

[Provider Address]
[Provider Address]
[Provider Address]
[Provider Address]

Date

Mutual Confidentiality Agreement

Dear Sir/Madam,

1 Disclosure

- 1.1 **National Grid Electricity System Operator** 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 successors and/or permitted assigns) and the **Provider** (which expression shall include its successors and/or permitted assigns) wish to exchange information with each other relating to the **Tender**.
- 1.2 In this letter agreement:
 - 1.2.1 "**Agreement**" means this letter agreement.
 - 1.2.2 "**Black Start Contract**" means a contract between **NGESO** and a provider to deliver the Black Start service pursuant to the **Tender** following such provider successfully completing and passing the **Tender** process.
 - 1.2.3 "**Confidential Information**" means all confidential or proprietary information (however recorded or preserved) relating to the **Tender** that is disclosed or made available whether before or after the date of this agreement (in any form or medium), directly or indirectly, by the **Disclosing Party** to the **Recipient**.
 - 1.2.4 "**Disclosing Party**" means a party to this **Agreement** which discloses or makes available directly or indirectly **Confidential Information**.
 - 1.2.5 "**National Grid Transmission Licence**" the licence granted to **National Grid** under Section 6(1)(b) of the Electricity Act 1989.
 - 1.2.6 "**Recipient**" means a party to this **Agreement** which receives or obtains directly or indirectly **Confidential Information**.
 - 1.2.7 "**Tender**" means the **NGESO** Black Start tender commencing with the Expression of Interest dated 4th February 2019 and ending at the date of execution of contracts following contract award.
- 1.3 In consideration of the **Disclosing Party** agreeing to disclose **Confidential Information** to the **Recipient**, the **Recipient** undertakes to the **Disclosing Party** that it shall:
 - 1.3.1 keep the **Confidential Information** secret and confidential;

- 1.3.2 not use or exploit the **Confidential Information** in any way, except for or in connection with, the **Tender**; and
- 1.3.3 only make disclosure of the **Confidential Information** in accordance with paragraph 1.4 and paragraph 1.5. Any other disclosure can only be made with the **Disclosing Party's** prior written consent.
- 1.4 Each party may disclose the **Confidential Information** to any of its officers, and employees, advisers, subcontractors and contractors (including, in the case of **National Grid**, consultants appointed for the purposes of evaluating the **Tender** and, in the case of the **Provider**, any party with whom the **Provider** has formed a consortium for the purposes of the **Tender**) that need to know the relevant **Confidential Information** for the **Tender** only, provided that it procures that each such person to whom the **Confidential Information** is disclosed complies with the obligations set out in this **Agreement** as if they were the **Recipient**.
- 1.5 Each party may disclose the **Confidential Information** to the minimum extent required by:
 - 1.5.1 any order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or taxation authority of competent jurisdiction;
 - 1.5.2 the rules of any listing authority or stock exchange on which its shares are listed; or
 - 1.5.3 the laws or regulations of any country to which its affairs are subject.

2 Limitations on obligations

The obligations set out in paragraph 1 shall not apply, or shall cease to apply, to **Confidential Information** which the **Recipient** can show to the **Disclosing Party's** reasonable satisfaction:

- 2.1 that it is, or becomes generally available to the public other than as a direct or indirect result of the information being disclosed by the **Recipient** in breach of this **Agreement**; or
- 2.2 was already lawfully known to the **Recipient** before it was disclosed by the **Disclosing Party**;
- 2.3 has been received by the **Recipient** from a third party source that is not connected with the **Disclosing Party** and that such source was not under any obligation of confidence in respect of that information; or
- 2.4 that is required to be disclosed by **National Grid** and/or **NGESO** in connection with the **Tender** or as part of its obligations under the **National Grid Transmission Licence**.

3 Return of the Confidential Information

- 3.1 If requested by the **Disclosing Party** at any time, the **Recipient** shall immediately destroy or return to the **Disclosing Party** (as the provider may reasonably require) all documents and other records of the **Confidential Information** that have been supplied to or generated by the **Recipient**. If the **Confidential Information** is stored in electronic form, the **Recipient** shall permanently erase all such **Confidential Information** from its computer and communications systems and devices used by it (to the extent technically practicable).
- 3.2 The **Disclosing Party** may request the **Recipient** to certify in writing that it has complied with its obligations in paragraph 3.1.

4 **Term and Termination**

- 4.1 If either party decides not to continue to be involved in the **Tender** with the other party, it shall notify that party immediately.
- 4.2 Notwithstanding any other provision of this **Agreement**, the provisions of this **Agreement** shall continue to bind each party after termination of discussions between the parties in relation to the **Tender** pursuant to paragraph 4.1 and shall continue to bind each party after termination of this **Agreement**.
- 4.3 If the **Provider** is awarded a **Black Start Contract**, the obligations under this **Agreement** shall be superseded by the provisions of such **Black Start Contract**.

5 **No Announcement**

The **Provider** shall not make any public announcement or statement regarding the **Tender** or its participation in the **Tender**, and/or the status of its power station or interconnection as a potential Black Start plant.

6 **Validity**

This **Agreement** shall come into effect on the date the **Provider** duly signs and dates the **Agreement**. The **Provider** shall return the duly signed and dated copy to **National Grid** as soon as reasonably practicable after signing.

7 **Successors and Assigns**

- 7.1 The terms and conditions of this **Agreement** shall insure for the benefit of and be binding upon the respective permitted successors and assigns of the parties, provided, however, that no party may assign its rights or obligations under this **Agreement** without the other party's prior written consent.
- 7.2 Nothing in this **Agreement**, express or implied, is intended to confer upon any party, other than the parties to this **Agreement** or their respective authorised successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this **Agreement**, except as expressly provided in this latter agreement.

8 **Acknowledgment and inadequacy of damages**

- 8.1 Where the **Provider** is participating in the **Tender** with another party or parties ("**Consortium**"), the **Provider** hereby represents, warrants and confirms that the **Provider**:
 - 8.1.1 has all requisite power and authority, and has taken all requisite corporate action, to enable it to enter into and perform this **Agreement** for and on behalf of all members of the **Consortium**;
 - 8.1.2 is entering into this **Agreement** for and on behalf of all members of the **Consortium** and that the entry into this **Agreement** shall be valid, legal and binding obligations on all members of the **Consortium**;
 - 8.1.3 does not require any further consent, approval or authority of any member of the **Consortium** to enter into or perform the obligations under this **Agreement**; and
 - 8.1.4 shall procure that all members of the **Consortium** comply with the obligations and requirements under this **Agreement**.

- 8.2 Each party acknowledges and agrees that the **Confidential Information** may not be accurate or complete and it makes no warranty or representation (whether express or implied) concerning the **Confidential Information**, or its accuracy or completeness.
- 8.3 Without prejudice to any other rights or remedies that each party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this **Agreement** by the other party. Accordingly, each party shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this **Agreement**.
- 8.4 No failure in exercising any right, power of privilege under this **Agreement** will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this **Agreement**.

9 **Governing law and jurisdiction**

- 9.1 **Governing law.** This **Agreement** and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 9.2 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this **Agreement** or its subject matter or formation.

Please sign and return a copy of this **Agreement** if you agree to its terms.

Yours faithfully,

.....

Signed for and on behalf of National Grid Electricity System Operator Limited

We acknowledge receipt and agree to the terms of this Agreement:

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Signed by on behalf of [Name of Provider]

Date: []