

**4. BLACK START CAPABILITY**

*[Note: this clause will need substantial amendment to reflect the circumstances of any individual case, for example the type of Black Start Plant, use of distillate fuel, whether or not new capital costs are involved etc. Text in square brackets in italics only for use if Auxiliary Unit is registered as a separate BM Unit to the main Module/Unit.]*

**4.1 Introduction**

The **Generator** agrees to provide **The Company** with the **Part 2 System Ancillary Service** of **Black Start Capability**, and this Clause 4 and Schedule E set out provisions relating to such service including the payments to be made by **The Company** to the **Generator** in respect thereof.

**4.2 Definitions**

In this Clause 4 and Schedule E the following terms shall have the meanings ascribed to them below:-

“Acceptable Security”	has the meaning attributed to it in Sub-Clause 4.6.3.4;
“Additional Works Period”	as defined in Annexure B;
“Annual Availability Shortfall Payments”	means the payments calculated in accordance with Schedule E, Section 2, Part II to be made by the <b>Generator</b> to <b>The Company</b> in the circumstances set out in Annexure C to this Clause 4 and representing repayment of part of the <b>Works Contribution Payment</b> ;
“Assessment Period”	has the meaning attributed to it in Sub-Clause 4.15.1;
“Assurance Visit”	has the meaning attributed to it in Sub-Clause 4.19.2;
“Auxiliaries”	means any item of <b>Plant</b> and/or <b>Apparatus</b> not directly a part of the boiler <b>Plant</b> or <b>BS Genset(s)</b> , but required for the boiler <b>Plant’s</b> or <b>BS Genset(s)</b> functional operation including without limitation the <b>BS Auxiliary Unit(s)</b> ;
“Auxiliary Contracted MW”	means the respective level of MW available for <b>Black Start</b> from each <b>BS Auxiliary Unit(s)</b> specified in Schedule E, Section 1, Part II;
“Black Start Availability Price”	means the price specified in Schedule E, Section 3, Part I;
“Black Start Capability”	means the actions required of the <b>Generator</b> contained in Sub-Clause 4.8.5 in addition to and without prejudice to the <b>Generator’s</b> obligations under the <b>Grid Code</b>

	with regard to <b>Black Start Capability</b> ;
<b>“Black Start Instruction”</b>	has the meaning attributed to it in Sub-Clause 4.10.1;
<b>“Black Start Plant”</b>	means the <b>BS Genset(s)</b> , the <b>BS Auxiliary Unit(s)</b> and other <b>Plant</b> and <b>Apparatus</b> at the <b>Power Station</b> used to provide the <b>Black Start Service</b> ;
<b>“Black Start Service”</b>	means the obligations of the <b>Generator</b> more particularly referred to in Sub-Clause 4.8 (which shall be in addition to and without prejudice to the <b>Generator’s</b> obligations under the <b>Grid Code</b> with regard to <b>Black Start Capability</b> ), to include in addition the procedure for running down and testing of <b>Plant</b> in <b>Reproving Assessments</b> ;
<b>“Black Start Situation”</b>	the period of time beginning when <b>The Company</b> issues a declaration to the <b>Generator</b> in accordance with <b>Grid Code OC 9.4.6</b> that a <b>Partial Shutdown</b> or a <b>Total Shutdown</b> exists and ending when <b>The Company</b> issues a declaration to the <b>Generator</b> in accordance with <b>Grid Code OC 9.4.7.9</b> ;
<b>“Black Start Station”</b>	has the meaning attributed to it in the <b>Grid Code</b> ;
<b>“Black Start Test”</b>	means any <b>Capability Assessment</b> , <b>Reproving Assessment</b> , test pursuant to <b>Grid Code OC5</b> , exercise pursuant to Sub-Clause 4.12, or <b>Remote Synchronisation Test</b> involving monitoring and/or inspection of the <b>Black Start Plant</b> and/or changes to the production profile of any <b>BM Unit</b> at the <b>Generator’s Power Station</b> ;
<b>“Black Start Test Main Unit”</b>	means, in relation to any <b>Black Start Test</b> , any <b>BM Unit</b> comprising a <b>BS Genset</b> subject to that <b>Black Start Test</b> ;
<b>“Black Start Test Parameters”</b>	means, in respect of any <b>Black Start Test</b> , the parameters agreed between the <b>Parties</b> pursuant to Sub-Clause 4.20.9 as amended pursuant to Sub-Clause 4.20.14;
<b>“Black Start Test Period”</b>	means, in relation to any <b>Black Start Test</b> , the period from and including the start time to and including the

	end time each as comprised within the <b>Black Start Test Parameters</b> ;
<b>“Black Start Test Settlement Period”</b>	means a <b>Settlement Period</b> comprised in a <b>Black Start Test Period</b> ;
<b>“BS Auxiliary Unit(s)”</b>	means those <b>[Gas Turbine Units]</b> identified in Schedule E, Section 1, Part II;
<b>“BS Genset(s)”</b>	means the <b>CCGT Module(s)</b> or <b>Generating Unit(s)</b> specified in Schedule E, Section 1, Part 1;
<b>“Capability Assessment”</b>	has the meaning attributed to it in Sub-Clause 4.20.1(b);
<b>“Commissioning Assessment”</b>	has the meaning attributed to it in paragraph 1 of Part I of Annexure A to this Clause 4;
<b>“Competent Authority”</b>	has the meaning attributed to it in the <b>CUSC</b> ;
<b>“Connection Event”</b>	has the meaning attributed to it in Sub-Clause 4.8.5.2;
<b>“Consents”</b>	means all and any consent, licence, approval, permission, wayleave or other right of whatever nature whether governmental or regulatory in character or otherwise necessary for the provision of by the <b>Generator</b> of the <b>Black Start Service</b> , including without limitation the construction and installation of the <b>BS Auxiliary Unit(s)</b> ;
<b>Effective Date”</b>	<b>[XXXXXXX]</b> ;
<b>“Escrow Account”</b>	has the meaning attributed to it in Sub-Clause 4.6.3.4;
<b>“Event of Default”</b>	has the meaning attributed to it in Sub-Clause 4.13;
<b>“Expiry Date”</b>	means 24:00 hours on the date immediately preceding the <b>[ ]</b> anniversary of the <b>Service Commencement Date</b> ;
<b>“Final Consent Date”</b>	has the meaning attributed to it in Sub-Clause 4.3.1;
<b>“Legal Requirement”</b>	means any order of a <b>Competent Authority</b> , Act of Parliament, Directive, regulations or licence, consent or similar provision issued by a <b>Competent Authority</b> ;
<b>“Local Joint Restoration Plan”</b>	means a plan specific to each <b>Power Station</b> at which

	<b>Black Start Plant</b> is located to enable a rapid restoration of the <b>National Electricity Transmission System</b> in the event of a <b>Black Start Situation</b> and which is more particularly described in Sub-Clause 4.8.5;
<b>“Minimum Non Zero Time”</b>	has the meaning attributed to the term in Appendix 1 of <b>Grid Code BC1</b>
<b>“Monthly Availability Payment”</b>	means an amount determined in accordance with Sub-Clause 4.6.1.2;
<b>“Non-Performing Party”</b>	has the meaning attributed to it in Clause 4.24;
<b>“Partial Shutdown”</b>	means the same as a <b>Total Shutdown</b> except that all generation has ceased in a separate part of the <b>Total System</b> and there is no supply from <b>External Interconnections</b> or other parts of the <b>Total System</b> to that part of the <b>Total System</b> and, therefore, that part of the <b>Total System</b> is shutdown, with the result that it is not possible for that part of the <b>Total System</b> to begin to function again without <b>The Company’s</b> direction relating to a <b>Black Start Situation</b> ;
<b>“Power Island”</b>	means an isolated <b>Power Station</b> , or groups of isolated <b>Power Stations</b> , together with complementary <b>Demand</b> ;
<b>“Provisional Service Commencement Date”</b>	has the meaning attributed to it in paragraph 4(a) of Part I of Annexure A to Clause 4;
<b>“Rated Bank”</b>	has the meaning attributed to it in Sub-Clause 4.6.3.4;
<b>“Re-assessment Availability Date”</b>	has the meaning attributed to it in paragraph 4(a) of Part I of Annexure A to Clause 4;
<b>“Relevant Third Parties”</b>	has the meaning attributed to it in Sub-Clause 4.12.1;
<b>“Remote Synchronisation”</b>	means <b>Synchronisation</b> of the <b>Generator’s Plant</b> and <b>Apparatus</b> by closure of a circuit breaker which is not under the direct control of the <b>Generator</b> ;
<b>“Remote Synchronisation Test”</b>	means the test more particularly described in Annexure D to this Clause 4;

<p><b>“Repayment Amount”</b></p>	<p>means payments calculated in accordance with Schedule E, Section 2, Part I to be made by the <b>Generator</b> to <b>The Company</b> in the circumstances set out in Annexure B to this Clause 4 and representing repayments in whole or in part of <b>Monthly Availability Payments</b>;</p>
<p><b>“Reproving Assessment”</b></p>	<p>means a test which <b>The Company</b> may require the <b>Generator</b> to carry out to verify the restoration of <b>Black Start Capability</b> as more particularly described in Sub-Clause 4.9.3.2(b);</p>
<p><b>“Reserve Service”</b></p>	<p>means <b>Short Term Operating Reserve</b> or any similar service procured by <b>The Company</b> being a service under which <b>The Company</b> has access to sources of extra power in the form of either generation or demand reduction to be able to deal with unforeseen demand increase and/or generation unavailability or any services created following the Electricity Market Reform proposals coming into force;</p>
<p><b>“Reserve Service Contract”</b></p>	<p>means each and every contract relating to the <b>Power Station</b> only between <b>The Company</b> and the <b>Generator</b> for the provision by the <b>Generator</b> of a <b>Reserve Service</b>;</p>
<p><b>“RST”</b></p>	<p>as defined in paragraph 1 of Annexure D;</p>
<p><b>“Service Commencement Date”</b></p>	<p>means either:-                      (i) (where the <b>Generator</b> passes the first <b>Commissioning Assessment</b>) 00.00 hours on the <b>Provisional Service Commencement Date</b>; or                      (ii) (in all other cases) 00.00 hours on the first day of the calendar month immediately following the date on which the <b>Generator</b> has successfully completed a second or subsequent <b>Commissioning Assessment</b> in accordance with the provisions of Annexure A to this Clause 4;</p>
<p><b>“Short Term Operating Reserve”</b></p>	<p>the meaning attributed to it in the <b>Standard Contract Terms</b>;</p>
<p><b>“Shutdown”</b></p>	<p>means the condition of a <b>Generating Unit</b> where the</p>

	generator rotor is at rest or on barring;
<b>“Standard Contract Terms”</b>	means the document entitled “Short Term Operating Reserve Standard Contract Terms” published by <b>The Company</b> and as revised from time to time in accordance with its terms;
<b>“Standard Exercise Price”</b>	means the price specified in Schedule E, Section 3, Part II;
<b>“Station Contracted MW”</b>	means that amount of <b>Active Power</b> specified in Schedule E, Section 1, Part I (or such other amount agreed from time to time between the <b>Generator</b> and the <b>Grid Operator</b> pursuant to Sub-Clauses 4.8.8 to 4.8.12 inclusive) which shall not include <b>Active Power</b> supplied by the <b>BS Auxiliary Unit(s)</b> to the <b>BS Genset(s)</b> for the purposes of a <b>Black Start Situation</b> ;
<b>“Target Commencement Date”</b>	means [XXXXXX] or such later date as the <b>Generator</b> and <b>The Company</b> may agree in writing;
<b>“Technical Parameters”</b>	means those technical parameters related to the <b>Black Start Service</b> set out in Schedule E, Section 1, Part III (as the same may be revised from time to time in accordance with Sub-Clauses 4.8.8 to 4.8.12 inclusive);
<b>“Time to Connection Event”</b>	means the period of time specified as such in Schedule E, Section 1, Part III (or such other period of time agreed from time to time between <b>The Company</b> and the <b>Generator</b> pursuant to Sub-Clauses 4.8.8 to 4.8.12 inclusive);
<b>“Total Shutdown”</b>	means the situation existing when all generation has ceased and there is no electricity supply from <b>External Interconnections</b> and, therefore, the <b>Total System</b> has shutdown with the result that it is not possible for the <b>Total System</b> to begin to function again without <b>The Company’s</b> directions relating to a <b>Black Start Situation</b> ;
<b>“Unit Board”</b>	has the meaning attributed to it in the <b>Grid Code</b> ;
<b>“Valid Invoice(s)”</b>	has the meaning attributed to it in Clause 4.6.2.3;

“Valid Invoice Deadline”	has the meaning attributed to it in Sub-Clause 4.6.2.3;
“Valid Invoice Failure Payment”	means the payment to be made by the <b>Generator</b> to <b>The Company</b> by way of repayment of part of the <b>Works Contribution Payment</b> as more particularly described in Sub-Clause 4.6.2.6 and calculated in accordance with Part V of Annexure A to Clause 4;
“Voltage Control Mode”	means the automatic voltage regulator selected to auto and being off is the automatic voltage regulator selected to manual;
“Works”	means those works relating to the <b>BS Auxiliary Unit(s)</b> more particularly specified in Parts III and IV to Annexure A to this Clause 4;
“Works Contribution Payment”	means the payment to be made by <b>The Company</b> to the <b>Generator</b> by way of reimbursement of the cost of the <b>Works</b> as more particularly described in Sub-Clause 4.6.1.1;
“Works Contribution Refund Payment”	means a payment calculated in accordance with Schedule E, Section 2, Part III to be made by the <b>Generator</b> to <b>The Company</b> in the circumstances referred to therein and representing repayment of all or part of the <b>Works Contribution Payment</b> ;
“Works Programme”	means the programme for completion of the <b>Works</b> more particularly specified in Part IV of Annexure A to this Clause 4.

### 4.3 Conditions Precedent

4.3.1 Save for the obligation of **The Company** to pay to the **Generator** the **Works Contribution Payment** pursuant to Sub-Clause 4.6.2 and the obligations of the **Parties** in this Sub-Clause 4.3.1 and Sub-Clauses 4.6.3 and 4.16.2, the respective obligations of the **Parties** under this Clause 4 are, subject to Sub-Clause 4.3.2, conditional upon the satisfaction of each of the following conditions precedent not later than [XXXXXX] or such later date as may be agreed in writing between the **Parties** (“the **Final Consent Date**”):

4.3.1.1 all **Consents** or amendments to **Consents** which have a material bearing on the ability of the **Generator** to perform its obligations under this Clause 4 including without limitation pursuant to Section 36 of the **Act** having been granted for a period of not less than the period of this Clause 4 either unconditionally or, if subject to conditions and the

- Generator** having determined in its sole discretion to satisfy or fulfil such conditions, such conditions having been satisfied, fulfilled or accepted by the **Generator**;
- 4.3.1.2 the variation to the **Bilateral Agreement** for the **Power Station** the subject of this **Agreement** having been executed by the **Generator** and **The Company** and all provisions therein having a material bearing on the ability or liability of the **Generator** to perform its obligations under this Clause 4 being binding and unconditional in all respects;
- 4.3.1.3 the agreement for construction of the **Works** referred to in Annexure A to this Clause 4 having been entered into and having become unconditional in all respects and the **Generator** having obtained such other approvals (including board, shareholder, lender and counter-parties to contracts approvals) as it may consider appropriate; and.
- 4.3.1.4 receipt by **The Company** of **Acceptable Security** (defined in Sub-Clause 4.6.3.4) in accordance with Sub-Clause 4.6.3.2 to secure possible repayment of the **Works Contribution Payment** in accordance with the provisions of Sub-Clause 4.6.3.
- 4.3.2 The **Generator** shall be entitled at its option to waive one or both of the conditions precedent specified in Sub-Clause 4.3.1.1 and 4.3.1.3 by notice in writing to **The Company** and **The Company** shall be entitled at its option to waive the condition precedent specified in Sub-Clause 4.3.1(d) by notice in writing to the **Generator**.
- 4.3.3 When each of the conditions precedent specified in Sub-Clause 4.3.1.1, 4.3.1.2 and 4.3.1.3 have been satisfied or (where permitted) waived, the **Generator** shall forthwith give written notice to that effect to **The Company**, and **The Company** shall similarly notify the **Generator** in respect of the condition precedent specified in Sub-Clause 4.3.1.4. Such notices shall be conclusive and binding on the **Parties** as to the satisfaction or waiver thereof. Without prejudice to the foregoing, the **Generator** shall notify **The Company** forthwith upon the granting of a consent under Section 36 of the **Act** in respect of the **BS Auxiliary Unit** and, for the purposes of Sub-Clause 4.3.1.1, such notification shall be accompanied by a copy of such consent.
- 4.3.4 Subject to the provisions of Sub-Clause 4.3.2 the **Generator** undertakes to use its reasonable endeavours to fulfil the conditions precedent specified in Sub-Clause 4.3.1 as soon as reasonably practicable but in any event not later than the **Final Consent Date**.
- 4.3.5 If any of the conditions precedent specified in Sub-Clause 4.3.1 has not either been satisfied (or where permitted waived) by the **Final Consent Date**, then:-
- 4.3.5.1 subject always to Sub-Clause 4.3.5.2 below, the provisions of this Clause 4 (except Sub-Clauses 4.6.2 and 4.6.3 to the extent required to give effect to Sub-Clause 4.3.5.2 below) shall thereupon cease to have any effect and the **Parties** shall have no rights against each other with respect to any breach of any of the provisions of this Sub-Clause 4.3; and
- 4.3.5.2 where all or part of the **Works Contribution Payment** has been paid by **The Company** in accordance with the provisions of Sub-Clause 4.6.2 (but not otherwise) the



**Generator** shall pay to **The Company** in accordance with Clause 8 a **Works Contribution Refund Payment** calculated in accordance with the formula in paragraph (a) of Schedule E, Section 2, Part III, which to the extent there are sums in an **Escrow Account** referred to in Sub-Clause 4.6.3.4 may be satisfied by withdrawal from such account in favour of **The Company**.

#### 4.4 Works

Both **Parties** shall comply with their respective obligations set out in Annexure A to this Clause 4 in relation to the commissioning of the **BS Auxiliary Unit** and associated **Works**.

#### 4.5 Term

4.5.1 Subject to the provisions of Sub-Clause 4.3 the obligations of the **Generator** hereunder to provide the **Black Start Service** shall apply at all times from the **Service Commencement Date** until the **Expiry Date** subject to and in accordance with the provisions of this Clause 4 and, save where expressly provided otherwise in this Clause 4 and the Schedules, “**term of Clause 4**” shall be construed accordingly.

4.5.2 If the provisions of this Clause 4 shall not by then have terminated, not later than 12 months prior to the **Expiry Date** the **Parties** shall meet to discuss whether the provisions of this Clause 4 should be extended for a period beyond the **Expiry Date** and if so the duration of such extension and the terms (including prices) upon which the **Black Start Service** shall continue to be provided by the **Generator**. In the absence of any agreement between the **Parties** the provisions of this Clause 4 shall cease to apply in respect of periods after the **Expiry Date**.

4.5.3 Without prejudice to the other rights of termination in this **Agreement** after the **Service Commencement Date**, **The Company** shall be entitled to terminate the provisions of this Clause 4 prior to the **Service Commencement Date** in the manner specified in paragraphs 9, 10, 11, 12 and 15 of Part I of Annexure A to this Clause 4 whereupon, if all or part of the **Works Contribution Payment** has been paid by **The Company** to the **Generator** in accordance with the provisions of Sub-Clause 4.6.2 (but not otherwise), the **Generator** shall pay to **The Company** in accordance with Clause 8 a **Works Contribution Refund Payment** calculated in accordance with the formula in paragraph (a) of Schedule E, Section 2, Part III. For the avoidance of doubt, the **Works Contribution Refund Payment** in those circumstances shall constitute repayment of the **Works Contribution Payment** (together with interest thereon at the **Base Rate**) referred to at Sub-Clause 4.6.1.

#### 4.6 Payments

##### *Payments for Availability of Black Start Service*

4.6.1 **The Company** shall make the following availability payments to the **Generator** in accordance with the terms of this Clause 4:-

4.6.1.1 the sum of £[ ] (“the **Works Contribution Payment**”), subject to and in accordance with Sub-Clauses 4.6.2 and 4.6.3; and

4.6.1.2 with effect from the **Provisional Service Commencement Date**, and in accordance with Sub-Clause 4.6.4, a **Monthly Availability Payment** (“the **Monthly Availability**”

**Payment**”) calculated in accordance with Schedule E, Section 2, Part I in respect of all **Settlement Periods** in each calendar month in which:-

- (a) paragraph 4(a) of Part I of Annexure A to this Clause 4 shall apply; and/or
- (b) the **Black Start Plant** shall have the **Black Start Capability**.

For the avoidance of doubt, in accordance with the provisions of this Clause 4 the **Works Contribution Payment** may become repayable by the **Generator** to **The Company** (in whole or in part) by way of **Annual Availability Shortfall Payments** and/or a **Works Contribution Refund Payment** and/or a **Valid Invoice Failure Payment** (but not otherwise), and the **Monthly Availability Payments** may become repayable by the **Generator** to **The Company** (in whole or in part) by way of **Repayment Amounts** (but not otherwise).

#### 4.6.2 Works Contribution Payment

4.6.2.1 Payment of the **Works Contribution Payment** shall be dealt with in the following manner:-

- (a) **The Company** shall, by reference to the first **Final Monthly Statement** issued after the last to occur of:-

- (i) provision by the **Generator** to **The Company** of **Acceptable Security** in accordance with Sub-Clause 4.6.3.4; and
- (ii) receipt by **The Company** from the **Generator** of a copy of a consent under Section 36 of the **Act** (whether or not subject to conditions) in respect of the **BS Auxiliary Unit** or evidence reasonably satisfactory to **The Company** that such consent is not required

(or any earlier **Final Monthly Statement** at **The Company**'s sole discretion) pay to the **Generator** an initial tranche of the **Works Contribution Payment**, being £[ ] plus any value added tax payable on such amount; and

- (b) **The Company** shall, by reference to the first **Final Monthly Statement** issued after the last to occur of:-

- (i) the initial tranche of the **Works Contribution Payment** referred to in Sub-Clause 4.6.2.1(a) falling due and payable;
- (ii) provision by the **Generator** to **The Company** of **Acceptable Security** in accordance with Sub-Clause 4.6.3.4; and
- (iii) receipt by **The Company** from the **Generator** of written notification (together with such evidence thereof as **The Company** may reasonably require) that the **Generator** has fulfilled item [15] in Part IV of Annexure A; and
- (iv) receipt by **The Company** from the **Generator** of **Valid Invoice(s)** evidencing the costs to the **Generator** following completion of the **Works** pursuant to Sub-Clause 4.6.2.3,

(or any earlier **Final Monthly Statement** at **The Company**'s sole discretion) pay to the **Generator** the balance of the **Works Contribution Payment**, being £[ ] plus any value added tax payable on such amount.

- 4.6.2.2 The **Parties** acknowledge that the **Works Contribution Payment** and **Black Start Availability Price** have been negotiated and agreed between the **Parties** based on the **Generator** incurring [direct costs with respect to the **Works** (comprising those itemised costs specified in Part VI of Annexure A to this Clause 4)] of not less than [ ].
- 4.6.2.3 Accordingly, throughout the progress of the **Works** the **Generator** shall compile and maintain full and accurate records of all invoices evidencing such costs incurred as referred to in Sub-Clause 4.6.2.2 (“**Valid Invoices**”), and no later than twenty (20) **Business Days** after the date of notification from **The Company** to the **Generator** that the **Generator** has passed the **Commissioning Assessments** (“**Valid Invoice Deadline**”) the **Generator** shall submit copies of all such **Valid Invoices** to **The Company**.
- 4.6.2.4 For the purpose of Sub-Clause 4.6.2.2, **Valid Invoice(s)** may be issued by either:-
- (a) third party contractors, subject always to a maximum aggregate amount of £[ ] (exclusive of VAT) in respect of such invoice(s); and/or
  - (b) the **Generator**, subject always to a maximum aggregate amount of £[ ] (exclusive of VAT) in respect of such invoice(s),
- provided always that where any such invoice is issued by the **Generator**, such invoice includes a description which is reasonably satisfactory to **The Company** of the works undertaken by the **Generator** as part of the **Works** to which such invoice relates.
- 4.6.2.5 Following receipt of any invoice in respect of the **Works** submitted by the **Generator** in accordance with Sub-Clause 4.6.2.3, **The Company** shall, as soon as reasonably practicable thereafter, notify the **Generator** where **The Company** determines (acting reasonably) that such invoice is not a **Valid Invoice** and the **Generator** shall use reasonable endeavours to submit a replacement invoice which is a **Valid Invoice** before the **Valid Invoice Deadline**.
- 4.6.2.6 In the event that the total of all **Valid Invoices** (exclusive of VAT) received by **The Company** by the **Valid Invoice Deadline** is less than the total anticipated costs referred to in Sub-Clause 4.6.2.2, **The Company** may require the **Generator** to pay to **The Company** a **Valid Invoice Failure Payment** and **The Company** shall be entitled to reduce the **Black Start Availability Price** by application of the formula set out in Part V of Annexure A to this Clause 4, such reduction to be effective from the date hereof.
- 4.6.2.7 If the actual cost incurred by the **Generator** for completion of the **Works** (as evidenced by **Valid Invoices** submitted to **The Company** in accordance with Sub-Clause 4.6.2.3) is less than or equal to ninety percent of the **Works Contribution Payment**, then the **Generator** shall repay to **The Company** an amount being the difference between the actual cost of completion of the **Works** and the **Works Contribution Payment** (together with interest thereon at the **Base Rate** and including any value added tax payable on such amount).

*Security*

- 4.6.3 The following provisions shall apply with respect to security against possible repayments of the **Works Contribution Payments**:
- 4.6.3.1 The **Generator** shall as a condition of the payment by **The Company** of the **Works Contribution Payment** pursuant to Sub-Clause 4.6.1.1 and until payment of any **Works**

**Contribution Refund Payment** or any **Annual Availability Shortfall Payment** applicable to the **Assessment Period** ending on the **Expiry Date** (or completion of the calculation indicating that no such **Annual Availability Shortfall Payment** is applicable) provide security against possible repayment of the **Works Contribution Payment** under this **Agreement** as provided below.

4.6.3.2 Until the **Service Commencement Date**, the security shall be **Acceptable Security** for not less than the secured amount being the amount from time to time of the **Works Contribution Refund Payment** which would be payable upon termination as calculated in accordance with paragraph (a) of Schedule E, Section 2, Part III including any value added tax payable on such amount. Where such **Acceptable Security** is a bond or letter of credit this shall be issued for a period of not less than six months. If for any reason the bond or letter of credit has an **Expiry Date** occurring prior to the **Service Commencement Date**, the **Generator** shall provide a replacement bond or letter of credit with an appropriately extended **Expiry Date** or other equivalent **Acceptable Security** not later than 45 days before the expiry of the bond, letter of credit or other equivalent **Acceptable Security** and, if the **Generator** fails to do, **The Company** shall be entitled to call the bond, letter of credit or other equivalent **Acceptable Security**.

4.6.3.3 From and including the **Service Commencement Date** the security described in Sub-Clause 4.6.3.2 above shall be replaced (so that there is no gap in coverage) by security consisting of **Acceptable Security** for not less than the secured amount referred to in Sub-Clause 4.6.3.5 below. Where such **Acceptable Security** is a bond or letter of credit this shall (except in the case of the final period) be issued for a period of not less than six months and thereafter replaced by the **Generator** at least 45 days prior to the expiry of the previous bond, letter of credit or other equivalent **Acceptable Security**. If the **Generator** fails to so provide a replacement bond, letter of credit or other equivalent **Acceptable Security**, **The Company** shall be entitled to call the bond, letter of credit or other equivalent **Acceptable Security**.

4.6.3.4 In this Sub-Clause 4.6.3:-

“**Acceptable Security**” shall mean:

- (a) a first demand without proof or conditions irrevocable performance bond in a form reasonably satisfactory to **The Company** issued by a **Rated Bank** payable in Sterling in London; or
- (b) an irrevocable standby letter of credit in a form reasonably satisfactory to **The Company** issued by a **Rated Bank** payable in Sterling in London; or
- (c) a cash deposit in Sterling in an **Escrow Account**; or
- (d) such other form of security acceptable to **The Company** which shall be in such form as is included in **The Company**'s then current policy and procedure.

A “**Rated Bank**” shall mean a City of London branch of a bank with a rating of at least A- (Standard and Poor's long term rating) or A3 (Moody's long term rating).

An “**Escrow Account**” shall mean a separately designated bank account in the name of **The Company** established by a mandate signed by both **The Company** and the **Generator**

at a branch of Barclays Bank PLC or another bank in the City of London as notified by **The Company** to the **Generator**, bearing from (and including) the date of deposit of principal sums to (but excluding) the date of withdrawal of principal sums from such account a reasonable commercial rate of interest which shall be payable to the **Generator** but mandated for withdrawal of principal only by way of a call by **The Company** as referred to in Sub-Clause 4.6.3.6 below or by way of payment to the **Generator** to the extent of any reduction in the amount so secured and mandated for the transfer of any interest accrued to the **Escrow Account** quarterly to such bank account as the **Generator** may specify. **The Company** agrees to take any steps required to be taken by it for the release from the **Escrow Account** and payment to the **Generator** of such interest and any amount of principal in excess of the amount required to be secured at the relevant time.

- 4.6.3.5 The secured amount as referred to in Sub-Clause 4.6.3.3 above shall be for the maximum amount payable in respect of the **Works Contribution Refund Payment** as provided in Schedule E, Section 2, Part III at the relevant date including any value added tax payable on such amount.
- 4.6.3.6 **The Company** shall be entitled to call upon the security if:
- (a) a **Works Contribution Refund Payment** or an **Annual Availability Shortfall Payment** has become payable under this **Agreement** and has not been paid by the **Generator** in accordance with Clause 8; or
  - (b) other equivalent **Acceptable Security** of the required amount has not been put in place within the time periods provided for in this Sub-Clause 4.6.3. Where the security has been called for this reason, **The Company** shall repay the amount so called when the **Generator** puts in place the appropriate replacement security in accordance with this Sub-Clause 4.6.3.
- 4.6.3.7 If any bank or banks being the issuer of a bond or letter of credit shall suffer at any time a change of rating so as to fall below that required above the **Generator** shall forthwith on the **Generator** becoming aware of such occurrence notify **The Company** and within 14 days of the **Generator** becoming aware of such change of rating provide to **The Company** a replacement bond or letter of credit from a **Rated Bank** on the same terms as to amount and **Expiry Date** as the security being replaced or equivalent **Acceptable Security**. For the avoidance of doubt any such change of rating shall not during such 14 days constitute a breach under this **Agreement**, provided that the replacement security shall be provided, and from the date of its provision the security which it replaces shall be released by **The Company**.
- 4.6.3.8 The **Generator** shall on reasonable notice to **The Company** be entitled to request the substitution of any form of security then in place with any other **Acceptable Security** and on such replacement security being put in place **The Company** shall release the previous security. The **Generator** may provide different securities to **The Company** at any time, each securing a different amount, provided that such securities do not exceed six in number at any time and that the aggregate is equal to the amount required to be secured under this Sub-Clause 4.6.3.

***Monthly Availability Payments and Repayment Amounts***

4.6.4 In respect of each calendar month in the period commencing on the **Provisional Service Commencement Date** and ending on the **Expiry Date**, **The Company** shall calculate in accordance with the formulae set out in Schedule E, Section 2, Part I and by reference to the **Black Start Availability Price** (after indexation pursuant to Sub-Clause 4.6.5):-

4.6.4.1 the **Monthly Availability Payment**; and

4.6.4.2 any **Repayment Amount**,

and in connection therewith:-

(a) where the **Monthly Availability Payment** exceeds the **Repayment Amount**, **The Company** shall pay the difference to the **Generator** in accordance with Clause 8; or

(b) where the **Repayment Amount** exceeds the **Monthly Availability Payment**, the **Generator** shall pay the difference to **The Company** in accordance with Clause 8.

***Indexation***

4.6.5 The **Black Start Availability Price** shall be subject to indexation during the term of this Clause 4 in accordance with the provisions of Schedule E, Section 3, Part III. For the avoidance of doubt the **Works Contribution Payment** shall not be subject to indexation.

4.6.6 The **Parties** acknowledge that they do not intend that the **Generator** should benefit from over recovery of its costs where the **BS Auxiliary Unit(s)** at the **Power Station** is also contracted to provide a **Reserve Service** under a **Reserve Service Contract**. Accordingly, it is hereby agreed that the **Generator** will not offer terms to **The Company** for provision of a **Reserve Service** from the **BS Auxiliary Unit(s)** during all or part of the period ending on the **Expiry Date** without first seeking to agree in writing with **The Company** an appropriate reduction in the **Black Start Availability Price** for the duration of any resulting **Reserve Service Contract**. If no such agreement can be concluded then **The Company** reserves the right to decline to enter into any new **Reserve service Contract** with the **Generator**.

**4.7 Impact of Force Majeure on Availability Payments**

4.7.1 For the avoidance of doubt, and without prejudice to Sub-Clause 4.24, for the purposes of Sub-Clauses 4.6.1(b) and 4.6.4 the **Black Start Service** shall be unavailable and no **Monthly Availability Payment** or **Repayment Amount** shall fall due in respect of and to the extent of any **Settlement Period** in which the **Generator** is unable to provide the **Black Start Service** due to **Force Majeure**.

4.7.2 In respect of each **Settlement Period** when the **Generator** is unable to provide the **Black Start Service** due to **Force Majeure**, the **Expiry Date** shall be extended by the aggregate of all such **Settlement Periods** during the term of this Clause 4. The **Monthly Availability Payment** and/or the **Repayment Amount** that falls due during any such extension period shall be fixed at the levels set following the final indexation prior to the original **Expiry Date** and will not be subject to any further indexation.

**4.8 Black Start Service**

***Service Description***

- 4.8.1 Subject to the provisions of this Clause 4, with effect from the **Service Commencement Date** and thereafter in all **Settlement Periods** until the **Expiry Date**, and in consideration of **The Company's** payments to the **Generator** in accordance with Sub-Clause 4.6, the **Generator** hereby agrees at all times (save where the **Generator** notifies **The Company** pursuant to Sub-Clause 4.9.1 that the **Black Start Plant** does not have the **Black Start Capability**) to maintain the **Black Start Plant** in a condition such that it is able to:-
- 4.8.1.1 provide the **Black Start Capability** as described in Sub-Clauses 4.8.5 to 4.8.7 inclusive; and
- 4.8.1.2 comply with valid instructions for initiation and implementation of the **Local Joint Restoration Plan**,
- so that, in the event of a **Total Shutdown** or a **Partial Shutdown** of the **National Electricity Transmission System**, [at least one of] the **BS Genset(s)** is able to **Start-Up** from **Shutdown** and to energise a part of the **National Electricity Transmission System** and thereafter the local **User System** (in accordance with the **Local Joint Restoration Plan**) and/or be **Synchronised** to the **National Electricity Transmission System** and the local **User System** (in accordance with the **Local Joint Restoration Plan**) upon instruction from **The Company**, in accordance with the **Time to Connection Event** as set out in Schedule E, Part III, without an external electrical supply.
- 4.8.2 The **Generator** hereby further agrees with effect from the **Service Commencement Date** and thereafter until the **Expiry Date** to provide and maintain at the **Power Station** (and, where necessary, replenish) all necessary consumables (which shall include supplies of raw water, demineralised water and infrastructure for the supply of natural gas to the **BS Auxiliary Units**), maintain arrangements for supplies of natural gas to the **BS Auxiliary Units** at the appropriate time and the required pressure and maintain communication channels for the **BS Genset(s)** and the **BS Auxiliary Unit(s)** and other related supplies so that:
- 4.8.2.1 in a **Black Start Situation**, and by block and/or ramp loading in each case in accordance with Sub-Clauses 4.8.5 to 4.8.7 inclusive, **Active Power** from the **BS Genset(s)** of at least the **Station Contracted MW** is capable of being provided and sustained in accordance with Sub-Clauses 4.8.5 to 4.8.7 inclusive for at least [ ] consecutive [hours][days] (or in the case of multiple **Start-Ups** undertaken before essential supplies can be replenished, an aggregate of [ ] [hours][days]); and
- 4.8.2.2 during a **Black Start Situation**, the **Power Station** is capable of providing sufficient **Active Power** to achieve a controlled **Shutdown** of the **BS Genset(s)** and perform a **Start-Up** of a [BS Genset] [CCGT Unit within the relevant CCGT Module] at least [ ] times.
- 4.8.3 It is acknowledged and agreed by the **Generator** that the **Power Station** shall be registered as a **Black Start Station** under the relevant **Bilateral Agreement** as provided in the variation referred to in Sub-Clause 4.3.1.2 for the purposes of the **Grid Code OC9.4.5.1** and that accordingly the **Generator's** obligations contained in this Clause 4 shall be additional and without prejudice to those (if any) set out in the **Grid Code**.
- 4.8.4 If, during a period which is the subject of a prior notification from the **Generator** to **The Company** pursuant to Sub-Clause 4.9.1 in which the **Black Start Plant** does not have the **Black Start Capability**, **The Company** issues a declaration in accordance with **Grid Code OC 9.4.6** that a

**Partial Shutdown** or a **Total Shutdown** exists, the **Generator** shall if required by **The Company** indicate whether and to what extent it is able to respond to **Black Start Instructions** and, if so, the basis upon which it will accept such instructions. Subject to the **Parties** reaching agreement thereto the **Generator** shall use its reasonable endeavours to meet any such request by **The Company** to perform a **Black Start**.

***Black Start Capability***

4.8.5 Without prejudice to the **Grid Code**, the **Black Start Capability** shall comprise the maintaining of suitable mains independent turbine barring and jacking facilities for all **BS Genset(s)** (independent of the **BS Auxiliary Unit(s)**) which will last for a minimum of 20 minutes after the loss of external alternating current supplies, and the capability in a **Black Start Situation** of the **BS Genset(s)** where required, (subject to Sub-Clause 4.9) to perform and re-perform the following actions upon receipt of a relevant instruction from **The Company**:-

- 4.8.5.1 immediately commence the procedure to enable **Start-Up** from **Shutdown** with or without an external electrical supply; and
- 4.8.5.2 within the **Time to Connection Event**, energise part of the **National Electricity Transmission System** (which would then energise the local **Distribution System**) and/or local **Distribution System** from the **Connection Point** or be **Synchronised** to the **National Electricity Transmission System** or the local **Distribution System** or a part thereof (“the **Connection Event**”) in accordance with the **Local Joint Restoration Plan**; and
- 4.8.5.3 be capable of accepting individual loads which will be connected in the form of demand blocks in each case of up to the relevant figure specified in Schedule E, Section 1 and in the **Local Joint Restoration Plan**; and
- 4.8.5.4 when a block load is connected to the **BS Genset(s)** in accordance with paragraph 4.8.5.3 above respond so that the **Frequency** of the **Power Island** should not fall below the minimum **Frequency** specified in Schedule E, Section 1 and that the **Frequency** of the **Power Island** is restored to within statutory limits (above 49.5 Hz) within **[10 seconds]** maintaining stable operation thereafter pending connection of the next block load; and
- 4.8.5.5 be capable of operating within the loading restrictions set out in Schedule E, Section 1 and of accepting loading instructions issued by the **Grid Operator** and/or the **Public Distribution System Operator** in accordance with the loading procedures specified in the **Local Joint Restoration Plan**; and
- 4.8.5.6 achieve a power output equal to the **Station Contracted MW** (or such lesser power output as may be instructed by **The Company**) within the loading period specified in Schedule E, Section 1 assuming loading is achieved by the connection of demand blocks in accordance with paragraphs 4.8.5.3, 4.8.5.4 and 4.8.5.5 above; and
- 4.8.5.7 in order to achieve the power output within the loading period as specified in paragraph 4.8.5.6 above, achieve the interim power output levels specified in Schedule E, Section 1 (or such other interim power output levels as agreed between the **Generator** and the **Grid Operator** from time to time) in the timescales therein specified, and further be



- capable of sustaining a power output equal to the **Station Contracted MW** (or such lower level of MW output as may be instructed by **The Company**) in accordance with Sub-Clause 4.8.2 until otherwise instructed by **The Company**; and
- 4.8.5.8 without prejudice to the **Generator's** obligation to provide **Reactive Power** in accordance with **Grid Code CC6.3.2**, provide **Reactive Power** at no-load at the generator stator terminals (at rated terminal voltage) of at least the range specified in Schedule E, Section 1 (or such other range agreed between the **Generator** and the **Grid Operator** from time to time); and
- 4.8.5.9 operate in a **Frequency Sensitive Mode** in accordance with instructions issued by **The Company** pursuant to the **Grid Code** or as specified in the **Local Joint Restoration Plan**; and
- 4.8.5.10 operate in a **Voltage Control Mode** in accordance with instructions issued by **The Company** pursuant to the **Grid Code** or as specified in the **Local Joint Restoration Plan**; and
- 4.8.5.11 recommence all or part of the **Local Joint Restoration Plan** to the extent the **BS Genset(s)** is disconnected from the **National Electricity Transmission System** or **Demand** is disconnected from that **BS Genset(s)** during a **Black Start Situation**; and
- 4.8.5.12 to co-operate with **The Company** to facilitate the provision of local 400kV, 275kV and 132kV sub-station indications to enable proper co-ordination of actions defined in the **Local Joint Restoration Plan** and to enable **Remote Synchronisation** to be co-ordinated from the **Power Station** control room; and
- 4.8.5.13 maintain provision of the **Black Start Service** in accordance with the provisions of this Sub-Clause 4.8.5 and Sub-Clause 4.8.2 (without reliance on **Auxiliaries** that could be adversely affected by deviations in the **Frequency** of the **System** or by other conditions affecting the **National Electricity Transmission System**) until notification from **The Company** to the **Generator** in accordance with **Grid Code OC 9.4.7.9** that the **Black Start** situation no longer exists.
- The precise operational and procedural requirements of and responses from the **Black Start Plant** will be more comprehensively set out in the **Local Joint Restoration Plan** provided always that the **Local Joint Restoration Plan** shall place no greater obligations upon the **Generator** than those contained within this Clause 4. In relation thereto, in the event of any inconsistency between the provisions of the **Local Joint Restoration Plan** and this Clause 4 the provisions of the **Local Joint Restoration Plan** shall prevail in so far as the inconsistency relates to procedural matters, otherwise the provisions of this Clause 4 shall prevail.
- 4.8.6 Subject to Sub-Clause 4.11 the **Generator** acknowledges that in a **Black Start** situation **The Company** may issue an instruction for operation of the **BS Genset(s)** outside of the technical limitations comprising the **Black Start Capability** to the extent the instruction is to operate in accordance with **Dynamic Parameters** and other **BM Unit Data** submitted pursuant to **Grid Code BC1** (as amended from time to time).

4.8.7 The **Generator** warrants to **The Company** that it believes that operation of the **BS Genset(s)** in accordance with the **Black Start Capability** set out in Sub-Clause 4.8.5 will be within its safe operating parameters (whether relating to personnel or **Plant** or **Apparatus**) and will not require the **Generator** to change generation on such **BS Genset(s)** for safety reasons pursuant to **Grid Code OC 9.4.7.4**.

*Revisions to **Technical Parameters** and/or the **Black Start Capability** requirements*

4.8.8 Subject always to Sub-Clause 4.8.9, the **Generator** may issue a request to **The Company** that one or more of the **Technical Parameters** and/or the **Black Start Capability** requirements (more particularly specified in Sub-Clause 4.8.5) be revised temporarily (such request to be confirmed by facsimile in the appropriate form set out in Schedule E, Section 4), and upon receipt of the **Generator's** facsimile confirmation of such request, **The Company**, may at its sole discretion either accede to or decline such request provided always that any acceptance of such request may at **The Company's** sole discretion be immediately withdrawn at any time thereafter.

4.8.9 The **Generator** shall specify in any request made in accordance with Sub-Clause 4.8.8 the start time and expected end time between which any revision(s) to the **Technical Parameters** and/or the **Black Start Capability** requirements shall apply.

4.8.10 If **The Company** accepts any request made by the **Generator** pursuant to Sub-Clause 4.8.8, any such revision(s) shall apply from the start time specified by the **Generator**, until the end time specified by the **Generator** or any earlier time at which **The Company** withdraws its acceptance of the **Generator's** request pursuant to Sub-Clause 4.8.8.

4.8.11 If **The Company** declines (or withdraws any previous acceptance of) any request made by the **Generator** pursuant to Sub-Clause 4.8.8, then the original **Technical Parameters** and/or **Black Start Capability** requirements shall continue to apply (or be reinstated as the case may be), and for the avoidance of doubt if as a result the **Generator** is unable to maintain the **Black Start Capability** from the **Black Start Plant** then it shall notify **The Company** accordingly in accordance with Sub-Clause 4.9.1.

4.8.12 For the avoidance of doubt, the revisions which may be requested by the **Generator** pursuant to Sub-Clause 4.8.8 may include without limitation reductions to quantities of consumables and/or other related supplies required to be provided and/or maintained by the **Generator** at the **Power Station** as more particularly provided in Sub-Clauses 4.8.2 and 4.8.5.7.

**4.9 Absence of Black Start Capability**

*Notification by **Generator***

4.9.1 The **Generator** shall notify **The Company** by facsimile in the appropriate form set out in Schedule E, Section 4 as soon as reasonably practicable if (but in any event within 20 minutes of it becoming aware that):-

4.9.1.1 the **Black Start Plant** does not or will not have any part of the **Black Start Capability**, and such notification shall include a brief explanation thereof, the time of commencement and the expected duration thereof;

4.9.1.2 (without prejudice to Sub-Clause 4.9.4.1) following the issue of a notification by the **Generator** in accordance with Sub-Clause 4.9.1.1, the **Black Start Capability** has been restored and such notification shall include the time of such restoration.

For the purposes of this Sub-Clause 4.9.1 the **Generator** shall be deemed to have the knowledge of its station operators at the **Power Station**. The **Generator** undertakes to **The Company** that each notification given by its station operators pursuant to this Sub-Clause 4.9.1 shall reflect the true operating characteristics of the **Black Start Plant**.

*Determination by **The Company***

4.9.2 Notwithstanding Sub-Clause 4.9.1, the **Black Start Plant** may be determined by **The Company** not to have the **Black Start Capability** either:

4.9.2.1 (subject to review by the **Independent Expert**) by reference to inspections, **Assurance Visits** and testing carried out pursuant to Sub-Clauses 4.19 and 4.20; or

4.9.2.2 in accordance with the terms of Sub-Clause 4.12.3.

4.9.3 With effect from:-

4.9.3.1 the time at which the **Black Start Plant** is notified by the **Generator** or determined by **The Company** or, in the event of disagreement, by the **Independent Expert** upon the reference of either **Party**, no longer to have the **Black Start Capability**; or

4.9.3.2 the commencement of the **Settlement Period** in which the respective **Event of Default** referred to in Sub-Clause 4.13 shall have occurred,

the **Black Start Plant** shall be deemed not to have the **Black Start Capability** and no payments in respect of all subsequent **Settlement Periods** shall be payable by either **Party** to the other unless and until the **Black Start Capability** shall be deemed to be restored in accordance with the following provisions:-

(a) The **Generator** shall as soon as reasonably practicable notify **The Company** by facsimile in the appropriate form set out in Schedule E, Section 4 of the time and date when it considers that the **Black Start Capability** is restored and shall, where unavailability of the **Black Start Service** was due to an **Event of Default**, give **The Company** a brief explanation as to the reason for such **Event of Default**.

(b) Upon receipt of such notification and explanation, **The Company** shall have **[five] Business Days** to inform the **Generator** that it wishes to conduct a test ("a **Reproving Assessment**") in order to verify such restoration of **Black Start Capability**, and in respect thereof the relevant provisions of Sub-Clause 4.20 shall apply. The scope of a **Reproving Assessment** shall in each case have regard to the nature and extent of the circumstances which gave rise to the **Black Start Plant** no longer having the **Black Start Capability** and shall be discussed and agreed with the **Generator** (such agreement not to be unreasonably withheld or delayed). Without limiting the foregoing, a **Reproving Assessment** may include the monitoring of the normal operation of the **BS Genset(s)** and/or the **BS Auxiliary Unit(s)** (as appropriate).

- (c) If **The Company** fails to notify the **Generator** in accordance with paragraph (ii) above that it wishes to carry out a **Reproving Assessment** then the **Black Start Capability** shall be deemed to have been restored with effect from the time set out in the notification by the **Generator** pursuant to paragraph (i) above and the **Monthly Availability Payments** shall become payable with effect from such time and date.
- (d) Upon receipt of notification from **The Company** to the **Generator** informing the **Generator** that it wishes to conduct a **Reproving Assessment**, the **Generator** shall notify **The Company** of the time and date when the **Reproving Assessment** may be carried out which (unless **The Company** and the **Generator** otherwise agree in writing) shall be not earlier than [ ] hours and not later than [ ] [hours/Business Days] following such notification. Where the **Generator** unreasonably delays in sending such notification, **The Company** may specify a time for the conduct of the **Reproving Assessment** on no less than [168 hours] notice. **The Company** shall not unreasonably refuse to carry out a **Reproving Assessment** at the times and dates notified by the **Generator**. Without limitation, it shall be reasonable for **The Company** (by notice in writing to the **Generator**) to refuse to carry out the **Reproving Assessment** at the time and date notified by the **Generator** in order to minimise cost implications or where the safety or security of the **System** may be compromised. Upon any refusal by **The Company** as aforesaid, the **Generator** shall notify **The Company** of an alternative time and date when the **Reproving Assessment** may be carried out and where the **Generator** unreasonably delays in sending such notification, **The Company** may specify a time for the conduct of the **Reproving Assessment** on no less than [168 hours] notice.
- (e) In the event that **The Company** fails to conduct a **Reproving Assessment** at the time and date notified by the **Generator** pursuant to paragraph (iv) above, save in the circumstances therein set out, then (unless it is prevented from carrying out such **Reproving Assessment** by means of an act or default of the **Generator** or by reason of an event or circumstance of **Force Majeure**) the **Black Start Capability** shall be deemed to have been restored with effect from the time set out in the notification by the **Generator** pursuant to paragraph (a) above and the **Monthly Availability Payments** shall become payable with effect from such time and date.
- (f) If the **Generator** passes a **Reproving Assessment**, then (subject to paragraph (g) below) the **Black Start Capability** shall be deemed to be restored with effect from the time and date notified by the **Generator** pursuant to paragraph (a) above and the **Monthly Availability Payments** shall become payable with effect from such time and date.
- (g) If the **Generator** fails a **Reproving Assessment**, then paragraphs (a) to (d) (inclusive) shall continue to apply and the **Generator** shall be required to re-

notify **The Company** of the time and date when it considers that the **Black Start Capability** shall be restored, and the **Black Start Capability** shall only be deemed to be restored as from the earlier of:-

- (i) the passing of a subsequent **Reproving Assessment**;
  - (ii) the date of the first notification where, in accordance with Sub-Clause 4.20.4, the first **Reproving Assessment** is determined to have been passed; or
  - (iii) if **The Company** fails to carry out a subsequent **Reproving Assessment**, with effect from the time of the last notification from the **Generator** to **The Company** that the **Black Start Capability** is restored.
- (h) In relation to all **Reproving Assessments** the provisions of Sub-Clauses 4.20.3 to 4.20.24 (inclusive) shall apply.
- (i) During any period of dispute as to a determination of **The Company** that the **Black Start Plant** no longer has the **Black Start Capability**, the provisions of Sub-Clause 4.9.5 shall apply.

4.9.4 For the avoidance of doubt, no payments shall be payable by either **Party** in respect of any **Settlement Periods** following a determination by **The Company** that the **Black Start Plant** no longer has the **Black Start Capability**, notwithstanding that the **Generator** shall have requested a further test and/or made a reference to the **Independent Expert** pursuant to Sub-Clause 4.20.4, unless and until the earlier of (as the case may be):-

4.9.4.1 the **Generator** passes such further test or the **Independent Expert** determines that such further test was passed, in which cases the **Monthly Availability Payments** in respect of the **Settlement Periods** since the first test shall become payable by **The Company** to the **Generator** by reference to the first practicable **Final Monthly Statement** issued following such further successful test together with interest thereon at the **Base Rate** from the date on which such payments would otherwise have been due and payable by **The Company**; or

4.9.4.2 the **Black Start Capability** shall be deemed to be restored in accordance with Sub-Clause 4.9.3.

#### **4.10 Black Start Instruction**

4.10.1 During any **Black Start Situation** **The Company** shall give an instruction to the **Generator** as referred to in Grid Code OC9.4 for implementation of the **Local Joint Restoration Plan** from the **Black Start Plant** ("a **Black Start Instruction**") which may comprise (subject to Sub-Clauses 4.8.5, 4.8.6 and 4.11), without limitation, any one or more of the instructions set out at Sub-Clauses 4.10.1.1 to 4.10.1.6 below. The **Local Joint Restoration Plan** shall set out who shall give the following instructions:-

4.10.1.1 an instruction to **Start-Up** the **BS Genset(s)**, without an external electrical supply and in accordance with the **Local Joint Restoration Plan**; and/or

- 4.10.1.2 an instruction for such **BS Genset(s)** to be connected to or **Synchronised** to the **National Electricity Transmission System** and the local **User System** (in accordance with the **Local Joint Restoration Plan**) or a part thereof; and/or
- 4.10.1.3 an instruction for such **BS Genset(s)** to maintain a specified voltage at the **Commercial Boundary**; and/or
- 4.10.1.4 an instruction for such **BS Genset(s)** to accept block loads within the range specified in Schedule E; and/or
- 4.10.1.5 an instruction for such **BS Genset(s)** to operate in **Frequency Sensitive Mode**; and/or
- 4.10.1.6 an instruction to switch in or out the **Power System Stabiliser**.

The modes of instruction specified in this Sub-Clause 4.10.1 are indicative only but all **Black Start Instructions** shall fall within the remit of this Clause 4, the **Local Joint Restoration Plan** and/or the **Grid Code**. The actual method of instruction and the detailed instruction formats for use in a **Black Start Situation** will be more comprehensively set out in the **Local Joint Restoration Plan**.

- 4.10.2 Subject and without prejudice to Sub-Clause 4.11 the **Generator** agrees that **The Company** may issue a **Black Start Instruction** for operation of the **BS Genset(s)** outside of operating capability as declared or redeclared to **The Company** pursuant to relevant provisions of the **Grid Code** but only to the extent the instruction is for operation in accordance with the relevant **Black Start Capability** or a capability otherwise agreed by the **Generator**.
- 4.10.3 The **Generator** acknowledges and agrees that a **Black Start Situation** will constitute an emergency situation as referred to in the **Grid Code** and that accordingly a **Black Start Instruction** may constitute an **Emergency Instruction**.
- 4.10.4 During any **Black Start Situation**, **The Company** shall provide the **Generator** with such information relating to the **National Electricity Transmission System** as **The Company**, in its reasonable opinion, shall consider to be necessary in order to enable the **Generator** to implement the **Local Joint Restoration Plan** or respond to instructions under the **Grid Code**.

#### **4.11 Safety and Insurance**

- 4.11.1 Notwithstanding Sub-Clauses 4.8.7 and 4.10, **The Company** accepts that the decision to operate the **BS Genset(s)** outside of its safe operating parameters is one for the **Generator** alone, and accepts that the **Generator** may change generation on that **BS Genset(s)** or the **BS Auxiliary Unit(s)** if it believes it is necessary for safety reasons (whether relating to personnel or **Plant** or **Apparatus**).
- 4.11.2 The responsibility for injury to personnel and damage to **Plant** and **Apparatus** owned and/or operated by the **Generator** caused by operation of the **BS Genset(s)** in a **Black Start Situation** (including without limitation any damage to a **BS Genset(s)** caused by loss of barring) therefore rests with the **Generator** and **The Company** shall have no liability whatsoever in connection therewith.
- 4.11.3 The **Generator** shall indemnify and keep indemnified **The Company** in respect of liability for death or personal injury and/or, damage to **Plant** and **Apparatus** owned and/or operated by **The Company** and arising out of or in connection with such operation of the **BS Genset(s)** outside of its safe operating parameters save to the extent that:-
  - 4.11.3.1 the **Generator** has notified **The Company** that the **BS Genset(s)** cannot be operated within its safe operating parameters because of the **Demand** experienced and **The Company** subsequently fails to comply with **Grid Code OC 9.4.7.4**;

- 4.11.3.2 such death or personal injury and/or damage to **Plant** and **Apparatus** is caused by **The Company's** negligent act, omission or default; and
- 4.11.3.3 the **Generator** has operated the **BS Genset(s)** in accordance with **Good Industry Practice**.
- 4.11.4 The **Generator** shall insure for Public Liability risks with a reputable insurer with a minimum value of **[5]** million pounds Sterling (£**[5,000,000]**) for each and every claim.

#### **4.12 Local Joint Restoration Plan and Training**

- 4.12.1 The **Generator** shall co-operate with **The Company** in the development, review and updating from time to time of a **Local Joint Restoration Plan** for the **Power Station** which shall be in a form to be agreed between the **Parties** (such agreement not to be unreasonably withheld or delayed) and one or more local **Public Distribution System Operators** and/or **User** and/or third party responsible for necessary consumables as referred to in Sub-Clause 4.8.2 (as the case may be) (together “the **Relevant Third Parties**”), and shall include details of the following:-
  - 4.12.1 the part of the **National Electricity Transmission System** and/or local **Distribution System** to be energised (in the case of the local **Distribution System** indirectly) by the **Generator** utilising the **Black Start Plant** and the methods by which this will be achieved;
  - 4.12.2 how the block loading of the **Black Start Plant** is to be achieved by direct communication between the **Generator**, the local **Public Distribution System Operator** and **The Company**;
  - 4.12.3 manner of operation during islanded conditions;
  - 4.12.4 telephone numbers of all parties concerned and all other pertinent information of a similar nature; and
  - 4.12.5 the time periods required for the restoration of such necessary consumables.
- 4.12.2 In connection with Sub-Clause 4.12.1, the **Generator** shall ensure that all appropriate personnel at the **Power Station** are made aware of the **Local Joint Restoration Plan** and receive appropriate training in respect thereof. Appropriate training shall be at the sole discretion of the **Generator** but may include the carrying out of one exercise a year (of no more than a reasonable duration) with various station staff (which may include the operation of any part of the **Local Joint Restoration Plan**). Upon reasonable request from the **Generator**, **The Company** shall use reasonable endeavours (insofar as permitted by the **Grid Code** and subject as provided below) to co-operate with the **Generator** in the carrying out of any such exercise by the issue of suitable instructions (at times and for periods agreed with **The Company**) and, subject to the **Generator's** rights referred to in Sub-Clauses 4.20.9 to 4.20.28 inclusive, each **Party** shall bear its own additional staffing costs in connection with any such exercise. In respect of any exercises involving changes to the production profile of any **BM Unit** at the **Generator's Power Station**, the provisions of Sub-Clauses 4.20.9 to 4.20.28 inclusive shall apply.
- 4.12.3 The **Parties** shall use reasonable endeavours to ensure that a **Local Joint Restoration Plan** has been developed by the **Service Commencement Date** and, in connection therewith, the **Generator** shall be responsible for procuring that all **Relevant Third Parties** co-operate in the development of such

**Local Joint Restoration Plan.** In the event that a **Local Joint Restoration Plan** has not been agreed by the **Parties** and the **Relevant Third Parties** by the date being [three] months after the **Service Commencement Date** or such later date as may be agreed in writing by both **Parties**, **The Company** shall be entitled to notify the **Generator** in writing at any time thereafter that the **Black Start Plant** shall be deemed not to have any part of the **Black Start Capability** with effect from the date of such notification until such time as a **Local Joint Restoration Plan** has been developed and agreed by the **Parties** and the **Relevant Third Parties**.

#### **4.13 Events of Default**

In relation to the **Black Start Service**, each of the events specified in Annexure B to this Clause 4 (and no others) shall constitute an "Event of Default" and shall result in the respective consequences also set out therein as if the same were set out in full in this Clause 4. For the avoidance of doubt, where one incident results in more than one **Event of Default**, **The Company** shall only be entitled to apply the respective consequence once.

#### **4.14 Consequences of Events of Default**

4.14.1 The provisions of Annexure B to this Clause 4 shall apply in the case of an **Event of Default** and, subject to the provisions thereof, the amounts payable by the **Generator** to **The Company** in respect thereof shall be calculated in accordance with Schedule E, Section 2, Part I (in respect of a **Repayment Amount**) and Schedule E, Section 2, Part III (in respect of a **Works Contribution Refund Payment**).

4.14.2 The **Generator** acknowledges and agrees that the provisions of Annexure B to this Clause 4 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date hereof and that in particular (but without limiting the foregoing) any monies which cease to be payable by **The Company** to the **Generator** hereunder, the aggregate number of hours expressed to be taken into account in calculating the **Monthly Availability Payments** payable to the **Generator** pursuant to this Clause 4, the **Repayment Amounts** and the **Works Contribution Refund Payments** have been calculated so as to reflect as fairly as possible the costs which are reasonably contemplated by the **Parties** at the date hereof as being likely to be incurred by **The Company** as a direct result of the **Events of Default** as referred to in Sub-Clause 4.13 or (as the case may be) the termination of provision of the **Black Start Service**.

#### **4.15 Annual Assessment**

4.15.1 Following the expiry of each consecutive 12 month period of operation of this Clause 4 commencing from the **Service Commencement Date**, **The Company** shall undertake assessments of the extent of provision of the **Black Start Service** by the **Generator** over the immediately preceding 12 month period (the "Assessment Period") and shall notify the **Generator** accordingly.

4.15.2 The first assessment shall be carried out by determining in relation to each **Assessment Period** and by reference to Sub-Clauses 4.15.3 and 4.15.4 the number of **Settlement Periods** during such **Assessment Period** in which the **Black Start Plant** has had the **Black Start Capability**.

4.15.3 If in respect of any period the **Black Start Plant** does not have the **Black Start Capability** due solely to **Force Majeure**, then to the extent that in respect of such period the **Generator** is able to demonstrate to **The Company's** reasonable satisfaction that it has been taking all reasonably practicable steps to restore the **Black Start Capability** from the **Black Start Plant**, the **Black Start**



**Plant** shall be deemed to have had the **Black Start Capability** for the purposes of Annexure C to this Clause 4.

- 4.15.4 If the **Generator** gives **The Company** prior written notice of any period during which the **Generator** proposes to withdraw the **Black Start Capability** from the **Black Start Plant** (including the duration of such period), **The Company** shall:
- 4.15.4.1 assess the likely consequences of such withdrawal; and
  - 4.15.4.2 may agree in writing with the **Generator** to the proposed period outage or propose an alternative period of outage.
- 4.15.5 If the **Parties** agree to a period of outage pursuant to Sub-Clause 4.15.4.2 the withdrawal of the **Black Start Capability** during the agreed period shall not be included in the **Annual Assessment** in accordance with Annex C.
- 4.15.6 Where the **Parties** do not agree to a period of outage pursuant to Sub-Clause 4.15.4.2 the withdrawal of the **Black Start Capability** during any period shall be included in the availability assessment for **Biennial Assessment** in accordance with Annex C.
- 4.15.7 If the percentage of **Settlement Periods** in an **Assessment Period** that the **Black Start Plant** had the **Black Start Capability** is less than a **Black Start Capability** percentage stated in Annexure C to this Clause 4 then the respective consequences stated in Annexure C to this Clause 4 shall apply.
- 4.15.8 In respect of each **Assessment Period**, a second assessment shall also be carried out of the number of **Settlement Periods** during such **Assessment Period** in which the **Black Start Plant** did not have the **Black Start Capability** due to **Force Majeure**. If the percentage of such **Settlement Periods** during such **Assessment Period** exceeds 75% then either **Party** shall be entitled to terminate this Clause 4 forthwith by notice in writing to the other to be served at any time until the end of one month following expiry of the relevant **Assessment Period** (or one month following completion of the assessment, if later). In respect of such termination, the **Generator** shall pay to **The Company** in accordance with Clause 8 a **Works Contribution Refund Payment** calculated in accordance with the formula in paragraph (b) of Schedule E, Section 2, Part III.
- 4.15.9 The first such **Assessment Period** shall commence on the **Service Commencement Date**. In the event of termination of the provisions of this Clause 4 during an **Assessment Period** the availability of the **Black Start Plant** in respect of the period since the end of the last **Assessment Period** shall be assessed by **The Company** in accordance with this Sub-Clause 4.15 but in respect of such shorter period, and "**Assessment Period**" shall be construed accordingly.
- 4.15.10 Subject to Sub-Clauses 4.15.3 and 4.15.4, for the purposes of this Sub-Clause 4.15 and Schedule E, Section 2, Part II and Schedule E, Section 2, Part III, periods when the **Black Start Plant** shall not have had the **Black Start Capability** shall be determined in accordance with Sub-Clause 4.9 and/or Sub-Clause 4.20.3.
- 4.16 Black Start Exercise Payment**
- No exercise payments shall be made by **The Company** to the **Generator** under this **Agreement** in respect of running of the **BS Genset(s)** or the **BS Auxiliary Unit(s)** during a **Black Start Situation** or during **Reproving Assessments**, **Capability Assessments**, **Remote Synchronisation Tests** or **Grid Code** tests carried out pursuant to Sub-Clauses 4.9.3 and/or 4.20.1 or during exercises carried out pursuant to Sub-Clause 4.12.

**4.17 Termination**

4.17.1 Without prejudice to **The Company's** right to terminate the provisions of this Clause 4 prior to the **Service Commencement Date** pursuant to Sub-Clause 4.5.3 or in the circumstances described in Sub-Clause 4.15.7, **The Company** shall be entitled to terminate the provisions of this Clause 4 after the **Service Commencement Date** only in the following circumstances:-

4.17.1.1 as specified in Annexure B to this Clause 4 as a consequence of one or more **Events of Default**; and

4.17.1.2 as specified in Annexure C to this Clause 4.

4.17.2 Upon termination of Clause 4 as referred to in Sub-Clause 4.17.1 or upon termination of this **Agreement** pursuant to Clause 11, the **Generator** shall pay to **The Company** in accordance with Clause 8 a **Works Contribution Refund Payment** calculated in accordance with the formula in paragraph (b) of Schedule E, Section 2, Part III.

4.17.3 Termination of this Clause 4 shall, subject to Sub-Clause 4.3.5, be without prejudice to any rights of the **Parties** which shall have accrued at the time of such termination.

**4.18 Instructions and Notifications**

4.18.1 All notifications, declarations, confirmations and other communications of whatever nature to be given by **The Company** to the **Generator** or vice versa pursuant to this Clause 4 which concern the availability and utilisation of the **Black Start Service** shall (unless otherwise specified to the contrary in this Clause 4) be given either:-

4.18.1.1 in accordance with the **Grid Code** (where applicable); or

4.18.1.2 by telephone,

and subsequently confirmed by facsimile in the appropriate form set out in Schedule E, Section 4 or by such other means as may be agreed in writing by the **Parties**.

**4.19 Inspections and Assurance Visits**

*Inspections*

4.19.1 To enable **The Company** to verify the capability of the **Black Start Plant** to provide the **Black Start Service**, the **Generator** shall permit **The Company** to inspect such of the following as **The Company** may reasonably require (in each case upon giving to the **Generator** not less than 24 hours prior notice):-

4.19.1 the **BS Genset(s)**;

4.19.2 the **Auxiliaries** (including without limitation the **BS Auxiliary Unit(s)**);

4.19.3 the **Generator's** other **Plant** and **Apparatus**, in relation to **Black Start Capability**, necessary consumables (which shall include supplies of raw water, demineralised water and infrastructure for the supply of natural gas to the **BS Auxiliary Unit(s)**), , communication channels and other related supplies at the **Power Station**;

4.19.4 arrangements that the **Generator** has in place for the supply of natural gas to the **BS Auxiliary Units** at the appropriate time and the required pressure;

4.19.5 the **Local Joint Restoration Plan** and such evidence as **The Company** shall reasonably require to demonstrate compliance by the **Generator** with its obligations contained in this **Agreement**; and

4.19.6 any **Black Start Situation** procedure which has been or may in future be developed independently by the **Generator** in respect of the **Power Station** giving specific guidance to that **Power Station** in the event of a **Black Start Situation** and which is or may at a future date be in current use at the **Power Station**.

Such inspection shall be carried out without undue interference with the normal operation of the **Black Start Plant**.

*Assurance Visits*

4.19.2 Without prejudice to, and in addition to, **The Company's** right to carry out inspections in accordance with Sub-Clause 4.19.1, the **Generator** shall, subject to Sub-Clause 4.19.3, not more than once in any calendar year, permit **The Company** to visit the **Power Station** (upon **The Company** giving to the **Generator** not less than 168 hours' prior notice) so that **The Company** may ascertain to its reasonable satisfaction that the **Generator** has, in accordance with **Good Industry Practice**, implemented at the **Power Station** appropriate technical, training and documentation procedures ("an **Assurance Visit**"). **Assurance Visits** shall be carried out without undue interference with the normal operation of the **Black Start Plant**.

4.19.3 Following receipt of any notice issued by **The Company** pursuant to Sub-Clause 4.19.2, the **Generator** may propose to **The Company** an alternative time and date for the **Assurance Visit**, provided that any such alternative time and date shall not be later than 28 **Settlement Days** following the time and date specified by **The Company** in its notice, and (at its option) **The Company** may agree to such alternative time and date. In the event that the **Generator** unreasonably delays the **Assurance Visit** beyond the time and date being 28 **Settlement Days** after the time and date for the **Assurance Visit** specified by **The Company** in its notice, then no **Monthly Availability Payments** shall accrue to the **Generator** in respect of the period commencing at the time and date for the **Assurance Visit** specified in **The Company's** notice and ending upon completion by **The Company** of an **Assurance Visit**.

**4.20 Black Start Tests**

*Remote Synchronisation Tests, Capability Assessments and Repeating Assessments*

4.20.1 Without prejudice to **The Company's** right to conduct tests in accordance with **Grid Code OC 5.7.1** and **Repeating Assessments** pursuant to Sub-Clause 4.9.4, and subject always to the provisions of this Clause 4, **The Company** shall have the right:-

4.20.1.1 not more than once in any two calendar years to require the **Generator**, by notice in writing, to carry out a **Remote Synchronisation Test** at a time no sooner than 168 hours following the time of issue of the notice, to determine whether the **BS Genset(s)** and/or the **Auxiliaries** and their associated **Plant** and **Apparatus** are able to perform the processes described in paragraphs 3 to 5 of Annexure D to this Clause 4 and are otherwise capable of providing the **Black Start Service** in accordance with this Clause 4; and

4.20.1.2 to require the **Generator**, by notice in writing, to carry out a test ("a **Capability Assessment**") at any time no sooner than 24 hours following the issue of the notice where **The Company** has reasonable grounds for believing that the **Black Start Plant**

does not have the **Black Start Capability**. The scope of a **Capability Assessment** shall in each case have regard to the nature and extent of the circumstances upon which **The Company** bases its opinion that the **Black Start Plant** does not have the **Black Start Capability** and shall be discussed and agreed with the **Generator** (such agreement not to be unreasonably withheld or delayed). Without limiting the foregoing the **Capability Assessment** may include the monitoring of the normal operation of the **BS Genset(s)** and/or the **BS Auxiliary Unit(s)** (as appropriate).

- 4.20.3 Following receipt of any such notices, the **Generator** may make representations to **The Company** regarding the specified time and duration of the **Remote Synchronisation Test** or (as the case may be) the **Capability Assessment**, provided that, in the case of a **Capability Assessment**, any revised time and duration proposed by the **Generator** shall not be later than 168 hours after the time and date for the **Capability Assessment** specified by **The Company** in its notice and shall be accompanied by a justification setting out the reasons for delaying the **Capability Assessment** which is reasonably satisfactory to **The Company**.
- 4.20.4 Following receipt of such representations from the **Generator**, **The Company** may (at its option) agree a different time (either before or after that specified in its notice) for the **Remote Synchronisation Test** or **Capability Assessment** (as the case may be) to take into account the **Generator's** representations. In the event that the **Generator** notifies **The Company** that the **Black Start Plant** does not have the **Black Start Capability** at the scheduled time and date for the **Capability Assessment** then **The Company** reserves the right to treat such circumstances as a failed **Black Start Test** and the **Black Start Plant** shall, with effect from the scheduled time and date for the **Capability Assessment**, be determined not have the **Black Start Capability** for the purposes of Sub-Clause 4.9.2.1.
- 4.20.5 Each notice referred to in Sub-Clause 4.20.1.1 shall indicate the scope of the **Remote Synchronisation Test** and all actions required of the **Generator** in respect thereof. A summary of the **Remote Synchronisation Test** procedure is set out in Annexure D to this Clause 4. A detailed procedure for the **Power Station** developed in accordance with this summary will be agreed between the **Parties** (such agreement not to be unreasonably withheld or delayed) no later than 12.00 hours on the **Business Day** before the day on which the **Remote Synchronisation Test** is due to be conducted and the rights and obligations of the **Parties** under the **Remote Synchronisation Test** procedure shall be governed by the terms of this **Agreement**.
- 4.20.6 A **Reproving Assessment** or a **Capability Assessment** shall be commenced either by **The Company** giving the **Generator** one or more of the instructions referred to in Sub-Clause 4.10, which may be in the manner of a test carried out pursuant to **Grid Code OC5** or (at **The Company's** option) by monitoring and/or inspecting the **BS Genset(s)** and/or the **BS Auxiliary Unit(s)** during any period in which they are providing generation otherwise than in accordance with this Clause 4. The performance of such **Plant** and **Apparatus** shall be assessed by **The Company** by reference to metering and/or any monitoring equipment and at the option of the **Generator** shall be carried out in the presence of a reasonable number of non-participating representatives of the **Generator**. If such metering and/or monitoring equipment indicates that the **Generator** is unable to comply with such

instruction then **The Company** shall notify the **Generator** that the **Generator** has failed the **Reproving Assessment** or **Capability Assessment**.

4.20.7 If a bona fide dispute arises relating to the performance of the **BS Genset(s)** and/or the **BS Auxiliary Unit(s)** during or as to the results of a **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment, The Company** and the **Generator** shall attempt to resolve the dispute by discussions, and if they fail to reach agreement the **Generator** may require **The Company** to carry out a further **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment** (as applicable) to be carried out on not less than respectively 168, 24 or 24 hours notice which shall be carried out in accordance with the provisions of this Sub-Clause 4.20 as if **The Company** had issued an instruction at the time of notice from the **Generator**. If the **Generator** passes such further **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment**, it shall be deemed to have passed the first **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment**. If the **Generator** fails such further **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment** and a dispute arises in respect of that further **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment** or if any dispute arises in relation to an inspection or **Assurance Visit** carried out pursuant to Sub-Clause 4.19, then the **Parties** shall attempt to resolve the dispute by discussions but if they fail to reach agreement within 3 **Business Days** of the commencement of such discussions either **Party** may refer the matter to the **Independent Expert** for determination. The **Generator** shall not be treated as failing any **Remote Synchronisation Test, Reproving Assessment** or **Capability Assessment** if it has given notice of non-capability pursuant to Sub-Clause 4.9 either:-

4.19.7.1 before the notice of the relevant test given by **The Company**; or

4.19.7.2 after the notice of the relevant test given by **The Company** in respect of matters which the **Generator** can reasonably demonstrate arose after the giving of such notice by **The Company**.

4.20.8 Each **Party** shall bear its own costs incurred as a direct result of a **Capability Assessment** and a **Remote Synchronisation Test** save where the **Generator** fails such **Capability Assessment** or **Remote Synchronisation Test** (as the case may be), in which event the **Generator** shall reimburse to **The Company** all of **The Company's** reasonable costs reasonably incurred as a direct result thereof. Additionally, the **Generator** shall reimburse to **The Company** all of **The Company's** reasonable costs reasonably incurred as a direct result of a **Reproving Assessment** conducted either following an **Event of Default** referred to in Sub-Clause 4.13 or following failure by the **Generator** of a previous **Reproving Assessment**.

***Black Start Test Procedure - Black Start Test Parameters***

4.20.9 In respect of each **Black Start Test, The Company** and the **Generator** shall use all reasonable endeavours to agree, no later than four clear **Settlement Days** before the day on which the **Black Start Test** is due to be conducted, the **Black Start Test Parameters** for the conduct of the **Black Start Test**, such agreement to be in writing substantially in the appropriate form set out in Schedule E, Section 4. If no such agreement is reached by such date, then without prejudice to any other provision of this **Agreement** no **Monthly Availability Payments** shall accrue due to the **Generator** from such date until the date when such agreement is finally reached.

- 4.20.10 The **Black Start Test Parameters** shall comprise those matters necessary to be agreed for the purposes of Sub-Clauses 4.9.3 (**Reproving Assessments**), 4.12.2 (exercises), 4.20.1.1 (**Remote Synchronisation Tests**), 4.20.1.2 (**Capability Assessments**) and **Grid Code OC 5.7.1(d)**, as applicable, and shall be consistent therewith, and shall include (without limitation):
- 4.20.10.1 the **BM Unit ID** for the **BS Genset(s)** and **BM Unit ID** for the **BS Auxiliary Unit(s)**;
  - 4.20.10.2 the proposed start time and end time for the **Black Start Test Period**, each determined in accordance with Sub-Clause 4.20.11;
  - 4.20.10.3 a proposed running profile together with underlying **Physical Notification** level and **Maximum Export Limit**, for the **BS Genset(s)** during the **Black Start Test** which meet the requirements of Sub-Clause 4.20.12; and
  - 4.20.10.4 in respect of the **BS Genset(s)**, **Bid Prices** and **Offer Prices** which meet the requirements of Sub-Clause 4.20.13.
- 4.20.11 The start time and end time of a **Black Start Test Period** referred to in Sub-Clause 4.20.7.2 shall, unless otherwise agreed by the **Parties** in writing, be determined as follows:
- 4.20.11.1 in the case where the running profile comprised within the **Black Start Test Parameters** indicates the **BS Genset(s)** being **Synchronised** in any **Settlement Period(s)** in the twelve hour period immediately prior to commencement of the **Black Start Test Period**:-
    - (a) the start time shall be one hour prior to the time indicated in the running profile for the **BS Genset** to commence **De-Loading** in preparation for **Desynchronisation**; and
    - (b) the end time shall be one hour after the time indicated in the running profile by which the **BS Genset(s)** shall have achieved an **Output** equal to its **Physical Notification** level;
    - (c) in the case where the running profile comprised within the **Black Start Test Parameters** indicates the **BS Genset(s)** not being **Synchronised** in any **Settlement Period(s)** in the twelve hour period immediately prior to commencement of the **Black Start Test Period**:-
      - (i) the start time shall be one hour prior to the time indicated in the running profile for the opening of the final circuit breaker connecting the **Power Station** to the **National Electricity Transmission System** in preparation for the **Synchronisation** of the **BS Genset(s)**; and
      - (ii) the end time shall be one hour after the time indicated by the running profile for the **BS Genset(s)** to achieve an **Output** equal to its **Physical Notification** level.
- 4.20.12 The underlying **Physical Notification** level, for the **BS Genset(s)** during the **Black Start Test** referred to in Sub-Clause 4.20.10.3 shall, unless otherwise agreed by the **Parties** in writing, be determined as follows:
- (a) in the case where the running profile comprised within the **Black Start Test Parameters** indicates some or all of the **BS Genset(s)** being **Synchronised** in any **Settlement Period(s)** in the twelve hour period

immediately prior to commencement of the **Black Start Test Period**, the underlying **Physical Notification** level for all **BS Gensets** at the **Black Start Station** other than those **BS Genset(s)** that have been **Synchronised** in the twelve hour period shall be zero MW; and

- (b) in the case where the running profile comprised within the **Black Start Test Parameters** indicates the **BS Genset(s)** not being **Synchronised** in any **Settlement Period(s)** in the twelve hour period immediately prior to commencement of the **Black Start Test Period**, the underlying **Physical Notification** level for all **BS Gensets** at the **Black Start Station** shall be zero MW.

4.20.13 **Bid Prices** and **Offer Prices** referred to in Sub-Clause 4.20.10.4 shall:-

4.20.13.1 comprise **Bid-Offer Pairs** with a **Bid Price** and **Offer Price** which are equal;

4.20.13.2 reflect the differential in costs between those which would be incurred by the **Generator** in operating the **BS Genset(s)** in accordance with the **Bid-Offer Pair** in the event of its acceptance and those which would be incurred in operating the **BS Genset(s)** in accordance with its **Final Physical Notification Data**; and

4.20.13.3 comprise a **Bid Price** not less than £0.00.

4.20.14 The **Dynamic Parameters** for the **BS Genset(s)** during the **Black Start Test** shall, unless otherwise agreed by the **Parties** in the **Black Start Test Parameters**, be those **Dynamic Parameters** which applied at the time of notification by **The Company** of the requirement for a **Black Start Test**.

4.20.15 Once agreed by the **Parties**, the **Black Start Test Parameters** may subsequently be revised by agreement in writing of the **Parties** (not to be unreasonably withheld or delayed) but not so as to fall outside of the **Black Start Test Period**.

***Black Start Test Procedure – Black Start Test Conduct***

4.20.16 In conducting a **Remote Synchronisation Test**, **Reproving Assessment** or **Capability Assessment**, **The Company** may assess the suitability of, and the performance of the **Generator's** personnel against, the terms of the **Local Joint Restoration Plan** and/or any **Black Start Situation** procedure which has been developed independently by the **Generator** (as more particularly referred to in Sub-Clause 4.19.1.6), and such assessment shall (inter alia) be taken into account when determining whether the **Generator** has passed or failed such **Remote Synchronisation Test**, **Reproving Assessment** or **Capability Assessment**.

4.20.17 For the purposes of any **Black Start Test** which is not limited solely to monitoring the normal operation of the **BS Genset(s)**, and to facilitate the issue by **The Company** of **Bid-Offer Acceptances** in respect of the **BS Genset(s)**, the **Generator** shall submit, in accordance with the **Balancing and Settlement Code** and in respect of all **Black Start Test Settlement Periods**:-

4.20.17.1 a **Maximum Export Limit** and **Physical Notification** level matching those comprised within the **Black Start Test Parameters** for the **BS Genset(s)**;

4.20.17.2 **Bid-Offer Data** comprising **Bid-Offer Pairs** for levels of MW (positive and/or, as the case may be, negative) consistent with the running profile for the **BS Genset(s)** comprised within the **Black Start Test Parameters** (and by reference to the **Physical Notification** level specified in paragraph (a) above);

- 4.20.17.3 **Dynamic Parameters** which comply with Sub-Clause 4.20.11; and
- 4.20.17.4 in respect of the **Bid-Offer Pairs** submitted in accordance with paragraph (b) above, **Bid-Offer Prices** consistent with the **Bid-Offer Prices** for the **BS Genset(s)** comprised within the **Black Start Test Parameters**.
- 4.20.18 For the purposes of any **Black Start Test** which is not limited solely to monitoring the normal operation of the **BS Auxiliary Unit(s)** the **Generator** shall, in relation to the **BM Unit(s)** comprising the **BS Auxiliary Unit(s)**, submit in accordance with the **Balancing and Settlement Code** and the **Grid Code**, and in respect of all **Black Start Test Settlement Periods, Physical Notifications** comprising a profile of zero intended production.
- 4.20.19 Subject to Sub-Clause 4.20.20, the **Bid-Offer Acceptance(s)** that **The Company** shall issue in order to facilitate the conduct of the **Black Start Test** shall be determined as follows:
- 4.20.19.1 in the case where the running profile comprised within the **Black Start Test Parameters** indicates the **BS Genset(s)** being **Synchronised** in any **Settlement Period(s)** in the twelve hour period immediately prior to commencement of the **Black Start Test Period, The Company** shall, in respect of each **Black Start Test Settlement Period**, issue **Bid-Offer Acceptance(s)** in respect of any **BS Genset(s)** which is **Synchronised** in accordance with its **Physical Notification**, to permit such **BS Genset(s)** to follow the running profile comprised within the **Black Start Test Parameters**.
- 4.20.19.2 in the case where the running profile comprised within the **Black Start Test Parameters** indicates the **BS Genset(s)** not being **Synchronised** in any **Settlement Period(s)** in the twelve hour period immediately prior to commencement of the **Black Start Test Period, The Company** shall issue **Bid-Offer Acceptance(s)** in respect of the **Black Start Test Main Unit** to increase the generation of the **Black Start Test Main Unit** to its **Stable Export Limit** for a period equal to the prevailing **Minimum Non Zero Time** submitted in respect of the **Black Start Test Main Unit**, and such running of the **Black Start Test Main Unit** shall be completed prior to the disconnection of the **Power Station's** external alternating current supplies in accordance with the running profile comprised in the **Black Start Test Parameters**.

*Cancellation*

- 4.20.20 Where **The Company** reasonably considers that any **Black Start Test**, other than a **Reproving Assessment** (in respect of which Sub-Clause 4.9.3.2(d) shall apply), would result in **The Company** incurring exceptional costs or the safety or security of the **System** being compromised, **The Company** may notify the **Generator** of the cancellation of such **Black Start Test**, in which event the **Parties** shall agree a new time for the conduct of such **Black Start Test** and Sub-Clauses 4.20.9 to 4.20.19 and this Sub-Clause 4.20.20 shall apply. Where the **Generator** unreasonably withholds or delays such agreement, **The Company** may specify a time for the conduct of such **Black Start Test** on no less than 168 hours' notice.

*Notices*

- 4.20.21 **The Generator** shall use such telephone and facsimile numbers as may be notified to it by **The Company** from time to time for the purposes of notices to be given or confirmed by facsimile or



telephone pursuant to this Sub-Clause 4.20. Service of such notice shall be without prejudice to the **Generator's** obligations to notify **BM Unit Data** by means of the **EDL Equipment** pursuant to the **Grid Code** and/or the **Balancing and Settlement Code**.

*Payments during a Black Start Test*

4.20.22 The **Parties** acknowledge that the **Balancing and Settlement Code** shall govern the payments falling due to the **Parties** in respect of any running of **BM Unit(s)** during the **Black Start Test Period**, save that in respect of the running of the **BM Unit(s)** comprising the **BS Auxiliary Unit(s)** during the **Black Start Test Period**, **The Company** shall pay to the **Generator**, in accordance with Clause 8, in respect of each **BS Auxiliary Unit** which runs an amount being the lesser of:-

4.20.22.1 the Standard Exercise Price multiplied by the metered MWh Output of the BS Auxiliary Unit(s) during the Black Start Test Period; and

4.20.22.2 the Standard Exercise Price x Auxiliary Contracted MW of the BS Auxiliary Unit x 5 Settlement Periods.

4.20.23 In the event that the **BS Genset(s)** **Desynchronises** in accordance with the running profile comprised within the **Black Start Test Parameters** and subsequently is unable to **Synchronise** in accordance with that running profile due to plant failure, then provided firstly that **The Company** is so notified by the **Generator** in sufficient time and secondly that the **Generator** is taking all reasonable steps to rectify the plant failure, **The Company** agrees to continue to issue **Bid-Offer Acceptances** to reflect the actual **Output** of the **BS Genset(s)** until but not beyond the expiry of the **Black Start Test Period**.

4.20.24 The **Standard Exercise Price** shall be subject to indexation during the term of this Clause 4 in accordance with the provisions of Schedule E, Section 3, Part III.

*Forced Cooling*

4.20.25 If during any Grid Code test, Remote Synchronisation Test, Repeating Assessment or Capability Assessment the BS Genset(s) at the Power Station is required to be Shutdown, any forced cooling of the BS Genset(s) undertaken by the Generator shall be at its own cost.

*Restrictions on Black Start Tests*

4.20.26 **The Company** shall not require a **Black Start Test** during periods when the **Black Start Plant** does not have or is deemed not to have the **Black Start Capability** by reason of:-

4.20.26.1 a planned maintenance and/or inspection period agreed pursuant to the **Grid Code**;

4.20.26.2 an event or circumstance of **Force Majeure**;

4.20.26.3 notification in accordance with Sub-Clause 4.9.1; or

4.20.26.4 the terms of this Clause 4 (including Sub-Clauses 4.9.2, 4.9.3, 4.9.4 and 4.12.3) or Annexure B to this Clause 4.

*Damage to Plant and Apparatus*

4.20.27 For the avoidance of doubt, each **Party** shall bear the risk of, and the other **Party** shall have no liability to that **Party** in respect of, loss and damage to that **Party's Plant** and/or **Apparatus** caused during or as a result of any **Grid Code** test, **Remote Synchronisation Test**, **Repeating Assessment**, **Capability Assessment** or exercise pursuant to Sub-Clause 4.12.2 (whether due wholly or partly to the other **Party's** default or to the malfunction of its **Plant** or **Apparatus** or otherwise).

**4.21 Monitoring and Metering**

Without prejudice to any existing right of **The Company** to monitor and meter the provision of any **Ancillary Service**, **The Company** by agreement with the **Generator** (not to be unreasonably withheld or delayed) may monitor and/or meter the provision by the **Generator** of the **Black Start Service**.

#### **4.22 Changes to Other Documents**

4.22.1 The **Parties** agree to negotiate in good faith and use all reasonable endeavours to agree amendments to this Clause 4 in light of:-

4.22.1.1 any changes to a **Legal Requirement** or industry documentation (including without limitation the **Act**, any **Licence**, the **Balancing and Settlement Code**, the **Grid Code**, the **Connection and Use of System Code**, the **Mandatory Services Agreement** and/or the relevant **Bilateral Agreement**); or

4.22.1.2 the implementation of any new **Legal Requirement**, resulting in a material change to the manner of provision of the **Black Start Service** by the **Generator** and/or the basis of payments made to or by **The Company** under this Clause 4, such amendments to have the effect so far as reasonably practicable of making the provision of the **Black Start Service** by the **Generator** and/or (as the case may be) the basis of payments to or by **The Company** under this Clause 4 no more or less favourable to the respective **Party** as was the case before such variations took effect (ignoring all payments made to the **Generator** otherwise than pursuant to this **Agreement** which, as a result of the changes to industry documentation as referred to above, shall cease to be payable to the **Generator** or are otherwise varied).

4.22.2 Failing agreement in respect of the matters contained in Sub-Clause 4.22.1, within 30 days of a **Party** notifying the other **Party** that it intends to refer a matter to the **Independent Expert**, that **Party** shall have the right to invoke the provisions of Clause 19.

4.22.3 It is agreed that neither **Party** shall be entitled to modify, alter or otherwise change the site specific technical conditions under Appendix F1 (relating to the **Black Start Service**) of the **Bilateral Agreement** for the **Power Station** the subject of this **Agreement** referred to in Sub-Clause 4.3.1.2 so as to remove the reference therein to **Black Start** during such time as terms dealing with the provision of and payment for such **Ancillary Service** are contained in this Clause 4 (as amended, varied or otherwise altered from time to time) and have not either terminated or expired in accordance with the provisions of this Clause 4.

#### **4.23 Independent Expert**

4.23.1 Where any provision of this Clause 4 or Schedule E provides for a dispute or difference between the **Parties** to be referred to the **Independent Expert**, the **Parties** agree that he shall act as an expert and not as an arbitrator and shall decide those matters referred to him by reference to **Good Industry Practice** using his skill, experience and knowledge and with regard to all such other matters as he in his sole discretion considers appropriate.

4.23.2 All references to the **Independent Expert** shall be made in writing by either **Party** with notice to the other being given contemporaneously.

4.23.3 The **Parties** shall promptly supply the **Independent Expert** with such documents and information as he may reasonably request when considering any referral.

4.23.4 The **Independent Expert** shall be requested to use his best endeavours to give his decision upon the question before him as soon as possible following its referral to him. The **Parties** shall share equally his fees and expenses.

4.23.5 The **Parties** expressly acknowledge that submission of disputes for resolution by the **Independent Expert** does not preclude subsequent submission of disputes for resolution in accordance with Clause 19. Pending any such submission the **Parties** shall treat the **Independent Expert**'s decision as final and binding.

#### **4.24 Force Majeure**

If any **Party** (the "**Non-Performing Party**") shall be unable to carry out any of its obligations under this **Agreement** due to **Force Majeure**, then without prejudice to the other provisions of this Clause 4 this **Agreement** shall remain in effect but:-

4.24.1 the **Non-Performing Party**'s relevant obligations; and

4.24.2 the obligations of the other **Party** owed to the **Non-Performing Party** under this **Agreement**, shall be suspended for a period equal to the duration of **Force Majeure** provided that:-

4.24.3 the suspension of performance is of no greater scope and of no longer duration than is required by the **Force Majeure**;

4.24.4 no obligations of any **Party** that arose before the **Force Majeure** causing suspension of performance are excused as a result of the **Force Majeure**;

4.24.4 the **Non-Performing Party** gives the other **Party** prompt notice describing the circumstance of **Force Majeure**, including the nature of the occurrence and its expected duration, and continues to furnish regular reports with respect thereto during the period of **Force Majeure**;

4.24.5 the **Non-Performing Party** uses all reasonable efforts to remedy its inability to perform; and

4.24.6 as soon as reasonably practicable after the event which constitutes **Force Majeure** the **Parties** shall discuss how best to continue their operations so far as possible in accordance with this Clause 4.

#### **4.25 BM Unit Registration**

If during the term of this Clause 4 the registration of any or all of the **Black Start Plant** as (or as part of) a **BM Unit** changes, then the **Parties** shall use all reasonable endeavours to agree such variations to this Clause 4 and Schedule E as shall be necessary in consequence thereof. Failing agreement within 30 days, either **Party** shall have the right to refer the matter to the **Independent Expert** for determination whose decision shall be final and binding on the **Parties**.

**ANNEXURE A (TO CLAUSE 4)**

**Works Programme**

**Part I**

**Timescale**

1. The **Generator** shall use its reasonable endeavours to procure that the **Commissioning Assessment** is passed on or before the **Target Commencement Date** and in respect thereof time shall be of the essence. The **Parties** agree that the milestone schedule shown in Part IV of this Annexure A represents an indicative schedule of progress of the **Works**. During progress of the **Works**, but in any event no later than 3 months prior to completion of the **Works**, both **Parties** shall use their reasonable endeavours to agree the precise technical specification for the test or sequence of tests (a "**Commissioning Assessment**") referred to in Part II below. Such **Commissioning Assessment** shall not include any requirement for **The Company** to issue **Bid-Offer Acceptance(s)**. If the **Parties** shall have failed to reach agreement by the date 3 months prior to completion of the **Works**, then the matter shall be referred to the **Independent Expert** who shall determine in his absolute discretion the precise technical specification consistent with the summary procedure set out in Part II below.
2. The **Generator** shall provide to **The Company** monthly reports of how the **Works** are progressing which shall, inter alia, identify any delay or anticipated delay in completing the **Works** and how the **Generator** proposes to remedy or avoid any such delay or anticipated delay. Moreover, the **Generator** shall, if so requested by **The Company**, give to **The Company** such evidence as it shall reasonably require and, if necessary, allow **The Company's** representatives all reasonable access to the **Power Station** and to the **Auxiliaries** and/or **BS Genset(s)** and **Plant** and **Apparatus** owned or operated by the **Generator** to enable **The Company** to ascertain how the **Works** are progressing and that the **Works** are proceeding in accordance with the **Works Programme**. Furthermore, the **Generator** shall notify **The Company** of its intention to conduct an acceptance test of the **Auxiliaries** and shall, if so requested by **The Company** and at **The Company's** sole cost, allow **The Company's** representatives to be present at such a test as observers.
3. The **Generator** shall notify **The Company** in writing of the date when the **Works** are substantially completed and the **BS Genset(s)** and/or the **Auxiliaries** and their associated **Plant** and **Apparatus** are able in the **Generator's** opinion to provide the **Black Start Service**.
4. Following receipt of a notice issued by the **Generator** pursuant to paragraph 3 or 6 (as the case may be):-
  - (a) the **Works** shall be deemed to be available for the purposes of conducting a **Commissioning Assessment** with effect from the date specified in the notice given by the **Generator** in accordance with paragraph 3 ("the **Provisional Service Commencement Date**") or paragraph 6 ("the **Re-assessment Availability Date**") and

the **Generator** shall (subject to paragraph 7) be entitled to receive **Monthly Availability Payments** with effect from the **Provisional Service Commencement Date**;

- (b) **The Company** shall, as soon as reasonably practicable after the **Provisional Service Commencement Date** or **Re-assessment Availability Date** (as the case may be), contact the **Generator** to agree the date on which the **Generator** shall carry out a **Commissioning Assessment**, the scope of which is set out in Part II of this Annexure A, to determine whether the **BS Genset(s)** and/or the **Auxiliaries** and their associated **Plant** and **Apparatus** have the **Black Start Capability** and are otherwise capable of providing the **Black Start Service** in accordance with Clause 4. For the avoidance of doubt, the **Black Start Plant** shall not have the **Black Start Capability** until such time as a **Commissioning Assessment** has been passed in accordance with this Annexure A.

- 5 Both **Parties** shall use their reasonable endeavours to ensure that the **Commissioning Assessment** is conducted as soon as possible and shall agree the date and time of the **Commissioning Assessment**, provided always that, although **The Company** shall not unreasonably refuse to carry out a **Commissioning Assessment** at any time and date that may be requested by the **Generator**, having regard to the cost implications **The Company** reserves the right to cancel any **Commissioning Assessment** previously agreed to be carried out. In such a case the **Parties** shall agree an alternative time and date when the **Commissioning Assessment** shall be carried out which shall be as soon as possible thereafter. Either **Party** may request the **Independent Expert** to be present at a **Commissioning Assessment**.

- 6 As soon as possible after the date on which the **Commissioning Assessment** has been completed, **The Company** shall notify the **Generator** whether it has passed or failed the **Commissioning Assessment**. Subject to the provisions of paragraph 9, in the event that **The Company** notifies the **Generator** that in **The Company's** opinion (and giving reasons for that opinion) the **Generator** has failed any **Commissioning Assessment**, the **Generator** shall as soon as possible respond to **The Company**. If the **Generator** does not dispute that there has been a failure, it shall address the reason for the failure and shall subsequently notify **The Company** when the failure has been addressed, whereupon the provisions of paragraphs 4 and 5 shall apply. If the **Generator** disputes that there has been a failure, the **Parties** shall attempt to resolve the dispute by discussions, and if they fail to reach agreement within 3 **Business Days** of the commencement of such discussions either **Party** may refer to the matter to the **Independent Expert** for determination and the provisions of paragraph 13 shall apply to such reference.

- 7 Where the **Generator** is determined by **The Company** or (where appropriate) the **Independent Expert** to have passed the first **Commissioning Assessment** then the **Black Start Plant** shall be deemed to have had the **Black Start Capability** with effect from the **Provisional Service Commencement Date** and the **Provisional Service Commencement Date** shall constitute the **Service Commencement Date**. Where the **Generator** fails the first **Commissioning Assessment**

then the **Generator** shall reimburse to **The Company** all **Monthly Availability Payments** received in respect of all periods from the **Provisional Service Commencement Date** by way of a **Repayment Amount** and shall not be entitled to receive **Monthly Availability Payments** in respect of the **Black Start Plant** for the period commencing on the date of failure of the first **Commissioning Assessment** and ending at 00.00 hours **on the first day of the calendar month immediately following** the date on which the **Generator** has successfully completed a second or subsequent **Commissioning Assessment**.

8 Each **Party** shall bear its own costs in relation to the first **Commissioning Assessment** and the cost of running of the **BS Genset(s)** and/or **Auxiliaries** during a **Commissioning Assessment** shall be borne by the **Generator**. Where the **Generator** passes or fails the second and where it fails any subsequent **Commissioning Assessment**, the **Generator** shall be responsible not only for its own costs but also shall reimburse to **The Company** all **The Company's** reasonable costs reasonably incurred as a direct result of the second and each subsequent **Commissioning Assessment** (not to exceed in relation to all tests **£[ ]** in aggregate). For the avoidance of doubt, each **Party** shall bear the risk of, and the other **Party** shall have no liability to the **Party** in respect of, loss and damage to that **Party's Plant** or **Apparatus** caused during or as a result of any **Commissioning Assessment** (whether due wholly or partly to the other **Party's** default or the malfunction of its **Plant** or **Apparatus** or otherwise).

9 Subject always to paragraph 13(b) below, if the **Generator** shall fail a third successive **Commissioning Assessment**, **The Company** may serve written notice on the **Generator** terminating the provisions of Clause 4, and such notice shall take effect immediately.

10 Subject always to paragraphs 12 and 13(b) below, save to the extent due to an event or circumstance of **Force Majeure** or an act or omission of **The Company**, if the earlier of the date of a successful **Commissioning Assessment** or the date on which the **Works** are deemed to have been commissioned is:-

(a) after the **Target Commencement Date**, then the **Generator** shall pay to **The Company** without deduction or set off liquidated damages at the daily rate of **£[2,000]** for each such day (reduced by the number of days between the date originally agreed for a **Commissioning Assessment** and any date subsequently agreed following cancellation by **The Company** pursuant to paragraph 5 above) that such date is later than the **Target Commencement Date**, provided always that such liquidated damages shall not in any event exceed **£[210,000]**; and

(b) **[ ]** more than **[6]** months after the **Target Commencement Date**, then **The Company** shall have the right to terminate Clause 4 by written notice to the **Generator** in accordance with Clause 16.

11 For the purposes of paragraph 10(a), liquidated damages shall be payable by the **Generator** to **The Company** on a monthly basis in accordance with Clause 8, and due date shall be ascertained accordingly. If any payment of liquidated damages (not being a payment subject to a bona fide dispute) remains unpaid after the due date of payment and such non-payment continues unremedied at

the expiry of 14 **Business Days** immediately following receipt by the **Generator** of written notice from **The Company** of such non-payment then **The Company** shall have the right to terminate Clause 4 by written notice to the **Generator** in accordance with Clause 16. Without prejudice to such right of termination, **The Company** may set off all or any part of any liquidated damages due to it pursuant to this Annexure A against any payments due from it to the **Generator** pursuant to this **Agreement** and/or any **Mandatory Services Agreement** or other agreement for the provision of **Ancillary Services** to **The Company** to which the **Generator** is **Party**, and the **Generator** hereby consents to the exercise of such right.

12 [If **Force Majeure** prevents successful completion of a **Commissioning Assessment** or deemed commissioning within 12 months after the **Target Commencement Date**, **The Company** shall have the right to terminate Clause 4 by written notice to the **Generator** given in accordance with Clause 16.]

13 Upon any referral to the **Independent Expert** in the circumstances provided in paragraph 6:-

- (a) the **Generator's** obligation to pay liquidated damages to **The Company** under paragraph 10(a) above shall continue notwithstanding the referral provided always that if the **Independent Expert** determines that the relevant **Commissioning Assessment** has been passed, then **The Company** shall repay to the **Generator** in accordance with Clause 8 any liquidated damages paid by the **Generator** pursuant to paragraph 10(a) above in respect of the period after such **Commissioning Assessment** together with interest thereon at the **Base Rate** from the date of payment by the **Generator**; and
- (a) **The Company's** right to terminate the provisions of Clause 4 under paragraphs 9 and 10(b) above shall be suspended and shall have no effect during the period commencing with such referral and ending on the date of determination by the **Independent Expert**.

14 If, following receipt of a monthly report pursuant to paragraph 2 above or in exercise of its rights pursuant to paragraph 2 above or otherwise, **The Company** has reasonable grounds for believing that the **Works** will not be completed on or before the **Target Commencement Date**, then it shall so notify the **Generator**. The **Generator** shall within 12 **Business Days** inform **The Company** of the reasons for the delay or anticipated delay and shall at the same time either submit to **The Company** its proposals for remedying or avoiding such delay or anticipated delay or alternatively shall notify **The Company** of such later date by which it reasonably expects the **Works** to be completed and commissioned.

4 If **The Company** has reasonable grounds for believing that despite the **Generator's** proposals (if any) for remedying or avoiding any delay or anticipated delay the **Works** will not be completed and commissioned within a period 6 months or (where any delay is caused by **Force Majeure**) 12 months after the **Target Commencement Date**, then **The Company** may request the **Independent Expert** to declare that the **Works** have been abandoned. Upon receipt of such a request, the **Independent Expert** shall determine in his sole opinion whether there is any reasonable prospect of the **Works** being completed by, or within 6 or 12 months (as the case may be) of, the **Target Commencement Date**. If the **Independent Expert**

determines that there is no such reasonable prospect, then he shall so notify **The Company** and the **Generator** whereupon the following provisions shall apply:-

(a) the **Generator** shall pay to **The Company** in accordance with Clause 8 an amount equal to a **Works Contribution Refund Payment** calculated in accordance with the formula in paragraph (a) of Schedule E, Section 2, Part III as if termination of Clause 4 had thereupon taken place by way of repayment of the **Works Contribution Payment** (together with interest thereon at the **Base Rate**) referred to at Clause 4.6.1(a);

(b) if either:-

(i) the **Works** are subsequently completed or commissioned within a period of 6 months or (where the delay is caused by **Force Majeure**) 12 months after the **Target Commencement Date**; or

(ii) before the expiry of such relevant period it is agreed by the **Parties** or determined pursuant to Clause 19 that notwithstanding the **Independent Expert**'s determination the **Works** had not at the date of his determination been abandoned and that there are reasonable grounds for believing that the **Works** will be completed before the expiry of such relevant period;

then by reference to the first practicable **Final Monthly Statement** following such completion and commissioning or agreement or determination (as the case may be) **The Company** shall repay to the **Generator** the amount paid and referred to in paragraph 15(a) together with interest thereon at the **Base Rate** from the date of payment to **The Company** referred to in paragraph 15(a) above;

(b) if either:-

(i) the **Works** are not subsequently completed or commissioned within a period of 6 months or (where the delay is caused by **Force Majeure**) 12 months after the **Target Commencement Date**; or

(ii) before the expiry of such relevant period it is agreed by the **Parties** or determined pursuant to Clause 19 that the **Independent Expert** was correct in his determination that the **Works** had been abandoned or that there are no reasonable grounds for believing that the **Works** will be completed before the expiry of such relevant period,

then **The Company** shall thereupon be entitled to terminate Clause 4 forthwith by notice in writing to the **Generator** in accordance with Clause 16.



## **Part II**

### **Commissioning Assessment - Summary Procedure**

1. **Scope**

The precise technical specification for a **Commissioning Assessment** will be comprehensively set out in a detailed specification to be agreed between the **Parties** no later than 3 months prior to the completion of the **Works** (such agreement not to be unreasonably withheld or delayed) or otherwise determined by the **Independent Expert** pursuant to paragraph 1 of Part I of this Annexure A.

2. **Purpose**

The **Commissioning Assessment** will aim to demonstrate that with and without external power supplies to all or part of the **Power Station** the **BS Auxiliary Unit** can be independently started and in turn allow the reliable start up of the **[main Gas Turbine Units and Steam Unit]** in the manner (including without limitation within the timescales) required by the **Black Start Capability** technical parameters.

3. **Specification**

A full range of commissioning and **Plant** performance test will be carried out by the **Generator** to prove that the **BS Auxiliary Unit** performs correctly without detriment to the operation of the existing **BS Genset(s)**. The **Commissioning Assessment** may form part of these tests however they will be considered to be independent from them.

The **Commissioning Assessment** shall be deemed to be passed when the **Power Station** has demonstrated that it has performed adequately in all the following tests such that all **Parties** can have confidence that a station **Black Start Situation** could be performed if the situation arose. It should be noted that performance tests of various types may be conducted after the **Commissioning Assessment** but these will not affect the ability of the **Power Station** to carry out a **Black Start Situation**.

**[List of tests to be completed]**

**Part III**  
**Specification of BS Auxiliary Unit**

*[To be completed]*

**Part IV**

**Indicative Milestone Schedule**

MILESTONE ACTIVITY	LATEST TARGET
1. <b>The Company</b> exec approval	
2. Contract signing	
3. Complete preliminary functional specifications	
4. Environmental Statement completed	
5. Submit IPC Application	
6. Submit Section 36 Application	
7. Expected to receive Section 36 <b>Consents</b>	
8. Expected to receive IPC <b>Consents</b>	
9. Site access (enabling works)	
10. Site access (main civil)	
11. Civil construction completion	
12. Start of delivery of power converter system	
13. Complete pipe-work installation	
14. Complete electrical control & instrumentation installation	
15. Mechanical completion (i.e. the completion of the supply and installation of the power converter system and process <b>Plant</b> and equipment provided under contract to the <b>Generator</b> with the exception of minor defects and omissions).	
16. Cold commissioning complete	
17. Start hot commissioning	
18. Completion of hot commissioning	
19. <b>Black Start Capability</b> testing	
20. <b>Target Commencement Date</b>	

**Part V**

**Valid Invoice Failure Formula**

The **Valid Invoice Failure Payment** ( $VIF_t$ ) payable by the **Generator** to **The Company** pursuant to Sub-Clause 4.6.2.4 shall be calculated in accordance with the following formulae:-

$$VIF_t = [WCP_1 - VIW_1] \times \frac{c}{6}$$

Where:

- $VIF_t$  = the total **Valid Invoice Failure Payment** payable by the **Generator** to **The Company**
- $WCP_1$  = the **Works Contribution Payment** (including VAT thereon) paid by **The Company**
- $VIW_1$  = the total cost (£) of those completed **Works** (including VAT thereon) evidenced by **Valid Invoice(s)** received by **The Company** by the **Valid Invoice Deadline**
- $c$  = a factor equal to the number of calendar months (subject to a maximum of six calendar months) which elapse after the **Valid Invoice Deadline** until provision by the **Generator** of all **Valid Invoice(s)** evidencing the total cost of the completed **Works**

**Part VI**  
**Valid Invoices**

***[Insert list of required invoices]***

**Part V**

**Valid Invoice Failure Formula**

In the event that the total of all **Valid Invoices** (exclusive of VAT) received by **The Company** by the **Valid Invoice Deadline** is less than the total anticipated costs referred to in Sub-Clause 4.6.2.2, in accordance with Sub-Clause 4.6.2.6 the **Black Start Availability Price** per **Settlement Period** shall be reduced, effective from the date hereof, in accordance with the following formula **[Insert formula]**

**ANNEXURE B (TO CLAUSE 4)**

**Events Of Default and Consequences**

<p><b>Event of Default (Capability) - Failure of first Commissioning Assessment</b></p>	<p><b>Consequences</b></p>
<p>Failure by the <b>Generator</b> of the first <b>Commissioning Assessment</b> conducted in accordance with Parts I and II of Annexure A to Clause 4.</p>	<p>1. A <b>Repayment Amount</b> shall become payable by the <b>Generator</b> to <b>The Company</b>, being an amount calculated in accordance with Schedule E, Section 2, Part I.</p>
<p><b>Event of Default (Capability) - Notification of non-capability</b></p>	<p><b>Consequences</b></p>
<p>Save in respect of a planned maintenance or inspection period agreed pursuant to the <b>Grid Code</b> (evidenced by written notification(s) from the <b>Generator</b> under <b>Grid Code</b> OC 2.4.1.2.3 and 2.4.1.2.4), failure by the <b>Generator</b> to notify <b>The Company</b> that the <b>Black Start Plant</b> does not or will not have the <b>Black Start Capability</b> in the manner referred to in Sub-Clause 4.9.1.1 (whether evidenced by a <b>Remote Synchronisation Test, Capability Assessment, Grid Code</b> test or otherwise)</p>	<p>1. The <b>Black Start Service</b> shall be deemed to be unavailable and Sub-Clause 4.9.3 shall apply; and</p> <p>2. Upon the first and each successive <b>Event of Default</b> a <b>Repayment Amount</b> shall become payable by the <b>Generator</b> to <b>The Company</b>, being an amount calculated in accordance with Schedule E, Section 2, Part I; and</p> <p>3. Upon the third and each successive <b>Event of Default</b> within each <b>Assessment Period</b> (reduced pro rata for any <b>Assessment Period</b> shorter than 12 months), in addition to 2 above, <b>The Company</b> shall have the right to terminate Clause 4 by notice in writing to the <b>Generator</b> to be served not later than 28 days following such third or successive <b>Event of Default</b>.</p>
<p><b>Event of Default - Planned Maintenance and Inspection Periods</b></p>	<p><b>Consequences</b></p>
<p>In respect of a planned maintenance or inspection period agreed pursuant to the <b>Grid Code</b> (as evidenced by written notification(s) from the <b>Generator</b> under <b>Grid Code</b> OC 2.4.1.2.3 and 2.4.1.2.4.), failure by the <b>Generator</b> to notify <b>The Company</b> that the <b>Black Start Plant</b> does not or will not have the <b>Black Start Capability</b> in the manner referred to in Sub-Clause 4.9.1.1.</p>	<p>The <b>Black Start Service</b> shall be deemed to be unavailable during, and there shall be taken into account in the calculation of <b>Black Start Capability Payments</b> those <b>Settlement Periods</b> comprised in, the period commencing at 00.00 on the first day of the planned maintenance or inspection period agreed pursuant to the <b>Grid Code</b> (as notified by the <b>Generator</b> to <b>The Company</b> under <b>Grid Code</b> OC 2.4.1.2.3 and 2.4.1.2.4.) and ending at 24.00 hours on the last day of such planned maintenance or inspection period.</p>
<p><b>Events of Default (Black Start Situation) - Black Start Instruction</b></p>	<p><b>Consequences</b></p>
<p>Save during a period the subject of a prior notification from the <b>Generator</b> to <b>The Company</b> as referred to in Sub-Clause 4.9.1 in which the <b>Black Start Plant</b> does not have the <b>Black Start Capability</b>, the failure by the <b>Generator</b> to comply with <b>The Company's</b> instruction for the initiation and implementation of the <b>Local Joint Restoration Plan</b> in accordance with Sub-Clause 4.10 save to the extent:-</p> <p>(a) the instruction requires the <b>Generator</b> to sustain the relevant <b>Station Contracted MW</b></p>	<p>1. The <b>Black Start Service</b> shall be deemed to be unavailable and Sub-Clause 4.9.3 shall apply; and</p> <p>2. A <b>Repayment Amount</b> shall become payable by the <b>Generator</b> to <b>The Company</b>, being an amount calculated in accordance with Schedule E, Section 2, Part I); and</p> <p>3. In addition to 2 above, <b>The Company</b> shall have the right to terminate Clause 4 forthwith by</p>

<p>(or such lesser power output agreed by the <b>Generator</b> and the <b>Grid Operator</b>) in any <b>Black Start Situation</b> for more than the number of hours and on the basis referred to in Sub-Clause 4.8.2; or</p> <p>(b) compliance with the instruction would mean the relevant <b>BS Genset</b> could not keep within its safe operating parameters and a subsequent change in generation on that <b>BS Genset</b> was demonstrated to <b>The Company's</b> reasonable satisfaction to be necessary for safety reasons (whether relating to personnel or <b>Plant</b> and <b>Apparatus</b>); or</p> <p>(c) the failure was wholly and directly caused by an event or circumstance of <b>Force Majeure</b>.</p>	<p>notice in writing to the <b>Generator</b>.</p>
<p><b>Events of Default - Failure of Black Start Tests</b></p>	<p><b>Consequences</b></p>
<p>The failure by the <b>Generator</b> to pass a <b>Reproving Assessment</b>; carried out as a result of failure of any <b>Black Start Test</b> (excluding an exercise pursuant to Sub-Clause 4.12).</p>	<ol style="list-style-type: none"> <li>1. The <b>Black Start Service</b> shall be deemed to be unavailable and Sub-Clause 4.9.4 shall apply; and</li> <li>2. A <b>Repayment Amount</b> shall become payable by the <b>Generator</b> to <b>The Company</b>, being an amount calculated in accordance with Schedule E, Section 2, Part 1.</li> </ol>
<p>The failure by the <b>Generator</b> of any <b>Reproving Assessment</b> carried out following failure of both a <b>Black Start Test</b> (excluding an exercise pursuant to Sub-Clause 4.12) and a subsequent <b>Reproving Assessment</b>.</p>	<ol style="list-style-type: none"> <li>1. The <b>Black Start Service</b> shall be deemed to be unavailable and Sub-Clause 4.9.3 shall apply; and</li> <li>2. A <b>Repayment Amount</b> shall become payable by the <b>Generator</b> to <b>The Company</b>, being an amount calculated in accordance with Schedule E, Section 2, Part 1.</li> <li>3. Upon the first and each successive <b>Event of Default</b>, <b>The Company</b> shall have the right to terminate Clause 4 by notice in writing to the <b>Generator</b>.</li> <li>4. Without prejudice to 3 above, <b>The Company</b> may (at its option) meet with the <b>Generator</b> to discuss the reasons for failure of the <b>Black Start Test</b> and the subsequent <b>Reproving Assessments</b> and, subject to the <b>Generator</b> identifying the cause(s) for such failure and demonstrating to <b>The Company's</b> reasonable satisfaction that it is able to remove or address such cause(s) before the <b>Expiry Date</b>, <b>The Company</b> may (in its sole discretion) agree with the <b>Generator</b> a period during which the <b>Generator</b> shall (at its own cost) undertake additional works to ensure that the <b>Black Start Capability</b> is restored ("<b>Additional Works Period</b>"). Where <b>The Company</b> agrees to an <b>Additional Works Period</b>, <b>The Company</b> shall only be permitted to terminate Clause 4 in accordance with 3 above,</li> </ol>



	<p>where either:-</p> <ul style="list-style-type: none"><li>(i) the <b>Generator</b> advises that the additional works will not be completed within the <b>Additional Works Period</b>;</li><li>(ii) following completion of the additional works, the <b>Generator</b> fails a subsequent <b>Reproving Test</b>.</li></ul>
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**ANNEXURE C (TO CLAUSE 4)**

**Annual Assessment of Black Start Capability**

% Black Start Capability over each Assessment Period	Consequences
≥90%	None
<90% ≥[85]%	The <b>Generator</b> shall pay to <b>The Company</b> in accordance with Clause 8 the <b>Annual Availability Shortfall Payment</b> calculated in accordance with the formulae set out in Schedule E, Section 2 Part II.
<[85]%	<p>Either (at <b>The Company</b>'s absolute discretion):</p> <ol style="list-style-type: none"> <li>1. The <b>Generator</b> shall pay to <b>The Company</b> in accordance with Clause 8 the <b>Annual Availability Shortfall Payment</b> calculated in accordance with the formulae set out in Schedule E, Section 2, Part II; or</li> <li>2. <b>The Company</b> shall implement a reduction in the <b>Availability Price</b> specified in Schedule E, Section 2, Part I equivalent to the percentage unavailability of the <b>Black Start Capability</b> over the <b>Assessment Period</b> and shall revise the calculation of <b>Monthly Availability Payments</b> due to the <b>Generator</b> in respect of the <b>Assessment Period</b> accordingly and recover any overpayment of <b>Monthly Availability Payments</b> from the <b>Generator</b> by reference to the first practicable <b>Final Monthly Statement</b> after expiry of the <b>Assessment Period</b>. Further, the <b>Parties</b> shall discuss and endeavour to agree appropriate amendments to Clause 4 to reflect the reduced value to <b>The Company</b> of the <b>Black Start Service</b>. Provided always that, if no such agreement shall by then have been reached, <b>The Company</b> shall be entitled to terminate Clause 4 forthwith by notice in writing to the <b>Generator</b> to be served at any time until the end of one month following expiry of the relevant <b>Assessment Period</b> (or one month following completion of the assessment, if later).</li> </ol>

**ANNEXURE D (TO CLAUSE 4)**  
**Remote Synchronisation Testing**  
**Summary Procedure**

- 1 Each **Black Start Station** will be required to undertake a **Remote Synchronisation Test** (“**RST**”) once every two calendar years. The **RST** will be managed by **The Company**.
- 2 The precise technical requirements for a **RST** will be comprehensively set out in the ‘**RST** procedure’ as amended from time to time and to be agreed by the **Generator** prior to the test (such agreement not be unreasonably withheld or delayed).
- 3 A **RST** will require the relevant **Genset** at a **Black Start Station** to energise from dead a local busbar, a circuit(s), a transformer(s) and a remote busbar and then synchronise onto a live busbar that is already synchronised to the **National Electricity Transmission System**.
- 4 At the start of the energisation process the test generating unit will be run up from barring speed and at **Synchronous Speed** the **Generator** circuit breaker will be closed to energise the test part of the system. The energisation process may require excitation level on the **Genset** to be anywhere between zero and nominal LV voltage when the circuit breaker is closed and may require the excitation to be gradually increased to meet a target HV voltage level.
- 5 The **Generator** may be required to operate for up to one hour at no load at **Synchronous Speed** while the **Genset**’s ability to control voltage and **Frequency** on the test system is verified. If forced cooling of the **Genset** is required to enable such operation to be permissible then the cost of such cooling should be the sole responsibility of the **Generator**.
- 6 All reasonable care will be undertaken in preparing the **RST** procedure such that neither the energisation process nor the remote **Synchronisation** process will cause damage to **Plant** or equipment owned by the **Generator** or **The Company**, however all risks of damage to a **Party**’s **Plant** or equipment shall be borne by that **Party**.
- 7 The **Black Start Station** will be required to provide substation indications to enable the test to be co-ordinated from the **Power Station** Control Room..

5. **NOT USED**

6. **NOT USED**

7. **NOT USED**

8. **PAYMENT**

The **Parties** agree that the provisions of Paragraph 4.3.2 of the **Connection and Use of System Code** shall apply to payments made by **The Company** to the **Generator** (and by the **Generator** to **The Company**) pursuant to this **Agreement** in respect of the provision of **Agreed Ancillary Services** as if set out in full herein.

9. **LIMITATION OF LIABILITY**

9.1 Subject to Sub-Clause 9.2 and Clause 8, 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:-

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

9.1.2 the liability of such other **Party** to any other person for loss in respect of physical damage to the property of any person subject, for the avoidance of doubt, to the requirement that the amount of such liability claimed by such other **Party** should be mitigated in accordance with general law,

provided further that the liability of any **Party** in respect of all claims for such loss shall not exceed £5 million per incident or series of related incidents.

9.2 Nothing in this **Agreement** shall exclude or limit the liability of the **Party Liable** for death or personal injury resulting from the negligence of the **Party Liable** or any of its officers, employees or agents and the **Party Liable** shall indemnify and keep indemnified the other **Party**, its officers, employees or agents, from and against all such and any loss or liability which such other **Party** may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the **Party Liable** or any of its officers, employees or agents.

9.3 Subject to Sub-Clause 9.2 and Clause 8 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:-

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

9.3.2 any indirect or consequential loss; or

9.3.3 loss resulting from the liability of the other **Party** to any other person howsoever and whensoever arising save as provided in Sub-Clause 9.1.2 and Sub-Clause 9.2.

- 9.4 Each **Party** acknowledges and agrees that the other **Party** holds the benefit of Sub-Clauses 9.1 and 9.2 and 9.3 for itself and as trustee and agent for its officers, employees and agents.
- 9.5 The rights and remedies provided by this **Agreement** to the **Parties** are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this **Agreement**, including without limitation any rights either **Party** may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the **Parties** hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the other **Party**, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this **Agreement** and undertakes not to enforce any of the same except as expressly provided herein.
- 9.6 For the avoidance of doubt, the **Parties** acknowledge and agree that nothing in this **Agreement** shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, privileges, remedies, duties and obligations of the **Secretary of State** or the **Authority** under the **Act**, any **Licence** or otherwise howsoever.
- 9.7 Each of Sub-Clauses 9.1, 9.2, 9.3 and 9.4 shall:-
- 9.7.1 be construed as a separate and severable contract term, and if one or more of such Sub-Clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Sub-Clauses shall remain in full force and effect and shall continue to bind the **Parties**; and
- 9.7.2 survive termination of this **Agreement**.
- 9.8 For the avoidance of doubt, nothing in this Clause 9 shall prevent or restrict any **Party** enforcing any obligation (including suing for a debt) owed to it under or pursuant to this **Agreement**.
- 9.9 Each **Party** acknowledges and agrees that the provisions of this Clause 9 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this **Agreement**.

## **10. METERING**

- 10.1 The relationship between the **Parties** with respect to **Energy Metering Equipment** shall be regulated in accordance with Sections K and L of the **Balancing and Settlement Code**.
- 10.2 The relationship between the **Parties** with respect to **Operational Metering Equipment** shall be regulated by Paragraph 6.7.3 of the **Connection and Use of System Code**.

## **11. TERMINATION**

- 11.1 This **Agreement** shall automatically terminate upon:-
- 11.1.1 the **Generator** ceasing to be party to the **BSC Framework Agreement**; or
- 11.1.2 the **Generator** ceasing to be party to the **CUSC Framework Agreement**; or
- 11.1.3 revocation or withdrawal of the **Generation Licence** or the **Transmission Licence**.
- 11.2 Upon termination of any **Bilateral Agreement**, this **Agreement** shall automatically be terminated to the extent that it applies to the **BM Units** at, and **Agreed Ancillary Services** supplied or made available from, the **Connection Site** which is the subject of the said **Bilateral Agreement**.

- 11.3 Where the **Generator** serves notice to **Disconnect** the **Generator's Equipment** at a **Connection Site** under a **Bilateral Agreement** or the **Connection and Use of System Code**, the **Parties** shall discuss the possibility of terms being offered for the continued provision (following the date when **Disconnection** would otherwise have occurred) of any **Agreed Ancillary Service** which was being provided by the **Generator** at that **Connection Site** immediately before service of the notice to **Disconnect** and for which **The Company** is unable to find a reasonable alternative.
- 11.4 Without purporting to exhaustively specify within this Sub-Clause 11.4 the circumstances in which no payments will be made under this **Agreement**, no payments will be made under this **Agreement** (save for the **Initial Payment**), in respect of an **Agreed Ancillary Service** to be provided from a **BM Unit** in relation to any period when the **BM Unit** or **CCGT Unit** or the **Generator's Equipment** at any **Connection Site** used by that **BM Unit** or **CCGT Unit** is prevented from providing that **Agreed Ancillary Service** by reason of a circumstance of **Force Majeure** or is **Deenergised** or **Disconnected** for any reason pursuant to the relevant **Bilateral Agreement** or the **Connection and Use of System Code**.

#### **Termination by the Generator**

- 11.5 In the event that:-
- 11.5.1 **The Company** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the **Generator**, notified to **The Company** and corrected within 48 hours following such notification) any amount properly due or owing from it pursuant to this **Agreement** according to its terms and such non-payment continues unremedied and not disputed in good faith and upon reasonable grounds at the expiry of 7 **Business Days** immediately following receipt by **The Company** of written notice from the **Generator** of such non-payment; or
- 11.5.2 in respect of **The Company**:-
- (a) an order of the High Court is made or an effective resolution passed for its insolvent winding-up or dissolution; or
  - (b) 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
  - (c) 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
  - (d) 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**);
  - (e) 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 £750.00 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 28 days of appointment of the liquidator, receiver, administrative receiver, administrator nominee or other similar officer, such person has not provided to the **Generator** a guarantee of future performance by **The Company** of this **Agreement** in such form and amount as the **Generator** may reasonably require, the **Generator** may declare by notice in writing to **The Company** that such event has become an event of default. Once the **Generator** has given due and proper notice of an event of default this **Agreement** shall terminate.

11.6 Termination of this **Agreement** in relation to any **BM Unit** and/or any **Agreed Ancillary Service** under Sub-Clauses 11.1 to 11.5 or any of them shall not affect any rights or obligations of the **Parties** which have accrued at the time of such termination.

## 12. ASSIGNMENT

12.1 The **Generator** shall not assign or transfer nor purport to assign or transfer the benefit or burden of this **Agreement** save in the following circumstances:-

12.1.1 the **Generator** may assign or charge its benefit under this **Agreement** in whole or in part by way of security;

12.1.2 upon the disposal of the whole of the **Generator's** business or undertaking, the **Generator** may transfer its rights and obligations under this **Agreement** to the purchaser thereof provided that the transfer to the purchaser of all of its rights and obligations under the **Connection and Use of System Code**, all **Bilateral Agreements** (and associated **Construction Agreements**) and all **Mandatory Services Agreements** shall have taken place;

12.1.3 upon disposal of part of the **Generator's** business or undertaking comprising **Generator's Equipment** at one or more **Connection Sites**, the **Generator** may transfer its rights and obligations under this **Agreement** to the purchaser thereof provided that the transfer to the purchaser of all of its rights and obligations under those **Bilateral Agreement(s)** (and associated **Construction Agreement(s)**) and **Mandatory Services Agreement(s)** relevant to the part of the business or undertaking to be transferred shall have taken place.

12.2 **The Company** shall not assign or transfer nor purport to assign or transfer the benefit or burden of this **Agreement** save to the holder of a **Licence** with responsibility for carrying out the **Balancing Services Activity**.

## 13. CONFIDENTIALITY AND ANNOUNCEMENTS

### 13.1 General Restrictions

13.1.1 Subject to the exceptions provided in Sub-Clause 13.2 (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**):-

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

13.1.2 Each **Party** undertakes to use information referred to in Sub-Clause 13.1.1 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.

## 13.2 **Exceptions**

13.2.1 The restrictions imposed by Sub-Clause 13.1 shall not apply to the disclosure of any information:-

- (a) 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;
- (b) which is required by law or pursuant to the rules of the **Electricity Supply 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 Supply Arbitration Association** in England and Wales or pursuant to the rules or regulations of the Financial Services Authority to receive the same;
- (c) 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;
- (d) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
- (e) in accordance with the provisions of the **Balancing and Settlement Code** or pursuant to any **Licence** of the **Party** concerned;
- (f) by either **Party** to any parent undertaking on a "need to know" basis only;
- (g) to any authorised consultants, banks, financiers, insurers or professional advisers to the disclosing **Party**;



- (h) by the **Generator** to a third party who is a party to a power purchase agreement and/or tolling agreement in respect of the electricity generated by the **Contracted Unit** 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 **Generator** is subject to under this **Agreement**;
- (i) by **The Company** to any parent, subsidiary or fellow subsidiary undertaking; or
- (j) required or expressly permitted to be disclosed under the terms of any agreement or arrangement (including this **Agreement**, the **Connection and Use of System Code**, any **Bilateral Agreement** (and associated **Construction Agreement**), any **Mandatory Services Agreement**, the **Grid Code**, the **Distribution Code** and the **Fuel Security Code** (if any)) to which both the **Parties** have agreed to be bound.

13.2.2 In this Sub-Clause 13.2, 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.

### 13.3 **Third Parties**

Before either **Party** discloses any information in any of the circumstances described in Sub-Clause 13.2.1(f) to (h) (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 13.

### 13.4 **Public announcements**

- (a) Subject to Sub-Clause 13.4(b), 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).
- (b) 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.

### 13.5 **Procedures**

With respect to the information referred to in Sub-Clause 13.1.1, both **Parties** shall ensure that:-

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

13.6 **Termination**

Notwithstanding any other provision of this **Agreement**, the provisions of this Clause 13 shall continue to bind a person after termination of this **Agreement**, in whole or in part, for whatever reason.

14. **ADDITIONAL COSTS**

14.1 Save where expressly provided in this **Agreement**, if:-

- (a) the **Generator** is of the opinion that in order to comply with any change in or amendment to the **Grid Code** (other than the withdrawal of or reduction in the scope of a **Derogation**) or any statutory or regulatory obligation coming into force after the date hereof the **Generator** is obliged to incur costs and expenses for the purpose of carrying out modifications to any **BM Unit** or **CCGT Unit** or otherwise for the purposes of changing the manner of operation of a **BM Unit** or **CCGT Unit** in relation to the provision of any **Agreed Ancillary Service**; or
- (b) **The Company** is of the opinion that by reason of any change in or amendment to the **Grid Code** or any statutory or regulatory obligation coming into force after the date hereof the **Generator** is able to make savings in the cost and expense of providing any **Agreed Ancillary Service** from any **BM Unit** or **CCGT Unit**,

then either the **Generator** or **The Company** as the case may be may by notice in writing require that the **Parties** shall endeavour to agree any adjustment in the rates and prices for the **Agreed Ancillary Service** and the **BM Unit** or **CCGT Unit** concerned as set out in this **Agreement** having regard to the **Charging Principles** (if any) set out therein. If the **Parties** cannot agree to an adjustment in the rates and prices for the **Agreed Ancillary Service** as set out in this **Agreement** within a month of receipt by either **Party** of the other **Party's** written notice, either **Party** may refer the matter to arbitration for determination pursuant to Clause 19 hereof (and any arbitrator appointed shall exercise his powers pursuant to sub-paragraph 12.1 of the rules of the **Electricity Supply Arbitration Association**).

14.2 If, at any time during the term of this **Agreement** there is a variation in the security standards with which **The Company** is obliged to comply and such variation would, in the **Generator's** reasonable opinion, materially affect the operation of the services to be provided under this **Agreement**, **The Company** and the **Generator** shall negotiate in good faith with a view to agreeing and implementing appropriate amendments to this **Agreement**. If the **Parties** are unable to reach agreement within 28 days of either **Party** serving on the other notice of its intention to refer matter to arbitration either **Party** may refer the matter to arbitration for determination pursuant to Clause 19 hereof.

15. **WAIVER**

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. Payment of any sum or the submission of any **Provisional Monthly Statement** or **Final**

**Monthly Statement** by **The Company** to the **Generator** under this **Agreement** shall not operate to impair or be construed as a waiver of any right, power, privilege or remedy **The Company** may have against the **Generator** under this **Agreement** and/or the **Grid Code** and/or the **Connection and Use of System Code** and/or any **Bilateral Agreement** (including any associated **Construction Agreement**) and/or any **Mandatory Services Agreement**.

**16. NOTICES**

16.1 Any notice or other communication to be given by one **Party** to the other under, or in connection with the matters contemplated by, this **Agreement** shall be addressed to the recipient and sent to the address or facsimile number of such other **Party** given in Schedule J for the purpose and marked for the attention of the person so given or to such other address or facsimile number and/or marked for such other attention as such other **Party** may from time to time specify by notice given in accordance with this Clause 16 to the **Party** giving the relevant notice or other communication to it.

16.2 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:-

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

16.2.2 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; or

16.2.3 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.

**17. COUNTERPARTS**

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. For the purposes of this Clause 17, 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.

**18. VARIATIONS**

18.1 Subject to Sub-Clause 18.2 no variations or amendments to this **Agreement** shall be effective unless made in writing and signed by or on behalf of both **The Company** and the **Generator**.

18.2 **The Company** and the **Generator** shall effect any amendment required to be made to this **Agreement** by the **Authority** as a result of a change in the **Transmission Licence** or an order or directions made pursuant to the **Act** or a **Licence** or as a result of settling any of the terms hereof or otherwise as required by this **Agreement** and the **Generator** hereby authorises and instructs **The**

**Company** to make any such amendment on its behalf and undertakes not to withdraw qualify or revoke such authority or instruction at any time.

## **19. DISPUTE RESOLUTION**

19.1 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 rules of the **Electricity Supply Arbitration Association** in force from time to time.

19.2 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.

## **20. JURISDICTION**

20.1 Subject and without prejudice to Clause 19 and to Sub-Clause 20.4, 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 20 referred to as "**Proceedings**") arising out of or in connection with this **Agreement** may be brought to such courts.

20.2 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 20 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.

20.3 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**.

20.4 For the avoidance of doubt nothing contained in the foregoing provisions of this Clause 20 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.

## **21. GOVERNING LAW**

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

## **22. SEVERANCE OF TERMS**

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.

**23. ENTIRE AGREEMENT**

This **Agreement** contains or expressly refers to the entire agreement between the **Parties** with respect to the subject matter hereof, and expressly excludes any warranty, condition or other undertaking implied at law or by custom, and supersedes all previous agreements and understandings between the **Parties** with respect thereto and each of the **Parties** acknowledges and confirms that it is not aware of any representation, warranty or other undertaking not fully reflected in the terms of this **Agreement** upon which it has relied in entering into this **Agreement**. To the extent that any such representation, warranty or other undertaking exists, each **Party** irrevocably and unconditionally waives any right it may have to claim damages for breach of warranty and/or to rescind this **Agreement**, unless such warranty or misrepresentation was made or given fraudulently.

**24. BILATERAL AGREEMENT**

The **Generator** hereby undertakes at **The Company's** request to enter into an agreement in a form to be agreed between the **Parties** (acting reasonably) to amend the provisions of Appendix F1 to the **Bilateral Agreement** in respect of the **Power Station** to include reference to those **Agreed Ancillary Services** which the **Generator** agrees from time to time to provide to **The Company** pursuant to this **Agreement** but which are not at the date of signature of this **Agreement** included in Appendix F1.

**25. RIGHTS OF THIRD PARTIES**

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**.

**26. FORCE MAJEURE**

26.1 In so far as either **Party** is prevented from performing any of its obligations under this **Agreement**, other than those under Clause 4, due to an event or circumstances of **Force Majeure**, then neither the **Generator** nor **The Company** (as the case may be) shall be deemed to be in breach of such obligations for so long as the circumstances of **Force Majeure** continues to prevent such performance.

26.2 The **Party** affected by the **Force Majeure** shall give to the other **Party** immediately upon becoming aware of an event or circumstances 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**.

26.3 As soon as is reasonably practicable, following an event or circumstance of **Force Majeure**, the **Parties** shall meet to discuss how best to continue their respective obligations as set out in this **Agreement**.

26.4 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**.

26.5 Either **Party** shall have a right to terminate the provisions of this **Agreement** if a **Party** has been prevented from performing its obligations thereunder due to an event or circumstance of **Force Majeure** for a continuous period of two calendar months.

## 27. **COMPLIANCE WITH RELEVANT REQUIREMENTS**

27.1 Each **Party** shall:

27.1.1 comply with all **Relevant Requirements**;

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

27.1.3 have and shall maintain in place throughout the term of this **Agreement** its own policies and procedures, including **Adequate Procedures** to ensure compliance with the **Relevant Requirements**, and this Sub-Clause 27.1, and will enforce them where appropriate; and

27.1.4 procure and ensure that all of its **Associated Persons** and/or other persons who are performing services and/or providing goods in connection with this Clause 4 comply with this Sub-Clause 27.1.

27.2 Without prejudice to any other rights or remedies either **Party** may terminate this **Agreement** on written notice to the other **Party** specifying the date on which this **Agreement** will terminate in the event of a breach of Sub-Clause 27.1.

**GENERAL DEFINITIONS FOUND IN SCHEDULE A OF CSA OR SCHEDULE B OF MASA**

“the Act”	the Electricity Act 1989;
“Active Power”	the product of voltage and the in-phase component of alternating current measured in units of Watts and standard multiples thereof i.e.  1000 Watts = 1kW 1000 kW = 1MW 1000 MW = 1GW 1000 GW = 1TW
“Adequate Procedures”	shall be determined in accordance with section 7(2) of the Bribery Act (and any guidance issued under section 8 of that Act);
“Agreed Ancillary Services”	<b>Part 2 System Ancillary Services and Commercial Ancillary Services;</b>
“Agreement”	this agreement (including the Schedules) as amended, extended, supplemented, novated or modified from time to time;
“Allowed Interruption”	the meaning attributed to it in the CUSC;
“Ancillary Services”	<b>System Ancillary Services</b> and/or <b>Commercial Ancillary Services</b> , as the case may be;
“Apparatus”	all equipment in which electrical conductors are used, supported or of which they may form a part;
“Associated Person”	shall have the meaning ascribed to it in section 8 of the <b>Bribery Act</b> and shall include but is not limited to any employees, agents and/or subcontractors of the <b>Generator</b> or <b>The Company</b> as applicable in relation to the provision of <b>Agreed Ancillary Service(s)</b> ;
“Authority”	the Director General of Electricity Supply appointed for the time being pursuant to section 1 of the <b>Act</b> or, after the coming into force of section 1 of the Utilities Act 2000, the Gas and Electricity Markets Authority established by that section;
“Balancing and Settlement Code (BSC)”	the meaning attributed to it in the <b>Transmission Licence</b> ;
“Balancing Mechanism Window”	the meaning attributed to it in the <b>BSC</b> ;
“Balancing Services Activity”	the meaning attributed to it in the <b>Transmission Licence</b> ;

“ <b>Bilateral Agreement</b> ”	the meaning attributed to it in the <b>CUSC</b> ;
“ <b>Bid-Offer Acceptance</b> ”	the meaning attributed to it in the <b>Grid Code</b> ;
“ <b>Bid-Offer Data</b> ”	the meaning attributed to it in the <b>BSC</b> ;
“ <b>Bid-Offer Pairs</b> ”	the meaning attributed to it in the <b>Grid Code</b> ;
“ <b>Bid Price</b> ”	the meaning attributed to it in the <b>Grid Code</b> ;
“ <b>Bribery Act</b> ”	the Bribery Act 2010 (and any amendment thereto);
“ <b>BM Unit</b> ”	the meaning attributed to it in the <b>BSC</b> , except for the purposes of this <b>Agreement</b> the reference to “a Party” in the <b>BSC</b> shall be a reference to the <b>Generator</b> ;
“ <b>BM Unit Metered Volume</b> ”	the meaning attributed to it in the <b>BSC</b> ;
“ <b>BSC Framework Agreement</b> ”	the meaning attributed to it in the <b>CUSC</b> ;
“ <b>Business Day</b> ”	a week-day other than a Saturday on which banks are open for domestic business in the City of London;
“ <b>Circuit Breaker</b> ”	a mechanical switching device, capable of making carrying and breaking currents under normal circuit conditions and also of making, carrying for a specified time and breaking currents under specific abnormal circuit conditions, such as those of short circuit;
“ <b>Combined Cycle Gas Turbine Module</b> ” or “ <b>CCGT Module</b> ”	a collection of <b>Generating Units</b> (registered as a <b>CCGT Module</b> under the <b>Grid Code</b> PC) comprising one or more <b>Gas Turbine Units</b> (or other gas based engine units) and one or more <b>Steam Units</b> where, in normal operation, the waste heat from the <b>Gas Turbine Units</b> is passed to the water/steam of the associated <b>Steam Unit</b> or <b>Steam Units</b> and where the component units within the <b>CCGT Module</b> are directly connected by steam or hot gas lines which enable those units to contribute to the efficiency of the combined cycle operation of the <b>CCGT Module</b> ;
“ <b>Combined Cycle Gas Turbine Unit</b> ” or “ <b>CCGT Unit</b> ”	a <b>Generating Unit</b> within a <b>CCGT Module</b> ;
“ <b>Commercial Ancillary Services</b> ”	<b>Ancillary Services</b> other than the <b>System Ancillary Services</b> ;
“ <b>Connection and Use of System Code</b> ”	the <b>Connection and Use of System Code</b> designed by the



	<b>Secretary of State</b> as from time to time modified;
“ <b>Connection Site</b> ”	each location more particularly described in the relevant <b>Bilateral Agreement</b> at which the <b>Generator’s Equipment</b> and <b>Transmission Connection Assets</b> required to connect the <b>Generator</b> to the <b>National Electricity Transmission System</b> are situated or at which the <b>Generator’s Equipment</b> is connected to a <b>User System</b> ;
“ <b>Construction Agreement</b> ”	as defined in the <b>CUSC</b> ;
“ <b>CUSC Framework Agreement</b> ”	the meaning attributed to it in the <b>Transmission Licence</b> ;
“ <b>Customer</b> ”	a person to whom electrical power is provided (whether or not he is the same person as the person who provides the electrical power) other than power to meet <b>Station Demand</b> of that person;
“ <b>Deenergise</b> ”	the movement of any isolator breaker or switch or the removal of any fuse whereby no <b>Electricity</b> can flow to or from the relevant <b>System</b> at a <b>Connection Site</b> through the <b>Generator’s Equipment</b> and “ <b>Deenergised</b> ” shall be construed accordingly;
“ <b>Demand</b> ”	the demand of MW and Mvar of <b>Electricity</b> ;
“ <b>Derogation</b> ”	a direction issued by the <b>Authority</b> which relieves the <b>Generator</b> from its obligation under the <b>Generation Licence</b> to comply with such parts of the <b>Grid Code</b> as may be specified in such direction;
“ <b>Desynchronisation</b> ”	has the meaning attributed to it in the <b>Grid Code</b> and terms “ <b>De-Synchronised</b> ” and “ <b>De-Synchronisation</b> ” shall be construed accordingly;
“ <b>Disconnect</b> ”	permanent physical disconnection of the <b>Generator’s Equipment</b> at any given <b>Connection Site</b> and “ <b>Disconnection</b> ” shall be construed accordingly;
“ <b>Distribution Code(s)</b> ”	the <b>Distribution Code(s)</b> drawn up by <b>Public Distribution System Operators</b> pursuant to the terms of their respective <b>Licence(s)</b> as from time to time revised in accordance with those <b>Licences</b> ;
“ <b>Distribution Licence</b> ”	a licence issued under section 6(1)(c) of the <b>Act</b> ;
“ <b>Electricity</b> ”	<b>Active Energy</b> and <b>Reactive Energy</b> ;

**“Electricity Supply Arbitration Association”** the meaning attributed to it in the **Grid Code**;

**“Embedded”** having a direct connection to a **User System** or the **System** of any **User** to which **Customers** and/or **Power Stations** are connected such connection being either a direct connection or a connection via a busbar of another **User** or of **The Company** (but with no other connection to the **National Electricity Transmission System**);

**“Emergency Instruction”** has the meaning attributed to it in the **Grid Code**;

**“Energy” or “Active Energy”** the electrical energy produced, flowing or supplied by an electric circuit during a time interval, being the integral with respect to time of the instantaneous power, measured in units of Watt-hours or standard multiples thereof i.e.

1000 Wh	=	1kWh
1000 kWh	=	1MWh
1000 MWh	=	1GWh
1000 GWh	=	1TWh

**“Energy Metering Equipment”** the meaning attributed to the phrase “Metering Equipment” in the **Balancing and Settlement Code**;

**“Enhanced Reactive Power Services”** the meaning attributed to it in the **CUSC**;

**“Final Monthly Statement”** the meaning attributed to it in the **CUSC**;

**“Force Majeure”** for the purposes of Clause 26, in relation to either **Party** to this **Agreement** any event or circumstance which is beyond the reasonable control of such **Party** (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that **Party** or its officers or employees or a failure to maintain such **Plant** in accordance with **Good Industry Practice** or lack of funds of that **Party**) 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, lightning, 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 Electricity Act 1989);

**“Gas Turbine Unit”**

a **Generating Unit** driven by a gas turbine, (for instance by an aero-engine);

**“Generating Unit”**

unless otherwise provided in this **Agreement**, any **Apparatus** which produces electricity including for the avoidance of doubt a **CCGT Unit**;

**“Generation Licence”**

the licence granted to the **Generator** pursuant to section 6(1)(a) of the **Act**;

**“Generator’s Equipment”**

the **Plant** and **Apparatus** owned by the **Generator** (ascertained in the absence of agreement to the contrary by reference to the principles of ownership set out in **CUSC**) which

(a) is connected to **Transmission Connection Assets** forming part of any particular **Connection Site** to which the **Generator** wishes so to connect or

(b) is connected to a **User System** to which the **Generator** wishes so to connect;

**“Good Industry Practice”**

the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;

**“Grid Code”**

the **Grid Code** drawn up pursuant to the **Transmission Licence** as from time to time revised in accordance with the **Transmission Licence** (and references in this **Agreement** to any specific provision or part of the **Grid Code** shall be construed as references to such provision or part as from time to time amended);

**“Grid Code CC”**

the Connection Conditions of **Grid Code**;

**“Grid Code OC”**

the Operating Codes of the **Grid Code**;

**“Grid Code PC”**

the Planning Code of the **Grid Code**;

**“Grid Operator”**

the person who for the time being and from time to time is required by the terms of a **Licence** (inter alia) to implement the **Grid Code**;

“ <b>Grid Supply Point</b> ”	a point of supply from the <b>National Electricity Transmission System</b> to <b>Network Operators</b> or <b>Non-Embedded Customers</b> ;
“ <b>Licence</b> ”	any one or more as appropriate of the <b>Licences</b> granted pursuant to section 6 of the <b>Act</b> ;
“ <b>Mandatory Services Agreement</b> ”	the meaning attributed to it in the <b>CUSC</b> ;
“ <b>Maximum Export Limit</b> ”	the meaning attributed to it in BC1.A.1.3 of the <b>Grid Code</b> ;
“ <b>National Electricity Transmission System</b> ”	has the meaning attributed to it in the <b>CUSC</b> ;
“ <b>Non-Embedded Customer</b> ”	a <b>Customer</b> except for a <b>Network Operator</b> acting in its capacity as such receiving electricity direct from the <b>National Electricity Transmission System</b> irrespective of from whom it is supplied;
“ <b>Operational Metering Equipment</b> ”	meters, instrument transformers (both voltage and current), transducers metering protection equipment including alarms circuitry and their associated outstations as may be necessary for the purposes of the <b>Grid Code</b> CC6.5.6 and the corresponding provision of the relevant <b>Distribution Code</b> ;
“ <b>Output</b> ”	the actual <b>Active Power</b> or <b>Reactive Power</b> output achieved by a <b>BM Unit</b> ;
“ <b>Part 1 System Ancillary Services</b> ”	the meaning attributed to it in <b>Grid Code</b> CC8.1;
“ <b>Part 2 System Ancillary Services</b> ”	the meaning attributed to it in <b>Grid Code</b> CC8.1;
“ <b>Party</b> ”	each person for the time being and from time to time a party of this <b>Agreement</b> and any successor(s) in title to, or permitted assign(s) of, such person and “ <b>Parties</b> ” shall be construed accordingly;
“ <b>Party Liable</b> ”	the meaning attributed to it in Sub-Clause 9.1;
“ <b>Plant</b> ”	fixed and movable items used in the generation and/or supply and/or transmission of electricity other than <b>Apparatus</b> ;
“ <b>Physical Notification</b> ”	the meaning attributed to it in the <b>Grid Code</b> ;
“ <b>Power Station</b> ”	an installation comprising one or more <b>Generating Units</b> (even where separately sited) owned or controlled by the same <b>Generator</b> which may reasonably be considered as being

managed as one **Power Station**, for the purposes of this **Agreement** being the **Generator's Power Station** at [ ];

**“Proceedings”**

the meaning attributed to it in Sub-Clause 20.1;

**“Provisional Monthly Statement”**

the meaning attributed to it in the **CUSC**;

**“Public Distribution System Operator”**

a holder of a **Distribution Licence** who was the holder of, or is a successor to a company which was the holder or, a **Public Electricity Supply Licence**, relating to distribution activities in **Great Britain**;

**“Public Electricity Supply Licence”**

a licence issued under section 6(1)(c) of the **Act** prior to the coming into force of section 30 of the Utilities Act 2000;

**“Reactive Energy”**

the integral with respect to time of **Reactive Power**;

**“Reactive Power”**

the product of voltage and current and the sine of the phase angle between them measured in units of voltamperes reactive and standard multiples thereof i.e.,

$$1000 \text{ Var} = 1\text{kvar}$$

$$1000 \text{ kVar} = 1\text{Mvarr}$$

**“Relevant Requirements”**

shall mean all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the **Bribery Act**.

**“Remote Transmission Assets”**

any **Plant** and **Apparatus** or meters owned by **The Company** which (a) are embedded in a **User System** and which are not directly connected by **Plant** and/or **Apparatus** owned by **The Company** to a sub-station owned by **The Company** and (b) are by agreement between **The Company** and such **User** under the direction and control of such **User**;

**“Secretary of State”**

the meaning attributed to it in the **Act**;

**“Settlement Period”**

a period of 30 minutes ending on the hour or half hour in each hour during a day;

**“Short Term Operating Reserve”**

the additional **Active Power** and/or the reduction in **Demand** from non-synchronised generating plant or demand sites which must be capable of being provided within 240 minutes of instruction by **The Company** and sustained for up to 2 hours for the purposes of balancing **Active Power** and **Demand** on the

**National Electricity Transmission System;**

**“Station Demand”**

the meaning attributed to it in the **CUSC**;

**“Steam Unit”**

a **Generating Unit** whose primes mover converts the heat-energy in steam to mechanical energy;

**“System”**

any **User System** or the **National Electricity Transmission System** as the case may be;

**“System Ancillary Services”**

**Part 1 System Ancillary Services** and **Part 2 System Ancillary Services**;

**“Transmission Connection Assets”**

the meaning attributed to it in the **CUSC**;

**“Transmission Licence”**

the licence granted to **The Company** under section 6(1)(b) of the **Act**;

**“User”**

a person who is party to the **CUSC Framework Agreement** other than **The Company**; and

**“User System”**

any **System** owned or operated by a **User** comprising:-

- (a) **Generating Units**; and/or
- (b) systems consisting (wholly or mainly) of electric lines used for the distribution of electricity from **Grid Supply Points** or **Generating Units** or other entry points to the point of delivery to **Customers**, or other **Units**;

and **Plant** and/or **Apparatus** connecting:-

- (a) the **System** as described above; or
- (b) **Non-Embedded Customers** equipment;

to the **National Electricity Transmission System** or to the relevant other **User System**, as the case may be. The **User System** includes any **Remote Transmission Assets** operated by such **User** or other person and any **Plant** and/or **Apparatus** and meters owned or operated by the **User** or other person in connection with the distribution of electricity but does not include any part of the **National Electricity Transmission System**.

Black Start Capability Generic Terms (New Build)

Draft: 4

Date: 30/01/13

**SCHEDULE E**  
**BLACK START CAPABILITY**

**SECTION 1 DATA**

**Part I**

[Main Generating Unit(s)] [CCGT Module(s)] : [ ]

Station Contracted MW:[ ] MW

**Part II**

[BS Auxiliary Unit(s):[ ]]

[Auxiliary Contracted MW:[ ]]

**Part III**

**(Ref: Sub-Clause 4.8.5)**

<b>Time to Connection Event</b> (minutes) (Ref: Sub-Clause 4.8.5.2)	120 minutes (or such other period agreed by the <b>Parties</b> in writing)
Individual Loads (Ref: Sub-Clause 4.8.5.3)	
Minimum Frequency (Ref: Sub-Clause 4.8.5.4)	[ ] Hz
Loading Restrictions  Minimum amount of <b>Active Power</b> for indefinite running (subject to fuel stocks)  Maximum period of running for MW output below that stated above  (Ref: Sub-Clause 4.8.5.5)	[ ] MW  [ ] Minutes
Loading period (Ref: Sub-Clause 4.8.5.6)	[ ] minutes from the time of the <b>Connection          Event</b>
Interim power output levels (MW) 1 2 3 (Ref: Sub-Clause 4.8.5.7)	[ ] MW within ½ hour of <b>Connection Event</b> [ ] MW within 1 hour of <b>Connection Event</b> [ ] MW within 1½ of <b>Connection Event</b>
<b>Reactive Power</b> range (Mvar) (Ref: Sub-Clause 4.8.5.8)	[ ] Mvar leading to [ ] Mvar lagging at <b>Minimum Output</b>



**SECTION 2 - FORMULAE**

**Part I**

**Availability Payments**

**1. Total Monthly Payment**

$$TMP_m = BSAP_m - RA_m$$

Where:

$TMP_m$  = total monthly payment by **The Company** to the **Generator** pursuant to Clause 4

$BSAP_m$  = defined in 2 below

$RA_m$  =  $RAF_m + RAC_m + RABS_m$  as each is defined in 3 below

And if  $TMP_m$  is negative, then the **Generator** shall pay to **The Company** such amount in accordance with Clause 8.

**Monthly Availability Payment**

$$BSAP_m = \sum_{j=1}^{month} BSAP_j * BSAM_j$$

$BSAP_m$  = the aggregate **Monthly Availability Payments** payable in respect of calendar month m

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

$BSAP_j$  = the **Black Start Availability Price** for all **Settlement Periods** j subject to indexation in accordance with Schedule E, Section 3, Part III

$BSAM_j$  = 0 in respect of each **Settlement Period** j in which the **Black Start Plant** does not, or is deemed not to, have the **Black Start Capability** in accordance with Sub-Clause 4.9, Sub-Clause 4.12.3 or Sub-Clause 4.19.3, otherwise 1

**Repayment Amounts**

(a)

$$RAF_m = \sum_{n=1}^m BSAP_m$$

Where:

$RAF_m$  = the **Repayment Amount** referred to in the Capability (Failure of first **Commissioning Assessment**) section of the table in Annexure B to Clause 4

$\sum_{n=1}^m$  = the summation over all calendar months m in the period commencing on the **Provisional Service Commencement Date** and ending on the date of failure of the first **Commissioning Assessment** in calendar month m

(b)

$$RAC_m = \sum^{EventofDefault} \min((BSAP_j * 480), \sum_{j=1}^{j=x} BSAP_j * BSAM_j)$$

Where:

$RAC_m$  = the **Repayment Amount** referred to in the Capability (Notification of non-capability) section of the table in Annexure B to Clause 4

$\sum^{EventofDefault}$  = the summation over each **Event of Default** referred to in the Capability section of the table in Annexure B to Clause 4

$\sum_{j=1}^{j=x}$  = the summation over each **Settlement Period** j prior to the **Event of Default** beginning with the **Settlement Period** in which the **Black Start Plant** was last demonstrated to **The Company's** reasonable satisfaction to have the **Black Start Capability**

(c)

$$RABS_m = \sum^{EventofDefault} \min((BSAP_j * 1440), \sum_{j=1}^{j=y} BSAP_j * BSAM_j)$$

Where:

Black Start Capability Generic Terms (New Build)

Draft: 4

Date: 30/01/13

$RABS_m$  = the **Repayment Amount** referred to in the **Black Start Situation** section of the table in Annexure B to Clause 4

$\sum^{EventofDefault}$  = the summation over each **Event of Default** referred to in the **Black Start Situation** section of the table in Annexure B to Clause 4

$\sum_{j=1}^{j=y}$  = the summation over each **Settlement Period j** prior to the **Event of Default** beginning with the commencement of Clause 4 or, if later, the last successful initiation and implementation of the **Local Joint Restoration Plan** in a **Black Start Situation** or during a **Grid Code** test or **Remote Synchronisation Test**

**Part II**

**Annual Availability Shortfall Payment**

1. **Calculation of Annual Availability Shortfall Payment**

$$AASP_y = (MR_y * RFA_y)$$

$AASP_y$  = The total **Annual Availability Shortfall Payment** due to **The Company** from the **Generator** in respect of **Assessment Period y** (as defined in Sub-Clause 4.15.1)

$MR_y$  = As defined in 2 below

$RFA_y$  = Calculated in accordance with 3 below

2. **Calculation of maximum amount repayable ( $MR_y$ ) in respect of any single Assessment Period**

$$MR_y = (A * WCP + Id)$$

$MR_y$  = The maximum aggregate amount payable by the **Generator** to **The Company** by way of **Annual Availability Shortfall Payments** in respect of **Assessment Period y**

$A$  = A fraction, being the **Assessment Period y** divided by the **Term yy** (as defined in Sub-Clause 4.5)

$WCP$  = Amount of total **Works Contribution Payment(s)**

$Id$  = Interest at the **Base Rate** calculated on  $WCP$  accruing on a daily basis over the number of days in **Assessment Period y**

3. **Calculation of  $RFA_y$  in respect of any single Assessment Period**

$RFA_y$  = 0 if  $AA_y \geq 0.9$   
otherwise

$$RFA_y = (0.9 - AA_y) / 0.9$$

Where:

$AA_y$  = Actual availability and is the percentage of **Settlement Periods** over

**Assessment Period** *y* in which the **Black Start Plant** has had **Black Start Capability** (expressed as a fraction) as calculated below

Where:

$$AA_y = \frac{\sum_{j=0}^{12\text{months}} (BSAMA_j)}{SP}$$

$\sum_{j=0}^{12\text{months}}$  = the summation over all **Settlement Periods** *j* in **Assessment Period** *y*

$BSAMA_j$  = 0 in respect of each **Settlement Period** *j* in which the **Black Start Plant** does not have **Black Start Capability** as provided in Sub-Clause 4.9 (excluding where due to events or circumstances of **Force Majeure** or where **The Company** has approved a period of withdrawal of **Black Start Capability** pursuant to Sub-Clause 4.15.4), otherwise 1

$SP$  = the number of **Settlement Periods** *j* in **Assessment Period** *y*

**Part III**  
**Works Contribution Refund Payment**

The **Works Contribution Refund Payment** ( $WCRP_t$ ) referred to in Sub-Clauses 4.3.5, 4.5.3, 4.17.2 and paragraph 15a of Annexure A shall be calculated in accordance with the following applicable formulae:-

$$WCRP_t = [(WCP_1 + I_1) \times f_1] - \left[ \sum_o^{Total} AASP_y \right] - \left[ \sum_o^{Total} FMWCRP_y \right]$$

Where:-

$WCRP_t$  = the **Works Contribution Refund Payment** payable by the **Generator** to **The Company**

$WCP_1$  = the sum of all **Works Contribution Payments** (including VAT thereon) paid by **The Company** to the **Generator**

$I_1$  = **Interest** at the **Base Rate** calculated on  $WCP_1$  accruing on a daily basis from the date of payment of  $WCP_1$  by **The Company** until the date of repayment by the **Generator**

$f_1$  = a factor equal to either:

- (i) prior to the date of successful completion of the **Refurbishment Works**, 1: or
- (ii) from and including the date of successful completion of the **Refurbishment Works**

$$\frac{M_R}{M_T}$$

$M_R$  = the number of whole calendar months remaining until the **Expiry Date** as at the date of termination or (as the case may be) the date that the **Works Contribution Refund Trigger Event** occurs

$M_T$  = in respect of  $WCRP_t$  the total number of whole calendar months in the period from the date of successful completion of the **Refurbishment Works** until the **Expiry Date**

$AASP_y$  = all **Annual Availability Shortfall Payments** paid or payable by the **Generator to The Company** over the term of Clause 4

**SECTION 3 - PRICES**

**Part I**

**Black Start Availability Price**

£[ ]/Settlement Period

**Part II**

**Standard Exercise Prices (Black Start Tests)**

	<b>Standard Exercise Price (£/MWh)</b>
<b>BS Genset*</b>	
<b><i>BS Auxiliary Unit</i></b>	

\* only applicable if **CCGT Module**



**SCHEDULE E**  
**BLACK START CAPABILITY**

**SECTION 3 - PRICES**

**Part III**

**Indexation Formulae**

The prices specified in Schedule E, Section 3 Part I and II are specified at April 20[xx] values and will be adjusted annually (commencing on 1st April 20[xx+1]) to take account of general price inflation. The index used will be the Retail Prices Index (RPI) with 1987 = 100 base.

The source of the RPI index is to be the monthly Office for National Statistics “*Focus on Consumer Price Indices*”.

The relevant price will therefore be increased (or reduced as appropriate) for the period April 20[xx+1] to March 20[xx+2] by the following factor:-

$$\frac{RPI_2}{RPI_1}$$

Where

RPI is the RPI for March 20[xx+1]  
RPI<sub>1</sub> is the RPI for March 20[xx]

The relevant price will then be increased (or reduced as appropriate) for the period April 20[xx+2] to March 20[xx+3] by the following factor:-

$$\frac{RPI_3}{RPI_1}$$

Where

RPI<sub>3</sub> is the RPI for March 20[xx+2]  
RPI<sub>1</sub> is the RPI for March 20[xx]

In subsequent years indexation will continue in accordance with the above, with always the numerator of the factor representing the RPI of the year under consideration and the denominator of the factor being RPI for March 20[xx].

Black Start Capability Generic Terms (New Build)

Draft: 4

Date: 30/01/13

In the event that RPI ceases to be published or is not published in respect of any relevant month or it is not practicable to use RPI because of a change in the method of compilation or some other reason, indexation for the purpose of this Part III 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 RPI had continued to be available.

**SECTION 4 - NOTIFICATION FORMATS**

**NOTIFICATION OF NON-CAPABILITY AND RESTORATION OF CAPABILITY FOR BLACK START**

**[NAME OF GENERATOR]**

*Optional Logo*

Station .....Telephone:

Standby Tel:

Fax:

Standby Fax:

**NOTIFICATION TIME**

<b>HRS:MINS</b>	<b>DD/MM/YY</b>	<b>CONFIRMATION OF A TELEPHONE CONVERSATION ?✓</b>	
		BETWEEN	OF NATIONAL GRID
		AND	OF [NAME OF GENERATOR]

**PERIOD OF NON-CAPABILITY**

	<b>TIME (hrs:mins)</b>	<b>DATE (dd/mm/yy)</b>
COMMENCEMENT OF NON-CAPABILITY		
*ESTIMATED TIME/DATE OF RESTORATION		

\* Indicate estimated time/date of restoration and re-notify actual time/date of restoration when known using table below.

**REASON FOR NON-CAPABILITY**

**RESTORATION OF-CAPABILITY**

	<b>TIME (hrs:mins)</b>	<b>DATE (dd/mm/yy)</b>
TIME/DATE OF RESTORATION		

Fax Sent By (Print name):

Signature: .....

Date: .....

Time: .....

Acknowledged by **National Grid Electricity Transmission plc:**

Signature: .....

Date: .....

Time: .....

Black Start Capability Generic Terms (New Build)

Draft: 4

Date: 30/01/13

<b>NATIONAL GRID USE ONLY</b>	SENT TO O & T SETTLEMENTS? ✓	
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**National Grid Control Centre**

**Fax: 0870 602 4809**  
**Standby Fax: 0870 602 4802**

**REQUEST TO REVISE CONTRACT DATA FOR BLACK START**

[NAME OF GENERATOR]

Optional Logo

Station .....Telephone:

Standby Tel:

Fax:

Standby Fax:

**NOTIFICATION TIME**

<b>HRS:MINS</b>	<b>DD/MM/YY</b>	<b>CONFIRMATION OF A TELEPHONE CONVERSATION ?✓</b>	
		BETWEEN	OF NATIONAL GRID
		AND	[NAME OF GENERATOR]

**REDECLARATION OF CONTRACT DATA**

STATION CONTRACTED (MW)		*National Grid ACCEPT ✓	National Grid REJECT ✖
EXISTING	PROPOSED		
PROPOSED INTERIM POWER OUTPUT LEVELS			
1 [ ] MW WITHIN [ ] MINS			
2 [ ] MW WITHIN [ ] MINS			
3 [ ] MW WITHIN [ ] MINS			

PROPOSED REACTIVE POWER RANGE (Mvars) AT MIN OUTPUT/GEN STATOR TERMINALS	*National Grid ACCEPT ✓	National Grid REJECT ✖
[ ] LEADING TO [ ] LAGGING		

TIME TO CONNECTION EVENT (MINS)		*National Grid ACCEPT ✓	National Grid REJECT ✖
EXISTING	PROPOSED		

DETAILS OF ANY OTHER REVISION(S) TO THE BLACK START CAPABILITY	*National Grid ACCEPT ✓	National Grid REJECT ✖

\*This agreement can be withdrawn at anytime by the **Company** and the contract parameters reinstated.

Fax Sent By (Print name):

Signature: .....

Date: .....

Time: .....

Acknowledged by **National Grid Electricity Transmission plc**:

Black Start Capability Generic Terms (New Build)

Draft: 4

Date: 30/01/13

Signature: .....

Date: .....

Time: .....

<b>NATIONAL GRID USE ONLY</b>	SENT TO O & T SETTLEMENTS?✓	
	SENT TO O & T CONTRACTS?✓	

National Grid Control Centre

Fax: 0870 602 4809

Standby Fax: 0870 602 4802

**AGREEMENT OF BLACK START TEST PARAMETERS**

[GENERATOR'S NAME]

[ ] POWER STATION

<b>AGREEMENT REFERENCE NUMBER</b>	<b>IDENTITY OF BS GENSET [BM UNIT ID]</b>	<b>BLACK START TEST DATE</b>	<b>BLACK START TEST PERIOD START TIME</b>	<b>BLACK START TEST PERIOD END TIME</b>
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**BS GENSET:**

PARAMETERS	[BM UNIT ID]
Physical Notification Level (MW)	
Maximum Export Limit (MW)	
Bid Price (£/MWh)	
Offer Price (£/MWh)	Equal to Bid Price
MZT (Hours)	
Min Desync Interval (Hours)	
Min Sync Interval(Hours)	

**BS AUXILIARY UNIT:**

PARAMETERS	[BM UNIT ID]
Physical Notification Level	Zero
Maximum Export Limit (MW)	

<b>PROPOSED RUNNING PROFILE(S) FOR THE BS GENSET</b>
Appended hereto.

The aforementioned Black Start Test Parameters and Running Profiles are agreed pursuant to 4.20.9 by:

Signature: .....

Date: .....

Time: .....

Authorised Signatory

On behalf of [ ]

Signature: .....

Date: .....

Time: .....

Electricity Balancing and Energy Trading Manager

On behalf of **National Grid Electricity Transmission plc**

Black Start Capability Generic Terms (New Build)

Draft: 4

Date: 30/01/13

<b>NATIONAL GRID USE ONLY</b>	COPY TO CONTRACTS, OPS POLICY & SETTLEMENTS? ✓	
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