**mDated 2020**

**NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED**

and

**[ ]**

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**COMMERCIAL SERVICES AGREEMENT REGARDING**

**Super SEL**

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***Contract Log Number: [ ]***

**THIS COMMERCIAL SERVICES AGREEMENT** is made the day of 2020

**BETWEEN:-**

1. **NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED** a company registered in England with Number 11014226 whose registered office is at 1-3 Strand, London, WC2N 5EH (“**NGESO**” which expression shall include its permitted successors and/or assigns); and
2. **[ ]** a limited liability partnership in England with Number [ ] whose registered office is at [ ](the “**Generator**” which expression shall include its permitted successors and/or assigns).

**WHEREAS:-**

1. **NGESO** has an ongoing requirement for “footroom” from **Generating Plant**.
2. This **Agreement** sets out the terms upon which the **Generator** has agreed to contribute to that requirement by offering terms for the provision ofthe **Super SEL Service** from one or more **BM Units** at the **Generator’s Power Station**(s) at [ ].

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

1. Definitions

Unless the subject matter otherwise requires or is inconsistent therewith or unless expressly defined in Appendix 1, the definitions contained or referred to in Section 11 of the **Connection and Use of System Code** shallhave the same meanings, interpretations and construction in this **Agreement** as though the same were set out in full in this **Agreement**. In addition, the further definitions set out in Appendix 1 to this **Agreement** shall apply.

1. Commencement and Term

This **Agreement** shall commence on the **Effective Date** and shall continue in full force and effect until terminated by either **Party** by giving not less than thirty (30) **Days’** notice in writing to the other **Party** (**“Service Term”**).

1. SERVICE PROVISION

*Provision of the* ***Super SEL Service***

Throughout the **Service Term**,the **Generator** agrees to provide the **Super SEL Service** upon and subject to the terms and conditions set out herein.

*Availability*

No later than 14:00 hours each **Day**, for the next following **Trading Day** and in respect of each **Contracted Unit**, the **Generator** shall submit to **NGESO** by email a report, in the form set outin Appendix 2, specifying the start and end times of any periods of availability of that **Contracted Unit** to provide the **Super SEL Service** for each **Settlement Period** in that **Trading Day** (**“Availability Declaration”**).

If no properly completed **Availability Declaration** is submitted by the time specified in clause 3.2 then, unless otherwise agreed in writing by **NGESO**, the **Super SEL Service** shall be deemed to be availablein the next following **Trading Day** with an **Available SEL Reduction** as specified in the last properly completed submitted **Availability Declaration**.

Each **Availability Declaration** shall specify, for each period of availability, the **Available SEL Reduction**, which unless otherwise agreed in writing by **NGESO** shall be within the **SEL Reduction Capability Range**, together with the associated other data specified in Appendix 3.

* 1. Until such time as a properly completed Availability Declaration is submitted by the Generator pursuant to this Clause 3, each Contracted Unit shall be deemed to be available in each Trading Day, and with an Available SEL Reduction, as specified in any default Availability Declaration which may be agreed between the Parties for such purpose at the date of this Agreement.

*Instruction by* ***NGESO***

With respect to any one or more consecutive **Settlement Periods** falling in any period of availability in any **Trading Day** (or in two consecutive such **Trading Days**) pursuant to this Clause 3, **NGESO** may in its absolute discretion, issue to the **Generator** an instruction (“**Instruction”)** by telephone to provide the **Super SEL Service**.

Each **Instruction** shall specify a period defined by:

* + 1. the start time for delivery of the Super SEL Service which, unless otherwise specified in the Availability Declaration or agreed between the Parties, shall be not less than [] hours, and not more than six (6) hours, after the time of the Instruction (“Start Time”); and
    2. the end time for delivery of the Super SEL Service (“End Time”), which shall comply with the prevailing Minimum Enactment Period and Maximum Enactment Period.
  1. NGESO shall send to the Generator a written record of the Instruction by email as soon as reasonably practicable following the Instruction. The Parties agree that the telephone instruction shall be the Instruction and a failure to send a written record of the Instruction shall not invalidate the Instruction.
  2. For the avoidance of doubt, NGESO may issue more than one (1) Instruction with respect to any single Trading Day.

*Required response by* ***Generator***

Following the issue of an **Instruction** by **NGESO**, the **Generator** shall:

* + 1. prior to the Start Time, resubmit the prevailing Dynamic Parameters of the Contracted Unit so that, with effect from the Start Time, SEL is equal to the level of SEL prevailing in the Settlement Period immediately prior to the time of Instruction less the Available SEL Reduction (“Super SEL Level”) and MEL is maintained at the level (subject to the Tolerance) prevailing in the Settlement Period immediately prior to the time of Instruction], and ensure that such values are maintained until the End Time;
    2. promptly submit and maintain through to Gate Closure in respect of each Settlement Period falling within the Instructed Service Period:-
       1. a **Physical Notification** not less than the **Super SEL Level**; and
       2. a single **Bid-Offer Pair** with a “from” MW level and “to” MW level that will allow the **Output** of the **Contracted Unit** to be reduced to a level equal to the **Super SEL Level** for which **NGESO** may issue an **Acceptance**.

*Cancellation of an Instruction or Changes to End Time*

* 1. NGESO may, by notifying the Generator by telephone, cancel an Instruction at any time and for any reason.
  2. If NGESO wishes to move forward or back the End Time specified in an Instruction, including during an Instructed Service Period, it shall notify the Generator by telephone (“Revised Instruction”). NGESO shall send to the Generator a written record of the Revised Instruction by email as soon as reasonably practicable following the Revised Instruction. The Parties agree that the telephone instruction to change the End Time shall be the Revised Instruction and a failure to send a written record of the Revised Instruction shall not invalidate the Revised Instruction. Any change to the End Time shall comply with the prevailing Minimum Enactment Period and Maximum Enactment Period.

*Service Unavailability*

* 1. Where at any time the Generator becomes aware that the Contracted Unit and associated Plant and Apparatus at the Power Station no longer has the capability to provide the Super SEL Service in accordance with the provisions of this Agreement it shall promptly notify NGESO by email and the Generator shall thereafter promptly notify NGESO by email when the capability is restored. Each indication of non-capability shall be accompanied by an explanation in reasonable detail of the reasons for such unavailability, and for the avoidance of doubt, the Generator may only declare unavailability for reasons of safety or reasons relating to the technical capability of the Contracted Unit and/or such associated Plant and Apparatus.
  2. For the purposes of this Clause 3 but subject always to Clause 3.15, the Super SEL Service shall be deemed unavailable in respect of all Trading Days from the time that the Contracted Unit is notified by the Generator as no longer having the capability to provide the Super SEL Service to the time of receipt by NGESO of notification that capability is restored as referred to in Clause 3.13.
  3. Notwithstanding Clauses 3.13 and 3.14, if in respect of all or any part of an Instructed Service Period the Generator fails to comply with any requirement of Clause 3.10, then the Super SEL Service shall be deemed unavailable from commencement of the Settlement Period in which such failure occurs and until the End Time, notwithstanding any earlier restoration of capability notified by the Generator.

1. Payment

Subject to the **Generator** complying in full with its obligations in respect of the **Super SEL Service** in accordance with the provisions of Clause 3, **NGESO** shall pay to the **Generator** an amount for each **Instructed Service Period** in a calendar month (**“Enactment Payment”**), calculated by reference to the then prevailing **Enactment Fee** and the duration of that **Instructed Service Period**.

For the avoidance of doubt, an **Enactment Payment** shall not be payable by **NGESO** to the extent that delivery of the **Super SEL Service** is not in accordance with an **Instruction** (or **Revised Instruction**, as the case may be) and/or during periods of unavailability notified (or deemed unavailability) in accordance with Clauses 3.13, 3.14 or 3.15.

* 1. The initial Enactment Fee shall be agreed between the Parties at the date of this Agreement, and may subsequently be revised, by the Generator by notification to NGESO by email, in the form set out in Appendix 3, not more than once in any weekly (Monday to Sunday) period. Any revised Enactment Fee must be submitted by 17.00 hours on Tuesday as applicable for the following seven (7) consecutive Trading Days commencing 23.00 hours Sunday. There shall be a single Enactment Fee for each Trading Day, but Enactment Fees may vary for different Trading Days. For the avoidance of doubt, in the event no such revision is submitted by such date then the Enactment Fee for a Trading Day shall apply as agreed or last revised for that Trading Day.

**NGESO** shall not later than eighteen (18) **Business Days** following the end of a calendar month during the **Service Term** in respect of which one or more **Instructions** have been given,send to the **Generator** a statement (**“Monthly Statement”**) setting out for that month the **Enactment Payment**(s) due to the **Generator**.

If the **Generator** disagrees with the content of any **Monthly Statement** it may notify **NGESO** by email, with evidence upon which it relies in support of such disagreement no later than seven (7) **Business 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 Clauses 4.6 and 4.7.

Where a disagreement is notified by the **Generator** pursuant to Clause 4.5, 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 be promptly re-issued by **NGESO**. In the absence of agreement, the **Monthly Statement** shall be binding upon the **Parties** subject only to Clause 4.7until such time as otherwise agreed in writing by the **Parties** or as may otherwise be determined by an **Expert**.

**NGESO** may at any time correct any error or omission in a **Monthly Statement** by promptly revising the **Monthly Statement** and re-issuing the same to the **Generator**, whereupon Clauses 4.5 and 4.6 shall apply.

**NGESO** shall pay to the **Generator** the amount shown as due from **NGESO** in a **Monthly Statement**, together with any Value Added Tax properly chargeable in respect of the provision of the **Super SEL Service** within three (3) **Business Days** after the date on which that **Monthly Statement** is issued.

If, by virtue of the foregoing provisions, it is determined or agreed that:

the **Generator** is entitled to a further sum, **NGESO** shall pay such further sum plus interest at the rate of one percent (1%) above the base rate of Barclays Bank Plc from the date on which that sum is determined to be due to the date of actual payment; or

the **Generator** was not entitled to any sum it has received, then the **Generator** shall promptly repay such amount to **NGESO** together with interest at the rate of one percent (1%) above the base rate of Barclays Bank Plcon such amount from the date of payment by **NGESO** until the date of repayment by the **Generator**.

Sums payable by one **Party** to the other pursuant to this **Agreement** whether by way of charges, interest or otherwise, shall (except 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 and payable by the other **Party** under this **Agreement** against any payment it makes to that **Party** under this **Agreement**).

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 **NGESO** to the **Generator** pursuant to this **Agreement** as if set out in full herein.

The **Generator** agrees that **NGESO** may maintain a self-billing system throughout the **Service Term** whereby each **Monthly Statement** shall constitute a self-billing invoice for VAT purposes. Accordingly, **NGESO** and the **Generator** shall 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 **Generator** hereby warrants and undertakes to **NGESO** that:

it is registered for VAT and will inform **NGESO** forthwith if it ceases to be so registered or changes its VAT registration number;

it will account to **HMRC** for the VAT paid by **NGESO**; and

it will not issue its own VAT invoices for provision of the **Super SEL Service**.

1. Monitoring and Metering

All output of the **Contracted Unit** shall be measured by **Energy Metering Equipment** in accordance with the **BSC**.

The **Generator** hereby undertakes to provide to **NGESO** such metering data and related information as it may reasonably request for the purposes of enabling **NGESO** to verify the **Generator’s** compliance with its obligations under this **Agreement**.

1. Publication of Data

**NGESO** shall be permitted to publish and/or announce details of the **Super SEL Service** provided by the **Generator** from the **Power Station(s)**, and the **Generator** hereby consents to the disclosure by **NGESO** of any information insofar as it relates to the provision of the **Super SEL Service** pursuant to this Clause 6.

Prior to any publication and/or announcement by **NGESO** in accordance with Clause 6.1, **NGESO** shall give reasonable notice to the **Generator** of its intention to publicise any details pursuant to Clause 6.1 and the **Generator** shall be entitled to notify **NGESO** of any amendments it proposes to the format of the publication or announcement within three (3) **Business Days** of receiving the same from **NGESO**.

**NGESO** shall give reasonable consideration to any proposed amendments it receives from the **Generator** in accordance with Clause 6.2 but shall be under no obligation whatsoever to accept or implement any such amendments.

1. CONFIDENTIALITY AND ANNOUNCEMENTS
   1. Subject to the exceptions provided in Clause 7.3 (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):
      * + 1. any of the contents of this **Agreement**;
          2. any commercially confidential information relating to the negotiations concerning the entering into of this **Agreement**;
          3. any commercially confidential information which may come to a **Party’s** knowledge in the course of such negotiations; or
          4. any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other **Party**.
   2. Each Party undertakes to use information referred to in Clause 7.1 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.
   3. The restrictions imposed by Clause 7.1 shall not apply to the disclosure of any information:-
      * + 1. 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;
          2. 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;
          3. 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;
          4. to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
          5. in accordance with the provisions of the **Balancing and Settlement** **Code** or pursuant to any **Licence** of the **Party** concerned;
          6. by either **Party** to any parent undertaking on a “need to know” basis only;
          7. to any authorised consultants, banks, financiers, insurers or professional advisers to the disclosing **Party**;
          8. by **NGESO** to any parent, subsidiary or fellow subsidiary undertaking;
          9. by the **Generator** to any of its **Affiliates**; or
          10. 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**), the **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.
   4. In this Clause 7, 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.
   5. Before either Party discloses any information in any of the circumstances described in Sub-Clause 7.3(g) (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 7.
   6. Subject to Clause 7.7, 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).
   7. 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.
   8. With respect to the information referred to in Clause 7.1, both Parties shall ensure that:-
      1. such information is disseminated within their respective organisations on a “need to know” basis only;
      2. employees, directors, agents, consultants and professional advisers who are in receipt of such information are made fully aware of the Party’s obligations of confidence in relation thereto; and
      3. any copies of such information, whether in hard copy or computerised form, will clearly identify the information as confidential.
   9. Notwithstanding any other provision of this Agreement, the provisions of this Clause 7 shall continue to bind a person after termination of this Agreement in whole or in part, for whatever reason.
2. ANTI-BRIBERY

In respect of this **Agreement**, each **Party** shall:

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

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;

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 Sub-Clause 8.1, and will enforce them where appropriate; and

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 **Agreement** comply with this Sub-Clause 8.1.

1. EMR

Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in this **Agreement**, the **Generator** consents to **NGESO** 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**.

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**.

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; |
| **“Agreement”** | means this document or agreement; |
| **“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; |
| **“EMR Functions”** | has the meaning given to “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013; |
| **“Provider”** | means the entity who has entered into or is bound by the Agreement with The Company; and |
| **“The Company”** | means National Grid Electricity System Operator Limited (No: 11014226) whose registered office is at 1-3 Strand, London, WC2N 5EH”. |

1. Notices
   1. For the purposes of this **Agreement**, unless and until otherwise notified, any notice or other communication, other than a notice or communication issued pursuant to Clause 10.3, to be given by **NGESO** or the **Generator** to the other under, or in connection with matters contemplated by, this **Agreement** shall be sent to the following address and/or email address and marked for the attention of the person named below:

**NGESO**: National Grid Electricity System Operator Limited

Faraday House

Warwick Technology Park

Gallows Hill

Warwick CV34 6DA

For the attention of: Balancing and Revenue Services Manager

Copy to: Head of Markets, Electricity

Email Address: commercial.operation@nationalgrideso.com

**Generator**: [ ]

[ ]

[ ]

[ ]

Facsimile number: [ ]

FAO: [ ]

Any operational notice or other communication expressed under this **Agreement** to be made by the **Parties** to each other by telephone or e-mail shall be notified to the other to the following e-mail addresses and telephone numbers or such alternative details and as may be notified in writing by one **Party** to the other for such purpose:

**NGESO**:

Email: [CTR1.COSM@nationalgrid.com](mailto:CTR1.COSM@nationalgrid.com);

Trading@nationalgrideso.com;

Telephone contact number: 01189 363077.

**Generator**:

Email: [ ];

Operational contact: [ ];

Telephone contact number: [ ].

1. 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 11, 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.

1. VARIATIONS
   1. No variations or amendments to this Agreement shall be effective unless made in writing and signed by or on behalf of both NGESO and the Generator.
2. DISPUTE RESOLUTION
   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.
   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.
3. warranty
   1. Each Party warrants and represents that it has the 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.
   2. The Generator hereby warrants to NGESO that, to the best of its knowledge and belief, the entering into this Agreement and the provision by it of the Super SEL Service does not and will not cause the Generator:
      1. to be in breach of its duties under Section 9 of the Act;
      2. to be in breach of the Electrical 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 Generator;
      3. to be in breach of any restrictions and conditions attaching to relevant authorisations of the Environment Agency; or
      4. 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.
4. LIMITATIONS ON LIABILITY
   1. Subject to Clause 15.2 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:
      1. physical damage to the property of the other Party, its officers, employees or agents; and/or
      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.

* 1. 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.
  2. Subject to Clause 15.2, 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:
     1. any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
     2. any indirect or consequential loss; or
     3. loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in Clauses 15.1.2 and 15.2.
  3. Each Party acknowledges and agrees that the other Party holds the benefit of Clauses 15.1, 15.2 and 15.3 for itself and as trustee and agent for its officers, employees and agents.
  4. For the avoidance of doubt, nothing in this Clause 15 shall prevent or restrict either Party from enforcing any obligations (including suing for a debt) owed to it under or pursuant to this Agreement.

1. termination
   1. Either Party shall have the right to terminate this Agreement:
      1. following a breach of warranty under Clause 14;
      2. following a material breach by one Party (the “Defaulting Party”) of its obligations under this Agreement and which has not been remedied within fourteen (14) Days following notice in writing being given to the Defaulting Party of such breach; or
      3. following the occurrence of an Insolvency Event in relation to that Party.
   2. Notwithstanding any other provision of this Agreement, the provisions of Clauses 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 17, 19, 20, 21, 22, 23 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.
2. EXPERT
   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:
      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;
      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;
      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;
      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**;
      5. if the **Expert** wishes to obtain independent professional and/or technical advice in connection with the question before him:
         * 1. he shall first provide the **Parties** with details of the name, organisation and estimated fees of the professional or technical adviser; and
           2. 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;
      6. 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;
      7. 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
      8. 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.
3. ASSIGNMENT AND SUBCONTRACTING
   1. Subject to Clause 18.2 and 18.3, this Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge 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).
   2. NGESO 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.
   3. The Generator may assign or charge its benefit under this Agreement in whole or in part by way of security.
   4. The Generator may subcontract or delegate the performance of any of its obligations or duties arising under this Agreement provided always that this shall not relieve the Generator from liability for performance of any such obligation or duty.
4. waiver

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.

1. JURISDICTION
   1. Subject and without prejudice to Clause 13, 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.
   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.
2. GOVERNING LAW
   1. This Agreement shall be governed by and construed in all respects in accordance with English law.
3. SEVERANCE OF TERMS
   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.
4. ENTIRE AGREEMENT
   1. This Agreement contains or expressly refer to the entire agreement between the Parties with respect to the subject matter of such agreements, 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.
5. THIRD PARTY RIGHTS
   1. 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.

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

|  |  |
| --- | --- |
| **SIGNED** for and on behalf of )  **NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED** |  |
| By |  |
| Dates |  |

|  |  |
| --- | --- |
| **SIGNED** for andon behalf of )  **[ ]** |  |
| By |  |
| Dated |  |

APPENDIX 1 - Definitions

|  |  |
| --- | --- |
| **“Act”** | the Electricity Act 1989; |
| **“Adequate Procedures”** | shall be determined in accordance with section 7(2) of the **Bribery Act** (and any guidance issued under section 8 of such **Bribery** **Act**); |
| **“Affiliate”** | in relation to the **Generator**, any person directly or indirectly controlling, controlled by or under common control with or who has direct or indirect interest in the **Generator**; |
| “**Agreement**” | this **Commercial Services Agreement** (including the Appendices) as amended, extended, supplemented, novated or modified from time to time; |
| **“Anti-Bribery Laws”** | all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the **Bribery Act**; |
| **“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 **Bribery Act** and shall include but is not limited to any employees, agents and/or subcontractors of the **Generator** or **NGESO** as applicable in relation to the provision of the **Super SEL Service**; |
| **“Authority”** | the Gas and Electricity Markets Authority established by section 1 of the Utilities Act 2000; |
| **“Availability Declaration”** | has the meaning give to it in Clause 3.2; |
| **“Available SEL Reduction”** | in relation to the value of **SEL** prevailing for the **Contracted Unit**, the value specified in the relevant **Availability Declaration**; |
| **“Balancing Mechanism”** | the meaning given to it in the **BSC**; |
| **“Balancing and Settlement Code (BSC)”** | the meaning attributed to it in the **Transmission Licence**; |
| **“Balancing Services Activity”** | the meaning given to it in the **Transmission Licence**; |
| **“BM Unit”** | the meaning attributed to it in the **Balancing and Settlement Code**; |
| **“Bribery Act”** | the United Kingdom Bribery Act 2010 (and any amendment thereto); |
| **“Business Day”** | a weekday other than a Saturday on which banks are open for domestic business in the City of London; |
| **“Cancellation Time”** | the time at which **NGESO** notifies the **Generator** under Clause 3.7 that an **Instruction** is cancelled; |
| **“Connection and Use of System Code (CUSC)”** | the **Connection and Use of System Code** designed by the **Secretary of State** as from time to time modified; |
| **“Contracted Unit”** | each of the following **BM Unit(s)** for which the **Generator** is and will remain **Lead Party** throughout the **Service Term**:-  [ ] **Power Station: BM Unit(s) [ ]**  [ ] **Power Station: BM Unit(s) [ ]**  and where applicable **“Contracted Units”** shall be construed accordingly; |
| **“Day”** | a calendar day; |
| **“Dynamic Parameters”** | the meaning given to that term in the **Grid Code**; |
| **“Effective Date”** | the date of this **Agreement**; |
| **“Enactment Fee”** | the fee established and from time to time revised by the **Generator** under and in accordance with Clause 4.3; |
| **“Enactment Payment”** | the meaning given to that term in Clause 4.1; |
| **“End Time”** | the meaning given to that term in Clause 3.7.2; |
| **“Energy Metering Equipment”** | meaning attributed to the phrase **“Metering Equipment”** in the **Balancing and Settlement Code**; |
| **“Expert”** | an expert appointed in accordance with Clause 17; |
| **“Generation Licence”** | the licence granted to the **Generator** under section 6(1)(a) of the **Act**; |
| **“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); |
| **“Insolvency Event”** | shall include, but is not limited to, any of the following events:  An order of the High Court is made or an effective resolution passed for its insolvent winding-up or dissolution; or  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 undertakings is appointed; or  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  It enters into any scheme or 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**);  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 Service Period”** | the period commencing at the **Start Time** and ending at the **End Time** (as may be changed in any **Revised Instruction**) or any earlier **Cancellation Time**; |
| **“Instruction”** | an instruction issued by **NGESO** in accordance with Clause 3.6; |
| **“Licence”** | any one or more as appropriate of the **Licences** granted pursuant to section 6 of the **Act**; |
| **“Maximum Export Limit” or “MEL”** | the meaning given to that term in Appendix 1 of BC1 of the **Grid Code**; |
| **“Maximum Enactment Period”** | the maximum period (in hours) the reduced **SEL** can be sustained per enactment as declared in the **Availability Declaration**; |
| **“Minimum Enactment Period”** | the minimum period (in hours) the reduced **SEL** must be sustained per enactment as declared in the **Availability Declaration**; |
| **“Monthly Statement”** | the meaning given to that term in Clause 4.4; |
| **“NETS”** | the **National Electricity Transmission System**; |
| **“Output”** | the actual active power output achieved by a **BM Unit**; |
| **“Party”** | each person for the time being and from time to time a party to this **Agreement** and any successor(s) in title to, or permitted assign(s) of, such person and “**Parties**” shall be construed accordingly; |
| **“Plant”** | fixed and movable items used in the generation and/or supply and/or transmission of electricity other than **Apparatus**; |
| **“Power Station(s)”** | the **Generator**’s **Power Station(s)** at [ ]; |
| **“Revised Instruction”** | the meaning given to that term in Clause 3.12; |
| **“Secretary of State”** | the meaning attributed to it in the **Act**; |
| **“SEL Reduction Capability Range”** | in relation to the value of **SEL** prevailing for the **Contracted Unit**, a reduction in in SEL ranging from [XX] MW to [XX]MW; |
| **“Service Term”** | the meaning given to that term in Clause 2.1; |
| **“Settlement Period”** | the meaning given to that term in the BSC; |
| **“Stable Export Limit” or “SEL”** | the meaning given to that term in Appendix 1 to BC1 of the Grid Code; |
| **“Start Time”** | the meaning given to that term in Clause 3.7.1; |
| **“Super SEL Level”** | the meaning given to that term in Clause 3.10.1; |
| **“Super SEL Service”** | the service provided by the **Generator** in accordance with this **Agreement** comprising the change in operation of its **Plant** and **Apparatus** at a **BM Unit** so as to facilitate the reduction in the **SEL** of that **BM Unit**, giving **NGESO** access to additional “footroom”; |
| **“Tolerance”** | in respect of a stated value, an amount equal to plus or minus ten percent (10%) of that stated value; |
| **“Trading Day”** | each **Day** in the **Service Term**, which commences at 23:00 hours on one **Day** and concludes at 23:00 hours on the following **Day**; |
| **“Transmission Licence”** | the licence granted to **NGESO** under section 6(1)(b) of the **Act**. |
|  |  |
|  |  |

**APPENDIX 2 – AVAILABILITY DECLARATION (FORM)**

## SUPER SEL SERVICE AVAILABILITY DATA

To be summited by no later than 14:00 hours each **Day**, for the next following **Trading Day** and in respect of each **Contracted Unit**

FOR SERVICECOMMENCING AT 23:00 HRS ON (DD:MM:YY)….

From: [ ]

To: **NGESO**

Email: [trading@nationalgrideso.com](mailto:trading@nationalgrideso.com).

|  |  |
| --- | --- |
| BMU ID |  |
| Service |  |
| **Available SEL Reduction**\* |  |
| Available From (Date & Time) |  |
| Available To (Date & Time) |  |
| Notice period to reduce SEL (hours) |  |
| Maximum Enactment Period reduced SEL can be sustained per enactment (hours) |  |
| Minimum Enactment Period reduced SEL must be sustained per enactment (hours) |  |
| Inertia Contribution at Super SEL Level – MVA.s |  |
| Reactive Power Range at Super SEL Level – Lead and Lag MVAr |  |
| Frequency Response at Super SEL Level – Primary, Secondary and High | |  |  |  |  | | --- | --- | --- | --- | |  | P | S | H | | 0.2Hz |  |  |  | | 0.5Hz |  |  |  | | 0.8Hz |  |  |  | |

\* To be a reduction in SEL, not an absolute SEL value, and within the **SEL Reduction Capability Range** unless otherwise agreed in writing with **NGESO**

Actual amount of SEL reduction will be agreed at point of instruction.

Instructions to utilise the service are to be communicated to [ ] Control Room [ ] or [ ]

**APPENDIX 3 – REVISIONS TO ENACTMENT FEE (FORM)**

To be summited by 17.00 hours on Tuesday as applicable for the following seven (7) consecutive **Trading Days** commencing 23.00 hours Sunday.

From: [ ]

To: **NGESO**

Email: [trading@nationalgrideso.com](mailto:trading@nationalgrideso.com).

|  |  |
| --- | --- |
| BMU ID |  |
| Service |  |

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Revised **Enactment Fee** (£ /hr)  (subject to Clause 4.3) | |  |  | | --- | --- | | Trading Day (ending 23.00) | £//hr | | Mon |  | | Tue |  | | Wed |  | | Thus |  | | Fri |  | | Sat |  | | Sun |  | |