by The Company in connection with any Collateral Instrument or other payment or any variation, amendment, supplement, novation or replacement of any Collateral Instrument shall discharge, reduce, prejudice or affect the Guaranteed Liabilities or liability of the Guarantor under this Guarantee and Indemnity.
- 9.4 The Company shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Guaranteed Liabilities.
- 9.5 For the purposes of this clause “**Collateral Instruments**” means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities, policies of insurance, insurance performance bonds and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the User, and includes any document or instrument creating or evidencing an encumbrance, however defined, such as, without limitation, letters of credit, deposit deeds, or escrow agreements.
10. The Guarantor shall not, until all its obligations and liabilities hereunder have been fully performed or satisfied, exercise, unless instructed to do so by The Company in which case it shall exercise as instructed:
- (a) its rights of subrogation, contribution and indemnity in connection with any payment by the Guarantor pursuant to this Guarantee and Indemnity;
  - (b) its right to take the benefit of, share in or enforce any security or other guarantee or indemnity for the User obligations held by The Company; and

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

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

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

- (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and Indemnity and no limitation on the powers will be exceeded as a result of the Guarantor entering into this Guarantee and Indemnity;
- (c) the execution, delivery and performance by the Guarantor of this Guarantee and Indemnity and the performance of its obligations under this Guarantee and Indemnity have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents; or

- (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is a party or which is binding upon it or any of its assets; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets; and
- (d) this Guarantee and Indemnity is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

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

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

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

14.1 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee and Indemnity. The Company may only assign its

rights under this Guarantee and Indemnity to a person in favour of whom an assignment has been made pursuant to the CUSC Documentation.

- 14.2 The Company may disclose to a prospective assignee or transferee such information about this Guarantee and Indemnity as The Company thinks fit.
15. The Company's rights under this Guarantee and Indemnity are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as The Company deems expedient.
- 16.1 If any provisions of this Guarantee and Indemnity become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 16.2 No failure or delay by The Company in exercising any right or remedy shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
17. A person who is not a party to this Guarantee and Indemnity (including any employee, officer, agent, representative or sub-contractor of any party) shall not have the right to enforce any term of this Guarantee and Indemnity which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Guarantor and The Company, which agreement must refer to this clause 17.
- 18.1 Subject to clause 18.2, the Guarantor's obligations under this Guarantee and Indemnity shall terminate on **[specify date up to 5 years from the date of Deed]** (the "**Termination Date**") and, subject as aforesaid, no demand may be made by The Company on or after the Termination Date.
- 18.2 Notwithstanding clause 18.1 above or any release, discharge, termination or settlement between The Company and the Guarantor, the liability of the Guarantor under this Guarantee and Indemnity shall continue in full

force and effect (and a demand may be made under this Guarantee and Indemnity) on or following the Termination Date and/or such release discharge, termination or settlement in relation to clauses 5 and 11 of this Guarantee and Indemnity, and in relation to:

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

19. Any of:

- (i) any Notice of Drawing (as defined in the CUSC Documentation); and
- (ii) in the absence of manifest error, any statement of account, signed as correct by an officer of The Company, showing any amount due from the Guarantor under this Guarantee and Indemnity,

shall be binding and conclusive on and against the Guarantor.

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

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



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

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

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

- (a) in the case of the Guarantor:

Address: [REDACTED]

Facsimile Number: [REDACTED]

For the attention of: [REDACTED]

- (b) in the case of The Company:

Address: 1-3 Strand

London

WC2N 5EH

Facsimile Number: [REDACTED]

For the attention of: [REDACTED]

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

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

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

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

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

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

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

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

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

22.6 [The Guarantor authorises and appoints *[name]* of *[legal representatives or related company in England and Wales]* (or such other person being a firm of solicitors in England as they may from time to time substitute by notice to The Company) to accept service of all legal process arising out of or connected with this Guarantee and Indemnity. Service on such person (or substitute) shall be deemed to be service on the Guarantor. Except upon a substitution, the Guarantor shall not revoke any such

authority or appointment and shall at all times maintain an agent for service of process in England. If any agent ceases for any reason to be an agent, the Guarantor shall forthwith appoint another agent and advise The Company accordingly.]

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

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

[The Common Seal of [.....] was hereunto affixed in the presence of:

[.....] Director

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

or

[Executed as a Deed by  
[            ] acting  
by:

[.....] Director

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

**[FINAL SUMS or CANCELLATION CHARGE – FIXED TERM & FIXED AMOUNT]**

**DATED**

**20**

---

**[GUARANTOR] (1)**

**in favour of**

**NATIONAL GRID ELECTRICITY TRANSMISSION PLC (2)**

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**GUARANTEE AND INDEMNITY**

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**THIS GUARANTEE AND INDEMNITY** is made the

day of

20

by [.....] a company [registered in [ ]<sup>6</sup> (No. ....)] and having its registered office at [.....] (herein called the “**Guarantor**”) in favour of **National Grid Electricity Transmission plc** a company registered in England (No. 02366977) having its registered office at 1-3 Strand, London, WC2N 5EH herein called “**The Company**”.

## **WHEREAS**

- (A) The Company and [ ] a company registered in England (No. [ ]) and having its registered office at [ ] herein called the “**User**” are parties (in the case of the User pursuant to an Accession Agreement dated ....200.) to a document dated 18<sup>th</sup> September 2001 known as the “**CUSC Framework Agreement**” (as amended from time to time, the “**CUSC Agreement**”) relating to the connection to and use of the electricity transmission system in Great Britain. Pursuant to the CUSC Agreement, effect is given to a code, also relating to such connection to and use of the electricity transmission system in Great Britain, known as the “**Connection and Use of System Code**” (as amended from time to time, the “**CUSC**”).
- (B) With reference to the CUSC, The Company and the User have entered into an agreement dated ....200. known as a “**Bilateral Connection Agreement**” or a “**Bilateral Embedded Generation Agreement**” (together the “**Bilateral Agreement**”) and have also entered into a Construction Agreement dated ....200. (each as amended from time to time, the “**Construction Agreement**”) relating to certain works to be effected or arranged by The Company.
- (C) The Guarantor is aware of the subject-matter and the terms of the CUSC Agreement, the CUSC, the Bilateral Agreement and the Construction

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<sup>6</sup> Complete.

Agreement (together the “**CUSC Documentation**”) and of the User’s obligations thereunder.

- (D) The CUSC Documentation requires that the User provides security cover in respect of its liability to pay **Final Sums/Cancellation Charges** (as defined in the CUSC Documentation) to The Company pursuant to the terms of the Construction Agreement.
- (E) The Guarantor has agreed to provide this Guarantee in discharge of the User’s obligations to provide such security cover.

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

- 4 In this Guarantee and Indemnity “**Guaranteed Liabilities**” means all monies which are now, or may in the future become due or owing by the User to The Company howsoever arising under or in connection with the Construction Agreement, in respect of **Final Sums/Cancellation Charges** (as defined in the CUSC Documentation).
- 5 This Guarantee and Indemnity is effective from [*specify date*] (the “**Effective Date**”).
- 6 It is acknowledged that this Guarantee and Indemnity relates to the User’s obligations under or pursuant to or in connection with the Construction Agreement and the term “**Guaranteed Liabilities**” shall be construed accordingly.
- 4 Subject to satisfaction of The Company’s obligations in clause 9.2 the Guarantor irrevocably and unconditionally guarantees to The Company the punctual payment by the User of the Guaranteed Liabilities and that whenever the User does not pay any Guaranteed Liabilities the Guarantor shall within three business days pay such Guaranteed Liabilities to The Company on written demand as if it were the principal debtor and in the currency in which the same falls due for payment.

- 5.1 The Guarantor agrees to pay interest on demand on each amount demanded under this Guarantee and Indemnity from the date of demand until payment (as well after as before judgment) at the rate applicable to relevant unpaid sums under the CUSC Documentation accruing on a daily basis. Any payment of interest hereunder shall discharge pro tanto the User's obligations to pay interest under the Construction Agreement in respect of the corresponding Guaranteed Liabilities.
- 5.2 The Guarantor agrees to pay legal and other costs and expenses (on a full and unqualified indemnity basis) incurred by The Company whether before or after the date of demand on the Guarantor: (i) in enforcing or reasonably endeavouring to enforce the payment of any money due under this Guarantee and Indemnity or otherwise in relation to this Guarantee and Indemnity; and (ii) in resisting or reasonably endeavouring to resist any claims or defences made against The Company in connection with the liabilities or alleged liabilities of the User guaranteed hereunder or any money or benefits received by or any preference or alleged preference given to The Company from or by the User.
- 6.1 The obligations of the Guarantor under this Guarantee and Indemnity are undertaken by it as a primary obligor and not merely as a surety.
- 6.2 As a separate and independent primary obligation, without prejudice to Clause 4, the Guarantor unconditionally and irrevocably agrees to keep The Company fully indemnified on demand against all damages, losses, costs and expenses arising from any of the Guaranteed Liabilities not being or ceasing to be valid or enforceable against the User for whatever reason, whether or not known to The Company. The amount of the damage, cost, loss or expense shall be equal to the amount which The Company would otherwise have been entitled to recover.
7. The total amount recoverable by The Company from the Guarantor under this Guarantee and Indemnity in aggregate shall not exceed:
- (a) **[specify figure ]**; plus



- (b) all costs, expenses and interest payable by the User under the Construction Agreement, in relation to the Guaranteed Liabilities; plus
  - (c) all costs, expenses, interest and other amounts payable by the Guarantor under this Guarantee and Indemnity.
8. The liability of the Guarantor to make payment to The Company shall not be impaired or discharged by reason of any of the following (whether or not the Guarantor has notice thereof):
- (a) any amendment, variation or waiver (however fundamental) of any provision of any of the CUSC Documentation;
  - (b) any modification of any of the CUSC Documentation irrespective (provided that such modification is made in accordance with the terms thereof) of whether the User was a party to or in agreement with any such modification;
  - (c) any indulgence or forbearance shown by The Company towards the User or the Guarantor whether as to payment or time for payment or any arrangement entered into or composition accepted by The Company modifying (by operation of law or otherwise) the rights and remedies of The Company under the CUSC Documentation with regard to payment or time for payment;
  - (d) any action lawfully taken by any party to any of the CUSC Documentation to determine any of the CUSC Documentation as respects the User or any other party thereto, or as a result of which the User ceases to be a party to any of the CUSC Documentation;
  - (e) any change in the relationship between the Guarantor and the User;
  - (f) any disability, legal limitation, incapacity or change in the status or constitution of the User, the Guarantor or The Company;

- (g) the bankruptcy, liquidation, dissolution or insolvency of the User or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the User or any of its property;
- (h) any third party becoming or ceasing to be a party to any of the CUSC Documentation;
- (i) any failure or delay by The Company to assert any of its rights under this Guarantee and Indemnity;
- (j) any composition discharge release or other variation of liability entered into with or granted to the User;
- (k) the invalidity or unenforceability of the obligations of the User pursuant to any of the CUSC Documentation;
- (l) any other act or omission of The Company or any other circumstance which but for this provision might discharge the Guarantor.

9.1 This Guarantee and Indemnity shall:

- (a) be in addition to any present or future Collateral Instrument, right or remedy held by or available to The Company; and
- (b) not be in any way prejudiced or affected by:
  - (i) the existence of any Collateral Instrument, rights or remedies;  
or
  - (ii) any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or

- (iii) The Company dealing with, exchanging, varying or failing to perfect or enforce any Collateral Instrument; or
  - (iv) The Company giving time for payment or indulgence or compounding with any person liable for the Guaranteed Liabilities.
- 9.2 The Company may not make any demand or claim against the Guarantor under this Guarantee and Indemnity without first having demanded payment from the User in respect of the relevant Guaranteed Liabilities. Subject thereto The Company shall not be obliged to make any claim or demand on the User or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Guarantee and Indemnity.
- 9.3 No action taken or omitted by The Company in connection with any Collateral Instrument or other payment or any variation, amendment, supplement, novation or replacement of any Collateral Instrument shall discharge, reduce, prejudice or affect the Guaranteed Liabilities or liability of the Guarantor under this Guarantee and Indemnity.
- 9.4 The Company shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Guaranteed Liabilities.
- 9.5 For the purposes of this clause “**Collateral Instruments**” means notes, bills of exchange, certificates of deposit and other negotiable and non-negotiable instruments, guarantees, indemnities, policies of insurance, insurance performance bonds and other assurances against financial loss, and any other documents or instruments which contain or evidence an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the User, and includes any document or

instrument creating or evidencing an encumbrance, however defined, such as, without limitation, letters of credit, deposit deeds, or escrow agreements.

10. The Guarantor shall not, until all its obligations and liabilities hereunder have been fully performed or satisfied, exercise, unless instructed to do so by The Company in which case it shall exercise as instructed:
  - (a) its rights of subrogation, contribution and indemnity in connection with any payment by the Guarantor pursuant to this Guarantee and Indemnity;
  - (b) its right to take the benefit of, share in or enforce any security or other guarantee or indemnity for the User obligations held by The Company; and
  - (c) its right to prove or claim in the bankruptcy, liquidation, dissolution or insolvency of the User or any receivership, administration, moratorium, composition of creditors or other analogous event affecting the User or any of its property.

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

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

- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Guarantee and Indemnity and no limitation on the powers will be exceeded as a result of the Guarantor entering into this Guarantee and Indemnity;
- (c) the execution, delivery and performance by the Guarantor of this Guarantee and Indemnity and the performance of its obligations under this Guarantee and Indemnity have been duly authorised by all necessary corporate action and do not contravene or conflict with:
  - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents; or
  - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is a party or which is binding upon it or any of its assets; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets; and
- (d) this Guarantee and Indemnity is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

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

12. All payments by the Guarantor under this Guarantee and Indemnity shall be made in full, without set-off or counterclaim and, subject to clause 13, free and clear of any deductions or withholdings in immediately available, freely

transferable, cleared funds for value on the date specified in The Company's demand to the account notified to the Guarantor by The Company.

13. If at any time the Guarantor is required by law to make any deduction or withholding in respect of any taxes, duties or other charges or withholdings from any payment due under this Guarantee and Indemnity, the sum due from the Guarantor in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, The Company receives on the due date and retains (free of any liability in respect of such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been required to be made.
- 14.1 The Guarantor may not assign or transfer any of its rights or obligations under this Guarantee and Indemnity. The Company may only assign its rights under this Guarantee and Indemnity to a person in favour of whom an assignment has been made pursuant to the CUSC Documentation.
- 14.2 The Company may disclose to a prospective assignee or transferee such information about this Guarantee and Indemnity as The Company thinks fit.
15. The Company's rights under this Guarantee and Indemnity are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as The Company deems expedient.
- 16.1 If any provisions of this Guarantee and Indemnity become invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
- 16.2 No failure or delay by The Company in exercising any right or remedy shall operate as a waiver, nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.

17. A person who is not a party to this Guarantee and Indemnity (including any employee, officer, agent, representative or sub-contractor of any party) shall not have the right to enforce any term of this Guarantee and Indemnity which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Guarantor and The Company, which agreement must refer to this clause 17.
- 18.1 Subject to clause 18.2, the Guarantor's obligations under this Guarantee and Indemnity shall terminate on [ *specify date*] (the "**Termination Date**") and, subject as aforesaid, no demand may be made by The Company on or after the Termination Date.
- 18.2 Notwithstanding clause 18.1 above or any release, discharge, termination or settlement between The Company and the Guarantor, the liability of the Guarantor under this Guarantee and Indemnity shall continue in full force and effect (and a demand may be made under this Guarantee and Indemnity) on or following the Termination Date and/or such release discharge, termination or settlement in relation to clauses 5 and 11 of this Guarantee and Indemnity, and in relation to:
- (a) any of the Guaranteed Liabilities which have become due on or prior to the Termination Date; and
  - (b) the Guaranteed Liabilities if any monies paid to The Company in reduction of the indebtedness of the User in respect of the Guaranteed Liabilities have to be repaid by The Company by virtue of any provision or enactment relating to bankruptcy, liquidation, administration, dissolution, insolvency or other analogous event for the time being in force or on any other ground. If that happens the liability of the Guarantor under this Guarantee and Indemnity shall be computed as if such monies had never been paid to The Company at all.

19. Any of:
- (i) any Notice of Drawing (as defined in the CUSC Documentation); and
  - (ii) in the absence of manifest error, any statement of account, signed as correct by an officer of The Company, showing any amount due from the Guarantor under this Guarantee and Indemnity,
- shall be binding and conclusive on and against the Guarantor.

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

- (a) if in writing, when delivered or, if later, 2 days after posting if sent by first class post (or 7 days if sent by second class post or 5 days if sent from outside the United Kingdom);
- (b) if by facsimile, when received or as evidenced by the notifying party's facsimile transmission report.

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

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

- (a) in the case of the Guarantor:
  - Address: [REDACTED]
  - Facsimile Number: [REDACTED]



For the attention of: [REDACTED]

(b) in the case of The Company:

Address: 1-3 Strand  
London  
WC2N 5EH

Facsimile Number: [REDACTED]

For the attention of: [REDACTED]

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

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

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

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

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

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

- 22.4.1 taking proceedings relating to a Dispute in any other courts (and the Guarantor waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum); or
- 22.4.2 referring a Dispute to be finally settled by arbitration under the Rules of Arbitration and Conciliation of the International Chamber of Commerce by two or more arbitrators appointed pursuant to such Rules.
- 22.5 To the extent allowed by law, The Company may take concurrent proceedings in any number of jurisdictions.
- 22.6 [The Guarantor authorises and appoints *[name]* of *[legal representatives or related company in England and Wales]* (or such other person being a firm of solicitors in England as they may from time to time substitute by notice to The Company) to accept service of all legal process arising out of or connected with this Guarantee and Indemnity. Service on such person (or substitute) shall be deemed to be service on the Guarantor. Except upon a substitution, the Guarantor shall not revoke any such authority or appointment and shall at all times maintain an agent for service of process in England. If any agent ceases for any reason to be an agent, the Guarantor shall forthwith appoint another agent and advise The Company accordingly.]
- 22.7 [The Guarantor waives any right of state immunity which it may have in respect of any proceedings or action (which shall include any attachment or arrest prior to judgement and any enforcement proceedings including execution) commenced by The Company against the Guarantor under or in connection with this Guarantee.]

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

[The Common Seal of [.....] was hereunto affixed in the presence of:

[.....] Director

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

or

[Executed as a Deed by

[            ] acting

by:

[.....] Director

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

**[Independent Law firm headed notepaper]**

National Grid Electricity Transmission plc  
1-3 Strand  
London  
WC2N 5EH

Date: [            ] 2007

Dear Sirs

[Re – Guarantee by [    ] (the “Company”)]

1        We are [lawyers/solicitors/legal counsel] practising and qualified to practise in [*insert jurisdiction*] and to advise on the law of [*insert jurisdiction*].

2        We refer to the following document:

- (i)        [Parent Company Guarantee] governed by the laws of England and Wales to be entered into between [    ] and National Grid Electricity Transmission plc, a copy of which is attached hereto as Annex [x];

referred to in this opinion as the “**Transaction Document**”.

3        In connection with this opinion, we have examined the following documents:

- (i)        a copy of the Transaction Document;
- (ii)        a copy, certified by a director or other duly authorised officer of the Company as being a true, complete and up-to-date copy, of the Certificate of Incorporation and the [Memorandum and Articles of Association][statutes][by-laws][or equivalent document(s)] of the Company (the “**Constitutional Documents**”);
- (iii)        an [extract] [Certificate of Good Standing] dated [            ] from the Companies [Commercial] Registry of [*insert jurisdiction*] relating to the Company certifying that, among others things, no action is being taken for the Company to be struck off or dissolved and, so far as the Registrar is aware, the Company is not in liquidation, an administrator has not been appointed and no receiver or manager of the Company’s property has been appointed as of that date; [*date - this should be the date of the opinion or updated on the opinion date*]
- (iv)        any and all authorisations, approvals and consents (including without limitation exchange control consents if any) necessary or expedient for the execution and performance by the Company of the Transaction Documents; and

- (v) [such other records and documents as we have deemed necessary or appropriate for the purposes of this opinion.]

Based on the foregoing and subject to (a) any factual matters or documents not disclosed to us in the course of our investigations and (b) the qualifications and limitations stated hereinafter, we do not consider that there are any other agreements, instruments or documents nor any further enquiries we need to review or undertake (as the case may be) concerning the Company in order to issue this opinion letter.

4 The opinions set forth herein relate only to the laws of *[insert relevant country]*. We neither express nor imply any view or opinion on, or in respect of, the laws of any jurisdiction other than *[insert jurisdiction]* and have made no investigation of any other laws (including, without limitation, the laws of England and Wales) which may be relevant to the documents submitted to us or opinions given by us. We have further more assumed and have not verified:

- (i) the genuineness of all documents submitted to us and of the signatures thereon; *[consider if documents should be notarised]*
- (ii) the validity and enforceability of the Transaction Document, as a matter of English law;
- (iii) the conformity to the original of all copy or specimen documents;
- (iv) the capacity, power and authority of each of the parties to the Transaction Document other than the Company;
- (v) the due execution and entry into of the Transaction Document in compliance with all requisite corporate authorisations, by each of the parties to it other than the Company; and
- (vi) that there are no provisions of the laws or public policy of any jurisdiction outside *[insert jurisdiction]* (being a jurisdiction where any obligation contemplated by the Transaction Document falls to be performed) which would be contravened by the authorisation, execution, entry into, delivery or performance of the Transaction Document or of any obligation the performance of which is contemplated by the Transaction Document.

5 Based upon and subject to the foregoing, we are of the opinion that, insofar only as the laws of *[insert jurisdiction]* and the administration thereof is concerned:

- (i) the Company is a [limited liability company] duly incorporated and organised, in good standing and validly existing under the laws of *[insert jurisdiction]* and possesses the capacity to sue and be sued in its own name. We confirm that we have made all necessary investigations and certify that, so far as we are aware, the statements in the [Certificate of Good Standing] are true and correct as at the date of this opinion. We confirm that there are no pending proceedings (whether court proceedings or otherwise) relating to bankruptcy, liquidation, administration, dissolution, insolvency or other analogous events in relation to the Company and so far as we are aware no evidence of any steps being taken for or of the appointment of any liquidator, receiver, administrator or other similar official in respect of the Company and/or any of its assets.

- (ii) the Company has power to carry on its activities as now carried on, to own property and other assets and to execute, deliver and perform its obligations pursuant to the Transaction Document.
- (iii) it is not necessary, in order to ensure the validity, effectiveness or enforceability or admissibility in evidence of the Transaction Document that any such document be filed, registered, recorded or enrolled in any public office in *[insert jurisdiction]* or that any other instrument relating thereto be executed, delivered, filed, registered, recorded or enrolled in any public office in *[insert jurisdiction]*.
- (iv) neither the Transaction Document nor the arrangements contemplated thereby give rise to any registration or stamp or other tax or duty in or imposed by *[insert jurisdiction]* or any authority or agency thereof.
- (v) neither the execution or entry into the Company of the Transaction Document, nor the compliance by the Company with any obligations to which it is subject pursuant thereto will conflict with or result in any breach or violation of (i) any existing applicable law, statute, rule or regulation of *[insert jurisdiction]* to which the Company is subject or (ii) any of the terms, conditions or provisions of the Constitutional Documents.
- (vi) that the entry into and execution of the Transaction Document is within the capacity and power of the Company and the entry into and execution by the Company of the Transaction Document has been validly authorised and that the obligations assumed pursuant to the Transaction Document constitute or on execution and entry into the Transaction Document will constitute the legal, valid binding and enforceable obligations of the Company under the laws of *[insert jurisdiction]* .
- (vii) where a Transaction Document is stated to be governed by English Law, it is a valid choice and accordingly would be applied by the *[insert jurisdiction]* courts.
- (viii) all payments made by the Company pursuant to the Transaction Document may be made without deduction of any *[insert jurisdiction]* tax provided that *[state conditions]*.
- (ix) the Company has obtained all authorisations, approvals and consents (including without limitation, exchange control consents) from all governmental authorities or agencies in *[insert jurisdiction]* necessary or appropriate for the entering into and execution by it of the Transaction Document and to the exercise of its rights and the performance of its obligations pursuant to the Transaction Document (including, without limitation, for making all payments due or to become due from it thereunder free from any deduction or withholding) and to render the same legal, valid and enforceable and admissible in evidence.
- (x) the Company is subject to the jurisdiction of the courts of *[insert jurisdiction]* and not entitled to claim immunity from any suit, execution, attachment or other legal process in *[insert jurisdiction]* on the ground of sovereignty or otherwise.
- (xi) the submission by the Company to the jurisdiction of the English Courts is valid and would be recognised as such by the courts of *[insert jurisdiction]*.

- (xii) any final judgment for a sum of money obtained against the Company in the High Court of England will be enforceable against it in *[insert jurisdiction]*, provided that *[state any current conditions]*. On the facts of this matter presented to us, we know of no public policy at the date hereof which would prevent or hinder the enforcement of such a final judgment in *[insert jurisdiction]*.
- (xiii) if National Grid Electricity Transmission plc chooses to institute proceedings in *[insert jurisdiction]* the courts of *[insert jurisdiction]* will accept jurisdiction and any final judgment for a sum of money obtained against the Company in the courts of *[insert jurisdiction]* will be enforceable against it in *[insert jurisdiction]*, provided that *[state any current conditions]*. On the facts of this matter presented to us, we know of no public policy at the date hereof which would prevent or hinder the enforcement of such a final judgment in *[insert jurisdiction]*.
- (xiv) The obligations of the Company pursuant to the Transaction Document rank [or when entered into will rank] at least *pari passu* with all other of its present and future unsecured and unsubordinated indebtedness or obligations (with the exception of any mandatorily preferred by law and not by contract).
- (xv) it is not necessary that National Grid Electricity Transmission plc be licensed, qualified or otherwise entitled to carry on business in *[insert jurisdiction]* in order to enable it:-
  - (A) to enforce its rights pursuant to the Transaction Document.
  - (B) to perform the obligations (if any) expressed to be assumed by National Grid Electricity Transmission plc in the Transaction Document.
- (xvi) National Grid Electricity Transmission plc will not be deemed to be resident, domiciled, carrying on business or subject to taxation in *[insert jurisdiction]* by reason only of the entry into the Transaction Document.

6 The opinions set forth herein are intended to be for the benefit only of National Grid Electricity Transmission plc save that it may also be relied upon by any other person to whom the benefit of the Transaction Document has been assigned by National Grid Electricity Transmission plc.

Yours faithfully