**DATED [ ] 2016**

**DEPOSIT DEED**

BETWEEN

**National Grid Electricity Transmission plc**

and

**[ Limited]**

**THIS DEPOSIT DEED** is made on the day of 2016

**BETWEEN**:

1. **NATIONAL GRID ELECTRICITY TRANSMISSION PLC** a company registered in England and Wales (No 2366977) having its registered office at 1-3 Strand, London, WC2N 5EH ("**NGET**"); and

2. **[ ] LIMITED** a company registered in England and Wales (No. ) having its registered office at [ ] (the "**Company**").

**RECITALS**

A. This Deed is supplemental to the Invitation to Tender (“**ITT**”) issued by NGET on 15 April 2016 as revised and further issued by NGET on 27 June 2016 relating to the new balancing service of Enhanced Frequency Response.

B. The ITT requires a bid bond to be posted or, in lieu thereof, a letter of credit or cash deposit in the Relevant Amount.

C. The Company has or will pay the sum of [ ][[1]](#footnote-2) pounds sterling (£[ ][[2]](#footnote-3)) (the “**Relevant Amount**”) to NGET on or before the date of this Deed.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. In this Deed:
	1. The following words and expressions shall have the following meanings:
		1. **“Collateral Instrument”** means any note, bill of exchange, certificate of deposit or other negotiable or non‑negotiable instrument, guarantee, letter of credit, deposit agreement, indemnity or other assurance against financial loss, or any other document or instrument which contains or evidences an obligation (with or without security) to pay, discharge or be responsible directly or indirectly for, any indebtedness or liabilities of the Company, and includes any document or instrument creating or evidencing an encumbrance, however defined and includes, without limitation, an escrow agreement;
		2. “**Conditions Precedent**” has the meaning given to that term in the Contract;
		3. “**Contract**” means the contract for the provision of Enhanced Frequency Response to be entered into between NGET and the Company following a Contract Award;
		4. **“Contract Award”** means a contract award by NGET pursuant to the ITT in the event that the Company’s Tender Submission is successful;
		5. “**Deposit**” means the amount paid by the Company to NGET under this Deed, being the Relevant Amount, together with any interest that accrues on the Relevant Amount during such time as the Deposit is held in the Deposit Account;
		6. **“Deposit Account”** means the interest bearing deposit account, details of which NGET shall provide to the Company prior to the Tender Submission;
		7. “**Enhanced Frequency Response**” has the meaning given to that term in the Contract;
		8. “**Financial Collateral Arrangements Regulations**” means the Financial Collateral Arrangements (No 2) Regulations 2003 (SI 2003/3226) as amended by the Financial Collateral Arrangements (No 2) Regulations 2003 (Amendment) Regulations 2009 (SI 2009/2462) and the Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010 (SI 2010/2993);
		9. “**Indebtedness**” means a sum equal to the amount Deposit that the Company acknowledges and agrees shall be owing to NGET upon the occurrence of a Relevant Event;
		10. “**Long Stop Date**” has the meaning given to that term in the Contract;
		11. “**Offer**” means the offer of terms made by the Company as part of its Tender Submission to provide the service of Enhanced Frequency Response and which has not been withdrawn by the Company prior to the Contract Award;
		12. “**Post-Tender Milestones**” has the meaning given to that term in the Contract;
		13. **“PTM Date”** has the meaning given to that term in the Contract;
		14. “**Relevant Amount**” has the meaning given to it in Recital C above;
		15. “**Relevant Event**” means:

 (a) the Offer has been accepted by NGET and the Company fails to validly execute the Contract in breach of the ITT;

(b) the Company fails to satisfy the Post-Tender Milestones by the PTM Date in accordance with the Contract; or

(c) the Company fails to satisfy the Conditions Precedent by the Long Stop Date in accordance with the Contract; and

* + 1. “**Tender Submission**” means the Company’s submission in response to the ITT including the Offer.
	1. references to the singular shall include the plural and vice versa;
	2. references to Clauses are to the clauses of this Deed, unless otherwise stated.
1. NGET and the Company hereby acknowledge and agree that:
	1. the arrangements under this Deed constitute a financial collateral arrangement as that term is defined in the Financial Collateral Arrangements Regulations;
	2. neither the Deposit nor any part of it shall constitute a debt owed by NGET to the Company;
	3. the Company shall not deal with the Deposit or any part thereof (whether by way of assignment charge or otherwise) or be entitled to require repayment of the Deposit unless and until one of the conditions set out in Clauses 2.8.1, 2.8.2, 2.8.3 and 2.8.4 is satisfied;
	4. NGET is not obliged to secure any particular rate of interest on balances in the Deposit Account;
	5. the liability to taxation on any interest accrued on the Relevant Amount shall be borne by the party who ultimately entitled to that interest;
	6. until the occurrence of a Relevant Event, NGET shall hold the Deposit on trust for the Company in accordance with, and subject to, the terms of this Deed provided that NGET shall not be liable to the Company for any loss to the Deposit or any loss of interest arising from any act or default unless such loss arises from the wilful default or negligence of the Company;
	7. following the occurrence of a Relevant Event (and without prejudice to any other rights or remedies available to NGET), legal and beneficial ownership in the Deposit shall transfer to NGET and the trust shall terminate; and
	8. subject always to Clause 2.7, NGET shall repay the Deposit to the Company within ten (10) Business Days of the earlier to occur of:
		1. the date upon which NGET confirms to the Company that the Company has satisfied the Conditions Precedent (provided that such satisfaction occurs on or prior to the Longstop Date), such confirmation not to be unreasonably withheld or delayed;
		2. the Company withdrawing its Offer prior to the Contract Award as may be permitted and in accordance with the terms of the ITT;
		3. NGET notifying the Company in accordance with the ITT that its Offer has been unsuccessful; or
		4. NGET withdrawing from or terminating the ITT for any reason.
2. NGET shall notify the Company of the occurrence of a Relevant Event within 14 days of becoming aware of the occurrence of a Relevant Event provided always that such notification shall be without prejudice to NGET’s rights pursuant to Clause 2.7.
3. No failure or delay by NGET in exercising any power, right or remedy under this Deed or at law shall operate as a waiver of it nor shall any single or partial exercise or waiver of any such power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.
4. This Deed shall:
	1. be in addition to any present or future Collateral Instrument, right or remedy held by or available to NGET; and
	2. not be in any way prejudiced or affected by:
		1. the existence of any Collateral Instrument, rights or remedies; or
		2. any Collateral Instrument becoming wholly or in part void, voidable or unenforceable on any ground; or
		3. NGET dealing with, exchanging, varying, releasing or failing to perfect or enforce any Collateral Instrument; or
		4. NGET giving time for payment or indulgence or compounding with any person liable under a Collateral instrument.
5. The Company hereby acknowledges and agrees that:
	1. NGET shall not be obliged to make any claim or demand on the Company or to resort to any Collateral Instrument or other means of payment now or in future held by or available to it before enforcing this Deed;
	2. NGET shall not be obliged to apply any money or other property received or recovered in consequence of any enforcement or realisation of any Collateral Instrument or other payment in reduction of the Indebtedness; and
	3. no action taken or omitted by NGET pursuant to or in connection with any Collateral Instrument, the ITT or the Contract or other payment or any variation, modification, amendment, supplement, extension, reduction or replacement of any Collateral Instrument or the Contract shall discharge, reduce, prejudice or affect the liabilities or liability of the Company under this Deed.
6. Neither party may assign or transfer any of its rights or obligations under this Deed without the prior written consent of the other (not to be unreasonably withheld or delayed).
7. NGET’s rights under this Deed are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as NGET deems expedient.
8. A person who is not, or does not become, a party to this Deed (including any employee, officer, agent, representative or sub-contractor of any party) shall have no right to enforce under the Contracts (Rights of Third Parties) Act 1999 to enforce to enforce or to enjoy the benefit of any term of this Deed (other than permitted assignees or transferees in accordance with Clause 7).
9. Each of the provisions of this Deed is severable and distinct from the others. If at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality or unenforceability of the remaining provisions of this Deed shall not in any way be affected or impaired.
10. For the purposes of this Deed any notice or other communication required to be given by NGET or the Company to the other in writing under, or in connection with matters contemplated by, this Deed shall be sent to the following address and/or facsimile number and marked for the attention of the person named below:

NGET: National Grid Electricity Transmission plc

 System Operator

 National Grid House

 Warwick Technology Park

 Gallows Hill

 Warwick CV34 6DA

 Facsimile number: 01926 655630

 For the attention of: The Company Secretary

the Company [ ]

 [ ]

 Facsimile number: [ ]

 For the attention of: [ ]

1. This Deed shall be governed by and construed in accordance with English Law and :
	1. the courts of England have exclusive jurisdiction to settle any disputes arising out of or connected with this Deed (including a dispute regarding the existence validity or termination of this Deed or the consequences of its nullity) (a **“Dispute**”); and
	2. the parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes between them and accordingly that they will not argue to the contrary.

**IN WITNESS** the parties hereto have duly executed this Deed the day and year first before written

Executed as a Deed and the Common Seal

of **NATIONAL GRID ELECTRICITY TRANSMISSION PLC**

was affixed in the presence of a member of the

Board Sealing Committee

Executed as a Deed by **[ ]**

acting by

………………………….

Director

in the presence of:

Witness ………………………

Address ………………………

Occupation …………………..

1. Insert amount in words [↑](#footnote-ref-2)
2. Insert amount [↑](#footnote-ref-3)