
**NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED
GENERAL TERMS AND CONDITIONS FOR THE PROVISION
OF PRIMARY ELECTRICITY SYSTEM RESTORATION
SERVICE**

Draft v.1.0

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Primary Electricity System Restoration Service General Terms and Conditions

4. BACKGROUND

- 4.1 The **BS Service Provider** agrees to provide the **Company** with the **Part 2 System Ancillary Service of Black Start Capability**. **Black Start Capability** forms part of the wider **Electricity System Restoration Services** that the **Company** procures.

The agreement (referred to in these General Terms and Conditions as this “**Agreement**”) between the **Parties** for the provision of the Stability Compensation Service shall comprise the **Contract Form** and these General Terms and Conditions (including the Annexures and Schedules hereto).

4.2 Definitions

In this **Agreement** the definitions in Schedule A shall apply and the following terms shall have the meanings ascribed to them below:-

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| “Acceptable Security” | has the meaning attributed to it in Sub-Clause 4.6.4.4; |
| “Act” | the Electricity Act 1989; |
| “Active Power” | the product of voltage and the in-phase component of alternating current measured in units of Watts and standard multiples thereof i.e. 1000 Watts = 1kW 1000 kW = 1MW 1000 MW = 1GW 1000 GW = 1TW |
| “Additional Works Period” | has the meaning given to it in Annexure B; |
| “Adequate Procedures” | shall be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 8 of that Act); |
| “Agreed Ancillary Service” | Part 2 System Ancillary Services and Commercial Ancillary Services; |
| “Agreement” | this agreement (including the Schedules) as amended, extended, supplemented, novated or modified from time to time; |
| “Ancillary Services” | System Ancillary Services and/or Commercial Ancillary Services , as the case may be; |
| “Annual Availability Shortfall Payments” | means the payments calculated in accordance with Schedule E, Section 1, Part II to be made by the BS Service Provider to the Company in the |

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| | circumstances set out in Annexure C to this Agreement; |
| “Apparatus” | all equipment in which electrical conductors are used, supported or of which they may form a part; |
| “Approved Rating” | a long term credit rating from Standard & Poor’s of not less than [], Moody’s Investor Services of [] or Fitch of []; |
| “Assessment Period” | has the meaning attributed to it in Sub-Clause 4.15.1; |
| “Associated Person” | shall have the meaning ascribed to it in section 8 of the Bribery Act and shall include but is not limited to any employees, agents and/or subcontractors of the BS Service Provider or The Company as applicable in relation to the provision of Agreed Ancillary Services ; |
| “Assurance Visit” | has the meaning attributed to it in Sub-Clause 4.19.2; |
| “Authority” | the Director General of Electricity Supply appointed for the time being pursuant to section 1 of the Act or, after the coming into force of section 1 of the Utilities Act 2000, the Gas and Electricity Markets Authority established by that section; |
| “Auxiliaries” | means any item of Plant and/or Apparatus not directly a part of the boiler plant, Generating Unit DC Converter , HVDC Converter Station or Power Park Module (as applicable), but required for the boiler plant’s, Generating Unit’s , DC Converter’s , HVDC Converter Station’s or Power Park Module’s functional operation; |
| “Balancing and Settlement Code (BSC)” | the meaning attributed to it in the Transmission Licence ; |
| “Balancing Services” | has the meaning given to that term in the Transmission Licence but excluding: <ul style="list-style-type: none"> (a) such services as the BS Service Provider may be required to have available as Ancillary Services pursuant to the Grid Code; and (b) offers and bids made in the balancing mechanism (as that term is defined in the Transmission Licence); |
| “Balancing Services Activity” | the meaning attributed to it in the Transmission Licence ; |

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| “Base Rate” | in respect of any day the rate per annum which is equal to the base lending rate from time to time of Barclays Bank plc as at the close of business on the immediately preceding Business Day ; |
| “Bid-Offer Acceptance” | the meaning attributed to it in the Grid Code ; |
| “Bid Price” | the meaning attributed to it in the Grid Code ; |
| “Bilateral Agreement” | the meaning attributed to it in the CUSC ; |
| “Black Start” | means the procedure necessary for a recovery from a Total Shutdown or Partial Shutdown ; |
| “Black Start Availability Price” | means the price specified in Part 7 (<i>Black Start Availability Price</i>) of the Contract Form ; |
| “Black Start Capability” | means an ability in respect of Black Start Plant to Start-Up from Shutdown and to energise a part of the National Electricity Transmission System upon instruction from the Company , within two hours, without an external electrical energy supply and including the obligations of the BS Service Provider contained in Sub-Clause 4.8.4 in addition to and without prejudice to the BS Service Provider’s obligations under the Grid Code with regard to Black Starts ; |
| “Black Start Contracted MW” | means that amount of Active Power specified in Part 6 (<i>Black Start Service Parameters</i>) of the Contract Form (or such other amount agreed from time to time between the BS Service Provider and the Grid Operator pursuant to Sub-Clauses 4.8.6 to 4.8.10 inclusive) which shall not, where applicable, include Active Power supplied by the BS Auxiliary Units to the Black Start Plant for the purposes of a Black Start Situation ; |
| “Black Start Instruction” | has the meaning attributed to it in Sub-Clause 4.10.1; |
| “Black Start Plant” | means a Power-Generating Facility or a HVDC System , which includes the relevant site and specific technical requirements for the Power-Generating Facility , or the HVDC System to provide the Black Start Service ; |
| “Black Start Service” | means the obligations of the BS Service Provider more particularly referred to in Sub-Clause 4.8 (which, where applicable, shall be in addition to and without prejudice to the BS Service Provider’s obligations under the Grid Code with regard to Black Start Capability), to include in |

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| | addition the procedure for running down and testing of Plant in Reproving Assessments ; |
| “Black Start Situation” | means the period of time beginning when the Company issues a declaration to the BS Service Provider in accordance with Grid Code OC 9.4.6 that a Partial Shutdown or a Total Shutdown exists and ending when The Company issues a declaration to the BS Service Provider in accordance with Grid Code OC 9.4.7.9 ; |
| “Black Start Station” | has the meaning attributed to it in the Grid Code ; |
| “Black Start Test” | means a test carried out by a BS Service Provider on the instructions of the Company , in order to demonstrate the Black Start Capability of its Black Start Plant ; |
| “Black Start Test Parameters and Procedures” | means, in respect of any Black Start Test , the parameters agreed between the Parties pursuant to Sub-Clause 4.20.2 as the same may be amended; |
| “Black Start Test Period” | means, in relation to any Black Start Test , the period from and including the start time to and including the end time each as comprised within the Black Start Test Parameters and Procedures ; |
| “BM Unit” | the meaning attributed to it in the BSC , except for the purposes of this Agreement the reference to “a Party ” in the BSC shall be a reference to the Generator ; |
| “BM Unit Data” | the meaning attributed to it in the Grid Code ; |
| “Bribery Act” | the Bribery Act 2010 (and any amendment thereto); |
| “BS Auxiliary Units” | means a power source with the ability to start without external supplies and provide sufficient output to enable the delivery of the Black Start Service at the Black Start Plant identified in Part 6 (<i>Black Start Service Technical Parameters</i>) of the Contract Form ; |
| “BS Gensets” | means the Generating Units specified in Part 6 (<i>Black Start Service Technical Parameters</i>) of the Contract Form ; |
| “BS HVDC System” | means a HVDC System that is the subject of a contractual obligation to maintain Black Start Capability ; |

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| “BS Service Provider” | means the Generator or the HVDC Owner , as the case may be; |
| “BSC Framework Agreement” | the meaning attributed to it in the CUSC ; |
| “Business Day” | a week-day other than a Saturday on which banks are open for domestic business in the City of London; |
| “Capability Assessment” | has the meaning attributed to it in Sub-Clause 4.20.1.2; |
| “Circuit Breaker” | a mechanical switching device, capable of making carrying and breaking currents under normal circuit conditions and also of making, carrying for a specified time and breaking currents under specific abnormal circuit conditions, such as those of short circuit; |
| “Combined Cycle Gas Turbine Module” or “CCGT Module” | a collection of Generating Units (registered as a CCGT Module under the Grid Code PC) comprising one or more Gas Turbine Units (or other gas based engine units) and one or more Steam Units where, in normal operation, the waste heat from the Gas Turbine Units is passed to the water/steam of the associated Steam Unit or Steam Units and where the component units within the CCGT Module are directly connected by steam or hot gas lines which enable those units to contribute to the efficiency of the combined cycle operation of the CCGT Module ; |
| “Combined Cycle Gas Turbine Unit” or “CCGT Unit” | a Generating Unit within a CCGT Module ; |
| “Commercial Boundary” | the meaning attributed to it in the CUSC ; |
| “Commissioning Assessment” | has the meaning attributed to it in paragraph 1 of Part I of Annexure A to this Agreement; |
| “Competent Authority” | has the meaning attributed to it in the CUSC ; |
| “Conditions Precedent” | the conditions precedent set out in Part 1 (<i>Conditions Precedent</i>) of the Contract Form ; |
| “Connection and Use of System Code (CUSC)” | the Connection and Use of System Code designed by the Secretary of State as from time to time modified; |

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| “Connection Event” | has the meaning attributed to it in Sub-Clause 4.8.4.3; |
| “Connection Point” | the connection of the Power Station to the National Electricity Transmission System , as more particularly described in the Bilateral Agreement for the Power Station ; |
| “Connection Site” | each location more particularly described in the relevant Bilateral Agreement at which the BS Service Provider’s Equipment and Transmission Connection Assets required to connect the BS Service Provider to the National Electricity Transmission System are situated or at which the BS Service Provider’s Equipment is connected to a User System ; |
| “Construction Agreement” | as defined in the CUSC ; |
| “Contract Form” | the contract from executed by the Parties to which these General Terms and Conditions are attached; |
| “CUSC Framework Agreement” | the meaning attributed to it in the Transmission Licence ; |
| “Dead Line Charge Test” | means the test more particularly described in Part 2 of Annexure D to this Agreement; |
| “Deenergise” | the movement of any isolator breaker or switch or the removal of any fuse whereby no Electricity can flow to or from the relevant System at a Connection Site through the BS Service Provider’s Equipment and “ Deenergised ” shall be construed accordingly; |
| “De-Load” | as defined in the CUSC , and “ De-Loading ” shall be construed accordingly; |
| “Delay Event” | means: (i) any event of Force Majeure that delays the implementation of the Works ; (ii) any failure to schedule a Commissioning Assessment within ten (10) days of the BS Service Provider’s notice under paragraph 3 or paragraph 6 of Annexure A that is due to any act or omission of The Company ; or (iii) any change reasonably required by the Company to the Works ; |
| “Demand” | the demand of MW and Mvar of Electricity ; |
| “Desynchronisation” | has the meaning attributed to it in the Grid Code and “ De-Synchronised ” and “ De-Synchronisation ” shall be construed accordingly; |

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| “Disconnect” | permanent physical disconnection of the BS Service Provider’s Equipment at any given Connection Site and “Disconnection” shall be construed accordingly; |
| “Distribution Codes” | the Distribution Codes drawn up by Public Distribution System Operators pursuant to the terms of their respective Licences as from time to time revised in accordance with those Licences ; |
| “Dynamic Parameters” | the meaning attributed to it in the Grid Code ; |
| “EDL Equipment” | the electronic despatch mechanism by which the Parties communicate with respect to the BM Units at the Generator’s Power Station for the purposes of operation of the Balancing Mechanism and the utilisation of Balancing Services ; |
| “Emergency Instruction” | has the meaning attributed to it in the Grid Code ; |
| “Energy Metering Equipment” | the meaning attributed to the phrase “Metering Equipment” in the Balancing and Settlement Code ; |
| “Electricity” | Active Energy and Reactive Energy ; |
| “Escrow Account” | has the meaning attributed to it in Sub-Clause 4.6.4.4; |
| “Event of Default” | has the meaning attributed to it in Sub-Clause 4.13; |
| “Expiry Date” | means 24:00 hours on the date immediately preceding the [] anniversary of the Service Commencement Date ; |
| “External Costs” | costs incurred by the BS Service Provider to third party contractors arising directly from the Works and falling within the categories of cost described as external costs in Part 3 (<i>Works Contribution Payment</i>) of the Contract Form ; |
| “External Interconnection” | the meaning attributed to it in the Grid Code ; |
| “Final Consent Date” | the date by which the Conditions Precedent must have been fulfilled or waived in accordance with Part 1 (<i>Conditions Precedent</i>) of the Contract Form ; |
| “Final Monthly Statement” | the meaning attributed to it in the CUSC ; |

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| “Force Majeure” | in relation to either Party to this Agreement any event or circumstance which is beyond the reasonable control of such Party (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that Party or its officers or employees or through the unsuitability of the Black Start Plant to perform the Black Start Service as specified in this Agreement (whether by virtue of a design specification fault or otherwise) or a failure to maintain such Plant in accordance with Good Industry Practice or lack of funds of that Party) but subject thereto including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, 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 Electricity Act 1989); |
| “Frequency” | the number of alternating current cycles per second (expressed in Hertz) at which a System is running; |
| “Frequency Sensitive Mode” | the meaning attributed to it in the Grid Code ; |
| “Funded Plant” | means such elements of the Black Start Plant as have been funded wholly or partly through a Works Contribution Payment save where such funding does not materially enhance the capability of the Black Start Plant to provide Balancing Services other than the Black Start Service ; |
| “Gas Turbine Unit” | a Generating Unit driven by a gas turbine, (for instance by an aero-engine); |
| “GB Converter Station” | in relation to an HVDC System , the HVDC Converter Station located in GB; |
| “Generating Unit” | unless otherwise provided in this Agreement , any Apparatus which produces electricity including for the avoidance of doubt a CCGT Unit ; |
| “Generation Licence” | the licence granted to the Generator pursuant to section 6(1)(a) of the Act ; |

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| “Genset” | a Generating Unit or CCGT Module at a Large Power Station ; |
| “Good Industry Practice” | the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances; |
| “Great Britain” or “GB” | the meaning attributed to it in Schedule 1 of the Transmission Licence ; |
| “Grid Code” | the Grid Code drawn up pursuant to the Transmission Licence as from time to time revised in accordance with the Transmission Licence (and references in this Agreement to any specific provision or part of the Grid Code shall be construed as references to such provision or part as from time to time amended); |
| “Grid Code BC” | the Balancing Codes of the Grid Code ; |
| “Grid Code CC” | the Connection Conditions of Grid Code ; |
| “Grid Code OC” | the Operating Codes of the Grid Code ; |
| “Grid Operator” | the person who for the time being and from time to time is required by the terms of a Licence (inter alia) to implement the Grid Code ; |
| “Guarantor” | the party providing Acceptable Security in the form of a parent company guarantee under 4.6.4.4.4; |
| “HVDC Converter Station” | has the meaning given to it in the Grid Code ; |
| “HVDC System” | has the meaning given to it in the Grid Code ; |
| “Independent Expert” | such expert agreed between the Parties from time to time Provided that <ul style="list-style-type: none"> (a) where the Parties fail to agree on a suitable expert within 30 days of either Party serving on the other notice of its intention to apply to the President of the Institute of Mechanical Engineers as mentioned below; or (b) where any Independent Expert appointed from time to time shall fail, refuse or cease to act in this capacity set out herein and no substitute expert of |

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| | <p>suitable standing and qualification can be agreed by the parties within 30 days,</p> <p>such expert as the President of the Institute of Mechanical Engineers shall, on the application of either Party, nominate shall be the Independent Expert;</p> |
| “Internal Costs” | costs incurred by the BS Service Provider internally arising directly from the Works and falling within the categories of cost described as internal costs in Part 3 (<i>Works Contribution Payment</i>) of the Contract Form ; |
| “Legal Requirement” | means any order of a Competent Authority , Act of Parliament, Directive, regulations or licence, consent or similar provision issued by a Competent Authority ; |
| “Licence” | any one or more as appropriate of the Licences granted pursuant to section 6 of the Act ; |
| “Local Joint Restoration Plan” | means a plan specific to each Black Start Station or BS HVDC System to enable a rapid restoration of the National Electricity Transmission System in the event of a Black Start Situation and which is more particularly described in Sub-Clause 4.8.4; |
| “Mandatory Agreement” Services | the meaning attributed to it in the CUSC ; |
| “Maximum Export Limit” | the meaning attributed to it in BC1.A.1.3 of the Grid Code ; |
| “Monthly Availability Payment” | means an amount determined in accordance with Sub-Clause 4.6.1.2; |
| “National Electricity Transmission System” | has the meaning attributed to it in the CUSC ; |
| “Non-Performing Party” | has the meaning attributed to it in Clause 4.24; |
| “Offer Price” | the meaning attributed to it in the BSC ; |
| “Operational Metering Equipment” | meters, instrument transformers (both voltage and current), transducers metering protection equipment including alarms circuitry and their associated outstations as may be necessary for the purposes of the Grid Code CC6.5.6 and the corresponding provision of the relevant Distribution Code ; |
| “Output” | the actual Active Power or Reactive Power output achieved by a BM Unit ; |

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| “Part 2 System Ancillary Services” | the meaning attributed to it in Grid Code CC8.1 ; |
| “Partial Shutdown” | means the same as a Total Shutdown except that all generation has ceased in a separate part of the Total System and there is no electricity supply from External Interconnections or other parts of the Total System to that part of the Total System and, therefore, that part of the Total System is shutdown, with the result that it is not possible for that part of the Total System to begin to function again without the Company’s direction relating to a Black Start Situation ; |
| “Party” | each person for the time being and from time to time a party of this Agreement and any successor(s) in title to, or permitted assign(s) of, such person and “Parties” shall be construed accordingly; |
| “Plant” | fixed and movable items used in the generation and/or supply and/or transmission of electricity other than Apparatus ; |
| “Physical Notification” | the meaning attributed to it in the Grid Code ; |
| “Power-Generating Facility” | means a facility that converts primary energy into electrical energy and which consists of one or more Power-Generating Modules connected to a network at one or more connection points; |
| “Power-Generating Module” | means either a synchronous power-generating module or a Power Park Module ; |
| “Power Island” | means the independent operation of a whole network or part of a network that is isolated after being disconnected from the interconnected system, having at least one power-generating module or HVDC System supplying power to this network and controlling the frequency and voltage; |
| “Power Park Module” | has the meaning attributed to it in the Grid Code ; |
| “Power Station” | an installation comprising one or more Generating Units (even where separately sited) owned or controlled by the same Generator which may reasonably be considered as being managed as one Power Station , for the purposes of this Agreement being the Generator’s Power Station at [REDACTED]; |
| “Provisional Statement” Monthly | the meaning attributed to it in the CUSC ; |

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| “Public Distribution System Operator” | a holder of a Distribution Licence who was the holder of, or is a successor to a company which was the holder of, a Public Electricity Supply Licence , relating to distribution activities in Great Britain ; |
| “Rated Bank” | has the meaning attributed to it in Sub-Clause 4.6.4.4; |
| “Reactive Power” | the product of voltage and current and the sine of the phase angle between them measured in units of voltamperes reactive and standard multiples thereof i.e., 1000 Var = 1kvar 1000 kVar = 1Mvarr |
| “Relevant Third Parties” | has the meaning attributed to it in Sub-Clause 4.12.1; |
| “Remote Synchronisation” | means synchronisation of a power-generating module or HVDC System by closure of a circuit breaker which is not under the direct control of the BS Service Provider ; |
| “Remote Synchronisation Test” or “RST” | means the test more particularly described in Part 1 of Annexure D to this Clause 4; |
| “Repayment Amount” | means payments calculated in accordance with Schedule E, Section 1, 0 to be made by the BS Service Provider to the Company in the circumstances set out in Annexure B to this Clause 4 and representing repayments in whole or in part of Monthly Availability Payments ; |
| “Reproving Assessment” | means a test which the Company may require the BS Service Provider to carry out to verify the restoration of Black Start Capability of the Black Start Plant as more particularly described in Sub-Clause 4.9.4.2.2; |
| “Required NAV” | has the meaning given to it (where applicable) in Part 4 (<i>Security</i>) of the Contract Form ; |
| “Secretary of State” | the meaning attributed to it in the Act ; |
| “Service Commencement Date” | means 00.00 hours on the first day of the calendar month immediately following the date on which the Black Start Plant has successfully completed a Commissioning Assessment in accordance with the provisions of Annexure A to this Clause 4, subject to the Local Joint Restoration Plan |

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| | having been agreed in accordance with Clause 4.12.3; |
| “Settlement Period” | a period of 30 minutes ending on the hour or half hour in each hour during a day; |
| “Shutdown” | means, in relation to a Generating Unit , the condition of a Generating Unit where the generator rotor is at rest or (where applicable) on barring; or, in relation to a HVDC System , the DC circuit is open; |
| “Start-up” | means: in relation to a Generating Unit , the action of bringing the Generating Unit from Shutdown to Synchronous Speed ; or, in the case of a HVDC System , the action of closing the DC circuit; |
| “Steam Unit” | a Generating Unit whose primes mover converts the heat-energy in steam to mechanical energy; |
| “Synchronised” | the condition where an incoming BM Unit or CCGT Unit or System is connected to the busbars of another System so that the Frequencies and phase relationships of the BM Unit or CCGT Unit or the System , as the case may be, and the System to which it is connected are identical: “Synchronise” and “Synchronisation” shall be construed accordingly; |
| “Synchronous Speed” | that speed required by a BM Unit or CCGT Unit to enable it to be Synchronised to a System ; |
| “System” | any User System or the National Electricity Transmission System as the case may be; |
| “Target Availability” | means, in relation to an Assessment Period , the target availability for Black Start Capability as specified in the table set out in Part 8 (<i>Target Availability</i>) of the Contract Form ; |
| “Target Commencement Date” | means the date specified as such in Part 2 (<i>Works</i>) of the Contract Form or such earlier date as the BS Service Provider and The Company may agree in writing; |
| “Technical Parameters” | means those technical parameters related to the Black Start Service set out in Part 6 of the Contract Form (as the same may be revised from time to time in accordance with Sub-Clauses 4.8.6 to 4.8.10 inclusive); |
| “Time to Connection Event” | means the period of time specified as such in Part 6 (<i>Black Start Technical Service Parameters</i>) of the Contract Form (or such other period of time |

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| | agreed from time to time between The Company and the BS Service Provider pursuant to Sub-Clauses 4.8.6 to 4.8.10 inclusive); |
| “Total Shutdown” | means the situation existing when all generation has ceased and there is no electricity supply from External Interconnections and, therefore, the Total System has shutdown with the result that it is not possible for the Total System to begin to function again without The Company’s directions relating to a Black Start ; |
| “Total System” | the National Electricity Transmission System and all User Systems in Great Britain ; |
| “Transmission Licence” | the licence granted to The Company under section 6(1)(b) of the Act ; |
| “Transmission Owner” | means National Grid Electricity Transmission plc (registered no. 02366977); |
| “User” | a person who is party to the CUSC Framework Agreement other than The Company ; and |
| “User System” | <p>any System owned or operated by a User comprising: -</p> <p>(c) Generating Units; and/or</p> <p>(d) systems consisting (wholly or mainly) of electric lines used for the distribution of electricity from Grid Supply Points or Generating Units or other entry points to the point of delivery to Customers, or other Units;</p> <p>and Plant and/or Apparatus connecting:</p> <p>(e) the System as described above; or</p> <p>(f) Non-Embedded Customers equipment;</p> <p>to the National Electricity Transmission System or to the relevant other User System, as the case may be. The User System includes any Remote Transmission Assets operated by such User or other person and any Plant and/or Apparatus and meters owned or operated by the User or other person in connection with the distribution of electricity but does not include any part of the National Electricity Transmission System.</p> |

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| “Valid Invoice” | has the meaning attributed to it in Sub-Clause 4.6.3.4; |
| “Voltage Control Mode” | means the automatic voltage regulator selected to auto and being off is the automatic voltage regulator selected to manual; |
| “Works” | means those works relating to the Black Start Plant more particularly specified in Part 2 (<i>Works</i>) of the Contract Form ; |
| “Works Contribution” | means the reimbursement by the Company to the BS Service Provider of the costs incurred by the BS Service Provider arising directly from the Works , to be made by the Company , as more particularly described in Sub-Clause 4.6.1.1; |
| “Works Contribution Payments” | means the payments to be made under Sub-clause 4.6.3 for the purposes of the Works Contribution ; |
| “Works Contribution Period” | has the meaning given to that term in Part 3 (<i>Works Contribution Payment</i>) of the Contract Form ; |
| “Works Contribution Refund Payment” | means a payment calculated in accordance with SCHEDULE A section 1 Part III, to be made by the BS Service Provider to The Company in the circumstances referred to therein and representing repayment of all or part of the Works Contribution Payments ; and |
| “Works Programme” | the programme set out or referred to in Annexure A. |

- 4.2.1 except where the context otherwise requires, references to a particular Sub-Clause, Clause, Paragraph, Appendix or Schedule shall be a reference to that Sub-Clause, Clause, Paragraph, Appendix or Schedule in or to this Agreement;
- 4.2.2 the table of contents and headings are inserted for convenience only and shall be ignored in construing this Agreement;
- 4.2.3 references to the words “include” or “including” are to be construed without limitation;
- 4.2.4 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 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;

- 4.2.5 references to the masculine shall include the feminine and references in the singular shall include references in the plural and vice versa; and
- 4.2.6 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.

4.3 Conditions Precedent

- 4.3.1 Save for the obligations of the **Parties** in Part 1 (*Conditions Precedent*) of the **Contract Form** and Clause 4.26 (*No Announcement*), the respective obligations of the **Parties** under this Clause 4 are, subject to Sub-Clause 4.3.3, conditional upon the satisfaction of each of the **Conditions Precedent** not later than the **Final Consent Date**.
- 4.3.2 The **BS Service Provider** shall be entitled at its option to waive any **Condition Precedent** that the **Company** is obliged to fulfil by notice in writing to the **Company**. The **Company** shall be entitled at its option to waive any **Condition Precedent** that the **BS Service Provider** is obliged to fulfil by notice in writing to the **BS Service Provider**.
- 4.3.3 When each of the **Conditions Precedent** have been satisfied or (where permitted) waived, the **BS Service Provider** shall forthwith give written notice to that effect to the **Company**, and the **Company** shall similarly notify the **BS Service Provider** in respect of any **Conditions Precedent** which it has fulfilled. Such notices shall be conclusive and binding on the **Parties** as to the satisfaction or waiver thereof. Without prejudice to the foregoing, the **BS Service Provider** shall (in circumstances where such consent is required) notify the **Company** forthwith upon the granting of a consent under Section 36 of the **Act** in respect of the **BS Auxiliary Unit** and, for the purposes of Sub-Clause **Error! Reference source not found.**, such notification shall be accompanied by a copy of such consent.
- 4.3.4 Subject to the provisions of Sub-Clause 4.3.2 the **BS Service Provider** undertakes to use its reasonable endeavours to fulfil each of the **Conditions Precedent** that it is obliged to fulfil as soon as reasonably practicable but in any event not later than the **Final Consent Date**.
- 4.3.5 If any of the **Conditions Precedent** specified in Sub-Clause 4.3.1 has not either been satisfied (or where permitted waived) by the **Final Consent Date**, then the provisions of this Clause 4 shall thereupon cease to have any effect and the

Parties shall have no rights against each other with respect to any breach of any of the provisions of this Sub-Clause 4.3.

4.4 **Works**

- 4.4.1 Both **Parties** shall comply with their respective obligations set out in Annexure A to this Agreement in relation to the commissioning of the **Works**.
- 4.4.2 The **Parties** acknowledge that, where the **Contract Form** specifies that no **Works**, other than a **Commissioning Test**, are required for the purposes of enabling the **BS Service Provider** to provide the **Black Start Service** no **Works Contribution Payment** is payable in respect of the **Works** and that the provisions of Clause 4.6.1.1 (relating to the payment of the **Works Contribution**), Clause 4.6.2 (relating to the repayment of the **Works Contribution**), Clause 4.6.3 (*Works Contribution Payments*), Clause 4.6.4 (*Security*) and all provisions relating to the payment of a **Works Contribution Refund Payment** shall not apply.

4.5 **Term**

- 4.5.1 Subject to the provisions of Sub-Clause 4.3, the obligations of the **BS Service Provider** hereunder to provide the **Black Start Service** shall apply at all times from the **Service Commencement Date** until the **Expiry Date** subject to and in accordance with the provisions of this **Agreement** and, save where expressly provided otherwise in this **Agreement** and the Schedules, “term of this **Agreement**” shall be construed accordingly.
- 4.5.2 If the provisions of this **Agreement** shall not by then have terminated, not later than twelve (12) months prior to the **Expiry Date** the **Parties** shall meet to discuss whether the provisions of this **Agreement** should be extended for a period beyond the **Expiry Date** and if so the duration of such extension and the terms (including prices) upon which the **Black Start Service** shall continue to be provided by the **BS Service Provider**. In the absence of any agreement between the **Parties** the provisions of this **Agreement** shall cease to apply in respect of periods after the **Expiry Date**.
- 4.5.3 Without prejudice to the other rights of termination in this **Agreement** after the **Service Commencement Date**, **The Company** shall be entitled to terminate this **Agreement** prior to the **Service Commencement Date** in the manner specified in paragraphs 9, 10, 11, 12 and 15 of Part I of Annexure A to this Clause 4 whereupon, if all or part of the **Works Contribution** has been paid by **The Company** to the **BS Service Provider** in accordance with the provisions of Sub-Clause 4.6.3 (but not otherwise), the **BS Service Provider** shall pay to **The Company** in accordance with Clause 8 (*Payment*) of Annexure D Part 2 a **Works Contribution Refund Payment** calculated in accordance with the formula in Schedule E, Section 2, Part III. For the avoidance of doubt, the **Works Contribution Refund Payment** in those circumstances shall constitute repayment of the **Works Contribution** (together with interest thereon at the **Base Rate**) referred to at Sub-Clause 4.6.1.

4.6 **Payments**

Payments for Availability of Black Start Service

- 4.6.1 **The Company** shall make the following availability payments to the **BS Service Provider** in accordance with the terms of this Clause 4 :-
- 4.6.1.1 sums by way of reimbursement of certain of the **BS Service Provider's Internal Costs** and **External Costs** up to the maximum aggregate amount of the **Internal Costs Cap** and the **External Costs Cap** respectively (the "**Works Contribution**"), payable subject to and in accordance with Sub-Clauses 4.6.3 and 4.6.4; and
- 4.6.1.2 with effect from the **Service Commencement Date**, and in accordance with Sub-Clause 4.6.5, a **Monthly Availability Payment** (the "**Monthly Availability Payment**") calculated in accordance with Schedule E, Section 2, 0 in respect of all **Settlement Periods** in each calendar month in which:
- 4.6.1.2.1 paragraph **Error! Reference source not found.** of Part I of Annexure A to this **Agreement** shall apply; and/or
- 4.6.1.2.2 the **Black Start Plant** shall have the **Black Start Capability**.
- 4.6.2 For the avoidance of doubt, in accordance with the provisions of this **Agreement**, the **Works Contribution** may become repayable by the **BS Service Provider** to **The Company** (in whole or in part) by way of **Annual Availability Shortfall Payments** and/or a **Works Contribution Refund Payment** (but not otherwise), and the **Monthly Availability Payments** may become repayable by the **BS Service Provider** to **The Company** (in whole or in part) by way of **Repayment Amounts** (but not otherwise).
- 4.6.3 **Works Contribution Payments**
- 4.6.3.1 **The Company** shall, by reference to each **Works Contribution Period**, pay to the **BS Service Provider** a **Works Contribution Payment** in respect of the **Internal Costs** and **External Costs** incurred by the **BS Service Provider** in that **Works Contribution Period** subject to:
- 4.6.3.1.1 provision by the **BS Service Provider** to **The Company** of **Acceptable Security** in accordance with Sub-Clause 4.6.4.4; and
- 4.6.3.1.2 receipt by **The Company** from the **BS Service Provider** of **Valid Invoices**.
- 4.6.3.2 Not used
- 4.6.3.3 Not used
- 4.6.3.4 For the purpose of Sub-Clause 4.6.3.1, a "**Valid Invoice**" shall mean an invoice issued by the **BS Service Provider**:-
- 4.6.3.4.1 that itemises **Internal Costs** and **External Costs** separately;
- 4.6.3.4.2 to the extent relating to **External Costs**, that does not exceed, when aggregated with all other **External Costs** so invoiced, the **External Costs Cap** and is be supported by copy invoices from the relevant third party

contractors and such other evidence as **The Company** may reasonably require;

- 4.6.3.4.3 to the extent relating to **Internal Costs**, that does not exceed, when aggregated with all other **Internal Costs** so invoiced, the **Internal Costs Cap** and includes a description which is reasonably satisfactory to **The Company** of that part of the **Works** to which such invoice relates and is supported by such other evidence as **The Company** may reasonably require,

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

- 4.6.3.5 Not used

- 4.6.3.6 Following receipt of any invoice in respect of the **Works** submitted by the **BS Service Provider** in accordance with Sub-Clause 4.6.3.1, **The Company** shall, as soon as reasonably practicable thereafter, notify the **BS Service Provider** and provide a reason where **The Company** determines (acting reasonably) that such invoice is not a **Valid Invoice** and the **BS Service Provider** shall submit a replacement invoice which is a **Valid Invoice** as soon as reasonably practicable thereafter.

- 4.6.3.7 Each **Valid Invoice** shall be paid by the **Company** within forty two (42) days after receipt.

- 4.6.3.8 Not used

Security

- 4.6.4 The following provisions shall apply with respect to security against possible repayments of the **Works Contribution**:

- 4.6.4.1 The **BS Service Provider** shall, as a condition of the payment by the **Company** of each **Works Contribution Payment** pursuant to Sub-Clause 4.6.1.1 and until payment of any **Works Contribution Refund Payment** or any **Annual Availability Shortfall Payment** applicable to the **Assessment Period** ending on the **Expiry Date** (or completion of the calculation indicating that no such **Annual Availability Shortfall Payment** is applicable) provide security against possible repayment of the **Works Contribution** under this **Agreement** as provided below.

- 4.6.4.2 Until the **Service Commencement Date**, the security provided must be **Acceptable Security** for not less than the secured amount being the amount from time to time of the **Works Contribution Refund Payment** which would be payable upon termination as calculated in accordance with Schedule E, Section 2, Part III including any value added tax payable on such amount. Where such **Acceptable Security** is a bond or letter of credit this shall be issued for a period of not less than six (6) months. If for any reason the bond or letter of credit has an **Expiry Date** occurring prior to the **Service Commencement Date**, the **BS Service Provider** shall provide a replacement bond or letter of credit with an appropriately extended **Expiry Date** or other equivalent **Acceptable Security** not later than forty five (45) days before the expiry of the bond, letter of credit or other equivalent **Acceptable Security** and, if the **BS Service Provider** fails to so

provide a replacement bond or letter of credit, the **Company** shall be entitled to call the bond, letter of credit or other equivalent **Acceptable Security**.

4.6.4.3 From and including the **Service Commencement Date** the security described in Sub-Clause 4.6.4.2 above shall be replaced (so that there is no gap in coverage) by security consisting of **Acceptable Security** for not less than the secured amount referred to in Sub-Clause 4.6.4.5 below. Where such **Acceptable Security** is a bond or letter of credit this shall (except in the case of the final period) be issued for a period of not less than six (6) months and thereafter replaced by the **BS Service Provider** at least forty five (45) days prior to the expiry of the previous bond, letter of credit or other equivalent **Acceptable Security**. If the **BS Service Provider** fails to so provide a replacement bond, letter of credit or other equivalent **Acceptable Security**, **The Company** shall be entitled to call the bond, letter of credit or other equivalent **Acceptable Security**.

4.6.4.4 In this Sub-Clause 4.6.4:

“**Acceptable Security**” shall mean: -

- 4.6.4.4.1 a first demand without proof or conditions irrevocable performance bond in a form reasonably satisfactory to **The Company** issued by a **Rated Bank** payable in Sterling in London; or
- 4.6.4.4.2 an irrevocable standby letter of credit in a form reasonably satisfactory to **The Company** issued by a **Rated Bank** payable in Sterling in London; or
- 4.6.4.4.3 a cash deposit in Sterling in an **Escrow Account**;
- 4.6.4.4.4 a parent company guarantee in terms and from an issuer satisfactory to **The Company**; or
- 4.6.4.4.5 such other form of security acceptable to **The Company** which shall be in such form as is included in **The Company's** then current policy and procedure.

“**Rated Bank**” shall mean 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).

“**Escrow Account**” shall mean a separately designated bank account in the name of **The Company** established by a mandate signed by both **The Company** and the **BS Service Provider** at a branch of Barclays Bank PLC or another bank in the City of London as notified by **The Company** to the **BS Service Provider**, bearing from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account a reasonable commercial rate of interest which shall be payable to the **BS Service Provider** but mandated for withdrawal of principal only by way of a call by **The Company** as referred to in Sub-Clause 4.6.4.6 below or by way of payment to the **BS Service Provider** to the extent of any reduction in the amount so secured and mandated for the transfer of any interest accrued to the **Escrow Account** quarterly to such bank account as the **BS Service Provider** may specify. **The Company** agrees to take any steps required to be taken by it for the release from the **Escrow Account** and payment to the **BS Service Provider** of such interest and any amount of principal in excess of the amount required to be secured at the relevant time.

4.6.4.5 The secured amount as referred to in Sub-Clause 4.6.4.3 above shall be for the maximum amount payable in respect of the **Works Contribution Refund Payment** as provided in Schedule E, Section 2, Part III at the relevant date including any value added tax payable on such amount.

4.6.4.6 The **Company** shall be entitled to call upon the security if: -

4.6.4.6.1 a **Works Contribution Refund Payment** or an **Annual Availability Shortfall Payment** has become payable under this **Agreement** and has not been paid by the **BS Service Provider** in accordance with Clause 8 (*Payment*) of Annexure D Part 2; or

4.6.4.6.2 other equivalent **Acceptable Security** of the required amount has not been put in place within the time periods provided for in this Sub-Clause 4.6.4. Where the security has been called for this reason, the **Company** shall repay the amount so called when the **BS Service Provider** puts in place the appropriate replacement security in accordance with this Sub-Clause 4.6.4.

4.6.4.7 If any bank or banks being the issuer of a bond or letter of credit shall suffer at any time a change of rating so as to fall below that required above the **BS Service Provider** shall forthwith on the **BS Service Provider** becoming aware of such occurrence notify **The Company** and within twenty (20) Business Days of the **BS Service Provider** becoming aware of such change of rating provide to **The Company** a replacement bond or letter of credit from a **Rated Bank** on the same terms as to amount and **Expiry Date** as the security being replaced or equivalent **Acceptable Security**. For the avoidance of doubt any such change of rating shall not during such period of twenty (20) **Business Days** constitute a breach under this **Agreement**, provided that the replacement security shall be provided, and from the date of its provision the security which it replaces shall be released by **The Company**.

4.6.4.8 Where the form of **Acceptable Security** is a parent company guarantee provided pursuant to Sub-Clause 4.6.4.4 and the **Contract Form** indicates that this clause applies, the **BS Service Provider** shall procure that:

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

and if:

- (c) the **BS Service Provider** shall fail to procure: (i) the **Auditor's Certificate** by not later than six (6) months after the end of a financial year of the **Guarantor**; or (ii) the **FD's Certificate** by not later than one

(1) month after the end of the second quarter in a financial year of the **Guarantor** (in either case, the “**Due Date**”); or

- (d) the net asset value of the **Guarantor** stated in the **Auditor’s Certificate** or the **FD’s Certificate** (as the context requires) is less than the **Required NAV**,

the **BS Service Provider** shall forthwith following the **Due Date** or the date of issue of the **Auditor’s Certificate** or the **FD’s Certificate** (as the context requires) provide to **The Company** a replacement for such parent company guarantee comprising another form of **Acceptable Security**.

4.6.4.9 Where the form of **Acceptable Security** is a parent company guarantee provided pursuant to Sub-Clause 4.6.4.4 and the **Contract Form** indicates that this clause applies, the **BS Service Provider** shall procure that, if the **Guarantor** shall suffer at any time a change of rating so as to fall below the **Approved Rating**, the **BS Service Provider** shall forthwith on becoming aware of such occurrence notify **The Company** and within fourteen (14) days of the **BS Service Provider** becoming aware of such change of rating provide to **The Company** a replacement for such parent company guarantee comprising another form of **Acceptable Security**.

4.6.4.10 The **BS Service Provider** shall on reasonable notice to **The Company** be entitled to request the substitution of any form of security then in place with any other **Acceptable Security** and on such replacement security being put in place **The Company** shall release the security first provided. The **BS Service Provider** may provide different security instruments to **The Company** at any time, each securing a different amount, provided that the number of security instruments does not exceed six at any time and that the aggregate sum secured is equal to the amount required to be secured under this Sub-Clause 4.6.4.

Monthly Availability Payments and Repayment Amounts

4.6.5 In respect of each calendar month in the period commencing on the **Service Commencement Date** and ending on the **Expiry Date**, **The Company** shall calculate in accordance with the formulae set out in Schedule E, Section 2, 0 and by reference to the **Black Start Availability Price** (after indexation pursuant to Sub-Clause 4.6.6):-

4.6.5.1 the **Monthly Availability Payment**; and

4.6.5.2 any **Repayment Amount**,

and in connection therewith: -

- 4.6.5.2.1 where the **Monthly Availability Payment** exceeds the **Repayment Amount**, **The Company** shall pay the difference to the **BS Service Provider** in accordance with Clause 8 of Annexure D Part 2; or
- 4.6.5.2.2 where the **Repayment Amount** exceeds the **Monthly Availability Payment**, the **BS Service Provider** shall pay the difference to **The Company** in accordance with Clause 8 of Annexure D Part 2.

Indexation

- 4.6.6 The **Black Start Availability Price** shall be subject to indexation during the term of this Clause 4 in accordance with the provisions of Schedule E, **Error! Reference source not found.**, Part IV. For the avoidance of doubt the **Works Contribution Payment** shall not be subject to indexation.

Commercial Ancillary Services

- 4.6.7 The **Parties** acknowledge that they do not intend that the **BS Service Provider** should over-recover its costs where a **Works Contribution Payment** has been made to fund all or part of the **Black Start Plant** (including any **BS Auxiliary Unit**), and the **BS Service Provider** seeks to provide a **Balancing Service** or other similar service to a third party (otherwise than pursuant to existing contractual obligations) using any part of the **Funded Plant**. Accordingly, it is hereby agreed that, subject to Clause 4.6.8, the **BS Service Provider** will not offer terms to **The Company** for provision of any **Balancing Service** or offer terms to a third party for the provision of a similar service using any part of the **Funded Plant** during any period prior to the **Expiry Date** without first seeking to agree in writing with **The Company** an appropriate reduction in the **Black Start Availability Price** for the duration of any resulting contract reflecting the proportion of the capital cost of the relevant **Funded Plant** funded by **The Company** through a **Works Contribution Payment**. **The Company** shall, as soon as reasonably practicable following receipt of a written request from the **BS Service Provider**, meet with the **BS Service Provider** to discuss an appropriate reduction, and each of the **Parties** shall use reasonable endeavours to agree on such appropriate reduction in the **Black Start Availability Price** within such period as is required to allow the **BS Service Provider** to offer terms to **The Company** with respect to the relevant **Balancing Service**. If no such agreement can be concluded, then **The Company** reserves the right to decline to contract with the **BS Service Provider** for any **Balancing Service** provided from any part of the **Funded Plant**.
- 4.6.8 If the **Parties** have agreed in writing prior to the date of this Clause 4, the basis on which the **BS Service Provider** may use **Funded Plant** to provide **Balancing Services** or other similar services to a third party the **BS Service Provider** may provide **Balancing Services** or other similar services to a third party on the basis of that agreement.

4.7 **Not used**

4.8 **Black Start Service**

Service Description

4.8.1 Subject to the provisions of this Clause 4, with effect from the **Service Commencement Date** and thereafter in all **Settlement Periods** until the **Expiry Date**, and in consideration of **The Company's** payments to the **BS Service Provider** in accordance with Sub-Clause 4.6, the **BS Service Provider** hereby agrees at all times (save where the **BS Service Provider** notifies **The Company** pursuant to Sub-Clause 4.9.1 that the **Black Start Plant** does not have the **Black Start Capability**) to maintain the **Black Start Plant** in a condition such that it is able to:-

4.8.1.1 provide the **Black Start Capability** as described in Sub-Clauses 4.8.4 to 4.8.5 inclusive; and

4.8.1.2 comply with valid instructions for initiation and implementation of the **Local Joint Restoration Plan**, so that, in the event of a **Total Shutdown** or a **Partial Shutdown** of the **National Electricity Transmission System**:

4.8.1.2.1 in the case of **Black Start Plant** other than a **BS HVDC System**, at least one of the **BS Gensets** at the **Power Station** is able to **Start-Up** from **Shutdown** and to energise a part of the **National Electricity Transmission System** and thereafter the local **User System** (in accordance with the **Local Joint Restoration Plan**) and/or be **Synchronised** to the **National Electricity Transmission System** and the local **User System** (in accordance with the **Local Joint Restoration Plan**),

4.8.1.2.2 or, in the case of a **BS HVDC System**, it is able to **Start-Up** from **Shutdown** and to energise part of the **National Electricity Transmission System** and thereafter the local **User System** (in accordance with the **Local Joint Restoration Plan**) and/or be **Synchronised** to the **National Electricity Transmission System** and the local **User System** (in accordance with the **Local Joint Restoration Plan**),

upon instruction from **The Company**, in accordance with the **Time to Connection Event** as set out in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form**, without an external electrical supply.

4.8.1.3 The **BS Service Provider** hereby further agrees with effect from the **Service Commencement Date** and thereafter until the **Expiry Date** to provide and maintain at the **Black Start Plant** (and, where necessary, replenish) all necessary consumables (which, where applicable, shall include supplies of raw water, demineralised water and infrastructure for the supply of natural gas to the **BS Auxiliary Units**), maintain, where applicable, arrangements for supplies of natural gas to the **BS Auxiliary Units** at the appropriate time and the required pressure and maintain communication channels for the **Black Start Plant** and other related supplies so that:

4.8.1.3.1 in a **Black Start Situation**, and by block and/or ramp loading in each case in accordance with Sub-Clauses 4.8.4 to 4.8.5 inclusive, **Active Power** from the **Black Start Plant** of at least the **Black Start Contracted MW** is capable of being provided and sustained for not less than the period specified in the **Technical Parameters**; and

4.8.1.3.2 during a **Black Start Situation**:

4.8.1.3.2.1 in the case of a **Black Start Station**, the **Power Station** is capable of providing sufficient **Active Power** to achieve a controlled **Shutdown** of the

BS Gensets and perform a **Start-Up** of a **BS Genset** or **CCGT Unit** within the relevant **CCGT Module** at least three times; or

4.8.1.3.2.2 in the case of a **BS HVDC System**, the **HVDC System** is capable of importing to the **National Electricity Transmission System** sufficient **Active Power** to achieve re-energisation following a trip at least three times.

4.8.2 The **BS Service Provider** agrees that the **Power Station** shall, if so required by **The Company**, be registered as a **Black Start Station** under the relevant **Bilateral Agreement** for the purposes of the **Grid Code OC 9.4.5.1** and that accordingly the **BS Service Provider's** obligations contained in this Clause 4 shall be additional and without prejudice to those (if any) set out in the **Grid Code**.

4.8.3 If, during a period which is the subject of a prior notification from the **BS Service Provider** to **The Company** pursuant to Sub-Clause 4.9.1 that the **Black Start Plant** does not have the **Black Start Capability**, **The Company** issues a declaration in accordance with **Grid Code OC 9.4.6** that a **Partial Shutdown** or a **Total Shutdown** exists, the **BS Service Provider** shall if required by **The Company** indicate whether and to what extent it is able to respond to **Black Start Instructions** and, if so, the basis upon which it will accept such instructions. Subject to the **Parties** reaching agreement thereto the **BS Service Provider** shall use its reasonable endeavours to meet any such request by **The Company** to perform the **Black Start Service**.

Black Start Capability

4.8.4 Without prejudice to the **Grid Code**, the **Black Start Capability** shall comprise the capability in a **Black Start Situation** of the **Black Start Plant** to operate in accordance with the contracted characteristics and outputs specified in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form** and, where required, (subject to Sub-Clause 4.9) to perform and re-perform the following actions upon receipt of a relevant instruction from **The Company**:-

4.8.4.1 in the case of a **Black Start Station**, and if applicable, maintaining suitable mains independent turbine barring and jacking facilities for all **BS Gensets** (independent of the **BS Auxiliary Units**) which will last for a minimum of twenty (20) minutes after the loss of external alternating current supplies;

4.8.4.2 immediately commence the procedure to enable **Start-Up** of the **Black Start Plant** from **Shutdown** with or without an external electrical supply (in the case of a **HVDC System**, to the **GB Converter Station**); and

4.8.4.3 within the **Time to Connection Event**, energise part of the **National Electricity Transmission System** (which would then energise the local **Distribution System**) and/or local **Distribution System** from the **Connection Point** or be **Synchronised** to the **National Electricity Transmission System** or the local **Distribution System** or a part thereof (the "**Connection Event**") in accordance with the **Local Joint Restoration Plan**; and

4.8.4.4 be capable of accepting individual loads which will be connected in the form of demand blocks in each case of up to the relevant figure specified in Part 6 (*Black*

Start Service Technical Parameters) of the **Contract Form** and in the **Local Joint Restoration Plan**; and

- 4.8.4.5 when a block load is connected to the **Black Start Plant** in accordance with Sub-Clause 4.8.4.4 above respond so that the **Frequency** of the **Power Island** should not fall below the minimum or above the maximum **Frequency** specified in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form** and that the **Frequency** of the **Power Island** is restored to within statutory limits (above 49.5 Hz and, to the extent possible, below 50.5 Hz) within ten (10) seconds maintaining stable operation thereafter pending connection of the next block load; and
- 4.8.4.6 be capable of operating within the loading restrictions set out in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form** and of accepting loading instructions issued by the **Grid Operator** and/or the **Public Distribution System Operator** in accordance with the loading procedures specified in the **Local Joint Restoration Plan**; and
- 4.8.4.7 achieve a power output equal to the **Black Start Contracted MW** (or such lesser power output as may be instructed by **The Company**) within the loading period specified in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form** assuming loading is achieved by the connection of demand blocks in accordance with Sub-Clauses 4.8.4.4, 4.8.4.5 and 4.8.4.6 above; and
- 4.8.4.8 in order to achieve the power output within the loading period as specified in Sub-Clause 4.8.4.7 above, achieve the interim power output levels specified in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form** (or such other interim power output levels as agreed between the **BS Service Provider** and the **Grid Operator** from time to time) in the timescales therein specified, and further be capable of sustaining a power output equal to the **Black Start Contracted MW** (or such lower level of MW output as may be instructed by **The Company**) in accordance with Sub-Clause 4.8.1.3 until otherwise instructed by **The Company**; and
- 4.8.4.9 without prejudice to the **BS Service Provider's** obligation to provide **Reactive Power** in accordance with **Grid Code CC 6.3.2** (where applicable), provide **Reactive Power** at no-load at the generator stator terminals (at rated terminal voltage) or at the **GB Converter Station** (as the context requires) of at least the range specified in Part 6 (*Black Start Service Technical Parameters*) of the **Contract Form** (or such other range agreed between the **BS Service Provider** and the **Grid Operator** from time to time); and
- 4.8.4.10 operate in a **Frequency Sensitive Mode** in accordance with instructions issued by **The Company** pursuant to the **Grid Code** or as specified in the **Local Joint Restoration Plan**; and
- 4.8.4.11 operate in a **Voltage Control Mode** in accordance with instructions issued by **The Company** pursuant to the **Grid Code** or as specified in the **Local Joint Restoration Plan**; and
- 4.8.4.12 recommence all or part of the **Local Joint Restoration Plan** to the extent that any **BS Genset** or **HVDC System** is disconnected from the **National**

Electricity Transmission System or Demand is disconnected from that **BS Genset or HVDC System** during a **Black Start Situation**; and

- 4.8.4.13 to co-operate with **The Company** to facilitate the provision of local 400kV, 275kV and 132kV sub-station indications to enable proper co-ordination of actions defined in the **Local Joint Restoration Plan** and to enable **Remote Synchronisation** to be co-ordinated from the **BS Service Provider's** control room; and
- 4.8.4.14 maintain provision of the **Black Start Service** in accordance with the provisions of this Sub-Clause 4.8.4 and Sub-Clause 4.8.1.3 (without reliance on **Auxiliaries** that could be adversely affected by deviations in the **Frequency** of the **System** or by other conditions affecting the **National Electricity Transmission System**) until notification from **The Company** to the **BS Service Provider** in accordance with **Grid Code OC 9.4.7.9** that the **Black Start Situation** no longer exists.

The precise operational and procedural requirements of and responses from the **Black Start Plant** will be more comprehensively set out in the **Local Joint Restoration Plan** provided always that the **Local Joint Restoration Plan** shall place no greater obligations upon the **BS Service Provider** than those contained within this Clause 4. In relation thereto, in the event of any inconsistency between the provisions of the **Local Joint Restoration Plan** and this Clause 4 the provisions of the **Local Joint Restoration Plan** shall prevail in so far as the inconsistency relates to procedural matters, otherwise the provisions of this Clause 4 shall prevail. Subject to Sub-Clause 4.11 the **BS Service Provider** acknowledges that in a **Black Start Situation**, **The Company** may issue an instruction for operation of the **Black Start Plant** outside of the technical limitations comprising the **Black Start Capability** to the extent that, in the case of a **Black Start Station**, the instruction is to operate in accordance with **Dynamic Parameters** and other **BM Unit Data** submitted pursuant to **Grid Code BC1** (as amended from time to time).

- 4.8.5 The **BS Service Provider** warrants to **The Company** that it believes that operation of the **Black Start Plant** in accordance with the **Black Start Capability** set out in Sub-Clause 4.8.4 will be within its safe operating parameters (whether relating to personnel or **Plant** or **Apparatus**) and will not require the **BS Service Provider** to change generation on the **BS Gensets** or flow on the **BS HVDC System** for safety reasons pursuant to **Grid Code OC 9.4.7.4**.

Revisions to Technical Parameters and/or the Black Start Capability requirements

- 4.8.6 Subject always to Sub-Clause 4.8.7, the **BS Service Provider** may issue a request to **The Company** that one or more of the **Technical Parameters** and/or the **Black Start Capability** requirements (more particularly specified in Sub-Clause 4.8.4) be revised temporarily (such request to be confirmed by facsimile or other electronic means approved from time to time by **The Company** in the appropriate form set out in Schedule E, Section 2), and upon receipt of the **BS Service Provider's** facsimile confirmation of such request, **The Company** may at its sole discretion either accede to or decline such request provided always that any acceptance of such request may at **The Company's** sole discretion be immediately withdrawn at any time thereafter.
- 4.8.7 The **BS Service Provider** shall specify in any request made in accordance with Sub-Clause 4.8.6 the start time and expected end time between which any

revisions to the **Technical Parameters** and/or the **Black Start Capability** requirements shall apply.

4.8.8 If **The Company** accepts any request made by the **BS Service Provider** pursuant to Sub-Clause 4.8.6, any such revisions shall apply from the start time specified by the **BS Service Provider**, until the end time specified by the **BS Service Provider** or any earlier time at which **The Company** withdraws its acceptance of the **BS Service Provider's** request pursuant to Sub-Clause 4.8.6.

4.8.9 If **The Company** declines (or withdraws any previous acceptance of) any request made by the **BS Service Provider** pursuant to Sub-Clause 4.8.6, then the original **Technical Parameters** and/or **Black Start Capability** requirements shall continue to apply (or be reinstated as the case may be), and for the avoidance of doubt if as a result the **BS Service Provider** is unable to maintain the **Black Start Capability** from the **Black Start Plant** then it shall notify **The Company** accordingly in accordance with Sub-Clause 4.9.1.

4.8.10 For the avoidance of doubt, the revisions which may be requested by the **BS Service Provider** pursuant to Sub-Clause 4.8.6 may include without limitation reductions to quantities of consumables and/or other related supplies required to be provided and/or maintained by the **BS Service Provider** at the **Power Station** in accordance with Sub-Clause 4.8.1.3.

4.9 **Absence of Black Start Capability**

Notification by BS Service Provider

4.9.1 The **BS Service Provider** shall notify the **Company** by facsimile or other electronic means approved from time to time by the **Company** in the appropriate form set out in Schedule E, Section 2 as soon as reasonably practicable (but in any event within twenty (20) minutes of it becoming aware that) if:-

4.9.1.1 the **Black Start Plant** does not or will not have any part of the **Black Start Capability** (or, to the extent not possible, a further notice stating the reasons shall be given as soon as reasonably practicable thereafter), and such notification shall include a brief explanation thereof, the time of commencement and the expected duration thereof;

4.9.1.2 (without prejudice to Sub-Clause 4.9.4.1) following the issue of a notification by the **BS Service Provider** in accordance with Sub-Clause 4.9.4.1, the **Black Start Capability** has been restored and such notification shall include the time of such restoration.

4.9.2 For the purposes of Sub-Clause 4.9.1 the **BS Service Provider** shall be deemed to have the knowledge of its operators at the **Black Start Plant**. The **BS Service Provider** undertakes to the **Company** that each notification given by its plant

operators pursuant to Sub-Clause 4.9.1 shall reflect the true operating characteristics of the **Black Start Plant**.

Determination by The Company

4.9.3 Notwithstanding Sub-Clause 4.9.1, the **Black Start Plant** may be determined by the **Company** not to have the **Black Start Capability** either:

4.9.3.1 (subject to review by the **Independent Expert**) by reference to inspections, **Assurance Visits**, testing carried out pursuant to Sub-Clauses 4.19 (*Inspections and Assurance Visits*) and 4.20 (*Black Start Tests*), or metering and monitoring carried out pursuant to Sub-Clause 4.21 (*Metering and Monitoring*); or

4.9.3.2 in accordance with the terms of Sub-Clause 4.12.3.

4.9.4 With effect from: -

4.9.4.1 the time at which the **Black Start Plant** is notified by the **BS Service Provider** or determined by **The Company** or, in the event of disagreement, by the **Independent Expert** upon the reference of either **Party**, no longer to have the **Black Start Capability**; or

4.9.4.2 the commencement of the **Settlement Period** in which the respective **Event of Default** referred to in Sub-Clause 4.13 shall have occurred, the **Black Start Plant** shall be deemed not to have the **Black Start Capability** and no payments in respect of all subsequent **Settlement Periods** shall be payable by either **Party** to the other unless and until the **Black Start Capability** shall be deemed to be restored in accordance with the following provisions:-

4.9.4.2.1 The **BS Service Provider** shall as soon as reasonably practicable notify **The Company** by facsimile or other electronic means approved from time to time by **The Company** in the appropriate form set out in Schedule E, Section 2 of the time and date when it considers that the **Black Start Capability** is restored and shall, where unavailability of the **Black Start Service** was due to an **Event of Default**, give **The Company** a brief explanation as to the reason for such **Event of Default**.

4.9.4.2.2 Promptly following receipt of such notification and explanation, **The Company** may inform the **BS Service Provider** within five (5) **Business Days** that it wishes to conduct a test (a "**Reproving Assessment**") in order to verify such restoration of **Black Start Capability** and, in respect thereof, the relevant provisions of Sub-Clause 4.20 (*Black Start Tests*) shall apply. The scope of a **Reproving Assessment** shall in each case have regard to the nature and extent of the circumstances which gave rise to the **Black Start Plant** no longer having the **Black Start Capability** and shall be discussed and agreed with the **BS Service Provider** (such agreement not to be unreasonably withheld or delayed). Without limiting the foregoing, a **Reproving Assessment** may include the monitoring of the normal operation of the **BS Gensets** or **BS HVDC System** and/or the **BS Auxiliary Units** (as appropriate).

4.9.4.2.3 If **The Company** fails to notify the **BS Service Provider** in accordance with paragraph 4.9.4.2.2 above that it wishes to carry out a **Reproving Assessment** then the **Black Start Capability** shall be deemed to have been restored with effect from the time set out in the notification by the **BS Service**

Provider pursuant to paragraph 4.9.4.2.1 above and the **Monthly Availability Payments** shall become payable with effect from such time and date.

- 4.9.4.2.4 Promptly following receipt of notification from **The Company** that it wishes to conduct a **Reproving Assessment**, the **BS Service Provider** shall notify **The Company** of the time and date when the **Reproving Assessment** may be carried out which (unless **The Company** and the **BS Service Provider** otherwise agree in writing) shall be not earlier than seventy two (72) hours and not later than one hundred and sixty eight (168) hours following such notification. If the **BS Service Provider** unreasonably delays its notification, **The Company** may specify a time for the conduct of the **Reproving Assessment** on no less than one hundred sixty eight (168) hours' notice. **The Company** shall not unreasonably refuse to carry out a **Reproving Assessment** at the times and dates notified by the **BS Service Provider**. Without limitation, it shall be reasonable for **The Company** (by notice in writing to the **BS Service Provider**) to refuse to carry out the **Reproving Assessment** at the time and date notified by the **BS Service Provider** in order to minimise cost implications or where the safety or security of the **System** may be compromised. Upon any refusal by **The Company** as aforesaid, the **BS Service Provider** shall notify **The Company** of an alternative time and date when the **Reproving Assessment** may be carried out and where the **BS Service Provider** unreasonably delays in sending such notification, **The Company** may specify a time for the conduct of the **Reproving Assessment** on no less than one hundred sixty eight (168) hours' notice.
- 4.9.4.2.5 If **The Company** fails to conduct a **Reproving Assessment** at the time and date notified by the **BS Service Provider** pursuant to paragraph 4.9.4.2.4 above, save in the circumstances therein set out, then (unless it is prevented from carrying out such **Reproving Assessment** by means of an act or default of the **BS Service Provider** or by reason of an event or circumstance of **Force Majeure**) the **Black Start Capability** shall be deemed to have been restored with effect from the time set out in the notification by the **BS Service Provider** pursuant to paragraph 4.9.4.2.1 above and the **Monthly Availability Payments** shall become payable with effect from such time and date.
- 4.9.4.2.6 If the **BS Service Provider** passes a **Reproving Assessment**, then (subject to paragraph 4.9.4.2.7 below) the **Black Start Capability** shall be deemed to be restored with effect from the time and date notified by the **BS Service Provider** pursuant to paragraph 4.9.4.2.1 above and the **Monthly Availability Payments** shall become payable with effect from such time and date.
- 4.9.4.2.7 If the **BS Service Provider** fails a **Reproving Assessment**, then paragraphs 4.9.4.2.1 to 4.9.4.2.4 above (inclusive) shall continue to apply and the **BS Service Provider** shall be required to re-notify **The Company** of the time and date when it considers that the **Black Start Capability** shall be

restored, and the **Black Start Capability** shall only be deemed to be restored as from the earlier of:-

4.9.4.2.7.1 the passing of a subsequent **Reproving Assessment**;

4.9.4.2.7.2 the date of the first notification where the first **Reproving Assessment** is determined to have been passed; or

4.9.4.2.7.3 if **The Company** fails to carry out a subsequent **Reproving Assessment**, with effect from the time of the last notification from the **BS Service Provider** to **The Company** that the **Black Start Capability** is restored.

4.9.4.2.7.4 In relation to the conduct of all **Reproving Assessments** the provisions of Sub-Clause 4.20 shall apply.

4.9.4.2.8 During any period of dispute as to a determination of **The Company** that the **Black Start Plant** no longer has the **Black Start Capability**, the provisions of Sub-Clause 4.9.5 shall apply.

4.9.5 For the avoidance of doubt, no payments shall be payable by either **Party** in respect of any **Settlement Periods** following a determination by **The Company** that the **Black Start Plant** no longer has the **Black Start Capability**, notwithstanding that the **BS Service Provider** shall have requested a further test and/or made a reference to the **Independent Expert** pursuant to Sub-Clause 4.23, unless and until:-

4.9.5.1 the **BS Service Provider** passes such further test or the **Independent Expert** determines that such further test was passed, in which cases the **Monthly Availability Payments** in respect of the **Settlement Periods** since the first test shall become payable by **The Company** to the **BS Service Provider** by reference to the first practicable **Final Monthly Statement** issued following such further successful test together with interest thereon at the **Base Rate** from the date on which such payments would otherwise have been due and payable by **The Company**; or

4.9.5.2 the **Black Start Capability** shall be deemed to be restored in accordance with Sub-Clause 4.9.4.

4.10 **Black Start Instruction**

4.10.1 During any **Black Start Situation** the **Company** shall give an instruction to the **BS Service Provider** as referred to in **Grid Code** OC9.4 for implementation of the **Local Joint Restoration Plan** from the **Black Start Plant** (a "**Black Start Instruction**") which may comprise (subject to Sub-Clauses 4.8.4 and 4.11 (*Safety and Insurance*)), without limitation, any one or more of the instructions set out at Sub-Clauses 4.10.1.1 to 4.10.1.6 below. The **Local Joint Restoration Plan** shall set out who shall give the following instructions: -

4.10.1.1 an instruction to **Start-Up** the **Black Start Plant**, without an external electrical supply (in the case of a, **BS HVDC System** without an external electrical supply

to the **GB Converter Station**) and in accordance with the **Local Joint Restoration Plan**; and/or

- 4.10.1.2 an instruction for the **Black Start Plant** to be connected to or **Synchronised** to the **National Electricity Transmission System** and the local **User System** (in accordance with the **Local Joint Restoration Plan**) or a part thereof; and/or
- 4.10.1.3 an instruction, where applicable, for the **Black Start Plant** to maintain a specified voltage at the **Commercial Boundary**; and/or
- 4.10.1.4 an instruction for the **Black Start Plant** to accept block loads within the range specified in Schedule E, Section 1, **Error! Reference source not found.**; and/or
- 4.10.1.5 an instruction for the **Black Start Plant** to operate in **Frequency Sensitive Mode**; and/or
- 4.10.1.6 an instruction to switch in or out the **Power System Stabiliser**.

The modes of instruction specified in this Sub-Clause 4.10.1 are indicative only but all **Black Start Instructions** shall fall within the remit of this Clause 4, the **Local Joint Restoration Plan** and/or the **Grid Code**. The actual method of instruction and the detailed instruction formats for use in a **Black Start Situation** will be more comprehensively set out in the **Local Joint Restoration Plan**.

- 4.10.2 Subject and without prejudice to Sub-Clause 4.11 (*Safety and Insurance*) the **BS Service Provider** agrees that **The Company** may issue a **Black Start Instruction** for operation of the **Black Start Plant** outside of operating capability as declared or redeclared to **The Company** pursuant to relevant provisions of the **Grid Code** but only to the extent the instruction is for operation in accordance with the relevant **Black Start Capability** or a capability otherwise agreed by the **BS Service Provider**.
- 4.10.3 The **BS Service Provider** acknowledges and agrees that a **Black Start Situation** will constitute an emergency situation as referred to in the **Grid Code** and that accordingly a **Black Start Instruction** may constitute an **Emergency Instruction**.
- 4.10.4 During any **Black Start Situation**, **The Company** shall provide the **BS Service Provider** with such information relating to the **National Electricity Transmission System** as **The Company**, in its reasonable opinion, shall consider to be necessary in order to enable the **BS Service Provider** to implement the **Local Joint Restoration Plan** or respond to instructions under the **Grid Code**.

4.11 **Safety and Insurance**

- 4.11.1 Notwithstanding Sub-Clauses 4.8.5 and 4.10, **The Company** accepts that the decision to operate a **Black Start Plant** outside its safe operating parameters is one for the **BS Service Provider** alone, and accepts that the **BS Service Provider** may change generation or flow on that **Black Start Plant** if it believes it is necessary for safety reasons (whether relating to personnel or **Plant** or **Apparatus**).
- 4.11.2 The responsibility for injury to personnel and damage to **Plant** and **Apparatus** owned and/or operated by the **BS Service Provider** caused by operation of the

Black Start Plant in a **Black Start Situation** (including without limitation any damage to a **BS Genset** caused by loss of barring) therefore rests with the **BS Service Provider** and **The Company** shall have no liability whatsoever in connection therewith.

4.11.3 The **BS Service Provider** shall indemnify and keep indemnified **The Company** in respect of liability for death or personal injury and/or damage to **Plant** and **Apparatus** owned and/or operated by **The Company** and arising out of or in connection with such operation of the **Black Start Plant** outside of its safe operating parameters save to the extent that: -

4.11.3.1 the **BS Service Provider** has notified **The Company** that the **Black Start Plant** cannot be operated within its safe operating parameters because of the **Demand** experienced and **The Company** subsequently fails to comply with **Grid Code OC 9.4.7.4**;

4.11.3.2 such death or personal injury and/or damage to **Plant** and **Apparatus** is caused by **The Company's** negligent act or omission or default; and

4.11.3.3 the **BS Service Provider** has operated the **Black Start Plant** in accordance with **Good Industry Practice**.

4.11.4 The **BS Service Provider** shall insure for **Public Liability** risks with a reputable insurer with a minimum value of ten million pounds Sterling (£10,000,000) for each and every claim.

4.11.5 The **BS Service Provider** acknowledges and agrees that, for the purposes of Sub-Clause 4.11.3, references to **The Company** shall include the **Transmission Owner** and that, in addition to **The Company**, the **Transmission Owner** shall be entitled to enforce Sub-Clause 4.11.3.

4.12 **Local Joint Restoration Plan and Training**

4.12.1 The **BS Service Provider** shall co-operate with **The Company** in the development, review and updating from time to time of a **Local Joint Restoration Plan** for the **Power Station** which shall be in a form to be agreed between the **Parties** (such agreement not to be unreasonably withheld or delayed) and one or more local **Public Distribution System Operators** and/or **User** and/or third party responsible for necessary consumables as referred to in Sub-Clause 4.8.1.3 (as the case may be) (together the "**Relevant Third Parties**"), and shall include details of the following:-

4.12.1.1 the part of the **National Electricity Transmission System** and/or local **Distribution System** to be energised (in the case of the local **Distribution**

System indirectly) by the **BS Service Provider** utilising the **Black Start Plant** and the methods by which this will be achieved;

4.12.1.2 how the block loading of the **Black Start Plant** is to be achieved by direct communication between the **BS Service Provider**, the local **Public Distribution System Operator** and **The Company**;

4.12.1.3 manner of operation during islanded conditions;

4.12.1.4 telephone numbers of all **Parties** concerned and all other pertinent information of a similar nature; and

4.12.1.5 the time periods required for the restoration of such necessary consumables.

4.12.2 In connection with Sub-Clause 4.12.1, the **BS Service Provider** shall ensure that all appropriate personnel at the **Black Start Plant** are made aware of the **Local Joint Restoration Plan** and receive appropriate training in respect thereof. Appropriate training shall be at the sole discretion of the **BS Service Provider** but may include the carrying out of one exercise a year (of no more than a reasonable duration) with various station staff (which may include the operation of any part of the **Local Joint Restoration Plan**). Upon reasonable request from the **BS Service Provider**, **The Company** shall use reasonable endeavours (insofar as permitted by the **Grid Code** and subject as provided below) to co-operate with the **BS Service Provider** in the carrying out of any such exercise by the issue of suitable instructions (at times and for periods agreed with **The Company**) and, subject to the **BS Service Provider's** rights referred to in Sub-Clauses 4.20.2 to 4.20.15, each **Party** shall bear its own additional staffing costs in connection with any such exercise. In respect of any exercises involving changes to the production profile of any **BM Unit** at the **BS Service Provider's Power Station**, the provisions of Sub-Clauses 4.20.2 to 4.20.15 shall apply.

4.12.3 The occurrence of the **Service Commencement Date** shall in all respects be conditional on a **Local Joint Restoration Plan** having been developed and, in connection therewith, the **BS Service Provider** shall be responsible for procuring that all **Relevant Third Parties** co-operate in the development of such **Local Joint Restoration Plan**.

4.13 Events of Default

In relation to the **Black Start Service**, each of the events specified in Annexure B (*Events of Default and Consequences*) to this Clause 4 (and no others) shall constitute an "**Event of Default**" and shall result in the respective consequences also set out therein as if the same were set out in full in this Clause 4. For the avoidance of doubt, where one incident results in more than one **Event of Default**, **The Company** shall only be entitled to apply the respective consequence once.

4.14 Consequences of Events of Default

4.14.1 The provisions of Annexure B (*Events of Default and Consequences*) to this Clause 4 shall apply in the case of an **Event of Default** and, subject to the provisions thereof, the amounts payable by the **BS Service Provider** to **The Company** in respect thereof shall be calculated in accordance with Schedule E,

Section 2, 0 (in respect of a **Repayment Amount**) and Schedule E, Section 2 Part III (in respect of a **Works Contribution Refund Payment**).

4.14.2 The **BS Service Provider** acknowledges and agrees that the provisions of Annexure B to this Clause 4 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof and that in particular (but without limiting the foregoing) any monies which cease to be payable by **The Company** to the **BS Service Provider** hereunder, the aggregate number of hours expressed to be taken into account in calculating the **Monthly Availability Payments** payable to the **BS Service Provider** pursuant to this Clause 4, the **Repayment Amounts** and the **Works Contribution Refund Payments** have been calculated so as to reflect as fairly as possible the costs which are reasonably contemplated by the **Parties** at the date hereof as being likely to be incurred by **The Company** as a direct result of the **Events of Default** as referred to in Sub-Clause 4.13 or (as the case may be) the termination of provision of the **Black Start Service**.

4.15 **Annual Assessment**

4.15.1 Following the expiry of each consecutive twelve (12) month period of operation of this Clause **Error! Reference source not found.** commencing from the **Service Commencement Date**, **The Company** shall undertake assessments of the extent of provision of the **Black Start Service** by the **BS Service Provider** over the immediately preceding twelve (12) month period (the "**Assessment Period**") and shall notify the **BS Service Provider** accordingly within twelve (12) months following the end of the **Assessment Period**. If no such notification has been received by the **BS Service Provider** from **The Company** by the date falling twelve (12) months after the end of the **Assessment Period**, no such assessment shall be required.

4.15.2 The first assessment shall be carried out by determining in relation to each **Assessment Period** and by reference to Sub-Clauses 4.15.3 to 4.15.4 inclusive, the number of **Settlement Periods** during such **Assessment Period** in which the **Black Start Plant** has had the **Black Start Capability**.

4.15.3 If in respect of any period the **Black Start Plant** does not have the **Black Start Capability** due solely to **Force Majeure** then, to the extent that in respect of such period the **BS Service Provider** is able to demonstrate to **The Company's** reasonable satisfaction that it has been taking all reasonably practicable steps to restore the **Black Start Capability** of the **Black Start Plant**, the **Black Start Plant** shall be deemed to have had the **Black Start Capability** for the purposes of Annexure C (*Annual Assessment of Black Start Capability*) to this Clause **Error! Reference source not found.**

4.15.4 If the **BS Service Provider** gives **The Company** prior written notice of any period during which the **BS Service Provider** proposes to withdraw the **Black Start Capability** from the **Black Start Plant** in addition to the periods of scheduled

maintenance specified in the table set out in Schedule E, **Error! Reference source not found.** (including the duration of such period), **The Company**:

- 4.15.4.1 shall assess the likely consequences of such withdrawal; and
- 4.15.4.2 may, at its discretion, agree in writing with the **BS Service Provider** to the proposed period of outage or propose an alternative period of outage.
- 4.15.5 If the **Parties** agree to a period of outage pursuant to Sub-Clause 4.15.4.2 the withdrawal of the **Black Start Capability** during the agreed period shall not be included in the **Annual Assessment** in accordance with Annexure C.
- 4.15.6 Where the **Parties** do not agree to a period of outage pursuant to Sub-Clause 4.15.4.2 the withdrawal of the **Black Start Capability** during any period shall be included in the availability assessment for **Annual Assessment** in accordance with Annexure C.
- 4.15.7 If the percentage of **Settlement Periods** in an **Assessment Period** that the **Black Start Plant** had the **Black Start Capability** is less than a **Black Start Capability** percentage stated in Annexure C to this Clause 4 then the respective consequences stated in Annexure C to this Clause 4 shall apply.
- 4.15.8 In respect of each **Assessment Period**, a second assessment shall also be carried out of the number of **Settlement Periods** during such **Assessment Period** in which the **Black Start Plant** did not have the **Black Start Capability** due to **Force Majeure**. If the percentage of such **Settlement Periods** during such **Assessment Period** exceeds 75% then either **Party** shall be entitled to terminate this Clause 4 forthwith by notice in writing to the other to be served at any time until the end of one month following expiry of the relevant **Assessment Period** (or one month following completion of the assessment, if later). In respect of such termination, the **BS Service Provider** shall pay to **The Company** in accordance with Clause 8 (*Payment*) of Annexure D Part 2 a **Works Contribution Refund Payment** calculated in accordance with the formula in Schedule E, Section 2, Part III.
- 4.15.9 The first such **Assessment Period** shall commence on the **Service Commencement Date**. In the event of termination of the provisions of this Clause 4 during an **Assessment Period**, the availability of the **Black Start Plant** in respect of the period since the end of the last **Assessment Period** shall be assessed by **The Company** in accordance with this Sub-Clause 4.15 but in respect of such shorter period, and “**Assessment Period**” shall be construed accordingly.
- 4.15.10 Subject to Sub-Clauses 4.15.3 and 4.15.4, for the purposes of this Sub-Clause 4.15 and Schedule E, Section 2, periods when the **Black Start Plant** shall not have had the **Black Start Capability** shall be determined in accordance with Sub-Clause 4.9 and/or Sub-Clause 4.12.3.
- 4.16 **Not used**
- 4.17 **Termination**
- 4.17.1 Without prejudice to **The Company**’s right to terminate the provisions of this Clause 4 prior to the **Service Commencement Date** pursuant to Sub-Clause 4.5.3 or in the circumstances described in Sub-Clause 4.15.8, the

Company shall be entitled to terminate the provisions of this Agreement after the **Service Commencement Date** only in the following circumstances as specified in:

- 4.17.1.1 Annexure B (*Events of Default and Consequences*) to this Clause 4 as a consequence of one or more **Events of Default**; and
- 4.17.1.2 Annexure C (*Annual Assessment of Black Start Capability*) to this Agreement.
- 4.17.2 Upon termination of this Clause 4 as referred to in Sub-Clause 4.17.1 or upon termination of this **Agreement** pursuant to Sub-Clause 10.1, the **BS Service Provider** shall pay to **The Company** in accordance with Clause 8 of Annexure D Part 2 a **Works Contribution Refund Payment** calculated in accordance with the formula in Schedule E, Section 2, Part III.
- 4.17.3 Termination of this Clause 4 shall, subject to Sub-Clause 4.3.5 be without prejudice to any rights of the **Parties** which shall have accrued at the time of such termination.

4.18 Instructions and Notifications

- 4.18.1 All notifications, declarations, confirmations and other communications of whatever nature to be given by **The Company** to the **BS Service Provider** or vice versa pursuant to this Clause 4 which concern the availability and utilisation of the **Black Start Service** shall (unless otherwise specified to the contrary in this Clause 4) be given either:-
 - 4.18.1.1 in accordance with the **Grid Code** (where applicable); or
 - 4.18.1.2 by telephone,and subsequently confirmed by facsimile or other electronic means approved from time to time by **The Company** in the appropriate form set out in Schedule E, Section 2 or by such other means as may be agreed in writing by the **Parties**.

4.19 Inspections and Assurance Visits

Inspections

- 4.19.1 To enable the **Company** to verify the capability of the **Black Start Plant** to provide the **Black Start Service**, the **BS Service Provider** shall permit **The Company** to inspect such of the following as the **Company** may reasonably require (in each case upon giving to the **BS Service Provider** not less than 24 hours prior notice):-
 - 4.19.1.1 the **BS Gensets** or **HVDC Converter Station**;
 - 4.19.1.2 the **Auxiliaries** (including without limitation the **BS Auxiliary Units**);
 - 4.19.1.3 the **BS Service Provider's** other **Plant** and **Apparatus**, in relation to **Black Start Capability**, necessary consumables (which shall include supplies of raw water, demineralised water and, where applicable, infrastructure for the supply of

natural gas to the **BS Auxiliary Units**), communication channels and other related supplies at the **Power Station**;

- 4.19.1.4 where applicable arrangements that the **BS Service Provider** has in place for the supply of natural gas to the **BS Auxiliary Units** at the appropriate time and the required pressure;
- 4.19.1.5 the **Local Joint Restoration Plan** and such evidence as the **Company** shall reasonably require to demonstrate compliance by the **BS Service Provider** with its obligations contained in this **Agreement**; and
- 4.19.1.6 any **Black Start Situation** procedure which has been or may in future be developed independently by the **BS Service Provider** in respect of the **Black Start Plant** giving specific guidance to that **Black Start Plant** in the event of a **Black Start Situation** and which is or may at a future date be in current use at the **Black Start Plant**.

Such inspection shall be carried out without undue interference with the normal operation of the **Black Start Plant**.

Assurance Visits

- 4.19.2 Without prejudice to, and in addition to, the **Company's** right to carry out inspections in accordance with Sub-Clause 4.19.1, the **BS Service Provider** shall, subject to Sub-Clause 4.19.3, not more than once in any calendar year, permit the **Company** to visit the **Black Start Plant** (upon the **Company** giving to the **BS Service Provider** not less than one hundred sixty eight (168) hours' prior notice) so that the **Company** may ascertain to its reasonable satisfaction that the **BS Service Provider** has, in accordance with **Good Industry Practice**, implemented at the **Black Start Plant** appropriate technical, training and documentation procedures (an "**Assurance Visit**"). **Assurance Visits** shall be carried out without undue interference with the normal operation of the **Black Start Plant**.
- 4.19.3 Following receipt of any notice issued by the **Company** pursuant to Sub-Clause 4.19.2, the **BS Service Provider** may propose to the **Company** 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) **Settlement Days** following the time and date specified by the **Company** in its notice, and (at its option) the **Company** may agree to such alternative time and date. In the event that the **BS Service Provider** unreasonably delays the **Assurance Visit** beyond the time and date being twenty eight (28) **Settlement Days** after the time and date for the **Assurance Visit** specified by the **Company** in its notice, then no **Monthly Availability Payments** shall accrue to the **BS Service Provider** in respect of the period commencing at the time and date for the **Assurance Visit** specified in the **Company's** notice and ending upon completion by the **Company** of an **Assurance Visit**.
- 4.19.4 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 **Independent Expert** for determination.

4.20 Black Start Tests¹

Obligations to carry out a Commissioning Assessment, Capability Assessment, Remote Synchronisation Test, Dead Line Charge Test and Repeating Assessment

4.20.1 For the purposes of this **Agreement**, **Black Start Tests** include **Commissioning Assessments, Capability Assessments, Remote Synchronisation Tests, Dead Line Charge Tests** and **Repeating Assessments**. Subject always to the provisions of this **Agreement**, the **BS Service Provider** shall:-

4.20.1.1 [on written notice to the **Company** and not later than the **Target Commencement Date** (or such later date as may be determined in accordance with Part 1 of Annexure A) carry out a **Commissioning Assessment** in accordance with Part 1 of Annexure A (*Works Programme*);]²

4.20.1.2 [on written notice to the **Company** and not later than the **[]** anniversary of the **Service Commencement Date**, carry out a test (a "**Capability Assessment**") in accordance with the procedure set out in OC5.7.2 of the **Grid Code** provided always that not more than one **Capability Assessment** will be required to be undertaken by the **BS Service Provider** in any period of thirty-six (36) calendar months;] OR [on written notice to the **Company** and not later than the third anniversary of the last **Capability Assessment** undertaken by the **BS Service Provider** in accordance with the contractual terms governing the provision of black start services in place immediately prior to commencement of the term of this Clause 4.]³

4.20.1.3 on written notice from the **Company** given not more than once in any two (2) calendar years, carry out a **Remote Synchronisation Test**, to determine whether the **BS Gensets** or **BS HVDC System** and/or the **Auxiliaries** and their associated **Plant** and **Apparatus** are able to perform the processes described in Part 1 of Annexure D (*Remote Synchronisation Testing/Dead Line Charge Test*) and are otherwise capable of providing the **Black Start Service** in accordance with this Clause 4. Subject to the foregoing, the **Company** may undertake a **RST** at the time of conducting a **Capability Assessment** or at such other times as it may determine; on written notice from the **Company** given not more than once in any two (2) calendar years, carry out a **Dead Line Charge Test**, to determine whether the **BS Gensets** or **BS HVDC System** and/or the **Auxiliaries** and their associated **Plant** and **Apparatus** are able to perform the processes described in Part 2 of Annexure D (*Remote Synchronisation Testing/Dead Line Charge Test*) and are otherwise capable of providing the **Black Start Service** in accordance with this Clause 4. Subject to the foregoing, **The Company** may undertake a **Dead Line Charge Test** at the time of conducting a **Capability Assessment** or at such other times as it may determine; and following written notice from the **Company** under Sub-Clause 4.9.4.2(b), carry out a **Repeating Assessment** in order to verify the restoration of **Black Start Capability** on such date as may be determined under Sub-Clause 4.9.4.2 in accordance the procedure set out in OC5.7.2 of the **Grid Code**.

Black Start Test Procedure - Preparatory

4.20.2 In respect of each **Black Start Test**, the **Company** and the **BS Service Provider** shall use all reasonable endeavours to agree, no later than four (4) clear **Settlement Days** before the day on which the **Black Start Test** is due to be conducted, the

¹ Clause 4.20 has been drafted for a power generating facility and will need to be adapted for an interconnector.

² New Providers only – where the Black Start Plant is currently being used to provide a Black Start Service, no Commissioning Assessment will be required unless changes are being made to the plant affecting its Black Start Capability.

³ The second option is for existing providers only.

Black Start Test Parameters and Procedures for the conduct of the **Black Start Test**, such agreement to be recorded in the form of a side letter. If no such agreement is reached by such date and the **Company**, acting reasonably, determines that such failure is due to the default of the **BS Service Provider**, then without prejudice to any other provision of this **Agreement** no **Monthly Availability Payments** shall accrue due to the **BS Service Provider** from such date until the date when such agreement is finally reached.

4.20.3 The **Black Start Test Parameters and Procedures** shall comprise those matters necessary to meet the objectives referred to in Sub-Clause 4.20.1.1 (**Commissioning Assessment**), 4.20.1.2 (**Capability Assessment**), 4.20.1.3 (**RST**), 4.20.1.3 (**Dead Line Charge**) and 4.20.1.3 (**Reproving Assessments**), as applicable, and shall be consistent therewith, and shall in each case include (without limitation):

4.20.3.1 the **BM Unit ID** for each of the **BS Gensets** and **BM Unit ID** (or other identification) for each of the **BS Auxiliary Units**;

4.20.3.2 the proposed start time and end time for the **Black Start Test Period**, each determined in accordance with Sub-Clause 4.20.4;

4.20.3.3 a proposed running profile, together with underlying **Physical Notification** level and **Maximum Export Limit**, for each of the **BS Gensets** during the **Black Start Test** which meet the requirements of Sub-Clause 4.20.5; and

4.20.3.4 a proposed running profile for each of the **BS Auxiliary Units**.

Black Start Test Period

4.20.4 The start time and end time of a **Black Start Test Period** referred to in Sub-Clause 4.20.3.2 shall, unless otherwise agreed by the **Parties** in writing, be determined as follows:

4.20.4.1 in the case where the running profile comprised within the **Black Start Test Parameters** indicates the **BS Gensets** being **Synchronised** in any **Settlement Periods** in the twelve hour period immediately prior to commencement of the **Black Start Test Period**:-

(a) the start time shall be one hour prior to the time indicated in the running profile for the **BS Genset** to commence **De-Loading** in preparation for **Desynchronisation**; and

(b) the end time shall be one (1) hour after the time indicated in the running profile by which the **BS Gensets** shall have achieved an **Output** equal to its **Physical Notification** level;

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

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

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

- (b) the end time shall be one (1) hour after the time indicated by the running profile for the **BS Gensets** to achieve an **Output** equal to its **Physical Notification** level.
- 4.20.5 The underlying **Physical Notification** level for a **BS Genset** during the **Black Start Test** referred to in Sub-Clause 4.20.3.3 shall, unless otherwise agreed by the **Parties** in writing, be zero (0) MW if the running profile of that **BS Genset** indicates it not being **Synchronised** in any **Settlement Period** in the twelve (12) hour period immediately prior to commencement of the **Black Start Test Period**.
- 4.20.6 The **Dynamic Parameters** for the **BS Gensets** during the **Black Start Test** shall, unless otherwise agreed by the **Parties** in the **Black Start Test Parameters and Procedures**, be those **Dynamic Parameters** which applied at the time of the written notice under Sub-Clause 4.20.1 of the requirement for a **Black Start Test**.
- 4.20.7 Once agreed by the **Parties** in accordance with Sub-Clause 4.20.2, the **Black Start Test Parameters and Procedures** may subsequently be revised by agreement in writing of the **Parties** (not to be unreasonably withheld or delayed) but not so as to fall outside of the **Black Start Test Period**.

Black Start Test Procedure - Conduct

- 4.20.8 In conducting a **Black Start Test**, the **Company** may assess the suitability of, and the performance of the **BS Service Provider's** personnel against, the terms of the **Local Joint Restoration Plan** and/or any **Black Start Situation** procedure which has been developed independently by the **BS Service Provider** (as more particularly referred to in Sub-Clause 4.19.1.6), and such assessment shall (inter alia) be taken into account when determining whether the **BS Service Provider** has passed or failed such **Black Start Test**.
- 4.20.9 Where **The Company** or the **BS Service Provider** reasonably considers that any **Black Start Test**, other than a **Reproving Assessment** (in respect of which Sub-Clause 4.9.4.2.4 (shall apply), would result in it incurring exceptional costs or (in the case of **The Company** only) the safety or security of the **System** being compromised, it may notify the other **Party** of the cancellation of such **Black Start Test**, in which event the **Parties** shall agree a new time for the conduct of such **Black Start Test** and Sub-Clauses 4.20.2 to 4.20.7 and this Sub-Clause 4.20.9 shall apply. Where the **BS Service Provider** unreasonably withholds or delays such agreement, the **Company** may specify a time for the conduct of such **Black Start Test** on no less than one hundred sixty eight (168) hours' notice.

Notices

- 4.20.10 The **BS Service Provider** shall use such telephone and facsimile numbers (or the address for such other electronic means approved from time to time by the **Company**) as may be notified to it by the **Company** from time to time for the purposes of notices to be given or confirmed pursuant to this Sub-Clause 4.20. Service of such notice shall be without prejudice to the **BS Service Provider's**

obligations to notify **BM Unit Data** by means of the **EDL Equipment** pursuant to the **Grid Code** and/or the **Balancing and Settlement Code**.

Black Start Test - Costs

- 4.20.11 Each **Party** shall bear its own costs incurred as a direct result of a **Commissioning Assessment**, a **Capability Assessment**, a **Dead Line Charge Test** and a **Remote Synchronisation Test** save where the **BS Service Provider** fails such **Commissioning Assessment**, **Capability Assessment**, **Dead Line Charge Test** or **Remote Synchronisation Test** (as the case may be), in which event the **BS Service Provider** shall, in addition to bearing its own costs, reimburse to the **Company** all of the **Company's** reasonable resource costs (other than costs incurred in connection with reconfiguring the **National Electricity Transmission System**) and expenses reasonably incurred as a direct result thereof. Additionally, the **BS Service Provider** shall reimburse to the **Company** all of the **Company's** reasonable costs reasonably incurred as a direct result of a **Reproving Assessment** conducted either following an **Event of Default** referred to in Sub-Clause 4.13 (*Events of Default*) or following failure by the **BS Service Provider** of a previous **Reproving Assessment**.

Disputes

- 4.20.12 If a bona fide dispute relates to the performance of the **BS Gensets** or **BS HVDC System** and/or the **BS Auxiliary Units** or the results of a **Black Start Test**, the **Company** and the **BS Service Provider** shall attempt to resolve the dispute by discussion, and if they fail to reach agreement the **BS Service Provider** may require a further test. If the **BS Service Provider** passes such further **Black Start Test**, it shall be deemed to have passed the first test. If the **BS Service Provider** fails such further **Black Start Test** and a dispute arises in respect of that further test, then the **Parties** shall attempt to resolve the dispute by discussion but if they fail to reach agreement within three (3) **Business Days** of the commencement of such discussion either **Party** may refer the matter to the **Independent Expert** for

determination. The **BS Service Provider** shall not be treated as failing any **Black Start Test** if it has given notice of non-capability pursuant to Sub-Clause 4.9 either:-

- 4.20.12.1 before the notice of the relevant test is given in accordance with Sub-Clause 4.20.1; or
- 4.20.12.2 after the notice of the relevant test is given in accordance with Sub-Clause 4.20.1 in respect of matters which the **BS Service Provider** can reasonably demonstrate arose after the giving of such notice.

Forced Cooling

- 4.20.13 If during any **Black Start Test** relating to a power generating facility a **BS Genset** at the **Power Station** is required to be **Shutdown**, any forced cooling of that **BS Genset** undertaken by the **BS Service Provider** shall be at its own cost.

Restrictions on Black Start Tests

- 4.20.14 The **Company** shall not require a **Black Start Test** during periods when the **Black Start Plant** does not have or is deemed not to have the **Black Start Capability** by reason of: -
 - 4.20.14.1 a planned maintenance and/or inspection period agreed pursuant to the **Grid Code**;
 - 4.20.14.2 an event or circumstance of **Force Majeure**;
 - 4.20.14.3 notification in accordance with Sub-Clause 4.9.1; or
 - 4.20.14.4 the terms of this Clause 4 (including Sub-Clauses 4.9.3, 4.9.4, 4.9.5 and 4.12.3) or Annexure B (*Events of Default and Consequences*) to this Clause 4.

Damage to Plant and Apparatus

- 4.20.15 For the avoidance of doubt, each **Party** shall bear the risk of, and the other **Party** shall have no liability to that **Party** in respect of, loss and damage to that **Party's Plant** and/or **Apparatus** caused during or as a result of any **Black Start Test** (whether due wholly or partly to the other **Party's** default or to the malfunction of its **Plant** or **Apparatus** or otherwise).

4.21 Monitoring and Metering

Without prejudice to any existing right of the **Company** to monitor and meter the provision of any **Ancillary Service**, the **Company** by agreement with the **BS Service Provider** (not to be unreasonably withheld or delayed) may monitor and/or meter the provision by the **BS Service Provider** of the **Black Start Service**. The **BS Service Provider** shall for such purposes provide to the **Company** all metering and monitoring data required under the **Grid Code** and otherwise comply with all operational metering requirements set out or referred to in the **Grid Code**.

4.22 Changes to Other Documents

4.22.1 The **Parties** agree to negotiate in good faith and use all reasonable endeavours to agree amendments to this Clause 4 in light of: -

4.22.1.1 any changes to a **Legal Requirement** or industry documentation (including without limitation the **Act**, any **Licence**, the **Balancing and Settlement Code**, the **Grid Code**, the **Connection and Use of System Code**, the **Mandatory Services Agreement** and/or the relevant **Bilateral Agreement**); or

4.22.1.2 the implementation of any new **Legal Requirement** resulting, in either case, in a material change to the manner of provision of the **Black Start Service** by the **BS Service Provider** and/or the basis of payments made to or by the **Company** under this Clause 4, such amendments to have the effect so far as reasonably practicable of making the provision of the **Black Start Service** by the **BS Service Provider** and/or (as the case may be) the basis of payments to or by the **Company** under this Clause 4 no more or less favourable to the respective **Party** as was the case before such variations took effect (ignoring all payments made to the **BS Service Provider** otherwise than pursuant to this **Agreement** which, as a result of the changes to industry documentation as referred to above, shall cease to be payable to the **BS Service Provider** or are otherwise varied).

4.22.2 Failing agreement in respect of the matters contained in Sub-Clause 4.22.1, within thirty (30) days of a **Party** notifying the other **Party** that it intends to refer a matter to the **Independent Expert**, that **Party** shall have the right to invoke the provisions of Clause 18 (*Dispute Resolution*).

4.22.3 It is agreed that neither **Party** shall be entitled to modify, alter or otherwise change the site specific technical conditions under Appendix F1 (relating to the **Black Start Service**) of the **Bilateral Agreement** for the **Power Station** the subject of this **Agreement** referred to in Sub-Clause 4.3.3 so as to remove the reference therein to **Black Start** during such time as terms dealing with the provision of and payment for such **Ancillary Service** are contained in this Clause 4 (as amended, varied or otherwise altered from time to time) and have not either terminated or expired in accordance with the provisions of this Clause 4.

4.23 Independent Expert

4.23.1 Where any provision of this Clause 4 or Schedule E provides for a dispute or difference between the **Parties** to be referred to the **Independent Expert**, the following provisions shall apply:

4.23.1.1 the **Independent 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;

4.23.1.2 if the **Parties** cannot agree upon the selection of an **Independent Expert**, the selection shall be made by the President for the time being of the Law Society of England and Wales;

4.23.1.3 all references to the **Independent Expert** shall be made in writing by either **Party** with notice to the other being given contemporaneously, and the **Parties** shall

promptly supply the **Independent Expert** with such documents and information as he may request when considering any referral;

4.23.1.4 the **Independent Expert** shall be requested to use his 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**;

4.23.1.5 if the **Independent Expert** wishes to obtain independent professional and/or technical advice in connection with the question before him:

- a) he shall first provide the **Parties** with details of the name, organisation and estimated fees of the professional or technical adviser; and
- b) he may engage such advisers with the consent of the **Parties** (which consent shall not be unreasonably withheld or delayed) for the purposes of obtaining such professional and/or technical advice as he may reasonably require;

4.23.1.6 the **Independent Expert** shall not be held liable for any act or omission, and his written decision will be given without any liability on the **Independent Expert's** part to either **Party**, unless it shall be shown that he acted fraudulently or in bad faith;

4.23.1.7 save to the extent otherwise expressly provided herein, pending the determination by the **Independent Expert**, the **Parties** shall continue to the extent possible to perform their obligations; and

4.23.1.8 the **Independent Expert** shall at his discretion be entitled to order that the costs of the reference of a dispute to him shall be paid by the **Parties** in whatever proportions he thinks fit.

4.24 Force Majeure

4.24.1 If either **Party** (the "**Non-Performing Party**") shall be unable to carry out any of its obligations under this **Agreement** due to **Force Majeure**, then without prejudice to the other provisions of this Clause 4 this **Agreement** shall remain in effect but the **Non-Performing Party's** relevant obligations and the obligations of the other **Party** owed to the **Non-Performing Party** under this **Agreement**, shall be suspended for a period equal to the duration of **Force Majeure** provided that:-

4.24.1.1 the suspension of performance is of no greater scope and of no longer duration than is required by the **Force Majeure**;

4.24.1.2 no obligations of any **Party** that arose before the **Force Majeure** causing suspension of performance are excused as a result of the **Force Majeure**;

4.24.1.3 the **Non-Performing Party** gives the other **Party** prompt notice describing the circumstance of **Force Majeure**, including the nature of the occurrence and its

expected duration, and continues to furnish regular reports with respect thereto during the period of **Force Majeure**;

4.24.1.4 the **Non-Performing Party** uses all reasonable efforts to remedy its inability to perform; and

4.24.1.5 as soon as reasonably practicable after the event which constitutes **Force Majeure** the **Parties** shall discuss how best to continue their operations so far as possible in accordance with this Clause 4.

4.24.2 For the purposes of Sub-Clauses 4.6.1.2 and 4.6.4 the **Black Start Service** shall be unavailable and no **Monthly Availability Payment** or **Repayment Amount** shall fall due in respect of and to the extent of any **Settlement Period** in which the **BS Service Provider** is unable to provide the **Black Start Service** due to **Force Majeure**.

4.24.3 The **Expiry Date** shall be extended by the aggregate of all **Settlement Periods** during the term of this Clause 4 in which the **BS Service Provider** is unable to provide the **Black Start Service** due to **Force Majeure**. The **Monthly Availability Payment** and/or the **Repayment Amount** that falls due during any such extension period shall be fixed at the levels set following the final indexation prior to the original **Expiry Date** and will not be subject to any further indexation.

4.25 **BM Unit Registration**

If during the term of this Clause 4 the registration status of any or all of the **Black Start Plant** as (or as part of) a **BM Unit** or as a non-**BM Unit** changes, then the **Parties** shall use all reasonable endeavours to agree such variations to this Clause 4 and Schedule E as shall be necessary in consequence thereof. Failing agreement within thirty (30) days, either **Party** shall have the right to refer the matter to the **Independent Expert** for determination whose decision shall be final and binding on the **Parties**.

4.26 **No Announcement**

Notwithstanding Sub-clause 13.4 (*Confidentiality and Announcements*), the **BS Service Provider** agrees that except as provided in Sub-Clause 13.4.2 it shall not make any public announcement or statement regarding the subject matter of this Clause 4 and/or the status of the **Power Station** or **HVDC System** as a **Black Start Plant** and this Sub-Clause 4.26 shall continue to bind the **BS Service Provider** after termination or expiry of this Clause 4 for whatever reason.

ANNEXURE A TO CLAUSE 4 WORKS PROGRAMME ⁴

Part I

Timescale

1. The **BS Service Provider** shall use its reasonable endeavours to procure that the **Commissioning Assessment** is passed on or before the **Target Commencement Date**. The **Parties** agree that the milestone schedule set out in Part 5 of the **Contract Form** represents an indicative schedule of progress of the **Works**. During progress of the **Works**, but in any event no later than three (3) months prior to completion of the **Works**, both **Parties** shall use their reasonable endeavours to agree the precise technical specification for the test or sequence of tests (a "**Commissioning Assessment**") referred to in Part II below. Such **Commissioning Assessment** shall not include any requirement for **The Company** to issue **Bid-Offer Acceptances**. If the **Parties** shall have failed to reach agreement by the date three (3) months prior to completion of the **Works**, then the matter shall be referred to the **Independent Expert** who shall determine in his absolute discretion the precise technical specification consistent with the summary procedure set out in Part II below.
2. The **BS Service Provider** shall provide to the **Company** monthly reports of how the **Works** are progressing which shall, inter alia, identify any delay or anticipated delay in completing the **Works** and how the **BS Service Provider** proposes to remedy or avoid any such delay or anticipated delay. Moreover, the **BS Service Provider** shall, if so requested by the **Company**, give to the **Company** such evidence as it shall reasonably require and, if necessary, allow **The Company's** representatives all reasonable access to the **Power Station** and to the **Auxiliaries and/or BS Gensets** and **Plant and Apparatus** owned or operated by the **BS Service Provider** to enable **The Company** to ascertain how the **Works** are progressing and that the **Works** are proceeding in accordance with the **Works Programme**. Furthermore, the **BS Service Provider** shall notify **The Company** of its intention to conduct an acceptance test of the **Auxiliaries** and shall, if so requested by **The Company** and at **The Company's** sole cost, allow **The Company's** representatives to be present at such a test as observers.
3. The **BS Service Provider** shall notify the **Company** in writing of the date when the **Works** are substantially completed (including the installation and commissioning of all communications links to enable the **BS Service Provider** to receive **Black Start Instructions**) and the **BS Gensets** and/or the **Auxiliaries** and their associated **Plant and Apparatus** are able in the **BS Service Provider's** opinion to provide the **Black Start Service**.
4. Following receipt of a notice issued by the **BS Service Provider** pursuant to paragraph 3 or 6 (as the case may be):
 - 4.1. the **Company** shall, as soon as reasonably practicable, contact the **BS Service Provider** to agree the date on which the **BS Service Provider** shall carry out a **Commissioning Assessment**, the scope of which is set out in Part II of this Annexure A, to determine whether the **BS Gensets** and/or the **Auxiliaries** and their associated **Plant and Apparatus** have the **Black Start Capability** and are

⁴ Note: this Annexure has been developed to cover the installation and commissioning of an auxiliary generating unit. It may need to be adapted in the case of a HVDC System or a Power Park Module and the changes required will be dependent on the specific works required.

otherwise capable of providing the **Black Start Service** in accordance with Clause []. For the avoidance of doubt, the **Black Start Plant** shall not have the **Black Start Capability** until such time as a **Commissioning Assessment** has been passed in accordance with this Annexure A.

5. Both **Parties** shall use their reasonable endeavours to ensure that the **Commissioning Assessment** is conducted as soon as possible and shall agree the date and time of the **Commissioning Assessment**, provided always that, although **The Company** shall not unreasonably refuse to carry out a **Commissioning Assessment** at any time and date that may be requested by the **BS Service Provider**, having regard to the cost implications the **Company** reserves the right to cancel any **Commissioning Assessment** previously agreed to be carried out. In such a case the **Parties** shall agree an alternative time and date when the **Commissioning Assessment** shall be carried out which shall be as soon as possible thereafter. Either **Party** may request the **Independent Expert** to be present at a **Commissioning Assessment**.
6. As soon as possible after the date on which the **Commissioning Assessment** has been completed, the **Company** shall notify the **BS Service Provider** whether it has passed or failed the **Commissioning Assessment**. Subject to the provisions of paragraph 9, in the event that the **Company** notifies the **BS Service Provider** that in the **Company's** opinion (and giving reasons for that opinion) the **BS Service Provider** has failed any **Commissioning Assessment**, the **BS Service Provider** shall as soon as possible respond to the **Company**. If the **BS Service Provider** does not dispute that there has been a failure, it shall address the reason for the failure and shall subsequently notify **The Company** when the failure has been addressed, whereupon the provisions of paragraphs 4 and 5 shall apply. If the **BS Service Provider** disputes that there has been a failure, the **Parties** shall attempt to resolve the dispute by discussions, and if they fail to reach agreement within three (3) **Business Days** of the commencement of such discussions either **Party** may refer the matter to the **Independent Expert** for determination and the provisions of paragraph 13 shall apply to such reference.
7. Where the **BS Service Provider** is determined by the **Company** or (where appropriate) the **Independent Expert** to have passed the first **Commissioning Assessment** then the **Black Start Plant** shall be deemed to have had the **Black Start Capability** with effect from 00.00 hours on the first day of the calendar month immediately following the date on which the **Commissioning Assessment** was successfully completed
8. For the avoidance of doubt, each **Party** shall bear the risk of, and the other **Party** shall have no liability to the **Party** in respect of, loss and damage to that **Party's Plant** or **Apparatus** caused during or as a result of any **Commissioning Assessment** (whether due wholly or partly to the other **Party's** default or the malfunction of its **Plant** or **Apparatus** or otherwise).
9. Subject always to paragraph 13.2 below, if the **BS Service Provider** shall fail a third successive **Commissioning Assessment**, the **Company** may serve written notice on the **BS Service Provider** terminating the provisions of this **Agreement** and such notice shall take effect immediately.
10. Subject always to paragraphs 12 and 13.2 below, save to the extent due to a **Delay Event**, if the date of a successful **Commissioning Assessment** is:-

- 10.1. after the **Target Commencement Date**, then save to the extent due to an event or circumstance of **Force Majeure** the **BS Service Provider** shall pay to the **Company** without deduction or set off liquidated damages at the daily rate of three thousand pounds Sterling (£3,000) per day in respect of the first sixty (60) days after the **Target Commencement Date** and then one thousand pounds Sterling (£1,000) per day in respect of the next one hundred twenty (120) days after the **Target Commencement Date** (reduced by the number of days between the date originally agreed for a **Commissioning Assessment** and any date subsequently agreed following cancellation by **The Company** pursuant to paragraph 5 above), provided always that such liquidated damages shall not in any event exceed three hundred thousand pounds Sterling (£300,000); and
- 10.2. more than six (6) months after the **Target Commencement Date**, then the **Company** shall have the right to terminate Clause 4 by written notice to the **BS Service Provider** in accordance with Clause 15 (*Notices*).
11. For the purposes of paragraph 10.11 liquidated damages shall be payable by the **BS Service Provider** to the **Company** on a monthly basis in accordance with Clause 8 (*Payment*) of Annexure D Part 2, and the due date shall be ascertained accordingly. If any payment of liquidated damages (not being a payment subject to a bona fide dispute) remains unpaid after the due date of payment and such non-payment continues unremedied at the expiry of fourteen (14) **Business Days** immediately following receipt by the **BS Service Provider** of written notice from the **Company** of such non-payment then the **Company** shall have the right to terminate this Agreement by written notice to the **BS Service Provider** in accordance with Clause 15 (*Notices*). Without prejudice to such right of termination, the **Company** may set off all or any part of any liquidated damages due to it pursuant to this Annexure A against any payments due from it to the **BS Service Provider** pursuant to this **Agreement** and/or any **Mandatory Services Agreement** or other agreement for the provision of **Ancillary Services** to the **Company** to which the **BS Service Provider** is **Party**, and the **BS Service Provider** hereby consents to the exercise of such right.
12. If **Force Majeure** prevents successful completion of a **Commissioning Assessment** within twelve (12) months after the **Target Commencement Date**, the **Company** shall have the right to terminate Clause 4 by written notice to the **BS Service Provider** given in accordance with Clause 15 (*Notices*).
13. Upon any referral to the **Independent Expert** in the circumstances provided in paragraph 6:-
- 13.1. the **BS Service Provider's** obligation to pay liquidated damages to the **Company** under paragraph 10.1 above shall continue notwithstanding the referral provided always that if the **Independent Expert** determines that the relevant **Commissioning Assessment** has been passed, then the **Company** shall repay to the **BS Service Provider** in accordance with Clause 8 (*Payment*) any liquidated damages paid by the **BS Service Provider** pursuant to paragraph 10.1 above in respect of the period after such **Commissioning Assessment** together with interest thereon at the **Base Rate** from the date of payment by the **BS Service Provider**; and
- 13.2. The **Company's** right to terminate this Agreement under paragraphs 9 and 10.2 above shall be suspended and shall have no effect during the period commencing with such referral and ending on the date of determination by the **Independent Expert**.

14. If, following receipt of a monthly report pursuant to paragraph 2 above or in exercise of its rights pursuant to paragraph 2 above or otherwise, the **Company** has reasonable grounds for believing that the **Works** will not be completed on or before the **Target Commencement Date**, then it shall so notify the **BS Service Provider**. The **BS Service Provider** shall within twelve (12) **Business Days** inform the **Company** of the reasons for the delay or anticipated delay and shall at the same time either submit to the **Company** its proposals for remedying or avoiding such delay or anticipated delay or alternatively shall notify the **Company** of such later date by which it reasonably expects the **Works** to be completed and commissioned.
15. If the **Company** has reasonable grounds for believing that despite the **BS Service Provider's** proposals (if any) for remedying or avoiding any delay or anticipated delay the **Works** will not be completed and commissioned within a period six (6) months or (where any delay is caused by **Force Majeure**) twelve (12) months after the **Target Commencement Date**, then the **Company** may request the **Independent Expert** to declare that the **Works** have been abandoned. Upon receipt of such a request, the **Independent Expert** shall determine in his sole opinion whether there is any reasonable prospect of the **Works** being completed by, or within six (6) or twelve (12) months (as the case may be) of, the **Target Commencement Date**. If the **Independent Expert** determines that there is no such reasonable prospect, then he shall so notify the **Company** and the **BS Service Provider** whereupon the following provisions shall apply:-
- 15.1. the **BS Service Provider** shall pay to the **Company** in accordance with Clause 8 (*Payment*) an amount equal to a **Works Contribution Refund Payment** calculated in accordance with the formula in Schedule E, Section 2, Part III as if termination of this **Agreement** had thereupon taken place by way of repayment of the **Works Contribution Payment** (together with interest thereon at the **Base Rate**) referred to at Clause 4.6.1.1;
- 15.2. if either:-
- 15.2.1. the **Works** are subsequently completed or commissioned within a period of six (6) months or (where the delay is caused by **Force Majeure**) twelve (12) months after the **Target Commencement Date**; or
- 15.2.2. before the expiry of such relevant period it is agreed by the **Parties** or determined pursuant to Clause 18 (*Dispute Resolution*) that notwithstanding the **Independent Expert's** determination the **Works** had not at the date of his determination been abandoned and that there are reasonable grounds for believing that the **Works** will be completed before the expiry of such relevant period,
- then by reference to the first practicable **Final Monthly Statement** following such completion and commissioning or agreement or determination (as the case may be) the **Company** shall repay to the **BS Service Provider** the amount paid and referred to in paragraph 15.1 together with interest thereon at the **Base Rate** from the date of payment to the **Company** referred to in paragraph 15.1 above;
- 15.3. if either:-
- 15.3.1. the **Works** are not subsequently completed or commissioned within a period of six (6) months or (where the delay is caused by **Force Majeure**) twelve (12) months after the **Target Commencement Date**; or

15.3.2. before the expiry of such relevant period it is agreed by the **Parties** or determined pursuant to Clause 18 (*Dispute Resolution*) that the **Independent Expert** was correct in his determination that the **Works** had been abandoned or that there are no reasonable grounds for believing that the **Works** will be completed before the expiry of such relevant period,

then the **Company** shall thereupon be entitled to terminate this **Agreement** forthwith by notice in writing to the **BS Service Provider** in accordance with Clause 15 (*Notices*).

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Part II

Commissioning Assessment - Summary Procedure⁵

1. Scope

The precise technical specification for a **Commissioning Assessment** will be comprehensively set out in a detailed specification to be agreed between the **Parties** no later than three (3) months prior to the completion of the **Works** (such agreement not to be unreasonably withheld or delayed) or otherwise determined by the **Independent Expert** pursuant to paragraph 1 of Part I of this Annexure A.

2. Purpose

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

3. Specification

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

The **Commissioning Assessment** shall be deemed to be passed when the **Power Station** has demonstrated that it has performed adequately in all the required tests such that all **Parties** can have confidence that the **Black Start Capability** could be provided if the situation arose to include Installation and commissioning of all communications links to enable the **BS Service Provider** to receive **Black Start Instructions**). It should be noted that performance tests of various types may be conducted after the **Commissioning Assessment** but these will not affect the ability of the **Power Station** to carry out a **Black Start Instruction**.

⁵ Note: this Part has been developed to cover the installation and commissioning of an auxiliary generating unit. It may need to be adapted in the case of a HVDC System or Power Park Module and the changes required will be dependent on the specific works required.

ANNEXURE B TO CLAUSE 4 EVENTS OF DEFAULT AND CONSEQUENCES

| Event of Default (Capability) - Failure of first Commissioning Assessment | Consequences |
|---|---|
| Failure by the BS Service Provider of the first Commissioning Assessment conducted in accordance with Part I and Part II of Annexure A to Clause Error! Reference source not found. | A Repayment Amount shall become payable by the BS Service Provider to The Company , being an amount calculated in accordance with Schedule E, Section 2, 0. |
| Event of Default (Capability) - Notification of non-capability | Consequences |
| Save in respect of a planned maintenance or inspection period agreed pursuant to the Grid Code (evidenced by written notification(s) from the BS Service Provider under Grid Code OC 2.4.1.2.3 and 2.4.1.2.4), failure by the BS Service Provider to notify The Company that the Black Start Plant does not or will not have the Black Start Capability in the manner referred to in Sub-Clause 4.9.1.1 (whether evidenced by a Remote Synchronisation Test, Capability Assessment, Grid Code test or otherwise). | <p>(1) The Black Start Service shall be deemed to be unavailable and Sub-Clause 4.9.4 shall apply; and</p> <p>(2) Upon the first and each successive Event of Default a Repayment Amount shall become payable by the BS Service Provider to The Company, being an amount calculated in accordance with Schedule E, Section 2, 0; and</p> <p>(3) Upon the third and each successive Event of Default within each Assessment Period (reduced pro rata for any Assessment Period shorter than twelve (12) months), in addition to (2) above, The Company shall have the right to terminate Clause 4 by notice in writing to the BS Service Provider to be served not later than twenty eight (28) days following such third or successive Event of Default.</p> |
| Event of Default - Planned Maintenance and Inspection Periods | Consequences |
| In respect of a planned maintenance or inspection period agreed pursuant to the Grid Code (as evidenced by written notification(s) from the BS Service Provider under Grid Code OC 2.4.1.2.3 and 2.4.1.2.4), failure by the BS Service Provider to notify The Company that the Black Start Plant does not or will not have | The Black Start Service shall be deemed to be unavailable during, and there shall be taken into account in the calculation of Black Start Capability Payments those Settlement Periods comprised in, the period commencing at 00.00 on the first day of the planned maintenance or inspection period agreed pursuant to the Grid Code (as notified by the BS Service Provider to The Company under Grid Code OC 2.4.1.2.3 |

| | |
|--|---|
| the Black Start Capability in the manner referred to in Sub-Clause 4.9.1.1. | and 2.4.1.2.4.) and ending at 24.00 hours on the last day of such planned maintenance or inspection period. |
| Events of Default (Black Start Situation) - Black Start Instruction | Consequences |
| <p>Save during a period the subject of a prior notification from the BS Service Provider to The Company as referred to in Sub-Clause 4.9.1 in which the Black Start Plant does not have the Black Start Capability, the failure by the BS Service Provider to comply with The Company's instruction for the initiation and implementation of the Local Joint Restoration Plan in accordance with Sub-Clause 4.10 save to the extent:-</p> <p>(a) the instruction requires the BS Service Provider to sustain the relevant Black Start Contracted MW (or such lesser power output agreed by the BS Service Provider and the Grid Operator) in any Black Start Situation for more than the number of hours and on the basis referred to in Sub-Clause 4.8.1.3; or</p> <p>(b) compliance with the instruction would mean the Black Start Plant could not keep within its safe operating parameters and a subsequent change in output from that Black Start Plant was demonstrated to The Company's reasonable satisfaction to be necessary for safety reasons (whether relating to personnel or Plant and Apparatus);</p> <p>(c) the failure was wholly and directly caused by the unavailability of or constraint on the National Gas Transmission System such that the BS Service Provider was unable to offtake gas in sufficient quantities at that part of the National Gas Transmission System to which the Black Start Station is connected; or</p> | <p>(1) The Black Start Service shall be deemed to be unavailable and Sub-Clause 4.9.4 shall apply; and</p> <p>(2) A Repayment Amount shall become payable by the BS Service Provider to The Company, being an amount calculated in accordance with Schedule E, Section 2 , 0); and</p> <p>(3) In addition to (2) above, The Company shall have the right to terminate Clause Error! Reference source not found. forthwith by notice in writing to the BS Service Provider.</p> |

| (d) the failure was wholly and directly caused by an event or circumstance of Force Majeure . | |
|---|--|
| Events of Default - Failure of Black Start Tests | Consequences |
| The failure by the BS Service Provider to pass a Reproving Assessment carried out as a result of a failure of any Black Start Test (excluding an exercise pursuant to Sub-Clause 4.12). | <p>(1) The Black Start Service shall be deemed to be unavailable and Sub-Clause 4.9.4 shall apply; and</p> <p>(2) A Repayment Amount shall become payable by the BS Service Provider to The Company, being an amount calculated in accordance with Schedule E, Section 2, Part 1.</p> |
| The failure by the BS Service Provider of any Reproving Assessment carried out following failure of both a Black Start Test (excluding an exercise pursuant to Sub-Clause 4.12) and a subsequent Reproving Assessment . | <p>(1) The Black Start Service shall be deemed to be unavailable and Sub-Clause 4.9.4 shall apply; and</p> <p>(2) A Repayment Amount shall become payable by the BS Service Provider to The Company, being an amount calculated in accordance with Schedule E, Section 2, 0.</p> <p>(3) Upon the first and each successive Event of Default, The Company shall have the right to terminate Clause Error! Reference source not found. by notice in writing to the BS Service Provider.</p> <p>(4) Without prejudice to (3) above, The Company may (at its option) meet with the BS Service Provider to discuss the reasons for failure of the Black Start Test and the subsequent Reproving Assessments and, subject to the BS Service Provider identifying the cause(s) for such failure and demonstrating to The Company's reasonable satisfaction that it is able to remove or address such cause(s) before the Expiry Date, The Company may (in its sole discretion) agree with the BS Service Provider a period during which the BS Service Provider shall (at its own cost) undertake</p> |

| | <p>additional works to ensure that the Black Start Capability is restored (“Additional Works Period”). Where The Company agrees to an Additional Works Period, The Company shall only be permitted to terminate Clause Error! Reference source not found. in accordance with (3) above, where either:-</p> <p>(i) the BS Service Provider advises that the additional works will not be completed within the Additional Works Period;</p> <p>(ii) following completion of the additional works, the BS Service Provider fails a subsequent Reproving Test.</p> |
|---|--|
| Events of Default – Public Announcement | Consequences |
| Any breach by the BS Service Provider of its obligation contained in Sub-Clause 4.26 (<i>No Announcement</i>). | The Company shall have the right to terminate Clause Error! Reference source not found. forthwith by notice in writing to the BS Service Provider . |

**ANNEXURE C TO CLAUSE 4
ANNUAL ASSESSMENT OF BLACK START CAPABILITY**

| % Black Start Capability over each Assessment Period by reference to Target Availability in the relevant Assessment Period (“ TA_y ”) | Consequences |
|--|---|
| ≥ TA_y | None. |
| Year 1 < TA_y ≥ 90% Year 2 < TA_y ≥ 90% Year 3 < TA_y ≥ 90% Year 4 < TA_y ≥ 90% Year 5 < TA_y ≥ 90% | The BS Service Provider shall pay to The Company in accordance with Clause 8 (<i>Payment</i>) of Annexure D Part 2 the Annual Availability Shortfall Payment calculated in accordance with the formulae set out in Schedule E, Section 2, 0. |
| < 90% | Either (at The Company's absolute discretion): (1) The BS Service Provider shall pay to The Company in accordance with Clause 8 (<i>Payment</i>) of Annexure D Part 2 the Annual Availability Shortfall Payment calculated in accordance with the formulae set out in Schedule E, 0; or (2) The Company shall implement a reduction in the Availability Price specified in Schedule E, Section 3, 0 equivalent to the percentage unavailability of the Black Start Capability over the Assessment Period and shall revise the calculation of Monthly Availability Payments due to the BS Service Provider in respect of the Assessment Period accordingly and recover any overpayment of Monthly Availability Payments from the BS Service Provider by reference to the first practicable Final Monthly Statement after |

| | |
|--|---|
| | <p>expiry of the Assessment Period. Further, the Parties shall discuss and endeavour to agree appropriate amendments to Clause Error! Reference source not found. to reflect the reduced value to The Company of the Black Start Service. Provided always that, if no such agreement shall by then have been reached, The Company shall be entitled to terminate Clause Error! Reference source not found. forthwith by notice in writing to the BS Service Provider to be served at any time until the end of one (1) month following expiry of the relevant Assessment Period (or one month following completion of the assessment, if later).</p> |
|--|---|

ANNEXURE D TO CLAUSE 4 REMOTE SYNCHRONISATION TEST/DEAD LINE CHARGE TEST

PART 1 – RST SUMMARY PROCEDURE

1. The precise technical requirements for a **RST** will be comprehensively set out in the '**RST** procedure' as amended from time to time and to be agreed by the **BS Service Provider** prior to the test (such agreement not be unreasonably withheld or delayed).
2. A **RST** will require the **BS Service Provider** to energise from dead a local busbar, a circuit(s), a transformer(s) and a remote busbar and then synchronise onto a live busbar that is already synchronised to the **National Electricity Transmission System**.
3. At the start of the energisation process, the **BS Service Provider** circuit breaker will be closed to energise the test part of the system. The energisation process may require, when the relevant circuit breaker is closed the voltage level to be gradually increased to meet a target HV voltage level.
4. The **BS Service Provider** may be required to operate for up to one hour at no load at **Synchronous Speed** while the **Genset's/HVDC System's** ability to control voltage and **Frequency** on the test system is verified. If forced cooling of the **Genset** is required to enable such operation to be permissible, then the cost of such cooling should be the sole responsibility of the **BS Service Provider**.
5. All reasonable care will be undertaken in preparing the **RST** procedure such that neither the energisation process nor the remote **Synchronisation** process will cause damage to **Plant** or equipment owned by the **BS Service Provider** or the **Company**, however all risks of damage to a **Party's Plant** or equipment shall be borne by that **Party**.
6. The **BS Service Provider** will be required to provide substation indications to enable the test to be co-ordinated from the **BS Service Provider's** control room.

PART 2 – DEAD LINE CHARGE TEST SUMMARY PROCEDURE

1. A **Dead Line Charge Test** will be carried out in the same manner as a **Remote Synchronisation Test** with the exception that the **Black Start Plant** is not synchronised to the **National Electricity Transmission System** at the remote busbar. This test confirms the **BS Service Provider's** ability to charge a dead part of the network and its ability to control parameters at the remote end.

1. NOT USED
2. NOT USED
3. NOT USED
4. NOT USED
5. NOT USED
6. NOT USED
7. NOT USED

8. **PAYMENT**

The **Parties** agree that the provisions of Paragraph 4.3.2 of the **Connection and Use of System Code** shall apply to payments made by the **Company** to the **Generator** (and by the **Generator** to the **Company**) pursuant to this **Agreement** in respect of the provision of the **Black Start Service** as if set out in full herein.

9. **LIMITATION OF LIABILITY**

- 9.1 Subject to Sub-Clause 9.2, save where any provision of this **Agreement** 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 this **Agreement** other than for loss directly resulting from such breach and which at the date of this **Agreement** was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:-

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

- 9.1.2 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 £5 million per incident or series of related incidents.

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

- 9.3 Subject to Sub-Clause 9.2 and save where any provision of this **Agreement** 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:-

- 9.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 9.3.2 any indirect or consequential loss; or
- 9.3.3 loss resulting from the liability of the other **Party** to any other person howsoever and whensoever arising save as provided in Sub-Clause 9.1.2 and Sub-Clause 9.2.
- 9.4 Each **Party** acknowledges and agrees that the other **Party** holds the benefit of Sub-Clauses 9.1, 9.2 and 9.3 for itself and as trustee and agent for its officers, employees and agents.
- 9.5 The rights and remedies provided by this **Agreement** to the **Parties** are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this **Agreement**, including 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 this **Agreement** and undertakes not to enforce any of the same except as expressly provided herein.
- 9.6 For the avoidance of doubt, the **Parties** acknowledge and agree that nothing in this **Agreement** 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.
- 9.7 Each of Sub-Clauses 9.1, 9.2, 9.3 and 9.4 shall:-
- 9.7.1 be construed as a separate and severable contract term, and if one or more of such Sub-Clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Sub-Clauses shall remain in full force and effect and shall continue to bind the **Parties**; and
- 9.7.2 survive termination of this **Agreement**.
- 9.8 For the avoidance of doubt, nothing in this Clause 9 shall prevent or restrict any **Party** enforcing any obligation (including suing for a debt) owed to it under or pursuant to this **Agreement**.
- 9.9 Each **Party** acknowledges and agrees that the provisions of this Clause 9 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this **Agreement**.
10. **METERING**
- 10.1 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**.

10.2 The relationship between the **Parties** with respect to **Operational Metering Equipment** shall be regulated by Paragraph 6.7.3 of the **Connection and Use of System Code**.

11. **TERMINATION**

11.1 This **Agreement** shall automatically terminate upon:-

11.1.1 the **Generator** ceasing to be party to the **BSC Framework Agreement**; or

11.1.2 the **Generator** ceasing to be party to the **CUSC Framework Agreement**; or

11.1.3 revocation or withdrawal of the **Generation Licence** or the **Transmission Licence**.

11.2 Upon termination of any **Bilateral Agreement**, this **Agreement** shall automatically be terminated to the extent that it applies to the **BM Units** at, and the **Black Start Service** supplied or made available from, the **Connection Site** which is the subject of the said **Bilateral Agreement**.

11.3 Where the **Generator** serves notice to **Disconnect** the **Generator's Equipment** at a **Connection Site** under a **Bilateral Agreement** or the **Connection and Use of System Code**, the **Parties** shall discuss the possibility of terms being offered for the continued provision (following the date when **Disconnection** would otherwise have occurred) of the **Black Start Service** which was being provided by the **Generator** at that **Connection Site** immediately before service of the notice to **Disconnect** and for which the **Company** is unable to find a reasonable alternative.

11.4 Without purporting to exhaustively specify within this Sub-Clause 11.4 the circumstances in which no payments will be made under this **Agreement**, no payments will be made under this **Agreement** (save for the initial payment), in respect of the **Black Start Service** to be provided from a **BM Unit** in relation to any period when the **BM Unit** or **CCGT Unit** or the **Generator's Equipment** at any **Connection Site** used by that **BM Unit** or **CCGT Unit** is prevented from providing that **Agreed Ancillary Service** by reason of a circumstance of **Force Majeure** or is **Deenergised** or **Disconnected** for any reason pursuant to the relevant **Bilateral Agreement** or the **Connection and Use of System Code**.

Termination by the BS Service Provider

11.4.1 In the event that:-

11.4.1.1 The **Company** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the **BS Service Provider**, notified to the **Company** and corrected within 48 hours following such notification) any amount properly due or owing from it pursuant to this **Agreement** according to its terms and such non-payment continues unremedied and not disputed in good faith and upon reasonable grounds at the expiry of 7 **Business Days** immediately following

receipt by the **Company** of written notice from the **BS Service Provider** of such non-payment; or

11.4.2 in respect of the **Company**:-

11.4.2.1 an order of the High Court is made or an effective resolution passed for its insolvent winding-up or dissolution; or

11.4.2.2 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

11.4.2.3 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

11.4.2.4 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**);

11.4.2.5 it is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 save that such section shall have effect as if for £750.00 there was inserted £250,000 (and the **Company** 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 28 days of appointment of the liquidator, receiver, administrative receiver, administrator nominee or other similar officer, such person has not provided to the **BS Service Provider** a guarantee of future performance by the **Company** of this **Agreement** in such form and amount as the **BS Service Provider** may reasonably require, the **BS Service Provider** may declare by notice in writing to the **Company** that such event has become an event of default. Once the **BS Service Provider** has given due and proper notice of an event of default this **Agreement** shall terminate.

11.5 Termination of this **Agreement** shall not affect any rights or obligations of the **Parties** which have accrued at the time of such termination.

12. **ASSIGNMENT**

12.1 The **BS Service Provider** shall not assign or transfer nor purport to assign or transfer the benefit or burden of this **Agreement** save in the following circumstances:-

12.1.1 the **BS Service Provider** may assign or charge its benefit under this **Agreement** in whole or in part by way of security;

12.1.2 upon the disposal of the whole of the **BS Service Provider's** business or undertaking, the **BS Service Provider** may transfer its rights and obligations under this **Agreement** to the purchaser thereof provided that the transfer to the purchaser of all of its rights and obligations under the **Connection and Use of**

System Code, all **Bilateral Agreements** (and associated **Construction Agreements**) and all **Mandatory Services Agreements** shall have taken place;

12.1.3 upon disposal of part of the **BS Service Provider's** business or undertaking comprising **Black Start Plant**, the **Generator** may transfer its rights and obligations under this **Agreement** to the purchaser thereof provided that the transfer to the purchaser of all of its rights and obligations under those **Bilateral Agreements** (and associated **Construction Agreements**) and **Mandatory Services Agreements** relevant to the part of the business or undertaking to be transferred shall have taken place.

12.2 The **Company** shall not assign or transfer nor purport to assign or transfer the benefit or burden of this **Agreement** save to the holder of a **Licence** with responsibility for carrying out the **Balancing Services Activity**.

13. **CONFIDENTIALITY AND ANNOUNCEMENTS**

13.1 **General Restrictions**

13.1.1 Subject to the exceptions provided in Sub-Clause 13.2 (and to the extent otherwise expressly permitted by this **Agreement**, neither **Party** shall, at any time, whether before or after the expiry or sooner termination of this **Agreement**, 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 this **Agreement**):-

13.1.1.1 any of the contents of this **Agreement**;

13.1.1.2 any commercially confidential information relating to the negotiations concerning the entering into of this **Agreement**;

13.1.1.3 any commercially confidential information which may come to a **Party's** knowledge in the course of such negotiations; or

13.1.1.4 any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other **Party**.

13.1.2 Each **Party** undertakes to use information referred to in Sub-Clause 13.1.1 and disclosed to it by the other **Party** solely for the purposes of this **Agreement** and shall not use it for any other purpose or for the purposes of any third party.

13.2 **Exceptions**

13.2.1 The restrictions imposed by Sub-Clause 13.1 shall not apply to the disclosure of any information:

13.2.1.1 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 this **Agreement** or which it receives from a third party independently entitled to disclose it;

- 13.2.1.2 which is required by law or pursuant to the rules of the **Electricity Arbitration Association** in England and Wales or pursuant to the rules or regulations of the Financial Services Authority to be disclosed to any person who is authorised by law or pursuant to the rules of the **Electricity Arbitration Association** in England and Wales or pursuant to the rules or regulations of the Financial Services Authority to receive the same;
- 13.2.1.3 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;
- 13.2.1.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
- 13.2.1.5 in accordance with the provisions of the **Balancing and Settlement Code** or pursuant to any **Licence** of the **Party** concerned;
- 13.2.1.6 by either **Party** to any parent undertaking on a “need to know” basis only;
- 13.2.1.7 to any authorised consultants, banks, financiers, insurers or professional advisers to the disclosing **Party**;
- 13.2.1.8 by the **BS Service Provider** to a third party who is a party to a power purchase agreement and/or tolling agreement in respect of the electricity generated by the **Black Start Plant** and with whom all (or some of) the risks and benefits arising from the **Agreement** will be shared provided such party is subject to confidentiality undertakings which are no less onerous than those to which the **BS Service Provider** is subject to under this **Agreement**;
- 13.2.1.9 by the **Company** to any parent, subsidiary or fellow subsidiary undertaking; or
- 13.2.1.10 required or expressly permitted to be disclosed under the terms of any agreement or arrangement (including this **Agreement**, the **Connection and Use of System Code**, any **Bilateral Agreement** (and associated **Construction Agreement**), any **Mandatory Services Agreement**, the **Grid Code**, the **Distribution Code** and the **Fuel Security Code** (if any)) to which both the **Parties** have agreed to be bound.
- 13.2.2 In this Sub-Clause 13.2 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.

13.3 **Third Parties**

Before either **Party** discloses any information in any of the circumstances described in Sub-Clauses 13.2.1.6 to 13.2.1.8 (other than to its authorised professional advisers), it shall notify the other **Party** of its intention to make such disclosure and 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 13.

13.4 **Public announcements**

- 13.4.1 Subject to Sub-Clause 13.4.2, no public announcement or statement regarding the signature, performance or termination of this **Agreement** shall be issued or made unless 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).
- 13.4.2 Neither **Party** shall be prohibited from issuing or making any such public announcement or statement if 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.

13.5 **Procedures**

With respect to the information referred to in Sub-Clause 13.1.1, both **Parties** shall ensure that:-

- 13.5.1 such information is disseminated within their respective organisations on a “need to know” basis only;
- 13.5.2 employees, directors, 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
- 13.5.3 any copies of such information, whether in hard copy or computerised form, will clearly identify the information as confidential.

13.6 **Termination**

Notwithstanding any other provision of this **Agreement**, the provisions of this Clause 13 shall continue to bind a person after termination of this **Agreement**, in whole or in part, for whatever reason.

14. **WAIVER**

No delay by or omission of any **Party** in exercising any right, power, privilege or remedy under this **Agreement** shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Payment of any sum or the submission of any **Provisional Monthly Statement** or **Final Monthly Statement** by the **Company** to the **Generator** under this **Agreement** shall not operate to impair or be construed as a waiver of any right, power, privilege or remedy the **Company** may have against the **Generator** under this **Agreement** and/or the **Grid Code** and/or the **Connection and Use of System Code** and/or any **Bilateral Agreement** (including any associated **Construction Agreement**) and/or any **Mandatory Services Agreement**.

15. **NOTICES**

- 15.1 Any notice or other communication to be given by one **Party** to the other under, or in connection with the matters contemplated by, this **Agreement** shall be addressed to the recipient and sent to the address or facsimile number of such other **Party** given in Part 9 (*Notices*) of the **Contract Form** for the purpose and marked for the attention of the person so given or to such other address or

facsimile number and/or marked for such other attention as such other **Party** may from time to time specify by notice given in accordance with this Clause 15 to the **Party** giving the relevant notice or other communication to it.

- 15.2 Any notice or other communication to be given by one **Party** to the other **Party** under, or in connection with the matters contemplated by, this **Agreement** shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile, and shall be deemed to have been received:-
- 15.2.1 in the case of delivery by hand, when delivered; or
- 15.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or
- 15.2.3 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.

16. **COUNTERPARTS**

This **Agreement** may be executed in any number of counterparts and by the different **Parties** on separate counterparts, each of which when executed and delivered shall constitute an original but all the counterparts shall together constitute but one and the same instrument. For the purposes of this Clause 16, the delivery of a facsimile copy of a signed counterpart of this **Agreement** shall be deemed to be valid signature thereof provided that the **Party** so delivering a facsimile hereby undertakes to deliver an original copy of this **Agreement** forthwith following such facsimile transmission.

17. **VARIATIONS**

- 17.1 Subject to Sub-Clause 17.2 no variations or amendments to this **Agreement** shall be effective unless made in writing and signed by or on behalf of both the **Company** and the **BS Service Provider**.
- 17.2 The **Company** and the **BS Service Provider** shall effect any amendment required to be made to this **Agreement** by the **Authority** as a result of a change in the **Transmission Licence** or an order or directions made pursuant to the **Act** or a **Licence** or as a result of settling any of the terms hereof or otherwise as required by this **Agreement** and the **BS Service Provider** hereby authorises and instructs the **Company** to make any such amendment on its behalf and undertakes not to withdraw qualify or revoke such authority or instruction at any time.

18. **DISPUTE RESOLUTION**

- 18.1 Save where expressly stated in this **Agreement** 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 shall be and is hereby referred to arbitration pursuant to the rules of the **Electricity Arbitration Association** in force from time to time.

- 18.2 Whatever the nationality, residence or domicile of either **Party** and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (notwithstanding anything in section 108 thereof) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

19. **JURISDICTION**

- 19.1 Subject and without prejudice to Clause 18 (*Dispute Resolution*) and to Sub-Clause 19.4, both **Parties** irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this **Agreement** and that accordingly any suit, action or proceeding (together in this Clause 19 referred to as “**Proceedings**”) arising out of or in connection with this **Agreement** may be brought to such courts.

- 19.2 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 19 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 be conclusive and binding upon such **Party** and may be enforced in the courts of any other jurisdiction.

- 19.3 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**.

- 19.4 For the avoidance of doubt nothing contained in the foregoing provisions of this Clause 19 shall be taken as permitting a party to commence **Proceedings** in the courts where this **Agreement** otherwise provides for **Proceedings** to be referred to arbitration.

20. **GOVERNING LAW**

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

21. **SEVERANCE OF TERMS**

If any provision of this **Agreement** 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 this **Agreement** which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

22. **ENTIRE AGREEMENT**

This **Agreement** contains or expressly refers to the entire agreement between the **Parties** with respect to the subject matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and

supersedes all previous agreements and understandings between the **Parties** with respect thereto and 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 this **Agreement** upon which it has relied in entering into this **Agreement**. 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 this **Agreement**, unless such warranty or misrepresentation was made or given fraudulently.

23. **RIGHTS OF THIRD PARTIES**

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 this **Agreement** save as expressly provided in this **Agreement**.

24. **ANTI-BRIBERY**

24.1 Each **Party** shall:

- 24.1.1 comply with all **Anti-Bribery Laws**;
- 24.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the **Bribery Act** if such activity, practice or conduct had been carried out in the UK;
- 24.1.3 have and shall maintain in place throughout the term of this **Agreement** its own policies and procedures, including **Adequate Procedures** to ensure compliance with the **Anti-Bribery Laws**, and this Sub-Clause 24.1 and will enforce them where appropriate; and
- 24.1.4 procure and ensure that all of its **Associated Persons** and/or other persons who are performing services and/or providing goods pursuant to this **Agreement** comply with this Sub-Clause 24.1.

24.2 Without prejudice to any other rights or remedies either Party may terminate this **Agreement** on written notice to the other **Party** specifying the date on which this **Agreement** will terminate in the event of a breach of Sub-Clause 24.1.

SCHEDULE E BLACK START CAPABILITY SECTION 1 – AVAILABILITY PAYMENTS

Part I Monthly Availability Payment

1. TOTAL MONTHLY PAYMENT

$$TMP_m = BSAP_m - RA_m$$

Where:

TMP_m is the total monthly payment by **The Company** to the **BS Service Provider** pursuant to Clause 4;

$BSAP_m$ is defined in paragraph 2 below;

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

and if TMP_m is negative, then the **BS Service Provider** shall pay to **The Company** such amount in accordance with Clause 8 (*Payment*) of Annexure D Part 2.

2. MONTHLY AVAILABILITY PAYMENT

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

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

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

$BSAP_j$ is the **Black Start Availability Price** for all **Settlement Periods j** subject to indexation in accordance with Schedule E, **Error! Reference source not found.**, Part IV; and

$BSAM_j$ is 0 in respect of each **Settlement Period j** in which the **Black Start Plant** does not have the **Black Start Capability** (including by reason of an **Event of Default**), or is deemed not to have the **Black Start Capability** in accordance with Sub-Clause 4.9, Sub-Clause 4.12.3 or Sub-Clause 4.19.3, otherwise 1.

3. REPAYMENT AMOUNTS

(a)

$$RAF_m = \sum_{n=1}^m BSAP_m$$

Where:

RAF_m is the **Repayment Amount** referred to in the **Capability** (Failure of first **Commissioning Assessment**) section of the table in Annexure B to Clause 4; and

$\sum_{n=1}^m$ is the summation over all calendar months' m in the period commencing on the **Provisional Service Commencement Date** and ending on the date of failure of the first **Commissioning Assessment** in calendar month m.

(b)

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

Where:

RAC_m is the **Repayment Amount** referred to in the Capability (Notification of non-capability) section of the table in Annexure B to Clause 4;

$\sum_{j=1}^{EventofDefault}$ Is the summation over each **Event of Default** referred to in the Capability section of the table in Annexure B to Clause 4; and

$\sum_{j=1}^{j=x}$ is the summation over each **Settlement Period j** prior to the **Event of Default** beginning with the **Settlement Period** in which the **Black Start Plant** was last demonstrated to **The Company's** reasonable satisfaction to have the **Black Start Capability**.

(c)

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

Where:

$RABS_m$ is the **Repayment Amount** referred to in the **Black Start Situation** section and the **Black Start Test** section of the table in Annexure B to Clause 4;

$\sum_{j=1}^{EventofDefault}$ is the summation over each **Event of Default** referred to in the **Black Start Situation** section of the table in Annexure B to Clause 4; and

$$\sum_{j=1}^{j=y}$$

is the summation over each **Settlement Period** j prior to the **Event of Default** beginning with the commencement of Clause 4 or, if later, the last successful initiation and implementation of the **Local Joint Restoration Plan** in a **Black Start Situation** or during a **Grid Code** test or **Remote Synchronisation Test**.

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Part II

Annual Availability Shortfall Payment

4. CALCULATION OF ANNUAL AVAILABILITY SHORTFALL PAYMENT

- 4.1 For the purposes of Clause 4.15 and Annexure C to this Clause 4, the **Annual Availability Shortfall Payment** (AASP) shall be calculated as follows:

$$AASP_y = (MR_y * RFA_y)$$

$AASP_y$ is the **Annual Availability Shortfall Payment** due to the **Company** from the **BS Service Provider** in respect of **Assessment Period y** (as defined in Sub-Clause 4.15.1);

MR_y is defined in paragraph 4.2 below; and

RFA_y is calculated in accordance with paragraph 4.3 below.

4.2 Calculation of maximum amount repayable (MR_y) in respect of any single Assessment Period

In circumstances where a **Works Contribution Payment** has been made (but not otherwise) the maximum aggregate amount payable by the **BS Service Provider** to the **Company** by way of **Annual Availability Shortfall Payments** in respect of **Assessment Period y** (MR_y) is calculated as follows:

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

Where:

A is a fraction, being the **Assessment Period y** divided by the term of Clause 4 (as defined in Sub-Clause 4.4.2);

WCP is the amount of total **Works Contribution Payments**; and

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

4.3 Calculation of RFA_y in respect of any single Assessment Period

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

Otherwise

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

Where:

TA_y is the **Target Availability** as specified in Part 8 (*Target Availability*) of the **Contract Form**;

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

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

Where:

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

$BSAMA_j$ is 0 in respect of each **Settlement Period** j in which the **Black Start Plant** does not have **Black Start Capability** as provided in Sub-Clause 4.9 (excluding where due to events or circumstances of **Force Majeure** or where the **Company** has approved a period of withdrawal of **Black Start Capability** pursuant to Sub-Clause 4.15.4), otherwise 1; and

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

Part III

Works Contribution Refund Payment

The **Works Contribution Refund Payment** ($WCRP_t$) referred to in Sub-Clauses 4.5.3, 4.15.8, 4.17.2 and paragraph 15.1 of Annexure A shall be calculated in accordance with the following applicable formulae:-

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

Where: -

$WCRP_t$ is the **Works Contribution Refund Payment** payable by the **BS Service Provider** to the **Company**;

WCP_1 is the sum of all **Works Contribution Payments** (including VAT thereon) paid by the **Company** to the **BS Service Provider**;

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

f_1 is a factor equal to either:

- (i) prior to the date of successful completion of the **Works**, 1: or
- (ii) from and including the date of successful completion of the **Works**:

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

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

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

$AASP_y$ is all **Annual Availability Shortfall Payments** paid or payable by the **BS Service Provider** to the **Company** over the term of Clause 4.

Part IV

Indexation Formulae

The **Black Start Availability Price** specified in Part 7 (*Black Start Availability Price*) of the **Contract Form** will be adjusted annually commencing on [] to take account of general price inflation. The index used will be the Consumer Prices Index (CPI) with 2015 = 100 base.

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

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

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

Where

CPI_2 is the CPI for the month of []

CPI_1 is the CPI for the month of []

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

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

Where

CPI_3 is the CPI for the month of []

CPI_1 is the CPI for the month of []

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

In the event that CPI ceases to be published or is not published in respect of any relevant month or it is not practicable to use CPI because of a change in the method of compilation or some other reason, indexation for the purpose of this Part IV shall be calculated by the **Company** 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.

SECTION 2 - NOTIFICATION FORMATS

NOTIFICATION OF NON-CAPABILITY AND RESTORATION OF CAPABILITY FOR BLACK START

[NAME OF BS SERVICE PROVIDER]

Optional Logo

StationTelephone:

Standby Tel:

Fax:

Standby Fax:

NOTIFICATION TIME

| | | |
|-----------------|-----------------|--|
| HRS:MINS | DD/MM/YY | CONFIRMATION OF A TELEPHONE CONVERSATION? ✓ |
| | | BETWEEN OF NATIONAL GRID AND OF [NAME OF BS SERVICE PROVIDER] |

PERIOD OF NON-CAPABILITY

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

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

REASON FOR NON-CAPABILITY

| |
|--|
| |
|--|

RESTORATION OF-CAPABILITY

| | TIME (hrs:mins) | DATE (dd/mm/yy) |
|---------------------------------|--------------------|--------------------|
| TIME/DATE OF RESTORATION | | |

Fax Sent By (Print name):

Signature:

Date:

Time:

Acknowledged by National Grid Electricity System Operator Limited:

Signature:

Date:

Time:

| | | |
|-----------------------------------|---|--|
| NATIONAL GRID USE ONLY | SENT TO O & T SETTLEMENTS? ✓ | |
|-----------------------------------|---|--|

National Grid Control Centre

Fax:

0870 602 4809

Standby Fax: 0870 602 4802

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REQUEST TO REVISE CONTRACT DATA FOR BLACK START

[NAME OF BS SERVICE PROVIDER]

Optional Logo

StationTelephone:

Standby Tel:

Fax:

Standby Fax:

NOTIFICATION TIME

| | |
|-----------------|-----------------|
| HRS:MINS | DD/MM/YY |
| | |

| | |
|---|--|
| CONFIRMATION OF A TELEPHONE CONVERSATION? ✓ | |
| BETWEEN OF NATIONAL GRID AND OF [NAME OF BS SERVICE PROVIDER] | |

REDECLARATION OF CONTRACT DATA

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

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

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

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

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

Fax Sent By (Print name):

Signature:

Date:

Time:

Acknowledged by **National Grid Electricity System Operator Limited:**

Signature:

Date:

Time:

| | | |
|-------------------------------|-----------------------------|--|
| NATIONAL GRID USE ONLY | SENT TO O & T SETTLEMENTS?✓ | |
| | SENT TO O & T CONTRACTS?✓ | |

National Grid Control Centre

Fax: 0870 602 4809
Standby Fax: 0870 602 4802

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AGREEMENT OF BLACK START TEST PARAMETERS⁶

[BS SERVICE PROVIDER'S NAME]
[] POWER STATION

| AGREEMENT REFERENCE NUMBER | IDENTITY OF BS GENSET [BM UNIT ID] | BLACK START TEST DATE | BLACK START TEST PERIOD START TIME | BLACK START TEST PERIOD END TIME |
|----------------------------|------------------------------------|-----------------------|------------------------------------|----------------------------------|
| | | | | |

BS GENSET:

| PARAMETERS | [BM UNIT ID] |
|----------------------------------|--------------------|
| Physical Notification Level (MW) | |
| Maximum Export Limit (MW) | |
| Bid Price (£/MWh) | |
| Offer Price (£/MWh) | Equal to Bid Price |
| MZT (Hours) | |
| Min Desync Interval (Hours) | |
| Min Sync Interval(Hours) | |

BS AUXILIARY UNIT:

| PARAMETERS | [BM UNIT ID] |
|-----------------------------|--------------|
| Physical Notification Level | Zero |
| Maximum Export Limit (MW) | |

| PROPOSED RUNNING PROFILE(S) FOR THE BS GENSET |
|---|
| Appended hereto. |

The aforementioned Black Start Test Parameters and Running Profiles are agreed pursuant to Sub-Clause [4.20] by:

Signature: Date: Time:

Authorised Signatory

On behalf of []

Signature: Date: Time:

Electricity Balancing and Energy Trading Manager

On behalf of **National Grid Electricity System Operator Limited**

⁶ This will require updating for a HVDC System or a Power Park Module

| | | |
|------------------------|--|--|
| NATIONAL GRID USE ONLY | COPY TO CONTRACTS, OPS POLICY & SETTLEMENTS? ✓ | |
|------------------------|--|--|

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