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

Draft v.1.0

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**NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED –TOP UP RESTORATION CAPABILITY
(TRANSMISSION) CONTRACT 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**”) and the Contract Form shall form the entire agreement between NGESO and the TR Contractor regarding the provision of Top Up Restoration Capability (this “**Agreement**”).
- 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 in this Agreement.
- 1.3. The rules of interpretation set out in the General Terms and Conditions shall apply as if set out in full herein.

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 16 (*Termination*) shall continue in force and effect until the expiry of the Service Term.
- 2.2. This Agreement, other than this Clause 2 and Clauses 17 (*Force Majeure*) to 34 (*EMR*), shall in all respects be conditional on the Conditions Precedent being satisfied by the TR Contractor or waived by NGESO by the CP Date.
- 2.3. The TR Contractor 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. When each of the Conditions Precedent has been satisfied or (where permitted, as stated in the Contract Form) waived, the TR Contractor shall without delay give written notice to that effect to NGESO. Such notices shall be conclusive and binding on the Parties as to the satisfaction or waiver thereof. Without prejudice to the foregoing, the TR Contractor shall (in circumstances where such consent is required) notify NGESO as soon as is reasonably practicable upon the granting of a consent under Section 36 of the Act in respect of the Contracted Top Up Plant and such notification shall be accompanied by a copy of such consent.
- 2.5. If any Condition Precedent has not been satisfied by the TR Contractor or waived by 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 TR Contractor 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 TR Contractor shall, by not later than ten (10) Business Days following the end of each calendar month until the Commercial Operations Date has occurred (or

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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 TR Contractor'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 referred to in Clause 16.2, 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 TR Contractor by notice in writing to the other for determination by the Expert.

3.3. When the Works are substantially completed (including the installation and commissioning of all communications links to enable the TR Contractor to receive Restoration Instructions) and the Contracted Top Up Plant is capable in the TR Contractor's opinion of providing the Top Up Restoration Capability in accordance with the Contracted Top Up Requirements, the TR Contractor 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 TR Contractor, 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 shall be entitled to attend a Commissioning Assessment and either 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

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the TR Contractor 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 TR Contractor 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 TR Contractor in accordance with Clause 16 (*Termination*).
- 3.7. For the purposes of Clause 3.5, LADs shall be payable by the TR Contractor to NGESO on a monthly basis in accordance with Clause 10 (*Payment*) and the due date shall be ascertained accordingly.
- 3.8. If the Contracted Top Up Plant has not for any reason (including any Delay Event) successfully passed the Commissioning Assessment by the first anniversary of the Scheduled Commercial Operations Date (“**Review Date**”), NGESO may request such additional evidence regarding the TR Contractor’s progress toward achieving the Commercial Operations Date as it may reasonably require and may further require that the Parties meet to consider in good faith whether there are reasonable prospects that the Commissioning Assessment will be passed within three (3) months after the Review Date. Once NGESO considers that it is in possession of sufficient evidence, it shall, acting reasonably, make a determination and notify the TR Contractor in writing either:
 - 3.8.1. that it (in its absolute discretion) considers there to be a reasonable prospect that the Commissioning Assessment will be passed within three (3) months after the Review Date, in which event this Agreement shall continue in full force and effect and the TR Contractor shall continue to take all steps necessary to pass the Commissioning Assessment within that three (3) months period; or
 - 3.8.2. that it (in its absolute discretion) considers there is no reasonable prospect that the Commissioning Assessment will be passed within three (3) months after the Review Date,

and NGESO shall have the right to terminate this Agreement by written notice to the TR Contractor in accordance with Clause 16 (*Termination*) if it gives notice under Clause 3.8.1 and the Commissioning Assessment is not achieved within three (3) months after the Review Date or if it gives notice under Clause 3.8.2.

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3.9. The remedies prescribed in this Clause 3 shall be 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.

3.10. The TR Contractor shall:

3.10.1. comply with the provisions of Schedule 5 (*Security*) in relation to the implementation of the Works and the provision of Top Up Restoration Capability; and

3.10.2. take reasonable steps (in accordance with Good Industry Practice) to procure that no aspect of the Works is sourced or ultimately derived from any Sanctioned Person and that no aspect of providing Top Up Restoration Capability otherwise involves a Sanctioned Person.

4. WORKS CONTRIBUTION PAYMENTS

4.1. The Parties acknowledge that, where the Contract Form specifies that no Works, other than a Commissioning Assessment, are required for the purposes of enabling the TR Contractor to provide Top Up Restoration Capability no Works Contribution Payment is payable in respect of the Works and that the provisions of this Clause 4 and all provisions relating to the payment of a Works Contribution Payment or a Works Contribution Refund Payment shall not apply.

4.2. 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 TR Contractor an amount ("**Works Contribution Payment**") in respect of the Internal Costs and External Costs incurred by the TR Contractor in that Works Contribution Period subject to receipt from the TR Contractor of invoices that:

4.2.1. itemise Internal Costs and External Costs separately;

4.2.2. 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

4.2.3. 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 TR Contractor shall have used its reasonable endeavours to mitigate.

4.3. Following receipt of any invoice in respect of the Works submitted by the TR Contractor in accordance with Clause 4.1, NGESO shall, as soon as reasonably practicable thereafter, notify the TR Contractor and provide a reason where NGESO determines (acting reasonably) that such invoice does not meet the requirements

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of Clause 4.1 and the TR Contractor shall submit a replacement invoice that does meet those requirements as soon as reasonably practicable thereafter.

- 4.4. Each invoice meeting the requirements of Clause 4.1 shall be paid by NGESO within forty two (42) days after receipt.
- 4.5. The TR Contractor 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 TR Contractor seeks to provide a Balancing Service or other similar service to a third party (otherwise than pursuant to existing contractual obligations) using any part of the Funded Capability. Accordingly, it is hereby agreed that the TR Contractor will not offer terms to NGESO for provision of any Balancing Service or offer terms to 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 TR Contractor, meet with the TR Contractor to discuss an appropriate reduction, and each of NGESO and the TR Contractor shall use reasonable endeavours to agree on such appropriate reduction in the Availability Price within such period as is required to allow the TR Contractor to offer terms to NGESO with respect to the relevant Balancing Service or offer terms to a third party for the provision of a similar service. If no such agreement can be concluded, then NGESO reserves the right to decline to contract with the TR Contractor for any Balancing Service or similar service provided from any part of the Funded Capability.
- 4.6. If NGESO and the TR Contractor have agreed in writing prior to the date of this Agreement, the basis on which the TR Contractor may use Funded Capability to provide Balancing Services or other similar services to a third party the TR Contractor may provide Balancing Services or other similar services to 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 (and to the extent that): -
 - 4.7.1. an Annual Availability Shortfall Payment has become payable under this Agreement and has not been paid by the TR Contractor 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 TR Contractor in accordance with Clause 16.3;
 - 4.7.3. LADs have become payable under this Agreement and have not been paid by the TR Contractor 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 TR Contractor 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 of a Rated Bank the TR Contractor shall forthwith on the TR Contractor becoming aware of such occurrence

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notify NGESO and within twenty (20) Business Days of the TR Contractor 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 TR Contractor has elected in the Contract Form that this Clause 4.9 shall apply, the TR Contractor 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 TR Contractor 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,

the TR Contractor shall within twenty (20) Business Days 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 Acceptable Security to replace such parent company guarantee.

- 4.10. Where the Acceptable Security provided by the TR Contractor is a parent company guarantee and the TR Contractor has elected in the Contract Form that this Clause 4.10 shall apply, the TR Contractor 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 TR Contractor shall forthwith on becoming aware of such occurrence notify NGESO and within twenty (20) Business Days of the TR Contractor 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. Where the TR Contractor's Acceptable Security is time limited, the TR Contractor must replace it at least forty five (45) days prior to expiry. If the TR Contractor fails

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to so replace the Acceptable Security, NGESO shall be entitled to make a claim for an amount equal to the Security Amount.

- 4.12. The TR Contractor shall on reasonable notice to NGESO be entitled to request the substitution of any Acceptable Security with any other Acceptable Security. Subject to NGESO's consent (not to be unreasonably withheld or delayed) and on such replacement Acceptable Security being put in place NGESO shall release the Acceptable Security first provided. The TR Contractor 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, that the aggregate sum secured is equal to the Security Amount and that the security otherwise constitutes Acceptable Security.

5. SERVICE TERM

- 5.1. The TR Contractor shall make Available the Contracted Top Up Plant with effect on and from the Commercial Operations Date and, subject to earlier termination of this Agreement in accordance with Clause 16 (*Termination*) or 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 Plant shall continue to be made Available by the TR Contractor, 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 RESTORATION CAPABILITY

- 6.1. The TR Contractor 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 Top Up Restoration Capability in accordance with Emergency Instructions and in accordance with the Contracted Top Up Requirements ("**Available**").
- 6.2. Without prejudice to Clause 6.1 the TR Contractor shall ensure that the Contracted Top Up Plant is able to:
- 6.2.1. commence the procedure to Start-up the Contracted Top Up Plant from shutdown once external electricity supplies have been restored at any time

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- within the period of resilience specified in the Contracted Top Up Requirements;
- 6.2.2. manage voltage and remain connected during energisation/block loading within the limits specified in the Contracted Top Up Requirements;
 - 6.2.3. manage frequency and remain connected during energisation/block loading within the limits specified in the Contracted Top Up Requirements; and
 - 6.2.4. where so required in the Contracted Top Up Requirements, continue to deliver output for the specified minimum period;
 - 6.2.5. where so required in the Contracted Top Up Requirements, accept instantaneous loading of demand blocks of the specified minimum size;
 - 6.2.6. where so required in the Contracted Top Up Requirements, provide the specified level of reactive power;
 - 6.2.7. where so required in the Contracted Top Up Requirements, maintain the specified short-circuit level capability; and
 - 6.2.8. where so required in the Contracted Top Up Requirements, provide the specified level of inertia.
- 6.3. The TR Contractor shall notify NGESO by facsimile or other electronic means approved from time to time by NGESO, in the form set out in Schedule 6, as soon as reasonably practicable (but in any event within twenty (20) minutes of it becoming aware) if:
- 6.3.1. the Contracted Top Up Plant does not or will not have any part of the Top Up Restoration Capability and such notification shall include a brief explanation thereof, the time of commencement and the expected duration thereof;
 - 6.3.2. (without prejudice to Clause 6.3.1) following the issue of a notification by the TR Contractor in accordance with Clause 6.3.1, the Top Up Restoration Capability has been restored and such notification shall include the time of such restoration.
- 6.4. Promptly following receipt of a Restoration Notice, NGESO may inform the TR Contractor 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 Unavailable from the date of NGESO’s notice until the date on which the Contracted Top Up Plant successfully passes a Reproving Assessment.
- 6.5. If NGESO fails to notify the TR Contractor in accordance with Clause 6.4 that it wishes to carry out a Reproving 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.
- 6.6. If the TR Contractor gives NGESO prior written notice of any period during which the TR Contractor proposes to withdraw the Top Up Restoration Capability in addition to the periods of scheduled maintenance specified in the table set out in Part 7 of the Contract Form (including the duration of such period), NGESO:

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- 6.6.1. shall assess the likely consequences of such withdrawal; and
- 6.6.2. may, at its discretion, agree in writing with the TR Contractor to the proposed period of outage or propose an alternative period of outage.
- 6.7. If the Parties agree to a period of outage pursuant to Clause 6.6, the withdrawal of the Top Up Restoration Capability during the agreed period shall not be included in the assessment under Clause 8.3.

Revisions to Contracted Top Up Requirements and/or Top Up Restoration Capability requirements

- 6.8. Subject always to Clause 6.9, the TR Contractor may issue a request to NGESO that one or more of the Contracted Top Up Requirements and/or the Top Up Restoration Capability requirements (more particularly specified in Clause 6.2) be revised temporarily (such request to be confirmed by facsimile or other electronic means approved from time to time by NGESO and in the form set out in Schedule 6), and upon receipt of the TR Contractor's confirmation of such request, NGESO may at its sole discretion either accede to or decline such request provided always that any acceptance of such request may at NGESO's sole discretion be immediately withdrawn at any time thereafter.
- 6.9. The TR Contractor shall specify in any request made in accordance with Clause 6.8 the start time and expected end time between which any revisions to the Contracted Top Up Requirements and/or the Top Up Restoration Capability requirements shall apply.
- 6.10. If NGESO accepts any request made by the TR Contractor pursuant to Clause 6.8, any such revisions shall apply from the start time specified by the TR Contractor, until the end time specified by the TR Contractor or any earlier time at which NGESO withdraws its acceptance of the TR Contractor's request pursuant to Clause 6.8.
- 6.11. If NGESO declines (or withdraws any previous acceptance of) any request made by the TR Contractor pursuant to Clause 6.8, then the original Contracted Top Up Requirements and/or Top Up Restoration Capability requirements shall continue to apply (or be reinstated as the case may be), and for the avoidance of doubt if as a result the TR Contractor is unable to maintain the Top Up Restoration Capability from the Contracted Top Up Plant then it shall notify NGESO accordingly in accordance with Clause 6.3.1.

7. INSTRUCTIONS

- 7.1. During any Electricity System Restoration, once external electrical power supplies are restored to the TR Contractor's Site, NGESO may issue an instruction to the TR Contractor as referred to in OC9.4 of the Grid Code (a "**Restoration Instruction**") including (without limitation) to:
 - 7.1.1. Start-up and resynchronise the Contracted Top Up Plant to the NETS; and
 - 7.1.2. carry out all Restoration Instructions in accordance with the Contracted Top Up Requirements.
- 7.2. The TR Contractor shall continue to comply with all Restoration Instructions from NGESO in accordance with the Contracted Top Up Requirements until the time specified in OC9.4.7.12 of the Grid Code.

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- 7.3. The TR Contractor acknowledges and agrees that an Electricity System Restoration will constitute an emergency situation as referred to in the Grid Code and that accordingly a Restoration Instruction may constitute an Emergency Instruction.

8. SERVICE FEES AND REBATES

- 8.1. With effect from the Commercial Operations Date, NGESO shall pay a monthly payment ("**Monthly Availability Payment**") calculated by reference the number of Settlement Periods in the Month in which the Contracted Top Up Plant was Available and the Availability Price in accordance with Schedule 3, Part I (*Availability Payments and Availability Rebates*).
- 8.2. NGESO shall be entitled to apply an Availability Rebate in the circumstances specified in Schedule 2 (*Events of Default and Consequences*).
- 8.3. If in any Availability Assessment Period the Actual Availability of the Contracted Top Up Plant falls below the Target Availability, the TR Contractor shall pay an Annual Availability Shortfall Payment.
- 8.4. 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:
- 8.4.1. the TR Contractor shall pay an Annual Availability Shortfall Payment; or
- 8.4.2. NGESO may terminate this Agreement in accordance with Clause 16.2.5.
- 8.5. If an Electricity System Restoration is implemented, the TR Contractor may seek to recover costs incurred in connection with Emergency Instructions as Avoidable Costs (as defined in the BSC) under section G (Contingencies) of the BSC.

9. SAFETY AND INSURANCE

- 9.1. NGESO acknowledges that any decision to operate the Contracted Top Up Plant outside its safe operating parameters is one for the TR Contractor alone, and accepts that the TR Contractor 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 and Apparatus).
- 9.2. The responsibility for injury to personnel and damage to Plant and Apparatus owned and/or operated by the TR Contractor caused by operation of the Contracted Top Up Plant in an Electricity System Restoration therefore rests with the TR Contractor and NGESO shall have no liability whatsoever in connection therewith.
- 9.3. The TR Contractor shall indemnify and keep indemnified NGESO in respect of liability for death or personal injury and/or damage to Plant and Apparatus owned and/or operated by NGESO and arising out of or in connection with such operation

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of the Contracted Top Up Plant outside of its safe operating parameters save to the extent that:

- 9.3.1. such death or personal injury and/or damage to Plant and Apparatus is caused by the negligent act or omission or default of NGESO; and
- 9.3.2. the TR Contractor has operated the Contracted Top Up Plant in accordance with Good Industry Practice.
- 9.4. The TR Contractor 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.
- 9.5. The TR Contractor acknowledges and agrees that, for the purposes of Clause 9.3, references to NGESO shall include the Transmission Owner and that, in addition to NGESO, the Transmission Owner shall be entitled to enforce Clause 9.3.

10. PAYMENT

- 10.1. In respect of each calendar month ("**Relevant Month**") during the Term and by no later than expiry of the second calendar month which follows, NGESO shall send to the TR Contractor a statement ("**Monthly Statement**") setting out its calculation of:-
 - 10.1.1. the Monthly Availability Payment payable by NGESO to the TR Contractor pursuant to Clause 8.1;
 - 10.1.2. any Availability Rebates payable by the TR Contractor to NGESO pursuant to Clause 8.2;
 - 10.1.3. (where relevant) any Annual Availability Shortfall Payment due by the TR Contractor;
 - 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 TR Contractor.
- 10.2. If the TR Contractor disagrees with the content of the Monthly Statement, it may notify NGESO in writing, with evidence upon which it relies in support of such disagreement, no later than the date falling ten (10) Business Days after receipt thereof, but in the absence of any such notification by such date, the Monthly Statement shall be final and binding on the Parties subject only to Clause 10.3.
- 10.3. Where a disagreement is notified by the TR Contractor pursuant to Clause 10.2, NGESO and the TR Contractor shall discuss and endeavour to resolve the same in good faith, and any revisions to a Monthly Statement agreed as a result thereof shall be reflected in a revised Monthly Statement, which shall promptly be issued by NGESO. In the absence of agreement, the Monthly Statement shall be binding upon the Parties until such time as otherwise agreed in writing between the Parties or as may otherwise be determined by an Expert following a referral by either Party to an Expert for determination, and which in each case shall be reflected in a revised Monthly Statement which shall promptly be issued by NGESO.
- 10.4. Where, having regard to any results of any other monitoring by NGESO of service delivery, NGESO or the TR Contractor discovers that some or all of any calculations and/or amounts falling due shown in any Monthly Statement are incorrect, then it

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shall promptly notify the other in writing whereupon NGESO shall, at its discretion, revise the Monthly Statement and re-issue the same to the TR Contractor, and the provisions of Clauses 10.2 and 10.3 shall apply mutatis mutandis to such revised Monthly Statement.

- 10.5. In the absence of fraud, neither NGESO nor the TR Contractor may invoke the provisions of Clause 10.4, with respect to the contents of any Monthly Statement (including any revised Monthly Statement) after the period of twelve (12) months has elapsed following submission of the original Monthly Statement in which the calculations and/or amounts in question were first stated, after which date such calculations and/or amounts shown in the last Monthly Statement (including any revised Monthly Statement) issued by NGESO shall be final and conclusive.
- 10.6. No later than the eighteenth (18th) Business Day of the second Month following the Relevant Month, NGESO will issue a self-billing invoice (or credit note) reflecting the Monthly Statement issued pursuant to Clause 10.1 (as may have been revised pursuant to the foregoing provisions), and no later than five (5) Business Days after such date of issue NGESO shall pay to the TR Contractor (or the Contractor shall pay to NGESO, as the case may be) the net amount shown as due from NGESO to the TR Contractor (or from the TR Contractor to NGESO, as the case may be) in that Monthly Statement (or revised Monthly Statement).
- 10.7. All payments shall be made in pounds sterling by direct bank transfer or equivalent transfer of immediately available funds to the other Party's bank account, details of which shall be as notified by each Party to the other from time to time in accordance with these Service Terms & Conditions. If either Party (the **"Defaulting Party"**) fails to pay any amount properly due under these Service Terms on the due date then the Defaulting Party shall pay to the other Party interest on such overdue amount at the Enhanced Rate from the date on which such payment was properly due to (but excluding) the date of actual payment. Any interest shall accrue from day to day.
- 10.8. If by virtue of the foregoing provisions, it is determined or agreed that:-
- 10.8.1. the TR Contractor was entitled to a further payment from NGESO, then the TR Contractor shall be entitled to interest at the Base Rate on the amount of such further payment from the due date until the date of actual payment; or
- 10.8.2. the TR Contractor was not entitled to any payment it has received,
- then NGESO shall be entitled to interest at the Base Rate on such amount from the date of payment by NGESO until the date of repayment by the TR Contractor (or, as the case may be, until the date when NGESO makes a payment to the TR Contractor pursuant to Clause 10.6 against which such amount is offset).
- 10.9. All amounts specified falling due and payable pursuant to these Service Terms & Conditions shall be exclusive of any Value Added Tax or other similar tax and NGESO shall pay to the TR Contractor Value Added Tax at the rate for the time being and from time to time properly chargeable in respect of the making available and/or provision of the Service Terms & Conditions.
- 10.10. Sums payable by one Party to the other pursuant this Clause 10 whether by way of charges, interest or otherwise, shall (except to the extent permitted by these

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Service Terms & Conditions or otherwise required by any Legal Requirement) be paid in full, free and clear of and without deduction, set-off or deferment in respect of any disputes or claims whatsoever provided that either Party shall be entitled to set off any payment due and payable by the other Party under this Clause 10 against any payment it makes to that Party under this Clause 10.

10.11. The TR Contractor agrees that NGESO shall maintain a self-billing system whereby each Monthly Statement shall constitute a self-billing invoice for VAT purposes. Accordingly, NGESO and the TR Contractor shall enter into a self-billing agreement in accordance with VAT legislation and published guidance from HM Revenue and Customs from time to time, and agree to comply with all relevant requirements in relation to self-billing, and for such purpose the TR Contractor hereby warrants and undertakes to NGESO that:-

10.11.1. it is registered for VAT and will inform NGESO forthwith if it ceases to be so registered or changes its VAT registration number;

10.11.2. it will account to HM Revenue and Customs for the VAT paid by NGESO pursuant to Clause 10.9; and

10.11.3. it will not issue its own VAT invoices.

11. TESTING

11.1. Subject always to the provisions of this Agreement, the TR Contractor shall:

11.1.1. following written notice to NGESO under Clause 3.3 and not later than the Scheduled Commercial Operations Date, carry out a Commissioning Assessment in order to verify that the Contracted Top Up Plant is capable of providing the Top Up Restoration Capability in accordance with the Contracted Top Up Requirements;

11.1.2. on written notice to NGESO and not later than the third anniversary of the Commercial Operations Date, carry out a test (a “**Capability Assessment**”) in order to verify the Availability of the Contracted Top Up Plant, provided always that not more than one Capability Assessment will be required to be undertaken by the TR Contractor in any period of thirty-six (36) calendar months;

11.1.3. on written notice from NGESO under Clause 6.46.2, undertake a Repeating Assessment in order to verify the restoration of Availability. The scope of a Repeating Assessment shall in each case have regard to the nature and extent of the circumstances which gave rise to the Contracted Top Up Plant being Unavailable and shall be discussed and agreed with the TR Contractor (such agreement not to be unreasonably withheld or delayed). Without limiting the foregoing, a Repeating Assessment may include the monitoring of the normal operation of the Contracted Top Up Plant.

Test Procedure - Preparatory

11.2. In respect of each Test, NGESO and the TR Contractor shall use all reasonable endeavours to agree, no later than four (4) clear Settlement Days before the day on which the Test is due to be conducted, the parameters and procedures for the conduct of the Test (“**Test Parameters and Procedures**”), such agreement to be

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recorded in the form of a side letter. If no such agreement is reached by such date and NGESO, acting reasonably, determines that such failure is due to the default of the TR Contractor, then without prejudice to any other provision of this Agreement no Monthly Availability Payments shall accrue due to the TR Contractor from such date until the date when such agreement is finally reached.

- 11.3. The Test Parameters and Procedures shall comprise those matters necessary to meet the objectives referred to in Clause 11.1.1 (*Commissioning Assessment*), 11.1.2 (*Capability Assessment*) and 11.1.3 (*Reproving Assessments*), as applicable, and shall be consistent therewith, and shall in each case include (without limitation):

- 11.3.1. the BM Unit IDs for each Genset;
- 11.3.2. the proposed start time and end time for the Test Period, each determined in accordance with Clause 11.4;
- 11.3.3. a proposed running profile, together with underlying Physical Notification level and Maximum Export Limit for each of the Gensets during the Test which meet the requirements of Clause 11.5.

Test Period

- 11.4. The start time and end time of a Test Period referred to in Sub-Clause 11.3.2 shall, unless otherwise agreed by the Parties in writing, be determined as follows:

- 11.4.1. in the case where the running profile comprised within the Test Parameters and Procedures indicates the Gensets being Synchronised in any Settlement Periods in the twelve hour period immediately prior to commencement of the Test Period:

- (a) the start time shall be one hour prior to the time indicated in the running profile for the Genset to commence De-Loading in preparation for Desynchronisation; and
- (b) the end time shall be one (1) hour after the time indicated in the running profile by which the Genset shall have achieved an Output equal to its Physical Notification level;

- 11.4.2. if the running profile comprised within the Test Parameters and Procedures indicates the Gensets not being Synchronised in any Settlement Period in the twelve hour period immediately prior to commencement of the Test Period:

- (a) the start time shall be one (1) hour prior to the time indicated in the running profile for the opening of the final circuit breaker connecting the Power Station to the National Electricity

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Transmission System or User System (as the case may be) in preparation for the Synchronisation of the Gensets; and

- (b) the end time shall be one (1) hour after the time indicated by the running profile for the Gensets to achieve an Output equal to its Physical Notification level.

11.5. The underlying Physical Notification level for a Genset during the Test referred to in Clause 11.3.3 shall, unless otherwise agreed by the Parties in writing, be zero (0) MW if the running profile of that Genset indicates it not being Synchronised in any Settlement Period in the twelve (12) hour period immediately prior to commencement of the Test Period.

11.6. The Dynamic Parameters for the Gensets during the Test shall, unless otherwise agreed by the Parties in the Test Parameters and Procedures, be those Dynamic Parameters which applied at the time of the written notice under Clause 11.1 of the requirement for a Test.

11.7. Once agreed by the Parties in accordance with Clause 11.2, the Test Parameters and Procedures may subsequently be revised by agreement in writing of the Parties (not to be unreasonably withheld or delayed) but not so as to fall outside of the Test Period.

Test Procedure - Conduct

11.8. Where NGESO or the TR Contractor reasonably considers that any Test, other than a Repeating Assessment, would result in it incurring exceptional costs or (in the case of NGESO only) the safety or security of the System being compromised, it may notify the other Party of the cancellation of such Test, in which event the Parties shall agree a new time for the conduct of such Test and Clauses 11.2 to 11.7 and this Clause 11.8 shall apply. Where the TR Contractor unreasonably withholds or delays such agreement, NGESO may specify a time for the conduct of such Test on no less than one hundred and sixty eight (168) hours' notice.

Notices

11.9. The TR Contractor shall use such telephone and facsimile numbers (or the address for such other electronic means approved from time to time by NGESO) as may be notified to it by NGESO from time to time for the purposes of notices to be given or confirmed pursuant to this Clause 11. Service of such notice shall be without prejudice to the TR Contractor's obligations to notify BM Unit Data by means of the EDL Equipment pursuant to the Grid Code and/or the Balancing and Settlement Code.

Test - Costs

11.10. The TR Contractor and NGESO shall each bear its own costs incurred in conducting any Commissioning Assessment or Capability Assessment under this Clause 11 save where the TR Contractor fails such Commissioning Assessment or Capability Assessment, in which event the TR Contractor shall, in addition to bearing its own costs, reimburse to NGESO all of NGESO's reasonable resource costs (other than costs incurred in connection with reconfiguring the National Electricity Transmission System) and expenses reasonably incurred as a direct result thereof. Additionally, the TR Contractor shall reimburse to NGESO all of

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NGESO's reasonable costs reasonably incurred as a direct result of a Repeating Assessment conducted either following an Event of Default or following failure by the TR Contractor of a previous Repeating Assessment.

Disputes

- 11.11. If a bona fide dispute arises relating to the performance of the Contracted Top Up Plant or the results of a Capability Assessment or a Repeating Assessment, NGESO and the TR Contractor shall, following notice in writing issued by either of them to the other, attempt to resolve the dispute by discussion, and if they fail to reach agreement within twenty (20) Business Days of that notice, the TR Contractor may require a further Assessment. If the TR Contractor passes such further Assessment, it shall be deemed to have passed the first Assessment. If the TR Contractor 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 TR Contractor may refer the matter to the Expert for determination. The Contracted Top Up Plant shall not be treated as failing any Test if the TR Contractor has given notice of non-capability pursuant to Clause 6.3 either:-

11.11.1. before the notice of the relevant Test is given in accordance with Clause 11.1; or

11.11.2. after the notice of the relevant Test is given in accordance with Clause 11.1 in respect of matters which the TR Contractor can reasonably demonstrate arose after the giving of such notice.

Forced Cooling

- 11.12. If during any Test relating to a power generating facility, a Genset at the Power Station is required to be Shutdown, any forced cooling of that Genset undertaken by the TR Contractor shall be at its own cost.

Restrictions on Tests

- 11.13. NGESO may not require a Test during periods when the Contracted Top Up Plant is not Available by reason of: -

11.13.1. a planned maintenance and/or inspection period agreed pursuant to the Grid Code;

11.13.2. an event or circumstance of Force Majeure;

11.13.3. notification in accordance with Clause 6.3; or

11.13.4. the terms of this Agreement (including Clauses 6.4 and Schedule 2 (*Events of Default and Consequences*)).

Damage to Plant and Apparatus

- 11.14. Each Party shall bear the risk of, and the other Party shall have no liability to that Party in respect of, loss and damage to that Party's Plant and/or Apparatus

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caused during or as a result of any Test (whether due wholly or partly to the other Party's default or to the malfunction of its Plant or Apparatus or otherwise).

12. MONITORING AND METERING

12.1. Without prejudice to any existing right of NGESO to monitor and meter the provision of any Ancillary Service, NGESO may monitor and/or meter the Top Up Restoration Capability of the Contracted Top Up Plant and/or its ability to meet the Contracted Top-Up Requirements. The TR Contractor shall for such purposes provide to NGESO all metering and monitoring data required under the Grid Code, including (without limitation):

12.1.1. Frequency (Hz);

12.1.2. Voltage (kV);

12.1.3. Availability (Available/Unavailable);

12.1.4. Active Power Output (MW);

12.1.5. Reactive Power Output (MVar);

12.1.6. For Contracted Top Up Plant comprising wind turbines, wind speed forecasts and observations (ms-1) and wind direction forecasts and observations (degrees); and

12.1.7. For Contracted Top Up Plant comprising hydro-electric plant, the upper reservoir limits.

12.2. The TR Contractor shall provide all data referred to in Clause 12.1 through data links and otherwise comply with all operational metering requirements set out or referred to in the Grid Code.

12.3. NGESO shall be entitled to visit the TR Contractor's site on reasonable notice to conduct investigations of the Contracted Top Up Plant in order to verify compliance by the TR Contractor with its obligations under these Service Terms & Conditions.

13. INSPECTIONS AND ASSURANCE VISITS

Inspections

- 13.1. To enable NGESO to verify that the Contracted Top Up Plant is able to provide Top-Up Restoration Capability in accordance with the Contracted Top-Up Requirements, the TR Contractor shall permit NGESO to inspect such parts of the Contracted Top Up Plant as it may reasonably require (in each case upon giving to the TR Contractor not less than forty-eight (48) hours prior notice) provided that such inspection shall be carried out without undue interference with the normal operation of the Contracted Top Up Plant.

Assurance Visits

- 13.2. Without prejudice to, and in addition to, NGESO's right to carry out inspections in accordance with Clause 13.1, the TR Contractor 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 access to the Contracted Top Up Plant for the purposes of ascertaining to its reasonable satisfaction that the TR Contractor 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 TR Contractor may propose to NGESO 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 NGESO in its notice, and (at its option) NGESO may agree to such alternative time and date. In the event that the TR Contractor 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 NGESO in its notice, then no Monthly Availability Payments shall accrue to the TR Contractor in respect of the period commencing at the time and date for the Assurance Visit specified in that notice and ending upon completion by NGESO of an Assurance Visit.
- 13.4. 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 14 be made and deemed to have been received in accordance with Clause 26 (*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 any Legal Requirement.

15. CHANGES TO OTHER DOCUMENTS

- 15.1. The Parties agree to negotiate in good faith and use all reasonable endeavours to agree amendments to this Agreement in light of:

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- 15.1.1. any changes to a Legal Requirement or industry documentation (including without limitation the Electricity Act 1989, any Licence, the Balancing and Settlement Code, the Grid Code, the Connection and Use of System Code and/or the relevant Bilateral Connection Agreement); or
- 15.1.2. the implementation of any new Legal Requirement,

resulting, in either case, in a material change to the manner of provision of Top Up Restoration Capability by the TR Contractor and/or the basis of payments made to or by NGESO under this Agreement, such amendments to have the effect so far as reasonably practicable of making the provision of Top Up Restoration Capability by the TR Contractor and/or (as the case may be) the basis of payments to or by NGESO under this Agreement no more or less favourable to the respective Party as was the case before such variations took effect (ignoring all payments made to the TR Contractor otherwise than pursuant to this Agreement which, as a result of the changes to industry documentation as referred to above, shall cease to be payable to the TR Contractor or are otherwise varied).

Failing agreement in respect of the matters contained in Clause 15.1, within thirty (30) days of a Party notifying the other Party that it intends to refer a matter to the Expert, that Party shall have the right to invoke the provisions of Clause 27 (*Dispute Resolution*).

16. TERMINATION

- 16.1. 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.
- 16.2. Without prejudice to Clause 16.1, NGESO may in its absolute discretion terminate this Agreement with immediate effect by notice in writing to the TR Contractor in the following circumstances:-
 - 16.2.1. where the provisions of Schedule 2 so provide (*Events of Default and Consequences*);
 - 16.2.2. in the circumstances described in Clause 3.6;
 - 16.2.3. 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;
 - 16.2.4. in the circumstances described in Clause 3.8;
 - 16.2.5. in the circumstances described in Clause 8.4.2; or
 - 16.2.6. in the circumstances described in Clause 21.5.
- 16.3. If this Agreement is terminated by NGESO in accordance with this Clause 16.1, NGESO shall be entitled to payment by the TR Contractor of a Works Contribution Refund Payment calculated in accordance with Schedule 3, Part III.

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17. FORCE MAJEURE

17.1. In so far as either 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:

17.1.1. the TR Contractor 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;

17.1.2. 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

17.1.3. 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 TR Contractor submitted its Tender Submission.

17.2. A Party affected by Force Majeure shall give to the other Party 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 Party during the period of Force Majeure.

17.3. 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.

17.4. 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.

18. NO ANNOUNCEMENT

18.1. The TR Contractor agrees that, except as provided in Clause 22.2, 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 TR Contractor after termination or expiry of this Agreement for whatever reason.

19. LIABILITY, INDEMNITY AND INSURANCE

19.1. Subject to Clauses 11.14 and 19.2, and save where any provision of these Service Terms & Conditions provides for an indemnity, the Parties acknowledge and agree

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that neither Party nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of the Agreement other than for loss directly resulting from such breach and which at the date of formation of the Agreement was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

- 19.1.1. physical damage to the property of the other Party, its officers, employees or agents; and/or
- 19.1.2. the liability of such other Party to any other person for loss in respect of physical damage to the property of any person subject, for the avoidance of doubt, to the requirement that the amount of such liability claimed by such other Party should be mitigated in accordance with general law,

and provided further that the liability of either Party in respect of all claims for the losses referred to in this Clause 19.1 shall not exceed the Liability Cap per incident or series of related incidents.

19.2. Nothing in these Service Terms & Conditions shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party or any of its officers, employees or agents, and each Party shall indemnify and keep indemnified the other Party, its officers, employees and agents from and against all such and any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of that Party or its officers, employees or agents.

19.3. Subject to Clause 19.2, and save where any provision of these Service Terms & Conditions provides for an indemnity, neither Party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

- 19.3.1. any loss of profit, loss of revenue, loss of use, loss of data, loss of contract or loss of goodwill; or
- 19.3.2. any indirect or consequential loss; or
- 19.3.3. loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in Clauses 19.1.2 and 19.2.

19.4. Without prejudice to Clause 9.4, the TR Contractor shall insure with a reputable insurance company for (and on request provide evidence to NGESO of) such insurances as required by law and necessary for the safe and efficient performance of the Agreement and to cover the liabilities set out in Clause 19. Where possible the TR Contractor shall add NGESO as a named party on its insurance policies.

19.5. The TR Contractor's liabilities under the Agreement shall not be deemed to be released or limited by the TR Contractor taking out the insurance policies referred to in Clause 19.4.

20. RECORDS AND AUDITS

20.1. The TR Contractor shall keep proper and accurate records of all matters relating to the performance of its obligations under this Agreement.

20.2. The records shall be maintained in a form suitable for audit purposes and shall be retained for any period required by any Legal Requirement, and in any event, for the term of the Agreement and for a period of no less than seven (7) years after termination of the Agreement where such records contain or relate to financial data and/or contract data.

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- 20.3. NGESO, or a reputable independent third-party auditor nominated by it, may, on reasonable notice to the TR Contractor and during normal working hours, inspect and review the records for the purposes of verifying the TR Contractor's compliance with its obligations under the Agreement and/or to meet any other audit or information requirement that may be required by any Legal Requirement.
- 20.4. The TR Contractor shall co-operate fully and promptly with any such audit and/or inspection conducted by NGESO and provide such reasonable assistance as may be required by NGESO in relation to any audit.
- 20.5. The TR Contractor shall ensure that all paperwork issued by or on behalf of the TR Contractor to NGESO (including, without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references any other appropriate and necessary information.

21. ASSIGNMENT

- 21.1. Save as provided for in Clauses 21.2 and 21.3, this Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
- 21.2. NGESO may assign or transfer the benefit and/or burden of this Agreement or any other rights and/or obligations pursuant to these Service Terms and to a successor Licence holder.
- 21.3. The TR Contractor may with the prior consent of NGESO (such consent not to be unreasonably withheld or delayed):
- 21.3.1. assign or charge its benefit under this Agreement in whole or in part by way of security; or
 - 21.3.2. upon disposal of any part of the TR Contractor's business comprising the Contracted Top Up Plant, the TR Contractor may transfer its rights and obligations under this Agreement to the purchaser thereof provided that there have been transferred to the purchaser of all of its rights and obligations under each of the Bilateral Connection Agreements (and associated Construction Agreements) and Mandatory Services Agreements relevant to the part of the business or undertaking to be transferred.
- 21.4. If ownership, occupancy or use (for the purpose of providing the Top Up Plant Capability) of the site at which a Contracted Top Up Plant is located changes, or may change, during the term of the Agreement, the TR Contractor shall immediately notify NGESO of the same. NGESO and the TR Contractor shall, at the reasonable request of NGESO, discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.
- 21.5. NGESO may terminate the Agreement in accordance with Clause 16.2 if a Change in Ownership of the TR Contractor occurs and the new owner of the TR Contractor fails to meet any of NGESO's reasonable due diligence checks as notified to the TR Contractor.

22. CONFIDENTIALITY

- 22.1. NGESO may disclose information relating to this Agreement under obligations within its Licence, the Balancing and Settlement Code, the Grid Code, the

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Connection and Use of System Code, the Fuel Security Code or as otherwise required or permitted by the Authority or as expressly stated in this Agreement to be permitted under this Clause. It shall not be a breach of this Clause 22 where NGESO discloses any such information.

22.2. Neither Party shall be prohibited from issuing or making any public announcement or statement to the extent expressly permitted or if it is necessary to do so in order to comply with any Legal Requirement or the regulations of any recognised stock exchange upon which the share capital of such Party is from time to time listed or dealt in.

22.3. Save as permitted by Clause 22.1, each Party shall treat as strictly confidential and shall not disclose any Confidential Information relating to the other Party received or obtained as a result of entering into or performing this Agreement. The restrictions imposed by this Clause 22.3 shall not apply to the disclosure of any Confidential Information:

22.3.1. which is in or becomes part of the public domain otherwise than as a result of a breach of Clause 22.3, or which a Party can show was in its written records prior to the date of disclosure of the same by the other Party, or which it received from a third party independently entitled to disclose it;

22.3.2. which is required to be disclosed by law, an industry code or pursuant to any licence of the Party concerned;

22.3.3. to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party;

22.3.4. to any parent, subsidiary or fellow subsidiary undertaking on a “need to know” basis only. In this Clause 22.3.4, the words “parent”, “subsidiary” and “undertaking” shall have the meanings as provided in sections 1159, 1161 and 1162 of the Companies Act 2006;

22.3.5. by the TR Contractor to any owner and/or operator of relevant plant and apparatus to the extent necessary to enable the TR Contractor to provide the Top Up Restoration Capability pursuant to these Service Terms and fulfil its obligations under this Agreement.

22.4. Save as permitted by Clause 22.1, no Party shall use the name, brands and/or logos of another Party for any purpose without that other Party’s prior written approval (such approval not to be unreasonably withheld or delayed).

23. INTELLECTUAL PROPERTY RIGHTS

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

24. DATA PROTECTION

24.1. The provisions of paragraph 15 of the General Terms and Conditions shall apply in respect of Data Protection Law as if set out in full herein.

25. MODERN SLAVERY, ANTI-BRIBERY AND LIVING WAGE

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

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26. NOTICES

- 26.1. Paragraph 17 of the General Terms and Conditions shall apply to any notice required to be submitted as if set out in full herein.
- 26.2. For the purposes of Clause 26.1, the contact details and addresses of each Party shall be those set out in Part 8 of the Contract Form or as otherwise notified from time to time by that Party to the other Party.

27. DISPUTE RESOLUTION

- 27.1. The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to this Agreement.
- 27.2. In the event that a dispute cannot be resolved within thirty (30) days of written notice of the dispute, the dispute shall be escalated to the Parties' senior representatives (named in the Contract Form, or as otherwise notified by each Party to the other) who have authority to settle the same or may refer the dispute to mediation.
- 27.3. If thirty (30) days following such an escalation the Parties have still not resolved the dispute, then a Party shall have the right to refer the dispute to either:
 - 27.3.1. Arbitration pursuant to the rules of the Electricity Arbitration Association in force from time to time; or
 - 27.3.2. (where these Service Terms & Conditions provide for the dispute to be referred to the Expert) the Expert,
- 27.4. For the avoidance of doubt, Clauses 27.2 and 27.3 shall not preclude a Party from raising arbitration proceedings in the event a claim is considered to be nearing the end of a prescription and/or limitation period pursuant to the Limitation Act 1980.

Arbitration

- 27.5. Where any dispute is referred in accordance with Clause 27.3.1 to arbitration, the following provisions shall apply:
 - 27.5.1. The seat of arbitration shall be London;
 - 27.5.2. The number of arbitrators shall be one. Where no arbitrator is named or where the named arbitrator is not able or is unwilling to act the appointer of the arbitrator (and of any replacement) shall be The President of the Electricity Arbitration Association;
 - 27.5.3. Whatever the nationality, residence or domicile of a Party and wherever the dispute or difference or any part thereof arose, the laws of England and Wales shall be the proper law of any reference to arbitration, and in particular (but not so as to derogate from the generality of the foregoing) the rules and provisions of the Arbitration Act 1996 (notwithstanding anything in Section 108 thereof) shall apply to any such arbitration wherever the same or any part of it shall be conducted;
 - 27.5.4. For the avoidance of doubt, the Parties confirm and agree that nothing in the agreement to arbitrate prevents a Party:
 - 27.5.4.1. challenging the award of an arbitral tribunal as provided for under the Arbitration Act 1996;
 - 27.5.4.2. seeking the remedy of specific performance or any other power or remedy that would be available to the English court from the arbitral tribunal in accordance with the Arbitration Act 1996;

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- 27.5.4.3. seeking interim relief from the English court under the Arbitration Act 1996, or from any other court with competent jurisdiction; or
- 27.5.4.4. seeking to enforce any arbitral award in the English court or any court of competent jurisdiction.
- 27.5.5. Without prejudice to any other mode of service allowed under any relevant law, where the TR Contractor is not incorporated in any part of Great Britain, the TR Contractor agrees that if it does not have, or shall cease to have, a place of business in Great Britain it will promptly appoint, and shall at all times maintain, an agent for the service of process in Great Britain to accept service of process on its behalf in any proceedings commenced in support of, or in relation to arbitration, in the courts of England and Wales.

Expert determination

27.6. Where any dispute is referred in accordance with Clause 27.3.2 to the Expert for determination, the following provisions shall apply:

- 27.6.1. the Expert shall act as an expert and not as an arbitrator and shall decide those matters referred to them using their skill, experience and knowledge, and with regard to all such other matters as they in their sole discretion considers appropriate;
- 27.6.2. if the Parties cannot agree upon the selection of an Expert, the Expert shall be determined by the President for the time being of the Law Society of England and Wales;
- 27.6.3. all references to the Expert shall be made in writing by either Party with notice to the other (as relevant) being given contemporaneously, and the Parties shall promptly supply the Expert with such documents and information as they may request when considering any referral;
- 27.6.4. the Expert shall be requested to use their best endeavours to give their decision upon the question before them as soon as possible in writing following its referral to them, their decision shall, in the absence of fraud or manifest error, be final and binding upon the Parties;
- 27.6.5. if the Expert wishes to obtain independent professional and/or technical advice in connection with the question before them:
 - 27.6.5.1. the Expert shall first provide the Parties with details of the name, organisation and estimated fees of the professional or technical adviser; and
 - 27.6.5.2. the Expert may engage such advisor with the consent of the Parties (which consent shall not be unreasonably withheld or delayed) for the purposes of obtaining such professional and/or technical advice as they may reasonably require;
- 27.6.6. the Expert shall not be held liable for any act or omission, and their written decision will be given without any liability on the Expert's part to either Party, unless it shall be shown that they acted fraudulently or in bad faith;
- 27.6.7. save to the extent otherwise expressly provided herein pending the determination by the Expert, this Agreement shall continue to the extent possible for the Parties to perform their obligations; and
- 27.6.8. the Expert shall at their discretion be entitled to order that the costs of the reference of a dispute to them shall be paid by the Parties in whatever proportions they think fit.

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28. GOVERNING LAW AND JURISDICTION

28.1. 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.

29. SEVERANCE

29.1. The provisions of paragraph 19 (*Severance*) of the General Terms and Conditions shall apply as if set out in full herein.

30. THIRD PARTY RIGHTS

30.1. 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.

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

31. NO AGENCY OR PARTNERSHIP

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

32. WAIVER

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

33. ENTIRE AGREEMENT

33.1. The Contract Form, these Service Terms & Conditions and the documents referred to in them (the “**Relevant Documents**”) together constitute the entire agreement and understanding of the Parties relating to the matters contemplated by the Relevant Documents and supersede any previous drafts, agreements, understandings or arrangements between any of the Parties relating to the subject matter of the Relevant Documents, which shall cease to have any further effect.

34. EMR

34.1. Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in this Agreement, the TR Contractor 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 this Agreement for the purpose of carrying out its EMR Functions.

34.2. For the purposes of this Clause 34 only:-

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

34.2.2. “**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;

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

- 34.2.4. **“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.

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SCHEDULE 1

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 and in terms reasonably satisfactory to NGESO issued by a Rated Bank payable in Sterling in London; or ii. an irrevocable standby letter of credit and in terms 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 and in terms and from an issuer reasonably satisfactory to NGESO; or <p>such other form of security acceptable to NGESO and in terms reasonably satisfactory to NGESO;</p>
“Act”	the Electricity Act 1989;
“Active Power”	has the meaning given to it in the Grid Code;
“Actual Availability”	in relation to an Availability Assessment Period, means the percentage of Settlement Periods in the Availability Assessment Period in which the Contracted Top Up Plant was Available;
“Agreement”	has the meaning given to it in Clause 1.1;
“Annual Availability Shortfall Payment”	a sum calculated in accordance with Schedule 3, Part II;
“Assurance Visit”	has the meaning give to it in Clause 13.2;
“Authority”	The Gas and Electricity Markets Authority;
“Availability Assessment Period”	a period of twelve consecutive calendar months commencing on the Commercial

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	Operations Date or an anniversary of the Commercial Operations 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 TR Contractor to NGESO in the circumstances set out in Schedule 2 (<i>Events of Default and Consequences</i>);
“Availability Redeclaration”	a notice given by the TR Contractor to NGESO under Clause 6.3.1;
“Available”	in relation to the Contracted Top Up Plant, has the meaning given to it in Clause 6.1 and the term “Unavailable” shall be construed accordingly;
“Balancing and Settlement Code”	has the meaning given to that term in the Transmission Licence;
“Balancing Service”	has the meaning given to that term in the Transmission Licence;
“Base Rate”	The Bank of England Official Rate from time to time;
“Bilateral Connection Agreement”	has the meaning given to that term in the CUSC;
“BM Unit”	has the meaning given to it in the Grid Code;
“BM Unit Data”	has the meaning given to it in the Grid Code;
“BM Unit ID”	has the meaning given to it in the Balancing and Settlement Code;
“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 11.1.2;
“Change in Ownership”	has the meaning given to it in the General Terms and Conditions;
“Commercial Operations Date”	means the day after the date on which NGESO notifies the TR Contractor that the Contracted Top Up Plant has passed the

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	Commissioning Assessment in accordance with Clause 3.4;
“Commissioning Assessment”	the commissioning testing of the Top Up Plant to be undertaken in accordance with a procedure to be developed by NGESO and summarised in Schedule 4 Part 1 (<i>Commissioning Assessment - Summary Procedure</i>);;
“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 TR Contractor or the subject matter of this Agreement;
“Conditions Precedent”	means the conditions set out in Part 1 of the Contract Form;
“Confidential Information”	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“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 TR Contractor of the Contracted Top Up Plant, including where relevant the implementation of the Works;
“Construction Agreement”	has the meaning given to it in the CUSC;
“Contract Form”	means the document signed by the Parties to which these Service Terms & Conditions are attached;
“Contracted Top Up Plant”	the Top Up Restoration Plant identified in the Contract Form;

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“Contracted Top Up Requirements”	in relation to a Contracted Top Up Plant, the technical requirements set out in Part 5 of 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;
“Data Protection Law”	any Legal Requirement relating to the processing, privacy, and use of personal data, as applicable to NGESO and the TR Contractor, including in the UK: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any current laws or regulations implementing Council Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679 (“GDPR”), and/or any corresponding or equivalent national laws or regulations, once in force and applicable, including the Data Protection Act 2018, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;
“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 ten (10) days of the TR Contractor’s notice under Clause 3.3 that is due to any act or omission of NGESO;
“De-load”	has the meaning given to it in the Grid Code and “De-loading” shall be construed accordingly;

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“Directive”	in relation to a Party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority, which is legally binding upon that Party or, if not legally binding upon that Party, with which that Party would ordinarily comply, acting in accordance with Good Industry Practice;
“Dynamic Parameter”	has the meaning given to it in the Grid Code;
“EDL Equipment”	in relation to a Power Station, the electronic despatch mechanism by which the Parties communicate with respect to the BM Units at the TR Contractor’s Power Station for the purposes of operation of the Balancing Mechanism and the utilisation of Balancing Services;
“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;
“Emergency Instruction”	has the meaning attributed to it in the Grid Code;
“Enhanced Rate”	in respect of any day the rate per annum which is 4% per annum above the Base Rate;
“Escrow Account”	a separately designated bank account in the name of NGESO established by a mandate signed by both NGESO and the TR Contractor at a branch of Barclays Bank PLC or another bank in the City of London as notified by NGESO to the TR Contractor, 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 TR Contractor but mandated for withdrawal of principal only by way of a call by NGESO or by way of payment to the TR Contractor to the extent of any reduction in the amount so secured and mandated for the transfer of any interest accrued to the Escrow

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	Account quarterly to such bank account as the TR Contractor 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 27.6;
“Expiry Date”	the date falling on the [fifth] anniversary of the Commercial Operations Date;
“External Costs”	the costs incurred by the TR Contractor 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

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	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;
“Fuel Security Code”	the document of that title designated as such by the Secretary of State as from time to time amended;
“Funded Capability”	in relation to a Top Up Plant, any capability that has been materially enhanced through a Works Contribution Payment;
“General Terms and Conditions”	the Flexibility Services General Terms and Conditions published by the ENA;
“Genset”	(where applicable) a Generating Unit or CCGT Unit within the relevant CCGT Module (as such terms are defined in the Grid Code) specified in the Contracted Top Up Requirements;
“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;

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“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 TR Contractor 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 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 [] ¹ multiplied by the number of Settlement Periods in the day;
“Legal Requirement”	means any order of a Competent Authority, Act of Parliament, Directive, regulations or licence, consent or similar provision issued by a Competent Authority;
“Liability Cap”	five million GB pounds (£5,000,000);;
“Licence”	any one or more as appropriate of the licences granted pursuant to section 6 of the Act;
“Mandatory Service Agreement”	has the meaning given to it in the CUSC;
“Maximum Export Limit”	has the meaning given to it in the Grid Code;
“Minimum Availability”	in relation to an Availability Assessment Period, means an Actual Availability of not less than [] per cent ([]%);
“Month”	means a calendar month;
“Monthly Availability Payment”	an amount calculated in accordance with Schedule 3, Part I;

¹ To be determined by reference to the cost of alternative actions that would need to be taken by NGESO.

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“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 for any other reason, or restrictions otherwise imposed on the operation of the Contracted Top Up Plant by the Transmission Owner which, in either case, prevents the Contracted Top Up Plant from providing Top Up Restoration Capability;
“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 an Electricity System Restoration;
“Parties”	taken together, NGESO and the TR Contractor;
“Physical Notification”	has the meaning given to it in the Grid Code;
“Planned Outage”	an outage of part of the NETS coordinated by NGESO under OC2 of the Grid Code;
“Power Station”	has the meaning given to it in the Grid Code;
“Plant and Apparatus”	has the meaning given to it in the Grid Code;
“Project Plan”	the plan setting out the Scheduled Commercial Operations Date and the associated milestones submitted by the TR Contractor in as a Condition Precedent, as

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	the same may be varied from time to time in accordance with Clause 3.2;
“Top Up Restoration Contractor” or “TR Contractor”	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);
“Reactive Power”	has the meaning given to it in the Grid Code;
“Relevant Documents”	has the meaning given to that term in Clause 33;
“Reproving Assessment”	has the meaning given to that term in Clause 6.4;
“Restoration Instruction”	an instruction issued by NGESO in accordance with Clause 7;
“Restoration Notice”	a notice given by the TR Contractor to NGESO under Clause 6.3.2;
“Sanctioned Country”	means any country or territory that is the target of comprehensive, country or territory wide Sanctions;
“Sanctioned Person”	means any person (companies, entities or individuals) that is (i) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, a Sanctions List; (ii) the government of a Sanctioned Country or a member of the government of a Sanctioned Country; (iii) resident in or incorporated under the laws of any Sanctioned Country; or (iv) to the best of the knowledge and belief of a party (having made due and careful enquiries), otherwise a target of Sanctions;
“Sanctions”	means economic or financial sanctions, trade embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;
“Sanctions Authority”	means (i) United Kingdom government, (ii) the United Nations Security Council; (iii) the European Union; (iv) the United States government; (v) the sanctions local

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	competent authority where the deal is executed or booked;
“Sanctions List”	means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by any Sanctions Authority, including, without limitation, (i) the Consolidated United Nations Security Council Sanctions List; (ii) the "Specially Designated Nationals and Blocked Persons" list maintained by The Office of Foreign Assets Control ("OFAC"); (iii) the consolidated list of persons, groups or entities subject to European Union sanctions administered by the European External Action Service;
“Scheduled Commercial Operations Date”	the date specified in the TR Contractor’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 an amount equal to the maximum amount potentially payable in respect of the Works Contribution Refund Payment at the relevant date, including any value added tax payable on such amounts plus, in the period prior to the Commercial Operations Date, an amount equal to the maximum amount potentially payable in respect of LADs;
“Service Term”	has the meaning given to that term in Clause 5.1;
“Service Terms & Conditions”	has the meaning given to that term in clause 1.1;
“Settlement Days”	has the meaning given to it in the Balancing and Settlement Code;
“Settlement Period”	a period of 30 minutes ending on the hour or half hour in each hour during a day;
“Shutdown”	means, in relation to a Generating Unit, the condition of a Generating Unit where the generator rotor is at rest or (where applicable) on barring;
“Start-up”	means: in relation to a Generating Unit, the action of bringing the Generating Unit from Shutdown to Synchronous Speed;

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“Synchronised”	the condition where an incoming Generating Unit or System is connected to the busbars of another System so that the Frequencies and phase relationships of the Generating Unit or the System, as the case may be, and the System to which it is connected are identical; “Synchronise”, “Synchronisation”, “Desynchronise” and “Desynchronisation” shall be construed accordingly;
“Synchronous Speed”	that speed required by a Generating Unit to enable it to be Synchronised to a System;
“Target Availability”	means, in relation to a Contracted Top Up Plant and an Availability Assessment Period, the target Availability (expressed as a percentage) as specified in the table set out in Part 7 of the Contract Form;
“Tender”	means the competitive procurement process for Electricity System Restoration Services, undertaken pursuant to the ITT;
“Tender Submission”	means a submission made in response to the ITT;
“Test”	means a Commissioning Assessment, Capability Assessment or a Reproving Assessment;
“Test Parameters and Procedures”	has the meaning given to it in Clause 11.2;
“Test Period”	the period between the start time and the end time of a Test;
“Top Up Restoration Plant”	has the meaning given to that term in the Grid Code;
“Top Up Restoration Capability”	has the meaning given to that term in the Grid Code;
“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 an Electricity System Restoration;

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“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 as amended from time to time, including by the addition of the Electricity System Restoration Standard;
“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”	has the meaning given to it in Clause 4.1; 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.

SCHEDULE 2

Events of Default and Consequences

1. Event of Default - Availability Redeclaration	Consequences
<p>Save in respect of a planned maintenance or inspection period agreed pursuant to the Grid Code, failure by the TR Contractor 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 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 TR Contractor 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 TR Contractor 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 or inspection period agreed pursuant to the Grid Code, failure by the TR Contractor 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 or inspection period agreed pursuant to the Grid Code and ending at 24.00 hours on the last day of such planned maintenance or inspection period.</p>
3. Events of Default Failure to comply with Restoration Instruction	Consequences

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<p>Save during a period the subject of a prior notification from the TR Contractor to NGESO in which the Contracted Top Up Plant is Unavailable, the failure by the TR Contractor to comply with a Restoration Instruction 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) (where applicable) the failure was wholly and directly caused by the unavailability of or constraint on the National Gas Transmission System such that the TR Contractor 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; 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 TR Contractor 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 TR Contractor.</p>
<p>4. Events of Default - Failure of Capability Assessment or Repeating Assessment</p>	<p>Consequences</p>
<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 TR Contractor 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 TR Contractor 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, NGESO shall have the right to</p>

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	<p>terminate this Agreement by notice in writing to the TR Contractor.</p> <p>(4) Without prejudice to (3) above, NGESO may (at its option) meet with the TR Contractor to discuss the reasons for failure of the Capability Assessment and the subsequent Reproving Assessment and, subject to the TR Contractor 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 TR Contractor a period during which the TR Contractor 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 TR Contractor advises that the additional works will not be completed within the Additional Works Period; 2. following completion of the additional works, the TR Contractor fails a subsequent Reproving Test.
<p>5. Events of Default – Public Announcement</p>	<p>Consequences</p>
<p>Any breach by the TR Contractor of its obligation contained in Clause 17 (<i>No Announcement</i>).</p>	<p>NGESO shall have the right to terminate this Agreement forthwith by notice in writing to the TR Contractor.</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 TR Contractor pursuant to Clause 8 (*Service Fees and Rebates*);

$BSAP_m$ is defined in paragraph 2 below;

$RA_m = RAC_m + RABS_m$ as each is defined in paragraph 3 below,

and if TMP_m is negative, then the TR Contractor 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 3, Part IV; 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 Redecclaration*) 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:

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

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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 Top Up Restoration Capability in accordance with the Contracted Top Up Requirements.

- 3.2 If the Event of Default specified in row 3 (*failure to comply with a Restoration Instruction*) or 4 (*failure of Capability Assessment and Repeating Assessment*) of the table in Schedule 2 (occurs in month m, an Availability Rebate ($RABS_m$) shall be calculated as follows:

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

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 Commercial Operations Date or, if later, the last date on which the Contracted Top Up Plant was last demonstrated to NGESO's reasonable satisfaction to be capable of providing Top Up Restoration Capability in accordance with the Contracted Top Up Requirements in an Electricity System Restoration or Capability Assessment or Repeating Assessment.

PART II

ANNUAL AVAILABILITY SHORTFALL PAYMENT

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

$$AASP_y = (\sum_{jy} BSAMA_j * BSAP_j) * RFA_y$$

\sum_{jy} is the summation for all Settlement Periods j in Assessment Period y;

and

RFA_y is a percentage calculated in accordance with paragraph **Error! Reference source not found.** below.

1.2. The term RFA in respect of any single Assessment Period y shall be calculated as:

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

Otherwise

$$RFA_y = \text{Min} [(TA_y - AA_y), 25] / TA_y$$

Where:

TA_y is the Target Availability (expressed as a percentage) as specified in the table in Part 7 of the Contract Form applicable to Assessment Period y;

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

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

Where:

$\sum_{j=0}^{12\text{months}}$ is the summation overall Settlement Periods j in Assessment Period y;

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BSAMA_j is 0 in respect of each Settlement Period j in which the Contracted Top Up Plant does not have Top Up Plant Capability (excluding where due to events or circumstances of Force Majeure or where NGESO has approved a period of withdrawal of Top Up Plant Capability pursuant to Clause 6.6), otherwise 1; and

SP is the number of Settlement Periods j in 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 TR Contractor to NGESO;

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

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 TR Contractor;

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 TR Contractor to NGESO under this Agreement.

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Part IV Indexation

The Availability Price specified in Part 6 (*Availability Price*) of the Contract Form will be adjusted annually commencing on [] to take account of general price inflation. The index used will be the Consumer Prices Index (CPI) with 2015 = 100 base.

The source of the CPI index is to be the monthly Office for National Statistics Statistical bulletin.

The Availability Price will therefore be increased (or reduced as appropriate) for the period to by the following factor:-

$$CPI_2/CPI_1$$

Where:

CPI_2 is the CPI for the month of []

CPI_1 is the CPI for the month of []

The Availability Price will then be increased (or reduced as appropriate) for the period [] to [] by the following factor:-

$$CPI_3/CPI_1$$

Where:

CPI_3 is the CPI for the month of []

CPI_1 is the CPI for the month of []

In subsequent years indexation will continue in accordance with the above, with always the numerator of the factor representing the CPI of the year under consideration and the denominator of the factor being CPI for [].

In the event that CPI ceases to be published or is not published in respect of any relevant month or it is not practicable to use CPI because of a change in the method of compilation or some other reason, indexation for the purpose of this Part IV shall be calculated by NGESO using an index agreed by the Parties with a view to determining the relevant price after indexation that would be closest to the relevant price after indexation if CPI had continued to be available.

SCHEDULE 4

Commissioning Assessment - Summary Procedure²

1. Scope

The precise technical specification for a Commissioning Assessment will be comprehensively set out in a detailed specification to be agreed between the Parties no later than three (3) months prior to the completion of the Works (such agreement not to be unreasonably withheld or delayed) or otherwise determined by the Expert.

2. Purpose

The Commissioning Assessment will aim to demonstrate that with and without external power supplies to all or part of the Power Station the Auxiliary Unit can be independently started and in turn allow the reliable Start-up of the main Gas Turbine Units and Steam Unit in the manner (including without limitation within the timescales) required by the Contracted Top Up Requirements.

3. Specification

a) A full range of commissioning and Plant performance test will be carried out by the TR Contractor to prove that the Auxiliary Unit performs correctly without detriment to the operation of the existing Gensets. The Commissioning Assessment may form part of these tests however they will be considered to be independent from them.

b) The Commissioning Assessment shall be deemed to be passed when the Power Station has demonstrated that it has performed adequately in all the required tests such that all Parties can have confidence that the Top Up Restoration Capability could be provided if the situation arose to include installation and commissioning of all communications links to enable the TR Contractor to receive Instructions). It should be noted that performance tests of various types may be conducted after the Commissioning Assessment but these will not affect the ability of the Power Station to carry out an Instruction.

² This may require some updating to reflect Top Up Restoration Capability

SCHEDULE 5³

Security

Part 1: Mandatory Background Checking Requirements

1 DEFINITIONS

1.1 In this Schedule the following words and expressions have the following meanings:

Assurance Procedure means the Client's assurance process named "UKPS8: UK Contractor Background Checking Procedure" (as updated from time to time) relating to the Background Checking Requirements

Background Checking Requirements means together the Standard Requirements Check, Minimum Requirements Check and the NSV Check

Minimum Requirements Check means a verification check on the Supplier Personnel's identity, and confirmation of their right to work in the United Kingdom (or any other territory in which they are engaged to provide services to the Client) using either:

- (a) the Nominated Provider (unless otherwise agreed in writing by the Client); or
- (b) where paragraph **Error! Reference source not found.** of this Part 1 applies, the Assurance Procedure

Third Party Provider means a or such other company as determined by the Client from time to time

NSV Check means national security vetting conducted by the UK Government on Supplier Personnel performing NSV Designated Roles

NSV Designated Role means a role as notified by the Client to the Supplier from time to time which require frequent and uncontrolled access to critical national infrastructure sites and/ systems directly or indirectly supporting critical national infrastructure or for other reason (as determined by the Client at its sole discretion) require national security vetting

Standard Requirements Check means the Minimum Requirements Check plus a check on the Supplier Personnel's employment history for the period of three years prior to their engagement, a verification check of home address throughout the three years prior to commencement of their engagement, a "basic disclosure" of unspent criminal convictions provided by Disclosure Scotland or the Disclosure and Barring

³ Please note this is a standard schedule and may require reviewing and updating.

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Service or equivalent which is satisfactory to the Customer, and an international fraud and sanctions check or global watch check using either:

- (a) the Nominated Provider (unless otherwise agreed in writing by the Client); or
- (b) where paragraph **Error! Reference source not found.** of this Part 1 applies, the Assurance Procedure.

2 BACKGROUND CHECKING PROCEDURE

- 2.1 The Supplier shall comply with the Background Checking Requirements and ensure that all documents and records are obtained and/or verified in accordance with Applicable Law. If any Supplier Personnel are to be based outside the United Kingdom, the Supplier must obtain the Client's express written permission prior to engaging such Supplier Personnel and comply with all background checking requirements stipulated by the Client which shall as a minimum include the Minimum Requirements Check (as amended to comply with Applicable Law and any other laws or verification procedures which apply to the relevant jurisdiction).
- 2.2 The Supplier shall ensure that all Supplier Personnel prior to commencing any services or Deliverables of any kind to the Client:-
 - (a) undergo the Standard Requirements Check if they:
 - (i) have or will have any level of unsupervised access to or control (whether local or remote) over the Client's (or any of the Client Parties') operational or office sites, financial information, commercial information (including Client Data), information systems, records, email system, security systems or personal employee information; or
 - (ii) have or will have access directly to members of the public, domestic properties, or to any customers of the Client ("a Standard Requirements Role");
 - (b) undergo the NSV Check if performing a NSV Designated Role; or
 - (c) undergo the Minimum Requirements Check if they are not performing a Standard Requirements Role or a NSV Designated Role,
- 2.3 Where a Standard Requirements Check is required and it reveals that the Supplier Personnel has a criminal record, such record shall be disclosed to the Client if the Supplier wishes to assign the Supplier Personnel to this Agreement. The Client reserves the right in its absolute discretion to require that such Supplier Personnel is excluded from directly or indirectly providing any Services if in its opinion the relevant charge, caution or conviction renders them unsuitable for the work in question.
- 2.4 Without prejudice to paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** of this Part 1, if the Supplier instructs the Nominated

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Provider to withhold access to the Client (or the Client is otherwise unable to use the Nominated Provider service) such that the Client is unable to verify whether the relevant checks have been completed then:

- (a) the Supplier shall notify the Client as soon as reasonably practicable of such instruction to the Nominated Provider;
- (b) on receipt of such notification at paragraph **Error! Reference source not found.** of this Part 1 (or following the Client otherwise becoming aware of the unavailability of the Nominated Provider service) the Client shall notify the Supplier of the applicable Assurance Procedure which the Supplier will be required to follow; and
- (c) the Supplier shall ensure that the Assurance Procedure is complied with within eight (8) Days of receipt of the same, and a failure by the Supplier to do so shall be a material breach of this Agreement.

- 2.5 The Client reserves the right to require that additional checking over and above the Background Checks be undertaken for particularly high-risk roles.
- 2.6 Where during the Term of this Agreement the Supplier becomes aware of any conviction of Supplier Personnel, or any falsification of information by Supplier Personnel, this information shall be forwarded to the Client for determination in its absolute discretion as to whether the Supplier Personnel should be allowed to continue working for or providing any services or Deliverables to the Client.
- 2.7 Without prejudice to **Error! Reference source not found. (Error! Reference source not found.)** the Supplier shall retain, manage, store and secure accurate and complete records of all checks made in accordance with the Background Checking Requirements, in accordance with the Data Protection Act 2018 (as amended) , and in such a manner that the Client can, on reasonable notice, request access in order to conduct an audit in respect of Supplier Personnel in accordance with the terms of this Agreement.
- 2.8 The Supplier acknowledges and accepts that the Nominated Provider will provide the Client with access to the Background Check Records to enable the Client to conduct audits in respect of compliance with the Background Checking Requirements.

Part 2: Mandatory Information Security Requirements

The Supplier shall be required to comply with the following requirements in this Part 2:-

1. INTRODUCTION & BACKGROUND

Client is committed to delivering operational excellence and the highest levels of security standards. This is achieved by maintaining appropriate security controls and safeguards, that cover both internal processes and those elements outsourced by Client to its supply-chain. These supply-chain partners, contractors, service providers, and suppliers (collectively called 'Suppliers') upon whom Client relies, play a key role in the achievement of these goals.

Client and its Suppliers shall acknowledge that security risks are shared between the parties and that any compromise represents an unacceptable risk to Client, requiring immediate communication and co-operation between the parties.

2. PURPOSE

The purpose of this schedule is to define the security requirements that need to be met by Client's supply-chain during the delivery of products and services. Security requirements contained within this schedule align to Client's IT Control Set, which are based on NIST 800-53.

3. RELATED CLIENT STANDARDS

This schedule shall be used in conjunction with all associated contract documentation and Client's 'Supplier Code of Conduct' with which the Supplier shall comply. A copy of the Supplier Code of Conduct can be found on the Client website under the Suppliers page (<https://www.nationalgrid.com/suppliers>).

4. DEFINITIONS

Product: A product is the item offered for sale. A product can be a service or an item. It can be physical or in virtual or cyber form. (Collective term for and may be described as an asset, component, service, equipment, assembly, sub-assembly, design, system or various other terms within a contract or purchase order.)

Service: A form of 'product', often associated with a support activity or process

Cyber Asset: Any programmable electronic devices and communication networks including hardware, software, and data.

Externally Facing: Any vulnerability that could be exploited without existing access to the system.

5. MANDATORY AND NON-MANDATORY REQUIREMENTS

Within this document:

Shall: Indicates a mandatory requirement.

Should: Indicates best practice and is the preferred option. If an alternative method is used then a suitable and sufficient risk assessment must be completed to show that the alternative method delivers the same, or better, level of protection.

6. ASSURANCE REQUIREMENTS

Client requires its supply-chain to provide evidence of compliance with the obligations under this agreement and applicable law, and to demonstrate the controls supporting the confidentiality, integrity and security of Client data and systems.

Therefore, Client, acting by itself or through its agents, shall have the right to undertake the assurance and audit activities detailed below during the term of this agreement, and, for a period of eighteen (18) months thereafter, in line with country, federal and state statute of limitations.

6.1. PRE-CONTRACT SECURITY AND PERIODIC ASSURANCE ASSESSMENTS

Client operates a risk-based approach to supply-chain security, whereby the level of security assurance and oversight is proportionate to the products or services being supplied, and the potential risks associated. This includes pre-, post-, and end of contract assurance assessments and periodic reporting requirements.

This assurance activity may include:

- Completion of Client security questionnaire;
- Details of controls and provision of supporting evidence; and
- Periodic submission of independent assurance certification and/or compliance attestations.

Note: in accordance with Client's risk-based approach, the level of assurance activity may be subject to change based the availability of evidence and the ongoing performance of the Supplier.

Upon agreement with NG Security, evidence of compliance may be provided in different formats and methods and the assessment may be performed remotely, or onsite at the Supplier's location. For any onsite assessment at the Supplier's location, Client will aim to provide at least fifteen (15) business days' advance notice to the Supplier.

6.2. FOR-CAUSE AUDIT

In the event of an actual or suspected security breach (Paragraph 7.23 refers), or non-compliance with this agreement and/or applicable law, Client may invoke its right to audit, as provided under this agreement, with 24 hours' notice to the Supplier in order to investigate and review related documentation, facilities, and processes.

6.3. REGULATORY AUDITS

Under statute, rules, regulations, codes of practice/regulatory frameworks, or otherwise, certain government departments and regulatory, statutory and other entities, committees and bodies (collectively called, "**Regulatory Body**"), are entitled to investigate the affairs of Client, including any activities or processes performed by Client's supply-chain.

In these circumstances, Client agrees to provide evidence of such a Regulatory Body investigation to the Supplier, and the Supplier shall promptly cooperate and support Client and the Regulatory Bodies in order to fulfil such obligations.

6.4. CONDUCT AND ARRANGEMENTS

The Supplier (and applicable sub-tier supplier and /or sub-contractors) shall provide all reasonable co-operation and assistance in support of these assurance and audit activities, via the timely provision of:

- (a) Relevant information and supporting evidence requested by Client, and its representatives; and
- (b) Reasonable access to any sites, facilities and employees involved (whether exclusively or non-exclusively) in the performance of the services.

This includes any third-party representative that Client employs to conduct the audit on its behalf. The decision to use a third party shall be communicated to the Supplier and shall be mutually acceptable to both NG and the Supplier.

In return, Client and its representatives shall use all reasonable efforts to ensure that they do not unreasonably cause disruption or delay the provision of products or services. Additionally, during any onsite visit to the Supplier's location, Client and its representatives agree to comply with the Supplier's security and safety protocols, and any relevant site or facility operating procedures (as is applicable and reasonable).

All assessment and audit activities shall be subject to existing confidentially arrangements between Client and the Supplier.

6.5. COSTS AND EXPENSES

Client and the Supplier shall bear their own respective costs and expenses incurred as part of the above assurance or audit activities unless a material default is identified, in which case the Supplier shall reimburse Client for all reasonable costs incurred.

6.6. AUDIT OUTCOMES

All findings (positive and negative) shall be shared with the Supplier to obtain their factual concurrence and enable a right to respond or seek further clarification.

If a default is identified, a remediation plan shall be proposed by the Supplier for agreement with the Client Security team. The agreed remediation plan shall be completed to an agreed timescale and the Supplier shall agree to:

- (a) carry out the remediation plan at its own cost;
- (b) reasonably co-operate in the carrying out of the remediation plan, and comply with the applicable instructions from Client, its representatives or regulatory bodies (as applicable); and
- (c) furnish evidence of its compliance with its obligations under this Agreement following execution of the remediation plan in a manner which is reasonably satisfactory to the Client.

7. MINIMUM SECURITY REQUIREMENTS

The requirements set out in this paragraph are the minimum-security controls that NG requires of all its Suppliers to have in place within their organisation in order to protect the ongoing confidentiality, integrity, and availability of NG information and/or systems.

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These controls shall be formally defined within the Supplier's organisation via the publication and management of documented processes, policies, standards and/or systems. The Supplier shall be able to demonstrate compliance with these controls, in accordance with the requirements detailed in Paragraph 6.

7.1. SECURITY MANAGEMENT SYSTEMS

The Supplier shall maintain an overarching organisational security policy and supporting security management systems, that ensures the products or services supplied to Client conform to the requirements within this schedule, and all relevant legislative requirements.

The Supplier shall demonstrate the compliance of their security management system via the provision of independently verified certification or audit reports (e.g. ISO 27001, SOC 1, SOC 2) that covers the scope of the products or services supplied to Client.

Note: in accordance with **Paragraph 6 - Assurance Requirements** above, Client may request additional evidence or reporting, and undertake further assurance assessments, to validate the Supplier's compliance with this agreement.

A list of all the Supplier's locations providing products or services to Client in support of this Agreement shall be provided to the Client by completing the table in **Part 3 of this Schedule**. Changes to this list requires pre-approval from Client.

7.2. RISK MANAGEMENT

The Supplier shall undertake and document formalised risk assessments to understand their key security risks. This shall include the likelihood and impact from unauthorised access, use, disclosure, modification, or destruction of assets and the information processed, stored, or transmitted.

The risk assessments shall be reviewed every 12 calendar months, or whenever there are significant changes. Identified improvement actions shall be agreed and tracked appropriately.

7.3. SUPPLY CHAIN MANAGEMENT

The Supplier shall implement processes and controls for the identification, assurance and management of sub-tier suppliers and sub-contractors (3rd, 4th parties, etc.).

Any sub-tier supplier or subcontractor who is given access to Client's Confidential Information, or to whom it provides Information created on behalf of Client, shall comply with the same restrictions and conditions set forth herein via a written contractual agreement (flow-down). The Supplier is responsible for enforcing and validating these requirements from sub-tier or outsourced organisations to demonstrate compliance.

Note: Client's data, may not be maintained, stored, or transmitted outside of the United States of America, United Kingdom, or the European Economic Area, except for entities that are legally affiliated or are wholly owned subsidiaries.

A list of sub-tier suppliers and subcontractors directly involved in the supply of products or services to Client shall be provided by completing the table in [REDACTED]. Changes to this list requires pre-approval from Client.

7.4. ASSET MANAGEMENT

The Supplier shall maintain an inventory of assets and equipment, which includes key status and identification information and enables traceability of its use/application.

When assets no longer serve a useful purpose, due to cessation of services or obsolete technology, they shall be repurposed or securely disposed of using methods that prevent the recovery of information. Prior to disposal, release, or reuse, the Supplier shall sanitise the media using defined sanitisation techniques and mechanisms commensurate with the security classification of the information.

Upon contract termination, Client assets and equipment shall be returned, or, if agreed with Client, disposed of in accordance with the above requirement.

7.5. CONFIGURATION MANAGEMENT

The Supplier shall maintain baseline configuration information of its assets and equipment. The information shall include key software and hardware details and their status.

Production environments shall be logically and/or physically segregated from Non-Production (e.g. development and test) environments.

7.6. CHANGE MANAGEMENT

The Supplier shall ensure that there are internal controls to identify, approve, validate, and implement changes in a safe and traceable manner. The impact and risks associated with the change, including any associated with the Client, shall be considered as part of the review.

Changes shall be implemented in a controlled manner and all documentation, records, or systems, impacted by the change (e.g. process flow diagrams, FMEAs, Control Plans, Operator Instructions, penetration testing, etc.), shall be reviewed and updated as part of the implementation plan.

The Supplier shall notify the Client contract manager of any changes that could impact delivery or fulfilment of the contracted requirements.

7.7. AWARENESS AND TRAINING

The Supplier is responsible for establishing and maintaining adequate resources and security competency requirements, in support of the delivery of any products or services to Client.

The Supplier shall provide security and data privacy awareness training to all employees, plus role-based security training for physical or information security personnel, third party stakeholders, and personnel with elevated or privileged access to Client facilities, systems, or information. These requirements should cover the following areas as a minimum:

- Data protection (privacy)
- Cyber and Physical security
- Acceptable use of devices

Records of individual training activities shall be recorded and retained in accordance with the Supplier's record retention policies and a minimum of 3 years.

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7.8. PEOPLE SECURITY

The Supplier shall have a process to ensure pre-employment screening checks are performed for all employees to manage 'insider risk.' The details are set out in Part 1 of this Schedule.

Additional background screening requirements may be required based on the specific level of physical and/or logical access to Client facilities, network, systems, or information. Upon termination of the engagement of any Supplier Personnel (or their involvement in providing the services or Deliverables) the Supplier shall remove all access privileges and recover all equipment and records held by the relevant Supplier Personnel.

7.9. PHYSICAL SECURITY

The Supplier shall ensure appropriate physical security controls, proportionate to risk and asset criticality, are in place to prevent unauthorised access. The approach taken should include as a minimum the following key principles:

- Access shall be controlled and subject to authorisation.
- Access events shall be recorded and monitored to identify any irregular or suspicious activity.
- Logs shall be retained for a minimum of 1 calendar year (12 months), or six calendar years for the US (United States) Jurisdiction.
- Visitors shall be escorted and monitored at all times.
- Limits shall also be set on the maximum number of visitors that can be escorted by an individual at one time.

Network hardware (firewalls, routers, switches, access point controllers, etc.) shall be kept in secured areas and protected against physical tampering and unauthorised connections.

7.10. FACILITY SECURITY

The Supplier shall ensure that server rooms, data centres, computer supply closets, and rooms containing documented critical systems include the following controls:

- Physical security (in accordance with **Paragraph PHYSICAL SECURITY7.9 - Physical Security**).
- Temperature and humidity monitoring.
- Emergency lighting.
- Back-up/emergency power supply systems.

These systems shall be maintained to ensure continued availability and integrity. Maintenance and removal of critical area equipment is approved and logged.

7.11. IDENTIFICATION AND AUTHENTICATION

The Suppliers information systems shall perform identity and authentication checks prior to establishing a connection.

The Supplier shall ensure password and supporting management systems meet the following minimum requirements:

- The initial password issued by a systems security administrator shall only be valid for the user's first on-line session. Upon initial log-on to the system, the user shall be forced to change their password immediately.

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- Password length of at least 8 characters and a complexity that is at least a combination of 3 different types of characters (e.g., uppercase alphabetic (A-Z), lowercase alphabetic (a-z), non-alphabetic (numeric or special characters)).
- For systems using Passphrase authentication, the length should be at least 12 characters.
- All passwords shall expire within 90 days.
- Users shall be prevented from reusing the last 10 passwords

Note: Where there is a system limitation preventing achievement of the above length and complexity requirements, these shall be notified to Client Security for review of appropriate compensating controls.

7.12. ACCESS CONTROL

The Supplier shall have access control policies, processes, and systems to prevent unauthorised access to information, systems, and networks. These shall at a minimum cover the management of the following:

- Approval of access.
- Segregation of duties
- Generic/shared accounts, including updates following any changes to personnel
- Privileged access accounts, including administrator and developer account restrictions
- Remote access, including usage restrictions.
- Authentication protocols, including Multi Factor Authentication
- Set a limit of consecutive invalid logon attempts by a user, with automatic locking of the account if limit breached
- Systems shall lock automatically after a defined period of session inactivity, requiring re-authentication to obtain access to the system
- Access monitoring, to detect unauthorised access attempts
- Periodic access reviews (minimum annual)
- Revocation of access from the Supplier's network within the following timeframes:
 - 24 hours in the event of a for-cause termination
 - 48 hours for standard termination
 - 7 days for all other system, data and application access.

7.13. NETWORK SECURITY

The Supplier shall control communications at the external boundaries of systems, and at identified and documented key internal boundaries of systems, utilising recognised industry best practices, including but not limited to the following:

- Firewalls
- Domain Name System (DNS)
- Intrusion Protection Systems (IPS)
- Network access control (NAC),
- Security information and event management (SIEM)
- Antivirus and other malicious software prevention tools

7.14. SYSTEM LOGGING

The Supplier shall ensure traceability of information system events, with log records generated, retained and protected that capture:

- What type of event occurred.
- When the event occurred.
- Where the event occurred.
- The source of the event.
- The outcome of the event.
- The identity of any individuals or subjects associated with the event.

Log records shall be retained in accordance with record retention policies. Logs and logging tools shall be forensically sound, protected against damage, loss, or unauthorised modification.

7.15. CONTINUOUS MONITORING

The Supplier shall monitor communications on information systems and networks to detect potential attacks and unauthorised use by monitoring as a minimum:

- User activity
- Elevated privileges
- Hosts
- Remote connections

Alerts shall be generated and investigated for the following as a minimum:

- Detected unauthorized exfiltration of data
- Suspicious user behaviour and unauthorised actions on systems
- Detected malicious code
- System abnormalities
- Unauthorised network intrusion
- Detected failure of event logging

Confirmed security incidents involving NG information, system and networks shall be investigated within 24 hours and reported to NG in accordance with **Paragraph 7.23 - Security Incident MANAGEMENT**.

7.16. THREAT AND VULNERABILITY MANAGEMENT

The Supplier shall have threat and vulnerability management policies, processes, and systems and undertake vulnerability scans of information systems at least quarterly based on risk, to prevent the exploitation of system control weakness, security breaches, and information systems and connected Operational Technology outages. Information systems are defined by National Grid's definition of a "Cyber Asset" as per Paragraph 4.

Vulnerabilities should be classified, and remediated, in accordance with the below:

- **Critical** (CVSS score 9.0 – 10.0 AND Externally Facing) = provide corrective plan and prepare a Change Request within 24 hours, for implementation within 72 hours. The total elapsed time must not exceed 72 hours.

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- **High** (CVSS score 7.0 – 10 AND NOT Externally Facing) = provide corrective plan and prepare a Change Request within 5 days, for implementation within 21 days. The total elapsed time must not exceed 21 calendar days.
- **Medium** (CVSS score 4.0 – 6.9) = provide corrective plan and prepare a Change Request within 30 days, for implementation within 60 days. The total elapsed time must not exceed 60 calendar days.
- **Low** (CVSS score 0.1 – 3.9) = Provide corrective plan and prepare a Change Request within 30 days, for implementation within 90 days. The total elapsed time must not exceed 90 calendar days. This is best practise but not compulsory.

In the event that the Supplier utilises an alternative classification scheme, the scoring and remediation timing shall be demonstrably equivalent to the above requirements and must be approved by the National Grid Vulnerability Management team. Prior to service commencement the Supplier shall have identified and remediated all vulnerabilities classified as Critical, High and Medium using the above or approved equivalent classification system as well as providing evidence that the system is free from these classifications of vulnerabilities. Any vulnerabilities that are unable to be remediated must be raised with National Grid Security in order to deem whether an exemption is appropriate before service commencement.

7.17. **PENETRATION TESTING**

The Supplier shall at least annually conduct a penetration test using an approved internal team or, at its own expense, an independent third party and provide Client with an executive overview of such testing and findings. The method of test scoring and issue ratings shall follow standard industry practice, such as the latest Common Vulnerability Scoring System (CVSS) published by the US National Institute of Standards and Technology (NIST). For any material findings (critical, high, or medium risk) defined using the scoring system in Paragraph 7.16, the supplier shall follow the same timeframes defined in this section. The supplier must produce a remediation plan detailing the actions and dates by when these security issues shall be fully resolved and provide a copy of this report to National Grid Security. Any remediations that will exceed the timeframes set out in Paragraph 7.16 must be communicated to National Grid Security along with a remediation plan that includes the expected timeframes for completion of work.

Prior to service commencement Supplier shall have tested and remediated any weaknesses or potential exploits classified as Medium, High or Critical either internally or using an independent third party at its own expense. Evidence of this must also be provided to Client before service commencement. Any weaknesses or exploits that are unable to be remediated must be raised with National Grid Security to deem whether an exemption is appropriate before service commencement.

7.18. **PATCH MANAGEMENT**

The Supplier shall remediate identified threats and vulnerabilities via the implementation and tracking of security patches. Patches shall be tested prior to release and implementation into production.

The Supplier should maintain security patching in accordance with timings detailed above in **Paragraph 7.16 - Threat and Vulnerability Management**.

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7.19. DATA SECURITY

The Supplier shall maintain a data classification scheme and ensure that all information assets are identified with the defined classification level.

The Supplier shall protect the confidentiality, integrity, and availability of their information at rest, during transmission, and in-use, in accordance with the classification scheme to prevent unauthorized disclosure and modification.

Client information held by the Supplier shall be encrypted in accordance with:

- At rest and in-use = AES 256.
- Information in transit = minimum of TLS 1.2 (with no compromised cyphers)

Note: The Supplier should have a plan to transition to TLS 1.3 and the following are prohibited:

- TLS 1.1 and earlier versions of SSL.
- The use of Self-Signed Certificates.
- Wild Card certificates.

Cryptographic keys shall be reviewed every 12 calendar months as a minimum.

Upon contract termination, any Client data shall be returned, or, destroyed in line with Client requirements.

7.20. BACKUPS

The Supplier shall perform periodic data and system backups to enable timely, complete and accurate restoration of data processes. Backups shall be stored in offsite locations with appropriate cyber, environmental, and physical security controls, which are demonstrably equivalent to those at the primary site.

Backups shall be periodically tested to verify the data is usable and compatible with current configurations by restoring a changing set of files that includes representative examples of:

- operating system files,
- application files
- business/end user data.

7.21. BUSINESS CONTINUITY

The Supplier shall have business continuity plans that detail how operations will be maintained during an unplanned disruption in service. This shall include contingencies for business processes, assets, human resources, and business partners, and cover key information, system, and services. Continuity plans shall be approved by senior management and reviewed/tested every 12 calendar months at a minimum.

7.22. DISASTER RECOVERY

The Supplier shall perform periodic disaster recovery tests at a frequency determined by criticality but minimum annually. Actual disaster recovery events arising from operational incidents are deemed equivalent to disaster recovery tests for periodic testing requirements. Tabletop/walkthrough disaster recovery tests are permissible only where operational tests are not viable.

7.23. SECURITY INCIDENT MANAGEMENT AND DATA BREACH

The Supplier shall maintain processes and incident response plans for the management of security incidents. This shall include the following elements as a minimum:

- The identification, classification and reporting of incidents, including definition of reportable incidents to Client, law enforcement or regulatory institutions.
- Defined roles and responsibilities, including incident handling activities involving the Suppliers supply chain.
- Establishment of containment and recovery actions.
- Incident investigation, including the identification of root cause(s).
- Incident resolution, including the implementation of corrective actions.

Client shall be notified promptly, but in no event later than 24 hours, following the confirmation of a security incident relevant to the products or services provided to Client. This includes, but is not limited to, an exploitation of security vulnerabilities by third parties that have resulted in loss, corruption, unauthorized modification, sale, rental, and/or otherwise damages to or materially alters the integrity of Client Data and shall work with Client to mitigate such vulnerabilities. ("Security Breach"). The Supplier shall cooperate with Client to resolve security issues and support Client with any notifications to governmental/administrative entities, as required by Law.

Note: all associated information security incidents and data breaches shall be reported to the Client Cyber-Response hotline:

- In the **US**, call **781-907-3745**
- In the **UK (United Kingdom)**, call **01214248204**
- Or send an email to **cyberresponse@nationalgrid.com**.

A report containing details of the Security Breach, including root cause(s) and corrective action plans implemented (or in process of being implemented) to prevent a future recurrence thereof, plus an assessment of the impact and any known or reasonably suspected future impact on Client and known third parties, shall be provided, in writing, no later than three (3) business days after confirmation, unless an extension to this timeframe is agreed by the Client Incident Management team.

Incidents shall be documented and tracked against defined timeframes to ensure timely resolution and closure. Records of the incident shall be retained for at least 1 calendar years.

SCHEDULE 6

Notification Formats

Provider Name	
Station	
Unit(s)	
Telephone Number	
Date	

**NOTIFICATION OF NON-CAPABILITY AND RESTORATION OF CAPABILITY FOR
ELECTRICITY SYSTEM RESTORATION – ESR (BLACK START)**

	TIME (hrs:mins)	DATE (dd/mm/yy)
COMMENCEMENT OF NON-CAPABILITY		
COMMENCEMENT OF PARTIAL AVAILABILITY		
*ESTIMATED TIME/DATE OF RESTORATION		
TIME/DATE OF RESTORATION		

* Indicate estimated time/date of restoration and re-notify actual time/date of restoration when known using table above.

Please tick this box if the unavailability is a part of the stations scheduled maintenance days

☐

REASON FOR NON-CAPABILITY

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**REQUEST TO REVISE CONTRACT DATA FOR ELECTRICITY SYSTEM RESTORATION
– ESR (BLACK START)**

REDECLARATION OF CONTRACT DATA

STATION CONTRACTED (MW)		*National Grid ESO ACCEPT ✓	National Grid ESO REJECT ✗
EXISTING	PROPOSED		
PROPOSED INTERIM POWER OUTPUT LEVELS			
1 [] MW WITHIN [] MINS			
2 [] MW WITHIN [] MINS			
3 [] MW WITHIN [] MINS			

PROPOSED REACTIVE POWER RANGE (Mvars) AT MIN OUTPUT/GEN STATOR TERMINALS	*National Grid ESO ACCEPT ✓	National Grid ESO REJECT ✗
[] LEADING TO [] LAGGING		

TIME TO CONNECTION EVENT (MINS)		*National Grid ESO ACCEPT ✓	National Grid ESO REJECT ✗
EXISTING	PROPOSED		

DETAILS OF ANY OTHER REVISION(S) TO THE ESR (BLACK START) CAPABILITY	*National Grid ESO ACCEPT ✓	National Grid ESO REJECT ✗

*This agreement can be withdrawn at any time by NGESO and the contract parameters reinstated.

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Please email the completed form to ctr1.ccta@nationalgrid.com

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