

Substation Keys Hire Extension of Contestability Agreement

This Substation Keys Hire Extension of Contestability Agreement is dated **2023** and made between:

- (1) **National Grid Electricity Distribution (South West)/(South Wales)/(East Midlands)/(West Midlands) plc** (company number: 02366894/02366985/ 02366923/ 03600574*) whose registered office is at Avonbank, Feeder Rd, Bristol BS2 0TB (“**NGED**”); and
- (2) [**Company name**] whose registered office is at [**address**] (the “**Connection Provider**”).

Background

- (A) NGED and the Connection Provider have entered into a framework agreement dated [**INSERT**] (the “**Framework Agreement**”).
- (B) As part of NGED's commitment to the development and facilitation of competition in connections NGED has invited the Connection Provider to take part in this Extension of Contestability Initiative (as defined below in Clause 1.2).
- (C) The Connection Provider has agreed to take part in this Extension of Contestability Initiative on the terms and conditions set out in this Substation Keys Hire EOC Agreement (as defined below in Clause 1.2).

It is agreed as follows:

1. Definitions and interpretation

- 1.1 The terms of this Substation Keys Hire EOC Agreement shall be deemed to be incorporated into and form part of the Framework Agreement for the duration of this Substation Keys Hire EOC Agreement. In the event of any conflict between this Substation Keys Hire EOC Agreement and the Framework Agreement, the terms of this Substation Keys Hire EOC Agreement shall prevail over the conflicting terms of the Framework Agreement solely in respect of the subject matter of this Substation Keys Hire EOC Agreement.
- 1.2 In this Substation Keys Hire EOC Agreement, terms have the meanings given to them in the Framework Agreement unless the context requires otherwise and in addition the following definitions shall apply:

"Business Hours" between the hours of 0800 to 1600 on a Working Day;

"Competent" means having achieved all necessary accreditations and/or certifications regarding working on NGED's distribution network, including as a minimum the following Lloyds Register National Electricity Registration Scheme scopes: (i) LV Network Connection –

	Operational Activity, and (ii) HV Network Connection – Operational Activity;
"Depot"	the NGED premises at which the Substation Key is collected and returned by the Connection Provider;
"Extension of Contestability Initiative"	NGED has certain Substation Keys which the Connection Provider wishes to hire from time to time on the terms of this Substation Keys Hire EOC Agreement in order to access elements of the Distribution System;
"Indemnified Party"	NGED, any company in the NGED Group and any of their respective servants and agents;
"Substation Key"	a key which allows access to the substations in NGED's distribution network, as described in the relevant Order (and "Substation Keys" shall be construed accordingly);
"Substation Key Damage"	damage to a Substation Key (excluding fair wear and tear) which was not present at the start of the Hire Period of that Substation Key;
"Substation Keys EOC Commencement Date"	the date specified on the front sheet of this Substation Keys Hire EOC Agreement;
"Substation Keys EOC Default"	any act, statement, omission or negligence on the part of either party in connection with this Substation Keys Hire EOC Agreement in respect of which a party is legally liable to the other whether in contract or tort;
"Substation Keys Hire Costs"	the charges payable by the Connection Provider as set out in clause 10;
"Substation Keys Hire EOC Agreement"	this agreement (including any schedules to it) between NGED and the Connection Provider;
"Substation Keys Hire Period"	the period of hire of Substation Keys by the Connection Provider set out in the Substation Keys Order;
"Substation Keys Hire Request"	the Connection Provider's written request to hire Substation Keys from NGED;

"Substation Keys Hiring Out Form"	the form to be signed by the Connection Provider's representative before the Substation Keys are collected from the Depot, in the form set out in Appendix 1;
"Substation Keys Order"	has the meaning set out in clause 2.2;
"Substation Site"	means the substation on the Distribution System to which the Connection Provider has been authorised by NGED Control to obtain access in order to carry out the Substation Works;
"Substation Works"	means the activities to be carried out by the Connection Provider at the Substation Site;
"NGED Control"	means the department of NGED with responsibility for managing, supervising and authorising activities on the Distribution System; and
"NGED Engineer"	the NGED employee who issues and receives the Substation Key at the Depot;

1.3 In this Substation Keys Hire EOC Agreement, unless the context requires otherwise, the principles of interpretation set out in clause 1.2 of the Framework Agreement shall apply.

1.4 The terms set out below apply solely in respect of this Substation Keys Hire EOC Agreement for the duration of this Substation Keys Hire EOC Agreement.

2. **Hire of Substation Keys**

2.1 The Connection Provider agrees to hire and NGED agrees to provide Substation Keys on a when needed basis subject to the terms and conditions of this Substation Keys Hire EOC Agreement.

2.2 If the Connection Provider wishes to hire Substation Keys, the Connection Provider shall send NGED a written Substation Keys Hire Request. NGED shall not be required to provide any Substation Keys unless and until it has confirmed the Connection Provider's Substation Keys Hire Request in writing (such accepted Substation Keys Hire Request a "**Substation Keys Order**").

2.3 This Substation Keys Hire EOC Agreement shall prevail over any terms and conditions in any Substation Keys Order or Substation Keys Hire Request placed by the Connection Provider, any acknowledgement from NGED of such Order, or in any other correspondence between the parties relating to the subject matter of this Substation Keys Hire EOC Agreement except only to the extent any terms and conditions on the Substation Keys Order do not conflict with this Substation Keys Hire EOC Agreement.

- 2.4 This Substation Keys Hire EOC Agreement and (to the extent that it applies to this Substation Keys Hire EOC Agreement) the Framework Agreement set out the entire agreement and understanding between the parties in respect of the subject matter of this Substation Keys Hire EOC Agreement.
- 2.5 NGED shall not be obliged to accept any Substation Keys Hire Request and shall be entitled to refuse any Substation Keys Hire Request at its sole discretion.
- 2.6 Any company in the NGED Group may provide Substation Keys in accordance with this Substation Keys Hire EOC Agreement. Irrespective of the company in the NGED Group that provided the Substation Keys the Connection Provider may only enforce its rights and remedies under this Substation Keys Hire EOC Agreement against NGED and for these purposes only any breach of this Substation Keys Hire EOC Agreement by the company in the NGED Group that provided the Substation Keys shall be deemed to be a breach by NGED.

3. **Term**

- 3.1 This Substation Keys Hire EOC Agreement shall be deemed to have commenced on the Substation Keys EOC Commencement Date and shall continue until terminated in accordance with its terms.
- 3.2 Each Substation Keys Hire Period shall commence and expire at the time specified in the relevant Substation Keys Order.

4. **Collection of Substation Keys**

- 4.1 The Connection Provider shall place a Substation Keys Order on each occasion it wishes to hire Substation Keys from NGED in accordance with this Substation Keys Hire EOC Agreement and each Substation Keys Order shall specify:
- (a) (if applicable) the type of Substation Keys required;
 - (b) the commencement date and time and expiry date and time of the Substation Keys Hire Period; and
 - (c) the Substation Site(s) at which the Substation Keys will be used.
- 4.2 The Connection Provider shall obtain authorisation to enter all proposed Substation Sites from NGED Control before collecting the Substation Keys from the Depot. The Connection Provider shall not be entitled to collect any Substation Keys from the Depot unless and until the Connection Provider has provided written evidence to NGED's reasonable satisfaction that the Connection Provider's access to the proposed Substation Site(s) has been approved and authorised by NGED Control.
- 4.3 The Substation Keys shall be collected from the Depot by the Connection Provider's representative at the start of the Substation Keys Hire Period. The Connection Provider shall procure that its representative shall:
- (a) inspect each Substation Key;

- (b) confirm on the Substation Keys Hiring Out Form the Substation Site(s) which the Substation Key is to be used to access; and
- (c) sign the Substation Keys Hiring Out Form,

before such Substation Key is delivered into the Connection Provider's custody at the start of the Substation Keys Hire Period. The Connection Provider shall not be permitted to remove any Substation Key from the Depot unless and until its representative has completed and signed the Substation Keys Hiring Out Form in respect of such Substation Key.

- 4.4 At the end of the Substation Keys Hire Period the Connection Provider shall procure that the Connection Provider's representative shall return the Substation Keys to the Depot. A Substation Key shall not be deemed to have left the Connection Provider's custody and control until the NGED Engineer has countersigned the Substation Keys Hiring Out Form confirming safe receipt of such Substation Key.
- 4.5 This Substation Keys Hire EOC Agreement sets forth the extent of NGED's obligations and liabilities in respect of the Substation Keys and in particular all conditions, warranties or other terms (express or implied), including as to quality, fitness for a particular purpose or any other kind whatsoever are hereby excluded to the fullest extent permitted by law.

5. **Late return of Substation Keys**

- 5.1 Without prejudice to any other right or remedy NGED may have, in the event that at the end of the Substation Keys Hire Period, the Connection Provider returns any Substation Key to the Depot more than sixty minutes late or fails to return that Substation Key at all, NGED shall be entitled to charge to the Connection Provider liquidated damages of £25 per hour (or any part thereof) from the end of the Substation Keys Hire Period to the time the Substation Key is returned to the Depot or otherwise delivered into the custody of NGED, up to a maximum of £3,000. The Connection Provider accepts that the liquidated damages provided for in this clause 5.1 are a genuine pre-estimate of the loss which NGED is likely to incur as a result of the Connection Provider failing to return a Substation Key in accordance with this Substation Keys Hire EOC Agreement.
- 5.2 Without prejudice to any other right or remedy it may have, if the Connection Provider fails to return any Substation Key to the Depot within 120 hours of the end of the Substation Keys Hire Period, NGED shall be entitled at its sole discretion to:
 - (a) charge to the Connection Provider all costs and expenses suffered and incurred by NGED as a result of such failure, including without limitation all costs of obtaining equipment to replace the Substation Key; and
 - (b) forthwith terminate this Substation Keys Hire EOC Agreement and any Substation Keys Orders subsisting at the date of such termination.

6. **Use of Substation Keys**

- 6.1 The Connection Provider shall (and shall procure that the Connection Provider's representatives shall):
- (a) use the Substation Keys only for the purposes of carrying out the Substation Works at the Substation Site;
 - (b) comply with all written and oral instructions of NGED and/or the NGED Engineer regarding safety and usage applicable to the Substation Keys;
 - (c) inspect the Substation Keys prior to signing the Substation Keys Hiring Out Form;
 - (d) keep possession and control of the Substation Keys at all times during the Substation Keys Hire Period and shall not part with possession of any Substation Key without NGED's prior written consent (and the Connection Provider shall at its own cost make good (or shall pay on demand NGED's costs of having made good) any damage to or loss of the Substation Keys sustained during the Substation Keys Hire Period);
 - (e) maintain records of the Substation Works undertaken and usage records of the Substation Keys and make copies of such records readily available to NGED, together with such additional information as NGED may reasonably require;
 - (f) not sell, lease, lend, hire, charge by way of security, modify, move, interfere with, make copies of or otherwise deal with the Substation Keys in any way, save as permitted under sub-clause 6.1(a), without NGED's prior written consent; and
 - (g) keep NGED fully informed of all material matters relating to the Substation Keys and give immediate written notice to NGED in the event of loss, accident or damage to the Substation Keys arising out of or in connection with the Connection Provider's possession or use of the Substation Keys.

7. **Obligations of the Connection Provider**

- 7.1 The Connection Provider shall ensure that all personnel that it engages in using the Substation Keys:
- (a) shall do so with all due skill and diligence, and shall possess such qualifications, skills and experience as are necessary for the proper and safe access to any Substation Site;
 - (b) shall comply with all applicable rules, regulations, laws and requirements (including without limitation those relating to health and safety and security arrangements) in relation to the use of the Substation Keys and access to any Substation Site; and
 - (c) are Competent.

7.2 The Connection Provider acknowledges that:

- (a) it shall be responsible for obtaining and maintaining all necessary rights, permissions and other consents (if any) for the use of the Substation Keys and access to the Substation Site(s) in accordance with this Substation Keys Hire EOC Agreement; and
- (b) NGED shall not be responsible for any loss of or damage arising out of or in connection with any negligence, misuse, mishandling of the Substation Keys or otherwise caused by the Connection Provider or its officers, employees, agents or Connection Providers.

7.3 On termination or expiry of this Substation Keys Hire EOC Agreement for any reason, the Connection Provider shall return all Substation Keys in its possession or control to NGED as soon as reasonably practicable and in any event within 3 days.

8. **Ownership**

8.1 The Substation Keys shall remain at all times the property of NGED, and the Connection Provider shall not have any right, title or interest in or to the Substation Keys save as expressly set out in this Substation Keys Hire EOC Agreement.

8.2 The risk of loss, theft, damage or destruction of the Substation Keys shall pass to the Connection Provider upon signing of the Substation Keys Hiring Out Form on collection of such Substation Keys from the Depot. Subject to clause 8.3, the Substation Keys shall remain at the sole risk of the Connection Provider during the Substation Keys Hire Period.

8.3 Risk in the Substation Keys shall pass to NGED on the countersigning of the Substation Keys Hiring Out Form by the NGED Engineer on return of the Substation Keys to the Depot at the end of the Substation Keys Hire Period.

9. **Insurance**

9.1 Without prejudice to its obligation to indemnify NGED under clause 11, the Connection Provider shall, at its own expense, obtain and maintain the following insurances for the duration of the Substation Keys Hire Period:

- (a) insurance for such amounts as a prudent Connection Provider would insure for, or for such amount as NGED may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the use of the Substation Keys; and
- (b) insurance against such other further risks relating to the use of the Substation Keys as may be required by law, together with such insurance as NGED may from time to time consider reasonably necessary and advise to the Connection Provider.

10. **Substation Keys Hire Costs and payment terms**

- 10.1 Following the end of the Substation Keys Hire Period, NGED shall calculate the amount of the Substation Keys Hire Costs due from the Connection Provider in accordance with clause 10.2.
- 10.2 The Substation Keys Hire Costs shall be calculated by reference to:
- (a) the total amount of time spent by the NGED Engineer: (i) delivering the Substation Keys at the commencement of the Substation Keys Hire Period, (ii) waiting at the Depot to deliver and collect the Substation Keys and (iii) collecting such Substation Keys at the end of the Substation Keys Hire Period (such activities "**Handling the Substation Keys**"); and
 - (b) any amounts due to NGED under clause 5.1 in respect of the relevant Substation Keys Hire Period.
- 10.3 Subject to clause 10.4, the charge payable for the NGED Engineer's time shall be published on the NGED Technical Information Site from time to time and shall be calculated by reference to each 3-hour period or part thereof spent by the NGED Engineer Handling the Substation Keys.
- 10.4 A higher charge will be payable in respect of any part of the NGED Engineer's time Handling the Substation Keys which occurs outside of Business Hours. Such higher charge shall be published on the NGED Technical Information Site from time to time and shall be calculated by reference to each 3-hour period or part thereof spent by the NGED Engineer Handling the Substation Keys outside Business Hours. Where on any occasion the NGED's Engineer's time Handling the Substation Keys includes time both within and outside Business Hours, the relevant 3-hour period spent Handling the Substation Keys which falls in both charge rates shall be charged at the higher rate.
- 10.5 Following calculation of the Hire Costs payable in accordance with clause 10.2, NGED shall invoice the Connection Provider for amounts due in accordance with the process set out in clause 22 of the Framework Agreement.
- 10.6 Where under this Substation Keys Hire EOC Agreement any party agrees to pay to any other party any sum or to furnish to any other party consideration which (in either case) is consideration for a taxable supply that sum or consideration shall be exclusive of Value Added Tax payable on it and the recipient of the supply shall pay an amount equal to such Value Added Tax in addition to any sum or consideration on receipt of a valid Value Added Tax invoice from the relevant party.
- 10.7 All amounts due under this Substation Keys Hire EOC Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding or tax or as required by law).

11. **Liability and remedies**

- 11.1 Each party shall inform the other of any Substation Keys EOC Default and afford the other a reasonable opportunity to correct the Substation Keys EOC Default.
- 11.2 Subject to sub-clause 23.1 of the Framework Agreement, NGED's liability under this Substation Keys Hire EOC Agreement, whether in contract, tort (including

negligence), breach of statutory duty or otherwise, shall not exceed £5,000 (five thousand pounds) per event or series of connected events.

- 11.3 Notwithstanding sub-clause 23.8 of the Framework Agreement, the Connection Provider accepts unlimited liability for and shall indemnify the Indemnified Parties and keep them indemnified against any fine, penalty, charge or similar sum (and all associated legal costs incurred) claimed by a regulatory body from an Indemnified Party due to Substation Keys EOC Default by the Connection Provider under this Substation Keys Hire EOC Agreement.
- 11.4 Subject to sub-clause 23.1 of the Framework Agreement, the Connection Provider shall indemnify each Indemnified Party and keep each Indemnified Party indemnified fully at all times against all demands, damages, losses, costs (including reasonable legal costs), expenses and charges connected with or arising from any act or omission of the Connection Provider in relation to this Substation Keys Hire EOC Agreement.
- 11.5 The Connection Provider undertakes and agrees to take out and maintain insurance cover in full force and effect at its own cost with an insurance office of repute to cover its liabilities under this Substation Keys Hire EOC Agreement to the extent as would be reasonably expected.
- 11.6 The Connection Provider shall produce at NGED's reasonable request a copy of the insurance policy or policies relating to this Substation Keys Hire EOC Agreement and the relevant renewal receipts for inspection by NGED.
- 11.7 The sum insured shall not be less than £5,000,000 for any one event or series of connected events. The Connection Provider shall not self insure its liabilities under this Substation Keys Hire EOC Agreement without the written consent of NGED.

12. **Force Majeure**

- 12.1 If either party is affected by an Event of Force Majeure, the affected party shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 12.3 If the Connection Provider is affected by an Event of Force Majeure and the written notice in relation to the Event of Force Majeure has not been withdrawn within 1 week, NGED may terminate this Substation Keys Hire EOC Agreement with immediate effect by serving a written notice on the Connection Provider. The service of such notice shall be without prejudice to any rights or obligations which have accrued prior to termination.

13. **Termination**

- 13.1 Without prejudice to any right or remedy either party may have against the other for breach or non-performance of this Substation Keys Hire EOC Agreement, either party may, with immediate effect by notice in writing to the other, terminate this Substation Keys Hire EOC Agreement on or at any time after the happening of any of the following events:

- (a) a material breach of any of the terms and conditions set out in this Substation Keys Hire EOC Agreement provided that where such breach is capable of remedy the party in breach has been advised in writing of the breach and has not rectified it within five (5) days of receipt. For the purposes of this sub-clause a breach shall be considered capable of remedy if time is not of the essence in performance of the obligation and if that party can comply with the obligation within the 10 day period;
- (b) on the occurrence of any one or more of the events set out in sub-clauses 33.3(b) to 33.3(h) of the Framework Agreement;
- (c) on the party for any reason whatsoever being substantially prevented from performing or becoming unable to perform its obligations.

13.2 NGED may by notice in writing immediately terminate this Substation Keys Hire EOC Agreement if:

- (a) any event occurs, or circumstances arise which, in the reasonable opinion of NGED, make it no longer commercially desirable for NGED to continue with the Substation Keys Hire EOC Agreement; or
- (b) NGED consider termination necessary due to any change in legislation or the conditions of NGED's distribution licence granted pursuant to Section 6(1) (c) of the Electricity Act 1989 or any other legislative requirements.

13.3 Notwithstanding sub-clause 33.1 of the Framework Agreement, NGED may terminate this Substation Keys Hire EOC Agreement at any time on 30 days' notice in writing to the Connection Provider.

14. **Consequences of termination**

14.1 All rights and obligations of the parties shall cease to have effect immediately upon termination of this Substation Keys Hire EOC Agreement except that termination shall not affect:

- (a) the accrued rights and obligations of the parties at the date of termination; and
- (b) the continued existence and the validity of the rights and obligations of the parties under clauses 11, 14 and 16 which are expressed to survive termination.

14.2 Where this Substation Keys Hire EOC Agreement expires or terminates for any reason:

- (a) it shall no longer be deemed incorporated into the Framework Agreement; and
- (b) the Connection Provider shall as soon as practicable and in any event not more than 2 Working Days after receipt of written notice of termination of this Substation Keys Hire EOC Agreement, return any Substation Keys in its possession to NGED. If the Substation Keys are not returned within this time period, NGED shall be entitled to enter upon any premises where such

Substation Keys are stored and repossess such Substation Keys forthwith. The Connection Provider shall indemnify NGED on demand against all reasonable costs and expenses incurred by NGED in effecting such repossession.

15. **Costs and expenses**

Each party shall bear its own costs and expenses incurred in the preparation, execution and implementation of this Substation Keys Hire EOC Agreement.

16. **Data Protection**

NGED may give the Connection Provider the names and addresses of its employees, agents, contractors and sub-contractors. Where NGED does give the Connection Provider any such information the Connection Provider shall keep such information confidential, shall comply with its obligations under the Data Protection Act 1998 in respect of such information and shall only use it for the purpose of hiring Substation Keys from NGED under this Substation Keys Hire EOC Agreement.

17. **Entire Agreement**

Following the Substation Keys EOC Commencement Date the entire agreement clause in the Framework Agreement shall be deemed (without affecting any previously agreed variations which are still in force) to be varied for the duration of this Substation Keys Hire EOC Agreement to include reference to this Substation Keys Hire EOC Agreement forming part of the Framework Agreement. For the duration of this Substation Keys Hire EOC Agreement this Substation Keys Hire EOC Agreement shall be read and construed together with the Framework Agreement. In the event of any conflict between this Substation Keys Hire EOC Agreement and the Framework Agreement, the terms of this Substation Keys Hire EOC Agreement shall prevail over the conflicting terms of the Framework Agreement solely in respect of the subject matter of this Substation Keys Hire EOC Agreement.

This Substation Keys Hire EOC Agreement has been signed on the date stated as the "Date of this Agreement" on page 1 of this Substation Keys Hire EOC Agreement.

Appendix 1
(Substation Keys Hiring Out Form)

This hiring out form is a part of the substation keys hire agreement between:

_____ (the "**Connection Provider**"); and National Grid Electricity Distribution (South West) plc, National Grid Electricity Distribution (South Wales) plc, National Grid Electricity Distribution (East Midlands) plc and National Grid Electricity Distribution (West Midlands) plc ("**NGED**"), dated _____ (the "**Substation Keys Agreement**"). This hiring out form is subject to all the terms and conditions of the Substation Keys Agreement.

Hire period date/time from: _____ to: _____
Substation Sites to be accessed

By signing this hiring out form, I confirm that:

(i) I am properly authorised by the Connection Provider to collect and use the keys being collected, (the "**Keys**"). (ii) I have all qualifications, skills and experience as are necessary for the proper and safe access of the NGED sites set out in the table above (the "**Sites**") and have received all necessary training and accreditation in order to access the Sites safely and in accordance with all relevant rules and guidelines (including as a minimum National Electricity Registration Scheme Scopes: LV and HV Network Connection – Operational Access. (iii) I will not permit the Sites to be accessed by any third party without my proper supervision and direction, nor will I permit the Keys to leave my custody at any time during the period of hire. (iv) I acknowledge that I use the Keys entirely at my own risk as a competent Connection Provider. (v) I will use the Keys only to access the Sites set out above. (vi) I have inspected the Keys and consider them to be in a good, undamaged and useable condition free of defects on collection, save as noted on the reverse of this form. (vii) I will return the Keys to NGED promptly at the end of the Hire Period.

Date/time of collection:	Date/time of return:
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Signed on behalf of Connection Provider **on collection** of the Keys:

Signed on behalf of NGED **on return** of the Keys:

Name:

Date:

Name:

Date:

Damage/defects on collection (to be noted prior to removing the Keys from the collection location)

Comments

Signed on behalf of Connection Provider:

Signed on behalf of NGED:

Damage/defects on return (to be noted prior to NGED signing the form on return of the Keys)

Comments

Signed on behalf of Connection Provider:

Signed on behalf of NGED:

SIGNED BY

Signature.....

Print Name.....

Designation.....

For and on behalf of [*name of Connection Provider*]

SIGNED BY

Signature.....

Print Name: Richard Allcock

Designation: Connections Policy Engineer

For and on behalf of National Grid Electricity Distribution (**South West**)/(**South Wales**)/(**East Midlands**)/(**West Midlands**) **plc** (company number: 02366894/02366985/02366923/ 03600574) whose registered office is at Avonbank, Feeder Rd, Bristol BS2 0TB (“NGED”)