

DATED

2018

NATIONAL GRID ELECTRICITY TRANSMISSION PLC (1)

and

[PROVIDER] (2)

**DEMAND TURN UP (FIXED)
BALANCING SERVICES AGREEMENT**

CONTRACT LOG NO: []

TABLE OF CONTENTS

1.	DEFINITIONS.....	3
2.	COMMENCEMENT AND TERM	4
3.	SERVICE PROVISION.....	4
4.	SERVICE AVAILABILITY AND AVAILABILITY REPORTS	4
5.	UTILISATION.....	7
6.	PAYMENTS AND INVOICING	8
7.	EVENTS OF DEFAULT	11
8.	GRID CODE AND DISTRIBUTION CODE.....	11
9.	MAINTENANCE AND STATUS OF CONTRACTED SITES.....	12
10.	WARRANTY AND INDEMNITY.....	12
11.	PROVISION OF OTHER SERVICES.....	13
12.	TESTING	14
13.	MONITORING AND METERING.....	15
14.	NOTICES.....	16
15.	EMR.....	16
16.	LIMITATIONS ON LIABILITY	17
17.	CONFIDENTIALITY AND ANNOUNCEMENTS.....	18
18.	TERMINATION.....	20
19.	FORCE MAJEURE	20
20.	EXPERT DETERMINATION	21
21.	GOVERNING LAW AND JURISDICTION.....	22
22.	ASSIGNMENT	22
23.	THIRD PARTY RIGHTS	22
24.	ANTI-BRIBERY.....	22
25.	WAIVER.....	23
26.	SEVERANCE OF TERMS.....	23
27.	ENTIRE AGREEMENT.....	23
28.	VARIATIONS.....	23
29.	COUNTERPARTS	23
	APPENDIX 1 DEFINITIONS.....	25
	APPENDIX 2 PART 1 - CONTRACT PARAMETERS	33
	APPENDIX 3 CALCULATION OF PAYMENTS	35
	APPENDIX 4 CONTRACTED SITE(S)	40

THIS **BALANCING SERVICES AGREEMENT** is made on the [redacted] of [redacted] 2018

BETWEEN

- (1) **NATIONAL GRID ELECTRICITY TRANSMISSION PLC** a company incorporated and registered in England and Wales with company number 2366977 whose registered office is 1-3 Strand, London, WC2N 5EH ("**National Grid**", which expression shall include its successors and/or permitted assigns); and
- (2) [redacted] a company incorporated and registered in England and Wales with company number [redacted] whose registered office is [redacted] ("**Provider**", which expression shall include its successors and/or permitted assigns),
each a "**Party**" and, together, the "**Parties**" to this **Balancing Services Agreement**.

WHEREAS

- (A) **National Grid** has a requirement for a negative reserve service, and wishes to contract with non-BM demand site owners and/or operators of suitable sites.
- (B) The **Provider** is the owner and/or operator of each **Contracted Site**, each of which has the capability to provide a negative reserve service or the **Provider** has contracted with the owner and/or operator of each **Contracted Site** for the provision of a negative reserve service from that **Contracted Site**.
- (C) This **Agreement** shall apply with respect to each successful **DTU Tender** and the **Provider** will make available each **Contracted Site** or, where it is not the owner, procure the availability of each **Contracted Site**, for despatch by **National Grid** by way of a negative reserve service.
- (D) The **Provider** has acknowledged that **National Grid** may enter into a back to back arrangement with the relevant **Public Distribution Network Operator** if such **Public Distribution Network Operator** has a requirement for a negative reserve service in its local distribution area. Under such an arrangement **National Grid** would instruct **Demand Turn Up** on behalf of the **Public Distribution Network Operator** on its request which might result in increased utilisation.

NOW IT IS HEREBY AGREED

1. **DEFINITIONS**

- 1.1 In this **Agreement** unless the subject matter or context otherwise requires or is inconsistent therewith, the definitions set out in Appendix 1 and the definitions set out in the **Grid Code** shall apply.
- 1.2 In this **Agreement**:
 - 1.2.1 references to a particular Clause, Paragraph, Appendix or Schedule will be a reference to that Clause, Paragraph, Appendix or Schedule in or to the agreement in which such reference appears;

- 1.2.2 the table of contents and the headings are inserted for convenience only and will be ignored in construing this **Agreement**;
- 1.2.3 references to the words “include” or “including” are to be construed without limitation;
- 1.2.4 references to a month are to a calendar month;
- 1.2.5 any reference to a rule, enactment, statutory provision, regulation or code or any subdivision or provision thereof will be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to any instruments, orders or regulations then in force and made under or deriving validity from the relevant statute;
- 1.2.6 references to the masculine will include the feminine and references in the singular will include references in the plural and vice versa; and
- 1.2.7 any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.

2. **COMMENCEMENT AND TERM**

- 2.1 This **Agreement** shall come into force on the **Effective Date** and shall continue in full force and effect throughout the **Service Term**, subject to earlier termination by either **Party** in accordance with Clause 18 (*Termination*).
- 2.2 The **Parties** may extend the **Service Term** by written agreement.

3. **SERVICE PROVISION**

- 3.1 The **Provider** hereby agrees to make available **Demand Turn Up** to **National Grid** from each **Contracted Site** throughout the **Service Term** and to deliver **Demand Turn Up** in accordance with each **Utilisation Instruction**, subject to the applicable terms and conditions set out or referred to in this **Agreement**. Each **Contracted Site** shall make available and (following an **Instruction**) deliver not less than 0.1MW of **Demand Turn Up** and provide no more than the **Maximum Contracted MW**.
- 3.2 The **Provider** has committed to make available and deliver **Demand Turn Up** to **National Grid** in accordance with the **Method of Delivery** and acknowledges that any failure to do so will constitute an **Event of Default** and Clause 7 (*Events of Default*) shall apply.

4. **SERVICE AVAILABILITY AND AVAILABILITY REPORTS**

- 4.1 The **Provider** shall submit to **National Grid** one or more reports in such form as **National Grid** may require specifying the availability of **Demand Turn Up** per **Availability Window** on each **Day** during a **Service Week** (“**Availability Report**”) as more particularly specified in Sub-Clause 4.2. If an **Availability Report** is not submitted in respect of a whole or part of a **Service Week** in accordance with Sub-Clause 4.2 then, unless otherwise agreed in writing by

National Grid, the **Demand Turn Up Service** shall be deemed to have been declared at 0 MW and to be unavailable in respect of the applicable **Service Week** or that part of the applicable **Service Week** (as the case may be).

4.2 An **Availability Report** shall:

4.2.1 Be sent via the **Availability Tool** (or by such other method as **National Grid** may otherwise direct) and shall be submitted:

- (a) on a weekly basis by not later than 10:00 hours on either a Friday or a Tuesday prior to the start of the applicable **Service Week**; or
- (b) on a bi-weekly (meaning two (2) **Availability Reports** per **Service Week**) basis by not later than 10:00 hours on either a Friday or a Tuesday prior to the start of the applicable **Availability Window(s)** for the relevant **Days** in that **Service Week**,

provided that, the **Provider** may specify in an **Availability Report** that the **Available MW** in respect of all or any **Availability Windows** shall continue to apply until further notice in respect of the equivalent **Availability Windows** on specified **Days** falling after the period covered by that **Availability Report**;

4.2.2 Specify the **Available MW** for each **Contracted Site** during an **Availability Window**, which shall comprise a figure between the **Minimum Instructable MW** and the **Maximum Contracted MW** for the duration of that **Availability Window**, provided that:

- (a) the **Provider** is permitted to submit per **Contracted Site** a maximum of two differing values of **Available MW** during an **Availability Window** on the basis that following a change in the **Available MW** from one value to another value during an **Availability Window**, such change to the **Available MW** shall apply for the remainder of that **Availability Window**; and
- (b) if the **Provider** does not wish to or is unable to make the **Demand Turn Up Service** available from a **Contracted Site** during an **Availability Window** or part of an **Availability Window**, then it shall declare the **Available MW** at 0 MW for the applicable period (and a declaration of 0 MW shall, for the avoidance of doubt, comprise one value for the purposes of Sub-Clause 4.2.2(a)), provided that the **Provider** may not declare the **Available MW** at 0 MW throughout a **Service Week**. Where the **Provider** declares the **Available MW** at 0 MW for the duration of the whole of a **Service Week**, this shall constitute an **Event of Default** and Clause 7 shall apply; and
- (c) availability (pursuant to Sub-Clause 4.2.2(a) or unavailability (pursuant to Sub-Clause 4.2.2(b)) of **Demand Turn Up** shall be declared in respect of whole **Settlement Periods** only;

4.2.3 Specify whether the **Provider** wishes to revise the **Utilisation Fee** specified in Appendix 2 (*Contract Parameters*) for the purposes of the **Demand Turn Up Service** and, if it does so, the **Provider** shall specify:

- (a) each **Availability Window** during which the **Provider** wishes to lower the **Utilisation Fee**; and
 - (b) the applicable revised **Utilisation Fee** in respect of each such **Availability Window**, which may not exceed the value set out in Appendix 2.
- 4.2.4 Specify whether the **Provider** wishes to provide the **Optional Service** and, if it does, the **Provider** shall specify for each **Contracted Site**:
 - (a) any periods outside the **Availability Windows** during which the **Provider** is able to deliver the **Optional Service** (an “**Optional Availability Window**”) provided that such availability may be made in respect of whole consecutive **Settlement Periods** only;
 - (b) the **Available MW** during the **Optional Availability Window** in which the **Provider** is able to provide the **Optional Service**. For the avoidance of doubt, the **Provider** may only submit one value of **Available MW** during an **Optional Availability Window**; and
 - (c) the **Utilisation Fee** in respect of the **Optional Availability Window**, provided that, the **Provider** may specify in the **Availability Report** that the **Available MW** in respect of all or any **Optional Availability Windows** shall continue to apply until further notice in respect of the equivalent **Optional Availability Windows** on specified **Days** falling after the period covered by that **Availability Report**.
- 4.3 The **Provider** shall notify **National Grid** without delay via the **Availability Tool** (or by such other method as **National Grid** may otherwise direct) if at any time following the issue of an **Availability Report** under Sub-Clause 4.2 or following a **Utilisation Instruction**, it becomes aware of any technical constraint affecting its ability to provide the **Available MW** so notified or the **Instructed MW** so instructed. Each such notification of inability to provide the **Available MW** or the **Instructed MW** by the **Provider** shall be accompanied by an explanation in reasonable detail of the reasons for such inability. Following such notice of inability, the **Provider** shall notify **National Grid** via the **Availability Tool** (or by such other method as **National Grid** may otherwise direct) as soon as reasonably practicable once the technical constraint has been rectified, whereupon the **Provider** may declare the **Contracted Site** available for the **Demand Turn Up Service** and (where applicable) for **Optional DTU** in the next **Availability Report**.
- 4.4 If it is specified in Appendix 2 (*Contract Parameters*) that the **Provider** has elected for the **Forecast Methodology** settlement option the **Provider** shall provide its forecast demand (expressed in MW) per **Settlement Period** or generation output profiles (expressed in MW) per **Settlement Period** for an applicable **Day** (in each case, the “**Forecast Data**”) to **National Grid** via the **Forecast Tool** (or by such other method as **National Grid** may otherwise direct) no later than 11:00 hours on the immediately preceding **Day** (or such later time as **National Grid** may in its absolute discretion agree). Where the **Provider** does not submit its **Forecast Data** by such time, the **Demand Turn Up Service** shall be deemed to be unavailable during

the applicable **Availability Window** and (where relevant) the **Optional Service** shall be deemed to be unavailable for the **Optional Availability Window**.

- 4.5 If it is specified in Appendix 2 (*Contract Parameters*) that the **Provider** has elected for the “**Baseline Methodology**” settlement option, the **Provider** shall provide its demand data (expressed in MW) per **Settlement Period** or generation data (expressed in MW) per **Settlement Period** relating to the four (4) weeks immediately preceding the applicable **Service Week** (in each case, “**Baseline Data**”) by no later than the tenth (10th) **Business Day** following the end of each month via the **Actuals Tool** (or by such other method as **National Grid** may otherwise direct). Where the **Provider** does not submit its **Baseline Data** by such time, there shall be no obligation on **National Grid** to make any **Utilisation Payments** to the **Provider** until such time as it receives the applicable **Baseline Data** and **National Grid** may (acting reasonably and taking into account the **Provider’s** reasons for such delay) determine whether any failure to provide **Baseline Data** in accordance with this Sub-Clause 4.5 shall constitute an **Event of Default** and Clause 7 shall apply.

5. UTILISATION

- 5.1 In respect of each **Availability Window** in which **Demand Turn Up** is available or in respect of any **Optional Availability Window** in which **Optional DTU** is available, **National Grid** may, but is not obliged to, notify the **Provider** of its requirement (if any) for **Demand Turn Up** and/or **Optional DTU** from a **Contracted Site** (a “**Utilisation Instruction**”) in accordance with Sub-Clause 5.2, specifying for that **Contracted Site**:

- 5.1.1 that the **Available MW** must be delivered, at which point the **Available MW** for the relevant **Availability Window** or **Optional Availability Window** shall become the “**Instructed MW**”;
- 5.1.2 the start time for delivery of the **Available MW** in respect of the relevant **Availability Window** or **Optional Availability Window** (“**Start Time**”); and
- 5.1.3 the end time for delivery of the **Available MW** in respect of the relevant **Availability Window** or **Optional Availability Window**, provided that the duration of the **Demand Turn Up Service** or **Optional Service** specified in the **Utilisation Instruction** may be no shorter than the **Minimum Utilisation Period** and no longer than **Maximum Utilisation Period** set out in Appendix 2 (*Contract Parameters*).

Where so provided in Appendix 2 (*Contract Parameters*) in relation to a **Contracted Site** (but not otherwise), **National Grid** may in its absolute discretion provide more than one **Utilisation Instruction** per **Availability Window** or **Optional Availability Window**, provided always that the **Instructed MW** shall not at any time exceed the **Available MW** for that **Availability Window** or **Optional Availability Window**.

- 5.2 **National Grid** may notify a **Utilisation Instruction** either by email or by telephone at the **Provider Control Point** as soon as reasonably practicable prior to the **Start Time**. The

Provider shall in respect of any **Utilisation Instruction** confirm by email (or by such other method as **National Grid** may direct) that it will implement the **Utilisation Instruction** as soon as practicable following receipt, but in any case within thirty (30) minutes of receipt of that **Utilisation Instruction** (provided that where a **Utilisation Instruction** is notified by telephone, the **Provider** shall provide its confirmation by telephone at that time and the subsequent email confirmation shall act as written evidence of the **Provider's** confirmation). If the **Provider** does not so confirm that it will implement a **Utilisation Instruction**, the **Provider** shall be deemed to have rejected the **Utilisation Instruction** and be deemed unavailable to provide **Demand Turn Up** in accordance with the **Utilisation Instruction**, and Sub-Clause 5.3 shall apply.

5.3 The **Provider** shall deliver or procure the delivery of the **Instructed MW** from an **Instructed Site** in accordance with each **Utilisation Instruction** and Clause 7 (*Events of Default*) shall apply in respect of any failure by the **Provider** to comply with this Sub-Clause 5.3.

5.4 Following a **Utilisation Instruction**, **National Grid** may, subject to and in accordance with the **Contract Parameters**, notify the **Provider** by telephone or email of a variation to the terms of a **Utilisation Instruction** that has been confirmed in accordance with Sub-Clause 5.2 and the **Provider** shall act reasonably and without delay in implementing such variation in accordance with its terms. Any notification made by telephone under this Sub-Clause 5.4 shall be confirmed by **National Grid** by email transmission as soon as reasonable practicable thereafter.

5.5 If in respect of an **Instructed Site**:

5.5.1 the **Provider** fails to deliver the **Demand Turn Up** or the **Optional DTU** at the **Start Time** to a level of at least 90% of the **Instructed MW**;

5.5.2 the volume in MWh of the **Demand Turn Up** or the **Optional DTU** delivered by the **Provider** is less than 90% of the **Instructed MW** multiplied by the number of hours comprised in the relevant **Availability Window** or **Optional Availability Window** (as the context requires); or

5.5.3 the **Provider** fails to confirm a **Utilisation Instruction** in accordance with Sub-Clause 5.2,

then Clause 7 (*Events of Default*) shall apply.

6. **PAYMENTS AND INVOICING**

6.1 Subject to Sub-Clause 6.5, in consideration of the **Provider** making available **Demand Turn Up** in accordance with Clauses 4 and 5, **National Grid** shall make a payment in respect of each **Availability Window** in which **Demand Turn Up** is made available, calculated in accordance with Part 1 of Appendix 3 ("**Availability Payment**"). For the avoidance of doubt, no **Availability Payment** shall be payable in relation to any **Optional Availability Window** in which **Optional DTU** is made available.

- 6.2 In consideration of the **Provider** delivering **Demand Turn Up** or **Optional DTU** in accordance with Clauses 4 and 5, **National Grid** shall make a payment in respect of each **Utilisation Instruction** pursuant to which the **Provider** has delivered **Demand Turn Up** during an **Availability Window** or delivered the **Optional DTU** during an **Optional Availability Window** calculated in accordance with:
- 6.2.1 Part 2 of and Part 4 of Appendix 3 where the **Provider** has opted for the **Forecast Methodology** settlement option; or
- 6.2.2 Part 2 and Part 3 of Appendix 3 where the **Provider** has opted for the **Baseline Methodology** settlement option,
- each a “**Utilisation Payment**”.
- 6.3 For the avoidance of doubt, neither **Availability Payments** nor **Utilisation Payments** shall be payable by **National Grid** to the extent that delivery of **Demand Turn Up** occurs outside an **Availability Window** or to the extent that delivery of **Optional DTU** occurs outside an **Optional Availability Window** and/or otherwise than in accordance with a **Utilisation Instruction**.
- 6.4 No payment shall be made by **National Grid** pursuant to Sub-Clause 6.1 and 6.2 for any **Availability Window** (or, where relevant, an **Optional Availability Window**) in which the **Provider** fails to comply with any of its obligations hereunder, provided that where a **Contracted Site** is unavailable in an **Availability Window** within the recovery time specified in Appendix 2 (*Contract Parameters*) by reason of the **Provider’s** compliance with a previous **Utilisation Instruction**, the **Contracted Site** will be deemed available in that **Availability Window** at the level specified in the applicable **Availability Report**.
- 6.5 If **National Grid** determines in respect of a month and in relation to any **Contracted Site** (by reference to meter data for the **Contracted Site** that the aggregate actual availability (expressed in MWh) (the “**Achieved Availability**”) of **Demand Turn Up** across all **Availability Windows** in that month was less than ninety percent (90%) of the aggregate declared instruction (expressed in MWh) (the “**Declared Instruction**”) across all **Availability Windows** in that month for the **Contracted Site**, then the **Availability Payment** payable to the **Provider** with respect to that **Contracted Site** will be adjusted in accordance with the formula in Appendix 3, Part 1.
- 6.6 **National Grid** shall not later than eighteen (18) **Business Days** following the end of each month during the **Service Term**, send to the **Provider** a statement (“**Monthly Statement**”) setting out, in respect of each **Contracted Site** for that month the **Availability Payment** and the **Utilisation Payment**.
- 6.7 If the **Provider** disagrees with the content of any **Monthly Statement** it may notify **National Grid** in writing, with the evidence upon which it relies in support of such disagreement, no later than seven (7) days after the date of receipt of that **Monthly Statement**, but in the absence of

any such notification by such date, the **Monthly Statement** shall be final and binding on the **Parties** subject only to Sub-Clause 6.8.

- 6.8 Where a disagreement is notified by the **Provider** pursuant to Sub-Clause 6.7, the **Parties** shall discuss and endeavour to resolve the same in good faith, and any revisions to a **Monthly Statement** agreed as a result thereof shall be reflected in a revised **Monthly Statement** which shall promptly be re-issued by **National Grid**. In the absence of agreement, the **Monthly Statement** shall be binding upon the **Parties** until such time as otherwise agreed in writing between the **Parties** or as may otherwise be determined by an **Expert**.
- 6.9 Where **National Grid** discovers that any prior **Monthly Statement** contains an arithmetic error or omission, or becomes aware of metering errors or any other facts which show that the **Provider** was not entitled to receive a payment already made, or where payment is due between the **Parties** in consequence of the resolution of a dispute then **National Grid** shall be entitled to include an adjustment in the **Monthly Statement** issued in accordance with Clause 6.5, provided that an explanation of the adjustment in reasonable detail is included in the **Monthly Statement**.
- 6.10 **National Grid** shall pay to the **Provider** the amount shown as due from **National Grid** in a **Monthly Statement**, together with any Value Added Tax properly chargeable in respect of the provision of the **Demand Turn Up Service** and/or the **Optional Service** within three (3) **Business Days** after the date on which that **Monthly Statement** is issued.
- 6.11 If, by virtue of the foregoing provisions and by not later than twelve (12) months following the expiry of the **Service Term**, it is determined or agreed that:
- 6.11.1 the **Provider** is entitled to a further sum from **National Grid**, **National Grid** shall pay such further sum plus interest at the **Base Rate** from the date on which that sum is determined to be due to the date of actual payment; or
- 6.11.2 the **Provider** was not entitled to any sum it has received, then the **Provider** shall promptly repay such amount to **National Grid** together with interest at the **Base Rate** on such amount from the date of payment by **National Grid** until the date of repayment by the **Provider** (or, as the case may be, until the date when **National Grid** makes a payment to the **Provider** against which such amount is off-set pursuant to Sub-Clause 6.13).
- 6.12 All payments to be made by **National Grid** to the **Provider** under this **Agreement** will be made by payment to such account at a UK clearing bank as the **Provider** may notify **National Grid** in writing on or before the date hereof or such other account as the **Provider** may from time to time notify to **National Grid**.
- 6.13 All amounts specified in this Agreement shall be exclusive of any value added tax or other similar tax.

- 6.14 Sums payable by one **Party** to the other pursuant to this **Agreement** whether by way of charges, interest or otherwise, shall (except to the extent permitted in this Clause 6 or as otherwise required by law) be paid in full, free and clear of and without deduction, set-off or deferment in respect of any disputes or claims provided that either **Party** shall be entitled to set off any payment due and payable by the other **Party** under this **Agreement** against any payment it makes to that **Party** under this **Agreement**).
- 6.15 The **Provider** agrees that **National Grid** may maintain a self-billing system throughout the **Service Term** whereby each **Monthly Statement** shall constitute a self-billing invoice for VAT purposes. Accordingly, **National Grid** and the **Provider** shall at **National Grid's** discretion enter into a self-billing agreement in accordance with VAT legislation and published guidance from HM Revenue and Customs ("**HMRC**") from time to time, and agrees to comply with all relevant requirements in relation to self-billing, and for such purpose the **Service Provider** hereby warrants and undertakes to **National Grid** that:
- 6.15.1 it is registered for VAT and will inform **National Grid** forthwith if it ceases to be so registered or changes its VAT registration number;
- 6.15.2 it will account to HMRC for the VAT paid by **National Grid** pursuant to Sub-Clause 6.12; and
- 6.15.3 it will not issue its own VAT invoices for provision of the **Demand Turn Up Service**.
- 6.16 The provisions of this Clause 6 shall survive termination of this **Agreement**.

7. **EVENTS OF DEFAULT**

- 7.1 In the event the **Provider** fails to comply with its obligations under any of the following provisions or the provision is otherwise stated to apply:
- 7.1.1 Sub-Clause 3.2;
- 7.1.2 Sub-Clause 5.3;
- 7.1.3 Any of its obligations under Sub-Clause 5.5;
- 7.1.4 Submission of an **Availability Report** in accordance with Sub-Clause 4.1;
- 7.1.5 Sub-Clause 4.2.2(b);
- 7.1.6 Submission of its **Baseline Data** in accordance with Sub-Clause 4.5; or
- 7.1.7 Any other failure to comply to a material extent with any of its obligations under this **Agreement**,

such event shall be an "**Event of Default**". The **Parties** agree that where three (3) or more **Events of Default** occur during any thirty (30) **Day** period, **National Grid** may in its absolute discretion terminate this **Agreement** in accordance with Sub-Clause 18.1.

8. **GRID CODE AND DISTRIBUTION CODE**

- 8.1 The provision by the **Provider** of the **Demand Turn Up Service** and/or the **Optional Service** shall not relieve it of any of its obligations or affect such obligations (if any) set out in the **Grid**

Code (including without limitation its obligations (if any) to provide **Demand** control when instructed by **National Grid** under **Grid Code OC6**) or in the **Distribution Code** of its host **Public Distribution System Operator**.

9. **MAINTENANCE AND STATUS OF CONTRACTED SITES**

9.1 The **Provider** shall maintain or procure the maintenance of the **Plant** and **Apparatus** comprised in each **Contracted Site** to such a standard that the **Provider** can meet its obligations to provide **Demand Turn Up** and (where applicable) **Optional DTU** in accordance with the terms of the **Agreement**.

9.2 If a **Contracted Site** or any part thereof becomes a **BM Unit** (or part of a **BM Unit**) then this **Agreement** shall automatically terminate in respect of that **Contracted Site** from the date on which the **Contracted Site** becomes a **BM Unit** (or part of a **BM Unit**) and Sub-Clause 18.3 shall apply.

10. **WARRANTY AND INDEMNITY**

10.1 Each **Party** warrants and represents that it has full capacity and authority to enter into and perform this **Agreement** and that those signing this **Agreement** are duly authorised to bind the **Party** for whom they sign.

10.2 The **Provider** hereby warrants to **National Grid** that to the best of its knowledge and belief the entering into of this **Agreement** and the provision by it of **Demand Turn Up** does not and will not cause the **Provider**:-

10.2.1 to be in breach of its duties (if any) under Section 9 of the **Act**;

10.2.2 to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) or of any regulations made under Section 29 of the **Act** or of any other enactment relating to safety or standards applicable in respect of the business of the **Provider** or any operator of the **Contracted Site**;

10.2.3 to be in breach of any provisions of the **Distribution Code** of its host **Public Distribution System Operator** or make its compliance with any provision of the **Distribution Code** impossible;

10.2.4 to be in breach of any agreement for the acceptance of electricity into a **User System** or any **Connection Agreement**;

10.2.5 to be in breach of any restrictions and conditions attaching to relevant authorisations of the Environment Agency; or

10.2.6 to be in material breach of any other agreement or arrangement of whatever nature with any other person which could or may affect the performance of its obligations under this **Agreement**.

10.3 For the purposes of Sub-Clause 10.2, the **Provider's** "knowledge and belief" shall be deemed to include the knowledge of the directors of the **Provider** as at the date of this **Agreement**.

10.4 The **Provider** shall, subject to Clause 18, indemnify **National Grid** against all and any claims which are brought against **National Grid** at any time by any other person connected to or using a **User System** or the **Authority** or the owner or operator of any other **User System** or any customer or other person connected to or using such other **User System** or any other person whatever arising out of or resulting from any breach of Sub-Clause 10.2.

10.5 The provisions of this Clause 10 shall survive termination of this **Agreement**.

11. **PROVISION OF OTHER SERVICES**

11.1 Subject to Sub-Clause 11.3, the **Provider** hereby warrants to **National Grid** in relation to each **Contracted Site** that:

11.1.1 on the date of entering into this **Agreement** and in respect of **Demand Turn Up** from that **Contracted Site**; and

11.1.2 on the date of any **Utilisation Instruction** for that **Contracted Site**, neither it nor the site operator is a party to an agreement or arrangement with its host **Public Distribution System Operator** or electricity supplier or other person to provide or procure the provision of any service from that **Contracted Site** the provision of which may impair the **Provider's** ability to provide **Demand Turn Up** during the **Availability Windows** and/or **Optional DTU** during **Optional Availability Windows** and that it will indemnify **National Grid** against any losses, liabilities, claims, expenses and demands which **National Grid** suffers as a direct result of a breach by the **Provider** of the provisions of this Sub-Clause 11.1. Notwithstanding such warranty where any agreement or arrangement results during the **Service Term** in the impairment of the ability of the **Provider** to provide the **Demand Turn Up Service** during any **Availability Window** and/or **Optional DTU** during any **Optional Availability Window**, then the **Provider** undertakes to reimburse to **National Grid** all and any losses, liabilities, claims, expenses and demands reasonably incurred or suffered by **National Grid** as a result of the **Provider's** inability to provide or procure the provision of **Demand Turn Up**.

11.2 Subject to Sub-Clause 11.3, where during the **Service Term** the **Provider** intends to enter into an agreement or arrangement with its host **Public Distribution System Operator** or electricity supplier or other third party to provide any service from the **Contracted Site(s)** or to utilise the related connection assets as identified in the **Connection Agreement(s)** for the **Contracted Site(s)** during the **Availability Windows** or any **Optional Availability Windows** the provision or use of which, in either case, impairs the **Provider's** ability to provide **Demand Turn Up** or **Optional DTU**, the **Provider** shall notify **National Grid** as soon as reasonably practicable before entering into such agreement or arrangement. Upon and with effect from the entering into of any such agreement or arrangement, **National Grid** shall have the right to terminate this **Agreement** forthwith.

11.3 The availability in any **Settlement Period** of a decrease in exports or increase in imports of **Active Power** from or to a **Contracted Site** or any part thereof for the benefit of any third party (including without limitation the **Provider's** host **Public Distribution System Operator** or electricity supplier) shall be deemed for the purposes of Clauses 11.1 to impair the **Provider's** ability to provide **Demand Turn Up** and/or **Optional DTU**, save that where **National Grid** has approved (at its sole discretion) in writing an arrangement (including, for the avoidance of doubt, any payment and settlement terms) whereby it instructs the provision of **Demand Turn Up** or **Optional DTU** the use of which is for the benefit of the **Public Distribution System Operator**, the **Provider** shall not be deemed to be impairing its ability to provide **Demand Turn Up** or **Optional DTU**.

12. **TESTING**

12.1 Where the **Provider** is determined by **National Grid** to have failed to provide **Demand Turn Up** or **Optional DTU** from any **Contracted Site** in accordance with Clauses 4 and 5, **National Grid** shall notify the **Provider** of such failure (hereinafter referred to as a "**Delivery Failure**") as soon as reasonably practicable thereafter and the **Provider** shall, for the purposes of Sub-Clause 6.4, be deemed to have failed to comply with its obligations with effect from the time at which the **Delivery Failure** occurred until such time as the **Provider** shall have restored the availability of the **Contracted Site** in accordance with the following provisions of this Clause 12.

12.2 At any time during the period of fourteen (14) **Days** after notification of a **Delivery Failure** by **National Grid** (the "**Permitted Test Period**"), **National Grid** may in any **Availability Window** issue a **Utilisation Instruction** in respect of the relevant **Contracted Site** in accordance with Clause 5 (a "**Reproving Test**") in order to verify the availability of **Demand Turn Up** and (where applicable) **Optional DTU** from the **Contracted Site**;

12.3 If either:-

12.3.1 **National Grid** fails to carry out a **Reproving Test** during the **Permitted Test Period** in accordance with Sub-Clause 12.2; or

12.3.2 the **Provider** passes a **Reproving Test** carried out during the **Permitted Test Period** in accordance with Sub-Clause 12.2,

then the availability of the provision of **Demand Turn Up** and (where applicable) **Optional DTU** from the **Contracted Site** shall be deemed to have been restored with effect from the commencement of the first **Availability Window** or **Optional Availability Window** after that in which the **Delivery Failure** occurred.

12.4 If the **Provider** fails a **Reproving Test** ("**Failed Test**") carried out during the **Permitted Test Period** in accordance with Clause 12.2, then:-

12.4.1 **National Grid** shall notify the **Provider** thereof as soon as reasonably practicable thereafter; and

- 12.4.2 Clauses 12.2 and 12.3 shall apply in respect of a further **Reproving Test** except that the **Permitted Test Period** shall constitute the period of fourteen (14) **Days** after the date of the **Failed Test** and, if **National Grid** fails to carry out a further **Reproving Test** or the **Provider** passes a further **Reproving Test**, the availability of **Demand Turn Up** and (where applicable) **Optional DTU** shall be deemed to have been restored with effect from the commencement of the first **Availability Window** or **Optional Availability Window** after that in which the **Failed Test** took place).
- 12.5 For the purposes of this Clause 12, a **Reproving Test** shall be passed if, in respect of the relevant **Contracted Site**, the **Provider** complies in all respects with Clauses 4 and 5 and failure of a **Reproving Test** shall be construed accordingly.
- 12.6 Notwithstanding Sub-Clause 12.1 above, **National Grid** may at its sole discretion, upon forty eight (48) hours written notice to the **Provider**, conduct such tests of the **Plant** and **Apparatus** comprised in a **Contracted Site** as it considers necessary during any **Availability Window** or (where applicable) **Optional Availability Window** in respect of which the **Provider** has not indicated that **Demand Turn Up** or **Optional DTU** is unavailable. **National Grid** may issue a **Utilisation Instruction** for such purposes.
- 12.7 No **Utilisation Payment** shall be paid by **National Grid** in respect of any **Demand Turn Up** or **Optional DTU** provided by the **Provider** during a test conducted pursuant to Sub-Clause 12.2 or Sub-Clause 12.4.
- 12.8 Where the **Provider** has in respect of a **Contracted Site** failed two or more consecutive **Reproving Tests** conducted in accordance with this Clause 12, **National Grid** may in its absolute discretion terminate this **Agreement** by notice in writing to the **Provider** at any time.
13. **MONITORING AND METERING**
- 13.1 The availability of **Demand Turn Up** and the amount of **Demand Turn Up** or **Optional DTU** delivered from a **Contracted Site** shall be monitored by **National Grid** from time to time.
- 13.2 Without prejudice to the generality of Sub-Clause 13.1, **National Grid** shall assess the availability of **Demand Turn Up** and the amount of **Demand Turn Up** or **Optional DTU** delivered from a **Contracted Site** by reference to a **Performance Report** in the agreed form which the **Provider** shall prepare and submit to **National Grid** as soon as reasonably practicable following expiry of the month in question (but in any event no later than the tenth **Business Day** following the expiry of the month).
- 13.3 Without prejudice to the generality of Sub-Clauses 13.1 and 13.2, for the purposes of monitoring the amount of **Demand Turn Up** or **Optional DTU** delivered from a **Contracted Site**, the **Provider** shall include minute by minute meter or half hourly data associated with each relevant Meter Point Administration Number in the **Performance Report**. **National Grid**

reserves the right to collect any meter data that it may reasonably require for the purposes of this **Agreement** from a third party and the **Provider** hereby irrevocably consents to the collection of such meter data from any third party and undertakes to perform any actions **National Grid** considers reasonably necessary to facilitate collection of data.

14. **NOTICES**

14.1 For the purposes of this **Agreement**, and subject to Sub-Clause 14.2, unless and until otherwise notified by the relevant **Party** to the any notice or other communication to be given by **National Grid** or the **Provider** to the other under, or in connection with matters contemplated by, this **Agreement** shall be sent to the following address and/or facsimile number and marked for the attention of the person named below:

National Grid: National Grid Electricity Transmission plc
System Operation
National Grid House
Warwick Technology Park
Gallows Hill
Warwick CV34 6DA
Facsimile number: 01926 655630
For the attention of: The Company Secretary
Copy to: The Head of Commercial Operations
Facsimile number: 01926 656613

Provider: []
Facsimile number: [FACSIMILE NUMBER]
For the attention of: [NAME OF INDIVIDUAL]

14.2 Communications in respect of operational matters shall be notified to the **Provider** by telephone or fax as follows:

Provider: Operational telephone contact number: []
Operational facsimile number: []
Operational contact: []

15. **EMR**

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

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

15.3 Where for the purposes of this provision only:

“AF Rules” has the meaning given to “allocation framework” in section 13(2) of the Energy Act 2013;

“Capacity Market Rules” means the rules made under section 34 of the Energy Act 2013 as modified from time to time in accordance with that section and The Electricity Capacity Regulations 2014;

“EMR Document” means The Energy Act 2013, The Electricity Capacity Regulations 2014, the Capacity Market Rules, The Contracts for Difference (Allocation) Regulations 2014, The Contracts for Difference (Definition of Eligible Generator) Regulations 2014, The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014, The Electricity Market Reform (General) Regulations 2014, the AF Rules and any other regulations or instruments made under Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts) of Part 2 of the Energy Act 2013 which are in force from time to time; and

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

16. **LIMITATIONS ON LIABILITY**

16.1 Subject to Sub-Clause 16.2 and save where any provision of this **Agreement** provides for an indemnity, the **Parties** acknowledge and agree 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 hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

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

16.1.2 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,

and provided further that the liability of either **Party** in respect of all claims for such loss shall not exceed five hundred thousand pounds sterling (£500,000) per incident or series of related incidents.

- 16.2 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 and 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 its officers, employees or agents.
- 16.3 Subject to Sub-Clause 16.2, and save where any provision of this **Agreement** provides for an indemnity, neither the **Party Liable** nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other **Party** for:
- 16.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
 - 16.3.2 any indirect or consequential loss; or
 - 16.3.3 loss resulting from the liability of the other **Party** to any other person howsoever and whensoever arising save as provided in Sub-Clauses 16.1.2 and 16.2.
- 16.4 Each **Party** acknowledges and agrees that the other **Party** holds the benefit of Sub-Clauses 16.1, 16.2 and 16.3 for itself and as trustee and agent for its officers, employees and agents.
- 16.5 For the avoidance of doubt, nothing in this Clause 16 shall prevent or restrict either **Party** from enforcing any obligations (including suing for a debt) owed to it under or pursuant to this **Agreement**.
- 16.6 The **Provider** agrees that the relevant provisions as to determination of payments to be made between **National Grid** and the **Provider**, subject always to this Clause 16, in consequence of events of default set out in this **Agreement** reflect the legitimate interest of **National Grid** as **Great Britain System Operator** in ensuring compliance by the **Provider** with this **Agreement**, and furthermore are reasonable in light of **National Grid's** roles and responsibilities in such capacity and the anticipated harm and the difficulty of estimating or calculating actual damages. The **Provider** accordingly waives the right to contest those provisions as an unreasonable penalty or otherwise.

17. **CONFIDENTIALITY AND ANNOUNCEMENTS**

- 17.1 Subject to Sub-Clause 17.2, and to the extent otherwise expressly permitted by this **Agreement**, neither **Party** shall, at any time, whether before or after the expiry or earlier termination of this **Agreement**, without the prior written consent of the other **Party**, divulge 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 officers or employees to the extent that

reasonably required to enable such persons to carry out their duties in connection with this **Agreement**) of:

- 17.1.1 any of the contents of this **Agreement**; or
 - 17.1.2 any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party received in relation to this **Agreement**.
- 17.2 Each **Party** undertakes to use information referred to in Sub-Clause 17.1.1 and disclosed to it by the other **Party** solely for the purposes of this **Agreement** and shall not use it for any other purpose.
- 17.3 The restrictions imposed by Sub-Clause 17.1 shall not apply to the disclosure of any information:
- 17.3.1 which is in or becomes part of the public domain otherwise than as a result of a breach of a Sub-Clause 10.1, or which either **Party** can show was in its written records prior to the date of disclosure of the same by the other **Party**, or which it received from a third party independently entitled to disclose it;
 - 17.3.2 which is required by law or regulatory authority to be disclosed;
 - 17.3.3 which is disclosed to a **Permitted Third Party**;
 - 17.3.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
 - 17.3.5 in accordance with the provisions of the **Balancing and Settlement Code** or pursuant to any licence of the **Party** concerned;
 - 17.3.6 to any parent, subsidiary or fellow subsidiary undertaking on a "need to know" basis only (having the meanings provided in sections 1159, 1161 and 1162 of the Companies Act 2006);
 - 17.3.7 required or expressly permitted to be disclosed under the terms of this **Agreement** or any other agreement or arrangement to which the **Parties** have agreed to be bound.
- 17.4 Subject to Sub-Clause 17.3.2 and Sub-Clause 17.3.3, neither **Party** shall make or cause to be made any public announcement or statement regarding the award, signature, performance or termination of this **Agreement** unless, before it is made, the other **Party** has been furnished with a copy of the announcement or statement and has approved it (such approval not to be unreasonably withheld or delayed).
- 17.5 Neither **Party** shall be prohibited from issuing or making any such public announcement or statement to the extent expressly permitted or otherwise contemplated by this **Agreement** or 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.

17.6 Without limiting Sub-Clause 17.3.2, and for the purposes of any or all of the statements published from time to time pursuant to Standard Condition C16 of the **Transmission Licence, National Grid** may publish in such manner or form as it thinks fit details of this **Agreement, Utilisation Instructions** and payments made to the **Provider** from time to time under this **Agreement**.

18. **TERMINATION**

18.1 **National Grid** shall have the right to terminate this **Agreement** forthwith on written notice to the **Provider**:

18.1.1 where Clause 7 applies;

18.1.2 where Sub-Clause 12.8 applies;

18.1.3 following any breach of any warranty and/or representation under Sub-Clause 10.2;
or

18.1.4 following the occurrence of an **Insolvency Event** in relation to the **Provider**.

18.2 The **Provider** shall have the right to terminate this **Agreement**:

18.2.1 forthwith on notice in writing to **National Grid** following failure by **National Grid** to comply with Sub-Clause 6.10 and which has not been remedied within thirty (30) days following such notice from the **Provider**; or

18.2.2 forthwith on notice in writing to **National Grid** following the occurrence of an **Insolvency Event** in relation to **National Grid**.

18.3 Notwithstanding any other provision of this **Agreement**, the provisions of Clauses 6, 10, 16, 17 and 24 shall continue to bind the **Parties** after termination of this **Agreement**, for whatever reason. Termination of this **Agreement** shall not affect any accrued rights or liability of either **Party** or the coming into effect or continuance of any provision hereof which is expressly or by implication intended to come into force or effect after such termination.

19. **FORCE MAJEURE**

19.1 In so far as either Party (the "**Affected Party**") is prevented from performing any of its obligations under this **Agreement** due to an event or circumstance of **Force Majeure**, then, subject to compliance in full with the requirements of this Clause 19, the **Affected Party** shall be relieved from such obligations for so long as and to the extent that the event or circumstance of **Force Majeure** continues to prevent such performance.

19.2 The **Affected Party** shall notify the other **Party** in writing immediately upon becoming aware of an event or circumstance of **Force Majeure**, 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**.

- 19.3 The **Affected Party** shall take, at its own cost, all steps reasonably required to remedy the effects of the **Force Majeure** and restore its performance of its obligations in full.
- 19.4 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**.
- 19.5 Either **Party** shall have a right to terminate this **Agreement** if the **Affected Party** has been prevented from performing its obligations due to an event or circumstance of **Force Majeure** for a continuous period of three (3) months or more.

20. **EXPERT DETERMINATION**

- 20.1 Where a provision of this **Agreement** expressly provides for the referral by a **Party** of any matter in dispute to an **Expert**, the following provisions shall apply:
- 20.1.1 the **Expert** shall act as an expert and not as an arbitrator and shall decide those matters referred to him using his skill, experience and knowledge, and with regard to all such other matters as he in his sole discretion considers appropriate;
- 20.1.2 if the **Parties** cannot agree upon the selection of an **Expert**, the **Expert** shall be determined by the President for the time being of the Law Society of England and Wales;
- 20.1.3 all references to the **Expert** shall be made in writing by either **Party** with notice to the other being given contemporaneously, and the **Parties** shall promptly supply the **Expert** with such documents and information as he may request when considering any referral;
- 20.1.4 the **Expert** shall be requested to use his best endeavours to give his decision upon the question before him as soon as possible in writing following its referral to him, his decision shall, in the absence of fraud or manifest error, be final and binding upon the **Parties**;
- 20.1.5 if the **Expert** wishes to obtain independent professional and/or technical advice in connection with the question before him:
- 20.1.6 he shall first provide the **Parties** with details of the name, organisation and estimated fees of the professional or technical adviser; and
- 20.1.7 he may engage such advisers with the consent of the **Parties** (which consent shall not be unreasonably withheld or delayed) for the purposes of obtaining such professional and/or technical advice as he may reasonably require;
- 20.1.8 the **Expert** shall not be held liable for any act or omission, and his written decision will be given without any liability on the **Expert's** part to either **Party**, unless it shall be shown that he acted fraudulently or in bad faith;
- 20.1.9 save to the extent otherwise expressly provided herein, pending the determination by the **Expert**, the **Parties** shall continue to the extent possible to perform their obligations; and

20.1.10 the **Expert** shall at his discretion be entitled to order that the costs of the reference of a dispute to him shall be paid by the **Parties** in whatever proportions he thinks fit.

21. **GOVERNING LAW AND JURISDICTION**

21.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.

21.2 The **Parties** irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this **Agreement** (including non-contractual disputes or claims) and the **Parties** waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate form.

22. **ASSIGNMENT**

22.1 Subject to Sub-Clause 22.2, this **Agreement** is personal to the **Parties** and neither **Party** shall assign, transfer, mortgage, charge, subcontract, or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other **Party** (such consent not to be unreasonably withheld or delayed).

22.2 **National Grid** is permitted to assign or transfer the benefit and/or burden of this **Agreement** to the holder of a **Licence** with responsibility for carrying out the **Balancing Services Activity**.

23. **THIRD PARTY RIGHTS**

23.1 The **Parties** 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**.

24. **ANTI-BRIBERY**

24.1 Each **Party** shall:

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

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

24.1.3 have and shall maintain in place, throughout the **Service Term**, its own policies and procedures, including **Adequate Procedures**, to ensure compliance with the **Anti-Bribery Laws** and this Clause 24, and will enforce them where appropriate; and

24.1.4 procure and ensure that all of its **Associated Persons** and/or other persons who are performing services in connection with this **Agreement** comply with this Clause 24.

24.2 If either **Party** breaches this Clause 24 then, without prejudice to any other rights or remedies, the other **Party** may immediately terminate this Agreement on written notice to the **Party** in breach.

25. **WAIVER**

25.1 No failure or delay by either **Party** to exercise any right, power or remedy under this **Agreement** (including a partial exercise) will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

26. **SEVERANCE OF TERMS**

26.1 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.

27. **ENTIRE AGREEMENT**

This **Agreement** contains or expressly refer to the entire agreement between the **Parties** with respect to the subject matter hereof and expressly exclude any warranty, condition or other undertaking implied at law or by custom. Each of the **Parties** acknowledges and confirms that it has not, in entering into this **Agreement**, relied on any representation, warranty or other undertaking not fully reflected in the terms of this **Agreement**.

28. **VARIATIONS**

No variation to this **Agreement** shall be effective unless made in writing and signed by or on behalf of both **National Grid** and the **Provider**.

29. **COUNTERPARTS**

This **Agreement** may be executed in counterparts, each of which shall be an original, and which together shall constitute one and the same agreement.

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

SIGNED BY)
for and on behalf of)
NATIONAL GRID ELECTRICITY)
TRANSMISSION PLC

SIGNED BY)
for and on behalf of)
[PROVIDER])

APPENDIX 1
DEFINITIONS

“Achieved Availability”	has the meaning given to that term in Sub-Clause 6.5;
“the Act”	the Electricity Act 1989 as amended;
“Active Power”	means 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 = 1 kW 1000 kW = 1 MW 1000 MW = 1 GW 1000 GW = 1 TW;
“Actuals Tool”	means the visual basic application through which the Provider submits to National Grid its Baseline Date ;
“Adequate Procedures”	shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act);
“Affected Party”	has the meaning set out in Sub-Clause 19.1;
“Ancillary Services”	means System Ancillary Services and/or Commercial Ancillary Services , as the case may be;
“Anti-Bribery Laws”	shall mean all applicable laws, statutes, regulations, and codes of mandatory application relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
“Apparatus”	means all equipment in which electrical conductors are used, supported or of which they may form part of;
“Associated Persons”	has the meaning ascribed to it in section 8 of the Bribery Act 2010 and shall include but is not limited to any employees, agents and/or subcontractors of the Generator or National Grid as applicable in relation to the provision of the Commercial Ancillary Services ;
“Availability Payment”	shall have the meaning given in Sub-Clause 6.1;
“Availability Report”	shall have the meaning given in Sub-Clause 4.1;
“Availability Window”	means, in relation to the Demand Turn Up Service :

- (i) on each **Working Day** during the months of May, September and October 2018, the period commencing at 23:30 hours on that **Day** and ending at 08.30 hours on the following **Day**;
- (ii) on each **Working Day** during the months of June, July and August 2018, the period commencing at 23:30 hours on that **Day** and ending at 09:00 on the following **Day**; and
- (iii) on each **non-Working Day** during the months of May to October 2018 (inclusive), the period commencing at 13.00 hours on that **Day** and ending at 16.00 hours on that **Day**;

“Available MW” in relation to a **Contracted Site** and for an **Availability Window** or **Optional Availability Window**, means the level of **Demand Turn Up** or **Optional Demand Turn Up** (expressed in MW) that the **Provider** has notified as being available for the period(s) of availability as specified in the applicable **Availability Report**, save where it is provided in this **Agreement** that the availability of the **Contracted Site** is deemed to be 0 MW;

“Availability Payment” has the meaning given to that term in Sub-Clause 6.1;

“Availability Tool” means the visual basic application through which the **Provider** submits to **National Grid** its **Available MW** and other changeable parameters;

“Balancing Services Activity” the meaning given to it in the **Transmission Licence**;

“Base Rate” in respect of any **Day**, means the rate per annum which is equal to the base lending rate from time to time of Barclays Bank plc as at the close of business on the immediately preceding **Business Day**;

“Baseline Demand” means (where the **Provider** has elected for the **Baseline Methodology** settlement option), in respect of each **Settlement Period** in a **Day** during which **Demand Turn Up** or **Optional DTU** is delivered by way of an increase in import of **Active Power**, the figure (in MW) calculated in accordance with the methodology set out in Part 3 of Appendix 3;

“Baseline Generation” means (where the **Provider** has elected for the **Baseline Methodology** settlement option), in respect of each

	Settlement Period in a Day during which Demand Turn Up or Optional DTU is delivered by way of a reduction in export of Active Power , the figure (expressed in MW) calculated in accordance with the methodology set out in Part 3 of Appendix 3;
“Baseline Methodology”	means, for the purposes of calculating payments due to the Provider under Clause 6, the methodology referred to in Sub-Clause 4.5 and;
“Business Day”	means a Day other than a Saturday and a Sunday and other than Days on which banks are closed for domestic business in the City of London and “Business Days” shall be interpreted accordingly;
“Commercial Ancillary Services”	means Ancillary Services other than System Ancillary Services ;
“Contracted Site”	means, in respect of the provision of Demand Turn Up , and (where applicable) Optional DTU , each site specified in Appendix 4;
“Day”	means a calendar day and “Days” shall be interpreted accordingly;
“Declared Instruction”	has the meaning given to that term in Sub-Clause 6.5;
“Demand Turn Up”	means, in relation to a Contracted Site , the increase in import or reduction in export of Active Power (expressed in MW) specified in a Utilisation Instruction and provided in accordance with the terms of this Agreement ;
“Demand Turn Up Service”	means the provision of Demand Turn Up procured as part of National Grid’s balancing services activity (as such term is defined in the Transmission Licence);
“Distribution Code”	means the Distribution Code drawn up by a Public Distribution System Operator pursuant to the terms of its Licence as from time to time revised in accordance with that Licence ;
“DTU Tender”	means the procurement process for the Demand Turn Up Service undertaken pursuant to the invitation to tender published by National Grid on its web site on [] February 2018, as may be revised and republished by National Grid ;
“Effective Date”	means [the date on which this Agreement is executed];

“Event of Default”	has the meaning set out in Clause 7;
“Expert”	means any person appointed to act as an expert under Clause 20;
“Forecast Demand”	means (where the Provider has elected for the Forecast Methodology settlement option), in respect of each Settlement Period in a Day during which Demand Turn Up or Optional DTU is delivered by way of an increase in import of Active Power , the figure (expressed in MW) calculated in accordance with the methodology set out in Part 4 of Appendix 3;
“Forecast Generation”	means (where the Provider has elected for the Forecast Methodology settlement option), in respect of each Settlement Period in a Day during which Demand Turn Up or Optional DTU is delivered by way of a reduction in export of Active Power , the figure (expressed in MW) calculated in accordance with the methodology set out in Part 4 of Appendix 3;
“Forecast Tool”	means the visual basic application through which the Provider submits to National Grid its Forecast Data ;
“Forecast Methodology”	means, for the purposes of calculating payments due to the Provider under Clause 6, the methodology referred to in Sub-Clause 4.4;
“Force Majeure”	for the purposes of Clause 19 means, in relation to either Party , any event or circumstances 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) 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, government restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 and 35 of the Act);

“Grid Code”

means 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);

“Insolvency Event”

shall include, but is not limited to, any of the following events occurring:

- (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 a **Party** 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);

“Instructed MW”

has the meaning set out in Sub-Clause 5.1.1;

“Instructed Site”

means a **Contracted Site** that is the subject of a **Utilisation Instruction**;

“Licence”	means any one or more as appropriate of the Licences granted pursuant to section 6 of the Act ;
“Maximum Contracted MW”	means the maximum quantity of Demand Turn Up or Optional DTU specified in Appendix 2 (<i>Contract Parameters</i>);
“Maximum Utilisation Period”	means the maximum duration of Demand Turn Up or Optional DTU specified in Appendix 2 (<i>Contract Parameters</i>);
“Method of Delivery”	means the manner and process by which the Provider has agreed to provide Demand Turn Up or Optional DTU , as specified in Appendix 2;
“Minimum Utilisation Period”	means the minimum duration of Demand Turn Up or Optional DTU specified in Appendix 2 (<i>Contract Parameters</i>);
“Monthly Statement”	has the meaning set out in Sub-Clause 6.6;
“National Electricity Transmission System”	has the meaning attributed to it in the Grid Code ;
“Optional Availability Window”	has the meaning set out in Sub-Clause 4.2.4(a)
“Optional DTU”	means, in relation to a Contracted Site , the increase in import or the reduction in export of Active Power specified in a Utilisation Instruction and provided in an Optional Availability Window in accordance with this Agreement ;
“Optional Service”	means the provision of Optional DTU procured as part of National Grid’s balancing services activity (as defined in the Transmission Licence);
“Party Liable”	has the meaning given in Sub-Clause 16.1;
“Performance Report”	means a report in relation to a Contracted Site and, based on minute-by-minute or half hourly meter readings, providing details of the availability and delivery of Demand Turn Up from that Contracted Site and delivery of any Optional DTU from that Contracted Site , prepared by the Provider and submitted to National Grid in accordance with Sub-Clause 13.2;
“Permitted Test Period”	has the meaning set out in Sub-Clause 12.2;
“Permitted Third Party”	means (i) any owner and/or operator of a Contracted Site and (ii) a Public Distribution Network Operator ;

“Plant”	means fixed and moveable items used in the generation and/or supply and/or transmission and/or distribution of electricity other than Apparatus ;
“Provider Control Point”	means, in respect of a Contracted Site , the point of contact for the purposes of receiving Utilisation Instructions , as specified in Appendix 2 or as otherwise notified by the Provider to National Grid from time to time;
“Public Distribution System Operator”	means a holder of a Distribution Licence who was the holder, or is a successor to a company which was the holder of a Public Electricity Supply Licence relating to distribution activities in Great Britain on 18 September 2001;
“Reproving Test”	has the meaning set out in Sub-Clause 12.2;
“Service Week”	means the week commencing at 00:00 each Monday to the instant in time before 00:00:00 hours on the following Monday;
“Service Term”	means the period from 23.30 hours on 30 April 2018 and ending at 08.30 hours on 28 October 2018;
“Settlement Period”	means a period of 30 minutes ending on the hour or half hour in each hour during a Day ;
“Transmission Licence”	means the licence granted to National Grid under section 6(1)(b) of the Act ;
“User System”	means any System owned or operated by a User comprising:- <ul style="list-style-type: none"> (a) Generating Units; and/or (b) Distribution Systems (and/or other systems consisting (wholly or mainly) of electrical lines which are owned or operated by a person other than a Public Distribution System Operator; <p style="margin-left: 40px;">and Plant and/or Apparatus connecting:</p> <ul style="list-style-type: none"> (c) Generating Units and/or Distribution Systems (and/or other systems consisting (wholly or mainly) of electric lines which are owned or operated by a person other than a Public Distribution System Operator); or (d) non-embedded customers;

to the **National Electricity Transmission System** or to the relevant other **User System**, as the case may be, including 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 Grid Transmission System**;

“Utilisation Fee”

means the fee used for calculating the **Utilisation Payment**, as specified for the purposes of **Demand Turn Up** in Appendix 2, Part 1 (Contract Parameters) as the same may be reduced in accordance with Sub-Clause 4.2.3 or as specified for the purposes of **Optional DTU** in the relevant **Availability Report**;

“Utilisation Instruction”

means an instruction in respect of **Demand Turn Up** or **Optional DTU** made in accordance with Sub-Clause 5.1;

“Utilisation Payment”

has the meaning given to that term in Sub-Clause 6.2; and

“Working Day”

means each **Day** of the week, other than Saturday or Sunday and any **Day** that is a bank holiday in England and Wales.

APPENDIX 2

PART 1 - CONTRACT PARAMETERS

Contracted Site: [Site ID]

Parameter	Value
Availability Fee	In relation to Demand Turn Up , the price (£/MW/h) awarded pursuant to the DTU Tender
Utilisation Fee	In relation to Demand Turn Up , the price (£/MWh) awarded pursuant to the DTU Tender or as may be revised in accordance with Sub-Clause 4.2.3.
Minimum Instructable MW	[] MW
Maximum Contracted MW	[] MW
Minimum Utilisation Period	[] minutes
Maximum Utilisation Period	[] minutes (9999 for no limit)
Response Time to Utilisation Instruction	[] minutes
Response Time to variation in Utilisation Instruction	[] minutes
Recovery Time	[] minutes
Maximum number of Utilisation Instructions within a single Availability Window	[x]/[unlimited]
Metering	[Minute by minute]/ [per Settlement Period]

Settlement method	[Forecast Methodology]/[Baseline Methodology]
Type of Asset	[Load response]/ [Generation: standby/back up]/ [Generation: Balancing support]/ [Energy storage: standby/back up]/ [Energy storage: Balancing support]
Provider Control Point	Email: [] Telephone: []
Manner in which Demand Turn Up is to be provided (“Method of Delivery”)	

PART 2 – OTHER INFORMATION

Description of activity/process varied to deliver Demand Turn Up	
Other services currently being provided to National Grid in relation the Contracted Site	

APPENDIX 3
CALCULATION OF PAYMENTS

Part 1 – Availability Payment

The **Availability Payment** for month m (AP_m) for **Contracted Site** s shall be calculated as follows:

$$AP_m = (\sum_s \sum_i AC * 0.5 * AF * MP)$$

Where:

\sum_s is the summation for **Contracted Site** s ;

\sum_i is the summation for each **Settlement Period** i in an **Availability Window** during month m in which **Demand Turn Up** was available;

AC is the available **Demand Turn Up** (expressed in MW) as declared or deemed to be declared by the **Provider** in accordance with Sub-Clause 4.2 and Sub-Clause 5.2 or as may be otherwise specified save to the extent that the **Provider** is in default as described in Clause 7;

AF is the **Availability Fee** (expressed in £/MW/h) for the **Contracted Site** s (as specified in Appendix 2); and

CD is the capped energy delivered for **Contracted Site** s over **Settlement Period** i (expressed in MWh) and is calculated:

(a) For demand (an increase in import of **Active Power**):

$$\text{Max}(\text{Min}((AD - D)*0.5, ED), 0)$$

(b) For generation (a reduction in export of **Active Power**):

$$\text{Max}(\text{Min}((G - AG)*0.5, ED), 0)$$

MP is the monthly availability reduction and is calculated as follows:

if $(\sum_s \sum_i CD / \sum_s \sum_i ED) \geq 0.9$, then $MP = 1$,

otherwise, $MP = (\sum_s \sum_i CD / \sum_s \sum_i ED)$

AD is defined in Part 2 of this Appendix 3

D is defined in Part 2 of this Appendix 3

Part 2 – Utilisation Payment

1. The **Utilisation Payment** for month m (UP_m) shall be calculated as follows for the delivery of **Demand Turn Up** by way of increasing demand (an increase in import of **Active Power**):

$$UP_m = \sum_s \sum_i \max(\text{Min}((AD - D)*0.5, ED), 0) * UF$$

Where:

\sum_s is the summation for **Contracted Site s**;

\sum_i is the summation for each **Settlement Period i** in a **Availability Window** or an **Optional Availability Window** (as the context requires) during month m that **Contracted Site s** was the subject of a **Utilisation Instruction**;

AD is the average metered demand for **Contracted Site s** over **Settlement Period i** (expressed in **MW**);

DT is the **Declared Instruction**;

ED is the expected delivery in for **Contracted Site s** over **Settlement Period i** (expressed in **MWh**) and calculated as:

$DT * DI / 60$ where DI is the number of minutes within the **Settlement Period** that **Demand Turn Up** is instructed

D is the expected demand per **Settlement Period i** (expressed in **MW**), which:

(i) if the **Provider** has elected for the **Forecast Methodology** option, shall be the **Forecast Demand**; or

(ii) if the **Provider** has elected for the **Baseline Methodology** option, shall be the **Baseline Demand**

UF is the **Utilisation Fee** (expressed in £/MWh) applicable to **Demand Turn Up** (as specified in Appendix 2).

2. The **Utilisation Payment** for month m (UP_m) shall be calculated as follows for the delivery of **Demand Turn Up** by way of reducing generation (a reduction in export of **Active Power**):

$$UP_m = \sum_s \sum_i \max(\text{Min}((G - AG)*0.5, ED), 0) * UF$$

Where:

\sum_s is the summation for **Contracted Site s**;

- Σ_i is the summation for each **Settlement Period i** in a **Availability Window** or an **Optional Availability Window** (as the context requires) during month m that **Contracted Site s** was the subject of a **Utilisation Instruction**;
- AG is the average metered generation for **Contracted Site s** over **Settlement Period i** (expressed in MW);
- DT is the **Declared Instruction**
- ED is the expected delivery in **Contracted Site s** over **Settlement Period i** (expressed in MWh) and calculated as:
- $DT * DI / 60$ where DI is the number of minutes within the **Settlement Period** that **Demand Turn Up** is instructed
- G is the applicable generation output per **Settlement Period i** (expressed in MW), which:
- (i) if the **Provider** has elected for the **Forecast Methodology** option, shall be the **Forecast Generation**; or
 - (ii) if the **Provider** has elected for the **Baseline Methodology** option, shall be the **Baseline Generation**;
- UF is the **Utilisation Fee** (expressed in £/MWh) applicable to **Demand Turn Up** (as specified in Appendix 2).

Part 3 – Calculation of Baseline Demand and Baseline Generation

For the purposes of calculating the **Baseline Demand** or the **Baseline Generation** for each **Settlement Period** on **Day d** during which **Demand Turn Up** or **Optional DTU** is delivered by the **Provider** ("**Relevant Settlement Period**"), the following methodology shall be applied:

1. Calculate the average metered demand in MW ("**Average Demand MW**") or the average metered generation output in MW ("**Average Generation MW**") (as the case may be) on the basis of the **Baseline Data** for the equivalent **Settlement Periods** ("**Equivalent Settlement Periods**") to the **Relevant Settlement Period** for the same day of the week as **Day d** in the preceding four (4) week period ("**Relevant Month**").
2. If in relation to a **Contracted Site** where **Demand Turn Up** is delivered by way of a reduction in the export of **Active Power** a **Plant Outage** occurred during the **Relevant Month** then:

- (a) the **Baseline Data** shall be adjusted by excluding those **Equivalent Settlement Periods** that fall within a **Plant Outage Period** (“**Plant Outage Settlement Periods**”) and the **Baseline Data** shall be determined by calculating the average of the generation data for the **Equivalent Settlement Periods** in the **Relevant Month** not affected by a **Plant Outage**; and
 - (b) where a **Plant Outage Period** affects the whole of the **Relevant Month**, the **Baseline Data** shall be determined by **National Grid** (acting in its sole discretion) based on historical data.
3. If during an **Equivalent Settlement Period**, **Demand Turn Up** or **Optional DTU** has been delivered, the **Average Demand MW** and the **Average Generation MW** shall be adjusted in respect of that **Equivalent Settlement Period** as follows:
- (a) in the case of **Demand Turn Up** or **Optional DTU** delivered by increasing imports of **Active Power**, by deducting an amount (in MW) equal to the **Instructed MW** from the metered demand; and
 - (b) in the case of **Demand Turn Up** or **Optional DTU** delivered by reducing the exports of **Active Power**, by adding an amount (in MW) equal to the **Instructed MW** to the metered output
4. If in relation to a **Contracted Site** where **Demand Turn Up** is delivered by way of a reduction in the export of **Active Power** an **Equivalent Settlement Period** falls within a **Ramping Period**, the **Baseline Data** shall be determined by **National Grid** (acting in its sole discretion) based on historical data.
5. The **Baseline Demand** or the **Baseline Generation** for the **Relevant Settlement Period** shall be adjusted by multiplying the relevant value by a fraction, the numerator of which is the actual metered demand or generation output (as the context requires) and the denominator of which is the **Average Demand MW** or the **Average Generation MW** (as the context requires) derived in accordance with paragraph 1, 2, 3 and 4 above in each case in respect of the second and third **Settlement Periods** immediately prior to the first **Settlement Period** on **Day d** that is the subject of a **Utilisation Instruction**.

Part 4 – Calculation of Forecast Demand and Forecast Generation

The **Forecast Demand** or the **Forecast Generation** for each **Settlement Period** on **Day d** during which **Demand Turn Up** or **Optional Demand Turn Up** is delivered by the **Provider** (“**Relevant Settlement Periods**”) shall be derived from the **Forecast Data** for a **Relevant Settlement Period** and adjusted by multiplying the relevant value by a fraction, the numerator of which is the actual metered demand or generation output (as the context requires) and the denominator of which is the **Forecast Demand** or the **Forecast Generation** (as the context requires) in each case in respect of the two **Settlement**

Periods immediately prior to the first **Settlement Period** on **Day d** that is the subject of a **Utilisation Instruction**.

APPENDIX 4 CONTRACTED SITE(S)

CONTRACTED SITE(S) Contracted Site ID	Location	Nearest GSP	Capacity	MPAN