
TRANSITION FLEXIBILITY SERVICES AGREEMENT

4TH APRIL 2022

This Agreement sets out the terms and conditions on which the Provider agrees to provide its Flexibility Services to the Company 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In this Agreement and the recitals, unless the context otherwise requires or superseded by additional terms placed within the schedules, the following expressions shall have the meanings set out below: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 produced by the Company and signed by the Provider when entering into this Agreement;

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

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

“**Available or Availability**” means that the DER, in accordance with the Service Requirements and the Utilisation Instruction, is/are available to deliver 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 and Schedule 5;

“**Availability Price**” in respect of each DER, means the price (£/kW/h) offered in the response to the Company’s auction for making available the DER for a Flexibility Service in accordance 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 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;

“**Coincidental Contracts**” means multiple Flexibility Contracts over the same or overlapping Service Windows for which the combined Contracted Service Capacity does not breach the DER flexibility capacity.

“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 through the NMF (or alternate trading platform) and "Awarded a Contract" shall be construed accordingly;

“Contracted Service Capacity” means the amount of energy (kW) 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;

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

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

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

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

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

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

“Flexibility Contract” means an auction bid or offer for some or all of the Contracted Service Capacity via the NMF (or alternate trading platform) 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 a 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 in a Zone during the Service Period;

“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;

“**kW**” means a kilowatt, a watt is a unit of real power and used to quantify the rate of energy transfer

“**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 **Error! Reference source not found.**;

“**MSID**” means a metering system identifier;

“**Network**” means the electricity network operated by the Company to which the DER is connected and in which the Zone is located;

“**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;

“**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;

“**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 Utilisation Instruction and the commencement of the next Utilisation Instruction, as defined in Schedule 1;

“Requested End Time” means the date and time (to the nearest minute) as notified in accordance with Clause **Error! Reference source not found.** and/or Schedule 1 at which the Requested kW is no longer required to be delivered;

“Requested kW” means the kW requested in accordance with Clause **Error! Reference source not found.** and/or Schedule 4;

“Requested Start Time” means the date and time (to the nearest minute) as notified in accordance with Clause **Error! Reference source not found.** and/or Schedule 4 at which the Requested kW shall be delivered;

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

“Service Failure” meaning is defined in Clause 5 and 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 Stacking” permits more than one Flexibility Contract over the same or overlapping Service Windows. The Contracted Service Capacity for individual Flexibility Services should not breach the DER Flexibility capacity.

“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;;

“**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;

“**Utilisation Price**” in respect of each DER, means the price in £/kWh offered in the response to the Company’s auction for the utilisation of the DER for any Flexibility Service, in accordance with Schedule 1;

“**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

- 2.1 This Agreement shall commence on the Commencement Date and shall continue, until terminated or varied in accordance with 2.2.
- 2.2 The Company may update the Contract and other associated documents from time to time by publication of an updated version of the relevant document on the TRANSITION website, and each such updated version shall be effective from the date shown on its front cover provided always that, except with the consent in writing of the Provider, any updated version shall not apply to any service provision already in force at the time of publication.

3. SCOPE OF FLEXIBILITY SERVICES

- 3.1 The Flexibility Services shall be performed in accordance with the Service Terms given in Schedule 1 (as amended by the auction process managed by the NMF (or alternate trading platform)).

4. PROVIDER'S OBLIGATIONS

- 4.1 The Provider will:
- 4.1.1 ensure the Availability of the DER and perform the Flexibility Services in compliance with the terms of the Contract and all Applicable Laws, Statutory Requirements, regulatory requirements and Good Industry Practice;
 - 4.1.2 provide the Flexibility Services in accordance with all applicable UK health, safety and environment legislation and approved codes of practice, including the Electricity Safety, Quality and Continuity Regulations 2002;
 - 4.1.3 ensure that all technical, communication and data provision requirements set out in the Schedule 4 and 5 are complied with at all times;
 - 4.1.4 act diligently and in good faith in all of its dealings with the Company;
 - 4.1.5 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;
 - 4.1.6 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER;
 - 4.1.7 disclose any change of circumstances which could affect the delivery of the Flexibility Services;
 - 4.1.8 remedy any Defect of the Flexibility Services in accordance with Good Industry Practice and to the satisfaction of the Company; and
 - 4.1.9 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under the Contract that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under the Contract.
- 4.2 The Provider warrants and undertakes to the Company at all times that:
- 4.2.1 the DER contracted to provide the Flexibility Services has, as applicable, either:
 - a) live connection(s) to the Company's Network, associated MPAN or MSID and Connection Agreement(s); or

- b) a connection offer(s) pursuant to a live connection and that the connection(s) can be completed in time to meet the Service Requirements as specified in the Service Terms;
- 4.2.2 it has obtained and maintains in force for the Term, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services in accordance with the terms of the Contract;
- 4.2.3 where applicable, for each DER project in development, the Provider has and, if requested, will promptly provide to the Company a copy of, a defined schedule of design, build and commissioning (a “**Development Plan**”) in respect of each DER;
- 4.2.4 where applicable, it shall take all reasonable steps to achieve, or procure, the commissioning of each DER project on time and in accordance with the relevant Development Plan; and
- 4.2.5 it is and remains responsible for (or if applicable, procuring of) health and safety compliance at the Site(s) providing the Flexibility Services.

5. SERVICE FAILURE

- 5.1 The Provider shall notify the Company as soon as reasonably practicable upon becoming aware that it is or will be unable to provide the Flexibility Services in all or any part of any contracted Service Window as set out in the Service Terms.
- 5.2 In the event of a Service Failure by the Provider, the Company may take further action, including requiring further information from the Provider, implementing a rectification plan for improving the Provider’s performance or proposing a variation to the Service Requirements as specified in the Service Terms.
- 5.3 If the Parties fail to reach agreement on any rectification actions, the Provider fails to provide further information, or the Provider’s performance in respect of the Service Failure notified by the Company does not significantly improve within thirty (30) calendar days of the date of the notice from the Company, such failure will be deemed a material breach of the Contract for the purposes of paragraph 7.1.1 of these Terms and Conditions.

6. CHARGES AND PAYMENTS

- 6.1 All Charges and other sums payable under the Contract shall be paid in accordance with Schedule 4 and 5

7. TERMINATION

- 7.1 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 (“**Terminating Party**”), to immediately terminate the Contract on giving written notice of termination to the other Party (“**Defaulting Party**”) if at any time during the Term of the Contract:
 - 7.1.1 the Defaulting Party is in material, repeated and/or persistent breach of the Contract, and where that breach is capable of remedy is not remedied within 14 days of a written notice of breach from the Terminating Party;
 - 7.1.2 an Insolvency Event occurs in relation to the Defaulting Party;
 - 7.1.3 paragraph 10.3 termination rights are invoked.

- 7.2 On termination, the rights and liabilities of the Parties that have accrued before termination shall subsist.
- 7.3 Any provision of this Contract that expressly or by implication is intended to come into, or continue in force, on or after termination or expiry of the Contract shall survive termination or expiry.
- 7.4 Where requested by the other Party, on termination or expiry of the Contract each Party shall delete or return Confidential Information provided by the other Party for the purpose of the Contract.
- 7.5 Following termination or expiry of the Contract, the Provider shall promptly at the Provider's cost deliver to the Company for approval a final invoice with supporting documents detailing any remaining monies due to it in connection with the provision of the Flexibility Services under the Contract.
- 7.6 Where the Company terminates the Contract as a result of a material, repeated and/or persistent breach by the Provider pursuant to paragraph 7.1.1, the Company shall be entitled to recover from the Provider the cost, loss and expenses reasonably incurred by the Company as a result of the termination, including where relevant appointing a replacement Provider. Such costs, losses and expenses shall be a debt due and immediately payable by the Provider to the Company subject to limitations of liability set out in paragraph 9.

8. FORCE MAJEURE

- 8.1 A Party shall not be in breach or default of the Contract to the extent that it is prevented from performing any of its obligations under the Contract as a result of a Force Majeure Event, for so long as the Force Majeure Event continues to prevent such performance.
- 8.2 If a Force Majeure Event occurs the affected Party will notify the other Party as soon as reasonably practicable, providing information about the effect of the Force Majeure Event on the affected Party's ability to perform its obligations under the Contract and its likely duration (if known). The affected Party will use reasonable endeavours to mitigate the impact of the Force Majeure Event.
- 8.3 If a Force Majeure Event prevents, hinders or delays a Party in performing its obligations under the Contract for a continuous period of at least two (2) calendar months, either Party may terminate the Contract with immediate effect.

9. LIABILITY, INDEMNITY AND INSURANCE

- 9.1 Subject to paragraph 9.2, Parties acknowledge and agree that the liability of one Party to the other under this Contract shall be limited to 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.
- 9.2 Nothing in this Contract shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party or any of its officers, employees or agents, and each Party shall indemnify and keep indemnified the other Party, its officers, employees and agents from and against all such and any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of that Party or its officers, employees or agents.
- 9.3 Subject to paragraph 9.2, neither Party nor any of its officers, employees or agents shall be liable to the other Party for:

- 9.3.1 any loss of profit, loss of revenue, loss of use, loss of data, loss of contract or loss of goodwill; or
 - 9.3.2 any indirect, special or consequential loss; or
 - 9.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in paragraphs 9.1 and 9.2.
- 9.4 The Provider shall procure (and on request provide evidence to the Company of) appropriate insurances as required by law and/or as necessary for the safe and efficient performance of the Contract to cover the liabilities set out in paragraph 9, with a reputable insurance company. Where possible the Provider shall add the Company as a named party on its insurance policies.
- 9.5 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 this paragraph 9.
- 9.6 The Provider's liabilities under the Contract shall not be deemed to be released or limited by the Provider taking out the insurance policies referred to in paragraph 9.4.

10. ASSIGNMENT, ASSIGNATION, SUB-CONTRACTING AND CHANGE IN OWNERSHIP

- 10.1 The Contract is personal to the Provider who shall not assign, transfer, novate, mortgage or charge, its rights and obligations under the Contract without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- 10.2 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.
- 10.3 If ownership, occupancy or use of any Site changes, or may change, during the Term, the Provider shall immediately notify the Company of the same. The Company may accept the change by prior written agreement (such acceptance not to be unreasonably withheld or delayed). The Company reserves the right to terminate the Contract in accordance with paragraph **Error! Reference source not found.** if a Change in Ownership of the Provider occurs and the new owner of the Provider fails to meet any of the Company's reasonable due diligence checks.

11. CONFIDENTIALITY

- 11.1 The Company is required to disclose certain information relating to this Contract pursuant to its Distribution Licence and various industry codes. The Company may share information relating to the Contract for the purpose of industry initiatives in relation to network constraint management and electricity network optimisation. The Company shall also be entitled to make publicity releases and/or announcements regarding either this Contract and/or the Company's activities under the Contract. It shall not be a breach of this paragraph 11 where the Company discloses any such information.
- 11.2 Save as permitted by paragraph 11.1, each Party shall treat as strictly confidential and shall not disclose any Confidential Information relating to the other Party received or obtained as a result of entering into or performing this Contract, save to the extent the information is in the public domain, is required to be disclosed by Applicable Law, by a regulatory authority, or to a court or tribunal or to a Party's affiliate for the purpose of performing this Agreement.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Contract does not transfer any interest in Intellectual Property Rights.
- 12.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times; prior to, during the Term of the Contract 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 the Contract.

13. DATA PROTECTION

- 13.1 Each Party shall, at its own expense, ensure that it complies with all applicable Data Protection Law.
- 13.2 The Parties acknowledge that as at the date of the Contract, 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.

14. COMPLIANCE

- 14.1 The Provider undertakes, warrants and represents that in relation to the Flexibility Services the Provider and its officers, employees, agents or subcontractors has complied with and shall at all times continue to comply with the requirements of all applicable anti-corruption and anti-bribery laws, statutes, regulations and codes, including the Modern Slavery Act 2015 and the Bribery Act 2010.
- 14.2 The Provider shall have suitable controls and compliance procedures in place to ensure compliance, shall promptly report to the Company any non-compliance with clause 14.1 and shall provide the Company with such reasonable assistance as it may require from time to time to enable it to comply with all applicable anti-corruption and anti-bribery laws, statutes, regulations and codes in relation to the Contract.
- 14.3 The Provider shall indemnify the Company against any losses, incurred by or awarded against the Company as a result of any breach of clause 14.1 by the Provider.
- 14.4 Any breach of this paragraph **Error! Reference source not found.** by the Provider shall be deemed a material breach of the Contract for the purposes of paragraph 7.1.1.

15. NOTICES

- 15.1 Unless otherwise specified in the Service Terms, all notices shall be submitted in accordance with the processes, and to the relevant addresses, set out in the Annex.

16. DISPUTE RESOLUTION

- 16.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to the Contract.
- 16.2 If sixty (60) days following such good faith efforts the Parties have still not resolved the dispute, then either Party may raise proceedings in court. Where an emergency remedy is required the Parties may raise proceedings in court before sixty (60) days have elapsed.

17. THIRD PARTY RIGHTS

17.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 or where appropriate the Contracts (Third Party Rights) (Scotland) Act 2017, the Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

18. ENTIRE AGREEMENT

18.1 The Contract and the documents referred to in it together constitute the entire agreement and understanding of the Parties relating to the matters contemplated by the Contract and those documents supersede and the Parties do not rely on any previous drafts, agreements, understandings or arrangements between any of the Parties relating to the subject matter of the Contract.

19. GOVERNING LAW AND JURISDICTION

19.1 This Contract and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with it 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.

19.2 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.

20. SERVICE SPECIFIC ACKNOWLEDGEMENTS

20.1 The Provider hereby acknowledges that: (a) the use of DERs 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.

21. TRANSITION TRIAL SPECIFICS

21.1 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 TERMS

1. The Company shall conduct auctions through the NMF Platform (or alternate trading platform) by requesting Flexibility Services and to identify Providers with DERs that could deliver one or more of the Flexibility Services in this Schedule 1.
2. 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.
3. DERs that are registered, as described in Schedule 3 will be able to respond to the auctions through the NMF Platform (or alternate trading platform) to offer to deliver one or more of the Flexibility Services in this Schedule 1. The DER will offer the following information:
 - a. Contracted Service Capacity (in kW)
 - b. Availability Price (£/kW/h)
 - c. Utilisation Price (£/kWh)
4. The Company will determine the total expected contract cost, for Flexibility Contract(s) for the Provider by calculating the total of:
 - a. the Availability Price multiplied by the Contracted Service Capacity and multiplied by aggregate Service Window hours during the Service Period; plus
 - b. the Utilisation Price multiplied by the Contracted Service Capacity and multiplied by 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 economical position (including the total expected contract cost 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. For Providers with a Flexibility Contract for a specific Flexibility Service the Company will endeavour to issue Utilisation Instructions to DERs with the lowest Utilisation Price 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.

Item	Details				Initiating Party ¹
Flexibility Service	Sustain Peak Management	Sustain Export Peak Management	Secure Constraint Management (pre-fault)	Dynamic Constraint Management (post-fault)	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 constraint at peak demand times.	A service to provide the DSO with a planned reduction in generation or increase in demand in advance of a forecast capacity constraint at peak generation times.	A service to provide the DSO with a reduction in demand or increase in generation during a planned outage to maintain security standards and avoid any customer minutes lost.	A service to provide the DSO with a near 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 to maintain security standards and avoid any customer minutes lost.	DSO
Location of DER	Location of each the DER as specified in the DER Register				Provider
Zone	The location specified in the Flexibility Contract where the Flexibility Service is required to be delivered.				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] As specified in the Flexibility Contract				DSO
Service Period	As specified in Flexibility Contract at [Season; Week; Day Ahead; Intra-Day] stage				DSO
Contracted Service Capacity	The flexible capacity (in kW) 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	Details	Initiating Party ²
Service Stacking	The ability of the Provider to use a DER to deliver more than one flexibility services within the same or adjacent Settlement Period in accordance with Schedule 6, provided it does not interfere with the delivery of the Flexibility Service.	DSO
Aggregation	Aggregation of energy resources into a DER to provide the Contracted Service Capacity is permitted	Provider
Availability Status	The status of the DER being Available or Unavailable.	Provider
Contracted Service Minimum Run Time	30 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	120 minutes duration, being the maximum time between the Requested Start Time and Requested End Time, within the Service Window.	DSO
Ramp Down Time	No allowance or Utilisation Fee payment will be made for any Ramp Down Time.	Provider
Ramp Up Time	No allowance is made for Ramp Up Time and the DER should deliver the Contracted Service Capacity from the start of the time specified in the Utilisation Instruction. Utilisation Fee payments will be subject to the settlement rules set out in Schedule 2.	Provider
Recovery Time	24 hours being the period after the Ramp Down Time before the DER can be used to deliver the Flexibility Service.	DSO
Maximum Utilisations	The DER can be used to deliver a Flexibility Service once in any day, subject to the Recovery Time.	DSO
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

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

**SCHEDULE 2
FLEXIBILITY SERVICE CHARGES**

1. Auction and Evaluation

- (a) The Company shall conduct auctions through the NMF Platform (or alternate trading platform) 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 paragraphs 3,4 and 5.

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 responses setting out their proposed Availability Price and Utilisation Price in the NMF (or alternate trading platform) for relevant auctions and the NMF (or alternate trading platform) shall record the Availability Price and Utilisation Price 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 Price (for the relevant auction) Price multiplied by the Contracted Service Capacity and multiplied by the hours in every Service Window for the previous month.</i>	<i>The Availability Price for the relevant auction as per the Flexibility Contract.</i>	<i>n/a</i>
<i>In respect of Utilisation Fee, the Utilisation Price (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 Price 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) calendar 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) No payments for the Availability Fee and Utilisation Fee will be made for the Service Window and Utilisation Instruction in the event of a failure to deliver:
 - (i) Failure to deliver 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;
 - (ii) Delivery of under 50% of an asset’s contracted requirement will be deemed a failure of delivery as per Schedule 5.

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 15 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 (through the NMF or directly) 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 (through the NMF or directly) reserves the right to instruct a Provider to cease delivery of a Flexibility Service in advance of the Requested Start Time or Requested 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 directly (or if applicable through the NMF) as soon as reasonably practicable using an Unavailability Notice the form of which is in the table below and sending it to ssentransition@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 Notice to indicate if a DER has become available or if the period of unavailability should be extended.
- (c) If a Provider submits an Unavailability Notice to the Company after a Utilisation Instruction has been issued this will be treated as non-delivery.

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 interval between data points shall be one (1) minute.
 - (ii) Where Service Meter Data is collected in energy (kWh) the allowed intervals between data points shall be one (1), two (2), three (3), five (5), six (6), ten (10), fifteen (15), or thirty (30) minutes.
 - (iii) 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; and
 - (B) free from errors, duplication or in Service Meter Data; and
 - (C) have a continuous timestamp for the entirety of the Service Meter Data.
 - (iv) 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 during a Flexibility Event, 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 of a Flexibility Event 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. **Baselining**

- (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.

(ii) Data upload frequency

(A) Providers must upload data for Eligible Days and Service Meter Data for all Flexibility Services and covering 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 amend clauses to require improvements in monitor performance.

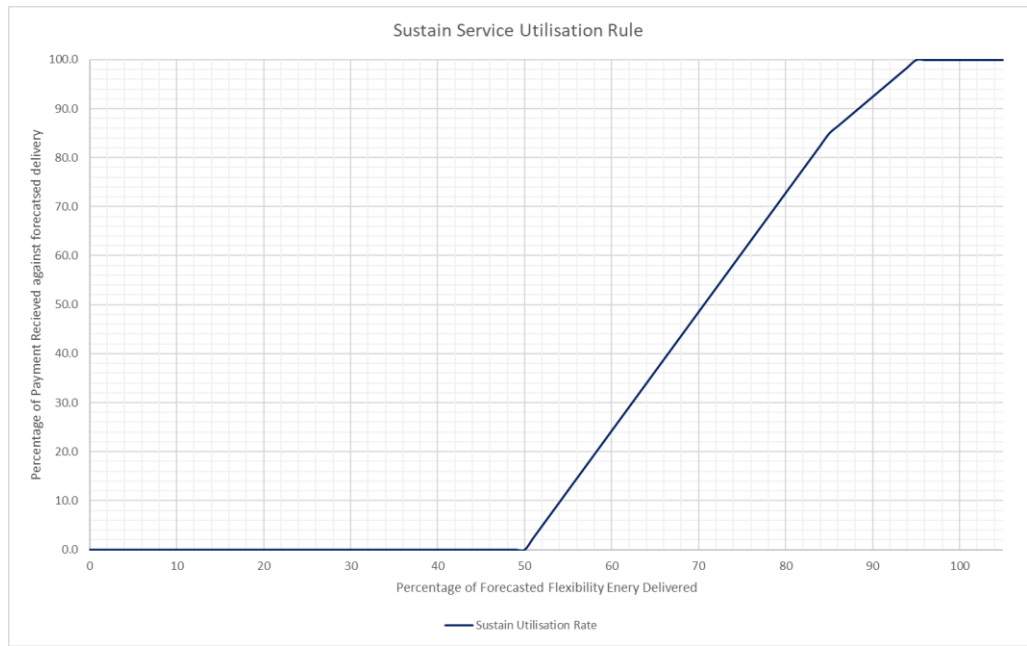
(i) **Option Two – Nominated Baseline with Same Day Adjustment (SDA)**

- (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) 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 amend clauses to require improvements in performance.
- (v) 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 the first revised Nominated Baseline issued for a DER for a Flexibility Event in any month. Other revised Nomination Baselines for further Flexibility Events issued for a DER in a month shall be ignored and the original Nominated Baseline shall apply.
- (vi) 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 amend clauses to require an alternate baseline methodology.

3. Non-Delivery and Under-Delivery

- (a) Utilisation Fee Settlement Rule:
- (i) If an Unavailability Notice for a DER is sent to the Company after a Utilisation Instruction has been issued this will be treated as a Service Failure.
 - (ii) The Utilisation Fee for a Flexible Event is related to the level of Contracted Service Capacity delivered compared to the level of Contracted Service Capacity requested in the relevant Utilisation Instruction.
 - (iii) 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 of a Flexible Event.
 - (iv) 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 of a Flexibility Event 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) Availability Fees for any Flexibility Contract will be paid as the product of the Availability Price (in £/kW/h) 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 3(b) (iv) below.
- (ii) 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.
- (iii) If an Unavailability Notice for a DER is sent to the Company after a Utilisation Instruction has been issued this will be treated as a Service Failure.
- (iv) The Availability Rate for each Flexibility Contract will be calculated by looking at the average response of a DER over the previous month's Utilisations.
 - (A) The response of a DER to a Flexibility Event will be calculated for each Settlement Period in all relevant Utilisation Instruction, as the level of Contracted Service Capacity delivered (kWh) in the Settlement Period divided by the level of Contracted Service Capacity requested (kWh) in the Settlement Period. This figure will be capped at 1 for each Settlement Period in the case of any over-delivery.
 - (B) The aggregate of the calculation in Schedule 5 paragraph 3(b)(iv)(A) in respect of all Settlement Period in all relevant Utilisation Instructions issued by the Company during the previous month divided by the total number of Settlement Period for all relevant Utilisation Instructions issued by the Company during the previous month to give an average availability response.

- (C) The average availability response 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) 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.

SCHEDULE 6
COINCIDENTAL CONTRACTS AND SERVICE STACKING

1. A DER is permitted to have Coincidental Contracts running over the same or overlapping Service Windows.
2. The Contracted Service Capacity used for Coincidental Contracts running over the same or overlapping Service Windows should not breach the flexibility capacity limits for the DER.
3. Service Stacking will be permitted between Flexibility Services which can be contracted for simultaneously Service Windows, for example Dynamic Constraint Management with Sustain Peak Management or Dynamic Constraint Management with Secure Constraint Management.
4. Utilisation Instructions will not be issued for competing Flexibility Services for simultaneous Settlement Periods, for example between Sustain Export Peak Management and Secure Constraint Management.
5. The Contracted Service Capacity for the Flexibility Services running over the same or overlapping Service Windows should not breach the flexibility capacity limits for the DER.
6. DERs participating in Flexibility services are prohibited from taking part in Peer to Peer (P2P) Network Capacity Trades (Exceeding Maximum Export Capacity, Exceeding Import Capacity and Offsetting) during the contracted Service Window.
7. The table below sets out between which Flexibility Services, Service Stacking and Coincidental Contracts are permitted.

	Sustain Peak Management	Sustain Export Peak Management	Secure Constraint Management	Dynamic Constraint Management
Sustain Peak Management	Coincidental Contracts	Coincidental Contracts Utilisation of Flexibility Services cannot occur at the same time	Coincidental Contracts	Service Stacking and Coincidental Contracts
Sustain Export Peak Management	Coincidental Contracts Utilisation of Flexibility Services cannot occur at the same time	Coincidental Contracts	Coincidental Contracts Utilisation of Flexibility Services cannot occur at the same time	Coincidental Contracts Utilisation of Flexibility Services cannot occur at the same time
Secure Constraint Management	Coincidental Contracts	Coincidental Contracts Utilisation of Flexibility Services cannot occur at the same time	Coincidental Contracts	Service Stacking and Coincidental Contracts
Dynamic Constraint Management	Service Stacking and Coincidental Contracts	Coincidental Contracts Utilisation of Flexibility Services cannot occur at the same time	Service Stacking and Coincidental Contracts	Coincidental Contracts