

CUSC - EXHIBIT O - PART I B

**THE CONNECTION AND USE OF SYSTEM CODE
INTERFACE AGREEMENTS**

**PART I B - RELEVANT TRANSMISSION LICENSEE ASSETS ON USER
LAND IN SCOTLAND**

CUSC - EXHIBIT O - PART I B

DATED _____ 200[]

[] (User)

- and -

[Insert name of Relevant Transmission Licensee (RTL)]

INTERFACE AGREEMENT

Relating to Relevant Transmission Licensee Assets on
User Land at []

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INTERFACE AGREEMENT
(ASSET LICENCE FACILITY AGREEMENT)

(RELEVANT TRANSMISSION LICENSEE ASSETS)

THIS DEED OF AGREEMENT is made on the _____ day of _____ 200[]

BETWEEN

(1) [] a company registered in [] (with number [] whose registered office is at [] (“User”, which expression shall include its successors and/or permitted assigns);
and

(2) [Insert name of Relevant Transmission Licensee] a company registered in [] with number [] whose registered office is at [] (“RTL”, which expression shall include its successors and/or permitted assigns)]

WHEREAS

Certain assets and facilities of the RTL are to be installed on property title to which is vested in User and this Agreement is entered into by the Parties to give effect to appropriate arrangements in respect of such assets and the use of such assets and facilities.

NOW IT IS HEREBY AGREED as follows:-

1. DEFINITIONS AND INTERPRETATION

In this Agreement, the following words and expressions shall, unless the subject-matter or context otherwise requires or is inconsistent therewith, bear the following meanings:-

“Act”	the Electricity Act 1989 as amended by Utilities Act 2000;
“Affiliate”	in relation to User means any holding company or subsidiary of that Party or any subsidiary of a holding company of User, in each case within the meaning of Sections 736, 736A and 736B of the Companies Act 1985 as substituted by Section 144 of the Companies Act 1989 and if that section is not in force at the date of this Agreement as if such section were in force at such date;
“Apparatus”	all equipment in which electrical conductors are used, supported or of which they may form a part;
“Authority”	the Gas and Electricity Markets Authority established by Section 1 of the Utilities Act 2000;
“Authorised Electricity Operator”	any person (other than The Company in its capacity as operator of the GB Transmission System) who is authorised to generate, participate in the transmission of, distribute or supply electricity and for the purposes of Standard Condition C4 of the Transmission Licence shall

include any person who has made application to be so authorised which application has not been refused and any person transferring electricity to or from Great Britain across an interconnector or who has made application for use of interconnector which has not been refused;

“Bilateral Connection
“Agreement”

a Bilateral Connection Agreement entered into between the User and The Company pursuant to the Connection Agreement and dated [];

“Competent Authority”

the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister (including the Scottish Ministers), ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Community;

“Connection Agreement”

the Connection and Use of System Code given contractual force by the CUSC Framework Agreement entered into by, amongst others, the User regarding, amongst other

things, the connection of User's Plant and Apparatus to the GB Transmission System and the use by the User of such system;

"Connection Site" [];

"CUSC Framework Agreement" means the agreement of that title, in the form approved by the Secretary of State, by which the Connection Agreement is made contractually binding between the parties to that agreement, as amended from time to time with the approval of the Secretary of State;

"Customer" a person to whom electrical power is provided (whether or not he is the provider of such electrical power) other than power to meet station demand of that person;

“Directive”	includes any present or future directive, requirement, instruction, direction or rule of any Competent Authority, (but only, if not having the force of law, if compliance with the Directive is in accordance with the general practice of persons to whom the Directive is addressed) and includes any modification, extension or replacement thereof then in force;
“Distribution System”	the system consisting (wholly or mainly) of electric lines owned or operated by any Authorised Electricity Operator and used for the distribution of electricity from grid supply points or generation sets or other entry points to the point of delivery to Customers or Authorised Electricity Operators, and includes any Remote Transmission Assets operated by such Authorised Electricity Operator and any electrical plant and meters owned or operated by the Authorised Electricity Operator in connection with the distribution of electricity, but shall not include any part of the GB Transmission System;

“Emergency Personnel”	in relation to a Party, all employees of that Party who have appropriate knowledge and experience and are recognised by that Party as being able to carry out competently and safely emergency action for the purposes of clause 9;
“Facility Asset”	those assets listed in Schedule 4;
“Force Majeure”	in relation to a Party, any event or circumstance which is beyond the reasonable control of that Party, and which results in or causes the failure of that Party to perform any of its obligations under this Agreement including any act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and apparatus which could not have been

prevented by Good Industry Practice, governmental restraint, Act of Parliament legislation, bye-law, and Directive (not being any order, regulation or directive under Section 32, 33, 34 or 35 of the Act) Provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party;

“Fuel Security Code”

the document of that title designated as such by the Secretary of State as from time to time amended;

“GB Transmission System”

the system consisting (wholly or mainly) of high voltage electric wires owned or operated by transmission licensees within Great Britain and used for the transmission of electricity from one power station to a sub-station or to another power station or between sub-stations or to or from any external interconnection and includes any electrical plant or apparatus or meters owned or operated by any transmission licensee within Great Britain in connection with the transmission of electricity but shall not include

	Remote Transmission Assets;
“Good Industry Practice”	in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
“Grid Code”	the document or documents produced pursuant to standard condition C14 of The Company Transmission Licence, as from time to time revised in accordance with The Company Transmission Licence;
“High Voltage Lines”	electric lines of a nominal voltage of or exceeding 132 kilovolts;
“HV”	of a nominal voltage exceeding 650 volts;
“Intellectual Property”	patents, trademarks, service marks, rights in designs, trade names, copyrights and topography rights (whether or not any of the same is registered and including applications for registration of any of the same)

and rights under licences and consents in relation to any of the same and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the same which may subsist anywhere in the world;

“Licence” any licence granted pursuant to Section 6 of the Act;

“Location Managers” [];

“Low Voltage” or “LV” means a voltage not exceeding 250 volts;

“Medium Voltage” or “MV” means a voltage exceeding 250 volts but not exceeding 650 volts;

“Modification” any alteration to or replacement of RTL Assets pursuant to clause 3.1 of this Agreement and “Modify” and “Modified” shall be construed accordingly;

“The Company” National Grid Electricity Transmission plc;

“The Company Transmission Licence” the licence granted to The Company under Section 6(1)(b) of the Act;

“Party” each person for the time being and from time to time party to this

	Agreement and any successor(s) in title to, or permitted assign(s) of, such person;
“Permitted Purpose”	means the maintenance, inspection, testing, removal, operation, modification or repair of the RTL Assets;
“Plant”	fixed and moveable items used in the generation and/or supply and/or transmission of electricity other than Apparatus;
“Regulations”	the Electricity Safety Quality and Continuity Regulations 2002 as amended from time to time;
“Relevant Transmission Licensee”	means SP Transmission Limited in south of Scotland and Scottish Hydro-Electric Transmission Limited in north of Scotland;
“Relocation Proposal”	a proposal by User to the RTL pursuant to sub-clause 5.1 for the relocation of any of the RTL Assets;
“Remote Transmission Assets”	any Plant and Apparatus or meters owned by The Company which (a) are embedded in a Distribution System or a user system and which are not directly connected by Plant and/or Apparatus owned by The Company to a sub-station owned by

The Company and (b) are by agreement between The Company and such public distribution system operator or user under the direction and control of such public distribution system operator or user;

“Right of Access”

full right and liberty during the currency of this Agreement to enter upon and through and remain upon any part of User’s Land (including where relevant any land over which User has a right of servitude, wayleave or similar right which benefits the User’s Land and the use of which by the RTL is necessary to enable it to exercise the Right of Access hereby granted) PROVIDED to the extent necessary for a Permitted Purpose and subject to the provisions of clause 5;

“RTL Assets”

those assets listed in Schedule 1 (including any plinths or other structures (excluding buildings) to or upon which the same are affixed and to or upon which no assets of any other person are affixed and any straps, bolts or other such things for attachment thereto) as any of the same may be Modified pursuant to

	this Agreement;
“RTL Licence”	the licence granted to the RTL under Section 6 of the Act;
“Secretary of State”	has the meaning given to that term in the Act;
“Services”	in the context of Clause 8, the goods and services specified in Schedule 5;
“Site Specific Safety Rules”	means the rules, procedures or current arrangements for and relating to safety co-ordination across boundaries (to permit work to or testing on the system of one of the Parties which, for this to be done safely, requires isolation and/or other precautions on Plant and/ or MV and/or LV Apparatus whether at, adjacent to or remote from the location of the work or testing) which the Parties mutually agree to use their best endeavours to formulate as soon as possible after the date of this Agreement and on the basis that any dispute as to their content shall be resolved in accordance with the provisions of Clause 10;
“User’s Land”	the land described in Schedule 2;

“User’s Licence”

the licence granted to the User under
Section 6 of the Act;

In this Agreement:

- (i) unless the context otherwise requires all references to a particular clause, sub-clause, paragraph or Schedule shall be a reference to that clause, sub-clause, paragraph or Schedule in or to this Agreement;
- (ii) the table of contents and headings are inserted for convenience only and shall be ignored in construing this Agreement;
- (iii) references to the words “include” or “including” are to be construed without limitation to the generality of the preceding words;
- (iv) unless there is something in the subject matter or the context which is inconsistent therewith, any reference to an Act of Parliament or any Section thereof or Schedule thereto, or other provision thereof or any instrument, order or regulation made thereunder shall be construed at the particular time as including a reference to any modification, extension, replacement or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament; and
- (v) references to the masculine shall include the feminine and references in the singular shall include the plural and vice versa and words denoting natural persons shall include companies,

corporations and any other legal entity and vice versa.

2. RIGHT TO INSTALL AND RETAIN ASSET

2.1 Subject to sub-clause 5.1, User hereby grants to the RTL the right to install and thereafter retain and replace as provided in this Agreement RTL Assets on User's Land in such places as are currently proposed (subject to such variations between the date hereof and the actual date of installation as may be agreed to by User) and such right shall extend to any Modified RTL Assets. User shall maintain any shelter and/or support enjoyed by any RTL Assets at the date of this Agreement or, if later, when relocated on User's Land in accordance with clause 5 and grants to the RTL a Right of Access for the purpose of the maintenance, inspection, testing, removal, operation, Modification or repair of any RTL Assets.

3. MODIFICATIONS REPLACEMENTS AND ALTERATIONS

3.1 The RTL may at its own expense replace or alter any RTL Assets provided that:-

3.1.1 the replacement RTL Assets or the RTL Assets as so altered:-

- (i) are placed in the same or approximately the same position;
- (ii) fulfil the same or a similar purpose;
- (iii) can, where relevant, be accommodated in and on existing buildings or structures;
- (iv) do not require additional or improved facilities or services from User;

- (v) do not restrict the actual and intended use of User's Land and any equipment thereon or therein to any materially greater extent than the RTL Assets so replaced or altered; and
- (vi) are either of the same or a similar or smaller size or the alteration is effected substantially within the space occupied by such RTL Assets to enable the RTL Assets to be used up to their full capability; and

3.1.2 prior written notification has been given to User.

3.2 If any replacement or alteration permitted by clause 3.1 shall require minor alterations or work to the existing buildings or structures housing or supporting the RTL Assets in question, such alterations or works may be carried out (with the prior written approval of User (such approval not to be unreasonably withheld or delayed)) but at the cost of the RTL.

3.3 To the extent that any of the conditions of clause 3.1 are not in User's reasonable opinion met in relation to any replacement or alteration, User may by notice in writing require the RTL promptly to remove such replacement or alteration and, if the RTL fails to do so, may remove the same itself at the cost and expense of the RTL. On such removal, the RTL may reinstate the RTL Assets so replaced or altered.

3.4 The RTL shall, if considering moving, replacing, or altering any of the RTL Assets, give due consideration as to whether it shall be operationally practicable, desirable and reasonably economic to move such RTL Assets to (or place the replacement or altered RTL Assets on) its own property.

3.5 For the avoidance of doubt it is hereby agreed that any dispute between

the Parties regarding this clause shall be determined in accordance with the provisions of Clause 10 of this Agreement.

4. SECURITY AND COMPLIANCE WITH STATUTES etc

4.1 User undertakes to maintain and provide security in relation to the RTL Assets in accordance with the arrangements set out in Part I of Schedule 3.

4.2 Each Party shall procure that, as between the Parties, all reasonable and necessary steps are taken, as and when necessary or desirable, in co-operation with the other (and, so far as applicable, with any third party), to ensure compliance with the provisions (each such provision or part thereof being in this clause 4 an "Obligation") of:-

- (i) all statutes and Directives applicable to any RTL Assets and/or any part (including the whole) of User's Land;
- (ii) any statute or Directive which may affect any other property (of whatever nature) of either Party as a result of the existence, nature, location, or manner of operation of any RTL Assets; and
- (iii) any statute or Directive requiring the reporting of any occurrence relating to or affecting any RTL Assets and/or User's Land (including the Reporting of Injuries Diseases and Dangerous Occurrence Regulations 1985 and the Regulations).

4.3 Each Party shall, so far as it is aware of the same, unless it has reasonable grounds for believing that the other Party possesses the information, keep the other Party informed of all matters relating to any Obligation or potential Obligation and/or the extent to which such Obligation may be applicable.

4.4 In the event of any dispute as to responsibility, as between the Parties, pursuant to clause 4.2, for compliance with an Obligation, that responsibility shall be allocated, so far as practicable, on the basis that:-

- (i) each Party shall refrain from taking or permitting any act or omission which would prevent compliance with an Obligation; and
- (ii) positive action required in relation to a Party's property as a consequence of the existence, nature, location or manner of operation of that property or any other property of that Party shall be the responsibility of that Party, and, to the extent that such action is required in respect of or affecting any property of the other Party (or property of a third party located in or on that other Party's land), such action may be taken with the prior approval of that other Party (such approval, subject to (i) above, not to be unreasonably withheld or delayed).

4.5 The provisions for safety co-ordination between the Parties contained in Part II of Schedule 3 shall apply.

5. RELOCATIONS

5.1 At any time and from time to time during the term of this Agreement, User may with the prior written consent of the RTL (such consent not to be unreasonably withheld or delayed) require the RTL to relocate any RTL Assets either to a different location on the User Land or to the RTL's or a third party's land, such consent to be sought and given or refused in accordance with the following procedure:-

5.1.1 User shall serve a written notice on the RTL, which notice shall specify:-

- (a) the RTL Assets which User wishes to be relocated;
- (b) the reasons for such wish;
- (c) the proposed new location for such RTL Assets; and
- (d) the timing of the carrying out of such relocation.

5.1.2 The RTL shall within one month of receipt of any such notice (or such longer period as shall be reasonably necessary) serve a counter notice stating:-

- (a) whether or not in its reasonable opinion such Relocation Proposal is acceptable to it;
- (b) if the Relocation Proposal is not acceptable to the RTL, the grounds for such opinion and the terms of any alternative proposal (the "Alternative Relocation Proposal") covering so far as relevant the matters referred to in items (a) - (d) of clause 5.1.1 which would be acceptable to the RTL; and
- (c) in respect of the Relocation Proposal (if accepted) or of any Alternative Relocation Proposal, the costs likely to be incurred in connection with considering the Relocation Proposal or the Alternative Relocation Proposal and effecting the said relocation of the RTL Assets and the proper and reasonable costs of relocating any other equipment that may be necessary as a result of the relocation of those RTL Assets and any consequential losses including payments to third parties incurred as a result of the relocation of those RTL Assets and the

proposed manner and timing of payment of the same by User.

- 5.1.3 If within one month of the date of such counter notice (or such longer period as shall be reasonably necessary) User has not withdrawn the Relocation Proposal and the Parties have not agreed upon it or the Alternative Relocation Proposal (if any) or a variation of either of them (such agreement to include agreement on the costs referred to in item (c) of clause 5.1.2) the matter shall be dealt with in accordance with Clause 10.
- 5.2 Upon approval or settlement of any Relocation Proposal, Alternative Relocation Proposal or variation thereof pursuant to clause 5.1, the RTL shall (conditionally upon it being able to obtain all necessary licences and consents which it will use reasonable endeavours to do) relocate or procure the relocation of the relevant RTL Assets as quickly as reasonably practicable (having regard to, amongst other things, technical and operational requirements and to the availability of all necessary licences and consents).
- 5.3 User shall render all reasonable assistance to the RTL in connection with such relocation licences and consents and pay to the RTL all costs referred to in item (c) of clause 5.1.2 as agreed or settled pursuant to clause 5.1 provided that all reasonable endeavours are used to minimise such costs and in the event that a Relocation Proposal is withdrawn or consent thereto is reasonably withheld pursuant to clause 5.1, User shall pay to the RTL all costs reasonably incurred by the RTL in connection with considering the Relocation Proposal and any counter notice.
- 5.4 Such of the provisions of this Agreement as are appropriate and

relevant (including the provisions of this clause 5), shall continue to apply to any relocated RTL Assets.

6. REMOVALS

6.1 In the event that there shall cease to be a Bilateral Connection Agreement relating to any RTL Assets on User's Land the RTL shall remove all RTL Assets from User's Land in accordance with the provisions relating thereto contained in the Connection Agreement and the Bilateral Connection Agreement.

6.2 Where the RTL is obliged to remove any of the RTL Assets from User's Land, whether under this Clause 6, and fails to do so in accordance with the relevant provisions, (whether they be contained in this Clause 6, Clause 3 or Clause 5) User shall be entitled to remove those RTL Assets to land belonging to the RTL and the RTL shall provide all reasonable assistance to enable User safely so to do and shall pay and reimburse to User all costs and expenses reasonably incurred by User in so doing.

7. RIGHTS OF ACCESS

7.1 A Right of Access includes the right to bring on to User's Land such vehicles, plant, machinery and maintenance or construction materials as shall be reasonably necessary for the Permitted Purpose.

7.2 A Right of Access given to the RTL may be exercised by any person, including third party contractors, reasonably nominated from time to time by the RTL. To the extent (if any) that any particular authorisation or clearances may be required to be given by User and the procedures for giving and obtaining the same are not for the time being stipulated in arrangements made pursuant to clause 7.3, the same shall be given

within a reasonable time from the date of the request therefor, save in the case of emergency in which case it shall be given without delay.

7.3 The RTL shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable, to facilitate the safe exercise by it of any Right of Access with the minimum of disruption, disturbance or inconvenience to User. Such arrangements and provisions shall provide for User to have the right to make directions or regulations from time to time in relation to a specified matter. Matters to be covered by such arrangements and/or provision shall include:-

- (i) the identification of any relevant RTL Assets;
- (ii) the particular access routes applicable to the land in question having particular regard for the weight and size limits on those routes;
- (iii) any limitations on times of exercise of a Right of Access;
- (iv) any requirements as to prior notification and as to authorisation or security clearance of individuals exercising such Rights of Access, and procedures for obtaining the same;
- (v) the means of communication between the Parties and all employees and/or contractors who may be authorised from time to time by the RTL to exercise a Right of Access of any relevant directions or regulations made by the RTL;
- (vi) the identification of and arrangements applicable to Emergency Personnel.
- (vii) any limitation or restriction on the exercise of such Right of

Access to the extent that in the circumstances is reasonable.

7.4 The RTL shall procure that any such arrangements and/or provisions (or directions or regulations issued by User pursuant thereto) made from time to time between the Parties shall be observed and performed by it and all persons authorised by it to exercise any Right of Access.

7.4.1 The RTL shall procure that all reasonable steps are taken in the exercise of any Right of Access to:

- (a) avoid or minimise damage to User's Land, or any other property thereon or therein;
- (b) cause as little disturbance and inconvenience as possible to User or other occupier of User's Land;

and shall promptly make good any damage caused to User's Land and/or such other property in the course of the exercise of such rights and shall indemnify User against all actions, claims, proceedings, losses, costs and demands arising out of such exercise.

7.4.2 Subject to clause 7.4.1, all such rights shall be exercisable free of any charge or payment of any kind.

7.5 Subject to any contrary arrangements for the time being made under clause 7.3,

7.5.1 a Right of Access for operation or inspection shall be available without prior notice;

7.5.2 a Right of Access for the purpose of maintenance, testing or repair of HV Apparatus granted shall only be exercisable on the

giving of at least seven days prior written notice to User except in the case of loss of generation or demand or other emergency (in which event User shall render all possible assistance in procuring that the Right of Access shall be exercisable as soon as possible); and

7.5.3 a Right of Access for the purpose of Modifying any RTL Asset shall be exercisable only after two weeks prior written notice to User.

8. SERVICES AND USE OF ASSETS

8.1 Subject as hereinafter provided, in relation to each Facility Asset, User shall, if required by the RTL, make the Facility Asset in question available for use by the RTL to such extent as is necessary for the purposes of the RTL's undertaking but not so as to prejudice the use now or hereafter of such Facility Asset by User for its undertaking.

8.2 Subject as hereinafter provided, in relation to each of the Services, User shall, if required by the RTL, provide the same to the RTL. Such provision shall be of such a quality and quantity and shall be provided at such times as the RTL shall reasonably request. User shall not be required to exceed the level of quality or quantity of the Services as is anticipated by the Parties at the date of this Agreement, unless specifically agreed otherwise between the Parties.

8.3 Where the use of any Facility Asset is made available or such Services are supplied as aforesaid, the Parties shall procure that all reasonable arrangements and provisions are made and/or revised from time to time, as and when necessary or desirable between the local personnel employed by each of them in that regard, such arrangements to

include:-

- 8.3.1 the identification of the Facility Asset and/or Services in question including (where relevant) the extent of their availability;
 - 8.3.2 the hours during which such use or provision shall be allowed or made;
 - 8.3.3 any requirements as to notification of use or call for supply or temporary suspension thereof;
 - 8.3.4 any requirements as to authorisation or security clearance of individuals and the procedures for obtaining the same; and
 - 8.3.5 any safety requirements;
- 8.4 The provision of use of the Facility Asset listed in Schedule 4, Part One and the supply of the Services listed in Schedule 5, Part One shall not be terminated unless User ceases to require the Facility Asset or Services for its own use in which case the supply of the Services or use of the Facility Asset may be terminated by not less than one year's notice in writing;
- 8.5 The provision of use of the Facility Asset listed in Schedule 4, Part Two and the supply of the Services listed in Schedule 5, Part Two shall continue until terminated by not less than six months notice in writing by either Party. User shall maintain the Facility Asset in accordance with Good Industry Practice.

9. NON-INTERFERENCE

- 9.1 User agrees that neither it nor its agents, employees and invitees will

interfere in any way with any of the RTL Assets without the consent of the RTL. For the purposes of this clause “interfere” shall include:

9.1.1 disconnecting or altering the connection of any RTL Assets to any system of cables, foundations, pipes, drains or other media to which it may be connected from time to time or to prevent supply of any substance or thing through such connected system;

9.1.2 affixing or removing any item or substance of any nature whatsoever to or from any RTL Assets;

9.1.3 damaging any RTL Assets;

9.1.4 allowing any other person to interfere with any RTL Assets;

9.1.5 altering any meters or settings on any RTL Assets.

9.1.6 the obstruction of access to any RTL Assets.

9.2 The obligations contained in this clause 9 shall be suspended to the extent that emergency action is taken by Emergency Personnel in good faith to protect the health and safety of persons or to prevent damage to property. All reasonable care shall be taken in the course of such emergency action. When the emergency has ended, any damaged property will be reinstated by the RTL, save for damage occurring by reason of lack of reasonable care in the course of the emergency action taken by User which shall be the responsibility of User.

10. DISPUTE RESOLUTION

10.1 Any dispute arising under this Agreement between Location Managers of the Parties shall, if not resolved within 14 days of first arising, be

referred at the instance of either party to the respective line managers, or those fulfilling a similar function whether or not so called, of User and the RTL who shall use all reasonable endeavours to resolve the matter in dispute within one month.

10.2 Save where expressly stated in this Agreement to the contrary (including the procedure for initial dispute resolution contained in Clause 10.1) and subject to any contrary provision of the Act, any Licence, or the Regulations, or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any Licence or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under out of or in connection with this Agreement between the Parties shall (subject to initial dispute resolution procedures referred to in Clause 1 having been exhausted) be and is hereby referred to arbitration pursuant to the arbitration rules of the Electricity Supply Industry Arbitration Association in force from time to time.

10.3 Whatever the nationality residence or domicile of any Party and wherever the dispute or difference or any part thereof arose the law of England and Wales shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (including any modification, extension, replacement or re-enactment thereof for the time being in force) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

11. GOVERNING LAW AND JURISDICTION

11.1 This Agreement shall be governed by and construed in all respects in accordance with English law.

- 11.2 Subject and without prejudice to clause 10 and to clause 11.4 the Parties irrevocably agree that only the courts of England and Wales and the courts of Scotland are to have jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (together in this clause 11 referred to as "Proceedings") arising out of or in connection with this Agreement may be brought in such courts.
- 11.3 Each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in any such court as is referred to in this clause 11 and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any Proceedings brought in the courts of England and Wales or the courts of Scotland shall be conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.
- 11.4 For the avoidance of doubt nothing contained in the foregoing provisions of this clause 11 shall be taken as permitting a Party to commence Proceedings in the courts where this Agreement otherwise provides for proceedings to be referred to arbitration.

12. CONFIDENTIALITY

- 12.1 For the purposes of this Clause 12 except where the context otherwise requires:

12.1.1 "Authorised Recipient", in relation to any Protected Information, means any Business Person who, before the Protected Information had been divulged to him by the RTL or any subsidiary of the RTL, had been informed of the nature and

effect of this clause 12 and who requires access to such Protected Information for the proper performance of his duties as a Business Person in the course of Permitted Activities;

12.1.2 “Business Person” means any person who is a Licensed Business Person, or a Corporate Functions Person and “Business Personnel” shall be construed accordingly.

12.1.3 “Confidential Information” means all data and other information supplied to User under the provisions of this Agreement.

12.1.4 “Corporate Functions Person” means any person who:-

(a) is a director of the RTL; or

(b) is an employee of the RTL or any of its subsidiaries carrying out any administrative, finance or other corporate services of any kind which in part relate to the Licensed Business; or

(c) is engaged as an agent of or adviser to or performs work in relation to or services for the Licensed Business.

12.1.6 “Licensed Business” means any business or activity of the RTL or any of its associates authorised by its RTL Licence;

12.1.7 “Licensed Business Person” means any employee of the RTL or any director or employee of its subsidiaries who is engaged solely in its Licensed Business and “Licensed Business Personnel” shall be construed accordingly;

12.1.8 “Permitted Activities” means activities carried on for the purposes of the Licensed Business;

12.1.9 “Protected Information” means any information relating to the affairs of a Party which is furnished to Business Personnel pursuant to this Agreement unless, prior to such information being furnished, such Party has informed the recipient thereof by notice in writing or by endorsement on such information, that the said information is not to be regarded as Protected Information.

12.2 Confidentiality for the RTL and its Subsidiaries

The RTL and its subsidiaries in each of their capacities in this Agreement shall secure that Protected Information is not:-

12.2.1 divulged by Business Personnel to any person unless that person is an Authorised Recipient;

12.2.2 used by Business Personnel for the purposes of obtaining for the RTL or any of its subsidiaries or for any other person:-

- (a) any Licence; or
- (b) any right to purchase or otherwise acquire, or to distribute, electricity including by means of an electricity purchase contract (as defined in The Company Transmission Licence); or
- (c) any contract or arrangement for the supply of electricity to customers or suppliers; or
- (d) any contract for the use of any electrical lines or electrical plant belonging to or under the control of a supplier.

12.2.3 used by Business Personnel for the purpose of carrying on any

activities other than Permitted Activities except with the consent in writing of the Party to whose affairs such Protected Information relates.

12.3 Nothing in this Clause 12 shall apply:

12.3.1 to any Protected Information which, before it is furnished to Business Personnel is in the public domain;

12.3.2 to any Protected Information which, after it is furnished to Business Personnel:

(a) is acquired by the RTL or any subsidiary of the RTL in circumstances in which this Clause 12 does not apply; or

(b) is acquired by the RTL or any subsidiary of the RTL in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or

(c) enters the public domain otherwise than as a result of a breach by the RTL or any subsidiary of the RTL of its obligations in this Clause 12.

12.3.3 to the disclosure of any Protected Information to any person if the RTL or any subsidiary is required or permitted to make such disclosure to such person:

(a) in compliance with the duties of the RTL or any associate under the Act or any other requirement of a Competent Authority; or

(b) in compliance with the conditions of its RTL Licence or

any document referred to in its RTL Licence with which the RTL is required to comply; or

- (c) in compliance with any other requirement of law; or
- (d) in response to a requirement of any recognised stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
- (e) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal.

12.3.4 to any Protected Information to the extent that the RTL or any of its subsidiaries is expressly permitted or required to disclose that information under the terms of any agreement or arrangement (including the Fuel Security Code) with the Party to whose affairs such Protected Information relates.

12.4 The RTL and its subsidiaries may use all and any information or data supplied to or acquired by it, from or in relation to the other Party to this Agreement in performing its Permitted Activities and may pass the same to subsidiaries of the RTL which carry out such activities and the User hereto agrees to provide all information to the RTL and its subsidiaries for such purpose.

12.5 The Company and its subsidiaries may use all and any information or data supplied to or acquired by it from the RTL pursuant to Clause 12.3.3 in relation to this Agreement in performing its activities under The Company Transmission Licence including for the following purposes:

12.5.1 the operation and planning of the GB Transmission

System;

12.5.2 the calculation of charges and preparation of offers of terms for connection to or use of the GB Transmission System;

and the User agrees to provide all information to the RTL and its subsidiaries for such purposes.

12.6 The RTL undertakes that, having regard to the activities in which any Business Person is engaged and the nature and effective life of the Protected Information divulged to him by virtue of such activities, neither the RTL nor any of its subsidiaries shall unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Protected Information or permit Protected Information to be divulged to any Business Person:

- (a) who has notified the RTL or the relevant subsidiary of his intention to become engaged as an employee or agent of any other person (other than of the RTL or any subsidiary thereof);
or
- (b) who is authorised by licence or exemption to generate or supply electricity.

12.7 Without prejudice to other provisions of this clause 12 the RTL shall procure that any additional copies of the Protected Information, whether in hard copy or computerised form, will clearly identify the Protected Information as protected.

12.8 The RTL undertakes to use all reasonable endeavours to procure that no employee is a Corporate Functions Person unless the same is

necessary for the proper performance of his duties.

12.9 Confidentiality for User

12.9.1 User hereby undertakes with the RTL and its subsidiaries that it shall preserve the confidentiality and secrecy of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes Confidential Information except:

- (a) in the circumstances set out in Clause 12.9.2;
- (b) to the extent expressly permitted by this Agreement; or
- (c) with the consent in writing of the RTL.

12.9.2 Exceptions: the circumstances referred to in Clause 12.9.1(a) are:

- (a) where the Confidential Information, before it is furnished to User, is in the public domain; or
- (b) where the Confidential Information, after it is furnished to User:
 - (i) is acquired by User in circumstances in which this Clause 12 does not apply; or
 - (ii) is acquired by User in circumstances in which this Clause 12 does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 12; or
 - (iii) enters the public domain otherwise than as a result of a breach by User of its obligations in this Clause

12; or

- (c) if User is required or permitted to make disclosure of the Confidential Information to any person:
 - (i) in compliance with the duties of User under the Act or any other requirement of a Competent Authority;
 - (ii) in compliance with the conditions of any Licence or any document referred to in any Licence with which User is required to comply;
 - (iii) in compliance with any other requirement of law;
 - (iv) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
 - (v) pursuant to the Arbitration Rules for the Electricity Supply Industry Arbitration Association or pursuant to any judicial or other arbitral process or tribunal; or
- (d) where Confidential Information is furnished by User to the employees, directors, agents, lenders, consultants and professional advisers of User in each case on the basis set out in Sub-Clause 12.10.

12.10 With effect from the date of this Agreement User shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under this Clause 12. These procedures will include:

12.10.1 the Confidential Information will be disseminated within User

only on a “need to know” basis;

12.10.2 employees, directors, agents, lenders, consultants and professional advisers of User in receipt of Confidential Information will be made fully aware of User’s obligations of confidence in relation thereto.

13. TITLE TO ASSETS

13.1 The RTL acknowledges that it does not have and will not acquire any title, right or interest in User’s Land save for such rights as are expressly granted herein or otherwise provided nevertheless that, if according to any rule of law, the RTL could acquire any such title, right or interest in any of User’s Land, the RTL undertakes to do all that is required to transfer such right or interest to User to ensure that User shall not, by reason of such right or interest arising, have its full rights in such land diminished (and in the interim to hold such rights in trust for User) and shall if requested by User, be obliged forthwith to establish trust arrangements valid under Scottish law so as to ensure that any such right or interest shall be held on behalf of User.

13.2 User agrees that it shall not by any act or default render the RTL Assets liable to any distress execution or other legal process, and in the event that the RTL Assets shall become so liable, shall forthwith give notice of any such proceedings to the RTL and shall forthwith notify any third party instituting any such process of the ownership of such RTL Assets.

13.3 If User desires to mortgage or charge User’s Land or its interest therein on which any RTL Assets are located or to enter into any arrangement which, if made, might affect the rights of the RTL expressly granted herein, then User shall ensure that the RTL Assets are not and will not

be subject to the rights granted therein and are not and will not be affected by the mortgage, legal charge or other agreement or arrangement, and shall give prior written notification thereof to the RTL.

- 13.4 In the event that User shall wish to grant rights over or dispose of any interest in or change the use of User's Land User shall notify the RTL of such wish and fully consult the RTL in respect thereof and shall not grant such rights or make such disposal or change of use save on terms securing to the reasonable satisfaction of that other the Rights of Access granted in respect of User's Land.

14. LIMITATION OF LIABILITY

- 14.1 Subject to sub-clauses 5.3, 6.2, 9.2 and 14.5 and save as provided in this sub-clause 14.1 and sub-clause 14.2 neither Party ("the Party Liable") nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of this Agreement other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach and which resulted from:

14.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

14.1.2 the liability of the other Party to any other person for loss arising from physical damage to the property of any person.

- 14.2 Nothing in this Agreement shall exclude or limit the liability of the Party Liable for death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents and the Party Liable shall indemnify and keep indemnified the other Party, its officers, employees or agents, from and against all such and any loss or liability

which the other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its officers, employees or agents.

14.3 Subject to sub-clauses 5.3, 6.2, 9.2 and 14.5 neither Party, nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:-

14.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

14.3.2 any indirect or consequential loss; or

14.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in sub-clauses 14.1.2 and 14.2.

14.4 The rights and remedies provided by this Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this Agreement, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the Parties hereby waives in the fullest extent possible all such rights and remedies provided by common law or statute, and releases the Party Liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this Agreement and undertakes not to enforce any of the same except as expressly provided herein.

14.5 Save as otherwise expressly provided in this Agreement, this clause 14

insofar as it excludes or limits liability shall override any other provision in this Agreement provided that nothing in this clause 14 shall exclude or restrict or otherwise prejudice or affect any of:

14.5.1 the rights, powers, duties and obligations of either Party which are conferred or created by the Act, the User's Licence, RTL's Licence or the Regulations or any amendment or re-enactment thereof; or

14.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence as aforesaid or otherwise howsoever.

14.6 Each of the sub-clauses of this clause 14 shall:

14.6.1 be construed as a separate and severable contract term, and if one or more of such sub-clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-clauses shall remain in full force and effect and shall continue to bind the Parties; and

14.6.2 survive termination of this Agreement.

14.7 Each Party agrees that the other Party holds the benefit of sub clauses 14.1, 14.2 and 14.3 above for itself and as trustee and agent for its officers, employees and agents

14.8 Each Party hereby acknowledges and agrees that the provisions of this clause 14 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof.

15. INTELLECTUAL PROPERTY

All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by a Party, its officers, employees, agents or consultants during the currency of this Agreement shall vest in such Party as the sole beneficial owner thereof save where the Parties agree in writing otherwise.

16. FORCE MAJEURE

If either Party (the “Non-Performing Party”) shall be unable to carry out any of its obligations under this Agreement due to a circumstance of Force Majeure this Agreement shall remain in effect but save as otherwise provided herein the Non-Performing Party’s obligations hereunder shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:

- (i) the Non-Performing Party gives the other Party prompt notice describing the circumstance of Force Majeure, including the nature of the occurrence, its expected duration and the particular obligations affected by it, and continues to furnish regular reports with respect thereto during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no liabilities of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and

- (v) as soon as practicable after the event which constitutes Force Majeure the Parties shall discuss how best to continue their operations so far as possible in accordance with this Agreement.

17. WAIVER

No delay by or omission of a Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or future exercise thereof or the exercise of any other right, power, privilege or remedy.

18. NOTICES

18.1 Any notice or other communication to be given by one Party to the other under, or in connection with the matters contemplated by, this Agreement shall be addressed to the recipient and sent to the address, telex number or facsimile number of such other Party given in Schedule 6 and marked for the attention of the person so given or to such other address, telex number and/or facsimile number and/or marked for such other attention as such other Party may from time to time specify by notice given in accordance with this clause 18 to the Party giving the relevant notice or other communication to it.

18.2 Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by, this Agreement shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or telex or facsimile, and shall be deemed to have been received:

- 18.2.1 in the case of delivery by hand, when delivered; or
- 18.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or
- 18.2.3 in the case of telex, on the transmission of the automatic answerback of the addressee (where such transmission occurs before 1700 hours on the day of transmission) and in any other case on the day following the day of transmission; or
- 18.2.4 in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

19. VARIATIONS

The provisions of Schedules 1, 3, 4, 5 and 6 may be varied from time to time by written memorandum signed by an authorised officer of each of the Parties. Subject thereto no variations to this Agreement shall be effective unless made by way of supplemental deed.

20. OVERRIDING PROVISIONS & GOOD INDUSTRY PRACTICE

- 20.1 In the event of any conflict between RTL's or User's obligations hereunder and their obligations under the User's Licence and RTL's Licence, the Act, any direction of the Secretary of State, the Authority or ruling of the Competition Commission, the Grid Code, Connection Agreement or the Bilateral Connection Agreement, the provisions of the User's Licence and RTL's Licence, the Act, the Grid Code, the

Connection Agreement or Bilateral Agreement the direction of the Secretary of State, the Authority, or ruling of the Competition Commission shall prevail and accordingly the RTL and User respectively shall not be responsible for any failure to perform their respective obligations hereunder to the extent that any such failure is directly attributable to proper compliance with such provisions, rulings or directions.

20.2 Both parties shall observe their respective obligations hereunder in accordance with Good Industry Practice.

21. ASSIGNMENT AND SUB-CONTRACTING

21.1 The rights and obligations of a Party may not be assigned (otherwise than to an Affiliate or by way of a charge or an assignment by way of security) without the consent of the other Party, such consent not to be unreasonably withheld.

21.2 Each Party shall have the right to sub-contract or delegate the performance of any of its obligations or duties arising under this Agreement without the consent of the other. The sub-contracting by either Party of the performance of any obligations or duties under this Agreement shall not relieve such Party from the liability for performance of such obligation or duty.

22. ILLEGALITY AND PARTIAL INVALIDITY

22.1 If at any time any provision of this Agreement should become or be declared unlawful, invalid, illegal or unenforceable in any respect under the law of any jurisdiction, neither the validity, legality or enforceability of the remaining provisions nor the validity, legality or enforceability of such provision under the law of any other jurisdiction shall be affected.

22.2 If any part of a provision of this Agreement is or becomes or is declared invalid, unlawful, illegal or unenforceable but the rest of such provision would remain valid, lawful or enforceable if part of the wording were deleted the provision shall apply with such modifications as may be necessary to make it valid, lawful, enforceable and effective but without affecting the meaning of legality, validity or enforceability of any other provision of this Agreement.

23. TERM AND TERMINATION

This Agreement shall continue until no RTL Assets are on User's land and no Facility Assets or Services are shared or provided.

24. REGISTRATION AND MEMORANDUM

24.1 Where any or all of User's Land is registered or the RTL's interest therein is subject to compulsory registration at the Land Register of Scotland, the parties hereto agree to apply to the Keeper for the registration as appropriate of the rights and obligations granted by or contained in this Agreement and User agrees to place on deposit at the Land Register of Scotland all relevant Land or Charge Certificates to enable such registration to be effected.

24.2 Where any of User's Land is not so registered or subject to compulsory registration, User shall procure within six months of the date hereof that certified copies of any such agreement are attached to the most recent conveyance (in the case of a heritable interest) or the lease under or pursuant to which they hold such land.

25. ENTIRE AGREEMENT

25.1 This Agreement contains the entire agreement between the Parties with

respect to the subject-matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the Parties with respect thereto and:

- (i) each of the Parties acknowledges and confirms that it does not enter into this Agreement in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this Agreement; but
- (ii) the RTL acknowledges that User may have entered or may enter into agreements with other parties who hold a Licence containing similar rights and/or liabilities to those contained in this Agreement affecting User's Land and any assets thereon. User shall, when entering into such agreement with any such party use reasonable endeavours to avoid conflicts between the provisions thereof and the provisions of this Agreement but in the event of any conflict User shall use all reasonable endeavours to procure that appropriate arrangements are made to settle the same to give full effect (so far as practicable) to the rights and liabilities under this Agreement and under such other agreements as aforesaid. In the event of any dispute as to such conflict and/or arrangements the dispute shall be dealt with in accordance with Clause 10.

IN WITNESS whereof this Agreement has been entered into as a deed the day and year first above written.

SCHEDULE 1

RTL ASSETS ON USER LAND

SCHEDULE 2

USER'S LAND

SCHEDULE 3

Part I

Security Details (Cl. 4.1)

User's Land

Part II

Plant MV LV Apparatus Safety Co-Ordination Procedures (Cl. 4.5)

- (1) The Parties will comply with the Site Specific Safety Rules and any agreed modifications thereto.
- (2) The Parties will arrange for the Site Specific Safety Rules to be written down and to be implemented by the person or persons responsible on behalf of the relevant Parties for the co-ordination of safety.

SCHEDULE 4

USER OWNED FACILITY ASSETS

PART ONE

PART TWO

SCHEDULE 5
SHARED SERVICES PROVIDED BY USER

PART ONE

PART TWO

SCHEDULE 6

Addresses, Fax Nos etc (Cl. 19.)

[Insert details of Relevant Transmission Licensee]

[]

Telephone:

Facsimile:

[Insert details of User]

[]

Telephone:

Facsimile:

THE COMMON SEAL of)
)
[RELEVANT TRANSMISSION LICENSEE])
was hereunto affixed in the presence of:-)

THE COMMON SEAL of)
[])
was hereunto affixed in the presence of:-)

END OF SECTION O PART I B