Flexibility Services Standard Agreement

RECITALS:

(1) The Company, as owner and operator of the local Network, requires the provision of Flexibility Services (as hereinafter defined) to aid the management and operation of its Network. The Company wishes to contract with providers and/or operators of suitable assets for the provision of such Flexibility Services.

(2) The Provider is the owner and/or operator of assets, or has entered into arrangements for rights in respect of third party owned assets that have the capability to provide Flexibility Services and wishes to make available such assets for the provision of such Flexibility Services, for example through aggregated or individual assets. The Company will pay the Provider for these Flexibility Services in accordance with this Agreement.

(3) The Company wishes to award the Provider with an Overarching Contract making the Provider eligible to enter Trade Opportunities to provide the Flexibility Services to the Company, subject to the terms and conditions contained herein.

Glossary and Interpretation

1. Introduction

1.1 The Glossary and Rules of Interpretation shall apply to any document published or to be published by the Company which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation (see definition of Associated Document).

1.2 Any capitalised term used in the Glossary and Rules of Interpretation shall have the meaning given to it (if any) in the Glossary and Service Glossary as applicable.

1.3 The Company may update any of the Glossary and Rules of Interpretation, General Terms and Conditions, Service Glossary, Service Terms, Annexes, Forms and Templates, and other Associated Documents from time to time by publication of an updated version of the relevant document on its website, and each such updated version shall be effective from the date shown on its front cover provided always that, except with the consent of the Provider in writing (which shall include by approved electronic means to the extent permitted by the Service Terms), any updated version shall not apply to (i) any Agreement already in force or (ii) to any Service Terms already applying to Flexibility Services currently being provided at the time of publication.

2. Rules of Interpretation

2.1 Unless the context otherwise requires:

2.1.1 the singular includes the plural and vice versa;

2.1.2 reference to a gender includes the other gender and the neuter;

2.1.3 references to an act of Parliament, statutory provision or statutory instrument include a reference to that act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;

2.1.4 words denoting persons shall include any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality; and

2.1.5 references to a company shall include a corporation or other body corporate and body corporate shall have the meaning given in section 1173 of the Companies Act 2006.

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

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, General Terms and Conditions, and Glossary to a particular paragraph or Annex shall be a reference to that paragraph or Annex in or to that Associated Document.

Priority of documents

2.6 If there is any conflict between the provisions of any of the documents comprising the Agreement, then the following order of priority between the documents shall apply:

2.6.1 Associated Documents; and

2.6.2 General Terms and Conditions and Glossary.

3. Glossary

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

"Accessible Site"	a Site that is not a domestic site;
"Affiliate"	any holding company or subsidiary company of a Party, or any company which is a subsidiary of such holding company and "**holding company**" and "**subsidiary**" have the meanings given in section 1159 of the Companies Act 2006;

"Agreement"	the General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes, the Forms and Templates;
"Annexes"	the annexes appended to the General Terms and Conditions;
"Apparatus"	all equipment in which electrical conductors are used, supported or of which they may form a part;
"Applicable Law"	any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or Industry Code, rule of court or directives or requirements of any regulatory body (including any health, safety and environmental legislation and approved codes of practice);
"Associated Document"	any document published or to be published by the Company which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation in Part 2 above, which includes but is not limited to the Service Terms, Service Glossary, Annexes and Forms and Templates.
"Authority"	the Gas and Electricity Markets Authority;
"Availability" or **"Available"**	means that the Flexibility Services, in accordance with the Service Requirements and the Utilisation Instruction, and where applicable, are available to be delivered to the Company for the duration of the Service Window;
"Availability Payment!	has the meaning given to it in the Service Terms;
"Balancing Services Activity"	has the meaning attributed to it in the ESO's Transmission Licence;
"BSC"	means the balancing and settlement code as administered by Elexon;
"Business Day"	any Day other than a Saturday or Sunday or a bank holiday, in England and Wales where the Company is located in England and Wales and in the City of Edinburgh where the Company is located in Scotland;
"Business Hours"	between 9:00 am and 5:00 pm on a Business Day;
"Change in Ownership"	means: 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;
"Charge(s)"	as applicable, the Availability Payments and the Utilisation Payments;
"CMZ"	constraint managed zone;

"Confidential Information"	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Connection Agreement"	an agreement governing the terms of connection of any Plant or Apparatus to, and/or any agreement for the supply of electricity to the Plant or Apparatus or for the acceptance of electricity into, and its delivery from, the Company's Distribution System or Transmission System (as the case may be);
"Connection and Use of System Code" or **"CUSC"**	the Connection and Use of System Code designated by the Secretary of State for Energy Security and Net Zero (DESNZ) as from time to time modified;
"Contract Award"	the execution and award by the Company of a contract for the provision of Flexibility Services by the Provider;
"Contract Data"	all data other than Performance Data associated with the Agreement;
"Commencement Date"	the date communicated in the Contract Award, from which the Agreement shall enforce;
the "Company"	NATIONAL GRID ELECTRICITY DISTRIBUTION (SOUTH WEST) PLC, NATIONAL GRID ELECTRICITY DISTRIBUTION (SOUTH WALES) PLC, NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AND NATIONAL GRID ELECTRICITY DISTRIBUTION (WEST MIDLANDS) PLC (company numbers: 02366894, 02366985, 02366923 and 03600574 respectively) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB (the "Company"), Party to this Agreement;
"Data Protection Law"	any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Company, the Provider and/or the Flexibility Services, including in the UK: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any current laws or regulations implementing Council Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679 ("GDPR") as retained in the laws of the United Kingdom by the European Union (Withdrawal) Act 2018, and/or any corresponding or equivalent national laws or regulations, once in force and applicable, including the Data Protection Act 2018, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;
"Day"	a calendar day;

"DCUSA"	means the Distribution Connection and Use of System Agreement entered into by the DCUSA Parties (which includes the Company) and DCUSA Limited;
"Defaulting Party"	has the meaning given in paragraph 7.1of the General Terms and Conditions;
"Defect"	an issue that may arise with the DER equipment, metering or the communication interface between the Company and Provider which results in non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services;
"Development Plan"	the defined schedule of design, build and commissioning in respect of a DER project in development;
"Distributed Energy Resources" or **"DER"**	the electricity generators, electricity storage or electrical loads (both in respect of domestic and non-domestic assets and including, but not limited to, electric vehicle charge points), and other Site equipment, machinery, Apparatus, materials and other items used for the provision of the Flexibility Services as described in the Service Terms;
"Distribution Code"	the Distribution Code of Licensed Distribution Network Operators of Great Britain;
"Distribution Licence"	a licence issued under section 6(1)(c) of the Electricity Act 1989;
"Distribution Limit"	£200,000 (two hundred thousand pounds sterling) or such other amount as may be stated in the Service Terms;
"Distribution System"	a distribution network owned and/or operated by the holder of a Distribution Licence;
"ESO"	means National Grid Electricity System Operator Limited (company number: 11014226) (and any successor to its role);
"Expert"	an independent expert appointed for the purposes of expert determination;
"Flexibility Services"	means, as more particularly described in the Service Terms, the services to be provided by the Provider to the Company under and in accordance with this Agreement which give the Company the ability to manage the load at a specific point of the Network at certain points in time;
"Force Majeure Event"	any event or circumstance which is beyond either the Company's or the Provider's (as the case may be) reasonable control or its employees and which results in or causes its failure to perform any of its obligations under the Agreement, provided that: (a) lack of funds; or (b) any failure or fault in the DER, including insufficient fuel, shall not constitute a Force Majeure Event;
"Forms and Templates"	where applicable, the relevant forms and templates associated with the onboarding, procurement, contract award or operation of Flexibility Services;

"Fuel Security Code"	means the document of that title designated as such by the Secretary of State for Energy Security and Net Zero as may be amended from time to time;
"General Terms and Conditions"	the general terms and conditions applicable to the provision of Flexibility Services to be provided under the Agreement;
"Glossary"	this glossary of terms and interpretation, as applicable to the Agreement;
"Good Industry Practice"	the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances or the standard which would reasonably and ordinarily be expected from systems used by a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances;
"Grid Code"	the technical code for connection and development of the national electricity transmission system as amended from time to time (available at www.nationalgrid.com/uk/electricity/codes/grid-code/code-documents);
"GSP"	grid supply point;
"Industry Code"	the BSC, the CUSC, the Grid Code, Transmission Code, the Distribution Code, the DCUSA, the Smart Energy Code, the Retail Energy Code and the Fuel Security Code.
"Insolvency Event"	means any pre-insolvency, creditor protection, or insolvency related actions, events, processes or proceedings, whether in or out of court, including the following (and any proceedings or steps leading to any of the following): any form of bankruptcy, liquidation, administration, receivership, voluntary arrangement, scheme of arrangement, restructuring plan or other compromise or arrangement or scheme with creditors, moratorium, stay or limitation of creditors' rights, interim or provisional supervision by a court or court appointee, winding up or striking off, or any distress, execution, commercial rent arrears recovery or other process levied or exercised; or any similar actions, events, processes or proceedings in any jurisdiction outside England and Wales where the Company is located in England and Wales or alternatively Scotland where the Company is located in Scotland;
"Intellectual Property Rights"	all intellectual property, including patents, trade marks, service marks, domain names, business and trading names, styles, logos and get-ups, rights in goodwill, database rights and rights in data, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, rights in

	know-how, trade secrets and Confidential Information lists and other proprietary knowledge and information and all rights under licences and consents in relation to any such rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world for their full term, including any renewals and extensions;
"Material Adverse Effect"	any event or circumstance which, in the opinion of the Company: 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;
"MPAN"	meter point administration number;
"MSID"	metering system identifier;
"Network"	the electricity network operated by the Company to which the DER is connected;
"Non-Terminating Party"	has the meaning given in paragraph 7.4 of the General Terms and Conditions;
"Party"	each of the Company and the Provider, together the **"Parties"**;
"Performance Data"	such data relating to the performance of the Plant, Apparatus and related infrastructure as may be notified by the Company to the Provider or by the Provider to the Company from time to time;
"Personal Data"	has the meaning given to it in applicable Data Protection Law;
"Plant"	fixed and movable items used in the generation and/or supply and/or transmission and/or distribution of electricity other than Apparatus;
"Primacy Rules"	means the primacy rules defined by the Energy Networks Association (as may be updated from time to time);
"Provider"	the organisation intending to provide Flexibility Services to the Company, Party to this Agreement;
"Retail Energy Code"	the retail energy code administered by the Retail Energy Code Company Ltd;
"Rules of Interpretation"	the rules of interpretation detailed at paragraph 2 above;
"Service Failure"	as defined in the Service Terms;
"Service Glossary"	any glossary of terms within the Service Terms as applicable to a particular Flexibility Service;
"Service Requirements"	the specification that the Flexibility Services must be capable of meeting, as defined in the Service Terms;

"Service Period"	As defined in the Service Terms;
"Service Terms"	the service terms applicable to the provision of Flexibility Services which form part of the Agreement;
"Service Window"	the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with the Agreement, the Flexibility Services to the Company, as defined in the Service Terms (if applicable);
"Site"	means the site on which the DER is located;
"Smart Energy Code"	the smart energy code administered by the Smart Energy Administrator and Secretariat;
"Statutory Requirements"	the requirements placed on the Company and/or the Provider or affecting or governing the provision and/or use of the Flexibility Services by Applicable Law and/or the applicable Distribution Licence or Transmission Licence and/or a regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters;
"TCM"	transmission constraint management;
"Term"	the duration of the Agreement as specified by the Company in the Service Terms;
"Terminating Party"	has the meaning given in paragraph 7.1 of the General Terms and Conditions;
"Termination Notice"	has the meaning given in paragraph 7.4 of the General Terms and Conditions;
"Transmission Code"	the System Operator Transmission Owner Code as required by Transmission Licences granted under the Electricity Act 1989;
"Transmission Licence"	a licence issued under section 6(1)(b) of the Electricity Act 1989;
"Transmission Limit"	£500,000 (five hundred thousand pounds sterling) save as provided in the Service Terms;
"Transmission System"	the electricity transmission system, as defined in the Connection and Use of System Code;
"Unavailability" (or **"Unavailable"**)	the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the Company;
"Utilisation Instruction"	an instruction by the Company to the Provider to deliver Flexibility Services;
"Utilisation Payments"	has the meaning given to it in the Service Terms.

General Terms and Conditions

August 2024

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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 "Agreement" in these General Terms and Conditions mean these General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes and where applicable, the Forms and Templates.

2. Scope of Flexibility Services

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

3. Provider's Obligations

3.1 The Provider will:

3.1.1 ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with the terms of the Agreement and all Applicable Laws, Statutory Requirements and Good Industry Practice;

3.1.2 ensure that all technical, communication and data provision requirements set out in the Service Terms and Annexes are complied with at all times;

3.1.3 act diligently and in good faith in all of its dealings with the Company;

3.1.4 ensure that it is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;

3.1.5 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER;

3.1.6 where reasonably required by the Company in order to inspect and test the DER, or to install, maintain, replace or remove communication equipment belonging to the Company in relation to the provision of Flexibility Services in accordance with the Agreement; grant access to a Site in accordance with paragraph 6 of the Service Terms;

3.1.7 remedy any Defect of the Flexibility Services in accordance with Good Industry Practice and to the satisfaction of the Company;

3.1.8 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under the Agreement that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under the Agreement;

3.1.9 use reasonable endeavours to ensure that a DER that is pre-qualified is not registered with another Provider to provide Flexibility Services to the Company. If the Company identifies

that the DER is registered with more than one Provider, the Company will notify both Providers. The DER will remain registered with the existing Provider until sufficient evidence of the Provider to which the Asset is registered has been provided to the Company's satisfaction (acting reasonably).

3.2 The Provider hereby acknowledges that Contract Award does not guarantee that any Flexibility Services will be required by the Company or commit the Company to requiring any, or any particular level of, such Flexibility Services.

4. Record and Audits

4.1 The Provider shall keep proper and accurate records of all matters relating to the performance of its obligations under the Agreement.

4.2 The records shall be maintained in a form suitable for audit purposes and shall be retained for any period required by any Applicable Law, and in any event, for the Term of the Agreement and for a period of no less than:

4.2.1 seven (7) years after expiry or termination of the Agreement where such records contain or relate to financial data and/or Contract Data; or

4.2.2 unless specified otherwise in the Annexes, four (4) years after expiry or termination of the Agreement where such records relate to Performance Data.

4.3 The Company, or a reputable independent third-party auditor nominated by it, may, on reasonable notice, and in any event on not less than fifteen (15) Business Days' (or such other period as may be specified in the Service Terms or required by Applicable Law) notice, to the Provider and during normal working hours, inspect and review the records, as described in paragraph 4.2, for the purposes of verifying the Provider's compliance with its obligations under the Agreement and/or to meet any other audit or information requirement that may be required by Applicable Law and/or any regulatory body, including the Authority.

4.4 The Provider shall co-operate fully and promptly with any such audit and/or inspection conducted by the Company and provide such reasonable assistance as may be required by the Company in relation to any audit.

4.5 The Provider shall ensure that all paperwork issued by or on behalf of the Provider to the Company (including, without limitation, invoices, correspondence and delivery notes), is complete, accurate and clearly references any other appropriate and necessary information.

5. Representations and Warranties

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

5.1.1 it is a duly incorporated and company validly existing under the law of its jurisdiction of incorporation;

5.1.2 it has the right, power, capacity and authority to enter into and perform its obligations under the Agreement;

5.1.3 the entry into and performance by it of the Agreement does not and will not contravene or conflict with any Applicable Law or judicial or official order applicable to it;

5.1.4 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 the Agreement;

5.1.5 all information it provides to the other Party will be complete and accurate save to the extent disclosed;

5.1.6 no Insolvency Event is continuing or might reasonably be anticipated; and

5.1.7 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.

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

5.2.1 the DER contracted to provide the Flexibility Services has, as applicable, either:

(a) live connection(s) to the Company's Network, associated MPAN or MSID and Connection Agreement(s); or

(b) a connection offer(s) for a live connection and that the connection(s) can be completed and a Connection Agreement entered into in time to meet the Service Requirements as specified in the Service Terms;

5.2.2 it has, or it will procure that the owner of the DER has, obtained and maintains in force for the Term, either directly or through agreement via its aggregated DER, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services in accordance with the terms of the Agreement, including but not limited to any authorisation required pursuant to the regulations, codes, agreements and arrangements referenced in paragraph 5.2.9;

5.2.3 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 in connection with the Agreement (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for provision of Flexibility Services with the Company;

5.2.4 it shall disclose as soon as reasonably possible any change of circumstances which could affect the delivery of the Flexibility Services;

5.2.5 where applicable, for each DER project in development, the Provider has (or has procured), and, if requested, will promptly provide to the Company a copy of the Development Plan in respect of each DER;

5.2.6 where applicable, it shall take all reasonable steps to achieve, or procure, the commissioning of each DER project on time and in accordance with the relevant Development Plan;

5.2.7 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 paragraphs 5.1.3 and 5.2.9, the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by the Annexes;

5.2.8 where any Accessible Site is occupied by an Affiliate of the Provider or any other third party, the Provider shall be responsible for ensuring that where any provision in the Agreement imposes an obligation on the Provider to do or refrain from doing a particular thing in relation to a Site or any DER at such Site, the relevant Affiliate or third party complies with that obligation as if it were the named “Provider” party to the Agreement; and

5.2.9 the provision of Flexibility Services will not cause it or the DER to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) (available from the Company on request) or any other enactment relating to health and safety or standards, the Grid Code, Distribution Code, any Connection Agreement, any agreement for the supply of electricity, any restrictions and conditions attaching to relevant authorisations of the Environment Agency

5.3 Without prejudice to any right or remedy, each Party will be entitled to claim damages from the other Party for any breach of representation or warranty set out in the Agreement which causes that Party to incur costs or losses.

6. Charges and Payments

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

7. Termination

7.1 Each of the Parties shall have the right, if it is not the Party in breach or in relation to which any of the events concerned occurs ("**Terminating Party**"), to immediately terminate the Agreement on giving written notice of termination to the other Party ("**Defaulting Party**") if at any time during the Term of the Agreement:

7.1.1 subject to paragraph 7.3, the Defaulting Party is in material and/or persistent breach of the Agreement;

7.1.2 an Insolvency Event occurs in relation to the Defaulting Party;

7.1.3 paragraph 11.6 of these General Terms and Conditions applies.

7.2 Either Party shall have the right to immediately terminate the Agreement on giving written notice of termination to the other Party under paragraph 9.4 of these General Terms and Conditions.

7.3 For the purposes of paragraph 7.1.1, and without limitation, the following shall be deemed to be a material breach by a Party of the Agreement:

7.3.1 the Defaulting Party fails to pay (other than by inadvertent error in funds transmission which is discovered by Terminating Party, notified to the Defaulting Party and corrected within thirty (30) Business Days following such notification) any amount properly due or owing from it pursuant to paragraph 6, and such non-payment continues unremedied and not disputed in good faith and upon reasonable grounds at the expiry of thirty (30) Business Days immediately following receipt by the Defaulting Party of written notice from the Terminating Party of such non-payment;

7.3.2 paragraphs 8.3 or 15.10 of these General Terms and Conditions apply; or

7.3.3 any other material breach by the Defaulting Party of any of its obligations under the Agreement which, if capable of remedy, the Defaulting Party fails to remedy within ten (10) Business Days after service of a written notice from the Terminating Party specifying the breach and requiring it to be remedied.

7.4 Either Party (the "**Terminating Party**") may at any time on providing no less than ninety (90) Days prior written notice to the other Party (the "**Non-Terminating Party**") terminate the Agreement. Where the Non-Terminating Party fails to respond to a Termination Notice in accordance with this paragraph 7.4, the Non-Terminating Party shall be deemed to have accepted the Termination Notice.

Accrued liabilities

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

Surviving provisions

7.6 This paragraph and the following provisions of the Agreement shall survive termination or expiry:

7.6.1 paragraph 4 (*Records and Audit*);

7.6.2 paragraph 6 (*Charges and Payment*);

7.6.3 paragraph 7 (*Termination*);

7.6.4 paragraph 8 (*Service Failure*);

7.6.5 paragraph 10 (*Indemnity, Liability & Insurance*);

7.6.6 paragraph 12 (*Confidentiality*);

7.6.7 paragraph 13 (*Intellectual Property Rights*);

7.6.8 paragraph 14 (*Data Protection*);

7.6.9 paragraph 17 (*Dispute Resolution*);

7.6.10 paragraph 21 (*Waiver*);

7.6.11 paragraph 24 (*Governing Law and Jurisdiction*);

7.6.12 Glossary; and

7.6.13 any other provision of the Agreement that expressly or by implication is intended to come into, or continue in force, on or after termination or expiry of the Agreement.

Consequences of termination or expiry

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

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

7.8.1 deliver to the Company for approval a final invoice detailing all monies due to it under the Agreement;

7.8.2 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.

7.9 Where the Company terminates the Agreement as a result of a material and/or persistent breach by the Provider pursuant to paragraph 7.1.1, the Company may recover from the Provider any and all costs, losses and expenses reasonably incurred by the Company as a result of such termination, including where relevant such costs, losses and expenses associated with appointing a replacement Provider. Such costs, losses and expenses shall be payable by the Provider to the Company provided that the liability of the Provider in respect of this paragraph 7.9 shall not exceed (as applicable):

7.9.1 the Transmission Limit where such costs, losses and expenses are in connection with, or relate to, DER connected to the Transmission System; or

7.9.2 the Distribution Limit where such costs, losses and expenses are in connection with, or relate to, DER connected to the Distribution System.

7.10 The Parties agree that any costs, losses and expenses incurred by the Company pursuant to paragraph 7.9 shall be deemed direct losses and costs of the Company and accordingly not be subject to paragraph 10.3.

8. Service Failure

8.1 Notwithstanding its obligations under paragraph 8.2, the Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability of the Provider to provide the Flexibility Services in all or any part of any contracted Service Window (if applicable) as set out in the Service Terms.

8.2 In the event of a Service Failure by the Provider, the Company may require the Provider to:

8.2.1 provide the Company with a written explanation as to the cause of the failure of service delivery;

8.2.2 implement a rectification plan for improving performance and/or reducing the number of occurrences of Unavailability, which may include at the Company's discretion, a repeat of any commissioning tests undertaken on initial installation and commissioning of the DER;

8.2.3 propose a variation to the Service Requirements as specified in the Service Terms; or

8.2.4 take any other action that may be agreed with the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).

8.3 In the event that:

8.3.1 the Provider fails to comply with the terms of paragraph 8.2;

8.3.2 the Provider's proposals are not accepted by the Company (acting reasonably);

8.3.3 the Parties (acting reasonably) fail to reach agreement on any rectification actions; or

8.3.4 the Provider's performance in respect of the Service Failure notified by the Company does not significantly improve within thirty (30) Days of the date of the notice,

such failure will be deemed a material breach of the Agreement for the purposes of paragraph 7.1.1 of these General Terms and Conditions and paragraph 7.9 shall apply.

9. Force Majeure

9.1 A Party shall not be in breach or default of the Agreement to the extent that it is prevented from performing any of its obligations under the Agreement as a result of a Force Majeure Event, for so long as the Force Majeure Event continues to prevent such performance.

9.2 If a Force Majeure Event occurs, the following process will apply:

9.2.1 the affected Party will notify the other Party as soon as reasonably practicable of:

(a) the occurrence and description of the Force Majeure Event;

(b) the date on which the Force Majeure Event commenced and its likely duration (if known); and

(c) the effect of the Force Majeure Event on the Party's ability to perform its obligations under the Agreement;

9.2.2 as soon as is reasonably practicable following notification pursuant to paragraph 9.2.1, the Parties shall meet to discuss how best to continue their respective obligations under the Agreement; and

9.2.3 the affected Party will use reasonable endeavours to mitigate the impact of the Force Majeure Event on its ability to perform its obligations under the Agreement.

9.3 For the avoidance of doubt the non-performance of either Party's obligations under the Agreement arising prior to the Force Majeure Event, shall not be excused as a result of the Force Majeure Event.

9.4 If a Force Majeure Event prevents, hinders or delays a Party in performing its obligations under the Agreement for a continuous period of at least two (2) calendar months, either Party may terminate the Agreement with immediate effect.

10. Liability, Indemnity and Insurance

Note – National Grid Electricity Distributions implementation of this clause deviates from the ENA Standard

10.1 Subject to Clause 10.3 and without prejudice to Clause 10.4, 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.

10.2 Subject to Clause 10.3, 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 10.2, a contract year means a 12 month period commencing on the Commencement Date or any anniversary of it.

10.3 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.

10.4 Subject to Clause 10.3 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.

11. Transfers, sub-contracting and Change in Ownership

11.1 Where pursuant to paragraph 24:

11.1.1 the governing law of this Agreement is English law, any reference to "assign" shall be construed as relating to an "assignment"; or

11.1.2 the governing law of this Agreement is Scots law, any reference to "assign" shall be construed as relating to an "assignation".

11.2 Save as provided for in paragraph 11.3, the Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).

11.3 The Company may without the consent of the other Party assign, novate or transfer the benefit or burden of the Agreement or any other rights and/or obligations pursuant to these General Terms and Conditions to: (i) the holder of a Distribution Licence; (ii) the holder of a Transmission Licence with responsibility for carrying out the Balancing Services Activity; or (iii) to an Affiliate of the Company but only where such Affiliate of the Company holds a Distribution Licence or a Transmission Licence.

11.4 If either Party sub-contracts any part of the provision or obligations of Flexibility Services, then the responsible Party shall be fully responsible for the acts, omissions or defaults of any sub-contractor (and its employees) as if they were the acts, omissions or defaults of the responsible Party.

11.5 If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Accessible Site changes, or may change, during the Term, the Provider shall promptly notify the Company of the same. Where (i) the ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Accessible Site changes during the Term; or (ii) the use (for the purpose of providing the Flexibility Services) of any domestic Site changes during the Term, the Provider shall update its records and ensure that such records are reflective of such changes. The Company and the Provider shall if required, and at the reasonable request of the Company discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.

11.6 The Company reserves the right to terminate the Agreement in accordance with paragraph 7.1.3 if a Change in Ownership of the Provider occurs and the new owner of the Provider fails to meet any of the Company's reasonable due diligence checks as notified to the Provider.

12. Confidentiality

12.1 The Company is required to disclose certain information in accordance with this Agreement under obligations within its Distribution Licence or Transmission Licence (as applicable), or an Industry Code. Information shared will include but may not be limited to provider names, awarded prices, volumes, GSP and asset locations, and contract durations. Pursuant to the Primacy Rules, the Company, as applicable, shall be entitled to share information relating to the Agreement for the purpose of industry initiatives in relation to network or system constraint management and electricity network optimisation and the Company shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement. It shall not be a breach of this paragraph 12 where the Company discloses any such information. Such information shall include but is not limited to:

12.1.1 CMZ locations;

12.1.2 CMZ requirements;

12.1.3 a list of TCM generators;

12.1.4 an agreed form of 'risk of conflict forecast';

12.1.5 ESO planning outputs;

12.1.6 Company outages;

12.1.7 transmission outages; and

12.1.8 any additional Company related information as may be required,

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

12.2 Subject to paragraphs 12.1, 12.3.4 and 12.3.5, no public announcement or statement regarding the completion, performance or termination of the Agreement shall be issued or made by the Provider without the Company's prior written approval (such approval not to be unreasonably withheld or delayed). Neither Party shall be prohibited from issuing or making any such public announcement or statement to the extent expressly permitted or if it is necessary to do so in order to comply with any Applicable Law or the regulations of any recognised stock exchange upon which the share capital of such Party is from time to time listed or dealt in.

12.3 Save as permitted by paragraph 12.1, each Party shall treat as strictly confidential and shall not disclose any Confidential Information relating to the other Party received or obtained as a result of entering into or performing this Agreement. The restrictions imposed by this paragraph 12.3 shall not apply to the disclosure of any Confidential Information:

12.3.1 which is in or becomes part of the public domain otherwise than as a result of a breach of paragraph 12.3, or which either Party can show was in its written records prior to the date of

disclosure of the same by the other Party, or which it received from a third party independently entitled to disclose it;

12.3.2 which is required to be disclosed by law, an Industry Code or pursuant to any licence of the Party concerned;

12.3.3 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party;

12.3.4 to any parent, subsidiary or fellow subsidiary undertaking on a "need to know" basis only. In this paragraph 12.3.4, the words "parent", "subsidiary" and "undertaking" shall have the meanings as provided in sections 1159, 1161 and 1162 of the Companies Act 2006;

12.3.5 by the Provider to any owner and/or operator of relevant Plant and Apparatus to the extent necessary to enable the Provider to submit an offer or tender to provide Flexibility Services pursuant to the Agreement and fulfil its obligations under the Agreement.

12.4 Save as permitted by paragraph 12.1, 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 (such approval not to be unreasonably withheld or delayed).

13. Intellectual Property Rights

13.1 The Agreement does not transfer any interest in Intellectual Property Rights.

13.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's intellectual property other than to the extent reasonably necessary in performing its obligations pursuant to the Agreement, provided that nothing in this paragraph 13.2 shall operate so as to exclude any non-excludable rights of either Party.

14. Data Protection

14.1 Each Party shall, at its own expense, ensure that it complies with all applicable Data Protection Law.

14.2 The Parties acknowledge that as at the date of the Agreement, neither Party acts as a processor on behalf of the other. If at any point during the Term, either Party considers that one Party is acting as processor on behalf of the other, then the Parties shall promptly meet to negotiate in good faith a separate data processing agreement to cover the matters required by the Data Protection Law.

15. Modern Slavery, Anti-bribery and Living Wage

Modern slavery

15.1 The Parties undertake, warrant and represent that:

15.1.1 neither Party nor any of its officers, employees, agents or subcontractors:

(a) has committed an offence under the Modern Slavery Act 2015 ("**MSA Offence**");

(b) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

(c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

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

15.1.3 they shall notify the Company immediately in writing if they become aware or has reason to believe that they, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Provider's obligations under this paragraph 15.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations;

15.1.4 they shall include in their contracts with subcontractors and suppliers' anti-slavery and human trafficking provisions that are at least as onerous as those set out in this paragraph 15.1; and

15.1.5 they will respond to all reasonable requests for information required by the other Party for the purposes of completing other Party's annual anti-slavery and human trafficking statement.

15.2 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.

15.3 The Provider will permit the Company and its third party representatives, on reasonable notice during normal Business Hours, but without notice if there are reasonable grounds to suspect an instance of slavery and human trafficking, to access and take copies of records and any other information held at the Provider's premises (which shall be the Provider's office premises and other business premises) and to meet with personnel and more generally to audit compliance with its obligations under this paragraph 15. The Provider shall give all necessary assistance to the conduct of such audits during the term of the Agreement.

Anti-bribery

15.4 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 the Agreement.

15.5 The Provider shall immediately notify the Company if a foreign public official exerts a direct or indirect influence over the performance of the Agreement.

15.6 The Provider shall not:

15.6.1 Offer or agree to give any person working for or engaged by the Company or any other Affiliate of the Company any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to the Agreement, or any other agreement between the Provider and the Company or any Affiliate of the Company, including its award to the Provider and any of the rights and obligations contained within it; nor

15.6.2 Enter into the Agreement if it has knowledge that, in connection with the Agreement, any money has been, or shall be, paid to any person working for or engaged by the Company or any other Affiliate of the Company by or for the Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Company and has been approved by the Company before execution of the Agreement.

15.7 The Provider shall indemnify the Company against any losses, incurred by or awarded against the Company as a result of any breach of anti-corruption and anti-bribery laws, statutes, regulations and codes or the Bribery Act 2010.

15.8 The Provider agrees to provide the Company with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government, agency or competent authority in any relevant jurisdiction for the purpose of compliance with any anti-slavery laws or anti-bribery laws (including but not limited to the Modern Slavery Act 2015 and the Bribery Act 2010).

Living wage

15.9 Where applicable the Provider agrees to:

15.9.1 pay all of its personnel who are directly employed by it in respect of the provision of the Flexibility Services used within the UK not less than the real living wage (as defined at https://www.livingwage.org.uk/ as may be updated from time to time) for the Term of the Agreement; and

15.9.2 ensure all employees of its contractors and subcontractors performing the provision of the Flexibility Services used within the UK are paid not less than the real living wage (as defined

at https://www.livingwage.org.uk/ as may be updated from time to time) for the Term of the Agreement.

15.10 Any breach of this paragraph 15 by the Provider shall be deemed a material breach of the Agreement for the purposes of paragraphs 7.1.1 and 7.9.

16. Notices

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

16.2 A notice shall be deemed to have been received:

16.2.1 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;

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

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

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

16.5 This paragraph 16 does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

17. Dispute Resolution

17.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to the Agreement.

17.2 In the event that a dispute cannot be resolved within thirty (30) Days of written notice of the dispute, the dispute shall be escalated to the Parties' senior representatives (named in the Service Terms, or as otherwise notified by either Party to the other) who have authority to settle the same and/or may refer the dispute to the forms of dispute resolution in accordance with paragraph 17.3.

17.3 If thirty (30) Days following such an escalation the Parties have still not resolved the dispute, then either Party shall have the right to refer the dispute to either:

17.3.1 arbitration; or

17.3.2 an Expert for determination; or

17.3.3 such other process as is agreed between the Parties.

17.4 For the avoidance of doubt, paragraphs 17.2 and 17.3 shall not preclude a Party from raising arbitration proceedings (or where other processes have been agreed under paragraph 17.3.3 court

proceedings) in the event a claim is considered to be nearing the end of a prescription and/or limitation period pursuant to the Limitation Act 1980 or the Prescription and Limitation (Scotland) Act 1973 (as applicable) or where determination is required in the event of an emergency where the time periods set out in this paragraph 17 would not be suitable .

17.5 In the event that the Parties cannot agree any other process under paragraph 17.3.3, then either Party may refer any dispute to the courts of: (i) England and Wales if the Company is incorporated in England and Wales; and (ii) Scotland if the Company is incorporated in Scotland (as applicable).

Arbitration

17.6 Where any dispute is referred in accordance with paragraph 17.3.1 to arbitration, the following provisions shall apply:

17.6.1 If the Company is incorporated in England and Wales, the seat of arbitration shall be London. If the Company is incorporated in Scotland, the seat of arbitration shall be Edinburgh;

17.6.2 The number of arbitrators shall be one. Where no arbitrator is named or where the named arbitrator is not able or unwilling to act the appointer of the arbitrator (and of any replacement) shall be The Chartered Institute of Arbitrators;

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

17.6.4 For the avoidance of doubt, both Parties confirm and agree that nothing in the Agreement to arbitrate prevents a Party:

(a) challenging the award of an arbitral tribunal as provided for under the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010;

(b) seeking the remedy of specific performance or any other power or remedy that would be available to the English court or Scottish court (as the case may be) from the arbitral tribunal in accordance with the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010;

(c) seeking interim relief from the English court or Scottish court (as the case may be) under the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010, or from any other court with competent jurisdiction; or

(d) seeking to enforce any arbitral award in the English court or Scottish court (as the case may be) or any court of competent jurisdiction.

17.6.5 Without prejudice to any other mode of service allowed under any relevant law, where a Provider is not incorporated in any part of Great Britain, the Provider agrees that if it does not have, or shall cease to have, a place of business in Great Britain it will promptly appoint, and shall at all times maintain and identify to the Company, an agent for the service of process in Great Britain to accept service of process on its behalf in any proceedings commenced in support of, or in relation to arbitration, in the courts of England and Wales or Scotland (as the case may be).

Expert determination

17.7 Where any dispute is referred in accordance with paragraph 17.3.2 to an Expert for determination, the following provisions shall apply:

17.7.1 the Expert shall act as an expert and not as an arbitrator and shall decide those matters referred to them using their skill, experience and knowledge, and with regard to all such other matters as they in their sole discretion consider appropriate;

17.7.2 if the Parties cannot agree upon the selection of an Expert, the Expert shall be determined by (i) the President for the time being of the Law Society of England and Wales, if the Company is incorporated in England and Wales or (ii) the President for the time being of the Law Society of Scotland, if the Company is incorporated in Scotland;

17.7.3 all references to the Expert shall be made in writing by either Party with notice to the other being given contemporaneously, and the Parties shall promptly supply the Expert with such documents and information as they may request when considering any referral;

17.7.4 the Expert shall be requested to use their best endeavours to give their decision upon the question before them as soon as possible in writing following its referral to them, their decision shall, in the absence of fraud or manifest error, be final and binding upon the Parties;

17.7.5 if the Expert wishes to obtain independent professional and/or technical advice in connection with the question before them:

(a) the Expert shall first provide the Parties with details of the name, organisation and estimated fees of the professional or technical adviser; and

(b) the Expert may engage such advisor with the consent of the Parties (which consent shall not be unreasonably withheld or delayed) for the purposes of obtaining such professional and/or technical advice as they may reasonably require;

17.7.6 the Expert shall not be held liable for any act or omission, and their written decision will be given without any liability on the Expert's part to either Party, unless it shall be shown that they acted fraudulently or in bad faith;

17.7.7 save to the extent otherwise expressly provided herein pending the determination by the Expert, any subsisting Agreement shall continue to the extent possible for the Parties to perform their obligations; and

17.7.8 the Expert shall at their discretion be entitled to order that the costs of the reference of a dispute to them shall be paid by the Parties in whatever proportions they think fit.

18. Severance

18.1 If any provision of the Agreement becomes or is declared invalid, unenforceable or illegal by a judicial or other competent authority, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Agreement, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

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

19. Third Party Rights

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

20. No Agency or Partnership

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

20.2 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.

21. Waiver

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

22. Entire Agreement

22.1 The Agreement and the Associated Documents referred to in it together constitute the entire agreement and understanding of the Parties relating to the matters contemplated by the Agreement and those documents, and supersede any previous drafts, agreements, understandings or

arrangements between any of the Parties relating to the subject matter of the Agreement and those documents, which shall cease to have any further effect.

23. Counterparts

23.1 Where executed in counterparts:

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

23.1.2 delivery will take place when the date of delivery is agreed between the Parties after execution of the Agreement as evidenced by the date at the top of the Agreement.

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

24. Governing Law and Jurisdiction

24.1 The validity, construction and performance of the Agreement and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with the Agreement or its enforceability shall be governed by and construed: (i) in accordance with English law if the Company is incorporated in England and Wales; and (ii) in accordance with Scots law if the Company is incorporated in Scotland.

Flexibility Services Service Terms – Company Active Services

August 2024

1. Introduction

These Service Terms relate to National Grids flexibility procurement of Flexibility Services on its electricity distribution network in the Midlands, 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.

3. Service Terms Glossary

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

"Accepted/Awarded/Contracted Capacity"	The net volume, stated in kW or MW, accepted by the Company in accordance with the Service Terms and pursuant to a Trade Award;
"Accepted/Awarded/Contracted Availability Window"	means a committed Availability Window in respect of a Trade Dispatch Group, in which the DER or DER group is required to be Available within a specified window of time which is notified by the Company in the form of a Trade Award;
"Active Power" **and** **"Active Services"**	the product of voltage and the in-phase component of alternating current measured in units of Watts and standard multiples thereof i.e. 1000 Watts = 1kW, 1000 kW = 1MW, 1000 MW = 1GW, 1000 GW = 1TW;
"API"	means application programme interface;

"Asset Point Metering"	the metering measured directly from the DER and is downstream of the Boundary Point Metering;
"Availability Payment"	the fee payable in consideration for the Provider making the DER Available and calculated in accordance with the provisions of Clause 5 of the Service Terms;
"Availability Performance"	the overall monthly utilisation delivery performance calculated as a percentage for application to all availability payments at the point of invoicing;
"Availability Status"	Available or Unavailable;
"Availability"	means, for the purposes of the Contract, that the awarded DER or DER group is Available and, for the purposes of the Service Terms, shall be construed as set out in the definition of an Accepted Availability Window;
"Available"	means that the awarded DER or DER group is, subject to receipt of a Utilisation Instruction, available for dispatch;
"Boundary Metering Point"	the metering measured at the point of supply from the Company network;
"Contract Award"	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;
"Contracted Service Response"	The required response type to a Utilisation Instruction; Product, import or export, turn-up or turn-down, as informed to the Provider through a Trade Award;
"Awarded/Contracted Utilisation Windows"	means in respect of a Trade Dispatch Group, any utilisation dates and times confirmed to the Provider through a Trade Award;
"Flexibility Response"	means the increase or decrease of net export of active power to, or the reduction or increase of net import of active power from, the Company's Network;

"Due Date for Payment"	has the meaning given to it in paragraph 5.12.2;
"Event End Time"	means the earlier to occur of the events set out in paragraph 7.2.6;
"Flexibility Services"	means, the flexibility Products procured by the Company, defined in paragraph 5.11.4
"Grace Factor"	the percentage of under delivery below 100% for which renumeration of 100% will be applied;
"Maximum Run Time"	means the maximum period of time a Trade Dispatch Group may be requested by the Company to continuously deliver a Flexibility Response, as defined by the Provider;
"Meterable Unit"	means one DER, or a DER group containing multiple DER that are aggregated and regarded as a single entity, which deliver a Flexibility Response on a single metering data output.
"Minimum Run Time"	means the minimum period of time a Trade Dispatch Group may be requested by the Company to continuously deliver a Flexibility Response, as defined by the Provider;
"Monthly Utilisation Performance Factor"	the percentage calculated for application to the Availability Payment, for the relevant month, based on the Providers performance where Utilisation Instructions have been issued;
"Operational Period"	means the specified duration in which the parameters of a Trade Dispatch Group are deemed committed and unable to change, specified by the Company and available to view in the Market Gateway;
"Payable Over-delivery"	the percentage of over delivery beyond 100% for which renumeration will be allowable;
"Performance Multiplier"	the factor by which any percentage of under delivery below the grace factor will be multiplied by in order to calculate payable delivery;

"Performance Report"	means a report in relation to the Flexibility Services provided by a Trade Dispatch Group responding to Utilisation Instructions;
"Flexible Power Portal"	means the password protected Provider area of the flexible power website accessible via http://www.flexiblepower.co.uk/;
"Product"	The Flexibility Services procured by the Company, as further detail in section 5 of the Service Terms
"Requested Start Time"	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 Contracted Capacity shall be delivered;
"Response Time"	means the maximum period of time (in minutes) which is permitted to elapse from issue of a Utilisation Instruction by the Company to achieving the Contracted Capacity of a relevant Trade Dispatch Group;
"Service Meter Data"	the meter data recorded at the Service Meter in respect of a Meterable Unit;
"Service Meter"	the measuring equipment, that shall be used to determine delivery of the Flexibility Services;
"Stop Instruction/Notice"	an instruction from the Company to the Provider, instructing the Provider to cease delivery of the Flexibility Services, as more particularly described in Annex1;
"Trade Award"	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;
"Trade Dispatch Group"	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;

"Trade Opportunity"	the Company's flexibility requirements, from which a Provider may tender a Trade Response;
"Trade Response"	the technical and commercial parameters a Provider can offer in respect of a Trade Opportunity;
"Unavailability" (or "Unavailable")	the Flexibility Services, in accordance with the Service Requirements, are not Available to deliver a Flexibility Response to the Company;
"Utilisation Payment"	the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in paragraph 5;
"Utilisation Performance"	the calculated performance per utilisation event after any factors have been applied;
"Utilisation"	means in respect of a Trade Dispatch Group, any delivery of Flexibility Response following a Utilisation Instruction from the Company during a constraint event in accordance with the Trade Award and "Utilised" shall be construed accordingly;
"Zonal Price"	means the price awarded to all successful Trade Responses, established by the Company following its clearing process and informed to the Provider in the form of the Trade Award;
"Zone"	the Company defined geographic boundary location within which the DER or DER groups are sited 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 any subsequent Trade Award(s) and shall constitute Service Requirements for the purposes of this Agreement. The Trade Award will detail the following attributes;

Flexibility Product awarded

Zone awarded
Trade Dispatch Group awarded
Contracted Availability Windows
Contracted Utilisation Windows (where applicable)
Contracted Capacity per awarded Trade Dispatch Group
Awarded Zonal Price
Contracted Service Response type
Award commencement and expiry date; the “Service Period”

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

4.2 Service Windows

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

4.3 Service Requirements

1.	The DER shall be connected and capable of providing the Contracted Response type from the required 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 Contracted Capacity is the volume of 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 or DER group, can be delivered reliably, is fixed for the duration of the Service Period, and must be within the conditions of its respective Site’s Connection Agreement.

5.	The DER shall have a declarable set of capability parameters; each DER or DER group shall have a single point of communication and control compliant with Annex 1 of this Agreement.
6.	Each facility making up a DER or DER group set shall have metering of sufficient granularity and accuracy to enable the Company to monitor the provision of Flexibility Services, as further described in section 8 of the Service Terms.

5. Invoicing & Charges

5.1 Validation and settlement of the Flexibility Services requires the provision of metering data via the API or uploaded to the Flexible Power Portal as described in Annex 1.

5.2 The Flexibility Services and payment cycles are based on a calendar month, the Company operates a total of 12 billing cycles within each calendar year.

5.3 The Company operates a self-billing procedure for all charges relating to its flexibility services, self-billing invoices are produced within the Flexible Power Portal on behalf of Providers in accordance with clause 5.8 below.

5.4 After the end of each Utilisation event a Performance Report is created and provided to the Provider via the Flexible Power Portal which allows the Provider to review their performance results.

5.5 A provisional invoice will be produced automatically within one (1) working day following the end of each month. The Provider shall review within fourteen (14) calendar days of being provided the provisional invoice, if the calculations are disputed the Provider shall provide full details the Company. If the Provider disputes any calculations, then the final invoice shall be paid and any adjustment necessary will be netted from the invoice in the month following such dispute being resolved. The parties will endeavour to resolve any dispute within 30 calendar days of the provisional invoice being issued.

5.6 If no query is raised on the provisional invoice within a fourteen (14) calendar day window the settlement is assumed to be correct and the Flexible Power Portal will automatically generate a final invoice which can be downloaded by the provider for their records.

5.7 Following the (14) calendar day window the Flexible Power Portal will issue a copy of the final invoice to the Company accounts payable for processing.

5.8 Payments in respect of final invoice will be made via BACs to the Provider within 30 calendar days of the invoice date.

5.9 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.

5.10 Charges

5.10.1 Following a Trade Opportunity closure, the Company will use a clearing process, as further described in Annexes 1 and 2, to establish the Zonal Price it will pay to all successful Trade respondents.

5.10.2 The price the Company will pay the Provider for Flexibility Services will be communicated through the Trade Award

5.11 Calculation of Charges

5.11.1 There are two types of Flexibility Services payments: Utilisation Payments and Availability Payments. The application of the payment type depends on the Flexibility Service product being delivered.

Utilisation Payments

5.11.2 Utilisation Payments are made when a Utilisation Instruction is issued by the Company. Utilisation Payments are considered in terms of:

for every metered time period, energy (MWh) delivered supplied by the Provider and multiplied by the Utilisation Fee (£/MWh);

5.11.3 Where the Provider has not fully met the volume of the Utilisation Instruction, a Performance Multiplier is applied to determine Utilisation Performance and how much delivery is eligible for payment.

5.11.4 The Company shall calculate Utilisation Performance for each of the flexibility products it procures with the following factors;

Attribute	**Scheduled Availability, Operational Utilisation – Day Ahead (SAOU_DA)**	**Scheduled Utilisation, Utilisation Only - Settlement Periods (SU_SEP)**	**Scheduled Utilisation, Utilisation Only - Specific Periods (SU_SPP)**	**Operational Utilisation, Utilisation Only - 15min Response (OU_15)**
Utilisation Grace Factor	5%	5%	5%	10%
Availability Grace Factor	5%	N/A	N/A	N/A

Penalisation Multiplier	3	3	3	2
Payable Over-delivery	0%	0%	0%	0%

5.11.5 The Company reserves the right to amend the factors outlined in 5.11.4 and will make changes to these factors known ahead of Trade Opportunities becoming available.

Availability Payments

5.11.6 Where Availability is applicable to a flexibility service, payments are paid for every Accepted Availability Window in respect of the contracted DER or DER groups. Availability Payments are subject to a Monthly Utilisation Performance Factor.

5.11.7 Availability is determined by:

for every metered time period, the Agreed Availability Capacity (MW) multiplied by the Availability Fee.

5.11.8 Where a Service Provider declares Unavailability, or was not Available at the time of delivery, then no Availability Payment will be made for that metered time period.

5.11.9 Availability Performance is calculated monthly and Availability Payments are recovered should the delivered capacity be lower than the agreed delivery capacity. In order to facilitate recovery, the Provider's calculated Monthly Utilisation Performance Factor is applied to the Availability Payment

5.11.10 Detailed payment calculations are published by the ENA and available to view here; https://www.flexiblepower.co.uk/downloads/1124

5.12 Payment Terms

5.12.1 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.

5.12.2 All invoices shall be paid within thirty (30) Days of the date of invoice (the "Due Date for Payment").

5.12.3 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.

5.12.4 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).

5.12.5 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.

5.12.6 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 5.12.6 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

5.12.7 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. Sites & 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 Trade Dispatch Group that has been successful in a Trade Response, the Company will confirm within the Trade Award.

6.3 Should the Provider wish to change the component DER within a Trade Dispatch Group 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 DER to a Trade Dispatch Group at any time throughout the Service Period, however such changes to Trade Dispatch Groups can only take effect from the following Operational Period.

6.5 At any time during a Service Period, in respect of 6.3 and 6.4 above, Participation above the Awarded Capacity stated in the Trade Award cannot be exceeded.

7. Communications

7.1 Senior Representatives

The Company; Flexibility Commercial Manager. 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 Where the flexibility service being procured requires, the Provider shall build APIs, as further described in Annex 1, to the Flexible Power Portal to facilitate;

(a) the receipt of utilisation instructions from the company to initiate the start/stop of a delivery event, and;

(b) the provision of metering data to allow the validation and settlement of any Flexibility Response.

7.2.3 If, at any time, the Provider becomes aware that its Trade Dispatch Group will be Unavailable 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;

(a) Provider Name,

(b) Flexible Power Portal ID of unavailable unit,

(c) Date Unavailable from,

(d) Date Unavailable to.

7.2.4 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.

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

(i) The expiry of the agreed (or, where relevant, deemed agreed) Maximum Run Time;

(ii) any other time as required by the Company by way of a Stop Instruction or Notice; 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 72.6(ii) of the Service Terms would be prior to the end of the Minimum Run Time, Flexibility Response shall be operated until the end of the Minimum Run Time.

7.2.6 Acceptance of instructions

7.2.7 Unless the Provider has explicitly opted out of signal acknowledgements (only possible for scheduled services), and as further described in Annex 1;

(a) the Flexible Power Portal will issue dispatch instructions via API to the Providers stipulated endpoint. The Provider must implement this endpoint on their side and add it to their Flexible Power account. The Flexible Power Portal will send a json message to this endpoint up to 15 minutes before the scheduled start time of a dispatch event to allow for asset ramp up.

(b) a HTTP 200 response must be sent back to the Flexible Power Portal immediately (without waiting for assets to start). If a HTTP 200 response is not received then the Flexible Power Portal will resend the start signal every 30 seconds for up to 30 minutes, after which the event is considered failed.

7.2.8 The Company will not issue instructions other than via the API. Where the Provider has opted out of signal acknowledgement for scheduled services that allow, the provider must proceed to deliver the service in accordance with the parameters of their Trade Award.

7.2.9 As further described in section 14 of Annex 2, the Company may, at its discretion, permit 3rd Party Marketplaces to facilitate routes to its flexibility market. Where a Provider elects to enter the Companies flexibility market via a 3rd Party Marketplace, there will be no requirement to receive instructions via the Flexible Power Portal.

8. Performance Monitoring

8.1 Metering Standards

For Asset Point Metering, the Provider will ensure compliance with the following metering standards set out within the most recent published relevant Balancing and Settlement Code of Practice[1] Eleven: code of practice for the metering of balancing services assets for settlement purposes:

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

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

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

8.2 Submission of Performance Report

All performance reporting is undertaken within the Flexible Power Portal. 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.

[1] BSC & Codes - Elexon BSC

8.3 Testing and monitoring

Only metering proving tests, as detailed in Annex 1, must be completed. No delivery proving tests (test of ability to deliver a response) of DER or DER groups are required in order for the Provider to participate in Trades, as described in Annex 2.

8.4 Service Meter Data

Minute-by-minute and half hourly data, will be accepted for settlement purposes.

Certain products rely on minute-by-minute metering granularity for accurate performance monitoring and settlement. Where an alternative to minute-by-minute granularity is provided the data may be disaggregated. As such, the Provider shall recognise that any necessary disaggregation may result in non-optimal performance monitoring and calculation.

8.5 Service Failure

Each of the following shall constitute a Service Failure:

8.5.1 Reduced Capacity: if a Trade Dispatch Group providing the Flexibility Response fails to deliver in accordance with Utilisation Instructions at a delivery performance of at least 60% over 2 months or for 60 Utilisation events, whichever is sooner.

8.5.2 Unavailability level: if a Trade Dispatch Group,providing Flexibility Services is notified as Unavailable for more than 50% of the Awarded **Availability or Utilisation Window** in a month;

8.5.3 Unavailability Notification: if the Provider fails to notify the Company that a Trade Dispatch Group is Unavailable within 24hrs of a Contracted Availability Window.

8.6 Monitoring of DER development projects - Not applicable

8.7 Auditing

As required, the Company may request un-aggregated metering data from the Provider for a specified Meterable Unit. The timescales to provide this data and the timescale within which the Company will assess this data will be agreed at the time of request

9. Data Protection

The Company requires compliance with Clause 14 of the General Terms and Conditions**.**

10. Details of Flexibility Provider and Special Conditions

10.1 Details of the Flexibility Provider

The details of the Flexibility Provider Party to this Agreement shall be acknowledged in the Contract Award Letter issued via the Company's Market Gateway Platform, subject to acceptance of this Agreement enacted within the aforementioned Market Gateway Platform.

10.2 Special Conditions - None

10.3 Cyber Security - Not applicable

Annexes to Flexibility Services Service Terms – Company Active Services

August 2024

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 The Company uses the Flexible Power Portal, an online portal for Flexibility Service Provider interactions, to provide functionally that facilitates;

A) The recording of Service Windows associated with a Trade Award;

B) The instruction of Utilisation in respect of Service Windows associated with a Trade Award;

C) The receipt of metering data in order to verify a delivery to the instruction of Utilisation in respect of Service Windows associated with a Trade Award;

D) The calculation of delivery performance;

E) The calculation of payments due;

F) The provision of Self-billing invoices;

collectively known as 'Market Operations'.

1.2 The Flexible Power Portal is available here; https://flexiblepowerportal.co.uk

1.3 Providers will be granted login credentials for the Flexible Power Portal following agreement to this Agreement.

1.4 The Company may, at its discretion, permit 3rd Party Platform routes to its flexibility market, removing the need for Flexibility Service Providers to interact with the Flexible Power Portal, see section 14 of Annex 2 for further detail.

2 Flexible Power APIs

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 Utilisation Instructions.

Where the Company has awarded a Provider with availability for services that are instructed closer to real time, Providers are expected to develop their own interfaces with Flexible Power Portal dispatch API V1 or V2 in order to receive Utilisation Instructions.

3 Metering submission

The Company requires the provision of Metering Data to the Flexible Power Portal for all utilised service windows so that delivery can be verified. Metering can be submitted either via the available API or by CSV upload and must include Metering data, with timestamp, per Meterable Unit in accordance with the format specified in the guidance.

Should the Company identify a failure affecting the API communication of metering 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 of metering 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.

4 Metering Proving

Until the Company can determine that the Provider can successfully submit metering data for a Meterable Unit, entry into Trades for the respective DER may be withheld.

Successfully detecting metering data requires us to see at least 12 meter readings within the last 7 days submitted via the Flexible Power Portal via the CSV data upload functionality or using the available metering APIs.

Following a communications failure, the company may request the Provider complete further API testing.

5 API Guidance

- A library of all APIs available on the Flexible Power Portal is available here; https://flexiblepowerportal.co.uk/docs/public/participant.html
- Guidance on CSV metering submission is available here; https://flexiblepowerportal.co.uk/docs/public/faq.html
- Additional guidance on API set-up and testing is available here; https://flexiblepower.wpdserv.net/downloads/1121

6 Clearing & Dispatch Principles

The Company has published detailed information on how it makes decisions on its website here; https://www.flexiblepower.co.uk/downloads/1159

Annex 2 – Auction/Tender/Trade Guidelines

1. Introduction

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

1. The award of an Overarching Contract to enable FSPs to respond to Trade Opportunities;
2. The registration and validation of DER; and,
3. 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 this Agreement.

1.4 The Company may, at its discretion, permit 3rd Party Platform routes to its flexibility market, removing the need for Flexibility Service Providers to interact with the Market Gateway, see section 14 of this Annex 2 for further detail.

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 this Agreement, 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 Provider 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 Providers or groups of Providers;
b) set Trading restrictions for any Products; and
c) suspend or restrict Trading for one or more 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 Provider 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 Market Gateway 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.

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 user 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 13 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 12 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 Provider 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 amends 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 Flexible Power 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 clause 5 of the Service Terms.

11.4 Where functionality allows, 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 Where functionality does not allow, and at National Grids discretion, Trades may be conducted outside of the Market Gateway.

11.6 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.

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

11.8 Providers who have not completed Metering Proving as set-out in paragraph 8.3 of the Service Terms will be unable to complete a Trade Response.

11.9 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 ceiling 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, and the selection of the services, National Grid will communicate the Trade Award to the provider through email or through the Market Gateway where functionality allows.

12 Baselines

12.1 Upon DER validation, National Grid shall determine applicable Baselines 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 shall make visible the baseline value applicable to the Product.

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 as described in Annex 1.

14 Access via 3rd Party Platforms

14.1 Where the Company has an established partnership with a 3rd Party Marketplace for the purpose of flexibility market access and trading, the Company will allow all Provider market interactions to be performed on the 3rd party platform, removing the need for providers to interact with the Market Gateway.

14.2 Where a 3rd Party Marketplace has been granted permission by the Company to act a route to its flexibility market, Flexibility Services Providers using this route will be required to comply with any processes, requirements or interactions within the 3rd Party Marketplace that have been specified by the Company as necessary criteria for entry into its flexibility markets.

14.3 The Company will not allow a provider to interact across both the Market Gateway and 3rd Party Marketplaces concurrently.

14.4 The Company will not allow a provider to interact across multiple 3rd Party Marketplaces concurrently.

14.5 When a Provider elects to use a 3rd Party Marketplace, this will also remove their requirement to interface with the Company's Flexible Power Portal and all interfaces for the purpose of Market Operations are to be conducted through the chosen 3rd Party Marketplace.

Annex 3 – Special Requirements

THE FOLLOWING SHALL BE ADDED AS A NEW CLAUSE 5.4 IN THE GENERAL TERMS & CONDITIONS:

9.4 *In the event that, in contravention of Clause 5.2.7, Flexibility Response is instructed which causes the Provider to be in breach or non-compliance as described in Clauses 5.1.3 and/or 5.2.9, then Flexibility Response shall be deemed to be Unavailable from the Site during any Accepted Availability Window (as relevant).*