

# Flexibility Services Standard Agreement

## Glossary and Interpretation

### 1. Introduction

- (a) This Glossary of General Terms 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 of General Terms and Rules of Interpretation (in this document, an “Associated Document”).
- (b) Any capitalised term used in this Glossary of General Terms and Rules of Interpretation shall have the meaning given to it (if any) in Part 3 below.
- (c) The Company may update this Glossary of General Terms and Rules of Interpretation from time to time by publication of an updated version on its website, and each such updated version shall be effective from the date shown on its front cover provided always that any updated version shall not apply to any flexibility services contract extant at the date of publication except with the consent in writing or acquired via any approved electronic processes described in the Service Terms, of the relevant Provider.

### 2. Rules of Interpretation

2.1 Unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to a gender includes the other gender and the neuter;
- (iii) 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;
- (iv) 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
- (v) 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.

2.2 A table of contents and headings are for convenience only and shall be ignored in construing the terms of the Contract.

- 2.3 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.
- 2.4 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.
- 2.5 all references in an Associated Document to a particular paragraph or Annex shall be a reference to that paragraph or Annex in or to that Associated Document.

### 3. Definitions and Interpretation

- 3.1 In this Agreement and the recitals, unless the context otherwise requires or superseded by additional terms placed within the schedules, the following expressions shall have the meanings set out below:

“Affiliate”	means any holding company or subsidiary company of a Party, or any company which is a subsidiary of such holding company and “holding company” and “subsidiary” have the meanings given in section 1159 of the Companies Act 2006;
“Annexes”	the annexes appended to the General Terms and Conditions;
“Applicable Law”	means any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body;
“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 of General Terms and Rules of Interpretation, which includes but is not limited to the Service Terms, Annexes, Forms and Templates and Signature Documents.
“Available or Availability”	means that the Flexibility Services, in accordance with the Service Requirements and the Utilisation Instruction, are available to be delivered to the Company for the duration of the Service Window;
“Availability Fee”	means the fee payable in consideration for the Provider making available the DER and calculated in accordance with the provisions of the Service Terms;
“Availability Status”	means Available or Unavailable;
“Authority”	means the Gas and Electricity Markets Authority;
“Business Hours”	means between 9:00 am and 5:00 pm on a Business Day;
“Business Day”	means any day other than a Saturday or a Sunday or a bank holiday in England and Wales;

<p><b>“Change in Ownership”</b></p>	<p>means: a) any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty per cent (50%) or more of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or b) any other arrangements that have or may have or which result in the same effect as sub-clause a) above.</p>
<p><b>“Charges”</b></p>	<p>means the charges set out in the Service Terms;</p>
<p><b>“Commencement Date”</b></p>	<p>means the date set out in Clause 3 of the General Terms and Conditions;</p>
<p>the <b>“Company”</b></p>	<p>means the Licensee responsible for awarding this Contract;</p>
<p><b>“Confidential Information”</b></p>	<p>means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;</p>
<p><b>“Connection Agreement”</b></p>	<p>means any agreement governing the terms of connection of any plant or apparatus to, and/or any agreement for the supply of electricity to the plant or apparatus or for the acceptance of electricity into, and its delivery from, the Company’s electricity distribution Network;</p>
<p><b>“Contract”</b></p>	<p>the General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes, and if relevant the Forms and Templates and the Signatures documents. References to ‘Agreement’ shall be interpreted as the same;</p>
<p><b>“Contract Award”</b></p>	<p>the letter issued by the Company to the Flexibility Provider to confirm the successful award of a Contract;</p>
<p><b>“Data Protection Law”</b></p>	<p>means any applicable law relating to the processing, privacy, and use of personal data, as applicable to the Company, the Provider and/or the Flexibility Services, including in the UK: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any current laws or regulations implementing Council Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679 (“GDPR”), and/or any corresponding or equivalent national laws or regulations, once in force and applicable, including the Data Protection Act 2018, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of</p>

	practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;
<b>“Defect”</b>	means an issue that may arise with the DER equipment, metering or the communication interface between the Company and Provider which results in an apparent non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services.’
<b>“Disclosing Party”</b>	means the Party disclosing Confidential Information to the Receiving Party;
<b>“Dispatch Equipment”</b>	means any equipment (including any routers, computers, input / output notes and cables and software) owned by the Company and provided in respect of the provision of the Flexibility Services under this Agreement;
<b>“Distributed Energy Resources” or “DER”</b>	means the electricity generators, electricity storage or electrical loads, and other Site equipment, machinery, apparatus, materials and other items used for the provision of the Flexibility Services as described or referenced within the Service Terms;
<b>“Distribution Code”</b>	means the Distribution Code of Licenced Distribution Network Operators of Great Britain;
<b>“Distribution Licence”</b>	means a licence issued under section 6(c) of the Electricity Act 1989;
<b>“Distribution Licensee”</b>	means a holder of Distribution Licence within the same Group of companies as the Company;
<b>“Due Date for Payment”</b>	has the meaning given to it in the Service Terms;
<b>“Electricity Regulations”</b>	means the Electricity Act 1989, the Utilities Act 2000, the Energy Acts 2008 – 2016, the National Terms of Connection and any other licences, codes or industry agreements related to such legislation;
<b>“Expiry Date”</b>	means the date this Contract expires, as defined in the Contract and as can be extended pursuant to Clause 3 of the General Terms and Conditions;
<b>“Flexibility Provider”</b>	means the provider of Flexibility Services who is counterparty to the Contract;
<b>“Flexibility Services”</b>	means, and more particularly described in the Service Terms, the services to be provided by the Flexibility Provider to the Company under and in accordance with this Contract which give the Company the ability to manage the load at a specific point of the Network at certain points in time;

<p><b>“Force Majeure”</b></p>	<p>means any event or circumstance which is beyond either the Company’s or the Flexibility 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 Contract, provided that: (a) lack of funds; or (b) any failure or fault in the DER, including insufficient fuel, shall not constitute Force Majeure;</p>
<p><b>“Forms and Templates”</b></p>	<p>Where applicable, the relevant forms and templates associated with the onboarding, procurement and Contract Award for a Flexibility Service;</p>
<p><b>“General Terms and Conditions”</b></p>	<p>the general terms and conditions applicable to the provision of Flexibility Services to be provided under the Contract;</p>
<p><b>“Glossary”</b></p>	<p>this glossary of terms and interpretation, as applicable to the Contract;</p>
<p><b>“Good Industry Practice”</b></p>	<p>means the exercise of the degree of care, skill and diligence, which would reasonably be expected from an experienced and competent person carrying out services of a similar nature, scope and complexity as the Flexibility Services;</p>
<p><b>“Grid Code”</b></p>	<p>means the technical code for connection and development of the National Electricity Transmission System (available at <a href="http://www.nationalgrid.com/uk/electricity/codes/grid-code?code-documents">www.nationalgrid.com/uk/electricity/codes/grid-code?code-documents</a>);</p>
<p><b>“Group”</b></p>	<p>means in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company. For the purposes of this definition the terms “holding company” and “subsidiary” shall have the meanings assigned to them by section 1159 of the Companies Act 2006;</p>
<p><b>“Intellectual Property Rights”</b></p>	<p>means patents, rights in or to inventions, copyright and related rights, trademarks, service marks, business names, rights in get-up goodwill and the right to sue for passing off, rights in designs, rights in domain names and website addresses, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;</p>
<p><b>“Insolvency Event”</b></p>	<p>means a Party becoming insolvent or entering into liquidation or receivership or being the subject of an application for an administration order or suffering an administrative receiver or similar officer to be appointed in relation to the whole or any part of its assets or convening a meeting to make a composition or voluntary arrangement with its creditors or suffering any material judgement to be executed in relation to any of its property or assets or if an encumbrancer takes possession of or sells any Party’s</p>

	assets or if an application is made to a court of competent jurisdiction by a Party for protection from its creditors generally or if any other steps are taken for the winding up of that Party (otherwise than for the purpose of an amalgamation or reconstruction) including the passing of a resolution for the Party's winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of that Party;
<b>"Loss"</b>	means any direct and/or indirect loss, damage, cost or expense;
<b>"Material Adverse Effect"</b>	means any event or circumstance which, in the opinion of the Company: a) 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 b) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company.
<b>"MPAN"</b>	means a meter point administration number;
<b>"MSA Offence"</b>	has the meaning given to it in Clause 20.1.1o);
<b>"MSID"</b>	means a metering system identifier;
<b>"Network"</b>	means the electricity network operated by the Company to which the DER is connected;
<b>"Nominated Person"</b>	means the persons appointed by the Provider and the Company to be responsible for ensuring the performance of this Contract;
<b>"Non-Operational Notice"</b>	means a formal notice as described in Clause 21;
<b>The "Parties"</b>	means the Party or Parties, the Company and the Flexibility Provider, subject to the agreement of the General Terms and Conditions and the Associated Documents;
<b>"Performance Report"</b>	means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions in accordance with the Service Terms;
<b>"Power Requirement"</b>	means the level of power injection or demand reduction required by the company within a specified service window and delivered by the provider following a utilisation instruction;
<b>"Proving Test"</b>	means the tests, more particularly described in the Service Terms, undertaken in accordance with Clause 6.4;
<b>"Receiving Party"</b>	means the Party receiving Confidential Information from the Disclosing Party;

<b>“Recovery Time”</b>	means the minimum time required between the end of a Flexibility Service delivery and the commencement of the next Flexibility Service delivery, as defined in the Service Terms;
<b>“Requested End Time”</b>	means the date and time (to the nearest minute) as notified in accordance with Clause 4 and/or the Service Terms at which the Requested MW is no longer required to be delivered;
<b>“Requested MW”</b>	means the MW requested in accordance with Clause 4 and/or the Service Terms;
<b>“Requested Start Time”</b>	means the date and time (to the nearest minute) as notified in accordance with Clause 4 and/or the Service Terms at which the Requested MW shall be delivered;
<b>“Service Failure”</b>	meaning is defined in the Service Terms;
<b>“Service Meter”</b>	means the measuring equipment, as defined by the Company in the Service Terms, that shall be used to determine delivery of the Service;
<b>“Service Meter Data”</b>	means the meter data recorded at the Service Meter at the Site(s) referenced in the Service Terms;
<b>“Service Period”</b>	means the period as specified in the Service Terms;
<b>“Service Requirements”</b>	means the specification that the Flexibility Services must be capable of meeting, as defined in the Service Terms;
<b>“Service Window”</b>	means the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with this Agreement, the Flexibility Services to the Company, as defined in the Service Terms;
<b>“Sites”</b>	means the Provider’s sites which are detailed or referenced within the Service Terms;
<b>“Statutory Requirements”</b>	means the requirements placed on the Company and/or the Provider or affecting or governing the provision and/or use of the Flexibility Services by Applicable Law and/or the Distribution Licence and/or a Regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters;
<b>“Stop Instruction”</b>	means 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;
<b>“Term”</b>	means the duration of this Contract;

<b>“Testing and Commissioning Test”</b>	means the tests, more particularly described in Annex 1, undertaken to determine whether the Flexibility Services can be delivered in accordance with the Service Requirements and an Instruction;
<b>“Transmission Licensee”</b>	means a holder of a licence issued under section 6(b) of the Electricity Act 1989;
<b>“Unavailable”</b>	means that the Flexibility Services, in accordance with the Service Requirements, are not available to be delivered to the Company;
<b>“Utilisation Fee”</b>	means the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in the Service Terms;
<b>“Utilisation Instructions”</b>	means an instruction by the Company to the Provider to deliver Flexibility Services in accordance with the Service Terms;
<b>“VAT”</b>	value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature;
<b>“Zone”</b>	means the feeding area of the DERs being managed or where the Flexibility Services will be provided and to which the Flexibility Services will be delivered.



# Flexibility Services General Terms and Conditions

## Jan 2023

### TABLE OF CONTENTS

1.	Introduction .....	1
2.	Rules of Interpretation .....	1
3.	Definitions and Interpretation.....	2
1.	Introduction .....	11
2.	Changes to these General Terms and Conditions .....	11
3.	Duration and Term .....	11
2.	Scope of Flexibility Services .....	12
3.	Variation.....	12
4.	Monitoring and Equipment .....	12
5.	Records and Audit .....	13
6.	Provider’s Obligations .....	13
7.	Representations and Warranties.....	14
8.	Charges and Payment .....	16
9.	Termination .....	16
10.	Service Failure and Material Breach.....	18
11.	Force Majeure.....	18

12.	Indemnity, Liability & Insurance.....	19
13.	[Assignment, <i>NOTE: IF ENGLISH</i> ] [ASSIGNATION, <i>NOTE: IF SCOTTISH</i> ] Sub-Contracting and Change in Ownership.....	19
14.	Confidentiality, Information Disclosure and Publicity.....	20
15.	Intellectual Property Rights.....	20
16.	Company Property.....	20
17.	Data Protection.....	21
18.	Modern Slavery, Anti-Bribery.....	21
19.	Notices.....	22
20.	Dispute Resolution.....	22
21.	Severance.....	23
22.	Third Party Rights.....	23
23.	No Agency or Partnership.....	23
24.	Waiver.....	23
25.	Entire Agreement.....	24
26.	Counterparts.....	24
27.	Governing Law and Jurisdiction.....	24

## 1. Introduction

- 1.1 These General Terms and Conditions shall apply to the provision of Flexibility Services by the Provider to the Company.
- 1.2 References to the “Contract” 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 and the Signature Document.
- 1.3 If there is any conflict between the provisions of any of the documents comprising the Contract, then the following order of priority between the documents shall apply:
  1. Associated Documents
  2. General Terms and Conditions and Glossary;

## 2. Changes to these General Terms and Conditions

The Company may update any of the General Terms and Conditions, Service Terms, Annexes and 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 (or by approved electronic means as permitted within the Service Terms) , any updated version shall not apply to any Contract already in force at the time of publication.

## 3. Duration and Term

- 1.1 This Contract shall commence on the Commencement Date advised by the company within the Contract Award letter issued following the Flexibility Providers acceptance of these General Terms and Conditions and Associated Documents.
- 1.2 The Company may give the Provider reasonable notice in writing or via electronic means that the General Terms and Conditions and/or Associated Documents have been updated. Should the Flexibility Provider fail to accept any such updates within the prescribed deadline, the Contract will terminate.
- 1.3 Subject to earlier termination in accordance with Clause 11, this Contract shall endure provided that the conditions of clause 1.2 are met.

## 4. Scope of Flexibility Services

- 4.1 The Provider shall make its DER Available for provision of the Flexibility Services in accordance with the Service Terms and shall provide notice of any Unavailability in accordance with the Service Terms.
- 4.2 The Company may request from the Provider, subject to the Provider's Availability Status, the provision of the Flexibility Services for Service Periods by issuing a Utilisation Instruction in accordance with Clause 4.4.
- 4.3 This Contract is not a guarantee of Utilisation Instructions and does not constitute a contract for the exclusive provision of Flexibility Services. The Company reserves the right to contract with other providers for the type of services covered by this Contract.
- 4.4 The provisions of the Service Terms shall apply in respect of all communications between the Company and the Provider in respect of the Flexibility Services.
- 4.5 Where, and to the extent that a Provider is Available, the Company may request Flexibility Services from the Provider by sending a Utilisation Instruction in accordance with the Service Terms.
- 4.6 The Company may:
  - 4.6.1 withdraw any Utilisation Instruction by providing notice to the Provider at any time before the Provider has provided a response under and in accordance with Clause 4.7; and/or
  - 4.6.2 issue a Stop Instruction to the Provider in accordance with the Service Terms.
- 4.7 The Provider must respond to the instruction in accordance with the provisions set out in the Service Terms.
- 4.8 Where the Provider receives a Utilisation Instruction and subject to receipt of any Stop Instruction or has issued an Unavailability Notice, the Provider shall provide the Flexibility Services to the Company using the DER in accordance with the terms in the Service Terms.
- 4.9 In performing the Flexibility Services pursuant to this Agreement, the Provider must comply with the technical requirements set out in Annex 1.

## 5. Variation

- 5.1 Unless otherwise provided in the Service Terms, no variation of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 5.2 The Flexibility Provider may, with prior approval of the Company (in its sole discretion), change the DER providing the service(s) by providing a minimum of thirty (30) days notice and/or any notice arrangement described in the Service Terms of the change and specifying that the new DER meets the technical, functional and non-functional requirements of the specified service.

## 6. Monitoring and Equipment

- 6.1 Subject to the Service Terms, the Company shall be entitled to, at its sole discretion, monitor, meter and determine the Provider's provision of the Flexibility Services using such data collection and

systems as the Company deems appropriate and which may, without limitation, utilise minute by minute metering data analysis techniques for each active DER.

- 6.2 The Company reserves the right to collect any meter data that it reasonably requires for the purpose of this Contract from a third party, including but not limited to an electricity supplier, and the Provider undertakes to secure all necessary consents on behalf of the owner or user of the DER, and to perform any action that the Company considers reasonably necessary to facilitate such collection and use of meter data.
- 6.3 The Company shall assess the availability of Flexibility Services and the amount of Flexibility Services delivered by the Provider and may complete this by reference to a Performance Report. The detail and expected timing of these reports is specified in the Service Terms.
- 6.4 Should the Company identify a failure affecting the communications with the Providers Dispatch or Data Provision Equipment the Company may notify the Provider and that it requires a Proving Test in accordance with the requirements set out in Annex 1.
- 6.5 If applicable and unless otherwise agreed, on expiry or termination of this Contract each Party shall remove and return to the other Party any equipment at its Site(s) provided by the other Party for the purpose of the Contract within an acceptable timeframe as agreed by both Parties.

## **7. Records and Audit**

- 7.1 The Provider shall keep or cause to be kept proper and accurate records of all matters relating to the performance of its obligations under this Agreement. The records shall be maintained in a form suitable for audit purposes, shall be kept separate from any other records of the Provider and shall be retained for the period required by any applicable statutory provision and in any event during the Term of this Contract and for a period of not less than seven (7) years thereafter.
- 7.2 The Company or a reputable independent third-party auditor nominated by it may, on reasonable notice to the Provider and during normal working hours, inspect and review the records for the purposes of verifying the Provider's compliance with its obligations under this Contract and/or to meet any other audit or information requirement that may be required by applicable law and/or any regulatory body or the Authority.
- 7.3 The Provider shall co-operate fully and promptly with any such audit and/or inspection conducted by the Company and whatever reasonable assistance may be required by the Company in relation to any audit.
- 7.4 The Provider shall take or procure to be taken such steps as may be necessary to ensure that all paperwork issued by or on behalf of the Flexibility Provider to the Company (including, without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references the relevant purchase order date and number and/or contract number.

## **8. Flexibility Provider's Obligations**

- 8.1 The Flexibility Provider shall:

- 8.1.1 Ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with this Contract and all Applicable Laws, Statutory Requirements and Good Industry Practice;
- 8.1.2 ensure that all technical, communication and data provision requirements set out in Annex 1 are complied with at all times;
- 8.1.3 provide the Flexibility Services in accordance with all UK health, safety and environment legislation and approved codes of practice;
- 8.1.4 remedy any Defect of the Flexibility Services with Good Industry Practice and to the satisfaction of the Company;
- 8.1.5 act diligently and in good faith in all of its dealings with the Company;
- 8.1.6 ensure that it is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;
- 8.1.7 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under this Contract that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under this Contract;
- 8.1.8 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER.
- 8.1.9 permit and grant (or secure) rights of access to and over and egress from the Site to the Company and/or its agents or sub-contractors (upon reasonable notice and within normal working hours) as the Company may reasonably require in order to inspect and test the DER, or to install, maintain, replace or remove communication equipment belonging to the Company in relation to the provision of flexibility services.

## 9. Representations and Warranties

- 9.1 Without prejudice to its other obligations under and/or pursuant to this Contract, each Party warrants and undertakes to the other Party at all times that:
  - 9.1.1 it is a duly incorporated company validly existing under the law of its jurisdiction of incorporation;
  - 9.1.2 it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement;
  - 9.1.3 the entry into and performance by it of this Contract does not and will not contravene or conflict with any law or regulation or judicial or official order applicable to it;
  - 9.1.4 it will not be in material breach of any other agreement or arrangement of whatever nature with any person which could or may affect the performance of its obligations under this Contract;
  - 9.1.5 all information it provides to the other Party will be complete and accurate;
  - 9.1.6 no Insolvency Event is continuing or might reasonably be anticipated; and

9.1.7 no litigation, arbitration or administrative proceedings are taking place, pending, or to the Party's knowledge threatened against it, any of its directors or any of its assets, which, if adversely determined might reasonably be expected to have a Material Adverse Effect.

9.2 Without prejudice to its other obligations under and/or pursuant to this Contract and in addition to the foregoing, the Provider warrants and undertakes to the Company at all times that:

9.2.1 the DER contracted to provide flexibility services has either live connection(s) to the Company's electricity Network and associated MPAN or MSID and Connection Agreement(s), or a connection offer(s) pursuant to live connection and that the connection(s) can be completed in time to meet the Service Requirements as specified in the Service Terms;

9.2.2 it has obtained and maintains in force for the Term, either directly or through agreement with its aggregated DER sites, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services in accordance with the terms of this Contract under those enactments, codes, agreements and arrangements referenced in Clause 9.2.10;

9.2.3 it has neither fixed nor adjusted any Charge under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of any Charge (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for Flexibility Services with the Company;

9.2.4 it shall disclose any change of circumstances which could affect the delivery of the Flexibility Services;

9.2.5 in respect of DER projects in development, the Provider has in place a defined schedule of design, build and commissioning which shall promptly be made available to the Company on request for its review of the same;

9.2.6 it shall take all reasonable steps to achieve commissioning of the DER project on time and in accordance with the construction schedule;

9.2.7 if, at any time during the Term, the provision of Flexibility Services would cause the Provider to be in breach or non-compliance as described in Clauses 9.1.3 or 9.2.10, the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by the Service Terms;

9.2.8 where relevant, it is and remains responsible for health and safety compliance at the Sites providing the flexibility services and shall use best endeavours to ensure that all activities relevant to this contract comply with all UK health, safety and environment legislation and approved codes of practice;

9.2.9 insofar as any Site is occupied by an Affiliate of the Provider or any other third party from time to time, the Provider shall be responsible for ensuring that where any provision in this Contract imposes an obligation on the Provider to do or refrain from doing a particular thing in relation to a Site or any DER at such Site, the relevant Affiliate or third party complies with that obligation as if it were the named "Provider" party to this Contract.

9.2.10 the provision of Flexibility Services will not cause it or the contracted DER to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) (available from the Company on request) or of any other enactment relating to safety

or standards, the Grid Code, Distribution Code, any Connection Agreement, any agreement for the supply of electricity, any restrictions and conditions attaching to relevant authorisations of the Environment Agency, or any other agreement or arrangement of whatever nature with any other person.

- 9.3 Without prejudice to any right or remedy, each Party will be entitled to claim damages from the other Party for any breach of warranty set out herein.

## 10. Charges and Payment

- 10.1 All Charges and other sums payable under the Contract shall be paid in accordance with the Service Terms.

## 11. Termination

- 11.1 Each of the Parties shall have the right, if it is not the Party in breach or in relation to which any of the events concerned occurs, to immediately terminate this Agreement on giving written notice of termination to the other if at any time during the Term of this Agreement:
- 11.1.1 a Party is in material and/or persistent breach of this Agreement;
- 11.1.2 in relation to the Party to which the notice is addressed:
- a) a notice is issued to convene a meeting for the purpose of passing a resolution, or any written resolution is circulated, to wind it up, or such a resolution is passed other than a resolution for its solvent reconstruction or reorganisation;
  - b) a resolution is passed by its directors to seek a winding up, or a petition for a winding up order is presented against it, or such an order is made;
  - c) a receiver, administrative receiver, receiver and manager, interim receiver, custodian, sequestrator, administrator or similar officer is appointed in respect of that Party or over a substantial part of its assets, or any steps are taken to appoint such an officer in respect of that Party, or an encumbrancer takes steps to enforce or enforces its security, or any distress, attachment, sequestration or execution or other similar process affects any of its assets and is not discharged within fourteen (14) days;
  - d) a proposal for a voluntary arrangement is made in relation to it under Part I of the Insolvency Act 1986;
  - e) it takes any step (including starting negotiations) with a view to readjusting, rescheduling or deferring any part of its indebtedness, or it proposes or makes any general [assignment, **Note: if English**] [assignment, **Note: if Scottish**] composition or arrangement with or for the benefit of all or some of its creditors (other than for the sole purpose of a solvent amalgamation or solvent reconstruction), or it makes or suspends or threatens to suspend making payments to all or some of its creditors or it submits to any type of voluntary arrangement;



- f) it is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - g) any step or event is taken or arises outside the United Kingdom which is similar or analogous to any of the steps or events listed at 1.3a) to 1.3f) above;
  - h) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - i) any of the events in 1.3b) to 1.3j) above occurs in relation to any of its Affiliates; and
  - j) Clause 15.4 of this Agreement applies.
- 11.2 Either Party may terminate this Agreement at any time by providing ninety (90) days written notice to the other Party.

***Accrued liabilities***

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

***Surviving provisions***

- 11.4 This Clause and the following provisions of this Agreement shall survive termination or expiry, without limit of time:
- 11.4.1 Clause 3 (*Definitions and interpretation*);
  - 11.4.2 Clause 7 (Records and Audit);
  - 11.4.3 Clause 10 (Charges and Payment);
  - 11.4.4 Clause 11 (*Consequences of Termination or Expiry*);
  - 11.4.5 Clause 12 (*Service Failure and Material Breach*);
  - 11.4.6 Clause 14 (Indemnity, Liability & Insurance);
  - 11.4.7 Clause 16 (Confidentiality, Information Disclosure & Publicity);
  - 11.4.8 Clause 17 (Intellectual Property Rights);
  - 11.4.9 Clause 19 (Data Protection);
  - 11.4.10 Clause 22 (Dispute Resolution);
  - 11.4.11 Clause 26 (*Waiver*); and
  - 11.4.12 Clause 29 (Governing Law and Jurisdiction).

***Consequences of termination or expiry***

- 11.5 Where requested by the other Party, on termination or expiry of this Agreement each Party shall delete or return Confidential Information provided by the other Party for the purpose of the Agreement.
- 11.6 Following termination or expiry of this Agreement, the Provider shall promptly at the Provider's cost:
- 11.6.1 deliver to the Company for approval a final invoice detailing all monies due to it under the Agreement;
  - 11.6.2 submit to the Company within thirty (30) Business Days all invoices with supporting documents for payment of all outstanding sums in connection with the provision of the Flexibility Services.

## 12. Service Failure and Material Breach

- 12.1 Notwithstanding its obligations under Clause 12.2, the Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability (howsoever caused) of the Provider to provide the Flexibility Services in all or any part of any contracted Service Window.
- 12.2 In the event of a Service Failure by the Provider, the Company may require the Provider to:
- k) provide the Company with a written explanation as to the cause of the failure of service delivery;
  - l) 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;
  - m) propose a variation to the Service Requirements as specified in the Service Terms; or
  - n) take any other action that may be agreed with the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).
- 12.3 If the Provider fails to comply with the terms of Clause 12.2, the Provider's proposals are not accepted by the Company, the Parties fail to reach agreement on actions or the Provider's performance in respect of the Service Failure notified by the Company does not significantly improve within thirty (30) days of the date of the notice, such failure will be deemed a material breach of this Agreement for the purposes of Clause 11.1.
- 12.4 Where the Company terminates this Agreement as a result of a material and/or persistent breach by the Provider under Clause 11.1, the Company shall be entitled to recover from the Provider the cost, loss and expenses reasonably incurred by the Company as a result of the termination, including where relevant appointing a replacement Provider. Such costs, losses and expenses shall be a debt due and immediately payable by the Provider to the Company subject to the cap of liabilities across this Agreement as stated in clause 14.

## 13. Force Majeure

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

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

## 14. Indemnity, Liability & Insurance

[note – National Grids implementation of this clause deviates from the ENA Standard

- 14.1 Subject to Clause 14.3 and without prejudice to Clause 14.4, the Company's liability to the Provider (save in respect of payment of Charges) arising under or in connection with this Agreement and howsoever arising shall not exceed one million pounds sterling (£1,000,000) and the Company shall not be liable for any other payments incurred by the Provider in the provision of the Flexibility Services.
- 14.2 Subject to Clause 14.3, and save in respect of deductions to the Charges otherwise payable, the Provider's total aggregate liability under or in connection with this Agreement for events arising in any contract year, shall not exceed the aggregate Charges paid and payable (whether or not invoiced to the Company) under or pursuant to this Agreement in the contract year previous to the one in which the event arises. For the purposes of this Clause 14.2, a contract year means a 12 month period commencing on the Commencement Date or any anniversary of it.
- 14.3 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; its fraud or fraudulent misrepresentation; and any other liability which cannot by law be excluded or limited.
- 14.4 Subject to Clause 14.3 above, and save in respect of the Company's obligation to pay the Charges or where this Agreement provides for an indemnity, neither Party shall be liable to the other for (a) any loss of profits, loss of revenue, loss of use, loss of contract or loss of goodwill; or (b) any indirect or consequential losses.

## 15. [Assignment, *NOTE: IF ENGLISH*] [ASSIGNATION, *NOTE: IF SCOTTISH*] Sub-Contracting and Change in Ownership

- 15.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
- 15.2 If either Party sub-contracts any part of the provision or obligations of Flexibility Services, then the responsible Party shall be fully responsible for the acts, omissions or defaults of any sub-contractor (and its employees) as if they were the acts, omissions or defaults of the responsible Party.
- 15.3 If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Site changes, or may change, during the Term, the Provider shall immediately notify the Company of the same. The Company and the Provider shall if required, and at the reasonable request of the Company discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.

- 15.4 The Company reserves the right to terminate this Agreement if a Change in Ownership of the Provider occurs and may treat a Change of Ownership as a material breach for the purposes of Clause 11.1. Any termination under clause 15.4 would be provided in writing and effective immediately

## 16. Confidentiality, Information Disclosure and Publicity

- 16.1 The Company is required to disclose certain information in accordance with this document under obligations within the Company Licence Agreement, the Grid Code, the Transmission Code, the Connection and Use of System Agreement, the Distribution Code and the Fuel Security Code. Information shared will include but may not be limited to providers names, awarded prices, volumes and contract durations. It shall not be a breach of this clause 16 for the Company to disclose this information. The Company may also share information relating to this Agreement for the purpose of industry initiatives in relation to network constraint management and electricity network optimisation.
- 16.2 Save as permitted by clause 16.1, or except with the consent of the disclosing party, or as required by law, a court order, or by any relevant regulatory, or government authority, or to the extent that information has come into the public domain through no fault of the receiving party, each Party shall treat as strictly confidential and shall not disclose all commercial and technical information relating to the other Party received or obtained as a result of entering into or performing this Agreement.
- 16.3 Save as permitted by clause 16.1 neither Party shall use the name, brands and/or logos of the other Party for any purpose without the other Party's prior written approval. In the event that the other Party grants its approval to any use of its name, brand and/or logo, it may make such approval subject to such conditions and restrictions on use as it considers appropriate. Written approval should not be unreasonably withheld. The Company shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement.

## 17. Intellectual Property Rights

- 17.1 This Agreement does not transfer any interest in Intellectual Property Rights.
- 17.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's Intellectual Property other than to the extent reasonably necessary in performing its obligations pursuant to this Agreement, provided that nothing in this Clause 17 shall operate so as to exclude any non-excludable rights of either Party.

## 18. Company Property

- 18.1 Each Party shall retain its rights in its own physical property used for the purposes of this Agreement. Any equipment, tools, drawings, specifications, data and other materials supplied by or on behalf of the Company to the Provider:
- 18.1.1 shall at all times be and shall remain the exclusive property of the Company;

- 18.1.2 shall be held by the Provider in safe custody at its own risk and maintained and kept in good condition by the Provider until returned by the Company;
- 18.1.3 shall be marked visibly by the Provider as the property of the Company; and
- 18.1.4 shall not be disposed of other than in accordance with the written instructions of the Company nor used otherwise than as authorised by the Company in writing.

## 19. Data Protection

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

## 20. Modern Slavery, Anti-Bribery

- 20.1 The Provider undertakes, warrants and represents that:
  - 20.1.1 neither the Provider nor any of its officers, employees, agents or subcontractors:
    - o) has committed an offence under the Modern Slavery Act 2015 (“**MSA Offence**”);
    - p) 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
    - q) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
  - 20.1.2 it shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - 20.1.3 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Company’s obligations under this Clause 20. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations; and
  - 20.1.4 it shall include in its contracts with its subcontractors and suppliers’ anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 20.
- 20.2 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.
- 20.3 Any breach of this Clause 20 by the Provider shall be deemed a material breach of the Agreement for the purposes of Clause 11.1.
- 20.4 The Provider shall have suitable controls and compliance procedures in place and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall

promptly report to the Company any request or demand for any undue financial or other advantage of any kind received or offered by the Provider in connection with this Agreement.

20.5 The Provider agrees to:

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

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

## 21. Notices

21.1 The processes for notices and communications in respect of operational matters are set out in Annex 1.

21.2 All formal notices or other communications to be served under this Agreement (“**Non-Operational Notice**”) shall be given in writing and shall be delivered or sent to the addresses for notice set out in the Contract Award or to such other address as each Party may have notified in writing to the other Party.

21.3 A Non-Operational Notice shall be delivered by hand, sent by pre-paid first-class post, or by recorded delivery post (or equivalent recorded postal delivery service).

1.4 A Non-Operational Notice or other communication shall be deemed to have been received:

21.3.1 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;

21.3.2 if sent by first class post, at 9.00 a.m. on the second Business Day after posting.

21.4 E-mail communications may be valid for Non-Operational Notices the purposes of this Agreement, where agreed between the Parties. Such email notices shall be deemed to have been received on the day of sending, or where outside of Business Hours on the first Business Day thereafter.

21.5 In verifying service of a Non-Operational Notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted.

21.6 This Clause does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

## 22. Dispute Resolution

22.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to this Agreement. In the event that a dispute cannot be resolved within thirty (30) days of written notice of the dispute, the dispute shall be escalated to the Parties’ senior representatives (named in the Service Terms, or as otherwise notified by either Party to the other) who have authority to settle the same.

22.2 If thirty (30) days following such an escalation the Parties have still not resolved the dispute, then either Party shall have the right to refer the dispute to mediation or to commence proceedings.

22.3 Nothing in this Agreement shall prevent either Party from raising Court proceedings in order to preserve or enforce its proprietary or other rights.

## 23. Severance

- 23.1 If any provision of this Agreement is declared by a judicial or other competent authority to be wholly or partly void, voidable, illegal or otherwise unenforceable in whole or in part, that provision (or part provision) shall be deemed severed from this Agreement and the other provisions of this Agreement and the remainder of the relevant provision shall continue in full force and effect.
- 23.2 If any provision of this Agreement are so found to be wholly or partly invalid or unenforceable, but would be valid or enforceable if some part of the provision were deleted, restricted or limited in a particular manner, the provision in question shall apply with the minimum deletions, restrictions or limitations as may be necessary to make it valid or enforceable.
- 23.3 The Company and the Provider each acknowledge that it has entered into this Agreement on an arm's length basis and that it has taken independent legal advice in so doing.

## 24. Third Party Rights

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

## 25. No Agency or Partnership

- 25.1 Nothing in this Agreement shall be deemed to constitute a partnership or joint venture or contract of employment between the Parties nor constitute either Party the agent of the other.
- 25.2 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.

## 26. Waiver

- 26.1 If a Party delays or fails to exercise (in whole or part) any right, claim or remedy conferred by or arising under or in connection with this Agreement or by law, this will not operate as a waiver of, or as preventing the further exercise or the enforcement of, that right, claim or remedy. Any single or partial exercise or waiver of any such right, claim or remedy shall not preclude its further exercise or the exercise of any other right, claim or remedy.
- 26.2 A waiver of any right, claim or remedy conferred by or arising under or otherwise in connection with this Agreement or by law shall be effective only if it is given in writing and is signed by or on behalf of the Party giving it.



## 27. Entire Agreement

- 27.1 This Agreement and the documents referred to in it together constitute the entire agreement and understanding of the Parties relating to the matters contemplated by this Agreement and those documents, and supersede any previous drafts, agreements, understandings or arrangements between any of the parties relating to the subject matter of this Agreement and those documents, which shall cease to have any further effect.

## 28. Counterparts

- 28.1 Where executed in counterparts:
- 28.1.1 This Agreement shall not take effect until all of the counterparts have been delivered; and
- 28.1.2 delivery will take place when the date of delivery is agreed between the Parties after execution of this Agreement as evidenced by the date inserted at the start of this Agreement.
- 28.2 Where not executed in counterparts, this Agreement shall take effect after its execution upon the date agreed between the Parties as evidenced by the date inserted at the start of this Agreement.

## 29. Governing Law and Jurisdiction

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



# Flexibility Services Service Terms

## DNO Active Services

Jan 2023

### 1. Introduction

These Service Terms relate to National Grids flexibility procurement of Active Services on its electricity distribution network in the Midland, South West and Wales.

### 2. 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).

### 3. Service Terms Glossary

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

<b>“Accepted [MW/MVAR]”</b>	The [MW/MVAR] accepted in accordance with the Service Terms;
<b>“Accepted Availability Window”</b>	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 as being required by the Company for the Company's Dynamic and/or Secure Services;
<b>“Active Power”</b> and <b>“Active Services”</b>	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;
<b>“API”</b>	means application programme interface;
<b>“Available”</b>	means that Demand Response is, subject to receipt of a Utilisation Instruction, available for despatch;
<b>“Availability”</b>	means, for the purposes of the Contract, that Demand Response is Available and, for the purposes of the Service Terms, shall be construed as set out in the definition of Availability Window below;
<b>“Availability Payment”</b>	the fee payable in consideration for the Provider making the DER Available and calculated in accordance with the provisions of Clause 5;
<b>“Availability Status”</b>	Available or Unavailable;
<b>“Availability Window”</b>	means, for each Trade Dispatch Group, the window of time during which the Company's Dynamic Services may be required to be Available during an Operational Period as notified pursuant to a Trade Award and "Availability" shall be construed accordingly;
<b>“Cease Time”</b>	means the end of the minute during which the Company ceases, or requires the cessation of, the despatch of Demand Response in accordance with this Agreement;

<b>“Central Control”</b>	means the Company control facility from where the network is monitored and managed. Unless otherwise set out in this Agreement or agreed between Parties from time to time, any notice or other communication with Central Control shall be via the Portal;
<b>“Committed Availability Window”</b>	means an Availability Window (or any part thereof) in respect of which a notification or assumption that Demand Response is Available;
<b>“Company's Dynamic Services”</b>	means the Company's 'dynamic' constraint management zone services required in a Zone identified by the Company in respect of which the Provider has been Awarded a Trade Award;
<b>“Company's Restore Services”</b>	means the Company's 'restore' constraint management zone services required in a Zone identified by the Company in respect of which the Provider has been Awarded a Trade Award;
<b>“Company's Secure Services”</b>	means the Company's 'secure' constraint management zone services required in a Zone identified by the Company in respect of which the Provider has been Awarded a Trade Award;
<b>“Company's Sustain Services”</b>	means the Company's 'sustain' constraint management zone services required in a Zone identified by the Company in respect of which the Provider has been Awarded a Trade Award;
<b>“Contract Award”</b>	means a notification of contract award by the Company to the Provider following an invitation to tender for an Overarching Contract and "Awarded a Contract" shall be construed accordingly;
<b>“Contracted Availability Windows”</b>	means in respect of a Trade Dispatch Group, any availability dates and times confirmed to the Provider through a Trade Award;
<b>“Contracted Capacity”</b>	means the target net MW of Demand Response in respect of a Trade Dispatch Group, confirmed to the Provider through a Trade Award;
<b>“Contracted Service Response”</b>	The Provider's Trade Dispatch Groups response to a Utilisation Instruction; import or export, turn-up or turn-down, as informed to the Provider through a Trade Award
<b>“Contracted Utilisation Windows”</b>	means in respect of a Trade Dispatch Group, any utilisation dates and times confirmed to the Provider through a Trade Award;

<b>“Demand”</b>	the demand (in MW) of Active Power consumed by Plant and/or Apparatus;
<b>“Demand Response”</b>	means the increase of net export of active power to, or the reduction of net import of active power from, the Company's Network from or to a Trade Dispatch Group;
<b>“Demand Response Active Power Code”</b>	As defined in the Grid Code;
<b>“Demand Response Provider”</b>	As defined in the Grid Code;
<b>“Trade Dispatch Group”</b>	means one, or multiple Meterable Units that are aggregated and regarded as a single dispatchable entity, which may be entered into a Trade Opportunity in the form of a Trade Response;
<b>“Dispatchable Generation”</b>	means DER that is not subject to any delivery constraints due to its technology type, such as time of day, state of charge, or any other relevant variables;
<b>“Due Date for Payment”</b>	has the meaning given to it in paragraph 5.9;
<b>“Event End Time”</b>	means the earlier to occur of the events set out in paragraph 7.2.6;
<b>“Expected Availability”</b>	means those Availability Windows which the Company has informed the Provider in the form of a Trade Award that a Trade Dispatch Group is deemed Available and constitutes a Committed Availability Window;
<b>“Flexibility Services”</b>	means, the Company's Dynamic Services, Company's Restore Services, Company's Secure Services and the Company's Sustain Services;
<b>“Generation”</b>	The electrical output (in MW) of a DER;
<b>“Maximum Capacity”</b>	means the maximum MW of Demand Response committed by the Provider in respect of each applicable Flexibility Service in a Trade Response as set out in a relevant Trade Award;
<b>“Maximum Utilisation Period”</b>	means the period of time in respect of a Trade Dispatch Group beginning at the time at which either the output of that Trade Dispatch Group is greater than 0MW or the demand of MW and Mvar of electricity is less than the Contracted Capacity as set out in the Trade Award.

<b>“Meterable Unit”</b>	means one, or multiple DER that are aggregated and regarded as a single entity and metered on a single metering output.
<b>“Minimum Utilisation Period”</b>	means the period of time in respect of a Trade Dispatch Group beginning at the time at which either the output of that Trade Dispatch Group is greater than 0MW or the demand of MW and Mvar of electricity is less than the Contracted Capacity (including any ramping period) as set out in the Trade Award.
<b>“Operational Day”</b>	means the period from 0500 hours on one day to 0500 hours on the following day;
<b>“Operational Period”</b>	means the duration for which a Flexibility Service may be required by the Company which shall, in respect of each Flexibility Service requirement, and unless such Flexibility Service requirement or this Agreement is terminated earlier in accordance with its terms;
<b>“Output”</b>	Active Power output (in MW) achieved by DER, Plant and/or Apparatus;
<b>“Performance Report”</b>	means a report in relation to the Flexibility Services provided by a Trade Dispatch Group responding to Utilisation Instructions;
<b>“Portal”</b>	means the password protected Provider area of the flexible power website accessible via <a href="http://www.flexiblepower.co.uk/">http://www.flexiblepower.co.uk/</a> ;
<b>“Power Requirement”</b>	means the level of power injection or demand reduction required by the Company within a specified Service Window and delivered by the Provider following a Utilisation Instruction,
<b>“Product”</b>	The Company’s Sustain, Secure, Dynamic and Restore Services.
<b>“Recovery Period”</b>	means the period specified by the Provider within their Trade Response, which commences upon expiry of the earlier of the Cease Time, the Maximum Utilisation Period or relevant Accepted Availability Window (as relevant), for which the Trade Dispatch Group is Unavailable to be despatched;
<b>“Recovery Time”</b>	the minimum time required between the end of a Flexibility Service delivery window and the commencement of the next Flexibility Service delivery window, as means the period specified by the Provider within their Trade Response.

<b>“Requested End Time”</b>	the date and time (to the nearest minute) as notified in accordance with the Service Terms, and as specified by the Company in the Trade Award, at which the Requested MW is no longer required to be delivered;
<b>“Requested MW”</b>	the MW requested by the Company in accordance with paragraph 4, and specified by the Company in the Trade Award.;
<b>“Requested Start Time”</b>	the date and time (to the nearest minute) as notified in accordance with paragraph 4 and specified by the Company in the Trade Award, at which the Requested MW shall be delivered;
<b>“Response Time”</b>	means the maximum period of time (in minutes) which is permitted to elapse from despatch of Demand Response by the Company or issue of a Utilisation Instruction by the Company (as relevant) to achieving the Contracted Capacity of a relevant Trade Dispatch Group;
<b>“Service Meter”</b>	the measuring equipment, that shall be used to determine delivery of the Flexibility Services;
<b>“Service Meter Data”</b>	the meter data recorded at the Service Meter in respect of a Meterable Unit;
<b>“Stop Instruction”</b>	an instruction from the Company to the Provider, instructing the Provider to cease delivery of the Flexibility Services, as more particularly described in Annex1;
<b>“Trade Award”</b>	the accepted technical and commercial parameters the Company accepts from the Trade Response, and a such the parameters the Provider is contracted to deliver in response to a Utilisation Instruction;
<b>“Trade Opportunity”</b>	the Company’s flexibility requirements, from which a Provider may tender a Trade Response;
<b>“Trade Response”</b>	the technical and commercial parameters a Provider can offer in respect of a Trade Opportunity;
<b>“Unavailable”</b>	means that a Trade Dispatch Group is not Available for despatch;

<b>“Utilisation”</b>	means in respect of a Trade Dispatch Group, any dispatch of Demand Response following a Utilisation Instruction from the Company during a constraint event in accordance with the Trade Award which is provided continuously until the Event End Time and "Utilised" shall be construed accordingly;
<b>“Utilisation Payment”</b>	the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in paragraph 5;
<b>“Week “</b>	means a period of seven Operational Days commencing at 05.00 hours on a Monday and terminating at 05.00 hours on the next following Monday;
<b>“Weekly Limit”</b>	means the limit specified by the Provider within their Trade Response, which an Available Trade Dispatch Group may be Utilised within a Week;
<b>“Zonal Price”</b>	means the price awarded to all successful Trade Responses, established by the Company following its clearing process and inform to the Provider in the form of the Trade Award;
<b>“Zone”</b>	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.

## 4. Service Details

### 4.1 Service Parameters

Service parameters specific to the Provider will be defined within the Trade Award and shall constitute Service Requirements for the purposes of this Agreement. The Trade Award will include;

Service Requirement Attributes
Service awarded (sustain, dynamic, secure, restore)
Zone awarded
Trade Dispatch Group awarded
Contracted Availability Windows
Contracted Utilisation Windows (where applicable)
Maximum Capacity per awarded Trade Dispatch Group (MW)
Award price
Contracted Service Response
Award Expiry Date

4.1.1 As required National Grid may add or amend attributes within the Trade Award.

### 4.2 Service Failure

Means where, in respect of a Trade Dispatch Group within a Zone, (a) the Company has been entitled, in accordance with this Agreement, to make performance adjustments of 20% or more to the relevant charges in any 2 consecutive months or in three or more months in any six (6) month period; or (b) the number of Availability Windows within a Trade Dispatch Group which are subject to a notification of Unavailability, or which are otherwise deemed to be Unavailable, is greater than 20% of the Expected Availability for that Trade Dispatch Group.

### 4.3 Service Windows

As described in Clause 4.1 of the Service Terms, Contracted Service Windows will be described in the Trade Award.



#### 4.4 Service Requirements

1.	The flexible facilities making up the DER shall be connected and capable of providing the contracted response type from the area of the Network subject to the limitation (represented by the Zone).
2.	Exporting generators and storage assets, greater than 16Amps per phase shall have a long-term parallel connection compliant with the requirements of EREC G59 or G99. Flexible or timed connections are permissible, subject to the conditions of the connection. Those less than 16Amps per phase shall be compliant with the requirements of EREC G83 or G98.
3.	The DER shall be able to deliver on instruction the contracted service response type, from or onto the Network.
4.	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, is fixed for the duration of the Service Period, and must be within the conditions of each Site's Connection Agreement.
5.	The DER shall have a declarable set of capability parameters; each declarable set of capability parameters shall have a single point of communication and control.
6.	Each facility making up a DER set shall have metering of sufficient granularity and accuracy to enable the Company to monitor the provision of Flexibility Services. The metering data shall be made available to the Company electronically via its Portal. The metering point shall be at the boundary between the Site on which the DER is located and the [distribution] Network, or on the terminals of the facility if approved by the Company. The Provider should be able to provide technical details of the meter and a single line diagram of the DER on request.

#### 4.5 Service Specific Acknowledgements

The Provider hereby acknowledges that: (a) the provision of Demand Response pursuant to this Agreement and the participation in the Flexibility Services programme is entirely voluntary and (b) Contract Award does not guarantee that any Flexibility Services will be awarded by the Company through its Trade process or commit the Company to requiring any, or any particular level of, such Flexibility Services.

#### 4.6 Variation to Service Windows

The Company will not instruct any variation to an Awarded Availability Window or where Utilisation Windows are instructed as part of the Trade Award.

## 5. Invoicing & Charges

- 5.1 Validation and settlement of the Flexibility Services requires the provision of metering data via the API as described in Annex 1.
- 5.2 The Flexibility Services and payment cycles are based on a calendar month and therefore the Company operates a total of 12 billing cycles within each calendar year.
- 5.3 After the end of each Utilisation event a Performance Report is created and provided to the Provider via the Portal which allows the Provider to review their results. At the end of the month the Performance Reports are then compiled along with the availability payments and reconciliations for any shortfall of delivery.
- 5.4 A full earnings statement will be produced automatically within one (1) week following the end of each month as further detailed below. Once the earnings statement has been created and provided to the Provider, the Provider shall confirm within fourteen (14) days of being provided if the calculations are disputed and provide full details of the same to the Company. If the Provider disputes any calculations, then the earnings statement is placed on hold until such dispute is been resolved. The parties will endeavour to resolve any dispute before the cut off period as set out in fig 1. Following resolution or determination of any dispute, the earnings statement shall be updated accordingly.
- 5.5 If no query is raised on the earnings statement within the fourteen (14) day window the statement is assumed to be correct. Unless the Provider confirms that the Charges are disputed, and following determination or agreement of any disputed earnings statement, the Portal will automatically generate a self-billing invoice which can be downloaded for financial records. The Portal also automatically sends a duplicate to the Company accounts payable for processing.
- 5.6 In accordance with the self-billing arrangements that will be in force under this Contract, the Provider;
- Agrees that the Company will issue invoices on their behalf,
  - Agrees that they won't issue VAT invoices for goods or services covered by the Agreement,
  - Agrees to notify the Company of any changes to their VAT status.
- 5.7 Charges
- 5.7.1 Following a Trade Opportunity closure, the Company will use a clearing process, as further described in Annex 2, to establish the Zonal Price it will pay to all successful Trade respondents.
- 5.7.2 The price the Company will pay the Provider for Flexibility Services will be communicated through the Trade Award.
- 5.8 Calculation of Charges
- 5.8.1 For the Company's Dynamic and Secure Services, there are two primary payments: Utilisation Payments and Availability Payments. For the Company's Sustain and Restore Services, there is one payment: the Utilisation Payment.
- 5.8.2 Utilisation Payments are made when a Utilisation Instruction is issued by the Company and subject to the Delivery Performance of the Provider.

5.8.3 Availability Payments are paid for every Accepted Availability Window in respect of the Site(s) / CMZ Group (s). Availability Payments are subject to a monthly availability performance metric.

5.8.4 Utilisation Performance is calculated with the following attribute values:

Attribute	Dynamic Services	Secure Services	Sustain Services
Grace Factor ( <i>GF</i> )	5%	5%	5%
Penalisation Multiplier ( <i>PM</i> )	3	3	3
Reconciliation Grace Factor ( <i>RGF</i> )	0%	0%	0%

Attribute	Restore Services
Delivery Target Threshold ( <i>DTT</i> )	100%
Payable Over-delivery ( <i>PO</i> )	10%
Penalisation Multiplier ( <i>PM</i> )	1 for delivery between 80% and 100%, and 2 for delivery under 80%

5.8.5 Availability Performance is calculated monthly. A monthly performance metric is applied, the performance metric is the same as the percentage of total utilisation delivery for the same month.

5.8.6 The company has published further mathematical information on how these attributes are applied to calculate delivery and settlement here; [www.flexiblepower.co.uk/national-grid-electricity-distribution/tools-and-documents](http://www.flexiblepower.co.uk/national-grid-electricity-distribution/tools-and-documents)

## 5.9 Payment Terms

5.9.1 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.

- 5.9.2 All invoices shall be paid within thirty (30) days of the date of invoice (the "Due Date for Payment").
- 5.9.3 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.
- 5.9.4 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).
- 5.9.5 All sums payable under this Contract shall be exclusive of VAT. The payor of any sums shall pay an amount equal to such VAT to the payee in addition to any sum or consideration on receipt of a valid VAT invoice from the payee.
- 5.9.6 If the payor fails to pay to the payee any undisputed amount payable by it under this Agreement, the payee may charge the payor interest on the overdue amount from the due date 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 5.9.6 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.9.7 The payor may, without limiting any other rights or remedies it may have, withhold or set off any amounts owed to it by the payee against any amounts payable by the payor to the payee under this Contract.

## 6. DER

- 6.1 Details of the Provider's DER are to be submitted to the Company through its Market Gateway User Interface, as further described in Annex 2.
- 6.2 Where DER form part of a successful Trade, the Company will confirm within the Trade Award.
- 6.3 Should the Provider wish to change its DER post Trade Award, this can be accommodated through the Market Gateway User Interface, as further described in Annex 2.
- 6.4 The Company will allow the inclusion of additional sites at any time throughout the Term, however the earliest changes to sites/DER can only take effect the following operational period.
- 6.5 Participation above the Awarded Capacity stated in the Trade Award cannot be exceeded.

## 7. Communications

### 7.1 Senior Representatives

The Company; Flexible Power Commercial Lead. [nged.flexiblepower@nationalgrid.co.uk](mailto:nged.flexiblepower@nationalgrid.co.uk)

The Provider; the Company shall acquire this information through the Market Gateway User Interface.

### 7.2 Process and systems for communications

7.2.1 Following Contract Award, the Company will create a user account that will provide the Provider with access to the Flexible Power Portal.

7.2.2 The Provider must build APIs, as further described in Annex 1, to the Flexible Power Portal to facilitate;

- (a) The provision of metering data to allow the validate and settlement of any service delivery, and;
- (b) The receipt of utilisation instructions from the company to initiate the start of a delivery event.

7.2.3 If, at any time, the Provider becomes aware that its DER will be Unavailable from time during an Awarded Availability Window and/or Awarded Utilisation Window, then it shall as soon as reasonably practicable, contact the Company's Senior Representative as detailed in Clause 7.1 of the Service Terms to confirm;

- Provider Name,
- Portal ID of unavailable unit,
- Date Unavailable from,
- Date Unavailable to.

7.2.4 Notification of unavailability will not remove penalties associated with the non-delivery of Awarded Utilisation Windows and the monthly availability performance metric,

7.2.5 The Company may, in any Awarded Availability Window which has not been declared to be Unavailable at that time to provide Flexibility Services, issue a notice (a "Utilisation Instruction") requiring the Provider to delivery Flexibility services.

7.2.6 Where the Company issues a Utilisation Instruction requiring the Provider to provide Demand Response the Provider shall, within the Response Time and unless otherwise agreed between the Company and the Provider, provide Demand Response from the Trade Dispatch Group continuously for a minimum of the declared (or deemed declared) Minimum Utilisation Period until the earlier of:

- (i) The expiry of the declared (or, where relevant, deemed declared) Maximum Utilisation Period or the Weekly Limit;
- (ii) any other time as required by the Company by way of a Stop Instruction; and
- (iii) the end of the Accepted Availability Window or other period of time declared as Available by the Provider in respect of a Site(s) / CMZ Group (as relevant),
- (iv) provided that if the time set out in Clauses 7.2.6(i) or 7.2.6(ii) of the Service Terms would be prior to the end of the Minimum Utilisation Period, Demand Response shall be operated until the end of the Minimum Utilisation Period.

7.2.7 In the event that, in respect of the despatch of Demand Response in accordance with 7.2.5 in any Accepted Availability Window of any Trade Dispatch Group:-

- (i) Demand Response is not provided at a level of at least the required level of Contracted Capacity less any applicable grace factor (as set out in Clause 5.8 of the Service Terms) as measured at the minute in which the Response Time ends; or
- (ii) Demand Response is not provided continuously at a level of at least the required level of Contracted Capacity less any applicable grace factor (as set out in Clause 5.8 of the Service Terms) from the expiry of the Response Time until the first to occur of the times described in Clauses 7.2.6 (i), (ii) or (iii) of the Service Terms,
- (iii) then the Charges otherwise payable by the Company to the Provider shall be reduced in accordance with the Penalisation Multiplier (*PM*) described in Clause 5.8.4 of the Service Terms.

## 8. Performance Monitoring

### 8.1 Submission of Performance Report

As detailed in Clause 5.2 of the Service Terms, all performance reporting is undertaken within the Portal. Here Performance Reports can be viewed by both the Company and the Provider. Should either party wish to discuss reported performance they should contact the other parties' representative as detailed in Clause 7.1 of the Service Terms.

### 8.2 Testing and monitoring

Only API testing as detailed in Annex 1 must be completed. No Proving Tests (test of ability to deliver a response) of assets or asset groups are required in order for the Provider to participate in Trades as described in Annex 2..

Should the Company identify a failure affecting the API communications the Company shall notify the Providers nominated person as detailed in Clause 7.1 of the Service Terms as soon as practical in order to resolve the failure and if necessary retrieve any missing data.

Should the Provider identify a failure affecting the API communications the Provider shall notify the Companies nominated person as detailed in Clause 7.1 of the Service Terms as soon as practical in order to resolve the failure and if necessary provide any missing data.

Following a communications failure, the company may request the Provider complete further API testing as detailed in Annex 1.

# Annexes to Flexibility Service Terms

## DNO Active Services

### Jan 2023

#### Definitions

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

## Annex 1 – Flexibility Management Systems/Technical Requirements

### 1 DNO Flexibility Management System Details

#### 1.1. API Development

An API is a software intermediary that allows two applications to talk to each other. In the context of the Company's Flexibility Services, the API replaces the requirement for dedicated hardware to be provided to connect to a Provider's sites in order to collect the metering data and send control requests from the central control desk.

Providers are expected to develop their own interface for the API to the assets that they intend to offer to the Company.

The latest definitions of each API, including the surrounding authentication are available on the [Portal](#).

#### 1.2 Signal and Control Requirements

The API requires the provision of Metering Data so delivery can be verified

The following signals need to be provided to the Company:

- Metering data, with timestamp, per Meterable Unit
- Emergency stop signal, per Meterable Unit.
- 

In addition, the following control signals from the Company will need to be accepted:

- Dispatch start control, per Trade Dispatch Group.
- Dispatch stop control, per Trade Dispatch Group

#### 1.4 Guidance on API set-up and Testing is available here;

<https://flexiblepower.wpdserv.net/downloads/1121>

### 2 Dispatch Principles

2.1 The Provider acknowledges that, in the event that should the Demand Response availability secured 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 Clause 2.2 of the Service Terms below, use its reasonable endeavours to issue despatch in accordance with the 'Acceptance & Dispatch Principles' (which are available at <https://flexiblepower.wpdserv.net/downloads/1121>), there instructions for is no guarantee that the Provider will be Utilised during a constraint event.



## Annex 2 – Trade Rules

### 1. Introduction

1.1 National Grid uses the Market Gateway, an online portal for Flexibility Service Provider interactions, to provide functionally that facilitates;

- A) The award of an Overarching Contract to enable FSPs to respond to Trade Opportunities;
- B) The registration and validation of Sites/DER; and,
- C) Trade Responses to National Grids Trade Opportunities, collectively known as 'Market Activities'

1.2 The Market Gateway is available here; <https://marketgateway.nationalgrid.co.uk/>

1.3 Parties awarded with an Overarching Contract are granted further access to DER registration, Trading and related activities on the Market Gateway, under the terms and conditions of these rules.

### 2. General rights and obligations

2.1 General rights and obligations of Providers;

- 2.1.1 Providers have the right to access the Market Gateway and to perform Market Activities under the terms and conditions of these rules.
- 2.1.2 A Provider's ability to perform certain Market Activities is subject to the award of an Overarching Contract.
- 2.1.3 When engaged in Market Activities, it is the responsibility of each Provider to make itself acquainted with the different Products and Trade Use Cases, to select appropriate Trade Opportunities, and to populate them with appropriate and correct properties and parameters.

2.2 General rights and obligations of National Grid;

- 2.2.1 National Grid determines what Products and Trade Opportunities shall be available for Trading and/or Settlement at all times, including their properties, parameters and conditions for availability.
- 2.2.2 National Grid shall endeavour to treat all Providers in a transparent, fair and non-discriminatory manner. Subject to the foregoing:
  - a) If at any time a situation arises in relation to the Flexibility Services, where there is no express provision made in these, National Grid may implement such procedures as it sees fit in order to resolve the situation and maintain a fair and orderly Flexibility Services market;
  - b) The availability of any specific Product or Market to any individual Member may be limited by time, geographical location of the Provider's Assets, and other criteria as are determined by National Grid and set out at the time of Trade Opportunity publication.

2.6 Subject to section 2.1 and notice to the relevant Providers, National Grid may also, as it sees fit and notwithstanding any other provision of the Rules:

- a) set Trading restrictions for any individual Member or groups of Members;
- b) set Trading restrictions for any Products; and

c) suspend or restrict Trading for one or several Products.

### **3 Market Gateway Access**

- 3.1 Registration for access is made available here; <https://marketgateway.nationalgrid.co.uk/>
- 3.2 National Grid shall only accept registration requests that National Grid in its sole discretion considers fit and proper to become Providers.
- 3.3 Before granting full access National Grid can perform, and require the applicant to perform or participate in, such customer due diligence and credit checks as it sees fit. In addition National Grid may request other documents and information deemed necessary to accept the registration request.
- 3.4 National Grid shall not grant access of more than one instance per organisation.

### **4 Use of the Market Gateway**

- 4.1 The Platform is the principal trading facility for the National Grids Flexibility Services.
- 4.2 Where functionality permits, Providers will be provided with or will be allowed to generate one or more Users for accessing the Market Gateway. Users will be deemed to have such authorisations to act on behalf of their organisation.
- 4.3 Providers are only allowed to access the Market Gateway for the purpose of conducting the Provider's own Market Activities. Providers are not allowed to give third parties access to the Platform to conduct any form of activity that effectively is on behalf of a third party, except as explicitly agreed with National Grid. This includes any form of principal trading, sponsored access or other form of sharing.
- 4.4 User credentials to the Market Gateway are personal, and may not be shared between different persons except as explicitly agreed with National Grid. The Provider is strictly liable for all use of the Platform through the user credentials registered to the Provider, until such time that National Grid have confirmed that the relevant credentials have been disabled following written request from the Provider. A Member shall immediately notify National Grid if it suspects that a user's credentials to the Platform have been subject to unauthorised use or access, or otherwise compromised.
- 4.5 National Grid reserves the right to remove a Provider's right to access the Market Gateway, including all associated users, in case of termination of its Overarching Contract as a result of material breach.
- 4.6 Where a provider wishes to delete their market gateway account, remove or change a user this request should be submitted to [nged.flexiblepower@nationalgrid.co.uk](mailto:nged.flexiblepower@nationalgrid.co.uk).

### **5 Availability and functionality**

- 5.1 The Market Gateway will have such functionality as National Grid decides to make available at any given time.
- 5.2 The Market Gateway will from time to time be developed and updated with additional functionalities, and each Member must make itself acquainted with any such changes so as to at all times use the Market Gateway in accordance with any reasonable instruction provided.

- 5.3 National Grid will take all reasonable and practicable steps to maintain the continuity of access to the Market Gateway for Provider during Trading Hours, and shall give reasonable prior notice of system outages and other matters affecting use or access to the Market Gateway. However, National Grid shall in no event be liable for:
- a) any temporary suspension, interruption, unavailability or fault occurring in the provision of the Market Gateway;
  - b) any loss or damage whatsoever and howsoever caused arising in connection with the use of information or services acquired by the Provider through use of the Market Gateway howsoever; or
  - c) any Force Majeure Event.

- 5.4 Providers shall ensure that those parts of their software and equipment used to connect with the Market Gateway are interoperable with and comply with the requirements as published by National Grid from time to time, and are solely responsible for all trading facilities which National Grid does not provide.

- 5.5 National Grid may, in situations where the Platform is not working properly or becomes unavailable to any one or more Members by reasons outside the reasonable control of the User(s), permit affected Users to submit, amend or cancel Trade Responses in another manner than through the Market Gateway, as further specified by National Grid in each case. National Grid shall have no obligation to provide any such alternative Trade Response facilities.

## **6 Intellectual Property, Confidentiality, Information Disclosure and Publicity**

- 6.1 In accordance with Clause 17 of the General Terms and Conditions, the Market Gateway and all intellectual property rights associated with it is the sole property of National Grid. A Provider acquires no rights to the Market Gateway other than the right to access and use the Market Gateway in accordance with these rules, and nothing herein shall be deemed or construed as a transfer of or license to any rights to the Market Gateway.
- 6.2 Information acquired by National Grid via the Market Gateway may be disclosed by National Grid in accordance with Clause 16 of the General Terms and Conditions.

## **7 Market Behaviour**

- 7.1 Providers shall in connection with all Market Activities act in accordance with these rules and generally accepted trading practice, and refrain from any form of disorderly or unreasonable conduct. This includes a prohibition on any kind of market manipulation, insider trading and other behaviour which is eligible to distort the Markets or create improper advantages to individual Members.
- 7.2 Each Trade Response, and any amendments to it, must reflect an actual Trade intention, and the Member must be capable of performing its obligations under the corresponding Trade Awards if awarded.

## **8 Communication**

- 8.1 Notices in relation to Market Activities sent by electronic communication shall be deemed to have been given at the time they are successfully sent. Any notice to be given shall be sent by e-mail to the e-mail address of the Market Gateway Admin User/s of the Provider.

## **9 Amendments**

- 9.1 These rules may be amended by National Grid from time to time
- 9.2 Where amendments affect the Parties' rights under Contracts entered into before the amendment became effective, the Provider will be required to declare acceptance of these changes through functionality available within the Market Gateway. In these instances, National Grid will provide at least thirty (30) days' notice to Providers. The notice shall specify when the amendment will come into effect and give an overview of the relevant amendments by direct inclusion in the notice or by reference.
- 9.3 Notwithstanding sections 9.1 and 9.2, the following amendments to these rules may be implemented with immediate effect following notice to affected Members:
- a) if so required by Applicable Law,
  - b) if such amendments are deemed necessary to ensure a fair and orderly market,
  - c) to correct manifest errors, or
  - d) if such amendments only relate to new Products.
- 10 DER Registration**
- 10.1 This section sets out requirements for the population and submission of DER and Meterable Units.
- 10.2 Within the functionality of the Market Gateway, the Provider must submit for validation, all required data fields associated with the DER.
- 10.3 Where the Provider is acting as an Agent on behalf of DER outside of its ownership, it must ensure that all appropriate permissions for the sharing of DER data have been obtained.
- 10.4 National Grid will seek to validate all DER within a timely manner. Notification of validation, by means of approved/rejected will be provided through the functionality of the Market Gateway. Once validated National Grid will assign the links to Zones within the Portal as well as ensure that there are no duplicate assets.
- 10.5 Where National Grid has rejected a DER, a reason for rejection will be provided. The Provider may re-submit the DER for validation if the rejection reason has been resolved.
- 10.6 National Grid may contact the Provider to acquire further information should it be need to assist their validation of any DER.
- 10.7 Where National Grid becomes aware of a DER submission that duplicates a submission from another Provider, National Grid will trigger its asset duplication process as defined here;  
<https://flexiblepower.wpdserv.net/downloads/1121>
- 10.8 Within the functionality of the Market Gateway, the Provider must ensure that all validated DER are assigned to a Meterable Unit and that Metering provision can be provided for each Meterable Unit through the API as described in Annex 1.
- 10.9 Within the functionality of the Market Gateway, at any time a Provider may;
- a) Submit new assets for Validation
  - b) Submit edited assets for Validation
  - c) Change the assets allocated to a Meterable Unit

10.10 the earliest the changes described in 10.9 can take effect will be from the next Operational Period, as defined in the Guidance Document here; <https://flexiblepower.wpdserv.net/downloads/1121>

## **11 Trading**

11.1 This section sets out requirements for the population and submission of Trade Responses.

11.2 All Trade Responses and Trade Awards are binding on the Provider involved.

11.3 National Grid facilitates the Settlement of Trade Awards in accordance with this clause 5 of the Service Terms.

11.4 National Grid will present Trade Opportunities through its Market Gateway, Providers may select through functionality of the Market Gateway which Trade Opportunities its wishes to enter.

11.5 Providers who have not completed the registration of DER through the functionality of the Market Gateway or received validation of these DER within the Market Gateway will be unable to complete a Trade Response.

11.6 Providers who have not allocated their Sites/DER to Meterable Units will be unable to complete a Trade Response.

11.7 Providers who have not complete the API requirements set-out in Annex 1 will be unable to complete a Trade Response.

11.8 Within a Trade Opportunity, providers may submit one Trade Response per Trade Dispatch Group.

### **11.9 Clearing**

11.9.1 Where deemed appropriate, National Grid will use a Pay as Clear mechanic where we are using competitive pricing. This means that all providers are paid at the rate of the marginal Asset, rather than the price they bid

11.9.2 Where services are not appropriate for Pay as Clear, National Grid will use a fixed price.

11.9.3 The decision between Pay as Clear and Fixed pricing will be communicated within the Trade Opportunity.

### **11.10 Trade Award Notice**

11.10.1 Following the collation of all Trade Responses by the DSO, and the selection of the services, National Grid will communicate the Trade Award to the provider through the functionality of the Market Gateway.

## **12 Baselines**

- 12.1 Upon DER validation, National Grid shall determine applicable Baselines Options available to the Providers Meterable Units based on the Technology Types of the DER the Provider populates it with.
- 12.2 Upon Trade Response, National Grid will provide the applicable values of these baseline options within the functionality of the Market Gateway and require the Provider to select which baseline is wants to apply to each Meterable Unit that makes up the Trade Dispatch Group selected for Trade Response.
- 12.3 Details of the baselines options and the methodology that determines the baseline values are published as an annex to the Guidance Document here; <https://flexiblepower.wpdserv.net/downloads/1121>

### **13 Utilisation**

- 13.1 As described in Clause 7 of the Service Terms, the Company may, in any Awarded Availability Window which has not been declared to be Unavailable at that time to provide Flexibility Services, issue a notice (a "Utilisation Instruction") requiring the Provider to delivery Flexibility services.
- 13.2 Notification of a Utilisation Instruction will be issued via the API as described in Annex 1.

## Annex 3 – Special Requirements

**THE FOLLOWING SHALL BE ADDED AS A NEW CLAUSE 9.4 IN THE CONDITIONS:**

- 9.4 *In the event that, in contravention of Clause 9.2.7, Demand Response is despatched which causes the Provider to be in breach or non-compliance as described in Clauses 9.1.3 and/or 9.2.10, then Demand Response shall be deemed to be Unavailable from the Site during any Accepted Availability Window (as relevant).*