**Flexibility Services Agreement**

**THIS AGREEMENT** is made on [●] 2024

**BETWEEN:**

1. **[Northern Powergrid (Northeast) plc,** (registered number 02906593) whose registered office is at Lloyds Court, 98 Grey Street, Newcastle Upon Tyne, NE1 6AF (the “**Company**”); /
2. **Northern Powergrid (Yorkshire) plc,** (registered number 04112320) whose registered office is at Lloyds Court, 98 Grey Street, Newcastle Upon Tyne, NE1 6AF (the “**Company**”)**];** and
3. **[●] Limited/plc**, a company incorporated in [England and Wales] [Scotland] (registered number [●]) whose registered office is at [●] (the “**Provider**”),

(together the “**Parties**” and each a “**Party**”).

**RECITALS:**

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

**IT IS AGREED:**

**Glossary and Interpretation**

1. **Introduction**
   1. The Glossary and Rules of Interpretation shall apply to any document published or to be published by the Company which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation (see definition of Associated Document).
   2. Any capitalised term used in the Glossary and Rules of Interpretation shall have the meaning given to it (if any) in the Glossary and Service Glossary as applicable.
   3. The Company may update any of the Glossary and Rules of Interpretation, General Terms and Conditions, Service Glossary, Service Terms, Annexes, Forms and Templates, and other Associated Documents from time to time by publication of an updated version of the relevant document on its website, and each such updated version shall be effective from the date shown on its front cover provided always that, except with the consent of the Provider in writing (which shall include by approved electronic means to the extent permitted by the Service Terms), any updated version shall not apply to (i) any Agreement already in force or (ii) to any Service Terms already applying to Flexibility Services currently being provided at the time of publication.
2. **Rules of Interpretation**
   1. Unless the context otherwise requires:
      1. the singular includes the plural and vice versa;
      2. reference to a gender includes the other gender and the neuter;
      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;
      4. words denoting persons shall include any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality; and
      5. references to a company shall include a corporation or other body corporate and body corporate shall have the meaning given in section 1173 of the Companies Act 2006.
   2. A table of contents and headings are for convenience only and shall be ignored in construing the terms of the Agreement.
   3. Any reference to the words “**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.
   4. If a term or expression is defined within the Service Terms or Annexes relating to a particular service, the defined term or expression within the Service Terms or Annexes shall apply to the relevant service.
   5. All references in an Associated Document, General Terms and Conditions, and Glossary to a particular paragraph or Annex shall be a reference to that paragraph or Annex in or to that Associated Document.

*Priority of documents*

* 1. If there is any conflict between the provisions of any of the documents comprising the Agreement, then the following order of priority between the documents shall apply:
     1. Associated Documents; and
     2. General Terms and Conditions and Glossary.

1. **Glossary**

In the Agreement, unless superseded by additional terms placed within the Service Glossary or Annexes or the context otherwise requires, the following expressions shall have the meaning set out below:

|  |  |
| --- | --- |
| **“Accessible Site”** | a Site that is not a domestic site; |
| **“Affiliate”** | 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; |
| **“Agreement”** | the General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes, the Forms and Templates; |
| **“Annexes”** | the annexes appended to the General Terms and Conditions; |
| **“Apparatus”** | all equipment in which electrical conductors are used, supported or of which they may form a part; |
| **“Applicable Law”** | 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 (including any health, safety and environmental legislation and approved codes of practice); |
| **“Associated Document”** | any document published or to be published by the Company which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation in Part 2 above, which includes but is not limited to the Service Terms, Service Glossary, Annexes and Forms and Templates. |
| **“Authority”** | the Gas and Electricity Markets Authority; |
| **“Availability”** or  **“Available”** | means that the Flexibility Services, in accordance with the Service Requirements and the Utilisation Instruction, and where applicable, are available to be delivered to the Company for the duration of the Service Window; |
| **“Availability Payment”** | has the meaning given to it in the Service Terms; |
| **“Balancing Services Activity”** | has the meaning attributed to it in the ESO’s Transmission Licence; |
| **“BSC”** | means the balancing and settlement code as administered by Elexon; |
| **“Business Day”** | any Day other than a Saturday or Sunday or a bank holiday, in England and Wales where the Company is located in England and Wales and in the City of Edinburgh where the Company is located in Scotland; |
| **“Business Hours”** | between 9:00 am and 5:00 pm on a Business Day; |
| **“Change in Ownership”** | means:   1. 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 2. any other arrangements that have or may have or which result in the same effect as sub-clause a) above; |
| **“Charge(s)”** | as applicable, the Availability Payments and the Utilisation Payments; |
| **“CMZ”** | constraint managed zone; |
| **“Confidential Information”** | 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”** | an 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 Distribution System or Transmission System (as the case may be); |
| **“Connection and Use of System Code”** or **“CUSC”** | the Connection and Use of System Code designated by the Secretary of State for Energy Security and Net Zero (DESNZ) as from time to time modified; |
| **“Contract Award”** | the execution and award by the Company of a contract for the provision of Flexibility Services by the Provider; |
| **“Contract Data”** | all data other than Performance Data associated with the Agreement; |
| **“Data Protection Law”** | 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”) as retained in the laws of the United Kingdom by the European Union (Withdrawal) Act 2018, 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; |
| **“Day”** | a calendar day; |
| **“DCUSA”** | means the Distribution Connection and Use of System Agreement entered into by the DCUSA Parties (which includes the Company) and DCUSA Limited; |
| **“Defaulting Party”** | has the meaning given in paragraph [7.1](#_bookmark16)of the General Terms and Conditions; |
| **“Defect”** | an issue that may arise with the DER equipment, metering or the communication interface between the Company and Provider which results in non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services; |
| **“Development Plan”** | the defined schedule of design, build and commissioning in respect of a DER project in development; |
| **“Distributed Energy Resources”** or **“DER”** | the electricity generators, electricity storage or electrical loads (both in respect of domestic and non-domestic assets and including, but not limited to, electric vehicle charge points), and other Site equipment, machinery, Apparatus, materials and other items used for the provision of the Flexibility Services as described in the Service Terms; |
| **“Distribution Code”** | the Distribution Code of Licensed Distribution Network Operators of Great Britain; |
| **“Distribution Licence”** | a licence issued under section 6(1)(c) of the Electricity Act 1989; |
| **“Distribution Limit”** | £200,000 (two hundred thousand pounds sterling) or such other amount as may be stated in the Service Terms; |
| **“Distribution System”** | a distribution network owned and/or operated by the holder of a Distribution Licence; |
| **“ESO”** | means National Grid Electricity System Operator Limited (company number: 11014226) (and any successor to its role); |
| **“Expert”** | an independent expert appointed for the purposes of expert determination; |
| **“Flexibility Services”** | means, as more particularly described in the Service Terms, 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 Event”** | 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 a Force Majeure Event; |
| **“Forms and Templates”** | where applicable, the relevant forms and templates associated with the onboarding, procurement, contract award or operation of Flexibility Services; |
| **“Fuel Security Code”** | means the document of that title designated as such by the Secretary of State for Energy Security and Net Zero as may be amended from time to time; |
| **“General Terms and Conditions”** | the general terms and conditions applicable to the provision of Flexibility Services to be provided under the Agreement; |
| **“Glossary”** | this glossary of terms and interpretation, as applicable to the Agreement; |
| **“Good Industry Practice”** | the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances or the standard which would reasonably and ordinarily be expected from systems used by a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances; |
| **“Grid Code”** | the technical code for connection and development of the national electricity transmission system as amended from time to time (available at [www.nationalgrid.com/uk/electricity/codes/grid-](http://www.nationalgrid.com/uk/electricity/codes/grid-) code/code-documents); |
| **“GSP”** | grid supply point; |
| **“Industry Code”** | the BSC, the CUSC, the Grid Code, Transmission Code, the Distribution Code, the DCUSA, the Smart Energy Code, the Retail Energy Code and the Fuel Security Code. |
| **“Insolvency Event”** | means any pre-insolvency, creditor protection, or insolvency related actions, events, processes or proceedings, whether in or out of court, including the following (and any proceedings or steps leading to any of the following): any form of bankruptcy, liquidation, administration, receivership, voluntary arrangement, scheme of arrangement, restructuring plan or other compromise or arrangement or scheme with creditors, moratorium, stay or limitation of creditors’ rights, interim or provisional supervision by a court or court appointee, winding up or striking off, or any distress, execution, commercial rent arrears recovery or other process levied or exercised; or any similar actions, events, processes or proceedings in any jurisdiction outside England and Wales where the Company is located in England and Wales or alternatively Scotland where the Company is located in Scotland; |
| **“Intellectual Property Rights”** | all intellectual property, including patents, trade marks, service marks, domain names, business and trading names, styles, logos and get- ups, rights in goodwill, database rights and rights in data, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, rights in know-how, trade secrets and Confidential Information lists and other proprietary knowledge and information and all rights under licences and consents in relation to any such rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world for their full term, including any renewals and extensions; |
| **“Material Adverse Effect”** | any event or circumstance which, in the opinion of the Company:   1. 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 2. is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company; |
| **“MPAN”** | meter point administration number; |
| **“MSID”** | metering system identifier; |
| **“Network”** | the electricity network operated by the Company to which the DER is connected; |
| **“Non-Terminating Party”** | has the meaning given in paragraph [7.4](#_bookmark20) of the General Terms and Conditions; |
| **“Party”** | each of the Company and the Provider, together the **“Parties”**; |
| **“Performance Data”** | such data relating to the performance of the Plant, Apparatus and related infrastructure as may be notified by the Company to the Provider or by the Provider to the Company from time to time; |
| **“Personal Data”** | has the meaning given to it in Data Protection Law[1;](#_bookmark1) |
| **Plant”** | fixed and movable items used in the generation and/or supply and/or transmission and/or distribution of electricity other than Apparatus; |
| **“Primacy Rules”** | means the primacy rules defined by the Energy Networks Association (as may be updated from time to time); |
| **“Retail Energy Code”** | the retail energy code administered by the Retail Energy Code Company Ltd; |
| **“Rules of Interpretation”** | the rules of interpretation detailed at paragraph [2](#_bookmark0) above; |
| **“Service Failure”** | as defined in the Service Terms; |
| **“Service Glossary”** | any glossary of terms within the Service Terms as applicable to a particular Flexibility Service; |
| **“Service Requirements”** | the specification that the Flexibility Services must be capable of meeting, as defined in the Service Terms; |
| **“Service Period”** | As defined in the Service Terms; |
| **“Service Terms”** | the service terms applicable to the provision of Flexibility Services which form part of the Agreement; |
| **“Service Window”** | the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with the Agreement, the Flexibility Services to the Company, as defined in the Service Terms (if applicable); |
| **“Site”** | means the site on which the DER is located; |
| **“Smart Energy Code”** | the smart energy code administered by the Smart Energy Administrator and Secretariat; |
| **“Statutory Requirements”** | 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 applicable Distribution Licence or Transmission 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; |
| **“TCM”** | transmission constraint management; |
| **“Term”** | the duration of the Agreement as specified by the Company in the Service Terms; |
| **“Terminating Party”** | has the meaning given in paragraph [7.1](#_bookmark16) of the General Terms and Conditions; |
| **“Termination Notice”** | has the meaning given in paragraph [7.4](#_bookmark20) of the General Terms and Conditions; |
| **“Transmission Code”** | the System Operator Transmission Owner Code as required by Transmission Licences granted under the Electricity Act 1989; |
| **“Transmission Licence”** | a licence issued under section 6(1)(b) of the Electricity Act 1989; |
| **“Transmission Limit”** | £500,000 (five hundred thousand pounds sterling) save as provided in the Service Terms; |
| **“Transmission System”** | the electricity transmission system, as defined in the Connection and Use of System Code; |
| **“Unavailability” (or**  **“Unavailable”)** | the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the Company; |
| **“Utilisation Instruction”** | an instruction by the Company to the Provider to deliver Flexibility Services; |
| **“Utilisation Payments”** | has the meaning given to it in the Service Terms. |

**General Terms and Conditions**

**[●] 2024**

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# Introduction

* 1. These General Terms and Conditions shall apply to the provision of Flexibility Services by the Provider to the Company.
  2. References to the “Agreement” in these General Terms and Conditions mean these General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes and where applicable, the Forms and Templates.

# Scope of Flexibility Services

* 1. The Flexibility Services shall be performed in accordance with the Service Terms, these General Terms and Conditions and any other applicable Associated Documents.

# Provider’s Obligations

* 1. The Provider will:
     1. ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with the terms of the Agreement and all Applicable Laws, Statutory Requirements and Good Industry Practice;
     2. ensure that all technical, communication and data provision requirements set out in the Service Terms and Annexes are complied with at all times;
     3. act diligently and in good faith in all of its dealings with the Company;
     4. 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;
     5. at the request of the Company, make available to the Company information in relation to the metering equipment at the DER;
     6. where reasonably required by the Company 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 in accordance with the Agreement; grant access to a Site in accordance with paragraph [6.6](#_bookmark72) of the Service Terms;
     7. remedy any Defect of the Flexibility Services in accordance with Good Industry Practice and to the satisfaction of the Company;
     8. disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under the Agreement that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under the Agreement;
     9. use reasonable endeavours to ensure that a DER that is pre-qualified is not registered with another provider to provide Flexibility Services to the Company. If the Company identifies that the DER is registered with more than one provider, the Company will notify both the Provider and the other provider(s). The DER will remain registered with the existing Provider until sufficient evidence of the Provider to which the DER is registered has been provided to the Company’s satisfaction (acting reasonably).
  2. The Provider hereby acknowledges that 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.

# Record and Audits

* 1. The Provider shall keep proper and accurate records of all matters relating to the performance of its obligations under the Agreement.
  2. The records shall be maintained in a form suitable for audit purposes and shall be retained for any period required by any Applicable Law, and in any event, for the Term of the Agreement and for a period of no less than:
     1. seven (7) years after expiry or termination of the Agreement where such records contain or relate to financial data and/or Contract Data; or
     2. unless specified otherwise in the Annexes, four (4) years after expiry or termination of the Agreement where such records relate to Performance Data.
  3. The Company, or a reputable independent third-party auditor nominated by it, may, on reasonable notice, and in any event on not less than fifteen (15) Business Days’ (or such other period as may be specified in the Service Terms or required by Applicable Law) notice, to the Provider and during normal working hours, inspect and review the records, as described in paragraph [4.2,](#_bookmark7) for the purposes of verifying the Provider’s compliance with its obligations under the Agreement and/or to meet any other audit or information requirement that may be required by Applicable Law and/or any regulatory body, including the Authority.
  4. The Provider shall co-operate fully and promptly with any such audit and/or inspection conducted by the Company and provide such reasonable assistance as may be required by the Company in relation to any audit.
  5. The Provider shall ensure that all paperwork issued by or on behalf of the Provider to the Company (including, without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references any other appropriate and necessary information.

# Representations and Warranties

* 1. Without prejudice to its other obligations under and/or pursuant to the Agreement, each Party warrants and undertakes to the other Party at all times that:
     1. it is a duly incorporated and company validly existing under the law of its jurisdiction of incorporation;
     2. it has the right, power, capacity and authority to enter into and perform its obligations under the Agreement;
     3. the entry into and performance by it of the Agreement does not and will not contravene or conflict with any Applicable Law or judicial or official order applicable to it;
     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 the Agreement;
     5. all information it provides to the other Party will be complete and accurate save to the extent disclosed;
     6. no Insolvency Event is continuing or might reasonably be anticipated; and
     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.
  2. Without prejudice to its other obligations under and/or pursuant to the Agreement and in addition to the foregoing, the Provider warrants and undertakes to the Company at all times that:
     1. the DER contracted to provide the Flexibility Services has, as applicable, either:
        1. live connection(s) to the Company’s Network, associated MPAN or MSID and Connection Agreement(s); or
        2. a connection offer(s) for a live connection and that the connection(s) can be completed and a Connection Agreement entered into in time to meet the Service Requirements as specified in the Service Terms;
     2. it has, or it will procure that the owner of the DER has, obtained and maintains in force for the Term, either directly or through agreement via its aggregated DER, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services in accordance with the terms of the Agreement, including but not limited to any authorisation required pursuant to the regulations, codes, agreements and arrangements referenced in paragraph [5.2.9;](#_bookmark10)
     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 in connection with the Agreement (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 provision of Flexibility Services with the Company;
     4. it shall disclose as soon as reasonably possible any change of circumstances which could affect the delivery of the Flexibility Services;
     5. where applicable, for each DER project in development, the Provider has (or has procured), and, if requested, will promptly provide to the Company a copy of the Development Plan in respect of each DER;
     6. 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;
     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 paragraphs [5.1.3](#_bookmark9) and [5.2.9,](#_bookmark10) the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by the Annexes;
     8. where any Accessible Site is occupied by an Affiliate of the Provider or any other third party, the Provider shall be responsible for ensuring that where any provision in the 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 the Agreement; and
     9. the provision of Flexibility Services will not cause it or the 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 any other enactment relating to health and 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
  3. Without prejudice to any right or remedy, each Party will be entitled to claim damages from the other Party for any breach of representation or warranty set out in the Agreement which causes that Party to incur costs or losses.

# Charges and Payments

* 1. All Charges and other sums payable under the Agreement shall be paid in accordance with the Service Terms.

# Termination

* 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 Agreement on giving written notice of termination to the other Party (“**Defaulting Party**”) if at any time during the Term of the Agreement:
     1. subject to paragraph [7.3,](#_bookmark19) the Defaulting Party is in material and/or persistent breach of the Agreement;
     2. an Insolvency Event occurs in relation to the Defaulting Party;
     3. paragraph [11.6](#_bookmark37) of these General Terms and Conditions applies.
  2. Either Party shall have the right to immediately terminate the Agreement on giving written notice of termination to the other Party under paragraph [9.4](#_bookmark28) of these General Terms and Conditions.
  3. For the purposes of paragraph [7.1.1,](#_bookmark17) and without limitation, the following shall be deemed to be a material breach by a Party of the Agreement:
     1. the Defaulting Party fails to pay (other than by inadvertent error in funds transmission which is discovered by Terminating Party, notified to the Defaulting Party and corrected within thirty

(30) Business Days following such notification) any amount properly due or owing from it pursuant to paragraph [6,](#_bookmark13) and such non-payment continues unremedied and not disputed in good faith and upon reasonable grounds at the expiry of thirty (30) Business Days immediately following receipt by the Defaulting Party of written notice from the Terminating Party of such non-payment;

* + 1. paragraphs [8.3](#_bookmark25) or [15.10](#_bookmark52) of these General Terms and Conditions apply; or
    2. any other material breach by the Defaulting Party of any of its obligations under the Agreement which, if capable of remedy, the Defaulting Party fails to remedy within ten (10) Business Days after service of a written notice from the Terminating Party specifying the breach and requiring it to be remedied.
  1. Either Party (the “**Terminating Party**”) may at any time on providing no less than ninety (90) Days prior written notice (“**Termination Notice**”) to the other Party (the “**Non-Terminating Party**”) terminate the Agreement. Where the Non-Terminating Party fails to respond to a Termination Notice in accordance with this paragraph [7.4,](#_bookmark20) the Non-Terminating Party shall be deemed to have accepted the Termination Notice.

*Accrued liabilities*

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

*Surviving provisions*

* 1. This paragraph and the following provisions of the Agreement shall survive termination or expiry:
     1. paragraph [4](#_bookmark6) (*Records and Audit*);
     2. paragraph [6](#_bookmark13) (*Charges and Payment*);
     3. paragraph [7](#_bookmark15) (*Termination*);
     4. paragraph [8](#_bookmark23) (*Service Failure*);
     5. paragraph [10](#_bookmark30) (*Indemnity, Liability & Insurance*);
     6. paragraph [12](#_bookmark39) (*Confidentiality*);
     7. paragraph [13](#_bookmark45) (*Intellectual Property Rights*);
     8. paragraph [14](#_bookmark48) (*Data Protection*);
     9. paragraph [17](#_bookmark56) (*Dispute Resolution*);
     10. paragraph [21](#_bookmark66) (*Waiver*);
     11. paragraph [24](#_bookmark70) (*Governing Law and Jurisdiction*);
     12. Glossary; and
     13. any other provision of the Agreement that expressly or by implication is intended to come into, or continue in force, on or after termination or expiry of the Agreement.

*Consequences of termination or expiry*

* 1. Where requested by the other Party, on termination or expiry of the Agreement each Party shall delete or return Confidential Information provided by the other Party for the purpose of the Agreement.
  2. Following termination or expiry of the Agreement, the Provider shall promptly at the Provider’s cost:
     1. deliver to the Company for approval a final invoice detailing all monies due to it under the Agreement;
     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.
  3. Where the Company terminates the Agreement as a result of a material and/or persistent breach by the Provider pursuant to paragraph [7.1.1,](#_bookmark17) the Company may recover from the Provider any and all costs, losses and expenses reasonably incurred by the Company as a result of such termination, including where relevant such costs, losses and expenses associated with appointing a replacement Provider. Such costs, losses and expenses shall be payable by the Provider to the Company provided that the liability of the Provider in respect of this paragraph [7.9](#_bookmark21) shall not exceed (as applicable):
     1. the Transmission Limit where such costs, losses and expenses are in connection with, or relate to, DER connected to the Transmission System; or
     2. the Distribution Limit where such costs, losses and expenses are in connection with, or relate to, DER connected to the Distribution System.
  4. The Parties agree that any costs, losses and expenses incurred by the Company pursuant to paragraph [7.9](#_bookmark21) shall be deemed direct losses and costs of the Company and accordingly not be subject to paragraph [10.3.](#_bookmark34)

# Service Failure

* 1. Notwithstanding its obligations under paragraph [8.2,](#_bookmark24) the Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability of the Provider to provide the Flexibility Services in all or any part of any contracted Service Window (if applicable) as set out in the Service Terms.
  2. In the event of a Service Failure by the Provider, the Company may require the Provider to:
     1. provide the Company with a written explanation as to the cause of the failure of service delivery;
     2. implement a rectification plan for improving performance and/or reducing the number of occurrences of Unavailability, which may include at the Company’s discretion, a repeat of any commissioning tests undertaken on initial installation and commissioning of the DER;
     3. propose a variation to the Service Requirements as specified in the Service Terms; or
     4. take any other action that may be agreed with the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).
  3. In the event that:
     1. the Provider fails to comply with the terms of paragraph [8.2;](#_bookmark24)
     2. the Provider’s proposals are not accepted by the Company (acting reasonably);
     3. the Parties (acting reasonably) fail to reach agreement on any rectification actions; or
     4. 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 the Agreement for the purposes of paragraph [7.1.1](#_bookmark17) of these General Terms and Conditions and paragraph [7.9](#_bookmark21) shall apply.

# Force Majeure

* 1. A Party shall not be in breach or default of the Agreement to the extent that it is prevented from performing any of its obligations under the Agreement as a result of a Force Majeure Event, for so long as the Force Majeure Event continues to prevent such performance.
  2. If a Force Majeure Event occurs, the following process will apply:
     1. the affected Party will notify the other Party as soon as reasonably practicable of:
        1. the occurrence and description of the Force Majeure Event;
        2. the date on which the Force Majeure Event commenced and its likely duration (if known); and
        3. the effect of the Force Majeure Event on the Party’s ability to perform its obligations under the Agreement;
     2. as soon as is reasonably practicable following notification pursuant to paragraph [9.2](#_bookmark27).1, the Parties shall meet to discuss how best to continue their respective obligations under the Agreement; and
     3. 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.
  3. For the avoidance of doubt the non-performance of either Party's obligations under the Agreement arising prior to the Force Majeure Event, shall not be excused as a result of the Force Majeure Event.
  4. 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 two (2) calendar months, either Party may terminate the Agreement with immediate effect.

# Liability, Indemnity and Insurance

Subject to paragraph [10.2,](#_bookmark33) and save where any provision of the Agreement provides for an indemnity, the Parties acknowledge and agree that neither Party nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of the Agreement other than for loss directly resulting from such breach and which at the date of formation of the Agreement was

reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

* + 1. physical damage to the property of the other Party, its officers, employees or agents; and/or
    2. any liability arising under paragraph [5.3](#_bookmark11) and/or
    3. the liability of such other Party to any other person for loss in respect of physical damage to the property of any person subject, for the avoidance of doubt, to the requirement that the amount of such liability claimed by such other Party should be mitigated in accordance with general law,

and provided further that the liability of any Party in respect of all claims for the losses referred to in this paragraph [10.1](#_bookmark31) shall not exceed (i) the Transmission Limit where such claims are in connection with, or relate to, DER connected to the Transmission System or (ii) the Distribution Limit where such claims are in connection with, or relate to DER connected to the Distribution System, in each case per incident or series of related incidents.

* 1. Nothing in this Agreement 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.
  2. Subject to paragraph [10.2,](#_bookmark33) and save where any provision of the Agreement provides for an indemnity or otherwise, neither Party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:
     1. any loss of profit, loss of revenue, loss of use, loss of data, loss of contract or loss of goodwill; or
     2. any indirect or consequential loss; or
     3. loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in paragraphs [10.1.3](#_bookmark32) and [10.2.](#_bookmark33)
  3. Subject to paragraph [10.2,](#_bookmark33) and save where any provision of the Agreement provides for an indemnity, the liability of any Party in respect of all claims for the losses referred to in paragraph [10.1](#_bookmark31) shall be subject to an aggregate cap of two million pounds sterling (£2,000,000).
  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 the Agreement to cover the liabilities set out in paragraph 10, with a reputable insurance company.
  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 paragraph [10.](#_bookmark30) If the Provider acts as an aggregator in connection with the provision of the Flexibility Services to Accessible Sites, it shall, where it is reasonably practicable to do so, ensure that the DER owners and operators for which it acts maintain appropriate insurance to the extent set out in paragraph 10.
  6. The Provider’s liabilities under the Agreement shall not be deemed to be released or limited by the Provider taking out the insurance policies referred to in paragraph[10.](#_bookmark30)

# Transfers, sub-contracting and Change in Ownership

* 1. Where pursuant to paragraph [24:](#_bookmark70)
     1. the governing law of this Agreement is English law, any reference to “assign” shall be construed as relating to an “assignment”; or
     2. the governing law of this Agreement is Scots law, any reference to “assign” shall be construed as relating to an “assignation”.
  2. Save as provided for in paragraph [11.3,](#_bookmark36) the 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 the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
  3. The Company may without the consent of the other Party assign, novate or transfer the benefit or burden of the Agreement or any other rights and/or obligations pursuant to these General Terms and Conditions to: (i) the holder of a Distribution Licence; (ii) the holder of a Transmission Licence with responsibility for carrying out the Balancing Services Activity; or (iii) to an Affiliate of the Company but only where such Affiliate of the Company holds a Distribution Licence or a Transmission Licence.
  4. 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.
  5. If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Accessible Site changes, or may change, during the Term, the Provider shall promptly notify the Company of the same. Where (i) the ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Accessible Site changes during the Term; or (ii) the use (for the purpose of providing the Flexibility Services) of any domestic Site changes during the Term, the Provider shall update its records and ensure that such records are reflective of such changes. 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.
  6. The Company reserves the right to terminate the Agreement in accordance with paragraph [7.1.3](#_bookmark18) 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 as notified to the Provider.

# Confidentiality

* 1. The Company is required to disclose certain information in accordance with this Agreement under obligations within its Distribution Licence or Transmission Licence (as applicable), or an Industry Code. Information shared will include but may not be limited to provider names, awarded prices, volumes, GSP and asset locations, and contract durations. Pursuant to the Primacy Rules, the Company, as applicable, shall be entitled to share information relating to the Agreement for the purpose of industry initiatives in relation to network or system constraint management and electricity network optimisation and 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. It shall not be a breach of this paragraph [12](#_bookmark39) where the Company discloses any such information. Such information shall include but is not limited to:
     1. CMZ locations;
     2. CMZ requirements;
     3. a list of TCM generators;
     4. an agreed form of ‘risk of conflict forecast’;
     5. ESO planning outputs;
     6. Company outages;
     7. transmission outages; and
     8. any additional Company related information as may be required,

as may be updated from time to time on agreement from the Company or the ESO.

* 1. Subject to paragraphs [12.1,](#_bookmark40) [12.3.4](#_bookmark42) and [12.3.5,](#_bookmark43) no public announcement or statement regarding the completion, performance or termination of the Agreement shall be issued or made by the Provider without the Company’s prior written approval (such approval not to be unreasonably withheld or delayed). Neither Party shall be prohibited from issuing or making any such public announcement or statement to the extent expressly permitted or if it is necessary to do so in order to comply with any Applicable Law or the regulations of any recognised stock exchange upon which the share capital of such Party is from time to time listed or dealt in.
  2. Save as permitted by paragraph [12.1,](#_bookmark40) 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 Agreement. The restrictions imposed by this paragraph [12.3](#_bookmark41) shall not apply to the disclosure of any Confidential Information:
     1. which is in or becomes part of the public domain otherwise than as a result of a breach of paragraph [12.3,](#_bookmark41) or which either Party can show was in its written records prior to the date of disclosure of the same by the other Party, or which it received from a third party independently entitled to disclose it;
     2. which is required to be disclosed by law, an Industry Code or pursuant to any licence of the Party concerned;
     3. to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party;
     4. to any parent, subsidiary or fellow subsidiary undertaking on a “need to know” basis only. In this paragraph [12.3.4,](#_bookmark42) the words “parent”, “subsidiary” and “undertaking” shall have the meanings as provided in sections 1159, 1161 and 1162 of the Companies Act 2006;
     5. by the Provider to any owner and/or operator of relevant Plant and Apparatus to the extent necessary to enable the Provider to submit an offer or tender to provide Flexibility Services pursuant to the Agreement and fulfil its obligations under the Agreement.
  3. Save as permitted by paragraph [12.1,](#_bookmark40) 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 (such approval not to be unreasonably withheld or delayed).

# Intellectual Property Rights

* 1. The Agreement does not transfer any interest in Intellectual Property Rights.
  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 the Agreement, provided that nothing in this paragraph [13.2](#_bookmark46) shall operate so as to exclude any non-excludable rights of either Party.

# Data Protection

* 1. Each Party shall, at its own expense, ensure that it complies with all applicable Data Protection Law.
  2. The Parties acknowledge that as at the date of the 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.
  3. Each Party shall ensure that it complies with its obligations pursuant to paragraph 9 of the Service Terms.

# Modern Slavery, Anti-bribery and Living Wage

*Modern slavery*

* 1. The Parties undertake, warrant and represent that:
     1. neither Party nor any of its officers, employees, agents or subcontractors:
        1. has committed an offence under the Modern Slavery Act 2015 (“**MSA Offence**”);
        2. 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
        3. is aware of 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;
     2. they 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;
     3. they shall notify the Company immediately in writing if they become aware or has reason to believe that they, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Provider’s obligations under this paragraph [15.1.](#_bookmark51) Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations;
     4. they shall include in their contracts with subcontractors and suppliers’ anti-slavery and human trafficking provisions that are at least as onerous as those set out in this paragraph 15.1; and
     5. they will respond to all reasonable requests for information required by the other Party for the purposes of completing other Party’s annual anti-slavery and human trafficking statement.
  2. The Provider shall indemnify the Company against any losses, incurred by or awarded against the Company as a result of any breach of anti-slavery and human trafficking laws, statutes, regulations and codes or the Modern Slavery Act 2015.
  3. The Provider will permit the Company and its third party representatives, on reasonable notice during normal Business Hours, but without notice if there are reasonable grounds to suspect an instance of slavery and human trafficking, to access and take copies of records and any other information held at the Provider’s premises (which shall be the Provider’s office premises and other business premises) and to meet with personnel and more generally to audit compliance with its obligations under this paragraph [15.](#_bookmark50) The Provider shall give all necessary assistance to the conduct of such audits during the term of the Agreement.

*Anti-bribery*

* 1. The Provider shall have suitable controls and compliance procedures in place and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received or offered by the Provider in connection with the Agreement.
  2. The Provider shall immediately notify the Company if a foreign public official exerts a direct or indirect influence over the performance of the Agreement.
  3. The Provider shall not:
     1. Offer or agree to give any person working for or engaged by the Company or any other Affiliate of the Company any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to the Agreement, or any other agreement between the Provider and the Company or any Affiliate of the Company, including its award to the Provider and any of the rights and obligations contained within it; nor
     2. Enter into the Agreement if it has knowledge that, in connection with the Agreement, any money has been, or shall be, paid to any person working for or engaged by the Company or any other Affiliate of the Company by or for the Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Company and has been approved by the Company before execution of the Agreement.
  4. The Provider shall indemnify the Company against any losses, incurred by or awarded against the Company as a result of any breach of anti-corruption and anti-bribery laws, statutes, regulations and codes or the Bribery Act 2010.
  5. The Provider agrees to provide the Company with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government, agency or competent authority in any relevant jurisdiction for the purpose of compliance with any anti-slavery laws or anti-bribery laws (including but not limited to the Modern Slavery Act 2015 and the Bribery Act 2010).

*Living wage*

* 1. Where applicable the Provider agrees to:
     1. pay all of its personnel who are directly employed by it in respect of the provision of the Flexibility Services used within the UK not less than the real living wage (as defined at <https://www.livingwage.org.uk/> as may be updated from time to time) for the Term of the Agreement; and
     2. ensure all employees of its contractors and subcontractors performing the provision of the Flexibility Services used within the UK are paid not less than the real living wage (as defined at <https://www.livingwage.org.uk/> as may be updated from time to time) for the Term of the Agreement.
  2. Any breach of this paragraph [15](#_bookmark50) by the Provider shall be deemed a material breach of the Agreement for the purposes of paragraphs [7.1.1](#_bookmark17) and [7.9.](#_bookmark21)

# Notices

* 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 Service Terms.
  2. A notice shall be deemed to have been received:
     1. if delivered by hand or recorded delivery post within Business Hours at the time of delivery or, if delivered by hand outside Business Hours, at the next start of Business Hours;
     2. if sent by first class post, at 9.00 a.m. on the second Business Day after posting.
  3. E-mail communications may be valid for notices the purposes of the Agreement, where agreed between the Parties. Such email notices shall be deemed to have been received on the Day of sending, or where outside of Business Hours on the first Business Day thereafter.
  4. In verifying service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted.
  5. This paragraph [16](#_bookmark54) does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

# Dispute Resolution

* 1. The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to the Agreement.
  2. 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 the Service Terms, or as otherwise notified by either Party to the other) who have authority to settle the same and/or may refer the dispute to the forms of dispute resolution in accordance with paragraph [17.3.](#_bookmark58)
  3. 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 either:
     1. arbitration; or
     2. an Expert for determination; or
     3. such other process as is agreed between the Parties.
  4. For the avoidance of doubt, paragraphs [17.2](#_bookmark57) and [17.3](#_bookmark58) shall not preclude a Party from raising arbitration proceedings (or where other processes have been agreed under paragraph [17.3.3](#_bookmark61) court proceedings) in the event a claim is considered to be nearing the end of a prescription and/or limitation period pursuant to the Limitation Act 1980 or the Prescription and Limitation (Scotland) Act 1973 (as applicable) or where determination is required in the event of an emergency where the time periods set out in this paragraph [17](#_bookmark56) would not be suitable .
  5. In the event that the Parties cannot agree any other process under paragraph [17.3.3,](#_bookmark61) then either Party may refer any dispute to 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 (as applicable).

*Arbitration*

* 1. Where any dispute is referred in accordance with paragraph [17.3.1](#_bookmark59) to arbitration, the following provisions shall apply:
     1. If the Company is incorporated in England and Wales, the seat of arbitration shall be London. If the Company is incorporated in Scotland, the seat of arbitration shall be Edinburgh;
     2. The number of arbitrators shall be one. Where no arbitrator is named or where the named arbitrator is not able or unwilling to act the appointer of the arbitrator (and of any replacement) shall be The Chartered Institute of Arbitrators;
     3. Whatever the nationality, residence or domicile of either Party and wherever the dispute or difference or any part thereof arose, (i) the laws of England and Wales shall be the proper law of any reference to arbitration if the Company is incorporated in England and Wales or

(ii) the laws of Scotland shall be the proper law of any reference to arbitration if the Company is incorporated in Scotland, and in particular (but not so as to derogate from the generality of the foregoing) the rules and provisions of (i) the Arbitration Act 1996 (notwithstanding anything in Section 108 thereof) shall apply if the Company is incorporated in England and Wales or (ii) the Arbitration (Scotland) Act 2010 shall apply if the Company is incorporated in Scotland, to any such arbitration wherever the same or any part of it shall be conducted;

* + 1. For the avoidance of doubt, both Parties confirm and agree that nothing in the Agreement to arbitrate prevents a Party:
       1. challenging the award of an arbitral tribunal as provided for under the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010;
       2. seeking the remedy of specific performance or any other power or remedy that would be available to the English court or Scottish court (as the case may be) from the arbitral tribunal in accordance with the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010;
       3. seeking interim relief from the English court or Scottish court (as the case may be) under the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010, or from any other court with competent jurisdiction; or
       4. seeking to enforce any arbitral award in the English court or Scottish court (as the case may be) or any court of competent jurisdiction.
    2. Without prejudice to any other mode of service allowed under any relevant law, where a Provider is not incorporated in any part of Great Britain, the Provider agrees that if it does not have, or shall cease to have, a place of business in Great Britain it will promptly appoint, and shall at all times maintain and identify to the Company, an agent for the service of process in Great Britain to accept service of process on its behalf in any proceedings commenced in support of, or in relation to arbitration, in the courts of England and Wales or Scotland (as the case may be).

*Expert determination*

* 1. Where any dispute is referred in accordance with paragraph [17.3.2](#_bookmark60) to an Expert for determination, the following provisions shall apply:
     1. the Expert shall act as an expert and not as an arbitrator and shall decide those matters referred to them using their skill, experience and knowledge, and with regard to all such other matters as they in their sole discretion consider appropriate;
     2. if the Parties cannot agree upon the selection of an Expert, the Expert shall be determined by (i) the President for the time being of the Law Society of England and Wales, if the Company is incorporated in England and Wales or (ii) the President for the time being of the Law Society of Scotland, if the Company is incorporated in Scotland;
     3. all references to the Expert shall be made in writing by either Party with notice to the other being given contemporaneously, and the Parties shall promptly supply the Expert with such documents and information as they may request when considering any referral;
     4. the Expert shall be requested to use their best endeavours to give their decision upon the question before them as soon as possible in writing following its referral to them, their decision shall, in the absence of fraud or manifest error, be final and binding upon the Parties;
     5. if the Expert wishes to obtain independent professional and/or technical advice in connection with the question before them:
        1. the Expert shall first provide the Parties with details of the name, organisation and estimated fees of the professional or technical adviser; and
        2. the Expert may engage such advisor with the consent of the Parties (which consent shall not be unreasonably withheld or delayed) for the purposes of obtaining such professional and/or technical advice as they may reasonably require;
     6. the Expert shall not be held liable for any act or omission, and their written decision will be given without any liability on the Expert’s part to either Party, unless it shall be shown that they acted fraudulently or in bad faith;
     7. save to the extent otherwise expressly provided herein pending the determination by the Expert, any subsisting Agreement shall continue to the extent possible for the Parties to perform their obligations; and
     8. the Expert shall at their discretion be entitled to order that the costs of the reference of a dispute to them shall be paid by the Parties in whatever proportions they think fit.

# Severance

* 1. If any provision of the Agreement becomes or is declared invalid, unenforceable or illegal by a judicial or other competent authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Agreement, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.
  2. The Company and the Provider each acknowledge that it has entered into the Agreement on an arm’s length basis and that it has taken independent legal advice in so doing.

# Third Party Rights

* 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 Agreement 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.

# No Agency or Partnership

* 1. Nothing in the 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.
  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.

# Waiver

* 1. No failure or delay by any Party to exercise any right, power or remedy under the Agreement will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

# Entire Agreement

* 1. The Agreement and the Associated Documents referred to in it together constitute the entire agreement and understanding of the Parties relating to the matters contemplated by the Agreement and those documents, and supersede any previous drafts, agreements, understandings or arrangements between any of the Parties relating to the subject matter of the Agreement and those documents, which shall cease to have any further effect.

# Counterparts

* 1. Where executed in counterparts:
     1. the Agreement shall not take effect until all of the counterparts have been delivered; and
     2. delivery will take place when the date of delivery is agreed between the Parties after execution of the Agreement as evidenced by the date at the top of the Agreement.
  2. Where not executed in counterparts, the Agreement shall take effect after its execution upon the date agreed between the Parties as evidenced by the date at the top of the Agreement.

# Governing Law and Jurisdiction

* 1. The validity, construction and performance of the Agreement and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with the 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.

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

|  |  |  |
| --- | --- | --- |
| *Signed* | ) |  |
|  | ) |  |
|  | ) |  |
| *for and on behalf of* |  |  |
| **[NORTHERN POWERGRID (NORTHEAST) PLC / NORTHERN POWERGRID (YORKSHIRE) PLC]** | ) | *……………………………………*  Director/Duly Authorised Signatory |

|  |  |  |
| --- | --- | --- |
| *Signed* | ) |  |
|  | ) |  |
|  | ) |  |
| *for and on behalf of:* |  |  |
| ***[PROVIDER]*** | ) | *……………………………………*  Director/Duly Authorised Signatory |

**Flexibility Services Service Terms –**

**Company Active Services**

**[●] 2024**

1. **Introduction**

These Service Terms relate to the Company’s procurement of Flexibility Services on its electricity distribution network.

1. **Changes to Service Terms**

All UK DNOs work collectively through the ENAs Open Networks Project to develop a standardised Common Contract for the procurement of Flexibility Services. Any suggestions/feedback regarding the General Terms and its Associated Documents can be directed to the ENA who will ensure it is incorporated into the ongoing Contract development; [opennetworks@energynetworks.org.](mailto:opennetworks@energynetworks.org)

1. **Service Terms Glossary**

These additional terms placed within the Service Terms are applicable to all Associated Documents and shall supersede terms within the General Terms and Conditions and Glossary. The following expressions shall have the meaning set out below:

|  |  |
| --- | --- |
| **“Accepted Availability Window”** | means a Committed Availability Window in respect of a Trade Dispatch Group which is notified by the Company in the form of a Trade Award; |
| **“Accepted MW/MVAR”** | the MW/MVAR accepted in accordance with this Annex; |
| **“****Accepted End Time”** | the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Accepted MW/MVAR is no longer required to be delivered; |
| **“Accepted Start Time”** | the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Accepted MW/MVAR shall be delivered; |
| **“Active Power”** | the product of voltage and the in-phase component of alternating current measured in units of Watts and standard multiples thereof i.e. 1000 Watts = 1kW, 1000 kW = 1MW, 1000 MW = 1GW, 1000 GW = 1TW; |
| **“API”** | means application programme interface; |
| **“Asset Point Metering”** | Asset Point Metering means the metering measured directly from the DER and is downstream of the Boundary Point Metering. |
| **“Availability Payment”** | the fee payable in consideration for the Provider making the DER Available and calculated in accordance with the provisions of Clause 5; |
| **“Availability Performance”** | the overall monthly utilisation delivery performance calculated as a percentage for application to all availability payments at the point of invoicing; |
| **“Boundary Point Metering”** | Boundary Point Metering means the metering measured at the point of supply from the DNO network. |
| **“Contracted Capacity”** | the target net MW/MVAR of Demand Response at a Site(s)/Dispatch Group as per this Agreement |
| **“****Demand”** | the demand (in MW) of Active Power consumed by Plant and/or Apparatus; |
| **“Demand Response”** | means the delivery by the Provider of power injection or demand reduction; |
| **“****Demand Response Active Power Code”** | as defined in the Grid Code; |
| **“****Demand Response Provider”** | as defined in the Grid Code; |
| **“****Discretionary Flexibility Services”** | additional Flexibility Services requested by the Company outside of or in addition to the Service Requirements detailed within the Service Terms; |
| **“Discretionary Service Periods”** | in respect of a DER, periods during the Term that are not Service Periods; |
| **“Dispatch Group”** | means multiple Sites that are aggregated and regarded as a single entity for the purposes of dispatch and settlement; |
| **“****Generation”** | the electrical output (in MW) of a generating unit; |
| **“Grace Factor”** | the percentage of under delivery below 100% for which renumeration of 100% will be applied; |
| **“Market Platform”** | means the system used for running competitions to procure flexibility services. |
| **“Monthly Utilisation Performance Factor”** | the percentage calculated for application to the Availability Payment, for the relevant month, based on the Providers performance where Utilisation Instructions have been issued; |
| **“Output”** | Active Power output (in MW) achieved by Plant and/or Apparatus; |
| **“Performance Report”** | means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions and Discretionary Utilisation Requests in accordance with the Service Terms; |
| **“Platform”** | means the system used for dispatch and settlement (https://www.flexiblepower.co.uk/) or as notified in writing by the Company to the Provider from time to time; |
| **“Power Requirement”** | means the level of power injection or demand reduction required by the Company within a specified Service Window (if applicable) and delivered by the Provider following a Utilisation Instruction; |
| **“Payable Over-delivery”** | the percentage of over delivery beyond 100% for which renumeration will be allowable; |
| **“Performance Multiplier”** | the factor by which any percentage of under delivery below the grace factor will be multiplied by in order to calculate payable delivery; |
| **“Recovery Time”** | the minimum time required between the end of a Flexibility Service delivery window and the commencement of the next Flexibility Service delivery window, as defined in the Service Terms; |
| **“Requested End Time”** | the date and time (to the nearest minute) as notified in accordance with this Annex at which the Requested MW is no longer required to be delivered; |
| **“****Requested MW”** | the MW requested by the Company in accordance with the Service Terms; |
| **“Requested Start Time”** | the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Requested MW shall be delivered; |
| **“Response Time”** | means the maximum period of time which is permitted to elapse from the issue of a Utilisation Instruction by the Company to the Provider delivering the Contracted Capacity at the relevant Site(s) / Dispatch Group; |
| **“Service Failure”** | means where one or more of the events described in paragraph 8.5 occurs; |
| **“Service Meter”** | the measuring equipment, as defined by the Company in the Service Terms, that shall be used to determine delivery of the Flexibility Services; |
| **“Service Meter Data”** | the meter data recorded at the Service Meter at the Site(s) listed in the Service Terms; |
| **“****Service Period”** | the period as specified in the “Availability Schedule” section of the first table contained in Annex 3; |
| **“Stop Instruction”** | an instruction from the Company to the Provider, instructing the Provider to cease delivery of the Flexibility Services, as more particularly described in the Service Terms; |
| **“Trade”** | is when the provider has a successful bid outcome. |
| **“Utilisation Payment”** | the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in paragraph 5; |
| **“Utilisation Performance”** | the calculated performance per utilisation event after any factors have been applied; |
| **“Unavailability” (or “Unavailable”)** | the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the Company; |
| **“****Zone”** | 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. **Service Details**
   1. Service Parameters
      1. Details of the Service parameters shall be provided in the notification of Contract Award and examples shall be available within the relevant tools and templates schedule.
   2. Service Windows
      1. Details of the Service Windows shall be provided in the notification of Contract Award and examples shall be available within the relevant tools and templates schedule.
   3. Service Requirements

|  |  |
| --- | --- |
|  | *The flexible facilities making up the DER shall be connected and capable of exporting to or importing from the area of the Network asset(s) subject to the limitation (represented by the* *zone) during intact and under first circuit outage of that* *network asset(s).* |
|  | *Exporting generators and storage assets, greater than 16A per phase shall have a long-**term parallel connection compliant with the requirements of EREC G59 or G99. Flexible or timed connections are permissible, subject to the conditions of the connection. Those less than 16A per phase shall be compliant with the requirements of EREC G83 or G98.* |
|  | *The DER shall be able to deliver on instruction a reduction or increase in import or export, from or onto the Network.* |
|  | *The flexible MW is the volume of additional consumption or* *generation that can be adjusted flexibly relative to a defined baseline level. It shall be from one or more facilities making up the DER, can be delivered reliably and in full, is fixed for the duration of the* *service period, and must be within the conditions of each* *Facility’s Connection Agreement.* |
|  | *The DER shall have a single set of capability parameters, and shall be a single point of communication and control.* |
|  | *The DER can run for other purposes during the Service Window, subject to it maintaining its ability to meet any* *Flexibility Services requirements as stipulated in this Agreement. It is the responsibility of the Provider to ensure that they can deliver the contracted Flexibility Services on instruction.* |

1. **Invoicing & Charges**
   1. All invoices shall reference the statement number and be sent to the Nominated Person as identified in Part 1 of this Agreement.

##### For Flexibility Services performed by the Provider during a calendar month, the Platform will automatically generate an invoice on or around a date between the first day and the sixteenth day of the calendar month that immediately follows the month to which the invoice relates.  The Provider must send each such invoice directly to [Accounts.Payable@NorthernPowergrid.com](mailto:Accounts.Payable@NorthernPowergrid.com) or any other email address that the Company may notify the Provider in writing, and copy to the Relevant Company Performance Manager identified in clause 7 below, or such other person as the Company may nominate in writing from time to time. The Provider must send the invoice in pdf format.

**Platform failure invoicing**

In the event that the Platform is not available or otherwise fails to generate an invoice when required, the Company shall manually calculate the Charges for the relevant calendar month and send the calculations to the Provider as soon as reasonably practicable. The Provider must review the Charges and promptly send an invoice to the Company, to the contact details and in the format referred to above, that matches and corresponds with the Charges calculated by the Company.

The Provider shall not dispute any Charges calculated by the Company unless the Provider, acting reasonably and in good faith at all times, is of the opinion that such calculations contain manifest errors, in which case the Provider shall promptly notify the Company in writing, clearly identifying the manifest errors. Where the Company, acting reasonably, agrees that there are manifest errors in the calculations, the Company shall correct such manifest errors, but make no other changes to the Charges that have been calculated, and send the revised Charges to the Provider. The Provider shall accept such revised Charges and promptly send an invoice to the Company, to the contact details and in the format referred to above, that matches and corresponds with the revised Charges calculated by the Company.

**Valid invoices**

All invoices shall include the purchase order number and the statement period. The statement period should be equal to one calendar month.

The Company will validate the invoice, and the Company shall pay all valid invoices in accordance with the Payment Terms at Paragraph 5.4 below.

* 1. Charges

##### Details of the Charges will be set out in the notification of Contract Award.

* 1. Calculation of Charges
     1. There are two types of Charges: Utilisation Payments and Availability Payments. The application of the payment type depends on the Flexibility Services being provided.
     2. Utilisation Payments are made when a Utilisation Instruction is issued by the Company. Utilisation Payments are considered in terms of:
        1. for every metered time period, energy (MWh) delivered supplied by the Provider and multiplied by the Utilisation Fee (£/MWh); or,
        2. the capacity (MW) delivered multiplied by the Utilisation Fee (£/MW) over a period- of-time.
     3. Where the Provider has not fully met the volume of the Utilisation Instruction, a Performance Multiplier is applied to determine how much delivery is eligible for payment.
     4. The Company shall calculate Utilisation Performance for each of the flexibility products it procures with the following factors:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Peak Reduction**  **(PR)** | **Scheduled Utilisation**  **(SU)** | **Scheduled Availability, Operational Utilisation**  **(SAOU)** | **Variable Availability, Operational Utilisation**  **(VAOU)** | **Operational Utilisation**  **(OU)** |
| Utilisation Grace Factor | 5% | 5% | 5% | 5% | 5% |
| Availability Grace Factor | N/A | N/A | 5% | 5% | N/A |
| Performance Multiplier | 3 | 3 | 3 | 3 | 2 |
| Payable Over-delivery | 0 | 0 | 0 | 0 | 0 |

* + 1. The Company reserves the right to amend the Grace Factors outlined in 5.3.4 and may make changes to Grace Factors ahead of Trade Opportunities becoming available.

#### Availability Payments

* + 1. Where the relevant Flexibility Services are Available, payments are paid for every Accepted Availability Window in respect of the contracted DER. Availability Payments are subject to a Monthly Utilisation Performance Factor.
    2. Availability is determined by:
       1. for every metered time period, the Agreed Availability Capacity (MW) multiplied by the Availability Fee.
    3. Where a Service Provider declares Unavailability, or was not Available at the time of delivery, then no Availability Payment will be made for that metered time period.
    4. Availability Performance is calculated monthly and Availability Payments are recovered should the delivered capacity be lower than the agreed delivery capacity. To determine the recovery the Provider’s calculated Monthly Utilisation Performance Factor is applied to the Availability Payment.
    5. Detailed payment calculations are published by the ENA and available to view here: [open-networks-standardised-dno-settlement-methodology-(3).pdf (energynetworks.org)](https://www.energynetworks.org/assets/images/open-networks-standardised-dno-settlement-methodology-(3).pdf?1724742321)
  1. Payment Terms
     1. In consideration of the provision by the Provider of the Flexibility Services in accordance with the terms of this Agreement, the Company shall pay to the Provider the Charges.
     2. All invoices shall be paid within thirty (30) Days of the date of invoice (the "Due Date for Payment").
     3. If the Company intends to pay less than the sum stated as due in the self-billing invoice it shall, not later than five (5) Business Days before the Due Date for Payment, give the Provider notice of that intention by issuing a notice which shall specify both the sum that it considers to be due to the Provider at the date the notice is given, or the sum which it considers is due from the Provider to the Company, and the basis on which that sum is calculated.
     4. Unless otherwise agreed in writing between the Parties, 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).
     5. All sums payable under this Agreement shall be exclusive of VAT.
     6. If the Company fails to pay to the Provider any undisputed Charges payable by it under this Agreement, the Provider may charge interest on the overdue amount from the Due Date for Payment up to the date of actual payment at the rate of two per cent (2%) per annum above the base rate of the Bank of England. Such interest shall accrue from day to day from the due date until actual payment of the overdue amount, whether before or after judgment. The relevant Party shall pay the interest together with the overdue amount. The Parties acknowledge that their liability under this paragraph [5.4.6](#_bookmark71) is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
     7. The Company may, without limiting any other rights or remedies that it may have, deduct, withhold or set off from any amounts owed by the Company to the Provider against any amounts owed by the Provider to the Company (in each case, howsoever occurring).

1. **Sites & DER**
   1. Details of the Provider's DER are to be submitted to the Company through the Market Platform, as further described in Annex 2.
   2. Where a DER forms part of a successful Trade, the Company will confirm such trade within the Trade Award.
   3. Should the Provider wish to change its DER post Trade Award, this can be accommodated through the change of DER process, as further described in Annex 3.
   4. The Company will allow the inclusion of additional sites at any time throughout the Term. Such changes to DER shall take effect no earlier than the following operational period.
   5. The Accepted MW stated in the Trade Award cannot be exceeded.
2. **Communications**
   1. Senior Representatives

Escalations process

|  |  |  |
| --- | --- | --- |
| **Escalation Level** | **Company Representative** | **Service Provider Representative** |
| 1 | Performance Manager - Nicole Butterworth or any successor in the same or similar role |  |
| 2 | Commercial Manager – Liz Sidebotham or any successor in the same or similar role |  |
| 3 | Head of Commercial Flexibility – Duncan Oliphant or any successor in the same or similar role |  |

* 1. Process and systems for communications

Metering data will be communicated to the Platform via an API or other method as agreed and specified by the Company.

The four communication types in the table below (except the Emergency Stop Instruction) will be sent to/from the Platform, via an API or other method as agreed and specified by the Company.

|  |  |  |
| --- | --- | --- |
| **Utilisation Instructions** | **Stop Instructions** | **Unavailability notices** |
| Sent by the Company to the Provider.  The Utilisation Instruction must specify for a DER:   * + the Zone to which the Utilisation Instruction relates;   + the Requested Start Time;   + the Requested End Time; and   + the Requested MW. | Each party can give notice of an emergency Stop Instruction by phone call to the other party. | Sent by the Provider to the Company.  The Unavailability Notice must specify for a DER:   * the DER to which the Unavailability Notice relates; * the Unavailability start time; * the Unavailability end time; and * the MW shortfall   The Provider shall separately provide the Unavailability notification/remedy notification by email to the Relevant Company Performance Manager. |

* 1. Acceptance of instructions

The Provider may accept the Utilisation Instruction by responding (by any method as approved by the Company) to the Utilisation Instruction within [thirty (30) minutes] from the time of the request, setting out:

* the Accepted Start Time, which cannot be earlier than, but must be no later than [thirty (30) minutes] from, the Requested Start Time;
* the Accepted End Time, which can be no later than the Requested End Time but otherwise has to be at least ***[thirty (30) minutes]*** from the Accepted Start Time; and
* the Accepted MW, ***[which shall be at least [0.1MW]] [which shall be at least [20] % of the Requested MW]*** and can be no greater than the Requested MW.

1. **Performance Monitoring**
   1. Metering Standards

For Asset Point Metering, the Provider will ensure compliance with the following metering standards set out within the most recent published relevant Balancing and Settlement Code of Practice Eleven: code of practice for the metering of balancing services assets for settlement purposes:

* the metering ‘accuracy requirements’;
* the ‘asset meter calibration test certification’;
* the ‘limits of error’;
* the ‘sealing’ requirements.

For Boundary Point Metering, the Provider should be compliant with Balancing and Settlement Codes of Practice 1, 2, 3, 4, 5 and 10 as applicable.

If requested by the Company, the Provider shall provide evidence of compliance with the above standards. This may be in the form of certification, photo, or written confirmation.

* 1. Submission of Performance Report

##### Performance reporting is automatically generated by the Platform.

* 1. Testing and monitoring

|  |  |  |
| --- | --- | --- |
| **Processes** | **Standards** | **Timetable of testing** |
| The Company may require that a proving test of the API link be completed one month before the first Service Window. | Not used | If required, the proving test must be demonstrated once before service delivery commences, and as determined by the Company in the event of change to the Platform, or in the case of any API communication issues at either end. |

* 1. Service Meter

Minute-by-minute and half hourly data will be accepted for settlement purposes. Certain products rely on minute-by-minute metering granularity for accurate performance monitoring and settlement. Where an alternative to minute-by-minute granularity is provided the data may be disaggregated. As such, this could result in performance monitoring and calculation inaccuracies.

* 1. Service Failure

Each of the following shall constitute a Service Failure:

* + 1. Reduced Capacity: if a unit providing Flexibility Services fails to deliver Flexibility Services in accordance with Utilisation Instructions at a delivery performance of at least 60% over a period of two months.
    2. Unavailability level: if a unit providing Flexibility Services is Unavailable and has more than 30% of agreed availability of the Service Period in a month;
    3. Unavailability Notification: if the Provider fails to notify the Company that a unit providing Flexibility Services is Unavailable within 24 hours.
  1. Monitoring of DER development projects
     1. Where applicable, details of development milestones and expected date of delivery and any special requirements will be set out in the notification of Contract Award.
  2. Auditing

See paragraph 4 of the General Terms and Conditions

* 1. Additional performance obligations
     1. The Provider shall have and maintain security controls to protect the Company’s networks, systems, software, data and Confidential Information that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems – Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management.
     2. The Provider shall ensure that any email from or on behalf of the Provider to the Company or any of its Affiliates, and/or any email that relates to any Flexibility Services provided under this Agreement:

##### originates from a domain or domains with a published Domain-based Message Authentication, Reporting and Conformance (“DMARC”) policy of “reject” and with a published Sender Policy Framework policy consisting of valid senders and a “fail” directive (-all). If the optional DMARC “pct” directive is used, “pct” must be set to “100”;

##### passes a DMARC authentication check;

##### uses a DomainKeys identified Mail (DKIM) 2048 bit key; and

##### supports Transport Layer Security (TLS).

* + 1. The Provider shall implement and maintain reputable tools and software for the purposes of data validation, including ensuring that any data that is provided directly or indirectly to the Company and/or uploaded onto the Platform are accurate, complete and up to date and in a format that the Platform is able to display in human readable format.
  1. Non-delivery and under-delivery

##### Not used.

1. **Data Protection**
   1. **DEFINITIONS**

In this paragraph 9, the following expressions shall have the meanings set out below:

|  |  |
| --- | --- |
| **Agreed Purposes** | means those purposes set out in the table immediately below paragraph 9.5 |
| **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures** | as set out in Data Protection Law |
| **Data Discloser** | a party that discloses Shared Personal Data to the other party |
| **Permitted Recipients** | the parties to this Agreement, the employees of each party, any third parties engaged to perform obligations in connection with this Agreement |
| **Shared Personal Data** | the personal data to be provided by one party to the other party under this Agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:   1. MPAN numbers relating to DERs; and 2. (if so agreed between the parties) Individual device data |

* + - 1. **Shared Personal Data.** This clause sets out the framework for the provision of Shared Personal Data to one party by the other (referred to in this clause as the **Data Discloser**) as a controller. Each party acknowledges that the Data Discloser may disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
      2. **Effect of non-compliance with Data Protection Law.** Each party shall comply with all the obligations imposed on a controller under the Data Protection Law, and in the event that there is any material breach of Data Protection Law by a party, the provisions of clause 7.3.3 of the General Terms and Conditions shall apply.
      3. **Particular obligations relating to data sharing.** Each party shall:
      4. ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
      5. give full information to any data subject whose personal data may be processed under this Agreement of the nature of such processing. This includes giving notice that, during the course of this Agreement, and any longer period of retention under clause 4.2 of the General Terms and Conditions, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
      6. process the Shared Personal Data only for the Agreed Purposes;
      7. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
      8. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Paragraph 8.10;
      9. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of the Shared Personal Data and against accidental loss or destruction of, or damage to, personal data;
      10. not transfer any Shared Personal Data outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Law as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Law; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Law by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Law applies to the transfer.
          1. **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Law. In particular, each party shall:
      11. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
      12. promptly inform the other party about the receipt of any data subject rights request in relation to the Shared Personal Data;
      13. provide the other party with reasonable assistance in complying with any data subject rights request in relation to the Shared Personal Data;
      14. not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
      15. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators in relation to the Shared Personal Data;
      16. notify the other party without undue delay on becoming aware of any breach of the Data Protection Law in relation to the Shared Personal Data (but in any event in not less than 48 hours after becoming aware of the breach);
      17. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this Agreement unless required by law to store the Shared Personal Data;
      18. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
      19. maintain complete and accurate records and information to demonstrate its compliance with this Paragraph 8.10; and
      20. provide the other party with contact details of its Data Protection Officer.

**Agreed Purposes**

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject Matter of the Processing | Processing of MPANs and, to the extent required and shared, individual device data as required for the delivery of the Flexibility Services under the Agreement |
| Duration of Processing | For the duration of the Agreement |
| Nature and purposes of the processing | The verification of the location of DERs being suitable using their MPANs to locate such DERs. |
| Type of Personal Data | * MPANs * Device data |
| Categories of Data Subject | * DER owners |

1. **Details of Flexibility Provider and Special Conditions**

|  |  |
| --- | --- |
| **Provider name** | [●] |
| **Provider**’**s company number and registered office** |  |
| **Contract number** | [[to be completed by the Company post award]] |
| **Provider**’**s addresses for notices** | [●]  Address: [●] Contact Number: [●]  For the attention of: [●]  Email Address: [●] |
| **Company**’**s addresses for notices** | Northern Powergrid  Lloyds Court  78 Grey Street  Newcastle Upon Tyne  NE1 6AF |
| **Provider**’**s Nominated Person** | [●] |
| **Company**’**s Nominated Person** | Jenny Riley or any successor in the same or similar role of Company Secretary |

#### Cyber Security

Not applicable.

**Annexes to Flexibility Services Service Terms – Company Active Services**

**[●] 2024**

**Definitions**

The additional terms placed within the Service Terms shall also apply to these associated Annexes.

**Annex 1 – Flexibility Management Systems/Technical Requirements**

A1.1 Company Flexibility Management System Details

The Company operates its Flexibility Services requirements through the Platform. The Platform is the operational platform through which Flexibility Services providers are able to declare if their Distributed Energy Resource (DER) is Available or Unavailable and submit associated meter readings. The Company uses the Platform to accept declarations and issue Utilisation Instructions. The Platform is equipped with functionality that calculates:

* Performance against the agreed baseline.
* Payments
* Monthly invoices.

The Provider will be provided with Platform access once it has been awarded a contract for the Flexibility Services.

In the event that the Platform becomes Unavailable, the Company reserves the right to use alternative technology or processes (including manually performing any of the functionality described above).

The Provider acknowledges that, in the event that Demand Response availability declarations from multiple contractors (including the Provider) for the Flexibility Services within a Zone exceed the Company's overall peak Demand Response MW requirements for such Flexibility Service and Zone, then whilst the Company will, subject to paragraph 3 below, use its reasonable endeavours to issue Utilisation Instructions for despatch in accordance with the 'fair despatch principles' (which are available at https://www.flexiblepower.co.uk/downloads/28), there is no guarantee that the Provider will be utilised during a constraint event.

A1.2 Dispatch Principles

##### Detailed Dispatch Principles are published by the ENA and available to view here: [ON19-WS1A-P3 Flexibility Services - Dispatch and Settlement Processes – Energy Networks Association (ENA)](https://www.energynetworks.org/publications/on19-ws1a-p3-flexibility-services-dispatch-and-settlement-processes)

**Annex 2 – Tender/Trade Guidelines**

Not used.

**Annex 3 – Special Requirements**

##### Change of DER process

##### In the event that the Provider wishes to change the DER used to provide the Flexibility Services, the Provider shall notify the Company in writing of this intention and provide any additional information that the Company may reasonably require.

**Forms & Templates to Flexibility Services Service Terms – Company Active Services**

**[●] 2024**

1. **Introduction**

Where a Company adopts Forms and Templates as part of its process to contract for Active Services these shall be detailed here.

1. **Unavailability/Remedy Template**

##### In accordance with paragraph [7.2,](#_bookmark73) this is a notification of Unavailability of Flexibility Services.

|  |  |
| --- | --- |
| *Company Name:* |  |
| *Zone ID:* |  |
| *Flexible Unit:* |  |
| *Unavailable From Date/Time:* |  |
| *Unavailable To Date/Time:* |  |
| *Reason:* |  |
| *Name of individual making notification:* |  |
| *Date of notification:* |  |

1. **Service Parameters**

##### The following tables are an example of how the Service Parameters may be presented in the Contract Award Notification. The tables below are included for illustrative purposes only.

**Table 1**

|  |  |  |
| --- | --- | --- |
| **Contract Details** | **Piclo Contract ID** |  |
| **Obligation ID** |  |
| **Bid ID** |  |
| **Buying contracting party** |  |
| **Selling contracting party** |  |
| **Seller ID** |  |
| **Contract Type** |  |
| **Product Type** |  |
| **Zone** |  |
| **Contract Status** |  |
| **Availability Schedule** | **Competition ID** |  |
| **Competition Name** |  |
| **Competition Reference** |  |
| **Service Period Name** |  |
| **Window Name** |  |
| **Service Period Start** |  |
| **Service Period End** |  |
| **Service Days** |  |
| **Public Holiday Handling** |  |
| **Window Start Time** |  |
| **Window End Time** |  |
| **Flexibility Contracted** | **Contract Capacity (MW)** |  |
| **Capacity Type** |  |
| **Maximum Runtime** |  |
| **Charges** | **Utilisation Fee (£/MWh)** |  |
| **Availability Fee (£/MWh) including discounts for failure to respond)** |  |
| **Values/Prices** |  |
| **Discretionary Utilisation Fee (£/MWh)** |  |
| **Time period applied for metering and settlement** |  |

**Table 2**

|  |  |  |
| --- | --- | --- |
| **Contract Details** | **Buying contracting party** |  |
| **Seller contracting party** |  |
| **Piclo Contract ID** |  |
| **Basic Asset Details** | **Asset ID** |  |
| **Asset Ref** |  |
| **Asset Name** |  |
| **Asset Status** |  |
| **Asset Category** |  |
| **Asset Type** |  |
| **Voltage Level** |  |
| **Postcode** |  |
| **Country Code** |  |
| **Flexibility Details** | **Active Export Capacity (MW)** |  |
| **Active Import Capacity (MW)** |  |
| **Reactive Export Capacity (MVar)** |  |
| **Reactive Import Capacity (MVar)** |  |
| **Connection Details** | **Connection Status** |  |
| **Operational Date** |  |
| **Connection Type** |  |
| **Connection Current** |  |
| **EREC Compliance** |  |
| **Max Import Capacity (MVa)** |  |
| **Max Export Capacity (MVa)** |  |
| **Meter Details** | **Metering Point** |  |
| **Meter Interval** |  |
| **Export Meter ID** |  |
| **Import Meter ID** |  |
| **Supplier** |  |
| **Technical Details** | **Response Time** |  |
| **Maximum Runtime** |  |
| **Minimum Runtime** |  |
| **Recovery Time** |  |
| **Location Details** | **Address** |  |
| **Latitude** |  |
| **Longitude** |  |
| **Maintenance and access** | **Planned maintenance periods** |  |
| **Notice period required for access** |  |
| **Contact details for site** | **Name** |  |
| **Email address** |  |
| **Telephone number(s)** |  |