

**DATED** \_\_\_\_\_ **20[ ]**

**NATIONAL GRID ELECTRICITY  
SYSTEM OPERATOR LIMITED**

**and**

**[ ]**

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**STATIC REACTIVE POWER SERVICE  
AGREEMENT RELATING  
TO A FACILITY AT [ ]**

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**Contract Log No [ ]**

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THIS STATIC REACTIVE SERVICE AGREEMENT is made the        day of        20[ ]

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**BETWEEN:-**

- (1) **NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED** a company registered in England with number 11014226 whose registered office is at 1-3 Strand, London, WC2N 5EH (the “**Company**” which expression shall include its permitted successors and/or assigns); and
  - (2) [ ] a company registered in [England/Scotland] with number [ ] whose registered office is at [ ] (the “**Provider**” which expression shall include its permitted successors and/or assigns),
- each a “**Party**” and, together, the “**Parties**”.

**WHEREAS:-**

- (A) The **Company** issued an Invitation to Tender (“**ITT**”) on 25 November 2019 for the provision of static reactive power services in the Mersey area of the **National Electricity Transmission System** and the **Provider** has submitted a tender for the provision of static reactive power services from its **Facility**.
- (B) The **Company** has selected the **Provider** to provide reactive power services on the basis of the rules set out in the **ITT** and the **Parties** are entering into this **Agreement** in accordance with those **ITT** rules.

**NOW IT IS HEREBY AGREED** as follows:-

- 1. **DEFINITIONS, INTERPRETATION AND CONSTRUCTION**
- 1.1. The defined terms set out in Schedule 1 shall, unless the context otherwise requires, apply where used in this **Agreement**.
- 1.2. In this **Agreement**:
  - 1.2.1. 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**;

- 1.2.2. the headings are inserted for convenience only and will be ignored in construing this **Agreement**;
- 1.2.3. references to the words “include” or “including” are to be construed without limitation;
- 1.2.4. references to a month are to a calendar month;
- 1.2.5. 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;
- 1.2.6. references to the masculine will include the feminine and references in the singular will include references in the plural and vice versa; and
- 1.2.7. 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.

## 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 6 (*Termination*), shall continue in force and effect until the expiry of the **Service Term**.
- 2.2. This **Agreement**, other than this Clause 2 and Clauses 7 to 18 (inclusive), shall in all respects be conditional on:
  - 2.2.1. the **Provider** becoming bound by the relevant **Bilateral Agreement** [and **Distribution Connection Agreement**]<sup>1</sup>;
  - 2.2.2. the **Provider** demonstrating that the **Facility** has **Acceptable Protection Settings** in place; and

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<sup>1</sup> Delete if not applicable

2.2.3. the **Facility** successfully passing the **Initial Proving Test** in accordance with the requirements of Schedule 5, Part B (*Testing*),

(together, the “**Conditions Precedent**”) by the **Long Stop Date**.

2.3. [The **Provider’s** progress in satisfying the **Conditions Precedent** shall be assessed by the **Company** by reference to the **Phase 1 Post Tender Milestones** on the **Phase 1 PTM Date** and by reference to the **Phase 2 Post Tender Milestones** on the **Phase 2 PTM Date**<sup>2</sup>, and:

2.3.1. if the **Company** considers the applicable **Post Tender Milestones** to have been satisfied by the applicable **PTM Date** (or, in its absolute discretion, waives any such requirement), it shall notify the **Provider** in writing accordingly; or

2.3.2. if the **Company** considers that the requirements of the applicable **Post Tender Milestones** have not been satisfied and, in the **Company’s** reasonable opinion, there is no reasonable prospect of the **Provider** being capable of satisfying the applicable **Post Tender Milestones** within two months after the applicable **PTM Date**, this **Agreement** (to the extent in force) shall terminate automatically,

in either case, such notice to be given to the **Provider** as soon as reasonably practicable after the applicable **PTM Date**. 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 6.1.2 (*Termination*) shall apply.]<sup>3</sup>

2.4. The **Provider** shall use its reasonable endeavours to satisfy the **Conditions Precedent** and shall provide the **Company** with reasonable evidence of satisfaction by not later than twenty (20) **Business Days** prior to the **Scheduled Commercial Operations Date**.

2.5. The **Company** shall, acting reasonably, notify the **Provider** as soon as reasonably practicable after the date specified in Clause 2.4 either:

2.5.1. that it considers the **Conditions Precedent** to have been satisfied in which event, the **Commercial Operations Date** will take effect from 00:00:00 hours on the day following the **Company's** notice (provided that the **Commercial Operations Date** shall not be earlier than 1<sup>st</sup> April 2022); or

2.5.2. that:

- (i) it has received no evidence from the **Provider**; or
- (ii) it considers on the basis of evidence received from the **Provider** that the **Conditions Precedent** have not been satisfied and, in the **Company's** opinion, there is no reasonable prospect of the **Provider** being capable of satisfying the **Conditions Precedent** by the **Long Stop Date**,

and, in either case, this **Agreement** (to the extent in force) shall terminate automatically on the date of the **Company's** notice.

### 3. AVAILABILITY, SERVICE PROVISION AND PAYMENT

#### 3.1. Provision of Static Reactive Power Service

3.1.1. The **Provider** agrees with effect from the **Commercial Operations Date** and throughout the **Service Term** to [fuel]<sup>4</sup>, operate, maintain and repair the **Facility** in accordance with **Good Industry Practice** with a view to making it **Available** -to provide the **Static Reactive Power Service** in accordance with the **Contracted Parameters** throughout the **Service Term** upon and subject to the terms and conditions set out herein.

3.1.2. The **Provider** agrees and acknowledges that the **Facility** shall be treated as **Unavailable** in respect of any **Settlement Period** that is subject to restrictions imposed on the operation of the **Facility** by the **Local DNO**.

3.1.3. 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**.

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<sup>2</sup> Post Tender Milestones to be provided and agreed prior to contract award

<sup>3</sup> New build only. If not applicable, delete and replace with 'Not Used'.

3.1.4. [The **Provider** shall permit the **Company** on not less than ten (10) **Business Days**' notice to establish a secure virtual private network connection ("**VPN**") with the **Provider**, establish connectivity from the data concentrator host to the **Provider**, and configure the **Company's** data collection facility to receive the **Provider's** data signals. The **Provider** shall transmit all necessary data feeds using the IEC60870-5-104 protocol, including an **Availability** signal and meter data thereafter on a continuous basis to allow the **Company** to remotely monitor and issue **Instructions** to the **Facility** for the remainder of the **Service Term**.]<sup>5</sup>

3.1.5. 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 **Static 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 Schedule 3.

### 3.2. Notification of Unavailability

3.2.1. If at any time the **Provider** becomes aware that the **Facility** no longer has or will no longer have the **Contracted Absorption Capacity** it shall promptly notify the **Company** that the **Facility** is **Unavailable** (including, for the avoidance of doubt, in respect of any **Planned Maintenance Periods**) by facsimile or email in the form set out in Schedule 6, Part A (*Forms*) and the **Provider** shall thereafter promptly notify the **Company** by facsimile or email in the form set out in Schedule 6, Part B (*Forms*) when the **Contracted Absorption Capacity** is restored.

3.2.2. Each notification by the **Provider** that the **Facility** is **Unavailable** pursuant to Clause 3.2.1 shall be accompanied by an explanation in reasonable detail of the reasons for the **Facility** being **Unavailable** and, for the avoidance of

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<sup>4</sup> Delete where not applicable

<sup>5</sup> Embedded providers only. If not applicable, delete and replace with 'Not Used'.

doubt, the **Provider** may only declare the **Facility Unavailable** 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**.

3.2.3. For the purposes of this Clause 3, the **Static Reactive Power Service** shall be treated as **Unavailable** from the time of the **Provider's** notice under Clause 3.2.2 to the time of receipt by the **Company** of notification under Clause 3.2.1 that the **Contracted Absorption Capacity** has been restored.

### 3.3. **Instructions and Instructions to End**

3.3.1. It is acknowledged by the **Provider** that, in relation to any **Settlement Periods** (subject always to the **Instructed Settlement Periods Cap**) 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**") to require the **Facility** to absorb **Reactive Power**, and subsequently notify the **Provider** when it no longer requires the **Facility** to absorb **Reactive Power** ("**Instruction to End**").

3.3.2. 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**, the **Facility** operates:

(i) in a control mode (or, for **Providers** connected to the **Local Distribution System**, at a power factor) which enables constant reactive power absorption, as more particularly described in the **ITT**; and

(ii) to the full extent of the **Contracted Absorption Capacity**.

3.3.3. 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) the **Facility** fails to absorb **Reactive Power** to the full extent of the **Contracted Absorption Capacity** in accordance with an **Instruction** within the **Notice Period**; and/or

(iii) the **Facility** ceases to absorb **Reactive Power** to the full extent of the **Contracted Absorption Capacity** following an **Instruction**, otherwise than in accordance with an **Instruction to End**,

then the **Facility** shall with effect from the **Settlement Period** in which such failure occurred be treated as **Unavailable** until full capability is restored.

3.3.4. Promptly following each failure under Clause 3.3.3 the **Provider** shall notify the **Company** of the causes of the failure.

3.3.5. 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 (in the case of **Providers** connected to the **Local Distribution System**) **VPN** or (in the case of **Providers** connected either to the **NETS** or to the **Local Distribution System**) 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 3.3.1 and 3.3.2 (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)).

3.3.6. If at any time in a **Contract Year** the **Company** anticipates that the **Instructed Settlements Period Cap** will be met, the **Provider** shall at the **Company’s** request offer commercial terms for the provision of the **Static Reactive Power Service** in respect of such additional number of **Settlement Periods** in that **Contract Year** as the **Company** may request.

#### 3.4. **Continued Performance Failure**

In the event of any **Continued Performance Failure**, the **Company** may (at its sole discretion) reduce the **Availability Fee** and the **Contracted Absorption Capacity** on a pro-rata basis or terminate this **Agreement**. In the event of termination, the provisions of Clause 6.4 and 6.5 (*Termination*) shall apply.

#### 3.5. **Aggregated Facility**



3.5.1. For the purposes of this Clause 3.5 and Schedule 7, the term “**Aggregated Facility**” shall mean a notional **Facility** for which **Contracted Parameters** are confirmed by the **Company** and to which one or more **Sub-Facilities** may from time to time be **Allocated** by the **Provider** in accordance with Schedule 7 for the purpose of enabling the **Static Reactive Power Service** to be capable of being delivered and despatched from such **Sub-Facilities** on an aggregated basis via such **Aggregated Facility**, and which together shall comprise a **Facility** for the purposes of this **Agreement**.

3.5.2. An **Aggregated Facility** shall be treated as **Unavailable** unless and until the **Provider** shall have allocated or re-allocated to that **Aggregated Facility** in accordance with Schedule 7 sufficient **Sub-Facilities** to provide in aggregate the **Contracted Absorption Capacity**.

### 3.6. **Service Fees**

3.6.1. In consideration of the provision by the **Provider** of the **Static 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 (*Payments*).

3.6.2. [The **Provider** acknowledges that this **Agreement** shall constitute a **Market Agreement** for the purposes of Schedule 3 of **CUSC** and that it shall cease to be entitled to payments for the **Obligatory Reactive Power Service** throughout the **Service Term**.]<sup>6</sup>

3.6.3. [The **Provider** shall reimburse to the **Company** any payment for the **Obligatory Reactive Power Service** that it receives under the **CUSC** notwithstanding the provisions of Clause 3.6.2 during the **Service Term**.]<sup>7</sup>

### 3.7. **Annual Assessment**

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

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<sup>6</sup> Delete for non-CUSC parties and insert 'Not Used'.

<sup>7</sup> Delete for non-CUSC parties and insert 'Not Used'.

- (i) undertake an assessment of the extent of provision of the **Static 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 3.7.2 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 (*Payments*).

3.7.2. If in respect of any **Settlement Period** the **Facility** was **Unavailable** due solely to **Force Majeure** then, to the extent that in respect of such 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).

### 3.8. **Planned Maintenance**

- 3.8.1. 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 (including the duration of the outage) ("**Planned Maintenance Periods**").
- 3.8.2. 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**.
- 3.8.3. The **Provider** shall only withdraw the **Facility** from service for the purposes of planned maintenance in accordance with the **Planned Maintenance Programme**.

#### 4. PAYMENT

- 4.1. 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:-
- 4.1.1. its calculation of the **Availability Payment** due to the **Provider** in respect of the previous calendar month;
  - 4.1.2. in relation to the last calendar month in the **Contract Year**, its calculation of the **Annual Availability Reconciliation Payment** due from the **Provider**;
  - 4.1.3. if relevant, adjustments to be made (net of interest) in relation to disputes concerning **Availability Payments** any month prior to the previous month;
  - 4.1.4. [if relevant, any amount to be reimbursed by the **Provider** in accordance with clause 3.6.3 (*Service Fees*), which amount may be set-off by the **Company** against sums payable under this **Agreement**.]<sup>8</sup> and
  - 4.1.5. the net sum due to or from the **Provider** as a result thereof.
- 4.2. If the **Provider** disagrees with any dates times facts or calculations set out in the **Monthly Statement**, it shall state by notice in writing to the **Company** the reasons and facts which it relies upon in support of such disagreement. The **Parties** shall discuss and endeavour to resolve the matter 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 11 (*Dispute Resolution and Expert Determination*).
- 4.3. Where:-
- 4.3.1. the **Company** discovers that any previous **Monthly Statement** contains an arithmetic error or omission; or

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<sup>8</sup> Delete if not applicable and insert 'Not Used'

4.3.2. the **Company** becomes aware of any facts concerning matters provided by this Clause 4 (other than facts falling within Clause 4.3.1) which show that the payment made by or to the **Provider** was incorrect; or

4.3.3. the **Provider** establishes to the **Company's** reasonable satisfaction that it was entitled to receive any additional payment,

then the **Company** shall adjust the account between itself and the **Provider** in the next **Monthly Statement** which the **Company** issues, setting out the reason for the adjustment and the provisions of Clause 4.2 shall apply mutatis mutandis to such adjustment.

4.4. The **Company** shall pay to the **Provider** the amount shown as due from the **Company** in the **Monthly Statement** within three (3) **Business Days** after the date of issue. The **Provider** shall pay to the **Company** the amount shown as due from the **Provider** in such statement within three (3) **Business Days** of the date on which the statement is issued.

4.5. 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.

4.6. If it is agreed or otherwise determined under Clause 4.2 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.

4.7. If it is agreed or otherwise determined under Clause 4.2 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.

4.8. 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 **Static 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 **Static 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 **Static Reactive Power Service**.

- 4.9. 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.
- 4.10. 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 **Static Reactive Power Service** under this **Agreement**.
- 4.11. 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.
- 4.12. 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 must be made, in the absence of agreement to the contrary between the **Parties**, by 19.00 hours on the **Business Day** concerned.
- 4.13. The **Provider** hereby irrevocably consents to the operation of a self-billing system by the **Company** with regard to the payment for the **Static Reactive Power Service** and will at all times throughout the **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 **Static Reactive Power Service**.
- 4.14. The provisions of this Clause 4 shall survive termination of this **Agreement**.

## **5. MONITORING, METERING AND TESTING**

- 5.1 To enable the **Company** to monitor the **Availability** of the **Facility**, the **Provider** shall:
- 5.1.1 throughout the **Service Term**, maintain the **Monitoring Equipment** in good repair in accordance with **Good Industry Practice**; and
  - 5.1.2 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.
- 5.2 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.
- 5.3 Without limiting its obligations under Clause 5.1, 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*

- 5.4 At any time during the **Operational Period** the **Company** may notify the **Provider** in writing ("**Proving Test Notice**") that it wishes 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 5 (*Testing*) and which, if not agreed by the **Proving Test Date**, shall be determined by an **Expert** in accordance with Clause 11.3 (*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 ten (10) **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 ten (10) **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 a re-test has successfully been passed;
- (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 5.4) by reference to the next practicable **Monthly Statement**;
- (iv) the **Provider** shall notify the **Company** of the reasons for the failure, and may subsequently notify the **Company** when it is ready to carry out a re-test whereupon the provisions of this Clause 5.4 shall apply to that re-test mutatis mutandis; and
- (v) 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 6.1 (*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**.

## 6. **TERMINATION AND SUSPENSION**

6.1 The **Company** shall be entitled to terminate this **Agreement** forthwith by notice in writing to the **Provider** if:-

6.1.1 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

6.1.2 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;

6.1.3 if Clauses 2.3, 2.6, 3.4 or 5.4(v) applies apply; or

6.1.4 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 £750 there was inserted £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 fourteen (14) **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.

6.2 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 **Static Reactive Power Service** in accordance with the terms of this **Agreement**.

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

6.3.1 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

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

- (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 of the 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 section shall have effect as if for £750 there was inserted £250,000 (and the **Company** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by it with recourse to all appropriate measures and procedures);

and in any such case within fourteen (14) **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.

- 6.4 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.
- 6.5 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.

6.6 If at any time the operation of the **Facility** is subject to restrictions imposed by the **Local TO** that, in the **Company's** reasonable opinion, have a material and continuing adverse effect on the provision of the **Static Reactive Power Service** from the **Facility**, the **Company** may, by notice in writing to the **Provider**, suspend all rights and obligations of the **Parties** in relation to the **Static Reactive Power Service** until such time as the **Company** is reasonably satisfied that such restrictions are no longer being applied by the **Local TO** whereupon the **Company** shall by further notice ("**Notice of Resumption**") in writing to the **Provider** end the suspension of the **Parties'** respective rights and obligations. The **Provider** shall resume performance of the **Static Reactive Power Service** and its entitlement to **Availability Payments** shall resume with effect from the time and date specified in the **Notice of Resumption**. The **Service Term** shall not be extended by reason of any period of suspension.

## 7. WARRANTIES AND INDEMNITY

- 7.1 The **Provider** hereby warrants and represents to the **Company** that:

7.1.1 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 **Static 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;

7.1.2 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; and

7.1.3 as at date of this **Agreement** it is not a party to an agreement or arrangement with the **Company** or with any **Public Distribution System Operator** or electricity supplier or other person to provide any service from the **Facility** which may impair the **Provider's** ability to provide the **Static Reactive Power Service** and/or perform its obligations under this **Agreement**. The **Provider** repeats this warranty and representation upon its confirmation under Clause 3.3.2 (*Instructions and Instructions to End*) of each **Instruction** during the **Service Term**.

7.2 In the event that any warranty or representation made under Clause 7.1 is breached, the **Provider** shall indemnify the **Company** against all and any losses, liabilities, claims, expenses that may be suffered or incurred by the **Company** as a direct result of that breach and all and any claims and demands which may be brought against the **Company** by any other person connected to or using the **User System** of a **Public Distribution System Operator** or any other **User System** or the owner of operator of any **User System** or any other person whatever arising out of or resulting from such breach. Any legal costs and expenses reasonably incurred in the contesting of such claims including the court costs and the reasonable fees of lawyers and other professional advisors shall be treated as direct losses.

7.3 The provisions of this Clause 7.3 shall continue to bind the **Parties** after termination of this **Agreement**.

## **8. LIMITATION OF LIABILITY**

8.1 Subject to Clause 8.2, save where any provision of this **Agreement** provides for an indemnity, the **Parties** agree and acknowledge that neither **Party** (the "**Party Liable**") nor any of its officers, employees or agents shall be liable to the other **Party** for loss

arising from any breach of this **Agreement** other than for loss directly resulting from such breach and which at the date of this **Agreement** was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:-

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

8.1.2 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 million) per incident or series of related incidents.

8.2 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.

8.3 Subject to Clause 8.2 and save where any provision of this **Agreement** provides for an indemnity neither the **Party Liable** nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other **Party** for:-

8.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

8.3.2 any indirect or consequential loss; or

8.3.3 loss resulting from the liability of the other **Party** to any other person howsoever and whensoever arising save as provided in Clause 8.1.2 and Clause 8.2.

8.4 Each **Party** acknowledges and agrees that the other **Party** holds the benefit of Clauses 8.1, 8.2 and 8.3 for itself and as trustee and agent for its officers, employees and agents.

8.5 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.

8.6 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.

8.7 Each of Clauses 8.1, 8.2 , 8.3 and 8.4 shall:-

8.7.1 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

8.7.2 survive termination of this **Agreement**.

8.8 For the avoidance of doubt, nothing in this Clause 8 shall prevent or restrict either **Party** enforcing any obligation (including suing for a debt) owed to it under or pursuant to this **Agreement**.

8.9 Each **Party** acknowledges and agrees that the provisions of this Clause 8 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**.

## 9. **CONFIDENTIALITY AND ANNOUNCEMENTS**

### 9.1 **General Restrictions**

9.1.1 Subject to the exceptions provided in Clause 9.2 (and to the extent otherwise expressly permitted by this **Agreement**, neither **Party** shall, at any time,

whether before or after the expiry or sooner termination of this **Agreement**, without the prior consent of the other **Party** in writing (such consent not to be unreasonably withheld or delayed), divulge or suffer or permit its officers, employees, agents or contractors to divulge to any person or permit use by any person (other than disclosure to or use by any of its or their respective officers or employees to the extent that such disclosure and use is required to enable such persons properly to carry out their duties in connection with this **Agreement**):-

- (i) any of the contents of this **Agreement**;
- (ii) any commercially confidential information relating to the negotiations concerning the entering into of this **Agreement**;
- (iii) any commercially confidential information which may come to a **Party's** knowledge in the course of such negotiations; or
- (iv) any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other **Party**.

9.1.2 Each **Party** undertakes to use information referred to in -Clause 9.1.1 and disclosed to it by the other **Party** solely for the purposes of this **Agreement** and shall not use it for any other purpose or for the purposes of any third party.

## 9.2 Exceptions

9.2.1 The restrictions imposed by Clause 9.1 shall not apply to the disclosure of any information:

- (i) 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;
- (ii) 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;

- (iii) 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;
- (iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
- (v) pursuant to any **Licence** of the **Party** concerned;
- (vi) by either **Party** to any parent undertaking on a "need to know" basis only;
- (vii) to any authorised consultants, banks, financiers, insurers or professional advisers to the disclosing **Party**;
- (viii) 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**;
- (ix) by the **Company** to any parent, subsidiary or fellow subsidiary undertaking;
- (x) by either **Party** to the **Local DNO** (to the extent required to facilitate the provision of the **Static Reactive Power Service**); or
- (xi) 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.

9.2.2 In this Clause 9.2, the words "parent undertaking", "subsidiary undertaking" and "fellow subsidiary undertaking" shall have the meanings as provided in sections 1161 and 1162 of the Companies Act 2006.

### 9.3 Third Parties



Before either **Party** discloses any information in any of the circumstances described in Clauses 9.2.1(vi) to 9.2.1(viii) (other than to its authorised professional advisers), it shall notify the other **Party** of its intention to make such disclosure and procure the execution and delivery to that **Party** of an undertaking executed by the person to whom the disclosure is proposed to be made being in the same terms mutatis mutandis as the undertakings contained in this Clause 9.

#### 9.4 **Public announcements**

9.4.1 Subject to Clause 9.4.2, no public announcement or statement regarding the signature, performance or termination of this **Agreement** shall be issued or made unless before it is issued or made both the **Parties** have been furnished with a copy of it and have approved it (such approval not to be unreasonably withheld or delayed).

9.4.2 Neither **Party** shall be prohibited from issuing or making any such public announcement or statement if it is necessary to do so in order to comply with any applicable law or the regulations of any recognised stock exchange upon which the share capital of such **Party** is from time to time listed or dealt in.

#### 9.5 **Procedures**

With respect to the information referred to in Clause 9.1.1, both **Parties** shall ensure that:-

9.5.1 such information is disseminated within their respective organisations on a "need to know" basis only;

9.5.2 employees, directors, agents, consultants and professional advisers who are in receipt of such information are made fully aware of the **Party's** obligations of confidence in relation thereto; and

9.5.3 any copies of such information, whether in hard copy or computerised form, will clearly identify the information as confidential.

## 9.6 Termination

Notwithstanding any other provision of this **Agreement**, the provisions of this Clause 9 shall continue to bind a person after termination of this **Agreement**, in whole or in part, for whatever reason.

## 10. DISCLOSURE OF INFORMATION

The **Provider** hereby consents to the disclosure and use by the **Company** in such manner or form as it thinks fit of data and other information relating to this **Agreement** and the provision of the **Static Reactive Power Service** (including payments made to the **Provider** hereunder):

- (a) for the purposes of any or all of the statements published from time to time pursuant to Standard Condition C16 of the **Transmission Licence**; or
- (b) for the purposes of making market data available to tenderers for the **Static Reactive Power Service**.

## 11. DISPUTE RESOLUTION AND EXPERT DETERMINATION

- 11.1 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.
- 11.2 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.
- 11.3 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:

- 11.3.1 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;
- 11.3.2 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;
- 11.3.3 if the **Parties** cannot agree upon the selection of an **Expert**, the **Expert** shall be selected on the application of either **Party** by the President for the Law Society of England and Wales;
- 11.3.4 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;
- 11.3.5 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;
- 11.3.6 the **Parties** shall equally share the **Expert's** fees and expenses unless the **Expert** determines otherwise; and
- 11.3.7 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.

## 12. NOTICES

- 12.1 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 following address and/or facsimile number and/or email and marked for the attention of the person named below:

the **Company**: National Grid Electricity System Operator Limited  
Commercial  
Faraday House  
Warwick Technology Park  
Gallows Hill  
Warwick CV34 6DA  
Facsimile number: 01926 655630  
E-mail: [REDACTED]  
For the attention of: The Company Secretary

Copy to: Head of Commercial  
Facsimile number: 01926 656613  
E-mail: [REDACTED]

the **Provider**: [REDACTED]

Facsimile number: [REDACTED]  
E-mail: [REDACTED]  
For the attention of: [REDACTED]

Operational telephone contact number: [REDACTED]  
Operational facsimile contact number: [REDACTED]  
Operational e-mail contact: [REDACTED]  
Operational contact: [REDACTED]

12.2 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:-

12.2.1 in the case of delivery by hand, when delivered; or

12.2.2 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;

12.2.3 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

12.2.4 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.

### 13. FORCE MAJEURE

13.1 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, the **Provider** shall not be entitled to any **Availability Payment** to the extent that the **Facility** is **Unavailable** by reason of **Force Majeure**.

13.2 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**.

13.3 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**.

13.4 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**.

13.5 Either **Party** shall have a right to terminate this **Agreement** if a **Party** has been prevented from performing its obligations due to an event or circumstance of **Force Majeure** for a continuous period of six (6) months.

### 14. MISCELLANEOUS

14.1 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.

- 14.2 No variations or amendments to this **Agreement** shall be effective unless made in writing and signed by and on behalf of both **Parties**.
- 14.3 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 the **Provider** may sub-contract the operation of the **Facility** to a third party operator.
- 14.4 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**.
- 14.5 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.
- 14.6 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.

## 15. ANTI-BRIBERY

- 15.1 Each **Party** shall:

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

15.1.2 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;

15.1.3 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

15.1.4 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 15.

15.2 If either **Party** breaches this Clause 15 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.

## 16. **EMR**

16.1 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**.

16.2 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**.

16.3 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;

**“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;

<b>“EMR Document”</b>	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
<b>“EMR Functions”</b>	has the meaning given to “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013.

## 17. JURISDICTION

- 17.1 Subject and without prejudice to Clause 11 (*Dispute Resolution and Expert Determination*) and to Clause 17.4, both **Parties** irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this **Agreement** and that accordingly any suit, action or proceeding (together in this Clause 17 referred to as “**Proceedings**”) arising out of or in connection with this **Agreement** may be brought to such courts.
- 17.2 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 17 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.
- 17.3 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**.



17.4 For the avoidance of doubt nothing contained in the foregoing provisions of this Clause 17 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.

**18. GOVERNING LAW**

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

**IN WITNESS WHEREOF** the hands of the duly authorised representatives of the **Parties** at the date first above written.

**SIGNED** on behalf of

**NATIONAL GRID**

**ELECTRICITY SYSTEM OPERATOR LIMITED**

**SIGNED** on behalf of

**[PROVIDER]**

## SCHEDULE 1

### Definitions

<b>“Acceptable Settings”</b>	<b>Protection</b> means, in relation to the <b>Facility</b> (or, in the case of an <b>Aggregated Facility</b> , each <b>Sub-Facility</b> ), protection settings that meet with the following technical requirements:  (a) in respect of the rate of change of frequency protection setting, a setting of one Hertz per second (1Hz/s) or above;  (b) that such <b>Facility</b> or <b>Sub-Facility</b> (as applicable) does not use vector shift protection settings; and  (c) the ability to remain connected and stable for faults on the <b>NETS</b> where the voltage at the point of connection to the <b>NETS</b> drops to zero (0) pu for up to one hundred and forty (140) ms,  as more particularly described in the <b>ITT</b> ;
<b>“Act”</b>	means the Electricity Act 1989;
<b>“Aggregated Facility”</b>	means the notional facility identified in Schedule 3, Part A ( <i>Facility and Contracted Parameters</i> ) and comprising a number of <b>Sub-Facilities</b> made <b>Available</b> and operated by the <b>Provider</b> on an aggregated basis;
<b>“Allocated”</b>	means, with respect to a <b>Sub-Facility</b> , allocated at the relevant time to an <b>Aggregated Facility</b> in accordance with the provisions of Schedule 7 ( <i>Provisions relating to an Aggregated Facility</i> ) and <b>“UnAllocated”</b> shall be construed

	accordingly;
<b>“Allocation Notification”</b>	shall have the meaning given in paragraph 1.6 of Schedule 7 ( <i>Provisions relating to an Aggregated Facility</i> );
<b>“Annual Availability Reconciliation Payment”</b>	means the payment to be calculated by the <b>Company</b> following the end of each <b>Contract Year</b> in accordance with Clause 3.7.1(ii) ( <i>Annual Assessment</i> );
<b>“Available”</b>	means that the <b>Facility</b> is capable of operating at not less than ninety per cent (90%) of its <b>Contracted Absorption Capacity</b> and otherwise is capable of operating in accordance with its <b>Contracted Parameters</b> in full in response to an <b>Instruction</b> , including absorption of <b>Reactive Power</b> from the <b>NETS</b> and the terms <b>“Availability”</b> , <b>“Unavailable”</b> and <b>“Unavailability”</b> shall be construed accordingly;
<b>“Availability Fee”</b>	means the sum of £[ ]/Settlement Period, as tendered by the <b>Provider</b> subject to indexation in accordance with paragraph 2 of Schedule 2 Part A ( <i>Availability Payment</i> );
<b>“Availability Payment”</b>	means the payment to be made to the <b>Provider</b> for each calendar month as calculated in accordance with Schedule 2, Part A ( <i>Availability Payment</i> );
<b>“Authority”</b>	means the Gas and Electricity Markets Authority;
<b>“Bilateral Agreement”</b>	as defined in the <b>CUSC</b> ;
<b>“BM Unit”</b>	as defined in the <b>BSC</b> ;
<b>“Balancing and Settlement Code” or “BSC”</b>	as defined in the <b>Public Electricity Supply Licence</b> ;

<b>“Business Day”</b>		a week-day other than a Saturday or Sunday on which banks are open for domestic business in the City of London;
<b>“Commercial Operations Date”</b>		means the later of: (i) the date on which the <b>Conditions Precedent</b> have been satisfied or waived in full; and (ii) 1 <sup>st</sup> April 2022, provided that such date shall not extend beyond the <b>Long Stop Date</b> ;
<b>“Competent Authority”</b>		means the <b>Authority</b> 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) or the member states of the European Union which have jurisdiction over the <b>Company</b> or the subject matter of this <b>Agreement</b> ;
<b>“Conditions Precedent”</b>		has the meaning given to it in Clause 2.2 ( <i>Commencement and Term</i> );
<b>“Continued Performance Failure”</b>		means, in respect of <b>Instructions</b> issued in any calendar month, the <b>Facility</b> was declared or deemed <b>Unavailable</b> for twenty percent (20%) of the aggregate <b>Relevant Settlement Periods</b> in that month;
<b>“Contract Year”</b>		means the period commencing on the <b>Commercial Operations Date</b> and ending on the date falling twelve (12) months from the <b>Commercial Operations Date</b> , and every period of twelve (12) months thereafter;
<b>“Contracted Capacity”</b>	<b>Absorption</b>	means the maximum capacity of the <b>Facility</b> to absorb <b>Reactive Power</b> as specified in the <b>Contracted Parameters</b> ;

<b>“Contracted Parameters”</b>	means, in relation to the <b>Facility</b> , the parameters and values specified in the table set out in Schedule 3 ( <i>Facility and Contracted Parameters</i> );
<b>“CUSC”</b>	means the Connection and Use of System Code as defined in the <b>Transmission Licence</b> ;
<b>“Distribution Licence”</b>	means a licence issued under section 6(1)(c) of the <b>Act</b> ;
<b>“EDL”</b>	means the electronic despatch logging mechanism by which the <b>Company</b> communicates with the <b>Provider</b> and the <b>Provider</b> communicates with <b>Company</b> in respect of the <b>Facility</b> for the purposes of sending and acknowledging <b>Instructions</b> and <b>Instructions to End</b> ;
<b>“Facility”</b>	the facility owned and operated by the <b>Provider</b> or (as the case may be) the <b>Aggregated Facility</b> operated by the <b>Provider</b> as further identified in Schedule 3, Part A ( <i>Facility and Contracted Parameters</i> );
<b>“Force Majeure”</b>	in relation to either <b>Party</b> any event, circumstance or condition which is beyond the reasonable control of such <b>Party</b> (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that <b>Party</b> or its officers or employees, agents, contractors and sub-contractors) which, despite all reasonable endeavours of the <b>Party</b> claiming <b>Force Majeure</b> 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, 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, 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) any restrictions imposed on the operation of the **Facility** by the **Local DNO**, shall be interpreted as a cause beyond the reasonable control of that **Party**;

**“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 Supply Point”**

has the meaning given to it in the BSC;

**“GSP Group”**

has the meaning given to it in the **BSC**;

**“Indicative Post Tender Milestones”**

means the indicative milestones set out in Schedule 4 (*Indicative Post Tender Milestones*);

**“Initial Proving Test”**

has the meaning given to it in Schedule 5 (*Testing*);

**“Instructed Settlement Periods Cap”**

means, in respect of any **Contract Year**, initially eleven thousand (11,000) **Settlement Periods**, subject always to the provisions of Clause 3.3.6 (*Instructions and Instructions to End*);

<b>“Instruction”</b>	has the meaning given to that term in Clause 3.3.1 ( <i>Instructions and Instructions to End</i> );
<b>“Instruction to End”</b>	has the meaning given that term in Clause 3.3.1( <i>Instructions and Instructions to End</i> );
<b>“ITT”</b>	has the meaning given to it in recital A;
<b>“Monthly Statement”</b>	has the meaning given to that term in Clause 4.1 ( <i>Payment</i> );
<b>“Legal Requirement”</b>	means any Act of Parliament, regulation, licence or any present or future directive, request, requirement, instruction, code of practice, direction or rule of any <b>Competent Authority</b> and any modification, extension or replacement thereof;
<b>“Licence”</b>	means a licence issued under section 6(1) of the Electricity Act 1989;
<b>“Local Distribution System”</b>	means all or part of the distribution system operated by the <b>Local DNO</b> ;
<b>“Local DNO”</b>	means SP Manweb Plc a company registered in England under number 02366937;
<b><u>“Local TO”</u></b>	<u>means the owner of that part of the <b>NETS</b> to which the <b>Facility</b> is connected or (in the case of an embedded <b>Facility</b>) the owner of that part of the <b>NETS</b> in which the associated <b>Grid Supply Point</b> is located;</u>
<b>“Long Stop Date”</b>	30 <sup>th</sup> June 2022;
<b>“Market Agreement”</b>	has the meaning given to that term in the <b>CUSC</b> ;
<b>“Monitoring Equipment”</b>	means the monitoring equipment required to be installed by the <b>Provider</b> in relation to the <b>Facility</b> , as more particularly set out in the <b>ITT</b> ;

**“National Electricity Transmission System” or Company’s Licence;** has the meaning given to that term in the

**“NETS”**

**“Notice Period”** means the period specified in Schedule 3 (*Notice Period and Contracted Parameters*);

**“Obligatory Reactive Power Service”** has the meaning given to that term in the **CUSC**;

**“Phase 1 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 **Phase 1 PTM Date**, initially based on Part A of the **Indicative Post Tender Milestones**;

**“Phase 2 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 **Phase 2 PTM Date**, initially based on Part B of the **Indicative Post Tender Milestones**;

**“Phase 1 PTM Date”** means the date on which the **Provider’s** achievement of the **Phase 1 Post Tender Milestones** is to be assessed, being the date falling nine (9) months after the date of contract award pursuant to the **Tender**;

**“Phase 2 PTM Date”** means the date on which the **Provider’s** achievement of the **Phase 2 Post Tender Milestones** is to be assessed, being the date falling six (6) months prior to the **Scheduled Commercial Operations Date**;

**“Planned Maintenance Periods”** has the meaning given to it in Clause 3.8.1 (*Planned Maintenance*);



<b>“Planned Maintenance Programme”</b>	has the meaning given to it in Clause 3.8.1 ( <i>Planned Maintenance</i> );
<b>“Post-Tender Milestones”</b>	means either the <b>Phase 1 Post Tender Milestones</b> or the <b>Phase 2 Post Tender Milestones</b> (as the context so requires);
<b>“Proving Test”</b>	means a test to be undertaken in accordance with Clause 5.4 ( <i>Testing</i> ) and the principles set out in Schedule 5 ( <i>Testing</i> );
<b>“PTM Date”</b>	means either the <b>Phase 1 PTM Date</b> or the <b>Phase 2 PTM Date</b> (as the context so requires);
<b>“Public Distribution System Operator”</b>	a holder of a <b>Distribution Licence</b> who was the holder of, or is a successor to a company which was the holder of a <b>Public Electricity Supply Licence</b> , relating to distribution activities in Great Britain;
<b>“Public Electricity Supply Licence”</b>	a licence granted under Section 6(1)(c) of <b>the Act</b> prior to the coming into force of section 30 of the Utilities Act 2000;
<b>“Reactive Power”</b>	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;
<b>“Relevant Settlement Period”</b>	means a <b>Settlement Period</b> that is subject to an <b>Instruction</b> ;
<b>“Scheduled Commercial Operations Date”</b>	1 <sup>st</sup> April 2022;
<b>“Service Term”</b>	means the period commencing at 23:00 hours on the <b>Commercial Operations Date</b> and ending at 07:00 hours on 31 March 2031;
<b>“Static Reactive Power”</b>	means the service of making the <b>Facility</b>

<b>Service</b>	<b>Available</b> and responding to the <b>Company's Instructions</b> in accordance with this <b>Agreement</b> ;
<b>"Sub-Facility"</b>	means a facility with a maximum capacity to absorb MVar of not less than five (5) MVar owned or operated by the <b>Provider</b> and introduced and validated as part of an <b>Aggregated Facility</b> pursuant to Paragraph 1.1 of Schedule 7 ( <i>Provisions relating to an Aggregated Facility</i> );
<b>"Sub-Facility Proposal"</b>	shall have the meaning in paragraph 1.1(a) of Schedule 7 ( <i>Provisions relating to an Aggregated Facility</i> );
<b>"Tender"</b>	means the competitive procurement process for the <b>Static Reactive Power Service</b> undertaken pursuant to the <b>ITT</b> ;
<b>"Trading Day"</b>	means, for each day, the period commencing at 23:00 hours and ending the instant in time before 23:00 hours the following day; and
<b>"VPN"</b>	has the meaning given to it in Clause 3.1.4 ( <i>Provision of Static Reactive Power Service</i> ).

## SCHEDULE 2

### Payments

#### Part A – Availability Payment

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

$$AP_m = \sum_{i=1}^{month} AF_i * AM_j$$

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

$AF_i$  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 **Unavailable**, including any **Settlement Periods** in which the **Facility** i is treated as **Unavailable** in accordance with Clauses 3.1.2, 3.2.3, 3.3, 3.5.2 or 5.4(d)(ii); or 1 in respect of each **Settlement Period** j in which the **Facility** i was **Available**.

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 2020] values and will be adjusted annually (commencing on [1st April 2022]) 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 **Contract Rate** will therefore be increased (or reduced as appropriate) for the period [April 2022] to [March 2023] by the following factor:-

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

Where:

$CPI_2$  is the CPI for [March 2022]

$CPI_1$  is the CPI for [March 2020]

- 2.3 The relevant price will then be increased (or reduced as appropriate) for the period [April 2023] to March [2024] by the following factor:-

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

Where:

$CPI_3$  is the CPI for [March 2023]

$CPI_1$  is the CPI for [March 2020]

- 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 2020].
- 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.

### Part B – Annual Availability Reconciliation Payment

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

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

$$RP_y = \sum AP_y * (TA_y - AA_y)$$

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** (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, includes any **Planned Maintenance Periods**).

**SCHEDULE 3**

**Facility and Contracted Parameters**

**Part A**

**[Facility Unit ID: [ ]]**

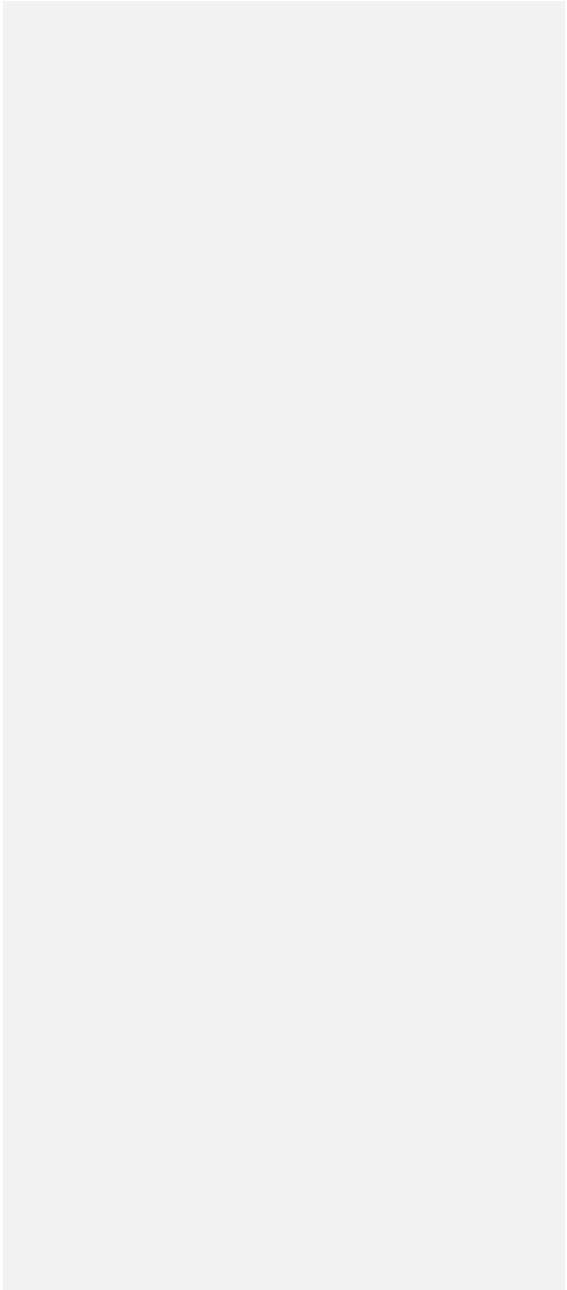
**[Aggregated Facility: ]**

Aggregated Facility Unit ID (including BM Unit ID)	Allocated Sub-Facilities
[ ]	

Contracted Parameter	Contracted Value
Notice Period	maximum thirty (30) minutes
Contracted Absorption Capacity (Leading MVar)	

**Part B**

[Details of **Sub-Facilities**]



**SCHEDULE 4**

**Indicative Post-Tender Milestones**

**Part A – Phase 1 Post Tender Milestones**

	<b>Milestone</b>	<b>Evidence Required</b>
1.	The grant by the relevant local planning authority (on terms and conditions reasonably acceptable to the <b>Company</b> ) of permission for the proposed erection, construction operation and/or site clearance required (including all and any ancillary erections, structures and equipment, plant and apparatus) and use of the <b>Facility</b> for the provision of the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b> .	Copy of all relevant consents or (at the <b>Company's</b> sole discretion) a declaration by the <b>Provider</b> that it has obtained the necessary planning permission) that may be required to enable the <b>Provider</b> to deliver its project for the purposes of providing the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b> .
2.	The <b>Provider</b> has either a leasehold or freehold interest in land upon which the <b>Facility</b> is (or is to be) situated	Evidence to the <b>Company's</b> reasonable satisfaction which may (at the <b>Company's</b> sole discretion) be by way of a declaration by the <b>Provider</b> that it has met these obligations.
3.	The <b>Provider</b> has in place (as can reasonably be expected to be in place by the <b>Phase 1 PTM Date</b> ), without limitation, those consents, permissions, approvals, licences, exemptions and other permits (in legally effectual form) as may be	Evidence to the <b>Company's</b> reasonable satisfaction which may (at the <b>Company's</b> sole discretion) be by way of a certificate from an independent consultant (based in the United Kingdom and who has sufficient experience and expertise in assessing the



	necessary to commence, carry out, maintain and ensure the provision of the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b> .	consenting requirements for the construction and operation of facilities similar to the <b>Provider's</b> system) that the <b>Provider</b> has, or can reasonably be expected to have, the necessary consents, permissions, approvals, licences, exemptions and other permits in place to enable the <b>Provider</b> to the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b> by no later than the <b>Scheduled Commercial Operations Date</b> .
4.	Entry by the <b>Provider</b> into a binding agreement (on terms acceptable to the <b>Company</b> ) for the connection of the <b>Facility</b> to the public electricity supplier distribution system or to the National Electricity Transmission System to receive a supply or electricity from and export electricity into the distribution system or the National Electricity Transmission System.	Unless evidence was fully provided at the <b>Tender</b> stage, evidence to the <b>Company's</b> reasonable satisfaction or (at the <b>Company's</b> sole discretion) a declaration by the <b>Provider</b> that it has entered into a suitable grid connection agreement that will enable the <b>Provider</b> to deliver the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b> .
5.	The <b>Provider</b> has put in place the necessary orders for all necessary plant, equipment, apparatus, machinery and other materials with long procurement and/or delivery periods.	Evidence to the <b>Company's</b> reasonable satisfaction.
6.	Entry by the <b>Provider</b> into a binding engineering procurement and construction contract and/or a supply agreement with an original equipment manufacturer (as applicable) for the provision of relevant	Unless a contract was entered into at the <b>Tender</b> stage, evidence to the <b>Company's</b> reasonable satisfaction which may be by way of a certificate from an independent consultant who has sufficient experience

<p>equipment and services in developing the <b>Facility</b> (including all ancillary and associated works in relation thereto) on terms and conditions reasonably acceptable to the <b>Company</b>.</p>	<p>and expertise in assessing the necessary requirements for the construction and operation of facilities similar to the <b>Provider's</b> system in the United Kingdom that, given the terms of such agreements, there is a reasonable prospect of the <b>Provider</b> being able to provide the <b>Static Reactive Power Service</b> by no later than the <b>Scheduled Commercial Operations Date</b>.</p>
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**Part B – Phase 2 Post Tender Milestones**

<p>1.</p>	<p>The <b>Provider</b> is close to completing development and construction of the <b>Facility</b>.</p>	<p>Evidence (to the <b>Company's</b> reasonable satisfaction) and/or (at the <b>Company's</b> sole discretion) a declaration by the <b>Provider</b> that it is on schedule to start providing the <b>Static Reactive Power Service</b> by the <b>Scheduled Commercial Operators Date</b> (or if not, by when).</p>
<p>2.</p>	<p>The <b>Provider</b> that is has in place, without limitation, all remaining consents, permissions, approvals, licences, exemptions and other permits (in legally effectual form as may be necessary to complete, maintain and ensure the provision of the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b>.</p>	<p>Evidence to the <b>Company's</b> reasonable satisfaction which may (at the <b>Company's</b> sole discretion) be by way of a certificate from an independent consultant (based in the United Kingdom and who has sufficient experience and expertise in assessing the consenting requirements for the construction and operation of facilities similar to the <b>Provider's</b> system) that the <b>Provider</b> has, all the necessary consents,</p>

		permissions, approvals, licences, exemptions and other permits in place to enable the <b>Provider</b> to provide the <b>Static Reactive Power Service</b> in accordance with the terms of the <b>Agreement</b> by no later than the <b>Scheduled Commercial Operations Date</b> .
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**SCHEDULE 5**

**Testing<sup>9</sup>**

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

**SCHEDULE 6**

**Forms**

**FORM A**

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

Facility:	
Contract Number:	
Company Name:	
Contracted Absorption Capacity:	

Tel:	
Standby Tel:	
Fax:	
Standby Fax:	

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

**UNAVAILABILITY OF STATIC REACTIVE POWER SERVICE**

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**

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

Facility:	
Contract Number:	
Company Name:	
Contracted Absorption Capacity:	

Tel:	
Standby Tel:	
Fax:	
Standby Fax:	

We hereby notify you of the availability of the Static Reactive Power Service  
from the above Facility

**RESTORATION OF AVAILABILITY OF STATIC REACTIVE POWER SERVICE**

<b>Reason for Restoration of Availability:</b>

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 7

### PROVISIONS RELATING TO AN AGGREGATED FACILITY

#### Introduction of new Sub-Facilities

- 1.1 For the purposes of Clause 3.5 (*Aggregated Facility*) and this Schedule 7, “**Sub-Facility**” shall mean a facility under the control or operation of the **Provider** approved in writing by the **Company** in accordance with the following provisions:-
- (a) details of each **Sub-Facility** proposed by the **Provider** shall be included in the form set out in Form A in Schedule 8 (a “**Sub-Facility Proposal**”) and notified to the **Company** by e-mail;
  - (b) each **Sub-Facility Proposal** shall be signed by the **Provider** and countersigned by or on behalf of the owner or operator of the proposed **Sub-Facility** (as the case may be);
  - (c) such proposed **Sub-Facility** shall then be subject to a verification process whereby the **Company** shall (inter alia) check the site details and ensure that no other **Ancillary Services** are being procured from the proposed **Sub-Facility** which may conflict with the provision of the **Static Reactive Power Service**;
  - (d) such proposed **Sub-Facility** is subject to a **Distribution Connection Agreement**;
  - (e) if the verification is completed to the **Company’s** satisfaction (such verification subject always to the **Company’s** rights under paragraph 1.2 below), the applicable **Sub-Facility Proposal** shall be countersigned by or on behalf of the **Company** and returned to the **Provider** by fax or e-mail; and
  - (f) such **Sub-Facility** shall then be approved for the purposes of this Schedule 7 from the date such **Sub-Facility Proposal** is returned by the **Company** to the **Provider** duly countersigned.
- 1.2 The **Provider** shall procure full audit and inspection rights (upon not less than 5 **Business Days** prior notice in writing from the **Company** to the **Provider**) to each **Sub-Facility** for the benefit of the **Company** and its agents and contractors, whether

or not the **Sub-Facility** is at the relevant time **Allocated**, and shall also retain full metering data for all relevant **Sub-Facilities** and make the same available for inspection by the **Company** at any time.

- 1.3 Unless otherwise notified in writing by the **Company**, no **Sub-Facility** may be proposed by the **Provider** unless representing not less than (five) 5 MVar of **Reactive Power** capability.

Allocation and re-allocation of **Sub-Facilities**

- 1.4 The **Provider** may:

- (a) allocate to an **Aggregated Facility** one or more **Sub-Facilities** which are at that time **UnAllocated**; and
- (b) re-allocate to that **Aggregated Facility** one or more **Sub-Facilities** which are at that time already **Allocated** to another aggregated facility (being a facility awarded a contract pursuant to the **Tender** with terms in the same form as this **Agreement**),

in each case in accordance with the procedure set out in this Schedule 7, provided that in the case of allocation and re-allocation of one or more **Sub-Facilities** to an **Aggregated Facility** and where that **Aggregated Facility** is a **BM Unit**, such allocation and re-allocation is only permitted where the **Sub-Facilities** comprising or which are to comprise the **Aggregated Facility** are within the same **GSP Group**.

- 1.5 Any such allocation or re-allocation of **Sub-Facilities** to an **Aggregated Facility** shall be made by fax or e-mail by the **Provider** to the **Company** in the form set out in Form B in Schedule 8 (an "**Allocation Notification**") in accordance with paragraph 1.6.

- 1.6 An **Allocation Notification** shall only be valid if:-

- (a) received by the **Company** no later than ten (10) **Business Days** prior to the time from which the allocation or re-allocation is expressed to take effect;
- (b) the **Company** is satisfied that appropriate communications and metering equipment have been installed at the applicable **Sub-Facility** be **Allocated** to



the **Aggregated Facility** in order to enable the instruction and monitoring of the delivery of the **Static Reactive Power Service** from the **Aggregated Facility**;

- (c) the **Company** is satisfied that any change in the geographical location of the **Sub-Facilities** comprised within the **Aggregated Facility** does not prejudice in the **Company's** sole discretion the provision of **Static Reactive Power Service**;
- (d) the **Company** is satisfied (subject to the **Provider** submitting evidence as the **Company** may reasonably require) that: (i) the **Provider** has duly consulted with the **Local DNO** as to the impact to the **Local Distribution System**, the **Local DNO** can attest to the effectiveness of the allocation or re-allocation of such **Sub-Facility** to absorb **Reactive Power** from the **NETS** (as more particularly described in the **ITT**), and that the **Local DNO** has no objections to such proposal; and (ii) such **Sub-Facilities** continue to be bound by the terms of a **Distribution Connection Agreement**;
- (e) the **Company** is satisfied as to the effectiveness of the allocation of such **Sub-Facility** to absorb **Reactive Power** from the **NETS** (as more particularly described in the **ITT**), and the **Company** may (at its discretion) require an **Initial Proving Test** to be carried out;
- (f) where re-allocating one or more **Sub-Facilities** to another aggregated facility (being a facility awarded a contract pursuant to the **Tender** with terms in the same form as this **Agreement**):
  - (i) the capability of that the **Aggregated Facility** and also such other aggregated facility remains, in each case, at the same level as the **Contracted Absorption Capacity**; and
  - (ii) any consequential changes to the **Contracted Parameters** for that other **Aggregated Facility** are first notified to the **Company** by email and the **Company** shall have confirmed in writing its agreement thereto.

- 1.7 With respect to each valid **Allocation Notification**, the **Company** shall confirm the same by countersigning the **Allocation Notification** and returning it to the **Provider** by facsimile or e-mail no later than five (5) days prior to the time from which the allocation or re-allocation is expressed to take effect.

1.8 The **Provider** may not make in excess of one (1) **Allocation Notification** in any calendar month.

1.9 If, in accordance with paragraph 1.6, an **Allocation Notification** is invalid then it shall be treated as if it was never submitted.

**Removal of UnAllocated Sub-Facilities**

1.10 The **Parties** may agree in writing from time to time that an **UnAllocated Sub-Facility** shall be removed from this **Agreement** and cease to be effective for the purposes of Clause 3.5 and this Schedule 7. Any such notice shall be made in the form specified in Form C of Schedule 8 and submitted by the **Provider** to the **Company** by email or facsimile.

1.11 Such proposed removal shall then be subject to approval by the **Company** (at its sole discretion) within five (5) days of receiving the notice referred to in paragraph 1.10 above, and duly counter-signed by or on behalf of the **Company** and returned to the **Provider** by email or facsimile.

**SCHEDULE 8**

**Forms – Aggregated Facility**

**Form A – Form of Notification Request for New Sub-Facility**

**From:** ..... **Fax:** .....

**To:** **National Grid Electricity System Operator, Balancing and Revenue Services** **Fax:** **01926 656612**

**Date:** ..... **Time:** .....

In accordance with Schedule 7 of the **Static Reactive Power Service**, this is a proposal to introduce the following new **Sub-Facility**:-

**OPERATIONAL DETAILS FOR SUB-FACILITY**

<b>SUB-FACILITY DETAILS</b>	
Site Name	
Asset Owner Address and Contact Details	
Asset Owner consenting to this request	Name: [     ] ..... [Title]
Site Address & Co-ordinates	
Technical / Site Contact (contact name and telephone number of both duty and standby personnel)	
Delivery Method	
[MVar]	
Assets providing Static Reactive Power Service (if multiple assets, list individual capacity of each asset)	

<b>METERING DETAILS</b>	
MPAN/MSID	
Make	

Model	
Serial Number	
Accuracy Class of the Meter	

1. CONFIRMATION BY PROVIDER:

.....

Signed by:

.....(signature) Name:

.....

For and on behalf of [ ]

2. CONFIRMATION BY OWNER/OPERATOR:

We, the undersigned, hereby acknowledge and undertake to National Grid Electricity System Operator Limited as follows:

we are the owner and/or operator of the **Sub-Facility** described above, and the information set out above is true and accurate;

we have agreed terms with the **Provider** referred to above in order to deliver **Static Reactive Power Service** from the **Sub-Facility** described above on an **Aggregated** basis through the **Provider**;

we hereby confirm that the **Sub-Facility** does not provide any other **Ancillary Service**;

we hereby grant to National Grid Electricity System Operator Limited and its agents and contractors audit and inspection rights to the **Sub-Facility** (upon not less than 5 **Business Days** notice) for the purposes of the provision of **Static Reactive Power Service**;

we hereby agree that we shall hold confidential and not disclose to any person, upon the terms of Clause 9 of the **Static Reactive Power Service Agreement**, all and any information disclosed to us by the **Provider** and relating to the **Static Reactive Power Service Agreement**.

Signed by:

.....(signature) Name:

.....

For and on behalf of [ ]

.....  
(Owner/Operator )

The above amendment(s) shall take effect .....(DD/MM/YY)  
on:

Signed by: ..... (signature)

Name: .....

For and on behalf of:

.....

From: **National Grid Electricity System Operator**, Balancing and Revenue Services

Fax: 01926 656612

To:

Fax:

Date: .....

Time: .....

In accordance with paragraph 1.1(e) of Schedule 7 of the **Static Reactive Power Service Agreement**, we APPROVE/REJECT\* (\*deleted as appropriate) your proposed introduction of a new **Sub-Facility** as set out above.

Signed by: .....(signature)

Name: .....

For and on behalf of **National Grid Electricity System Operator Limited**

**Form B – Allocation and Re-Allocation of Sub-Facilities**

**From:** ..... **Fax:** .....

**To:** **National Grid Electricity System Operator, Balancing and Revenue Services** **Fax:** **01926 656612**

**Date:** ..... **Time:** .....

In accordance with Schedule 7 of the **Static Reactive Power Service Agreement**, the following **Sub-Facilities** shall be **Allocated** and/or re-**Allocated** to the below mentioned **Aggregated Facility** as follows:

SUB-FACILITY	FROM AGGREGATED FACILITY	TO AGGREGATED FACILITY	LOCATION	CAPACITY (MVar)
<b>TOTAL</b>				<b>MVar</b>

1. SIGNED BY OWNER

Signed by: ..... (signature)  
 Name: .....  
 For and on behalf of:  
 .....

2. CONFIRMATION BY LOCAL DNO:

We, the undersigned, hereby acknowledge and undertake to National Grid Electricity System Operator Limited as follows:

we are the **Local DNO** to which the **Sub-Facility** described above is connected, and the information set out above is true and accurate;

we understand the **Provider** referred to above will be delivering **Static Reactive Power Service** from the **Sub-Facility** described above on an **Aggregated** basis through the **Provider** and have no objection to this;

we hereby agree that we shall hold confidential and not disclose to any person, upon the terms of Clause 9 of the **Static Reactive Power Service Agreement**, all and any information disclosed to us by the **Provider** and relating to the **Static Reactive Power Service Agreement**.

Signed by:

.....(signature) Name:

.....

For and on behalf of [SP Manweb Plc]

.....

From: **National Grid Electricity System Operator**, Balancing and Revenue Services

Fax: 01926 656612

To:  
Date: .....

Fax:  
Time: .....

In accordance with Schedule 7 of the **Static Reactive Power Service Agreement**, we ACKNOWLEDGE AS VALID/REJECT AS INVALID\* (\*deleted as appropriate) your notice of allocation and/or re-allocation of **Sub-Facilities** (as the case may be) as set out in the above table(s).

Signed by: ..... (signature)

Name:.....

For and on behalf of **National Grid Electricity System Operator Limited**

**Form C – Request to remove Sub-Facility**

**From:** ..... **Fax:** .....  
**To: National Grid Electricity System Operator, Balancing and Revenue Services** **Fax: 01926 656612**

**Date:** ..... **Time:** .....

In accordance with Schedule 7 of the **Static Reactive Power Service Agreement**, this is a proposal to remove the following **Unallocated Sub-Facilities** from the **Static Reactive Power Service Agreement**:-

Sub-Facility	LOCATION	CAPACITY (MVar)	REASON FOR REMOVAL

<b>The above amendment(s) shall take effect on:</b>	.....(DD/MM/YY)
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Signed by: ..... Name: .....  
 (signature)

For and on behalf of: .....

**CONFIRMATION BY OWNER/OPERATOR:**

We, the undersigned, hereby acknowledge and undertake to **National Grid Electricity System Operator Limited** that we are the owner and/or operator of the **Sub-Facility** described above, and the information set out above is true and accurate;

**Signed by:** .....(signature) **Name:** .....

For and on behalf of [            ]

**(National Grid Electricity System Operator Only)**

<b>The above amendment(s) shall take effect</b>	
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<b>on :-</b>	..... (DD/MM/YY)
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**From:** National Grid Electricity System Operator, Balancing & Revenue Services  
**Fax:** 01926 656612  
**To:** [            ]  
**Fax:** [            ]  
**Date:** .....  
**Time:** .....

In accordance with Schedule 7 of the **Static Reactive Power Service Agreement**, we APPROVE/REJECT\* (\*deleted as appropriate) your proposal as set out above.

**Signed** ..... **Name:** .....  
**by:** (signature) .....

For and on behalf of **National Grid Electricity System Operator Limited**