

## GUARANTEE DEED

This Deed of Guarantee (the "**Guarantee**"), dated as at \_\_\_\_\_, is made as a deed and entered into between:

- (1) [ \_\_\_\_\_ ] a company organised under the laws of England with company registration number [ \_\_\_\_\_ ], having its registered office at [ \_\_\_\_\_ ] (the "**Guarantor**"); and
- (2) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC**, a company registered in England with company registration number 2366977, having its registered office at 1-3 Strand, London, WC2N 5EH ("**National Grid**").

**WHEREAS** National Grid and [ \_\_\_\_\_ ] (the "**Generator**") have entered into an amendment to the commercial services agreement relating to the generation facility at [address of power station ] dated \_\_\_\_\_ (as the same may from time to time be modified, amended and supplemented, and shall be referred to herein as the "**CSA**") pursuant to which the Generator agrees to provide National Grid with the Part 2 System Ancillary Service (as defined in the CSA) of Black Start Capability (as defined in the CSA).

**WHEREAS** pursuant to clause 4 (*Black Start Capability*) of the CSA, the Generator is required to provide Acceptable Security (as defined in the CSA) to National Grid and therefore, as the parent company of the Generator, the Guarantor provides this parent company guarantee to National Grid on the terms set out herein.

### NOW THEREFORE:

#### 1. GUARANTEE

1.1 Subject to the provisions hereof:

- (a) the Guarantor hereby irrevocably and unconditionally guarantees timely payment when due of any amount payable by the Generator to National Grid in respect of the Works Contribution Refund Payment (as defined in the CSA) at the relevant date as calculated in accordance with Part III (*Works Contribution Refund Payment*) of Schedule E (*Black Start Capability*) of clause 4 (*Black Start Capability*) of the CSA including any value added tax payable on any such amount (the "**Obligations**"); and
- (b) as a primary obligation and separate from the guarantee under sub-clause (a), the Guarantor hereby irrevocably and unconditionally indemnifies National Grid on demand against any loss or liability suffered or incurred by National Grid in connection with:
  - (i) any failure by the Generator to perform or discharge the Obligations; and
  - (ii) any of the Obligations being or becoming totally or partially unenforceable by reason of illegality, capacity, lack or exceeding of powers, ineffectiveness of execution or any other matter.

1.2 National Grid shall be entitled to make a demand under this Guarantee on one or several occasions provided that the liability of the Guarantor under this Guarantee shall:

- (a) be specifically limited to payments expressly required to be made in respect of the Obligations; and
- (b) subject to Clause 7 (*Taxes*) not exceed an aggregate amount of [ \_\_\_\_\_ ]

- 1.3 Subject to Clause 8 (*Expiry*) below, this Guarantee shall be a continuing guarantee and shall remain in full force and effect and shall be binding upon the Guarantor, its successors and permitted assigns, until all amounts payable by the Generator in respect of the Obligations have been validly, finally and irrevocably paid in full.
- 1.4 The Guarantor shall be liable for and shall indemnify National Grid from and against any and all costs, loss and legal expenses which may be imposed on or incurred by National Grid in seeking to enforce and enforcing this Guarantee and in seeking to enforce and enforcing any judgment or order obtained in respect of this Guarantee, provided that the Guarantor shall not be liable for any costs, loss or legal expenses under this Clause 1.4 if no payment was due under the Guarantee.

## 2. PAYMENT DEMAND

- 2.1 If the Generator fails to pay any Obligations and National Grid has elected to exercise its rights under this Guarantee, National Grid shall make a demand upon the Guarantor (hereinafter referred to as a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount the Generator has failed to pay together with an explanation as to why such payment is due, with a specific statement that National Grid is calling upon the Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to the Guarantor that it must pay the Obligations within ten (10) business days after its receipt of the Payment Demand. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until the Generator or the Guarantor has cured such default, and additional written demand concerning such default shall not be required until such default is cured.
- 2.2 It is expressly agreed that any demand made by National Grid under this Guarantee shall, as between National Grid and the Guarantor, be conclusive evidence (in the absence of fraud or manifest error) that the amount demanded by National Grid is payable by the Guarantor to National Grid in accordance with Clause 2.1.

## 3. REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants as at the date of this Guarantee that:

- (a) it is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution and delivery of this Guarantee;
- (c) this Guarantee constitutes a valid and legally binding agreement of the Guarantor (ranking at least *pari passu* with all other of its present and future unsecured and unsubordinated indebtedness), except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and
- (d) the entry into this Guarantee and the performance of the obligations hereunder does not contravene any existing applicable law, statute, regulation or any judgment to which it is subject.

#### **4. SUBROGATION**

Until all demands under this Guarantee have been paid or satisfied in full, the Guarantor shall not claim any right of subrogation to National Grid's rights and undertakes not to take any step or accept any measure whereby the Guarantor would compete with National Grid in the liquidation or distribution of assets of the Generator.

#### **5. AMENDMENT OF GUARANTEE**

No term or provision of this Guarantee shall be amended, modified, altered, waived or supplemented except in writing signed by the Guarantor and National Grid.

#### **6. WAIVERS**

6.1 The Guarantor hereby waives (i) any notice of acceptance of this Guarantee; (ii) presentment and demand concerning the liabilities of the Guarantor, except as expressly hereinabove set forth; and (iii) any right to require that any action or proceeding be brought against the Generator or any other person, or except as expressly hereinabove set forth, to require that National Grid seeks enforcement of any performance against the Generator or any other person, prior to any action against the Guarantor under the terms hereof.

6.2 Except with respect to applicable statutes of limitation, no delay of National Grid in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder.

6.3 The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason of and the Guarantor waives its rights to prior notice of the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes, modifications or amendments in any manner in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the CSA.

6.4 The Guarantor agrees that as long as this Guarantee remains in force and effect and until all amounts which may be or become payable in respect of the Obligations or this Guarantee have been irrevocably paid in full, it shall not take any step to enforce any right or claim against the Generator in respect of any payment made under or liability arising from this Guarantee or claim or prove in competition with National Grid against the Generator in relation to this Guarantee.

#### **7. TAXES**

7.1 All payments made under this Guarantee are to be made without any deductions or withholding for or on account of taxes (a "**Tax Deduction**") unless a Tax Deduction is required by law, in which case the amount of the payment due from the Guarantor shall be increased to an amount which (after making the Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

#### **8. EXPIRY**

8.1 The obligations of the Guarantor hereunder shall continue in full force and effect until the earliest to occur of:

- (a) the replacement of this Guarantee by the Generator with another form of Acceptable Security pursuant to and in accordance with clause 4.6.4 of clause 4 (*Black Start Capability*) of the CSA; and

(b) the Expiry Date (as defined in clause 4 (*Black Start Capability*) of the CSA)  
(the "**Expiry Date**").

8.2 After such Expiry Date this Guarantee shall become null and void. Immediately after the Expiry Date National Grid shall return the original of this Guarantee to the Guarantor, it being understood that the failure to do so by National Grid or any delay in the return of this Guarantee shall in no event prevent the expiry thereof.

## 9. NOTICES

9.1 Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (a "**Notice**") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested as follows:

**Guarantor:**

Address:

Facsimile:

Attention:

**National Grid:**

Address: National Grid  
System Operator  
Faraday House  
Warwick Technology Park  
Gallows Hill  
Warwick  
CV34 6DA

Facsimile: 01926 655630

Attention: System Operator

Copy to: Head of Commercial

Facsimile: 01926 656613

9.2 Notice given by personal delivery or mail shall be effective upon actual receipt. Any party may change any address to which a Notice is to be given by giving written notice of such change of address as provided in paragraph (a) above.

## 10. GOVERNING LAW

10.1 This Guarantee and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.

10.2 Each party to this Guarantee agrees that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Guarantee) (a "**Dispute**"). The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

**11. SUCCESSORS AND ASSIGNS**

- 11.1 This Guarantee shall be binding upon the Guarantor, its successors and assigns and inure to the benefit of and be enforceable by National Grid, its successors and assigns.
- 11.2 National Grid is permitted to assign or transfer the benefit and/or burden of this Guarantee to the holder of a licence under section 6(1)(b) the Electricity Act 1989 with responsibility for carrying out the balancing services activity (as defined in that licence) in succession to National Grid and to whom National Grid assigns or transfers the benefit and/ or the burden of the CSA.

**12. ENTIRE AGREEMENT**

This Guarantee embodies the entire agreement and understanding between the Guarantor and National Grid and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof.

**13. PARTIAL INVALIDITY**

Each provision of this Guarantee is severable and distinct from each other, and if for any reason any such provision or part of a provision is or becomes invalid, illegal or unenforceable it shall be deemed to be modified to the minimum extent possible to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be severed and deemed to be deleted from this Guarantee. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remaining provisions of this Guarantee.

**14. THIRD PARTY RIGHTS**

Save as expressly provided in this Guarantee, a person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

**15. COUNTERPARTS**

This Guarantee may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**IN WITNESS** whereof this Guarantee has been duly executed as a deed and is delivered on the date first above written.

**SIGNATORIES TO THE GUARANTEE DEED**

**THE GUARANTOR**

**EXECUTED** as a **DEED** by )  
[ ] )  
by an authorised signatory: ) Name: \_\_\_\_\_  
) Title:

**The Common Seal of**  
**NATIONAL GRID ELECTRICITY TRANSMISSION plc**  
**was hereunto affixed in the presence**  
**of a member of the Board Sealing Committee**