
TRANSITION FLEXIBILITY SERVICES AGREEMENT

2021

This Agreement sets out the terms and conditions on which the Provider agrees to provide its Flexibility Services and incorporates the conditions of contract and the schedules.

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CONDITIONS OF CONTRACT

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In this Agreement and the recitals, unless the context otherwise requires or superseded by additional terms placed within the schedules, the following expressions shall have the meanings set out below:

“**Acceptance Form**” means the form signed by the Provider when entering into this Agreement;

“**Accepted [MW/MVAR]**” means the [MW/MVAR] accepted in accordance with Clause 3 and/or Schedule 3;

“**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;

“**API**” means application programme interface;

“**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 Rate**” means the percentage (%) change in the Availability Fee, dependant upon the relevant availability Settlement Rule applied to a given service.

“**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] [the City of Edinburgh]; *[Note: Please delete as appropriate England and Wales or Scotland depending on location of the Site]*

“**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 the Acceptance Form signed by the Provider when entering into this Agreement;

“**Company**” means the owner and operator of the local Network which requires the provision of Flexibility Services to aid the management and operation of its Network. “**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;

“**Contract Award**” means a notification of contract award by the Company to the Provider in respect of an invitation to tender issued by the Company and "Awarded a Contract" shall be construed accordingly;

“**Contracted Service Capacity**” means the amount of energy (kWh) that the Provider has agreed to make available to the Company pursuant to a Flexibility Contract, from one or more DERs as detailed in the Flexibility Contract

“**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.’

“**DER Register**” means the list of Provider DERs pursuant to Schedule 3;

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

“**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 9 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;

“**Eligible Days**” means ten (10) Weekdays and four (4) Weekend Days.

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

“**Flexibility Contract**” means an auction bid or offer for some or all of the Contracted Service Capacity which is received and subsequently accepted by the Company and used to deliver Flexibility Services in accordance with this Agreement;

“**Flexibility Contract End Date**” means the date specified in the Flexibility Contract being the date that the Provider commitment to deliver Flexibility Services ends.

“**Flexibility Contract Start Date**” means the date specified in the Flexibility Contract being the date that the Provider commitment to deliver Flexibility Services commences.

“**Flexibility Event**” means the delivery of Flexibility Services pursuant to an Utilisation Instruction.

“**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);

“**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 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;

“**Neutral Market Facilitator (NMF)**” is the platform used by the Company to auction and purchase flexibility services and other market services.

“**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;

“**Party**” means the Provider or the Company, and together they are the Parties;

“**Performance Report**” means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions in accordance with Schedule 5;

“**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;

“**Provider**” means the owner and/or operator of DER(s), or a party which has entered into arrangements for rights in respect of third party owned DERs, that has the capability to provide Flexibility Services through aggregated or individual assets;

“**Proving Test**” means the tests, more particularly described in Schedule 5, undertaken in accordance with Clause 5.4;

“**Ramp Down Time**” means the duration (measured in minutes) the flexibility asset (or pool of flexibility assets) take(s) to change output from the instructed output (demand or generation) to normal operating output at the end of service delivery

“**Ramp Up Time**” means the duration (measured in minutes) the flexibility asset (or pool of flexibility assets) take(s) to change output from normal operating output (demand or generation) to instructed output at the start of service delivery

“**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 Schedule 1 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 5 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 5;

“**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;

“**Settlement Report**” a report generated by the Company within the first twenty (20) days of each month (provided all Service Meter Data has been provided in accordance with this Agreement) specifying;

- a) the date and time at which the Flexibility Services were provided in accordance with Flexibility Contract(s);
- b) the relevant Availability Fee details (if any);
- c) the relevant Utilisation Fee details (if any); and
- d) the effect of the Settlement Rules (if any);

“**Settlement Rules**” means the adjustment of the Charges calculated in accordance with Schedule 5;

“**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;

“**The Company**” means Scottish Hydro Electric Power Distribution plc where Flexibility Services are provided in Scotland and Southern Electric Power Distribution plc where the Flexibility Services are provided in England.

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

“**Unavailability Notice**” means a notice issued by the Provider to inform the Company that a DER is Unavailable in accordance with Clause 3.8 and Schedule 4 paragraph 4;

“**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, such period being the “**Term**”.
- 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 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. Market Stimuli Packages shall be governed by Schedule 7.
- 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 Flexibility Contract(s) and/or 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 the issue of an Unavailability Notice, the Provider shall provide the Flexibility Services to the Company using the DER in accordance with Schedule 1.
- 3.9 Unless otherwise specified Ramp Up Time and Ramp Down Time must take place outside of Service Windows.
- 3.9.1 Utilisation Fees will be made for Contracted Service Capacity delivered during a Service Window, subject to settlement rules in Schedule 2.
- 3.10 In performing the Flexibility Services pursuant to this Agreement, the Provider must comply with the technical requirements set out in Schedule 6.
- 3.11 No Utilisation Fees shall be due to the Provider by the Company for any Flexibility Services delivered in excess of the Accepted [MW/MVAR], unless specifically requested by the Company.

4. VARIATION

- 4.1 Subject to Clause 4.2 and 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, such discretion not to be unreasonably withheld), 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 Schedule 5, the Company shall be entitled to, at its sole discretion but acting reasonably, 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 30 minute metering data analysis techniques for each active DER.
- 5.1.1 More granular, minute by minute metering may be required for certain services as detailed in Schedule 5.
- 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 Schedule 5.

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

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 one (1) year thereafter.

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 (prioritisation of potential conflicts in Service delivery is covered by this Agreement in Schedule 8);
- 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 10.1.1, 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 Subject to Clauses 13.1 and 13.2 and 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 which provides further terms in relation to charges and payment 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 Company in accordance with Schedule 2.
- 9.3 The Company will issue a Settlement Report detailing the Charges and any adjustments in accordance with Schedule 5.

- 9.4 The Provider will issue an invoice consistent with the Settlement Report for any undisputed amount that includes 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).
- 9.5 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.
- 9.6 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).
- 9.7 Where either Party disputes any Settlement Report or invoice (or any part of any Settlement Report or 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. Such disputes should be raised within five (5) Business Days of the relevant Settlement Report or invoice.
- 9.8 In the event that the Provider disputes whether certain amounts contained in a Settlement Report are properly due but does not dispute all sums contained in the Settlement Report, the Company shall pay the sums not in dispute in accordance with the terms of this Agreement notwithstanding that the Provider is disputing the other sums contained in the Settlement Report.
- 9.9 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.
- 9.10 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.
- 9.11 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, *Note: if English*] [assignment, *Note: if Scottish*] 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 1011(*Consequences of Termination or Expiry*);

10.4.5 Clause 11 (*Service Failure and Material Breach*);

10.4.6 Clause 13 (*Indemnity, Liability & Insurance*);

10.4.7 Clause 15 (*Confidentiality, Information Disclosure & Publicity*);

10.4.8 Clause 16 (*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 (not acting unreasonably), 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 After ten (10) Utilisation Instructions have been issued the Company reserves the right to claim material breach of this Agreement in accordance with Clause 10.1 if the Provider has failed to:
- 11.4.1 respond to more than two (2) Utilisation Instructions issued by the Company; or
 - 11.4.2 deliver Utilisation Instructions using more than 25% of the requested Contracted Service Capacity.

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 lower of (i) £250,000, or (ii) an amount equal to the total availability 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 [13] or has not complied with such insurance policies.

13.3 Notwithstanding anything to the contrary, 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.

14. [ASSIGNMENT, NOTE: IF ENGLISH] [ASSIGNATION, NOTE: IF SCOTTISH] 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 and for a period of five (5) years after the end of 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 Each party undertakes, warrants and represents that in connection with this Agreement:

19.1.1 no party 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 other party 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 its obligations under this Clause 19. Such notice to set out full details of the circumstances concerning the breach or potential breach of its 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 Subject to clause 13, each Party shall indemnify the other against any Losses, incurred by or awarded against the other 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 a party shall be deemed a material breach of the Agreement for the purposes of Clause 10.1.
- Each party 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 other party any request or demand for any undue financial or other advantage of any kind received or offered by the party in connection with 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 delivered by email to a predefined centrally managed inbox 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 email as per clause 20.2.
- 20.4 A Non-Operational Notice or other communication shall be deemed to have been received:
- 20.4.1 within 24 hours of sending the email or upon receiving a read receipt, whichever is earliest. Where sent outside of business hours the 24 hour window will start from 9.00 a.m. on the first business day thereafter.

20.5 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.

20.6 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. GOVERNING LAW AND JURISDICTION

- 27.1 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.
- 27.2 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.

28. TRANSITION TRIAL SPECIFICS

- 28.1 The Company shall notify the Provider as soon as reasonably practical if Flexibility Services are no longer required. If so subject to the DER units having successfully completed DER commissioning tests, the Company will not be able to reimburse any costs and expenses incurred in connection with the DER commissioning.

SCHEDULE 1
SERVICE DESCRIPTION

1. This Schedule 1 applies to those DERs of the Provider that do not benefit from a Market Stimuli Package; DERs that benefit from a Market Stimuli Package are governed by Schedule 7. A Provider may have DERs governed by this Schedule 1 and DERs that are governed by Schedule 7.
2. The Company shall conduct auctions to identify Providers with DERs that could deliver one or more of the Flexibility Services in this Schedule 1.
3. DERs that have been through minimum viable system (MVS) testing for the Local Energy Oxfordshire Project will be deemed sufficiently tested and able to participate in auctions to deliver those Flexibility Services for which they have been tested. Other DERs may be subject to basic testing as required by the Company
4. The Company will determine the total expected contract value for Flexibility Contract(s) for the Provider by calculating the total of;
 - a. the Availability Fee multiplied by the aggregate Service Window hours during the Service Period: plus
 - b. the Utilisation Fee multiplied by the expected hours of utilisation (as determined by the Company acting reasonably).
5. The Company may enter into Flexibility Contract(s) with the Providers who offer the most advantageous position (including the total expected contract value and the capability of the DERs) to use some or all of their DERs to deliver one or more of the Flexibility Services described in this Schedule 1.
6. The Company will endeavour to select DERs with the lowest Utilisation Fee first, but this may not always be possible (including but not limited to where this may be considered necessary to ensure security of supply, for technical reasons, or where the Contracted Service Capacity required exceeds the aggregate level of Contracted Service Capacity available from Flexibility Contract(s)). This will not impact the payment of the Availability Fee payable to DERs.

[Part 1]
[Service - Sustain Peak Management]

Item	Detail	Initiating Party ¹
Flexibility Service	[Sustain Peak Management]	DSO
Purpose of Flexibility Service	A service to provide the DSO with a planned reduction in demand or increase in generation in advance of a forecast capacity constraints at peak demand times.	DSO
Location of DER	[Postcode location of each the DER. Listed as per code in Schedule 3] DER located within the area supplied from the Zone.	Provider
Zone	The location specified in the Flexibility Contract where the Flexibility Service is required to mitigate the identified constraint.	DSO
Flexibility Contract Start Date	As specified in the Flexibility Contract	DSO
Flexibility Contract End Date	As specified in the Flexibility Contract	DSO
Service Window	[Hours in Day] and [Days in Week] during the Service Period [and to be specified in the Flexibility Contract at [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Service Period	[Months in Year] [and to be specified in Flexibility Contract at [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Contracted Service Capacity	The flexible capacity in [kW and / or kVAr] specified in the Flexibility Contract and that the Provider commits to provide to the Company during the Flexibility Contract..	Provider
Baseline Methodology	The baseline methodology which is set out in Schedule 5	DSO
Baseline	The baseline will be determined using the baseline methodology as set out in Schedule 5.	Provider
Settlement Period	A period of 30 minutes beginning on the hour or the half-hour.	n/a

¹ Indicates the party responsible for the initial population of the respective term (where applicable).

Item	Detail	Initiating Party ¹
Service Stacking	The ability of the Provider to use a DER to deliver more than one flexibility services within the same Settlement Period in accordance with Schedule 8, provided it does not interfere with the delivery of the Flexibility Service.	DSO
Aggregation	Aggregation of DERs to provide the Contracted Service Capacity.	Provider
Availability Status	The status of the DER (Available or Unavailable) as set out in Schedule 4.	Provider
Contracted Response Time	The flexibility service required activation within [XXXX] minutes	DSO
Contracted Service Minimum Run Time	[XXXX] minutes duration, being the minimum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Contracted Service Maximum Run Time	[XXXX] minutes duration, being the maximum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Ramp Down Time	Ramp down time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Ramp Up Time	Ramp up time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Contracted Service Recovery Time	[XXXX] minutes being the period after the ramp down time before the DER can be used to deliver the Flexibility Service. For the avoidance of doubt, delivery of the Flexibility Service includes the Contracted Response Time.	DSO
Maximum Utilisations	Maximum of [XXXX] hours per [XXXX]-hour period for this Flexibility Service.	DSO
Re-dispatch	The mechanism used to neutralise the impact on the overall system balance which may occur when the Company issues a Utilisation Instruction and can occur outside the Zone. Re-dispatch rules and requirements will not be included in the TRANSITION trials.	DSO
Re-Bound Effect	A load reduction (or increase) triggered by a demand response event, that is compensated partly or fully outside the period between the Requested Start Time and Requested End Time of a Utilisation Instruction or by other resources within the Zone. Re-bound effect rules and requirements will not be included in the TRANSITION trials.	Provider
Pre-qualification Requirements	The Provider certifies to the Company's satisfaction (not to be unreasonably withheld) that the committed DERs are capable of providing the Flexibility Service.	DSO
Scaling Factor	[Not Used]	DSO

[Service - Sustain Export Peak Management]

Item	Detail	Initiating Party ²
Flexibility Service	[Sustain Export Peak Management]	DSO
Purpose of Flexibility Service	A service to provide the DSO with a planned reduction in generation or increase in demand in advance of a forecast capacity constraints at peak generation times.	DSO
Location of DER	[Postcode location of each the DER. Listed as per code in Schedule 3] DER located within the area supplied from the Zone.	Provider
Zone	The location specified in the Flexibility Contract where the Flexibility Service is required to mitigate the identified constraint.	DSO
Contract Start Date	As specified in the Flexibility Contract	DSO
Contract End Date	As specified in the Flexibility Contract	DSO
Service Window	[Hours in Day] and [Days in Week] during the Service Period [and to be specified in the Flexibility Contract at [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Service Period	[Months in Year] [and to be specified in service auction at [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Contracted Service Capacity	The flexible capacity in [kW and / or kVAr] specified in the Flexibility Contract and that the Provider commits to provide to the Company during the Flexibility Contract..	Provider
Baseline Methodology	The baseline methodology which is set out in Schedule 5	DSO
Baseline	The baseline will be determined using the Baseline Methodology as set out in Schedule 5.	Provider
Settlement Period	A period of 30 minutes beginning on the hour or the half-hour.	n/a

² Indicates the party responsible for the initial population of the respective term (where applicable).

Item	Detail	Initiating Party ²
Service Stacking	The ability of the Provider to use a DER to deliver more than one flexibility services within the same Settlement Period in accordance with Schedule 8, provided it does not interfere with the delivery of the Flexibility Service.	DSO
Aggregation	Aggregation of DERs to provide the Contracted Service Capacity.	Provider
Availability Status	The status of the DER (Available or Unavailable) as set out in Schedule 4.	Provider
Contracted Response Time	The flexibility service required activation within [XXXX] minutes	DSO
Contracted Service Minimum Run Time	[XXXX] minutes duration, being the minimum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Contracted Service Maximum Run Time	[XXXX] minutes duration, being the maximum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Ramp Down Time	Ramp down time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Ramp Up Time	Ramp up time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Contracted Service Recovery Time	[XXXX] minutes being the period after the ramp down time before the DER can be used to deliver the Flexibility Service. For the avoidance of doubt, delivery of the Flexibility Service includes the Contracted Response Time.	DSO
Maximum Utilisations	Maximum of [XXXX] hours per [XXXX]-hour period for this Flexibility Service.	DSO
Re-dispatch	The mechanism used to neutralise the impact on the overall system balance which may occur when the Company issues a Utilisation Instruction and can occur outside the Zone. Re-dispatch rules and requirements will not be included in the TRANSITION trials.	DSO
Re-Bound Effect	A load reduction (or increase) triggered by a demand response event, that is compensated partly or fully outside the period between the Requested Start Time and Requested End Time of a Utilisation Instruction or by other resources within the Zone. Re-Bound Effect rules and requirements will not be included in the TRANSITION trials.	Provider
Pre-qualification Requirements	The Provider certifies to the Company's satisfaction (not to be unreasonably withheld) that the committed DERs are capable of providing the Flexibility Service.	DSO
Scaling Factor	[Not Used]	DSO

[Service - Secure DSO Constraint Management (pre-fault)]

Item	Detail	Initiating Party ³
Flexibility Service	[Secure DSO Constraint Management (pre-fault)]	DSO
Purpose of Flexibility Service	A service to provide the DSO with an immediate reduction in demand or increase in generation during a planned outage of one or more critical assets or in the event of network disturbances in order to maintain security standards and avoid any customer minutes lost.	DSO
Location of DER	[Postcode location of each the DER. Listed as per code in Schedule 3] DER located within the area supplied from the Zone.	Provider
Zone	The location specified in the Flexibility Contract where the Flexibility Service is required to mitigate the identified constraint.	DSO
Contract Start Date	As specified in the Flexibility Contract	DSO
Contract End Date	As specified in the Flexibility Contract	DSO
Service Window	[Hours in Day] and [Days in Week] during the Service Period [and to be specified in the Flexibility Contract at [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Service Period	[Months in Year] [and to be specified in the Flexibility Contract at [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Contracted Service Capacity	The flexible capacity in [kW and / or kVAr] specified in the Flexibility Contract and that the Provider commits to provide to the Company during the Flexibility Contract..	Provider
Baseline Methodology	The baseline methodology which is set out in Schedule 5	DSO
Baseline	The baseline will be determined using the baseline methodology as set out in Schedule 5.	Provider
Settlement Period	A period of 30 minutes beginning on the hour or the half-hour.	n/a

³ Indicates the party responsible for the initial population of the respective term (where applicable).

Item	Detail	Initiating Party ³
Service Stacking	The ability of the Provider to use a DER to deliver more than one flexibility services within the same Settlement Period in accordance with Schedule 8, provided it does not interfere with the delivery of the Flexibility Service.	DSO
Aggregation	Aggregation of DERs to provide the Contracted Service Capacity.	Provider
Availability Status	The status of the DER (Available or Unavailable) as set out in Schedule 4.	Provider
Contracted Response Time	The flexibility service required activation within [XXXX] minutes	DSO
Contracted Service Minimum Run Time	[XXXX] minutes duration, being the minimum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Contracted Service Maximum Run Time	[XXXX] minutes duration, being the maximum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Ramp Down Time	Ramp down time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Ramp Up Time	Ramp up time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Contracted Service Recovery Time	[XXXX] minutes being the period after the Ramp down time before the DER can be used to deliver the Flexibility Service. For the avoidance of doubt, delivery of the Flexibility Service includes the Contracted Response Time.	DSO
Maximum Utilisations	Maximum of [XXXX] hours per [XXXX]-hour period for this Flexibility Service.	DSO
Re-dispatch	The mechanism used to neutralise the impact on the overall system balance which may occur when the Company issues a Utilisation Instruction and can occur outside the Zone. Re-dispatch rules and requirements will not be included in the TRANSITION trials.	DSO
Re-Bound Effect	A load reduction (or increase) triggered by a demand response event, that is compensated partly or fully outside the period between the Requested Start Time and Requested End Time of a Utilisation Instruction or by other resources within the Zone. Re-Bound Effect rules and requirements will not be included in the TRANSITION trials.	Provider
Pre-qualification Requirements	The Provider certifies to the Company's satisfaction (not to be unreasonably withheld) that the committed DERs are capable of providing the Flexibility Service.	DSO
Scaling Factor	[Not Used]	DSO

[Service - Dynamic DSO Constraint Management (post-fault)]

Item	Detail	Initiating Party⁴
Flexibility Service	[Dynamic DSO Constraint Management (post-fault)]	DSO
Purpose of Flexibility Service	A service to provide the DSO with an immediate reduction in demand or increase in generation following an unplanned outage of one or more critical assets or a breach in network statutory limits in order to maintain security standards and avoid any customer minutes lost.	DSO
Location of DER	[Postcode location of each the DER. Listed as per code in Schedule 3] DER located within the area supplied from the Zone.	Provider
Zone	The location specified in the Flexibility Contract where the Flexibility Service is required to mitigate the identified constraint.	DSO
Contract Start Date	As specified in the Flexibility Contract	DSO
Contract End Date	As specified in the Flexibility Contract	DSO
Service Window	00:00 to 24:00 hours of each day during the Service Period stage.	DSO
Service Period	[Months in Year] [and to be specified in the Flexibility Contract [Year; Month; Day Ahead; Intra-Day] stage].	DSO
Contracted Service Capacity	The flexible capacity in [kW and / or kVAr] specified in the Flexibility Contract that the Provider commits to provide to the Company during the Flexibility Contract..	Provider
Baseline Methodology	The baseline methodology which is set out in Schedule 5	DSO
Baseline	The baseline will be determined using the baseline methodology as set out in Schedule 5.	Provider
Settlement Period	A period of 30 minutes beginning on the hour or the half-hour.	n/a

⁴ Indicates the party responsible for the initial population of the respective term (where applicable).

Item	Detail	Initiating Party ⁴
Service Stacking	The ability of the Provider to use a DER to deliver more than one flexibility services within the same Settlement Period in accordance with Schedule 8, provided it does not interfere with the delivery of the Flexibility Service.	DSO
Aggregation	Aggregation of DERs to provide the Contracted Service Capacity.	Provider
Availability Status	The status of the DER (Available or Unavailable) as set out in Schedule 4.	Provider
Contracted Response Time	The flexibility service required activation within [XXXX] minutes	DSO
Contracted Service Minimum Run Time	[XXXX] minutes duration, being the minimum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Contracted Service Maximum Run Time	[XXXX] minutes duration, being the maximum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Ramp Down Time	Ramp down time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Ramp Up Time	Ramp up time will not be included and Utilisation payments will be subject to the settlement rules set out in Schedule 2.	Provider
Contracted Service Recovery Time	[XXXX] minutes being the period after the ramp down time before the DER can be used to deliver the Flexibility Service. For the avoidance of doubt, delivery of the Flexibility Service includes the Contracted Response Time.	DSO
Maximum Utilisations	Maximum of [XXXX] hours per [XXXX]-hour period for this Flexibility Service.	DSO
Re-dispatch	The mechanism used to neutralise the impact on the overall system balance which may occur when the Company issues a Utilisation Instruction and can occur outside the Zone. Re-dispatch rules and requirements will not be included in the TRANSITION trials.	DSO
Re-Bound Effect	A load reduction (or increase) triggered by a demand response event, that is compensated partly or fully outside the period between the Requested Start Time and Requested End Time of a Utilisation Instruction or by other resources within the Zone. Re-bound effect rules and requirements will not be included in the TRANSITION trials.	Provider
Pre-qualification Requirements	The Provider certifies to the Company's satisfaction (not to be unreasonably withheld) that the committed DERs are capable of providing the Flexibility Service.	DSO
Scaling Factor	[Not Used]	DSO

[Part 2]

Not used

[Part 3]

[Service Requirements]

Service Specific Acknowledgements

The Provider hereby acknowledges that: (a) the provision of Demand Response pursuant to this Agreement and the participation in Flexibility Services programme is entirely voluntary 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

1. Auction and Evaluation

- (a) The Company shall conduct auctions to identify DERs willing and able to provide one or more of the Flexibility Services in Schedule 1. The Company shall secure Flexibility Contract(s) with the successful Providers to use some or all of their DERs to deliver one or more of the Flexibility Services described in Schedule 1.
- (b) The Company will assess auction results in accordance with Schedule 1 paragraph 3.

2. Performance

- (a) Any variation of the Availability Fee and / or Utilisation Fee shall be in accordance with Schedule 5.

3. Calculation of Charges

- (a) Providers wishing to be considered for the delivery of any Flexibility Service shall submit bids and offers setting out their proposed Availability Fee and Utilisation Fee in the NMF (or alternate trading platform) for relevant auctions and the NMF (or alternate trading platform) shall record the Availability Fee and Utilisation Fee submitted.
- (b) Charges shall be calculated in accordance with the table below.

Calculation formula	Values/prices	Baseline for measuring delivery
<i>In respect of Availability Fee, the Availability Fee (for the relevant auction) multiplied by the hours in every Service Window for the previous month.</i>	<i>The Availability Fee for the relevant auction as per the Flexibility Contract.</i>	<i>See Schedule 5.</i>
<i>In respect of Utilisation Fee, the Utilisation Fee (for the relevant auction) multiplied by the meter reading for the hours the Flexibility Service was delivered during the previous month.</i>	<i>The Utilisation Fee for the relevant auction as per the Flexibility Contract.</i>	<i>See Schedule 5.</i>

- (c) The Charges calculated in accordance with the above may be varied consistent with the Settlement Rules outlined in Schedule 5.

4. Payment Terms

- (a) The Provider will supply to the Company an invoice, or where applicable, a confirmation of acceptance against a Settlement Report issued by the Company for the Charges within thirty (30) Business Days of the end of the month to which such invoice refers. All invoices should reference the Settlement Report and be sent to the Nominated Person as identified in Part 1 of this Agreement.
- (b) The Company shall pay the Charges within thirty (30) days of receipt of the relevant invoice (the “Due Date for Payment”). Where the Provider fails to deliver the Flexibility Services as agreed in Clause 3, the Charges shall be subject to a reduction as set out in Schedule 5.
- (c) A failure of delivery as per Schedule 5 will be deemed as delivery under 50% of an assets contracted requirement. This may be caused by failure to deliver a service on time, failure to the deliver to the contractual level, failure to deliver for the contracted duration or failure to deliver at all.

SCHEDULE 3 SITES/DER

1. The Provider can register DERs to participate in Flexibility Services at any point. DER Registration must be completed through the ‘DER Registration Forms’ on the TRANSITION project website (<https://ssen-transition.com/get-involved/participation-qualification-and-contracts/>).
2. The Company may take up to eight (8) weeks to register a DER before it can be used on the NMF.
3. Upon successful DER registration the Company will maintain a DER Register with details of all DERs associated with the Provider.
4. Where the Provider has multiple DERs behind a single MPAN the Provider should make this clear in the ‘DER Registration Forms’ and follow the steps outlined in the ‘DER Registration Foreword’.
5. The Provider shall update the Company with any changes or additions to the DER Register or removals from the DER Register.
6. A DER shall not be considered for the provision of Flexibility Services until the Company has confirmed the DER Register has been updated.

**SCHEDULE 4
COMMUNICATIONS**

1. Senior Representatives

- (a) The senior representatives for the Parties for all Notices in relation to Clause 20 and this Agreement are set out in the relevant Acceptance Form;
- (b) Any changes to the senior representatives should be informed to the relevant Party and shall not take effect until confirmed or five (5) Business Days (whichever is earlier).

2. Utilisation Instructions

- (a) The Company (or a nominated third party on behalf of the Company) will issue a Utilisation Instruction as notice of an expected Utilisation within a Zone, consistent with the Schedule 1 for a given Flexibility Service.
- (b) The Utilisation Instruction will contain the following information;
 - DER or group of DERs to deliver the Flexibility Service.
 - Level of Contracted Service Capacity to be delivered by the DER or group of DERs.
 - Requested Start Time.
 - Requested End Time.

3. Stop Instructions

- (a) The Company (or a third party on its behalf) reserves the right to instruct a Provider to cease delivery of a Flexibility Service in advance of the Accepted End Time (“Stop Instruction”).
- (b) In the event a Stop Instruction has been issued in respect of a Utilisation Instruction and;
 - there is greater than or equal to [60 minutes] until the Requested Start Time, no Utilisation Fee will be payable.
 - there is less than [60 minutes] until the Requested Start Time, the Provider will be entitled to the Utilisation Fee as if the Utilisation Instruction had been delivered in full.
- (c) For the avoidance of doubt, a Stop Instruction will have no effect on the payment of Availability Fees.

4. Unavailability Notices

- (a) Should a DER be or expect to be unavailable during a Service Window for any period of time the Provider shall inform the Company as soon as reasonably practicable using an Unavailability Notice the form of which is in the table below and sending it to ssenttransition@sse.com

<i>Company Name:</i>	
<i>Zone ID:</i>	
<i>Flexible Unit:</i>	
<i>From Date/Time:</i>	<i>[Unavailable from]</i>

<i>To Date/Time:</i>	<i>[Unavailable to]</i>
<i>Reason:</i>	
<i>Name:</i>	<i>[of individual making notification]</i>
<i>Date:</i>	<i>[of notification]</i>

- (b) The Provider should provide the Company with a revised Unavailability Declaration to indicate a DER has become available or if the period of unavailability should be extended.
- (c) A Provider that submits an Unavailability Declaration to the Company after a Utilisation Instruction has been issued may be subject to the audit of the DER availability for any period.

5. Escalation Process

- (a) Any issue or dispute that arises should be escalated, initially with a level 1 contact and through to 3 and the relevant contacts are provided in the relevant Acceptance Form.

<i>Escalation Level</i>	<i>Company Representative</i>
<i>1</i>	<i>Relevant Company Authorised Person</i>
<i>2</i>	<i>Relevant Company Manager/Commercial Manager</i>
<i>3</i>	<i>Relevant Company Performance Manager</i>

SCHEDULE 5
PERFORMANCE MONITORING

Submission of Performance Report

1. Service Meter

- (a) The company will accept Service Meter Data in the form of power (kW) or energy (kWh).
 - (i) Where Service Meter Data is collected in power (kW) the maximum interval between data points shall be one (1) minute.
 - (ii) Where Service Meter Data is collected in energy (kWh) the maximum intervals between data points shall be thirty (30) minutes.
 - (iii) All Service Meter Data will be aggregated over 30-minute periods to provide an energy (kWh) value to ensure the baselining and settlement processes are assessed on a comparable basis for all DERs.
 - (iv) Service Meter Data shall be submitted to the Company as follows;
 - (A) using a data template to be provided by the Company which is based on local time for Service Meter Data;
 - (B) free from errors, duplication or omissions in Service Meter Data; and
 - (v) Any Service Meter Data not provided as above will result in the Provider being requested to resubmit the data and cause delays in the verification, settlement and payment process
- (b) The Service Meter for a DER could be the MPAN or metering located near to or on the DER. The Company will accept current monitoring as a means of providing data. In this case, the Company will require the below information in order to accept current monitoring and translate it into power (kW):
 - (i) Whether the flexibility source is a single-phase or three-phase connected resource
 - (ii) The voltage level at the point where the current metering is located. Where this is the same as the overall site Point of Connection this can be specified instead.
- (c) Where a Provider has multiple DERs behind a Service Meter (entered as a single DER in Schedule 3) they must amalgamate this data before sending it to the Company.
- (d) In accordance with Schedule 3, The Provider should aggregate Service Meter Data for all DERs that are modelled as a portfolio of DER at asset registration.
- (e) Providers shall provide the Company with Service Meter Data in accordance with the baseline methodology selected in Schedule 5 paragraph 2.
- (f) On the first occasion the Provider is unable to provide Service Meter Data for any 30-minute period in any 12-month period, the Company shall determine the Service Meter Data for that 30-minute period using the average of the Service Meter Data for adjacent 30-minute periods. For all subsequent occurrences where the Service Meter Data is

missing for a 30-minute period during the 12-month period, the Company shall treat it as a failure to deliver the Flexibility Service.

2. Baseline

- (a) The Company will offer two means of baselining to measure the delivery of a Flexibility Service from a DER or portfolio of DERs during a Flexibility Event.
- (b) The Provider can elect which baseline methodology to use for a Flexibility Contract. A Provider may elect for the Company to use both baseline methodologies in which case the Company will pay the Provider the maximum amount calculated using both baseline methodologies.
- (c) The minimum quantity of Service Meter Data to be provided by the Provider to the Company will depend on the baseline mechanism adopted by the Provider.
- (d) The minimum granularity of Service Meter Data is outlined in Schedule 5, paragraph 1. All data provided to the Company shall be aggregated to the same minimum level of granularity to ensure baselines are calculated fairly across both DER and Providers.
- (e) Service Meter Data use for baselining of a Flexibility Contract must be aggregated or disaggregated to reflect the DERs detailed in that Flexibility Contract.
- (f) The Company reserves the right to review and revise the baseline methodologies used and, subject to the agreement of the Provider, to use the revised baseline methodologies for future Flexibility Contracts.
- (g) Service Meter Data must be uploaded to the NMF using a template issued by the Company.
- (h) **Option One – Historic Baseline with Same Day Adjustment (SDA)**
 - (i) Calculation
 - (A) This baseline methodology will require the Provider to upload Service Meter Data for Eligible Days from the Service Meter to the NMF by 23:59 hours on the 10th of each month for the preceding month.
 - (B) For weekday Flexibility Events non-eligible days are defined as: weekends, bank holidays, previous Flexibility Event days, days for which DER was declared unavailable by the Provider and days which are prior to eight (8) weeks before the Flexibility Event.
 - (C) For weekend Flexibility Events non-eligible days are defined as: weekdays, previous Flexibility Event days, days for which the der was declared unavailable by the Service Provider and days which are prior to eight (8) weeks before the Flexibility Event.
 - (D) For a Flexibility Event that occurs on a Weekday, the Company will analyse the Eligible Days for Weekdays and use the average of the median eight (8) day profiles to calculate an unadjusted baseline (“Weekday Unadjusted Baseline”).
 - (E) For a Flexibility Event that occurs on a Weekend, the Company will analyse the Eligible Days for Weekends and use the average of the

median two (2) day profiles to calculate an unadjusted baseline (“Weekend Unadjusted Baseline”).

- (F) The Company will determine a same day adjustment factor to reflect any variability between the Eligible Days and the day and which takes into account the actual load profile in the two (2) hours leading up to the event start time which will be applied to the;
 - (I) Weekday Unadjusted Baseline to calculate a Weekday adjusted baseline (“Weekday Adjusted Baseline”) for that day’s event period; or
 - (II) Weekend Unadjusted Baseline to calculate a Weekend adjusted baseline (“Weekend Adjusted Baseline”) for that day’s event period.
 - (G) A mathematical representation of how this baseline will be calculated is given on the TRANSITION webpage..
- (ii) Data upload frequency
- (A) Providers must upload data for Eligible Days and Service Meter Data for all Flexibility Events on or before the tenth day of each month for the Flexibility Events that occurred during the previous month.
 - (B) It is at the discretion of the Provider should they choose to upload Meter Service Data throughout the month or as a bulk upload for the whole month.
- (iii) Missing Data
- (A) Where a Provider provides Service Meter Data in respect of a DER with missing values the Company will attempt to perform a baseline calculation with the data provided, noting that baseline accuracy will likely degrade with less data.
 - (B) Should a Provider submit Service Meter Data in respect of a DER that has missing data which results in a period of greater than 30 minutes without a meter reading for:
 - more than nine (9) days out of ten (10), and/or;
 - during a Flexibility Event, and/or;
 - the two (2) hours before a Flexibility Event, and/or;
 - one (1) hour after the Flexibility Event,then the Flexibility Event will be considered to have been failed and recorded as a zero delivery. Settlement rules on payment of Availability Fee and Utilisation Fee will be applied in accordance with Schedule 5, paragraph 4.
 - (C) Should a Provider submit Service Meter Data in respect of a DER that has missing data which results in a period of greater than 30 minutes without a valid Service Meter data reading for more than five (5) out of ten (10) days during a month the Company reserves

the right to conduct an audit and amend clauses to require improvements in monitor performance.

- (i) **Option Two – Nominated Baseline with Same Day Adjustment (SDA)**
- (i) Providers shall submit forecast meter data to the Company during a Flexibility Contract. This forecast will detail the expected meter data for each DER (or group of DERs if Schedule 5, paragraph 1 (c) or (d) applies) for the Service Window for the following day assuming no Utilisation Instruction will be issued (“Nominated Baseline”).
 - (ii) The Provider shall submit a Nominated Baseline by 17:00 hours on the day prior to the start of each Service Window during a Flexibility Contract. Data not submitted by this time will be considered missing data in accordance with Schedule 5, paragraph 2 (i), item (v).
 - (iii) The Company will compare the Service Meter Data with the Nominated Baseline to determine the level of Contracted Service Capacity delivered during a Flexibility Event.
 - (iv) A mathematical representation of how this baseline will be calculated is given on the TRANSITION webpage..
 - (v) **Missing Data**
 - (A) If a Provider fails to submit a Nominated Baseline by 17:00 hours for the Service Window for the next day then:
 - (I) If a Utilisation Instruction is issued by the Company for the Service Window on the next day the Company will not be able to prove dispatch and as a result the Flexibility Event will be treated as a failed delivery, unless the Provider submits historic data for the DER in accordance with Schedule 5, paragraph 2 (h).
 - (II) If a Utilisation Instruction is not issued by the Company for the Service Window on the next day then there will be no effect on the Provider.
 - (B) If the Provider does not submit a Nominated Baseline for over 50% of the Service Windows in any month, the Company reserves the right to conduct an audit and amend clauses to require improvements in performance.
 - (vi) The Provider may submit a revised Nominated Baseline in respect of a DER (or group of DERs if Schedule 5, paragraph 1 (c) or (d) applies) after the Company has issued a Utilisation Instruction provided the revised Nominated Baseline is received by the Company prior to the commencement of delivery. The Company shall only consider one revised Nominated Baseline issued for a DER in any month.
 - (vii) **Abnormal Data**
 - (A) When a Provider submits a Nominated Baseline in respect of a DER, the Company will use days without a Utilisation Instruction to check the accuracy of Nominated Baselines.

- (B) Should the Company determine that a Nominated Baseline is significantly inaccurate or raises gamification concerns, the Company reserves the right to conduct an audit and amend clauses to require an alternate baseline methodology.

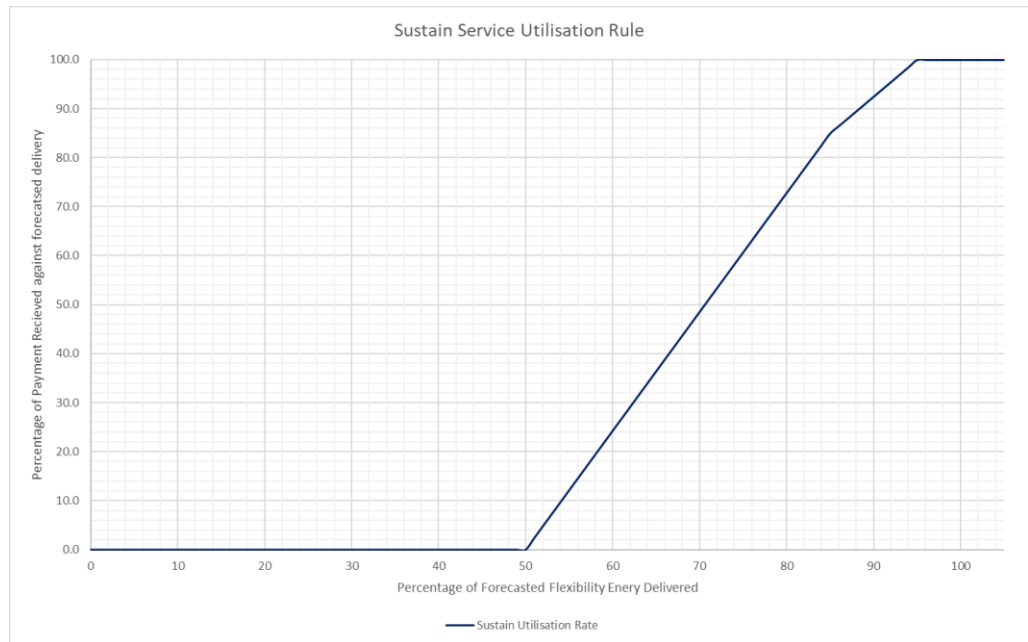
3. Auditing

- (a) The Company reserves the right to audit Service Meter Data provided from any Service Meter.
- (b) The Company will provide at least 24 hours' notice for an audit and the format of such audit is for the Company to determine. Options for the audit include, but are not limited to, provision of Service Meter Data for an historic period to a nominated email account for review or the Company making a site visit to test the flexible DER.
- (c) Providers must record and retain at least six (6) months' worth of historic Service Meter Data for each DER to allow the Company to conduct audits.
- (d) Where the Provider intends to utilise metering located near to or on the DER the Provider must ensure the Company can be provided access to the relevant Site and the DER used to provide Flexibility Services within 24 hours of so being requested.

4. Non-Delivery and Under-Delivery

- (a) Utilisation Fee Settlement Rule
- (i) The Utilisation Fee for a DER is related to the level of Contracted Service Capacity delivered compared to the level of Contracted Service Capacity requested in the relevant Utilisation Instruction.
- (ii) The response of a DER to a Utilisation Instruction will be analysed using the Service Meter Data provided from the Service Meter and the Baseline methodology in Schedule 5. This will determine the proportion of the Contracted Service Capacity requested in the relevant Utilisation Instruction that was provided in each Settlement Period.
- (iii) The level of response provided in each Settlement Period will then be subject to a Utilisation Rate adjustment to determine the level of the Utilisation Fee paid for that Settlement Period using the table below. An example of how this Utilisation Rate will affect payment is provided for clarity;

Proportion of the Contracted Service Capacity provided in Settlement Period	Utilisation Rate: Percentage of Utilisation Fee Payable
100% +	Full Payment
95% - 100%	Full Payment
85% - 94.9%	1.5% reduction for each 1% below 95%
50% - 84.9%	2.42% reduction for each 1% below 85%
<50% delivery	No Payment



(b) Availability Fee Settlement Rule

- (i) The Availability Fee for a DER is proportional to the level of Contracted Service Capacity delivered compared to the level of Contracted Service Capacity requested in all relevant Utilisation Instructions issued during the previous month.
- (ii) Availability Fees for any Flexibility Contract will be paid as the product of the availability price (in £/kW/hour) accepted by the Company during the relevant auction multiplied by the number of hours in all Service Windows for that Flexibility Contract in each month. This amount will then be subject to the Availability Rate adjustment in Schedule 5 paragraph 4(b)(iii) and (iv) below.
- (iii) If an Unavailability Notification is issued in respect of a DER for any month of the Flexibility Contract the Company shall reduce the number of hours for which an Availability Fee is paid to reflect the hours the DER was unavailable.
- (iv) The Availability Rate will be calculated by looking at the average percentage response of a DER over the previous months Utilisations.
 - (A) The percentage response of a DER to a Flexibility Event will be calculated as the level of Contracted Service Capacity delivered (kWh) divided by the level of Contracted Service Capacity requested (kWh) in the relevant Utilisation Instruction and multiplied by 100. This figure will be capped at 100% in the case of any over-delivery.
 - (B) The aggregate of the calculation in Schedule 5 paragraph 4(b)(iv)(A) in respect of all Utilisation Instructions issued but the Company during the previous month divided by the number of Utilisation

Instructions issued by the Company during the previous month to give an average availability response percentage.

- (C) The average availability response percentage will be multiplied by the availability price (in £/kW/hour) accepted by the Company during the relevant auction to determine the Availability Fee.
- (D) If the Company issued no Utilisation Instructions during the previous month the Company will pay an Availability Fee equivalent to the level of Availability Fee paid (£/kW/h) during the month preceding the previous month.
- (E) If the Company has issued no Utilisation Instructions during any preceding month, the Availability Fee will be paid to match the level of delivery achieved during testing of the DER.
- (F) If no testing was required the Availability Fee will be paid in full.

(c) **Penalty Payments**

There will be no penalty payments from the Provider to the Company for the non-delivery of any Flexibility Services during the Term of this Agreement or [end date of TP3], whichever occurs first.

(d) **Repeated Under-Delivery**

- (i) The below clauses do not apply to DER participating in flexibility trials under Schedule 7.
- (ii) If a DER fails to deliver at least 60% of the level of Contracted Service Capacity pursuant to a Utilisation Instruction on at least five (5) occasions, the Company reserves the right to review and amend the Contracted Service Capacity for that DER and amend the DER Register and all future Utilisation Instructions.
- (iii) Should a DER fail to deliver at least 50% of the level of Contracted Service Capacity pursuant to a Utilisation Instruction on at least five (5) occasions, the Company reserves the right to conduct an audit pursuant to Clause 11.3

SCHEDULE 6

Not used

SCHEDULE 7 MARKET STIMULI PACKAGES

This Schedule 7 applies to DERs that are subject to Market Stimuli Packages 1 and 2. A Provider may have DERs governed by this Schedule 7 and other DERs that are governed by Schedule 1. The schedule in this Agreement shall not apply to DERs benefitting from a Market Stimuli Package, except for the following provisions;

- Schedule 3; applies in full.
- Schedule 4; applies in full.
- Schedule 5; paragraphs 1 to 3 inclusive apply.

Part 1 Market Stimuli Package 1 – Simplicity Package (Flat Rate)

1. Proposed Package
 - (a) This Part 1 of Schedule 7 applies to those DERs of the Provider to which Market Stimuli Package 1 (MSP1) will be applied.
 - (b) MSP1 provides a guaranteed payment to Providers that can deliver their Contracted Service Capacity as instructed by the Company and a bonus payment to Providers that met or exceeded the MSP1 Delivery Obligation.
 - (c) The Provider must meet the MSP1 Aggregate Flexible Capacity requirements in order to be eligible for MSP1.
 - (d) Where a DER is used to provide services for MSP1, the Provider may not also offer Flexibility Services to the Company using that DER or participate in any other Market Stimuli Package for that DER.

2. The following terms and definitions apply to this MSP1 only.

MSP1 Aggregate Flexible Capacity	the aggregate Contracted Service Capacity of all Provider DERs being made available pursuant to this Agreement, subject to a minimum of 10kW and a maximum of 750kW.
MSP1 Delivery Obligation	ten (10) MSP1 Events where a Utilisation Instruction was issued and there was not a MSP1 Delivery Failure. Ten (10) successful MSP1 Events must be achieved within fifteen (15) requests.
MSP1 Delivery Failure	occurs when the energy delivered during a MSP1 Event is less than [65]% of the MSP1 Aggregate Flexible Capacity even if that failure is due to the DER being unavailable for that MSP1 Event.
MSP1 Event	the one hour delivery period specified by the Company during which the MSP1 Aggregate Flexible Capacity should be delivered.

MSP1 Delivery Payment	the sum of the MSP1 Aggregate Flexible Capacity multiplied by £0.15/kW payable for each MSP1 Event where there has not been a MSP1 Delivery Failure, subject to a maximum of ten (10) MSP1 Events.
MSP1 Uninstructed Events Payment	this applies if the Company has not requested fifteen (15) MSP1 Events by the MSP1 End Date. Calculated as fifteen (15) minus the total number of MSP1 Delivery Failures, multiplied by £0.15/kW. Quantity capped at £0.15/kW multiplied by ten (10) minus the number of successful MSP1 Events delivered.
MSP1 Bonus Payment	the product of £0.70/kW and the MSP1 Aggregate Flexible Capacity. Paid upon the delivery of ten (10) successful MSP1 Events; or ten (10) MSP1 Events being the sum of the MSP1 Uninstructed Events and successful MSP1 Events.
MSP1 Start Date	As specified in the relevant MSP1 Side Letter.
MSP1 End Date	the date that is six (6) months after the MSP1 Start Date.

3. Delivery Mechanics

- (a) The Company shall issue Utilisation Instructions in accordance with the following;
 - (i) for up to fifteen (15) MSP1 Events;
 - (ii) MSP1 Events shall only occur between 15:00 to 19:00 hours on any Business Day;
 - (iii) there shall be a maximum of one (1) MSP1 Event per Business Day;
 - (iv) the Utilisation Instruction for each MSP1 Event shall be issued at least four (4) hours prior to the Requested Start Time.
- (b) The Provider commits to deliver the MSP1 Delivery Obligation using the MSP1 Aggregate Flexible Capacity.
- (c) Service Meter Data should be provided in accordance with Schedule 5 Paragraph 1 which will be baselined in accordance with and Schedule 5 Paragraph 2.
- (d) A Provider fails to deliver a MSP1 Event if a MSP1 Delivery Failure is recorded for that MSP1 Event.

4. Payment Mechanics

- (a) The payment for MSP1 comprises three elements: MSP1 Delivery Payment, MSP1 Uninstructed Events Payment and MSP1 Bonus Payment.
- (b) The Company should confirm to the Provider when the MSP1 Delivery Obligation has been satisfied or discharged.
- (c) If the Company has confirmed to the Provider that the MSP1 Delivery Obligation has been satisfied or discharged, the MSP1 Delivery Payment and MSP1 Bonus Payment shall be payable by the Company to the Nominated Account within 30 Business Days of the date of such confirmation.

- (d) If at the MSP1 End Date the Company has not issued fifteen (15) MSP1 Events and:
- (i) the Provider has experienced less than six (6) MSP1 Delivery Failures, the following shall be payable by the Company to the Nominated Account within 30 Business Days of the MSP1 End Date;
 - (A) MSP1 Delivery Payment;
 - (B) MSP1 Uninstructed Events Payment; and
 - (C) MSP1 Bonus Payment; or
 - (ii) the Provider has experienced more than five (5) MSP1 Delivery Failures, the following shall be payable by the Company to the Nominated Account within 30 Business Days of the MSP1 End Date;
 - (A) MSP1 Delivery Payment;
 - (B) MSP1 Uninstructed Events Payment.
- (e) If paragraph 4(c) or 4(d) applies, the Provider may enter into negotiations with the Company for a further Agreement for the MSP1 Aggregate Flexible Capacity, subject to Company agreement and the Company having outstanding funds and network need for MSP1.

Part 2 Market Stimuli Package 2 – Upgrade Package (Flat Rate and Capital Support)

1. Proposed Package
 - (a) Part 2 of Schedule 7 applies to those DERs of the Provider that benefit from Market Stimuli Package 2 (MSP2).
 - (b) MSP2 provides upfront financial support for the enablement of DERs so they can deliver services. The Package also provides a guaranteed payment to Providers that can deliver their Contracted Service Capacity as instructed by the Company and a bonus payment to Providers that met or exceeded the MSP2 Delivery Obligation.
 - (c) The Provider must meet the MSP2 Aggregate Flexible Capacity requirements in order to be eligible for MSP2.
 - (d) Where a DER is used to provide services for MSP2, the Provider may not also offer Flexibility Services to the Company using that DER or participate in any other Market Stimuli Package for that DER.

2. The following terms and definitions apply to this MSP2 only.

MSP2 Aggregate Flexible Capacity	the aggregate Contracted Service Capacity of all Provider DERs being made available pursuant to this Agreement, subject to a minimum of 10kW and a maximum of 450kW.
MSP2 Delivery Obligation	Fifty (50) MSP2 Events where a Utilisation Instruction was issued and there was not a MSP2 Delivery Failure. Fifty (50) successful MSP2 Events must be achieved within sixty-five (65) requests.

MSP2 Delivery Failure	occurs when the energy delivered during a MSP2 Event is less than sixty five (65)% of the MSP2 Aggregate Flexible Capacity even if that failure is due to the DER being unavailable for that MSP2 Event.
MSP2 Event	the one hour delivery period specified by the Company during which the MSP2 Aggregate Flexible Capacity should be delivered.
MSP2 Delivery Payment	the aggregate of the MSP2 Aggregate Flexible Capacity multiplied by £0.08/kW payable for each MSP2 Event where there has not been a MSP2 Delivery Failure, subject to a maximum of fifty (50) Events.
MSP2 Uninstructed Events Payment	this applies if the Company has not requested sixty-five (65) MSP2 Events by the MSP2 End Date. Calculated as sixty five (65) minus the total number of MSP2 Delivery Failures, multiplied by £0.08/kW. Quantity capped at £0.08/kW multiplied by fifty (50) MSP2 Events minus the number of successful MSP2 Events delivered.
MSP2 Bonus Payment	the product of £2.00/kW multiplied by the MSP2 Aggregate Flexible Capacity. Paid upon the delivery of fifty (50) successful MSP2 Events; or fifty (50) MSP2 Events being the sum of the MSP2 Uninstructed Events and successful MSP2 Events.
MSP2 Initial Payment	the payment equal to the MSP2 Aggregate Flexible Capacity multiplied by £4.00/kW.
MSP2 Penalty Payment	Applies only if the Provider has more than fifteen (15) Delivery Failures against the MSP2 Events issued by the company. calculated as the product of the following terms; <ul style="list-style-type: none"> • MSP2 Aggregate Flexible Capacity; • £0.15/kW; and • The number of MSP2 Delivery Failures by the Provider less fifteen (15) • Penalty capped at the value of the MSP2 Initial Payment.
MSP2 Start Date	As specified in the relevant MSP2 Side Letter.
MSP2 End Date	The date that is eighteen (18) months after the MSP2 Start Date.

3. Delivery Mechanics

- (a) The Company shall issue Utilisation Instructions in accordance with the following;
- (i) for up to sixty-five (65) MSP2 Events;
 - (ii) MSP2 Events shall only occur between 15:00 to 19:00 hours on any Business Day;
 - (iii) there shall be a maximum of one (1) MSP2 Event per Business Day;
 - (iv) the Utilisation Instruction for each MSP2 Event shall be issued at least four (4) hours prior to the Requested Start Time.
- (b) The Provider commits to deliver the MSP2 Delivery Obligation using the MSP2 Aggregate Flexible Capacity.

- (c) Service Meter Data should be provided in accordance with Schedule 5 Paragraph 1 which will be baselined in accordance with and Schedule 5 Paragraph 2.
- (d) A Provider fails to deliver a MSP2 Event if a MSP2 Delivery Failure is recorded for that MSP2 Event.

4. Payment Mechanics

- (a) The Flexibility Payment comprises four (4) elements: MSP2 Initial Payment, MSP2 Delivery Payment, the MSP2 Uninstructed Events Payment and the MSP2 Bonus Payment.
- (b) The MSP2 Initial Payment is payable by the Company to the Nominated Account within 30 Business Days following signature of this Agreement.
- (c) An initial MSP2 Delivery Payment is payable by the Company to the Nominated Account within 30 Business Days of the delivery of twenty-five (25) MSP2 Events.
- (d) A second MSP2 Delivery Payment is payable by the Company to the Nominated Account within 30 Business Days of the delivery of the next twenty-five (25) MSP2 Events (50 events in total).
- (e) The Company shall confirm to the Provider when the MSP2 Delivery Obligation has been satisfied or discharged.
- (f) If the Company has confirmed to the Provider that the MSP2 Delivery Obligation has been satisfied or discharged, the Company shall make the following payments to the Nominated Account within 30 Business Days of the date of such confirmation;
 - (i) a MSP2 Delivery Payment for MSP2 Events where a Utilisation Instruction was issued, that were not subject to a MSP2 Delivery Failure and where no invoice has been received from the Company; plus
 - (ii) the MSP2 Bonus Payment.
- (g) If at the MSP2 End Date the Company has not issued sixty-five (65) MSP2 Events and:
 - (i) the Provider has experienced less than sixteen (16) MSP2 Delivery Failures, the following shall be payable by the Company to the Nominated Account within thirty (30) Business Days of the MSP2 End Date;
 - (A) a MSP2 Delivery Payment for MSP2 Events where a Utilisation Instruction was issued, that were not subject to a MSP2 Delivery Failure and where no invoice has been received from the Company; plus
 - (B) MSP2 Uninstructed Events Payment; plus
 - (C) MSP2 Bonus Payment.
 - (ii) the Provider has experienced more than fifteen (15) MSP2 Delivery Failures, the following shall be payable by the Company to the Nominated Account within thirty (30) Business Days of the MSP2 End Date;
 - (A) a MSP2 Delivery Payment for MSP2 Events where a Utilisation Instruction was issued, that were not subject to a MSP2 Delivery Failure and where no invoice has been received from the Company; and

(B) MSP2 Uninstructed Events Payment.

- (h) If at the MSP2 End Date, the Provider has experienced a MSP2 Delivery Failure for more than fifteen (15) MSP2 Events issued by the Company, a MSP2 Penalty Payment is payable by the Provider to the Company, subject to a maximum of the MSP2 Initial Payment.
- (i) This MSP2 can only apply once in respect of a DER.

SCHEDULE 8 SERVICE STACKING

Not relevant for Trial Period 1. To be advised if relevant for Trial Periods 2 and Trial Period 3.