ESO

Balancing Reserve
Service Terms - Compare

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1. Introduction

1.1. These **BR Service Terms** describe the requirements for provision of **Balancing Reserve** procured by **NGESO** under **Auctions** and the basis upon which **NGESO** shall make payments in respect thereof, and shall apply to each **Service Provider** and **BR Unit** the subject of a **BR Contract** (where, in accordance with the **BR Procurement Rules**, and for any **BR Service Window**, the **Service Provider's Sell Order** for that **BR Unit** is accepted (or partially accepted) by **NGESO**~~.~~ so as to render that **BR Unit** a **Contracted BR Unit** and that **BR Service Window** a **Contracted Service Window**).

1.2. Each **BR Contract** so formed shall create a legally binding obligation on the **Service Provider** to provide from the relevant **Contracted BR Unit**, and for **NGESO** to pay for, **Balancing Reserve** to be delivered during the relevant ~~**BR**~~**Contracted Service Window** upon the terms of these **BR Service Terms**.

1.3. A **BR Contract** shall relate to a single **Contracted BR Unit** and shall apply only to a single ~~**BR**~~**Contracted Service Window**.

1.4. For the avoidance of doubt:-

1.4.1 except as otherwise provided in these **BR Service Terms**, neither a **Service Provider** nor **NGESO** shall be under any obligation or commitment to respectively provide or pay for **Balancing Reserve** except pursuant to a **BR Contract** formed in respect of that **Contracted BR Unit** for a ~~**BR**~~**Contracted Service Window**; and

1.4.2 **Service Providers** may continue to contribute towards **NGESO**'s requirement for **Regulating Reserve** on an optional basis by participating in the **Balancing Mechanism** outside of any **BR Contract** (including during periods where **Balancing Reserve** is or is deemed to be unavailable as described in these **BR Service Terms**).

1.5. Neither **Party** may terminate a **BR Contract** once formed except as provided or referred to in paragraph 17 or by agreement in writing between the **Parties**.

1.6. These **BR Service Terms** should be read alongside the **BR Procurement Documentation** of which they form a part.

2. Changes to these BR Service Terms

2.1 Subject always to paragraph 2.2, **NGESO** may update these **BR Service Terms** from time to time by publication of an updated version on its website, and each such updated version shall be effective from the date shown on its front cover provided always that any updated version shall not apply to any **BR Contract** extant at the date of publication except with the consent in writing of the relevant **Service Provider**.

2.2 To the extent required by the **Electricity Balancing Regulations** (and by reference to those provisions of the **BR Procurement Documents** constituting terms and conditions approved by the **Authority** as the terms and conditions related to balancing pursuant to Article 18 of the **Electricity Balancing Regulations**), any variation to these **BR Service Terms** will be proposed and implemented in accordance with the applicable requirements in the **Electricity Balancing Regulations**.

3. Defined Terms

3.1 Unless ~~defined in these **BR Service Terms**, or~~ the context otherwise requires, ~~any capitalised term~~ terms used in these **BR Service Terms** shall have the ~~meaning~~meanings given to ~~it~~each (if any) in~~-~~:-

3.1.1 Schedule 1;

3.1.2 the prevailing **BR Procurement Rules**~~ or~~;

~~3.1~~3.1.3 the prevailing **Balancing Services Glossary of General Terms and Rules of Interpretation** ~~(as the case may be).~~ .

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3.2 Where a term is defined in Schedule 1 and also in either or both of the documents referred to at paragraphs 3.1.2 and 3.1.3, the meaning given in Schedule 1 shall prevail unless the context otherwise requires.

~~3.2~~3.3 For the purposes of paragraph 3.1, with respect to any **BR Contract**, "prevailing" shall mean the latest version of the applicable document which is in effect at the time of formation of that **BR Contract**.

4. Interpretation

4.1 The rules of interpretation set out in the **Balancing Services Glossary of General Terms and Rules of Interpretation** shall apply to these **BR Service Terms**.

5. Service Availability

5.1 With respect to any **Contracted BR Unit**, **NGESO** may utilise **Balancing Reserve** made available by the **Service Provider** during **~~BR~~Contracted Service Windows** by the issue of one or more **Bid-Offer Acceptances** in accordance with the **Grid Code**.

5.2 To facilitate the issue by **NGESO** of a **Bid-Offer Acceptance** in respect of a **~~BR~~Contracted Service Window**, and subject always to paragraph 5.9, the **Service Provider** shall, as soon as reasonably practicable but in any event by no later than **Gate Closure** for that **~~BR~~Contracted Service Window**, submit to **NGESO** in accordance with the **Grid Code**, in respect of the relevant **Contracted BR Unit** and so as to constitute a **Mandatory Availability Declaration**, **BM Unit Data** meeting the requirements (as applicable) of paragraphs 5.3 to 5.8 inclusive.

5.3 Where **the BR Contract** is for **Positive Balancing Reserve** from a **Final Physical Notification** of zero or above, then the **BM Unit Data** shall include, for the relevant **~~BR~~Contracted Service Window**:-

5.3.1 a **Final Physical Notification** where (subject always to paragraph 5.3.2):-

MEL – FPN ≥ **Contracted Capacity**

5.3.2 for **Contracted BR Units** which are **Power Park Modules** powered by an **Intermittent Power Source**, reference to **MEL** in paragraph 5.3.1 shall be to **Power Available**;

5.3.3 **Bid-Offer Data** comprising **Bid-Offer Pairs** (1 to 5) with a MW range greater than or equal to **Contracted Capacity**; and

5.3.~~3~~4 associated **Dynamic Parameters** which are consistent in all respects with the **BR Service Parameters**.

5.4 Where the **BR Contract** is for **Positive Balancing Reserve** from a negative **Final Physical Notification** towards zero but not through zero, then the **BM Unit Data** shall include, for the relevant **~~BR~~Contracted Service Window**:-

5.4.1 a **Final Physical Notification** where:-

SIL – FPN ≥ **Contracted Capacity**

5.4.2 **Bid-Offer Data** comprising **Bid-Offer Pairs** (1 to 5) with a MW range greater than or equal to **Contracted Capacity**; and

5.4.3 associated **Dynamic Parameters** which are consistent in all respects with the **BR Service Parameters**.

5.5 Where the **BR Contract** is for **Positive Balancing Reserve** from a negative **Final Physical Notification** towards zero and through zero, then the **BM Unit Data** shall include, for the relevant **~~BR~~Contracted Service Window**:-

5.5.1 a **Final Physical Notification** where:-

SEL and SIL equal zero, and

MEL – FPN ≥ **Contracted Capacity**
else

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SIL – FPN ≥ **Contracted Capacity**

5.5.2 **Bid-Offer Data** comprising **Bid-Offer Pairs** (1 to 5) with a MW range greater than or equal to **Contracted Capacity**; and

5.5.3 associated **Dynamic Parameters** which are consistent in all respects with the **BR Service Parameters**.

5.6 Where the **BR Contract** is for **Negative Balancing Reserve** from a **Final Physical Notification** (baseload) of zero or above zero but not through zero, then the **BM Unit Data** shall include, for relevant ~~**BR**~~**Contracted** **Service Window**:-

5.6.1 a **Final Physical Notification** where:-

FPN - SEL ≥ **Contracted Capacity**

5.6.2 **Bid-Offer Data** comprising **Bid-Offer Pairs** (-1 to -5) with a MW range greater than or equal to **Contracted Capacity**; and

5.6.3 associated **Dynamic Parameters** which are consistent in all respects with the **BR Service Parameters**.

5.7 Where the **BR Contract** is for **Negative Balancing Reserve** from a **Final Physical Notification** (baseload) of zero or above zero to a position less than zero, then the **BM Unit Data** shall include, for the relevant ~~**BR**~~**Contracted** **Service Window**:-

5.7.1 a **Final Physical Notification** where:-

SEL and SIL equal zero, and
FPN - MIL ≥ **Contracted Capacity**

If FPN > 0 and SEL and SIL are not both 0 then FPN - SEL ≥ **Contracted Capacity**
If FPN < 0 then FPN - MIL ≥ **Contracted Capacity**

5.7.2 **Bid-Offer Data** comprising **Bid-Offer Pairs** (-1 to -5) with a MW range greater than or equal to **Contracted Capacity**; and

5.7.3 associated **Dynamic Parameters** which are consistent in all respects with the **BR Service Parameters**.

5.8 Where the **BR Contract** is for **Negative Balancing Reserve** from a negative **Final Physical Notification**, then the **BM Unit Data** shall include, for the relevant ~~**BR**~~**Contracted** **Service Window**:-

5.8.1 a **Final Physical Notification** where:-

FPN - MIL ≥ **Contracted Capacity**

5.8.2 **Bid-Offer Data** comprising **Bid-Offer Pairs** (-1 to -5) with a MW range greater than or equal to **Contracted Capacity**; and

5.8.3 associated **Dynamic Parameters** which are consistent in all respects with the **BR Service Parameters**.

5.9 Where the **Service Provider** becomes aware of changes in the technical capability of a **Contracted BR Unit** (which for the avoidance of doubt shall exclude ~~changes~~the circumstances described in ~~the **Power Available** signal due~~paragraph 5.12.2 insofar as already notified to ~~meteorological data where that **Contracted BR Unit** is a **Power Park Module** powered by an **Intermittent Power Source**~~**NGESO**) rendering it unable to deliver **Balancing Reserve** in a ~~**BR**~~**Contracted** **Service Window** in accordance with its **BR Contract**, then it shall promptly indicate such unavailability, where

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applicable by withdrawing its **Mandatory Availability Declaration** (regardless of whether before or after **Gate Closure** for that ~~**BR**~~**Contracted Service Window**), by way of an appropriate resubmission of its relevant **BM Unit Data** in accordance with the **Grid Code**.

5.10 Each withdrawal by the **Service Provider** of a **Mandatory Availability Declaration** pursuant to paragraph 5.9 shall, upon request by **NGESO** and as soon as reasonably practicable thereafter be followed by an explanation in reasonable detail of the reasons for such unavailability.

5.11 Where, in respect of any **Contracted BR Unit** and ~~**BR**~~**Contracted Service Window**, the **Service Provider** shall have failed to submit (or shall have withdrawn pursuant to paragraph 5.9) a **Mandatory Availability Declaration** meeting the requirements (as applicable) of paragraphs 5.3 to 5.8 inclusive, then **Balancing Reserve** shall be deemed unavailable from that **Contracted BR Unit** for the entire affected ~~**BR**~~**Contracted Service Window,** and paragraph 1.4.2 shall apply.

~~5.12 Without prejudice to paragraph 8.2:-~~

5.12 ~~5.12~~Without prejudice to paragraph 5.11, and with respect to any **Contracted BR Unit** and **Contracted Service Window**, **Balancing Reserve** shall be deemed unavailable for the entirety of that **Contracted Service Window** if, at any time during that **Contracted Service Window**:-

5.12.1 the prevailing **Dynamic Parameters** (or any of them) submitted by the **Service Provider** are in any way inconsistent with the **Dispatch Flexibility Rules**; or

5.12.2 the **Contracted BR Unit** becomes incapable of delivering the full **Contracted Capacity** for the remainder of that **Contracted Service Window**; or

5.12.3 there is no, or ceases to be any, personnel employed by or contracted to the **Service Provider** present and tasked with responding to signals from **Control Telephony** or **System Telephony** relating to that **Contracted BR Unit**.

5.13 Without prejudice to paragraph 9.2:-

5.13.1 any failure to comply with paragraph 5.10; and/or

5.~~12~~13.2 any indication of unavailability pursuant to paragraph 5.9 ~~unrelated to~~which is not solely due to the technical capability of the **Contracted BR Unit**; and/or

~~5.12.3~~5.13.3 any indication that a **Contracted BR Unit** which is otherwise technically capable of delivering **Balancing Reserve** is or has become incapable of delivering the full **Contracted Capacity** for the remainder of a **Contracted Service Window** as described in paragraph 5.12.2; and/or

5.13.4 any persistent or repetitive failure to submit and/or withdraw **Mandatory Availability Declarations** pursuant to paragraphs 5.2 or 5.9; and/or

5.~~12.4~~13.5 any deemed unavailability pursuant to paragraph ~~14,~~15,

may result in **NGESO** at its sole discretion determining pursuant to the **BR Procurement Rules** that the **Service Provider** may not participate in the **Auctions** with respect to the relevant **BR Unit**.

~~5.13~~5.14 No costs or expenses incurred by **Service Providers** in the course of preparing and/or submitting **Mandatory Availability Declarations** shall be paid by **NGESO**.

~~5.14~~5.15 Upon service of any valid **Transfer Notice** pursuant to paragraph ~~22,~~23, and in relation only to the relevant **Transfer Period**, the provisions of this paragraph 5 shall be varied as between **NGESO** and the **Primary Service Provider** in the manner set out in paragraph ~~22~~23.13.

6. Service Instruction

6.1 **Service Providers** shall be instructed to provide **Balancing Reserve** from a **BR Contract** in all or part of ~~**BR**~~**Contracted Service Windows** by way of **Bid-Offer Acceptances** which may be issued by **NGESO** in accordance with the **Grid Code**.

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6.2 For the avoidance of doubt, where **NGESO** requires provision of **Balancing Reserve** in all or part of a ~~**BR**~~**Contracted Service Window**, it may issue a **Bid-Offer Acceptance** either prior to or during that ~~**BR**~~**Contracted Service Window**, consistent with the **BR Service Parameters**.

6.3 Upon service of any valid **Transfer Notice** pursuant to paragraph ~~22,~~23, and in relation only to the relevant **Transfer Period**, the provisions of this paragraph 6 shall be varied as between **NGESO** and the **Primary Service Provider** in the manner set out in paragraph ~~22~~23.13.

7. Service Delivery

7.1 The **Service Provider** shall, commencing on or before the expiry of the **Response Time**, ~~provide **Balancing Reserve**~~begin ramping up so as to deliver from ~~a~~the **Contracted BR Unit** ~~in a **BR Service Window**~~the instructed volume in accordance with the **Bid-Offer Acceptance**~~(s) issued~~ by ~~**NGESO** continuously until the time~~no later than expiry of the applicable **Ramping Period**, and shall maintain that delivery volume for the duration of the period implied in the **Bid-Offer Acceptance**(s~~) issued by **NGESO** in respect of that **Contracted BR Unit**,~~), provided that no such obligation shall arise in respect of any **Bid-Offer Acceptance** rejected by the **Service Provider** pursuant to **Grid Code** BC2.7.3.

7.2 ~~-~~For the avoidance of doubt, each **Contracted BR Unit** shall be capable of delivering the full **Contracted Capacity** for the duration of the **Contracted Service Window**.

7.3 In the event that, in respect of any ~~**BR**~~**Contracted Service Window**:-

~~(a) where the **Bid-Offer Acceptance** is issued during that **BR Service Window**, the **Contracted BR Unit** fails to provide **Balancing Reserve** by reaching a level at least ninety-five (95)% of the volume in MWh of energy instructed to be delivered in accordance with that **Bid-Offer Acceptance**;~~

~~(b)~~(a) the volume in MWh of **Balancing Reserve** provided by the **Service Provider** in accordance with one or a series of contiguous **Bid-Offer Acceptance(s)** issued in accordance with sub-paragraph 6 is less than ninety-five (95)% of the volume in MWh of energy instructed to be delivered in accordance with such **Bid-Offer Acceptance(s)**; or

~~(c) after ramping up or down (as the case may be) in accordance with the **Bid-Offer Acceptance**, the **Contracted BR Unit** fails to provide **Balancing Reserve** continuously at a level of at least ninety-five (95)% of the volume in MWh of energy instructed to be delivered in accordance with that **Bid-Offer Acceptance**; or~~

~~(d)~~(b) a **Bid-Offer Acceptance** is rejected by the **Service Provider** (other than in accordance with **Grid Code** BC2.7.3(b) and whether for reasons of safety or otherwise),

then no **BR Availability Payment** shall fall due with respect to that ~~**BR**~~**Contracted Service Window**.

7.~~3~~4 Upon service of any valid **Transfer Notice** pursuant to paragraph ~~22,~~23, and in relation only to the relevant **Transfer Period**, the provisions of this paragraph 7 shall be varied as between **NGESO** and the **Primary Service Provider** in the manner set out in paragraph ~~22~~23.13.

8. Dispatch Flexibility Rules

8.1 For the purposes of these **BR Service Terms**, the **Dispatch Flexibility Rules** are that each **Contracted BR Unit** shall be capable of being dispatched in accordance with paragraph 7.1 at any time during a **Contracted Service Window**:-

8.1.1 either from zero (0) MW **Output** or **Demand** or from any prevailing **Stable Export Limit** or **Stable Import Limit** or any other level of **Output** or **Demand**; and

8.1.2 for all or part of its **Contracted Capacity** and in one or multiple consecutive increments of one (1) MW; and

8.1.3 for a single or multiple consecutive periods each of not less than one (1) minute duration (representing a minimum activation period) which for these purposes shall exclude **Ramping Periods**.

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~~8.~~9. BR Availability Payments

~~8.1~~9.1 In respect of each **BR Contract** formed pursuant to the **BR Procurement Rules**, and subject always to paragraph ~~8~~9.2, **NGESO** shall, in accordance with paragraph ~~10,~~11, pay to the **Service Provider** an amount (a "**BR Availability Payment**") calculated in accordance with the formula in Schedule 1 and by reference to the applicable **Market Clearing Price** for each relevant ~~**BR**~~**Contracted Service Window**.

~~8.2~~9.2 No **BR Availability Payment** shall be made by **NGESO** to the **Service Provider** pursuant to this paragraph ~~8~~9 in respect of any ~~**BR**~~**Contracted Service Window** which is wholly or partly affected by a period or periods of unavailability or deemed unavailability pursuant to paragraphs 5 or ~~14~~15.

~~8.3~~9.3 With respect to any **Transfer Period**, and for the avoidance of doubt:

(a) for the purposes of this paragraph ~~8,~~9, the availability of **Balancing Reserve** pursuant to the relevant **BR Contract** shall be assessed by reference to the **BR Units**(s) registered to the **Secondary Service Provider** and not to the **Primary Service Provider's Contracted BR Unit**; and

(b) all and any **BR Availability Payments** accruing due pursuant to this paragraph ~~8~~9 shall be payable to the **Primary Service Provider** and nothing in these **BR Service Terms** shall create any liability or obligation on the part of **NGESO** to make any such payments to the **Secondary Service Provider**.

~~9.~~10. Energy Utilisation Payments

~~9.1~~10.1 Payments to the **Service Provider** with respect to the provision of **Balancing Reserve** in ~~**BR**~~**Contracted Service Windows** shall be made in respect of each **Bid Offer Acceptance** in accordance with the **Balancing and Settlement Code**.

~~9.2~~10.2 With respect to any **Transfer Period**, and for the avoidance of doubt:-

(a) for the purposes of this paragraph ~~9,~~10, the provision of **Balancing Reserve** pursuant to the relevant **BR Contract** shall be assessed by reference to the **BR Unit**(s) registered to the **Secondary Reserve Provider** and not to the **Primary Reserve Provider**'s **Contracted BR Unit**; and

(b) all and any **Energy Utilisation Payments** made pursuant to **Bid-Offer Acceptances** shall be made in accordance with the **BSC** to the **Secondary Reserve Provider** and not to the **Primary Reserve Provider** but subject thereto nothing in these **BR Service Terms** shall create any liability or obligation on the part of **NGESO** to make any such payments to the **Secondary Reserve Provider**.

~~10.~~11. Payment Procedure

11.1 ~~10.1~~ In respect of each calendar month during which the **Service Provider** has been party to one or more **BR Contracts**, **NGESO** shall send to the **Service Provider** a **Monthly Statement** setting out, in respect of each such **BR Contract**, its calculation of:-

(a) the **BR Availability Payments** payable to the **Service Provider** pursuant to paragraph 8;

(b) any adjustments made to previous **Monthly Statements**; and

(c) the resulting net amount due to (or from, as the case may be) the **Service Provider**,

and in respect thereof the provisions of Schedule 2 shall apply.

~~11.~~12. Grid Code and Distribution Code

~~11.1~~12.1 The provision by the **Service Provider** of **Balancing Reserve** shall not relieve it of any of its obligations or affect such obligations (where applicable) set out in the **Grid Code** (including its obligations (if any) to provide **Mode A Frequency Response** when instructed by **NGESO** pursuant to the **CUSC** and/or the **Grid Code**) or to provide **Demand** control when instructed by **NGESO** pursuant to **Grid Code** OC6) or in the **Distribution Code** of its host **Public Distribution System Operator**.

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~~11.2~~12.2 Without limiting ~~sub-~~paragraph 12, each **Service Provider** that is or becomes a **DRSC Liable User** shall, for the duration of each ~~**BR**~~**Contracted Service Window**, comply in all respects with the **Demand Response Services Code** as it refers to **Demand Response Active Power Control**.

~~12.~~13. Maintenance of Plant and Apparatus

~~12~~13.1 The **Service Provider** shall maintain all **Plant** and **Apparatus** comprising each **BR Unit** to such a standard that the **Service Provider** can meet its obligations to provide **Balancing Reserve** in accordance with each **BR Contract** and these **BR Service Terms**.

~~13.~~14. Third Party Claims

~~13.1~~14.1 The **Service Provider** undertakes to **NGESO** that the availability and delivery of **Balancing Reserve** from any **Contracted BR Unit** pursuant to and in accordance with each **BR Contract** and these **BR Service Terms** (including during any **Transfer Period**) will not at any time during any ~~**BR**~~**Contracted Service Window** cause the **Service Provider** to be in breach of or to otherwise be non-compliant with any **Connection Agreement** and/or any agreement for the supply of electricity or related services to or from a **Contracted BR Unit**.

~~13.2~~14.2 Notwithstanding ~~sub-~~paragraph 14, in the event that the **Service Provider** (or, during any **Transfer Period**, any **Secondary Service Provider**) makes available and/or delivers **Balancing Reserve** in accordance with these **BR Service Terms** in consequence of which **NGESO** suffers or incurs any loss in respect of a claim brought by any third party related to any actual or alleged breach or non-compliance by the **Service Provider** as described in sub-paragraph 14, then the **Service Provider** shall indemnify **NGESO** against all and any losses, liabilities, claims, expenses and demands suffered or incurred by **NGESO** in connection therewith. Such indemnity shall include any legal costs and expenses reasonably incurred in the contesting of such claims including the court costs and reasonable attorney's fees and other professional advisors' fees. The **Parties** agree and accept that, for the purposes of paragraph ~~19,~~20, all such legal costs and expenses expressed to be the subject of such indemnity shall be treated as direct losses.

~~13.3~~14.3 In the event of any such claim referred to in ~~sub-~~paragraph 14.2 being made against **NGESO**, **NGESO** shall as soon as reasonably practicable give notice of the claim together with all relevant supporting documentation to the **Service Provider**. The **Service Provider** shall be entitled, upon written notice to **NGESO** and subject to **NGESO** receiving from the **Service Provider** such reasonable undertakings as **NGESO** shall reasonably require to protect **NGESO** against damage to its name and reputation, to assume at its own expense the sole conduct of all proceedings relating to such claim including the right to contest such claim in the name of **NGESO**. **NGESO** shall supply the **Service Provider** with all information, assistance and particulars reasonably required by the **Service Provider** in connection therewith. **NGESO** shall not accept, settle, pay or compromise any such claim without the prior written approval of the **Service Provider** (not to be unreasonably withheld or delayed). -The **Service Provider** shall reimburse to **NGESO** all of its reasonable expenses incurred in connection with the provision of any such information, assistance or particulars in the contesting of any such claim.

~~14.~~15. Provision of Other Services

~~14~~15.1 The **Service Provider** undertakes to **NGESO** that the availability and delivery of **Balancing Reserve** from any **BR Unit** pursuant to and in accordance with a **BR Contract** and these **BR Service Terms** will not at any time during any ~~**BR**~~**Contracted Service Window** (including during any **Transfer Period**) be impaired or otherwise prejudiced by:-

~~14~~15.1.1 any planned increase or reduction (as the case may be) in **Output** of that **BR Unit** which reduces the **BR Capacity** to less than the **Contracted Capacity** otherwise than pursuant to a **Bid-Offer Acceptance**~~;~~ (which for the avoidance of doubt shall exclude for these purposes any unplanned outage of the **BR Unit** caused by a breakdown **of Plant or Apparatus**); and/or

~~14~~15.1.2 the **Service Provider's** (or, during any **Transfer Period**, any **Secondary Service Provider's**) performance of any agreement with a third party (including another **Service Provider**) relating to that **Contracted BR Unit**, including the making available and/or delivery of services to that third party by the **Service Provider** (whether by way of increases or reductions in **Generation** or **Demand** or stipulated running profiles, participation in any other services (including where part of a trial service) or otherwise, and whether to assist in the

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management, operation or protection of a **User System** or ~~pursuant to the **Capacity Market Rules** or~~ otherwise).

~~14~~15.2 Notwithstanding paragraph ~~14~~15.1, in the event that the **Service Provider** (or, during any **Transfer Period**, any **Secondary Service Provider**) is unable to provide **Balancing Reserve** (to any extent~~)~~, in all or any part of any ~~**BR**~~**Contracted** **Service Window** for any reason described in paragraph ~~14~~15.1, then the **Service Provider** shall (or shall procure that the **Secondary Service Provider** shall) give a full explanation to **NGESO** in its notification of unavailability pursuant to paragraph 5.9, and the **Contracted BR Unit** shall be deemed unavailable for the entire affected ~~**BR**~~**Contracted** **Service Window** and paragraph 5.11 shall apply.

~~14~~15.3 ~~Subject always to~~Where paragraph ~~14.4, and irrespective of whether or not~~15.2 applies, upon request from **NGESO** ~~elects to terminate the **BR Contract**,~~(at its sole discretion) the **Service Provider** ~~hereby agrees to reimburse~~shall pay to **NGESO** ~~all and any additional costs and expenses incurred by it as a result of such inability referred to in paragraph 14.2 including~~(in accordance with Schedule 3) an amount equal to the aggregate **Incremental Volume Cost Amount** for each relevant **Settlement Period** by way of reimbursement of **NGESO**'s additional costs of alternative or replacement service provision~~.~~

~~14.4 The amount or amounts for which~~ resulting from the **Service** ~~**Provider** may be liable to reimburse **NGESO** pursuant to paragraph 14.3 in respect of any single **BR Contract** shall not exceed in aggregate the greater of (1) two hundred and fifty thousand pounds sterling (£250,000), and (**Provider**'s inability to provide **Balancing Reserve** as referred to in paragraph 15.~~2~~) an amount equal to the **BR Availability Payments** payable in respect of that **BR Contract** for the relevant **BR Service Window** (ignoring any periods of unavailability and whether or not declared by the **Service Provider**).~~.

~~14.5~~15.4 Where, during any ~~**BR**~~**Contracted** **Service Window**, a **Service Provider** is required under the terms of any agreement with **NGESO** to provide from any **Contracted BR Unit** any other **Balancing Service** (except with respect to **Reactive Power**), the **Parties** agree and acknowledge that, unless pursuant to the terms for provision of and payment for such other **Balancing Services** the relevant **BR Unit** is deemed unavailable to provide **Balancing Reserve** or except as may otherwise be specified by **NGESO** in writing, the relevant **Contracted BR Unit** shall be deemed unavailable to provide such other **Balancing Service**, and availability of the **Contracted BR Unit** to provide **Balancing Reserve** pursuant to these **BR Service Terms** shall prevail.

~~14.6~~15.5 For the avoidance of doubt, paragraph ~~14.5~~15.4 shall not affect the submission by a **Service Provider** of (1) bids and offers (and the issue of **Bid-Offer Acceptances**) under the **Balancing Mechanism** where not made pursuant to terms agreed with **NGESO** for provision of any other **Balancing Service**, and (2) a **Sell Order** for **Positive Balancing Reserve** and a **Sell Order** for **Negative Balancing Reserve** with respect to the same **BR Unit** and ~~**BR**~~**Contracted** **Service Window** insofar as permitted by the **BR Procurement Rules**.

~~14.7 Where, during any **BR Service Window**, a **Service Provider** (or, during any **Transfer Period**, any **Secondary Service Provider**) is making available and/or delivering services to a third party in breach of paragraph 14.5, then the relevant **Contracted BR Unit** shall be deemed unavailable for the entire affected **BR Service Window** and paragraph 5.11 shall apply.~~15.6 Without prejudice to the undertaking in paragraph 15.1, nothing in this paragraph 15 shall prevent or restrict any **Contracted BR Unit** from providing **Balancing Reserve** in any **Contracted Service Window** which overlaps to any extent with service provision under a contract to which the **Service Provider** is a party pursuant to the **Capacity Market Rules**.

~~15.~~16. Communications

~~15.1~~16.1 Any communications required by these **BR Service Terms** to be given in writing shall unless otherwise provided in this paragraph ~~15~~16 be made and deemed to have been received in accordance with paragraph 28 save as may be otherwise agreed by the **Parties**.

~~15.2~~16.2 The **Parties** consent to the recording of all telephone conversations between them relating in whole or in part to these **BR Service Terms**, and each **Party** agrees to notify its employees of that consent and obtain their consent to that recording if required by **Law**.

~~15.3~~16.3 Unless otherwise expressly provided in these **BR Service Terms**, and subject always to paragraph ~~15~~16.4, all communications between the **Parties** (or between **NGESO** and the **Service Provider's Agent**) pursuant to these **BR Service Terms** shall be given via **EDL/EDT**.

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~~15.4~~16.4 If, for whatever reason, **EDL/EDT** shall at any time become unavailable, then to that extent all declarations, instructions and other communications of whatever nature which concern the availability and utilisation of **Balancing Reserve** shall be given by **Control Telephony** or **System Telephony** or by such other means as may be agreed between the **Parties**.

~~16.~~17. Termination of BR Contracts

~~16.1~~ 17.1 Either **Party** shall have the right to terminate a **BR Contract** in the circumstances set out in paragraph 8.1 of the prevailing **Common Flexibility Service Terms and Conditions** as if paragraphs 8.1 and 8.2 were set out in full herein.

~~16.2~~ Without prejudice to paragraph ~~16~~17.1, and in addition to any other rights of termination available under the **BR Procurement Documentation**, **NGESO** may in its absolute discretion terminate a **BR Contract** in respect of an **Contracted BR Unit** with immediate effect by notice in writing to the **Service Provider** ~~in the following circumstances:-~~

~~16.2.1 where paragraphs 14.2 or 14.7 apply; or~~

~~16.2.2~~17.2 where the **Service Provider** is in material breach of a warranty or declaration given as part of the **Registration and Pre-Qualification Procedure** or under any of the **BR Procurement Documentation**.

~~16.3~~17.3 Paragraphs 8.4 to 8.6 inclusive of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~17.~~18. Monitoring and Metering

~~17~~18.1 The volume of **Balancing Reserve** delivered and the time of delivery of **Balancing Reserve** pursuant to **Bid-Offer** Acceptance(s) shall be monitored by **NGESO** from time to time.

~~17.2~~18.2 The relationship between the **Parties** with respect to **Energy Metering Equipment** shall be regulated by Section L of the **Balancing and Settlement Code**.

~~17.3~~18.3 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**.

~~18.~~19. Force Majeure

~~18~~19.1 Save for paragraphs 10.2.2 and 10.4 which shall not apply, paragraph 10 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~19.~~20. Liability, Indemnity and Insurance

~~19~~20.1 Paragraph 11 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~20.~~21. Records and Audits

~~20~~21.1 Paragraph 5 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~21.~~22. Assignment

~~21~~22.1 Paragraph 12 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~22.~~23. Transfer of BR Contracts

~~22~~23.1 At any time during the subsistence of a **BR Contract**, a **Service Provider** ("the **Primary Service Provider**") may nominate another **Registered BR Participant** ("the **Secondary Service Provider**") to discharge its obligations to **NGESO** with respect to the delivery of **Balancing Reserve** in ~~**BR**~~**Contracted Service Window**(s) pursuant to that **BR Contract**.

~~22~~23.2 The effect of any such nomination, once validated by **NGESO** pursuant to this paragraph ~~22~~23, is that **NGESO** will monitor availability and submitted parameters, and treat delivery of **Balancing Reserve** from one or more **BR Units** registered to the **Secondary Service Provider** as if made and delivered by the **Primary Service Provider** from its **BR Unit** for the purposes of these **BR Service Terms**.

~~22~~23.3 No nomination shall be valid unless:-

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(a) both entitles are **Registered- BR Participants**;

(b) the **Secondary Service Provider** has **Plant** and **Apparatus** which is registered as a **BR Unit** pursuant to the **BR Procurement Rules** with sufficient **BR Capacity** reasonably expected to be available and proven capability to deliver **Balancing Reserve** to enable the **BR Contract** to be discharged during the applicable **~~BR~~Contracted Service Window**;

(c) the specified **Transfer Period** during which the nomination is to be effective is a period which comprises the entire **~~BR~~Contracted Service Window** created by a subsisting **BR Contract** to which the **Primary Service Provider** is a party; and

(d) the nomination is validly notified to **NGESO** pursuant to sub-paragraphs ~~22~~23.4, ~~22~~23.5 and ~~22~~23.6 and the **Transfer Notice** validated by **NGESO**.

Transfer Notices

~~22~~23.4 Each nomination shall be notified to **NGESO** by the **Primary Service Provider** by no later than ninety (90) minutes prior to commencement of the applicable **~~BR~~Contracted Service Window**, and each such nomination is referred to in these **BR Service Terms** as a "**Transfer Notice**".

~~22~~23.5 Unless otherwise stipulated in writing by **NGESO** from time to time, each **Transfer Notice** shall comprise the entirety of a **~~BR~~Contracted Service Window**, and shall specify:-

(a) the identity of the **Primary Service Provider** and **Contracted BR Unit**; and

(b) the identity of the **Secondary Service Provider** and its **BR Unit~~(s~~** which shall meet the requirements of paragraph 23.3(b).

~~22~~23.6 Each nomination shall comprise the entire **Contracted Capacity** associated with the **BR Contract** during the relevant **Transfer Period**, and for the avoidance of doubt the **Contracted Capacity** shall not be capable of being split amongst two or more **Secondary Service Providers**.

~~22~~23.7 In giving a **Transfer Notice**, the **Primary Service Provider** warrants that the **Secondary Service Provider** accepts the nomination.

~~22~~23.8 **NGESO** shall notify the **Primary Service Provider** as soon as reasonably practicable following receipt of the **Transfer Notice** whether or not the **Transfer Notice** has been validated. In the absence of any notification by **NGESO** of validation of the **Transfer Notice** by commencement of the relevant **~~BR~~Contracted Service Window** the **Transfer Notice** shall be deemed not to have been validated.

~~22~~23.9 Where in **NGESO**'s reasonable opinion the delivery of **Balancing Reserve** pursuant to the **BR Contract** during the **Transfer Period** by the **Secondary Service Provider**'s designated **BR Unit(s)** would or might endanger operational security within the meaning of the **Electricity Transmission System Operation Regulation**, then **NGESO** shall so notify both **Registered BR Participants** whereupon the **Transfer Notice** shall be deemed withdrawn.

~~22~~23.10 A **Transfer Notice** shall be invalid if the **Secondary Service Provider'**s designated **BR Unit** is the subject of a **BR Contract** for the same **~~BR~~Contracted Service Window**, in which case **NGESO** shall so notify both whereupon the **Transfer Notice** shall be deemed withdrawn.

Cancellation Notice

~~22~~23.11 A **Transfer Notice** may be cancelled by the **Primary Service Provider** (but not under any circumstances by the **Secondary Service Provider**) by no later than ninety (90) minutes prior to the start of the **~~BR~~Contracted Service Window** and by notification to **NGESO** in writing ("**Cancellation Notice**") specifying the date and time from -which the cancellation is to be effective.

Effect of Transfer Notice

~~22~~23.12 For the duration of each **Transfer Period** (or any earlier period where the **Transfer Period** comes to an end pursuant to the foregoing provisions), and subject always to paragraph ~~22~~23.13, **NGESO** consents to the **Primary Service Provider**'s obligation to deliver **Balancing Reserve** pursuant to the relevant **BR Contract** being discharged on its behalf by the **Secondary Service Provider** from its **BR Unit(s)**.

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~~22~~23.13 The **Parties** further acknowledge and agree that, for the duration of each **Transfer Period**:-

(a) paragraph 5 (Service Availability) shall be varied as follows:-

BM Unit Data shall be submitted by the **Secondary Service Provider** with respect to the **BR Unit(s)** designated by it pursuant to paragraph ~~22~~23.5, and the **Secondary Service Provider** shall observe and perform all obligations of the **Primary Service Provider** contained therein as if references to **Service Provider** and **Contracted BR Unit** were to the **Secondary Service Provider** and such **Contracted BR Unit(s)**;

(b) paragraph 6 (Service Instruction) shall be varied as follows:

all and any **Bid-Offer Acceptances** shall be issued by **NGESO** to the **Secondary Service Provider**, and the **Secondary Service Provider** shall observe and perform all obligations of the **Primary Service Provider** contained therein as if references to **Service Provider** and **Contracted BR Unit** were to the **Secondary Service Provide**r and the **BR Unit(s)** designated by it pursuant to paragraph ~~22~~23.5; and

(c) paragraph 7 (Service Delivery) shall be varied as follows:-

the **Secondary Service Provider** shall observe and perform all obligations of the **Service Provider** contained therein as if references to the **Service Provider** and the **Contracted BR Unit** were to the **Secondary Service Provider** and the **BR Unit(s)** designated by it pursuant to sub-paragraph ~~22~~23.5.

~~22~~23.14 For the avoidance of doubt, where a **Service Provider** wishes to discharge its obligations to **NGESO** with respect to the delivery of **Balancing Reserve** pursuant to a **BR Contract** using an alternative **BR Unit** which it has registered with **NGESO** under the **BR Procurement Rules**, it may serve a **Transfer Notice** pursuant to this paragraph ~~22~~23. With respect to each such **Transfer Notice** validated by **NGESO**,- for the purposes of these **BR Service Terms NGESO** will monitor availability and submitted parameters, and treat delivery of **Balancing Reserve** from that alternative **BR Unit**, as if made and delivered by the **Service Provider** from its original **BR Unit**, and all references in this paragraph ~~22~~23 to **Secondary Service Provider** shall be construed as meaning the **Service Provider** where the context admits.

~~22~~23.15 All **Transfer Notices** and **Cancellation Notices** and other notifications related thereto between the **Parties** referred to in this paragraph ~~22~~23 shall be made using the method of communication specified from time to time by **NGESO**.

~~23.~~24. Confidentiality

~~23~~24.1 The provisions of paragraph ~~13~~12 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply to all and any information provided by **NGESO** or any **Registered BR Participant** to the other (whether orally or in writing) pursuant to or in connection with these **BR Service Terms** as if set out in full herein.

~~24.~~25. Intellectual Property Rights

~~24~~25.1 The provisions of paragraph 14 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply to all intellectual property rights owned by or licensed to either **Party** as if set out in full herein.

~~25.~~26. Data Protection

~~25~~26.1 The provisions of paragraph 15 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~26.~~27. Modern Slavery, Anti-bribery and Living Wage

~~26~~27.1 The provisions of paragraph 16 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein, and without limitation as at the date of formation of each **BR Contract** the **Service Provider** warrants, represents and undertakes to **NGESO** in the manner set out in paragraph 16.1 thereof and indemnifies **NGESO** as provided in paragraphs 16.2 and 16.7 thereof.

~~26~~27.2 Any breach of this paragraph ~~26~~27 by the **Service Provider** shall be deemed a material breach of all and any relevant **BR Contracts** for the purposes of paragraph 14.1.

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~~27~~28 Notices

~~27.1~~28.1 Save to the extent the manner of communication between the **Parties** is otherwise stipulated in these **BR Service Terms**, paragraph 17 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply to any notice required to be submitted under these **BR Service Terms** by either **NGESO** or the **Registered BR Participant** to the other as if set out in full herein.

~~27.2~~28.2 For the purposes of paragraph ~~27~~28.1, the relevant contact details and addresses of each **Party** shall be those notified from time to time by that **Party** to the other pursuant to the **Registration and Pre-Qualification Procedure.**

~~28~~29 Dispute Resolution

~~28.1~~29.1 The provisions of paragraph 18 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply in relation to any dispute or difference of whatever nature however arising under, out of, or in connection with these **BR Service Terms** as if set out in full herein, save that:-

~~28.1.1~~29.1.1 no **Party** shall have any right to refer any dispute to an **Expert** for determination except where the dispute is stated in these **BR Service Terms** to be referable to an **Expert** for determination or otherwise agreed in writing by the **Parties** to be so referable;

~~28.1.2~~29.1.2 nothing in this paragraph ~~28~~29.1 shall prevent the **Parties** from agreeing to resolve any dispute or difference through the courts in which case paragraph ~~29~~30.2 shall apply; and

~~28.1.3~~29.1.3 where any dispute is referred to arbitration, the rules of the Electricity Arbitration Association shall apply unless otherwise agreed in writing by the **Parties** (and paragraph 18 of the prevailing **Common Flexibility Service Terms and Conditions** shall be read and construed accordingly).

~~29~~30 Governing Law and Jurisdiction

~~29.1~~30.1 Any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with these **BR Service Terms** or their enforceability shall be governed by and construed in accordance with the laws of England and Wales.

~~29.2~~30.2 Subject always to paragraph 29.1, **NGESO** and each **Registered BR Participant** submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with these **BR Service Terms** or their enforceability and waives any objection to proceedings being brought in such courts or on the grounds that proceedings have been brought in an inconvenient forum.

~~30~~31 Severance

~~30~~31.1 The provisions of paragraph 19 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~31~~32 Third Party Rights

~~31~~32.1 The provisions of paragraph 20 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein with the exception of the words “other than the Distribution and Transmission Licensees (the Company) who shall be entitled to independently enforce all of the terms of the Contract”.

~~32~~33 No Agency or Partnership

~~32~~33.1 The provisions of paragraph 21 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~33~~34 Waiver

~~33~~34.1 The provisions of paragraph 22 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~34~~35 Entire Agreement

~~34~~35.1 The provisions of paragraph 23 of the prevailing **Common Flexibility Service Terms and Conditions** shall apply as if set out in full herein.

~~35~~36 EMR

~~35.1~~36.1 Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in the **BR Procurement Documentation**, the **Services Provider** consents to

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NGESO and each of its subsidiaries using all and any information or data supplied to or acquired by it in any year under or in connection with any **Balancing Services Contract** for the purpose of carrying out its **EMR Functions**.

~~35.2~~36.2 For the purposes of this paragraph ~~35~~36 only:-

~~35.2.1~~36.2.1 **"AF Rules"** has the meaning given to "allocation framework" in section 13(2) of the Energy Act 2013;

~~35.2.2~~36.2.2 **"Capacity Market Rules"** means the rules created pursuant to section 34 of the Energy Act 2013 as modified from time to time in accordance with The Electricity Capacity Regulations 2014;

~~35.2.3~~36.2.3 **"EMR Functions"** has the meaning given to "EMR functions" in Chapter 5 of Part 2 of the Energy Act 2013; and

~~35.2.4~~36.2.4 **"EMR Document"** means The Energy Act 2013, The Electricity Capacity Regulations 2014, the Capacity Market Rules, The Contracts for Difference (Allocation) Regulations 2014, The Contracts for Difference (Electricity Supplier Obligation) Regulations 2014, The Contracts for Difference (Definition of Eligible Generator) Regulations 2014, The Electricity Market Reform (General) Regulations 2014, the AF Rules and any other regulations or instruments made under Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts) of Part 2 of the Energy Act 2013 which are in force from time to time.

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Schedule 1 – Defined Terms

"BR Capacity"	The maximum amount (in MW) of **Balancing Reserve** available at the relevant time from a **Contracted BR Unit** representing its 'footroom' or 'headroom' being defined as the difference between its prevailing (1) **MEL** or **MIL,** or **SEL** or **SIL** (as the case may be) and (2) its **Final Physical Notification,** or, in the case of a **Power Park Module** powered by an **Intermittent Power Source**, where 'headroom' being defined as the difference between its the prevailing (1) **Power Available** and (2) its **Final Physical Notification**;
"BR Service Parameters"	each of the following: (1) a **Response Time** not exceeding two (2) minutes; and (2) **Run-Up Rates** and **Run-Down Rates** which are sufficient to enable delivery of the **Contracted Capacity** by no later than ten (10) minutes after issue of the **Bid-Offer Acceptance** (which for the avoidance of doubt includes the **Response Time**);
"Cancellation Notice"	as defined in paragraph 23 of these **BR Service Terms**;
"Contracted Capacity"	in respect of any **Contracted BR Unit** and **Contracted Service Windows**, such part of the **Offered Capacity** which a **Service Provider** has agreed to provide in accordance with a **BR Contract**;
"Dispatch Flexibility Rules"	as defined in paragraph 8 of these **BR Service Terms**;
"DRSC Liable User"	any **Service Provider** whose **BR Contract** renders it a **Demand Response Provider** by virtue of the relevant **BR Unit** comprising a source of controllable **Demand**;

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"Incremental Volume Cost"	for a **Settlement Period**, the amount calculated as the higher of: (1) (A multiplied by B) minus C and (2) zero Where: A is the highest accepted **Offer Price** or **Bid Price** in the **Balancing Mechanism** in that **Settlement Period** (ignoring any system-tagged **Bid-Offer Acceptance** and any **Bid-Offer Acceptance** issued in error), or (if higher) any price for that **Settlement Period** agreed by **NGESO** and its counterparty pursuant to a grid trade under a Grid Trade Master Agreement; B is the **Contracted Capacity**; C is the settlement value calculated for that **Settlement Period** pursuant to Schedule 2 to these **BR Service Terms** which would otherwise have been payable to the **Service Provider** but for the operation of paragraph 15.2 and Schedule 2 to these **BR Service Terms**;
"Intermittent Power Source"	as defined in the **Grid Code**;
"Mandatory Availability Declaration"	a declaration or redeclaration of **BM Unit Data** with respect to a **Contracted Service Window** made under and in accordance with the **BR Service Terms**;
"Metering Equipment"	as defined in the **BSC**;
"Monthly Statement"	as defined in Schedule 3 to these **BR Service Terms**;
"Power Available"	as defined in the **Grid Code**;
"Power Park Module"	as defined in the **Grid Code**;
"Primary Service Provider"	as defined in paragraph 23 of the **BR Service Terms**;
"Ramping Period"	**Ramp-Up Period** or **Ramp-Down Period** (as the case may be);
"Ramp-Down Period"	the instructed MW divided by the average **Run-Down Rate**;
"Ramp-Up Period"	the instructed MW divided by the average **Run-Up Rate**;
"Response Time"	the maximum period of time from issue of a **Bid-Offer Acceptance** to commencement of ramping;
"Run-Down Rate"	as defined in **Grid Code** BC1;
"Run-Up Rate"	as defined in **Grid Code** BC1;
"Secondary Service Provider"	as defined in paragraph 23 of the **BR Service Terms**;
"Transfer Notice"	as defined in paragraph 23 of the **BR Service Terms**;

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"Transfer Period"	the period described as such in a **Transfer Notice** as may be shortened upon the cancellation or withdrawal of that **Transfer Notice** or otherwise in accordance with paragraph 23 of the **BR Service Terms**.

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Schedule 2 – BR Availability Payments

Calculation of Settlement Value

A settlement value shall be calculated for **Balancing Reserve** ~~(separately for each of **Positive Balancing Reserve** and **Negative Balancing Reserve**)~~ for each **BR Unit** and with respect to each ~~**BR**~~**Contracted** **Service Window** as follows:

Round ((**Contracted Capacity** * **Market Clearing Price** * 0.5 * AF), 2)

Where

AF = 0 if unavailable or deemed unavailable in accordance with these **BR Service Terms**, otherwise 1

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Schedule ~~2~~3 – Payment Provisions

1. Where amounts falling due by or to **NGESO** under these **BR Service Terms** are expressed to be payable in accordance with this Schedule ~~2~~3, then with respect to all and any such amounts the following provisions shall apply.

2. On the eighth (8th) **Business Day** of each calendar month **NGESO** shall send to the **Service Provider** a statement (the **"Monthly Statement"**) setting out, for each **BR Contract**, details of the following (to the extent applicable) in respect of the preceding calendar month, together with such other information as may be required to be provided under the these **BR Service Terms**:-
   a. the aggregate number of hours of service provision with respect to both availability and utilisation (as applicable);
   b. details of events of default or service failures, and any consequential amounts withheld by or payable to **NGESO** with respect thereof;
   c. the amounts payable by or to **NGESO** as a result; and
   d. in relation to all **BR Contracts**, the total net amount falling due to or from the **Service Provider**.

3. If the **Service Provider** disagrees with the content of any **Monthly Statement**, it may notify **NGESO** in writing, with evidence upon which it relies in support of such disagreement, no later than the date falling ten (10) **Business Days** after receipt thereof, but in the absence of any such notification by such date the **Monthly Statement** shall be final and binding on the **Parties** subject only to paragraph 4.

4. Where a disagreement is notified by the **Service Provider** pursuant to paragraph 2, the **Parties** shall discuss and endeavour to resolve the same in good faith, and any revisions to a **Monthly Statement** agreed as a result thereof shall be reflected in a revised **Monthly Statement**, which shall promptly be issued by **NGESO**. In the absence of agreement, the **Monthly Statement** shall be binding upon the **Parties** until such time as otherwise agreed in writing between the **Parties** or as may otherwise be determined by an **Expert** following a referral by either **Party** to an **Expert** for determination, and which in each case shall be reflected in a revised **Monthly Statement** which shall promptly be issued by **NGESO**.

5. Where, having regard to any **Settlement Run** or to the results of any other monitoring by **NGESO** of service delivery, **NGESO** or the **Service Provider** discovers that some or all of any calculations and/or amounts falling due shown in any **Monthly Statement** are incorrect, then it shall promptly notify the other in writing whereupon **NGESO** shall, at its discretion, revise the **Monthly Statement** and re-issue the same to the **Balancing Service Provider**, and the provisions of paragraphs 2 and 3 shall apply mutatis mutandis to such revised **Monthly Statement**.

6. In the absence of fraud, neither **NGESO** nor the **Balancing Service Provider** may invoke the provisions of paragraph 4, with respect to the contents of any **Monthly Statement** (including any revised **Monthly Statement**) after the period of twelve (12) months has elapsed following submission of the original **Monthly Statement** in which the calculations and/or amounts in question were first stated, after which date such calculations and/or amounts shown in the last **Monthly Statement** (including any revised **Monthly Statement**) issued by **NGESO** shall be final and conclusive.

7. No later than the eighteenth (18th) **Business Day** of each month, **NGESO** will issue a self-billing invoice (or credit note) in accordance with paragraph 11 reflecting the **Monthly Statement** issued pursuant to paragraph 1 (as may have been revised pursuant to the foregoing provisions), and no later than five (5) **Business Days** after such date of issue **NGESO** shall pay to the **Service Provider** (or the **Service Provider** shall pay to **NGESO**, as the case may be) the net amount shown as due from **NGESO** to the **Service Provider** (or from the **Service Provider** to **NGESO**, as the case may be) in that **Monthly Statement** (or revised **Monthly Statement**).

8. All payments shall be made in pounds sterling by direct bank transfer or equivalent transfer of immediately available funds to the other **Party's** bank account, details of which shall be as notified by each **Party** to the other from time to time in accordance with these **BR Service Terms**.

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9. If by virtue of the foregoing provisions, it is determined or agreed that:-
   a. the **Service Provider** was entitled to a further payment from **NGESO**, then the **Service Provider** shall be entitled to interest at the **Base Rate** on the amount of such further payment from the due date until the date of actual payment; or
   b. the **Service Provider** was not entitled to any payment it has received, then **NGESO** shall be entitled to interest at the **Base Rate** on such amount from the date of payment by **NGESO** until the date of repayment by the **Service Provider** (or, as the case may be, until the date when **NGESO** makes a payment to the **Service Provider** pursuant to paragraph 6 against which such amount is offset).

10. All amounts specified falling due and payable pursuant to these **BR Service Terms** shall be exclusive of any **Value Added Tax** or other similar tax and **NGESO** shall pay to the **Service Provider Value Added Tax** at the rate for the time being and from time to time properly chargeable in respect of the making available and/or provision of **Balancing Reserve** under these **BR Service Terms**.

11. Sums payable by one **Party** to the other pursuant this Schedule ~~2~~3 whether by way of charges, interest or otherwise, shall (except to the extent permitted by these **BR Service Terms** or otherwise required by **Law**) be paid in full, free and clear of and without deduction, set-off or deferment in respect of any disputes or claims whatsoever provided that either **Party** shall be entitled to set off any payment due and payable by the other **Party** under this Schedule ~~2~~3 against any payment it makes to that **Party** under this Schedule ~~2~~3.

12. For so long as the **Service Provider** is a **Registered BR Participant**, the **Service Provider** agrees that **NGESO** shall maintain a self-billing system whereby each **Monthly Statement** shall constitute a self-billing invoice for **VAT** purposes. Accordingly, **NGESO** and the **Balancing Service Provider** shall enter into a self-billing agreement in accordance with **VAT** legislation and published guidance from HM Revenue and Customs from time to time, and agree to comply with all relevant requirements in relation to self-billing, and for such purpose the **Service Provider** hereby warrants and undertakes to **NGESO** that:-
   a. it is registered for **VAT** and will inform **NGESO** forthwith if its ceases to be so registered or changes its **VAT** registration number;
   b. it will account to HM Revenue and Customs for the **VAT** paid by **NGESO** pursuant to paragraph 9; and
   c. it will not issue its own **VAT** invoices for provision of **Balancing Reserve**.

13. The provisions of this Schedule ~~2~~3 shall survive the termination of any **BR Contract**.

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