
**GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF
A REACTIVE POWER SERVICE**

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1. DEFINITIONS, INTERPRETATION AND CONSTRUCTION

- 1.1. The agreement (referred to in these **General Terms and Conditions** as “this **Agreement**”) between the **Parties** for the provision of the **Reactive Power Service** shall comprise the **Contract Form** and these **General Terms and Conditions** (including the Schedules hereto).
- 1.2. Unless the subject matter or context otherwise requires or is inconsistent therewith, terms and expressions defined in the **Contract Form** or in paragraph 11.3 of the **Connection and Use of System Code**, the Glossary and Definitions section of the **Grid Code** or in Schedule A to these **General Terms and Conditions** shall have the same meanings where used in this **Agreement**.
- 1.3. In this **Agreement**:
 - 1.3.1. unless otherwise stated, references to a particular clause, paragraph, Schedule or Appendix will be a reference to that clause, paragraph, schedule or appendix in or to this **Agreement**;
 - 1.3.2. the table of contents and headings are inserted for convenience only and will be ignored in construing this **Agreement**;
 - 1.3.3. references to the words “include” or “including” are to be construed without limitation;
 - 1.3.4. references to a month are to a calendar month;
 - 1.3.5. any reference to a rule, enactment, statutory provision, regulation or code or any subdivision or provision thereof will be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to any instruments, orders or regulations then in force and made under or deriving validity from the relevant statute;
 - 1.3.6. references to the masculine will include the feminine and references in the singular will include references in the plural and vice versa; and
 - 1.3.7. 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.
 - 1.3.8. references to “in writing” shall include communication by electronic means; and
 - 1.3.9. the Schedules form part of and are incorporated in this **Agreement** and references to this **Agreement** shall include references to the Schedules provided always that in the event of inconsistency or conflict between any matters set out in any Schedule and any matter set out in the main body of this **Agreement** the latter shall prevail.

2. COMMENCEMENT AND TERM

- 2.1. This **Agreement** shall, subject to Clause 2.2, apply from the date hereof and, subject always to earlier termination in accordance with Clause 3 (*Implementation of the Works*) and Clause 7 (*Termination and Suspension*), shall continue in force and effect until the expiry of the **Service Term**.
- 2.2. This **Agreement**, other than this Clause 2 and Clauses 8 (*Warranties and Indemnity*) to 20 (*Governing Law*) (inclusive), shall in all respects be conditional on satisfaction of the **Conditions Precedent**.
- 2.3. The **Provider** shall use all reasonable endeavours to ensure that the **Conditions Precedent** are satisfied as soon as possible after the date hereof and in any event by not later than the **CP Date**.
- 2.4. If any **Condition Precedent** has not been satisfied or waived by the **CP Date** this **Agreement** shall (to the extent in force) cease to apply.
- 2.5. If the provisions of this **Agreement** shall not by then have terminated, not later than twelve (12) months prior to the end of the **Service Term** (or any **Extended Term** agreed under this Clause), the **Parties** shall meet to discuss whether the **Service Term** should be extended and if so the duration of such extension (an "**Extended Term**") and the terms (including prices which may not exceed the **Availability Fee** specified in the **Tender Submission**) upon which the **Reactive Power Service** shall continue to be provided by the **Provider**, provided always that no extension may be agreed for a period which, either alone or when aggregated with any other period of extension, shall exceed ten (10) years. Unless the **Service Term** is further extended under this Clause or this **Agreement** shall by then have terminated, this **Agreement** shall terminate automatically without notice at the end of an **Extended Term**.

3. IMPLEMENTATION OF THE WORKS

- 3.1. The **Provider** shall (at its own cost) implement and complete the **Works** in accordance with **Good Industry Practice** by the **Scheduled Commercial Operations Date** and, without limiting that obligation, shall satisfy the **Post Tender Milestones** by the **PTM Date**¹.
- 3.2. The **Provider** shall, by not later than ten (10) **Business Days** following the end of each calendar month until the **Commercial Operations Date** has occurred (or more frequently on either **Party's** request), provide to the **Company** a progress report in writing setting out details of:
 - 3.2.1. the progress of the **Works** by reference to the **Project Plan**, including:

¹ Post Tender Milestones to be refined and agreed prior to contract award – for new build only

- (i) in respect of periods prior to the **PTM Date**, progress in achieving the **Post Tender Milestones** together with the forms of evidence specified in the table set out in Schedule 4 as and when a **Post Tender Milestone** has been achieved;
- (ii) in respect of periods after the **PTM Date** progress in the delivery to site of plant and equipment required for the operation of the **Facility** and the installation of such plant and equipment and progress in obtaining all outstanding consents, permissions, approvals, licences, exemptions and other permits (in legally effectual form) as may be necessary for the operation of the **Facility** in accordance with the terms of this **Agreement**;
- (iii) the **Provider's** proposals for remedying any delay or anticipated delay in implementing the **Project Plan**;
- (iv) the occurrence of any **Delay Event** and any adjustment (which shall, subject to the **Company's** right to terminate under Clause 14.5, reflect the period of delay) to the **Scheduled Commercial Operations Date**; and
- (v) any proposed revisions to the **Project Plan** necessary to reflect the above,

and, subject to the **Company's** approval (not to be unreasonably withheld or delayed) the revised **Project Plan** shall supersede the then current **Project Plan**, provided that any dispute concerning the occurrence or duration of a **Delay Event** and any related change to the **Scheduled Commercial Operations Date** may be referred by either **Party** by notice in writing to the other for determination by the **Expert**.

3.3. The **Provider's** progress shall be assessed by the **Company** by reference to the **Post Tender Milestones** on the **PTM Date** and the **Company** shall notify the **Provider** in writing no later than twenty (20) **Business Days** after the **PTM Date** either:

3.3.1. that it considers the applicable **Post Tender Milestones** to have been satisfied (or, in its absolute discretion, waives any such requirement), in which event the **Provider** shall then continue to implement and complete the **Works** by the **Scheduled Commercial Operations Date**; or

3.3.2. that it considers that the requirements of the applicable **Post Tender Milestones** have not been satisfied in which event, subject to Clause 3.4, this **Agreement** shall terminate on the date of the **Company's** notice and the **Provider** shall pay the **Termination Sum** to the **Company**, provided always that any dispute as to whether the **Post Tender Milestones** have been met may be referred by either **Party** by notice in writing to the other for determination by the **Expert**.

[For the avoidance of doubt, any incorrect, wrongful or inadvertent declaration given by the **Provider** in attesting to the achievement of any of the **Post Tender Milestones** (where applicable) shall constitute a material breach of the terms of this **Agreement**

and, in such event, the provisions of Clause 7.1.2 (*Termination and Suspension*) shall apply.]²

- 3.4. If the **Company** issues a notice under Clause 3.3.2 the **Company** may (in which event this **Agreement** shall not terminate on the date of the **Company's** notice under Clause 3.3.2) request by that notice such additional evidence regarding the **Provider's** progress toward satisfaction of the **Post Tender Milestones** as it may reasonably require (which may include the provision by the **Provider** of a performance improvement plan) and the **Parties** shall meet to consider in good faith whether there are reasonable prospects that the **Post Tender Milestones** will be satisfied within two (2) months after the relevant **PTM Date**. Once the **Company** considers that it is in possession of sufficient evidence, it shall, save to the extent that the provisions of Clause 14 (*Force Majeure*) apply and acting reasonably, make a determination and notify the **Provider** in writing either:
- 3.4.1. that it (in its absolute discretion) considers there to be a reasonable prospect that the **Post Tender Milestones** will be satisfied within two (2) months after the applicable **PTM Date**, in which event this **Agreement** shall continue in full force and effect and the **Provider** shall continue to implement and complete the **Works** by the **Scheduled Commercial Operations Date**; or
- 3.4.2. that it (in its absolute discretion) considers there is no reasonable prospect that the relevant **Post Tender Milestones** will be satisfied within two (2) months after the **PTM Date**, in which event this **Agreement** shall terminate on the date of the **Company's** notice under this Clause 3.4 and the **Provider** shall pay the **Termination Sum** to the **Company**, provided always that the **Provider** may, by notice in writing to the **Company**, refer the question of whether the **Company** has acted reasonably, for determination by the Expert.
- 3.5. When the **Works** are substantially completed and the **Facility** is capable in the **Provider's** opinion of providing the **Reactive Power Service** the **Provider** shall notify the **Company** in writing of the dates on which the **Facility** will be available for a **Proving Test** over the following period of thirty (30) days. [The **Provider's** confirmation must be accompanied by evidence to the **Company's** reasonable satisfaction that the **Provider** has: (i) **Acceptable Protection Settings** in place; and (ii) become bound by the relevant **Bilateral Agreement**.]³ The **Parties** shall use reasonable endeavours to ensure that a **Proving Test** of the **Facility** is conducted as soon as possible and shall agree the date and time of the **Proving Test**, provided always that, although the **Company** shall not unreasonably refuse to carry out a **Proving Test** at any time and date that may be requested by the **Provider**, having regard to the cost implications, the **Company** reserves the right to cancel any **Proving Test** previously agreed to be carried out. In such a case the **Parties** shall agree an alternative time and date when the **Proving Test** shall be carried out which shall be as soon as possible thereafter.

² New build only. If not applicable, delete and replace with 'Not Used'.

³ Delete in the case of existing plant as the Conditions Precedent will cover these requirements.

The **Company** shall be entitled to attend a **Proving Test** and either **Party** may request the **Expert** to be present at a **Proving Test**.

- 3.6. As soon as practicable after the date on which the **Proving Test** has been completed and in any event within five (5) **Business Days**, the **Company** shall notify the **Provider** whether the **Facility** has passed or failed the **Proving Test**. Any dispute as to whether the **Proving Test** has been passed or failed may be referred by either **Party** to the **Expert** for determination. [If it is agreed or otherwise determined that the **Proving Test** has been successfully passed, the **Company** shall return to the **Provider** the **Acceptable Security** as soon as reasonably practicable provided that any liability for liquidated damages under Clause 3.7 has been paid by the **Provider** in full.]
- 3.7. If the **Facility** has not successfully passed the **Proving Test** by the **Scheduled Commercial Operations Date** then, save to the extent due to a **Delay Event**, the **Provider** shall pay to the **Company**, without deduction or set off, liquidated damages at the **LAD Rate** with effect from the **Scheduled Commercial Operations Date** until and including the date on which the **Facility** successfully passes the **Proving Test**, provided always that such liquidated damages shall not in any event exceed the **LAD Cap**.
- 3.8. If at any time the aggregate amount of liquidated damages paid or payable under Clause 3.7 is equal to the **LAD Cap** then, the **Company** shall have the right to terminate this **Agreement** by written notice to the **Provider**.
- 3.9. For the purposes of Clause 3.7, liquidated damages shall be payable by the **Provider** to the **Company** on a monthly basis in accordance with Clause 4.8.1 (*Payment*) and the due date shall be ascertained accordingly.
- 3.10. The remedies prescribed in Clause 3.3.2, 3.6, 3.7 and 3.8 shall be the **Company's** sole and exclusive remedies with respect to:
 - 3.10.1. any failure, whether actual or prospective (as determined by the **Company** pursuant to Clause 3.3.2), of the **Provider** to satisfy the **Post Tender Milestones** within two (2) months of the **PTM Date**; or
 - 3.10.2. any failure of the **Facility** to successfully pass the **Proving Test** by the **Scheduled Commercial Operations Date**.
- 3.11. The **Provider** shall take reasonable steps (in accordance with **Good Industry Practice**) to procure that no aspect of the **Works** is sourced or ultimately derived from any **Sanctioned Person** and that no aspect of the **Reactive Power Service** otherwise involves a **Sanctioned Person**.
- 3.12. The **Provider** shall comply with the provisions of Schedule 3 (*Security*) in relation to the implementation of the **Works** and the provision of the **Reactive Power Service**.

4. AVAILABILITY, SERVICE PROVISION AND PAYMENT

4.1. Provision of the Reactive Power Service

- 4.1.1. The **Provider** agrees, with effect from the **Commercial Operations Date** and throughout the **Service Term** to [fuel]⁴, operate, maintain and repair the **Facility** in accordance with **Good Industry Practice** with a view to making it **Available** to provide the **Reactive Power Service** in accordance with the **Contracted Parameters** throughout the **Service Term** upon and subject to the terms and conditions set out herein.
- 4.1.2. The **Provider** agrees to maintain a single point of remote control at the site of the **Facility** to facilitate the issue of **Instructions** and **Instructions to End** by the **Company**.
- 4.1.3. The **Facility** shall be treated as **Unavailable** in any **Settlement Period** if it is unable to inject or absorb **Reactive Power** solely by reason of a **Network Constraint** and the **Provider** shall not be entitled to **Availability Payments** save to the extent that the **Facility** is unable to inject or absorb **Reactive Power** for in excess of one thousand three hundred and forty-four (1,344) **Settlement Periods** in aggregate in any **Contract Year** ("**Excess Settlement Periods**") solely by reason of **Planned Outages** affecting the **NETS**, in which event the **Provider** shall be entitled to **Availability Payments** for the **Excess Settlement Periods** calculated on the basis of a fee equal to fifty per-cent. (50%) of the **Availability Fee**.
- 4.1.4. Where the **Provider** wishes to substitute the **Facility** with another facility, the **Provider** shall take such steps as the **Company** may reasonably require (including, where required by the **Company**, the carrying out of an **Initial Proving Test** with respect to that substituted **Facility**) to ensure that such substituted facility will be able to deliver the **Reactive Power Service** in accordance with the requirements described in the **ITT**; and only where the **Company** is so satisfied, such substituted facility shall become the **Facility** for the purposes of this **Agreement** in substitution of the **Facility** described in Part 2 of the **Contract Form**.

4.2. Notification of Unavailability

- 4.2.1. If at any time the **Provider** becomes aware that the **Facility** is no longer or will no longer be **Available** or, in the case of a **Dynamic Facility**, the **Facility** will be **Available** but with less than its **Contracted Absorption Capability** and/or less than its **Contracted Injection Capability**, it shall promptly notify the **Company** accordingly (including, for the avoidance of doubt, in respect of any **Planned Maintenance Periods** or **Force Majeure Periods**) by facsimile or email in the form set out in Schedule 5, Part A (*Forms*) and the **Provider** shall thereafter promptly notify the **Company** by facsimile or email in the form set out in Schedule 5, Part B (*Forms*) when the **Availability** of the **Facility** is restored in full.

⁴ Delete where not applicable

- 4.2.2. Each notification by the **Provider** pursuant to Clause 4.2.1 shall be accompanied by an explanation in reasonable detail of the reasons for the **Facility** being **Unavailable** or, in the case of a **Dynamic Facility**, the reduced level of capability and, for the avoidance of doubt, the **Provider** may only declare the **Facility Unavailable** or, in the case of a **Dynamic Facility**, declare the **Facility Available** with reduced capability for reasons of safety or reasons relating to the technical capability of the **Facility** or where the **Facility** is to be withdrawn from service for the purposes of a **Planned Maintenance Period**.
- 4.2.3. For the purposes of this Clause 4, the **Facility** shall be treated as **Unavailable** or **Available** at the reduced level of capability (as applicable) from the time of the **Provider's** notice under Clause 4.2.2 to the time of receipt by the **Company** of notification under Clause 4.2.1 that the **Contracted Absorption Capacity** has been restored.
- 4.2.4. A **Facility** will not be treated as **Unavailable** during a **Settlement Period** by reason only of providing a **Permitted Service** during that **Settlement Period**, provided that its ability to provide the **Reactive Power Service** is not adversely affected by the provision of the **Permitted Service**.

4.3. **Instructions and Instructions to End**

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

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

and subsequently to notify the **Provider** when it no longer requires the **Facility** to provide the **Reactive Power Service** ("**Instruction to End**").

- 4.3.2. Following receipt of an **Instruction**, the **Provider** shall acknowledge receipt as soon as possible (but in any case by no later than two (2) minutes from receipt of an **Instruction**) and shall take all necessary steps to ensure that, throughout each **Relevant Settlement Period**:
- (i) in the case of a **Static Facility**, it operates in a control mode which enables constant reactive power absorption, as more particularly described in the **ITT** to the full extent of the **Contracted Absorption Capability**; or
 - (ii) in the case of a **Dynamic Facility**, it operates in either **Constant Reactive Power Control Mode** or **Voltage Control Mode** (as **Instructed**) to the full extent of its **Declared Absorption Capability** and **Declared Injection Capability**.

- 4.3.3. If an **Instruction** is issued by the **Company** and:

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

then the **Facility** shall with effect from the **Settlement Period** in which such failure occurred be treated as **Unavailable** until full capability is restored as notified by the **Provider** to the **Company** in accordance with Clause 4.2.1.

4.3.4. Promptly following each failure under Clause 4.3.3 the **Provider** shall notify the **Company** of the causes of the failure.

4.3.5. The **Parties** agree and acknowledge that **Instructions**, **Instructions to End** and also confirmations by the **Provider** of **Instructions** and **Instructions to End** transmitted through and stored on **EDL** or such other electronic means approved by the **Company** from time to time (each and together, the “**Applicable Logging Mechanism**”) shall be conclusive evidence of the giving and/or receipt of any communication required to be given pursuant to the terms of Clauses 0 and 4.3.2 (except during periods when the **Applicable Logging Mechanism** is unavailable for any reason, in which case communication shall be made by telephone, e-mail or facsimile (whichever is appropriate, as reasonably determined by the transmitting **Party** at the time transmitting)).

4.4. **Continued Performance Failure**

In the event of any **Continued Performance Failure**, the **Company** may (at its sole discretion) by written notice to the **Provider** reduce the **Availability Fee** and the **Contracted Absorption Capacity** on a pro-rata basis.

4.5. **Service Fees**

4.5.1. In consideration of the provision by the **Provider** of the **Reactive Power Service**, the **Company** shall pay to the **Provider** on a monthly basis an **Availability Payment** calculated in accordance with Schedule 2, Part A (*Availability Payment*).

4.5.2. The **Provider** acknowledges that:

- (i) this **Agreement** shall constitute a **Market Agreement** for the purposes of Schedule 3 of **CUSC** and that it shall cease to be entitled to any amounts payable under **CUSC** for the **Obligatory Reactive Power Service** throughout the **Service Term**; and

- (ii) it shall not be entitled to any other amounts payable under any commercial services agreement or other contract in respect of voltage or **Reactive Power** services.

4.5.3. The **Provider** shall reimburse to the **Company** any payment for the **Obligatory Reactive Power Service** or any other voltage or **Reactive Power** services that it receives notwithstanding the provisions of Clause 4.5.2 during the **Service Term**.

4.6. **Annual Assessment**

4.6.1. Following each anniversary of the **Commercial Operations Date**, the **Company** shall:

- (i) undertake an assessment of the extent of provision of the **Reactive Power Service** by the **Provider** over the immediately preceding **Contract Year** by determining in relation to that **Contract Year** and by reference to Clause 4.6.2 the number of **Settlement Periods** during such **Contract Year** in which the **Facility** was **Available**; and
- (ii) calculate the **Annual Availability Reconciliation Payment** in accordance with Schedule 2, Part B (*Annual Availability Reconciliation Payment*).

4.6.2. If in respect of any **Force Majeure Period**, to the extent that: (i) the event of **Force Majeure** is capable of being overcome by the **Provider** (but not otherwise); and (ii) in respect of that **Force Majeure Period** the **Provider** is able to demonstrate to the **Company's** reasonable satisfaction that it has been taking all reasonably practicable steps to restore the **Availability** of the **Facility**, the **Facility** shall be treated as having been **Available** in the relevant **Settlement Period** for the purposes of calculating the **Annual Availability Reconciliation Payment** (but not for any other purpose).

4.7. **Planned Maintenance**

4.7.1. Not later than three (3) months prior to the start of each **Contract Year**, the **Provider** shall provide to the **Company** notice and the programme ("**Planned Maintenance Programme**") of the **Settlement Periods** in that **Contract Year** during which the **Provider** proposes to withdraw the **Facility** from service for a maintenance outage (including the duration of the outage) ("**Planned Maintenance Periods**").

4.7.2. Following a request by the **Company**, the **Parties** shall meet to discuss (both **Parties** acting reasonably and in good faith) any changes the **Company** may reasonably require to the **Planned Maintenance Programme**.

4.7.3. The **Provider** shall only withdraw the **Facility** from service for the purposes of planned maintenance in accordance with the **Planned Maintenance Programme**.

4.8. **Grid Code**

4.8.1. It is acknowledged by both **Parties** that the provision of the **Reactive Power Service** in accordance with the terms hereof shall not relieve the **Provider** of any of its obligations set out in the **Grid Code** including without limitation its obligations (where applicable to the **Provider**) set out in **Grid Code** CC8.1 to provide **Reactive Power**

(supplied otherwise than by means of the **Reactive Power Service**) in accordance with CC6.3.2 and CC6.3.4 of the **Grid Code**.

5. PAYMENT

- 5.1. As soon as reasonably practicable and no later than eight (8) **Business Days** following the end of each calendar month the **Company** shall send to the **Provider** a statement (the “**Monthly Statement**”) consisting of:-
 - 5.1.1. its calculation of the **Availability Payment** due to the **Provider** in respect of the previous calendar month;
 - 5.1.2. in relation to the last calendar month in the **Contract Year**, its calculation of the **Annual Availability Reconciliation Payment** due from the **Provider**;
 - 5.1.3. if relevant, adjustments to be made (net of interest) in relation to disputes concerning **Availability Payments** in any month prior to the previous month;
 - 5.1.4. if relevant, any amount to be reimbursed by the **Provider** in accordance with Clause 4.5.3 (*Service Fees*), which amount may be set-off by the **Company** against sums payable under this **Agreement**; and
 - 5.1.5. the net sum due to or from the **Provider** as a result thereof.
- 5.2. If the **Provider** disagrees with any dates times facts or calculations set out in the **Monthly Statement**, it may notify the **Company** in writing, with evidence on which it relies upon in support of such disagreement, no later than the date falling ten (10) **Business Days** after receipt thereof, but in the absence of any such notification by such date, the **Monthly Statement** shall be final and binding on the **Parties** subject only to Clause 5.3. The **Parties** shall discuss and endeavour to resolve the matter in good faith and any adjustments agreed shall be included in the **Monthly Statement** next following the date of resolution of the dispute. The dates, times, facts and calculations set out in the **Monthly Statement** shall be binding upon the **Parties** until such time as they are reversed or revised by agreement between the **Parties** or otherwise determined pursuant to Clause 12 (*Dispute Resolution and Expert Determination*).
- 5.3. Where, having regard to any **Settlement Run** or to the results of any other monitoring by the **Company** of service delivery, the **Company** or the **Provider** discovers that some or all of any calculations and/or amounts falling due shown in any **Monthly Statement** are incorrect, then it shall promptly notify the other in writing whereupon the **Company** shall, subject to verification by **NGESO**, revise the **Monthly Statement** and re-issue the same to the **Provider**, and the provisions of Clause 5.2 shall apply mutatis mutandis to such revised **Monthly Statement**.
- 5.4. In the absence of fraud, neither the **Company** nor the **Provider** may invoke the provisions of Clause 5.3, with respect to the contents of any **Monthly Statement** after the period of twelve (12) months has elapsed following submission of that **Monthly Statement** in which the calculations and/or amounts in question were first stated, after

which date such calculations and/or amounts shown in the last **Monthly Statement** issued by the **Company** shall be final and conclusive.

- 5.5. No later than the eighteenth (18th) **Business Day** of each month, the **Company** will issue a self-billing invoice (or credit note) reflecting the **Monthly Statement** issued pursuant to Clause 5.2, and no later than five (5) **Business Days** after such date of issue the **Company** shall pay to the **Provider** (or the **Provider** shall pay to the **Company**, as the case may be) the net amount shown as due from the **Company** to the **Provider** (or from the **Provider** to the **Company**, as the case may be) in that **Monthly Statement**.
- 5.6. If either **Party** (the “**Defaulting Party**”) fails to pay any amount properly due under this **Agreement** on the due date then the **Defaulting Party** shall pay to the other **Party** interest on such overdue amount at the **Base Rate** plus three per cent (3%) from the due date on which such payment was properly due to (but excluding) the date of actual payment. Any interest shall accrue from day to day.
- 5.7. If it is agreed or otherwise determined under Clause 5.2 that the **Provider** was entitled to a further payment from the **Company**, the **Provider** shall be entitled to interest at the **Base Rate** on the amount of such further payment from the date on which that sum would have been payable had it been included in the **Monthly Statement** for each **Relevant Settlement Period** until the date of payment.
- 5.8. If it is agreed or otherwise determined under Clause 5.2 that the **Provider** was not entitled to any payment it has received, the **Company** shall be entitled to interest at the **Base Rate** on the amount so paid from the date of payment until the date of repayment or the date when the **Company** makes a payment to the **Provider** which takes such payment into account.
- 5.9. Notwithstanding any other provision of this **Agreement**, the **Parties** shall not be limited in any way as to the evidence they may rely upon in any proceedings arising out of or in connection with payment for the **Reactive Power Service** under this **Agreement** and the **Parties** agree that in the event and to the extent that either **Party** succeeds in proving in any such proceedings that the **Reactive Power Service** was or was not provided, the successful **Party** shall (without prejudice to any liquidated damages provision of this **Agreement**) be entitled to repayment of the sums already paid or payment of sums not paid as the case may be in respect of the **Reactive Power Service**.
- 5.10. Save as otherwise expressly provided in this **Agreement**, sums payable by one **Party** to the other pursuant to this **Agreement** whether by way of charges, interest or otherwise shall (except to the extent otherwise required by law) be paid in full, free and clear of and without deduction, set-off or deferment in respect of any disputes or claims whatsoever save for sums the subject of a final award or judgement (after exhaustion of all appeals if this opportunity is taken) or which by agreement between the **Company** and the **Provider** may be so deducted or set off.
- 5.11. All amounts specified hereunder shall be exclusive of any **Value Added Tax** or other similar tax and the **Company** shall pay to the **Provider** **Value Added Tax** at the rate

for the time being and from time to time properly chargeable in respect of the making available and/or supply of the **Reactive Power Service** under this **Agreement**.

- 5.12. All payments by the **Company** to the **Provider** under this **Agreement** will be made by payment to the bank account details of which are notified to the **Company** by the **Provider** from time to time.
- 5.13. The submission of all **Monthly Statements** and facts and other evidence in support thereof and any questions in connection therewith from the **Company** to the **Provider** and vice versa in accordance with this Clause 4.8.1 must be made, in the absence of agreement to the contrary between the **Parties**, by 19.00 hours on the **Business Day** concerned.
- 5.14. The **Provider** hereby irrevocably consents to the operation of a self-billing system by the **Company** with regard to the payment for the **Reactive Power Service** and will at all times throughout the **Service Term** maintain such consent. The **Provider** hereby undertakes to do (at the **Company's** cost) all acts and things reasonably necessary to enable the **Company** to comply with the regulations of HM Customs and Excise as regards the self-billing of the **Reactive Power Service**.
- 5.15. The provisions of this Clause 4.8.1 shall survive termination of this **Agreement**.

6. MONITORING, METERING AND TESTING

- 6.1. To enable the **Company** to monitor the **Availability** of the **Facility**, the **Provider** shall:
 - 6.1.1. throughout the **Service Term**, maintain the **Monitoring Equipment** in good repair in accordance with **Good Industry Practice**; and
 - 6.1.2. make (and retain for a period of twelve (12) months) second by second measurements of the absorption of **Reactive Power** by the **Facility** for each **Settlement Period** and shall make the relevant data available to the **Company** not later than twenty (20) **Business Days** following the end of each calendar month and in such format as the **Company** may reasonably require.
- 6.2. The **Provider** shall allow or procure for the **Company**, its employees, agents, suppliers, contractors and subcontractors such access to the **Facility** as the **Company** may reasonably require for the purposes of inspecting the **Facility** during the **Provider's** working hours and provided that the **Company** has given the **Provider** at least ten (10) **Business Days'** notice of any requirement for such access.
- 6.3. Without limiting its obligations under Clause 6.1, the **Provider** hereby grants to the **Company** the right to collect and record data from any **Monitoring Equipment** at the **Company's** own cost.

Testing

- 6.4. At any time during the **Operational Period** the **Company** may notify the **Provider** in writing ("**Proving Test Notice**") that it wishes the **Provider** to undertake a **Proving Test** in relation to the **Facility**, provided that the **Facility** has not been declared

Unavailable and subject to a maximum in any calendar year of two (2) **Proving Tests** (such maximum not including the **Initial Proving Test** or any re-tests). The following provisions shall apply:

- (a) the **Company** shall be permitted to undertake such **Proving Test** and the **Provider** shall:
 - (i) propose a date (within twenty (20), but not earlier than five (5), **Business Days** after the **Proving Test Notice**) for the **Proving Test** to be carried out in relation to the **Facility** ("**Proving Test Date**"); and
 - (ii) act reasonably with a view to agreeing the detailed programme for the **Proving Test**, which shall be consistent with the principles in Schedule 4 (*Testing*) and which, if not agreed by the **Proving Test Date**, shall be determined by an **Expert** in accordance with Clause 12.3 (*Dispute Resolution and Expert Determination*) and, following such determination, the **Provider** shall propose a new date for the **Proving Test** within twenty (20), but not earlier than five (5), **Business Days** after that determination;
- (b) the **Provider** shall be responsible for undertaking the **Proving Test** but shall do so in liaison with the **Company** and in connection therewith:
 - (i) whilst there is no obligation for the **Company** to attend the **Proving Test** (and the **Company's** failure to attend shall not invalidate the **Proving Test**), the **Provider** shall allow reasonable access to the **Company's** personnel and contractors to witness the **Proving Test**; and
 - (ii) the **Provider** shall (on request) provide to the **Company** the results of the **Proving Test** by email and any such reasonable additional evidence as the **Company** may reasonably require for the purposes of demonstrating performance of the **Facility** during the test;
- (c) if the **Company** determines (acting reasonably) that the **Facility** has passed the **Proving Test**, then:
 - (i) it shall notify the **Provider** in writing accordingly within five (5) **Business Days** after the completion of the **Proving Test**; and
 - (ii) the reasonable costs incurred by the **Provider** in connection with the carrying out of the **Proving Test** shall be paid to the **Provider** by the **Company** by reference to the next practicable **Monthly Statement**;
- (d) if the **Company** determines that the **Facility** has failed the **Proving Test**, then:
 - (i) it shall notify the **Provider** in writing accordingly within five (5) **Business Days** after completion of the **Proving Test**;
 - (ii) the **Provider** shall be deemed to have declared the **Facility Unavailable** with effect from the **Proving Test Date** until such time as the **Company**

notifies the **Provider** by email that the **Facility** has successfully passed a **Re-Test** at which point the **Facility** shall be treated as **Available**;

- (iii) the **Provider** shall reimburse the reasonable costs incurred by the **Company** in carrying out the **Proving Test** (and any **Re-Test**) pursuant to this Clause 6.4) by reference to the next practicable **Monthly Statement**;
- (iv) the **Provider** shall notify the **Company** in writing of the reasons for the failure, and may subsequently notify the **Company** in writing when it is ready to carry out a re-run of the **Proving Test** ("**Re-Test**") not later than twenty-four (24) hours prior to the proposed **Re-Test** date and the **Company** shall not unreasonably withhold or delay its consent to the proposed **Re-Test**, reasonableness to be judged for these purposes by reference to conditions on the **National Electricity Transmission System**;
- (v) the provisions of this Clause 6.4 shall apply to a **Re-Test** mutatis mutandis; and
- (vi) if the **Facility** fails a **Proving Test** (including any **Re-Test**) for substantially the same reason on two or more subsequent occasions in any period of twelve (12) calendar months and/or if the total number of **Proving Tests** (including any **Re-Test**) the **Facility** fails is more than five in aggregate during the **Service Term**, then the **Company** shall have the right to either: (aa) terminate this **Agreement** in accordance with Clause 7.1 (*Termination*); or (bb) to reduce the **Contracted Absorption Capacity** to the value that the **Company** reasonably considers reflects the true capability of the **Facility** on the basis of the failed **Proving Tests** and to reduce the **Availability Fee** by a percentage equal to the percentage reduction in the **Contracted Absorption Capacity**.

7. TERMINATION AND SUSPENSION

- 7.1. The **Company** shall be entitled to terminate this **Agreement** forthwith by notice in writing to the **Provider** if:-
 - 7.1.1. the **Provider** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the **Company**, notified to the **Provider** and corrected within five (5) **Business Days** thereafter) any material sum properly due or owing from the **Provider** to the **Company** pursuant to this **Agreement** according to its terms and such non-payment remains unremedied and not disputed in good faith and upon reasonable grounds at the expiry of fifteen (15) **Business Days** immediately following receipt by the **Provider** of written notice from the **Company** of such non-payment; or
 - 7.1.2. the **Provider** is in material breach of any other obligation under this **Agreement** and, in the case of a breach that is capable of remedy, has not remedied that breach within thirty (30) days (or such longer period as may reasonably be required for remedy) after receipt of notice from the **Company** identifying the breach and requiring its remedy;

7.1.3. if Clause 3.3.2, Clause 3.8 or Clause 6.4(d)(vi) applies; or

7.1.4. in respect of the **Provider**:-

- (i) an order of the **High Court** is made or an effective resolution passed for its insolvent winding up or dissolution; or
- (ii) a receiver (which expression shall include an administrative receiver within the meaning of Section 29 Insolvency Act 1986) of the whole or any material part of its assets or undertaking is appointed; or
- (iii) an administration order under Section 8 of the Insolvency Act 1986 is made or any other steps are taken to appoint an administrator or if a voluntary arrangement is proposed under Section 1 of that Act; or
- (iv) it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the **Authority**); or
- (v) it is unable to pay its debts (within the meaning of Section 123(1) or (2) of the Insolvency Act 1986 save that such sections shall have effect as if for seven hundred and fifty pounds sterling (£750) there was inserted two hundred and fifty thousand pounds sterling (£250,000) and the **Provider** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the **Provider** with recourse to all appropriate measures and procedures);

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

7.2. The **Company** acknowledges that the **Provider** may need to arrange funding to develop the **Facility** and that the funder may require as a condition of the availability of that finance to enter into a direct agreement with the **Company**. The **Company** shall act in good faith (at the cost and expense of the **Provider**) to negotiate such a direct agreement where reasonably required by the **Provider**, on terms to be agreed by the **Company** (acting reasonably) but not so as to impose any financial obligation on the **Company** and provided always that it shall not be unreasonable for the **Company** to refuse to enter a direct agreement where the terms of such direct agreement negatively impacts, or are likely to negatively impact, the provision of the **Reactive Power Service** in accordance with the terms of this **Agreement**.

7.3. The **Provider** may terminate this **Agreement** forthwith by notice in writing to the **Company** if:-

7.3.1. the **Company** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the **Provider**, notified to the **Company** and corrected within five (5) **Business Days** following such notification) any material sum properly due or

owing from it pursuant to this **Agreement** according to its terms and such non-payment remains unremedied and not disputed in good faith and upon reasonable grounds at the expiry of fifteen (15) **Business Days** immediately following receipt by the **Company** of written notice from the **Provider** of such non-payment; or

7.3.2. in respect of the **Company**:-

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

- (i) 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
- (ii) 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
- (iii) it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the **Authority**); or
- (iv) 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 seven hundred and fifty pounds sterling (£750) there was inserted two hundred and fifty thousand (£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 twenty-eight (28) days of appointment of the liquidator, receiver, administrative receiver, administrator, nominee or other similar officer, such person has not provided to the **Provider** a guarantee of future performance by the **Company** of this **Agreement** in such form and amount as the **Provider** may reasonably require.

7.4. Termination of this **Agreement** shall be without prejudice to the rights and remedies to which a **Party** may be entitled hereunder and shall not affect any accrued rights obligations or liabilities of either **Party** nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

7.5. For the avoidance of doubt, unless otherwise expressly provided herein, references in this **Agreement** to termination of this **Agreement** shall mean termination of all of the provisions of this **Agreement** and not otherwise.

8. WARRANTIES AND INDEMNITY

8.1. The **Provider** hereby warrants and represents to the **Company** that:

- 8.1.1. it has full power and authority to enter into this **Agreement** and perform its obligations hereunder, including without limitation that the availability and delivery of the **Reactive Power Service** from the **Facility** pursuant to and in accordance with this **Agreement** does not cause it, or any site owner, to be in breach of, or to otherwise be non-compliant with, any **Legal Requirement** and/or any agreement with any person; and
- 8.1.2. it will not do anything in connection with this **Agreement** that will cause it to be in breach of, or to otherwise be non-compliant with, any **Legal Requirement** and/or any agreement with any person.
- 8.2. The **Provider** further warrants and represents to the **Company** that the availability and delivery of the **Reactive Power Service** from the **Facility** pursuant to and in accordance with this **Agreement** will not at any time cause the **Provider** to be in breach of or to otherwise be non-compliant with any **Bilateral Connection Agreement** and/or any agreement for the supply of electricity or related services to or from the **Facility**. The **Provider** repeats this warranty and representation on acknowledgement of each **Instruction**.
- 8.3. If, notwithstanding Clause 8.2, the **Company** receives a claim by a third party related to any actual or alleged breach or non-compliance by the **Provider** as described in Clause 8.2, the **Provider** shall, provided the **Company** has notified the claim to it as soon as reasonably practicable after receipt, indemnify the **Company** against all and any losses, liabilities, claims and expenses that may be suffered or incurred by the **Company** in connection therewith. Such indemnity shall include any legal costs and expenses reasonably incurred in the contesting of such claim, including the court costs and the reasonable fees of lawyers and other professional advisers.
- 8.4. The **Provider** warrants and represents to the **Company** that, as at the date of this **Agreement**, it has obtained or has applied for the type of **Licence** specified in its **Tender Submission**. If at any time a different type of **Licence** is issued to the **Provider**, the **Company** shall be entitled to adjust the **Availability Fee** to ensure that the **Provider** is in no better a position financially order to maintain the principles of fair and equal treatment of those participating in the **Tender**. The provisions of this Clause 8 shall continue to bind the **Parties** after termination of this **Agreement**.

9. LIMITATION OF LIABILITY

- 9.1. Subject to Clause 9.2, save where any provision of this **Agreement** provides for an indemnity or the payment of liquidated damages, 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 five million pounds sterling (£5,000,000) 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 Clause 9.2 and save where any provision of this **Agreement** provides for an indemnity or the payment of liquidated damages 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 Clause 9.1.2 and Clause 9.2.
- 9.4. Each **Party** acknowledges and agrees that the other **Party** holds the benefit of 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 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 Clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Clauses shall remain in full force and effect and shall continue to bind the **Parties**; and

9.7.2. survive termination of this **Agreement**.

9.8. For the avoidance of doubt, nothing in this Clause 9 shall:

9.8.1. limit the **Company's** payment obligations under this **Agreement**; and/or

9.8.2. prevent or restrict either **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. CONFIDENTIALITY AND ANNOUNCEMENTS

10.1. Subject to the exceptions provided in Clause 10.3 (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**):-

10.1.1. any of the contents of this **Agreement**;

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

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

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

10.2. Each **Party** undertakes to use information referred to in Clause 10.1 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.

10.3. The restrictions imposed by Clause 10.1 shall not apply to the disclosure of any information:

- 10.3.1. which now or hereafter comes into the public domain otherwise than as a result of a breach of a confidentiality obligation or which either **Party** can show was in its written records prior to the date of disclosure of the same by the other **Party**, under this **Agreement** or which it receives from a third party independently entitled to disclose it;
- 10.3.2. 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;
- 10.3.3. which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the **Party** making the disclosure (or its parent undertaking) is or is proposed to be from time to time listed or dealt in, or is required to be disclosed by the Panel on Takeovers and Mergers;
- 10.3.4. to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
- 10.3.5. pursuant to any **Licence** of the **Party** concerned;
- 10.3.6. by either **Party** to any parent undertaking on a “need to know” basis only;
- 10.3.7. to any authorised consultants, banks, financiers, insurers or professional advisers to the disclosing **Party**;
- 10.3.8. by the **Provider** to a third party who is a party to a power purchase agreement in respect of the electricity generated by the **Facility** and with whom all (or some of) the risks and benefits arising from the **Agreement** will be shared provided such party is subject to confidentiality undertakings which are no less onerous than those to which the **Provider** is subject to under this **Agreement**;
- 10.3.9. by the **Company** to any parent, subsidiary or fellow subsidiary undertaking;
- 10.3.10. required or expressly permitted to be disclosed under the terms of any agreement or arrangement to which both the **Parties** have agreed to be bound.
- 10.4. In this Clause 10, 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.
- 10.5. Before either **Party** discloses any information in any of the circumstances described in Clauses 10.3.6 to 10.3.8 (other than to its authorised professional advisers), it shall notify the other **Party** of its intention to make such disclosure and (if the disclosing **Party** is the **Provider**) procure the execution and delivery to that **Party** of an undertaking executed by the person to whom the disclosure is proposed to be made being in the same terms mutatis mutandis as the undertakings contained in this Clause 10.

10.6. Public announcements

10.6.1. Subject to Clause 10.6.2, no public announcement or statement regarding the signature, performance or termination of this **Agreement** shall be issued or made unless to the extent legally possible before it is issued or made both the **Parties** have been furnished with a copy of it and have approved it (such approval not to be unreasonably withheld or delayed).

10.6.2. 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.

10.7. Procedures

10.7.1. With respect to the information referred to in Clause 10.1, both **Parties** shall ensure that:-

- (i) such information is disseminated within their respective organisations on a “need to know” basis only;
- (ii) 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
- (iii) any copies of such information, whether in hard copy or computerised form, will clearly identify the information as confidential.

10.8. Termination

Notwithstanding any other provision of this **Agreement**, the provisions of this Clause 10 shall continue to bind a person after termination of this **Agreement**, in whole or in part, for whatever reason.

11. DISCLOSURE OF INFORMATION

11.1. The **Provider** hereby consents to the disclosure and use by the **Company** in such manner or form and at such times as it thinks fit of:

11.1.1. the **Availability Fee, Contracted Parameters** and any other information submitted by the **Provider** in its **Tender Submission**;

11.1.2. the aggregate cost of **Availability Payments** and the aggregate amount of **Annual Availability Reconciliation Payments** made by the **Company** to the **Provider** and all other providers of the **Reactive Power Service**;

11.1.3. such data in relation to the provision of **Reactive Power** as the **Company** publishes from time to time in respect of the **Obligatory Reactive Power Service**; and

11.1.4. any other data and other information relating to this **Agreement** and the provision of the **Reactive Power Service** (including payments made to the **Provider** hereunder)

for the purposes of any or all of the statements published from time to time pursuant to Standard Condition C16 of the **Transmission Licence**.

12. DISPUTE RESOLUTION AND EXPERT DETERMINATION

12.1. 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 arbitration rules of the Electricity Arbitration Association in force from time to time. Provided always that prior to any such referral to arbitration:

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

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

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

12.2. 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.

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

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

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

12.3.3. if the **Parties** cannot agree upon the selection of an **Expert**, the **Expert** shall be selected on the application of either **Party** by the Centre for Effective Dispute Resolution;

- 12.3.4. all references to the **Expert** shall be made in writing by either **Party** with notice to the other being given contemporaneously, and the **Parties** shall promptly supply the **Expert** with such documents and information as he may request when considering any referral;
- 12.3.5. the **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**;
- 12.3.6. the **Parties** shall equally share the **Expert's** fees and expenses unless the **Expert** determines otherwise; and
- 12.3.7. save to the extent otherwise expressly provided herein or in the determination by the **Expert**, this Clause shall, to the extent necessary for the **Parties** to perform their obligations under this **Agreement**, continue to bind the **Parties** after termination.

13. NOTICES

- 13.1. For the purposes of this **Agreement**, save to the extent as may be specified on the forms specified in any of the Schedules, any notice or other communication to be given by the **Company** or the **Provider** to the other under, or in connection with matters contemplated by, this **Agreement** shall be sent to the address and/or facsimile number together with a copy by email and marked for the attention of the named person as specified in Part 4 of the **Contract Form**.
- 13.2. 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:-
- 13.2.1. in the case of delivery by hand, when delivered; or
- 13.2.2. 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;
- 13.2.3. in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 17.00 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement; or
- 13.2.4. in the case of email, one (1) hour after the time of transmission (as recorded on the device from which the sender sent the email), unless the sender received an automated message that the email has not been delivered.

14. FORCE MAJEURE

- 14.1. In so far as either **Party** is prevented from performing any of its obligations under this **Agreement** due to an event or circumstance of **Force Majeure**, then the rights and obligations of the **Parties** shall be suspended for as long as and to the extent that the

circumstance of **Force Majeure** prevents such performance. For the avoidance of doubt:

- 14.1.1. the **Provider** shall not be entitled to any **Availability Payment** in respect of any **Force Majeure Period**;
- 14.1.2. the **Parties** agree that they shall not be relieved from their obligations under this **Agreement** by reason of events or circumstances commencing prior to the last date specified in the **Tender** for **Tender Submissions** and continuing as at that date including restrictions introduced by any **Competent Authority** in relation to **Coronavirus** and the **Coronavirus Disease**; and
- 14.1.3. the **Parties** further agree that they shall be relieved from their obligations under this **Agreement** to the extent that they are unable to perform them by reason of any further restrictions or guidance introduced by any **Competent Authority** in relation to **Coronavirus** and the **Coronavirus Disease** on or after the date on which the **Provider** submitted its **Tender Submission**.
- 14.2. The **Party** affected by the **Force Majeure** shall give to the other **Party** promptly upon becoming aware of an event or circumstance of **Force Majeure**, a written communication describing the **Force Majeure** (including, without limitation, the nature of the occurrence and its expected duration) and the obligations which it is prevented from performing and shall continue to furnish regular reports with respect thereto to the other **Party** during the period of **Force Majeure**.
- 14.3. As soon as is reasonably practicable, following an event or circumstance of **Force Majeure**, the **Parties** shall discuss how best to continue their respective obligations as set out in this **Agreement**.
- 14.4. For the avoidance of doubt the non-performance of either **Party's** obligations pursuant to this **Agreement** arising prior to the event or circumstance of **Force Majeure**, shall not be excused as a result of the event or circumstance of **Force Majeure**.
- 14.5. Either **Party** shall have a right to terminate this **Agreement** by notice in writing to the other if that other **Party** has been prevented from performing its obligations due to an event or circumstance of **Force Majeure** for a continuous period of six (6) calendar months or more or for an aggregate period of nine (9) calendar months or more.

15. CHANGE IN LAW

- 15.1. If a **Relevant Change in Law** occurs that:

- 15.1.1. requires a change in the **Provider's** policies or practices in operating the **Facility**; or

- 15.1.2. materially increases or decreases the **Provider's** costs of performing this **Agreement**,

either **Party** may by not less than ten (10) **Business Days'** notice to the other require the other **Party** to meet and the **Parties** shall in good faith seek to agree any changes in operating practice and/or any changes which should be made to this **Agreement** as are necessary to achieve (insofar as possible) the same balance of benefits, liabilities,

risk and reward between the **Parties** in respect of the subject matter of this **Agreement** as applied immediately prior to the **Relevant Change in Law** ("**Required Changes**").

- 15.2. Neither **Party** shall be liable to the other **Party** for a failure to perform any obligation under this **Agreement** which becomes prohibited or otherwise impossible to perform by reason of a **Change in Law**.

16. MISCELLANEOUS

- 16.1. 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.
- 16.2. No variations or amendments to this **Agreement** shall be effective unless made in writing and signed by and on behalf of both **Parties**.
- 16.3. This **Agreement** is personal to the **Parties** and neither **Party** shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under this **Agreement** without the prior written consent of the other **Party** (such consent not to be unreasonably withheld, conditioned or delayed), save that:
- 16.3.1. the **Provider** may sub-contract the operation of the **Facility** to a third party operator; and
- 16.3.2. the **Provider** may, having given prior written notice to the **Company**, grant a security interest over this **Agreement** to a third party funder of the **Facility**.
- 16.4. Save in respect of a funder having rights pursuant to a direct agreement referred to under Clause 7.2 above, 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**.
- 16.5. 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. 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.
- 16.6. 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 Commission of the European Communities 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.

16.7. This **Agreement** contains or expressly refers to the entire agreement between the **Parties** with respect to the subject matter of this **Agreement**, 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 upon 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.

17. **ANTI-BRIBERY**

17.1. Each **Party** shall:

17.1.1 comply with all **Anti-Bribery Laws**;

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

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

17.1.4 procure and ensure that all of its **Associated Persons** and/or other persons who are performing services in connection with this **Agreement** comply with this Clause 17.

17.1.5 If either **Party** breaches this Clause then, without prejudice to any other rights or remedies, the other **Party** may immediately terminate this **Agreement** on written notice to the **Party** in breach.

18. **EMR**

18.1. Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in this **Agreement**, the **Provider** consents to the **Company** and each of its subsidiaries using all and any information or data supplied to or acquired by it in any year under or in connection with this **Agreement** for the purpose of carrying out its **EMR Functions**.

18.2. The provisions relating to the resolution of disputes set out in this **Agreement** (if any) are subject to any contrary provision of an **EMR Document**.

18.3. Where for the purposes of this provision only:

“AF Rules”	has the meaning given to “allocation framework” in section 13(2) of the Energy Act 2013;
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“Capacity Market Rules”	means the rules made under section 34 of the Energy Act 2013 as modified from time to time in accordance with that section and The Electricity Capacity Regulations 2014;
“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 (Definition of Eligible Provider) Regulations 2014, The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014, The Electricity Market Reform (General) Regulations 2014, the AF Rules and any other regulations or instruments made under Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts) of Part 2 of the Energy Act 2013 which are in force from time to time; and
“EMR Functions”	has the meaning given to “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013.

19. JURISDICTION

- 19.1. Subject and without prejudice to Clause 12 (*Dispute Resolution and Expert Determination*), both **Parties** irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes or claims (including non-contractual disputes or claims) which may arise out of or in connection with this **Agreement** or its subject matter or formation 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 in England and Wales.
- 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** and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in all respects in accordance with the laws of England and Wales.

SCHEDULE 1

Definitions

“Acceptable Settings”	Protection	means, in relation to the Facility , protection settings that enable the Facility to remain connected and stable for faults on the NETS where the voltage at the point of connection to the NETS drops to zero (0) pu for up to one hundred and forty (140) ms, as more particularly described in the ITT ;
“Acceptable Security”		<ul style="list-style-type: none">(i) an on-demand without proof or conditions irrevocable performance bond or guarantee in a form reasonably satisfactory to the Company issued by a Rated Bank payable in Sterling in London; or(ii) 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(iii) a parent company guarantee in terms and from an issuer satisfactory to the Company; or(iv) such other form of security acceptable to the Company which shall be in such form as is permitted in the ITT, <p>in each case, for an amount equal to the Secured Amount from time to time;</p>
“Act”		means the Electricity Act 1989;
“Adequate Procedures”		shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 8 of that Act);
“Agreement”		has the meaning given to it in Clause 1.1;
“Annual Reconciliation Payment”	Availability	means the payment to be calculated by the Company following the end of each Contract Year in accordance with Clause 4.6.1(ii) (<i>Annual Assessment</i>);

“Anti-Bribery Laws”	shall mean all applicable laws, statutes, regulations, and codes of mandatory application relating to anti-bribery and anti-corruption including but not limited to the Bribery Act ;
“Applicable Mechanism”	Logging has the meaning given to it in Clause 4.3.5;
“Associated Persons”	shall have the meaning ascribed to it in section 8 of the Bribery Act 2010 and shall include but is not limited to any employees, agents and/or subcontractors of the Provider or the Company as applicable in relation to the provision of the Reactive Power Service ;
“Available”	<p>means:</p> <ul style="list-style-type: none"> (a) in the case of a Static Facility, that the Facility is capable of operating at not less than ninety per cent (90%) of its Contracted Absorption Capacity and otherwise is capable of operating in accordance with its Contracted Parameters in full in response to an Instruction; and (b) in the case of a Dynamic Facility, that the Facility is capable of operation within its Declared Absorption Capability and Declared Injection Capability and otherwise is capable of operating in accordance with its Contracted Parameters in full in response to an Instruction, <p>and the terms “Availability”, “Unavailable” and “Unavailability” shall be construed accordingly;</p>
“Availability Fee”	means the sum per Settlement Period , as tendered by the Provider and specified in Part 2 of the Contract Form , subject to indexation in accordance with paragraph 2 of Schedule 2 Part A (<i>Availability Payment</i>);
“Availability Payment”	means the payment to be made to the Provider for each calendar month as calculated in accordance with Schedule 2, Part A (<i>Availability Payment</i>);

“Authority”		means the Gas and Electricity Markets Authority;
“Base Rate”		means the Bank of England Official Rate from time to time provided that, if at any time the Bank of England Official Rate is a negative rate, then 0%;
“Bilateral Agreement”	Connection	as defined in the CUSC ;
“BM Unit”		as defined in the BSC ;
“Balancing and Code” or “BSC”	Settlement	as defined in the Public Electricity Supply Licence ;
“Business Day”		a week-day other than a Saturday or Sunday on which banks are open for domestic business in the City of London;
“Change in Law”		means the occurrence of any of the following events after the date of this Agreement : <ul style="list-style-type: none"> (a) the coming into effect of any Law or Directive that is not in effect as at the date of this Agreement; (b) the repeal, replacement or amendment of any Law or Directive; or (c) a change in the interpretation of any Competent Authority of any Law or Directive;
“Commercial Operations Date”		means the day after the date on which the Company notifies the Provider that the Facility has passed the Proving Test ;
“Competent Authority”		means the Authority or any local, national or supra-national agency, authority, department, inspectorate, minister, official, court, tribunal or public or statutory person (whether autonomous or not) of the United Kingdom (or the government thereof) which have jurisdiction over the Company or the subject matter of this Agreement ;
“Conditions Precedent”		the conditions precedent set out in Part 1 of the Contract Form ;

“Constant Reactive Power Control Mode”		the ability of a Dynamic Facility to keep target Reactive Power injected or absorbed at the Grid Entry Point equal to the preselected MVar Set Point ;
“Continued Failure”	Performance	means, in respect of Instructions issued in any calendar month, the Facility failed to operate in accordance with any such Instructions and was treated as Unavailable under Clause 4.3.3 for twenty percent (20%) of the aggregate Relevant Settlement Periods in that month;
“Contract Form”		means, in relation to a Provider , the document to which these General Terms and Conditions are attached;
“Contract Year”		means each period of twelve (12) calendar months commencing on 1 April in each year of the Service Term , save that the first such year shall commence on the Commercial Operations Date and end on the next following 31 March;
“Contracted Capability”	Absorption	means the maximum capacity of a Facility to absorb Reactive Power as specified in the Contracted Parameters ;
“Contracted Capability”	Injection	means the maximum capacity of a Facility to inject Reactive Power , as specified in the Contracted Parameters ;
“Contracted Parameters”		means, in relation to the Facility , the parameters and values specified in the table set out in Part 2 of the Contract Form ;
“Coronavirus”		has the meaning given to it in the Coronavirus Act 2020, as at the date hereof;
“Coronavirus Disease”		has the meaning given to it in the Coronavirus Act 2020, as at the date hereof
“CP Date”		the date falling thirty (30) Business Days after the date of this Agreement ;
“CUSC”		means the Connection and Use of System Code as defined in the Transmission Licence ;
“Declared Capability”	Absorption	means:

- (a) in the case of a **Static Facility**, the **Contracted Absorption Capability**; and
- (b) in the case of a **Dynamic Facility**, the capability of the **Facility** to absorb **Reactive Power** specified in a notification under Clause 4.2 and, in the absence of such a notification, shall be equal to the **Contracted Absorption Capability**;

“Declared Injection Capability” means:

- (a) in the case of a **Static Facility**, capability equal to the **Contracted Injection Capability**; and
- (b) in the case of a **Dynamic Facility**, the capability of the **Facility** to inject **Reactive Power** specified in a notification under Clause 4.2 and, in the absence of such a notification, shall be equal to the **Contracted Injection Capability**;

“Defaulting Party” has the meaning given to it in Clause 5.6;

“Delay Event” means: (i) any event of **Force Majeure** that delays the implementation of the **Works**; (ii) any failure to schedule a **Proving Test** within 10 days of the **Provider’s** notice under Clause 3.5 that is due solely to any act or omission of the **Company**; or (iii) [any change required by the **Company** to the **Works** or the **Project Plan**];

“Dispute Notice” has the meaning given to it in Clause 12.1.1;

“Dynamic Facility” a **Facility** that is capable of absorbing MVar in **Constant Reactive Power Control Mode** and **Voltage Control Mode**, as specified in the **Contract Form**;

“EDL” means the electronic despatch logging mechanism by which the **Company** communicates with the **Provider** and the **Provider** communicates with **Company** in respect of the **Facility** for the purposes of sending and acknowledging **Instructions** and **Instructions to End**;

“Escrow Account”	means a separately designated interest-bearing bank account in the name of the Company established by a mandate in such terms as the Company may require and signed by both the Company and the Provider at a branch of Barclays Bank PLC or another bank in the City of London as notified by the Company to the Provider ;
“Excess Settlement Periods”	has the meaning given to that term in Clause 4.1.3;
“Expert”	has the meaning given to that term in Clause 12.3;
“Extended Term”	has the meaning given to that term in Clause 2.5;
“Facility”	the facility owned and operated by a Provider operated by the Provider as further identified in Part 2 of the Contract Form ;
“Force Majeure”	in relation to either Party any event, circumstance or condition which is beyond the reasonable control of such Party (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that Party or its officers or employees, agents, contractors and sub-contractors) which, despite all reasonable endeavours of the Party claiming Force Majeure to prevent it or mitigate its effects, causes a material delay or disruption in the performance of any obligation imposed hereunder, but subject thereto including act of God, epidemic or pandemic, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightening, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, pandemic, explosion, governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 and 35 of the Act), provided always that neither: (i) lack of funds, nor (ii) the act or omission of any contractor (unless due solely to an event that would have been treated as a cause beyond its reasonable

	control if the contractor had been a party to this Agreement), shall be interpreted as a cause beyond the reasonable control of that Party ;
"Force Majeure Period"	any Settlement Period in which the Facility is Unavailable solely by reason of Force Majeure ;
"General Terms and Conditions"	means this document;
"Good Industry Practice"	in relation to any undertaking and any circumstances the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from an experienced operator engaged in the same or similar type of undertaking under the same or similar circumstances;
"Grid Code"	has the meaning given to that term in the Company's Licence ;
"Grid Entry Point"	has the meaning given to the term "Onshore Grid Entry Point" in the Grid Code ;
"Grid Supply Point"	has the meaning given to it in the BSC ;
"High Voltage" or "HV"	has the meaning given to it in the Grid Code ;
"Industry Document"	the Licences , the BSC , the CUSC , the Grid Code and all other agreements, documents or codes with which the Provider is obliged to comply under the Act or its Licence ;
"Initial Proving Test"	has the meaning given to it in Schedule 5 (<i>Testing</i>);
"Instruction"	has the meaning given to that term in Clause 0 (<i>Instructions and Instructions to End</i>) and the term " Instructed " shall be construed accordingly;
"Instruction to End"	has the meaning given that term in Clause 0 (<i>Instructions and Instructions to End</i>);
"ITT"	has the meaning given to it in recital A of the Contract Form;
"Monthly Statement"	has the meaning given to that term in Clause 5.1 (<i>Payment</i>);

“LAD Cap”	means a sum equal to the LAD Rate multiplied by [180 days];
“LAD Rate”	means a daily rate equal to the Availability Fee multiplied by the number of Settlement Periods in the day;
“Law or Directive”	<p>(a) any law (including the common law);</p> <p>(b) any statute, statutory instrument, regulation, instruction, direction, rule or requirement of any Competent Authority;</p> <p>(c) any condition or other requirement of any Licence or other required authorisation, licence, consent, permit or approval (or of any exemption from the requirement to have the same); and</p> <p>(d) any provision of any Industry Document;</p>
“Legal Requirement”	means any Act of Parliament, regulation, licence or any present or future directive, request, requirement, instruction, code of practice, direction or rule of any Competent Authority and any modification, extension or replacement thereof;
“Licence”	means a licence issued under section 6(1) of the Electricity Act 1989;
“Local TO”	means the owner of that part of the NETS to which the Facility is connected or the owner of that part of the NETS in which the associated Grid Supply Point is located;
“Market Agreement”	has the meaning given to that term in the CUSC ;
“Monitoring Equipment”	means the monitoring equipment required to be installed by the Provider in relation to a Facility , as more particularly set out in the Bilateral Connection Agreement ;
“National Electricity Transmission System” or “NETS”	has the meaning given to that term in the Company’s Licence ;

“Network Constraint”	means unavailability of the NETS or restrictions otherwise imposed on the operation of a Facility by the Local TO ;
“Notice Period”	means the period specified in Part 2 of the Contract Form ;
“Obligatory Reactive Power Service”	has the meaning given to that term in the CUSC ;
“Operational Period”	the period from the Commercial Operations Date until the expiry or earlier termination of this Agreement ;
“Party Liable”	has the meaning given to that term in Clause 9.1;
“Permitted Service”	participation in the Balancing Mechanism, Response, Reserve, Constraint Management, wholesale electricity market, Capacity Market and Black Start and such other services as the Company may from time to time notify to all providers of the Reactive Power Service ;
“Post Tender Milestones”	means the milestones, and requisite evidence, agreed by the Company and the Provider as part of the Provider’s Tender Submission to be achieved by the PTM Date , as set out in Part 3 of the Contract Form ;
“Proceedings”	has the meaning given to that term in Clause 19.1;
“PTM Date”	means the date on which the Provider’s achievement of the Post Tender Milestones is to be assessed, being the date falling twelve (12) months prior to the Scheduled Commercial Operations Date ;
“Planned Maintenance Periods”	has the meaning given to it in Clause 4.7.1 (<i>Planned Maintenance</i>);
“Planned Maintenance Programme”	has the meaning given to it in Clause 4.7.1 (<i>Planned Maintenance</i>);
“Planned Outage”	an outage of part of the NETS coordinated by NGESO under OC2 of the Grid Code
“Project Plan”	the plan setting out the Scheduled Commercial Operations Date and the associated milestones submitted by the Provider in its Tender

	Submission as the same may be varied from time to time in accordance with Clause 3.2;
“Provider”	has the meaning given to it in the relevant Contract Form ;
“Proving Test”	means a test to be undertaken in accordance with Clause 6.4 (<i>Testing</i>) and the principles set out in Schedule 5 (<i>Testing</i>);
“Public Electricity Supply Licence”	a licence granted under Section 6(1)(c) of the Act prior to the coming into force of section 30 of the Utilities Act 2000;
“Rated Bank”	means a City of London branch of a bank with a rating of at least A- (Standard and Poor’s long term rating) or A3 (Moody’s long term rating);
“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 = 1Mvar;
“Reactive Power Service”	means the operation of a Facility in accordance with an Instruction and otherwise as provided in these General Terms and Conditions ;
“Relevant Change in Law”	means a Change in Law that: <ul style="list-style-type: none"> a) was not, acting in accordance with Good Industry Practice, reasonably foreseeable by the Provider as at the date of this Agreement; and b) affects the provision of the Reactive Power Service or other similar services but not one which affects the operation of the Facility in general;
“Relevant Settlement Period”	means a Settlement Period that is subject to an Instruction ;
“Sanctioned Country”	means any country or territory that is the target of comprehensive, country or territory wide Sanctions ;
“Sanctioned Person”	means any person (companies, entities or individuals) that is (i) listed on, or owned or controlled by a person listed on, or acting on behalf of a person listed on, a Sanctions List ; (ii) the government of a Sanctioned Country or a member of the government of a Sanctioned

		<p>Country; (iii) resident in or incorporated under the laws of any Sanctioned Country; or (iv) to the best of the knowledge and belief (having made due and 11 careful enquiries) of any member of the Group, otherwise a target of Sanctions;</p>
"Sanctions"		<p>means economic or financial sanctions, trade embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority;</p>
"Sanctions Authority"		<p>means (i) United Kingdom government, (ii) the United Nations Security Council; (iii) the European Union; (iv) the United States government; (v) the sanctions local competent authority where the deal is executed or booked;</p>
"Sanctions List"		<p>means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held by any Sanctions Authority, including, without limitation, (i) the Consolidated United Nations Security Council Sanctions List; (ii) the "Specially Designated Nationals and Blocked Persons" list maintained by The Office of Foreign Assets Control ("OFAC"); (iii) the consolidated list of persons, groups or entities subject to European Union sanctions administered by the European External Action Service;</p>
"Scheduled Operations Date"	Commercial	<p>1st April 2024 or such later date as the Company acting reasonably determines to be necessary to reflect any delay to the completion date for the connection works specified in the Connection and Use of System Agreement Construction Agreement at the date of execution (ignoring any subsequent modifications) compared with the completion date for such works specified in the Provider's Tender Submission;</p>
"Secured Amount"		<p>an amount equal to the Provider's maximum potential liability outstanding from time to time in respect of liquidated damages payable in accordance with Clause 3.7;</p>
"Service Term"		<p>means the period commencing at 23:00 hours on the Commercial Operations Date and ending at 07:00 hours on 31 March 2036;</p>

“Set Point”	a target level of Reactive Power (expressed in MVar) or a target level of voltage (expressed in kV), as the context requires;
“Settlement Periods”	has the meaning given to that term in the BSC ;
“Settlement Run”	has the meaning given to that term in the BSC ;
“Slope”	the percentage change in voltage based on nominal that results in a change of Reactive Power from 0 to the maximum absorption or maximum injection capability, as described in CCA.7.2.2 of the Grid Code ;
“Static Facility”	a Facility that is capable of absorbing MVar at an approximately constant level;
“Tender”	means the competitive procurement process for the Reactive Power Service undertaken pursuant to the ITT ;
“Tender Submission”	means a submission made in response to the ITT ;
“Termination Sum”	means an amount equal to [seventy-five per cent (75%)] of the LAD Cap and which is payable by the Provider in the circumstances described in Clause 3.3.2 or Clause 3.4.2;
“Trading Day”	means, for each day, the period commencing at 23:00 hours and ending the instant in time before 23:00 hours the following day;
“Transmission Licence”	has the meaning given to it in the BSC ;
“User System”	has the meaning given to it in the CUSC ;
“Voltage Control Mode”	in relation to a Dynamic Facility , the ability to absorb or inject MVar in direct proportion to the deviation of the Voltage of the NETS from the Instructed Set Point and inversely proportional to the Slope setting;
“VPN”	has the meaning given to it in Clause 4.3.5 (<i>Provision of Reactive Power Service</i>);
“Works”	means [the design, construction, commissioning and testing of the Facility] [the modification,

commissioning and testing of the **Facility**],
including the **Monitoring Equipment**⁵.

⁵ It is assumed that some works will be required by all Providers

SCHEDULE 2

Payments

Part A – Availability Payment

1. The aggregate **Availability Payment** in respect of calendar month m (“ AP_m ”) is calculated as follows:

$$AP_m = ((AF_i * (e/(a + e)) * AM_j * (RPe * RPa)) + ((Afi * (a/(a + e)) * AM_j * RPa)$$

[or]

$$AP_m = ((AF_i * (e/(a + e)) * AM_j * (RPe)) + ((Afi * (a/(a + e)) * AM_j * RPa))^6$$

However if RPa falls below 0.7, the AP_m will revert to £0.

AF_i is the **Availability Fee** for the **Facility i** in **Contract Year y** (expressed in £/**Settlement Period**) for all **Settlement Periods j**;

AM_j is: 0 in respect of each **Settlement Period j** in which the **Facility i** is wholly **Unavailable** (save in respect of **Force Majeure Periods** in which the **Provider** is entitled to payment under Clause 14.1.1), including any **Settlement Periods** in which the **Facility i** is treated as **Unavailable** in accordance with Clauses 4.2.1, 4.2.3, 4.3, **Error! Reference source not found.** or 6.4(d)(ii); or otherwise, 1;

a is the **Contracted Absorption Capability**;

e is the **Contracted Injection Capability**;

RPa is the **Declared Absorption Capability** divided by the **Contracted Absorption Capability** [(if these fall below 0.7 then AP_m payment will fall to £0)]⁷;

RPe is the **Declared Injection Capability** divided by the **Contracted Injection Capability** where a **Facility i** is capable of providing both injection and absorption of **Reactive Power**.

- [2. The **Availability Payment** will be calculated by reference to the **Availability Fee**, subject to indexation as follows:

⁷ Applicable to the alternative formula only. This may require an amendment to the definition of “Availability”.

- 2.1 The **Availability Fee** is specified at [April 2026] values and will be adjusted annually (commencing on [1st April 2027]) to take account of general price inflation. [The index used will be the Consumer Prices Index (“CPI”) with 2015 = 100 base. The source of the CPI index is the monthly Office for National Statistics Statistical bulletin.
- 2.2 The **Availability Fee** will therefore be increased (or reduced as appropriate) for the period [April 2027] to [March 2028] by the following factor:-

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

Where:

CPI_2 is the CPI for [March 2027]

CPI_1 is the CPI for [March 2026]

- 2.3 The relevant price will then be increased (or reduced as appropriate) for the period [April 2026] to March [2027] by the following factor:-

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

Where:

CPI_3 is the CPI for [March 2028]

CPI_1 is the CPI for [March 2026]

- 2.4 In subsequent years, indexation will continue in accordance with the above, with always the numerator of the factor representing the CPI of the **Contract Year** under consideration and the denominator of the factor being CPI for [March 2026].
- 2.5 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 paragraph 2 of this Schedule 2 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.]

[Alternative Indexation]

- [2. The **Availability Payment** will be calculated by reference to the **Availability Fee**, subject to indexation as follows:
- 2.1 [The **Availability Fee** is specified at April 2026 values and will be adjusted annually (commencing on [1st April 2027]) to take account of price inflation. The index used will be the BEAMA Electrical Labour Index and the BEAMA Electrical Equipment Index

with 2010 = 100 base. The source for the BEAMA Electrical Labour Index and BEAMA Electrical Equipment Index is the set of indices published by the British Electrotechnical & Allied Manufacturers Association on a monthly basis.

- 2.2 The revised **Availability Fee** (AF_y) for the period [April 2027] to [March 2028] will be calculated as follows:

$$AF_y = ((AF_{y-1} / 2) * (BEL_2 / BEL_1)) + ((AF_{y-1} / 2) * (BEE_2/BEE_1))$$

Where:

AF_{y-1} is the Availability Fee for the Contract Year 2026/2027;

BEL_2 is the BEAMA Electrical Labour Cost Index for March 2027;

BEL_1 is the BEAMA Electrical Labour Cost Index for March 2026;

BEE_2 is the BEAMA Electrical Equipment Index for March 2027; for March 2027;

BEE_1 is the BEAMA Electrical Equipment Index for March 2026.

- 2.3 The **Availability Fee** for the period [April 2028] to [March 2029] (AF_y) will be calculated as follows:-

$$AF_y = ((AF_{y-1} / 2) * (BEL_2 / BEL_1)) + ((AF_{y-1} / 2) * (BEE_2/BEE_1))$$

Where:

AF_{y-1} is the Availability Fee for the Contract Year 2027/2028;

BEL_2 is the BEAMA Electrical Labour Cost Index for March 2028;

BEL_1 is the BEAMA Electrical Labour Cost Index for March 2027;

BEE_2 is the BEAMA Electrical Equipment Index for March 2028;

BEE_1 is the BEAMA Electrical Equipment Index for March 2027;

- 2.4 In subsequent years, indexation will continue in accordance with the above, with BEL_2 and BEE_2 representing the BEAMA Electrical Labour Cost Index and BEAMA Electrical Equipment Index for the **Contract Year** under consideration and BEL_1 and BEE_1 representing the BEAMA Electrical Labour Cost Index and BEAMA Electrical Equipment Index for [March in the previous year].

- 2.5 In the event that the BEAMA Electrical Labour Cost Index and/or BEAMA Electrical Equipment Index ceases to be published or is not published in respect of any relevant

month or it is not practicable to use the BEAMA Electrical Labour Cost Index and/or BEAMA Electrical Equipment Index because of a change in the method of compilation or some other reason, indexation for the purpose of paragraph 2 of this Schedule 2 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 the BEAMA Electrical Labour Cost Index and/or BEAMA Electrical Equipment Index had continued to be available.]

Part B – Annual Availability Reconciliation Payment

The **Annual Availability Reconciliation Payment** payable in respect of **Contract Year y** (" RP_y ") is calculated as follows:

$$RP_y = \begin{cases} 0 & \text{if } AA_y \geq TA_y \\ \text{otherwise} \end{cases}$$

$$RP_y = \text{Max} \{ \sum AP_y * (TA_y - AA_y), 0 \}$$

Where:

$\sum AP_y$ is the summation of the **Availability Payments** for each month m in **Contract Year y**;

AA_y is the actual **Availability** of the **Facility**, being the number of **Settlement Periods** in **Contract Year y** in which the **Facility** was **Available** (including any **Force Majeure Period** required to be included in this calculation under Clause 4.7.2) as a proportion of the total number of **Settlement Periods** in **Contract Year y** (excluding any **Force Majeure Periods** other than any that are required to be included in this calculation under Clause 4.6.2) (expressed as a percentage); and

TA_y is the **Target Availability** of the **Facility** for **Contract Year y**, being ninety percent (90%) (which, for the avoidance of doubt, is a fixed value and shall not be subject to any adjustment to reflect any **Planned Maintenance Periods**).

Schedule 3 – Security⁸

Part 1: Mandatory Background Checking Requirements

1 Definitions

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

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

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

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

- (a) the Nominated Provider (unless otherwise agreed in writing by the Client); or
- (b) where paragraph 2.3 of this Part 1 applies, the Assurance Procedure

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

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

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

Standard Requirements Check means the Minimum Requirements Check plus a check on the Supplier Personnel's employment history for the period of three years prior to their engagement, a verification check of home address throughout the three years prior to commencement of their engagement, a "basic disclosure" of unspent criminal convictions provided by Disclosure Scotland or the Disclosure and Barring Service or equivalent which is satisfactory to the Customer, and an international fraud and sanctions check or global watch check using either:

- (a) the Nominated Provider (unless otherwise agreed in writing by the Client); or

⁸ Note: this Schedule is subject to review.

(b) where paragraph 2.3 of this Part 1 applies, the Assurance Procedure.

2 Background Checking Procedure

2.1 The Supplier shall comply with the Background Checking Requirements and ensure that all documents and records are obtained and/or verified in accordance with Applicable Law. If any Supplier Personnel are to be based outside the United Kingdom, the Supplier must obtain the Client's express written permission prior to engaging such Supplier Personnel and comply with all background checking requirements stipulated by the Client which shall as a minimum include the Minimum Requirements Check (as amended to comply with Applicable Law and any other laws or verification procedures which apply to the relevant jurisdiction).

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

(a) undergo the Standard Requirements Check if they:

- (i) have or will have any level of unsupervised access to or control (whether local or remote) over the Client's (or any of the Client Parties') operational or office sites, financial information, commercial information (including Client Data), information systems, records, email system, security systems or personal employee information; or
- (ii) have or will have access directly to members of the public, domestic properties, or to any customers of the Client ("a Standard Requirements Role");

(b) undergo the NSV Check if performing a NSV Designated Role; or

(c) undergo the Minimum Requirements Check if they are not performing a Standard Requirements Role or a NSV Designated Role,

2.3 Where a Standard Requirements Check is required and it reveals that the Supplier Personnel has a criminal record, such record shall be disclosed to the Client if the Supplier wishes to assign the Supplier Personnel to this Agreement. The Client reserves the right in its absolute discretion to require that such Supplier Personnel is excluded from directly or indirectly providing any Services if in its opinion the relevant charge, caution or conviction renders them unsuitable for the work in question.

2.4 Without prejudice to paragraphs 2.1 to 2.2 of this Part 1, if the Supplier instructs the Nominated Provider to withhold access to the Client (or the Client is otherwise unable to use the Nominated Provider service) such that the Client is unable to verify whether the relevant checks have been completed then:

(a) the Supplier shall notify the Client as soon as reasonably practicable of such instruction to the Nominated Provider;

- (b) on receipt of such notification at paragraph 2.4 of this Part 1 (or following the Client otherwise becoming aware of the unavailability of the Nominated Provider service) the Client shall notify the Supplier of the applicable Assurance Procedure which the Supplier will be required to follow; and
 - (c) the Supplier shall ensure that the Assurance Procedure is complied with within eight (8) Days of receipt of the same, and a failure by the Supplier to do so shall be a material breach of this Agreement.
- 2.5 The Client reserves the right to require that additional checking over and above the Background Checks be undertaken for particularly high-risk roles.
- 2.6 Where during the Term of this Agreement the Supplier becomes aware of any conviction of Supplier Personnel, or any falsification of information by Supplier Personnel, this information shall be forwarded to the Client for determination in its absolute discretion as to whether the Supplier Personnel should be allowed to continue working for or providing any services or Deliverables to the Client.
- 2.7 Without prejudice to **Error! Reference source not found. (Error! Reference source not found.)** the Supplier shall retain, manage, store and secure accurate and complete records of all checks made in accordance with the Background Checking Requirements, in accordance with the Data Protection Act 2018 (as amended) , and in such a manner that the Client can, on reasonable notice, request access in order to conduct an audit in respect of Supplier Personnel in accordance with the terms of this Agreement.
- 2.8 The Supplier acknowledges and accepts that the Nominated Provider will provide the Client with access to the Background Check Records to enable the Client to conduct audits in respect of compliance with the Background Checking Requirements.

Part 2: Mandatory Information Security Requirements

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

1. Introduction & Background

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

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

2. Purpose

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

3. Related Client Standards

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

4. Definitions

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

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

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

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

5. Mandatory and non-mandatory requirements

Within this document:

Shall: Indicates a mandatory requirement.

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

6. Assurance Requirements

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

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

6.1. Pre-Contract Security and Periodic Assurance Assessments

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

This assurance activity may include:

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

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

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

6.2. For-cause Audit

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

6.3. Regulatory Audits

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

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

6.4. Conduct and Arrangements

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

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

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

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

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

6.5. Costs and expenses

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

6.6. Audit Outcomes

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

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

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

7. Minimum Security Requirements

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

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

7.1. Security Management Systems

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

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

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

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

7.2. Risk Management

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

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

7.3. Supply Chain Management

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

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

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

A list of sub-tier suppliers and subcontractors directly involved in the supply of products or services to Client shall be provided by completing the table in Error! Reference source not found.. Changes to this list requires pre-approval from Client.

7.4. Asset Management

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

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

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

7.5. Configuration Management

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

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

7.6. Change Management

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

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

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

7.7. Awareness and Training

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

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

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

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

7.8. People Security

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

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

7.9. Physical Security

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

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

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

7.10. Facility Security

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

- Physical security (in accordance with **Paragraph Physical Security7.9 - Physical Security**).
- Temperature and humidity monitoring.
- Emergency lighting.
- Back-up/emergency power supply systems.

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

7.11. Identification and Authentication

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

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

- The initial password issued by a systems security administrator shall only be valid for the user's first on-line session. Upon initial log-on to the system, the user shall be forced to change their password immediately.
- Password length of at least 8 characters and a complexity that is at least a combination of 3 different types of characters (e.g., uppercase alphabetic (A-Z), lowercase alphabetic (a-z), non-alphabetic (numeric or special characters)).
- For systems using Passphrase authentication, the length should be at least 12 characters.
- All passwords shall expire within 90 days.
- Users shall be prevented from reusing the last 10 passwords

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

7.12. Access Control

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

- Approval of access.
- Segregation of duties
- Generic/shared accounts, including updates following any changes to personnel
- Privileged access accounts, including administrator and developer account restrictions
- Remote access, including usage restrictions.
- Authentication protocols, including Multi Factor Authentication
- Set a limit of consecutive invalid logon attempts by a user, with automatic locking of the account if limit breached

- Systems shall lock automatically after a defined period of session inactivity, requiring re-authentication to obtain access to the system
- Access monitoring, to detect unauthorised access attempts
- Periodic access reviews (minimum annual)
- Revocation of access from the Supplier's network within the following timeframes:
 - 24 hours in the event of a for-cause termination
 - 48 hours for standard termination
 - 7 days for all other system, data and application access.

7.13. Network Security

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

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

7.14. System Logging

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

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

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

7.15. Continuous Monitoring

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

- User activity
- Elevated privileges
- Hosts
- Remote connections

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

- Detected unauthorized exfiltration of data
- Suspicious user behaviour and unauthorised actions on systems
- Detected malicious code
- System abnormalities

- Unauthorised network intrusion
- Detected failure of event logging

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

7.16. Threat and Vulnerability Management

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

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

- **Critical** (CVSS score 9.0 – 10.0 AND [Externally Facing](#)) = provide corrective plan and prepare a Change Request within 24 hours, for implementation within 72 hours. The total elapsed time must not exceed 72 hours.
- **High** (CVSS score 7.0 – 10 AND NOT [Externally Facing](#)) = provide corrective plan and prepare a Change Request within 5 days, for implementation within 21 days. The total elapsed time must not exceed 21 calendar days.
- **Medium** (CVSS score 4.0 – 6.9) = provide corrective plan and prepare a Change Request within 30 days, for implementation within 60 days. The total elapsed time must not exceed 60 calendar days.
- **Low** (CVSS score 0.1 – 3.9) = Provide corrective plan and prepare a Change Request within 30 days, for implementation within 90 days. The total elapsed time must not exceed 90 calendar days. This is best practise but not compulsory.

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

7.17. Penetration Testing

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

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

7.18. Patch Management

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

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

7.19. Data Security

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

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

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

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

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

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

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

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

7.20. Backups

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

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

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

7.21. Business Continuity

The Supplier shall have business continuity plans that detail how operations will be maintained during an unplanned disruption in service. This shall include contingencies for business processes, assets, human resources, and business partners, and cover key information,

system, and services. Continuity plans shall be approved by senior management and reviewed/tested every 12 calendar months at a minimum.

7.22. Disaster Recovery

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

7.23. Security Incident Management and Data Breach

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

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

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

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

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

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

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

Part 3: Additional Information Security Requirements

1. Applicability of this Part 3

This Part 3 applies if in providing the Services or Deliverables, the Supplier (or any of its sub-contractors) or any Supplier Personnel will be:-

- a. utilising technology which will or could be connected to any of the Client's information systems, including without limitation, intranet, email, document management systems, operational management systems, cloud hosting sites or any other systems processing information which is confidential to the Client ("Client Information System");
- b. where any Supplier Personnel will have access using a Client Information System to any financial, commercial or other confidential data or personal data, or technical drawings or specifications which are not publicly available (including all Client Data) ("Sensitive Client Data");
- c. where any Supplier Personnel will have access to any Sensitive Client Data which is collected, stored or processed in a system which is controlled by the Supplier (or any of its sub-contractors) which is not a Client Information System;
- d. where any Sensitive Client Data is being collected, stored or processed by a sub-contractor of the Supplier; or
- e. if any Sensitive Client Data is being collected, stored or processed by the Supplier (or any of its sub-contractors), or any Client Information System is being accessed by Supplier Personnel based outside the United Kingdom.

2. Client Applicable Security Policies

The Supplier shall ensure that it has in place equivalent security controls and practices in order to meet the requirements of the following Client security Policies, such Policies to be shared with Supplier through a signed non-disclosure agreement (and as varied from time to time).

Policy Title
Acceptable Use of Devices Policy
Global People Security Policy
Global Physical Security Policy
Global Working from Abroad Policy

3. Supplier Locations

The Supplier shall provide a list of the primary locations within their organisation which are directly supporting the delivery of services or any Deliverables and therefore have any level of access to any Client Information System or Client Sensitive Data in accordance with the table below as soon as reasonably practicable after the Effective Date of this Agreement.

Table 1: Supplier sites and locations

Name	Address	Country	Description of Products or Services
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Note: changes to this list requires pre-approval from the Client contract / relationship manager who will seek guidance and approval from Client Security Team.

4. Sub-tier suppliers and sub-contractors table

The Supplier shall provide details of their sub-tier suppliers and subcontractors that will have access to any Client Information Systems or Client Sensitive Data.

Note: changes to this list requires pre-approval from the Client contract / relationship manager who will seek guidance and approval from Client Security.

Name	Address	Country	Description of Products or Services

SCHEDULE 4

Testing⁹

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

The **Initial Proving Tests** will be designed to demonstrate whether the **Facility** can meet the requirements of this **Agreement**. The level and scope of the **Initial Proving Tests** required will depend on the solution and build programme, but will include (without limitation) the following tests:

- Transition between **Constant Reactive Power Control Mode** and **Voltage Control Mode** by a **Dynamic Facility**, where appropriate
- Physical testing to demonstrate that the performance of the **Facility** matches the performance submitted in the **Provider's Tender Submission** including (without limitation):
 - Operation in **Constant Reactive Power Mode**
 - Operation in **Voltage Control Mode**

⁹ Testing requirements for Initial Proving Test and Proving Test will be notified by the **Company** during the **Tender** process

SCHEDULE 5

Forms

FORM A

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

Facility:	
Contract Number:	
Company Name:	
Declared Absorption Capability:	
Declared Injection Capability:	

Tel:	
Standby Tel:	
Fax:	
Standby Fax:	

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

UNAVAILABILITY OF REACTIVE POWER SERVICE

Period of Unavailability:
Reason for Unavailability:

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

Signature:

Acknowledged by National Grid Electricity System Operator (Print name):

.....

Signature: Date: Time:

National Grid Electricity System Operator Control

Fax number: 0870 602 4808

Standby Fax: 0870 602 4805

Telephone: 0844 892 0385

Standby Phone: 0844 892 0370

FORM B

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

Facility:	
Contract Number:	
Company Name:	
Declared Absorption Capability:	
Declared Injection Capability:	

Tel:	
Standby Tel:	
Fax:	
Standby Fax:	

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

RESTORATION OF AVAILABILITY OF REACTIVE POWER SERVICE

Time of Restoration:
Reason for Restoration of Availability:

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

Signature:

Acknowledged by National Grid Electricity System Operator

(Print name):

Signature: Date: Time:

National Grid Electricity System Control

National Grid Control

Fax number: 0870 602 4808

Telephone: 0844 892 0385

Standby Fax: 0870 602 4805

Standby Phone: 0844 892 0370

SCHEDULE 6

Not Used

