

**DATED**

**20[ ]**

**NATIONAL GRID ELECTRICITY SYSTEM  
OPERATOR LIMITED (1)**

and

**[ ] (2)**

---

**COMMERCIAL SERVICES AGREEMENT  
FOR [ ]**

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**CONTRACT LOG NO: [ ]**

**SUBJECT TO CONTRACT**

**DRAFT [ ]**

**[DATE]**

**REF: [ ]**

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**BETWEEN:**

- (1) **NATIONAL GRID ELECTRICITY SYSTEM OPERATOR LIMITED**, a company registered in England (company number 11014226) whose registered office is at 1-3 Strand, London, WC2N 5EH (the “**Company**” which expression shall include its permitted successors and/or assigns); and
  - (2) [REDACTED] a company registered in England under company number [REDACTED] whose registered office is at [REDACTED] (the “**Generator**” which expression shall include its permitted successors and/or assigns),
- each a “**Party**” and together the “**Parties**”.

**BACKGROUND:**

- (A) The **Connection and Use of System Code** and the **Grid Code** require the **Generator** to provide to the **Company** the **Part 1 System Ancillary Services** needed for **System** reasons, and the terms for the provision of and payment for these **Ancillary Services** are set out in the **Connection and Use of System Code** and associated **Mandatory Services Agreements**.
- (B) For the purposes of the operation and use of the **National Electricity Transmission System**, the **Company** also has a requirement for **Agreed Ancillary Services**, which are provided to the **Company** only where agreement is reached between the **Company** and the party concerned.
- (C) This **Agreement** sets out **Agreed Ancillary Services** which the **Generator** has agreed to provide to the **Company** from the **BM Units** within its [REDACTED] **Power Station** and details the prices to be paid by the **Company** for such **Ancillary Services**.
- (D) This **Agreement** is in addition to the **Mandatory Services Agreement** entered into by the **Parties** pursuant to the **Connection and Use of System Code** effective from the CUSC Implementation Date (as amended from time to time) (the “**Mandatory Services Agreement**”), which sets out the provisions for payment by the **Company** for the **Part 1 System Ancillary Services** required to be provided by the **Generator** from the **BM Units** within its [REDACTED] **Power Station**.

**IT IS AGREED as follows:**

1. **DEFINITIONS**
  - 1.1 In this **Agreement** unless the subject matter or context otherwise requires or is inconsistent therewith, or unless expressly defined herein the definitions set out in **Schedule A** shall apply.
  - 1.2 In this **Agreement**:
    - 1.2.1 except where the context otherwise requires, references to a particular Sub-Clause, Clause, Paragraph, Appendix or Schedule shall be a reference to that Sub-Clause, Clause, Paragraph, Appendix or Schedule in or to this **Agreement**;
    - 1.2.2 the table of contents and headings are inserted for convenience only and shall 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 except where the context otherwise requires, any reference to an Act of Parliament or any Part or Section or other provision of, or Schedule to, an Act of Parliament shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all instruments, orders or regulations then in force and made under or deriving validity from the relevant Act of Parliament;
- 1.2.5 references to the masculine shall include the feminine and references in the singular shall include references in the plural and vice versa; and
- 1.2.6 except where the context otherwise requires, 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 effect on the **Effective Date** and without prejudice to the earlier termination of individual clauses in this **Agreement**, shall continue in force and effect until this **Agreement** is terminated.

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

## 8. PAYMENT

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

## 9. LIMITATION OF LIABILITY

- 9.1 Subject to Sub-Clause 9.2, save where any provision of this **Agreement** provides for an indemnity, the **Parties** agree and acknowledge that neither **Party** (the “**Party Liable**”) nor any of its officers, employees or agents shall be liable to the other **Party** for loss arising from any breach of this **Agreement** other than for loss directly resulting from such breach and which at the date of this **Agreement** was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:-
  - 9.1.1 physical damage to the property of the other **Party**, its officers, employees or agents; and/or
  - 9.1.2 the liability of such other **Party** to any other person for loss in respect of physical damage to the property of any person subject, for the avoidance of doubt, to the

requirement that the amount of such liability claimed by such other Party should be mitigated in accordance with general law,

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

- 9.2 Nothing in this **Agreement** shall exclude or limit the liability of the **Party Liable** for death or personal injury resulting from the negligence of the **Party Liable** or any of its officers, employees or agents and the **Party Liable** shall indemnify and keep indemnified the other **Party**, its officers, employees or agents, from and against all such and any loss or liability which such other **Party** may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the **Party Liable** or any of its officers, employees or agents.
- 9.3 Subject to Sub-Clause 9.2 and save where any provision of this **Agreement** provides for an indemnity neither the **Party Liable** nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other **Party** for:-
- 9.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 9.3.2 any indirect or consequential loss; or
- 9.3.3 loss resulting from the liability of the other **Party** to any other person howsoever and whensoever arising save as provided in Sub-Clause 9.1.2 and Sub-Clause 9.2.
- 9.4 Each **Party** acknowledges and agrees that the other **Party** holds the benefit of Sub-Clauses 9.1, 9.2 and 9.3 for itself and as trustee and agent for its officers, employees and agents.
- 9.5 The rights and remedies provided by this **Agreement** to the **Parties** are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of this **Agreement**, including without limitation any rights either **Party** may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the **Parties** hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute and releases the other **Party**, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in this **Agreement** and undertakes not to enforce any of the same except as expressly provided herein.
- 9.6 For the avoidance of doubt, the **Parties** acknowledge and agree that nothing in this **Agreement** shall exclude or restrict or otherwise prejudice or affect any of the rights, powers, privileges, remedies, duties and obligations of the **Secretary of State** or the **Authority** under the **Act**, any **Licence** or otherwise howsoever.
- 9.7 Each of Sub-Clauses 9.1, 9.2 , 9.3 and 9.4 shall:-
- 9.7.1 be construed as a separate and severable contract term, and if one or more of such Sub-Clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such Sub-Clauses shall remain in full force and effect and shall continue to bind the **Parties**; and
- 9.7.2 survive termination of this **Agreement**.

9.8 For the avoidance of doubt, nothing in this Clause 9 shall prevent or restrict any **Party** enforcing any obligation (including suing for a debt) owed to it under or pursuant to this **Agreement**.

9.9 Each **Party** acknowledges and agrees that the provisions of this Clause 9 have been the subject of discussion and negotiation and are fair and reasonable having regard to the circumstances as at the date of this **Agreement**.

## 10. **METERING**

10.1 The relationship between the **Parties** with respect to **Energy Metering Equipment** shall be regulated in accordance with Sections K and L of the **Balancing and Settlement Code**.

10.2 The relationship between the **Parties** with respect to **Operational Metering Equipment** shall be regulated by Paragraph 6.7.3 of the **Connection and Use of System Code**.

## 11. **TERMINATION**

11.1 This **Agreement** shall automatically terminate upon:-

11.1.1 the **Generator** ceasing to be party to the **BSC Framework Agreement**; or

11.1.2 the **Generator** ceasing to be party to the **CUSC Framework Agreement**; or

11.1.3 revocation or withdrawal of the **Generation Licence** or the **Transmission Licence**.

11.2 Upon termination of any **Bilateral Agreement**, this **Agreement** shall automatically be terminated to the extent that it applies to the **BM Units** at, and **Agreed Ancillary Services** supplied or made available from, the **Connection Site** which is the subject of the said **Bilateral Agreement**.

11.3 Where the **Generator** serves notice to **Disconnect** the **Generator's Equipment** at a **Connection Site** under a **Bilateral Agreement** or the **Connection and Use of System Code**, the **Parties** shall discuss the possibility of terms being offered for the continued provision (following the date when **Disconnection** would otherwise have occurred) of any **Agreed Ancillary Service** which was being provided by the **Generator** at that **Connection Site** immediately before service of the notice to **Disconnect** and for which the **Company** is unable to find a reasonable alternative.

11.4 Without purporting to exhaustively specify within this Sub-Clause 11.4 the circumstances in which no payments will be made under this **Agreement**, no payments will be made under this **Agreement** (save for the initial payment), in respect of an **Agreed Ancillary Service** to be provided from a **BM Unit** in relation to any period when the **BM Unit** or **CCGT Unit** or the **Generator's Equipment** at any **Connection Site** used by that **BM Unit** or **CCGT Unit** is prevented from providing that **Agreed Ancillary Service** by reason of a circumstance of **Force Majeure** or is **Deenergised** or **Disconnected** for any reason pursuant to the relevant **Bilateral Agreement** or the **Connection and Use of System Code**.

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

11.5 In the event that:-

11.5.1 The **Company** shall fail to pay (other than by inadvertent error in funds transmission which is discovered by the **Generator**, notified to the **Company** and corrected within 48 hours following such notification) any amount properly due or owing from it pursuant to this **Agreement** according to its terms and such non-payment continues unremedied and not disputed in good faith and upon reasonable grounds at the expiry of 7 **Business Days** immediately following receipt by the **Company** of written notice from the **Generator** of such non-payment; or

11.5.2 in respect of the **Company**:-

11.5.2.1 an order of the High Court is made or an effective resolution passed for its insolvent winding-up or dissolution; or

11.5.2.2 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

11.5.2.3 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

11.5.2.4 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**);

11.5.2.5 it is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986 save that such section shall have effect as if for £750.00 there was inserted £250,000 (and the **Company** shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by it with recourse to all appropriate measures and procedures);

and in any such case within 28 days of appointment of the liquidator, receiver, administrative receiver, administrator nominee or other similar officer, such person has not provided to the **Generator** a guarantee of future performance by the **Company** of this **Agreement** in such form and amount as the **Generator** may reasonably require, the **Generator** may declare by notice in writing to the **Company** that such event has become an event of default. Once the **Generator** has given due and proper notice of an event of default this **Agreement** shall terminate.

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

## 12. **ASSIGNMENT**

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

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

12.1.2 upon the disposal of the whole of the **Generator's** business or undertaking, the **Generator** may transfer its rights and obligations under this **Agreement** to the purchaser thereof provided that the transfer to the purchaser of all of its rights and

obligations under the **Connection and Use of System Code**, all **Bilateral Agreements** (and associated **Construction Agreements**) and all **Mandatory Services Agreements** shall have taken place;

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

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

### 13. **CONFIDENTIALITY AND ANNOUNCEMENTS**

#### 13.1 **General Restrictions**

13.1.1 Subject to the exceptions provided in Sub-Clause 13.2 (and to the extent otherwise expressly permitted by this **Agreement**, neither **Party** shall, at any time, whether before or after the expiry or sooner termination of this **Agreement**, without the prior consent of the other **Party** in writing (in the case of approval by the **Generator**, 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**):-

13.1.1.1 any of the contents of this **Agreement**;

13.1.1.2 any commercially confidential information relating to the negotiations concerning the entering into of this **Agreement**;

13.1.1.3 any commercially confidential information which may come to a **Party's** knowledge in the course of such negotiations; or

13.1.1.4 any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other **Party**.

13.1.2 Each **Party** undertakes to use information referred to in Sub-Clause 13.1.1 and disclosed to it by the other **Party** solely for the purposes of this **Agreement** and shall not use it for any other purpose or for the purposes of any third party.

#### 13.2 **Exceptions**

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

13.2.1.1 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;

- 13.2.1.2 which is required by law or pursuant to the rules of the **Electricity 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 Arbitration Association** in England and Wales or pursuant to the rules or regulations of the Financial Services Authority to receive the same;
- 13.2.1.3 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;
- 13.2.1.4 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing **Party** is a party;
- 13.2.1.5 in accordance with the provisions of the **Balancing and Settlement Code** or pursuant to any **Licence** of the **Party** concerned;
- 13.2.1.6 by either **Party** to any parent undertaking on a “need to know” basis only;
- 13.2.1.7 to any authorised consultants, banks, financiers, insurers or professional advisers to the disclosing **Party**;
- 13.2.1.8 by the **Generator** to a third party who is a party to a power purchase agreement and/or tolling agreement in respect of the electricity generated by the **BS Genset** and with whom all (or some of) the risks and benefits arising from the **Agreement** will be shared provided such party is subject to confidentiality undertakings which are no less onerous than those to which the **Generator** is subject to under this **Agreement**;
- 13.2.1.9 by the **Company** to any parent, subsidiary or fellow subsidiary undertaking; or
- 13.2.1.10 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**), any **Mandatory Services Agreement**, the **Grid Code**, the **Distribution Code** and the **Fuel Security Code** (if any)) to which both the **Parties** have agreed to be bound.

13.2.2 In this Sub-Clause 13.2, the words “parent undertaking”, “subsidiary undertaking” and “fellow subsidiary undertaking” shall have the meanings as provided in sections 1161 and 1162 of the Companies Act 2006.

### 13.3 **Third Parties**

Before either **Party** discloses any information in any of the circumstances described in Sub-Clauses 13.2.1.6 to 13.2.1.8 (other than to its authorised professional advisers), it shall notify the other **Party** of its intention to make such disclosure and procure the execution and delivery to that **Party** of an undertaking executed by the person to whom the disclosure is proposed to be made being in the same terms mutatis mutandis as the undertakings contained in this Clause 13.

#### 13.4 **Public announcements**

13.4.1 Subject to Sub-Clause 13.4.2, 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 (in the case of approval by the **Generator**, such approval not to be unreasonably withheld or delayed).

13.4.2 Neither **Party** shall be prohibited from issuing or making any such public announcement or statement if it is necessary to do so in order to comply with any applicable law or the regulations of any recognised stock exchange upon which the share capital of such **Party** is from time to time listed or dealt in.

#### 13.5 **Procedures**

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

13.5.1 such information is disseminated within their respective organisations on a “need to know” basis only;

13.5.2 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

13.5.3 any copies of such information, whether in hard copy or computerised form, will clearly identify the information as confidential.

#### 13.6 **Termination**

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

#### 14. **ADDITIONAL COSTS**

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

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

14.1.2 the **Company** is of the opinion that by reason of any change in or amendment to the **Grid Code** or any statutory or regulatory obligation coming into force after the date hereof the **Generator** is able to make savings in the cost and expense of providing any **Agreed Ancillary Service** from any **BM Unit** or **CCGT Unit**,

then either the **Generator** or the **Company** as the case may be may by notice in writing require that the **Parties** shall endeavour to agree any adjustment in the rates and prices for the **Agreed Ancillary Service** and the **BM Unit** or **CCGT Unit** concerned as set out in this **Agreement** having regard to the **Charging Principles** (if any) set out therein. If the **Parties** cannot agree to an adjustment in the rates and prices for the **Agreed Ancillary Service** as set out in this **Agreement** within a

month of receipt by either **Party** of the other **Party**'s written notice, either **Party** may refer the matter to arbitration for determination pursuant to Clause 19 (*Dispute Resolution*) (and any arbitrator appointed shall exercise his powers pursuant to subparagraph 12.1 of the rules of the **Electricity Supply Arbitration Association**).

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

## 15. **WAIVER**

No delay by or omission of any **Party** in exercising any right, power, privilege or remedy under this **Agreement** shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Payment of any sum or the submission of any **Provisional Monthly Statement** or **Final Monthly Statement** by the **Company** to the **Generator** under this **Agreement** shall not operate to impair or be construed as a waiver of any right, power, privilege or remedy the **Company** may have against the **Generator** under this **Agreement** and/or the **Grid Code** and/or the **Connection and Use of System Code** and/or any **Bilateral Agreement** (including any associated **Construction Agreement**) and/or any **Mandatory Services Agreement**.

## 16. **NOTICES**

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

16.2 Any notice or other communication to be given by one **Party** to the other **Party** under, or in connection with the matters contemplated by, this **Agreement** shall be in writing and shall be given by letter delivered by hand or sent by first class prepaid post (airmail if overseas) or facsimile, and shall be deemed to have been received:-

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

16.2.2 in the case of first class prepaid post, on the second day following the day of posting or (if sent airmail from overseas) on the fifth day following the day of posting; or

16.2.3 in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 17.00 hours on the day of acknowledgement) and in any other case on the day following the day of acknowledgement.

## 17. COUNTERPARTS

This **Agreement** may be executed in any number of counterparts and by the different **Parties** on separate counterparts, each of which when executed and delivered shall constitute an original but all the counterparts shall together constitute but one and the same instrument. For the purposes of this Clause 17, the delivery of a facsimile copy of a signed counterpart of this **Agreement** shall be deemed to be valid signature thereof provided that the **Party** so delivering a facsimile hereby undertakes to deliver an original copy of this **Agreement** forthwith following such facsimile transmission.

## 18. VARIATIONS

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

18.2 The **Company** and the **Generator** shall effect any amendment required to be made to this **Agreement** by the **Authority** as a result of a change in the **Transmission Licence** or an order or directions made pursuant to the **Act** or a **Licence** or as a result of settling any of the terms hereof or otherwise as required by this **Agreement** and the **Generator** hereby authorises and instructs the **Company** to make any such amendment on its behalf and undertakes not to withdraw, qualify or revoke such authority or instruction at any time.

## 19. DISPUTE RESOLUTION

19.1 Save where expressly stated in this **Agreement** to the contrary and subject to any contrary provision of the **Act** or any **Licence** or the rights, powers, duties and obligations of the **Authority** or the **Secretary of State** under the **Act**, any **Licence** or otherwise howsoever, any dispute or difference of whatever nature howsoever arising under or 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 Arbitration Association** in force from time to time.

19.2 Whatever the nationality, residence or domicile of either **Party** and wherever the dispute or difference or any part thereof arose, the law of England shall be the proper law of any reference to arbitration hereunder and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 (notwithstanding anything in section 108 thereof) shall apply to any such arbitration wherever the same or any part of it shall be conducted.

## 20. JURISDICTION

20.1 Subject and without prejudice to Clause 19 (*Dispute Resolution*) and to Sub-Clause 20.4, both **Parties** irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this **Agreement** and that accordingly any suit, action or proceeding (together in this Clause 20 referred to as "**Proceedings**") arising out of or in connection with this **Agreement** may be brought to such courts.

20.2 Each **Party** irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any **Proceedings** in any such court as is referred to in this Clause 20 and any claim that any such **Proceedings** have been brought in an inconvenient forum and further irrevocably agrees that judgment in any proceedings

brought in the courts of England and Wales shall be conclusive and binding upon such **Party** and may be enforced in the courts of any other jurisdiction.

20.3 Each **Party** which is not incorporated in any part of **Great Britain** agrees that if it does not have, or shall cease to have, a place of business in **Great Britain** it will promptly appoint, and shall at all times maintain, a person in **Great Britain** to accept service of process on its behalf in any **Proceedings** in **Great Britain**.

20.4 For the avoidance of doubt nothing contained in the foregoing provisions of this Clause 20 shall be taken as permitting a party to commence **Proceedings** in the courts where this **Agreement** otherwise provides for **Proceedings** to be referred to arbitration.

## 21. **GOVERNING LAW**

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

## 22. **SEVERANCE OF TERMS**

If any provision of this **Agreement** is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the Commission of the European Communities or by order of the **Secretary of State**, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this **Agreement** which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

## 23. **ENTIRE AGREEMENT**

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

## 24. **BILATERAL AGREEMENT**

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

## 25. **RIGHTS OF THIRD PARTIES**

The **Parties** hereby acknowledge and agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that no rights, powers or benefits are or shall be

conferred on any person pursuant to this **Agreement** save as expressly provided in this **Agreement**.

## 26. **FORCE MAJEURE**

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

26.2 The **Party** affected by the **Force Majeure** shall give to the other **Party** immediately upon becoming aware of an event or circumstances of **Force Majeure**, a written communication describing the **Force Majeure** (including, without limitation, the nature of the occurrence and its expected duration) and the obligations which it is prevented from performing and shall continue to furnish regular reports with respect thereto to the other **Party** during the period of **Force Majeure**.

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

26.4 For the avoidance of doubt the non-performance of either **Party's** obligations pursuant to this **Agreement** arising prior to the event or circumstance of **Force Majeure**, shall not be excused as a result of the event or circumstance of **Force Majeure**.

26.5 Either **Party** shall have a right to terminate the provisions of this **Agreement** if a **Party** has been prevented from performing its obligations thereunder due to an event or circumstance of **Force Majeure** for a continuous period of 6 calendar months.

## 27. **ANTI-BRIBERY**

27.1 Each **Party** shall:

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

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

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

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

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

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

**SIGNED** on behalf of )

**NATIONAL GRID ELECTRICITY** )

**SYSTEM OPERATOR LIMITED** )

**SIGNED** on behalf of )

[ ] )

DRAFT

## SCHEDULE A

### FURTHER DEFINITIONS

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

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

<b>“Commercial Ancillary Services”</b>	<b>Ancillary Services</b> other than the <b>System Ancillary Services</b> ;
<b>“Connection and Use of System Code (CUSC)”</b>	the <b>Connection and Use of System Code</b> designed by the <b>Secretary of State</b> as from time to time modified;
<b>“Connection Site”</b>	each location more particularly described in the relevant <b>Bilateral Agreement</b> at which the <b>Generator’s Equipment</b> and <b>Transmission Connection Assets</b> required to connect the <b>Generator</b> to the <b>National Electricity Transmission System</b> are situated or at which the <b>Generator’s Equipment</b> is connected to a <b>User System</b> ;
<b>“Construction Agreement”</b>	as defined in the <b>CUSC</b> ;
<b>“CUSC Framework Agreement”</b>	the meaning attributed to it in the <b>Transmission Licence</b> ;
<b>“Customer”</b>	a person to whom electrical power is provided (whether or not he is the same person as the person who provides the electrical power) other than power to meet <b>Station Demand</b> of that person;
<b>“Deenergise”</b>	the movement of any isolator breaker or switch or the removal of any fuse whereby no <b>Electricity</b> can flow to or from the relevant <b>System</b> at a <b>Connection Site</b> through the <b>Generator’s Equipment</b> and “ <b>Deenergised</b> ” shall be construed accordingly;
<b>“Demand”</b>	the demand of MW and Mvar of <b>Electricity</b> ;
<b>“Derogation”</b>	a direction issued by the <b>Authority</b> which relieves the <b>Generator</b> from its obligation under the <b>Generation Licence</b> to comply with such parts of the <b>Grid Code</b> as may be specified in such direction;
<b>“Despatch Equipment”</b>	means the equipment (including, without limitation, the cables) owned by the <b>Generator</b> through which information flows electronically between certain parts of the equipment comprising the <b>Monitoring and Despatch Equipment</b> but excluding electronic data logging equipment;
<b>“Desynchronisation”</b>	the act of taking a <b>BM Unit</b> off a <b>System</b> to which it has been <b>Synchronised</b> by opening any connecting circuit breaker and “ <b>Desynchronised</b> ” shall be construed accordingly;
<b>“Disconnect”</b>	permanent physical disconnection of the <b>Generator’s Equipment</b> at any given <b>Connection Site</b> and “ <b>Disconnection</b> ” shall be construed accordingly;
<b>“Distribution Code”</b>	the <b>Distribution Code</b> drawn up by <b>Public Distribution System Operators</b> pursuant to the terms of their

	respective <b>Licences</b> as from time to time revised in accordance with those <b>Licences</b> ;								
<b>“Distribution System”</b>	the meaning attributed to in the Distribution Connection and Use of System Agreement;								
<b>“Distribution Licence”</b>	a licence issued under section 6(1)(c) of the <b>Act</b> ;								
<b>“Effective Date”</b>	the date hereof;								
<b>“Electricity”</b>	<b>Active Energy</b> and <b>Reactive Energy</b> ;								
<b>“Electricity Arbitration Association”</b>	the meaning attributed to it in the <b>Grid Code</b> ;								
<b>“Embedded”</b>	having a direct connection to a <b>User System</b> or the <b>System</b> of any <b>User</b> to which <b>Customers</b> and/or <b>Power Stations</b> are connected such connection being either a direct connection or a connection via a busbar of another <b>User</b> or of the <b>Company</b> (but with no other connection to the <b>National Electricity Transmission System</b> );								
<b>“Energy” or “Active Energy”</b>	the electrical energy produced, flowing or supplied by an electric circuit during a time interval, being the integral with respect to time of the instantaneous power, measured in units of Watt-hours or standard multiples thereof i.e.  <table border="0" style="margin-left: 40px;"> <tr> <td>1000 Wh =</td> <td>1kWh</td> </tr> <tr> <td>1000 kWh=</td> <td>1MWh</td> </tr> <tr> <td>1000 MWh</td> <td>= 1GWh</td> </tr> <tr> <td>1000 GWh</td> <td>= 1TWh</td> </tr> </table>	1000 Wh =	1kWh	1000 kWh=	1MWh	1000 MWh	= 1GWh	1000 GWh	= 1TWh
1000 Wh =	1kWh								
1000 kWh=	1MWh								
1000 MWh	= 1GWh								
1000 GWh	= 1TWh								
<b>“Energy Metering Equipment”</b>	the meaning attributed to the phrase “Metering Equipment” in the <b>Balancing and Settlement Code</b> ;								
<b>“Enhanced Reactive Power Services”</b>	the meaning attributed to it in the <b>CUSC</b> ;								
<b>“Externally Interconnected System Operator”</b>	the meaning attributed to it in the <b>Grid Code</b> ;								
<b>“Final Monthly Statement”</b>	the meaning attributed to it in the <b>CUSC</b> ;								
<b>“Force Majeure”</b>	for the purposes of Clause 26 ( <i>Force Majeure</i> ) in relation to either <b>Party</b> to this <b>Agreement</b> any event or circumstance which is beyond the reasonable control of such <b>Party</b> (not being, without limitation an event or circumstance caused by the negligence or lack of care and attention of that <b>Party</b> or its officers or employees or a failure to maintain such <b>Plant</b> in accordance with <b>Good Industry Practice</b> or lack of funds of that <b>Party</b> ) but								

subject thereto including act of God, strike, lockout or other industrial disturbance, act of the public enemy, war declared or undeclared, threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, governmental restraint, Act of Parliament, other legislation, bye law and Directive (not being any order, regulation or direction under Section 32, 33, 34 and 35 of the Electricity Act 1989);

<b>“Gas Turbine Unit”</b>	a <b>Generating Unit</b> driven by a gas turbine, (for instance by an aero-engine);
<b>“Generating Unit”</b>	unless otherwise provided in this <b>Agreement</b> , any <b>Apparatus</b> which produces electricity including for the avoidance of doubt a <b>CCGT Unit</b> ;
<b>“Generation Licence”</b>	the licence granted to the <b>Generator</b> pursuant to section 6(1)(a) of the <b>Act</b> ;
<b>“Generator’s Equipment”</b>	the <b>Plant</b> and <b>Apparatus</b> owned by the <b>Generator</b> (ascertained in the absence of agreement to the contrary by reference to the principles of ownership set out in <b>CUSC</b> ) which: <ol style="list-style-type: none"><li>a. is connected to <b>Transmission Connection Assets</b> forming part of any particular <b>Connection Site</b> to which the <b>Generator</b> wishes so to connect; or</li><li>b. is connected to a <b>User System</b> to which the <b>Generator</b> wishes so to connect;</li></ol>
<b>“Good Industry Practice”</b>	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances;
<b>“Grid Code”</b>	the <b>Grid Code</b> drawn up pursuant to the <b>Transmission Licence</b> as from time to time revised in accordance with the <b>Transmission Licence</b> (and references in this <b>Agreement</b> to any specific provision or part of the <b>Grid Code</b> shall be construed as references to such provision or part as from time to time amended);
<b>“Grid Code CC”</b>	the Connection Conditions of <b>Grid Code</b> ;
<b>“Grid Code OC”</b>	the Operating Codes of the <b>Grid Code</b> ;
<b>“Grid Code PC”</b>	the Planning Code of the <b>Grid Code</b> ;

<b>“Grid Operator”</b>	the person who for the time being and from time to time is required by the terms of a <b>Licence</b> (inter alia) to implement the <b>Grid Code</b> ;
<b>“Grid Supply Point”</b>	a point of supply from the <b>National Electricity Transmission System</b> to <b>Network Operators</b> or <b>Non-Embedded Customers</b> ;
<b>“Licence”</b>	any one or more as appropriate of the <b>Licences</b> granted pursuant to section 6 of the <b>Act</b> ;
<b>“Load”</b>	the <b>Active Power</b> or <b>Reactive Power</b> as the context requires generated, transmitted or distributed;
<b>“Mandatory Services Agreement”</b>	the meaning attributed to it in the <b>CUSC</b> ;
<b>“Maximum Export Limit”</b>	the meaning attributed to the term in Appendix 1 of <b>Grid Code BC1</b> ;
<b>“National Electricity Transmission System”</b>	has the meaning attributed to it in the <b>CUSC</b> ;
<b>“Network Operator”</b>	a person with a <b>User System</b> directly connected to the <b>National Electricity Transmission System</b> to which <b>Customers</b> and/or <b>Power Stations</b> (not forming part of a <b>User System</b> ) are connected, acting in its capacity as operator of the <b>User System</b> , but shall not include a person acting in the capacity of <b>Externally Interconnected System Operator</b> ;
<b>“Non-Embedded Customer”</b>	a <b>Customer</b> except for a <b>Network Operator</b> acting in its capacity as such receiving electricity direct from the <b>National Electricity Transmission System</b> irrespective of from whom it is supplied;
<b>“Operational Metering Equipment”</b>	meters, instrument transformers (both voltage and current), transducers metering protection equipment including alarms circuitry and their associated outstations as may be necessary for the purposes of the <b>Grid Code CC6.5.6</b> and the corresponding provision of the relevant <b>Distribution Code</b> ;
<b>“Output”</b>	the actual <b>Active Power</b> or <b>Reactive Power</b> output achieved by a <b>BM Unit</b> ;
<b>“Part 1 System Ancillary Services”</b>	the meaning attributed to it in <b>Grid Code CC8.1</b> ;
<b>“Part 2 System Ancillary Services”</b>	the meaning attributed to it in <b>Grid Code CC8.1</b> ;
<b>“Party”</b>	each person for the time being and from time to time a party of this <b>Agreement</b> and any successors in title to, or permitted assigns of, such person and <b>“Parties”</b> shall be construed accordingly;

<b>“Party Liable”</b>	the meaning attributed to it in Sub-Clause 9.1;
<b>“Plant”</b>	fixed and movable items used in the generation and/or supply and/or transmission of electricity other than <b>Apparatus</b> ;
<b>“Physical Notification”</b>	the meaning attributed to it in the <b>Grid Code</b> ;
<b>“Power Station”</b>	an installation comprising one or more <b>Generating Units</b> (even where separately sited) owned or controlled by the same <b>Generator</b> which may reasonably be considered as being managed as one <b>Power Station</b> , for the purposes of this <b>Agreement</b> being the <b>Generator’s Power Station</b> at [ ];
<b>“Proceedings”</b>	the meaning attributed to it in Sub-Clause 20.1 ( <i>Jurisdiction</i> );
<b>“Provisional Monthly Statement”</b>	the meaning attributed to it in the <b>CUSC</b> ;
<b>“Public Distribution System Operator”</b>	a holder of a <b>Distribution Licence</b> who was the holder of, or is a successor to a company which was the holder or, a <b>Public Electricity Supply Licence</b> , relating to distribution activities in <b>Great Britain</b> ;
<b>“Public Electricity Supply Licence”</b>	a licence issued under section 6(1)(c) of the <b>Act</b> prior to the coming into force of section 30 of the Utilities Act 2000;
<b>“Reactive Energy”</b>	the integral with respect to time of <b>Reactive Power</b> ;
<b>“Reactive Power”</b>	the product of voltage and current and the sine of the phase angle between them measured in units of voltamperes reactive and standard multiples thereof i.e.,  1000 Var = 1kvar 1000 kVar= 1Mvarr
<b>“Remote Transmission Assets”</b>	any <b>Plant</b> and <b>Apparatus</b> or meters owned by the <b>Company</b> which: (a) are embedded in a <b>User System</b> and which are not directly connected by <b>Plant</b> and/or <b>Apparatus</b> owned by the <b>Company</b> to a sub-station owned by the <b>Company</b> ; and (b) are by agreement between the <b>Company</b> and such <b>User</b> under the direction and control of such <b>User</b> ;
<b>“Secretary of State”</b>	the meaning attributed to it in the <b>Act</b> ;
<b>“Settlement Days”</b>	the meaning attributed to it in the <b>CUSC</b> ;
<b>“Settlement Period”</b>	a period of 30 minutes ending on the hour or half hour in each hour during a day;
<b>“Station Demand”</b>	the meaning attributed to it in the <b>CUSC</b> ;

<b>“Steam Unit”</b>	a <b>Generating Unit</b> whose primes mover converts the heat-energy in steam to mechanical energy;
<b>“System”</b>	any <b>User System</b> or the <b>National Electricity Transmission System</b> as the case may be;
<b>“System Ancillary Services”</b>	<b>Part 1 System Ancillary Services</b> and <b>Part 2 System Ancillary Services</b> ;
<b>“Transmission Connection Assets”</b>	the meaning attributed to it in the <b>CUSC</b> ;
<b>“Transmission Licence”</b>	the licence granted to the <b>Company</b> under section 6(1)(b) of the <b>Act</b> ;
<b>“User”</b>	a person who is party to the <b>CUSC Framework Agreement</b> other than the <b>Company</b> ; and
<b>“User System”</b>	any <b>System</b> owned or operated by a <b>User</b> comprising:- <ul style="list-style-type: none"> <li>a. <b>Generating Units</b>; and/or</li> <li>b. systems consisting (wholly or mainly) of electric lines used for the distribution of electricity from <b>Grid Supply Points</b> or <b>Generating Units</b> or other entry points to the point of delivery to <b>Customers</b>, or other <b>Units</b>;</li> <li>c. and <b>Plant</b> and/or <b>Apparatus</b> connecting: <ul style="list-style-type: none"> <li>i. the <b>System</b> as described above; or</li> <li>ii. <b>Non-Embedded Customers</b> equipment;</li> </ul> </li> </ul> <p>to the <b>National Electricity Transmission System</b> or to the relevant other <b>User System</b>, as the case may be.</p> <p>The <b>User System</b> includes any <b>Remote Transmission Assets</b> operated by such <b>User</b> or other person and any <b>Plant</b> and/or <b>Apparatus</b> and meters owned or operated by the <b>User</b> or other person in connection with the distribution of electricity but does not include any part of the <b>National Electricity Transmission System</b>.</p>