



**Example Document**  
**Subject to Amendment of Schedules at Tender Stage**

DATE:

20[•]

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**FLEXIBILITY SERVICES AGREEMENT**

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Between

**[COMPANY]**

(as the Company)

and

**[PROVIDER]**

(as the Provider)

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*Note: This Flexibility Services Agreement is intended to standardise the provision of Flexibility Services to Network operators. Please note that the project-specific details, timings and power requirements will be adapted for the particular Provider and Flexibility Services in question and placed within the appropriate schedules*

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**THIS AGREEMENT** is made on 20[●]

**BETWEEN:**

- (1) [●] **LIMITED/PLC**, a company incorporated in [England and Wales] [Scotland] (registered number [●]) whose registered office is at [●] (the “**Company**”); and
  - (2) [●] **LIMITED/PLC**, a company incorporated in [England and Wales] [Scotland] (registered number [●]) whose registered office is at [●] (the “**Provider**”).]
- (together the “**Parties**” and each a “**Party**”).

**RECITALS:**

- (1) The Company, as owner and operator of the local Network, requires the provision of Flexibility Services (as hereinafter defined) to aid the management and operation of its Network. The Company wishes to contract with providers and/or operators of suitable assets for the provision of such Flexibility Services.
- (2) The Provider is the owner and/or operator of assets, or has entered into arrangements for rights in respect of third party owned assets that have the capability to provide Flexibility Services and wishes to make available each Site for the provision of such Flexibility Services, for example through aggregated or individual assets. The Company will pay the Provider for these Flexibility Services in accordance with this Agreement.
- (3) The Company wishes to appoint the Provider to provide the Flexibility Services and the Provider has agreed to provide the Flexibility Services to the Company, on and subject to the terms and conditions contained herein.

The Parties hereby confirm that this Flexibility Services Agreement including Schedules shall incorporate the Conditions of Contract (a copy of which is attached) (the “**Conditions**”) and together the Flexibility Services Agreement and the Conditions shall be construed as one agreement (the “**Agreement**”). The priority of such documents shall be as set out below:

- (1) this Flexibility Services Agreement and the Schedules attached; and
- (2) the Conditions.

Terms used herein and not defined shall have the meaning given to them in the Conditions.

**PART 1 – Details of the Flexibility Provider and Special Conditions**

<b>Provider</b>	<b>Provider’s company number and registered office</b>
[●]	[●]
<b>Contract number</b>	[●]
<b>Provider’s addresses for notices</b>	[●] Address: [●] Contact Number: [●] For the attention of: [●]
<b>Company’s addresses for notices</b>	[●]



	Address: [●] Contact Number: [●] For the attention of: [●]
<b>Provider's Nominated Person</b>	[●]
<b>Company's Nominated Person</b>	[●]
<b>Special Conditions</b>	
The following provisions shall apply to the Agreement and, in the event of conflict, shall override the Conditions:	
<p><b>1. ADDITIONAL TERMS</b></p> <p>1.1 <i>Clause 9 of this Contract is deleted and replaced by the wording set out in Schedule 2.</i></p>	

## PART 2 – Commencement and Expiry Dates

<b>Commencement Date</b>	[●]
<b>Expiry Date</b>	As set out in Schedule 1

***[Note: the following signature blocks should be used if the Agreement is to be governed by English law. Scottish law signature blocks are on page 27 and must remain on this page]***

*Signed by the duly authorised representatives of the Parties as an agreement on the date first written above*

Signed )  
 )  
 )

for and on behalf of )  
**[COMPANY]** )

.....  
Director/Duly Authorised Signatory





Signed

)

)

)

for and on behalf of:

**[PROVIDER]**

)

.....

Director/Duly Authorised Signatory

SAMPLE



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## CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement and the recitals, unless the context otherwise requires or superseded by additional terms placed within the schedules, the following expressions shall have the meanings set out below:

“**Affiliate**” means any holding company or subsidiary company of a Party, or any company which is a subsidiary of such holding company and “**holding company**” and “**subsidiary**” have the meanings given in section 1159 of the Companies Act 2006;

“**Applicable Law**” means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body;

“**Available or Availability**” means that the Flexibility Services, in accordance with the Service Requirements and the Utilisation Instruction, are available to be delivered to the Company for the duration of the Service Window;

“**Availability Fee**” means the fee payable in consideration for the Provider making available the DER and calculated in accordance with the provisions of Schedule 2;

“**Availability Status**” means Available or Unavailable;

“**Authority**” means the Gas and Electricity Markets Authority;

“**Business Hours**” means between 9:00 am and 5:00 pm on a Business Day;

“**Business Day**” means any day other than a Saturday or a Sunday or a bank holiday in England and Wales;

“**Change in Ownership**” means:

- a) any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty per cent (50%) or more of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- b) any other arrangements that have or may have or which result in the same effect as sub-clause a) above.

“**Charges**” means the charges set out in Schedule 2 of this Agreement;

“**Commencement Date**” means the date set out in Part 2 of this Agreement;

“**Confidential Information**” means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

**“Connection Agreement”** means any agreement governing the terms of connection of any plant or apparatus to, and/or any agreement for the supply of electricity to the plant or apparatus or for the acceptance of electricity into, and its delivery from, the Company’s electricity distribution Network;

**“Data Protection Law”** means any applicable law relating to the processing, privacy, and use of personal data, as applicable to the Company, the Provider and/or the Flexibility Services, including in the UK: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any current laws or regulations implementing Council Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”), and/or any corresponding or equivalent national laws or regulations, once in force and applicable, including the Data Protection Act 2018, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;

**“Defect”** means an issue that may arise with the DER equipment, metering or the communication interface between the Company and Provider which results in an apparent non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services.’

**“Disclosing Party”** means the Party disclosing Confidential Information to the Receiving Party;

**“Discretionary Flexibility Services”** means additional Flexibility Services requested by the Company outside of or in addition to the Service Requirements detailed within this Agreement;

**“Discretionary Service Periods”** means in respect of a DER, periods during the Term of the Agreement that are not Service Periods;

**“Discretionary Utilisation Fee”** means the fee for providing Discretionary Flexibility Services as specified in Schedule 1;

**“Discretionary Utilisation Request”** means a request for Flexibility Services from the Company in respect of a DER during a Discretionary Service Period;

**“Dispatch Equipment”** means any equipment (including any routers, computers, input / output notes and cables and software) owned by the Company and provided in respect of the provision of the Flexibility Services under this Agreement;

**“Distributed Energy Resources”** or **“DER”** means the electricity generators, electricity storage or electrical loads, and other Site equipment, machinery, apparatus, materials and other items used for the provision of the Flexibility Services as described in Schedule 3;

**“Distribution Code”** means the Distribution Code of Licenced Distribution Network Operators of Great Britain;

**“Distribution Licence”** means a licence issued under section 6(c) of the Electricity Act 1989;



“**Distribution Licensee**” means a holder of Distribution Licence within the same Group of companies as the Company;

“**Due Date for Payment**” has the meaning given to it in Clause **Error! Reference source not found.** and/or Schedule 2;

“**Electricity Regulations**” means the Electricity Act 1989, the Utilities Act 2000, the Energy Acts 2008 – 2016, the National Terms of Connection and any other licences, codes or industry agreements related to such legislation;

“**Expiry Date**” means the date this Agreement expires, as defined in the Agreement and as can be extended pursuant to Clause 2;

“**Flexibility Provider**” means the provider set out in Part 1 of this Agreement;

“**Flexibility Services**” means, and more particularly described in Schedule 1, the services to be provided by the Provider to the Company under and in accordance with this Agreement which give the Company the ability to manage the load at a specific point of the Network at certain points in time;

“**Force Majeure**” means any event or circumstance which is beyond either the Company’s or the Provider’s (as the case may be) reasonable control or its employees and which results in or causes its failure to perform any of its obligations under the Agreement, provided that: (a) lack of funds; or (b) any failure or fault in the DER, including insufficient fuel, shall not constitute Force Majeure;

“**Good Industry Practice**” means the exercise of the degree of care, skill and diligence, which would reasonably be expected from an experienced and competent person carrying out services of a similar nature, scope and complexity as the Flexibility Services;

“**Grid Code**” means the technical code for connection and development of the National Electricity Transmission System (available at [www.nationalgrid.com/uk/electricity/codes/grid-code?code-documents](http://www.nationalgrid.com/uk/electricity/codes/grid-code?code-documents));

“**Group**” means in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company. For the purposes of this definition the terms “holding company” and “subsidiary” shall have the meanings assigned to them by section 1159 of the Companies Act 2006;

“**Intellectual Property Rights**” means patents, rights in or to inventions, copyright and related rights, trademarks, service marks, business names, rights in get-up goodwill and the right to sue for passing off, rights in designs, rights in domain names and website addresses, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“**Insolvency Event**” means a Party becoming insolvent or entering into liquidation or receivership or being the subject of an application for an administration order or suffering



an administrative receiver or similar officer to be appointed in relation to the whole or any part of its assets or convening a meeting to make a composition or voluntary arrangement with its creditors or suffering any material judgement to be executed in relation to any of its property or assets or if an encumbrancer takes possession of or sells any Party's assets or if an application is made to a court of competent jurisdiction by a Party for protection from its creditors generally or if any other steps are taken for the winding up of that Party (otherwise than for the purpose of an amalgamation or reconstruction) including the passing of a resolution for the Party's winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of that Party;

"**Loss**" means any direct and/or indirect loss, damage, cost or expense;

"**Material Adverse Effect**" means any event or circumstance which, in the opinion of the Company:

- c) is likely to materially and adversely affect the Provider's ability to perform or otherwise comply with all or any of its obligations under this Agreement; or
- d) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company.

"**MPAN**" means a meter point administration number;

"**MSA Offence**" has the meaning given to it in Clause 19.1.1a);

"**MSID**" means a metering system identifier;

"**Network**" means the electricity network operated by the Company to which the DER is connected;

"**Nominated Person**" means the persons appointed by the Provider and the Company to be responsible for ensuring the performance of this Agreement;

"**Non-Operational Notice**" means a formal notice as described in Clause 20;

"**Performance Report**" means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions and Discretionary Utilisation Requests in accordance with **Error! Reference source not found.**;

"**Power Requirement**" means the level of power injection or demand reduction required by the company within a specified service window and delivered by the provider following a utilisation instruction,

"**Proving Test**" means the tests, more particularly described in **Error! Reference source not found.**, undertaken in accordance with Clause 5.4;]

"**Receiving Party**" means the Party receiving Confidential Information from the Disclosing Party;

"**Recovery Time**" means the minimum time required between the end of a Flexibility Service delivery and the commencement of the next Flexibility Service delivery, as defined in Schedule 1;

**“Requested End Time”** means the date and time (to the nearest minute) as notified in accordance with Clause 3 and/or **Error! Reference source not found.** at which the Requested MW is no longer required to be delivered;

**“Requested MW”** means the MW requested in accordance with Clause 3 and/or Schedule 4;

**“Requested Start Time”** means the date and time (to the nearest minute) as notified in accordance with Clause 3 and/or Schedule 4 at which the Requested MW shall be delivered;

**“Schedules”** means the Schedules annexed to and forming part of this Agreement;

**“Service Failure”** meaning is defined in Schedule 1;

**“Service Meter”** means the measuring equipment, as defined by the Company in Schedule **Error! Reference source not found.** of this Agreement, that shall be used to determine delivery of the Service;

**“Service Meter Data”** means the meter data recorded at the Service Meter at the Site(s) listed in Schedule **Error! Reference source not found.**;

**“Service Period”** means the period as specified in Schedule 1;

**“Service Requirements”** means the specification that the Flexibility Services must be capable of meeting, as defined in Schedule 1;

**“Service Window”** means the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with this Agreement, the Flexibility Services to the Company, as defined in Schedule 1;

**“Sites”** means the Provider’s sites which are detailed in Schedule 3;

**“Statutory Requirements”** means the requirements placed on the Company and/or the Provider or affecting or governing the provision and/or use of the Flexibility Services by Applicable Law and/or the Distribution Licence and/or a Regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters;

**“Stop Instruction”** means an instruction from the Company to the Provider, instructing the Provider to cease delivery of the Flexibility Services, as more particularly described in Schedule 4;

**“Term”** means the duration of this Agreement;;

**“Testing and Commissioning Test”** means the tests, more particularly described in Schedule 5, undertaken to determine whether the Flexibility Services can be delivered in accordance with the Service Requirements and an Instruction;

**“Transmission Licensee”** means a holder of a licence issued under section 6(b) of the Electricity Act 1989;

**“Unavailable”** means that the Flexibility Services, in accordance with the Service Requirements, are not available to be delivered to the Company;

“**Utilisation Fee**” means the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in Schedule 2;

“**Utilisation Instructions**” means an instruction by the Company to the Provider to deliver Flexibility Services in accordance with Schedule 4;

“**VAT**” value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature;

“**Zone**” means the feeding area of the DERs being managed or where the Flexibility Services will be provided and to which the Flexibility Services will be delivered.

- 1.2 In this Agreement, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
  - 1.2.2 reference to a gender includes the other gender and the neuter; and
  - 1.2.3 references to an act of Parliament, statutory provision or statutory instrument include a reference to that act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it.
- 1.3 Any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 If there is any conflict between the Flexibility Services Agreement and any part of the Schedules, subject to Clause 1.6, the former shall prevail.
- 1.5 If there is any conflict between the Schedules and the Conditions, subject to Clause 1.6, the former shall prevail.
- 1.6 To the extent that the terms of this Agreement conflict with any of the rights or obligation of the Parties under the Electricity Regulations, the terms of the Electricity Regulations shall prevail.

## **2. DURATION AND TERM**

- 2.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with Clause 10, shall continue until the Expiry Date.
- 2.2 This Agreement shall terminate automatically on the Expiry Date without notice, unless extended pursuant to Schedule 1.
- 2.3 The Company may give the Provider reasonable notice in writing prior to the Expiry Date that the Term is extended. Extensions of the Term pursuant to this Clause 2.2 shall be limited in number and duration as set out in Schedule 1.

### **3. SCOPE OF FLEXIBILITY SERVICES**

- 3.1 The Provider shall make its DER Available for provision of the Flexibility Services in accordance with Schedule 1 and shall provide notice of any Unavailability in accordance with Schedule 4.
- 3.2 The Company may request from the Provider, subject to the Provider's Availability Status, the provision of the Flexibility Services for Service Periods by issuing a Utilisation Instruction in accordance with Clause 3.4.
- 3.3 This Agreement is not a guarantee of Utilisation Instructions and does not constitute a contract for the exclusive provision of Flexibility Services. The Company reserves the right to contract with other providers for the type of services covered by this Agreement.
- 3.4 The provisions of Schedule 4 shall apply in respect of all communications between the Company and the Provider in respect of the Flexibility Services.
- 3.5 Where, and to the extent that a Provider is Available, the Company may request Flexibility Services from the Provider by sending a Utilisation Instruction in accordance with Schedule 4.
- 3.6 The Company may:
- 3.6.1 withdraw any Utilisation Instruction by providing notice to the Provider at any time before the Provider has provided a response under and in accordance with Clause 3.7; and/or
  - 3.6.2 issue a Stop Instruction to the Provider in accordance with Schedule 4.
- 3.7 The Provider must respond to the instruction in accordance with the provisions set out in Schedule 4.
- 3.8 Where the Provider receives a Utilisation Instruction and subject to receipt of any Stop Instruction or has issued an Unavailability Notice, the Provider shall provide the Flexibility Services to the Company using the DER in accordance with the terms in Schedule 1.
- 3.9 In performing the Flexibility Services pursuant to this Agreement, the Provider must comply with the technical requirements set out in Schedule 7.

### **4. VARIATION**

- 4.1 Unless otherwise provided in Schedule 2, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 4.2 The Provider may, with prior approval of the Company (in its sole discretion), change the DER providing the service(s) detailed in Schedule 3 by providing a minimum of thirty (30) days notice of the change and specifying that the new DER meets the technical, functional and non-functional requirements of the specified service.

## 5. MONITORING AND EQUIPMENT

- 5.1 Subject to **Error! Reference source not found.**, the Company shall be entitled to, at its sole discretion, monitor, meter and determine the Provider's provision of the Flexibility Services using such data collection and systems as the Company deems appropriate and which may, without limitation, utilise minute by minute metering data analysis techniques for each active DER.
- 5.2 The Company reserves the right to collect any meter data that it reasonably requires for the purpose of this Agreement from a third party, including but not limited to an electricity supplier, and the Provider undertakes to secure all necessary consents on behalf of the owner or user of the DER, and to perform any action that the Company considers reasonably necessary to facilitate such collection and use of meter data.
- 5.3 The Company shall assess the availability of Flexibility Services and the amount of Flexibility Services delivered by the Provider and may complete this by reference to a Performance Report. The detail and expected timing of these reports is specified in Schedule 5.
- 5.4 Should the Company identify a failure affecting the communications with the Providers Dispatch or Data Provision Equipment the Company may notify the Provider and that it requires a Proving Test in accordance with the requirements set out in **Error! Reference source not found.**
- 5.5 If applicable and unless otherwise agreed, on expiry or termination of this Agreement each Party shall remove and return to the other Party any equipment at its Site(s) provided by the other Party for the purpose of the Agreement within an acceptable timeframe as agreed by both Parties.

## 6. RECORDS AND AUDIT

- 6.1 The Provider shall keep or cause to be kept proper and accurate records of all matters relating to the performance of its obligations under this Agreement. The records shall be maintained in a form suitable for audit purposes, shall be kept separate from any other records of the Provider and shall be retained for the period required by any applicable statutory provision and in any event during the Term of this Agreement and for a period of not less than seven (7) years thereafter.
- 6.2 The Company or a reputable independent third-party auditor nominated by it may, on reasonable notice to the Provider and during normal working hours, inspect and review the records for the purposes of verifying the Provider's compliance with its obligations under this Agreement and/or to meet any other audit or information requirement that may be required by applicable law and/or any regulatory body or the Authority.
- 6.3 The Provider shall co-operate fully and promptly with any such audit and/or inspection conducted by the Company and whatever reasonable assistance may be required by the Company in relation to any audit.
- 6.4 The Provider shall take or procure to be taken such steps as may be necessary to ensure that all paperwork issued by or on behalf of the Provider to the Company (including,



without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references the relevant purchase order date and number and/or contract number.

## **7. PROVIDER'S OBLIGATIONS**

7.1 The Provider shall:

- 7.1.1 Ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with this Agreement and all Applicable Laws, Statutory Requirements and Good Industry Practice;
- 7.1.2 ensure that all technical, communication and data provision requirements set out in Schedule 4 and are complied with at all times;
- 7.1.3 provide the Flexibility Services in accordance with all UK health, safety and environment legislation and approved codes of practice;
- 7.1.4 remedy any Defect of the Flexibility Services with Good Industry Practice and to the satisfaction of the Company;
- 7.1.5 act diligently and in good faith in all of its dealings with the Company;
- 7.1.6 ensure that it is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;
- 7.1.7 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under this Agreement that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under this Agreement;
- 7.1.8 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER.
- 7.1.9 permit and grant (or secure) rights of access to and over and egress from the Site to the Company and/or its agents or sub-contractors (upon reasonable notice and within normal working hours) as the Company may reasonably require in order to inspect and test the DER, or to install, maintain, replace or remove communication equipment belonging to the Company in relation to the provision of flexibility services.

## **8. REPRESENTATIONS AND WARRANTIES**

8.1 Without prejudice to its other obligations under and/or pursuant to this Agreement, each Party warrants and undertakes to the other Party at all times that:

- 8.1.1 it is a duly incorporated company validly existing under the law of its jurisdiction of incorporation;
- 8.1.2 it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement;

- 8.1.3 the entry into and performance by it of this Agreement does not and will not contravene or conflict with any law or regulation or judicial or official order applicable to it;
  - 8.1.4 it will not be in material breach of any other agreement or arrangement of whatever nature with any person which could or may affect the performance of its obligations under this Agreement;
  - 8.1.5 all information it provides to the other Party will be complete and accurate;
  - 8.1.6 no Insolvency Event is continuing or might reasonably be anticipated; and
  - 8.1.7 no litigation, arbitration or administrative proceedings are taking place, pending, or to the Party's knowledge threatened against it, any of its directors or any of its assets, which, if adversely determined might reasonably be expected to have a Material Adverse Effect.
- 8.2 Without prejudice to its other obligations under and/or pursuant to this Agreement and in addition to the foregoing, the Provider warrants and undertakes to the Company at all times that:
- 8.2.1 the DER contracted to provide flexibility services has either live connection(s) to the Company's electricity Network and associated MPAN or MSID and Connection Agreement(s), or a connection offer(s) pursuant to live connection and that the connection(s) can be completed in time to meet the Service Requirements as specified in Schedule 1;
  - 8.2.2 it has obtained and maintains in force for the Term, either directly or through agreement with its aggregated DER sites, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services in accordance with the terms of this Agreement, including those referenced in Clause 8.2.10;
  - 8.2.3 it has neither fixed nor adjusted any Charge under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of any Charge (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for Flexibility Services with the Company;
  - 8.2.4 it shall disclose any change of circumstances which could affect the delivery of the Flexibility Services;
  - 8.2.5 in respect of DER projects in development, the Provider has in place a defined schedule of design, build and commissioning which shall promptly be made available to the Company on request for its review of the same;
  - 8.2.6 it shall take all reasonable steps to achieve commissioning of the DER project on time and in accordance with the construction schedule;



- 8.2.7 if, at any time during the Term, the provision of Flexibility Services would cause the Provider to be in breach or non-compliance as described in Clause 8.2.10, the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by Schedule 4;
- 8.2.8 where relevant, it is and remains responsible for health and safety compliance at the Sites providing the flexibility services and shall use best endeavours to ensure that all activities relevant to this contract comply with all UK health, safety and environment legislation and approved codes of practice;
- 8.2.9 insofar as any Site is occupied by an Affiliate of the Provider or any other third party from time to time, the Provider shall be responsible for ensuring that where any provision in this Agreement imposes an obligation on the Provider to do or refrain from doing a particular thing in relation to a Site or any DER at such Site, the relevant Affiliate or third party complies with that obligation as if it were the named "Provider" party to this Agreement.
- 8.2.10 the provision of Flexibility Services will not cause it or the contracted DER to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) (available from the Company on request) or of any other enactment relating to safety or standards, the Grid Code, Distribution Code, any Connection Agreement, any agreement for the supply of electricity, any restrictions and conditions attaching to relevant authorisations of the Environment Agency, or any other agreement or arrangement of whatever nature with any other person.
- 8.3 Without prejudice to any right or remedy, each Party will be entitled to claim damages from the other Party for any breach of warranty set out herein.

## **9. CHARGES AND PAYMENT**

Unless any alternative provision is explicitly stated in Schedule 2 the provisions in this Clause 9 shall be adhered to.

- 9.1 The Company agrees to pay the Charges to the Provider as full remuneration for the satisfactory performance by the Provider of the Flexibility Services in accordance with this Agreement.
- 9.2 The Charges shall be calculated by the Provider in accordance with Schedule 2.
- 9.3 The Provider agrees that each invoice issued or accepted by it will include details of, as regards the Flexibility Services to which the invoice relates:
- a) the date on and time at which the Flexibility Services were provided;
  - b) the relevant Availability Fee details (if any); and
  - c) the relevant Utilisation Fee details (if any).

- 9.4 The Company shall not be held responsible for late payment of any invoices where the foregoing provisions relating to submission are not followed by the Provider.
- 9.5 Unless otherwise agreed in writing between the Company and the Provider, payment of invoices shall be made by the Company either (at the Company's option) by BACS payment to a bank account nominated in writing by the Provider or by cheque sent to an address nominated in writing by the Provider (or, where no such address is nominated in writing by the Provider then to the Provider's registered office).
- 9.6 If the Company intends to pay less than the sum stated as due by the Company in the invoice it shall, not later than five (5) Business Days before the Due Date for Payment, give the Provider notice of that intention by issuing a notice which shall specify both the sum that it considers to be due to the Provider at the date the notice is given, or the sum which it considers is due from the Provider to the Company, and the basis on which that sum is calculated.
- 9.7 If either Party fails to make any payment due to the other under this Agreement by the Due Date for Payment, then the Party failing to pay shall pay interest on the overdue amount at a rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The relevant Party shall pay the interest together with the overdue amount. The Parties acknowledge that their liability under this Clause 9.7 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.8 Where either Party disputes any invoice (or any part of any invoice) then, upon receipt by the Provider of notification from the Company of any such disputed amounts, the provisions of Clause 21 shall apply in resolving the disputed amounts.
- 9.9 In the event that the Company disputes whether certain amounts contained in an invoice are properly due but does not dispute all sums contained in the invoice, the Company shall pay the sums not in dispute in accordance with the terms of this Agreement notwithstanding that the Company is disputing the other sums contained in the invoice.
- 9.10 Where either Party disputes any invoice (whether in whole or in part), interest under Clause 9.7 is payable only after the dispute is resolved, and only on those sums found or agreed to be due following resolution of the dispute, from the due date until payment.
- 9.11 All payments and all other sums referred to in this Agreement are stated exclusive of VAT. Where applicable, VAT shall be payable by the payer to the payee only upon receipt of a valid VAT invoice.
- 9.12 Where, during the Term, the Provider wishes to change its bank details or address for payment, then the Provider must follow the provisions set out in Clause 20.

## **10. TERMINATION**

- 10.1 Each of the Parties shall have the right, if it is not the Party in breach or in relation to which any of the events concerned occurs, to immediately terminate this Agreement on

giving written notice of termination to the other if at any time during the Term of this Agreement:

10.1.1 a Party is in material and/or persistent breach of this Agreement;

10.1.2 in relation to the Party to which the notice is addressed:

- a) a notice is issued to convene a meeting for the purpose of passing a resolution, or any written resolution is circulated, to wind it up, or such a resolution is passed other than a resolution for its solvent reconstruction or reorganisation;
- b) a resolution is passed by its directors to seek a winding up, or a petition for a winding up order is presented against it, or such an order is made;
- c) a receiver, administrative receiver, receiver and manager, interim receiver, custodian, sequestrator, administrator or similar officer is appointed in respect of that Party or over a substantial part of its assets, or any steps are taken to appoint such an officer in respect of that Party, or an encumbrancer takes steps to enforce or enforces its security, or any distress, attachment, sequestration or execution or other similar process affects any of its assets and is not discharged within fourteen (14) days;
- d) a proposal for a voluntary arrangement is made in relation to it under Part I of the Insolvency Act 1986;
- e) it takes any step (including starting negotiations) with a view to readjusting, rescheduling or deferring any part of its indebtedness, or it proposes or makes any general assignment, composition or arrangement with or for the benefit of all or some of its creditors (other than for the sole purpose of a solvent amalgamation or solvent reconstruction), or it makes or suspends or threatens to suspend making payments to all or some of its creditors or it submits to any type of voluntary arrangement;
- f) it is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- g) any step or event is taken or arises outside the United Kingdom which is similar or analogous to any of the steps or events listed at 10.1.2a) to 10.1.2f) above;
- h) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- i) any of the events in 10.1.2b) to 10.1.2j) above occurs in relation to any of its Affiliates; and
- j) Clause 14.4 of this Agreement applies.

10.2 Either Party may terminate this Agreement at any time by providing ninety (90) days written notice to the other Party.

***Accrued liabilities***

- 10.3 On termination, the rights and liabilities of the Parties that have accrued before termination shall subsist.

***Surviving provisions***

- 10.4 This Clause and the following provisions of this Agreement shall survive termination or expiry, without limit of time:

- 10.4.1 Clause 1 (*Definitions and interpretation*);
- 10.4.2 Clause 6 (*Records and Audit*);
- 10.4.3 Clause 9 (*Charges and Payment*);
- 10.4.4 Clause **Error! Reference source not found.** (*Consequences of Termination or Expiry*);
- 10.4.5 Clause 11.4 (*Service Failure and Material Breach*);
- 10.4.6 Clause 3 (*Indemnity, Liability & Insurance*);
- 10.4.7 Clause 5 (*Confidentiality, Information Disclosure & Publicity*);
- 10.4.8 Clause 6 (*Intellectual Property Rights*);
- 10.4.9 Clause 18 (*Data Protection*);
- 10.4.10 Clause 21 (*Dispute Resolution*);
- 10.4.11 Clause 25 (*Waiver*); and
- 10.4.12 Clause 28 (*Governing Law and Jurisdiction*).

***Consequences of termination or expiry***

- 10.5 Where requested by the other Party, on termination or expiry of this Agreement each Party shall delete or return Confidential Information provided by the other Party for the purpose of the Agreement.

- 10.6 Following termination or expiry of this Agreement, the Provider shall promptly at the Provider's cost:

- 10.6.1 deliver to the Company for approval a final invoice detailing all monies due to it under the Agreement;
- 10.6.2 submit to the Company within thirty (30) Business Days all invoices with supporting documents for payment of all outstanding sums in connection with the provision of the Flexibility Services.

**11. SERVICE FAILURE AND MATERIAL BREACH**

- 11.1 Notwithstanding its obligations under Clause 11.2, the Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability (howsoever caused) of the Provider to provide the Flexibility Services in all or any part of any contracted Service Window.

- 11.2 In the event of a Service Failure by the Provider, the Company may require the Provider to:
- a) provide the Company with a written explanation as to the cause of the failure of service delivery;
  - b) implement a rectification plan for improving performance and/or reducing the number of occurrences of Unavailability, which may include at the Company's discretion, a repeat of any commissioning tests undertaken on initial installation and commissioning of the DER;
  - c) propose a variation to the Service Requirements as specified in Schedule 1; or
  - d) take any other action that may be agreed with the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).
- 11.3 If the Provider fails to comply with the terms of Clause 11.2, the Provider's proposals are not accepted by the Company, the Parties fail to reach agreement on actions or the Provider's performance in respect of the Service Failure notified by the Company does not significantly improve within thirty (30) days of the date of the notice, such failure will be deemed a material breach of this Agreement for the purposes of Clause 10.1.
- 11.4 Where the Company terminates this Agreement as a result of a material and/or persistent breach by the Provider under Clause 10.1, the Company shall be entitled to recover from the Provider the cost, loss and expenses reasonably incurred by the Company as a result of the termination, including where relevant appointing a replacement Provider. Such costs, losses and expenses shall be a debt due and immediately payable by the Provider to the Company subject to the cap of liabilities across this Agreement as stated in clause 13.

## **12. FORCE MAJEURE**

- 12.1 A Party is not in breach or default of this Agreement to the extent that it is prevented, hindered or delayed in performing any of its obligations under this Agreement as a result of a Force Majeure Event.
- 12.2 If a Force Majeure Event occurs, the following process will apply:
- (a) The affected Party will notify the other Party as soon as reasonably practicable of:
    - (i) The occurrence and description of the Force Majeure Event;
    - (ii) The date on which the Force Majeure Event commenced and its likely duration (if known);
    - (iii) The effect of the Force Majeure Event on the Party's ability to perform its obligations under the Agreement.
  - (b) The affected Party will use reasonable endeavours to mitigate the impact of the Force Majeure Event on its ability to perform its obligations under the Agreement.



- 12.3 If a Force Majeure Event prevents, hinders or delays a Party in performing its obligations under the Agreement for a continuous period of at least eight (8) weeks, either Party may terminate the Agreement on giving ninety (90) days written notice.

### **13. INDEMNITY, LIABILITY & INSURANCE**

- 13.1 Subject to Clause 13.2 the Provider and Company shall indemnify each other against all Loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by either Party as a result of:

13.1.1 either Party's breach of this Agreement;

13.1.2 any negligence or reckless act or omission committed by either Party in the course of performing this Agreement;

13.1.3 Loss or damage to any property (including property of the Company or the Provider); or

13.1.4 all related actions, suits, claims, demands, costs, charges or expenses to the extent that the same is caused by any negligent act or omission or breach of statutory duty, regulation or by-law by a Party, its sub-contractors, or their respective servants or agents in connection with this Agreement.

- 13.2 Notwithstanding any other provision in this Agreement, the aggregate total liability of either Party to the other Party under or in connection with this Agreement whether in contract tort or delict or howsoever arising shall not exceed in aggregate the greater of (i) £250,000, and (ii) an amount equal to the total charges payable and already paid to the Provider under this Agreement. This Clause shall not limit or exclude either Party's liability:

13.2.1 in the case of fraud, misrepresentation or wilful misconduct;

13.2.2 in the case of death or personal injury;

13.2.3 in the case of breach of statutory duty; or

13.2.4 where the Provider has invalidated such insurance referred to in this Clause [15] or has not complied with such insurance policies.

- 13.3 Notwithstanding anything to the contrary and subject to the conditions of Clause 11.4, neither Party shall have any liability to the other Party under this Agreement for any indirect or consequential loss of any kind howsoever caused.

- 13.4 The Provider shall procure (and on request provide evidence to the Company of) appropriate insurances as required by law and necessary for the safe and efficient performance of this Agreement to cover the liabilities set out in this Clause 13, with a reputable insurance company. Where possible the Provider shall add the Company as a named party on its insurance policies.

- 13.5 If the Provider appoints a sub-contractor in connection with the provision of the Flexibility Services, the Provider shall ensure that the sub-contractor maintains appropriate insurance to the extent set out in Clause 13.4. If the Provider acts as an aggregator in

connection with the provision of the Flexibility Services, it shall ensure that the DER owners and operators for which it acts maintain appropriate insurance to the extent set out in Clause 13.

- 13.6 The Provider's liabilities under this Agreement shall not be deemed to be releases or limited by the Provider taking out the insurance policies referred to in Clause 13.4.

#### **14. ASSIGNMENT, SUB-CONTRACTING AND CHANGE IN OWNERSHIP**

- 14.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
- 14.2 If either Party sub-contracts any part of the provision or obligations of Flexibility Services, then the responsible Party shall be fully responsible for the acts, omissions or defaults of any sub-contractor (and its employees) as if they were the acts, omissions or defaults of the responsible Party.
- 14.3 If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Site changes, or may change, during the Term, the Provider shall immediately notify the Company of the same. The Company and the Provider shall if required, and at the reasonable request of the Company discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.
- 14.4 The Company reserves the right to terminate this Agreement if a Change in Ownership of the Provider occurs and may treat a Change of Ownership as a material breach for the purposes of Clause 10.1. Any termination under clause 14.4 would be provided in writing and effective immediately

#### **15. CONFIDENTIALITY, INFORMATION DISCLOSURE AND PUBLICITY**

- 15.1 The Company is required to disclose certain information in accordance with this document under obligations within the Company Licence Agreement, the Grid Code, the Transmission Code, the Connection and Use of System Agreement, the Distribution Code and the Fuel Security Code. Information shared will include but may not be limited to providers names, awarded prices, volumes and contract durations. It shall not be a breach of this clause 15 for the Company to disclose this information. The Company may also share information relating to this Agreement for the purpose of industry initiatives in relation to network constraint management and electricity network optimisation.
- 15.2 Save as permitted by clause 15.1, or except with the consent of the disclosing party, or as required by law, a court order, or by any relevant regulatory, or government authority, or to the extent that information has come into the public domain through no fault of the receiving party, each Party shall treat as strictly confidential and shall not disclose all



commercial and technical information relating to the other Party received or obtained as a result of entering into or performing this Agreement.

- 15.3 Save as permitted by clause 15.1 neither Party shall use the name, brands and/or logos of the other Party for any purpose without the other Party's prior written approval. In the event that the other Party grants its approval to any use of its name, brand and/or logo, it may make such approval subject to such conditions and restrictions on use as it considers appropriate. Written approval should not be unreasonably withheld. The Company shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement.

## **16. INTELLECTUAL PROPERTY RIGHTS**

- 16.1 This Agreement does not transfer any interest in Intellectual Property Rights.
- 16.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's Intellectual Property other than to the extent reasonably necessary in performing its obligations pursuant to this Agreement, provided that nothing in this Clause 6 shall operate so as to exclude any non-excludable rights of either Party.

## **17. COMPANY PROPERTY**

- 17.1 Each Party shall retain its rights in its own physical property used for the purposes of this Agreement. Any equipment, tools, drawings, specifications, data and other materials supplied by or on behalf of the Company to the Provider:
- 17.1.1 shall at all times be and shall remain the exclusive property of the Company;
  - 17.1.2 shall be held by the Provider in safe custody at its own risk and maintained and kept in good condition by the Provider until returned by the Company;
  - 17.1.3 shall be marked visibly by the Provider as the property of the Company; and
  - 17.1.4 shall not be disposed of other than in accordance with the written instructions of the Company nor used otherwise than as authorised by the Company in writing.

## **18. DATA PROTECTION**

- 18.1 Each Party shall, at its own expense, ensure that it complies with all applicable Data Protection Law.
- 18.2 The Parties acknowledge that as at the date of this Agreement, neither Party acts as a processor on behalf of the other. If at any point during the term, either Party considers that one Party is acting as processor on behalf of the other, then the Parties shall promptly meet to negotiate in good faith a separate data processing agreement to cover the matters required by the Data Protection Law.

**19. MODERN SLAVERY, ANTI-BRIBERY**

19.1 The Provider undertakes, warrants and represents that:

19.1.1 neither the Provider nor any of its officers, employees, agents or subcontractors:

- a) has committed an offence under the Modern Slavery Act 2015 (“**MSA Offence**”);
- b) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

19.1.2 it shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

19.1.3 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Company’s obligations under this Clause 19. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations; and

19.1.4 it shall include in its contracts with its subcontractors and suppliers’ anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 19.

19.2 The Provider shall indemnify the Company against any Losses, incurred by or awarded against the Company as a result of any breach of anti-slavery and human trafficking laws, statutes, regulations and codes or the Modern Slavery Act 2015.

19.3 Any breach of this Clause 19 by the Provider shall be deemed a material breach of the Agreement for the purposes of Clause 10.1.

19.4 The Provider shall have suitable controls and compliance procedures in place and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received or offered by the Provider in connection with this Agreement.

19.5 The Provider agrees to:

19.5.1 pay all of its personnel who are directly employed by it in respect of the provision of the Services; and

19.5.2 ensure all employees of its contractors and subcontractors performing the provision of the Services are paid not less than the living wage for the Term of this Agreement.

## **20. NOTICES**

- 20.1 The processes for notices and communications in respect of operational matters are set out in Schedule 4.
- 20.2 All formal notices or other communications to be served under this Agreement (“**Non-Operational Notice**”) shall be given in writing and shall be delivered or sent to the addresses for notice set out in Part 1 of the Flexibility Services Agreement or to such other address as each Party may have notified in writing to the other Party.
- 20.3 A Non-Operational Notice shall be delivered by hand, sent by pre-paid first-class post, or by recorded delivery post (or equivalent recorded postal delivery service).
- 20.4 A Non-Operational Notice or other communication shall be deemed to have been received:
- 20.4.1 if delivered by hand or recorded delivery post within Business Hours at the time of delivery or, if delivered by hand outside Business Hours, at the next start of Business Hours;
- 20.4.2 if sent by first class post, at 9.00 a.m. on the second Business Day after posting.
- 20.5 E-mail communications may be valid for Non-Operational Notices the purposes of this Agreement, where agreed between the Parties. Such email notices shall be deemed to have been received on the day of sending, or where outside of Business Hours on the first Business Day thereafter.
- 20.6 In verifying service of a Non-Operational Notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted.
- 20.7 This Clause does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

## **21. DISPUTE RESOLUTION**

- 21.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to this Agreement. In the event that a dispute cannot be resolved within thirty (30) days of written notice of the dispute, the dispute shall be escalated to the Parties’ senior representatives (named in Schedule 4, or as otherwise notified by either Party to the other) who have authority to settle the same.
- 21.2 If thirty (30) days following such an escalation the Parties have still not resolved the dispute, then either Party shall have the right to refer the dispute to mediation or to commence proceedings.
- 21.3 Nothing in this Agreement shall prevent either Party from raising Court proceedings in order to preserve or enforce its proprietary or other rights.

## **22. SEVERANCE**

- 22.1 If any provision of this Agreement is declared by a judicial or other competent authority to be wholly or partly void, voidable, illegal or otherwise unenforceable in whole or in

part, that provision (or part provision) shall be deemed severed from this Agreement and the other provisions of this Agreement and the remainder of the relevant provision shall continue in full force and effect.

22.2 If any provision of this Agreement are so found to be wholly or partly invalid or unenforceable, but would be valid or enforceable if some part of the provision were deleted, restricted or limited in a particular manner, the provision in question shall apply with the minimum deletions, restrictions or limitations as may be necessary to make it valid or enforceable.

22.3 The Company and the Provider each acknowledge that it has entered into this Agreement on an arm's length basis and that it has taken independent legal advice in so doing.

### **23. THIRD PARTY RIGHTS**

23.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 or where appropriate the Contracts (Third Party Rights) (Scotland) Act 2017, this Agreement are not intended to, and do not, give any person who is not a party to it any right to enforce any of its provisions other than the Distribution and Transmission Licensees (the Company) who shall be entitled to independently enforce all of the terms of this Agreement.

### **24. NO AGENCY OR PARTNERSHIP**

24.1 Nothing in this Agreement shall be deemed to constitute a partnership or joint venture or contract of employment between the Parties nor constitute either Party the agent of the other.

24.2 Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf, including but not limited to the making of any representations or warranty and the exercise of any right or power.

### **25. WAIVER**

25.1 If a Party delays or fails to exercise (in whole or part) any right, claim or remedy conferred by or arising under or in connection with this Agreement or by law, this will not operate as a waiver of, or as preventing the further exercise or the enforcement of, that right, claim or remedy. Any single or partial exercise or waiver of any such right, claim or remedy shall not preclude its further exercise or the exercise of any other right, claim or remedy.

25.2 A waiver of any right, claim or remedy conferred by or arising under or otherwise in connection with this Agreement or by law shall be effective only if it is given in writing and is signed by or on behalf of the Party giving it.

### **26. ENTIRE AGREEMENT**

26.1 This Agreement and the documents referred to in it together constitute the entire agreement and understanding of the Parties relating to the matters contemplated by this

Agreement and those documents, and supersede any previous drafts, agreements, understandings or arrangements between any of the parties relating to the subject matter of this Agreement and those documents, which shall cease to have any further effect.

**27. COUNTERPARTS**

27.1 Where executed in counterparts:

27.1.1 This Agreement shall not take effect until all of the counterparts have been delivered; and

27.1.2 delivery will take place when the date of delivery is agreed between the Parties after execution of this Agreement as evidenced by the date inserted at the start of this Agreement.

27.2 Where not executed in counterparts, this Agreement shall take effect after its execution upon the date agreed between the Parties as evidenced by the date inserted at the start of this Agreement.

SAMPLE

**28. GOVERNING LAW AND JURISDICTION**

- 28.1 The validity, construction and performance of this Agreement and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with this Agreement or its enforceability shall be governed by and construed: (i) in accordance with English law if the Company is incorporated in England and Wales; and (ii) in accordance with Scots law if the Company is incorporated in Scotland.
- 28.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of: (i) England and Wales if the Company is incorporated in England and Wales; and (ii) Scotland if the Company is incorporated in Scotland, over any claim, dispute or matter arising under or in connection with this Agreement or its enforceability or the legal relationships established by this Agreement (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts or on the grounds that proceedings have been brought in an inconvenient forum.

**[Note: the following signature blocks should be used if the Agreement is to be governed by Scottish law]**

*IN WITNESS WHEREOF* this Agreement has been duly executed by the Parties as follows:

**THE COMPANY**

**EXECUTED** by [COMPANY] acting by

..... Director .....  
(Full Name) Signature

*In the presence of:*

..... Witness Full Name

..... Witness Signature

..... Witness Address

.....

**THE PROVIDER**

**EXECUTED** by [PROVIDER] acting by:

..... Director .....  
(Full Name) Signature

*In the presence of:*

..... Witness Full Name



**Scottish & Southern**  
Electricity Networks

..... *Witness Signature*

..... *Witness Address*

.....

SAMPLE



**SCHEDULE 1  
SERVICE DESCRIPTION**

1.1. Awarded Service Types [Delete as applicable]

<b>Service</b>	<b>Description</b>	<b>Tariff</b>
Secure	The Company and Flexibility Provider agree, in advance, the provider's availability to make a change in export or import.  Based on network conditions or forecasting closer to real-time, the Company may or may not instruct the provider to make the change.	Availability & Utilisation
Dynamic	The Company and Flexibility Provider agree, in advance, the provider's availability to make a change in export or import.  Following a network fault the Company may or may not instruct the provider to make the change.	Availability & Utilisation
Restore	Following an unplanned power outage, the Company instructs the Flexibility Provider, in real-time, to either remain off supply, reconnect with lower demand, or to reconnect generation to support faster restoration.	Utilisation

1.2. Flexibility Provider Service Parameters

Service parameters specific to this Agreement are documented in Schedule 3 (Sites/DER).

1.3. Generic Service Parameters

Parameter	Description	Secure	Dynamic	Restore
Availability Agreement Period	The time period before a service is required in which the DNO and Flexibility Provider may agree the Flexibility Provider Service Window.	At least 5 days. (Usually 1 month).	At least 5 days. (Usually 1 month).	Not applicable.
Utilisation Instruction Notification Period	The time period before a Flexibility Service is required by a DNO, in which a DNO may issue a Utilisation Instruction to a Flexibility Provider for the provision of a Flexibility Service.	At least 15 mins before start time. (Usually 5 days).	At least 15 mins before start time.	At least 15 mins before start time.
Maximum Ramping Period	The maximum allowed time, once a Utilisation Instruction becomes active, for a Flexibility Provider to reach the agreed flexibility capacity.	15 minutes	15 minutes	15 minutes

#### 1.4. Agreement Dates and Renewal

1.4.1. This Agreement shall commence on the Commencement Date and, subject to earlier termination, shall continue until the Expiry Date.

1.4.2. This Agreement shall terminate automatically on the Expiry Date without notice, unless extended.

1.4.3. The Company may give the Flexibility Provider reasonable notice in writing prior to the Expiry Date that the Term is extended. Extensions of the Term shall be limited in number and duration as set out in 1.4.5.

1.4.4. In post-fault scenarios, Flexibility Providers will be given access to export or import under conditions which would normally result in isolation from the network. This access is given for the duration of this Agreement, and removed upon termination of the Agreement.

1.4.5. Contract dates:

Parameter	Definition	Details
Commencement Date	Date this Agreement commences.	
Expiry Date	Date this Agreement expires.	
Permitted Contract Extension(s)	Number and duration of contract extensions, if applicable.	

### 1.5. Service Windows

1.5.1. The required flexibility availability and capacity for each CMZ are communicated by the Company to Flexibility Providers at least one month ahead. The Company will establish the availability of Flexibility Providers, using the Availability Request Form (see Forms and Templates).

1.5.2. Where availability requirements can be forecast for several months or a year ahead, the Company may choose to request a Flexibility Provider's availability to cover the entire period.

### 1.6. Variation to Service Windows [If applicable – delete as required]

1.6.1. The Company may, with written agreement from the Flexibility Provider, make variations to agreed Service Windows and/or capacity requirements, within the following boundaries:

- a. An agreed Service Window duration may change by up to 10%.
- b. The agreed capacity may be increased or lowered by no more than ten per cent (10%) of the contracted value.
- c. Variations shall be agreed at least 5 days ahead of an affected Service Window.
- d. Any variation greater than those above shall be the subject of either a new availability request or further procurement by the Company.

### 1.7. Service Requirements

1.	The Flexibility Provider's DER shall be connected and capable of exporting to or importing from the area of the Network asset(s) subject to the limitation (represented by the CMZ) and able to adjust that import/export as instructed by the Company in response to the network requirements;
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2.	Exporting generators and storage assets, greater than 16amps per phase shall have a long-term parallel connection compliant with the requirements of EREC G59 or G99. Those less than 16amps per phase shall be compliant with the requirements of EREC G83 or G98.
3.	The DER shall be able to deliver on instruction a reduction or increase in import, or an increase or reduction in export, from or to the Network.
4.	The Flexibility Capacity is the amount of active power change the DER can deliver relative to a defined baseline level. It shall be from one or more facilities making up the DER, can be delivered reliably and in full, is fixed for the duration of the service window, and must be within the conditions of each DERs Connection Agreement.
5.	Each DER shall have a single set of capability parameters, and shall have a single point of communication and control.
6.	The DER can run for other purposes during a Service Window, subject to it maintaining its ability to meet any service requirements as stipulated in this Agreement. It is the responsibility of the Flexibility Provider to ensure that they can deliver the contracted Flexibility Services on instruction.
7.	Each DER shall have minute by minute or 30 minute metering with sufficient accuracy to enable the Company to monitor the provision of Flexibility Services. The data shall be made available to the Company in near realtime via API, or at the end of every service month or upon request via spreadsheet. The metering point shall be at the boundary between the Site on which the DER is located and the Network, or on the terminals of the facility if approved by the Company. The Flexibility Provider should be able to provide technical details of the meter and a single line diagram of the DER on request.
8.	The DER can run for other purposes during the Service Window, subject to it not increasing demand on the network. It is the responsibility of the Provider to ensure that they can deliver the contracted Flexibility Services on instruction
9.	The Flexibility Provider's system/process shall deliver the specified level of power for the duration stipulated (or until the energy delivery requirement has been met), in accordance with the Utilisation Instruction.
10.	The Company may perform both pre-notified and no-notification test Flexibility Services events to ensure that the Flexibility Provider has the required load reduction/power injection and storage capacity during service windows
11.	The Flexibility Provider's log files must be retained for a minimum period of 12 months.
12.	The Flexibility Provider shall log and retain DER status and other data as required to demonstrate service delivery.

- |     |  |
|-----|--|
| 13. | In the event of the Flexibility Provider's service becoming unavailable, the Flexibility Provider must be capable of re-establishing availability within three days. |
|-----|--|

#### 1.8. Service Acknowledgements

The Flexibility Provider hereby acknowledges that:

- a. the provision of services pursuant to this Agreement and the participation in Flexibility Services programme is voluntary, except where the Flexibility Provider has committed their availability to provide services, and
- b. Contract Award does not guarantee that any Flexibility Services will be required by the Company or commit the Company to requiring any, or any particular level of, such Flexibility Services.

**SCHEDULE 2  
FLEXIBILITY SERVICE CHARGES**

The following terms shall replace those contained in Clause 9 of the Contract.

2.1. Invoicing

- All payment applications and invoices shall be submitted in accordance with the below.
  - 2.1.1. The Company agrees to pay the Charges to the Flexibility Provider as full remuneration for the satisfactory performance by the Flexibility Provider of the Flexibility Services in accordance with this Agreement.
  - 2.1.2. The Flexibility Provider shall provide to the Company an application for payment for all applicable Charges for a calendar month within 15 Business Days of the end of the calendar month to which such application for payment refers.
  - 2.1.3. The Flexibility Provider agrees that each application for payment issued by it shall include details of:
    - a. The agreed period(s) during which the Flexibility Services were made available to the Company;
    - b. Availability charges (if any), reflecting any reduction for periods of where the service was unavailable or had reduced capacity;
    - c. Utilisation charges (if any) reflecting any reductions for periods of where the service was unavailable or reduced, and any utilisation payment cap.
  - 2.1.4. If the Company intends to pay less than the sum stated as due from it in the application for payment, it shall, not later than 10 Business Days after receipt of the application for payment, give the Flexibility Provider notice of that intention by issuing a 'Pay Less Notice', which shall specify both the sum that it considers to be due to the Flexibility Provider at the date the Pay Less Notice is given, or the sum which it considers is due from the Flexibility Provider to the Company, and the basis on which that sum is calculated.
  - 2.1.5. In the event that the Company disputes whether certain amounts contained in an application for payment are properly due, but does not dispute all sums contained in the application for payment, the Company shall pay the sums not in dispute in accordance with the terms of this Agreement, notwithstanding it is disputing the other sums contained in the Application for Payment.
  - 2.1.6. Within 15 Business Days of the application for payment, the Company shall generate and issue to the Flexibility Provider a 'Purchase Order' for the value of the application for payment minus the amount confirmed in any relevant Pay Less Notice. Where no payment is due following a Pay Less Notice, no Purchase Order shall be issued.
  - 2.1.7. Upon receipt of a 'Purchase Order', The Flexibility Provider will supply to the Company an invoice, or where applicable, a confirmation of acceptance against an

invoice issued by the Company for the Charges within thirty (30) Business Days of the end of the month to which such invoice refers.

- 2.1.8. The Flexibility Provider agrees that each invoice issued or accepted by it will include details of, as regards the Flexibility Services to which the invoice relates:
- a. The 'Purchase Order' number as provided by the Company
  - b. the date on and time at which the Flexibility Services were provided;
  - c. the relevant Availability Fee details (if any); and
  - d. the relevant Utilisation Fee details (if any).
- 2.1.9. Invoices are submitted by the Flexibility Provider to the Company through the Tradex electronic invoicing platform supported by Causeway Technologies Limited (<https://www.causeway.com/sse-tradex-registration>).
- a. The Flexibility Provider agrees that costs associated with its use of the Tradex electronic invoicing platform are to be borne by it and not passed on to the Company in any way whatsoever.
  - b. If in the Company's opinion the Tradex electronic invoicing platform has become an inadequate means for the Flexibility Provider to submit its invoices, the Company may require the Flexibility Provider to submit its invoices through a reasonable alternative means which the Company shall specify by providing notice in writing to the Flexibility Provider.
- 2.1.10. The Company shall not be held responsible for late payment of any invoices where the foregoing provisions relating to submission are not followed by the Flexibility Provider.
- 2.1.11. The Company shall pay the Charges within thirty (30) days of receipt of the relevant invoice (the "Due Date for Payment").
- 2.1.12. Unless otherwise agreed in writing between the Company and the Flexibility Provider, payment of invoices shall be made by the Company by BACS payment to a bank account nominated in writing by the Flexibility Provider.
- 2.1.13. If either Party fails to make any payment due to the other under this Agreement by the Due Date for Payment, then the Party failing to pay shall pay interest on the overdue amount at a rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The relevant Party shall pay the interest together with the overdue amount. The Parties acknowledge that their liability under this Clause 9.7 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 2.1.14. Where either Party disputes any application for payment or invoice (or any part of any application for payment or invoice) then, upon receipt by the Flexibility Provider of notification from the Company of any such disputed amounts, the



provisions of Clause 22 (Dispute Resolution) shall apply in resolving the disputed amounts.

2.1.15. In the event that the Company disputes whether certain amounts contained in an invoice are properly due but does not dispute all sums contained in the invoice, the Company shall pay the sums not in dispute in accordance with the terms of this Agreement notwithstanding that the Company is disputing the other sums contained in the invoice.

2.1.16. Where either Party disputes any invoice (whether in whole or in part), interest under Clause 9.7 is payable only after the dispute is resolved, and only on those sums found or agreed to be due following resolution of the dispute, from the due date until payment.

2.1.17. All payments and all other sums referred to in this Agreement are stated exclusive of VAT. Where applicable, VAT shall be payable by the payer to the payee only upon receipt of a valid VAT invoice.

2.1.18. Where, during the Term, the Flexibility Provider wishes to change its bank details or address for payment, then the Flexibility Provider must follow the provisions set out in Clause 21 (Notices)

2.1.19. Time is of the essence in respect of the Flexibility Provider submitting applications for payment and invoices. If the Flexibility Provider fails to apply for payment for or fails to invoice the Company for payment of the Charges within six (6) months of the date of which the Flexibility Services were provided, then the Flexibility Provider shall be deemed to have waived its right to payment.

## 2.2. Capacity and Pricing

### 2.2.1. Flexibility capacity and pricing:

[Example from DER Details and Pricing Form Template v1.0. Replace with completed form]

CMZ Name	DER Name	Service	Direction	Service Year	Flexibility Capacity (MW)	Availability Price (£/MW/h)	Utilisation Price (£/MWh)	Nominal Availability to Utilisation hours ratio	Blended Rate (£)
Alderton		Secure	GTU/DTD	23/24				5	£ -
Alderton		Secure	GTU/DTD	24/25				5	£ -
Alderton		Secure	GTU/DTD	25/26				5	£ -
Alresford		Secure	GTU/DTD	23/24				5	£ -
Alresford		Secure	GTU/DTD	24/25				5	£ -
Alresford		Secure	GTU/DTD	25/26				5	£ -

## 2.3. Calculation of Charges

### 2.3.1. Secure Services

Calculation formula	Payment mechanism	Baseline for measuring delivery	Timing of payments
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<p><i>Flex utilisation (kWh) x Utilisation Fee (£/kWh) = Total Utilisation Charge (£)</i></p> <p><i>Flex capacity available (kW) x Time available (hours) x Availability Fee (£/kW/h) = Total Availability Charge (£)</i></p>	<p><i>On a monthly basis the Flexibility Provider will submit a Performance Report as a form of application of payment. Upon verification, Company will raise a purchase order and provide the number to the Flexibility Provider. The Flexibility Provider will submit an invoice quoting the purchase order number.</i></p>	<p><i>The Flexibility Provider will include baseline power/energy values in the Performance Report.</i></p>	<p><i>On receipt of application for payment, the Company will normally issue the purchase order number to the Flexibility Provider within 15 days. On receipt of invoice for payment, the Company will issue payment within 30 days of receipt.</i></p>
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### 2.3.2. Dynamic Services

<b>Calculation formula</b>	<b>Payment mechanism</b>	<b>Baseline for measuring delivery</b>	<b>Timing of payments</b>
<p><i>Flex utilisation (kWh) x Utilisation Fee (£/kWh) = Total Utilisation Charge (£)</i></p> <p><i>Flex capacity available (kW) x Time available (hours) x Availability Fee (£/kW/h) = Total Availability Charge (£)</i></p>	<p><i>On a monthly basis the Flexibility Provider will submit a Performance Report as a form of application of payment. Upon verification, Company will raise a purchase order and provide the number to the Flexibility Provider. The Flexibility Provider will submit an invoice quoting the purchase order number.</i></p>	<p><i>The Flexibility Provider will include baseline power/energy values in the Performance Report.</i></p>	<p><i>On receipt of application for payment, the Company will normally issue the purchase order number to the Flexibility Provider within 15 days. On receipt of invoice for payment, the Company will issue payment within 30 days of receipt.</i></p>

### 2.3.3. Restore Services

<b>Calculation formula</b>	<b>Payment mechanism</b>	<b>Baseline for measuring delivery</b>	<b>Timing of payments</b>
<p><i>Flex utilisation (kWh) x Utilisation Fee (£/kWh) = Total Utilisation Charge (£)</i></p>	<p><i>On a monthly basis the Flexibility Provider will submit a Performance Report as a form of application of payment. Upon verification Company will raise a purchase order and provide the number to the Flexibility Provider. The Flexibility Provider will submit an invoice quoting the purchase order number.</i></p>	<p><i>The Flexibility Provider will include baseline power/energy values in the Performance Report.</i></p>	<p><i>On receipt of application for payment, the Company will normally issue the purchase order number to the Flexibility Provider within 15 days. On Receipt of invoice for payment, the Company will issue payment within 30 days of receipt.</i></p>

## 2.4. Reduction of charges

### 2.4.1. Performance Based Pricing

- a. The Flexibility Provider shall report their performance for each half-hour of the service window and shall apply the appropriate fees according to the performance achieved.

### 2.4.2. Service Failure

- a. Where there is no net change in export/import power from the baseline in any half hour period of the service event, no Utilisation or Availability payment will be due for that period. The Flexibility Provider should include the reason for the failure in the performance report.
- b. No Utilisation payment will be due for delivery outside of the instructed Start & Stop times.
- c. If the Flexibility Provider has given notice of unavailability for an agreed Service Window and the Company has elected to cancel the service as a result, the Availability Fee shall not be payable for that service window.
- d. If the Flexibility Provider has given notice of capacity reduction for an agreed Service Window and the Company has elected to continue with the service, the Availability Fee shall be payable based upon the remaining capacity available.

### 2.4.3. Service Under-Performance

- a. An under-performing period is one where the minimum performance threshold has not been reached. A reduced Utilisation fee is payable for each underperforming half hour between the event Start & Stop times.
- b. The minimum performance threshold is **90%** of the instructed power change.
- c. The Utilisation fee payable for under-performing periods is **25%** of the normal Utilisation fee.
- d. No Availability payment will be due for periods where the minimum performance threshold has not been reached.

### 2.4.4. Over-Delivery Payment Cap

- a. A Payment Cap is applied to Utilisation payments for half hour periods where the maximum performance threshold has been exceeded.
- b. The maximum performance threshold is **110%** of the instructed power change.

### SCHEDULE 3 SITES/DER

- 3.1. The Company will refer to the DER details when requesting availability or instructing services pursuant to this Agreement.
- 3.2. If DER details change during the Term of the agreement, the Flexibility Provider must update and submit the DER Details form to the Company with a minimum of thirty (30) days notice and if accepted by the Company the updated DER Details shall form part of the Contract from the date of that acceptance onwards.
- 3.3. The Company will consider the addition or removal of DERs throughout the contract Term, however the total contracted capacity and pricing for the zone cannot be changed outside of the Tender process.
- 3.4. DER Details:

[Sample from DER Details and Pricing Template v1.0 (Aggregated DER tab). Replace with image of the relevant tab from the completed form (DER or Aggregated DER tab). For Providers with large number of DERs/Aggregated DERs where the text would be unreadable, add the reference to the spreadsheet itself as an appendix to the contract “DER Details are in the file Appendix A – DER Details and Pricing.xlsx which forms part of this contract”]

Item	Guidance	CMZ Name
<b>General Information</b>		
Capacity Readiness Date	If the bid capacity is not yet ready, provide the estimated date it will be.	
Baseline Method	Select the baseline method (Applies to Sustain & Secure services. Dynamic and Restore are post fault therefore the baseline is 0 MW).	
Nominated Static Baseline	For a nominated static baseline, enter the baseline power in MW.	
Minimum Capacity Unit	The minimum capacity increment/decrement that can be supported.	
Connection Voltage	The voltage of the aggregated DER connections to the network.	
Maximum Runtime	The maximum time that the aggregated DER can continuously run. Please state time and the capacity this is based on.	
Recovery Time	Shortest time between the end of one service event and the start of another (minutes).	
Minimum Runtime	The minimum time the aggregated DER can be run. Please state time and the capacity this is based on.	
Ramp up rate	Power ramp up rate in MW/min.	
Ramp down rate	Power ramp down rate in MW/min.	
Co2 Emissions (Generators)	Kg Co2/MWh during operation.	
Regular planned maintenance times	Any regular maintenance periods which could impact the provision of services.	
Additional Information	Any relevant additional information.	
<b>Operational Contact details</b>		
Name	Name of individual / service desk	
Email	email of individual / service desk	
Telephone	Telephone number of individual / service desk	

**SCHEDULE 4  
COMMUNICATIONS**

4.1. Process and systems for communications

The Company may use email, phone calls, web portal or API for communications with Flexibility Providers. If Flexibility Providers are not able to integrate via API, phone and email will be used.

At the Company's discretion and where it is beneficial to do so, Flexibility Providers may be given the option of using the Flexible Power portal and API to simplify scheduling, dispatch, performance reporting and invoice generation.

The communications outlined in this schedule relate to phone and email based communication.

4.2. Availability Request

4.2.1. For Secure & Dynamic services, the Company shall contact the Flexibility Provider at least 5 days in advance of the planned event to agree availability.

4.2.2. The Company will send an Availability Request to the Flexibility Provider by email, containing the following:

4.2.3. Availability Request - Minimum Information:

<i>Date and Time of Request:</i>	<i>[Date &amp; Time]</i>
<i>CMZ Name:</i>	
<i>Flexibility Provider Name:</i>	
<i>DER Name:</i>	
<i>Service Requested:</i>	<i>[Secure, Dynamic]</i>
<i>Direction:</i>	<i>[Generation Turn Up/Demand Turn Down or Generation Turn Down/Demand Turn Up]</i>
<i>Availability Required From:</i>	<i>[Date &amp; Time]</i>
<i>Availability Required To:</i>	<i>[Date &amp; Time]</i>
<i>Flexibility Capacity:</i>	<i>Active power change capacity, as a change from baseline (MW)</i>
<i>Baseline Method:</i>	<i>The baseline is the power that changes are measured against. The baseline method should be agreed at the time of booking availability and can be:</i>

	<ul style="list-style-type: none"> <li>• <i>Historical average</i></li> <li>• <i>Provider nominated half-hourly profile.</i></li> <li>• <i>Provider nominated static value.</i></li> </ul> <p><i>Note that the baseline for Dynamic services should be zero, since the service is used post-fault.</i></p>
<i>Nominated Static Baseline (MW):</i>	<i>If known at time of request, enter the static baseline value in MW (Use -ve values for demand assets).</i>

4.2.4. The Flexibility Provider shall respond by email within 1 working day to accept or decline the availability request.

4.2.5. The Flexibility Provider and Company shall keep a log of availability commitments made, for reporting and invoicing purposes.

4.2.6. If after agreeing availability, the Flexibility Provider determines it cannot deliver all or some of its commitments, it shall immediately notify the Company setting out the duration of the unavailability/reduction and the reason. If the notification is made by telephone, the Flexibility Provider shall send a confirmation email with the required Unavailability Notification information within 24 hours. The Company may at its absolute discretion:

- Elect to continue with the Service Window at the reduced capacity.
- Elect to cancel the Service Window.

The Company's decision will be communicated to the Flexibility Provider as soon as possible, however should that not occur before the start of an agreed service window, the Flexibility Provider shall be available at the times agreed and be prepared to respond to instruction and deliver at reduced capacity if possible.

#### 4.3. Utilisation Instruction

4.3.1. The Flexibility Provider shall not deliver any flexibility service unless they have received a Utilisation Instruction from the Company

4.3.2. The Company will communicate an Utilisation Instruction to the Flexibility Provider before each service event, including the following information:

4.3.3. Utilisation Instruction – Minimum Information:

<i>Date and Time of Instruction:</i>	<i>[Date &amp; Time]</i>
<i>CMZ Name:</i>	
<i>Flexibility Provider Name:</i>	



<i>DER Name:</i>	
<i>Service Instructed:</i>	<i>[Secure, Dynamic, Restore]</i>
<i>Direction:</i>	<i>[Generation Turn Up/Demand Turn Down or Generation Turn Down/Demand Turn Up]</i>
<i>Start Time:</i>	<i>[Start time DD/MM/YY HH:MM]</i>
<i>Stop Time:</i>	<i>[Stop time DD/MM/YY HH:MM]], if known at the time of instruction. If unknown, a separate Stop instruction may be used as well.</i>
<i>Flexibility Capacity:</i>	<i>Requested power change (MW).</i>
<i>Baseline:</i>	<i>Power baseline (MW). Use -ve values for demand assets.</i>

4.3.4. The Company shall issue Utilisation Instructions with notice periods as given in schedule 1.3 - Generic Service Parameters.

4.3.5. After accepting instructions by phone or email, the Flexibility Provider shall send a confirmation email to the Company control room as soon as possible.

4.3.6. If the Flexibility Provider is not able to fulfil a Secure or Dynamic Utilisation Instruction they shall notify the Company control room by phone as soon as possible. The Company may at its absolute discretion:

- a. Amend and re-issue the Instruction.
- b. Withdraw the Utilisation Instruction.

#### 4.4. Stop Instruction

4.4.1. If the Stop time is not included in the Utilisation Instruction, or is changed during the service, the Company may (after any agreed minimum run time) issue a Stop Instruction via phone call.

4.4.2. If the service does not end at the instructed Stop Time, the DER may be tripped if the Company determines there is a risk to the network.

4.4.3. Instructions Responses & Logging

4.4.4. Upon receipt of any Utilisation Instruction, the Flexibility Provider shall respond by phone or email to the Company control room within 15 mins.

4.4.5. The Flexibility Provider shall send email confirmation of a verbally accepted to Instructions to the Company control room within 24 hours.

4.4.6. The Flexibility Provider shall keep a log of Utilisation Instructions received, responses given, actions taken, duration of actions and energy export/import for reporting purposes.

#### 4.5. Services in Progress

4.5.1. If the Flexibility Provider determines that it is unable deliver all or part of a service already in progress, it shall immediately contact the Company Control Room by telephone to notify the Unavailability/Reduction.

4.5.2. Upon receipt of an Unavailability/Reduction of Service notification, the Company may at its absolute discretion:

- a. Elect to continue with the affected service at reduced capacity.
- b. Elect to cancel the remainder of the service.

#### 4.6. Summary Email & Service Log

4.6.1. In addition to other phone and email communications the Company shall within 24 hours of a service being used summarise all instructions given on the day and send by email to the Flexibility Provider.

4.6.2. The Flexibility Provider shall review the summary email and must notify the Company at once if the instruction summary does not match their records.

4.6.3. The Flexibility Provider shall keep a log of all instructions received and subsequent actions.

#### 4.7. Unavailability Notification

4.7.1. The Flexibility Provider shall immediately notify the Company of any period when services will be unavailable or reduced by completing an Unavailability Notification, setting out the duration of the unavailability/reduction and the reason.

4.7.2. The Flexibility Provider shall provide the Unavailability Notification by telephone or email to the Company's Control Room. Where the notice is initially given by telephone, a confirmatory email shall be sent by the Flexibility Provider to the Company's Control Room within 24 hours.

4.7.3. If the duration of the service unavailability is not specified by the Flexibility Provider, the Flexibility Provider should contact the Company control room when the service is available again. The Company will mark the service as unavailable until the Flexibility Provider advises otherwise.

4.7.4. Unavailability Notification – Minimum Information:

<i>Flexibility Provider Name:</i>	
<i>CMZ Name:</i>	
<i>DER Name:</i>	
<i>Service Unavailable/Reduced From (Date/Time):</i>	



<i>Service Unavailable/Reduced To (Date/Time):</i>	
<i>Reduced Flexibility Capacity, if applicable:</i>	
<i>Reason for unavailability/reduction:</i>	
<i>Name and Contact Details:</i>	<i>[of individual giving notification]</i>
<i>Date and Time of Notification:</i>	<i>[date/time notification was given to the Company]</i>
<i>Flexibility Provider Ref:</i>	<i>[e.g. incident or ticket ref]</i>

## SCHEDULE 5 PERFORMANCE MONITORING

### 5.1. Performance Reporting

5.1.1. The Flexibility Provider is responsible for reporting upon their performance. The data required for each service event is:

5.1.2. For Secure and Dynamic services, the pre-agreed flex capacity made available for each half hour period (kW).

5.1.3. For all services, metered export/import energy (kWh) or power (kW) readings, at a half-hour or finer granularity.

5.1.4. Corresponding baseline estimates of what the power/energy would have been, had the Flexibility Service not been delivered:

a. Depending on the specific service and DER, this may be a fixed value (kW) that applies throughout the event, or it may be required at half-hourly granularity.

b. For DER with consistent export or import under normal conditions, an averaged historical baseline value (kW) may be used instead of estimated data.

5.1.5. The differences between Actual and Baseline energy values, being the Utilisation each half hour.

5.2. Performance data for all services in an invoice period must be provided to the Company using the relevant Performance Report template.

5.3. If applicable, Flexibility Providers must provide the formula used for calculating Baseline values, and upon request by the Company must be able to demonstrate its accuracy by through comparison with real values.

5.4. The Company will verify the performance data supplied against monitoring data and may request more data or supporting information from the Flexibility Provider if necessary.

5.5. The Flexibility Provider shall apply the appropriate fees for each half hour period.

5.6. Example Performance Report for Secure and Dynamic services:

Half hour period (end timestamp)	Available/ Utilised	Baseline		Actual		Service Utilisation (kWh)	Agreed Flex Available (kW)	Performance (%)	Capped Utilisation (kWh)	Utilisation Fee (£/kWh)	Availability Fee (£/kWh)	Availability Payment Request (£)	Utilisation Payment Request (£)
		Avg Power (kW)	Baseline Energy (kWh)	Avg Power (kW)	Actual Energy (kWh)								
2021-07-05T09:30:00Z	A	100.00	50.00	100.00	50.00	0.00	100.00	0%	0.00	£0.50	£1.00	£50.00	£0.00
2021-07-05T10:00:00Z	A	100.00	50.00	100.00	50.00	0.00	100.00	0%	0.00	£0.50	£1.00	£50.00	£0.00
2021-07-05T10:30:00Z	U	100.00	50.00	300.00	150.00	100.00	100.00	100%	100.00	£2.00	£1.00	£50.00	£200.00
2021-07-05T11:00:00Z	U	100.00	50.00	350.00	175.00	125.00	100.00	125%	105.00	£2.00	£1.00	£50.00	£210.00
2021-07-05T11:30:00Z	U	100.00	50.00	280.00	140.00	90.00	100.00	90%	90.00	£2.00	£1.00	£50.00	£180.00
2021-07-05T12:00:00Z	U	100.00	50.00	300.00	150.00	100.00	100.00	100%	100.00	£2.00	£1.00	£50.00	£200.00
2021-07-05T12:30:00Z	U	100.00	50.00	250.00	125.00	75.00	100.00	75%	75.00	£0.50	£0.00	£0.00	£37.50
2021-07-05T13:00:00Z	U	100.00	50.00	240.00	120.00	70.00	100.00	70%	70.00	£0.50	£0.00	£0.00	£35.00
2021-07-05T13:30:00Z	U	100.00	50.00	230.00	115.00	65.00	100.00	65%	65.00	£0.50	£0.00	£0.00	£32.50
2021-07-05T14:00:00Z	U	100.00	50.00	200.00	100.00	50.00	50.00	100%	50.00	£2.00	£1.00	£25.00	£100.00
2021-07-05T14:30:00Z	U	100.00	50.00	200.00	100.00	50.00	50.00	100%	50.00	£2.00	£1.00	£25.00	£100.00
2021-07-05T15:00:00Z	U	100.00	50.00	160.00	80.00	30.00	50.00	60%	30.00	£0.50	£0.00	£0.00	£15.00
2021-07-05T15:30:00Z	U	100.00	50.00	100.00	50.00	0.00	50.00	0%	0.00	£0.50	£0.00	£0.00	£0.00
2021-07-05T16:00:00Z	A	100.00	50.00	100.00	50.00	0.00	50.00	0%	0.00	£0.50	£1.00	£25.00	£0.00
2021-07-05T16:30:00Z	A	100.00	50.00	100.00	50.00	0.00	50.00	0%	0.00	£0.50	£1.00	£25.00	£0.00
												<b>£400.00</b>	<b>£1,110.00</b>

### 5.7. Testing and monitoring

- 5.7.1. All testing will be organised for a time and duration acceptable for both the Company and Flexibility Provider and agreed before implementation. Testing will be planned to minimise impact to the Flexibility Provider's normal operations. The Company retains the right at its own discretion to refrain from issuing Utilisation Instructions to the Flexibility Provider until necessary testing has been concluded.
- 5.7.2. Testing may be undertaken to confirm:
- a. The Flexibility Provider's ability to receive and act upon instructions.
  - b. On receipt of a Utilisation Instruction, the appropriate processes and methodologies are in place to act upon the instruction
  - c. Demand Side Response – The Flexibility Provider provides evidence demand reduction has occurred and this is verified by Company using PowerOn/Pi Data/Metering Data.
  - d. Storage – The Flexibility Provider provides evidence energy has been stored.
  - e. Generation – The Flexibility Provider provides evidence generation export has occurred and this is verified by Company using PowerOn/Pi Data/Metering Data.
  - f. Upon issuing a Stop Instruction, the Flexibility Provider can receive, act upon, and evidence that the export has reduced/ceased as requested.
- 5.7.3. The Company shall be entitled to request information to test the Flexibility Provider's ability to provide the Flexibility Services, including an assessment of:
- a. the capability parameters of the DER;
  - b. the ability of the DER to meet the Flexibility Services requirements;
  - c. the ability of the Flexibility Provider to meet the Flexibility Services requirements;
  - d. the suitability of the Flexibility Provider's facilities;
  - e. that the Flexibility Provider has all relevant documentation in place;
  - f. the data which the Flexibility Provider is able to supply in relation to its performance of and its availability to perform the Flexibility Services (including meter data);
- 5.7.4. The Company shall provide a minimum of 10 days' notice of any proposed visit to the Flexibility Provider's site/facilities. The Flexibility Provider shall not unreasonably withhold permission for the Company to visit the Flexibility Provider's site/facilities.
- 5.7.5. The Company may repeat the assessment process on an annual basis or immediately following any service failure.

## **SCHEDULE 6 DISPATCH SYSTEMS/TECHNICAL REQUIREMENTS**

### 6.1. Flexible Power

- 6.1.1. Flexible Power is a joint DNO platform that standardises and automates some Flexibility Service operations.
- 6.1.2. The Company may offer Flexibility Providers the option of using the Flexible Power platform to automate scheduling, dispatch, performance reporting and invoice generation.
- 6.1.3. If Flexible Power is an option, Flexibility Providers who have been awarded contracts will be contacted by the Company to give an overview of the platform and review the differences between automated and manual operation.
- 6.1.4. If the Company and Flexibility Provider agree to use Flexible Power, an amendment will be made to this contract covering the changes, which include:
  - a. Schedule 2.3 - Calculation of Charges
  - b. Schedule 4 – Communications
  - c. Schedule 5 – Performance Monitoring
  - d. Schedule 6 – System/Technical Requirements

### 6.2. Integration Terms

- 6.2.1. The Flexible Power platform is available free of charge to Flexibility Providers, but there may be some cost to the Flexibility Provider if 3rd party technical assistance is needed to integrate with the API. Details of the Flexible Power API can be found at <https://flexiblepowerportal.co.uk/>
- 6.2.2. The use of Flexible Power is not mandatory, however the Company reserve the right not to renew contracts of Flexibility Providers who choose not to integrate.
- 6.2.3. The Company may offer at their discretion a one-off contribution of up to £5000.00 towards any integration costs incurred by the Flexibility Provider.
- 6.2.4. The Company do not provide integration development services.
- 6.2.5. The Flexibility Provider is responsible for integrating with the API, including contracting with any 3rd parties for integration services if needed.
- 6.2.6. The Company can propose 3rd Parties to provide integration services. The Flexibility Provider is not obliged to use the suggested 3rd Party, and the Company accept no liability for the 3rd Party.
- 6.2.7. Integration and testing shall be carried out to a schedule agreed between the Flexibility Provider and the Company.
- 6.2.8. The Company will pay the integration contribution upon a successful integration test, and presentation of evidence for costs incurred (e.g. timesheets or copy of purchase order for systems integration work).



**SCHEDULE 7**  
**SPECIAL TERMS**

7.1. Dispatch Criteria

7.1.1. The following criteria will be used by the Company per CMZ before requesting availability or issuing an utilisation Instruction to determine which Flexibility Provider will be used. The Company shall retain, at its sole discretion, the right to select the most appropriate Flexibility Provider to provide a service.

7.1.2. Criteria:

- a. Technical suitability for the specific constraint scenario.
- b. Pricing.
- c. Co2 emissions.
- d. Reliability based on prior service use.
- e. Any known unavailability or reduced capacity.