

**NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED
SERVICE TERMS & CONDITIONS FOR THE PROVISION
OF DISTRIBUTION RESTORATION SERVICES
(TOP-UP SERVICES)**

DRAFT

Draft v.1.0

DRAFT DISTRIBUTION RESTORATION CONTRACT TERMS (TOP-UP SERVICE TERMS)

1. GENERAL TERMS AND CONDITIONS/DEFINITIONS AND INTERPRETATION

- 1.1. The terms set out in this document, including its schedules, (these “**Service Terms & Conditions**”) together with the General Terms and Conditions (to the extent its provisions are expressly incorporated herein) and the Contract Form shall form the entire agreement between NGESO and the Provider regarding the provision of Top-Up Services (this “**Agreement**”). In the event of any conflict between these Service Terms & Conditions and the General Terms and Conditions, these Service Terms & Conditions shall take precedence.
- 1.2. Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in the Contract Form, in paragraph 11.3 of the Connection and Use of System Code, the Glossary and Definitions section of the Grid Code, in Schedule 1 to these Service Terms & Conditions or the General Terms and Conditions shall have the same meanings where used herein.
- 1.3. The rules of interpretation set out in the General Terms and Conditions shall apply as if set out in full herein.
- 1.4. The Provider acknowledges and agrees that where specific provisions of the Grid Code are expressly stated in these Service Terms & Conditions to apply, it shall comply with those provisions notwithstanding that it is not otherwise bound to comply with the Grid Code.

2. COMMENCEMENT

- 2.1. The provisions of this Agreement shall, subject to Clause 2.2, apply from the date stated on the front page of the Contract Form and, subject always to earlier termination in accordance with Clause 3 (*Implementation of the Works*), Clause 15 (*Termination*), Clause **Error! Reference source not found.** (*Force Majeure*) or [*other*], shall continue in force and effect until the expiry of the Service Term.
- 2.2. This Agreement, other than this Clause 2 and Clauses 15 (Termination), shall in all respects be conditional on the Conditions Precedent being satisfied by the Provider or waived by the NGESO by the CP Date.
- 2.3. The Provider shall use all reasonable endeavours to ensure that the Conditions Precedent are satisfied as soon as possible after the date hereof and in any event by not later than the CP Date.
- 2.4. If any Condition Precedent has not been satisfied by the Provider or waived by the NGESO on or before the CP Date this Agreement shall (to the extent in force) cease to apply.

3. IMPLEMENTATION OF THE WORKS

- 3.1. The Provider shall (at its own cost) implement and complete the Works in accordance with Good Industry Practice by the Scheduled Commercial Operations Date.

3.2. The Provider shall, by not later than ten (10) Business Days following the end of each calendar month until the Commercial Operations Date has occurred (or more frequently on either Party's request), provide to NGESO a progress report in writing setting out details of:

3.2.1. the progress of the Works by reference to the Project Plan, including progress in the delivery to site of plant and equipment required for the operation of the Contracted Top-Up Plant and the installation of such plant and equipment and progress in obtaining all outstanding consents, permissions, approvals, licences, exemptions and other permits (in legally effectual form) as may be necessary for the operation of the Contracted Top-Up Plant in accordance with the terms of this Agreement;

3.2.2. the Provider's proposals for remedying any delay or anticipated delay in implementing the Project Plan;

3.2.3. the occurrence of any Delay Event and any adjustment (which shall, subject to NGESO's right to terminate under Clause 15.4, reflect the period of delay) to the Scheduled Commercial Operations Date; and

3.2.4. any proposed revisions to the Project Plan necessary to reflect the above,

and, subject to NGESO's approval (not to be unreasonably withheld or delayed) the revised Project Plan shall supersede the then current Project Plan, provided that any dispute concerning the occurrence or duration of a Delay Event and any related change to the Scheduled Commercial Operations Date may be referred by either NGESO or the Provider by notice in writing to the other for determination by the Expert.

3.3. When the Works are substantially completed and the Contracted Top-Up Plant is capable in the Provider's opinion of providing the Contracted Top-Up Services the Provider shall notify NGESO in writing of the dates on which the Contracted Top-Up Plant will be available for a Commissioning Assessment over the following period of thirty (30) days. The Parties shall use reasonable endeavours to ensure that the Commissioning Assessment is conducted as soon as possible and shall agree the date and time of the Commissioning Assessment, provided always that, although NGESO shall not unreasonably refuse to carry out a Commissioning Assessment at any time and date that may be requested by the Provider, having regard to the cost implications, NGESO reserves the right to cancel any Commissioning Assessment previously agreed to be carried out. In such a case the Parties shall agree an alternative time and date when the Commissioning Assessment shall be carried out which shall be as soon as possible thereafter. NGESO and the DNO shall be entitled to attend a Commissioning Assessment and any Party may request the Expert to be present at a Commissioning Assessment.

3.4. As soon as practicable after the date on which the Commissioning Assessment has been completed and in any event within five (5) Business Days, NGESO shall notify the Provider and the DNO whether the Contracted Top-Up Plant has passed or failed the Commissioning Assessment. Any dispute as to whether the Commissioning

Assessment has been passed or failed may be referred by either Party to the Expert for determination.

3.5. If the Contracted Top-Up Plant has not successfully passed the Commissioning Assessment by the Scheduled Commercial Operations Date then, save to the extent due to a Delay Event, the Provider shall pay to NGESO, without deduction or set off, liquidated damages (“**LADs**”) at the LAD Rate with effect from the Scheduled Commercial Operations Date until and including the date on which the Contracted Top-Up Plant successfully passes the Commissioning Assessment, provided always that such liquidated damages shall not in any event exceed the LAD Cap.

3.6. If at any time the aggregate amount of LADs paid or payable under Clause 3.5 is equal to the LAD Cap then, NGESO shall have the right to terminate this Agreement by written notice to the Provider.

3.7. For the purposes of Clause 3.5, LADs shall be payable by the Provider to NGESO on a monthly basis in accordance with Clause 10 (*Payment*) and the due date shall be ascertained accordingly.

3.8. The remedies prescribed in this Clause 3 shall be the NGESO’s sole and exclusive remedies with respect to any failure of the Contracted Top-Up Plant to pass successfully a Commissioning Assessment by the Scheduled Commercial Operations Date.

4. WORKS CONTRIBUTION PAYMENTS

4.1. Subject to receipt by NGESO of Acceptable Security for the Security Amount and subject to that security remaining in full effect, NGESO shall, by reference to each Works Contribution Period, pay to the Provider a Works Contribution Payment in respect of the Internal Costs and External Costs incurred by the Provider in that Works Contribution Period subject to receipt from the Provider of invoices that:

4.1.1. itemise Internal Costs and External Costs separately;

4.1.2. to the extent relating to External Costs, do not exceed, when aggregated with all other External Costs so invoiced, the External Costs Cap and are supported by copy invoices from the relevant third party contractors and such other evidence of having been incurred as NGESO may reasonably require; and

4.1.3. to the extent relating to Internal Costs, do not exceed, when aggregated with all other Internal Costs so invoiced, the Internal Costs Cap and include a description which is reasonably satisfactory to NGESO of that part of the Works to which such invoice relates and is supported by such other evidence as NGESO may reasonably require,

provided always that, in each case, the invoiced sums shall be limited to reasonable costs which have been reasonably incurred and which the Provider shall have used its reasonable endeavours to mitigate.

4.2. Following receipt of any invoice in respect of the Works submitted by the Provider in accordance with Clause 4.1, NGESO shall, as soon as reasonably practicable thereafter, notify the Provider and provide a reason where NGESO determines

(acting reasonably) that such invoice does not meet the requirements of Clause 4.1 and the Provider shall submit a replacement invoice that does meet those requirements as soon as reasonably practicable thereafter.

- 4.3. Each invoice meeting the requirements of Clause 4.1 shall be paid by NGESO within forty two (42) days after receipt.
- 4.4. The Parties shall develop and agree the DRZP for the Distribution Restoration Zone by not later than the Service Commencement Date.
- 4.5. The Provider acknowledges that it should not over-recover its costs where a Works Contribution Payment has been made to fund all or part of the Contracted Top-Up Plant and the Provider seeks to provide a Balancing Service or other similar service to the DNO or a third party (otherwise than pursuant to existing contractual obligations) using any part of the Funded Capability. Accordingly, it is hereby agreed that the Provider will not offer terms to NGESO for provision of any Balancing Service or offer terms to the DNO or a third party for the provision of a similar service using any part of the Funded Capability during any period prior to the Expiry Date without first seeking to agree in writing with NGESO an appropriate reduction in the Availability Price for the duration of any resulting contract reflecting the proportion of the capital cost of the Funded Capability. NGESO shall, as soon as reasonably practicable following receipt of a written request from the Provider, meet with the Provider to discuss an appropriate reduction, and each of NGESO and the Provider shall use reasonable endeavours to agree on such appropriate reduction in the Availability Price within such period as is required to allow the Provider to offer terms to NGESO with respect to the relevant Balancing Service or offer terms to the DNO or a third party for the provision of a similar service. If no such agreement can be concluded, then NGESO and the DNO each reserves the right to decline to contract with the Provider for any Balancing Service or similar service provided from any part of the Funded Capability.
- 4.6. If NGESO and the Provider have agreed in writing prior to the date of this Agreement, the basis on which the Provider may use Funded Capability to provide Balancing Services or other similar services to the DNO or a third party the Provider may provide Balancing Services or other similar services to the DNO or a third party on the basis of that agreement.
- 4.7. NGESO shall be entitled to call upon the security provided to it in accordance with Clause 4.1 if: -
 - 4.7.1. an Annual Availability Shortfall Payment has become payable under this Agreement and has not been paid by the Provider in accordance with Clause 10.1.3;
 - 4.7.2. a Works Contribution Refund Payment has become payable under this Agreement and has not been paid by the Provider in accordance with Clause 15.3;
 - 4.7.3. LADs have become payable under this Agreement and have not been paid by the Provider in accordance with Clause 3.5; or
 - 4.7.4. other equivalent Acceptable Security of the required amount has not been put in place within the time periods provided for in this Clause 4. Where the security has been called for this reason, NGESO shall repay the amount so called when the Provider puts in place the appropriate replacement security.
- 4.8. If any bank or banks being the issuer of a bond or letter of credit shall suffer at any time a change of rating so as to fall below that required above the Provider shall

forthwith on the Provider becoming aware of such occurrence notify NGESO and within twenty (20) Business Days of the Provider becoming aware of such change of rating provide to NGESO a replacement bond or letter of credit from a Rated Bank on the same terms as to amount and expiry date as the security being replaced or equivalent Acceptable Security. For the avoidance of doubt any such change of rating shall not during such period of twenty (20) Business Days constitute a breach under this Agreement, provided that the replacement security shall be provided, and from the date of its provision the security which it replaces shall be released by NGESO.

- 4.9. Where the form of Acceptable Security is a parent company guarantee and the Provider has elected in the Contract Form that this Clause **Error! Reference source not found.** shall apply, the Provider shall procure that:

4.9.1. the Guarantor's auditor shall as soon as reasonably practicable following the end of each financial year of the Guarantor in which the parent company guarantee remains in force, certify (the "**Auditor's Certificate**") the net asset value on a consolidated basis of the Guarantor, by reference to the Guarantor's most recent annual audited financial statements; and

4.9.2. the Guarantor's finance director shall as soon as reasonably practicable following the end of the second quarter in each of the Guarantor's financial years in which the parent company guarantee remains in force, certify (the "**FD's Certificate**") the net asset value on a consolidated basis of the Guarantor, by reference to the Guarantor's half-year unaudited financial statements,

and if:

4.9.3. the Provider shall fail to procure: (i) the Auditor's Certificate by not later than six (6) months after the end of a financial year of the Guarantor; or (ii) the FD's Certificate by not later than one (1) month after the end of the second quarter in a financial year of the Guarantor (in either case, the "**Due Date**"); or

4.9.4. the net asset value of the Guarantor stated in the Auditor's Certificate or the FD's Certificate (as the context requires) is less than the Guarantor Minimum NAV,

4.9.5. the Provider shall forthwith following the Due Date or the date of issue of the Auditor's Certificate or the FD's Certificate (as the context requires) provide to NGESO a replacement for such parent company guarantee comprising another form of Acceptable Security.

- 4.10. Where the form of Acceptable Security is a parent company guarantee and the Provider has elected in the Contract Form that this Clause **Error! Reference source not found.** shall apply, the Provider shall procure that, if the Guarantor shall suffer at any time a change of rating so as to fall below the Guarantor Minimum Credit Rating, the Provider shall forthwith on becoming aware of such occurrence notify NGESO and within fourteen (14) days of the Provider becoming aware of such change of rating provide to NGESO a replacement for such parent company guarantee comprising another form of Acceptable Security.

- 4.11. The Provider shall on reasonable notice to NGESO be entitled to request the substitution of any form of security then in place with any other Acceptable Security and on such replacement security being put in place NGESO shall release the

security first provided. The Provider may provide different security instruments to NGESO at any time, each securing a different amount, provided that the number of security instruments does not exceed six at any time and that the aggregate sum secured is equal to the Security Amount.

5. SERVICE TERM

- 5.1. The Provider shall, subject to the development and agreement of the DRZP, make the Contracted Top-Up Plant Available with effect on and from the Service Commencement Date and, subject to earlier termination of this Agreement in accordance with Clause 15 15or extension in accordance with Clause 5.2, until the Expiry Date (the “**Service Term**”).
- 5.2. If the provisions of this Agreement shall not by then have terminated, not later than twelve (12) months prior to the end of the Service Term (or any Extended Term agreed under this Clause), the Parties shall meet to discuss whether the Service Term should be extended and if so the duration of such extension (an “**Extended Term**”) and the terms (including prices) upon which the Contracted Top-Up Services shall continue to be made Available by the Provider, provided always that no extension may be agreed for a period which, either alone or when aggregated with any other period of extension, shall exceed [] years. Unless the Service Term is further extended under this Clause or this Agreement shall by then have terminated, this Agreement shall terminate automatically without notice at the end of an Extended Term.

6. AVAILABILITY OF TOP-UP SERVICES

- 6.1. The Provider shall, throughout the Service Term, fuel, operate, maintain and repair the Contracted Top-Up Plant in accordance with Good Industry Practice with a view to making the Contracted Top-Up Plant Available to deliver the Contracted Top-Up Services in accordance with DR Instructions and in accordance with the Top-Up Service Requirements.
- 6.2. The Provider shall notify NGESO and the DNO through the DRZ Control System if at any time the Contracted Top-Up Plant will not be capable of providing one or more of the Contracted Top-Up Services in accordance with the applicable Top-Up Service Technical Requirements (“**Availability Redeclaration**”)¹. The Provider shall further notify (“**Restoration Notice**”) NGESO and the DNO through the DRZ Control System once the capability of the Contracted Top-Up Plant has been restored specifying the time and date of such restoration. If the Contracted Top-Up Plant was Unavailable by reason of an Event of Default, the Restoration Notice shall include a brief explanation as to the reason for such Event of Default.
- 6.3. Promptly following receipt of a Restoration Notice, NGESO may inform the Provider that it wishes to conduct a test (a “**Reproving Assessment**”) in order to verify such restoration of Availability and, in respect thereof, the relevant provisions of Clause 11 (*Testing*) shall apply. The Contracted Top-Up Plant shall then be treated as

¹ NB A mechanism will be developed for an appropriate adjustment to the Monthly Availability Payment in such circumstances.

Unavailable from the date of NGESO's notice until the date on which the Contracted Top-Up Plant successfully passes a Reprising Assessment.

6.4. If NGESO fails to notify the Provider in accordance with Clause 6.3 that it wishes to carry out a Reprising Assessment then the Availability of the Contracted Top-Up Plant shall be treated as restored with effect from the time set out in the Restoration Notice and the Monthly Availability Payments shall become payable with effect from such time and date.

6.5. NGESO shall notify the Provider and the DNO if at any time:

6.5.1. the DRZ Anchor Plant is not available for the purposes of the DRZP; or

6.5.2. the DRZ Top-Up Services available for the purposes of the DRZP are [as determined by the DRZ Control System] insufficient for implementation of the DRZP,

and the Contracted Top-Up Plant shall be treated as Unavailable until such time as NGESO notifies the Provider and the DNO that the availability of the DRZ Anchor Plant or the availability of the DRZ Top-Up Services has been restored.

6.6. The Provider shall, prior to the commencement of each Availability Assessment Period, notify NGESO and the DNO in writing by such means as NGESO may reasonably require of the dates and times of all planned maintenance and inspection periods applicable to the Contracted Top-Up Plant ("**Maintenance Plan**") for the forthcoming Availability Assessment Period. The Provider may propose modifications to the Maintenance Plan from time to time during the Availability Assessment Period on no less than twenty-eight (28) days notice. The Maintenance Plan shall not, subject to Clause 6.8, exceed the maximum number of days of planned outages specified for the relevant Availability Assessment Period in the table set out in the Contract Form.

6.7. Within fourteen (14) days of the Provider's notification of the Maintenance Plan or any modification thereto under Clause 6.5, NGESO and the DNO shall notify the Provider of its agreement with or objections to the Maintenance Plan or any modification thereto and, if NGESO shall make no notification within such time, it shall become binding on the Parties. The Parties shall act in good faith and use reasonable endeavours to resolve any objections notified by NGESO taking into account maintenance practices consistent with Good Industry Practice and the Maintenance Plan shall be amended accordingly.

6.8. If NGESO, in its absolute discretion, agrees to any additional number of days outage for the purposes of Clause 6.6, those additional outage days shall not be included for the purposes of calculating the Annual Availability Shortfall Payment.

7. TOP-UP SERVICE INSTRUCTION AND DELIVERY

7.1. For the purposes of an Electricity System Restoration, the DNO shall, at the request of NGESO, issue a DR Instruction to the Provider to start-up and resynchronise to the Local Distribution Network and provide any or all of the Contracted Top-Up Services either manually or automatically through the DRZ Control System and in accordance with the DRZP.

- 7.2. [The DNO shall be entitled to connect the Contracted Top-Up Plant to the DRZ Control System and the Provider shall for that purpose provide access to its site on reasonable notice. The Provider must [at its own cost and expense] provide all necessary data feeds to the DRZ Control System.]
- 7.3. Each of the Parties agrees to participate at its own cost and in good faith in all meetings of the DRZ Operational Working Group, including any review of the DRZP and its operation.

8. SERVICE FEES AND REBATES

- 8.1. With effect from the Service Commencement Date, NGESO shall pay a monthly payment for each Settlement Period in the Month in which the Contracted Top-Up Plant was Available ("**Monthly Availability Payment**"), calculated by reference to the Availability Price in accordance with Schedule 3, Part I (*Availability Payments and Rebates*).
- 8.2. NGESO shall be entitled to apply an Availability Rebate in the circumstances specified in Schedule 2 (*Events of Default*).
- 8.3. If in any Availability Assessment Period the Actual Availability of the Contracted Top-Up Plant falls below the Target Availability, the Provider shall pay an Annual Availability Shortfall Payment.
- 8.4. If in any Availability Assessment Period the Actual Availability of the Contracted Top-Up Plant falls below the Minimum Availability:
- 8.4.1. the Provider shall pay an Annual Availability Shortfall Payment; and
 - 8.4.2. the Availability Price shall be reduced by a fraction the denominator of which is the Target Availability and the numerator of which is the Actual Availability of the Contracted Top-Up Plant until such time as the Actual Availability of the Contracted Top-Up Plant has exceeded the Minimum Availability in a subsequent Availability Assessment Period.
- 8.5. If the Actual Availability of the Contracted Top-Up Plant falls below the Minimum Availability in any two consecutive Availability Assessment Periods then, at NGESO's discretion:
- 8.5.1. the Provider shall pay an Annual Availability Shortfall Payment; or
 - 8.5.2. NGESO may terminate this Agreement in accordance with Clause 15.2.3.
- 8.6. [If an Electricity System Restoration is implemented, the Provider shall be entitled to payment for energy exported in compliance with DR Instructions and the DRZP in any Settlement Period that does not fall within a Market Suspension Period, at a price equal to the System Buy Price calculated under the BSC or, in any Settlement Period that falls within a Market Suspension Period, at a price based on the Contingency Imbalance Price (as defined in the BSC).]

9. SAFETY AND INSURANCE

- 9.1.1. NGESO and the DNO acknowledge that the decision to operate the Contracted Top-Up Plant outside its safe operating parameters is one for the Provider alone, and accept that the Provider may change generation or flow on the Contracted

Top-Up Plant if it believes it is necessary for safety reasons (whether relating to personnel or Plant or Apparatus).

9.1.2. The responsibility for injury to personnel and damage to Plant and Apparatus owned and/or operated by the Provider caused by operation of the Contracted Top-Up Plant in an Electricity System Restoration therefore rests with the Provider and neither NGESO nor the DNO shall have any liability whatsoever in connection therewith.

9.1.3. The Provider shall indemnify and keep indemnified NGESO and the DNO in respect of liability for death or personal injury and/or damage to Plant and Apparatus owned and/or operated by NGESO or the DNO (as the context requires) and arising out of or in connection with such operation of the Contracted Top-Up Plant outside of its safe operating parameters save to the extent that:

9.1.3.1. such death or personal injury and/or damage to Plant and Apparatus is caused by the negligent act or omission or default of NGESO or the DNO; and

9.1.3.2. the Provider has operated the Contracted Top-Up Plant in accordance with Good Industry Practice.

9.1.4. The Provider shall insure for Public Liability risks arising from its operation of the Contracted Top-Up Plant with a reputable insurer with a minimum value of ten million pounds Sterling (£10,000,000) for each and every claim.

9.1.5. The Provider acknowledges and agrees that, for the purposes of Clause 9.1.3, references to NGESO shall include the Transmission Owner and that, in addition to NGESO, and the Transmission Owner shall be entitled to enforce Clause 9.1.3.

10. PAYMENT

10.1. In respect of each calendar month during the Term and by no later than expiry of the second calendar month which follows, NGESO shall send to the Provider a statement ("**Monthly Statement**") setting out its calculation of:-

10.1.1. the Monthly Availability Payment payable by NGESO to the Provider pursuant to Clause 8.1;

10.1.2. any Availability Rebates payable by the Provider to NGESO pursuant to Clause 8.2;

10.1.3. (where relevant) any Annual Availability Shortfall Payment due by the Provider;

10.1.4. any adjustments made to previous Monthly Statements; and

10.1.5. the resulting net amount due to (or from, as the case may be) the Provider.

10.2. [Payment mechanics to be added]²

² To be developed or incorporated by reference from the General Contract Terms, subject to necessary modification.

11. TESTING

- 11.1. The Provider shall once in each period of three calendar years during the term, undertake an assessment ("**Capability Assessment**") of the Contracted Top-Up Plant in accordance with []³.
- 11.2. The Provider shall, if so requested by NGESO after notifying restoration of capability of the Contracted Top-Up Plant under Clause 6.2, undertake a Reproving Assessment. The scope of a Reproving Assessment shall in each case have regard to the nature and extent of the circumstances which gave rise to the Contracted Top-Up Plant no longer having the Top-Up Plant Capability and shall be discussed and agreed with the Provider (such agreement not to be unreasonably withheld or delayed). Without limiting the foregoing, a Reproving Assessment may include the monitoring of the normal operation of the Contracted Top-Up Plant.
- 11.3. The Provider, NGESO and the DNO shall each bear its own costs incurred in conducting any Capability Assessment or Reproving Assessment under this Clause 11 save where the Provider fails such test, in which event the Provider shall, in addition to bearing its own costs, reimburse to NGESO and the DNO their respective reasonable resource costs (other than costs incurred in connection with reconfiguring the National Electricity Transmission System or the Distribution Network) and expenses reasonably incurred as a direct result thereof. Additionally, the Provider shall reimburse to NGESO and the DNO all of their respective reasonable costs reasonably incurred as a direct result of a Reproving Assessment conducted either following an Event of Default or following failure by the Provider of a previous Reproving Assessment.
- 11.4. If a bona fide dispute relates to the performance of the Contracted Top-Up Plant or the results of a Capability Assessment or a Reproving Assessment, NGESO and the Provider shall attempt to resolve the dispute by discussion, and if they fail to reach agreement the Provider may require a further Assessment. If the Provider passes such further Assessment, it shall be deemed to have passed the first Assessment. If the Provider fails such further Assessment and a dispute arises in respect of that further Assessment, then the Parties shall attempt to resolve the dispute by discussion but if they fail to reach agreement within three (3) Business Days of the commencement of such discussion either NGESO or the Provider may refer the matter to the Expert for determination.
- 11.5. Each Party shall bear the risk of, and the other Parties shall have no liability to that Party in respect of, loss and damage to that Party's Plant and/or Apparatus caused during or as a result of any Assessment (whether due wholly or partly to the other Party's default or to the malfunction of its Plant or Apparatus or otherwise).

12. MONITORING

- 12.1. [To enable NGESO to monitor the Availability of the Contracted Top-Up Plant, the [DNO] shall record minute by minute measurements of output from the

³ Testing provisions to be developed in due course.

Contracted Top-Up Plant and shall make that data available to NGESO in such format as NGESO may reasonably require.]

- 12.2. [NGESO/DNO] shall be entitled to visit the Provider's site on reasonable notice to conduct investigations of the Contracted Top-Up Plant in order to verify compliance by the Provider with its obligations under these Service Terms & Conditions.

13. INSPECTIONS AND ASSURANCE VISITS

- 13.1. To enable NGESO to verify that the Contracted Top-Up Plant has the capability to provide the Contracted Top-Up Services, the Provider shall permit NGESO to inspect such parts of the Contracted Top-Up Plant as NGESO may reasonably require (in each case upon giving to the Provider not less than 24 hours prior notice) provided that such inspection shall be carried out without undue interference with the normal operation of the Contracted Top-Up Plant.
- 13.2. The Provider shall, subject to Clause 13.3, not more than once in any calendar year and on receipt of not less than one hundred sixty eight (168) hours prior notice, provide NGESO or the DNO (the "**Requesting Party**") access to the Contracted Top-Up Plant for the purposes of ascertaining to its reasonable satisfaction that the Provider has, in accordance with Good Industry Practice, implemented at the Contracted Top-Up Plant appropriate technical, training and documentation procedures (an "**Assurance Visit**"). Assurance Visits shall be carried out without undue interference with the normal operation of the Contracted Top-Up Plant.
- 13.3. Following receipt of any notice under Clause 13.2, the Provider may propose to the Requesting Party an alternative time and date for the Assurance Visit, provided that any such alternative time and date shall not be later than twenty eight (28) days following the time and date specified by the Requesting Party in its notice, and (at its option) the Requesting Party may agree to such alternative time and date. In the event that the Provider unreasonably delays the Assurance Visit beyond the time and date being twenty eight (28) days after the time and date for the Assurance Visit specified by the Requesting Party in its notice, then no Monthly Availability Payments shall accrue to the Provider in respect of the period commencing at the time and date for the Assurance Visit specified in the notice from the Requesting Party and ending upon completion of an Assurance Visit.
- 13.4. In relation to any Assurance visit, the Provider shall permit the Requesting Party to be accompanied by either NGESO or the DNO (as the context requires).
- 13.5. If any dispute arises in relation to an inspection or Assurance Visit, then the Parties shall attempt to resolve the dispute by discussion but if they fail to reach agreement within three (3) Business Days of the commencement of discussions either Party may refer the matter to the Expert for determination.

14. COMMUNICATIONS

- 14.1. Any communications required by these Service Terms to be given in writing shall unless otherwise provided in this clause be made and deemed to have been received in accordance with Clause 25 (*Notices*), save as may be otherwise agreed by the Parties.
- 14.2. The Parties consent to the recording of all telephone conversations between them relating in whole or in part to these Service Terms & Conditions, and each Party

agrees to notify its employees of that consent and obtain their consent to that recording if required by Law.

15. TERMINATION

- 15.1. A Party shall have the right to terminate this Agreement in the circumstances set out in paragraph 8.1 of the General Terms and Conditions as if paragraphs 8.1 and 8.2 were set out in this Agreement in full, save that the references to paragraphs 9.3 (*Service Failure*) and 10.4 (*Force Majeure*) of the General Terms and Conditions shall not be applicable.
- 15.2. Without prejudice to Clause 15.1, NGESO may in its absolute discretion terminate this Agreement with immediate effect by notice in writing to the Provider in the following circumstances:-
 - 15.2.1. where the provisions of Schedule 2 so provide (*Events of Default and Consequences*); or
 - 15.2.2. if, in respect of any Availability Assessment Period, the number of Settlement Periods in which the Contracted Top-Up Plant was Unavailable due to Force Majeure exceeded 75% of the Settlement Periods in that Availability Assessment Period; or
 - 15.2.3. in the circumstances set out in Clause 8.5.2.
- 15.3. If this Agreement is terminated by NGESO in accordance with Clause 15.1, NGESO shall be entitled to payment by the Provider of a Works Contribution Refund Payment calculated in accordance with Schedule 3, Part III.
- 15.4. Either Party shall have a right to terminate this Agreement by notice in writing to the other if that other Party has been prevented from performing its obligations due to an event or circumstance of Force Majeure for a continuous period of six (6) calendar months or more or for an aggregate period of nine (9) calendar months or more.
- 15.5. NGESO shall, in addition to its other rights under this Clause 15, have the right to terminate this Agreement if any other agreement for the provision of Distribution Restoration Services as part of the same DZRP is terminated.

16. FORCE MAJEURE

- 16.1. In so far as any Party is prevented from performing any of its obligations under this Agreement due to an event or circumstance of Force Majeure, then the rights and obligations of the Parties shall be suspended for as long as and to the extent that the circumstance of Force Majeure prevents such performance. For the avoidance of doubt:
 - 16.1.1. the Provider shall not be entitled to any Monthly Availability Payment and NGESO shall not be entitled to any Availability Rebate to the extent that the Contracted Top-Up Plant is Unavailable by reason of Force Majeure;
 - 16.1.2. the Parties agree that they shall not be relieved from their obligations under this Agreement by reason of events or circumstances commencing prior to the last date specified in the Tender for Tender Submissions and continuing as

at that date including restrictions introduced by any Competent Authority in relation to Coronavirus and the Coronavirus Disease; and

16.1.3. the Parties further agree that they shall be relieved from their obligations under this Agreement to the extent that they are unable to perform them by reason of any further restrictions or guidance introduced by any Competent Authority in relation to Coronavirus and the Coronavirus Disease on or after the date on which the Provider submitted its Tender Submission.

16.2. A Party affected by Force Majeure shall give to the other Parties immediately upon becoming aware of an event or circumstance of Force Majeure, a written notice describing the Force Majeure (including, without limitation, the nature of the occurrence and its expected duration) and the obligations which it is prevented from performing and shall continue to furnish regular reports with respect thereto to the other Parties during the period of Force Majeure.

16.3. As soon as is reasonably practicable, following an event or circumstance of Force Majeure, the Parties shall discuss how best to continue their respective obligations as set out in this Agreement.

16.4. For the avoidance of doubt the non-performance of any Party's obligations pursuant to this Agreement arising prior to the event or circumstance of Force Majeure, shall not be excused as a result of the event or circumstance of Force Majeure.

17. NO ANNOUNCEMENT

17.1. The Provider agrees that, except as provided in Clause 13.2 of the General Terms and Conditions, it shall not make any public announcement or statement regarding the subject matter of this Agreement and/or the status of the Contracted Top-Up Plant and this Clause shall continue to bind the Provider after termination or expiry of this Agreement for whatever reason.

18. LIABILITY, INDEMNITY AND INSURANCE⁴

18.1. Paragraph 11 of the General Terms and Conditions shall apply as if set out in full herein.

19. RECORDS AND AUDITS

19.1. Paragraph 5 of the General Terms and Conditions shall apply as if set out in full herein.

20. ASSIGNMENT⁵

20.1. Paragraph 12 of the General Terms and Conditions shall apply as if set out in full herein.

21. CONFIDENTIALITY⁶

21.1. The provisions of paragraph 13 of the General Terms and Conditions shall apply as if set out in full herein.

⁴ Liability caps need to be considered

⁵ This may require amending to reflect tripartite assignment.

⁶ This may require amending to reflect tripartite confidential obligations.

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1. The provisions of paragraph 14 of the General Terms and Conditions shall apply to all Intellectual Property Rights owned by or licensed to either Party as if set out in full herein.

23. DATA PROTECTION

- 23.1. The provisions of paragraph 15 of the General Terms and Conditions shall apply as if set out in full herein.

24. MODERN SLAVERY, ANTI-BRIBERY AND LIVING WAGE

- 24.1. The provisions of paragraph 16 of the General Terms and Conditions shall apply as if set out in full herein.

25. NOTICES

- 25.1. Paragraph 17 of the General Terms and Conditions shall apply to any notice required to be submitted as if set out in full herein.
- 25.2. For the purposes of Clause 25.1, the contact details and addresses of each Party shall be those set out in the Contract Form or as otherwise notified from time to time by that Party to the other Parties.

26. DISPUTE RESOLUTION⁷

- 26.1. Paragraph 18 of the General Terms and Conditions shall apply in relation to any dispute or difference of whatever nature however arising under this Agreement as if set out in full herein, save that:-
- i. no party shall have any right to refer any dispute to an Expert for determination except where it is agreed in writing by the parties to be so referable; and
 - ii. where any dispute is referred to arbitration, the rules of the Electricity Arbitration Association shall apply unless otherwise agreed in writing by the Parties (and paragraph 18 of the General Terms and Conditions shall be read and construed accordingly).

27. GOVERNING LAW AND JURISDICTION

- 27.1. Any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with this Agreement or its enforceability shall be governed by and construed in accordance with the laws of England and Wales.

28. SEVERANCE

- 28.1. The provisions of paragraph 19 of the General Terms and Conditions shall apply as if set out in full herein.

29. THIRD PARTY RIGHTS

- 29.1. Save where expressly stated otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

⁷ This may require further development to reflect tripartite disputes.

- 29.2. The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

30. NO AGENCY OR PARTNERSHIP

- 30.1. The provisions of paragraph 21 of the General Terms and Conditions shall apply as if set out in full herein.

31. WAIVER

- 31.1. The provisions of paragraph 22 of the General Terms and Conditions shall apply as if set out in full herein.

32. ENTIRE AGREEMENT

- 32.1. The provisions of paragraph 23 of the General Terms and Conditions shall apply as if set out in full herein

33. EMR

- 33.1. Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in this Agreement, the Provider consents to NGESO and each of its subsidiaries using all and any information or data supplied to or acquired by it in any year under or in connection with any Balancing Services Contract for the purpose of carrying out its EMR Functions.

- 33.2. For the purposes of this Clause 33 only:-

- 33.2.1. **“AF Rules”** has the meaning given to “allocation framework” in section 13(2) of the Energy Act 2013;

- 33.2.2. **“Capacity Market Rules”** means the rules created pursuant to section 34 of the Energy Act 2013 as modified from time to time in accordance with The Electricity Capacity Regulations 2014;

- 33.2.3. **“EMR Functions”** has the meaning given to “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013; and

- 33.2.4. **“EMR Document”** means The Energy Act 2013, The Electricity Capacity Regulations 2014, the Capacity Market Rules, The Contracts for Difference (Allocation) Regulations 2014, The Contracts for Difference (Electricity Supplier Obligation) Regulations 2014, The Contracts for Difference (Definition of Eligible Generator) Regulations 2014, The Electricity Market Reform (General) Regulations 2014, the AF Rules and any other regulations or instruments made under Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts) of Part 2 of the Energy Act 2013 which are in force from time to time.⁸

⁸ The boilerplate requires further development. Where appropriate the ENA General Contract Terms will be used, subject to necessary modification.

SCHEDULE 1

Service Term Definitions

“Acceptable Security”	<p>means security in the form of:</p> <ul style="list-style-type: none"> i. a first demand, without proof or conditions, irrevocable performance bond in a form reasonably satisfactory to NGESO issued by a Rated Bank payable in Sterling in London; or ii. an irrevocable standby letter of credit in a form reasonably satisfactory to NGESO issued by a Rated Bank payable in Sterling in London; iii. a cash deposit in Sterling in an Escrow Account; iv. a parent company guarantee in terms and from an issuer satisfactory to NGESO; or <p>such other form of security acceptable to NGESO which shall be in such form as is included in NGESO’s then current policy and procedure;</p>
“Actual Availability”	<p>in relation to an Availability Assessment Period, means the actual availability of the Contracted Top-Up Plant calculated as the percentage of Settlement Periods over the Assessment Period in which the Contracted Top-Up Plant was capable of providing the Contracted Top-Up Services;</p>
“Agreement”	<p>has the meaning given to it in Clause 1.1;</p>
“Annual Availability Shortfall Payment”	<p>a sum calculated in accordance with Schedule 3, Part II;</p>
“Assessment”	<p>a Capability Assessment or a Reproving Assessment, as the context requires;</p>
“Assurance Visit”	<p>has the meaning give to it in Clause 13.213.1</p>
“Availability Assessment Period”	<p>a period of twelve consecutive calendar months commencing on the Service</p>

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	Commencement Date or an anniversary of the Service Commencement Date;
“Availability Price”	the price specified in Part 6 of the Contract Form;
“Availability Rebate”	an amount calculated in accordance with Schedule 3, Part 1 to be paid by the Provider to NGESO in the circumstances set out in Schedule 2 (<i>Events of Default</i>);
“Availability Redeclaration”	has the meaning given to it in Clause 6.2;
“Available”	in relation to the Contracted Top-Up Plant, means, subject to Clause 6.5, that it is capable of providing all or any of the Contracted Top-Up Services and the term “Unavailable” shall be construed accordingly ⁹ ;
“Balancing Service”	has the meaning given to that term in the Transmission Licence;
“Black Start”	means the procedure necessary for a recovery from a Total Shutdown or Partial Shutdown;
“Business Day”	a week-day other than a Saturday on which banks are open for domestic business in the City of London;
“Capability Assessment”	has the meaning given to it in Clause 11.1;
“Commercial Operations Date”	means the day after the date on which NGESO notifies the Provider that the Contracted Top-Up Plant has passed the Commissioning Assessment;
“Commissioning Assessment”	the commissioning testing of the Top-Up Plant to be undertaken in accordance with [] ¹⁰ ;
“Competent Authority”	means the Authority or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) which have jurisdiction over NGESO or the Provider or the subject matter of this Agreement;

⁹ Mechanism for adjusting Monthly Availability Payments for partial Availability to be developed.

¹⁰ Testing provisions to be developed.

“Condition Precedent”	means the conditions set out in Part 1 of the Contract Form;
“Consents”	means all and any consent, licence, approval, permission, wayleave or other right of whatever nature whether governmental or regulatory in character or otherwise necessary for the provision of by the Provider of the Contracted Top-Up Plant, including where relevant the implementation of the Works;
“Contract Form”	means the document signed by the Parties to which these Service Terms & Conditions are attached;
“Contracted Top-Up Plant”	the Top-Up Plant identified in the Contract Form;
“Contracted Top-Up Services”	means the Distribution Restoration Services to be provided from the Contracted Top-Up Plant, as specified in the Contract Form;
“Connection and Use of System Code (CUSC)”	the Connection and Use of System Code designed by the secretary of state as from time to time modified;
“Coronavirus”	has the meaning given to it in the Coronavirus Act 2020, as at the date hereof;
“Coronavirus Disease”	has the meaning given to it in the Coronavirus Act 2020, as at the date hereof;
“CP Date”	the date falling thirty (30) Business Days after the date of this Agreement;
“CUSC Framework Agreement”	has the meaning attributed to it in the Transmission Licence;
“Delay Event”	means: (i) any event of Force Majeure that delays the implementation of the Works; or (ii) any failure to schedule a Commissioning Assessment within 10 days of the Provider’s notice under Clause 3.3 that is due to any act or omission of NGESO;
“Distribution Restoration Services”	a service contributing to one or several measures of a Distribution Restoration Zone;

“DRZ Anchor Plant”	in relation to a Distribution Restoration Zone, means the generating plant identified as the anchor plant in the DRZP;
“DRZ Top-Up Services”	in relation to a Distribution Restoration Zone, means all of the Top-Up Services to be provided by the Distribution Restoration Service Providers in that zone;
“Distribution Restoration Zone Plan” or “DRZP”	a plan for the delivery of Restoration Services in a Distribution Restoration Zone;
“DNO”	the party identified in the Contract Form as the operator of the Local Distribution Network to which the Contracted Top-Up Plant is connected;
“Distribution Code”	has the meaning given to that term in a licence granted under section 6(1)(c) of the Electricity Act 1989;
“Distribution Restoration Service Provider”	a party with a contractual obligation to provide a Distribution Restoration Service;
“Distribution Restoration Zone” or “DRZ”	part of the Local Distribution Network which has been energised by Anchor Plant following a Total Shutdown or Partial Shutdown. The Distribution Restoration Zone shall include an Anchor Plant and may also include Top-Up Plant owned and operated by one or more Top-Up Generators;
“Distribution Restoration Zone Control System” or “DRZ Control System”	a combined automatic control and supervisory system which assesses the equipment status and operational conditions of a DNO’s System for the purposes of instructing Anchor Plant and Top-Up Plant and operating items of the DNO’s equipment for the purposes of establishing and running a Distribution Restoration Zone;
“DR Instruction”	an instruction issued by the DNO in accordance with Clause 7.1;
“DRZ Operational Working Group”	a working group comprising the parties involved in a DRZP and constituted for the purposes of [implementing and maintaining the DRZP] under [];
“Electricity System Restoration”	has the meaning given to that term in the Transmission Licence;

“Electricity System Restoration Standard”	has the meaning given to that term in the Transmission Licence;
“Escrow Account”	a separately designated bank account in the name of NGESO established by a mandate signed by both NGESO and the Provider at a branch of Barclays Bank PLC or another bank in the City of London as notified by NGESO to the Provider, bearing from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account a reasonable commercial rate of interest which shall be payable to the Provider but mandated for withdrawal of principal only by way of a call by NGESO or by way of payment to the Provider to the extent of any reduction in the amount so secured and mandated for the transfer of any interest accrued to the Escrow Account quarterly to such bank account as the Provider may specify;
“Event of Default”	an event of default specified in Schedule 2;
“Expert”	a person appointed for the purposes of an expert determination under Clause 26.1 of the General Terms and Conditions;
“Expiry Date”	the date falling on the [fifth] anniversary of the Service Commencement Date;
“External Costs”	the costs incurred by the Provider to third parties in the implementation of the Works more specifically detailed in Part 2 of the Contract Form ;
“External Costs Cap”	the maximum amount reimbursable in respect of External Costs as specified in Part 2 of the Contract Form;
“External Interconnection”	the meaning attributed to it in the Grid Code;
“Force Majeure”	in relation to a Party, any event, circumstance or condition which is beyond the reasonable control of such Party (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that Party or its officers or employees, agents, contractors and sub-contractors) which, despite the reasonable endeavours of the Party claiming Force Majeure to prevent it or

	mitigate its effects, causes delay or disruption in the performance of any obligation imposed hereunder, but subject thereto including act of God, epidemic or pandemic, 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, lightening, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 and 35 of the Act) or Network Constraint provided always that neither: (i) lack of funds, [nor (ii) the act or omission of any contractor (unless due solely to an event that would have been treated as a cause beyond its reasonable control if the contractor had been a party to this Agreement)], shall be interpreted as a cause beyond the reasonable control of that Party;
“Frequency”	the number of alternating current cycles per second (expressed in Hertz) at which a System is running;
“Funded Capability”	[in relation to an Top-Up Plant, any capability of the Top-Up Plant that has been materially enhanced through a Works Contribution Payment;]
“General Terms and Conditions”	[the [prevailing] Flexibility Services General Terms and Conditions published by the ENA];
“Good Industry Practice”	in relation to any undertaking and any circumstances the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from an experienced operator engaged in the same or similar type of undertaking under the same or similar circumstances;
“Grid Code”	the Grid Code drawn up pursuant to the Transmission Licence as from time to time revised in accordance with the

	Transmission Licence (and references in these Service Terms to any specific provision or part of the Grid Code shall be construed as references to such provision or part as from time to time amended);
“Grid Supply Point”	has the meaning given to it in the Grid Code;
“Guarantor”	the provider of a parent company guarantee for the purposes of Acceptable Security;
“Guarantor Minimum Credit Rating”	in relation to the Guarantor and where applicable, the credit rating specified in Part 4 of the Contract Form;
“Guarantor Minimum NAV”	in relation to the Guarantor and where applicable, the net asset value specified in Part 4 of the Contract Form;
“Internal Costs”	the costs incurred by the Provider other than External Costs in the implementation of the Works more specifically detailed in Part 2 of the Contract Form;
“Internal Costs Cap”	the maximum amount reimbursable in respect of Internal Costs as specified in Part 2 of the Contract Form;
“ITT”	has the meaning given to it in Clause Error! Reference source not found. the Contract Form;
“LAD Cap”	means a sum equal to the LAD Rate multiplied by [] days;
“LAD Rate”	means a daily rate equal to the sum of [] ¹¹ multiplied by the number of Settlement Periods in the day;
“Local Distribution Network”	the distribution network to which an Top-Up Plant is connected;
“Market Suspension Period”	has the meaning given to that term in the BSC;
“Minimum Availability”	in relation to an Availability Assessment Period, means an Actual Availability of not less than [] per cent ([]%);
“Month”	means a calendar month;

¹¹ To be determined by reference to the cost of alternative actions that would need to be taken by NGESO.

“Monthly Availability Payment”	an amount calculated in accordance with Schedule 3, Part I;
“Monthly Statement”	has the meaning given to that term in Clause 10.1;
“National Electricity Transmission System” or “NETS”	has the meaning given to that term in the CUSC;
“Network Constraint”	means a Planned Outage, unavailability of the NETS or the Local Distribution System for any other reason, or restrictions otherwise imposed on the operation of the Contracted Top-Up Plant by the DNO or the Transmission Owner;
“NGESO”	National Grid Electricity System Operator Limited, a company registered in England and Wales under company number 11014226;
“Partial Shutdown”	means the same as a Total Shutdown except that all generation has ceased in a separate part of the Total System and there is no electricity supply from External Interconnections or other parts of the Total System to that part of the Total System and, therefore, that part of the Total System is shutdown, with the result that it is not possible for that part of the Total System to begin to function again without NGESO’s direction relating to a Black Start Situation;
“Parties”	taken together, NGESO, the Provider and the DNO;
“Planned Outage”	an outage of part of the NETS coordinated by NGESO under OC2 of the Grid Code or an outage of part of the Local Distribution System coordinated by NGESO under OC2 of the Grid Code and/or the DNO under DOC2 of the Distribution Code;
“Project Plan”	the plan setting out the Scheduled Commercial Operations Date and the associated milestones submitted by the Provider in its Tender Submission as the same may be varied from time to time in accordance with Clause 3.2;
“Provider”	the party identified in the Contract Form as the owner of the Contracted Top-Up Plant;

“Rated Bank”	a City of London branch of a bank with a rating of at least A- (Standard and Poor’s long term rating) or A3 (Moody’s long term rating);
“Reproving Assessment”	has the meaning given to that term in Clause 6.3;
“Restoration Service”	has the meaning given to that term in the Transmission Licence;
“Restoration Service Provider”	a person with a legal or contractual obligation to provide Restoration Services necessary for the operation of a Distribution Restoration Zone Plan;
“Scheduled Commercial Operations Date”	the date specified in the Provider’s Tender Submission on which the Contracted Top-Up Plant is scheduled to complete the Commissioning Assessment and enter into commercial operation;
“Security Amount”	means: (i) prior to the Service Commencement Date, an amount equal to the maximum amount payable in respect of LADs; or (ii) following the Service Commencement Date, an amount equal to the maximum amount payable in respect of the Works Contribution Refund Payment at the relevant date, including any value added tax payable on such amounts;
“Service Commencement Date”	the day following the date on which the Contracted Top-Up Plant successfully completes the Commissioning Assessment;
“Service Term”	has the meaning given to that term in Clause 1.1;
“Service Terms & Conditions”	has the meaning given to that term in clause 1.1;
“Settlement Period”	a period of 30 minutes ending on the hour or half hour in each hour during a day;
“System Buy Price”	has the meaning given to that term in the BSC;
“Target Availability”	means, in relation to an Availability Assessment Period, the target availability for Top-Up Plant Capability as specified in the table set out in Part 7 of the Contract Form;

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“Tender”	means the competitive procurement process for Black Start Services and Distribution Restoration Services, undertaken pursuant to the ITT;
“Tender Submission”	means a submission made in response to the ITT;
“Top-Up Plant”	Plant and Equipment used for the provision of Top-Up Services;
“Top-Up Services”	means the services described in Part 5 of the Contract Form;
“Top-Up Service Technical Requirements”	the technical requirements for the Contracted Top-Up Services set out in Part 5 of the Contract Form;
“Total Shutdown”	means the situation existing when all generation has ceased and there is no electricity supply from External Interconnections and, therefore, the Total System has shutdown with the result that it is not possible for the Total System to begin to function again without NGESO's directions relating to a Black Start;
“Total System”	the National Electricity Transmission System and all User Systems in Great Britain;
“Transmission Licence”	the licence granted to NGESO under section 6(1)(b) of the Electricity Act 1989;
“Transmission Owner”	means the owner of that part of the NETS in which the Grid Supply Point associated with the Contracted Top-Up Plant is located;
“User System”	has the meaning given to that term in the Grid Code;
“Transmission Licence”	the licence issued to NGESO under section 6(1)(b) of the Electricity Act 1989;
“Works”	works described in Part 3 of the Contract Form;
“Works Contribution Payment”	an amount payable in accordance with Clause 4; and
“Works Contribution Period”	has the meaning given to it in Part 3 of the Contract Form;

“Works Contribution Refund Payment”	an amount calculated in accordance with Schedule 3, Part III.
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SCHEDULE 2

Events of Default and Consequences

1. Event of Default (Top-Up Plant Capability) - Availability Redeclaration	Consequences
<p>Save in respect of a planned maintenance period agreed pursuant to Clause 6.6, failure by the Provider to notify NGESO that the Contracted Top-Up Plant is not or will not be Available in the manner referred to in Clause 6.2 (whether evidenced by a Reproving Test or otherwise).</p>	<p>(1) The Contracted Top-Up Plant shall be deemed to be Unavailable; and</p> <p>(2) Upon the first and each successive Event of Default an Availability Rebate shall become payable by the Provider to NGESO, being an amount calculated in accordance with Schedule 3, Part I; and</p> <p>(3) Upon the third and each successive Event of Default within each Availability Assessment Period (reduced pro rata for any Availability Assessment Period shorter than twelve (12) months), in addition to (2) above, NGESO shall have the right to terminate this Agreement by notice in writing to the Provider and the DNO to be served not later than twenty eight (28) days following such third or successive Event of Default.</p>
2. Event of Default - Planned Maintenance Periods	Consequences
<p>In respect of a planned maintenance period agreed pursuant to Clause 6.6, failure by the Provider to notify NGESO that the Contracted Top-Up Plant is not or will not be Available.</p>	<p>The Contracted Top-Up Plant shall be deemed to be Unavailable during, and there shall be taken into account in the calculation of Monthly Availability Payments those Settlement Periods comprised in, the period commencing at 00.00 on the first day of the planned maintenance period agreed pursuant to Clause 6.7 and ending at 24.00 hours on the last day of such planned maintenance period.</p>
3. Events of Default (Electricity System Restoration) – Failure re DR Instruction	Consequences

<p>Save during a period the subject of a prior notification from the Provider to NGESO in which the Contracted Top-Up Plant is Unavailable, the failure by the Provider to comply with NGESO's instruction for the initiation and implementation of the DRZP save to the extent:-</p> <p>(a) compliance with the instruction would mean the Contracted Top-Up Plant could not keep within its safe operating parameters;</p> <p>(b) [the failure was wholly and directly caused by the unavailability of or constraint on the National Gas Transmission System such that the Provider was unable to offtake gas in sufficient quantities at that part of the National Gas Transmission System to which the Contracted Top-Up Plant is connected]¹²; or</p> <p>(c) the failure was wholly and directly caused by an event or circumstance of Force Majeure.</p>	<p>(1) The Contracted Top-Up Plant shall be deemed to be Unavailable; and</p> <p>(2) An Availability Rebate shall become payable by the Provider to NGESO, being an amount calculated in accordance with Schedule 3, Part I; and</p> <p>(3) In addition to (2) above, NGESO shall have the right to terminate this Agreement forthwith by notice in writing to the Provider and the DNO.</p>
4. Events of Default - Failure of Tests	Consequences
<p>The failure by the Contracted Top-Up Plant of a Repeating Assessment.</p>	<p>(1) The Contracted Top-Up Plant shall be deemed to be Unavailable; and</p> <p>(2) an Availability Rebate shall become payable by the Provider to NGESO, being an amount calculated in accordance with Schedule 3, Part I.</p>
<p>The failure by the Contracted Top-Up Plant of any Repeating Assessment [carried out following failure of both a Capability Assessment and a subsequent Repeating Assessment].</p>	<p>(1) The Contracted Top-Up Plant shall be deemed to be Unavailable; and</p> <p>(2) An Availability Rebate shall become payable by the Provider to NGESO, being an amount calculated in accordance with Schedule 3, Part I.</p> <p>(3) Upon the first and each successive Event of Default,</p>

¹² Delete where not applicable

	<p>NGESO shall have the right to terminate this Agreement by notice in writing to the Provider.</p> <p>(4) Without prejudice to (3) above, NGESO may (at its option) meet with the Provider to discuss the reasons for failure of the Capability Assessment and the subsequent [Reproving Assessment] and, subject to the Provider identifying the cause(s) for such failure and demonstrating to NGESO's reasonable satisfaction that it is able to remove or address such cause(s) before the Expiry Date, NGESO may (in its sole discretion) agree with the Provider a period during which the Provider shall (at its own cost) undertake additional works to ensure that the capability of the Contracted Top-Up Plant is restored ("Additional Works Period"). Where NGESO agrees to an Additional Works Period, NGESO shall only be permitted to terminate this Agreement in accordance with (3) above, where either:-</p> <ol style="list-style-type: none"> 1. the Provider advises that the additional works will not be completed within the Additional Works Period; 2. following completion of the additional works, the Provider fails a subsequent Reproving Test.
<p>5. Events of Default – Public Announcement</p>	<p>Consequences</p>
<p>Any breach by the Provider of its obligation contained in Clause 16 (<i>No Announcement</i>).</p>	<p>NGESO shall have the right to terminate this Agreement forthwith by notice in writing to the Provider.</p>

SCHEDULE 3

Availability Payments and Availability Rebates

PART I - AVAILABILITY PAYMENTS

1. TOTAL MONTHLY PAYMENT

$$TMP_m = BSAP_m - RA_m$$

Where:

TMP_m is the total monthly payment by NGESO to the Provider pursuant to Clause 8 (*Service Fees*);

$BSAP_m$ is defined in paragraph 0 below;

$RA_m = RAC_m + RABS_m$ as each is defined in paragraph 0 below,

and if TMP_m is negative, then the Provider shall pay to NGESO such amount in accordance with Clause 8 (*Service Fees and Rebates*).

2. MONTHLY AVAILABILITY PAYMENT

$$BSAP_m = \sum_{j=1}^{month} BSAP_j * BSAM_j$$

$BSAP_m$ is the aggregate Monthly Availability Payments payable in respect of calendar month m;

$\sum_{j=1}^{month}$ is the summation over all Settlement Periods j in calendar month m;

$BSAP_j$ is the Availability Price for all Settlement Periods j subject to indexation in accordance with Schedule 4, Part I; and

$BSAM_j$ is 0 in respect of each Settlement Period j in which the Contracted Top-Up Plant is Unavailable (including by reason of an Event of Default), or is deemed to be Unavailable in accordance with the provisions of this Agreement, otherwise 1.

3. AVAILABILITY REBATES

- 3.1 If the Event of Default specified in row 1 (Availability Redecoration) or row 2 (Planned Maintenance Periods) of the table in Schedule 2 occurs in month m, an Availability Rebate (RAC_m) shall be calculated as follows:

$$RAC_m = \sum_{EventofDefault} \min((BSAP_j * 480), \sum_{j=1}^{j=x} BSAP_j * BSAM_j)$$

Where:

$\sum_{EventofDefault}$ Is the summation over each Event of Default referred to in row 1 or row 2 of the table in Schedule 2; and

$\sum_{j=1}^{j=x}$ is the summation over each Settlement Period j prior to the Event of Default beginning with the Settlement Period in which the Contracted Top-Up Plant was last demonstrated to NGESO's reasonable satisfaction to be capable of providing the Contracted Top-Up Services.

- 3.2 If the Event of Default specified in row 3 (failure re DR Instruction) or 4 (failure of test) of the table in Schedule 2 (occurs in month m, an Availability Rebate ($RABS_m$) shall be calculated as follows:

$$RABS_m = \sum_{EventofDefault} \min((BSAP_j * 1440), \sum_{j=1}^{j=y} BSAP_j * BSAM_j)$$

Where:

$\sum_{EventofDefault}$ is the summation over each Event of Default referred to in row 3 or row 4 of the table in Schedule 2; and

$\sum_{j=1}^{j=y}$ is the summation over each Settlement Period j prior to the Event of Default beginning with the Service Commencement Date or, if later, the last successful initiation and implementation of the DZRP in an Electricity System Restoration.

PART II

ANNUAL AVAILABILITY SHORTFALL PAYMENT

- 1 The Annual Availability Shortfall Payment in respect of Availability Assessment Period y ($AASP_y$) shall be calculated as follows:

$$AASP_y = (MR_y * RFA_y)$$

$AASP_y$ is the Annual Availability Shortfall Payment due to NGESO from the Provider in respect of Availability Assessment Period y ;

MR_y is calculated in accordance with paragraph 2 below; and

RFA_y is calculated in accordance with paragraph 3 below.

- 2 The maximum amount repayable in respect of Availability Assessment Period y (MR_y) is calculated as follows:

$$MR_y = (A * WCP + Id)$$

Where:

A is a fraction, being the Availability Assessment Period y divided by the number of years in the Term);

WCP is the amount of total Works Contribution Payments (if any);

Id is interest at the Base Rate calculated on WCP accruing on a daily basis over the number of days in Availability Assessment Period y .

- 3 The relevant proportion of MR_y repayable in respect of Availability Assessment Period y (RFA_y) shall be calculated as follows:

$$RFA_y = 0 \text{ if } AA_y \geq TA_y$$

Otherwise

$$RFA_y = (TA_y - AA_y) / TA_y$$

Where:

TA_y is the Target Availability as specified in the table set out in the Contract Form;

AA_y is the actual availability and is the percentage of Settlement Periods over Availability Assessment Period y in which the Contracted Top-Up Plant was Available (expressed as a fraction) as calculated below:

$$AAy = \frac{\sum_{j=0}^{12months} (BSAMA_j)}{SP}$$

Where:

$$\sum_{j=0}^{12months}$$

is the summation overall Settlement Periods j in Availability Assessment Period y;

$BSAMA_j$

is 0 in respect of each Settlement Period j in which the Contracted Top-Up Plant was Unavailable (excluding where due to events or circumstances of Force Majeure, by reason of the operation of Clause 6.5 or where NGESO has approved a period of withdrawal of Top-Up Plant Capability pursuant to Clause 6.7), otherwise 1; and

SP

is the number of Settlement Periods j in Availability Assessment Period y.

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Part III Works Contribution Refund Payment

1. The Works Contribution Refund Payment ($WCRP_t$) shall be calculated as follows:

$$WCRP_t = [(WCP_1 + I_1) * f_1] - \sum AASP_y$$

Where: -

$WCRP_t$ is the Works Contribution Refund Payment payable by the Provider to NGESO;

WCP_1 is the aggregate amount of Works Contribution Payments (including VAT thereon) paid by NGESO to the Provider;

I_1 is Interest at the Base Rate calculated on WCP_1 accruing on a daily basis from the date of payment of WCP_1 by NGESO until the date of repayment by the Provider;

f_1 is a factor equal to either:
prior to the date of successful completion of the Works, 1; or
from and including the date of successful completion of the Works:

$$\frac{M_R}{M_T}$$

M_R is the number of whole calendar months remaining until the Expiry Date as at the date of termination or (as the case may be) the date on which the event that triggers the Works Contribution Refund Payment occurs;

M_T in respect of $WCRP_t$, is the total number of whole calendar months in the period from the date of successful completion of the Works until the Expiry Date; and

$AASP_y$ is the aggregate of all Annual Availability Shortfall Payments paid or payable by the Provider to NGESO under this Agreement.

SCHEDULE 4

Part 1 - Indexation

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