

DATE: [TO BE COMPLETED BY THE COMPANY POST AWARD] 20[●]

FLEXIBILITY SERVICES AGREEMENT

Between

WESTERN POWER DISTRIBUTION

(as the Company)

and

[PROVIDER]

(as the Provider)

Note: This Flexibility Services Agreement is intended to standardise the provision of Flexibility Services to Network operators. Please note that the project-specific details, timings and power requirements will be adapted for the particular Provider and Flexibility Services in question and placed within the appropriate schedules

THIS AGREEMENT is made on [to be completed by the Company post award] 20[●]

BETWEEN:

- (1) **Western Power Distribution (South West) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (West Midlands) plc, Western Power Distribution (East Midlands) plc** (company registered numbers: 02366894, 02366985, 03600574 and 02366923) whose registered office is at Avonbank, Feeder Road, Bristol BS2 0TB (the “**Company**”); and
- (2) [●] **LIMITED/PLC**, a company incorporated in [England and Wales] [Scotland] (registered number [●]) whose registered office is at [●] (the “**Provider**”).

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

RECITALS:

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

The Parties hereby confirm that this Flexibility Services Agreement including Schedules shall incorporate the Conditions of Contract (a copy of which is attached) (the “**Conditions**”) and together the Flexibility Services Agreement and the Conditions shall be construed as one agreement (the “**Agreement**”). The priority of such documents shall be as set out below:

- (1) this Flexibility Services Agreement and the Schedules attached; and
- (2) the Conditions.

Terms used herein and not defined shall have the meaning given to them in the Conditions.

PART 1 – Details of the Flexibility Provider and Special Conditions

Provider	Provider’s company number and registered office
[●]	[●]
Contract number	[[to be completed by the company post award]]
Provider’s addresses for notices	[●] Address: [●] Contact Number: [●] For the attention of: [●]

Company's addresses for notices	Western Power Distribution Address: Pegasus Business Park, Castle Donington, Derbyshire, DE74 2TU Contact Number: 01332 827436 For the attention of: Helen Sawdon
Provider's Nominated Person	[●]
Company's Nominated Person	Helen Sawdon
Special Conditions	
The following provisions shall apply to the Agreement and, in the event of conflict, shall override the Conditions:	
1. Company or Service specific variations will be added to the appropriate schedules, or in entirety to Schedule 7 Special Requirements. It is critical to note that where highlighted, these will override the conditions of the referenced clauses/sections in this agreement.	

PART 2 – Commencement and Expiry Dates

Commencement Date	The Agreement shall commence on the date the Agreement is made on as completed on page 2.
Expiry Date	As set out in Schedule 1

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

Signed)
)
)
for and on behalf of
Western Power Distribution)
Director/Duly Authorised Signatory

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

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CONDITIONS

1. DEFINITIONS AND INTERPRETATION

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

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

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

“Available or Availability” means that the Flexibility Services, in accordance with the Service Requirements and the Utilisation Instruction, are available to be delivered to the Company for the duration of the Service Window;

“Availability Fee” means the fee payable in consideration for the Provider making available the DER and calculated in accordance with the provisions of Schedule 2;

“Availability Status” means Available or Unavailable;

“Authority” means the Gas and Electricity Markets Authority;

“Business Hours” means between 9:00 am and 5:00 pm on a Business Day;

“Business Day” means any day other than a Saturday or a Sunday or a bank holiday in England and Wales;

“Change in Ownership” means:

- a) any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty per cent (50%) or more of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- b) any other arrangements that have or may have or which result in the same effect as sub-clause a) above.

“Charges” means the charges set out in Schedule 2 of this Agreement;

“Commencement Date” means the date set out in Part 2 of this Agreement;

“Confidential Information” means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Connection Agreement” means any agreement governing the terms of connection of any plant or apparatus to, and/or any agreement for the supply of electricity to the plant or apparatus or for

the acceptance of electricity into, and its delivery from, the Company's electricity distribution Network;

"Data Protection Law" means any applicable law relating to the processing, privacy, and use of personal data, as applicable to the Company, the Provider and/or the Flexibility Services, including in the UK: (i) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any current laws or regulations implementing Council Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679 ("**GDPR**"), and/or any corresponding or equivalent national laws or regulations, once in force and applicable, including the Data Protection Act 2018, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;

"Defect" means an issue that may arise with the DER equipment, metering or the communication interface between the Company and Provider which results in an apparent non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services.'

"Disclosing Party" means the Party disclosing Confidential Information to the Receiving Party;

"Discretionary Flexibility Services" means additional Flexibility Services requested by the Company outside of or in addition to the Service Requirements detailed within this Agreement;

"Discretionary Service Periods" means in respect of a DER, periods during the Term of the Agreement that are not Service Periods;

"Discretionary Utilisation Fee" means the fee for providing Discretionary Flexibility Services as specified in Schedule 1;

"Discretionary Utilisation Request" means a request for Flexibility Services from the Company in respect of a DER during a Discretionary Service Period;

"Dispatch Equipment" means any equipment (including any routers, computers, input / output notes and cables and software) owned by the Company and provided in respect of the provision of the Flexibility Services under this Agreement;

"Distributed Energy Resources" or "**DER**" means the electricity generators, electricity storage or electrical loads, and other Site equipment, machinery, apparatus, materials and other items used for the provision of the Flexibility Services as described in Schedule 3;

"Distribution Code" means the Distribution Code of Licenced Distribution Network Operators of Great Britain;

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

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

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

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

"Expiry Date" means the date this Agreement expires, as defined in the Agreement and as can be extended pursuant to Clause 2;

"Flexibility Provider" means the provider set out in Part 1 of this Agreement;

“Flexibility Services” means, and more particularly described in Schedule 1, the services to be provided by the Provider to the Company under and in accordance with this Agreement which give the Company the ability to manage the load at a specific point of the Network at certain points in time;

“Force Majeure” means any event or circumstance which is beyond either the Company’s or the Provider’s (as the case may be) reasonable control or its employees and which results in or causes its failure to perform any of its obligations under the Agreement, provided that: (a) lack of funds; or (b) any failure or fault in the DER, including insufficient fuel, shall not constitute Force Majeure;

“Good Industry Practice” means the exercise of the degree of care, skill and diligence, which would reasonably be expected from an experienced and competent person carrying out services of a similar nature, scope and complexity as the Flexibility Services;

“Grid Code” means the technical code for connection and development of the National Electricity Transmission System (available at www.nationalgrid.com/uk/electricity/codes/grid-code?code-documents);

“Group” means in relation to a company, that company, any subsidiary or holding company of that company, and any subsidiary of a holding company of that company. For the purposes of this definition the terms “holding company” and “subsidiary” shall have the meanings assigned to them by section 1159 of the Companies Act 2006;

“Intellectual Property Rights” means patents, rights in or to inventions, copyright and related rights, trademarks, service marks, business names, rights in get-up goodwill and the right to sue for passing off, rights in designs, rights in domain names and website addresses, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Insolvency Event” means a Party becoming insolvent or entering into liquidation or receivership or being the subject of an application for an administration order or suffering an administrative receiver or similar officer to be appointed in relation to the whole or any part of its assets or convening a meeting to make a composition or voluntary arrangement with its creditors or suffering any material judgement to be executed in relation to any of its property or assets or if an encumbrancer takes possession of or sells any Party’s assets or if an application is made to a court of competent jurisdiction by a Party for protection from its creditors generally or if any other steps are taken for the winding up of that Party (otherwise than for the purpose of an amalgamation or reconstruction) including the passing of a resolution for the Party’s winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of that Party;

“Loss” means any direct and/or indirect loss, damage, cost or expense;

“Material Adverse Effect” means any event or circumstance which, in the opinion of the Company:

- c) is likely to materially and adversely affect the Provider’s ability to perform or otherwise comply with all or any of its obligations under this Agreement; or

d) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company.

“**MPAN**” means a meter point administration number;

“**MSA Offence**” has the meaning given to it in Clause 19.1.1a);

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

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

“**Nominated Person**” means the persons appointed by the Provider and the Company to be responsible for ensuring the performance of this Agreement;

“**Non-Operational Notice**” means a formal notice as described in Clause 20;

“**Performance Report**” means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions and Discretionary Utilisation Requests in accordance with **Error! Reference source not found.**;

“**Power Requirement**” means the level of power injection or demand reduction required by the company within a specified service window and delivered by the provider following a utilisation instruction,

“**Proving Test**” means the tests, more particularly described in **Error! Reference source not found.**, undertaken in accordance with Clause 5.4;

“**Receiving Party**” means the Party receiving Confidential Information from the Disclosing Party;

“**Recovery Time**” means the minimum time required between the end of a Flexibility Service delivery and the commencement of the next Flexibility Service delivery, as defined in Schedule 1;

“**Requested End Time**” means the date and time (to the nearest minute) as notified in accordance with Clause 3 and/or **Error! Reference source not found.** at which the Requested MW is no longer required to be delivered;

“**Requested MW**” means the MW requested in accordance with Clause 3 and/or Schedule 4;

“**Requested Start Time**” means the date and time (to the nearest minute) as notified in accordance with Clause 3 and/or Schedule 4 at which the Requested MW shall be delivered;

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

“**Service Failure**” meaning is defined in Schedule 1;

“**Service Meter**” means the measuring equipment, as defined by the Company in Schedule **Error! Reference source not found.** of this Agreement, that shall be used to determine delivery of the Service;

“**Service Meter Data**” means the meter data recorded at the Service Meter at the Site(s) listed in Schedule **Error! Reference source not found.**;

“**Service Period**” means the period as specified in Schedule 1;

“**Service Requirements**” means the specification that the Flexibility Services must be capable of meeting, as defined in Schedule 1;

“Service Window” means the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with this Agreement, the Flexibility Services to the Company, as defined in Schedule 1;

“Sites” means the Provider’s sites which are detailed in Schedule 3;

“Statutory Requirements” means the requirements placed on the Company and/or the Provider or affecting or governing the provision and/or use of the Flexibility Services by Applicable Law and/or the Distribution Licence and/or a Regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters;

“Stop Instruction” means an instruction from the Company to the Provider, instructing the Provider to cease delivery of the Flexibility Services, as more particularly described in Schedule 4;

“Term” means the duration of this Agreement;;

“Testing and Commissioning Test” means the tests, more particularly described in Schedule 5, undertaken to determine whether the Flexibility Services can be delivered in accordance with the Service Requirements and an Instruction;

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

“Unavailable” means that the Flexibility Services, in accordance with the Service Requirements, are not available to be delivered to the Company;

“Utilisation Fee” means the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in Schedule 2;

“Utilisation Instructions” means an instruction by the Company to the Provider to deliver Flexibility Services in accordance with Schedule 4;

“VAT” value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature;

“Zone” means the feeding area of the DERs being managed or where the Flexibility Services will be provided and to which the Flexibility Services will be delivered.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

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

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

1.3 Any phrase introduced by the terms **“including”**, **“include”**, **“in particular”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 If there is any conflict between the Flexibility Services Agreement and any part of the Schedules, subject to Clause 1.6, the former shall prevail.

1.5 If there is any conflict between the Schedules and the Conditions, subject to Clause 1.6, the former shall prevail.

1.6 To the extent that the terms of this Agreement conflict with any of the rights or obligation of the Parties under the Electricity Regulations, the terms of the Electricity Regulations shall prevail.

2. DURATION AND TERM

2.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with Clause 10, shall continue until the Expiry Date.

2.2 This Agreement shall terminate automatically on the Expiry Date without notice, unless extended pursuant to Schedule 1.

2.3 The Company may give the Provider reasonable notice in writing prior to the Expiry Date that the Term is extended. Extensions of the Term pursuant to Clause 2.2 shall be limited in number and duration as set out in Schedule 1.

3. SCOPE OF FLEXIBILITY SERVICES

3.1 The Provider shall make its DER Available for provision of the Flexibility Services in accordance with Schedule 1 and shall provide notice of any Unavailability in accordance with Schedule 4.

3.2 The Company may request from the Provider, subject to the Provider's Availability Status, the provision of the Flexibility Services for Service Periods by issuing a Utilisation Instruction in accordance with Clause 3.4.

3.3 This Agreement is not a guarantee of Utilisation Instructions and does not constitute a contract for the exclusive provision of Flexibility Services. The Company reserves the right to contract with other providers for the type of services covered by this Agreement.

3.4 The provisions of Schedule 4 shall apply in respect of all communications between the Company and the Provider in respect of the Flexibility Services.

3.5 Where, and to the extent that a Provider is Available, the Company may request Flexibility Services from the Provider by sending a Utilisation Instruction in accordance with Schedule 4.

3.6 The Company may:

3.6.1 withdraw any Utilisation Instruction by providing notice to the Provider at any time before the Provider has provided a response under and in accordance with Clause 3.7; and/or

3.6.2 issue a Stop Instruction to the Provider in accordance with Schedule 4.

3.7 The Provider must respond to the instruction in accordance with the provisions set out in Schedule 4.

3.8 Where the Provider receives a Utilisation Instruction and subject to receipt of any Stop Instruction or has issued an Unavailability Notice, the Provider shall provide the Flexibility Services to the Company using the DER in accordance with the terms in Schedule 1.

3.9 In performing the Flexibility Services pursuant to this Agreement, the Provider must comply with the technical requirements set out in Schedule 7.

4. VARIATION

- 4.1 Unless otherwise provided in Schedule 1, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 4.2 The Provider may, with prior approval of the Company (in its sole discretion), change the DER providing the service(s) detailed in Schedule 3 by providing a minimum of thirty (30) days notice of the change and specifying that the new DER meets the technical, functional and non-functional requirements of the specified service.

5. MONITORING AND EQUIPMENT

- 5.1 Subject to **Error! Reference source not found.**, the Company shall be entitled to, at its sole discretion, monitor, meter and determine the Provider's provision of the Flexibility Services using such data collection and systems as the Company deems appropriate and which may, without limitation, utilise minute by minute metering data analysis techniques for each active DER.
- 5.2 The Company reserves the right to collect any meter data that it reasonably requires for the purpose of this Agreement from a third party, including but not limited to an electricity supplier, and the Provider undertakes to secure all necessary consents on behalf of the owner or user of the DER, and to perform any action that the Company considers reasonably necessary to facilitate such collection and use of meter data.
- 5.3 The Company shall assess the availability of Flexibility Services and the amount of Flexibility Services delivered by the Provider and may complete this by reference to a Performance Report. The detail and expected timing of these reports is specified in Schedule 5.
- 5.4 Should the Company identify a failure affecting the communications with the Providers Dispatch or Data Provision Equipment the Company may notify the Provider and that it requires a Proving Test in accordance with the requirements set out in **Error! Reference source not found.**
- 5.5 If applicable and unless otherwise agreed, on expiry or termination of this Agreement each Party shall remove and return to the other Party any equipment at its Site(s) provided by the other Party for the purpose of the Agreement within an acceptable timeframe as agreed by both Parties.

6. RECORDS AND AUDIT

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

invoices, correspondence and delivery notes), is complete, accurate and clearly references the relevant purchase order date and number and/or contract number.

7. PROVIDER'S OBLIGATIONS

7.1 The Provider shall:

- 7.1.1 Ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with this Agreement and all Applicable Laws, Statutory Requirements and Good Industry Practice;
- 7.1.2 ensure that all technical, communication and data provision requirements set out in Schedule 4 and are complied with at all times;
- 7.1.3 provide the Flexibility Services in accordance with all UK health, safety and environment legislation and approved codes of practice;
- 7.1.4 remedy any Defect of the Flexibility Services with Good Industry Practice and to the satisfaction of the Company;
- 7.1.5 act diligently and in good faith in all of its dealings with the Company;
- 7.1.6 ensure that it is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;
- 7.1.7 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under this Agreement that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under this Agreement;
- 7.1.8 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER.
- 7.1.9 permit and grant (or secure) rights of access to and over and egress from the Site to the Company and/or its agents or sub-contractors (upon reasonable notice and within normal working hours) as the Company may reasonably require in order to inspect and test the DER, or to install, maintain, replace or remove communication equipment belonging to the Company in relation to the provision of flexibility services.

8. REPRESENTATIONS AND WARRANTIES

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

- 8.1.1 it is a duly incorporated company validly existing under the law of its jurisdiction of incorporation;
- 8.1.2 it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement;
- 8.1.3 the entry into and performance by it of this Agreement does not and will not contravene or conflict with any law or regulation or judicial or official order applicable to it;
- 8.1.4 it will not be in material breach of any other agreement or arrangement of whatever nature with any person which could or may affect the performance of its obligations under this Agreement;
- 8.1.5 all information it provides to the other Party will be complete and accurate;

- 8.1.6 no Insolvency Event is continuing or might reasonably be anticipated; and
 - 8.1.7 no litigation, arbitration or administrative proceedings are taking place, pending, or to the Party's knowledge threatened against it, any of its directors or any of its assets, which, if adversely determined might reasonably be expected to have a Material Adverse Effect.
- 8.2 Without prejudice to its other obligations under and/or pursuant to this Agreement and in addition to the foregoing, the Provider warrants and undertakes to the Company at all times that:
- 8.2.1 the DER contracted to provide flexibility services has either live connection(s) to the Company's electricity Network and associated MPAN or MSID and Connection Agreement(s), or a connection offer(s) pursuant to live connection and that the connection(s) can be completed in time to meet the Service Requirements as specified in Schedule 1;
 - 8.2.2 it has obtained and maintains in force for the Term, either directly or through agreement with its aggregated DER sites, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services in accordance with the terms of this Agreement under those enactments, codes, agreements and arrangements referenced in Clause 8.2.10;
 - 8.2.3 it has neither fixed nor adjusted any Charge under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of any Charge (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for Flexibility Services with the Company;
 - 8.2.4 it shall disclose any change of circumstances which could affect the delivery of the Flexibility Services;
 - 8.2.5 in respect of DER projects in development, the Provider has in place a defined schedule of design, build and commissioning which shall promptly be made available to the Company on request for its review of the same;
 - 8.2.6 it shall take all reasonable steps to achieve commissioning of the DER project on time and in accordance with the construction schedule;
 - 8.2.7 if, at any time during the Term, the provision of Flexibility Services would cause the Provider to be in breach or non-compliance as described in Clauses 8.1.3 or 8.2.10, the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by Schedule 4;
 - 8.2.8 where relevant, it is and remains responsible for health and safety compliance at the Sites providing the flexibility services and shall use best endeavours to ensure that all activities relevant to this contract comply with all UK health, safety and environment legislation and approved codes of practice;
 - 8.2.9 insofar as any Site is occupied by an Affiliate of the Provider or any other third party from time to time, the Provider shall be responsible for ensuring that where any provision in this Agreement imposes an obligation on the Provider to do or refrain from doing a particular thing in relation to a Site or any DER at such Site, the relevant

Affiliate or third party complies with that obligation as if it were the named “Provider” party to this Agreement.

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

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

9. CHARGES AND PAYMENT

Unless any alternative provision is explicitly stated in Schedule 2 the provisions in this Clause 9 shall be adhered to.

9.1 The Company agrees to pay the Charges to the Provider as full remuneration for the satisfactory performance by the Provider of the Flexibility Services in accordance with this Agreement.

9.2 The Charges shall be calculated by the Provider in accordance with Schedule 2.

9.3 The Provider agrees that each invoice issued or accepted by it will include details of, as regards the Flexibility Services to which the invoice relates:

- a) the date on and time at which the Flexibility Services were provided;
- b) the relevant Availability Fee details (if any); and
- c) the relevant Utilisation Fee details (if any).

9.4 The Company shall not be held responsible for late payment of any invoices where the foregoing provisions relating to submission are not followed by the Provider.

9.5 Unless otherwise agreed in writing between the Company and the Provider, payment of invoices shall be made by the Company either (at the Company’s option) by BACS payment to a bank account nominated in writing by the Provider or by cheque sent to an address nominated in writing by the Provider (or, where no such address is nominated in writing by the Provider then to the Provider’s registered office).

9.6 If the Company intends to pay less than the sum stated as due by the Company in the 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.

9.7 If either Party fails to make any payment due to the other under this Agreement by the Due Date for Payment, then the Party failing to pay shall pay interest on the overdue amount at a rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis 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 Clause 9.7 is a substantial

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

- 9.8 Where either Party disputes any invoice (or any part of any invoice) then, upon receipt by the Provider of notification from the Company of any such disputed amounts, the provisions of Clause 21 shall apply in resolving the disputed amounts.
- 9.9 In the event that the Company disputes whether certain amounts contained in an invoice are properly due but does not dispute all sums contained in the invoice, the Company shall pay the sums not in dispute in accordance with the terms of this Agreement notwithstanding that the Company is disputing the other sums contained in the invoice.
- 9.10 Where either Party disputes any invoice (whether in whole or in part), interest under Clause 9.7 is payable only after the dispute is resolved, and only on those sums found or agreed to be due following resolution of the dispute, from the due date until payment.
- 9.11 All payments and all other sums referred to in this Agreement are stated exclusive of VAT. Where applicable, VAT shall be payable by the payer to the payee only upon receipt of a valid VAT invoice.
- 9.12 Where, during the Term, the Provider wishes to change its bank details or address for payment, then the Provider must follow the provisions set out in Clause 20.

10. TERMINATION

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

or threatens to suspend making payments to all or some of its creditors or it submits to any type of voluntary arrangement;

- f) it is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- g) any step or event is taken or arises outside the United Kingdom which is similar or analogous to any of the steps or events listed at 10.1.2a) to 10.1.2f) above;
- h) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- i) any of the events in 10.1.2b) to 10.1.2j) above occurs in relation to any of its Affiliates; and
- j) Clause 14.4 of this Agreement applies.

10.2 Either Party may terminate this Agreement at any time by providing ninety (90) days written notice to the other Party.

Accrued liabilities

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

Surviving provisions

10.4 This Clause and the following provisions of this Agreement shall survive termination or expiry, without limit of time:

- 10.4.1 Clause 1 (*Definitions and interpretation*);
- 10.4.2 Clause 6 (*Records and Audit*);
- 10.4.3 Clause 9 (*Charges and Payment*);
- 10.4.4 Clause **Error! Reference source not found.** (*Consequences of Termination or Expiry*);
- 10.4.5 Clause 11.4(*Service Failure and Material Breach*);
- 10.4.6 Clause 13 (*Indemnity, Liability & Insurance*);
- 10.4.7 Clause 15 (*Confidentiality, Information Disclosure & Publicity*);
- 10.4.8 Clause 16 (*Intellectual Property Rights*);
- 10.4.9 Clause 18 (*Data Protection*);
- 10.4.10 Clause 21 (*Dispute Resolution*);
- 10.4.11 Clause 25 (*Waiver*); and
- 10.4.12 Clause 28 (*Governing Law and Jurisdiction*).

Consequences of termination or expiry

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

- 10.6 Following termination or expiry of this Agreement, the Provider shall promptly at the Provider's cost:
- 10.6.1 deliver to the Company for approval a final invoice detailing all monies due to it under the Agreement;
 - 10.6.2 submit to the Company within thirty (30) Business Days all invoices with supporting documents for payment of all outstanding sums in connection with the provision of the Flexibility Services.

11. SERVICE FAILURE AND MATERIAL BREACH

- 11.1 Notwithstanding its obligations under Clause 11.2, the Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability (howsoever caused) of the Provider to provide the Flexibility Services in all or any part of any contracted Service Window.
- 11.2 In the event of a Service Failure by the Provider, the Company may require the Provider to:
- a) provide the Company with a written explanation as to the cause of the failure of service delivery;
 - b) implement a rectification plan for improving performance and/or reducing the number of occurrences of Unavailability, which may include at the Company's discretion, a repeat of any commissioning tests undertaken on initial installation and commissioning of the DER;
 - c) propose a variation to the Service Requirements as specified in Schedule 1; or
 - d) take any other action that may be agreed with the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).
- 11.3 If the Provider fails to comply with the terms of Clause 11.2, the Provider's proposals are not accepted by the Company, the Parties fail to reach agreement on actions or the Provider's performance in respect of the Service Failure notified by the Company does not significantly improve within thirty (30) days of the date of the notice, such failure will be deemed a material breach of this Agreement for the purposes of Clause 10.1.
- 11.4 Where the Company terminates this Agreement as a result of a material and/or persistent breach by the Provider under Clause 10.1, the Company shall be entitled to recover from the Provider the cost, loss and expenses reasonably incurred by the Company as a result of the termination, including where relevant appointing a replacement Provider. Such costs, losses and expenses shall be a debt due and immediately payable by the Provider to the Company subject to the cap of liabilities across this Agreement as stated in clause 13.

12. FORCE MAJEURE

- 12.1 A Party is not in breach or default of this Agreement to the extent that it is prevented, hindered or delayed in performing any of its obligations under this Agreement as a result of a Force Majeure Event.
- 12.2 If a Force Majeure Event occurs, the following process will apply:
- (a) The affected Party will notify the other Party as soon as reasonably practicable of:
 - (i) The occurrence and description of the Force Majeure Event;

- (ii) The date on which the Force Majeure Event commenced and its likely duration (if known);
 - (iii) The effect of the Force Majeure Event on the Party's ability to perform its obligations under the Agreement.
 - (b) The affected Party will use reasonable endeavours to mitigate the impact of the Force Majeure Event on its ability to perform its obligations under the Agreement.
- 12.3 If a Force Majeure Event prevents, hinders or delays a Party in performing its obligations under the Agreement for a continuous period of at least eight (8) weeks, either Party may terminate the Agreement on giving ninety (90) days written notice.
- 13. INDEMNITY, LIABILITY & INSURANCE**
- 13.1 Subject to Clause 13.2 the Provider and Company shall indemnify each other against all Loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by either Party as a result of:
- 13.1.1 either Party's breach of this Agreement;
 - 13.1.2 any negligence or reckless act or omission committed by either Party in the course of performing this Agreement;
 - 13.1.3 Loss or damage to any property (including property of the Company or the Provider); or
 - 13.1.4 all related actions, suits, claims, demands, costs, charges or expenses to the extent that the same is caused by any negligent act or omission or breach of statutory duty, regulation or by-law by a Party, its sub-contractors, or their respective servants or agents in connection with this Agreement.
- 13.2 Notwithstanding any other provision in this Agreement, the aggregate total liability of either Party to the other Party under or in connection with this Agreement whether in contract tort or delict or howsoever arising shall not exceed in aggregate the greater of (i) £250,000, and (ii) an amount equal to the total charges payable and already paid to the Provider under this Agreement. This Clause shall not limit or exclude either Party's liability:
- 13.2.1 in the case of fraud, misrepresentation or wilful misconduct;
 - 13.2.2 in the case of death or personal injury;
 - 13.2.3 in the case of breach of statutory duty; or
 - 13.2.4 where the Provider has invalidated such insurance referred to in this Clause [15] or has not complied with such insurance policies.
- 13.3 Notwithstanding anything to the contrary and subject to the conditions of Clause 11.4, neither Party shall have any liability to the other Party under this Agreement for any indirect or consequential loss of any kind howsoever caused.
- 13.4 The Provider shall procure (and on request provide evidence to the Company of) appropriate insurances as required by law to cover the liabilities set out in this Clause 13, with a reputable insurance company. Where possible the Provider shall add the Company as a named party on its insurance policies.
- 13.5 If the Provider appoints a sub-contractor in connection with the provision of the Flexibility Services, the Provider shall ensure that the sub-contractor maintains appropriate insurance to the

extent set out in Clause 13.4. If the Provider acts as an aggregator in connection with the provision of the Flexibility Services, it shall ensure that the DER owners and operators for which it acts maintain appropriate insurance to the extent set out in Clause 13.

- 13.6 The Provider's liabilities under this Agreement shall not be deemed to be released or limited by the Provider taking out the insurance policies referred to in Clause 13.4.

14. [ASSIGNMENT, NOTE: IF ENGLISH] [ASSIGNATION, NOTE: IF SCOTTISH] SUB-CONTRACTING AND CHANGE IN OWNERSHIP

- 14.1 This Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
- 14.2 If either Party sub-contracts any part of the provision or obligations of Flexibility Services, then the responsible Party shall be fully responsible for the acts, omissions or defaults of any sub-contractor (and its employees) as if they were the acts, omissions or defaults of the responsible Party.
- 14.3 If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Site changes, or may change, during the Term, the Provider shall immediately notify the Company of the same. The Company and the Provider shall if required, and at the reasonable request of the Company discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.
- 14.4 The Company reserves the right to terminate this Agreement if a Change in Ownership of the Provider occurs and may treat a Change of Ownership as a material breach for the purposes of Clause 10.1. Any termination under clause 14.4 would be provided in writing and effective immediately

15. CONFIDENTIALITY, INFORMATION DISCLOSURE AND PUBLICITY

- 15.1 The Company is required to disclose certain information in accordance with this document under obligations within the Company Licence Agreement, the Grid Code, the Transmission Code, the Connection and Use of System Agreement, the Distribution Code and the Fuel Security Code. Information shared will include but may not be limited to providers names, awarded prices, volumes and contract durations. It shall not be a breach of this clause 15 for the Company to disclose this information. The Company may also share information relating to this Agreement for the purpose of industry initiatives in relation to network constraint management and electricity network optimisation.
- 15.2 Save as permitted by clause 15.1, or except with the consent of the disclosing party, or as required by law, a court order, or by any relevant regulatory, or government authority, or to the extent that information has come into the public domain through no fault of the receiving party, each Party shall treat as strictly confidential and shall not disclose all commercial and technical information relating to the other Party received or obtained as a result of entering into or performing this Agreement.
- 15.3 Save as permitted by clause 15.1 neither Party shall use the name, brands and/or logos of the other Party for any purpose without the other Party's prior written approval. In the event that the other Party grants its approval to any use of its name, brand and/or logo, it may make such approval

subject to such conditions and restrictions on use as it considers appropriate. Written approval should not be unreasonably withheld. The Company shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 This Agreement does not transfer any interest in Intellectual Property Rights.

16.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's Intellectual Property other than to the extent reasonably necessary in performing its obligations pursuant to this Agreement, provided that nothing in this Clause 6 shall operate so as to exclude any non-excludable rights of either Party.

17. COMPANY PROPERTY

17.1 Each Party shall retain its rights in its own physical property used for the purposes of this Agreement. Any equipment, tools, drawings, specifications, data and other materials supplied by or on behalf of the Company to the Provider:

17.1.1 shall at all times be and shall remain the exclusive property of the Company;

17.1.2 shall be held by the Provider in safe custody at its own risk and maintained and kept in good condition by the Provider until returned by the Company;

17.1.3 shall be marked visibly by the Provider as the property of the Company; and

17.1.4 shall not be disposed of other than in accordance with the written instructions of the Company nor used otherwise than as authorised by the Company in writing.

18. DATA PROTECTION

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

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

19. MODERN SLAVERY, ANTI-BRIBERY

19.1 The Provider undertakes, warrants and represents that:

19.1.1 neither the Provider nor any of its officers, employees, agents or subcontractors:

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

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

- c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
- 19.1.2 it shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- 19.1.3 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Company's obligations under this Clause 19. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations; and
- 19.1.4 it shall include in its contracts with its subcontractors and suppliers' anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 19.
- 19.2 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.
- 19.3 Any breach of this Clause 19 by the Provider shall be deemed a material breach of the Agreement for the purposes of Clause 10.1.
- 19.4 The Provider shall have suitable controls and compliance procedures in place and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received or offered by the Provider in connection with this Agreement.
- 19.5 The Provider agrees to:
 - 19.5.1 pay all of its personnel who are directly employed by it in respect of the provision of the Services; and
 - 19.5.2 ensure all employees of its contractors and subcontractors performing the provision of the Services are paid not less than the living wage for the Term of this Agreement.
- 20. NOTICES**
- 20.1 The processes for notices and communications in respect of operational matters are set out in Schedule 4.
- 20.2 All formal notices or other communications to be served under this Agreement ("**Non-Operational Notice**") shall be given in writing and shall be delivered or sent to the addresses for notice set out in Part 1 of the Flexibility Services Agreement or to such other address as each Party may have notified in writing to the other Party.
- 20.3 A Non-Operational Notice shall be delivered by hand, sent by pre-paid first-class post, or by recorded delivery post (or equivalent recorded postal delivery service).
- 20.4 A Non-Operational Notice or other communication shall be deemed to have been received:
 - 20.4.1 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;

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

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

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

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

21. DISPUTE RESOLUTION

21.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to this Agreement. In the event that a dispute cannot be resolved within thirty (30) days of written notice of the dispute, the dispute shall be escalated to the Parties' senior representatives (named in Schedule 4, or as otherwise notified by either Party to the other) who have authority to settle the same.

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

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

22. SEVERANCE

22.1 If any provision of this Agreement is declared by a judicial or other competent authority to be wholly or partly void, voidable, illegal or otherwise unenforceable in whole or in part, that provision (or part provision) shall be deemed severed from this Agreement and the other provisions of this Agreement and the remainder of the relevant provision shall continue in full force and effect.

22.2 If any provision of this Agreement are so found to be wholly or partly invalid or unenforceable, but would be valid or enforceable if some part of the provision were deleted, restricted or limited in a particular manner, the provision in question shall apply with the minimum deletions, restrictions or limitations as may be necessary to make it valid or enforceable.

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

23. THIRD PARTY RIGHTS

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

24. NO AGENCY OR PARTNERSHIP

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

- 24.2 Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf, including but not limited to the making of any representations or warranty and the exercise of any right or power.

25. WAIVER

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

26. ENTIRE AGREEMENT

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

27. COUNTERPARTS

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

28. GOVERNING LAW AND JURISDICTION

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

SCHEDULE 1

SERVICE DESCRIPTION

S1.1 SERVICE PARAMETERS

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

Criteria
Type of Service awarded (sustain, dynamic, secure, restore)
Zones awarded
Operational Periods
Maximum Capacity per awarded Zone (MW)
Combined contract award price
Contracted Service Response ¹
Anticipated Operational Period

S1.2 EXPIRY DATE AND EXTENSIONS

The Expiry Date shall be the expiry or termination of the final Operational Period in respect of a Flexibility Service requirement to which this Agreement applies.

The Company may extend the Operational Period in respect of any Flexibility Service to which this Agreement applies by any further period or periods as required by giving not less than one (1) months' notice in writing to the Provider before expiry of the then current Operational Period. Upon giving such notice such Operational Period shall be extended by the period set out in the notice until the earlier of the end of that extended Operational Period (unless extended again) or termination in accordance with Clause 12 (Termination).

Either party may terminate an Operational Period in respect of any Services to which this Agreement applies on giving one (1) month's written notice to the other.

S1.3 SERVICE FAILURE

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

¹ The Provider's response to a Utilisation Instruction; import or export, turn-up or turn-down.

S1.4 SERVICE REQUIREMENTS

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

S1.5 SERVICE SPECIFIC ACKNOWLEDGEMENTS

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

S1.6 VARIATION TO WINDOWS

The Company will not instruct any variation to an Accepted Arming Window or Accepted Availability Window once a Utilisation Instruction for the same has been issued.

SCHEDULE 2

FLEXIBILITY SERVICE CHARGES

THIS ALTERNATIVE PROVISION REPLACES CLAUSE 9 OF THE AGREEMENT.

S2.1 INVOICING

- S2.1.1 The Flexibility Services require constant metering with data collected throughout the course of the month. This is collected via the API (see S2.4.1) and confirms that the Company has operational communications, but also facilitates the acquisition of background data to calculate the historical consumption, used for establishing a baseline. The Flexibility Services and payment cycles are based on a calendar month and therefore the Company operates a total of 12 billing cycles within each calendar year.
- S2.1.2 After the end of each Utilisation event a Performance Report is created and provided to the Provider via the Portal which allows the Provider to review their results. At the end of the month the Performance Reports are then compiled along with the availability / arming payments and reconciliations for any shortfall of delivery.
- S2.1.3 A full earnings statement will be produced automatically within one (1) week following the end of each month as further detailed below. Once the earnings statement has been created and provided to the Provider, the Provider shall confirm within fourteen (14) days of being provided if the calculations are disputed and provide full details of the same to the Company. If the Provider disputes any calculations, then the earnings statement is placed on hold until such dispute is been resolved. The parties will endeavour to resolve any dispute before the cut off period as set out in fig 1. Following resolution or determination of any dispute, the earnings statement shall be updated accordingly.
- S2.1.4 If no query is raised on the earnings statement within the fourteen (14) day window the statement is assumed to be correct. Unless the Provider confirms that the Charges are disputed, and following determination or agreement of any disputed earnings statement, the Portal will automatically generate a self-billing invoice which can be downloaded for financial records. The Portal also automatically sends a duplicate to the Company accounts payable for processing.
- S2.1.5 In accordance with the self-billing arrangements that will be in force under this Agreement, 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.

S2.2 INVOICE PAYMENT

- S2.2.1 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.
- S2.2.2 All invoices shall be paid within thirty (30) days of the date of invoice (the "**Due Date for Payment**").

- S2.2.3 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.
- S2.2.4 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).
- S2.2.5 All sums payable under this Agreement 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.
- S2.2.6 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 S2.2.5 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- S2.2.7 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 Agreement.

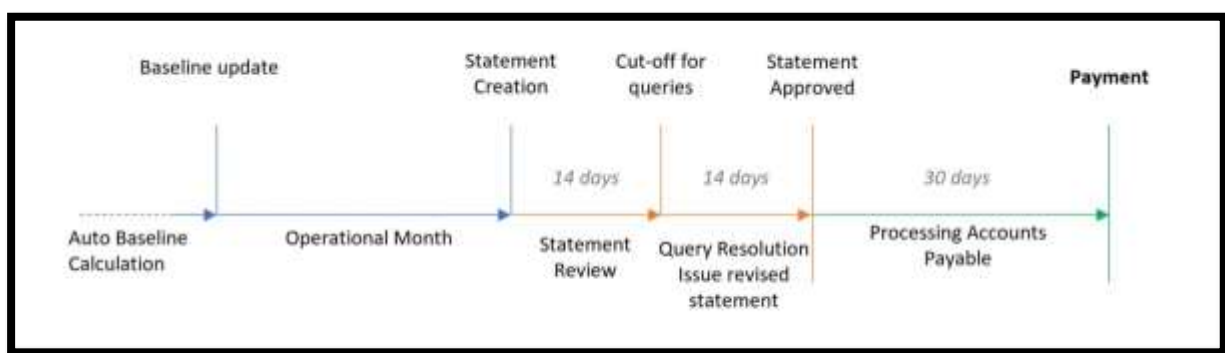


Fig.1 WPD Flexible Power invoicing & payment timeline

S2.3 PAYMENT AND PERFORMANCE CALCULATIONS

S2.3.1 DEFINITIONS AND INTERPRETATION

In this Schedule 2 Section S2.3, terms shall be defined and interpreted in accordance with the Terms and Conditions, unless the context otherwise requires or such terms are defined below:

"Arming Fee" has the meaning given in to it in S2.3.2.2 below;

"Arming Payment" means any payment calculated in accordance with S2.4.1.1 below;

"Arming Settlement Period" means each full thirty (30) minute period within an Accepted Arming Window, as described in S2.3.0 below;

"Availability Fee" has the meaning given in to it in S2.3.2.3(d) below; **[NOTE: THIS DEFINITION REPLACES THE DEFINITION OF AVAILABILITY FEE IN CLAUSE 1 OF THE CONDITIONS]**

"Availability Payment" means any payment calculated in accordance with S2.4.2.1 below;

"Availability Settlement Period" means each full thirty (30) minute period within an Accepted Availability Window, as described in S2.3.2.2 below;

"Constraint Event Delivery Proportion" has the meaning given to it in S2.4.5.3 below;

"Delivery Proportion" has the meaning given to it in S2.4.4.2 in respect of the Company's Dynamic Services and/or the Company's Secure Services, and/or in S2.5.4 in respect of the Company's Restore Services below;

"Delivery Target Threshold" has the meaning given to it in S2.5.3;

"Event Delivery Proportion" has the meaning given to it in S2.4.5.3 below;

"Grace Factor" has the meaning given to it in S2.4.4.1;

"Monthly Delivery Proportion" has the meaning given to it in S2.4.5.2 below;

"Payable Overdelivery" means the % of overpayment above 100% that will be available in respect of Utilisation Payments for the Company's Restore Services as set out in S2.5.3;

"Payment Proportion" means the value calculated in accordance with S2.4.4.4 in respect of the Company's Dynamic Services and/or the Company's Secure Services, and/or in S2.5.6 in respect of the Company's Restore Services below;

"Penalisation Multiplier" has the meaning given to it in S2.4.0 in respect of the Company's Dynamic Services and/or the Company's Secure Services, and/or in Paragraph S2.5.5 in respect of the Company's Restore Services below;

"Reconciliation Grace Factor" has the meaning given to it in S2.4.5.4 below;

"Utilisation Cost" has the meaning given to it in S2.3.2.3 below;

"Utilisation Payment" means any payment in respect of the Company's Dynamic Services and/or the Company's Secure Services calculated in accordance with S2.4.3 of this below, and/or any payment in respect of the Company's Restore Services calculated in accordance with S2.5.1 below;

"Utilisation Settlement Period" means each full one (1) minute period during a Utilisation event, as described in S2.3.0 below, with the first Utilisation Settlement Period for the Company's Dynamic Services and/or the Company's Secure Services being the minute in which the Response Time ends, and the first Utilisation Settlement Period for the Company's Restore Services being the first full minute after despatch of Demand Response, or the issue of a Utilisation Instruction, by the Company.

S2.3.2 GENERAL

S2.3.2.1 For the Company's Dynamic Services, there are two primary payments: Utilisation Payments and Availability Payments. For the Company's Secure Services, there are two primary payments: Utilisation Payments and Arming Payments. For the Company's Restore Services, there is one payment: the Utilisation Payment. Utilisation Payments are made when Demand Response is Utilised. Arming Payments are paid for every Accepted Arming Window in respect of the Site(s) / CMZ Group (s). Availability Payments are paid for every Accepted Availability Window in respect of the Site(s) / CMZ Group (s).

S2.3.2.2 Arming Payments, Availability Payments and Utilisation Payments are calculated at a different granularity called the Arming Settlement Period, the Availability Settlement Period and the Utilisation Settlement Period. The constants used to convert between MWh values and the individual time segments are (SP_u) and (SP_a), which correspond to the fraction of an hour for Utilisation, Availability and Arming. The Utilisation Settlement Period is 1 minute. The Arming Settlement Periods and Availability Settlement Periods are 30 minutes i.e.:

$$SP_u = \frac{1}{60} \text{ and } SP_a = 0.5$$

S2.3.2.3 In respect of each Site(s) / CMZ Group there are four constant values:

- The Contracted Capacity (CC_s), given in MW;*
- A Utilisation Cost (UC_s), which is the payment per MWh delivery by the Site(s) / CMZ Group during a Utilisation. The Utilisation Cost for each of the Company Dynamic Services, the Company's Secure Services and/or the Company's Restore Services for each Zone shall be as set out in the relevant Contract Award;*
- An Arming Fee (AF_s), which is the payment for Arming in respect of an Accepted Arming Window at a Site(s) / CMZ Group (s). This is a payment per MW per hour of Arming. The Arming Fee for a CMZ shall be as set out in the relevant Contract Award;*
- An Availability Fee (AC_s), which is the payment for Availability in respect of an Accepted Availability Window at a Site(s) / CMZ Group. This is a payment per MW per hour of Availability. The Availability Fee for a CMZ shall be as set out in the relevant Contract Award.*

S2.3.2.4 Payments are calculated on a month-by-month basis. The calculations in this Schedule 2 determine the Utilisation Payments, the Availability Payments and the Arming Payments due to a Site(s) / CMZ Group for a given month.

S2.3.2.5 For the Company's Dynamic Services and the Company's Secure Services, for each month, (m), there is a list of Arming Windows or Availability Windows (as appropriate) and a list of constraint events, which are written as (AW_m) and (E_m) for Arming of the Company's Secure Services and (AP_m) and (E_m) for Availability of the Company's Dynamic Services. The top-level

calculations will loop through these lists, but the bulk of the work is performed for an individual Arming Window or Availability Window and an individual constraint event.

S2.4 THE COMPANY'S SECURE SERVICES AND THE COMPANY'S DYNAMIC SERVICES

S2.4.1 THE COMPANY'S SECURE SERVICES ARMING PAYMENT

S2.4.1.1 Arming Payments for an Accepted Arming Window are determined as the sum for all Arming Settlement Periods in that Contracted Arming Window, based on binary values for if Demand Response is Available during each Arming Settlement Period.

S2.4.1.2 ST_{aw} and FT_{aw} are written for the start and finish time of the given Accepted Arming Window.

S2.4.1.3 The raw Arming Payment given to a Site(s) / CMZ Group for an Accepted Arming Window is as follows:

Where the Arming Fee is a payment per MW per hour:

$$AWP_{aw,s} = \left(\sum_{j=ST_{aw}}^{FT_{aw}} AF_{s,aw} \cdot SP_{aw} \cdot CC_s \cdot SA_{s,j} \right)$$

Where:

$AWP_{aw,s}$ is the Arming Payment for Site(s) / CMZ Group (s) during an Accepted Arming Window (aw)

$\sum_{j=ST_{aw}}^{FT_{aw}}$ sums the payment for every Arming Settlement Period in the Accepted Arming Window, from start to finish time inclusive

AF_s is the Arming Fee for that Site(s) / CMZ Group and Accepted Arming Window on a per MW per hour basis

SP_{aw} is the Arming Settlement Period

CC_s is the Contracted Capacity

$SA_{s,j}$ is whether Demand Response is Available for each Arming Settlement Period for the Site(s) / CMZ Group within an Accepted Arming Window which is supplied as binary data into the system, based on the reporting and the conditions outlined elsewhere in the Agreement

S2.4.2 THE COMPANY'S DYNAMIC SERVICES AVAILABILITY PAYMENT

S2.4.2.1 Availability Payments for an Accepted Availability Window are determined as the sum for all Availability Settlement Periods in that Accepted Availability Window, based on binary values for if Demand Response is Available during each Availability Settlement Period.

S2.4.2.2 ST_{aw} and FT_{aw} are written for the start and finish time of the given Accepted Availability Window.

S2.4.2.3 The raw Availability Payment given to a Site(s) / Group for an Accepted Availability Window is as follows:

Where the Availability Fee is a payment per MW per hour:

$$AP_{s,w} = \left(\sum_{j=ST_w}^{FT_w} AC_s \cdot SP_a \cdot CC_s \cdot SA_{s,j} \right)$$

Where:

$AP_{s,w}$ is the Availability Payment for Site(s) / CMZ Group (s) during an Accepted Availability Window (w)
 $\sum_{j=ST_w}^{FT_w}$ sums the payment for every Availability Settlement Period in the Accepted Availability Window, from start to finish time inclusive
 $AC_{s,w}$ is the Availability Fee for that Site(s) / CMZ Group and Accepted Availability Window on a per MW per hour basis
 SP_a is the Availability Settlement Period
 CC_s is the Contracted Capacity
 $SA_{s,j}$ is if Demand Response is Available for each Availability Settlement Period for the Site(s) / CMZ Group within an Accepted Availability Window which is supplied as binary data into the system, based on the reporting and the conditions outlined elsewhere in the Agreement

S2.4.3 UTILISATION PAYMENT

S2.4.3.1 For a Site(s) / CMZ Group (s), Utilisation Payments for the Company's Dynamic Services and the Company's Secure Services are calculated per-constraint Utilisation event (e). Each constraint Utilisation event has a start time (ST_e) and a finish time (FT_e), such that $ST_e < FT_e$.

S2.4.3.2 The Utilisation Payment for a Site(s) / CMZ Group (s) per constraint Utilisation event (e) is calculated as follows:

$$U_{s,e} = \sum_{j=ST_e}^{FT_e} CC_s \cdot UC_s \cdot SP_u \cdot PP(CC_s, AD_{s,j})$$

Where:

$U_{s,e}$ is the Utilisation Payment for Site(s) / CMZ Group (s) during each constraint Utilisation event (e)
 $\sum_{j=ST_e}^{FT_e}$ sum of the Utilisation Settlement Periods during the constraint Utilisation event,
 CC_s Contracted Capacity
 UC_s Utilisation Cost
 SP_u Utilisation Settlement Period of the Site(s) / CMZ Group, as defined above
 $AD_{s,j}$ is the actual, metered MW delivery of the Site(s) / CMZ Group (s) for each Utilisation Settlement Period during the constraint Utilisation event (j). In the payment calculations, there is no difference between Generator Sites and Demand reduction Sites, since this value is the 'reported to grid' value
 PP is the Payment Proportion and works out what fraction of the full price is due to the Site(s) / CMZ Group for every Utilisation Settlement Period based on the Contracted Capacity and the actual delivery.

S2.4.4 PAYMENT PROPORTION

S2.4.4.1 A margin of error as set out in S2.7, known as the Grace Factor (GF) is allowed in respect of under-delivery of the Contracted Capacity (CC) at a Site(s) / CMZ Group (assessed against each of the metrics set out at S4.2.12). Delivery of equal to or greater than the required level of Contracted Capacity less the applicable Grace Factor is awarded the full Utilisation Payment. A deduction from the full payment will be made for delivery of less than the required level of Contracted Capacity less the applicable Grace Factor.

S2.4.4.2 The Delivery Proportion ($DP_{s,j}$) is defined as the ratio of actual MW delivery (calculated from the baseline set out in S2.6) to Contracted Capacity. This ratio is a value that represents a percentage and rounded to two significant figures to ensure it represents a whole percentage.

S2.4.4.3 The Grace Factor determines the acceptable under-delivery for a Site(s) / CMZ Group. For every % point under that level, a fixed proportion as set out in S2.7, called the Penalisation Multiplier, (**PM**) of the full payment is deducted. Over-delivery is capped, and paid at Contracted Capacity.

S2.4.4.4 Thus, the Payment Proportion is a value between 0 and 1 (or 0 and 100%). The calculation contains two separate cases:

- 1) if $DP_{s,j} \geq (1 - GF)$, $PP_{s,j} = 1$
- 2) if $DP_{s,j} < (1 - GF)$, $PP_{s,j} = \text{Max}(0, 1 - GF - PM \cdot [1 - GF - DP_{s,j}])$

S2.4.5 MONTHLY RECONCILIATION

S2.4.5.1 In addition to the above, the Arming Payments and Availability Payments for a Site(s) / CMZ Group are subject to a monthly reconciliation based on the Site's / CMZ Group's individual Utilisation performance over the month.

S2.4.5.2 This is calculated as follows: the Monthly Delivery Proportion (**MDP_{s,m}**) for a Site(s) / CMZ Group for a given month is;

$$MDP_{s,m} = \frac{\sum_{e \in E_m} \text{Min}(1, EP_{s,e})}{\#E_m}$$

i.e. the capped proportion of average deliveries in a given month.

Where:

$e \in E_m$ is the Delivery Proportion during each and every constraint Utilisation event in the set of constraint Utilisation events for the month (m)

$\#E_m$ is the number of constraint Utilisation events in the month

$\text{Min}(1, EP_{s,e})$ caps the Delivery Proportion during each and every constraint Utilisation event at 100%, even if the Site(s) / CMZ Group over-delivers

This Constraint Event Delivery Proportion $EP_{s,e}$ for a Site(s) / CMZ Group and a Utilisation event is defined below.

S2.4.5.3 In order to define the Constraint Event Delivery Proportion, we first need the Event Delivery Proportion (**EDP**). For each individual constraint Utilisation event the total, uncapped Delivery Proportions for each Utilisation Settlement Period are summed.

$$EDP_{s,e} = \left(\sum_{j=ST_e}^{FT_e} DP_{s,j} \right) / (FT_e - ST_e + 1)$$

S2.4.5.3 As such, the Delivery Proportion for each Utilisation Settlement Period of the constraint Utilisation event is calculated. It is important to note that this is uncapped. This does not apply across constraint Utilisation events in the month, as shown in the **MDP_{s,m}** calculation.

S2.4.5.4 When calculating the Constraint Event Delivery Proportion, the Event Delivery Proportions are also given a grace factor, called the Reconciliation Grace Factor (**RGF**). Thus the Constraint Event Delivery Proportion is:

- 1) if $1 \leq EDP_{s,e} + RGF < 1 + RGF$, $EP_{s,e} = 1$
- 2) otherwise $EP_{s,e} = EDP_{s,e}$

S2.4.6 MONTHLY ARMING WINDOW AND AVAILABILITY WINDOW PAYMENTS

The monthly Arming Payment and Availability Payment for a Site(s) / CMZ Group for a given month is calculated as follows:

$$AP_{s,m} = \left(\sum_{w \in M} AP_{s,w} \right) \cdot MDP_{s,m}$$

That is, the total Arming Payments and Availability Payments due for the Site(s) / CMZ Group for the month multiplied by the Constraint Event Delivery Proportion.

S2.4.7 MONTHLY UTILISATION PAYMENTS

Similarly, the monthly Utilisation Payments due for a given Site(s) / CMZ Group in a month is calculated as the sum of the individual Utilisation Payments:

$$UP_{s,m} = \left(\sum_{e \in M} UP_{s,e} \right)$$

S2.5 THE COMPANY'S RESTORE SERVICES

S2.5.1 UTILISATION PAYMENT

S2.5.1.1 For a Site(s) / CMZ Group (s), Utilisation Payments for the Company's Restore Services are calculated per-constraint Utilisation event (e). Each constraint Utilisation event has a start time (ST_e) and a finish time (FT_e), such that $ST_e < FT_e$.

S2.5.1.2 The Utilisation Payment for a Site(s) / CMZ Group (s) per constraint Utilisation event (e) is calculated as follows:

$$U_{s,e} = \sum_{j=ST_e}^{FT_e} CC_s \cdot UC_s \cdot SP_u \cdot PP (CC_s, AD_{s,j})$$

Where:

$U_{s,e}$	is the Utilisation Payment for Site(s) / CMZ Group (s) during each constraint Utilisation event (ce)
$\sum_{j=ST_e}^{FT_e}$	sum of the Utilisation Settlement Periods during the constraint Utilisation event
CC_s	Contracted Capacity,
UC_s	Utilisation Cost,
SP_u	Utilisation Settlement Period of the Site(s) / CMZ Group, as defined above.
PP	is the Payment Proportion and works out what fraction of the full price is due to the Site(s) / CMZ Group for every Utilisation Settlement Period based on the Contracted Capacity and the actual delivery.
$AD_{s,j}$	is the actual, metered MW delivery of the Site(s) / CMZ Group (s) for each Utilisation Settlement Period during the constraint Utilisation event j . In the payment calculations, there is no difference between Generator Sites and Demand reduction Sites, since this value is the 'reported to grid' value

S2.5.2 PAYMENT PROPORTION

S2.5.3 Delivery of the Contracted Capacity at a Site(s) / CMZ Group of equal to or greater than the target delivery threshold set out in S2.7 (the Delivery Target Threshold (**DTT**)) is awarded the Utilisation Payment "at rate" (i.e. the payment % will equate to the delivery %), provided that delivery over the required level of Contracted Capacity will be paid up to a maximum Payable Over-delivery (**PO**) of the Contracted Capacity as set out in S2.7. A deduction from full payment of will be made based on the rules below for delivery of less than the Delivery Target Threshold of Contracted Capacity.

S2.5.4 The Delivery Proportion (**DP_{s,j}**) is defined as the ratio of actual MW delivery (calculated from the baseline set out in S2.6) to Contracted Capacity. This ratio is a value that represents a percentage and is rounded to two significant figures to ensure it represents a whole percentage.

S2.5.5 The Delivery Target Threshold (*DTT*) determines the acceptable under-delivery for a Site(s) / CMZ Group. For every % point under that level, a fixed proportion as set out in S2.7, called the Penalisation Multiplier, (*PM*) of the full payment is deducted.

S2.5.6 Thus, the Payment Proportion is a value between 0 and 1+*PO* (or 0 and 100%+*PO*%). The calculation contains three cases:

- 1) if $DP_{s,j} \geq (1 - DTT)$ and $DP_{s,j} \leq 1 + PO$, $PP_{s,j} = DP_{s,j}$
- 2) if $DP_{s,j} < (1 - DTT)$, $PP_{s,j} = \text{Max}(0, 1 - DTT - PM \cdot [1 - DTT - DP_{s,j}])$
- 3) if $DP_{s,j} > 1 + PO$, $PP_{s,j} = 1 + PO$

S2.6 BASELINE FOR MEASURING ACTUAL DELIVERY

S2.6.1 For Demand reduction Sites, delivery of Demand Response will be measured at the point of supply. The lowest level of demand that a Site can reliably reduce its demand to at any point during weekdays will be established on a month by month basis (unless otherwise agreed by the parties) by taking demand between 3pm and 8pm (Monday to Friday) over a period of the first three (3) weeks of the previous month. This consumption will then be totalled and if applicable, divided by any de-rating factor agreed between the Company and the Provider and will be used to establish the monthly average demand which will then become the baseline from which delivery of Demand Response will be measured.

S2.6.2 For Generation Sites, delivery of Demand Response will be measured at the output terminals of the generator. In respect of Dispatchable Generation, the baseline will be set at 0. In respect of "parallel operation generators" including, for example, CHP installations, then a distinction will be made between a Site that does **not** generate to the extent that it exports during the hours of 3pm to 8pm on any weekday, in which case the Site will be treated in the same way as a Demand reduction Site above, and a Site that does export, in which case the same principles as used in respect of Demand reduction will be apply to data collected from the generator during the three week period.

S2.6.3 The Company will consider alternative baseline methodologies where the above is proven unsuitable due to DER type, unique running arrangements etc. Any alternative methodologies for baselining will be agreed between the Company and the Provider post contract award and ahead of any service provision.

S2.7 PAYMENT MECHANISM VALUES

S2.7.1 The Company's Dynamic Services:

Attribute	Value
Grace Factor (<i>GF</i>)	5%
Penalisation Multiplier (<i>PM</i>)	3
Reconciliation Grace Factor (<i>RGF</i>)	0%

S2.7.2 The Company's Secure Services:

Attribute	Value
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Grace Factor (<i>GF</i>)	5%
Penalisation Multiplier (<i>PM</i>)	3
Reconciliation Grace Factor (<i>RGF</i>)	0%

S2.7.3 The Company's Restore Services:

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

SCHEDULE 3

SITES/DER

S3 DER RECORDS

- S3.1 Details of the Provider's sites/DER are to be submitted to the Company via the Invitation to Tender using Appendix B – Sites and Assets.
- S3.2 Appendix B will form part of your Contract Award. It will be retained by the Company as a record of active sites within its Zones.
- S3.3 Should the Provider wish to participate with additional sites/DER post award, Appendix B should be updated and resubmitted with notification to the Company. Provided this notification is given, the Company will allow the inclusion of additional sites at any time throughout the Term. However it should be noted that participation above the Maximum Capacity per awarded Zone stated the Contract Award cannot be exceeded.

SCHEDULE 4 COMMUNICATIONS

S4.1 SENIOR REPRESENTATIVES:

The Company; Helen Sawdon, Flexible Power Commercial Officer. hsawdon@westernpower.co.uk

The Provider; [●]

S4.2 DECLARATIONS OF AVAILABILITY & UTILISATION INSTRUCTIONS

Introduction

- S4.2.1 Post Contract commencement, the Company will create a user account that will provide the Provider with access to the Portal. This is the primary point of communication and fulfils multiple functions vital to the provision of Flexibility Services. The Portal displays all the Zones in which a Provider has contracted capacity and allows them to make the week-ahead declarations of service that can then be assessed by the Company's control engineers to determine if they can support an identified network limitation as further set out below. The outcome of the control engineers analysis and the decision as to whether service declarations are to be accepted or rejected are notified to the Provider via the Portal and they will need to log in after midday Thursday to access this.
- S4.2.2 When a Provider's capacity is accepted for service the following week it will then need to be scheduled for use the following week if for 'Secure' or held in a state of readiness at the appropriate times for 'Dynamic' and 'Restore'. Dynamic and Restore are both instructed services which are notified to the Provider with 15 minutes notice.
- S4.2.3 For all Service types the operating Week then commences on the following Monday. This aspect of service provision is outlined in the diagram below.

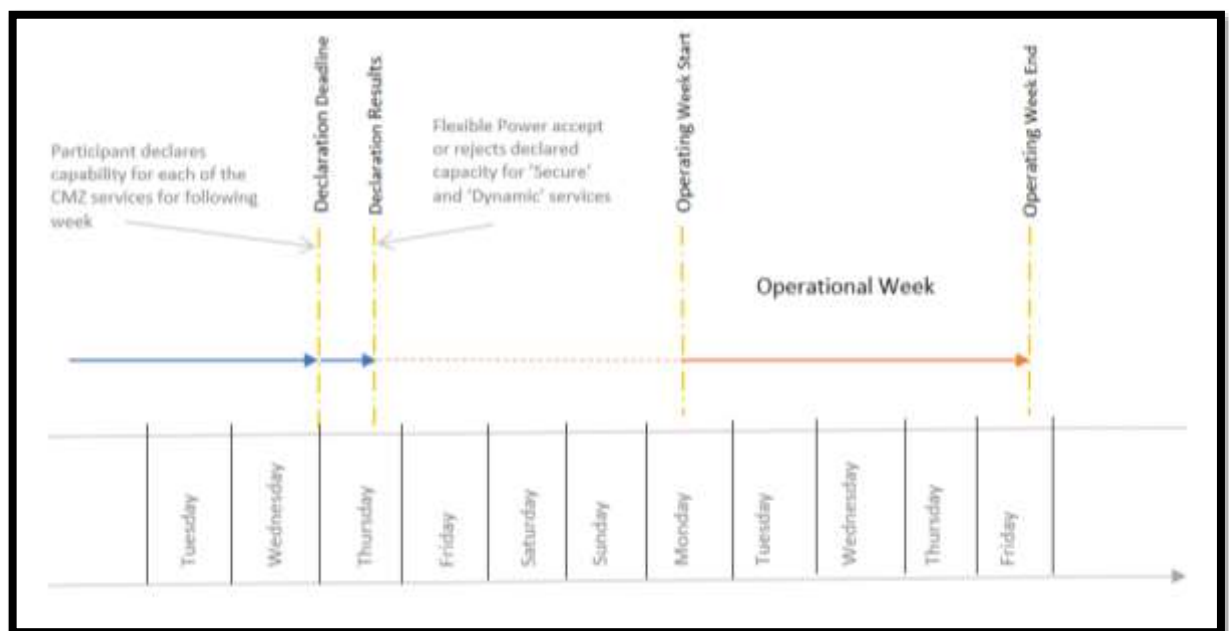


Fig.2 Flexible Power declaration and operation timeline

Declarations and Utilisation Instructions

THE FOLLOWING DEFINITION SHALL APPLY IN PLACE OF THE DEFINITION OF "AVAILABLE OR AVAILABILITY":

"Available" means that Demand Response is, subject to receipt of a Utilisation Instruction, available for despatch;

THE FOLLOWING DEFINITION SHALL APPLY IN PLACE OF THE DEFINITION OF "UNAVAILABLE":

"Unavailable" means that Demand Response is not Available for despatch;

THE FOLLOWING PROVISIONS SHALL APPLY IN PLACE OF CLAUSES 3.1, 3.2 AND 3.5 TO 3.9 OF THE CONDITIONS:

- S4.2.4 By 23:59 hours on each Wednesday (or as otherwise agreed between the Parties), the Provider shall notify Central Control of any Site(s) / CMZ Group that is Available for the despatch of Demand Response in a Zone, the Flexibility Service(s) that the Site(s) / CMZ Group is Available for and the capacity it is declaring in respect of such Site(s) / CMZ Group and Flexibility Service (provided that this shall not exceed the Maximum Capacity) during the following Week and the relevant Minimum Utilisation Period, Maximum Utilisation Period and Weekly Limit. In the absence of any notification to the contrary in respect of a particular Site /CMZ Group, the Company shall be entitled to assume that that Site / CMZ Group is Available for the despatch of Demand Response at all times for all Flexibility Services and for the most recently declared capacity (up to the Maximum Capacity), Minimum Utilisation Period, Maximum Utilisation Period and Weekly Limit (or the Maximum Capacity, Minimum Utilisation Period, Maximum Utilisation Period and Weekly Limit set out in the Portal if no declarations or updated declarations have been made).
- S4.2.5 By 1200 hours on each Thursday (or as otherwise agreed between the Parties), Central Control shall confirm to the Provider the Arming Windows and/or Availability Windows available during the following Week; the Committed Arming Window/s.
- S4.2.6 With respect to the above S4.2.5, any declared availability not confirmed by Central Control shall subsequently be deemed as Unavailable.
- S4.2.7 If, at any time, the Provider becomes aware that Demand Response will be Unavailable from a Site / CMZ Group for any time during a Committed Arming Window, Committed Availability Window and/or any other period of time or on the basis for which availability was declared or deemed declared pursuant to paragraph S4.2.4 above, then it shall as soon as reasonably practicable, contact the Company's Senior Representative as detailed in S4.1 to confirm;
- Provider Name,
 - Portal ID of unavailable unit,
 - Date Unavailable from,
 - Date Unavailable to.
- S4.2.8 Notwithstanding any notification or deemed notification that Demand Response is Available for despatch:
- (i) the Company may determine that, based on any Site(s) / CMZ Group and asset status monitoring data and information available to it (including where no data or information is available as a result of a failure of the control or communications systems), and taking into account any asset or Site / CMZ Group operational capabilities agreed between the Parties from time to time, Demand Response is Unavailable for despatch for any period

- during any Accepted Arming Window, Accepted Availability Window and/or other period of time which has not been declared or deemed to be Unavailable;
- (ii) if no Demand Response is provided for a period of time during an Accepted Arming Window, Accepted Availability Window and/or other period of time following a Utilisation Instruction, then Demand Response shall be deemed to be Unavailable for the period of failure to provide any Demand Response during that Accepted Arming Window, Accepted Availability Window and/or other period of time; and
 - (iii) unless otherwise agreed with the Provider, Demand Response shall be deemed to be Unavailable from a Site(s) / CMZ Group during each Accepted Arming Window, Accepted Availability Window (or part thereof) and/or other period of time previously notified, or deemed to be notified, as being Available that overlaps with a Recovery Period or in respect of any Accepted Arming Window, Accepted Availability Window or other period of time previously notified, or deemed to be notified, as being Available (or part thereof) which, were Demand Response to be despatched during such Accepted Arming Window, Accepted Availability Window (or part thereof) or other period of time previously notified, or deemed to be notified, as being Available, the Minimum Utilisation Period in respect of such despatch would exceed the relevant Weekly Limit.
- S4.2.9 Where:
- (i) the Company has determined, in accordance with paragraph S4.2.8(i) above, that Demand Response is Unavailable for despatch from a Site(s) / CMZ Group, then it shall notify the Provider of this as soon as reasonably practicable thereafter. Upon such notification (and without prejudice to Clause 13 of the Conditions), the Provider shall investigate and shall provide a report to the Company setting out the reasons why Demand Response was Unavailable for despatch;
 - (ii) no Demand Response is provided for a period of time following a Utilisation Instruction from the Company, then the Provider shall, as soon as practicable thereafter, provide a report to the Company setting out the reasons why Demand Response not provided following a Utilisation Instruction.
- S4.2.10 The Company may, in any Accepted Arming Window, Accepted Availability Window or other period of time in respect of a Site / CMZ Group which has not been declared or deemed to be Unavailable at that time to provide Flexibility Services, issue a notice (a "**Utilisation Instruction**") requiring the Provider to provide Demand Response.
- S4.2.11 Where the Company issues a Utilisation Instruction requiring the Provider to provide Demand Response the Provider shall, within the Response Time and unless otherwise agreed between the Company and the Provider, provide Demand Response from the Site / CMZ Group continuously for a minimum of the declared (or deemed declared) Minimum Utilisation Period until the earlier of:
- (i) The expiry of the declared (or, where relevant, deemed declared) Maximum Utilisation Period or the Weekly Limit;
 - (ii) any other time as required by the Company by way of a Stop Instruction; and
 - (iii) the end of the Accepted Arming Window, 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 S4.2.11(i) or S4.2.11(ii) above would be prior to the end of the Minimum Utilisation Period, Demand Response shall be operated until the end of the Minimum Utilisation Period.
- S4.2.12 In the event that, in respect of the despatch of Demand Response in accordance with S4.2.10 in any Accepted Arming Window or Accepted Availability Window at any Site(s) / CMZ Group:-
- (i) Demand Response is not provided at a level of at least the required level of Contracted Capacity less any applicable grace factor (as set out in S2.7) as measured at the minute in which the Response Time ends; or

- (ii) Demand Response is not provided continuously at a level of at least the required level of Contracted Capacity less any applicable grace factor (as set out in S2.7) from the expiry of the Response Time until the first to occur of the times described in S4.2.11 (i), (ii) or (iii) above,
- (iii) then the Charges otherwise payable by the Company to the Provider shall be reduced in accordance with Schedule 2.

S4.3 UNAVAILABILITY

The Provider shall inform the Company of any Unavailability in accordance with S4.2.7.

S4.4 PORTAL COMMUNICATION

S4.4.1 API DEVELOPMENT

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

Providers are expected to develop their own interface for the API to the assets that they intend to offer to the Company. Due to the large variety of potential scenarios that can occur, ranging from a single asset such as a standalone generator through to a complex estate with multiple assets or even part of a portfolio under management by a commercial aggregator.

The objective of the Provider is to establish a single point where they can aggregate the metering from all assets within a DER set along with communications to send to the Company, and are able to receive start and stop requests. It is at this point that we would expect a device such as a server to be hosting an API software program.

A comprehensive guide to API set-up is available on www.flexiblepower.co.uk/downloads/409.

S4.5 SIGNAL AND CONTROL REQUIREMENTS

The API requires continual provision of minute-by-minute data throughout the operational season, and ideally 3 weeks before the season begins. This provides the Company with both data for the baselining and so delivery can be verified in real time/close to real time. The system will tolerate a 15-minute delay of data. Any data missing beyond 15 minutes will need to be submitted to WPD to upload manually. After manual upload the event performance and earnings reports are automatically refreshed.

The following signals need to be provided to the Company:

- Current power usage in kW, with timestamp, per Zone.
- Emergency stop signal, per DSR programme and Zone.
-

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

- Dispatch start control, per DSR programme and Zone.
- Dispatch stop control, per DSR programme and Zone.

S4.6 API TESTING

Set up and testing of the API must be performed in the Portal (see S6) User Acceptance Testing (UAT) environment which offers new Providers as a safe environment in which to establish and test the technical aspects of the Flexible Power service. UAT replicates the live environment that is used for operating all

Flexibility Services. Providers can use this to establish the API interface as well as familiarise with the diary system used for capacity declaration.

Once a Provider has completed the initial set up and testing within the UAT environment they will be provided with a log in to the full production environment. This will require the Provider to modify the API to reflect the 'end point' so that they are able to receive the signals to their chosen device and send metering signals / emergency stop to Flexible Power's live production environment. Once established in the live production environment, the Provider may begin declaring Availability with a view to begin delivering service if instructed.

No timescale is imposed by which the Provider must complete API set-up & testing.

A comprehensive guide to API set-up and testing is available on www.flexiblepower.co.uk/downloads/606.

SCHEDULE 5

PERFORMANCE MONITORING

S5.1 PERFORMANCE REPORTING

As detailed in S2.1, all performance reporting is undertaken within the Portal. Here Performance Reports can be viewed by both the Company and the Provider. Should either party wish to discuss reported performance they should contact the other parties' representative as detailed in S4.1.

S5.2 PROVING TESTS

Only API testing as detailed in S4.6 must be completed. No Proving Tests (test of ability to deliver a response) of assets or asset groups are required in order for the Provider to commence provision of service as detailed in S4.2.

Should the Company identify a failure affecting the API communications the Company shall notify the Providers nominated person as detailed in S4.1 as soon as practical in order to resolve the failure and if necessary retrieve any missing data.

Should the Provider identify a failure affecting the API communications the Provider shall notify the Companies nominated person as detailed in S4.1 as soon as practical in order to resolve the failure and if necessary provide any missing data.

Following a communications failure, the company may request the Provider complete further API testing as detailed in in S4.6.

SCHEDULE 6

DESPATCH SYSTEMS/TECHNICAL REQUIREMENTS

S6.1 DNO FLEXIBILITY MANAGEMENT SYSTEMS

WPD operates its flexibility requirements through the Portal. The Portal is the operational platform through which flexibility providers are able to declare if their Distributed Energy Resource (DER) is Available or Unavailable and submit associated meter readings. The Distribution Network Operator (DNO) uses the Portal to accept declarations and instruct utilisation events.

The Portal is equipped with functionality that calculates;

- The DER baseline.
- Event performance.
- Event earnings.
- Monthly self-billing invoices.

Flexibility Providers will be provided with Portal access once they have been awarded a contract.

SCHEDULE 7- SPECIAL REQUIREMENTS

S7.1 CLAUSE 13 OF THE CONDITIONS SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

- 13.1 *Subject to Clause 13.3 and without prejudice to Clause 13.4, 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.*
- 13.2 *Subject to Clause 13.3, 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 13.2, a contract year means a 12 month period commencing on the Commencement Date or any anniversary of it.*
- 13.3 *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.*
- 13.4 *Subject to Clause 13.3 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.*

S7.2 PRINCIPLES OF DISPATCH

- S7.2.1 The Provider acknowledges that, in the event that Demand Response declarations from multiple contractors (including the Provider) for the Flexibility Services within a Zone exceed the Company's overall peak Demand Response MW requirements for such Flexibility Service and Zone, then whilst the Company will, subject to S7.1.2 below, use its reasonable endeavours to issue instructions for despatch in accordance with the 'Acceptance & Dispatch Principles' (which are available at <https://www.flexiblepower.co.uk/downloads/681>), there is no guarantee that the Provider will be Utilised during a constraint event.
- S7.2.2 In the event that (where relevant) the Provider's best and final offer price for the Flexibility Services in a Zone in its response to a relevant invitation to tender issued by the Company was higher than the applicable Utilisation Cost and Arming Fee or Availability Fee (each as defined in Schedule 2), then the Provider will (unless the Company determines otherwise at its discretion) be despatched in accordance with the 'price order despatch' principles (which are available at <https://www.flexiblepower.co.uk/downloads/178>) where the Company's MW Demand Response system needs for the Flexibility Service in a Zone exceed the relevant declarations from other contractors with lower best and final offer tender prices.

S7.3 THE FOLLOWING SHALL BE ADDED AS A NEW CLAUSE 8.4 IN THE CONDITIONS:

- 8.4 *In the event that, in contravention of Clause 8.2.7, Demand Response is despatched which causes the Provider to be in breach or non-compliance as described in Clauses*

8.1.3 and/or 8.2.10, then Demand Response shall be deemed to be Unavailable from the Site during any Accepted Arming Window or Accepted Availability Window (as relevant).

S7.3 TECHNICAL GLOSSARY

THE FOLLOWING DEFINITIONS SHALL BE ADDED TO CLAUSE 1 OF THE CONDITIONS AND, WHERE APPLICABLE, REPLACE THE EXISTING DEFINITION SET OUT THEREIN:

"Accepted Arming Window" means a Committed Arming Window in respect of a Site(s) / CMZ Group which is notified by the Company in the Portal as being required by the Company for the Company's Secure Services;

"Accepted Availability Window" means a Committed Availability Window in respect of a Site(s) / CMZ Group which is notified by the Company in the Portal as being required by the Company for the Company's Dynamic Services;

"API" means application programme interface;

"Arming Window" means, for each Site(s) / CMZ Group, the window of time during which the Company's Secure Services may be required to be Available during an Operational Period as notified pursuant to S4.2.5 and "Arming" shall be construed accordingly;

"Availability" means, for the purposes of the Conditions, that Demand Response is Available and, for the purposes of the Schedules, shall be construed as set out in the definition of Availability Window below;

"Availability Window" means, for each Site(s) / CMZ Group, the window of time during which the Company's Dynamic Services may be required to be Available during an Operational Period as notified pursuant to S4.2.5 and "Availability" shall be construed accordingly;

"Cease Time" means the end of the minute during which the Company ceases, or requires the cessation of, the despatch of Demand Response in accordance with this Agreement;

"Central Control" means the Company control facility from where the network is monitored and managed. Unless otherwise set out in this Agreement or agreed between Parties from time to time, any notice or other communication with Central Control shall be via the Portal;

"CMZ Group" means multiple Sites that are aggregated and regarded as a single entity as identified on the 'Availability' page of the Portal and provided that such aggregated Sites may be metered on a single metering output and receive a single Utilisation Instruction and requirement to cease or from which Demand Response may be despatched and ceased as a single unit;

"Committed Arming Window" means an Arming Window (or any part thereof) in respect of which a notification or assumption that Demand Response is Available pursuant to paragraphs S4.2.4 or S4.2.7 corresponds;

"Committed Availability Window" means an Availability Window (or any part thereof) in respect of which a notification or assumption that Demand Response is Available pursuant to paragraphs S4.2.4 or S4.2.7 corresponds;

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

"Contracted Capacity" means the target net MW of Demand Response at a Site / CMZ Group as set out in the Provider's declarations or deemed declarations made pursuant to S4.2.4 and/or S4.2.7 up to the Maximum Capacity;

"Company's Dynamic Services" means the Company's 'dynamic' constraint management zone services (as further explained on the Portal) required in a Zone identified by the Company in respect of which the Provider has been Awarded a Contract to which this Agreement is expressed to apply and to be provided by the Provider pursuant to Schedule 1;

"Company's Restore Services" means the Company's 'restore' constraint management zone services (as further explained on the Portal) required in a Zone identified by the Company in respect of which the Provider has been Awarded a Contract to which this Agreement is expressed to apply and to be provided by the Provider pursuant to Schedule 1;

"Company's Secure Services" means the Company's 'secure' constraint management zone services (as further explained on the Portal) required in a Zone identified by the Company in respect of which the Provider has been Awarded a Contract to which this Agreement is expressed to apply and to be provided by the Provider pursuant to Schedule 1;

"Demand Response" means the increase of net export of active power to, or the reduction of net import of active power from, the Company's Network from or to a Site(s) /CMZ Group. The delivery method for providing Demand Response for each Site / CMZ Group is set out in the Portal;

"Dispatchable Generation" means DER that is not subject to any delivery constraints due to its technology type, such as time of day, state of charge, or any other relevant variables;

"Due Date for Payment" has the meaning given to it in paragraph S2.2.5;

"Event End Time" means the earlier to occur of the events set out in paragraph S4.2.11;

"Expected Availability" means those Arming Windows and Availability Windows which it is agreed between the Company and the Provider from time to time would be likely to be declared or deemed Available and constitute a Committed Arming Window or Committed Availability Window (as appropriate);

"Flexibility Services" means, the Company's Dynamic Services, Company's Restore Services and Company's Secure Services;

"Maximum Capacity" means the maximum MW of Demand Response committed by the Provider in respect of each applicable Flexibility Service in a Zone as set out in a relevant Contract Award;

"Maximum Utilisation Period" means the period of time in respect of a Site / CMZ Group beginning at the time at which either the output of that Site(s) / CMZ Group is greater than 0MW or the demand of MW and Mvar of electricity is less than the Contracted Capacity as set out in the Portal as the same may be updated from time to time;

"Minimum Utilisation Period" means the period of time in respect of a Site(s) / CMZ Group beginning at the time at which either the output of that Site(s) / CMZ Group is greater than 0MW or the demand of MW and Mvar of electricity is less than the Contracted Capacity (including any ramping period) as set out in the Portal as the same may be updated from time to time;

"Operational Day" means the period from 0500 hours on one day to 0500 hours on the following day;

"Operational Period" means the duration for which a Flexibility Service may be required by the Company which shall, in respect of each Flexibility Service requirement, and unless such Flexibility Service requirement or this Agreement is terminated earlier in accordance with its terms, be for a minimum period of one (1) year from the date of Contract Award in respect of such Flexibility Service requirement as may be extended in accordance with this Agreement;

"Portal" means the password protected Provider area of the flexible power website accessible via <http://www.flexiblepower.co.uk/>;

"Response Time" means the maximum period of time (in minutes) which is permitted to elapse from despatch of Demand Response by the Company or issue of a Utilisation Instruction by the Company (as relevant) to achieving the Contracted Capacity at the relevant Site(s) / CMZ Group in connection with the Flexibility Services as set out in the Portal;

"Recovery Period" means the period specified in the Portal, which commences upon expiry of the earlier of the Cease Time, the Maximum Utilisation Period or relevant Accepted Arming Window or Accepted Availability Window (as relevant), for which the Site(s) / CMZ Group is Unavailable to be despatched;

"Utilisation" means in respect of a Site(s) / CMZ Group, any despatch of Demand Response following a Utilisation Instruction from the Company during a constraint event in accordance with this Agreement which is provided continuously until the Event End Time and "Utilised" shall be construed accordingly;

"Week" means a period of seven Operational Days commencing at 05.00 hours on a Monday and terminating at 05.00 hours on the next following Monday;

"Weekly Limit" means, in relation to any Week in respect of any Site(s) / CMZ Group, the weekly limit as set out in the Portal;