THIS AGREEMENT **is made on**

**BETWEEN:**

1. National Energy System Operator Limited (registered company no. 11014226), whose registered office is at: St Catherine's Lodge Bearwood Road Sindlesham Wokingham RG41 5BN (“NESO“)
2. [*INSERT NAME*](registered company no. [*XXXXX*]) whose registered office is at: [*INSERT ADDRESS*](“Project Counterparty”).

**WHEREAS:**

1. The Parties may have previously disclosed and may wish further to use, disclose and/or create for each other Confidential Information (as defined below) in connection with **the Long-term 2029 tender for the procurement of Stability Services, Reactive Power Services and / or Restoration Services** (the “**Proposed Project**”).
2. The Parties wish to enter into this Agreement to safeguard their rights and define their respective obligations with respect to Confidential Information and to protect the confidentiality of, and proprietary features contained in, Confidential Information.

**IT IS AGREED AS FOLLOWS:**

# DEFINITIONS

## In this Agreement, the following words and expressions shall have the following meanings:

* 1. “**Agreement**”shall mean this written confidentiality agreement;
	2. “**Affiliate**” means:
		1. in relation to a Person (including NESO), each other Person which directly or indirectly Controls, is directly or indirectly Controlled by, or is under direct or indirect common Control with, that Person from time to time; and
		2. in relation to NESO only, any governmental department, regulator, public body, or similar;
	3. “**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
	4. “**Confidential Information**” shall mean any and all information or data disclosed or made available (whether in writing, orally, by demonstration or by any other means) to, or obtained (whether directly or indirectly) by the Receiving Party or any third party acting on the Receiving Party's behalf, from the Disclosing Party, any of the Disclosing Party's Affiliates or its or their respective Representatives and whether before, on or after the date of this Agreement, which:
		1. relates (whether directly or indirectly) to the Proposed Project or to any discussions or negotiations relating to it; or
		2. is disclosed or obtained in the course of or in connection with any discussions or negotiations relating to the Proposed Project or otherwise in connection with the Proposed Project,
	5. and without prejudice to the generality of the foregoing definition, Confidential Information shall include any information or data relating to the Disclosing Party's (or any of the Disclosing Party's Affiliates) operations, processes, plans, intentions, financial performance, investment requirements, product information, know-how, marketing campaigns, branding and trade names, designs, trademarks, trade secrets, software, market opportunities, customers, competitors and/or business affairs. Confidential information shall also include any information regarding whether the Project Counterparty is subsequently awarded a contract for provision of Restoration Services pursuant to the Proposed Project;
	6. “**Control**” means:
		1. in relation to a company, the power of a Person to directly or indirectly secure:
			1. by means of the holding of shares or the possession of voting power in or in relation to that company or any other body corporate; or
			2. by virtue of any powers conferred by the articles of association or other document regulating that company or any other body corporate,
	7. that the affairs of the company are conducted in accordance with the wishes or directions of that other Person; and
		1. in respect of NESO the nearest equivalent meaning to that set out in paragraph (a) of this definition to the extent paragraph (a) is not applicable to NESO;
	8. “**Disclosing Party**” means the Party disclosing Confidential Information or from whom Confidential Information is obtained, whether directly or indirectly, and for the purposes of this Agreement a Party shall be treated as the Disclosing Party of any Confidential Information that that Party's Affiliates or its or their Representatives disclose or make available;
	9. “**EIR**”means the Environmental Information Regulations2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
	10. “**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time together with any guidance and/or codes of practice issued by the Information Commissioner's Office or relevant government department in relation to such legislation;
	11. “**Information**” has the meaning given under section 84 of the FOIA;
	12. “**Party**” means a party to this Agreement and “**Parties**” shall be construed accordingly;
	13. “**Permitted Purpose**” shall mean the use of the Confidential Information by the Receiving Party for the purposes of its consideration of, and discussions and negotiations with the Disclosing Party in relation to the Proposed Project but not for the purpose of discussing or developing opportunities with any other Person or for any other purpose whatsoever;
	14. **“Person”** includes individuals, partnerships, unincorporated associations, incorporated companies, limited liability partnerships, public bodies, joint ventures, trusts, and any other bodies of persons, legal or commercial entities (whether incorporated or unincorporated and whether resident or established in the UK or otherwise);
	15. “**Personal Data**” means any information relating to an identified or identifiable natural person;
	16. “**Receiving Party**” means the Party receiving or obtaining Confidential Information under this Agreement, except that for the purposes of this Agreement, a Party shall be treated as the Receiving Party in respect of Confidential Information that is received by that Party's Affiliates and its or their Representatives;
	17. “**Representative**” means in respect of a Party, the officers, employees, contractors, consultants, professional advisers and other representatives of that Party and/or of that Party's Affiliates; and
	18. “**Request**” shall have the meaning given to such term in the EIR, or the term “request for information” in the FOIA, as appropriate.

## In this Agreement:

### unless expressly provided otherwise, a reference to legislation or a legislative provision:

#### is a reference to it as amended, extended or re-enacted from time to time; and

#### includes all subordinate legislation made from time to time under that legislation or legislative provision,

### a reference to a **day** or **days** shall be construed as a reference to calendar days unless specified otherwise;

### unless expressly provided otherwise, a reference to **writing** or **written** includes email;

### any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms; and

### any obligation on a Party under this Agreement shall be deemed to include an obligation on that Party to procure that its Affiliates and its Representatives comply with that obligation.

# HANDLING OF CONFIDENTIAL INFORMATION

## In consideration of the mutual exchange and disclosure of Confidential Information, the Receiving Party undertakes to the Disclosing Party:

### subject to the remainder of this clause 2.1, to keep the Disclosing Party's Confidential Information secret and confidential;

### to use the Disclosing Party's Confidential Information only for the Permitted Purpose and for no other purpose whatsoever and in particular, but without prejudice to the generality of the foregoing:

#### not to make any commercial use of it; and

#### not to use or exploit it for the benefit of itself, or any third party;

other than pursuant to this Agreement or any further written agreement(s), that has or have been fully executed by authorised signatories of both Parties, that the Parties may enter into relating to the Proposed Project;

### not to copy, reproduce or reduce to writing any part of the Confidential Information except as may be reasonably necessary for the Permitted Purpose and for the avoidance of doubt, any copies, reproductions or reductions to writing so made shall be the property of the Disclosing Party;

### not to incorporate any of the Confidential Information into any of its own documentation or records except as may be necessary for the Permitted Purpose;

### not to disclose the Confidential Information to any other Person except:

#### to such of its Representatives and its Affiliates and its Affiliates' Representatives in so far as they have a reasonable need to know or see the same for the Permitted Purposes; or

#### with the prior written consent of the Disclosing Party;

provided that, in each case, the Receiving Party shall procure that such Persons are bound by confidentiality obligations with the Receiving Party at least as protective of the Confidential Information as those set out in this Agreement and shall enforce such obligations (at the Receiving Party’s cost) for the Disclosing Party’s benefit;

### to apply to the Confidential Information no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential or proprietary information (and in any event shall treat the Confidential Information with a reasonable degree of care and maintain reasonable security measures against theft, and unauthorised access or use of the Confidential Information even if it applies a lower standard to its own confidential information). For these purposes the Receiving Party undertakes not to use, transfer or store any part of the Confidential Information in an externally accessible computer or electronic information retrieval system or to transmit the Confidential Information outside the Receiving Party’s usual place of business, however this shall not prevent the use of secure remote access to its systems that contain Confidential Information;

### to respect and observe all regulations and restrictions relating to any security classification marked on the Confidential Information, both during the term of, and following expiry of, this Agreement and the period referred to in clause 8.3. Nothing in this Agreement shall replace or prejudice any security classification marked on any of the Confidential Information;

### to comply with all applicable laws relating to the processing of Personal Data which are applicable to any Confidential Information comprising Personal Data which is made available to the Project Counterparty; and

### in relation to the compliance with clauses 2.1(a) to 2.1(h) above (inclusive), to be liable to the Disclosing Party for the acts and omissions of any Persons to whom Confidential information is disclosed pursuant to clause 2.1(e), which are in breach of this Agreement, as if the acts and omissions of such Persons were the acts and omissions of the Receiving Party.

# EXEMPTIONS

## The obligations of confidentiality under this Agreement shall not apply to any information, data or material which the Receiving Party can prove:

### is in or becomes part of the public domain or is or otherwise becomes public knowledge by any means other than by breach of the provisions of this Agreement, or of any other obligation of confidence owed to the Disclosing Party by the Receiving Party, or by any Person for whom the Receiving Party is liable pursuant to the terms of this Agreement (information, data or material shall not be considered to be in the public domain by reason only of it having been disclosed pursuant to a request for information under FOIA, EIR, or Environmental Information (Scotland) Regulations 2004); or

### was previously or is at any time hereafter disclosed to the Receiving Party on a non-confidential basis by any third party (other than a Disclosing Party Affiliate or otherwise by a third party on behalf of the Disclosing Party or any of its Affiliates) having the right to disclose the same provided that such third party is not known by the Receiving Party to be party to a confidentiality agreement with the Disclosing Party or otherwise under an obligation of secrecy or confidence to the Disclosing Party;

### is released from the provisions of this Agreement by specific written consent given by the Disclosing Party; or

### was, or in the future is, developed independently by the Receiving Party without reference to Confidential Information.

# RETURN OF CONFIDENTIAL INFORMATION

## The Receiving Party:

### within seven days after receipt of a written request from the Disclosing Party; and/or

### within one month of completion of the Permitted Purpose,

shall:

### return to the Disclosing Party or, at the Disclosing Party's option, destroy or permanently erase, all documents and materials containing the Disclosing Party’s Confidential Information (and all copies of such documents and materials) and procure that any Person to whom such Confidential Information has been disclosed as permitted by this Agreement does likewise;

### where any of the Disclosing Party’s Confidential Information is held electronically and/or has been incorporated into any other document or record, irrevocably expunge all and any of the Disclosing Party's Confidential Information from that system, document or record unless the Receiving Party is not able to do so either by reason of applicable law, its own reasonable internal record keeping regulations or because such Confidential Information incorporated forms part of automatically archived computer back-up records, in which case the Receiving Party may retain such Confidential Information but always upon and subject to the terms and conditions of this Agreement; and

### certify in writing to the Disclosing Party's, by a duly authorised officer, that it has complied with the requirements of this clause 4.

# NON-DISCRETIONARY PUBLICATION

## Notwithstanding any of the foregoing provisions, a Party shall be entitled to make such disclosure, announcement, statement or communication in connection with the other Party's Confidential Information which is required by law (other than pursuant to any contract), by court or by any governmental or other regulatory authority (including the Office of Gas and Electricity Markets) provided, the other Party advance notice of such disclosure, announcement, statement or communication as is reasonably practicable in all the circumstances and provided that it uses all reasonable endeavours to:

### comply with all reasonable directions of the other Party regarding (i) the manner of such disclosure, announcement, statement or communication and (ii) any action which the other Party may wish to be taken to challenge legally the validity of such requirement; and

### minimise the extent and effect of such disclosure, announcement, statement or communication,

* 1. this clause shall not apply to Requests made to NESO, which shall be governed by clauses 5.2 and 5.3.

## The Project Counterparty acknowledges that NESO is subject to FOIA and EIR. Accordingly, if a Request is made to NESO for or concerning Confidential Information, the Project Counterparty shall provide NESO with such assistance as it reasonably requires to enable NESO to comply with its obligations. Without limiting the generality of the foregoing, the Project Counterparty shall:

### transfer to NESO all such Requests that it receives in respect of the Confidential Information as soon as practicable and in any event within three days of receiving such a Request; and

### provide NESO with a copy of all Confidential Information belonging to NESO within the scope of the Request which is within the Project Counterparty's possession or control in the form that NESO requires within five days (or such other period as the Authority may reasonably specify) of NESO's request for such Confidential Information; and

### not respond directly to such a Request without NESO's prior written approval.

## The Project Counterparty acknowledges that NESO may be required under FOIA and EIRs to disclose information (including Information and the Project Counterparty's Confidential Information) concerning the Project Counterparty without consulting or obtaining consent from the Project Counterparty. NESO shall take reasonable steps to notify the Project Counterparty of a Request (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so, but (notwithstanding any other provision in this Agreement) NESO shall be responsible for determining in its absolute discretion what information (including Information and the Project Counterparty's Confidential Information) is disclosable and/or whether any information (including Information and the Project Counterparty's Confidential Information) is exempt from disclosure in accordance with the FOIA or the EIRs.

# INTELLECTUAL PROPERTY

1. Each party reserves all rights in its Confidential Information. No rights, obligations or licences other than those expressly contained in this Agreement are granted by or to be implied from this Agreement or disclosure of the Confidential Information.

# ACKNOWLEDGMENT

## Each Party acknowledges that:

### any Confidential Information made available to it under this Agreement shall not have been independently verified, and may refer to matters which are under development or not yet complete; and

### each Party makes no express or implied, warranty or representation concerning its Confidential Information, including the accuracy or completeness of the Confidential Information supplied under this Agreement.

# TERMINATION

## This Agreement shall start on the date of this Agreement and continue in force (subject to earlier termination in accordance with clause 8.3) for *two* years from the date of this Agreement.

## Either Party may terminate this Agreement at any time by giving the other Party not less than seven days’ prior written notice.

## Notwithstanding the expiry or termination of this Agreement (for whatever reason), the terms of this Agreement (including the confidentiality obligations in it) shall continue to apply in respect of any Confidential Information disclosed or obtained prior to such expiry or termination for a period of 10 years after the termination of this Agreement.

# GENERAL

## If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any paragraph, or any part of one or more of these clauses or paragraphs) is held to be or becomes void or otherwise unenforceable for any reason under applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

## The rights and remedies of any Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party nor by any failure of, or delay by the said Party in ascertaining or exercising any such rights or remedies. Any waiver of any breach of this Agreement shall be in writing. The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

## No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties.

## This Agreement represents the entire agreement between the Parties relating to the Confidential Information and supersedes all prior agreements, arrangements and understandings between the Parties relating to the Confidential Information and each Party agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the other Party prior to signing this Agreement which such Party relied upon in entering into this Agreement whether such statement was made orally or in writing. However, nothing in this Agreement shall operate to exclude or limit any liability in respect of fraudulent misrepresentations.

# ASSIGNMENT

## Subject to clause 10.2, this Agreement is personal to each Party and no Party shall assign, novate, delegate or otherwise transfer or hold on trust the rights and responsibilities under this Agreement to any other Person without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

## Notwithstanding clause 10.1, NESO may by notice in writing to the Project Counterparty assign, novate, delegate or otherwise transfer or hold on trust any of its rights and responsibilities under this Agreement to any of its Affiliates.

# NOTICES

## Any notice sent under this Agreement must be in writing and may be served:

### on personal delivery; or

### by sending the notice by registered post to the address given above or to such other address as the relevant Party may give for the purpose of service of notices under this Agreement; or

### by email to the following addresses (or an address substituted in writing by the party to be served):

#### NESO: commercial.operation@nationalenergyso.com AND box.NESOLegalTeam@nationalenergyso.com

#### Project Counterparty: [EMAIL ADDRESS]

## Every such notice shall be deemed to have been served:

### if delivered by hand, upon delivery;

### two Business Days after posting of the same if delivered by registered post; or

### if sent by email, at the time of transmission, or, if this time falls outside NESO's standard business hours in the place of receipt, when NESO's standard business hours resume.

## This clause 11 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

# THIRD PARTY RIGHTS

## The provisions of this Agreement shall be intended to be for the benefit of each NESO Affiliate. Any Affiliate of NESO may, with the written consent of NESO, enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999 as if reference to NESO included a reference to them.

## No consent is necessary from any third party to vary (including, any release or compromises in whole or in part of any liability) or terminate this Agreement.

## Except as otherwise provided in clause 12.1, this Agreement does not create any right enforceable by any person who is not a Party under the Contracts (Rights of Third Parties) Act 1999.

# GOVERNING LAW AND JURISDICTION

1. This Agreement and any non-contractual obligations arising in connection with it shall be subject to the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales in respect of all disputes or differences arising out of or in connection with it (including any non-contractual obligations).

**IN WITNESS** of which the parties have signed this Agreement on the date set out above.

**SIGNED for and on behalf of National Energy System Operator Limited**

Signature: …………………….

Date: …………………….

**SIGNED for and on behalf of Project Counterparty**

Signature: …………………….

Date: …………………….