

*INDICATIVE DRAFT SUBJECT TO CONTRACT*

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**GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF  
MID- TERM REACTIVE POWER SERVICES**

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## **General Terms and Conditions**

### **1. GENERAL TERMS AND CONDITIONS AND CONTRACT FORMATION**

- 1.1. In relation to a **Tender**, a **Mid-Term Reactive Contract** shall be formed on each acceptance by **NESO** of a **Tender Submission**, as confirmed by an **Acceptance Form**, in relation to each applicable tendered **Facility**, which shall be personal to the **Provider** and may not be assigned or transferred without the consent of **NESO** (not to be unreasonably withheld or delayed).
- 1.2. This document (these “**General Terms and Conditions**”) is binding on a **Provider** and **NESO** under the terms of the **Framework Agreement** and contains the detailed service terms applicable to a **Mid-Term Reactive Contract**.
- 1.3. **NESO** may from time to time, initiate a review of these **General Terms and Conditions** and their operation by notice inviting any suggestions for changes from any **Provider**.
- 1.4. **NESO** shall, as part of a review under Clause 1.3, formulate and consult on **Change Proposals** in accordance with the procedure set out in Schedule 4 (*Change Control Procedure*).

### **2. DEFINITIONS, INTERPRETATION AND CONSTRUCTION**

- 2.1. Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in the **Acceptance Form** or in paragraph 11.3 of the **CUSC**, the Glossary and Definitions section of the **Grid Code** or in Schedule 1 to these **General Terms and Conditions** shall have the same meanings where used in these **General Terms and Conditions**.
- 2.2. In these **General Terms and Conditions**:
  - 2.2.1. unless otherwise stated, references to a particular clause, paragraph, Schedule or Appendix will be a reference to that clause, paragraph, schedule or appendix in or to these **General Terms and Conditions**;
  - 2.2.2. the table of contents and headings are inserted for convenience only and will be ignored in construing these **General Terms and Conditions**;
  - 2.2.3. references to the words “include” or “including” are to be construed without limitation;
  - 2.2.4. except where the context otherwise requires, any reference to an Act of Parliament or any Part or Section or other provision of, or Schedule to, an Act of Parliament shall be construed, at the particular time, as including a reference to any amendment, modification, extension or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament;
  - 2.2.5. references to a month are to a calendar month;

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- 2.2.6. any reference to a rule, enactment, statutory provision, regulation or code or any subdivision or provision thereof will be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to any instruments, orders or regulations then in force and made under or deriving validity from the relevant statute;
- 2.2.7. references to the masculine will include the feminine and references in the singular will include references in the plural and vice versa; and
- 2.2.8. except where the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.
- 2.2.9. references to “in writing” shall include communication by electronic means;
- 2.2.10. a reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006; and
- 2.2.11. the Schedules to these **General Terms and Conditions** form part of and are incorporated in these **General Terms and Conditions** and references to these **General Terms and Conditions** shall include references to the Schedules provided always that in the event of inconsistency or conflict between any matters set out in any Schedule and any matter set out in the main body of the **General Terms and Conditions**, the former shall prevail.

### **3. COMMENCEMENT AND TERM**

- 3.1. Each **Mid-Term Reactive Contract** shall, subject to Clause 3.2 apply from the date stated on the front page of the **Acceptance Form** and, subject always to earlier termination in accordance with these **General Terms and Conditions** shall continue in force and effect until the expiry of the **Service Term**.
- 3.2. Each **Mid-Term Reactive Contract**, other than this Clause 3 and Clauses 17 (*Warranties and Indemnity*) to 33 (*No Partnership*) (inclusive), shall in all respects be conditional on satisfaction of the **Conditions Precedent** as set out in the **Acceptance Form**.
- 3.3. The **Provider** shall use all reasonable endeavours to ensure that the **Conditions Precedent** are satisfied as soon as possible after the date of issue of the **Acceptance Form** and in any event by not later than the **CP Date** and shall update **NESO** in writing regarding progress in satisfying the **Conditions Precedent** on a weekly basis. Without prejudice to the foregoing, the **Provider** shall notify **NESO** without delay if it becomes aware of any material risk to the timely satisfaction of the **Conditions Precedent**.

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- 3.4. If any **Condition Precedent** relating to a **Mid-Term Reactive Contract** has not been satisfied or waived by **NESO** on or before the **CP Date**, that **Mid-Term Reactive Contract** shall (to the extent in force) terminate in accordance with Clause 16 (*Termination*), unless an extension to the **CP Date** has been agreed by **NESO**.
- 3.5. If the provisions of a **Mid-Term Reactive Contract** shall not by then have terminated, not later than three (3) 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, which may not exceed the **Availability Fee** specified in the **Acceptance Form**) upon which the **Mid-Term Reactive Service** shall continue to be provided by the **Provider**. Unless the **Service Term** is further extended under this Clause or the **Mid-Term Reactive Contract** shall by then have terminated, the **Mid-Term Reactive Contract** shall terminate automatically without notice at the end of an **Extended Term**. the **Mid-Term Reactive Contract** shall terminate automatically without notice at the end of an **Extended Term**.

## **4. IMPLEMENTATION OF THE WORKS**

- 4.1. The **Provider** shall (at its own cost) implement and complete the **Works** in accordance with **Good Industry Practice** by the **Scheduled Start Date** and, by not later than ten (10) **Business Days** following the end of each calendar month until the **Start Date** has occurred (or more frequently on either **Party's** request), provide to **NESO** a progress report in writing and in such format as **NESO** may from time to time specify setting out details of the progress of the **Works** against the milestones set out in the applicable **Acceptance Form** (each, a "**Milestone**") including:
- i. progress in achieving the **Post Tender Milestones**, together with such forms of evidence acceptable to **NESO** in its sole discretion, as and when a **Post Tender Milestone** has been achieved; and
  - ii. the **Provider's** proposals for remedying any delay or anticipated delay in implementing the **Works**.
- 4.2. The **Provider's** progress shall be assessed by **NESO** by reference to the **Post Tender Milestones** and **NESO** shall notify the **Provider** in writing at any time after each **PTM Date** either:
- 4.2.1. that it considers the applicable **Post Tender Milestone** has been satisfied (or, in its absolute discretion, waives any such requirement) or that the applicable **Post Tender Milestone** has not been satisfied but it agrees to extend the **PTM Date**, in which event the **Provider** shall then continue to implement and complete the **Works** by the **Scheduled Start Date**; or
  - 4.2.2. that it considers that the applicable **Post Tender Milestone** has not been satisfied in which event, the **Mid-Term Reactive Contract** shall terminate on the date of **NESO's** notice and the **Provider** shall pay the **Termination**

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**Sum** to **NESO**, provided always that any dispute as to whether a **Post Tender Milestone** has been met may be referred by either **Party** by notice in writing to the other for determination by the **Expert**.

- 4.2.3. For the avoidance of doubt, any incorrect, wrongful or misleading declaration given by the **Provider** in attesting to the achievement of any of the **Post Tender Milestones** (where applicable) shall constitute a material breach of the terms of the **Mid-Term Reactive Contract** and, in such event, **NESO** may exercise its termination right under Clause 16 (*Termination*). If a **PTM Date** is extended in accordance with Clause 4.2.1, the **Provider** must demonstrate evidence of completion of the **Post Tender Milestones** on or prior to the extended **PTM Date** notified by **NESO**. If the relevant **Post Tender Milestone** is not satisfied in full by the extension date the provisions of Clause 4.2 shall apply in relation to the relevant **Post Tender Milestone** and the extended **PTM Date**.
- 4.3. When the **Provider** considers that the **Works** are substantially completed and the **Facility** is capable of providing the **Mid-Term Reactive Service** the **Provider** shall notify **NESO** in writing of the dates on which the **Facility** will be available for completing the **Proving Tests** (unless **NESO** has notified the **Provider** that a **Proving Test** will not be required, in which event, the **Start Date** shall occur on the **Scheduled Start Date**) over the following period of thirty (30) days (or such longer period as the **Parties** may agree). The **Parties** shall in good faith seek to agree the date and time for completing the **Proving Test** ("**Proving Test Programme**"). The **Parties** may also need to validate and agree the timing of the **Proving Test Programme**, or certain elements of the **Proving Test Programme** with the **Local TO**. This may impact the, date and time for completing the **Proving Test**. **NESO** reserves the right to update the date and time of the **Proving Test Programme** as a result, provided always that, although **NESO** shall not unreasonably refuse to carry out the **Proving Test** at any time and date that may be requested by the **Provider**, having regard to the cost implications, **NESO** reserves the right to cancel a **Proving Test** previously agreed to be carried out. In such a case the **Parties** shall agree an updated **Proving Test Programme** setting out an alternative time and date when the **Proving Test** shall be carried out which shall be as soon as possible thereafter. **NESO** shall be entitled to attend any **Proving Test**. **NESO** shall have no liability for any costs and/or expenses incurred by the **Provider** arising in connection with any delay in completion of the **Proving Test Programme**.
- 4.4. The **Provider** shall notify all results from the **Proving Test** to **NESO** without delay following completion of the **Proving Test** and **NESO** shall, within fifteen (15) **Business Days** thereafter, notify the **Provider** whether the **Facility** has successfully completed the **Proving Test**. If **NESO** notifies the **Provider** that the **Proving Test** has not been successfully completed, the **Provider** shall undertake any necessary remedial action and the **Parties** shall agree a revised **Proving Test** to which the provisions of Clause 4.3 and this Clause 4.4 shall apply. If **NESO** notifies the **Provider** that the **Proving Test** has been successfully completed: the **Provider's** obligation to make the **Facility**

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**Available** in respect of the **Mid-Term Reactive Service** in accordance with Clause 5.1 shall commence twenty-four (24) hours after **NESO's** notice and the **Provider** must confirm to **NESO** by facsimile, or any other electronic method that **NESO** may notify to **Providers** from time to time, that the **Facility** is **Available** (otherwise it shall be treated as **Unavailable** until such confirmation is received) by that time and date;

- 4.5. The **Provider** must demonstrate to **NESO's** reasonable satisfaction that it has complied with all relevant requirements under the **Grid Code** before commencing commercial operations.
- 4.6. If the **Start Date** is achieved after the **Scheduled Start Date** for reasons other than a **Delay Event**, **NESO** may (save where it exercises its right under Clause 4.7) by notice in writing to the **Provider** elect to reduce the **Availability Fee** for the **Mid-Term Reactive Contract** by a fraction, the denominator of which is the number of days in the **Service Term** and the numerator of which is the number of days (up to a maximum of twenty-five per cent (25%) of the number of days between the **Scheduled Start Date** and the **Expiry Date** (for the purposes of this Clause 4, the "**Relevant Number of Days**") between the **Scheduled Start Date** and the **Start Date**.
- 4.7. If in relation to a **Mid-Term Reactive Contract**, the **Start Date** has not been achieved by the date falling the **Relevant Number of Days** after the **Scheduled Start Date**, **NESO** may terminate the **Mid-Term Reactive Contract** in accordance with Clause 16.2 (*Termination*) and the **Provider** shall pay the **Termination Sum** to **NESO**.
- 4.8. The above remedies shall be **NESO's** sole and exclusive remedies with respect to any failure of the **Facility** to successfully pass the **Proving Test** by the **Scheduled Start Date**.
- 4.9. The **Provider** shall 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 the **Mid-Term Reactive Service** otherwise involves a **Sanctioned Person**.
- 4.10. The **Provider** shall comply with the provisions of Schedule 3 (*Security*) in relation to the services, systems and personnel used by the **Provider** to implement the **Works** and to perform **Mid-Term Reactive Service**, provided always that references to:
  - 4.10.1. "Deliverables" in Schedule 3 (*Security*) are not applicable to any **Mid-Term Reactive Service**; and
  - 4.10.2. "Supplier" shall be read as "**Provider**".



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### **5. AVAILABILITY, SERVICE PROVISION AND INSTRUCTION**

#### **5.1. Provision of the Reactive Power Service**

5.1.1. The **Provider** agrees, with effect from the **Start Date** and throughout the **Service Term** to fuel, operate, maintain and repair the **Facility** in accordance with **Good Industry Practice** with a view to making it **Available** to provide the **Mid-Term Reactive Service** in accordance with the **Contracted Parameters** throughout the **Service Term** of each **Mid-Term Reactive Contract** upon and subject to the terms and conditions set out herein.

5.1.2. The **Provider** agrees to maintain a single point of remote control at the site of the **Facility** to facilitate the issue of **Instructions** and **Instructions to End** by **NESO**.

5.1.3. The **Facility** shall be treated as **Available** in any **Settlement Period** if it is unable to inject or absorb **Reactive Power** solely by reason of a **Network Constraint** and the **Provider** shall be entitled to **Availability Payments** calculated on the basis of a fee equal to fifty per-cent. (50%) of the **Availability Fee**, save to the extent that:

- (i) the **Facility** is unable to inject or absorb **Reactive Power** solely by reason of a **Network Constraint** on a circuit specified in any agreement with restricting intertrip schemes, including but not limited to Category 1 or Category 3 intertrip scheme within the **Provider's Bilateral Connection Agreement**; or
- (ii) the **Facility** has been unable to inject or absorb **Reactive Power** solely by reason of a **Network Constraint** for an aggregate period of the lesser of: (i) twenty-five per cent (25%) of the number of **Settlement Periods** in the **Service Term**; or (ii) 4,320 **Settlement Periods** in any **Contract Year**,

and, in either such case, the **Facility** shall be treated as **Unavailable** and shall not be entitled to **Availability Payments**.

5.1.4. The **Provider** will supply a monthly report in writing to **NESO** detailing the **Availability** achieved by the **Facility** and its performance against the **Contracted Parameters**.

5.1.5. For the avoidance of doubt, the **Facility** shall not be treated as **Available** under paragraph 1.1.3 during any **Planned Maintenance Period**.

#### **5.2. Notification of Unavailability**

5.2.1. If at any time the **Provider** becomes aware that the **Facility** is no longer or will no longer be **Available** or, in the case of a **Dynamic Facility**, the **Facility** will be **Available** but with less than its **Contracted Absorption**



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**Capability** and/or less than its **Contracted Injection Capability**, it shall promptly notify **NESO** accordingly (including, for the avoidance of doubt, in respect of any **Planned Maintenance Periods** or **Force Majeure Periods**) by facsimile or such other means as **NESO** may from time to time require, in the form set out in Schedule 6 (*Form A*) and the **Provider** shall thereafter promptly notify **NESO** by facsimile, or any other electronic method as specified from **NESO** from time to time, in the form set out in Schedule 6 (*Form B*) when the **Availability** of the **Facility** is restored in full.

5.2.2. Each notification by the **Provider** pursuant to Clause 5.2.1 shall be accompanied by an explanation in reasonable detail of the reasons for the **Facility** being **Unavailable** or, in the case of a **Dynamic Facility**, the reduced level of capability and, for the avoidance of doubt, the **Provider** may only declare the **Facility Unavailable** or, in the case of a **Dynamic Facility**, declare the **Facility Available** with reduced capability for reasons of safety or reasons relating to the technical capability of the **Facility** or where the **Facility** is to be withdrawn from service for the purposes of a **Planned Maintenance Period**.

5.2.3. For the purposes of this Clause 5, the **Facility** shall be treated as **Unavailable** or **Available** at the reduced level of capability (as applicable) from the time of the **Provider's** notice under Clause 5.2.1 to the time of receipt by **NESO** of notification under Clause 5.2.1 that the **Contracted Reactive Capability** has been restored.

### **5.3. Instructions and Instructions to End**

5.3.1. It is acknowledged by the **Provider** that, in relation to any **Settlement Periods** other than any for which the **Facility** has been declared or treated as **Unavailable**, **NESO** shall have the right (but not the obligation) to issue an **Instruction**:

- (i) specifying a **Set Point** or requiring a change in the **Set Point**; and/or
- (ii) in the case of a **Dynamic Facility** (at **NESO's** sole discretion) specifying operation in either **Voltage Control Mode** or in **Constant Reactive Power Control Mode** or specifying a change from one mode to the other,

and subsequently to notify the **Provider** when it no longer requires the **Facility** to provide the **Reactive Power Service** (for the purposes of this Clause 5, an "**Instruction to End**").

5.3.2. Following receipt of an **Instruction**, the **Provider** shall acknowledge receipt as soon as possible (but in any case, by no later than two (2) minutes (the "**Confirmation Time**") from receipt of an **Instruction**) and where the instruction is an acceptance the provider shall take all

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necessary steps to ensure that, throughout each **Relevant Settlement Period**:

- (i) in the case of a **Static Facility**, it operates in a control mode which enables constant reactive power absorption and/or injection as more particularly described in the **Technical Performance Requirements** to the full extent of the **Contracted Absorption Capability** and/or **Contracted Injection Capability**; or
- (ii) in the case of a **Dynamic Facility**, it operates in either **Constant Reactive Power Control Mode** or **Voltage Control Mode** (as **Instructed**) to the full extent of its **Declared Absorption Capability** and **Declared Injection Capability** as more particularly described in the **Technical Performance Requirements**.

5.3.3. If an **Instruction** is issued by **NESO** and:

- (i) the **Provider** fails to acknowledge receipt and/or the acknowledgement is a rejection of that **Instruction** within two (2) minutes of such **Instruction**; and/or
- (ii) in the case of a **Static Facility**, it fails to inject or absorb **Reactive Power** to at least ninety percent (90%) of the **Contracted Absorption Capability** and/or **Contracted Injection Capability** in accordance with an **Instruction** within the **Notice Period** or ceases to so absorb and/or inject **Reactive Power**, otherwise than in accordance with an **Instruction to End**; or
- (iii) in the case of a **Dynamic Facility**, it fails to absorb **Reactive Power** within its **Declared Absorption Capability** and/or fails to inject **Reactive Power** within its **Declared Injection Capability**, in accordance with an **Instruction** within the **Notice Period**, or ceases to so absorb or inject **Reactive Power** otherwise than in accordance with an **Instruction to End**,

then for that relevant **Settlement Period**, the **Provider** shall, pay an **Instruction Failure Rebate**.

- 5.3.4. An **Instruction Failure Rebate** will be due for any **Settlement Period** in a given month in which any of the circumstances described in Clause 5.3.3 occurs.
- 5.3.5. The **Provider** will be notified through the relevant **Monthly Statement** if the **Instruction Failure Rebate** applies.
- 5.3.6. It is the **Provider's** obligation to ensure it is aware of how the **Facility** is operating and performing in accordance with a **Mid-Term Reactive Contract** and any **Instruction**.

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- 5.3.7. Within 10 days of receipt of the **Monthly Statement** the **Provider** shall notify **NESO** of the causes of the failure under Clause 5.3.3 and any actions they are taking or have taken to remedy the causes of such failure.
- 5.3.8. The **Parties** agree and acknowledge that **Instructions, Instructions to End** and also confirmations by the **Provider** of **Instructions** and **Instructions to End** transmitted through and stored on **EDL** or such other electronic means approved by **NESO** from time to time (each and together, the “**Applicable Logging Mechanism**”) shall be conclusive evidence of the giving and/or receipt of any communication required to be given pursuant to the terms of this paragraph 5.3 (except during periods when the **Applicable Logging Mechanism** is unavailable for any reason, in which case communication shall be made by telephone, e-mail or facsimile (whichever is appropriate, as reasonably determined by the transmitting **Party** at the time transmitting)).

## **6. PERMITTED SERVICES**

- 6.1. Participation in the following services is permitted: Commercial Frequency Response, Reserve, Stability Pathfinders, Long-Term Stability Market, Mid-term Stability Market, , Voltage Pathfinders, Long-term Voltage Market, Capacity Market, Constraint Management Intertrip Service (CMIS), Balancing Mechanism, the wholesale electricity market, Electricity System Restoration and such other services as **NESO** may from time to time notify to all providers of the **Mid-Term Reactive Service**.
- 6.2. Before the **Facility** can participate in any **Permitted Service**, the **Provider** must, if **NESO** so requires, demonstrate that the **Facility** is capable of providing the **Mid-Term Reactive Service** concurrently with the **Permitted Service** using a methodology agreed with **NESO** or as part of a **Proving Test**. If it is not demonstrated that the **Mid-Term Reactive Service** can be provided concurrently with the **Permitted Service**, any failure to provide the **Mid-Term Reactive Service** concurrently with the **Permitted Service** will constitute a “material breach” for the purposes of Clause 16.2.3(*Termination*).
- 6.3. A **Facility** will not be treated as **Unavailable** during a **Settlement Period** by reason only of providing a **Permitted Service** during that **Settlement Period**, provided that its ability to provide the **Mid-Term Reactive Service** is not adversely affected by the provision of the **Permitted Service**.

## **7. SERVICE FEES**

- 7.1. **NESO** shall, if the **Acceptance Form** so provides (but not otherwise), and in consideration of the provision by the **Provider** of the **Mid-Term Reactive Service**, pay to the **Provider** on a monthly basis:

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7.1.1. an **Availability Payment** calculated in accordance with Part A of Schedule 2 (*Calculation of Payments and Rebates*); and/or

7.1.2. a sum calculated in accordance with Part C of Schedule 2 (*Calculation of Payments and Rebates*) (the "**Utilisation Payment**"),

less any rebates calculated in accordance with Part B of Schedule 2.

7.2. The **Provider** acknowledges that:

- (i) this **Agreement** shall constitute a **Market Agreement** for the purposes of Schedule 3 of **CUSC** and that it shall cease to be entitled to any amounts payable under **CUSC** for the **Obligatory Reactive Power Service** throughout the **Service Term** of each **Mid-Term Reactive Contract**; and
- (ii) it shall not be entitled to any other amounts payable under any commercial services agreement or other contract in respect of voltage or **Reactive Power** services.

7.3. The **Provider** shall reimburse to **NESO** any payment for the **Obligatory Reactive Power Service** or any other voltage or **Reactive Power** services that it receives notwithstanding the provisions of Clause 7.2 during the **Service Term** of any **Mid-Term Reactive Contract**.

7.4. In the event of any **Continued Performance Failure**, **NESO** may (at its sole discretion) by written notice to the **Provider**:

7.4.1. reduce the **Availability Fee**; and/or

7.4.2. reduce the **Contracted Absorption Capability**; and/or

7.4.3. reduce the **Contracted Injection Capability** on a pro-rata basis.

## **8. MAINTENANCE OF THE FACILITY**

8.1. If any **Mid-Term Reactive Contract** has a **Service Term** in excess of twelve months, the **Provider** shall, prior to the commencement of the second or any subsequent **Contract Year**, submit to **NESO** a **Maintenance Plan** for that **Contract Year**.

8.2. The **Provider** may propose modifications to any **Maintenance Plan** submitted in accordance with the **Conditions Precedent** or Clause 8.1. from time to time during the relevant **Contract Year** on no less than twenty (20) **Business Days'** notice. The **Maintenance Plan** may include up to a maximum of fifteen (15) calendar days of planned outages in any **Contract Year** (to be reduced on a pro rata basis if the **Contract Year** is a period of less than twelve (12) calendar months).

8.3. Within ten (10) **Business Days** of the **Provider's** notification of a **Maintenance Plan** under Clause 8.1 or any modification of a **Maintenance Plan** under Clause

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8.2, **NESO** shall notify the **Provider** of its agreement with or objections to the **Maintenance Plan** or any modification thereto and, if **NESO** shall make no notification within such time, it shall become binding on the **Parties**. The **Parties** shall act in good faith and use reasonable endeavours to resolve any objections notified by **NESO** taking into account maintenance practices consistent with **Good Industry Practice** and the **Maintenance Plan** shall be amended accordingly.

8.4. For the avoidance of doubt, the **Provider** shall not be entitled to an **Availability Payment** in respect of any period in which the **Facility** is undergoing maintenance in accordance with a **Maintenance Plan** or otherwise.

### **9. GRID CODE**

It is acknowledged by both **Parties** that the provision of the **Mid-Term Reactive Service** in accordance with the terms hereof shall not relieve the **Provider** of any of its obligations set out in the **Grid Code** including without limitation its obligations (where applicable to the **Provider**) set out in:

9.1. **Grid Code** ECC8.1 to provide **Reactive Power** in accordance with ECC6.3.2 of the **Grid Code**; or

9.2. **Grid Code** CC8.1 to provide **Reactive Power** in accordance with CC6.3.2.

### **10. PAYMENT**

10.1. As soon as reasonably practicable and no later than eight (8) **Business Days** following the end of each calendar month during the term of any **Mid-Term Reactive Contract**, **NESO** shall send to the **Provider** a statement (the "**Monthly Statement**") setting out:

10.1.1. (where applicable) its calculation of the **Availability Payment** due to the **Provider** (in accordance with Schedule 2, Part A) in respect of the previous calendar month;

10.1.2. (where applicable) its calculation of the **Utilisation Payment** due to the **Provider** (in accordance with Schedule 2, Part C) in respect of the previous calendar month;

10.1.3. its calculation of any **Availability Rebate** and/or **Instruction Failure Rebate** due from the **Provider** (in accordance with Schedule 2, Part B) in respect of the previous calendar month which shall not exceed the aggregate amount due for the calendar month in respect of the **Availability Payment** and/or the **Utilisation Payment**;

10.1.4. in respect of the last month of the **Service Term** (and, in the case of a **Mid-Term Reactive Contract** with a **Service Term** exceeding twelve months, in the last month of each **Contract Year** during the **Service Term**), any amount in respect of the monthly **Availability Rebates** that has not been off-set against monthly **Availability Payments** and/or **Utilisation Payments** and remains due and



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payable by the **Provider**, a sum ("**Annual Reconciliation Payment**") calculated in accordance with Schedule 2, Part B2 (*Calculation of Payments and Rebates*);

10.1.5. if relevant, adjustments to be made (net of interest) in relation to disputes concerning **Availability Payments** and/or **Utilisation Payments** in any month prior to the previous month;

10.1.6. any other amount to be reimbursed by the **Provider** in accordance with this **Agreement**; and

10.1.7. the net sum due to or from the **Provider** as a result thereof.

10.2. If the **Provider** disagrees with any dates, times, facts or calculations set out in the **Monthly Statement**, it may notify **NESO** in writing, with evidence on 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. The **Parties** shall discuss and endeavour to resolve the matter in good faith and any adjustments agreed shall be included in the **Monthly Statement** next following the date of resolution of the dispute. The dates, times, facts and calculations set out in the **Monthly Statement** shall be binding upon the **Parties** until such time as they are reversed or revised by agreement between the **Parties** or otherwise determined pursuant to Clause 19 (*Dispute Resolution and Expert Determination*).

10.3. Where, having regard to any **Settlement Run** or to the results of any other monitoring by **NESO** of service delivery, **NESO** or the **Provider** discovers that some or all of any calculations and/or amounts falling due shown in any **Monthly Statement** are incorrect, then it shall promptly notify the other in writing whereupon **NESO** shall, subject to verification by **NESO**, revise the **Monthly Statement** and re-issue the same to the **Provider**, and the provisions of Clause 10.2 shall apply mutatis mutandis to such revised **Monthly Statement**.

10.4. In the absence of fraud, neither **NESO** nor the **Provider** may invoke the provisions of Clause 10.3, with respect to the contents of any **Monthly Statement** after the period of twelve (12) months has elapsed following submission of that **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** issued by **NESO** shall be final and conclusive.

10.5. No later than the eighteenth (18th) **Business Day** of each month, **NESO** will issue a self-billing invoice (or credit note) reflecting the **Monthly Statement** and no later than five (5) **Business Days** after such date of issue **NESO** shall pay to the **Provider** (or the **Provider** shall pay to **NESO**, as the case may be) the net amount shown as due from **NESO** to the **Provider** (or from the **Provider** to **NESO**, as the case may be) in that **Monthly Statement**.

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- 10.6. If either **Party** (the “**Defaulting Party**”) fails to pay any amount properly due under this **Agreement** on the due date then the **Defaulting Party** shall pay to the other **Party** interest on such overdue amount at the **Base Rate** plus three per cent (3%) 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.
- 10.7. If it is agreed or otherwise determined under Clause 10.2 that the **Provider** was entitled to a further payment from **NESO**, the **Provider** shall be entitled to interest at the **Base Rate** on the amount of such further payment from the date on which that sum would have been payable had it been included in the **Monthly Statement** for each **Relevant Settlement Period** until the date of payment.
- 10.8. If it is agreed or otherwise determined under Clause 10.2 that the **Provider** was not entitled to any payment it has received, **NESO** shall be entitled to interest at the **Base Rate** on the amount so paid from the date of payment until the date of repayment or the date when **NESO** makes a payment to the **Provider** which takes such payment into account.
- 10.9. Notwithstanding the foregoing provisions of this Clause, the **Parties** shall not be limited in any way as to the evidence they may rely upon in any dispute resolution proceedings arising out of or in connection with payment under a **Mid-Term Reactive Contract** and the **Parties** agree that in the event and to the extent that either **Party** succeeds in proving in any such proceedings that the **Mid-Term Reactive Service** was or was not provided, the successful **Party** shall be entitled to repayment of the sums already paid or payment of sums not paid as the case may be in respect of the **Mid-Term Reactive Service**.
- 10.10. Save as otherwise expressly provided in these **General Terms and Conditions**, sums payable by one **Party** to the other whether by way of charges, interest or otherwise shall (except to the extent otherwise required by law) be paid in full, free and clear of and without deduction, set-off or deferment in respect of any disputes or claims whatsoever save for sums the subject of a final award or judgement (after exhaustion of all appeals if this opportunity is taken) or which by agreement between **NESO** and the **Provider** may be so deducted or set off.
- 10.11. All amounts specified hereunder shall be exclusive of any **Value Added Tax** or other similar tax and **NESO** shall pay to the **Provider** **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 supply of the **Mid-Term Reactive Service** under a **Mid-Term Reactive Contract**.
- 10.12. All payments by **NESO** to the **Provider** under a **Mid-Term Reactive Contract** will be made by payment to the bank account details of which are notified to **NESO** by the **Provider** from time to time.



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- 10.13. The submission of all **Monthly Statements** and facts and other evidence in support thereof and any questions in connection therewith from **NESO** to the **Provider** and vice versa in accordance with this Clause must be made, in the absence of agreement to the contrary between the **Parties**, by 19.00 hours on the **Business Day** concerned.
- 10.14. The **Provider** hereby irrevocably consents to the operation of a self-billing system by **NESO** with regard to the payment for the **Mid-Term Reactive Service** and will at all times throughout the term of each **Mid-Term Reactive Contract** maintain such consent. The **Provider** hereby undertakes to do (at **NESO's** cost) all acts and things reasonably necessary to enable **NESO** to comply with the regulations of HM Customs and Excise as regards the self-billing of the **Mid-Term Reactive Service**.
- 10.15. The provisions of this Clause 10 shall survive termination of the relevant **Mid-Term Reactive Contract**.

## **11. INSPECTIONS AND ASSURANCE VISITS**

### ***Inspections***

- 11.1. To enable **NESO** to verify that the **Facility** is able to provide the **Mid-Term Reactive Service** in accordance with its **Contracted Parameters**, the **Provider** shall permit **NESO** (including its employees, agents, suppliers, contractors and subcontractors) to inspect such parts of the **Facility** as it may reasonably require (in each case upon giving to the **Provider** not less than two (2) **Business Days** prior written notice provided that such inspection shall be carried out) without undue interference with the normal operation of the **Facility**.

### ***Assurance Visits***

- 11.2. Without prejudice to, and in addition to, **NESO's** right to carry out inspections in accordance with Clause 11.1, the **Provider** shall, subject to Clause 11.3, not more than once in any calendar year and on receipt of not less than seven (7) calendar days prior notice, provide **NESO** access to the **Facility** for the purposes of ascertaining to its reasonable satisfaction that the **Provider** has, in accordance with **Good Industry Practice**, implemented at the **Facility** appropriate technical, training and documentation procedures (an "**Assurance Visit**"). **Assurance Visits** shall be carried out without undue interference with the normal operation of the **Facility**.
- 11.3. Following receipt of any notice under Clause 11.2, the **Provider** may propose to **NESO** 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 **NESO** in its notice, and (at its option) **NESO** may agree to such alternative time and date. In the event that the **Provider** unreasonably delays the **Assurance Visit** beyond the time and date

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being twenty eight (28) days after the time and date for the **Assurance Visit** specified by **NESO** in its notice, then no **Availability Payments** shall accrue to the **Provider** in respect of the period commencing at the time and date for the **Assurance Visit** specified in that notice and ending upon completion by **NESO** of an **Assurance Visit**.

- 11.4. 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.

## **12. REPROVING TESTS**

- 12.1. **NESO** may notify the **Provider** in writing ("**Reproving Test Notice**") if at any time it wishes the **Provider** to undertake a **Reproving Test** in relation to the **Facility**, provided that the **Facility** has not been declared **Unavailable** and subject to a maximum in any **Contract Year** of two (2) **Reproving Tests** (such maximum not including (where applicable) the **Proving Test** or any re-tests). The following provisions shall apply:

- (a) the **Provider** shall:
  - (i) propose a date (within twenty (20), but not earlier than five (5), **Business Days** after the **Reproving Test Notice**) for the **Reproving Test** to be carried out in relation to the **Facility** ("**Reproving Test Date**"); and
  - (ii) act reasonably with a view to agreeing the detailed programme for the **Reproving Test**, which shall be consistent with the principles in Part B of Annex A to Schedule 5 (*Testing*) and which, if not agreed by the **Reproving Test Date**, shall be determined by an **Expert** in accordance with Clause 19.3 (*Dispute Resolution and Expert Determination*) and, following such determination, the **Provider** shall propose a new date for the **Reproving Test** within twenty (20), but not earlier than five (5), **Business Days** after that determination;
- (b) the **Provider** shall be responsible for undertaking the **Reproving Test** but shall do so in liaison with **NESO** and in connection therewith:
  - (i) whilst there is no obligation for **NESO** to attend the **Reproving Test** (and **NESO's** failure to attend shall not invalidate the **Reproving Test**), the **Provider** shall allow reasonable access to **NESO's** personnel and contractors to witness the **Reproving Test**; and
  - (ii) the **Provider** shall (on request) provide to **NESO** the results of the **Reproving Test** by email and any such reasonable additional evidence as **NESO** may reasonably require for the purposes of demonstrating performance of the **Facility** during the test;

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- (c) if **NESO** determines (acting reasonably) that the **Facility** has passed the **Reproving Test**, then it shall notify the **Provider** in writing accordingly within fifteen (15) **Business Days** after the completion of the **Reproving Test**;
- (d) if **NESO** determines that the **Facility** has failed the **Reproving Test**, then:
  - (i) it shall notify the **Provider** in writing accordingly within fifteen (15) **Business Days** after completion of the **Reproving Test**;
  - (ii) the **Provider** shall be deemed to have declared the **Facility Unavailable** with effect from the **Reproving Test Date** until such time as **NESO** notifies the **Provider** by email that the **Facility** has successfully passed a **Re-Test** at which point the **Facility** shall be treated as **Available**;
  - (iii) the **Provider** shall reimburse the reasonable costs incurred by **NESO** in carrying out the **Reproving Test** (and any **Re-Test**) by reference to the next practicable **Monthly Statement**;
  - (iv) the **Provider** shall notify **NESO** in writing of the reasons for the failure, and may subsequently notify **NESO** in writing when it is ready to carry out a re-run of the **Reproving Test** ("**Re-Test**") not later than twenty-four (24) hours prior to the proposed **Re-Test** date and **NESO** shall not unreasonably withhold or delay its consent to the proposed **Re-Test**, reasonableness to be judged for these purposes by reference to conditions on the **National Electricity Transmission System**;
  - (v) the provisions of this Clause 12 shall apply to a **Re-Test** mutatis mutandis; and
  - (vi) if the **Facility** fails a **Reproving Test** (including any **Re-Test**) for substantially the same reason on two or more subsequent occasions in any rolling 12 month period and/or if the total number of **Reproving Tests** (including any **Re-Test**) the **Facility** fails is more than five in aggregate during the **Service Term**, then **NESO** shall have the right to either: (aa) treat such failure as a material breach of the **Mid-Term Reactive Contract** for the purposes of Clause 16.2.3 (*Termination*) or (bb) to reduce the **Contracted Absorption Capability** and/or the **Contracted Injection Capability** to the value that **NESO** reasonably considers reflects the true capability of the **Facility** on the basis of the failed **Proving Tests** and to reduce the **Availability Fee** by a percentage equal to the percentage reduction in the **Contracted Absorption Capability** and/or **Contracted Injection Capability**.

## **13. MONITORING AND METERING**

### ***Monitoring***

- 13.1. To enable **NESO** to monitor the **Availability** of the **Facility**, the **Provider** shall:

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- 13.1.1. throughout the **Service Term**, maintain the **Monitoring Equipment** in good repair in accordance with **Good Industry Practice**; and
  - 13.1.2. make (and retain for a period of twelve (12) months) second by second measurements of the absorption or injection of **Reactive Power** by the **Facility** for each **Settlement Period** and shall make the relevant data available to **NESO** not later than twenty (20) **Business Days** following the end of each calendar month and in such format as **NESO** may reasonably require.
- 13.2. Without limiting its obligations under Clause 13.1.2, the **Provider** hereby grants to **NESO** the right to collect and record data from any **Monitoring Equipment**.
- 13.3. The **Provider** shall throughout the **Service Term** of each **Mid-Term Reactive Contract** comply with the requirements of EC6.6 of the **Grid Code** (or CC6.6 of the **Grid Code** where applicable) as if the same was set out in this Clause and, without limitation thereto, shall ensure that all **Monitoring Equipment** is operational and that all required signals are provided at all times and that the **Monitoring Equipment** is maintained in accordance with **Good Industry Practice** and the provisions of the **Technical Performance Requirements**.
- 13.4. To enable **NESO** to verify the delivery of the **Mid-Term Reactive Service** for the purposes of calculating **Availability Payments** in accordance with Schedule 2 (*Calculation of Payments and Rebates*), the **Provider** shall procure and retain (for a period of not less than fifteen (15) months) the data specified by **NESO** from time to time (the "**Performance Data**") and shall promptly following **NESO's** request submit the **Performance Data** to **NESO** by electronic transfer in such format as set out by **NESO** in the **Technical Performance Requirements**.
- 13.5. Should the **Provider** fail to submit **Performance Data** in accordance with any request under Clause 13.4, the **Facility** will be deemed **Unavailable** for the purposes of calculation of **Availability Payments** in accordance with Schedule 2 (*Calculation of Payments and Rebates*). Should the **Provider** persistently fail to submit **Performance Data** in accordance with Clause 13.4 this will be treated as a material breach of the **Mid-Term Reactive Contract** for the purposes of Clause 16.2.3 (*Termination*).
- 13.6. If any part of the **Monitoring Equipment** fails to deliver the information required at the relevant substation (including the communications routes) under ECC6.6 of the **Grid Code**, then the **Provider** shall repair the **Monitoring Equipment** as soon as practicable after being notified of the fault by **NESO** or as otherwise agreed. The **Provider** shall also provide electronic signals to allow **NESO** to monitor the status of the **Monitoring Equipment** as at the **Grid Entry Point**.

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- 13.7. The accuracy of the **Monitoring Equipment** shall be maintained in accordance with **NESO's** requirements for dynamic system monitoring as published on **NESO's Website** from time to time.

### ***Metering***

- 13.8. The relationship between the **Parties** with respect to **Energy Metering Equipment** shall be regulated in accordance with Sections K and L of the **Balancing and Settlement Code**.
- 13.9. The relationship between the **Parties** with respect to **Operational Metering Equipment** shall be regulated by section 6 of the **Connection and Use of System Code**.
- 13.10. The **Provider** hereby consents (and where required pursuant to the **Balancing and Settlement Code** agrees to give its consent) to the disclosure to and use by **NESO** of all and any generation, demand and other operating data relating to the **Facility**.

## **14. PUBLICATION OF INFORMATION**

- 14.1. The **Provider** hereby acknowledges and agrees that **NESO** has the right (but no obligation) to publish in such manner or form and at such times as (in its absolute discretion) it thinks fit of:
- 14.1.1. the aggregate cost of **Availability Payments** and (where applicable) **Utilisation Payments** made by **NESO** to the **Provider** and all other providers of the **Mid-Term Reactive Service**;
- 14.1.2. such data as **NESO** may determine in relation to the provision of this **Mid-Term Reactive Service**;
- 14.2. Without prejudice to Clause 14.1, the **Provider** hereby consents to the publication and use by **NESO** of any other data and other information relating to the provision of the **Mid-Term Reactive Service** for the purposes of any or all of the statements published from time to time pursuant to Standard Condition C9 of the **NESO Licence**.
- 14.3. Where **NESO** intends disclosing and using any data or other information relating to a **Mid-Term Reactive Contract** other than that specified in Clause 14.1 and 14.2, it shall first consult with the **Provider** regarding the form and scope of the intended disclosure documentation and, acting reasonably and in good faith, make such adjustments to the disclosure documentation as the **Provider** may reasonably request in order to protect its business interests.

## **15. RECORDS AND AUDITS**

- 15.1. The **Provider** shall keep proper and accurate records of all matters relating to the performance of its obligations under each **Mid-Term Reactive Contract**.

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15.1.1. 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 each **Mid-Term Reactive Contract** and for a period of no less than seven (7) years after termination of the **Mid-Term Reactive Contract** where such records contain or relate to financial data and/or contract data.

15.1.2. **NESO**, or an independent third-party auditor nominated by it, may, on reasonable notice to the **Provider** and during normal working hours, inspect and review the records for the purposes of verifying the **Provider's** compliance with its obligations under each **Mid-Term Reactive Contract** and/or to meet any other audit or information requirement that may be required by any **Legal Requirement**.

15.2. The **Provider** shall co-operate fully and promptly with any such audit and/or inspection conducted by **NESO** and provide such reasonable assistance as may be required by **NESO** in relation to any audit.

15.3. The **Provider** shall ensure that all paperwork issued by or on behalf of the **Provider** to **NESO** (including, without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references any other appropriate and necessary information.

## **16. TERMINATION**

### **Automatic Termination**

16.1. A **Provider's Mid-Term Reactive Contract** and the **Provider's Framework Agreement** shall terminate automatically upon:

16.1.1. the **Provider** ceasing to be a **BSC Party** solely as a result of the **Provider's** election or a material breach by the **Provider** of its obligations under the **BSC**; or

16.1.2. the **Provider** ceasing to be a party to the **CUSC Framework Agreement** solely as a result of the **Provider's** election or a material breach by the **Provider** of its obligations under the **CUSC**; or

16.1.3. in the case of a **Provider** required by the Electricity Act 1989 to hold a **Generation Licence**, the revocation or withdrawal of that **Generation Licence**; or

16.1.4. termination of the applicable **Connection Agreement** and the **Provider** cannot comply in all material respects with its obligations under these **General Terms and Conditions**; or

16.1.5. if Clause 3.4 applies.

### **Termination by NESO**

16.2. **NESO** may, by notice in writing to the **Provider**, terminate a **Mid-Term Reactive Contract** in the event that:



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- 16.2.1. the **Provider** fails to commence provision of the **Mid-Term Reactive Service** by the date falling the **Relevant Number of Days** after the **Scheduled Start Date**; or
- 16.2.2. the **Provider** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by **NESO**, notified to the **Provider** and corrected within five (5) **Business Days** thereafter) any material sum properly due or owing from the **Provider** to **NESO** pursuant to a **Mid-Term Reactive Contract** according to its terms and such non-payment remains unremedied and not disputed in good faith and upon reasonable grounds at the expiry of fifteen (15) **Business Days** immediately following receipt by the **Provider** of written notice from **NESO** of such non-payment; or
- 16.2.3. the **Provider** is in material or persistent breach of any other obligation under a **Mid-Term Reactive Contract** and, in the case of a breach that is capable of remedy, has not remedied that breach within thirty (30) days (or such longer period as may reasonably be required for remedy) after receipt of notice from **NESO** identifying the breach and requiring its remedy; or
- 16.2.4. the **Facility** is the subject of a **Continued Performance Failure**; or
- 16.2.5. if Clause 4.2.2 or Clause 4.7 (*Implementation of the Works*) or Clause 32.6 (*Assignment and Other Dealings*) applies; or
- 16.2.6. in respect of the **Provider** or (where relevant) the provider of **Acceptable Security**:
- (i) an order of the **High Court** is made or an effective resolution passed for its insolvent winding up or dissolution; or
  - (ii) a receiver (which expression shall include an administrative receiver within the meaning of Section 29 Insolvency Act 1986) of the whole or any material part of its assets or undertaking is appointed; or
  - (iii) an administration order under Section 8 of the Insolvency Act 1986 is made or any other steps are taken to appoint an administrator or if a voluntary arrangement is proposed under Section 1 of that Act; or
  - (iv) it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the **Authority**); or
  - (v) it is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986 and the **Provider** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the **Provider** with recourse to all appropriate measures and procedures),



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and in any such case within twenty-eight (28) days of appointment of the liquidator, receiver, administrative receiver, administrator, nominee or other similar officer, such person has not provided to **NESO** a guarantee of future performance by the **Provider** of this **Agreement** in such form and amount as **NESO** may reasonably require.

16.3. **NESO** shall be entitled to terminate a **Mid-Term Reactive Contract** forthwith by notice in writing to the **Provider** if Clause 22.4 (*Force Majeure*) applies.

16.4. The **Provider** may terminate a **Mid-Term Reactive Contract** forthwith by notice in writing to **NESO** if:

16.4.1. **NESO** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the **Provider**, notified to **NESO** and corrected within five (5) **Business Days** following such notification) any material sum properly due or owing from it pursuant to a **Mid-Term Reactive Contract** according to its terms and such non-payment remains unremedied and not disputed in good faith and upon reasonable grounds at the expiry of fifteen (15) **Business Days** immediately following receipt by **NESO** of written notice from the **Provider** of such non-payment; or

16.4.2. in respect of **NESO**:

- (i) an order of the High Court is made or an effective resolution passed for its insolvent winding-up or dissolution; or
- (ii) a receiver (which expression shall include an administrative receiver within the meaning of Section 29 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking is appointed; or
- (iii) an administration order under Section 8 of the Insolvency Act 1986 is made or any other steps are taken to appoint an administrator or if a voluntary arrangement is proposed under Section 1 of that Act; or
- (iv) it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the **Authority**); or
- (v) it is unable to pay its debts within the meaning of Section 123(1) or (2) of the Insolvency Act 1986 (and **NESO** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by it with recourse to all appropriate measures and procedures);

and in any such case within twenty-eight (28) days of appointment of the liquidator, receiver, administrative receiver, administrator, nominee or other similar officer, such person has not provided to the **Provider** a guarantee of future performance by **NESO**

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of the **Mid-Term Reactive Contract** in such form and amount as the **Provider** may reasonably require.

- 16.5. Termination of a **Mid-Term Reactive Contract** shall be without prejudice to the rights and remedies to which a **Party** may be entitled hereunder and shall not affect any accrued rights obligations or liabilities of either **Party** nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 16.6. The rights set out in this Clause 16 shall be without prejudice to any other right to terminate this **Agreement** (in whole or in part) set out in any other provision of this **Agreement**.

## **17. WARRANTIES AND INDEMNITY**

17.1. The **Provider** hereby warrants and represents to **NESO** that:

- 17.1.1. it has full power and authority to enter into the **Framework Agreement** and each **Mid-Term Reactive Contract** and perform its obligations hereunder, including without limitation that the availability and delivery of the **Mid-Term Reactive Service** from the **Facility** pursuant to and in accordance with this **Agreement** does not cause it, or any site owner, to be in breach of, or to otherwise be non-compliant with, any **Legal Requirement** and/or any agreement with any person; and
- 17.1.2. it will not do anything in connection with the **Framework Agreement** or any **Mid-Term Reactive Contract** that will cause it to be in breach of, or to otherwise be non-compliant with, any **Legal Requirement** and/or any agreement with any person.

17.2. The **Provider** further warrants and represents to **NESO** that the availability and delivery of the **Mid-Term Reactive Service** from the **Facility** pursuant to and in accordance with a **Mid-Term Reactive Contract** will not at any time cause the **Provider** to be in breach of or to otherwise be non-compliant with any **Bilateral Connection Agreement** and/or any agreement for the supply of electricity or related services to or from the **Facility**. The **Provider** repeats this warranty and representation on acknowledgement of each **Instruction**.

17.3. If, notwithstanding Clause 17.2, **NESO** receives a claim by a third party related to any actual or alleged breach or non-compliance by the **Provider** as described in Clause 17.2, the **Provider** shall, provided **NESO** has notified the claim to it as soon as reasonably practicable after receipt, indemnify **NESO** against all and any losses, liabilities, claims and expenses that may be suffered or incurred by **NESO** in connection therewith. Such indemnity shall include any legal costs and expenses reasonably incurred in the contesting of such claim, including the court costs and the reasonable fees of lawyers and other professional advisers.

17.4. The **Provider** warrants and represents to **NESO** that, as at the date of this **Agreement**, it has obtained, or has applied for the type of **Licence**, or will apply for the type of **Licence**, specified in its **Tender Submission**. If at any time a

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different type of **Licence** is issued to the **Provider**, **NESO** shall be entitled to adjust the **Availability Fee** to ensure that the **Provider** is in no better a position financially to maintain the principles of fair and equal treatment of those participating in the **Tender**. The provisions of this Clause shall continue to bind the **Parties** after termination of the relevant **Mid-Term Reactive Contract**.

### **18. LIMITATION OF LIABILITY AND INSURANCE**

18.1. Subject to Clause 18.2 save where any provision of these **General Terms and Conditions** provides for an indemnity, the **Parties** agree and acknowledge that neither **Party** (the "**Party Liable**") nor any of its officers, employees or agents shall be liable to the other **Party** for loss arising from any breach of a **Mid-Term Reactive Contract** other than for loss directly resulting from such breach and which at the date of the relevant **Mid-Term Reactive Contract** was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

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

18.1.2. 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,

provided further that the liability of any **Party** in respect of all claims for such loss shall not exceed five million pounds sterling (£5,000,000) per incident or series of related incidents.

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

18.3. Subject to Clause 18.2 and save where any provision of these **General Terms and Conditions** provides for an indemnity neither the **Party Liable** nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other **Party** for:

18.3.1. any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

18.3.2. any indirect or consequential loss; or

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- 18.3.3. loss resulting from the liability of the other **Party** to any other person howsoever and whensoever arising save as provided in Clause 18.1.2 and Clause 18.2.
- 18.4. Each **Party** acknowledges and agrees that the other **Party** holds the benefit of Clauses 18.1, 18.2 and 18.3 for itself and as trustee and agent for its officers, employees and agents.
- 18.5. The rights and remedies provided by these **General Terms and Conditions** to the **Parties** are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of a **Mid-Term Reactive Contract**, including without limitation any rights either **Party** may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the **Parties** hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the other **Party**, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in a **Mid-Term Reactive Contract** and undertakes not to enforce any of the same except as expressly provided herein.
- 18.6. For the avoidance of doubt, the **Parties** acknowledge and agree that nothing in these **General Terms and Conditions** shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, privileges, remedies, duties and obligations of the **Secretary of State** or the **Authority** under the **Act**, any **Licence** or otherwise howsoever.
- 18.7. Each of Clauses 18.1, 18.2, 18.3 and 18.4 shall:
- 18.7.1. be construed as a separate and severable contract term, and if one or more of such Clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Clauses shall remain in full force and effect and shall continue to bind the **Parties**; and
  - 18.7.2. survive termination of a **Mid-Term Reactive Contract**.
- 18.8. For the avoidance of doubt, nothing in this Clause 18 shall:
- 18.8.1. limit **NESO's** payment obligations under a **Mid-Term Reactive Contract**; and/or
  - 18.8.2. prevent or restrict either **Party** enforcing any obligation (including suing for a debt) owed to it under or pursuant to a **Mid-Term Reactive Contract**.
- 18.9. Each **Party** acknowledges and agrees that the provisions of this Clause 18 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of the relevant **Mid-Term Reactive Contract**.
- 18.10. The **Provider** shall (at its own cost and expense) insure for public liability risks arising from its operation of the **Facility** with a reputable insurer with a minimum value of ten

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million pounds Sterling (£10,000,000) for each and every claim and shall, on **NESO's** request, provide evidence of that cover being in place.

### **19. DISPUTE RESOLUTION AND EXPERT DETERMINATION**

19.1. Save where expressly stated in these **General Terms and Conditions** to the contrary and subject to any contrary provision of the **Act** or any **Licence** or the rights, powers, duties and obligations of the **Authority** or the **Secretary of State** under the **Act**, any **Licence** or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under, out of or in connection with this **Agreement** between the **Parties** ("**Dispute**") shall be and is hereby referred to arbitration in accordance with Clause 19.2, provided always that prior to any such referral to arbitration:

19.1.1. the **Party** seeking to refer the matter to arbitration shall first serve on the other **Party** a "**Dispute Notice**" describing in reasonable detail the nature of the **Dispute**;

19.1.2. the **Parties** shall thereafter without delay commence and continue to use all reasonable endeavours to resolve the **Dispute** promptly, equitably and in a good faith manner and (where commensurate with the nature and extent of the dispute) at a senior officer level; and

19.1.3. any referral to arbitration may only be made by a **Party** where the **Dispute** remains unresolved upon expiry of a period of twenty-eight (28) days following delivery of the relevant **Dispute Notice**.

19.2. Subject to Clause 19.1, any **Dispute** shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration from time to time in force, which Rules are deemed to be incorporated by reference into this Clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London and the language to be used in the arbitral proceedings shall be English.

19.3. Where any provision in these **General Terms and Conditions** provides, or the **Parties** have agreed, for a dispute or difference between the **Parties** to be referred to an independent expert ("**Expert**") the following provisions shall apply, and neither **Party** shall commence proceedings in any court in respect of or otherwise in connection with such dispute:

19.3.1. the **Expert** shall be jointly appointed by the **Parties** and shall be a person of good repute with the relevant skills and technical experience to be able to make a fair and reasoned determination having regard to the nature of the dispute or difference;

19.3.2. the **Parties** agree that the **Expert** shall act as an expert and not as an arbitrator and shall decide those matters referred to him using his skill, experience and knowledge and with regard to all such other matters as he in his sole discretion considers appropriate;



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- 19.3.3. if the **Parties** cannot agree upon the selection of an **Expert**, the **Expert** shall be selected on the application of either **Party** by the Centre for Effective Dispute Resolution;
- 19.3.4. all references to the **Expert** shall be made in writing by either **Party** with notice to the other being given contemporaneously, and the **Parties** shall promptly supply the **Expert** with such documents and information as he may request when considering any referral;
- 19.3.5. the **Expert** shall be requested to use his or her best endeavours to give his decision upon the question before him as soon as possible in writing following its referral to him, his decision shall, in the absence of fraud or manifest error, be final and binding upon the **Parties**;
- 19.3.6. the **Parties** shall equally share the **Expert's** fees and expenses unless the **Expert** determines otherwise; and
- 19.3.7. save to the extent otherwise expressly provided herein or in the determination by the **Expert**, this Clause shall, to the extent necessary for the **Parties** to perform their obligations under this **Agreement**, continue to bind the **Parties** after termination.

## **20. NOTICES**

- 20.1. For the purposes of each **Mid-Term Reactive Contract**, any notice or other communication to be given by **NESO** or the **Provider** to the other under, or in connection with matters contemplated by, a **Mid-Term Reactive Contract** shall be sent to the address and/or facsimile number and/or email address and marked for the attention of the named person as specified in the **Framework Agreement**.
- 20.2. Any notice or other communication to be given by one **Party** to the other **Party** under, or in connection with the matters contemplated by, these **General Terms and Conditions** shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile or email and shall be deemed to have been received:
  - 20.2.1. in the case of delivery by hand, when delivered;
  - 20.2.2. in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting;
  - 20.2.3. in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 17.00 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
  - 20.2.4. in the case of email, one (1) hour after the time of transmission (as recorded on the device from which the sender sent the email), unless the sender received an automated message that the email has not been delivered. For the avoidance of doubt, if an email is sent outside of typical

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business hours (before 09.00 hours and after 17.00 hours), it shall be considered received at 9am on the following **Business Day**.

### **21. OPERATIONAL COMMUNICATIONS**

- 21.1. Any operational communications between the **Parties** required by these **General Terms & Conditions** shall be given in accordance with the relevant clause or, in the case of the forms set out in Schedule 6, as specified on the relevant form, save as may be otherwise agreed by the **Parties**.
- 21.2. The **Parties** consent to the recording of all telephone conversations between them relating in whole or in part to any **Mid-Term Reactive Contract**, and each **Party** agrees to notify its employees of that consent and obtain their consent to that recording if required by any **Legal Requirement**.

### **22. FORCE MAJEURE**

- 22.1. In so far as either **Party** is prevented from performing any of its obligations under a **Mid-Term Reactive Contract** 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:
  - 22.1.1. the **Provider** shall not be entitled to any **Availability Payment** in respect of any **Force Majeure Period**; and
  - 22.1.2. the **Party** affected by the **Force Majeure** shall give to the other **Party** promptly upon becoming aware of an event or circumstance of **Force Majeure**, a written communication 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**.
- 22.2. 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 under the **Mid-Term Reactive Contract**.
- 22.3. For the avoidance of doubt the non-performance of either **Party's** obligations pursuant to a **Mid-Term Reactive Contract** 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**.
- 22.4. **NESO** shall have the right to terminate a **Mid-Term Reactive Contract** if, in respect of any period of twelve calendar months, the number of **Settlement Periods** in which the **Facility** was **Unavailable** due to **Force Majeure** exceeded 75% of the **Settlement Periods** in that period of twelve calendar months.



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### **23. CHANGE IN LAW**

If a **Relevant Change in Law** occurs that:

- 23.1. results in a material change to the manner of provision of the **Mid-Term Reactive Service** by the **Provider**; or
- 23.2. results in a material change to the basis of payments made to or by **NESO** in respect of the **Mid-Term Reactive Service**,

either **Party** may by not less than ten (10) **Business Days**' notice to the other require the other **Party** to meet and the **Parties** shall in good faith seek to agree any changes in operating practice and/or any changes which should be made to the **Mid-Term Reactive Contract** as are necessary to achieve (insofar as possible) the same balance of benefits, liabilities, risk and reward between the **Parties** in respect of the subject matter of the **Mid-Term Reactive Contract** as applied immediately prior to the **Relevant Change in Law** (ignoring, where relevant, any variation to payments made to the **Provider** otherwise than pursuant to the **Mid-Term Reactive Contract** as a result of changes to **Industry Documents**) ("**Required Changes**").

- 23.3. Failing agreement in respect of the matters contained in Clause 23.1, 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 19 (*Dispute Resolution and Expert Determination*).
- 23.4. Neither **Party** shall be liable to the other **Party** for a failure to perform any obligation under this **Agreement** which becomes prohibited or otherwise impossible to perform by reason of a **Change in Law**.

### **24. MISCELLANEOUS**

- 24.1. No delay by or omission of any **Party** in exercising any right, power, privilege or remedy under a **Mid-Term Reactive Contract** shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.
- 24.2. No variations or amendments to a **Mid-Term Reactive Contract** shall be effective unless made in writing and signed by and on behalf of both **Parties**.
- 24.3. The **Parties** hereby acknowledge and agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that no rights, powers or benefits are or shall be conferred on any person pursuant to a **Mid-Term Reactive Contract** save as expressly provided in these **General Terms and Conditions**.
- 24.4. If any provision of a **Mid-Term Reactive Contract** is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the **Secretary of State**, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of that **Mid-Term**

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**Reactive Contract** which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

- 24.5. Each **Mid-Term Reactive Contract** contains or expressly refers to the entire agreement between the **Parties** with respect to the subject matter of that **Mid-Term Reactive Contract**, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the **Parties** with respect thereto and each of the **Parties** acknowledges and confirms that it is not aware of any representation, warranty or other undertaking not fully reflected in the terms of a **Mid-Term Reactive Contract** which it has relied upon when entering into that **Mid-Term Reactive Contract**. To the extent that any such representation, warranty or other undertaking exists, each **Party** irrevocably and unconditionally waives any right it may have to claim damages for breach of warranty and/or to rescind a **Mid-Term Reactive Contract**, unless such warranty or misrepresentation was made or given fraudulently.

## **25. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 25.1. Subject to any rights to publish data provided in Clause 14 (*Publication of Information*), (and to the extent otherwise expressly permitted under these **General Terms and Conditions**), neither **Party** shall, at any time, whether before or after the expiry or sooner termination of a **Mid-Term Reactive Contract**, without the prior consent of the other **Party** in writing (such consent not to be unreasonably withheld or delayed), divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person or permit use by any person (other than disclosure to or use by any of its or their respective officers or employees to the extent that such disclosure and use is required to enable such persons properly to carry out their duties in connection with that **Mid-Term Reactive Contract**):

- 25.1.1. any of the contents of the **Mid-Term Reactive Contract**;
- 25.1.2. any commercially confidential information relating to the negotiations concerning the entering into of the **Mid-Term Reactive Contract**;
- 25.1.3. any commercially confidential information which may come to a **Party's** knowledge in the course of such negotiations; or
- 25.1.4. any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other **Party**.

- 25.2. Each **Party** undertakes to use information referred to in Clause 25.1 and disclosed to it by the other **Party** solely for the purposes of the **Mid-Term Reactive Contract** and shall not use it for any other purpose or for the purposes of any third party.

- 25.3. The restrictions imposed by Clause 25.1 shall not apply to the disclosure of any information:

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- 25.3.1. which now or hereafter comes into the public domain otherwise than as a result of a breach of a confidentiality obligation or which either **Party** can show was in its written records prior to the date of disclosure of the same by the other **Party**, under the **Mid-Term Reactive Contract** or which it receives from a third party independently entitled to disclose it;
  - 25.3.2. which is required by law or pursuant to the rules of the London Court of International Arbitration or pursuant to the rules or regulations of the Financial Conduct Authority to be disclosed to any person who is authorised by law or pursuant to the rules of the London Court of International Arbitration or pursuant to the rules or regulations of the Financial Conduct Authority to receive the same;
  - 25.3.3. which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the **Party** making the disclosure (or its parent undertaking) is or is proposed to be from time to time listed or dealt in, or is required to be disclosed by the Panel on Takeovers and Mergers;
  - 25.3.4. to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
  - 25.3.5. pursuant to any **Licence** of the **Party** concerned;
  - 25.3.6. to any consultants, banks, financiers, insurers, professional advisers retained by the disclosing **Party**;
  - 25.3.7. by the **Provider** to a third party who is a party to a power purchase agreement in respect of the electricity generated by the **Facility** and with whom all (or some of) the risks and benefits arising from the **Mid-Term Reactive Contract** will be shared provided such party is subject to confidentiality undertakings which are no less onerous than those to which the **Provider** is subject to under the **Mid-Term Reactive Contract**;
  - 25.3.8. by either **Party** to any parent, subsidiary or fellow subsidiary undertaking on a “need to know” basis only; or
  - 25.3.9. required or expressly permitted to be disclosed under the terms of any agreement or arrangement to which both the **Parties** have agreed to be bound.
- 25.4. In this Clause 25 the words “parent undertaking”, “subsidiary undertaking” and “fellow subsidiary undertaking” shall have the meanings as provided in sections 1161 and 1162 of the Companies Act 2006.
- 25.5. Before either **Party** discloses any information in any of the circumstances described in Clauses 25.3.6 to 25.3.8 (other than to its authorised professional advisers), it shall notify the other **Party** of its intention to make such disclosure and

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(in the case where the disclosing **Party** is the **Provider**) procure the execution and delivery to that **Party** of an undertaking executed by the person to whom the disclosure is proposed to be made being in the same terms mutatis mutandis as the undertakings contained in this Clause 25.

25.6. No public announcement or statement regarding the signature, performance or termination of this **Agreement** shall be issued or made by either **Party** unless:

25.6.1. to the extent legally possible, before it is issued or made, both the **Parties** have been furnished with a copy of it and have approved it (such approval not to be unreasonably withheld or delayed); or

25.6.2. it is necessary to do so in order to comply with any applicable law 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.

25.7. With respect to the information referred to in Clause 25.1 both **Parties** shall ensure, to the extent reasonably practicable, that:

25.7.1. such information is disseminated within their respective organisations on a “need to know” basis only;

25.7.2. employees, directors, officers, contractors, agents, consultants and professional advisers who are in receipt of such information are made fully aware of the **Party’s** obligations of confidence in relation thereto; and

25.7.3. any copies of such information, whether in hard copy or computerised form, will clearly identify the information as confidential.

25.8. Notwithstanding any other provision of this **Agreement**, the provisions of this Clause 25 shall continue to bind a person for a period of twenty-four (24) months after termination of the **Mid-Term Reactive Contract** for whatever reason.

## **26. ANTI-BRIBERY**

26.1. Each **Party** shall:

26.1.1. comply with all **Anti-Bribery Laws**;

26.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

26.1.3. have and shall maintain in place, throughout the **Service Term**, its own policies and procedures, including **Adequate Procedures**, to ensure compliance with the **Anti-Bribery Laws** and this Clause 26, and will enforce them where appropriate; and

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26.1.4. procure and ensure that all of its **Associated Persons** and/or other persons who are performing services in connection with a **Mid-Term Reactive Contract** comply with this Clause 26.

26.2. The **Provider** represents and warrants that neither it nor any member of the **Provider's Group** has been convicted of any offence involving **Anti-Bribery Laws** or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with **Anti-Bribery Laws** or been subject to any civil action arising in connection therewith or in connection with any actual or alleged secret payments to agents or other analogous circumstances.

26.3. Breach of this Clause 26 shall be a material breach of a **Mid-Term Reactive Contract** for the purposes of Clause 16.2.3 (*Termination*).

## **27. ANTI-SLAVERY AND HUMAN TRAFFICKING**

27.1. In performing its obligations under a **Mid-Term Reactive Contract**, the **Provider** shall:

27.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force ("**Anti-Slavery Laws**") including but not limited to the Modern Slavery Act 2015;

27.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;

27.1.3. notify **NESO** as soon as it becomes aware of any actual or suspected breach of clause 27.1.1 and/or clause 27.1.2; and

27.1.4. maintain a complete set of records to trace the supply chain of all services provided to **NESO** in connection with its **Mid-Term Reactive Contract**; and permit **NESO** and its third party representatives to inspect the **Provider's** premises and records, to meet the **Provider's** personnel and to audit the **Provider's** compliance with its obligations under this Clause 27.

27.2. The **Provider** represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

27.3. Breach of this **Clause 27** shall be a material breach of the **Mid-Term Reactive Contract** for the purposes of Clause 16.2.3 (*Termination*).

## **28. COMPETITION LAWS**

28.1. Neither the **Provider** nor any member of the **Provider's Group** is engaged in any agreement, arrangement, practice or conduct which amounts to an infringement of the **Competition Law** of any jurisdiction in which the

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**Provider** or any member of the **Provider's Group** respectively conducts business and none of their respective directors, officers or employees is engaged in any activity which would be an offence or infringement under any such **Competition Law**.

28.2. Neither the **Provider** nor any member of the **Provider's Group**, nor any of their respective directors, officers or employees, is the subject of any investigation, inquiry or proceedings by any relevant government body, agency or authority in connection with any actual or alleged infringement of the **Competition Law** of any jurisdiction in which the **Provider** or any member of the **Provider's Group** respectively conducts business. No such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.

28.3. Neither the **Provider** nor any member of the **Provider's Group** is affected by any existing or pending decisions, judgments, orders or rulings of any relevant government body, agency or authority responsible for enforcing the **Competition Law** of any jurisdiction and neither the **Provider** nor any member of the **Provider's Group** have given any undertakings or commitments to such bodies or been subject to any civil action arising in connection therewith.

28.4. Breach of this Clause 28 shall be a material breach of a **Mid-Term Reactive Contract** for the purposes of Clause 16.2.3 (*Termination*).

## **29. REPEATING REPRESENTATIONS AND WARRANTIES**

29.1. The representations and warranties set out in Clauses 26 (*Anti-Bribery*), 27 (*Anti-Slavery and Human Trafficking*) and 28 (*Competition Laws*) (each a "**Repeating Representation**") are deemed to be made by the **Provider** on the date of the **Framework Agreement**, the **Start Date** of each **Mid-Term Reactive Contract** and on the first **Business Day** of each month.

29.2. The **Provider** shall provide written notice to **NESO** promptly if at any time it becomes aware that any **Repeating Representation** is not true and accurate.

## **30. EMR**

30.1. Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in these **General Terms and Conditions**, the **Provider** consents to **NESO** 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 a **Mid-Term Reactive Contract** for the purpose of carrying out its **EMR Functions**.

30.2. The provisions relating to the resolution of disputes set out in these **General Terms and Conditions** are subject to any contrary provision of an **EMR Document**.



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30.3. Where for the purposes of this provision only:

|                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“AF Rules”</b>              | has the meaning given to “allocation framework” in section 13(2) of the Energy Act 2013;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>“Capacity Market Rules”</b> | means the rules made under section 34 of the Energy Act 2013 as modified from time to time in accordance with that section and The Electricity Capacity Regulations 2014;                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>“EMR Document”</b>          | 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 (Definition of Eligible Provider) Regulations 2014, The Contracts for Difference (Electricity Supplier Obligations) 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; and |
| <b>“EMR Functions”</b>         | has the meaning given to “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

## 31. GOVERNING LAW AND JURISDICTION

- 31.1. Each **Mid-Term Reactive Contract** and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 31.2. Subject and without prejudice to Clause 19 (*Dispute Resolution and Expert Determination*), both **Parties** irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with a **Mid-Term Reactive Contract** or its subject matter or formation and that accordingly any suit, action or proceeding (together in this Clause 31 referred to as “**Proceedings**”) arising out of or in connection with this
- 31.3. Each **Party** irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any **Proceedings** in any such court as is referred to in this Clause 31 and any claim that any such **Proceedings** have been brought in an inconvenient forum and further irrevocably agrees that judgment in any proceedings brought in the courts of England and Wales shall



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be conclusive and binding upon such **Party** and may be enforced in the courts of any other jurisdiction.

- 31.4. Each **Party** which is not incorporated in any part of Great Britain 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, a person in Great Britain to accept service of process on its behalf in any **Proceedings** in Great Britain.
- 31.5. For the avoidance of doubt nothing contained in the foregoing provisions of this Clause 31 shall be taken as permitting a **Party** to commence **Proceedings** in the courts where these **General Terms and Conditions** otherwise provide for **Proceedings** to be referred to arbitration.

### **32. ASSIGNMENT AND OTHER DEALINGS**

- 32.1. Save as provided for in Clauses 32.2 and 32.3, a **Mid-Term Reactive Contract** 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 a **Mid-Term Reactive Contract** without the prior written consent of the other **Party** (such consent not to be unreasonably withheld, conditioned or delayed).
- 32.2. **NESO** may assign or purport to transfer the benefit and/or burden of a **Mid-Term Reactive Contract** or any other rights and/or obligations pursuant to a **Mid-Term Reactive Contract** to a successor **Licence** holder.
- 32.3. The **Provider** may with the prior written consent of **NESO** (such consent not to unreasonably be withheld or delayed):
- 32.3.1. assign or charge its benefit under a **Mid-Term Reactive Contract** in whole or in part by way of security; or
- 32.3.2. upon disposal of any part of the **Provider's** business comprising the **Facility** to another member of the **Provider's Group**, transfer its rights and obligations under a **Mid-Term Reactive Contract** to that other member of the **Provider's Group**, provided that the **Provider** guarantees the continued performance of that **Mid-Term Reactive Contract** by that other member of the **Provider's Group** on such terms as **NESO** may require; or
- 32.3.3. upon disposal of any part of the **Provider's** business comprising the **Facility** to any third party (other than another member of the **Provider's Group**), transfer its rights and obligations under this **Agreement** to the new owner of the business, provided that there have been transferred to the new owner, all of its rights and obligations under each of the **Bilateral Connection Agreements** (and associated **Construction Agreements**) and **Mandatory Services Agreements** (as applicable) relevant to the part of the business or undertaking to be transferred and provided further

### **General Terms and Conditions**

that the new owner of the business satisfies any of **NESO's** reasonable due diligence checks (including technical and financial capacity) as notified to the **Provider**.

- 32.4. The **Provider** may subcontract any or all of its obligations under a **Mid-Term Reactive Contract** to any third party. No such subcontracting shall discharge any obligation of the **Provider** under the **Mid-Term Reactive Contract** and it shall remain liable in full for performance of the matter so subcontracted.
- 32.5. If ownership, occupancy or use (for the purpose of providing the **Contracted Services**) of the site at which the **Facility** is located changes, or may change, during the term of a **Mid-Term Reactive Contract**, the **Provider** shall immediately notify **NESO** of the same. **NESO** and the **Provider** shall, at the reasonable request of **NESO**, discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.
- 32.6. **NESO** may terminate the **Mid-Term Reactive Contract** in accordance with Clause 16.2.3 (*Termination*) if a **Change in Ownership** of the **Provider** occurs and the new owner fails to satisfy any of **NESO's** reasonable due diligence checks (including technical and financial capacity) as notified to the .

### **33. NO PARTNERSHIP**

The **Parties** are independent and nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the **Parties** or to impose any partnership obligation or liability on either **Party**. Neither **Party** shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other **Party** in any way.

## **General Terms and Conditions**

### **SCHEDULE 1** **DEFINITIONS**

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Absorption Capability”</b>         | in relation to a <b>Facility</b> , means its ability to absorb <b>Reactive Power</b> from the <b>NETS</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>“Acceptable Security”</b>           | <p>means security in the form of:</p> <ul style="list-style-type: none"><li>(i) an on-demand without proof or conditions irrevocable performance bond or guarantee in a form reasonably satisfactory to <b>NESO</b> issued by a <b>Rated Bank</b> payable in Sterling in London; or</li><li>(ii) an irrevocable standby letter of credit in a form reasonably satisfactory to <b>NESO</b> issued by a <b>Rated Bank</b> payable in Sterling in London; or</li><li>(iii) a parent company guarantee in terms and from an issuer satisfactory to <b>NESO</b>; or</li><li>(iv) a cash deposit in GB Pounds in an <b>Escrow Account</b>;</li><li>(v) such other form of security acceptable to <b>NESO</b>,</li></ul> <p>in each case, for an amount equal to the <b>Secured Amount</b> from time to time;</p> |
| <b>“Acceptance Form”</b>               | means a notice from <b>NESO</b> to the <b>Provider</b> (in such form and terms as <b>NESO</b> may from time to time determine), confirming the formation of a <b>Mid-Term Reactive Contract</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>“Act”</b>                           | means the Electricity Act 1989;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>“Adequate Procedures”</b>           | shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 8 of that Act);                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>“Annual Reconciliation Payment”</b> | has the meaning given to that term in Clause 10.1.4;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>“Anti-Bribery Laws”</b>             | shall mean all applicable laws, statutes, regulations, and codes of mandatory application relating to anti-bribery and anti-corruption including but not limited to the <b>Bribery Act</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“Associated Persons”</b>            | shall have the meaning ascribed to it in section 8 of the Bribery Act 2010 and shall include but is not limited to any employees, agents and/or subcontractors of the <b>Provider</b> or <b>NESO</b> as                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

## **General Terms and Conditions**

applicable in relation to the provision of the **Mid-Term Reactive Service**;

**“Available”**

means:

- (a) in relation to a **Static Facility**, that the **Facility** is capable of operating at not less than ninety per cent (90%) of its **Contracted Absorption Capability** and/or **Contracted Injection Capability** and otherwise is capable of operating in accordance with its **Contracted Parameters** in full in response to an **Instruction**;
- (b) in relation to a **Dynamic Facility**, that the **Facility** is capable of operation within its **Declared Absorption Capability** and **Declared Injection Capability** and otherwise is capable of operating in accordance with its **Contracted Parameters** in full in response to an **Instruction**,

and, in each case, the terms **“Availability”**, **“Unavailable”** and **“Unavailability”** shall be construed accordingly;

**“Availability Fee”**

means the sum per **Settlement Period**, as specified in the relevant **Acceptance Form**;

**“Availability Payment”**

means the payment to be made to the **Provider** for each calendar month as calculated in accordance with Schedule 2, Part A (*Calculation of Payments and Rebates*);

**“Availability Rebate”**

means any rebate payable by the **Provider** for each calendar month, as calculated in accordance with Part B of Schedule 2 (*Calculation of Payments and Rebates*);

**“Authority”**

means the Gas and Electricity Markets Authority;

**“Base Rate”**

means the Bank of England Official Rate from time to time provided that, if at any time the Bank of England Official Rate is a negative rate, then 0%;

**“Bilateral Connection Agreement”**

as defined in the **CUSC**;

**“BM Unit”**

as defined in the **BSC**;

**“Balancing and Settlement Code”**  
or **“BSC”**

as defined in **NESO’s Licence**;

## **General Terms and Conditions**

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Business Day”</b>                         | a week-day other than a Saturday or Sunday on which banks are open for domestic business in the City of London;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Change in Law”</b>                        | means, in relation to a <b>Mid-Term Reactive Contract</b> , the occurrence of any of the following events after the date thereof: <ul style="list-style-type: none"><li>(a) the coming into effect of any <b>Law or Directive</b> that is not in effect as at the date of the <b>Mid-Term Reactive Contract</b>;</li><li>(b) the repeal, replacement or amendment of any <b>Law or Directive</b>; or</li><li>(c) a change in the interpretation of any <b>Competent Authority</b> of any <b>Law or Directive</b>;</li></ul>                                                                          |
| <b>“Change in Ownership”</b>                  | means, in relation to a <b>Provider</b> : <ul style="list-style-type: none"><li>(a) any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty per cent (50%) or more of the shares in the <b>Provider</b> or any holding company of the <b>Provider</b> (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or</li><li>(b) any other arrangements that have or may have or which result in the same effect as described in (a) above;</li></ul> |
| <b>“Competent Authority”</b>                  | means the <b>Authority</b> 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 <b>NESO</b> or the subject matter of a <b>Mid-Term Reactive Contract</b> ;                                                                                                                                                                                                                             |
| <b>“Conditions Precedent”</b>                 | the conditions precedent as set out in the <b>Acceptance Form</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>“Constant Reactive Power Control Mode”</b> | the ability of a <b>Dynamic Facility</b> to keep target <b>Reactive Power</b> injected or absorbed at the <b>Grid Entry Point</b> equal to the preselected MVar <b>Set Point</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Continued Performance Failure”</b>        | means, in relation to a <b>Facility</b> : <ul style="list-style-type: none"><li>(a) the <b>Availability</b> of the <b>Facility</b> is ten per cent (10%) or more below the <b>Target Availability</b> for thirty per cent (30%) or more of the <b>Service Term</b> in aggregate;</li></ul>                                                                                                                                                                                                                                                                                                           |

## **General Terms and Conditions**

and/or

- (b) an **Instruction Failure Rebate** has been payable in respect of ten per cent (10%) or more of the **Settlement Periods** in the **Service Term** in aggregate;

**“Construction Agreements”**

as defined in the **CUSC**;

**“Contract Year”**

means, in relation to a **Mid-Term Reactive Contract**, each period of twelve (12) calendar months during the **Service Term** commencing on the **Start Date** or (where applicable) any anniversary thereof, save that the last such year shall end on the date of expiry or termination;

**“Contracted Absorption Capability”**

means **Absorption Capability** equal to the **Tendered Absorption Capability** as the same may be amended from time to time in accordance with Clause 12 (*Reproving Tests*);

**“Contracted Injection Capability”**

means **Injection Capability** equal to the **Tendered Injection Capability** as the same may be amended from time to time in accordance with Clause 12 (*Reproving Tests*);

**“Contracted Reactive Capability”**

has the meaning given to it in the **Acceptance Form**;

**“Contracted Parameters”**

means, in relation to the **Facility** the **Contracted Injection Capability** and / or the **Contracted Absorption Capability** and any other details specified in the **Acceptance Form**;

**“Contracted Utilisation Price”**

means, where applicable, the price for the calculation of the **Utilisation Payment** specified in the **Acceptance Form**;

**“CP Date”**

the date specified in the **Acceptance Form**;

**“CUSC”**

means the Connection and Use of System Code as defined in the **NESO Licence**;

**“Declared Absorption Capability”**

means:

- (a) in the case of a **Static Facility**, the **Contracted Absorption Capability**; and
- (b) in the case of a **Dynamic Facility**, the capability of the **Facility** to absorb **Reactive Power** specified in a notification under Clause 5.2.1 and, in the absence of such a notification, shall be equal to the **Contracted Absorption Capability**;



## **General Terms and Conditions**

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| <b>“Declared Injection Capability”</b> | means: <ul style="list-style-type: none"><li>(a) in the case of a <b>Static Facility</b>, <b>Injection Capability</b> equal to the <b>Contracted Injection Capability</b>; and</li><li>(b) in the case of a <b>Dynamic Facility</b>, the <b>Injection Capability</b> of the <b>Facility</b> specified in a notification under Clause 5.2.1 and, in the absence of such a notification, shall be equal to the <b>Contracted Injection Capability</b>;</li></ul>                                                                                                                                |
| <b>“Defaulting Party”</b>              | has the meaning given to it in Clause 10.6;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Delay Event”</b>                   | means: (i) any event of <b>Force Majeure</b> that delays the implementation of the <b>Works</b> ; (ii) any failure to schedule a <b>Proving Test</b> within 10 days of the <b>Provider’s</b> notice under Clause 4.3 that is due solely to any act or omission of <b>NESO</b> ; (iii) any change reasonably required by <b>NESO</b> to the <b>Works</b> ; or (iv) any unforeseen delay by the <b>Local TO</b> in connecting the <b>Facility</b> to the <b>NETS</b> , provided always that the <b>Provider</b> shall have used all reasonable endeavours to mitigate the effect of that delay; |
| <b>“Dispute Notice”</b>                | has the meaning given to it in Clause 19.1.1;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>“Dynamic Facility”</b>              | a <b>Facility</b> that is capable of absorbing MVar in <b>Constant Reactive Power Control Mode</b> and <b>Voltage Control Mode</b> , as specified in the <b>Contract Form</b> ;                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“EDL”</b>                           | means the electronic despatch logging mechanism by which <b>NESO</b> communicates with the <b>Provider</b> and the <b>Provider</b> communicates with <b>Company</b> in respect of the <b>Facility</b> for the purposes of sending and acknowledging <b>Instructions</b> and <b>Instructions to End</b> ;                                                                                                                                                                                                                                                                                      |
| <b>“Escrow Account”</b>                | means a separately designated interest-bearing bank account in the name of <b>NESO</b> established by a mandate in such terms as <b>NESO</b> may require and signed by both <b>NESO</b> and the <b>Provider</b> at a branch of Barclays Bank PLC or another bank in the City of London as notified by <b>NESO</b> to the <b>Provider</b> ;                                                                                                                                                                                                                                                    |
| <b>“Expert”</b>                        | has the meaning given to that term in Clause 19.3;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>“Extended Term”</b>                 | has the meaning given to that term in Clause 3.5;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>“Facility”</b>                      | in relation to a <b>Mid-Term Reactive Contract</b> , the facility described in the <b>Tender Acceptance</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

## **General Terms and Conditions**

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|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Force Majeure”</b>                | in relation to either <b>Party</b> any event, circumstance or condition which is beyond the reasonable control of such <b>Party</b> (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that <b>Party</b> or its officers or employees, agents, contractors and sub-contractors) which, despite all reasonable endeavours of the <b>Party</b> claiming <b>Force Majeure</b> to prevent it or mitigate its effects, causes a material 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, pandemic, 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 <b>Act</b> ), provided always that neither: (i) lack of funds, nor (ii) the act or omission of any contractor (unless due solely to an event that would have been treated as a cause beyond its reasonable control if the contractor had been a party to the <b>Mid-Term Reactive Contract</b> ), shall be interpreted as a cause beyond the reasonable control of that <b>Party</b> ; |
| <b>“Force Majeure Period”</b>         | any <b>Settlement Period</b> in which the <b>Facility</b> is <b>Unavailable</b> solely by reason of <b>Force Majeure</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>“General Terms and Conditions”</b> | means this document;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>“Good Industry Practice”</b>       | 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;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>“Grid Code”</b>                    | has the meaning given to that term in <b>NESO’s Licence</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>“Grid Entry Point”</b>             | has the meaning given to the term “Onshore Grid Entry Point” in the <b>Grid Code</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Grid Supply Point”</b>            | has the meaning given to it in the <b>BSC</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

## **General Terms and Conditions**

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| <b>“Industry Document”</b>            | the <b>Licences</b> , the <b>BSC</b> , the <b>CUSC</b> , the <b>Grid Code</b> and all other agreements, documents or codes with which the <b>Provider</b> is obliged to comply under the <b>Act</b> or its <b>Licence</b> ;                                                                                                                                                                                                                                                                              |
| <b>“Injection Capability”</b>         | in relation to a <b>Facility</b> , means its ability to inject <b>Reactive Power</b> onto the <b>NETS</b> ;                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>“Instruction”</b>                  | an instruction issued in accordance with Clause 5.3] ;                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Instruction Failure Rebate”</b>   | means a rebate against the <b>Availability Payment</b> payable in accordance with Clause 10.1 and calculated in accordance with paragraph B1 of Schedule 2 ( <i>Calculation of Payments and Rebates</i> );                                                                                                                                                                                                                                                                                               |
| <b>“Law or Directive”</b>             | <ul style="list-style-type: none"><li>(a) any law (including the common law);</li><li>(b) any statute, statutory instrument, regulation, instruction, direction, rule or requirement of any <b>Competent Authority</b>;</li><li>(c) any condition or other requirement of any <b>Licence</b> or other required authorisation, licence, consent, permit or approval (or of any exemption from the requirement to have the same); and</li><li>(d) any provision of any <b>Industry Document</b>;</li></ul> |
| <b>“Legal Requirement”</b>            | means any Act of Parliament, regulation, licence or any present or future directive, request, requirement, instruction, code of practice, direction or rule of any <b>Competent Authority</b> and any modification, extension or replacement thereof;                                                                                                                                                                                                                                                    |
| <b>“Licence”</b>                      | means a licence issued under section 6(1) of the Electricity Act 1989;                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>“Local TO”</b>                     | means the owner of that part of the <b>NETS</b> to which the <b>Facility</b> is connected or the owner of that part of the <b>NETS</b> in which the associated <b>Grid Supply Point</b> is located;                                                                                                                                                                                                                                                                                                      |
| <b>“Maintenance Plan”</b>             | in respect of a <b>Contract Year</b> , a plan setting out the dates and times of all planned maintenance and inspection periods applicable to the <b>Facility</b> ;                                                                                                                                                                                                                                                                                                                                      |
| <b>“Mandatory Services Agreement”</b> | has the meaning given to that term in the <b>CUSC</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>“Market Agreement”</b>             | has the meaning given to that term in the <b>CUSC</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

## **General Terms and Conditions**

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| <b>“Mid-Term Reactive Contract”</b>                         | a contract for the provision of <b>Reactive Power Capability</b> formed upon <b>NESO’s</b> acceptance of a <b>Tender Submission</b> as confirmed by an <b>Acceptance Form</b> or, where appropriate, entered into bilaterally between the <b>Parties</b> ; |
| <b>“Mid-Term Reactive Service”</b>                          | means the service described in Clause 5;                                                                                                                                                                                                                   |
| <b>“Monitoring Equipment”</b>                               | means the monitoring equipment required to be installed by the <b>Provider</b> in relation to a <b>Facility</b> , as more particularly set out in the <b>Technical Performance Requirements</b> and/or the <b>Bilateral Connection Agreement</b> ;         |
| <b>“Monthly Statement”</b>                                  | has the meaning given to that term in Clause 10.1 ( <i>Payment</i> );                                                                                                                                                                                      |
| <b>“National Electricity Transmission System” or “NETS”</b> | has the meaning given to that term in <b>NESO’s Licence</b> ;                                                                                                                                                                                              |
| <b>“NESO Licence”</b>                                       | the licence issued to <b>NESO</b> under section 6.1ZA of the <b>Act</b> ;                                                                                                                                                                                  |
| <b>“Network Constraint”</b>                                 | means unavailability of the <b>NETS</b> for any reason, including <b>Planned Outage</b> or <b>Unplanned Outage</b> , or restrictions otherwise imposed on the operation of a <b>Facility</b> by the <b>Local TO</b> ;                                      |
| <b>“Notice Period”</b>                                      | the notice period specified in the <b>Acceptance Form</b> ;                                                                                                                                                                                                |
| <b>“Obligatory Reactive Power Service”</b>                  | has the meaning given to that term in the <b>CUSC</b> ;                                                                                                                                                                                                    |
| <b>“Party”</b>                                              | <b>NESO</b> or the <b>Provider</b> (as the context requires) and the term <b>“Parties”</b> shall be construed accordingly;                                                                                                                                 |
| <b>“Party Liable”</b>                                       | has the meaning given to that term in Clause 18.1;                                                                                                                                                                                                         |
| <b>“Permitted Service”</b>                                  | in relation to a <b>Contracted Service</b> , such other balancing services as <b>NESO</b> may from time to time notify to all providers of the relevant <b>Contracted Service</b> ;                                                                        |
| <b>“Post Tender Milestones”</b>                             | means the milestones, and requisite evidence, agreed by <b>NESO</b> and the <b>Provider</b> to be achieved by the <b>PTM Date</b> , as set out in the <b>Acceptance Form</b> ;                                                                             |

## **General Terms and Conditions**

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| <b>“Proceedings”</b>                          | has the meaning given to that term in Clause 31.2;                                                                                                                                                                                                                                                                                                                                |
| <b>“Provider’s Group”</b>                     | means the <b>Provider</b> , any subsidiary or holding company of the <b>Provider</b> from time to time and any subsidiary of any such holding company from time to time;                                                                                                                                                                                                          |
| <b>“PTM Date”</b>                             | means, in relation to a <b>Post Tender Milestone</b> , the date specified in the <b>Acceptance Form</b> ;                                                                                                                                                                                                                                                                         |
| <b>“Planned NETS Outage”</b>                  | an outage of part of the <b>NETS</b> coordinated by <b>NESO</b> under OC2 of the <b>Grid Code</b> ;                                                                                                                                                                                                                                                                               |
| <b>“Planned Outage”</b>                       | an outage of part of the <b>NETS</b> coordinated by <b>NESO</b> under OC2 of the <b>Grid Code</b> and <b>“Unplanned Outage”</b> shall be construed accordingly;                                                                                                                                                                                                                   |
| <b>“Provider”</b>                             | has the meaning given to it in the relevant <b>Acceptance Form</b> ;                                                                                                                                                                                                                                                                                                              |
| <b>“Proving Test”</b>                         | a proving test of the <b>Facility</b> undertaken in accordance with Clause 4.3 in compliance with the principles set out in the <b>Technical Performance Requirements</b> to verify that the <b>Facility</b> is capable of providing the <b>Mid-Term Reactive Service</b> in accordance with the <b>Technical Performance Requirements</b> and the <b>Contracted Parameters</b> ; |
| <b>“Proving Test Programme”</b>               | has the meaning given to that term in Clause 4.5;                                                                                                                                                                                                                                                                                                                                 |
| <b>“Rated Bank”</b>                           | means 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) or any acceptable equivalent as approved by <b>NESO</b> ;                                                                                                                                                                            |
| <b>“Reactive Mid-Term Market Tender Pack”</b> | the documents published by <b>NESO</b> from time to time setting out the procedure to be followed for the procurement of the <b>Mid-Term Reactive Service</b> ;                                                                                                                                                                                                                   |
| <b>“Reactive Power”</b>                       | has the meaning given to it in the <b>Grid Code</b> ;                                                                                                                                                                                                                                                                                                                             |
| <b>“Reactive Power Mode”</b>                  | means ‘target voltage mode’ or ‘constant Mvar mode’ as described in the <b>Technical Performance Requirements</b> ;                                                                                                                                                                                                                                                               |
| <b>“Relevant Change in Law”</b>               | means a <b>Change in Law</b> that: <ul style="list-style-type: none"><li>a) was not, acting in accordance with <b>Good Industry Practice</b>, reasonably foreseeable by the <b>Provider</b> as at the date of the relevant <b>Mid-Term Reactive Contract</b>;</li><li>and</li></ul>                                                                                               |

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- b) affects the provision of a **Contracted Service** or other similar services but not one which affects the operation of the **Facility** in general;

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Relevant Number of Days”</b>    | has the meaning given to it in Clause 4.6;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>“Relevant Settlement Period”</b> | means a <b>Settlement Period</b> that is subject to an <b>Instruction</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>“Reproving Test”</b>             | in relation to the <b>Facility</b> , a test undertaken in accordance with the principles set out in Part B of Annex A to Schedule 5 ( <i>Testing</i> ) to verify that the <b>Facility</b> is capable of providing the <b>Mid-Term Reactive Service</b> in accordance with the <b>Technical Performance Requirements</b> ;                                                                                                                                                                                                                                  |
| <b>“Sanctioned Country”</b>         | means any country or territory that is the target of comprehensive, country or territory wide <b>Sanctions</b> ;                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>“Sanctioned Person”</b>          | 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 <b>Sanctions List</b> ; (ii) the government of a <b>Sanctioned Country</b> or a member of the government of a <b>Sanctioned Country</b> ; (iii) resident in or incorporated under the laws of any <b>Sanctioned Country</b> ; or (iv) to the best of the knowledge and belief (having made due and careful enquiries) of a <b>Party</b> , otherwise a target of <b>Sanctions</b> ; |
| <b>“Sanctions”</b>                  | means economic or financial sanctions, trade embargoes or restrictive measures imposed, administered or enforced from time to time by any <b>Sanctions Authority</b> ;                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>“Sanctions Authority”</b>        | means (i) United Kingdom government, (ii) the United Nations Security Council; (iii) the European Union; (iv) the United States government; (v) the sanctions local competent authority where the deal is executed or booked;                                                                                                                                                                                                                                                                                                                              |
| <b>“Sanctions List”</b>             | means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by any <b>Sanctions Authority</b> , 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;            |



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|                                             |                                                                                                                                                                                                                                                                                             |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Scheduled Start Date”</b>               | means, in relation to a <b>Mid-Term Reactive Contract</b> , the date specified by the <b>Provider</b> as part of its <b>Tender Submission</b> by which it expects to have completed the <b>Works</b> and the <b>Facility</b> to have passed the <b>Proving Test</b> ;                       |
| <b>“Secretary of State”</b>                 | the relevant Secretary of State for the purposes of the <b>Act</b> ;                                                                                                                                                                                                                        |
| <b>“Secured Amount”</b>                     | an amount equal to the <b>Termination Sum</b> ;                                                                                                                                                                                                                                             |
| <b>“Service Term”</b>                       | means, in relation to a <b>Mid-Term Reactive Contract</b> , the period commencing on the <b>Start Date</b> and ending on the expiry date specified in the <b>Acceptance Form</b> , subject to early termination or extension in accordance with these <b>General Terms and Conditions</b> ; |
| <b>“Set Point”</b>                          | a target level of <b>Reactive Power</b> (absorption or injection, expressed in MVar) or a target level of voltage (expressed in kV), as the context requires;                                                                                                                               |
| <b>“Settlement Periods”</b>                 | has the meaning given to that term in the <b>BSC</b> ;                                                                                                                                                                                                                                      |
| <b>“Settlement Run”</b>                     | has the meaning given to that term in the <b>BSC</b> ;                                                                                                                                                                                                                                      |
| <b>“Slope”</b>                              | the percentage change in voltage based on nominal that results in a change of <b>Reactive Power</b> from 0 to the maximum absorption or maximum injection capability, as described in CCA.7.2.2 of the <b>Grid Code</b> ;                                                                   |
| <b>“Start Date”</b>                         | In relation to a <b>Mid-Term Reactive Contract</b> , the date following that on which the relevant <b>Facility</b> successfully completes the <b>Proving Test</b> ;                                                                                                                         |
| <b>“Static Facility”</b>                    | a <b>Facility</b> that is only capable of absorbing or injecting MVar at an approximately constant level;                                                                                                                                                                                   |
| <b>“System”</b>                             | has the meaning given to it in the <b>Grid Code</b> ;                                                                                                                                                                                                                                       |
| <b>“Target Availability”</b>                | the level of <b>Availability</b> specified in the <b>Acceptance Form</b> ;                                                                                                                                                                                                                  |
| <b>“Technical Performance Requirements”</b> | those technical, monitoring, performance and other requirements set out or referred to in the specification included in the <b>Reactive Mid-Term Market Tender Pack</b> ;                                                                                                                   |
| <b>“Tender”</b>                             | means a competitive procurement process for the <b>Mid-Term Reactive Service</b> ;                                                                                                                                                                                                          |

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|                                         |                                                                                                                                                                                                                                                        |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Tender Submission”</b>              | means a submission made in respect of a <b>Tender</b> ;                                                                                                                                                                                                |
| <b>“Tendered Absorption Capability”</b> | the <b>Contracted Absorption Capability</b> specified in the <b>Acceptance Form</b> ;                                                                                                                                                                  |
| <b>“Tendered Injection Capability”</b>  | the <b>Contracted Injection Capability</b> specified in the <b>Acceptance Form</b> ;                                                                                                                                                                   |
| <b>“Termination Sum”</b>                | means an amount equal to one quarter of the <b>Settlement Periods</b> in the period commencing on the <b>Start Date</b> and ending on the expiry date specified in the <b>Acceptance Form</b> , multiplied by the applicable <b>Availability Fee</b> ; |
| <b>“Utilisation Payment”</b>            | has the meaning given to that term in Clause 7.1.2;                                                                                                                                                                                                    |
| <b>“Voltage Control Mode”</b>           | in relation to a <b>Dynamic Facility</b> , the ability to absorb or inject MVAR in direct proportion to the deviation of the Voltage of the <b>NETS</b> from the <b>Instructed Set Point</b> and inversely proportional to the <b>Slope</b> setting;   |
| <b>“Works”</b>                          | means the design, construction, modification, commissioning and/or testing of the <b>Facility</b> , including the <b>Monitoring Equipment</b> <sup>1</sup> .                                                                                           |

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<sup>1</sup> It is assumed that some works will be required by all Providers

**SCHEDULE 2**

**CALCULATION OF PAYMENTS AND REBATES**

**Part A – Monthly Payment**

**A.1 Aggregate Monthly Payment**

The aggregate **Monthly Payment** in respect of calendar month  $m$  ( $AMP_m$ ) accounting for any rebates and reconciliation payments due is calculated for a **Mid-Term Reactive Contract** as follows:

$$AMP_m = \text{MAX}(((VAP_m + UP_m) - AR_m), 0)$$

$VAP_m$  shall, if the **Acceptance Form** states that the **Availability Payment** is applicable, have the value calculated in accordance with paragraph A.2, otherwise, 0;

$UP_m$  shall, if the **Acceptance Form** states that the **Utilisation Payment** is applicable, have the value calculated in accordance with paragraph C.1, otherwise, 0;

$AR_m$  shall have the value calculated in accordance with paragraph B.1

**A.2 Availability Payment for provision of the Reactive Power Service**

The aggregate **Availability Payment** in respect of calendar month  $m$  (" $VAP_m$ ") is calculated as follows:

$$VAP_m = \sum_{jm} [((VAF_j * ((a/(a+i)) * RPa) * TAa) * AM_j) + ((VAF_j * ((i/(a+i)) * RPi) * Tai) * AM_j)]$$

$\sum_{jm}$  is the summation for all **Settlement Periods**  $j$  in calendar month  $m$

$VAF_j$  is the **Availability Fee** for the **Facility**  $f$  in **Contract Year**  $y$  (expressed in £/**Settlement Period**) in **Settlement Period**  $j$ ;

$a$  is the **Contracted Absorption Capability** (as a positive value);

$i$  is the **Contracted Injection Capability** (as a positive value) ;

$RPa$  is the **Declared Absorption Capability** (as a positive value) divided by the **Contracted Absorption Capability** expressed as a decimal fraction where the maximum value is 1;

$RPi$  is the **Declared Injection Capability** (as a positive value) divided by the **Contracted Injection Capability** expressed as a decimal fraction where the maximum value is 1, where a **Facility**  $f$  is capable of providing both injection and absorption of **Reactive Power**;

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|     |                                                                                                                                                                                                                                                          |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TAa | is a factor: (i) if the value of RPa is less than 0.9, equal to 0.7; or (ii) otherwise, equal to 1;                                                                                                                                                      |
| TAi | is a factor: (i) if the value of RPi is less than 0.9, equal to 0.7; or (ii) otherwise, equal to 1;                                                                                                                                                      |
| AMj | is: 0 in respect of each <b>Settlement Period</b> j in which the <b>Facility</b> f is wholly <b>Unavailable</b> , including any <b>Settlement Periods</b> in which the <b>Facility</b> f is treated as <b>Unavailable</b> in accordance with Clause 5.2. |

### **Part B – Rebates and Reconciliations**

#### **B.1 Monthly Availability Rebate**

The **Availability Rebate** ( $AR_m$ ) for each calendar month in the **Contract Year** is calculated as follows

$$AR_m = IFR_m + UC_m + UL_m$$

Where:

$IFR_m$  is the sum (if any) calculated in accordance with paragraph B.1.1 below.

$UC_m$  is the sum (if any) calculated in accordance with paragraph B.1.2 below; and

$UL_m$  is the unrecovered **Availability Rebate** (if any) as at month m, calculated in accordance with paragraph B.1.3 below (being a negative value);

B.1.1 The **Instruction Failure Rebate** (if any) for month m ( $IFR_m$ ) shall be calculated as follows:

$$IFR_m = VFSP_m * VAF_y$$

Where:

$IFR_m$  is the **Instruction Failure Rebate** due in month m for failing to respond to an **Instruction**

$VAF_y$  is the **Availability Fee** for the **Facility** f in **Contract Year** y or, where the **Acceptance Form** provides that the **Availability Payment** is not applicable, the **Contracted Utilisation Rate** (in either case, expressed in £/**Settlement Period**);

$VFSP_m$  is the number of **Settlement Periods** in month m in which the **Facility** f was **Unavailable** calculated in accordance with Clause 5.3.3 and 5.3.4.

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### B.1.2 Availability Rebate

The **Availability Rebate** ( $VUC_m$ ) in calendar month  $m$  of the **Contract Year** is calculated as:

$$VUC_m = ((\max((TAV_m - AAV_m), 0) * SP_m) * VAF_f)$$

Where:

$VUC_m$  is the **Availability Rebate** for being unavailable in calendar month  $m$

$TAV_m$  is the **Target Availability** (expressed as a percentage) for month  $m$ ;

$AAV_m$  is a fraction (expressed as a percentage) the numerator of which is the aggregate number of **Settlement Periods** in month  $m$  in which the **Facility** was either: (i) **Available**; or (ii) providing a **Permitted Service**, and the denominator of which is the aggregate number of **Settlement Periods** in month  $m$  less any **Settlement Periods** in which the **Facility** is **Unavailable** by reason of **Force Majeure**;

$VAF_f$  is the **Availability Fee** for the **Facility**  $f$  in **Contract Year**  $y$  or, where the **Acceptance Form** provides that the **Availability Payment** is not applicable, the **Contracted Utilisation Rate** (in either case, (in either case, expressed in £/**Settlement Period**);

### B.1.3 Unrecovered Availability Rebate - $UL_m$

The unrecovered **Availability Rebate** ( $UL_m$ ) for each calendar month  $m$  in the **Contract Year** is:

$$UL_m = \max(((\sum_{1m-1} AR_m - \sum_{1m-1} AMP_m) - (\sum_{1m-1} VAP_m + \sum_{1m-1} UP_m)), 0)$$

Where  $m = 1$ , the monthly unrecovered **Availability Rebate** ( $UL_m$ ) will be 0;

Where  $m > 1$ , the monthly unrecovered **Availability Rebate** ( $UL_m$ ) will be calculated as:  
The maximum of the the previous month's  $AR_m$  subtracted by both the previous month's  $AAP_m$  and the previous month's  $VAP_m$

$AR_m$  is calculated in accordance with paragraph B.1;

$AMP_m$  is calculated in accordance with paragraph A.1;

$VAP_m$  is (where so provided in the **Acceptance Form**) calculated in accordance with paragraph A.2; and

$UP_m$  is (where so provided in the **Acceptance Form**) calculated in accordance with paragraph C.1 .

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### B.2 – Annual Reconciliation Payment

The **Annual Reconciliation Payment** ( $ARL_{final}$ ) is calculated for **Contract Year**  $y$  as the maximum of the (the final month's  $AR_m$  subtracted by the final month's  $AMP_m$ ), or zero :

$$\text{i.e. } ARL_{final} = \text{MAX}((\sum_{1m-1} AR_m - \sum_{1m-1} AAP_m), 0)$$

Where:

$AR_m$  is calculated in accordance with paragraph B.1; and

$AMP_m$  is calculated in accordance with paragraph A.1.

### **Part C – Utilisation Fee Payment**

C.1 Where so provided in the **Tender Acceptance Form** (but not otherwise), the **Utilisation Payment** ("UP $_m$ ") in each calendar month ("m") is calculated as:

$$UP_m = \sum SP_m [((AD_a * AU_a) + (AD_i * AU_i)) / AP_d] * UR$$

Where:

$\sum SP_m$  is the summation for all **Settlement Periods** that are subject to an **Instruction** in calendar month  $m$ ;

$AD_a$  is expressed as a factor of 1 if the **Facility** provided **Absorption Capability** during the relevant **Settlement Period** in accordance with an **Instruction**;

$AU_a$  is the **Absorption Capability** of the **Facility** achieved in the relevant **Settlement Period** divided by the **Contracted Absorption Capability** (expressed as a decimal fraction);

$AD_i$  is expressed as a factor of 1 if the **Facility** provided **Injection Capability** during the relevant **Settlement Period** in accordance with an **Instruction**;

$AU_i$  is the **Injection Capability** of the **Facility** achieved in the relevant **Settlement Period** divided by the **Contracted Injection Capability** (expressed as a decimal fraction);

$UR$  is the **Contracted Utilisation Price** (expressed in £/SP);

$AP_d$  is a factor of 2 where both **Absorption Capability** and **Injection Capability** are being contracted and procured, otherwise 1 where only one of either **Absorption Capability** or **Injection Capability** is contracted.



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### Part D CPI Indexation

The **Availability Payment** will be calculated by reference to the **Availability Fee** and if so specified in the **Tender Acceptance Form** (but not otherwise), subject to indexation as follows:

The **Availability Fee** is specified at [April in the year of tender] values and will be adjusted annually, commencing on [1st April in the year of tender +1], 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 the monthly Office for National Statistics Statistical bulletin.

The **Availability Fee** will therefore be increased (or reduced as appropriate) for the period [April in the year of tender +1] to [March in the year of tender +2] by the following factor:-

$$\frac{CPI_2}{CPI_1}$$

Where:

$CPI_2$  is the CPI for [March in the year of tender +2]

$CPI_1$  is the CPI for [March in the year of tender +1]

The relevant price will then be increased (or reduced as appropriate) the following year for the period [April 2031] to March [2032] by the following factor:-

$$\frac{CPI_3}{CPI_1}$$

Where:

$CPI_3$  is the CPI for [March 2031]

$CPI_1$  is the CPI for [March 2029]

- In subsequent years, indexation will continue in accordance with the above, with always the numerator of the factor representing the CPI of the **Contract Year** under consideration and the denominator of the factor being CPI for [March 2029].
- 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 Part A of this Schedule shall be calculated by **NESO** 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.

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### **SCHEDULE 3** **SECURITY SCHEDULE**

#### **Part A - Mandatory Information Security Requirements**

The Supplier shall be required to comply with the following requirements:

##### **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 Controls Framework, which is based on ISO27001/2 and NIST 800-53.

##### **3. 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.

- **Sensitive Systems and/or Information:** Any system which is designated from time to time as Critical National Infrastructure or scoped within the Network and Information Systems Regulations 2018, or any information related to such system which may be used to cause damage or interruption to the system.

##### **4. MANDATORY & 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.

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### **5. REGULATORY & LEGISLATIVE CHANGES**

Should Client become subject to additional regulatory or legislative requirements, or the requirements of regulation or legislation to which Client is subject changes, Client reserves the right to make such necessary amendments to this Schedule to meet those requirements, through a mandatory contract change. Where this clause is triggered by the Client, the Client shall cover reasonable and necessary costs involved.

### **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 six (6) months thereafter.

#### **6.1. PRE-CONTRACT SECURITY & PERIODIC ASSURANCE**

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.

Review of security controls and provision of supporting evidence.

Periodic submission of independent assurance certification and/or compliance attestations.

Audit by Client or its agents against Client Controls Framework or regulatory requirements.

Annual Background Checking Assurance..

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

Upon agreement with Client Security Team, 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, within no less than 48 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

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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 & 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 Client 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 confidentiality arrangements between Client and the Supplier.

### **6.5. COSTS & EXPENSES**

Client and the Supplier shall bear their own respective costs and expenses incurred as part of the above assurance or audit activities.

### **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 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) provide 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.

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### **7. MINIMUM SECURITY REQUIREMENTS**

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

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**.

Where appropriate, Client may require the Supplier to meet additional controls specific to the Service or Product being supplied, as detailed in Part B of this Schedule.

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

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

#### **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. 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.

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### **7.4. 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.

### **7.5. 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.

### **7.6. AWARENESS & 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 (where applicable to the service):

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 or for three (3) years, whichever is longer.

### **7.7. PEOPLE SECURITY**

In this paragraph 7.8 the following definitions shall apply:

**3rd Party Background Checking Provider** means an independent provider of personnel background checking services nominated by the Supplier and agreed by the Client.

**Background Checking Requirements** means together the Standard Requirements Check.



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**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).

**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 Service or equivalent which is satisfactory to the Customer, and an international fraud and sanctions check or global watch check.

**Visitors** are Supplier's Personnel assessed by Client Security Team as exempt from the Background Checking Requirements as a result of their limited access to the Client's sites or systems.

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.

The Supplier shall ensure that all Supplier Personnel prior to commencing any services or Deliverables of any kind to the Client:-

undergo the Standard Requirements Check if they:

have or will have any level of unsupervised access to or control of (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

have or will have access directly to members of the public, domestic properties, or to any customers of the Client ("a Standard Requirements Role"); or

undergo the Minimum Requirements Check if they are not performing a Standard Requirements Role, save that a Minimum Requirements Check will not be required for any Supplier Personnel who are Visitors.

Where a Standard Requirements Check is required and it reveals that the Supplier Personnel has an unspent criminal record, such record shall be disclosed to the Client if the Supplier wishes to assign the Supplier Personnel to provide services to the Client. 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.

The Client reserves the right to require that additional screening over and above the Background Checks be undertaken for particularly high-risk roles.

## **General Terms and Conditions**

Where during the Term of this Agreement the Supplier becomes aware of any conviction of Supplier Personnel, or any false, incomplete or misleading 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.

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 acting by itself or through its agents 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.

The Supplier acknowledges and accepts that the Client acting by itself or through its agents will request and review Background Check Records to enable the Client to conduct audits in respect of compliance with the Background Checking Requirements.

### **7.8. 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).

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.

### **7.9. 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 7.9).

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 & AUTHENTICATION**

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

## **General Terms and Conditions**

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.

Password complexity controls must be implemented to ensure:

- A minimum length of eight characters.
- The ability to use all special characters but no special requirements to use them.
- Restrict sequential and repetitive characters (e.g. 12345 or aaaaaa).
- Restrict context specific passwords (e.g. the name of the site, etc.).
- Restrict commonly used passwords (e.g. p@ssw0rd, etc.) and dictionary words.
- Users are prevented from reusing the last 10 passwords.

Codes or links shall be provided via a separate device (e.g. a hard token or mobile phone), which is assigned to the user and linked to the user's account.

All generated codes or links shall be suitably protected and automatically expire within a fixed timeframe.

The ability to use all special characters but no special requirements to use them.

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

**Note:** Where Supplier access authentication is determined through Biometric capabilities, the following shall apply;

The user is given the option to consent or reject to biometric authentication.

The biometric data collected is handled in accordance with applicable personal data protection laws and regulations.

A backup authentication method is available and defaulted to if biometric authentication fails after a maximum of 3 attempts, which resets after successful login.

### **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.

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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:

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Detected unauthorised 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 Client information, system and networks shall be investigated within 72 hours and reported to Client in accordance with **Paragraph 7.223**.

### **7.16 THREAT & 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 outages. Information systems are defined by Client's definition of a "Cyber Asset" as per **Paragraph 3**.

Vulnerabilities should be classified and prioritised using industry standards, such as the Common Vulnerability Scoring System (CVSS) score, Exploit Prediction Scoring System (EPSS), Vulnerability Exploitability Exchange (VEX) and take into account variables, including:

Risk exposure of the vulnerability

Sensitivity of data transmitted, hosted, or modified by the application/asset

Threat intelligence

Available compensating controls

Supplier shall notify Client in accordance with **Paragraph 7.223** make all reasonable endeavours for the planning and implementation of remediations based on the following;

Critical (External boundary with Enterprise) - Provide corrective remediation plan and enable implementation within no more than 72 hours.

High - Provide corrective remediation plan and enable implementation within no more than 30 days.

Medium - Provide corrective remediation plan and enable implementation within no more than 60 days.

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 Client Security Team in order to deem whether an exemption is appropriate before service commencement.

### **7.17 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.

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The Supplier should maintain security patching in accordance with timings detailed above in **Paragraph 7.166**.

### **7.18 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 unauthorised 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.

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.

### **7.19 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

### **7.20 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.

### **7.21 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.



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Tabletop/walkthrough disaster recovery tests are permissible only where operational tests are not viable.

### **7.22 SECURITY INCIDENT MANAGEMENT & 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 Supplier's 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 72 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, unauthorised 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 Client Security Team:

Call 01214 248204; or

Send an email to [cyberresponse@neso.energy](mailto:cyberresponse@neso.energy)

Client reserves the right to amend the contact information for reporting information security incidents and data breaches from time-to-time and will notify the Supplier in writing of any changes. The Supplier shall make appropriate updates to its processes and procedures to reflect such changes within five (5) working days following notification.

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 five (5) 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 one (1) calendar year.

### **Part B – Additional Controls Required Specifically for the Product or Service Provision**

No additional controls identified at the time of entering this agreement.

NESO reserve the right to update this Part B if additional controls are identified during the course of this contract, based on the below table.

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| NESO<br>Control<br>Reference | Control Title | Control Requirement | How the control will<br>be met |
|------------------------------|---------------|---------------------|--------------------------------|
|                              |               |                     |                                |
|                              |               |                     |                                |
|                              |               |                     |                                |
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### **SCHEDULE 4** **CHANGE CONTROL PROCEDURE**

1. **NESO** may propose amendments to these **General Terms and Conditions** in accordance with Clause 1.3 and may propose amendments requested by a **Provider** by formulating a written proposal ("**Change Proposal**").
2. The contents of a **Change Proposal** shall include without limitation:
  - a. an explanation of, and the rationale for, each amendment, including the extent to which required as a result of a **Change in Law**;
  - b. if applicable, details of the **Change in Law**;
  - c. the proposed implementation date; and
  - d. where reasonable to do so having regard to the nature of each amendment, a copy of these **General Terms and Conditions** (or an extract thereof) clearly identifying the proposed new or revised legal text.
3. Each **Change Proposal** shall be notified by **NESO** to the **Providers**, and for these purposes notification may be published on the **NESO** website.
4. **NESO** shall give all recipients of the **Change Proposal** ("**CP Consultees**") a reasonable opportunity and, in any event, not less than thirty-one (31) calendar days, to review and provide **NESO** with written comments on each **Change Proposal**.
5. Not earlier than the date for receipt of comments from **CP Consultees** specified in paragraph 4, and having regard to such comments received, **NESO** may, at its sole discretion, notify **CP Consultees** (which may be by publication on the **NESO** website) its decision either to:
  - a. withdraw the **Change Proposal**, which shall be effective upon written notice of the same to all **CP Consultees**; or
  - b. implement the **Change Proposal** (with or without modifications) whereupon **NESO** shall proceed to formulation of a decision ("**Final Change Decision**") pursuant to paragraph 6,provided always that where **NESO** fails to take either of the steps outlined above by the date which is forty-five (45) **Business Days** after the date of notification of the **Change Proposal** then the same shall be deemed to have been withdrawn with immediate effect.
6. Each **Final Change Decision** shall specify one or more implementation dates and shall incorporate a copy of these **General Terms and Conditions** identifying clearly the new or revised legal text.
7. Each **Final Change Decision** shall be notified by **NESO** to all **CP Consultees** (which may be by publication on the **NESO** website) as soon as reasonably practicable and, ordinarily either alongside or within twenty (20) **Business Days** after the notification by **NESO** of its implementation decision pursuant to paragraph 5(b).
8. **NESO's** notification of the **Final Change Decision** shall be accompanied by a summary of all written comments received in relation to the **Change Proposal** pursuant to

### **General Terms and Conditions**

paragraph 4 (save to the extent marked as confidential) together with **NESO's** justification for addressing or not any such comments in the **Final Change Decision**.

9. Amendments to these **General Terms and Conditions** set out in a **Final Change Decision** notified by **NESO** pursuant to paragraph 7 shall become effective from the applicable implementation dates specified in the **Final Change Decision** ("**Final Implementation Dates**") which, for the avoidance of doubt, shall not be a date prior to the date fifteen (15) **Business Days** after notification by the proposing party of the **Final Change Decision**.
10. Upon the amendments set out in a **Final Change Decision** becoming effective, these **General Terms and Conditions** as so amended shall apply with effect from the relevant **Final Implementation Date** to all **Mid-Term Reactive Contracts** then subsisting as well as future **Mid-Term Reactive Contracts**, subject always to:
  - a. all and any accrued rights and liabilities of **NESO** and **Providers** hereunder and all and any rights and remedies they may have, in each case with respect to periods prior to the **Final Implementation Date**; and
  - b. paragraphs 15 and 17.
11. On each occasion that these **General Terms and Conditions** are amended in accordance with the foregoing provisions, **NESO** shall on or before the **Final Implementation Date** publish the **General Terms and Conditions** as so amended on the **NESO** website.
12. With respect to a **Final Change Decision**, a **Provider** may, no later than fifteen (15) **Business Days** after notification by **NESO** of that **Final Change Decision**, elect by notice in writing to **NESO**, and subject always to paragraph 13, where it is of the reasonable opinion that such amendments materially prejudice its ability to provide the **Mid-Term Reactive Service** and/or comply with its **Mid-Term Reactive Contract**, to reject the application of such amendments to the **General Terms and Conditions** provided that such rejection is accompanied by a full and detailed justification for the rejection.
13. To the extent that any **Final Change Decision** includes amendments required as a result of a **Change in Law**, no **Provider** may make an election to reject the application of such amendments pursuant to paragraph 12. Provided always that where a **Provider** disputes that a **Final Change Decision** includes amendments required as a result of a **Change in Law** then it may, within the period of fifteen (15) **Business Days** specified in paragraph 12, refer that dispute for determination by an **Expert**.
14. Within twenty (20) **Business Days** of receipt by **NESO** of a **Provider's** notice pursuant to paragraph 12 to reject the application of amendments to the **General Terms and Conditions**, **NESO** and the **Provider** shall negotiate in good faith provisions for the **Framework Agreement** ("**Special Conditions**") in order to negate the impact of the amendments set out in the **Final Change Decision**, such that the **Provider** is in no better and no worse position after the coming into effect of the **Final Change Decision** than it would have been had such **Final Change Decision** not come into effect.
15. If by the expiry of such period of twenty (20) **Business Days** **NESO** has been unable to reach agreement with the **Provider** as to the **Special Conditions** contemplated in

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paragraph 14, then either **NESO** or the **Provider** may, with the written consent of the other, refer the matter or matters in dispute for determination by an **Expert**.

16. Until such time as such **Special Conditions** are agreed or determined (as the case may be), and notwithstanding paragraph 10, unless otherwise agreed between **NESO** and the **Provider**, the amendments set out in the relevant **Final Change Decision** shall not apply to the **Standard Contract Terms**.
17. Without prejudice to any provision of this Schedule, **NESO** may, at its sole discretion and at any time prior to the later of (i) the relevant **Final Implementation Date** or, (ii) where paragraphs 13 or 15 apply, the date being five (5) **Business Days** after the date of the **Expert's** written decision, withdraw a **Final Change Decision** by notice in writing to the **Provider**, whereupon the same shall be of no effect and any **Special Conditions** agreed between the **Parties** pursuant to paragraph 14 shall be removed in respect of such **Final Change Decision**.
18. Nothing in this Schedule shall preclude **NESO** and **Provider** at the relevant time from agreeing changes to these **General Terms and Conditions** at any time and from time to time otherwise than in accordance with this Schedule.

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### **ANNEX A to SCHEDULE 5** **TESTING<sup>2</sup>**

#### **Part A – Proving Test**

**Proving Tests** are additional to tests or procedures that are required to demonstrate compliance against the relevant sections of the **Grid Code** or other codes as appropriate. All **Plant** and **Equipment** must be commissioned and test energised in accordance with **Good Industry Practice**, in coordination with the **Local TO** through their normal processes.

The **Proving Tests** will be designed to demonstrate whether the **Facility** can meet the requirements of this **Agreement**. The level and scope of the **Proving Tests** required will depend on the solution technology and build programme.

**NESO** will determine the **Proving Tests** based on the details of the solution technology. **NESO** shall make available to the **Provider** a full set of **Proving Tests** required no less than one (1) year before the **Scheduled Start Date**, unless otherwise stated by **NESO**.

**NESO** may (in its absolute discretion) apply a certain amount of tolerance in terms of service delivery demonstrated in the **Proving Tests** and whether this constitutes a pass compared to the **Contracted Parameters**, subject to suitable demonstration of capability during the **Proving Test**.

#### **Part B – Reproving Test**

The **Provider** agrees that it or its agent shall undertake **Reproving Tests** (including any re-tests), if required, during the **Service Term**, where requested by **NESO** in accordance with the provisions of paragraph 6 (*Reproving Test*) of this Schedule 5 to test whether the **Facility** is capable of providing the **Mid-Term Reactive Service**, including the **Contracted Reactive Capability**.

The level and scope of tests required will depend on the technology of the **Facility** and will include those tests specified in Part A of this Annex A. **NESO** may require the **Provider** to undertake any additional tests it considers necessary to identify the cause of any suspected non-compliance with the requirements of this Schedule 5.

**NESO** may (in its absolute discretion) apply a certain amount of tolerance in terms of service delivery demonstrated in a **Reproving Test** and whether this constitutes a pass compared to the **Contracted Reactive Capability**, subject to suitable demonstration of capability during the **Reproving Test**.

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<sup>2</sup> Testing requirements for Initial Proving Test and Proving Test will be notified by the **Company** during the **Tender** process



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**ANNEX B TO SCHEDULE 5**  
**REACTIVE POWER SERVICE TECHNICAL PERFORMANCE REQUIREMENTS**

**[Please refer to the published Reactive Power Service Technical Specification]**

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**SCHEDULE 6**  
**FORM A**

**REACTIVE POWER SERVICES FAX FORM FOR**  
**DECLARATION OF UNAVAILABILITY**

|                                        |  |                     |  |
|----------------------------------------|--|---------------------|--|
| <b>Facility:</b>                       |  | <b>Tel:</b>         |  |
| <b>Contract Number:</b>                |  | <b>Standby Tel:</b> |  |
| <b>Company Name:</b>                   |  | <b>Fax:</b>         |  |
| <b>Declared Absorption Capability:</b> |  | <b>Standby Fax:</b> |  |
| <b>Declared Injection Capability:</b>  |  |                     |  |

**We hereby notify you of the unavailability of the Reactive Power Services  
from the above Facility**

**UNAVAILABILITY OF REACTIVE POWER SERVICE**

|                                   |
|-----------------------------------|
| <b>Period of Unavailability:</b>  |
| <b>Reason for Unavailability:</b> |
|                                   |
|                                   |
|                                   |
|                                   |
|                                   |

**Fax Sent By (Print name): .....**      **Date: .....Time: .....**

**Signature: .....**

**Acknowledged by National Energy System Operator (Print name):**  
.....

**Signature: ..... Date: ..... Time: .....**

**National Energy System Operator Control**

**Fax number: 0870 602 4808**

**Standby Fax: 0870 602 4805**

**Telephone: 0844 892 0385**

**Standby Phone: 0844 892 0370**

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**FORM B**

**REACTIVE POWER SERVICES FAX FORM FOR  
REDECLARATION OF AVAILABILITY**

|                                                |  |
|------------------------------------------------|--|
| <b>Facility:</b>                               |  |
| <b>Contract Number:</b>                        |  |
| <b>Company Name:</b>                           |  |
| <b>Declared<br/>Absorption<br/>Capability:</b> |  |
| <b>Declared Injection<br/>Capability:</b>      |  |

|                     |  |
|---------------------|--|
| <b>Tel:</b>         |  |
| <b>Standby Tel:</b> |  |
| <b>Fax:</b>         |  |
| <b>Standby Fax:</b> |  |
|                     |  |

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**We hereby notify you of the restoration of the Reactive Power Services  
from the above Facility**

**RESTORATION OF AVAILABILITY OF REACTIVE POWER SERVICES**

|                                                |
|------------------------------------------------|
| <b>Time of Restoration:</b>                    |
| <b>Reason for Restoration of Availability:</b> |
|                                                |
|                                                |
|                                                |
|                                                |
|                                                |

**Fax Sent By (Print name): .....**      **Date: .....Time:**  
.....

**Signature: .....**

**Acknowledged by National Energy System Operator**

**(Print name): .....**

**Signature: ..... Date: ..... Time: .....**

**National Energy System Operator Control**

**Fax number: 0870 602 4808**

**Standby Fax: 0870 602 4805**

**General Terms and Conditions**

**Telephone: 0844 892 0385**

**Standby Phone: 0844 892 0370**

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