

## GUARANTEE DEED

This Deed of Guarantee (the "**Guarantee**"), dated as at \_\_\_\_\_, is made as a deed and entered into between:

- (1) [REDACTED], a company organised under the laws of [REDACTED] with company registration number [REDACTED], having its registered office at [REDACTED] (the "**Guarantor**"); and
- (2) **NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED**, a company registered in England with company registration number 11014226, having its registered office at 1-3 Strand, London, WC2N 5EH ("**National Grid**").

### WHEREAS

- A. National Grid and [REDACTED] (the "**Generator**") will enter into an agreement in all material respects on the terms of the Contract Form annexed hereto and the General Terms and Conditions referred to therein (referred to herein as the "**Service Agreement**") for the provision of the Reactive Power Service (as defined in the Service Agreement) on or around the date hereof.
- B. The Generator is required under the terms of the Service Agreement to provide Acceptable Security (as defined in the Service Agreement) to National Grid and therefore, as the parent company of the Generator, the Guarantor provides this parent company guarantee to National Grid on the terms set out herein.

### NOW THEREFORE:

#### 1. GUARANTEE

1.1 Subject to the provisions hereof:

- (a) the Guarantor hereby irrevocably and unconditionally guarantees timely payment when due of any amount payable by the Generator to National Grid in respect of liquidated damages in accordance with clause 3.7 of the Service Agreement, including any interest payable thereon (the "**Obligation**"); and
- (b) as a primary obligation and separate from the guarantee under sub-clause (a), the Guarantor hereby irrevocably and unconditionally indemnifies National Grid on demand against any loss or liability suffered or incurred by National Grid in connection with:
  - (i) any failure by the Generator to perform or discharge the Obligation; and
  - (ii) the Obligation being or becoming totally or partially unenforceable by reason of illegality, capacity, lack or exceeding of powers, ineffectiveness of execution or any other matter.

1.2 National Grid shall be entitled to make a demand under this Guarantee on one or several occasions provided that the liability of the Guarantor under this Guarantee shall be specifically limited to payments expressly required to be made in respect of the Obligation.

1.3 This Guarantee shall be a continuing guarantee and shall remain in full force and effect and shall be binding upon the Guarantor, its successors and permitted

assigns, until all amounts payable by the Generator in respect of the Obligation have been validly, finally and irrevocably paid in full.

- 1.4 The Guarantor shall be liable for and shall indemnify National Grid from and against any and all costs, loss and legal expenses which may be imposed on or incurred by National Grid in seeking to enforce and enforcing this Guarantee and in seeking to enforce and enforcing any judgment or order obtained in respect of this Guarantee.

## **2. PAYMENT DEMAND**

- 2.1 If the Generator fails to discharge the Obligation and National Grid has elected to exercise its rights under this Guarantee, National Grid shall make a demand upon the Guarantor (hereinafter referred to as a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount the Generator has failed to pay together with an explanation as to why such payment is due, with a specific statement that National Grid is calling upon the Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to the Guarantor that it must pay the Obligations within ten (10) business days after its receipt of the Payment Demand. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until the Generator or the Guarantor has cured such default, and additional written demand concerning such default shall not be required until such default is cured.

- 2.2 It is expressly agreed that any demand made by National Grid under this Guarantee shall, as between National Grid and the Guarantor, be conclusive evidence (in the absence of fraud or manifest error) that the amount demanded by National Grid is payable by the Guarantor to National Grid in accordance with Clause 2.1.

## **3. REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants as at the date of this Guarantee that:

- (a) it is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution and delivery of this Guarantee;
- (c) this Guarantee constitutes a valid and legally binding agreement of the Guarantor (ranking at least *pari passu* with all other of its present and future unsecured and unsubordinated indebtedness), except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and
- (d) the entry into this Guarantee and the performance of the obligations hereunder does not contravene any existing applicable law, statute, regulation or any judgment to which it is subject.

## **4. SUBROGATION**

Until all demands under this Guarantee have been paid or satisfied in full, the Guarantor shall not claim any right of subrogation to National Grid's rights and

undertakes not to take any step or accept any measure whereby the Guarantor would compete with National Grid in the liquidation or distribution of assets of the Generator.

## 5. AMENDMENT OF GUARANTEE

No term or provision of this Guarantee shall be amended, modified, altered, waived or supplemented except in writing signed by the Guarantor and National Grid.

## 6. WAIVERS

- 6.1 The Guarantor hereby waives (i) any notice of acceptance of this Guarantee; (ii) presentment and demand concerning the liabilities of the Guarantor, except as expressly hereinabove set forth; and (iii) any right to require that any action or proceeding be brought against the Generator or any other person, or except as expressly hereinabove set forth, to require that National Grid seeks enforcement of any performance against the Generator or any other person, prior to any action against the Guarantor under the terms hereof.
- 6.2 Except with respect to applicable statutes of limitation, no delay of National Grid in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of the Guarantor from any obligations hereunder.
- 6.3 The obligations of the Guarantor hereunder shall in no way be affected or impaired by reason of and the Guarantor waives its rights to prior notice of the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes, modifications or amendments in any manner in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Service Agreement.
- 6.4 The Guarantor agrees that as long as this Guarantee remains in force and effect and until all amounts which may be or become payable in respect of the Obligations or this Guarantee have been irrevocably paid in full, it shall not take any step to enforce any right or claim against the Generator in respect of any payment made under or liability arising from this Guarantee or claim or prove in competition with National Grid against the Generator in relation to this Guarantee.
- 6.5 This Guarantee shall expire and shall be returned by National Grid to the Guarantor and neither National Grid nor the Guarantor shall have any continuing liability to the other after:
- (a) the later to occur of: (i) the date on which the Generator has discharged the Obligation in full in accordance with the Service Agreement; and (ii) the date falling two hundred and seventy (270) days after the Scheduled Commercial Operations Date (as defined in the Service Agreement) (the “**Expiry Date**”); or
  - (b) if a Payment Demand has been made on or before the Expiry Date, the date of payment in full of the Payment Demand by the Guarantor to National Grid in accordance with this Guarantee.

## 7. TAXES

- 7.1 All payments made under this Guarantee are to be made without any deductions or withholding for or on account of taxes (a “**Tax Deduction**”) unless a Tax Deduction is required by law, in which case the amount of the payment due from the Guarantor shall be increased to an amount which (after making the Tax

Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

## 8. NOTICES

8.1 Any Payment Demand, notice or other communication (each a “**Notice**”) given by a Party under this Guarantee shall be:

- (a) in writing and in English;
- (b) signed by, or on behalf of, the Party giving it; and
- (c) sent to the relevant Party by hand or by first-class Royal Mail Recorded Signed For post at the address set out below (in which case a copy shall also be sent by email) to the address set out below:

### **Guarantor:**

Address: [REDACTED]

Email: [REDACTED]

Attention: [REDACTED]

### **National Grid:**

Address: National Grid Electricity System Operator Limited  
Faraday House, Warwick Technology Park, Gallows Hill  
Warwick, England, CV34 6DA

Email: [REDACTED]

Attention: System Operator

Copy to: Head of Commercial

8.2 Notices are deemed received:

- (a) by hand: on receipt of a signature at the time of delivery; or
- (b) by first-class Royal Mail Recorded Signed For post: at 9:00am on the second Business Day after posting.

8.3 All references to time are to the local time at the place of deemed receipt.

8.4 Any party may change any address to which a Notice is to be given by giving written notice of such change of address as provided in Clause 8.1 above.

## 9. GOVERNING LAW

9.1 This Guarantee and any non-contractual claims arising out of or in connection with it shall be governed by and construed in accordance with English law.

9.2 Each party to this Guarantee agrees that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Guarantee, whether contractual or non-contractual (including a dispute regarding the existence, validity or termination of this Guarantee) (a “**Dispute**”). The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

## **10. SUCCESSORS AND ASSIGNS**

- 10.1 This Guarantee shall be binding upon the Guarantor, its successors and assigns and inure to the benefit of and be enforceable by National Grid, its successors and assigns.
- 10.2 National Grid is permitted to assign or transfer the benefit and/or burden of this Guarantee to the holder of a licence under section 6(1)(b) the Electricity Act 1989 with responsibility for carrying out the balancing services activity (as defined in that licence) in succession to National Grid and to whom National Grid assigns or transfers the benefit and / or the burden of the Service Agreement.

## **11. ENTIRE AGREEMENT**

This Guarantee embodies the entire agreement and understanding between the Guarantor and National Grid and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof.

## **12. PARTIAL INVALIDITY**

Each provision of this Guarantee is severable and distinct from each other, and if for any reason any such provision or part of a provision is or becomes invalid, illegal or unenforceable it shall be deemed to be modified to the minimum extent possible to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be severed and deemed to be deleted from this Guarantee. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the remaining provisions of this Guarantee.

## **13. THIRD PARTY RIGHTS**

Save as expressly provided in this Guarantee, a person who is not a party to this Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.

## **14. COUNTERPARTS**

This Guarantee may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

**IN WITNESS** whereof this Guarantee has been duly executed as a deed and is delivered on the date first above written.



Annex

*[Copy of Contract Form to be inserted prior to use]*

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