

DATED

2018

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AND

[] LIMITED

NEMO APPOINTMENT [AND SERVICES] AGREEMENT

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- 1.1.8 any reference to an agreement, deed, instrument, licence, rule, enactment, statutory provision, regulation or code or any subdivision or provision thereof will be construed, at the particular time, as a reference to it as it may at that time have been amended, varied, supplemented, modified, suspended, assigned or novated and shall be construed as including a reference to any modification, extension or re-enactment thereof then in force and to any instruments, orders or regulations then in force and made under or deriving validity from the relevant statute;
- 1.1.9 words and expressions defined in the **DAOA** or the **CACM Regulation** shall (save where otherwise provided) have the same meanings where used in this **Agreement**;
- 1.1.10 references to the masculine will include the feminine and references in the singular will include references in the plural and vice versa;
- 1.1.11 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; and
- 1.1.12 any reference to a “holding company” or a “wholly-owned subsidiary” means a holding company or a wholly-owned subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.2 In this **Agreement** (including the recitals hereto), the following definitions will apply:

- “Affiliate”** in relation to a body corporate, means any subsidiary, subsidiary undertaking or holding company of such body corporate, and any subsidiary or subsidiary undertaking of any such holding company for the time being;
- “Agreed Interconnector Procedures”** means the operating procedures agreed between the **Parties** and appended to this **Agreement** at Appendix (A) (*Agreed Interconnector Procedures*), as amended and/or supplemented from time to time;
- [“Agreed Validations”** means the validations to be undertaken by the **NEMO** in accordance with this **Agreement** as described in Appendix (B) (*Agreed Validations*), as amended and/or supplemented from time to time;]
- “Agreement”** means this **Agreement** (including the Schedules and Appendices) as amended, extended, supplemented, novated or modified from time to time;
- “Applicable Law”** means any statute, statutory instrument, licence (including the **NGET Licence** and the licence granted by the Secretary of State to the **ITSO** under Section 6(1)(e) of the Electricity Act 1989), law, decree, order in council or directive, or any code including the **NGET Grid Code** and the **Balancing and Settlement Code**, or any request, requirement, instruction, direction or rule of any Competent Authority but only, where not having the force of law, if compliance with the Applicable Law is in accordance with the general practice of persons to whom the Applicable Law is addressed;
- “Authorisation”** means any authorisation, consent, approval, resolution, licence,

	exemption, filing, notarisation or registration;
“Balancing and Settlement Code” or “BSC”	means the code of that name established under the NGET Licence ;
“[Bidding zone x] Price”	in relation to a particular hour on a Trading Day , means the day ahead market clearing price of electricity in [bidding zone x] as specified in the PCR Result for that hour;
“[Bidding zone x] Volume”	means, in respect of a particular hour on a Trading Day , the volume of electricity (if any) (expressed in MWh as at the substation at []) which the PCR Result specifies will be transferred across the Interconnector in the direction [bidding zone X] to Great Britain for that hour;
“Business Day”	means a day other than a Saturday or Sunday on which banks are open for domestic business in the United Kingdom;
“CACM Regulation”	means Commission Regulation (EU) 2015/1222 establishing a Regulation on capacity allocation and congestion management;
“Central Counter Party”	means the entity or entities with the task of entering into contracts with market participants, by novation of the contracts resulting from the matching process, and of organising the transfer of net positions resulting from capacity allocation with other central counter parties or shipping agents;
“Change in Law”	means the occurrence of any of the following after the date of this Agreement : <ul style="list-style-type: none"> a. the enactment of any new Law or official requirement; b. the modification or repeal of any existing Law or official requirement; c. the commencement of any Law or official requirement which has been enacted but not yet become effective as at the date of this Agreement; d. a change in the interpretation or application by any Competent Authority of any Law or official requirement; e. the imposition of a requirement for Authorisations not required as at the date of this Agreement; f. after the grant of any Authorisation, a change in the terms and conditions attaching to such Authorisation or the attachment of any new terms or conditions; g. any Authorisation not being granted or, if granted for a limited period, not being renewed, on a timely basis where application for such Authorisation (or the renewal of such Authorisation, as the case may be) has been duly made; or h. any Authorisation that has been granted ceasing to remain in full force and effect and otherwise than as a result of any negligent or wilful act or omission by the relevant Party; i. any Authorisation being renewed and otherwise than as a result of any negligent or wilful act or omission by the relevant Party, on terms or subject to conditions which are materially less favourable to the relevant Party than those attached to

the original **Authorisation**;

["**Change Mechanism**"] means the procedure for variations to the **Services** set out in Schedule 1 (*Change Mechanism*);]

["**Change Order**"] means any variation to the **Services** which is agreed in writing pursuant to the **Change Mechanism**;]

["**Change Request Fee**"] has the meaning given in Paragraph 1 of Schedule 1 (*Change Mechanism*);]

"**Competent Authority**" means the Secretary of State (as defined in the Electricity Act), the GB electricity regulator (GEMA), the [] electricity regulator ([]), ACER, the European Commission and any local, national, supra-national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or [];

"**Confidential Information**" means:

- a. information regarding the terms and conditions or subject matter of this **Agreement**;
- b. all communications between the **Parties** and all information and other material supplied to, or received by, either **Party** from the other **Party** in connection with negotiations leading to this Agreement which is either marked "confidential" or by its nature is intended to be for the knowledge of the recipient and/or any other person within Clause 14.3 alone; and
- c. all information in any format or medium (including without limitation written, oral, visual or electronic form or on tape or disk) which is directly or indirectly disclosed by either **Party** where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

"**Congestion Rent**" means, in relation to a transfer of electricity across the **Interconnector** as required by a **PCR Result** on a given **Trading Day**, the summation for each hour in that **Trading Day** of i) A - B in the direction Great Britain to [bidding zone X] and ii) B - A in in the direction [bidding zone X] to Great Britain where:

A is an amount equal to the **GB Price** (expressed in €/MWh) multiplied by the **GB Volume** (expressed in MWh), and

B is an amount equal to the [**Bidding zone X**] **Price** (expressed in €/MWh) multiplied by the [**Bidding zone X**] **Volume** (expressed in MWh);

["**Critical Error**"] means a breach by the **NEMO** of its obligations under this **Agreement** (including the **Agreed Validations**) that:

- a. results in charges being incurred under the **BSC** in respect of the **Error Account** for the **Interconnector**; or
- b. results in the **ITSO Data** failing to be received in full and with

- revolution, riot, insurrection, civil commotion, sabotage, terrorism or the threat of sabotage or terrorism;
- c. any act of state or other exercise of sovereign, judicial or executive prerogative by any Competent Authority, including expropriation, nationalisation or compulsory acquisition or acts claimed to be justified by executive necessity;
- d. any epidemic, plague, explosion, chemical or radioactive contamination or ionising radiation, lightning, earthquake, tempest, flooding, fire, cyclone, hurricane, typhoon, tidal wave, whirlwind, storm, volcanic eruption and other unusual and extreme adverse weather or environmental conditions or action of the elements, meteorites, collision, or impact by any vehicle, vessel or aircraft or objects falling from aircraft or other aerial devices or the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speed; and
- e. any act of God;

“GB Agreed Procedures”	has the meaning given to that term in the GB Framework Agreement ;
“GB ITSOs”	means, taken together, National Grid Interconnectors Limited, BritNed Development Limited, Moyle Interconnector Limited and EirGrid Interconnector Limited;
[“GB Net Position”	[means the net position (expressed in MW) of the GB Bidding Zone];]
“GB Price”	in relation to a particular hour on a Trading Day , means the price for the GB bidding zone as specified in the relevant PCR Result for that hour;
“GB Volume”	means, in respect of a particular hour on a Trading Day , the volume of electricity (if any) (expressed in MWh as at the Interconnector substation in Great Britain) which the relevant PCR Result specifies will be transferred across the Interconnector in the direction Great Britain to [bidding zone X] for that hour;
“Good Industry Practice”	means the exercise of that degree of skill, care, prudence, foresight and operating practice which would ordinarily and reasonably be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the NEMO);
“Grid Code”	means the code of that name established under the NGET Licence ;
“Incident Committee”	has the meaning given to that term in the DAOA ;
“Insolvency Event”	means, in relation to a Party , any of the following events: <ul style="list-style-type: none"> a. an order of a competent court is made or a resolution is passed for its insolvent winding up or dissolution; b. a receiver of the whole or any material part of its assets or undertaking is appointed (whether under contract or by a court) or a decision for the opening of insolvency proceedings has

“ NEMO Manager ”	means the NEMO operational manager who is responsible for the day to day provision of the Services and the NEMO’s functions pursuant to the CACM Regulation , the MCO Plan and the DAOA ;
“ NEMO Systems ”	means the IT systems used by the NEMO in connection with the discharge of its functions under the CACM Regulation and the MCO Plan and its provision of the Services , including the interfaces with the IT systems of the ITSO ;
“ NGET ”	means National Grid Electricity Transmission plc, a company incorporated in England and Wales with registered number 02366977 (its successors and/or assignees);
“ NGET Licence ”	means the licence granted by the Secretary of State to NGET under Section 6(1)(b) of the Electricity Act permitting, inter alia, the transmission of electricity in Great Britain;
[“ Non-Critical Error ”	means a breach by the NEMO of its obligations under this Agreement or the Agreed Validations that does not amount to a Critical Error ;
[“ Notice of Change ”	has the meaning given in Schedule 1 (<i>Change Mechanism</i>);]
[“ Operational Fee ”	means a monthly fee of [] payable to the NEMO in respect of the Services ;
“ Operational Procedures ”	means the common operational procedures for the Interconnector agreed between the ITSO and the NEMO , a copy of which at the Effective Date is appended at Appendix (C) (<i>Operational Procedures</i>);
“ Party ” or “ Parties ”	means each person for the time being and from time to time a party to this Agreement and any successor in title to, or permitted assign of, such person;
“ PCR ”	means the day ahead price coupling process, including IT systems, the “ Matcher Broker ” software, infrastructure and processes, undertaken by the power exchanges participating in Single Day Ahead Coupling in accordance with the PCR Cooperation Agreement ;
“ PCR Cooperation Agreement ”	means the agreement of that name dated 13 June 2012 and made between the NEMO and various other European power exchanges as the same may be amended from time to time;
“ PCR Result ”	means the Final PCR Result and/or the Preliminary PCR Result as the context requires;
“ Power Exchange ”	means the electricity exchange operated by the NEMO in Great Britain under the name “[]”;
“ Preliminary FX Rate ”	means, in relation to a Trading Day , the Sterling to Euro or Euro to Sterling (as applicable) exchange rate determined in accordance with GB Agreed Procedure [];

“Preliminary PCR Result”	means, in respect of a Trading Day , the preliminary result from the PCR process at the day ahead stage as contained in the [MF20] file received by the NEMO and which has not been subject to Final Confirmation ;
[“Services”	means the services to be provided by the NEMO to the ITSO pursuant to Clause 4 (<i>NEMO’s Services</i>) of this Agreement ;
[“Services Invoice”	means the invoice to be presented by the NEMO each month in respect of the Operational Fee , substantially in the form of the pro forma invoice appended at Appendix (D) (<i>Pro Forma Services Invoice</i>);]
[“Services Provisions”	means Clause 4 and [] of this Agreement;]
“Shipping”	means the process of transferring electricity over the Interconnector on behalf of the relevant Central Counter Party for the purposes of Single Day Ahead Coupling and the related financial settlement;
“Shipping Agreement”	means, where applicable, the direct agreement to be entered into between the ITSO and the Exchange Clearing Party for the purposes of Shipping on such terms as the ITSO may reasonably require;
“Single Day Ahead Coupling”	means the multi-region day ahead price coupling solution operated pursuant to the CACM Regulation , the MCO Plan and the DAOA ;
[“Support Service”	means the service defined in Clause 4.8;]
“Trading Day”	means a calendar day in the CET time zone;
“Trading Party”	has the meaning given to that term in the BSC ; and
[“Transparency Platform”	means the transparency platform developed by the European Network of Transmission System Operators for Electricity pursuant to Regulation EU 543/2013 on the submission and publication of data in electricity markets.]

2. COMMENCEMENT AND TERM

- 2.1 Subject to Clause 2.2, this Agreement will come into effect on the **Effective Date** and shall continue thereafter in full force and effect until the **Expiry Date**, subject to earlier termination in accordance with Clause 15 (Suspension and Termination), or extension in accordance with Clause 2.2.
- 2.2 The **ITSO** may by notice in writing to the **NEMO** given at any time prior to [] extend the term of this **Agreement** by such period as it may specify in its notice.

3. NEMO FUNCTIONS

- 3.1 The **NEMO** shall, throughout the term of this **Agreement**, operate and maintain the necessary systems and processes to fulfil its obligations in respect of the operation of **PCR**, whilst ensuring that it is at all times compliant with its obligations under the **CACM Regulation**, the **MCO Plan**, the **DAOA** and the **PCR Cooperation Agreement**.
- 3.2 The **NEMO** shall submit to the **PCR** price coupling algorithm the day ahead cross zonal capacity and allocation constraints in accordance with Article 46 of the **CACM Regulation**. In particular it shall in respect of each **Trading Day** submit to **PCR** the **ITSO Data** applicable to that **Trading Day** as notified to it by the **ITSO**.
- 3.3 The **NEMO** shall deliver the single day ahead coupling results to the **ITSO** in accordance with Article 48(1) of the **CACM Regulation**.
- 3.4 The **NEMO** shall perform the **NEMO** task of **Central Counter Party** for the exchange of energy between the GB bidding zone and the [bidding zone X] in respect of the **Single Day Ahead Coupling** process in accordance with Article 68(3) of the **CACM Regulation**.
- 3.4.1 In particular the **NEMO** shall either:
- 3.4.1.1 itself, act as **Exchange Clearing Party** for the **Power Exchange**; or
- 3.4.1.2 ensure that a suitably qualified and experienced party is appointed as **Exchange Clearing Party** for the **Power Exchange**.
- 3.4.2 The **NEMO** shall procure that the **Exchange Clearing Party** undertakes a cross-clearing transaction with its counterpart **Central Counter Party** equal to the volume of any transfer over the **Interconnector** specified in the **Final PCR Result** and, [in respect of any such transfer in the direction Great Britain to [] or [] to Great Britain,] shall direct the **Exchange Clearing Party** to utilise the capacity on the **Interconnector** made available by the **ITSO** under Clause 3.5. The **ITSO** shall accordingly make available physical transmission rights, on the **Interconnector** [in the direction []] equal to the volume of any transfer over the **Interconnector** [in the direction []] specified in the **Final PCR Result** for use by the **Exchange Clearing Party** in accordance with its cross-clearing agreement with its counterpart **Central Counter Party**.
- 3.4.3 The **NEMO** shall notify the **ITSO** in writing not less than six (6) months prior to making any appointment of a third party as Exchange Clearing Party for the Power Exchange under Clause 3.4.1.2. The **NEMO** may proceed with the appointment of the proposed successor Exchange Clearing Party provided that such successor **Exchange Clearing Party** has, in the **ITSO**'s reasonable opinion, adequate technical and financial ability to fulfil its obligations under this Agreement.
- 3.4.4 In the event that the **Exchange Clearing Party** becomes aware of any issue which has resulted in the suspension of the cross-clearing link between it and its counterpart **Central Counter Party** the **NEMO** shall:
- 3.4.4.1 immediately notify the **ITSO** of such suspension;
- 3.4.4.2 convene a meeting of the **DAOA Incident Committee** in accordance with **Interconnector Operational Procedure** [] and communicate

with the members of the **DAOA Incident Committee** the background to such suspension and the requirement for a partial decoupling of the **Interconnector** from **PCR** for the period of suspension of the clearing link; and subject to compliance with clauses 3.4.1 3.4.2 and 3.7 and compliance with **Good Industry Practice**, be fully entitled to submit to **PMB** in respect of the **Interconnector** zero capacity for use in the **PCR** process:

- (a) for the next **Trading Day** and for each subsequent **Trading Day** occurring during such suspension, where the **NEMO** suspension occurred prior to 11.30 CET on the day of notification and such suspension has not been lifted by 12.40 CET on such day; and
- (b) for the **Trading Day** following the next **Trading Day** and for each subsequent **Trading Day** occurring during such suspension, where the **NEMO** suspension occurred after 11.30 CET on the day of notification and such suspension has not been lifted by 10.30 CET on the day following such notification.

3.5 The **NEMO** shall undertake the activity of **Shipping** in respect of the single day ahead coupling process in accordance with Article 68 of the **CACM Regulation**. In particular it shall ensure that:

- 3.5.1 where it acts as the **Exchange Clearing Party**, it enters into appropriate contractual arrangements with each of the other relevant **Central Counter Parties**]; and
- 3.5.2 where it appoints a third party in accordance with Clause 3.2.2 as the **Exchange Clearing Party**, that third party shall enter into a **Shipping Agreement** with the **ITSO** [and appropriate contractual arrangements with each of the other relevant **Central Counter Parties**.

3.6 The **NEMO** shall (save as otherwise agreed with the **ITSO**) collect all **Congestion Rent** arising from the **Single Day Ahead Coupling** process and transfer such **Congestion Rent** to the **ITSO** (where applicable) in accordance with this clause 3.6.

- 3.6.1 In particular in respect of each **Trading Day** for which a **PCR Result** is produced and where the **Congestion Rent** is:
 - 3.6.1.1 a positive number, the **NEMO** shall (where it is the **Exchange Clearing Party**) pay or procure that the **Exchange Clearing Party** pays an amount that is equal to the **Congestion Rent** to the **ITSO** in accordance with the terms of this **Agreement**; or
 - 3.6.1.2 a negative number, the **ITSO** will pay an amount equal to the **Congestion Rent** to the **Exchange Clearing Party** in accordance with the terms of this Agreement.

3.7 The **NEMO** will use best endeavours to refer (such referral to be evidenced by production of a certified copy of a minute from a meeting of the **DAOA** Joint Steering Committee), and seek direction from, the **DAOA** Joint Steering Committee in relation to the issue of whether the **Interconnector** should

- participate in **PCR** on a **Trading Day** during which there is a suspension of clearing services as described in Clause 3.4.4.
- 3.8 The **Parties** agree that they will amend this **Agreement**, and if necessary agree a new procedure to be appended to this **Agreement**, so that the **Agreement** complies with any decision or direction of the **DAOA** Joint Steering Committee as a result of a referral pursuant to Clause 3.7.
4. **[NEMO SERVICES]**
- 4.1 The **NEMO** shall undertake the **Agreed Validations** in respect of the **Preliminary PCR Result**.
- 4.2 The **NEMO** shall:
- 4.2.1 if the **Preliminary PCR Result** meets the validation requirements described in the **Agreed Validations**, notify acceptance of the **Preliminary PCR Result** to **PCR** in accordance with the **Agreed Interconnector Procedure** []; or
- 4.2.2 if the **Preliminary PCR Result** does not meet the validation requirements described in the **Agreed Validations**, notify rejection of the **Preliminary PCR Result** to **PCR** in accordance with the **Agreed Interconnector Procedure** [].
- 4.3 The **NEMO** will indemnify the **ITSO** against all reasonable liabilities, costs, expenses, damages and losses (including any direct loss of profit, interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the **ITSO** arising out of or in connection with any failure by the **NEMO** to perform its obligations under Clauses 4.1 and/or 4.2.
- 4.4 The **NEMO** shall:
- 4.4.1 notify the **ITSO** without delay by telephone, upon becoming aware of any potential problems or issues with the **PCR** process;
- 4.4.2 notify the **ITSO** without delay by telephone and provision of an electronic file, if the **Preliminary PCR Result** is either not issued or is rejected (either by the **NEMO** or another power exchange operator participating in **Single Day Ahead Coupling**);
- 4.4.3 [notify the **ITSO** without delay by telephone if the **NEMO** encounters a material malfunction of the **NEMO Systems**, including those elements of the **NEMO Systems** that undertake the **Agreed Validations**];
- 4.4.4 notify the **ITSO** without delay by telephone and in writing, if the **DAOA Incident Committee** is convened (to enable a representative of the **ITSO** to attend the **DAOA Incident Committee** conference call);
- 4.4.5 notify without delay each of: (i) the **ITSO** by provision of [the MR20 VH-result file in an XML format], and (ii) the **Exchange Clearing Party** by provision of [the MR20 VH-result file in an XML format], of the **Preliminary FX Rate**, **Interconnector** flow, **Interconnector** capacity, **Interconnector** ramping (hourly value), and **Interconnector** losses taken from the **Final PCR Result** (upon final confirmation thereof under

the **DAOA**) in accordance with the **Agreed Interconnector Procedure** []; and

- 4.4.6 notify the **ITSO** without delay by telephone and (where possible) provision of an electronic file, upon the actual or anticipated occurrence of any **Decoupling Event** and shall thereafter keep the **ITSO** informed of the steps being taken to resolve the **Decoupling Event** and the expected time of resolution.
- 4.5 The **NEMO** shall provide a service (the “**Support Service**”) to the **ITSO** from 08:00 to 17:00 (Central European Time) each **Trading Day** consisting of:
- 4.5.1 a telephone hotline to provide urgent technical support to the **ITSO** to cover the uploading of the **ITSO Data** into the **NEMO Systems**;
 - 4.5.2 a telephone help desk to provide first-line technical support to the **ITSO** and assistance with the resolution of general enquiries; and
 - 4.5.3 remote diagnosis and correction of **Errors** in accordance with the following response times:
 - 4.5.3.1 respond to potential **Critical Errors** within one (1) minute and using all reasonable endeavours to achieve permanent resolution as soon as reasonably practicable or finding a work around to ensure the inclusion of the **ITSO Data** in the **PCR** process; and
 - 4.5.3.2 respond to **Non-Critical Errors** as soon as reasonably practicable and in any event within one (1) hour and achieve resolution as soon as reasonably practicable.
 - 4.5.4 The **NEMO** shall in respect of each **Trading Day** retrieve the data on the **GB Net Position** from the **PMB** system and submit that data to the **Transparency Platform.**]
- 4.6 The **NEMO** shall provide the **ITSO** with a report at the end of each month setting out details of any **Errors** that have occurred and its response (including timescales) to any such **Errors** in the immediately preceding month.]
5. **PERFORMANCE AND LIAISON**
- 5.1 The **Parties** will cooperate in good faith with each other in order to give this **Agreement** full effect [and to enable the **NEMO** to carry out the **Services**].
 - 5.2 [The **NEMO** shall at all times provide the **Services** in accordance with **Good Industry Practice**, all **Applicable Law** and the **Agreed Interconnector Procedures** and shall maintain all necessary consents required for the provision of the **Services**.]
 - 5.3 In order to ensure the smooth and efficient performance of this **Agreement** the **NEMO Manager** and the **ITSO Manager** shall meet at least once every six (6) months, or at any other time on reasonable written notice given by either **Party** to the other, for the purpose of discussing [the provision of the **Services**, the **NEMO**’s monthly reports produced pursuant to Clause 4.6 and] any other appropriate matters related to the performance of this **Agreement**.

5.4 All information (including the **ITSO Data**) and other input or feedback in relation to the **Services** provided by the **ITSO** to the **NEMO** will, unless expressly stated otherwise by the **ITSO**, be provided without warranty (as to accuracy or otherwise) but the **NEMO** shall be entitled to act and otherwise rely upon any communication (whether or not in writing) from the **ITSO** (or its nominee) which the **NEMO** reasonably believes to be true and correct.

6. **BM UNIT METERED VOLUMES**

6.1 In respect of each hour on a **Trading Day**, the **ITSO** will submit **BM Unit Metered Volumes** in respect of the **Exchange Clearing Party's Consumption BM Unit** on the basis of the **Export Volumes** in accordance with the **ITSO's** obligations as **Interconnector Administrator** under the **BSC**.

6.2 If a **Party** considers that the **BM Unit Metered Volumes** for the **Exchange Clearing Party's Consumption BM Unit** have been incorrectly calculated or submitted, it shall notify the other and the **ITSO** shall use its reasonable endeavours to correct any error in calculation and/or submission of the **BM Unit Metered Volumes**.

6.3 On and from the date of this **Agreement** until the date on which this **Agreement** is terminated in accordance with Clause 9 (*Termination*), the **ITSO** will ensure that the **Exchange Clearing Party** has full access to its commercial platform to enable the **Exchange Clearing Party** to check the **BM Unit Metered Volumes** in respect of the **Exchange Clearing Party's Interconnector BM Units**.

7. **DATA SECURITY AND INTEGRITY**

7.1 The **ITSO** will own all rights, title and interest in and to all of the **ITSO Data** and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of the **ITSO Data**.

7.2 The **NEMO** will maintain an archive of the **ITSO Data** for not less than seven (7) years. In the event of any loss or damage to the **ITSO Data** which is not attributable to the default and negligence of the **ITSO**, the **NEMO** will restore the lost or damaged **ITSO Data** from the latest back-up of such the **ITSO Data** maintained by the **NEMO**.

7.3 The **NEMO** will:

7.3.1 take all reasonable precautions to preserve the integrity of any **ITSO Data** which it processes and to prevent any corruption or loss of such **ITSO Data**;

7.3.2 comply with its obligations under any applicable data security and integrity law, and will not, by act or omission, put the **ITSO** in breach of, or jeopardise any registration under, any such data security and integrity law;

7.3.3 promptly and fully notify the **ITSO** in writing of any notices in connection with the processing of any **ITSO Data**, including subject access requests, and provide such information and assistance as the **ITSO** may reasonably require;

- 7.3.4 promptly and fully notify the **ITSO** in writing if any **ITSO Data** has been disclosed in breach of Clause 14 (*Confidentiality*);
- 7.3.5 if there is any corruption or loss of **ITSO Data** attributable to any default by the **NEMO** or any of its **Affiliates**, use reasonable efforts to restore the data at its own expense;
- 7.3.6 subject to Clause 12, indemnify the **ITSO** against any loss or damage suffered by the **ITSO** in relation to any breach by the **NEMO** of its obligations under this Clause 7; and
- 7.3.7 submit to a data security audit if requested by the **ITSO** or if any **Competent Authority** requests or requires an audit of the **ITSO** and/or any of its service providers.
- 7.4 The **ITSO** hereby grants to the **NEMO** an irrevocable, non-exclusive, non-terminable, royalty-free licence to publish the **ITSO Data** and the **Preliminary PCR Result** to the members of the **Power Exchange** for use in their trading activities at their own risk and without recourse to the **ITSO** under the rules of the **Power Exchange** more particularly set out at: [].
- 7.5 The **NEMO** hereby grants to the **ITSO** an irrevocable, non-exclusive, non-terminable, royalty-free licence to use price data of the **Power Exchange** for the purposes of calculating the **Day Ahead Market Spread** (as such term is defined in the **Interconnector Access Rules**) when an explicit auction is held following a **Decoupling Event** in accordance with the **Interconnector Access Rules**.
- 7.6 Except as expressly provided otherwise, this **Agreement** does not transfer ownership of, or create any licences (implied or otherwise), in any **Intellectual Property Rights** in any data.
8. **[CHANGE REQUESTS]**
- 8.1 The **Parties** agree that the provisions of [Schedule 1 (*Change Mechanism*)] shall apply in respect of changes to the **Services**.]
9. **[PAYMENTS FOR SERVICES]**
- 9.1 [For the avoidance of doubt no costs relating to the performance by the **NEMO** of its regulated activities within the **Single Day Ahead Coupling** process shall be borne by the **ITSO** unless and until required by a binding decision of a **Competent Authority**.]
- 9.2 [In consideration of the **NEMO** performing the **Services** in accordance with this **Agreement**, the **ITSO** shall, subject to receipt of a **Services Invoice** from the **NEMO**, save in respect of any period during which the **Services** are suspended in accordance with Clause [15.9], pay the **Operational Fee** to the **NEMO** in accordance with this Clause [9].
- 9.3 [The **NEMO** shall within five (5) **Business Days** after the end of each month during the term of this **Agreement**, save in respect of any month during which the **Services** are suspended in accordance with Clause 15.10 prepare and send to the **ITSO** a **Services Invoice** in respect of the **Operational Fee** for that month and any applicable **Service Credits** and such invoice shall be paid by the **ITSO** by

the due date stated in that invoice or within forty-two (42) days of receipt, whichever is later.]

- 9.4 [Any payments due under a **Change Order** will, unless otherwise agreed in the **Change Order**, be charged and invoiced to the **ITSO** by the **NEMO** following acceptance by the **ITSO** of the applicable deliverables under the **Change Order** and be payable by the due date stated in that invoice or within forty-two (42) days of receipt of the invoice, whichever is later.]
- 9.5 All amounts payable under this **Agreement** will be exclusive of VAT or relevant local sales tax (if any), which will be paid at the rate and in the manner for the time being prescribed by law.
- 9.6 Any amount (other than one that is disputed in good faith) properly due from one **Party** to the other pursuant to this **Agreement** and remaining unpaid after the due date for payment shall bear interest at a rate equal to three per cent per annum (3%) above the base lending rate from time to time of Barclays Bank plc from and including the date when the amount in question was due until but excluding the date that it is received by the **Party** entitled to it provided that the relevant invoice is an appropriate and properly issued invoice. Interest shall accrue from day to day and shall be compounded with monthly rests.
- 9.7 For the duration of this **Agreement**, and for a period of seven (7) years from termination or expiry of the **Services Provisions**, the **NEMO** shall maintain full and accurate records, in accordance with the UK generally accepted accounting principles, in a form to be approved in writing by the **ITSO**, of all payments, prices, costs and expenses associated with and invoiced in respect of the **Services**.
- 9.8 At the **ITSO's** request, the **NEMO** will grant to the **ITSO** or its auditors access to the premises, records and accounts of the **NEMO** and its subcontractors, including its and their data processing facilities, and to such of its and their supporting documentation and explanations from support staff as is reasonable to ascertain compliance with this **Agreement**. Such access will be granted during normal business hours and subject to reasonable prior notice to the **NEMO**, except to the extent that such access is required by the **ITSO** outside of these parameters to meet regulatory obligations. If, on such examination, the **ITSO** reasonably considers that any payments, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the **ITSO**, then such **Dispute** shall be resolved in accordance with Clause 18] (*Dispute Resolution*).
- 9.9 The **ITSO** may withhold payment against any invoice not submitted in accordance with this **Agreement** and will immediately notify the **NEMO** in writing of its reason for so doing. If the invoice is disputed in part only, the **ITSO** will pay that part of the original invoice which it accepts by the due date stated in that invoice or within forty-two (42) days of receipt, whichever is later, whilst any query concerning a disputed sum is resolved.]

10. **ACCOUNTING FOR CONGESTION RENT**

- 10.1 The **Exchange Clearing Party** shall, and in respect of each **Trading Day** (T), issue and deliver to the **ITSO** on the next **Business Day** (T+1BD) a self-invoice in respect of the **Congestion Rents** that are payable for that **Trading Day** using the pro forma invoice set out in Schedule 2 (*Pro Forma Invoice for Congestion Rents*). A **Party** required to make payments in accordance with Clause 3.6 shall, make

payment of each invoice delivered in accordance with this Clause 10 [on the date of its issue]. All payments will be made in Euro.

10.2 The **Exchange Clearing Party** shall, not later than the fifth **Business Day** after the end of each month (or part thereof) during the term of this **Agreement**, issue and deliver to the **ITSO** a statement of the **Foreign Exchange Balance** for each **Trading Day** in that month, and if the net amount of the aggregated **Foreign Exchange Balance** values for that month (“net **Foreign Exchange Balance**”) is:

10.2.1 a positive number, the **Exchange Clearing Party** shall issue and deliver to the **ITSO** a self-invoice in respect of and pay an amount equal to the net **Foreign Exchange Balance** to the **ITSO** in Euro by the first **Business Day** after the month during which the relevant statement is received; or

10.2.2 a negative number, the **Exchange Clearing Party** shall simultaneously with the statement issue and deliver to the **ITSO** an invoice in respect of the net **Foreign Exchange Balance** and the **ITSO** shall pay an amount equal to the net **Foreign Exchange Balance** to the **Exchange Clearing Party** in Euro by the first **Business Day** after the month during which the relevant statement and invoice are received.

10.3 Where the **NEMO** has appointed a third party in accordance with Clause 3.4.1.2 as the **Exchange Clearing Party**, the **NEMO** shall remain fully responsible and liable towards the **ITSO**, in accordance with this **Agreement**, for the fulfilment of its obligations under this Clause 10, as set out in Clause 27.

11. **WARRANTIES AND INDEMNITIES**

11.1 The **NEMO** warrants and represents to the **ITSO** that:

11.1.1 the **Services** will be performed:

11.1.1.1 in a timely, reliable and professional manner,

11.1.1.2 in conformity with **Good Industry Practice** and so as not to cause fault or malfunction to the **PCR** processes,

11.1.1.3 by a sufficient number of competent staff with appropriate skills, qualifications and experience, at all times having the ability and capacity to meet the requirements, and

11.1.1.4 in compliance with all **Applicable Law** and regulations;

11.1.2 the possession or use of any documentation by the **ITSO** will, when used in accordance with and for the purposes of this **Agreement**, not infringe the **Intellectual Property Rights** of any third party;

11.1.3 it will use all reasonable endeavours to not introduce any viruses onto the **ITSO**'s systems while performing the **Services**; and

11.1.4 all information, in whatever form supplied by, or on behalf of, the **NEMO** to the **ITSO** in connection with this **Agreement** is, to the best of its knowledge and belief, not misleading and is true and accurate in all material respects.

- 11.2 Each **Party** warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this **Agreement** and that those signing this **Agreement** are duly authorised to bind the party for whom they sign.
- 11.3 If the **NEMO** receives written notice from the **ITSO** of any breach by the **NEMO** of the representations and warranties contained in Clause 11.1, the **NEMO** will, at its own expense, remedy that breach within twenty (20) **Business Days** following receipt of such notice, failing which the **ITSO** may pursue such rights and remedies as are available to it.
- 11.4 The warranties set out in Clauses 11.1 and 11.2 are the exclusive warranties of the **Parties** and are in lieu of all other express or implied warranties or conditions.

12. **INTELLECTUAL PROPERTY**

- 12.1 Subject to Clauses 7.5 and 15.5, the **Parties** acknowledge that the **NEMO** will retain any and all **Intellectual Property Rights** in the **NEMO Systems**.
- 12.2 The **NEMO** warrants that it has the necessary rights to use the **NEMO Systems**. The **NEMO** will indemnify the **ITSO** against all reasonable liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the **ITSO** arising out of or in connection with any claim made against it by any third party in relation to any infringement of **Intellectual Property Rights**.
- 12.3 The **NEMO** undertakes to defend the **ITSO** from and against any claim or action that the use or possession of any of the deliverables or any part of them infringes the **Intellectual Property Rights** of a third party, and shall indemnify the **ITSO** against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the **ITSO** arising out of or in connection with any such claim.
- 12.4 [In the event of termination of the **Services Provisions**, the **NEMO** will provide to the **ITSO** copies of such documentation relating to the design and operation of the **NEMO Systems** as the **ITSO** may reasonably require and the **Parties** agree that the **ITSO** will have the nonexclusive right to use such documentation solely for the purpose of procuring services equivalent to the **Services** from a new supplier and not for any other purpose.]

13. **LIMITATION OF LIABILITY**

- 13.1 Subject to Clause 13.2 and the indemnity from the **NEMO** in Clause 12 (*Intellectual Property*), each **Party** limits its liability under this **Agreement**, whether such liability arises in contract, tort (including without limitation negligence) or otherwise, as follows:

- 13.1.1 to a maximum liability of £XXX in aggregate in any twelve month period;
and

- 13.1.2 neither **Party** will be liable to the other **Party** for any loss of business, loss of use, loss of profits or anticipated profits, loss of contract, revenue loss, loss of goodwill or loss of anticipated savings, damage to the other party's reputation or other consequential or special or indirect loss or damage, however caused and whether arising in contract, tort or otherwise and whether foreseeable or not and even if such **Party** has been advised of the possibility of such loss or damage;
- [provided always that it is hereby acknowledged and agreed that any reasonable additional cost, expense or loss incurred by the **ITSO** directly resulting from the appointment of a new provider of services following the termination of the **Services Provisions** under Clause 15.1 or Clause 15.2 shall not be excluded by this Clause 13.]
- 13.2 Nothing in this **Agreement** will be construed as attempting to limit or exclude the liability of either **Party** in respect of injury to, or the death of, any person caused by any willful or negligent act or omission of any **Party**, its officers, employees, agents or subcontractors, or for fraud or fraudulent misrepresentation.
- 13.3 Each **Party** shall use reasonable endeavours to mitigate its losses.
14. **CONFIDENTIALITY**
- 14.1 Subject to Clause 14.3, each **Party** must, and must take reasonable measures to ensure that its officers, agents and employees, in relation to each item of **Confidential Information** of the other **Party**:
- 14.1.1 preserve the confidentiality of the item of **Confidential Information**;
- 14.1.2 only disclose or give access to the item of **Confidential Information** to an **Affiliate** on a strictly "need to know" basis;
- 14.1.3 only use the item of **Confidential Information** for the purpose of performing its obligations under this **Agreement** or any agreement contemplated by it; and
- 14.1.4 wherever the **Confidential Information** comprises communications to or from legally qualified professionals ensure that legal privilege attaches to such **Confidential Information** to the full extent possible and is preserved to the full extent possible under applicable national and supranational laws and that all such information in whatever format is clearly marked "Legally Privileged and Confidential".
- 14.2 Where an officer or employee of a **Party** with access to the **Confidential Information** of the other **Party** is, or is to become, an employee of an **Affiliate**, then the **Party** must, as soon as that fact is known, take all reasonable measures to ensure that the officer or employee ceases to have access to the **Confidential Information** and does not disclose the **Confidential Information** to an **Affiliate** other than in accordance with Clause 14.1.
- 14.3 Notwithstanding Clauses 14.1 and 14.2, a **Party** may disclose or use the **Confidential Information** of the other **Party**:
- 14.3.1 with the prior written consent of the other **Party**;

- 14.3.2 to the extent expressly permitted or contemplated by this **Agreement**;
- 14.3.3 to any person who is one of the directors, officers, employees, agents, advisers or insurers of the **Party** and who needs to know the **Confidential Information** in connection with this **Agreement**;
- 14.3.4 as may be directed or ordered or required in order to comply with any **Applicable Law**;
- 14.3.5 as may be required by any court, arbitrator or administrative tribunal in the course of proceedings before it to which the **Party** is a party; or
- 14.3.6 in order to ensure compliance with a licence issued under the Electricity Act 1989 (including, in the case of the **ITSO**, to ensure compliance by the **ITSO** with the **ITSO Licence**) or to obtain clearances or consents from a **Competent Authority** which reasonably requests disclosure.

15. **SUSPENSION AND TERMINATION**

- 15.1 Either **Party** may terminate: [(i) the **Services Provisions** or (ii)] this **Agreement** with immediate effect by giving written notice to the other if:
 - 15.1.1 the other **Party** commits a material breach of its obligations under this **Agreement** (other than a payment default) which is incapable of remedy or, if capable of remedy, has not been remedied within twenty (20) **Business Days** of the receipt by that **Party** of written notice requesting remedy of the material breach;
 - 15.1.2 the other **Party** is deemed to be unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986), or any other applicable insolvency legislation or any **Insolvency Event** occurs with respect to that **Party**;
 - 15.1.3 the other **Party** fails to pay any material sum that is due and payable and such default has not been remedied within twenty (20) **Business Days** of the receipt by that **Party** of written notice requesting payment (provided in each case that such payment is not subject to a bona-fide dispute);
 - 15.1.4 any warranty or representation given in Clause [11] (*Warranties and Indemnities*) is found to be untrue or misleading; or
 - 15.1.5 the performance of the other **Party** has been prevented for a continuous period of two (2) months by reason of an event of **Force Majeure**.
- 15.2 The **ITSO** may terminate this **Agreement** with immediate effect by giving written notice to the **NEMO** if the **NEMO** commits six (6) **Critical Errors** in any rolling twelve (12) month period.
- 15.3 Either **Party** may terminate this **Agreement** with immediate effect by giving written notice to the other if:

- 15.3.1 the **DAOA** or any successor agreement thereto is terminated for any reason or either the **NEMO** or the **ITSO** withdraws from the **DAOA** or any successor agreement thereto;
 - 15.3.2 the **CACM Regulation** ceases for any reason to have legal effect within the United Kingdom; or
 - 15.3.3 a regulatory authority or governmental authority which is empowered to enforce national or supranational competition law notifies one or more **Parties** in writing that it requires the activities comprising the subject matter of this **Agreement** or activities connected to this **Agreement** to cease immediately.
- 15.4 The **ITSO** may terminate this **Agreement** with immediate effect by giving written notice to the **NEMO** if the **NEMO** appoints a party other than [] or itself as the **Exchange Clearing Party** and that party does not in the **ITSO's** reasonable opinion have the technical or financial capability to fulfil that role.
- 15.5 [Upon termination or expiry of the **Services Provisions** (including when this **Agreement** is terminated) for any reason the **NEMO** will:
- 15.5.1 cease to provide the **Services**;
 - 15.5.2 as soon as practicable deliver to the **ITSO** all drawings, designs, plans, specifications, programs and other documentation as specified in Clause 12.4; and
 - 15.5.3 at the **ITSO's** request, provide all reasonable assistance in connection with the hand-over to a new supplier, provided that such assistance shall not be required to be provided at any time after the expiry of the period of one month following the date of termination or expiry of the **Services Provisions**.]
- 15.6 Upon termination of this **Agreement** for any reason the **NEMO** shall (if applicable) exercise its rights to terminate the appointment of the **Exchange Clearing Party**. The **Parties** acknowledge and agree that a claim for damages pursuant to any breach by the **NEMO** of this clause 15.6 would provide an inadequate remedy for the **ITSO**. Accordingly, in addition to any other remedies and damages available, the **NEMO** acknowledges and agrees that the **ITSO** shall be entitled to the remedies of injunction, specific performance or other equitable relief in respect of any threatened or actual breach of this Clause 15.6 by the **NEMO**. The **Parties** agree that the **ITSO** shall have the right to see a certified copy of the termination provisions in the appointment of the **Exchange Clearing Party**, which provisions shall not be waived or amended without the prior written consent of the **ITSO** (such consent not to be unreasonably withheld, conditioned or delayed).
- 15.7 The **ITSO** will not in any circumstances be liable to the **NEMO** for redundancy payments and staff termination costs arising from termination or expiry of the **Agreement** [or the **Services Provisions**.]
- 15.8 The termination of this **Agreement**, [or the **Services Provisions**.] will be without prejudice to the rights and remedies of the **Parties** that may have accrued up to the date of termination.

15.9 Clauses 13 (*Limitation of Liability*), 14 (*Confidentiality*), 18 (*Dispute Resolution*) and 28 (*Governing Law*) will survive termination of this **Agreement**.

15.10 If:

15.10.1 a **Decoupling Event** occurs and in the **ITSO's** opinion there is no reasonably foreseeable prospect of the **PCR** process recommencing within one month; or

15.10.2 the **Shipping Agreement** is terminated in circumstances where a successor **Exchange Clearing Party** has not yet been appointed);

The **ITSO** may, by giving ten (10) **Business Days** written notice to the **NEMO**, require the **NEMO** to suspend its performance of the **Services**. The **NEMO** shall, in any case, resume performance of the **Services** as soon as reasonably practicable after receiving written notice requiring it to do so from the **ITSO**.

16. **FORCE MAJEURE**

16.1 Neither **Party** will in any circumstances be in breach of this **Agreement** nor liable for delay in performing, or failure to perform, any of its obligations under this **Agreement** if and for so long as such delay or failure results from a **Force Majeure** provided that the affected **Party**:

16.1.1 promptly notifies the other **Party** of the **Force Majeure** after it becomes aware of the delay or failure resulting from that **Force Majeure** (the "**Notification**") identifying: (i) the nature of the event; (ii) the likely effect of the event on its ability to perform the **Services**; and (iii) the likely duration of the event; and

16.1.2 continues to use all reasonable endeavours to mitigate the effect of the **Force Majeure**, to carry out its obligations under this **Agreement** and to minimise the adverse effects of such **Force Majeure**.

16.2 If either **Party** is excused from the performance of any material obligation under this **Agreement** for a continuous period of two (2) months, then the other **Party** ("**Terminating Party**") may at any time thereafter, provided performance or punctual performance by the affected **Party** is still excused and there is in the reasonable opinion of the **Terminating Party** no prospect of performance or punctual performance being resumed within a further period of 30 days, terminate this **Agreement** [or the **Services Provisions**] by notice to the other **Party**.

16.3 The notice to terminate must specify the termination date, which must be not less than thirty (30) days after the date on which the notice to terminate is given.

16.4 Once a notice to terminate has been validly given, this **Agreement** [or the **Services Provisions** (as the context requires)] will terminate on the termination date set out in the notice.

17. **NO WAIVER**

No delay by or omission of any **Party** in exercising any right, power, privilege or remedy under this **Agreement** will 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 will not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

18. **DISPUTE RESOLUTION**

18.1 Any disagreement, difference of opinion or other dispute between the **Parties** which arises out of or in connection with this **Agreement** ("**Dispute**") must be resolved in accordance with this Clause 18.

18.2 Where there is a **Dispute**, a manager of each of the **ITSO** and the **NEMO** with day-to-day responsibility for the operation of this Agreement must meet within ten (10) **Business Days** of a request to meet made by either **Party** and seek to resolve the **Dispute**. If the **Parties** are unable to resolve the **Dispute** within ten (10) **Business Days** after the meeting (or such longer period as the **Parties** may agree) then the **Dispute** must be referred to a **Director** of each **Party** who shall together seek to resolve the **Dispute**.

18.3 In the event that the **Directors** of the **Parties** have been unable to resolve the **Dispute** within ten (10) **Business Days** after the **Dispute** was referred to them pursuant to Clause [21.2], either **Party** may refer the **Dispute** for final determination by the English Courts 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.

18.4 For the purposes of this Clause 18 the **NEMO's** address for service shall be:

[]

19. **CHANGE IN LAW**

19.1 If a **Change in Law** occurs, or is reasonably likely to occur, and results, or is reasonably likely to result, in a significant change to the provision of the **Services** under this **Agreement** or the rights and obligations of either **Party** under this **Agreement** then either **Party** shall, as soon as reasonably practicable after becoming aware of the relevant actual or proposed **Change in Law**, provide a written notice to the other **Party** which describes the relevant **Change in Law** in reasonable detail and sets out the anticipated impacts on the subject matter of this **Agreement**.

19.2 Within thirty (30) **Business Days** of receipt of the notice given in accordance with Clause 19.1, the **NEMO Manager** and the **ITSO Manager** shall meet to discuss such variations of this **Agreement** (as are necessary or desirable) to ensure that this **Agreement** can continue to operate as closely to the original commercial intent as possible.

19.3 If the **ITSO Manager** and the **NEMO Manager** are unable or unlikely to reach an agreement pursuant to Clause 19.2 prior to the **Change in Law** coming into effect, either **Party** may by written notice to the other **Party** terminate this **Agreement** on three (3) months' notice.

20. **ENTIRE AGREEMENT**

- 20.1 This **Agreement** (including the Schedules and Appendices) and the agreements expressly referred to in it contain or expressly refer to the entire agreement between the **Parties** with respect to the subject matter of this **Agreement** and expressly exclude any warranty, condition or other undertaking implied at law or by custom and supersede all previous agreements and understandings between the **Parties** with respect thereto and the **Parties** acknowledge and confirm that they do not enter into this **Agreement** in reliance on any representation, warranty or other undertaking (other than made fraudulently) not fully reflected in the terms of this **Agreement**.
- 20.2 The rights and remedies provided by this **Agreement** to the **Parties** are intended by the **Parties** to be exclusive and not cumulative and, to the extent permissible by law, will exclude and be in place of all substantive (but not procedural) rights or remedies express or implied and provided by law or statute in respect of the subject matter of this **Agreement**, including without limitation any rights either of the **Parties** may possess in tort which will include actions brought in negligence and/or nuisance. Accordingly, each **Party** hereby waives to the fullest extent possible all such rights and remedies provided by law or statute, and releases the other **Party** if it is liable to the other, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by 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.

21. **VARIATIONS**

- 21.1 No variation or amendment to the terms of this **Agreement** shall be of any effect unless agreed in writing and signed on behalf of each of the **Parties** by a duly authorised signatory.
- 21.2 If either **Party** wishes to vary the terms of this **Agreement**:
- 21.2.1 that **Party** shall promptly notify the other **Party** describing the proposed variation in reasonable detail; and
- 21.2.2 the **Parties** will meet no later than thirty (30) **Business Days** from the date of the notice referred to in Clause 21.2.1 to discuss the proposed change, provided always that no variation or amendment to the terms of this **Agreement** shall be of any effect unless agreed in writing and signed on behalf of each of the **Parties** by a duly authorised signatory.

22. **SEVERANCE OF TERMS**

- 22.1 If any provision of this **Agreement** is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of any **Competent Authority**, such invalidity, unenforceability or illegality will not prejudice or affect the remaining provisions of this **Agreement** which will continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.
- 22.2 If any provision of this **Agreement** is declared invalid, unenforceable or illegal as provided in Clause 22.1, the **Parties** will use best endeavours to agree provisions which may be substituted for such invalid, unenforceable or illegal provisions which substitute provisions are satisfactory to the relevant **Competent Authority** and produce as nearly as is practicable in all the circumstances the same economic and financial result.

23. NOTICES

23.1 Except as provided otherwise, all notices, requests, demands, instructions or other communications under this **Agreement** will be in writing and served by email or delivered in person or by courier or by pre-paid post to the respective representatives of the **Parties** whose contact details are as follows:

23.1.1 The **ITSO**: [] and

23.1.2 The **NEMO**: []

23.2 Service of notices, requests, demands, instructions or other communications will be deemed effective:

23.2.1 in the case of notices sent by email, at the time when the email is indicated to the sender as delivered to the recipient and/or the recipient acknowledges the receipt thereof;

23.2.2 in the case of notices delivered in person or by courier or by post, on the date of receipt, unless that date is not a **Business Day** in which case the notice will be deemed given and effective on the first following day that is a **Business Day**;

provided that, if the notice is received on a **Business Day** after 17:00 or on a date which is not a **Business Day**, the notice will be deemed given and effective on the first following day that is a **Business Day**.

23.3 Any change to the contact details of the **Parties** set out in Clause 23.1 must be notified by email to the other **Party**, to be effective five (5) **Business Days** following the sending of such email.

24. THIRD PARTY CONTRACT RIGHTS

Nothing in this **Agreement** is intended to confer on any third party any right to enforce any term of this **Agreement**.

25. RELATIONSHIP OF PARTIES

The relationship of the **Parties** is contractual. Nothing contained or implied in this **Agreement** constitutes or is deemed to constitute a **Party** the partner of the other for any purpose whatsoever or (except as expressly provided in this **Agreement** and the **Agreements** referred to in it) the legal representative, agent or trustee for any purpose whatsoever or create or be deemed to create any partnership, agency or trust of any nature whatsoever.

26. ASSIGNMENT

This **Agreement** will be binding upon and inure to the benefit of the **Parties** hereto and their permitted assignees. Neither **Party** will transfer its rights and/or obligations arising out of this **Agreement**, except with the prior written consent of the other **Party**, which consent will not be unreasonably withheld, conditioned or delayed.

27. **SUBCONTRACTING**

27.1 If the **NEMO** subcontracts or delegates performance of any obligations under this **Agreement** to a third party, it:

27.1.1 must notify the **ITSO** of that fact, including details of the third party within ten (10) **Business Days** of such subcontract agreement or delegation;

27.1.2 shall remain fully responsible and liable towards the **ITSO**, in accordance with this **Agreement**, for the fulfilment of its obligations under this **Agreement**; and

27.1.3 must ensure that such third party complies with the provisions of this **Agreement**, where applicable.

28. **GOVERNING LAW**

This **Agreement** and any dispute or claim arising out of or in connection with it or its subject matter is governed by and construed in all respects in accordance with the laws of England and Wales.

29. **COUNTERPARTS**

This **Agreement** may be executed in counterparts and by each **Party** on a separate counterpart, each of which when executed and delivered will constitute an original, but both the counterparts will together constitute but one and the same instrument. For the purposes of this Clause 29, the delivery of a scanned copy by email, of a signed counterpart of this **Agreement** will be deemed to be a valid signature thereof provided that the **Party** so delivering a email hereby undertakes to deliver an original copy of this **Agreement** forthwith following such email transmission.

APPENDIX A

Agreed Interconnector Procedures

APPENDIX B
Agreed Validations

APPENDIX C

Operational Procedures

APPENDIX D

Pro Forma Services Invoice

SCHEDULE 1

Change Mechanism

SCHEDULE 2

Pro Forma Invoice for Congestion Rents