

# **DEMAND SIDE BALANCING RESERVE**

## **STANDARD CONTRACT TERMS**

**WINTER 2014/15**  
**(June 2014 Tender)**

**Market Operation**  
**National Grid Electricity Transmission plc**  
**National Grid House**  
**Warwick Technology Park**  
**Gallows Hill**  
**Warwick**  
**CV34 6DA**

**Website:** [www.nationalgrid.com/uk](http://www.nationalgrid.com/uk)

## DEMAND SIDE BALANCING RESERVE – STANDARD CONTRACT TERMS

### 1. Definitions

In these DSBR Standard Contract Terms, the following terms shall have the respective meanings shown opposite each below:

- 1.1 “Adequate Procedures”: shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of the Bribery Act 2010);
- 1.2 “Agent”: the meaning ascribed to “Supplier Agent” in the Balancing and Settlement Code;
- 1.3 “Administration Fee”: where applicable, an amount (£/MW) selected by the Service Provider as identified in the DSBR Tendered Parameters calculated by reference to the Indicative DSBR Capability, being AF<sub>i</sub>;
- 1.4 “Anti-Bribery Laws”: all applicable laws, statutes, regulations and codes of mandatory application relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 1.5 “Associated Person”: has the meaning ascribed to it in section 8 of the Bribery Act 2010 and shall include but is not limited to any employees, agents and/or subcontractors of the Service Provider or NGET as applicable in relation to the provision of the DSBR Service;
- 1.6 “Authority”: the Gas and Electricity Markets Authority;
- 1.7 “Base Rate”: in respect of any Day the rate per annum which is equal to the base lending rate from time to time of Barclays Bank plc as at the close of business on the immediately preceding Business Day;
- 1.8 “Balancing and Settlement Code”: the document, as modified from time to time, setting out the Great Britain electricity balancing and settlement arrangements established by NGET pursuant to its transmission licence;
- 1.9 “Baseline Days”: for each relevant Settlement Period and DSBR Unit, the 10 Days of highest transmission system demand in the 365 Day period immediately prior to the Day in which that Settlement Period falls as more particularly calculated in accordance with the methodology in Annex 1;
- 1.10 “Baseline Demand Profile”: a deemed half hourly demand (or output) profile for a DSBR Unit for a Settlement Period, calculated by NGET, being the arithmetic mean average of the half-hourly Metered Consumptions for that DSBR Unit across each of the 10 Baseline Days ascertained for that Settlement Period, being QB<sub>ij</sub> expressed (if positive) as a net Import or (if negative) as a net Export;
- 1.11 “Business Day”: a Day other than a Saturday on which banks are open for domestic business in the City of London;
- 1.12 “Confidential Information”: information referred to in paragraph 13.1.1;
- 1.13 “Connection and Use of System Code”: the document, as modified from time to time, setting out the terms for connection and use of NGET’s transmission system established by NGET pursuant to its transmission licence;
- 1.14 “Constituent Meter Point”: a Meter Point constituting in whole or part a DSBR Unit and represented by a discrete MPAN;
- 1.15 “Contracted Service Window”: such part or parts of the DSBR Service Window (each being a continuous period of not less than 1 hour) as may be selected by the Service Provider as identified in the DSBR Tendered Parameters;

- 1.16 “Data Collector”: the meaning ascribed to it in the Balancing and Settlement Code;
- 1.17 “Day”: a calendar day;
- 1.18 “Demand Reduction”: a reduction in imports, or increase in exports, of flows of electricity at the relevant Meter Point(s) (including for the purposes of these DSBR Standard Contract Terms any such reduction in imports or increase in exports associated with the operation of on-site generating equipment);
- 1.19 “DSBR Contract”: the contract between the Parties for provision of the DSBR Service from a DSBR Unit, which may be created following acceptance by NGET of a DSBR Tender in each case in accordance with the DSBR Tender Procedure, and incorporating these DSBR Standard Contract Terms and the applicable DSBR Tendered Parameters;
- 1.20 “DSBR Delivered Quantity”: for a DSBR Unit and Settlement Period, the amount by which the Metered Consumption is less than the half hourly demand for that Settlement Period implicit in the Baseline Demand Profile, being  $DQ_{ij}$ , but so that the DSBR Delivered Quantity shall be capped at the Indicative DSBR Capability except in the case of a Max DSBR Instruction, all as more particularly specified in Part 4 of Annex 2;
- 1.21 “DSBR Instruction”: an instruction from NGET meeting the requirements of paragraph 5.3.4;
- 1.22 “DSBR Operational Methodology”: means NGET’s methodology from time to time as approved by the Authority pursuant to Special Condition 4K (“Demand Side Balancing Reserve and Supplemental Balancing Reserve Revenue Restriction on External Costs”) of NGET’s transmission licence for the purposes of determining that testing and utilisation of the DSBR Service is economic and efficient, including that it provides value for money for consumers in Great Britain;
- 1.23 “DSBR Procurement Methodology”: means NGET’s methodology from time to time as approved by the Authority pursuant to Special Condition 4K (“Demand Side Balancing Reserve and Supplemental Balancing Reserve Revenue Restriction on External Costs”) of NGET’s transmission licence for the purposes of determining that any procurement of the DSBR Service is economic and efficient, including that it provides value for money for consumers in Great Britain;
- 1.24 “DSBR Performance Test”: a test comprising issue of a DSBR Instruction undertaken by NGET in the circumstances specified in paragraph 8.4;
- 1.25 “DSBR Service”: a Balancing Service comprising the provision of Demand Reduction on instruction from NGET from a DSBR Unit by reference to a pre-determined baseline demand profile;
- 1.26 “DSBR Service Window”: the period from 1600 hours to 2000 hours in each Working Day during the Service Term;
- 1.27 “DSBR Standard Contract Terms”: in relation to any DSBR Contract, this document (including its Annexes), comprising the standard terms governing the provision of, and payment for, the DSBR Service, as published by NGET at the time of submission of the applicable DSBR Tender;
- 1.28 “DSBR System”: the web-based system owned and/or operated by NGET for procurement and utilisation of the DSBR Service;
- 1.29 “DSBR Tender”: a tender submitted by the Service Provider in accordance with the DSBR Tender Procedure;
- 1.30 “DSBR Tender Declaration”: the declaration given by the Service Provider in conjunction with a DSBR Tender;

- 1.31 “DSBR Tender Procedure”: the requirements for submission of DSBR Tenders established by NGET from time to time in accordance with the DSBR Procurement Methodology;
- 1.32 “DSBR Tendered Parameters”: those variables selected by the Service Provider in accordance with the DSBR Tender Procedure and comprised within a DSBR Tender;
- 1.33 “DSBR Unit”: a collection of one or more Constituent Meter Points the subject of a DSBR Contract;
- 1.34 “Expert”: an expert appointed pursuant to paragraph 16;
- 1.35 “Export”: the meaning ascribed to it in the Balancing and Settlement Code;
- 1.36 “Firm Delivery Period”: the meaning ascribed to it in Part 4 of Annex 2;
- 1.37 “Firm Despatch Spell”: the meaning ascribed to it in Part 4 of Annex 2;
- 1.38 “Firm DSBR Instruction”: the meaning ascribed to it in paragraph 5.3.6;
- 1.39 “Force Majeure”: any cause preventing either Party from performing any and or all of its obligations under these DSBR Standard Contract Terms which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of such Party including strikes, lockouts or other industrial disputes (in each case whether involving the workforce of such Party or any other party), act of God, war or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery other than caused by a failure to maintain, fire, explosion, flood, or storm;
- 1.40 “Import”: the meaning ascribed to it in the Balancing and Settlement Code;
- 1.41 “Indicative DSBR Capability”: an indicative volume of Demand Reduction from a DSBR Unit tendered by the Service Provider as identified in the DSBR Tendered Parameters, where applicable as may be reduced by NGET in accordance with the DSBR Tender Procedure, being a positive value  $Q_i$ ;
- 1.42 “Insolvency Event”: when a Party becomes insolvent or bankrupt or goes into liquidation, receivership or administration or is wound up or enters into a composition or arrangement with its creditors or ceases or threatens to cease to carry on business or takes or suffers any similar or analogous action in any jurisdiction;
- 1.43 “Max DSBR Instruction”: a DSBR Instruction in relation to which the Service Provider is requested to provide the DSBR Service in excess of the Indicative DSBR Capability and/or for longer than the Sustainability Duration;
- 1.44 “Meter Point”: the point at which a supply from a Distribution System:
- i. is or is intended to be measured, or
  - ii. where metering equipment has been removed, was or was intended to be measured, or
  - iii. in the case of an unmetered supply, is deemed to be measured,
- where in each case such measurement is for the purposes of ascertaining the Relevant Supplier’s settlement liabilities under the Balancing and Settlement Code;
- 1.45 “Metered Consumption”: for a Settlement Period and DSBR Unit, the aggregate Imports and/or Exports attributable to all Constituent Meter Points as shown by the Relevant Metering, where an Import is expressed as a positive integer and an Export is expressed as a negative integer, such aggregate amount being  $QD_{ij}$  expressed (if positive) as a net Import or (if negative) as a net Export;

- 1.46 "MPAN": the meaning ascribed to "MSID" in the Balancing and Settlement Code;
- 1.47 "NGET": National Grid Electricity Transmission plc, a company registered with number 2366977 and whose registered office is situated at 1-3 Strand, London, WC2N 5EH, which expression shall include its permitted successors and/or assigns;
- 1.48 "Operational Day": the period from 0500 hours on one Day to 0500 hours on the following Day;
- 1.49 "Owner/Operator": with respect to any DSBR Unit, the owner and/or operator of one or more of the Relevant Premises;
- 1.50 "Parties": with respect to any DSBR Contract, NGET and the applicable Service Provider;
- 1.51 "Party Liable": the meaning ascribed to it in paragraph 10.1;
- 1.52 "Relevant Metering": the BSC accredited half hourly metering registered to each associated Constituent Meter Point;
- 1.53 "Relevant Premises": the land, buildings, plant and equipment associated with each Constituent Meter Point;
- 1.54 "Relevant Supplier": the licensed supplier of electricity to the Relevant Premises;
- 1.55 "Service Provider": NGET's counterparty to a DSBR Contract;
- 1.56 "Service Term": Winter 2014/15;
- 1.57 "Settlement Periods": a period of 30 minutes beginning on the hour or the half-hour;
- 1.58 "Settlement Run": a Settlement Run or Reconciliation Settlement Run as defined in the Balancing and Settlement Code;
- 1.59 "Settlement Statement": a statement issued by NGET in accordance with paragraph 6.6.4 (including any revised or reissued statement);
- 1.60 "Set-up Fee": where applicable, an amount calculated at £10,000/MW (as may be reduced pro rata in accordance with paragraph 6.1.2) by reference to the Indicative DSBR Capability;
- 1.61 "Sustainability Duration": the continuous period over which Demand Reduction in response to a DSBR Instruction can be sustained, being not less than 1 hour, selected by the Service Provider as identified in the DSBR Tendered Parameters, being SD<sub>i</sub>;
- 1.62 "Third Party Intermediary": with respect to any DSBR Unit, a person who is not Owner/Operator of all of the Relevant Premises but who, in respect of those that it is not Owner/Operator, has the right to control and instruct the demand (or output) associated with the relevant Constituent Meter Point(s) by virtue of a contractual arrangement with each relevant Owner/Operator;
- 1.63 "Total Delivered Quantity": the meaning ascribed to it in Part 4 of Annex 2;
- 1.64 "Total Target Quantity": the meaning ascribed to it in Part 4 of Annex 2;
- 1.65 "Utilisation Fee": the payment due to the Service Provider referred to in paragraph 6.3;
- 1.66 "Utilisation Rate": the utilisation rate (£/MWh) selected by the Service Provider and identified in the DSBR Tendered Parameters;
- 1.67 "Winter": the period November to February inclusive;

1.68 “Working Day”: an Operational Day commencing at 0500 hours on either a Monday, Tuesday, Wednesday, Thursday or Friday but excluding statutory bank holidays (except Good Friday) in England and Wales.

## 2. **Interpretation**

In these DSBR Standard Contract Terms, the following interpretation rules set out below shall, unless the subject matter or context otherwise requires or is inconsistent therewith, apply:

2.1 all references to a particular paragraph shall be a reference to that paragraph in these DSBR Standard Contract Terms and all references to an Annex shall be to an Annex to these DSBR Standard Contract Terms;

2.2 headings are inserted for convenience only and shall be ignored in construing these DSBR Standard Contract Terms or a DSBR Contract as the case may be;

2.3 references to the words “include” or “including” are to be construed without limitation to the generality of the preceding words;

2.4 any references to an Act of Parliament or statutory or regulatory instrument or any part or section or other provision or schedule to an Act of Parliament or statutory or regulatory instrument 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 or statutory or regulatory instrument; and

2.5 references to the masculine shall include the feminine and references in the singular shall include the plural and vice versa and words denoting persons shall include any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.

## 3. **Commencement and term**

3.1 Each DSBR Contract shall be subject to satisfaction of the conditions precedent in paragraph 4.1, and subject thereto shall be effective from 0000 hours on the first Working Day of the Service Term.

3.2 The Parties shall have the right to terminate a DSBR Contract prior to expiry of the Service Term in accordance with paragraph 11.

## 4. **Conditions Precedent**

4.1 Subject to paragraph 4.4, the respective obligations of the Parties under these DSBR Standard Contract Terms, for any DSBR Unit, shall be conditional upon written confirmation, no later than 30 days prior to commencement of the Service Term (or such later date as may be agreed in writing by NGET):-

4.1.1 from the Service Provider that: -

(a) it has in place the necessary procedures and systems (including without limitation the installation of NGET’s “DSBR despatch interface” on its relevant hardware and software applications) to enable the delivery of demand reduction (or output) from that DSBR Unit during the Contracted Service Window within 2 hours of a DSBR Instruction; and

(b) it has all necessary consents and permissions to enable it to provide the DSBR Service from that DSBR Unit and perform its related obligations, and to enable NGET to exercise its rights and powers, in each case under these DSBR Standard Contract Terms; and

4.1.2 from NGET that it has undertaken such of those validation checks and procedures referred to in paragraph 4.2 as it may (in its absolute discretion) decide to perform and that it agrees that the conditions precedent in this paragraph 4.1 have been satisfied.

4.2 For the purposes of paragraph 4.1.2, the appropriate validation checks and procedures shall be determined by NGET acting reasonably, and may include accessing MPAN data held by the Electricity Central Online Enquiry Service and obtaining from Data Collectors Metered Consumption data for relevant MPANs with respect to each of the ten Days nominated by NGET for the purpose of DSBR Tenders on the DSBR System.

4.3 The carrying out of any validation checks and procedures by NGET shall not prejudice any claim it may have against the Service Provider if any of the representations made in the DSBR Tender Declaration is untrue.

4.4 Notwithstanding paragraph 4.1, this paragraph 4 and paragraphs 7 (DSBR Tender Declaration), 10 (Limitations on liability), 11 (Termination), 12 (Assignment), 13 (Confidentiality and Announcements), 16 (Expert Determination), 17 (Governing Law and Jurisdiction), 22 (Anti-Bribery) and 23 (EMR) of these DSBR Standard Contract Terms shall apply with respect to each DSBR Contract with effect from its creation.

## 5. **Service Obligations**

### 5.1 **Provision of DSBR Service**

5.1.1 The Service Provider shall provide the DSBR Service from a DSBR Unit in each DSBR Service Window throughout the Service Term in accordance with this paragraph 5.

5.1.2 For the avoidance of doubt, neither of the Parties shall have any obligation under these DSBR Standard Contract Terms with respect to the provision of, and payment for, the DSBR Service outside of the DSBR Service Windows.

### 5.2 **Notification of non-capability**

5.2.1 If at any time the Service Provider becomes aware that the DSBR Unit is incapable of delivering the Indicative DSBR Capability in response to a DSBR Instruction, then it shall as soon as reasonably practicable notify NGET in writing, and shall subsequently notify NGET as soon as it is aware that capability is restored.

5.2.2 On request by NGET, the Service Provider shall promptly provide an explanation and evidence to support any notification given pursuant to paragraph 5.2.1.

### 5.3 **Issue and Acknowledgment of DSBR Instructions**

5.3.1 NGET may at any time during the Service Term, and with respect to any DSBR Unit, issue a DSBR Instruction to the Service Provider.

5.3.2 A DSBR Instruction may only be issued by NGET with respect to periods falling wholly within a DSBR Service Window, but for the avoidance of doubt may be issued with respect to periods falling wholly or partly outside of a Contracted Service Window.

5.3.3 A DSBR Instruction may be issued notwithstanding a notification of incapability to deliver the Indicative DSBR Capability made by the Service Provider pursuant to paragraph 5.2.1.

5.3.4 Each DSBR Instruction shall specify:

- (a) the identity of the DSBR Unit;
- (b) the time of issue of the DSBR Instruction;
- (c) the "start" and "end" time defining the period over which the DSBR Service is instructed; and

- (d) if the DSBR Instruction is a Max DSBR Instruction.
- 5.3.5 NGET shall give the Service Provider as much early warning as possible of DSBR Instructions.
- 5.3.6 Any DSBR Instruction meeting the requirements set out below shall be considered a "Firm DSBR Instruction":-
  - (a) the "start" time of the DSBR Instruction is:
    - (i) not less than 2 hours after the time of instruction; and
    - (ii) not earlier than expiry of 2 hours after the end time of any other DSBR Instruction; and
  - (b) the period of time between the "start" and "end" times falls wholly within a Contracted Service Window, and is not less than 1 hour; and
  - (c) no notification of non-capability to deliver the Indicative DSBR Capability has been made by the Service Provider pursuant to paragraph 5.2.1.
- 5.3.7 A DSBR Instruction in respect of which the period of time between the "start" and "end" times falls only partly within a Contracted Service Window but which otherwise meets the requirements of paragraph 5.3.6 shall be construed for the purposes of these DSBR Standard Contract Terms as:-
  - (a) a Firm DSBR Instruction with respect to the period falling within the Contracted Service Window; and
  - (b) a DSBR Instruction which is not a Firm DSBR Instruction with respect to the period or periods falling outside of the Contracted Service Window.
- 5.3.8 The Service Provider shall acknowledge receipt of each DSBR Instruction.
- 5.3.9 Each DSBR Instruction from NGET, and acknowledgment from the Service Provider, shall be given via the DSBR System.
- 5.3.10 Nothing in this paragraph 5.3 shall preclude NGET from issuing a DSBR Instruction after expiry of the Service Term as part of a DSBR Performance Test with respect to a DSBR Instruction issued prior to expiry.
- 5.4 **Response to DSBR Instructions**
- 5.4.1 Where a DSBR Instruction is a Firm DSBR Instruction, the Service Provider shall procure that Demand Reduction is delivered from the DSBR Unit over the period specified in that DSBR Instruction, or at least until expiry of the Sustainability Duration if earlier, and shall further use all reasonable endeavours to ensure that the quantity of such Demand Reduction is not less than the Indicative DSBR Capability. Subject always to paragraph 5.4.3, the Service Provider may (at its sole discretion) deliver Demand Reduction pursuant to a Firm DSBR Instruction beyond expiry of the Sustainability Duration and for the avoidance of doubt shall be entitled to a Utilisation Fee in respect thereof.
- 5.4.2 Where a DSBR Instruction is not a Firm DSBR Instruction, then subject always to paragraph 5.4.3, the Service Provider may (at its sole discretion) deliver Demand Reduction in response, and provided it acknowledges receipt of the DSBR Instruction pursuant to paragraph 5.3.8 it shall be entitled to payment of a Utilisation Fee in respect thereof.
- 5.4.3 Where a DSBR Instruction is identified as a Max DSBR Instruction, then (regardless of whether or not it is Firm DSBR Instruction) the Service Provider shall use all reasonable endeavours to deliver as much Demand Reduction from the DSBR Unit as possible (notwithstanding that this may be in excess of the Indicative DSBR Capability) and for



the period instructed (notwithstanding that this may be for longer than the Sustainability Duration).

5.4.4 The Service Provider accepts all risk of loss, liability or damage incurred by any third party associated with its compliance with a DSBR Instruction, and therefore agrees to indemnify and hold NGET harmless from and against all and any loss, liability, cost and expense which NGET may suffer or incur as a result of any claim by any such third party (including the Owner/Operator where the Service Provider is a Third Party Intermediary), provided always that the Service Provider's liability under this paragraph 5.4 shall not exceed £500,000 per incident or series of related incidents.

## 5.5 **DSBR System**

5.5.1 NGET warrants that, with respect to the DSBR System, it has not knowingly introduced viruses or other material which is malicious or technologically harmful, but otherwise gives no warranty or undertaking as to the safety or fitness for purpose of such application or otherwise in relation thereto.

5.5.2 NGET hereby licences to the Service Provider the right to use the DSBR System during the Service Term solely for the purpose of provision of the DSBR Service upon and subject to these DSBR Standard Contract Terms.

5.5.3 Where the Service Provider is prevented from complying with its obligations under these DSBR Standard Contract Terms due to a malfunction of the DSBR System, then it shall notify NGET by telephone as soon as practicable, such notification to include details of the malfunction, whereupon the Parties shall cooperate with a view to rectifying the malfunction as soon as reasonably practicable.

## 6. **Payments**

### 6.1 **Set-up Fee**

6.1.1 Where the DSBR Contract is in respect of a DSBR Tender which specifies that a Set-up Fee applies (but not otherwise), NGET will pay to the Service Provider in respect of the relevant DSBR Unit and in accordance with this paragraph 6.1, a Set-up Fee calculated in accordance with Part 2 of Annex 2.

6.1.2 The rate of £10,000/MW used for calculation of the Set-up Fee will be reduced pro rata where the DSBR Contract is in respect of a DSBR Tender which specifies in its DSBR Tendered Parameters a Sustainability Duration of less than 2 hours.

6.1.3 Subject always to paragraph 6.4, the Set-up Fee will be payable to the Service Provider in accordance with the terms of paragraph 6.6.

### 6.2 **Administration Fee**

6.2.1 Where the DSBR Contract is in respect of a DSBR Tender which specifies an Administration Fee (but not otherwise), NGET will pay to the Service Provider in respect of the relevant DSBR Unit and in accordance with this paragraph 6.2, an Administration Fee calculated in accordance with Part 3 of Annex 2.

6.2.2 Subject always to paragraph 6.4, the Administration Fee will be payable to the Service Provider in accordance with the terms of paragraph 6.6.

### 6.3 **Utilisation Fee**

6.3.1 In respect of each DSBR Instruction, NGET will pay to the Service Provider in accordance with this paragraph 6.3, a Utilisation Fee calculated by reference to the Utilisation Rate and in accordance with Part 4 of Annex 2.

6.3.2 No Utilisation Fee shall be payable with respect to any DSBR Instruction issued as part of a DSBR Performance Test.

6.3.3 Utilisation Fees falling due with respect to any calendar month will be payable in accordance with the terms of paragraph 6.6.

6.4 **Non-payment of fees**

6.4.1 Where:-

- (a) as a result of the failure of a DSBR Performance Test, NGET has reasonable grounds to believe that the DSBR Unit does not have the capability to deliver the Indicative DSBR Capability and/or otherwise provide the DSBR Service in accordance with these DSBR Standard Contract Terms; and/or
- (b) the Service Provider is in breach of any provision of paragraph 7 (in any respect),

then without prejudice to its other rights and remedies NGET reserves the right to require repayment of all or any part of the Set-up Fee and/or Administration Fee (or to treat the same as no longer payable to the extent not then paid to the Service Provider).

6.5 **Conflict or ambiguity**

6.5.1 In the event of any conflict or ambiguity as between the provisions of this paragraph 6 and Annex 2, the latter shall prevail.

6.6 **Payment Procedure**

*Set-Up Fee*

6.6.1 Where applicable, NGET shall pay to the Service Provider the Set-up Fee by no later than the date 28 Days after issue by NGET of written confirmation pursuant to paragraph 4.1.

*Administration Fee*

6.6.2 Where applicable, NGET shall pay to the Service Provider the Administration Fee by no later than the date 28 Days after either expiry of the Service Term or earlier termination pursuant to paragraph 11.2, but subject always to paragraph 6.6.3.

6.6.3 Where at expiry of the Service Term a DSBR Performance Test is outstanding in the circumstances specified in paragraph 5.3.10, the Administration Fee shall be payable no later than expiry of the calendar month which follows that in which the DSBR Performance Test takes place.

*Settlement Statements and Utilisation Fees*

6.6.4 In respect of each calendar month during the Service Term, and by no later than expiry of the second calendar month which follows (and by the end of every subsequent calendar month as required by this paragraph 6.6), NGET shall send to the Service Provider a statement ("Settlement Statement") setting out, in respect of each DSBR Unit, its calculation of:-

- (a) the Utilisation Fees falling due in respect of Demand Reduction delivered in that calendar month pursuant to DSBR Instructions issued;
- (b) the Utilisation Fees falling due in respect of Demand Reduction delivered in any preceding calendar month in the circumstances specified in paragraph 6.6.5.2;
- (c) any adjustments to previous statements (including interest thereon pursuant to paragraph 6.6.13) made in accordance with paragraphs 6.6.8 and 6.6.9;

- (d) any amount falling due from the Service Provider by way of full or partial repayment of the Set-up Fee and/or the Administration Fee in accordance with these DSBR Standard Contract Terms; and
  - (e) the resulting net amount due to (or from, as the case may be) the Service Provider.
- 6.6.5 The Service Provider agrees and acknowledges that if NGET has not received, in reasonable time prior to submission of any Settlement Statement, complete and validated Metered Consumption data for the relevant DSBR Unit (which for the avoidance of doubt shall be for each constituent MPAN and Settlement Period in respect of which Demand Reduction is delivered during the relevant calendar month together also with Metered Consumption data for each such MPAN in those same Settlement Periods in each applicable Baseline Day), then:-
  - 6.6.5.1 in respect of the affected DSBR Instruction, NGET may (at its discretion) show the Utilisation Fee as zero; and
  - 6.6.5.2 where such Utilisation Fees are shown as zero but subject always to paragraph 6.6.10, upon subsequent receipt by NGET of complete and validated Metered Consumption data the Utilisation Fee falling due for the affected DSBR Instruction shall be shown in the next practicable Settlement Statement.
- 6.6.6 It is agreed by the Parties that for the purposes of the DSBR Standard Contract Terms estimated reads shall not, save where NGET otherwise agrees in writing at its discretion, constitute valid Metered Consumption data.
- 6.6.7 If the Service Provider disagrees with the content of any Settlement Statement, it may notify NGET in writing, with evidence upon which it relies in support of such disagreement, no later than the date 10 Business Days after receipt thereof, but in the absence of any such notification by such date the Settlement Statement shall be final and binding on the Parties subject only to paragraph 6.6.9.
- 6.6.8 Where a disagreement is notified by the Service Provider pursuant to paragraph 6.6.7, the Parties shall discuss and endeavour to resolve the same in good faith, and any revisions to a Settlement Statement agreed as a result thereof shall be reflected in a revised Settlement Statement, which shall promptly be issued by NGET. In the absence of agreement, the Settlement Statement shall be binding upon the Parties until such time as otherwise agreed in writing between the Parties or as may otherwise be determined by an Expert following a referral by either Party to an Expert for determination, and which in each case shall be reflected in a revised Settlement Statement which shall promptly be issued by NGET.
- 6.6.9 Where, having regard to any Settlement Run, NGET or the Service Provider discovers that some or all of the Utilisation Fees shown in any Settlement Statement are incorrect, then it shall promptly notify the other in writing whereupon NGET shall, where applicable, revise the Settlement Statement and re-issue the same to the Service Provider, and the provisions of paragraphs 6.6.7 and 6.6.8 shall apply mutatis mutandis to such revised Settlement Statement.
- 6.6.10 In the absence of fraud, neither NGET nor the Service Provider may invoke the provisions of paragraph 6.6.9 with respect to the contents of any Settlement Statement (including any revised Settlement Statement) after the period of 18 months has elapsed following submission of the original Settlement Statement in which the Utilisation Fee(s) in question were first stated, after which date the amount of such Utilisation Fees (if any) shown in the last Settlement Statement (including any revised Settlement Statement) issued by NGET shall be final and conclusive.
- 6.6.11 No later than expiry of the calendar month in which the Settlement Statement (or any revised Settlement Statement) is issued or the 5<sup>th</sup> Business Day after issue, if later, NGET shall pay to the Service Provider (or the Service Provider shall pay to NGET, as the case may be) the net amount shown as due from NGET to the Service Provider (or

- from the Service Provider to NGET, as the case may be) in that Settlement Statement (or revised Settlement Statement).
- 6.6.12 All payments shall be made in pounds sterling by direct bank transfer or equivalent transfer of immediately available funds to the other Party's bank account, details of which shall be as notified by each Party to the other from time to time in accordance with paragraph 15.
- 6.6.13 If by virtue of the foregoing provisions it is determined or agreed that:
- (a) the Service Provider was entitled to a further payment from NGET, then the Service Provider shall be entitled to interest at the Base Rate on the amount of such further payment from the due date until the date of actual payment; or
  - (b) the Service Provider was not entitled to any payment it has received, then NGET shall be entitled to interest at the Base Rate on such amount from the date of payment by NGET until the date of repayment by the Service Provider (or, as the case may be, until the date when NGET makes a payment to the Service Provider against which such amount is off-set pursuant to paragraph 6.6.15).
- 6.6.14 All amounts specified in the DSBR Contract shall be exclusive of any Value Added Tax or other similar tax and NGET shall pay to the Service Provider Value Added Tax at the rate for the time being and from time to time properly chargeable in respect of the making available and/or provision of the DSBR Service under these DSBR Standard Contract Terms and any DSBR Contract.
- 6.6.15 Sums payable by one Party to the other pursuant to these DSBR Standard Contract Terms whether by way of charges, interest or otherwise, shall (except to the extent permitted in this paragraph 6.6 or 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 whatsoever provided that either Party shall be entitled to set off any payment due and payable by the other Party under these DSBR Standard Contract Terms against any payment it makes to that Party under these DSBR Standard Contract Terms.
- 6.6.16 The Service Provider agrees that NGET shall maintain a self-billing system throughout the Service Term whereby each Settlement Statement shall constitute a self-billing invoice for VAT purposes. Accordingly, NGET and the Service Provider 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 agree to comply with all relevant requirements in relation to self-billing, and for such purpose the Service Provider hereby warrants and undertakes to NGET that:-
- (a) it is registered for VAT and will inform NGET forthwith if its ceases to be so registered or changes its VAT registration number;
  - (b) it will account to HMRC for the VAT paid by NGET pursuant to paragraph 6.6.14; and
  - (c) it will not issue its own VAT invoices for provision of the DSBR Service.
7. **DSBR Tender Declaration**
- 7.1 The representations contained in paragraphs 1, 2 and 3 of the DSBR Tender Declaration shall be deemed to be repeated on each day during the Service Term by reference to the facts then existing and the Service Provider shall procure that such representations shall be and remain true at all times during the Service Term. If any such representations become untrue, the Service Provider shall be in material breach of its obligations under these DSBR Standard Contract Terms.
- 7.2 The Service Provider shall procure that at all times during the Service Term:-

- 7.2.1 it has in place the necessary procedures and systems (including without limitation the installation of NGET's "DSBR despatch interface" on its relevant hardware and software applications) to enable the delivery of demand reduction (or output) from each DSBR Unit during the Contracted Service Window within 2 hours of a DSBR Instruction; and
- 7.2.2 it has all necessary consents and permissions to enable it to provide the DSBR Service and perform its related obligations, and to enable NGET to exercise its rights and powers, in each case under these DSBR Standard Contract Terms.
- 7.3 The Service Provider shall further procure that no attempt will be made to displace demand or generation from any constituent MPAN to any other site controlled by it (or vice versa) for the sole or main purpose of, or having the effect of materially, undermining the value to NGET of DSBR instructed.

## 8. **Monitoring and Testing**

### *Site inspections*

- 8.1 At any time prior to expiry of the Service Term, and without prejudice to paragraphs 8.2 and 8.3, NGET may (at its discretion) conduct site inspections of any Relevant Premises, in order to verify:
- 8.1.1 compliance by the Service Provider with the provisions of paragraph 7; and
- 8.1.2 compliance by the Service Provider with its other obligations under these DSBR Standard Contract Terms,

and for such purpose the Service Provider shall procure for NGET access to such Relevant Premises and pursuant thereto shall give all necessary instructions, consents and permissions to any Owner/Operator with respect thereto.

### *Production of agreements*

- 8.2 Without prejudice to, and for the purposes of, paragraph 8.1, where the Service Provider is a Third Party Intermediary, it will provide to NGET on request with copies of all and any agreements in place with each Owner/Operator in so far as related to the provision of the DSBR Service.

### *Sample test*

- 8.3 The Service Provider acknowledges that a DSBR Instruction may be issued as part of a sample test of DSBR Units carried out in accordance with the DSBR Operational Methodology (which, for the avoidance of doubt, shall accrue Utilisation Fees under and in accordance with these DSBR Standard Contract Terms).

### *DSBR Performance Test*

- 8.4 Without prejudice to paragraph 8.3, NGET may also (at its discretion) issue a DSBR Instruction by way of a DSBR Performance Test, in accordance with the following provisions (which, in accordance with paragraph 6.3.2, shall not accrue Utilisation Fees):-
- 8.4.1 a DSBR Performance Test may only be carried out:-
- (a) where NGET has reasonable grounds as a result of a site inspection carried out pursuant to paragraph 8.1 to believe that the Service Provider is not in compliance with any provision of paragraph 7 and/or with its other obligations under these DSBR Standard Contract Terms; or
  - (b) where, in relation to any Firm Delivery Period the subject of a previous DSBR Instruction, the Total Delivered Quantity is less than 75% of the Total Target Quantity;

- 8.4.2 NGET shall notify the Service Provider as soon as reasonably practicable of its intention to carry out a DSBR Performance Test;
- 8.4.3 the DSBR Instruction may only comprise a Firm DSBR Instruction, which shall be issued no later than 28 Days after NGET's notice under paragraph 8.4.2;
- 8.4.4 the DSBR Performance Test shall be treated as having been passed if, in relation to the Firm Delivery Period, the Total Delivered Quantity is 75% or more of the Total Target Quantity, otherwise it shall be treated as having failed; and
- 8.4.5 where a DSBR Performance Test is failed, and at the request of the Service Provider, NGET may (at its discretion), but without prejudice to paragraph 6.4.1(a), undertake a further DSBR Performance Test.

9. **Metering Data**

For all purposes connected with these DSBR Standard Contract Terms and DSBR Contracts (including for the calculation by NGET of Utilisation Fees), but only insofar as the same is not made available to NGET in like manner by the Relevant Supplier or any of its Agents, the Service Provider shall procure for NGET access to, and the right to use, all relevant Metered Consumption data in a timely manner and in such format as NGET shall reasonably require, and pursuant thereto shall give all necessary instructions, consents and permissions to relevant third parties (which may include the owner and/or operator of the Relevant Premises and/or or any Relevant Suppliers and/or the relevant distribution network owner(s) with respect thereto) for the disclosure to and use by NGET of such data for such purposes.

10. **Limitations on Liability**

- 10.1 Subject to paragraph 10.2, and save where any provision of these DSBR Standard Contract Terms 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 these DSBR Standard Contract Terms or any DSBR Contract other than for loss directly resulting from such breach and which at the date of formation of the DSBR Contract concerned was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:
  - 10.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or
  - 10.1.2 the liability of such other Party to any other person for loss in respect of physical damage to the property of any person subject, for the avoidance of doubt, to the requirement that the amount of such liability claimed by such other Party should be mitigated in accordance with general law, and provided further that the liability of any Party in respect of all claims for such loss shall not exceed £500,000 per incident or series of related incidents.
- 10.2 Nothing in these DSBR Standard Contract Terms 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.
- 10.3 Subject to paragraph 10.2, and save where any provision of these DSBR Standard Contract Terms 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:
  - 10.3.1 any loss of profit, loss of revenue, loss of use, loss of data, loss of contract or loss of goodwill; or

- 10.3.2 any indirect or consequential loss; or
- 10.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in paragraphs 10.1.2 and 10.2.
- 10.4 Each party acknowledges and agrees that the other Party holds the benefit of paragraphs 10.1, 10.2, and 10.3 for itself and as trustee and agent for its officers, employees and agents.
- 10.5 Save as provided in paragraph 10.6, the rights and remedies provided to the Parties by these DSBR Standard Contract Terms 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 of these DSBR Standard Contract Terms, including any rights either Party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, and save as provided above, each of the Parties hereby waives to the fullest extent possible 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 these DSBR Standard Contract Terms and undertakes not to enforce any of the same except as expressly provided herein.
- 10.6 Nothing in these DSBR Standard Contract Terms shall exclude or limit any remedy in common law available to NGET, or liability of the Service Provider to NGET, with respect to the DSBR Tender Declaration if any of the representations made therein is untrue.
- 10.7 Each of paragraphs 10.1, 10.2, 10.3, 10.3, 10.4 and 10.6 shall survive termination of the DSBR Contract concerned.
- 10.8 For the avoidance of doubt, nothing in this paragraph 10 shall prevent or restrict any Party from enforcing any obligations (including suing for a debt) owed to it under or pursuant to these DSBR Standard Contract Terms.

## 11. **Termination**

### 11.1 By NGET:

- 11.1.1 NGET shall have the right to terminate a DSBR Contract forthwith on written notice to the Service Provider in the event of a material breach by the Service Provider of these DSBR Standard Contract Terms.
- 11.1.2 For the purposes of paragraph 11.1.1, and without limitation, the following shall be deemed to be material breaches of these DSBR Standard Contract Terms (in each case with respect to the DSBR Unit concerned):-
- (a) a breach of any provision of paragraph 7 (in any respect);
  - (b) a failure by the Service Provider to comply with a DSBR Instruction as required by paragraph 5.4 where such failure shows a wilful or reckless disregard for the Service Provider's obligations under these DSBR Standard Contract Terms;
  - (c) a failure by the Service Provider to notify NGET in accordance with paragraph 5.2.1 upon becoming aware that a DSBR Unit is incapable of delivering the DSBR Indicative Capability; and
  - (d) any other material breach by the Service Provider of any of its obligations under these DSBR Standard Contract Terms which, if capable of remedy, the Service Provider fails to remedy within 10 Business Days after service of a written notice from NGET specifying the breach and requiring it to be remedied (and for these purposes any failure by NGET to access Metered Consumption data required for purposes connected with these DSBR Standard Contract Terms or any DSBR Contract shall be treated as a breach

of paragraph 8.2 which shall be deemed to be a material breach capable of remedy).

- 11.1.3 Without prejudice to paragraph 11.1.1, NGET shall also have the right to terminate a DSBR Contract forthwith on written notice to the Service Provider upon an Insolvency Event in relation to the Service Provider.
- 11.1.4 Upon termination pursuant to this paragraph 11.1:-
- (a) the Service Provider shall repay to NGET forthwith the Set-up Fee (if any) paid by NGET;
  - (b) the Administration Fee (if any) shall cease to be payable; and
  - (c) where the grounds for termination include manipulation, or attempted manipulation, of the Baseline Demand Profile, NGET may at its discretion withhold all or any of the Utilisation Fees otherwise payable to the Service Provider to the extent representing a reasonable estimation of NGET's loss.
- 11.2 By Service Provider:
- 11.2.1 The Service Provider shall have the right to terminate a DSBR Contract forthwith on written notice to NGET in the event of a material breach by NGET of these DSBR Standard Contract Terms.
- 11.2.2 Without prejudice to paragraph 11.2.1, the Service Provider shall also have the right to terminate a DSBR Contract forthwith on written notice to NGET upon an Insolvency Event in relation to NGET.
- 11.3 Force Majeure:
- 11.3.1 Either Party shall have the right to terminate a DSBR Contract forthwith by notice in writing to the other in the circumstances specified in paragraph 18.5.
- 11.3.2 Upon termination pursuant to this paragraph 11.3:-
- (a) the Service Provider shall repay to NGET forthwith the Set-up Fee (if any) paid by NGET; and
  - (b) the Administration Fee (if any) shall cease to be payable.
- 11.4 Pursuant to paragraphs 11.1, 11.2 or 11.3, all rights and licences for the Service Provider to use the DSBR System shall immediately cease, and the Service Provider shall immediately disable and uninstall from its hardware and systems the "DSBR despatch interface" application and all and any other software provided by NGET for the purposes of these DSBR Standard Contract Terms.
- 11.5 The provisions of paragraphs 6.6 (Payment Procedure), 13 (Confidentiality and Announcements), 22 (Anti-Bribery) and 23 (EMR) shall continue to bind the Parties after termination of the DSBR Contract, in whole or in part, for whatever reason.

## 12. **Assignment**

Any DSBR Contract is personal to the parties and neither Party shall assign, transfer, mortgage, charge, subcontract, or deal in any other manner with any or all of its rights and obligations under such DSBR Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

## 13. **Confidentiality and Announcements**

### 13.1 **General Restrictions**



13.1.1 Subject to paragraph 13.2, and to the extent otherwise expressly permitted by these DSBR Standard Contract Terms, neither Party shall, at any time, without the prior consent of the other Party in writing, divulge or permit its officers, employees, agents or contractors to divulge to any person or permit use by any person (other than disclosure to or use by officers or employees to the extent reasonably required to enable such persons to carry out their duties in connection with the DSBR Contract) of:

- (a) any of the contents of the DSBR Contract, any DSBR Tender, any tender acceptance and/or any tender rejection; or
- (b) any commercially confidential information concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party received in relation to the DSBR Contract.

13.1.2 Each Party undertakes to use Confidential Information disclosed to it by the other Party solely for the purposes of the DSBR Contract and shall not use it for any other purpose.

### 13.2 **Exceptions**

13.2.1 The restrictions imposed by paragraph 13.1 shall not apply to the disclosure of any Confidential Information:

- (a) which is in or becomes part of the public domain otherwise than as a result of a breach of paragraph 13.1, or which either Party can show was in its written records prior to the date of disclosure of the same by the other Party, or which it received from a third party independently entitled to disclose it;
- (b) which is required by law or regulatory authority to be disclosed;
- (c) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party;
- (d) in accordance with the provisions of the Balancing and Settlement Code or pursuant to any licence of the Party concerned;
- (e) to any parent, subsidiary or fellow subsidiary undertaking on a "need to know" basis only;
- (f) by the Service Provider to any Owner/Operator to the extent necessary to enable the Service Provider to submit a DSBR Tender and fulfil its obligations under these DSBR Standard Contract Terms;
- (g) required or expressly permitted to be disclosed under the terms of these DSBR Standard Contract Terms or any agreement or arrangement to which the Parties have agreed to be bound.

13.2.2 In this paragraph 13.2, the words "parent", "subsidiary" and "undertaking" shall have the meanings as provided in sections 1159, 1161 and 1162 of the Companies Act 2006.

### 13.3 **Third parties**

Before either Party discloses any Confidential Information in any of the circumstances described in paragraph 13.2.1(e) and (f) (other than to its authorised professional advisers), it shall notify the other Party of its intention to make such disclosure and procure that the recipient is placed under an obligation of confidentiality on terms equivalent to those contained in this paragraph 13, and the disclosing Party shall at all times be liable to the other Party for the failure of such recipient to comply with such terms.

### 13.4 **Public announcements**

- 13.4.1 Subject to paragraphs 13.4.2 and 13.4.3, no public announcement or statement regarding the completion, performance or termination of the DSBR Contract 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).
- 13.4.2 Neither Party shall be prohibited from issuing or making any such public announcement or statement to the extent expressly permitted or otherwise contemplated by these DSBR Standard Contract Terms or if it is necessary to do so in order to comply with any applicable law or the regulations of any recognised stock exchange upon which the share capital of such Party is from time to time listed or dealt in.
- 13.4.3 Without limiting paragraph 13.4.2, and for the purposes of any or all of the statements published from time to time pursuant to Standard Condition C16 of its transmission licence, NGET may publish in such manner or form as it thinks fit details of all and any DSBR Tenders, DSBR Contracts, DSBR Instructions and payments made to Service Providers from time to time under these DSBR Standard Contract Terms.

14. **Waiver**

No failure or delay by any party to exercise any right, power or remedy under these DSBR Standard Contract Terms or any DSBR Contract (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.

15. **Notices**

- 15.1 Unless otherwise specified in these DSBR Standard Contract Terms or agreed in writing by the Parties, any notice or communication to be given by one Party to the other under or in connection with the matters contemplated by these DSBR Standard Contract Terms shall be addressed to the recipient and sent to the address or facsimile number of the other Party set out or referred to below and marked for the attention of the person so given.

15.1.1 NGET:

*Address: National Grid Electricity Transmission plc*

*Market Operations*

*National Grid House*

*Warwick Technology Park*

*Gallows Hill*

*Warwick CV34 6DA*

*For the attention of: The Company Secretary*

*Facsimile number: 01926 655630*

*Copy to: Energy Operations Manager*

*Facsimile number: 01926 656612*

- 15.1.2 Service Provider: as specified in the DSBR Tendered Parameters.

- 15.2 Unless otherwise specified in these DSBR Standard Contract Terms or agreed in writing by the Parties, any notice or communication to be given by one Party to the other under or in connection with the matters contemplated by these DSBR Standard Contract Terms shall be in writing and given by letter delivered by hand or sent by first class prepaid post or facsimile, and shall be deemed to have been received:

- 15.2.1 in the case of delivery by hand, when delivered; or
- 15.2.2 in the case of first class prepaid post, on the second Day following the Day of posting; or
- 15.2.3 in the case of facsimile, on acknowledgement by the addressee's facsimile receiving equipment (where such acknowledgement occurs before 1700 hours on the Day of acknowledgement) and in any other case on the Day following the Day of acknowledgement.

**16. Expert Determination**

16.1 Where a provision of these DSBR Standard Contract Terms expressly provides for the referral by a Party of any matter in dispute to an Expert for determination, the following provisions shall apply:

16.1.1 the Expert shall act as an expert and not as an arbitrator and shall decide those matters referred to him using his skill, experience and knowledge, and with regard to all such other matters as he in his sole discretion considers appropriate;

16.1.2 if the Parties cannot agree upon the selection of an Expert, the Expert shall be determined by the President for the time being of the Law Society of England and Wales;

16.1.3 all references to the Expert shall be made in writing by either Party with notice to the other being given contemporaneously, and the Parties shall promptly supply the Expert with such documents and information as he may request when considering any referral;

16.1.4 the Expert shall be requested to use his best endeavours to give his decision upon the question before him as soon as possible in writing following its referral to him, his decision shall, in the absence of fraud or manifest error, be final and binding upon the Parties;

16.1.5 if the Expert wishes to obtain independent professional and/or technical advice in connection with the question before him:

(i) he shall first provide the Parties with details of the name, organisation and estimated fees of the professional or technical adviser; and

(ii) he may engage such advisor 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;

16.1.6 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;

16.1.7 save to the extent otherwise expressly provided herein pending the determination by the Expert, any subsisting DSBR Contract(s) shall continue to the extent possible for the Parties to perform their obligations; and

16.1.8 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.

**17. Governing Law and Jurisdiction**

17.1 These DSBR Standard Contract Terms, the DSBR Tender Procedure and each DSBR Contract shall be governed by and construed in all respects in accordance with the laws of England and Wales.

17.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the DSBR Tender

Procedure, these DSBR Standard Contract Terms and each DSBR Contract (including non-contractual disputes or claims) and the parties waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate form.

18. **Force Majeure**

18.1 In so far as either Party is prevented from performing any of its obligations under these DSBR Standard Contract Terms or any DSBR Contract due to an event or circumstance of Force Majeure, then neither the Service Provider nor NGET (as the case may be) shall be deemed to be in breach of such obligations for so long as the circumstance of Force Majeure continues to prevent such performance.

18.2 The Party affected by the Force Majeure shall give to the other Party immediately upon becoming aware of an event or circumstance of Force Majeure, a written communication describing the Force Majeure (including 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.

18.3 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 these DSBR Standard Contract Terms and/or the DSBR Contract.

18.4 For the avoidance of doubt the non-performance of either Party's obligations pursuant to these DSBR Standard Contract Terms and any DSBR Contract 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.

18.5 Either Party shall have a right to terminate the provisions of the DSBR Contract if a Party has been prevented from performing its obligations under these DSBR Standard Contract Terms and such DSBR Contract due to an event or circumstance of Force Majeure for a continuous period of 2 calendar months or more.

19. **Severance of Terms**

If any provision of these DSBR Standard Contract Terms 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 these DSBR Standard Contract Terms, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

20. **Entire Agreement**

These DSBR Standard Contract Terms and the DSBR Tendered Parameters contain or expressly refer to the entire agreement between the Parties with respect to each DSBR Contract and the subject matter thereof, and expressly exclude any warranty, condition or other undertaking implied at law or by custom, 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 such documents upon which it has relied in entering into each DSBR Contract save the representations made by the Service Provider in the DSBR Tender Declaration upon which NGET has relied.

21. **Third Party Rights**

The Parties acknowledge and agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that no rights, powers or benefits are or shall be conferred on any person pursuant to these DSBR Standard Contract Terms, or any DSBR Contract save as expressly provided in these DSBR Standard Contract Terms.

22. **Anti-Bribery**

- 22.1 Each Party shall:
- 22.1.1 comply with all Anti-Bribery Laws;
  - 22.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - 22.1.3 have and shall maintain in place, throughout the term of a DSBR Contract, its own policies and procedures, including Adequate Procedures, to ensure compliance with the Anti-Bribery Laws and this paragraph 22, and will enforce them where appropriate; and
  - 22.1.4 procure and ensure that all of its Associated Persons and/or other persons who are performing services in connection with a DSBR Contract comply with this paragraph 22.
- 22.2 If either Party breaches this paragraph 22 then, without prejudice to any other rights or remedies, the other Party may immediately terminate a DSBR Contract on written notice to the Party in breach.
23. **EMR**
- 23.1 Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in these DSBR Standard Contract Terms, the Service Provider consents to NGET 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 these DSBR Standard Contract Terms for the purpose of carrying out its EMR Functions.
- 23.2 The provisions relating to the resolution of disputes set out in these DSBR Standard Contract Terms (if any) are subject to any contrary provision of an EMR Document.
- 23.3 For the purposes of this paragraph 23 only:-
- 23.3.1 "AF Rules" has the meaning given to "allocation framework" in section 13(2) of the Energy Act 2013;
  - 23.3.2 "Capacity Market Rules" means the rules created pursuant to section 34 of the Energy Act 2013 as modified from time to time in accordance with The Electricity Capacity Regulations 2014;
  - 23.3.3 "EMR Functions" has the meaning given to "EMR functions" in Chapter 5 of Part 2 of the Energy Act 2013;
  - 23.3.4 "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 (Electricity Supplier Obligation) Regulations 2014, The Contracts for Difference (Definition of Eligible Generator) 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.

### **ANNEX 1 – BASELINE DAYS METHODOLOGY**

In respect of any DSBR Instruction, the 10 Baseline Days shall be ascertained as follows (and any terms used in this Annex 1 not defined in paragraph 1 of these DSBR Standard Contract Terms shall have the meanings ascribed to them in the Connection and Use of System Code or the Balancing and Settlement Code, as the case may be):-

1. For each of the successive 365 Days immediately prior to the date of issue of that DSBR Instruction (together "the Relevant Days"), NGET shall derive daily consumption data using BM Unit Metered Volumes extracted from the SAA-I014 Settlement Reports.
2. For these purposes, NGET shall take account of all Reconciliation Runs undertaken pursuant to the Balancing and Settlement Code up to and including the Interim Settlement Run (SF) for the Relevant Day last to occur ("the Final Relevant Day"), after which all subsequent Reconciliation Runs with respect to any Relevant Day shall be disregarded. Accordingly, once the SAA-I014 Settlement Report which reflects the Interim Settlement Run for the Final Relevant Day is issued, all SAA-I014 Settlement Reports then issued for each of the Relevant Days shall for these purposes be definitive.
3. From such SAA-I014 Settlement Reports, and for each Relevant Day, NGET will derive aggregate half hourly consumption values for each of the 48 Settlement Periods across all Balancing Mechanism Units with prefix 2\_, T\_, M\_ or E\_ (for the avoidance of doubt excluding exports on all Directly Connected Interconnectors and Interconnectors capable of exporting more than 100MW to the Total System).
4. From each of such 48 Settlement Periods in each Relevant Day, NGET shall derive the Settlement Period or Periods with the highest aggregate half-hourly consumption value, which shall represent the peak half-hourly consumption for that Relevant Day.
5. From each of the Relevant Days and associated peak half-hourly consumption, and after disregarding any Relevant Day(s) in which a DSBR Instruction was issued to the DSBR Unit in question, NGET shall ascertain the 10 Relevant Days with the highest peak half-hourly consumption, which shall together comprise the Baseline Days (and in the case of two or more Relevant Days with the same peak half-hourly consumption, the one(s) falling nearest to the date of the relevant DSBR Instruction shall be used).

## ANNEX 2 – PAYMENT FORMULAE

### Part 1 -Glossary

In this Annex 2, the following terms shall have the respective meanings shown opposite each below:

<b>AF<sub>i</sub></b>	<i>the Administration Fee (£/MW) applicable to DSBR Unit i</i>
<b>DQ<sub>ij</sub></b>	<i>the DSBR Delivered Quantity (MWh) applicable to DSBR Unit i and Settlement Period j</i>
<b>Q<sub>i</sub></b>	<i>the Indicative DSBR Capability (MW) applicable to DSBR Unit i</i>
<b>O<sub>ij</sub></b>	<i>for DSBR Unit i and Settlement Period j, the duration of overlap between any contiguous instruction period and the DSBR Service Window (hours)</i>
<b>QB<sub>ij</sub></b>	<i>the Baseline Demand Profile (MWh) applicable to DSBR Unit i and Settlement Period j</i>
<b>QD<sub>ij</sub></b>	<i>the Metered Consumption (MWh) applicable to DSBR Unit i and Settlement Period j</i>
<b>r</b>	<i>the Firm Delivery Period (hours)</i>
<b>RDQ<sub>ir</sub></b>	<i>the Total Delivered Quantity (MWh) applicable to DSBR Unit i and Firm Delivery Period r</i>
<b>SD<sub>i</sub></b>	<i>the Sustainability Duration (hours) applicable to DSBR Unit i</i>
<b>TQ<sub>ij</sub></b>	<i>the Target Quantity (MWh) applicable to DSBR Unit i and Settlement Period j</i>
<b>TTQ<sub>ir</sub></b>	<i>the Total Target Quantity (MWh) applicable to DSBR Unit i and Settlement Period j</i>
<b>UR</b>	<i>the applicable Utilisation Rate (£/MWh)</i>
<b>Σ<sub>jer</sub></b>	<i>a sum over all Settlement Periods j falling within Firm Delivery Period r</i>
<b>Σ<sub>jes</sub></b>	<i>a sum over all Settlement Periods j falling within period s being that part of the DSBR Service Window not forming part of the Firm Delivery Period</i>

### Part 2 – Set-up Fee (where applicable)

Set-up Fee for DSBR Unit i =  $\text{Min}(\text{SD}_i/2, 1) * \text{Q}_i * \text{£}10,000$

### Part 3 – Administration Fee (where applicable)

Administration Fee for DSBR Unit i =  $\text{AF}_i * \text{Q}_i$

### Part 4 – Utilisation Fee

(for the avoidance of doubt not applicable to DSBR Performance Tests)

1. For the purposes of this Part 4 and the calculation of Utilisation Fees, the DSBR Service shall be considered to be delivered from a DSBR Unit in respect of either (1) Settlement Periods together comprising a Firm Delivery Period or (2) any other Settlement Periods

the subject of one or more DSBR Instructions contained within the DSBR Service Window.

*Firm Delivery Periods – calculation of Utilisation Fee*

2. The Firm Delivery Period is ascertained by first identifying the relevant DSBR Instructions (in accordance with paragraph 3) and then the associated Firm Despatch Spell (in accordance with paragraph 4).
3. In recognition that a DSBR Instruction may be issued to extend or shorten the delivery period associated with another DSBR Instruction, it is necessary to identify an Eligible Contiguous Group as follows:
  - a. "Contiguous Group" means any group of Contiguous Instructions which are related as described in b. below;
  - b. "Contiguous Instruction" means a DSBR Instruction which, in relation to another DSBR Instruction, applies to the same DSBR Unit and in respect of which the end time of that (or the related) DSBR Instruction falls either:
    - (1) at the same time as either the start time or the end time of the other; or
    - (2) between the start time and end time of the other;and so that:
    - (i) if a DSBR Instruction A is contiguous with DSBR Instruction B, then DSBR Instruction B shall be considered to be contiguous with DSBR Instruction A, and if DSBR Instruction B is itself contiguous with DSBR Instruction C then DSBR Instruction C shall also be considered to be contiguous with DSBR Instruction A (and so on)
    - (ii) such DSBR Instructions contiguous with one another shall be considered to be a Contiguous Group, and any DSBR Instruction that is not contiguous with another DSBR Instruction shall be considered to form a Contiguous Group comprising only itself;
    - (iii) for any group of Contiguous Instructions:
      - (i) the contiguous start time is the earliest of the start times of any DSBR Instruction in the group;
      - (ii) the contiguous end time is the latest of the end times of any DSBR Instruction in the group; and
      - (iii) the contiguous instruction period is the period of time between the contiguous start time and the contiguous end time.
  - c. "Eligible Contiguous Group" means, in relation to a DSBR Unit and a Contracted Service Window, any Contiguous Group which meets all of the following criteria:
    - (1) it has a contiguous instruction period that overlaps at least in part with the Contracted Service Window;
    - (2) it has a contiguous start time that is 2 or more hours later than the end time of any DSBR Instruction issued with the respect to the same DSBR Unit that does not form part of that Contiguous Group;
    - (3) the contiguous start time is 2 hours or more later than the time of issue of the related DSBR Instruction; and
    - (4) it does not overlap (wholly or partly) with a Settlement Period in relation to which a Max DSBR instruction has been issued to the relevant DSBR Unit.



4. For any Eligible Contiguous Group so ascertained, its Firm Despatch Spell shall be identified as the period of time which:-
  - a. Commences at the later of:
    - i. The contiguous start time, and
    - ii. The start of the Contracted Service Window; and
  - b. Finishes at the earliest of:
    - i. The end of the Contracted Service Window,
    - ii. The contiguous end time,
    - iii. The end of the Sustainability Duration (commencing at the contiguous start time), and
    - iv. The spot time at the start of the first Settlement Period in which falls the DSBR Instruction to the relevant DSBR Unit with the earliest start time after the contiguous end time.
5. For each such Firm Despatch Spell, the Firm Delivery Period shall be those consecutive Settlement Periods which overlap (in whole or in part) with the Firm Despatch Spell.
6. In relation to all Settlement Periods comprised in a Firm Delivery Period, the Utilisation Fee for each DSBR Unit shall be calculated by reference to Total Target Quantity and Total Delivered Quantity (defined in accordance with paragraphs 7 and 8 below) as the sum of:
  - a. For any part of the Total Delivered Quantity up to 25% of the Total Target Quantity, then zero;
  - b. For any part of the Total Delivered Quantity falling between 25% and 50% of the Total Target Quantity, then one half of the Utilisation Rate multiplied by that part;
  - c. For any part of the Total Delivered Quantity falling between 50%, and 75% of the Total Target Quantity, one and a half times the Utilisation Rate multiplied by that part; and
  - d. For any part of the Total Delivered Quantity above 75% of the Total Target Quantity, then twice the Utilisation Rate multiplied by that part.
7. "Total Target Quantity" shall be ascertained as follows:
  - a. For any Settlement Period, the Target Quantity ( $TQ_{ij}$ ) for any DSBR Unit is determined as follows:

*Target Quantity  $TQ_{ij} = O_{ij} * Q_i$*

Where  $O_{ij}$  is the duration (in hours) of overlap between any contiguous instruction period and the DSBR Service Window (and is zero if there is no such overlap); and

$Q_i$  is the Indicative DSBR Capability of the DSBR Unit in MW.
  - b. For any Firm Delivery Period, "Total Target Quantity" ( $TTQ_{ir}$ ) is determined as  $\sum_{j \in r} TQ_{ij}$ 

Where  $\sum_{j \in r}$  represents a sum over all Settlement Periods  $j$  falling within the Firm Delivery Period  $r$
8. "Total Delivered Quantity" shall be ascertained as follows:
  - a. For any Settlement Period, the Delivered Quantity  $DQ_{ij}$  for each DSBR Unit is determined as follows:

If  $MaxDSR_{ij}=0$ , then  $DQ_{ij}= Min(TQ_{ij}, QB_{ij}-QD_{ij})$ , and

if  $MaxDSR_{ij}=1$ , then  $DQ_{ij}= QB_{ij}-QD_{ij}$

Where:

$QB_{ij}$  is the Baseline Demand Profile for the DSBR Unit in Settlement Period  $j$  (expressed as a positive value if the DSBR Unit is, on average, a net importer over the baseline periods and negative if a net exporter);

$QD_{ij}$  is the Metered Consumption of the DSBR Unit in Settlement Period  $j$  (for the avoidance of doubt, if a net Import expressed as a positive integer and if a net Export expressed as a negative integer); and

$MaxDSR_{ij}$  is a flag which has a value of 1 if NGET has issued a Max DSBR Instruction in relation to Settlement Period  $j$  with respect to DSBR Unit  $i$  and is otherwise zero.

- b. For any Firm Delivery Period, the Total Delivered Quantity ( $RDQ_{ir}$ ) for the relevant DSBR Unit is determined as  $\sum_{j \in r} DQ_{ij}$

Where  $\sum_{j \in r}$  represents a sum over all Settlement Periods  $j$  falling within the Firm Delivery Period  $r$

*DSBR outside of Firm Delivery Periods – calculation of Utilisation Fee*

9. In relation to all Settlement Periods the subject of one or more DSBR Instructions which are contained within the DSBR Service Window but which are not comprised in a Firm Delivery Period, the Utilisation Fee for each DSBR Unit is determined as  $\sum_{j \in s} DQ_{ij} * UR$

Where  $\sum_{j \in s}$  represents a sum over all Settlement Periods  $j$  falling within the period  $s$  being that part of the DSBR Service Window defined by the Settlement Periods in which the contiguous start and end times fall which excludes the Firm Delivery Period, and  $UR$  is the Utilisation Rate for DSBR Unit  $i$ .