

Flexibility Services Standard Agreement

THIS AGREEMENT is made on [●] 20[●]

BETWEEN:

- (1) [●] (registered number [●]) whose registered office is at [●] (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 Accessible Site for the provision of such Flexibility Services, for example through aggregated or individual assets. The Company will pay the Provider for these Flexibility Services in accordance with this Agreement.
- (3) The Company wishes to appoint the Provider to provide the Flexibility Services and the Provider has agreed to provide the Flexibility Services to the Company, on and subject to the terms and conditions contained herein.

IT IS AGREED:

Glossary and Interpretation

DOCUMENT CONTROL (*Delete as Required*)

Authorities

Version	Issue Date	Authorisation	Comments
0.1	15 December 2023	CMS	First draft for consultation
0.2	25 April 2024	CMS	Post-consultation draft

1. Introduction

- 1.1 The Glossary and Rules of Interpretation shall apply to any document published or to be published by the Company which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation (see definition of Associated Document).
- 1.2 Any capitalised term used in the Glossary and Rules of Interpretation shall have the meaning given to it (if any) in the Glossary and Service Glossary as applicable.
- 1.3 The Company may update any of the Glossary and Rules of Interpretation, General Terms and Conditions, Service Glossary, Service Terms, Annexes, Forms and Templates, and other Associated Documents from time to time by publication of an updated version of the relevant document on its website, and each such updated version shall be effective from the date shown on its front cover provided always that, except with the consent of the Provider in writing (which shall include by approved electronic means to the extent permitted by the Service Terms), any updated version shall not apply to (i) any Agreement already in force or (ii) to any Service Terms already applying to Flexibility Services currently being provided at the time of publication.

2. Rules of Interpretation

- 2.1 Unless the context otherwise requires:
- 2.1.1 the singular includes the plural and vice versa;
- 2.1.2 reference to a gender includes the other gender and the neuter;
- 2.1.3 references to an act of Parliament, statutory provision or statutory instrument include a reference to that act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 2.1.4 words denoting persons shall include any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality; and
- 2.1.5 references to a company shall include a corporation or other body corporate and body corporate shall have the meaning given in section 1173 of the Companies Act 2006.
- 2.2 A table of contents and headings are for convenience only and shall be ignored in construing the terms of the Agreement.
- 2.3 Any reference to the words “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.4 If a term or expression is defined within the Service Terms or Annexes relating to a particular service, the defined term or expression within the Service Terms or Annexes shall apply to the relevant service.

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

Priority of documents

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

2.6.1 Associated Documents; and

2.6.2 General Terms and Conditions and Glossary.

3. Glossary

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

“Accessible Site”	a Site that is not a domestic site;
“Affiliate”	any holding company or subsidiary company of a Party, or any company which is a subsidiary of such holding company and “holding company” and “subsidiary” have the meanings given in section 1159 of the Companies Act 2006;
“Agreement”	the General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes, the Forms and Templates;
“Annexes”	the annexes appended to the General Terms and Conditions;
“Apparatus”	all equipment in which electrical conductors are used, supported or of which they may form a part;
“Applicable Law”	any applicable law, statute, by-law, regulation, order, regulatory policy, guidance or Industry Code, rule of court or directives or requirements of any regulatory body (including any health, safety and environmental legislation and approved codes of practice);
“Associated Document”	any document published or to be published by the Company which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation in Part 2 above, which includes but is not limited to the Service Terms, Service Glossary, Annexes and Forms and Templates.
“Authority”	the Gas and Electricity Markets Authority;
“Availability” or “Available”	means that the Flexibility Services, in accordance with the Service Requirements and the Utilisation Instruction, and where applicable, are available to be delivered to the Company for the duration of the Service Window;
“Availability Payment”	has the meaning given to it in the Service Terms;

“Balancing Services Activity”	has the meaning attributed to it in the ESO’s Transmission Licence;
“BSC”	means the balancing and settlement code as administered by Elexon;
“Business Day”	any Day other than a Saturday or Sunday or a bank holiday, in England and Wales where the Company is located in England and Wales and in the City of Edinburgh where the Company is located in Scotland;
“Business Hours”	between 9:00 am and 5:00 pm on a Business Day;
“Change in Ownership”	means: <ul style="list-style-type: none"> a) any sale, transfer or disposal of any legal, beneficial or equitable interest in fifty per cent (50%) or more of the shares in the Provider (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or b) any other arrangements that have or may have or which result in the same effect as sub-clause a) above;
“Charge(s)”	as applicable, the Availability Payments and the Utilisation Payments;
“CMZ”	constraint managed zone;
“Confidential Information”	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;
“Connection Agreement”	an agreement governing the terms of connection of any Plant or Apparatus to, and/or any agreement for the supply of electricity to the Plant or Apparatus or for the acceptance of electricity into, and its delivery from, the Company’s Distribution System or Transmission System (as the case may be);
“Connection and Use of System Code” or “CUSC”	the Connection and Use of System Code designated by the Secretary of State for Energy Security and Net Zero (DESNZ) as from time to time modified;
“Contract Award”	the execution and award by the Company of a contract for the provision of Flexibility Services by the Provider;
“Contract Data”	all data other than Performance Data associated with the Agreement;
“Data Protection Law”	any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Company, the Provider and/or the Flexibility Services, including in the UK: (i) the Privacy and Electronic

	Communications (EC Directive) Regulations 2003 and any current laws or regulations implementing Council Directive 2002/58/EC; and/or (ii) the General Data Protection Regulation (EU) 2016/679 (“GDPR”) as retained in the laws of the United Kingdom by the European Union (Withdrawal) Act 2018, and/or any corresponding or equivalent national laws or regulations, once in force and applicable, including the Data Protection Act 2018, and includes any judicial or administrative interpretation of them, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant supervisory authority;
“Day”	a calendar day;
“DCUSA”	means the Distribution Connection and Use of System Agreement entered into by the DCUSA Parties (which includes the Company) and DCUSA Limited;
“Defaulting Party”	has the meaning given in paragraph 7.1 of the General Terms and Conditions;
“Defect”	an issue that may arise with the DER equipment, metering or the communication interface between the Company and Provider which results in non-delivery of Flexibility Services or a misinformed delivery of Flexibility Services;
“Development Plan”	the defined schedule of design, build and commissioning in respect of a DER project in development;
“Distributed Energy Resources” or “DER”	the electricity generators, electricity storage or electrical loads (both in respect of domestic and non-domestic assets and including, but not limited to, electric vehicle charge points), and other Site equipment, machinery, Apparatus, materials and other items used for the provision of the Flexibility Services as described in the Service Terms;
“Distribution Code”	the Distribution Code of Licensed Distribution Network Operators of Great Britain;
“Distribution Licence”	a licence issued under section 6(1)(c) of the Electricity Act 1989;
“Distribution Limit”	£200,000 (two hundred thousand pounds sterling) or such other amount as may be stated in the Service Terms;
“Distribution System”	a distribution network owned and/or operated by the holder of a Distribution Licence;
“ESO”	means National Grid Electricity System Operator Limited (company number: 11014226) (and any successor to its role);
“Expert”	an independent expert appointed for the purposes of expert determination;
“Flexibility Services”	means, as more particularly described in the Service Terms, the services to be provided by the Provider to the Company under and in accordance with this Agreement which give the Company the ability

	to manage the load at a specific point of the Network at certain points in time;
“Force Majeure Event”	any event or circumstance which is beyond either the Company’s or the Provider’s (as the case may be) reasonable control or its employees and which results in or causes its failure to perform any of its obligations under the Agreement, provided that: (a) lack of funds; or (b) any failure or fault in the DER, including insufficient fuel, shall not constitute a Force Majeure Event;
“Forms and Templates”	where applicable, the relevant forms and templates associated with the onboarding, procurement, contract award or operation of Flexibility Services;
“Fuel Security Code”	means the document of that title designated as such by the Secretary of State for Energy Security and Net Zero as may be amended from time to time;
“General Terms and Conditions”	the general terms and conditions applicable to the provision of Flexibility Services to be provided under the Agreement;
“Glossary”	this glossary of terms and interpretation, as applicable to the Agreement;
“Good Industry Practice”	the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances or the standard which would reasonably and ordinarily be expected from systems used by a skilled and experienced operator engaged in the same type of undertaking and carrying out services of similar nature, scope and complexity as the Flexibility Services, under the same or similar circumstances;
“Grid Code”	the technical code for connection and development of the national electricity transmission system as amended from time to time (available at www.nationalgrid.com/uk/electricity/codes/grid-code/code-documents);
“GSP”	grid supply point;
“Industry Code”	the BSC, the CUSC, the Grid Code, Transmission Code, the Distribution Code, the DCUSA, the Smart Energy Code, the Retail Energy Code and the Fuel Security Code.
“Insolvency Event”	means any pre-insolvency, creditor protection, or insolvency related actions, events, processes or proceedings, whether in or out of court, including the following (and any proceedings or steps leading to any of the following): any form of bankruptcy, liquidation, administration, receivership, voluntary arrangement, scheme of arrangement, restructuring plan or other compromise or arrangement or scheme with creditors, moratorium, stay or limitation of creditors’ rights, interim

	or provisional supervision by a court or court appointee, winding up or striking off, or any distress, execution, commercial rent arrears recovery or other process levied or exercised; or any similar actions, events, processes or proceedings in any jurisdiction outside England and Wales where the Company is located in England and Wales or alternatively Scotland where the Company is located in Scotland;
“Intellectual Property Rights”	all intellectual property, including patents, trade marks, service marks, domain names, business and trading names, styles, logos and get-ups, rights in goodwill, database rights and rights in data, rights in designs, copyrights and topography rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights) and all inventions, rights in know-how, trade secrets and Confidential Information lists and other proprietary knowledge and information and all rights under licences and consents in relation to any such rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world for their full term, including any renewals and extensions;
“Material Adverse Effect”	any event or circumstance which, in the opinion of the Company: <ul style="list-style-type: none"> a) is likely to materially and adversely affect the Provider’s ability to perform or otherwise comply with all or any of its obligations under this Agreement; or b) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Company;
“MPAN”	meter point administration number;
“MSID”	metering system identifier;
“Network”	the electricity network operated by the Company to which the DER is connected;
“Non-Terminating Party”	has the meaning given in paragraph 7.4 of the General Terms and Conditions;
“Party”	each of the Company and the Provider, together the “Parties” ;
“Performance Data”	such data relating to the performance of the Plant, Apparatus and related infrastructure as may be notified by the Company to the Provider or by the Provider to the Company from time to time;
“Personal Data”	has the meaning given to it in Data Protection Law ¹ ;
“Plant”	fixed and movable items used in the generation and/or supply and/or transmission and/or distribution of electricity other than Apparatus;

¹ **Drafting note: applicable legislation reference to be confirmed depending on type of data being processed.**

“Primacy Rules”	means the primacy rules defined by the Energy Networks Association (as may be updated from time to time);
“Retail Energy Code”	the retail energy code administered by the Retail Energy Code Company Ltd;
“Rules of Interpretation”	the rules of interpretation detailed at paragraph 2 above;
“Service Failure”	as defined in the Service Terms;
“Service Glossary”	any glossary of terms within the Service Terms as applicable to a particular Flexibility Service;
“Service Requirements”	the specification that the Flexibility Services must be capable of meeting, as defined in the Service Terms;
“Service Period”	As defined in the Service Terms;
“Service Terms”	the service terms applicable to the provision of Flexibility Services which form part of the Agreement;
“Service Window”	the time periods during the Service Period during which the Provider agrees to make Available, and provide in accordance with the Agreement, the Flexibility Services to the Company, as defined in the Service Terms (if applicable);
“Site”	means the site on which the DER is located;
“Smart Energy Code”	the smart energy code administered by the Smart Energy Administrator and Secretariat;
“Statutory Requirements”	the requirements placed on the Company and/or the Provider or affecting or governing the provision and/or use of the Flexibility Services by Applicable Law and/or the applicable Distribution Licence or Transmission Licence and/or a regulator and/or any relevant codes of practice issued by any government agency or body including in relation to health, safety and environmental matters;
“TCM”	transmission constraint management;
“Term”	the duration of the Agreement as specified by the Company in the Service Terms;
“Terminating Party”	has the meaning given in paragraph 7.1 of the General Terms and Conditions;
“Termination Notice”	has the meaning given in paragraph 7.4 of the General Terms and Conditions;
“Transmission Code”	the System Operator Transmission Owner Code as required by Transmission Licences granted under the Electricity Act 1989;
“Transmission Licence”	a licence issued under section 6(1)(b) of the Electricity Act 1989;
“Transmission Limit”	£500,000 (five hundred thousand pounds sterling) save as provided in the Service Terms;

“Transmission System”	the electricity transmission system, as defined in the Connection and Use of System Code;
“Unavailability” (or “Unavailable”)	the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the Company;
“Utilisation Instruction”	an instruction by the Company to the Provider to deliver Flexibility Services;
“Utilisation Payments”	has the meaning given to it in the Service Terms.

General Terms and Conditions

 2024

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Authorities

Version	Issue Date	Authorisation	Comments
0.1	15 December 2023	CMS	First draft for consultation
0.2	25 April 2024	CMS	Post-consultation draft

Note: cross-references to specific Service Terms and Annexes will be confirmed.

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April 2024

Contract reference number: [to be inserted]

1. Introduction

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

2. Scope of Flexibility Services

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

3. Provider’s Obligations

- 3.1 The Provider will:
 - 3.1.1 ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with the terms of the Agreement and all Applicable Laws, Statutory Requirements and Good Industry Practice;
 - 3.1.2 ensure that all technical, communication and data provision requirements set out in the Service Terms and Annexes are complied with at all times;
 - 3.1.3 act diligently and in good faith in all of its dealings with the Company;
 - 3.1.4 ensure that it is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;
 - 3.1.5 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER;
 - 3.1.6 where reasonably required by the Company in order to inspect and test the DER, or to install, maintain, replace or remove communication equipment belonging to the Company in relation to the provision of Flexibility Services in accordance with the Agreement; grant access to a Site in accordance with paragraph **Error! Reference source not found.** of the Service Terms;
 - 3.1.7 remedy any Defect of the Flexibility Services in accordance with Good Industry Practice and to the satisfaction of the Company;
 - 3.1.8 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under the Agreement that could reasonably

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impact Availability of the DER or the ability of the Provider to perform its obligations under the Agreement;

3.1.9 use reasonable endeavours to ensure that a DER that is pre-qualified is not registered with another Provider to provide Flexibility Services to the Company. If the Company identifies that the DER is registered with more than one Provider, the Company will notify both Providers. The DER will remain registered with the existing Provider until sufficient evidence of the Provider to which the Asset is registered has been provided to the Company's satisfaction (acting reasonably).

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

4. Record and Audits

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

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

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

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

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

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

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

5. Representations and Warranties

- 5.1 Without prejudice to its other obligations under and/or pursuant to the Agreement, each Party warrants and undertakes to the other Party at all times that:
- 5.1.1 it is a duly incorporated and company validly existing under the law of its jurisdiction of incorporation;
 - 5.1.2 it has the right, power, capacity and authority to enter into and perform its obligations under the Agreement;
 - 5.1.3 the entry into and performance by it of the Agreement does not and will not contravene or conflict with any Applicable Law or judicial or official order applicable to it;
 - 5.1.4 it will not be in material breach of any other agreement or arrangement of whatever nature with any person which could or may affect the performance of its obligations under the Agreement;
 - 5.1.5 all information it provides to the other Party will be complete and accurate save to the extent disclosed;
 - 5.1.6 no Insolvency Event is continuing or might reasonably be anticipated; and
 - 5.1.7 no litigation, arbitration or administrative proceedings are taking place, pending, or to the Party's knowledge threatened against it, any of its directors or any of its assets, which, if adversely determined might reasonably be expected to have a Material Adverse Effect.
- 5.2 Without prejudice to its other obligations under and/or pursuant to the Agreement and in addition to the foregoing, the Provider warrants and undertakes to the Company at all times that:
- 5.2.1 the DER contracted to provide the Flexibility Services has, as applicable, either:
 - (a) live connection(s) to the Company's Network, associated MPAN or MSID and Connection Agreement(s); or
 - (b) a connection offer(s) for a live connection and that the connection(s) can be completed and a Connection Agreement entered into in time to meet the Service Requirements as specified in the Service Terms;
 - 5.2.2 it has, or it will procure that the owner of the DER has, obtained and maintains in force for the Term, either directly or through agreement via its aggregated DER, all licences, permissions, authorisations, consents and permits needed to supply the Flexibility Services

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in accordance with the terms of the Agreement, including but not limited to any authorisation required pursuant to the regulations, codes, agreements and arrangements referenced in paragraph 5.2.9;

- 5.2.3 it has neither fixed nor adjusted any Charge under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of any Charge in connection with the Agreement (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for provision of Flexibility Services with the Company;
- 5.2.4 it shall disclose as soon as reasonably possible any change of circumstances which could affect the delivery of the Flexibility Services;
- 5.2.5 where applicable, for each DER project in development, the Provider has (or has procured), and, if requested, will promptly provide to the Company a copy of the Development Plan in respect of each DER;
- 5.2.6 where applicable, it shall take all reasonable steps to achieve, or procure, the commissioning of each DER project on time and in accordance with the relevant Development Plan;
- 5.2.7 if, at any time during the Term, the provision of Flexibility Services would cause the Provider to be in breach or non-compliance as described in paragraphs 5.1.3 and 5.2.9, the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by the Annexes;
- 5.2.8 where any Accessible Site is occupied by an Affiliate of the Provider or any other third party, the Provider shall be responsible for ensuring that where any provision in the Agreement imposes an obligation on the Provider to do or refrain from doing a particular thing in relation to a Site or any DER at such Site, the relevant Affiliate or third party complies with that obligation as if it were the named "Provider" party to the Agreement; and
- 5.2.9 the provision of Flexibility Services will not cause it or the DER to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) (available from the Company on request) or any other enactment relating to health and safety or standards, the Grid Code, Distribution Code, any Connection Agreement, any agreement for the supply of electricity, any restrictions and conditions attaching to relevant authorisations of the Environment Agency

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

6. Charges and Payments

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

7. Termination

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

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

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

7.1.3 paragraph 11.6 of these General Terms and Conditions applies.

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

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

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

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

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

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

Accrued liabilities

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

Surviving provisions

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

7.6.1 paragraph 4 (*Records and Audit*);

7.6.2 paragraph 6 (*Charges and Payment*);

7.6.3 paragraph 7 (*Termination*);

7.6.4 paragraph 8 (*Service Failure*);

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

7.6.6 paragraph 12 (*Confidentiality*);

7.6.7 paragraph 13 (*Intellectual Property Rights*);

7.6.8 paragraph 14 (*Data Protection*);

7.6.9 paragraph 17 (*Dispute Resolution*);

7.6.10 paragraph 21 (*Waiver*);

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

7.6.12 Glossary; and

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

Consequences of termination or expiry

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

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

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

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7.8.2 submit to the Company within thirty (30) Business Days all invoices with supporting documents for payment of all outstanding sums in connection with the provision of the Flexibility Services.

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

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

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

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

8. Service Failure

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

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

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

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

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

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

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8.3 In the event that:

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

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

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

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

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

9. Force Majeure

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

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

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

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

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

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

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

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

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

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

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10. Liability, Indemnity and Insurance

10.1 Subject to paragraph 10.2, and save where any provision of the Agreement provides for an indemnity, the Parties acknowledge and agree that neither Party nor any of its officers, employees or agents shall be liable to the other Party for loss arising from any breach of the Agreement other than for loss directly resulting from such breach and which at the date of formation of the Agreement was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

10.1.1 physical damage to the property of the other Party, its officers, employees or agents; and/or

10.1.2 any liability arising under paragraph 5.3 and/or

10.1.3 the liability of such other Party to any other person for loss in respect of physical damage to the property of any person subject, for the avoidance of doubt, to the requirement that the amount of such liability claimed by such other Party should be mitigated in accordance with general law,

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

10.2 Nothing in this Agreement shall exclude or limit the liability of either Party for death or personal injury resulting from the negligence of that Party or any of its officers, employees or agents, and each Party shall indemnify and keep indemnified the other Party, its officers, employees and agents from and against all such and any loss or liability which such other Party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of that Party or its officers, employees or agents.

10.3 Subject to paragraph 10.2, and save where any provision of the Agreement provides for an indemnity or otherwise, neither Party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

10.3.1 any loss of profit, loss of revenue, loss of use, loss of data, loss of contract or loss of goodwill; or

10.3.2 any indirect or consequential loss; or

10.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in paragraphs 10.1.3 and 10.2.

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- 10.4 Subject to paragraph 10.2, and save where any provision of the Agreement provides for an indemnity, the liability of any Party in respect of all claims for the losses referred to in paragraph 10.1 shall be subject to an aggregate cap of two million pounds sterling (£2,000,000).
- 10.5 The Provider shall procure (and on request provide evidence to the Company of) appropriate insurances as required by law and necessary for the safe and efficient performance of the Agreement to cover the liabilities set out in paragraph 10, with a reputable insurance company.
- 10.6 If the Provider appoints a sub-contractor in connection with the provision of the Flexibility Services, the Provider shall ensure that the sub-contractor maintains appropriate insurance to the extent set out in paragraph 10. If the Provider acts as an aggregator in connection with the provision of the Flexibility Services to Accessible Sites, it shall, where it is reasonably practicable to do so, ensure that the DER owners and operators for which it acts maintain appropriate insurance to the extent set out in paragraph 10.
- 10.7 The Provider's liabilities under the Agreement shall not be deemed to be released or limited by the Provider taking out the insurance policies referred to in paragraph 10.

11. Transfers, sub-contracting and Change in Ownership

- 11.1 Where pursuant to paragraph 24:
- 11.1.1 the governing law of this Agreement is English law, any reference to "assign" shall be construed as relating to an "assignment"; or
- 11.1.2 the governing law of this Agreement is Scots law, any reference to "assign" shall be construed as relating to an "assignment".
- 11.2 Save as provided for in paragraph 11.3, the Agreement is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).
- 11.3 The Company may without the consent of the other Party assign, novate or transfer the benefit or burden of the Agreement or any other rights and/or obligations pursuant to these General Terms and Conditions to: (i) the holder of a Distribution Licence; (ii) the holder of a Transmission Licence with responsibility for carrying out the Balancing Services Activity; or (iii) to an Affiliate of the Company but only where such Affiliate of the Company holds a Distribution Licence or a Transmission Licence.
- 11.4 If either Party sub-contracts any part of the provision or obligations of Flexibility Services, then the responsible Party shall be fully responsible for the acts, omissions or defaults of any sub-contractor (and its employees) as if they were the acts, omissions or defaults of the responsible Party.

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- 11.5 If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Accessible Site changes, or may change, during the Term, the Provider shall promptly notify the Company of the same. Where (i) the ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Accessible Site changes during the Term; or (ii) the use (for the purpose of providing the Flexibility Services) of any domestic Site changes during the Term, the Provider shall update its records and ensure that such records are reflective of such changes. The Company and the Provider shall if required, and at the reasonable request of the Company discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.
- 11.6 The Company reserves the right to terminate the Agreement in accordance with paragraph 7.1.3 if a Change in Ownership of the Provider occurs and the new owner of the Provider fails to meet any of the Company's reasonable due diligence checks as notified to the Provider.

12. Confidentiality

- 12.1 The Company is required to disclose certain information in accordance with this Agreement under obligations within its Distribution Licence or Transmission Licence (as applicable), or an Industry Code. Information shared will include but may not be limited to provider names, awarded prices, volumes, GSP and asset locations, and contract durations. Pursuant to the Primacy Rules, the Company, as applicable, shall be entitled to share information relating to the Agreement for the purpose of industry initiatives in relation to network or system constraint management and electricity network optimisation and the Company shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement. It shall not be a breach of this paragraph 12 where the Company discloses any such information. Such information shall include but is not limited to:
- 12.1.1 CMZ locations;
 - 12.1.2 CMZ requirements;
 - 12.1.3 a list of TCM generators;
 - 12.1.4 an agreed form of 'risk of conflict forecast';
 - 12.1.5 ESO planning outputs;
 - 12.1.6 Company outages;
 - 12.1.7 transmission outages; and
 - 12.1.8 any additional Company related information as may be required, as may be updated from time to time on agreement from the Company or the ESO.

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

13. Intellectual Property Rights

- 13.1 The Agreement does not transfer any interest in Intellectual Property Rights.
- 13.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party

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providing that intellectual property and neither Party shall make any use of the other Party's intellectual property other than to the extent reasonably necessary in performing its obligations pursuant to the Agreement, provided that nothing in this paragraph 13.2 shall operate so as to exclude any non-excludable rights of either Party.

14. Data Protection

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

15. Modern Slavery, Anti-bribery and Living Wage

Modern slavery

- 15.1 The Parties undertake, warrant and represent that:
- 15.1.1 neither Party nor any of its officers, employees, agents or subcontractors:
- (a) has committed an offence under the Modern Slavery Act 2015 ("**MSA Offence**");
 - (b) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 15.1.2 they shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- 15.1.3 they shall notify the Company immediately in writing if they become aware or has reason to believe that they, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Provider's obligations under this paragraph 15.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations;
- 15.1.4 they shall include in their contracts with subcontractors and suppliers' anti-slavery and human trafficking provisions that are at least as onerous as those set out in this paragraph 15.1; and

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

15.2 The Provider shall indemnify the Company against any losses, incurred by or awarded against the Company as a result of any breach of anti-slavery and human trafficking laws, statutes, regulations and codes or the Modern Slavery Act 2015.

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

Anti-bribery

15.4 The Provider shall have suitable controls and compliance procedures in place and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received or offered by the Provider in connection with the Agreement.

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

15.6 The Provider shall not:

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

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

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

Living wage

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

16. Notices

- 16.1 Unless otherwise specified in the Service Terms, all notices shall be submitted in accordance with the processes, and to the relevant addresses, set out in the Service Terms.
- 16.2 A notice shall be deemed to have been received:
- 16.2.1 if delivered by hand or recorded delivery post within Business Hours at the time of delivery or, if delivered by hand outside Business Hours, at the next start of Business Hours;
- 16.2.2 if sent by first class post, at 9.00 a.m. on the second Business Day after posting.
- 16.3 E-mail communications may be valid for notices the purposes of the Agreement, where agreed between the Parties. Such email notices shall be deemed to have been received on the Day of sending, or where outside of Business Hours on the first Business Day thereafter.

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- 16.4 In verifying service of a notice, it shall be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted.
- 16.5 This paragraph 16 does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

17. Dispute Resolution

- 17.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to the Agreement.
- 17.2 In the event that a dispute cannot be resolved within thirty (30) Days of written notice of the dispute, the dispute shall be escalated to the Parties' senior representatives (named in the Service Terms, or as otherwise notified by either Party to the other) who have authority to settle the same and/or may refer the dispute to the forms of dispute resolution in accordance with paragraph 17.3.
- 17.3 If thirty (30) Days following such an escalation the Parties have still not resolved the dispute, then either Party shall have the right to refer the dispute to either:
- 17.3.1 arbitration; or
 - 17.3.2 an Expert for determination; or
 - 17.3.3 such other process as is agreed between the Parties.
- 17.4 For the avoidance of doubt, paragraphs 17.2 and 17.3 shall not preclude a Party from raising arbitration proceedings (or where other processes have been agreed under paragraph 17.3.3 court proceedings) in the event a claim is considered to be nearing the end of a prescription and/or limitation period pursuant to the Limitation Act 1980 or the Prescription and Limitation (Scotland) Act 1973 (as applicable) or where determination is required in the event of an emergency where the time periods set out in this paragraph 17 would not be suitable .
- 17.5 In the event that the Parties cannot agree any other process under paragraph 17.3.3, then either Party may refer any dispute to the courts of: (i) England and Wales if the Company is incorporated in England and Wales; and (ii) Scotland if the Company is incorporated in Scotland (as applicable).
- Arbitration*
- 17.6 Where any dispute is referred in accordance with paragraph 17.3.1 to arbitration, the following provisions shall apply:
- 17.6.1 If the Company is incorporated in England and Wales, the seat of arbitration shall be London. If the Company is incorporated in Scotland, the seat of arbitration shall be Edinburgh;

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- 17.6.2 The number of arbitrators shall be one. Where no arbitrator is named or where the named arbitrator is not able or unwilling to act the appointer of the arbitrator (and of any replacement) shall be The Chartered Institute of Arbitrators;
- 17.6.3 Whatever the nationality, residence or domicile of either Party and wherever the dispute or difference or any part thereof arose, (i) the laws of England and Wales shall be the proper law of any reference to arbitration if the Company is incorporated in England and Wales or (ii) the laws of Scotland shall be the proper law of any reference to arbitration if the Company is incorporated in Scotland, and in particular (but not so as to derogate from the generality of the foregoing) the rules and provisions of (i) the Arbitration Act 1996 (notwithstanding anything in Section 108 thereof) shall apply if the Company is incorporated in England and Wales or (ii) the Arbitration (Scotland) Act 2010 shall apply if the Company is incorporated in Scotland, to any such arbitration wherever the same or any part of it shall be conducted;
- 17.6.4 For the avoidance of doubt, both Parties confirm and agree that nothing in the Agreement to arbitrate prevents a Party:
- (a) challenging the award of an arbitral tribunal as provided for under the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010;
 - (b) seeking the remedy of specific performance or any other power or remedy that would be available to the English court or Scottish court (as the case may be) from the arbitral tribunal in accordance with the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010;
 - (c) seeking interim relief from the English court or Scottish court (as the case may be) under the Arbitration Act 1996 and the Arbitration (Scotland) Act 2010, or from any other court with competent jurisdiction; or
 - (d) seeking to enforce any arbitral award in the English court or Scottish court (as the case may be) or any court of competent jurisdiction.
- 17.6.5 Without prejudice to any other mode of service allowed under any relevant law, where a Provider is not incorporated in any part of Great Britain, the Provider agrees that if it does not have, or shall cease to have, a place of business in Great Britain it will promptly appoint, and shall at all times maintain and identify to the Company, an agent for the service of process in Great Britain to accept service of process on its behalf in any proceedings commenced in support of, or in relation to arbitration, in the courts of England and Wales or Scotland (as the case may be).

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Expert determination

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

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18. Severance

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

19. Third Party Rights

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

20. No Agency or Partnership

- 20.1 Nothing in the Agreement shall be deemed to constitute a partnership or joint venture or contract of employment between the Parties nor constitute either Party the agent of the other.
- 20.2 Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf, including but not limited to the making of any representations or warranty and the exercise of any right or power.

21. Waiver

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

22. Entire Agreement

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

23. Counterparts

- 23.1 Where executed in counterparts:
- 23.1.1 the Agreement shall not take effect until all of the counterparts have been delivered; and

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

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

24. Governing Law and Jurisdiction

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

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[Drafting note: Signature documents can be added by the DNO as per its process]

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

Signed

)

)

)

for and on behalf of

[COMPANY]

)

.....

Director/Duly Authorised Signatory

Signed

)

)

)

for and on behalf of:

[PROVIDER]

)

.....

Director/Duly Authorised Signatory

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Flexibility Services Service Terms – Company Active Services

[] 2024

Authorities

Version	Issue Date	Authorisation	Comments
0.1	June 2024	SPEN Flexibility Procurement Manager	Final

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1. Introduction

These Service Terms relate to the Company’s procurement of Flexibility Services on its electricity distribution network. The Service requirements shall be as follows:

1.	The flexible facilities making up the DER shall be connected and capable of exporting to or importing from the area of the Network asset(s) subject to the limitation (represented by the zone) during intact and under first circuit outage of that network asset(s).
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 a reduction or increase in import or export, 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 and in full, is fixed for the duration of the service period, and must be within the conditions of each Facility / Site’s connection agreement.
5.	The DER shall have a single set of capability parameters, and shall be a single point of communication and control.
6.	The DER can run for other purposes during the Service Window, subject to it maintaining its ability to meet any service requirements as stipulated in this Agreement. It is the responsibility of the Provider to ensure that they can deliver the contracted Flexibility Services on instruction.

The Services that the Company will procure as part of the Agreement will include one or more of the following Services noted in the table below:

Name of Service Product	Service Use Case	Procurement Method
Scheduled Utilisation	Deferred reinforcement all voltage levels	Month – ahead
Operational Utilisation and Scheduled Availability	Planned network outages (Operational Flexibility)	Procured ahead to meet specific outage plan

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Operational Utilisation and Variable Availability	Post-fault maintenance	Month-ahead
Operational Utilisation	Customer restoration following interruption to supply	Month-ahead

Further Details on the Services is noted in Clause 4 “Service Details” of the Flexibility Services Service Terms – Company Active Services and the [Participation Guidance Document](#).

Further Details on the Service Product Parameters is available on the ENA website: ([ON Flexibility Products Review and Alignment \(Feb 2024\) – Energy Networks Association \(ENA\)](#))

2. Changes to Service Terms

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

3. Service Terms Glossary

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

“Accepted [MW/MVAR]”	the [MW/MVAR] accepted in accordance with [this Annex];
“Accepted Availability Window”	where services have been contracted to include variable availability, the accepted availability window is the period required for service provision to be made available following the agreement between the Company and Provider during the Availability Refinement Period. If a service does not have an Availability Refinement Period, then this Accepted Availability Window is defined within the Contract Award;
“Accepted End Time”	the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Accepted [MW/MVAR] is no longer required to be delivered;
“Accepted Start Time”	the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Accepted [MW/MVAR] shall be delivered;
“Active Power”	the product of voltage and the in-phase component of alternating current measured in units of Watts and standard

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	<p>multiples thereof i.e. 1000 Watts = 1kW, 1000 kW = 1MW, 1000 MW = 1GW, 1000 GW = 1TW;</p>
“Agreed Availability Capacity”	<p>the volume of capacity required to be made Available for the provision of services following the agreement between the Company and Provider during the Availability Refinement Period, where applicable;</p>
“Asset Point Metering”	<p>the metering measured directly from the DER and is downstream of the Boundary Point Metering;</p>
“Availability Fee”	<p>the fee payable in consideration for the Provider making the DER Available and calculated in accordance with the provisions of the Service Terms;</p>
“Availability Payments”	<p>means the payments made by the company in respect to the Accepted Availability Windows;</p>
“Availability Refinement Period”	<p>means the period defined within the product parameters where a refinement of the availability window and Agreed Availability Capacity is agreed;</p>
“Availability Status”	<p>Available or Unavailable;</p>
“Boundary Metering Point”	<p>the metering measured at the point of supply from the Company network;</p>
“Demand”	<p>the demand (in MW) of Active Power consumed by Plant and/or Apparatus;</p>
“Demand Response Active Power Code”	<p>as defined in the Grid Code;</p>
“Demand Response Provider”	<p>as defined in the Grid Code;</p>
“DPS Platform”	<p>the end-to-end Dynamic Purchasing system on which the Provider will register to take part in tenders from registration to dispatch, verification and settlement. The DPS platform currently refers to the Piclo Flex DPS platform unless otherwise noted by the Company.</p>
“Generation”	<p>the electrical output (in MW) of a [Unit];</p>
“Monthly Utilisation Performance Factor”	<p>the calculation of the impact on the Availability Payment, for the relevant month, of how the Provider performs where Utilisation Instructions have been issued;</p>

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“Output”	Active Power output (in MW) achieved by Plant and/or Apparatus;
“Performance Report”	means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions in accordance with the Service Terms;
“Power Requirement”	means the level of power injection or demand reduction required by the Company within a specified Service Window (if applicable) and delivered by the Provider following a Utilisation Instruction,
“Recovery Time”	the minimum time required between the end of a Flexibility Service delivery window and the commencement of the next Flexibility Service delivery window, as defined in the Service Terms;
“Requested End Time”	the date and time (to the nearest minute) as notified in accordance with this Annex at which the Requested MW is no longer required to be delivered;
“Requested MW”	the MW requested by the Company in accordance with the Service Terms;
“Requested Start Time”	the date and time (to the nearest minute) as notified in accordance with the Service Terms at which the Requested MW shall be delivered;
“Service Meter”	the measuring equipment, as defined by the Company in the Service Terms, that shall be used to determine delivery of the Flexibility Services;
“Service Meter Data”	the meter data recorded at the Service Meter at the Site(s) listed in the Service Terms;
“Service Period”	the period as specified in the Service Terms;
“Service Requirement”	the relevant service requirements detailed in the notification of Contract Award;
“Service Window”	the relevant service window detailed in the notification of Contract Award;
“Stop Instruction”	an instruction from the Company to the Provider, instructing the Provider to cease delivery of the Flexibility Services, as more particularly described in the Service Terms;
“Trade Award Notification”	the award notification sent to the Provider’s registered email address following a successful bid outcome.

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“Utilisation Fee”	the amount payable by the Company to the Provider for the utilisation of any Flexibility Service, as defined in the Service Terms;
“Utilisation Payments”	the payments made by the Company in respect to the capacity or energy delivered over a specified period of time, in response to a Utilisation Instruction;
“Zone”	the feeding area of the DERs being managed or where the Flexibility Services will be provided and to which the Flexibility Services will be delivered.
[Additional Company Terms...]	
[...]	

4. Service Details

4.1 Service Parameters

4.1.1 Details of the Service Parameters shall be provided in the notification of Contract Award and examples shall be available within the relevant tools and templates schedule.

4.2 Service Windows

4.2.1 Details of the Service Windows shall be provided in the notification of Contract Award and examples shall be available within the relevant tools and templates schedule.

4.3 Service Requirements

4.3.1 Details of the Service Requirements shall be provided in the notification of Contract Award and examples shall be available within the relevant tools and templates schedule.

5. Invoicing & Charges

5.1 All invoices should reference the statement number and be sent to the Nominated Person as identified in Part 1 of this Agreement.

5.1.1 Invoicing will be as per the guide available in the Company’s Participation Guidance document

- (a) The Flexibility Services require constant metering with data collected throughout the course of the month via the API. The Flexibility Services and payment cycles are based on a calendar month.
- (b) At the end of the month Performance Reports are compiled along with the arming and utilisation payments as applicable and reconciliations for any shortfall of delivery.

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(c)

5.2 Charges

Charges will be agreed based on accepted bid prices during the monthly tender bid cycle. If a bid is accepted on the DPS Platform, the Company will pay as bid. Information relating to applicable Fees for each Service Window(s) for each Zone will be available on the DPS Platform following bid award notification.

5.3 Calculation of Charges

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

Utilisation Payments

5.3.2 Utilisation Payments are made when a Utilisation Instruction is issued by the Company. Utilisation Payments can be in terms of:

- (a) for every metered time period, energy (MWh) delivered supplied by the Provider and multiplied by the Utilisation Fee (£/MWh); or,
- (b) the capacity (MW) delivered multiplied by the Utilisation Fee (£/MW) over a period-of-time.

5.3.3 Where the Provider has not fully met the Utilisation Instruction, an additional performance calculation is applied to the Utilisation Payments. The Monthly Utilisation Performance Factor determines how much under delivery is eligible for payment.

Availability Payments

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

5.3.5 Availability is determined by:

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

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

5.3.7 Availability Performance is calculated monthly and Availability Payments are recovered should the delivered capacity be lower than the agreed delivery capacity. A performance factor is applied to the Availability Payment and such performance factor shall consider the Provider's Monthly Utilisation Performance Factor.

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Further details on payment calculations and specific payment structure parameters relating to each Flexibility Product is available on the ENA website on the following links:

- Detailed Payment Calculations (<http://www.spenergynetworks.co.uk/userfiles/file/2024-2025ParticipationGuidance.pdf>)
- Specific Product Parameters ([https://www.energynetworks.org/assets/images/2023/Aug/on-flexibility-products-alignment-\(feb-2024\).pdf?1714490017](https://www.energynetworks.org/assets/images/2023/Aug/on-flexibility-products-alignment-(feb-2024).pdf?1714490017))

5.4 Payment Terms

- 5.4.1 In consideration of the provision by the Provider of the Flexibility Services in accordance with the terms of this Agreement, the Company shall pay to the Provider the Charges.
- 5.4.2 All invoices shall be paid within thirty (30) Days of the date of invoice (the "Due Date for Payment").
- 5.4.3 If the Company intends to pay less than the sum stated as due in the self-billing invoice it shall, not later than five (5) Business Days before the Due Date for Payment, give the Provider notice of that intention by issuing a notice which shall specify both the sum that it considers to be due to the Provider at the date the notice is given, or the sum which it considers is due from the Provider to the Company, and the basis on which that sum is calculated.
- 5.4.4 Unless otherwise agreed in writing between the Parties, payment of invoices shall be made by the Company either (at the Company's option) by BACS payment to a bank account nominated in writing by the Provider or by cheque sent to an address nominated in writing by the Provider (or, where no such address is nominated in writing by the Provider then to the Provider's registered office).
- 5.4.5 All sums payable under this Contract shall be exclusive of VAT. The payor of any sums shall pay an amount equal to such VAT to the payee in addition to any sum or consideration on receipt of a valid VAT invoice from the payee.
- 5.4.6 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

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acknowledge that their liability under this paragraph 5.4.6 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

5.4.7 The payor may, without limiting any other rights or remedies it may have, withhold or set off any amounts owed to it by the payee against any amounts payable by the payor to the payee under this Contract.

More information regarding payment terms is available in the Billing and Settlements Guide section in the Company’s Participation Guidance document.

6. Sites & DER

- 6.1 Details of the Provider's DER are to be submitted to the Company through the DPS Platform, as further described in the Participation Guidance document.
- 6.2 Where a DER forms part of a successful [Trade], the Company will confirm such trade within the [Trade Award Notification]. Following a successful bid outcome, the Trade Award Notification will be sent to the Provider’s registered email address.
- 6.3 Should the Provider wish to change its DER post [Trade Award], this can be accommodated through the DPS Platform, as further described in the Company’s Participation Guidance document.
- 6.4 The Company will allow the inclusion of additional sites at any time throughout the Term. Such changes to DER shall take effect not earlier than the following operational period.
- 6.5 Participation above the Accepted [MW/MVAR] stated in the [Trade Award] cannot be exceeded.
- 6.6 The Company may from time to time during the course of the Flexibility Services require access to the Provider’s Sites for the purpose of verifying compliance with the Agreement and shall notify the Provider in advance by email where such access is required. The provider shall use all reasonable endeavours to provide all necessary and reasonable access to the relevant areas for the Company and/or their contractors.

7. Communications

7.1 Senior Representatives
Escalations process

<i>Escalation Level</i>	<i>Company Representative</i>	<i>Service Provider Representative</i>
1	<i>Head of Flexibility</i>	[●]
2	<i>Flexibility Procurement Manager</i>	[●]

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7.2 Process and systems for communications

Utilisation Instructions	Stop Instructions	Unavailability notices
<p>Will be via the DPS Platform, unless the Company advises otherwise.</p> <p>The Utilisation Instruction must specify for a DER:</p> <ul style="list-style-type: none"> • the Zone to which the Utilisation Instruction relates; • the Requested Start Time; • the Requested End Time; and • the Requested MW. 	<p>Will be via the DPS Platform, unless the Company advises otherwise.</p>	<p>If, at any time, the Provider becomes aware that Flexibility Services will be Unavailable for any time during a committed service window and/or any other period of time or on the basis for which availability was declared or deemed declared then it shall as soon as reasonably practicable, contact the Company’s Senior Representative as detailed in this schedule to confirm;</p> <ul style="list-style-type: none"> • Provider Name, • Unit ID (e.g. MPAN) • Date Unavailable from, • Date Unavailable to

7.3 Acceptance of instructions

The Provider may accept the instruction by responding (by any method as approved by the Company) to the Utilisation Instruction within [48 hours] from the time of the request, setting out:

- the Accepted Start Time, which cannot be earlier than, but must be no later than [thirty (30) minutes] from, the Requested Start Time;
- the Accepted End Time, which can be no later than the Requested End Time but otherwise has to be at least **[thirty (30) minutes]** from the Accepted Start Time; and
- the Accepted MW, **which shall be at least 75% of the Requested MW** and can be no greater than the Requested MW.

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8. Performance Monitoring

8.1 Metering Standards

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

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

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

Additional information on Performance Monitoring is available in the [Participation Guidance](#) Document.

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

8.2 Submission of Performance Report

All performance reporting is undertaken within the DPS Platform, unless otherwise agreed.

Instructions on Submission of Performance Report is available in the SPEN [Participation Guidance](#) Document.

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8.3 Testing and monitoring

API testing is required and must be completed prior to the delivery of Flexibility Services. The date of the API Test will be at least 2 weeks prior to service delivery in accordance with the Flexibility Services Agreement, unless otherwise agreed by the Company.

If any further testing requirements arise, the Company will notify the Provider via the email registered on the DPS system. The email will include the scope of the testing required and specific timelines.

Should the Company identify a failure affecting the API communications the Company shall notify the Provider’s Senior Representative 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 Company’s Senior Representative 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.

8.4 Service Meter

Each facility making up a DER set shall have 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 the DPS Platform.

Measuring equipment	Service Meter Data	Standards
<p><i>[Note: Provide details of the measuring equipment]</i></p>	<p>Minute-by-minute and half hourly data, will be accepted for settlement purposes. Certain products rely on minute-by-minute metering granularity for accurate performance monitoring and settlement. Where an alternative to minute-by-minute granularity is provided the data may be disaggregated. As such, this could result in performance monitoring and calculation inaccuracies.</p>	<p><i>See clause 8.1 of the Flexibility Services Service Terms – Company Active Services.</i></p>

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	<i>[Note: DNO option to insert table to specify granularity preference for products]</i>	
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8.5 Service Failure

Each of the following shall constitute a Service Failure:

- 8.5.1 Reduced Capacity: if a unit providing Flexibility Services fails to deliver Flexibility Services in accordance with Utilisation Instructions at a delivery performance of at least 60% over 2 months.
- 8.5.2 Unavailability level: if a unit providing Flexibility Services is Unavailable and has more than 30% of [agreed availability] of the Service Period in a month;
- 8.5.3 Unavailability Notification: if the Provider fails to notify the Company that a unit providing Flexibility Services is Unavailable within 48 hours.

8.6 Monitoring of DER development projects

N/A

8.7 Auditing

Process	Requirements
<i>The Company will notify the Provider via email to agree scope and timeline of Audit Process if/when an audit is required.</i>	<i>The Company will notify the Provider via email to set out the requirements to conduct if/when an audit is required.</i>

8.8 Additional performance obligations

8.9 *Any additional performance obligations will be provided in the Company’s Participation Guidance.*

8.10 Non-delivery and under-delivery

Non-delivery and under-delivery guidelines will be provided in the Company’s Participation Guidance.

9. Data Protection

Annex 3 and Annex 4 of this Flexibility Services Service Terms – Company Active Services states any additional points related to Data Protection.

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10. Details of Flexibility Provider and Special Conditions

Provider	Provider's company number and registered office
Requested MW	[●]
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	[●] Address: [●] Contact Number: [●] For the attention of: [●]
Provider's Nominated Person	[●]
Company's Nominated Person	[to be split into operation and commercial details]

10.1 Cyber Security

Providers are required to comply with the Company's applicable Cyber Security policy or terms and a copy can be accessed at the following link: [Corporate Security Policy - Iberdrola](#)

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Annexes to Flexibility Services Service Terms – Company Active Services

[●] 2024

DOCUMENT CONTROL (*Delete as Required*)

Authorities

Version	Issue Date	Authorisation	Comments
0.1	Dec 2023		First draft for consultation
0.2	April 2024		Post-consultation draft
0.3	May 2024		SPEN Final Draft

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Definitions

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

Annex 1 – Flexibility Management Systems/Technical Requirements

A1.1 Company Flexibility Management System Details

Unless otherwise agreed between parties, the Company operates its flexibility requirements through the DPS Platform. The DPS Platform is the operational platform through which flexibility providers are able to declare if their DER is available and submit associated meter readings. The Company uses the DPS Platform to instruct utilisation events and post utilisation verification and invoicing.

The DPS Platform is equipped with functionality that calculates the following:

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

More information on the DPS Flexibility Management System and detailed instructions on API set-up and testing is available in the Participation Guidance Document.

A1.2 Dispatch Principles

The Provider acknowledges that, in the event that Demand Response availability declarations from multiple contractors (including the Provider) for the Flexibility Services within a Zone exceed the Company's overall peak Demand Response MW requirements for such Flexibility Service and Zone, then whilst the Company will use its reasonable endeavours to issue instructions for despatch in accordance with the 'fair dispatch principles' (which are available in the Participation Guidance Document. There is no guarantee that the Provider will be Utilised during a constraint event.

As part of the ENA Open Networks Project, DNOs have defined a standardised approach towards Dispatch Principles. These Dispatch Principles are available to view on the following link:

<https://www.energynetworks.org/publications/on19-ws1a-p3-flexibility-services-dispatch-and-settlement-processes>

Annex 2 – Auction/Tender/Trade Guidelines

The full documentation relating to the overall tendering process including Auction, Tender and Trade Guidelines are available in our ITT Letter and Participation Guidance Document on the Flexibility Services website

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(<https://www.spenergynetworks.co.uk/pages/flexibility>) The Participation Guidance Document includes the following:

1. Tender Parameters
2. 2024/25 Tender Timeline and Process
3. Dynamic Purchasing System Guide
4. Flexibility Services Agreement
5. Prequalification
6. Bidding Requirements
7. Bid Assessment
8. Pricing Strategy
9. Billing and Settlements Guide
10. SPEN Company Policies

Annex 3 – Special Requirements

The following additional clauses apply:

For the purposes of this Schedule, unless the context otherwise requires, the following expressions shall have the meanings set out below:

“COVID-19” means the novel coronavirus which was first reported as an infectious outbreak in Wuhan, China on 31 December 2019 and subsequently declared by the World Health Organisation as a Public Health Emergency of International Concern and any related strain or mutation of the said novel coronavirus;

“Data Protection Legislation” means all applicable laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes and/or rules of court relating to the processing of personal data and/or privacy (including (to the extent the UK GDPR applies), those under the law of the United Kingdom or of a part of the United Kingdom and/or (to the extent the EU GDPR applies), the law of the European Union or any member state of the European Union to which the Contractor is subject) including, but not limited to, (a) the Data Protection Act 2018, (b) the UK GDPR and/or Regulation (EU) 2016/679 (the "EU GDPR") (as applicable), (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and (d) any data protection and privacy laws enacted in replacement of (a) to (c) (in each case as amended, updated or re-enacted from time to time)), and all applicable guidance and codes of practice issued by the Information Commissioner and/or any other relevant Regulatory Body from time to time;

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"Data Protection Requirements" has the meaning given to it in Clause A3.5 (Protection of Personal Data and Network Security);

"Personal Data" has the meaning given to it in the Data Protection Legislation;

"Processing" has the meaning given to it in the Data Protection Legislation;

"ScottishPower Personal Data" means any Personal Data that the Provider is provided with access to, Processes and/or is required to Process in connection with the performance of this Agreement;

"Specific Data Requirements" means the specific data protection requirements set out in Annex 4 (Specific Data Requirements), if Annex 4 is expressly incorporated into this Agreement pursuant to Clause A3.5;

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018);

"Provider Personnel" means all employees, agents, consultants, contractors and sub-contractors of (i) the Provider, (ii) the Provider's authorised affiliates and/or (iii) any of the Provider's authorised sub-contractors, in each case that are engaged at any time or from time to time in connection with the provision of the Services, but which for the avoidance of doubt, will not include any domestic or commercial customers of the aforementioned parties.

A3.1 FORCE MAJEURE (COVID-19)

The following clause shall be added to the Conditions:

Notwithstanding any other provision in this Agreement, the Provider: (i) agrees that it has entered into this Agreement with full knowledge of and having taken into account the existence, effect and impact of COVID-19, including the measures adopted by acts of government, local government and regulatory bodies in relation to this as at the date of this Agreement; (ii) warrants and represents that it has implemented and will maintain appropriate measures and precautions to ensure that its performance of this Agreement will not be adversely impacted or affected by COVID-19 or any other, epidemic or pandemic which is similar in nature and/or impact (including the measures which may reasonably be expected to be adopted by acts of government, local government and regulatory bodies in relation or response to the same) (iii) warrants and represents to the Company that COVID-19 and other epidemics or pandemics which are similar in nature and/or impact do not and will not affect the completion in full of the Provider's obligations under this Agreement; and (iv) agrees that COVID-19 and other epidemics or pandemics which are similar in nature and/or impact shall not give rise to, and shall not be considered, a Force Majeure Event for the purposes of Clause 9 of this Agreement.

A3.2 MODERN SLAVERY

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The following Clauses shall be added to the Conditions and replace Clause 15.1-15.3.

A3.2.1 The Provider warrants and represents to the Company :

- a) it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking, including any activity or practice that would constitute an offence under s.1, s.2 and s.4 of the Modern Slavery Act 2015, if carried out in the UK ("**slavery and human trafficking**");
- b) the Provider Personnel and all other employees and agency workers of the Provider are paid in compliance with all applicable employment laws and minimum wage requirements; or
- c) it will take reasonable steps to prevent slavery and human trafficking in connection with the Provider's business;
- d) it will include in its contracts with its subcontractors and suppliers in connection with this Agreement slavery and human trafficking provisions that are at least as onerous to the subcontractor or supplier as those set out in this Agreement; and
- e) it will respond to all reasonable requests for information required by the Company for the purposes of completing the Company's annual anti-slavery and human trafficking statement.

A3.2.2 The Provider will permit the Company and its third party representatives, on reasonable notice during normal business hours, but without notice if there are reasonable grounds to suspect an instance of slavery and human trafficking, to access and take copies of records and any other information held at the premises and to meet with personnel and more generally to audit compliance with its obligations under this Clause A3.2. The Provider shall give all necessary assistance to the conduct of such audits during the term of this Agreement.

A3.2.3 Any instances of slavery and human trafficking connected to the Provider will entitle the Company to immediately terminate this Agreement on providing notice to the Provider (and without any liability by the Company to the Provider)..

A3.3 PREVENTION OF CORRUPTION

The following clauses shall be added to the Conditions and replace Clauses 15.4-15.8:

A3.3.1. Each Party shall:

- a) comply with all applicable laws, regulations, codes and guidance relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 ("**Relevant Requirements**"); and
- b) have and shall maintain in place throughout the term of this Agreement, and enforce where appropriate, its own policies to comply with the Relevant Requirements, including but not limited to adequate procedures under the Bribery Act 2010.

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A3.3.2 The Provider shall:

- a) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Agreement; and
- b) immediately notify the Company if a foreign public official exerts a direct influence over the performance of this Agreement.

A3.3.3 The Provider shall not:

- a) offer or agree to give any person working for or engaged by the Company or any other ScottishPower Group Company any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Provider and the Company or any ScottishPower Group Company, including its award to the Provider and any of the rights and obligations contained within it; nor
- b) enter into this Agreement if it has knowledge that, in connection with it, any money has been, or shall be, paid to any person working for or engaged by the Company or any other ScottishPower Group Company by or for the Provider, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Company and has been approved by the Company before execution of this Agreement.

A3.3.4 The Provider shall ensure that any person associated with the Provider who is performing Flexibility Services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this Clause A3.3 and the Provider shall ensure the compliance by such persons with such terms.

A3.3.5 In the event of a breach of this Clause A3.3 by the Provider, the Company may (without prejudice to its other rights under this Agreement and/or at law):

- a) terminate this Agreement immediately by written notice, and/or
- b) withhold payment of all or any part of the Charges; and/or
- c) suspend this Agreement at any time and without liability for such time period as required by the Company.

A3.3.6 The Provider shall indemnify and keep indemnified the Company and all ScottishPower Group Companies from and against all Losses, liabilities, damages, judgements, penalties, fines, costs, charges and expenses (including legal expenses) incurred by reason of any breach of this Clause A3.3 by the Provider or any of the Provider Personnel. This Clause A3.3 shall apply irrespective of cause and notwithstanding the negligence or breach of duty (whether statutory or otherwise) of the Provider and/or any person working for the Provider and/or any third party retained by the Provider

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A3.3.7 For the purpose of this Clause A3.3 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause A3.3 a person associated with the Provider includes but is not limited to any subcontractor or agent of the Provider used to perform the obligations of the Provider under this Agreement.

A3.4 OFF-PAYROLL WORKING RULES

The following clauses shall be added to the Conditions:

A3.4.1 The Provider:

- a) warrants and undertakes that all Provider Personnel that are, or will be made available to the Company under this Agreement are engaged as employees on a Pay-As-You-Earn (PAYE) basis, either directly by the Provider, or by an umbrella company engaged by the Provider and properly accredited by the FCSA (Freelancer & Contractor Services Association); and
- b) warrants and undertakes that, at all times throughout the duration of this Agreement, none of the Provider Personnel that are made available to the Company under this Agreement will provide the Flexibility Services through an intermediary (as defined in the off-payroll working rules contained in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 ("Off-Payroll Working Rules")) in such a manner that Off-Payroll Working Rules could apply to the engagement of such Provider Personnel.

A3.4.2 During the term of this Agreement and following its expiry or termination, the Provider will promptly notify the Company in writing if the Provider becomes aware that, or reasonably suspects that, any breach of its obligations in Clause A3.4 has occurred.

A3.4.3 If the Company receives a notice pursuant to Clause A3.4.2, or otherwise reasonably suspects that the Provider has breached any of the Provider's obligations in Clause A3.4, the Company may either (in its sole discretion):

- a) withhold any monies due to the Provider under the Agreement; or
- b) instruct the Provider to immediately remove any Provider Personnel who are performing and completing the Flexibility Services in breach of the Provider's warranty at Clause A3.4.1 and, if requested by the Company, to replace such worker with another worker who is engaged as an employee on a Pay-As-You-Earn (PAYE) basis, either directly by the Provider, or by an umbrella company engaged by the Provider and properly accredited by the FCSA (Freelancer & Contractor Services Association); or
- c) exercise both options set out in Clauses A3.4.3(a) and A3.4.3(b) above.

A3.4.4 Notwithstanding any other provision of this Agreement, the Provider shall free, relieve and indemnify the Company against all liability for tax (including PAYE) and employer and employee national insurance contributions, and, where applicable, apprenticeship levy, together with all interest, penalties, fines and costs incurred by the Company (including all reasonable legal expenses on an indemnity basis) in the event that HMRC successfully establishes, including

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where it is so established after the termination of this Agreement, that the Company's engagement with any Provider Personnel pursuant to this Agreement constituted deemed employment for the purpose of the Off-Payroll Working Rules.

A3.5 PROTECTION OF PERSONAL DATA AND NETWORK SECURITY

The following clauses shall be added to the Conditions and replace Clause 14

A3.5.1 The Provider warrants and undertakes to the Company that in the performance of its obligations under this Agreement it shall comply with: (i) the provisions of the Data Protection Legislation and (ii) the Specific Data Requirements (if any) (together, the "Data Protection Requirements").

A3.5.2 Without prejudice to Clause A3.5.1, if the Provider processes any personal data on the Company's behalf when performing its obligations under this Agreement, the Parties record their intention that the Company shall be the data controller and the Provider shall be a data processor and the Data Protection Requirements shall apply.

A3.5.3 The Provider shall provide such information as the Company may reasonably request from time to time to evidence and/or demonstrate the Provider's compliance with the terms of this Clause A3.5 and/or the Data Protection Requirements.

A3.5.4 Words and phrases which are defined in the applicable Data Protection Legislation shall (unless the context requires otherwise) have the same meanings in this Clause A3.5.

A3.5.5 In relation to the security of the Provider's network and information systems, the Provider:

- (a) warrants that any information provided by it in response to the cyber security review issued by the Company is up to date and accurate as at the start of the Term and that it shall (i) update the Company immediately if there are any changes to such information; (ii) notify the Company immediately if it becomes aware of any security incident affecting its network and information systems that could potentially affect the Company, and (iii) respond without delay to all queries and requests for information from the Company about any security incident, whether discovered by the Provider or the Company, in each case taking particular account of the nature and extent of the Company's reporting obligations under the Network and Information Systems Regulations 2018 ("NISR") and that the Company may be subject to and required to comply with statutory or other regulatory timescales;
- (b) without prejudice to its disaster recovery/business continuity obligations under this Agreement, use best endeavours to ensure business continuity for the Company at all times; and
- (c) agrees to co-operate with the Company in all aspects of its compliance with the NISR including, without limitation, any requests for information if there is a suspected or actual security incident and any inspections by regulators (where applicable).

A3.5.6 The Company reserves the right to notify the Provider, at any time and from time to time, of any amendments and/or additions to this Agreement that the Company (in its sole discretion) considers are

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necessary and/or appropriate in order to: (a) enable, ensure and/or facilitate the Company's (and/or any ScottishPower Group Company's) compliance with the Data Protection Legislation and/or NISR and/or (b) ensure that the terms of this Agreement provide the Company (and the ScottishPower Group Companies) with adequate rights and protections in relation to the Provider's Processing of ScottishPower Personal Data, having regard to the terms of any Data Protection Legislation. Any amendments and/or additions that may be notified by the Company to the Provider pursuant to this Clause A3.5.6 shall have effect from the date set out in the relevant notice issued by the Company.

ANNEX 4

Specific Data Requirements

This Annex sets out certain additional terms that apply under the Agreement in connection with data protection, including where the performance of the Agreement involves the Provider accessing, collecting, storing and/or otherwise Processing any ScottishPower Personal Data on behalf of the Company and/or any other ScottishPower Group Company.

This Annex forms part of the Agreement between the Company and the Provider and applies in addition to the other terms of the Agreement.

1. In this Annex, the following terms shall have the meanings given to them below:
 - 1.1 **"Agreement"** means the contract between the Company and the Provider to which this Annex is appended or incorporated;
 - 1.2 **"Data Controller"**, **"Data Processor"**, **"Data Subject"** **"Personal Data"**, **"Personal Data Breach"** and **"Process"** have the meanings given to them in the applicable Data Protection Legislation, except that, for the purposes of this Annex, the term "Process" shall be deemed to include both manual and automatic processing;
 - 1.3 **"Data Importer"** means the data importer within the meaning of the standard contractual clauses entered into pursuant to article 46(2)(d) UK GDPR (where applicable);
 - 1.4 **"Processing Particulars"** means details of the (a) the subject matter, duration, nature and purpose of the Processing to be carried out by the Provider; (b) the type of the ScottishPower Personal Data being Processed; and (c) the categories of Data Subjects, as set out in paragraph 2 and as may be advised by the Company to the Provider from time to time;
 - 1.5 **"Public Authority Access"** means a request for disclosure of, or direct access to, Personal Data by any government or public authority (or any body with delegated authority for any of them) under the laws of the country of destination;
 - 1.6 **"Relevant Personnel"** means those employees of the Provider and/or of any permitted Sub-processor that are required to have access to and/or to Process the ScottishPower Personal Data in order for the Provider to perform its obligations under the Agreement;
 - 1.7 **"Sub-processor"** means any sub-contractor, person, party or entity appointed by the Provider that Processes and/or will be required to Process any ScottishPower Personal Data in connection with the performance of the Agreement; and

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- 1.8 **“Transfer Impact Assessment”** means a risk assessment which sets out details of the following:
- 1.8.1 the Personal Data which will be transferred and/or processed and the country or countries to which and/or in which the Personal Data will be transferred and/or processed (if applicable);
 - 1.8.2 details of the proposed transfer(s), including details of the applicable transferee(s), duration, scale and regularity of the transfer(s), the length of any onward processing chain, the number of parties involved and the transmission channels to be used or employed;
 - 1.8.3 details of any Public Authority Access made, or which may be made to the Data Importer or those third parties with whom the Data Importer may or will onward share the Personal Data;
 - 1.8.4 confirmation of the implementation of the necessary appropriate safeguards under the Data Protection Legislation, including confirmation of how Data Subjects have enforceable rights and effective legal remedies;
 - 1.8.5 the local country assessment undertaken to record the assessment of legal sufficiency of the recipient country including whether anything in that country’s law or practice impinges or may impinge on the effectiveness of the appropriate safeguards under the Data Protection Legislation, including respecting the essence of the fundamental rights and freedoms and that such laws and practices do not exceed what is necessary and proportionate in a democratic society to safeguard the objectives set out in Art 23(1) of the UK GDPR and are not otherwise in contradiction with the Data Protection Legislation; and
 - 1.8.6 what supplementary measures (including relevant technical measures, such as encryption of Personal Data, contractual measures and organisational measures) have been or will be adopted by the Data Importer in cases where the local country assessment has identified any impingement (or potential impingement) on the effectiveness of the appropriate safeguards under the Data Protection Legislation.

2. **Data Processing description**

- 2.1 **Data Controller:** [Insert all ScottishPower Group Companies that are responsible for the Personal Data Processed].
- 2.2 **Data Processor:** the Provider.
- 2.3 The **Processing activities** that will be carried out by Provider are: [collection, recording, organization, structuring, conservation, adaptation or modification, extraction, consultation, use,

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communication for transmission, dissemination or any other form of access, collation or interconnection, limitation, suppression or destruction].

- 2.4 The **categories of Personal Data** that will be Processed by the Provider are: [name and contact details, identification documents, financial information, transaction data and account information, energy usage data, marketing and communications data, technical data].
- 2.5 The **categories of Data Subjects** whose information will be processed by the Provider are: [the Company's customers, the Company's employees, officers, Providers, contractors and/or agents, members of the public, the Company's marketing contacts, leads and potential customers].
3. Subject to paragraph 11, the Company shall be the Data Controller and the Provider shall be a Data Processor in respect of the Processing of the ScottishPower Personal Data in connection with the Agreement (including, without limitation, where the Provider and/or any Relevant Personnel collect any relevant ScottishPower Personal Data specifically for the purposes of providing the Services), unless the Parties agree otherwise in writing in respect of any particular ScottishPower Personal Data.
4. Each Party warrants and undertakes to the other Party that it shall comply with all duties and obligations imposed on it pursuant to the Data Protection Legislation in relation to the Processing of Personal Data in connection with the Agreement.
5. The Provider warrants and undertakes to the Company that in the performance of its obligations under the Agreement and in the Processing of all ScottishPower Personal Data it shall (a) comply with the Data Protection Legislation, (b) comply with the terms of this Annex and (c) not perform its obligations under the Agreement nor Process any ScottishPower Personal Data in such a way as to cause the Company and/or any other ScottishPower Group Company to breach any of its applicable obligations under the Data Protection Legislation.
6. The Provider warrants and undertakes to the Company that it shall:
- 6.1 process the ScottishPower Personal Data only in accordance with the instructions from the Company (which may be specific instructions or instructions of a general nature and which will include instructions given by email) including those set out in the Agreement or as otherwise notified by the Company to the Provider from time to time (whether by way of a set of Processing Particulars or otherwise);
- 6.2 process the ScottishPower Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by applicable laws or regulations or by the binding requirement of any regulatory body. The Provider further undertakes that it shall not Process ScottishPower Personal Data for purposes other than to provide the Services stipulated in the Agreement. In no case may the Provider Process ScottishPower Personal Data for its own purposes;

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- 6.3 follow the Company's instructions with respect to the international transfers of ScottishPower Personal Data to a third country or international organisation, unless the Provider is obliged to do so pursuant to a legal obligation, in which case the Provider shall inform the Company of such legal requirement prior to Processing;
- 6.4 immediately inform the Company if it believes that an instruction violates applicable Data Protection Legislation;
- 6.5 implement appropriate technical and organisational measures to protect the ScottishPower Personal Data against unauthorised or unlawful Processing and against accidental damage, loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the ScottishPower Personal Data and having regard to the nature of the ScottishPower Personal Data to be Processed and shall take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects. These measures shall include, without limitation:
 - (a) where appropriate, the pseudonymisation and/or encryption of ScottishPower Personal Data;
 - (b) measures which ensure the confidentiality, integrity, availability and resilience of all systems that are used to Process ScottishPower Personal Data;
 - (c) measures which enable the Provider to restore the availability of and access to the ScottishPower Personal Data in a timely manner (and in accordance with any specific timescales advised by the Company) in the event of an incident which affects such availability and/or access; and
 - (d) a process for regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of Processing,taking into account, in particular, the risks that are presented by Processing, in particular from a Personal Data Breach;
- 6.6 without prejudice to its obligations to implement and maintain measures in compliance with paragraph 6.5, comply, and ensure that the Relevant Personnel comply, with the Company's security and information security policies and/or procedures as advised to the Provider from time to time;
- 6.7 take all reasonable steps to ensure the trustworthiness and reliability of any Relevant Personnel who have access to the ScottishPower Personal Data;

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- 6.8 subject always to paragraph 6.16, not engage any Sub-processor without the prior written authorisation (whether specific or general) of the Company and the Provider shall ensure that:
- (a) it undertakes thorough due diligence on the proposed Sub-processor, including a risk assessment of the information governance related practices and processes of the proposed Sub-processor, which will be used by the Provider to inform any decision on appointing the proposed Sub-processor;
 - (b) it gives the Company reasonable advance notice (in writing) of its intention to appoint a Sub-processor (which notice shall include the identity and location of the proposed Sub-processor and the Processing proposed to be carried out by it) and provides the Company with such information as it may require in respect of the Sub-processor including, without limitation, the results of the due diligence referred to in paragraph 6.8(a) above and contact details for the Sub-processor's data protection officer (or other person responsible for data protection compliance);
 - (c) a written contract is put in place with each Sub-processor that is authorised by the Company pursuant to this paragraph 6.8, which places on the Sub-processor obligations in respect of the ScottishPower Personal Data which are materially and substantially equivalent to (and no less onerous than) the obligations set out in this Annex;
 - (d) the Processing by the authorised Sub-processor complies with the Company's instructions; and
 - (e) the Sub-processor's right to Process the ScottishPower Personal Data terminates automatically on expiry or termination of the Agreement for whatever reason.
- 6.9 ensure that only such Relevant Personnel who require to have access to the ScottishPower Personal Data in order for the Provider to perform its obligations under the Agreement shall have access to the ScottishPower Personal Data. The Provider shall ensure that, prior to being provided with access to the ScottishPower Personal Data for the purposes of the Agreement, all Relevant Personnel are (a) informed of the confidential nature of the ScottishPower Personal Data and have undergone training in the law of data protection and in the care and handling of personal data and are bound by obligations of confidentiality which cover the ScottishPower Personal Data and (b) where required by the Company, have had an appropriate criminal record check conducted by the Provider in respect of them and such check has not disclosed any convictions of a nature that would prevent them from having access to the ScottishPower Personal Data;
- 6.10 ensure that the Provider and the Relevant Personnel do not publish, disclose or divulge any of the ScottishPower Personal Data to any third party (other than to any permitted Sub-processor) unless the Provider is expressly directed in writing to do so by the Company (in the Agreement

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or otherwise) or the Provider is required to do so under applicable law. Where the Provider is required by law to publish, disclose or divulge any ScottishPower Personal Data, it should notify the Company in writing immediately and before making the disclosure;

- 6.11 notify the Company promptly (and in any event within 48 hours) if it or any Sub-processor is subject to an undertaking, information notice, enforcement notice, "stop now" notice or investigation by any regulatory body in connection with data protection or privacy laws;
- 6.12 notify the Company promptly (and in any event within 48 hours) if it or any Sub-processor receives an exercise of rights request, including, but not limited to a subject access request ("**Exercise of Rights Request**") from a Data Subject or a complaint (whether from the Information Commissioner's Office or otherwise) relating to the Company's and/or any ScottishPower Group Company's obligations under the Data Protection Legislation, and shall provide the Company with:
- (a) a copy of the Exercise of Rights Request or complaint; and
 - (b) reasonable co-operation and assistance, at the cost of the Provider, in relation to the Exercise of Rights Request, complaint and the fulfilment of the Company's and/or any ScottishPower Group Company's obligations under the Data Protection Legislation in respect of such Exercise of Rights Request, and/or complaints; and
 - (c) ensure that no Personal Data is disclosed by the Provider and/or any Sub-processor in response to an Exercise of Rights Request, or complaint without the Company's prior written consent;
- 6.13 notify the Company promptly (and in any event within 24 hours) upon becoming aware of any confirmed, suspected or threatened data breach (including any Personal Data Breach or any other breach of the Data Protection Legislation and/or this Annex) which relates directly or indirectly to the Agreement. Notification shall be through a secure email message to the following email address DP@spenergynetworks.co.uk and shall include relevant information and documentation about the breach including the details specified in paragraph 6.13 (a). The Provider shall:-
- (a) provide the Company with such information and assistance, at the cost of the Provider, as the Company may require in relation to the data breach, which shall include the provision of the following information:
 - description of the nature of the breach, including, when possible, the categories and the approximate number of affected parties, and the categories and approximate number of Personal Data records affected;
 - the Provider's Data Protection Officer (DPO) or the contact person for more information;

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- description of the possible consequences of the breach; and
 - description of the measures adopted or proposed to remedy the breach, including, if applicable, the measures adopted to mitigate the possible negative effects;
 - (b) take such steps and implement such measures as the Company may direct in order to control and/or mitigate the breach and restore the security of the compromised data;
 - (c) assist the Company (at the Company's request) to make any notifications to the Information Commissioner's Office and affected Data Subjects; and
 - (d) not make or permit any announcement to any party in relation to the data breach without the Company's consent, which consent may be subject to conditions at the Company's sole discretion;
- 6.14 maintain accurate written records of the Processing it undertakes in connection with the Agreement, together with such other records as the Company may reasonably require and/or as the Provider is legally required to keep under the Data Protection Legislation, and the Provider will provide the Company (or its representatives) with access to and copies of such records at any time on the Company's request;
- 6.15 permit the Company or its representatives (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Provider's data processing activities (and/or those of any Sub-processors and/or Relevant Personnel) and the Provider shall comply with all reasonable requests or directions by the Company to enable the Company to verify and/or procure that the Provider is in compliance with its obligations under the Agreement;
- 6.16 not Process ScottishPower Personal Data outside the UK without the express prior written consent of the Company. Where the Company consents to such Processing outside of the UK, in addition to its other obligations and responsibilities under and/or pursuant to this Agreement (including, without limitation, pursuant to this paragraph 6), the Provider shall comply with such safeguards, conditions and/or measures in relation to such Processing as the Company may notify to the Provider;

[NOTE: THE FOLLOWING PARAGRAPHS ARE TO BE COMPLETED WHERE, AS AT THE COMMENCEMENT DATE:

- **THE PROVIDER IS LOCATED (AND THE PROCESSING WILL TAKE PLACE) OUT WITH THE UK (PARAGRAPH 6.16.1); OR**

- **THE PROVIDER IS LOCATED WITHIN THE UK BUT WILL USE SUB-PROCESSORS WHO ARE LOCATED OUT WITH THE UK (PARAGRAPH 6.16.2)**

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[Subject always to the foregoing, as at the Commencement Date:-

- 6.16.1 the Company consents to the international transfer of the ScottishPower Personal Data to the Provider for [INSERT the overall purpose of the processing outside of the UK and the location of such processing] on the following basis:

OPTION 1 – PROVIDER IS BASED (AND PROCESSING WILL TAKE PLACE) IN A COUNTRY WITH UK GDPR ADEQUACY DECISION

Such international transfer is to a country or countries declared to have an adequate level of protection by the UK Government pursuant to article 45 of the UK GDPR and sections 17A and 17B of the Data Protection Act 2018, and therefore it is not necessary to provide adequate safeguards in accordance with article 46 of the UK GDPR. However, the Provider undertakes to inform the Company immediately in the event that the country importing the ScottishPower Personal Data no longer has the aforementioned decision of adequacy and to adopt the necessary measures to ensure an adequate level of protection of the ScottishPower Personal Data transferred in the countries to which the data is to be transferred, providing evidence of the adoption of such measures to the Company.

OPTION 2 – PROVIDER IS BASED (AND PROCESSING WILL TAKE PLACE) IN A COUNTRY WITHOUT UK GDPR ADEQUACY DECISION AND THE INTERNATIONAL TRANSFER INSTRUMENT USED IS THE SCC's OR OTHER APPROPRIATE SAFEGUARDS UNDER ART. 46 UK GDPR]

[Such international transfer is subject to appropriate safeguards provided for in article 46 UK GDPR.] OR

[Such international transfer is regulated by the provisions of appropriate standard contractual clauses entered into in accordance with article 46(2)(d) UK GDPR. To the extent that there is any conflict or ambiguity between any of the provisions of this Agreement and any executed standard contractual clauses, the provisions of the executed standard contractual clauses will prevail.]

OPTION 3 – PROVIDER IS BASED (AND PROCESSING WILL TAKE PLACE) IN A COUNTRY WITHOUT ADEQUACY DECISION AND NO ART. 46 UK GDPR INSTRUMENT CAN BE USED, HAVING TO APPLY A DEROGATION OF ART. 49 UK GDPR]

Such international transfer is covered by the derogation [insert derogation of Art. 49 UK GDPR] which is applicable.

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- 6.16.2 the Company consents to the international transfer of ScottishPower Personal Data by the Provider (as Data Exporter) to its authorised Sub-processors [Insert Sub-processors] located in [Insert country or countries to which the data is to be transferred] for [insert the part of the service requiring the international transfer of data] on the following basis and subject always to the Provider's compliance with paragraph 6.16.3:-

OPTION 1 - INTERNATIONAL TRANSFER TO COUNTRY WITH UK GDPR ADEQUACY DECISION

Such international transfer is to a country or countries declared to have an adequate level of protection by the UK Government pursuant to article 45 of the UK GDPR and sections 17A and 17B of the Data Protection Act 2018, and therefore it is not necessary to provide adequate safeguards in accordance with article 46 of the UK GDPR. However, the Provider undertakes to inform the Company immediately in the event that the country importing the ScottishPower Personal Data no longer has the aforementioned decision of adequacy and to adopt the necessary measures to ensure an adequate level of protection of the ScottishPower Personal Data transferred in the countries to which the data is to be transferred, providing evidence of the adoption of such measures to the Company.

OPTION 2 - INTERNATIONAL TRANSFERS TO A COUNTRY WITHOUT UK GDPR ADEQUACY DECISION AND THE INTERNATIONAL TRANSFER INSTRUMENT USED IS THE SCC's UNDER ART. 46 UK GDPR

Such international transfer is regulated by the provisions of appropriate standard contractual clauses entered into in accordance with article 46(2)(d) UK GDPR and the Provider shall ensure that the relevant Sub-processor enters into such standard contractual clauses.

- 6.16.3 The Provider (as Data Exporter) must comply with the terms of Chapter V of the UK GDPR and shall:

comply with any reasonable instructions and information requests notified to it by the Company in connection with the transfer;

carry out any relevant Transfer Impact Assessment and provide a copy of this to the Company together with any supporting documentation required by the Company prior to any international transfer being made under this Agreement;

implement appropriate safeguards in accordance and compliance with the Data Protection Legislation;

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implement any additional measures necessary to ensure an adequate level of protection for ScottishPower Personal Data transferred in the country (or countries) to which the ScottishPower Personal Data is to be transferred;

hold the Company harmless against any damages that may arise from the breach of such obligations;

6.17 provide the Company, at the cost of the Provider, with such assistance (in connection with the Agreement) as the Company may reasonably require in connection with the duties imposed on the Company and/or any ScottishPower Group Company under the Data Protection Legislation, without limitation, with respect to security measures, personal data breach notifications, records and data protection impact assessments; and

6.18 at the Company's discretion and direction:

6.18.1 return; and/or

6.18.2 permanently and securely destroy (so that it is no longer retrievable); and/or

6.18.3 only where expressly instructed to do so by the Company, deliver to another Data Controller or Data Processor specified by the Company;

the ScottishPower Personal Data held or otherwise Processed by the Provider, any Sub-processors and/or any Relevant Personnel in connection with the Agreement upon cessation of the performance of its relevant obligations under the Agreement. The Provider shall ensure that a copy of the Personal Data is only retained where and to the extent required by applicable law. Subject to the foregoing sentence, paragraphs 6.18.1 and 6.18.3 involve the destruction of all copies and any support or documents in the information systems of the Provider, and the Provider adopting security measures to prevent theft, loss or improper access to Personal Data during transit. In the case of paragraph 6.18.2, the Provider shall implement the necessary measures to prevent access to the information or subsequent recovery and must certify their destruction in writing and deliver the corresponding certificate to the Company (subject to retention requirement under applicable law).

7. The Provider warrants, undertakes and represents that it shall obtain and maintain during the term of the Agreement all such notifications and consents it is required to maintain under the Data Protection Legislation to enable it to lawfully provide Personal Data to ScottishPower Group Companies as required for the performance by the Provider of its obligations under the Agreement and/or in order to enable the ScottishPower Group Companies to receive the benefit of the Agreement.

8. Where the performance of the Agreement involves the Provider, any permitted Sub-processor and/or any Relevant Personnel collecting or obtaining any ScottishPower Personal Data from Data Subjects,

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the Provider warrants and undertakes that the Provider Personal Data will be collected or obtained:

- 8.1 in accordance with the terms of the Data Protection Legislation;
 - 8.2 in a manner which ensures that the Company is able to use the Provider Personal Data for the relevant purposes set out in the Agreement and/or that may be reasonably contemplated by the terms of the Agreement (including, without limitation, by ensuring that appropriate fair processing notices are given to the Data Subjects and, where applicable, that the Data Subject has provided its express, informed consent to the relevant Processing of their Personal Data); and
 - 8.3 in accordance with all instructions that are issued by the Company in connection with the particular activities, as such instructions may be updated by the Company from time to time.
9. The Provider shall, at its own cost, provide such assistance as may be requested by the Company in relation to any data protection impact assessments and/or consultations with relevant regulatory bodies that the Company may undertake in connection with its duties under the Data Protection Legislation.
10. The Provider shall ensure that all permitted Sub-processors and Relevant Personnel comply with the terms of this Annex and the Data Protection Legislation. Any act, omission, default or breach by any permitted Sub-processor and/or Relevant Personnel shall be deemed to be an act, omission, default or breach by the Provider for the purposes of the Agreement.
11. **Provider as Data Controller**

- 11.1 [OPTION 1 – CONTROLLER – CONTROLLER SHARING OF DATA FROM SPUK TO PROVIDER. IF CONTROLLER-CONTROLLER TRANSFER/SHARING IS NOT RELEVANT, THIS CAN BE MARKED AS NOT USED] [Where the Company shares Personal Data under its responsibility with the Provider in circumstances set out in this paragraph 11.1, this shall be a transfer of Personal Data from one party to the other, with both parties acting as independent Data Controllers in respect of shared data.

Details of the data sharing:

- Data provider: the Company.
- Data recipient: the Provider
- Types of data shared: [INSERT categories]

For these purposes, the Provider guarantees and undertakes to (a) comply with the obligations of a Data Controller set forth in the Data Protection Legislation; (b) co-operate and provide the

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Company with all the information necessary to demonstrate compliance with its obligations under the Data Protection Legislation and (c) hold the Company harmless from any damages that may arise from any breach of the foregoing obligations, including both possible sanctions by the regulatory bodies and claims for damages, judicial or extrajudicial, by the Data Subjects. Without prejudice to the foregoing the Provider's obligations under paragraphs 6 and 8 of this Annex do not apply to such shared Personal Data.

In the event that the sharing of data involves an international transfer to a country outside the UK and which does not have an adequacy decision from the UK Government, such transfer shall be regulated by the provisions of appropriate standard contractual clauses in accordance with article 46(2)(d) UK GDPR. To the extent that there is any conflict or ambiguity between any of the provisions of this Agreement and any executed standard contractual clauses, the provisions of the executed standard contractual clauses will prevail.]

- 11.2 [OPTION 2 – CONTROLLER – CONTROLLER SHARING OF DATA FROM PROVIDER TO SPUK. IF CONTROLLER-CONTROLLER TRANSFER/SHARING IS NOT RELEVANT, THIS CAN BE MARKED AS NOT USED] [Where the Provider shares Personal Data under its responsibility with the Company in circumstances set out in this paragraph 11.2, this shall be a transfer of Personal Data from one party to the other, with both parties acting as independent Data Controllers in respect of shared data.

Details of the data sharing:

- Data provider: the Provider.
- Data recipient: the Company
- Types of data shared: [INSERT categories]

For these purposes, the Provider guarantees and undertakes to: (a) comply with the obligations of a Data Controller provided for in the Data Protection Legislation and (b) hold the Company harmless from any damages that may arise from any breach of the foregoing obligations, including both possible sanctions by the regulatory bodies and claims for damages, judicial or extrajudicial, by the Data Subjects. Without prejudice to the foregoing the Provider's obligations under paragraphs 6 and 8 of this Annex do not apply to such shared Personal Data.

In the event that the sharing of data involves an international transfer to a country outside the UK and which does not have an adequacy decision from the UK Government such transfer shall be regulated by the provisions of appropriate standard contractual clauses in accordance with article 46(2)(d) UK GDPR. To the extent that there is any conflict or ambiguity between any of the

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provisions of this Agreement and any such standard contractual clauses executed between the Parties, the provisions of the executed standard contractual clauses will prevail.]

- 11.3 The Provider's obligations under this Annex do not extend to any Personal Data relating to the Provider's and/or any of its permitted sub-contractor's personnel that are engaged in the performance of the Provider's obligations under the Agreement that is generated by the Provider solely for the purposes of its (or its permitted sub-contractor's) internal human resources procedures and records ("HR Purposes"). The Provider acknowledges and agrees that it (or the relevant permitted sub-contractor) is a Data Controller in respect of the Processing of such Personal Data for the HR Purposes and the Provider undertakes to comply with (and to ensure that its permitted sub-contractors comply with) its obligations under Data Protection Legislation in respect of such Personal Data.
- 11.4 Without prejudice to the Company's other rights or remedies under the Agreement and/or at law and to the Provider's obligations and responsibilities as a Data Processor under and/or pursuant to the Data Protection Legislation, the Provider shall indemnify and keep the Company and all ScottishPower Group Companies fully and effectively indemnified from and against all losses, liabilities, claims, actions, demands, proceedings, damages, costs, charges and/or expenses (including legal and other professional fees and expenses) made against, suffered and/or incurred by the Company and/or any ScottishPower Group Company arising from, relating to and/or in connection with any breach by the Provider, any Sub-processor and/or any Relevant Personnel of any of the terms of this Annex and/or the Data Protection Legislation. Failure by the Provider to comply with the terms of this Annex or the Data Protection Legislation shall be considered a material Default of the Agreement for the purposes of Clause 7 (*Termination*).

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

 2024

DOCUMENT CONTROL (*Delete as Required*)

Authorities

Version	Issue Date	Authorisation	Comments
0.1	Dec 2023		First draft for consultation
0.2	April 2024		Post-consultation draft

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1. Introduction

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

2. DPS Requirements Template

The Requirements Template will be updated by the Company with the list of requirements as applicable per month. The full parameters of the requirements tendered will be available to view on the DPS Platform once the Requirements have been published and will be updated on a monthly basis when each competition is published on the 1st of each month.

The parameters information on this template will include but not limited to;-

- Requirements Location Details
- Service Window Open / Close
- Peak Capacity Required (MW)
- Bidding Window Open / Close
- Minimum Aggregate Size (kW)
- Maximum Voltage of Requirement Location (kV)

Example Tender Parameters Data Template are available to view on the Pico Flex DPS system.

3. Trade Award Notification Template

The Provider will receive a Trade Award Notification via email to the Providers registered email address. The Provider will be able to view the full parameters of the trade in which a trade was successful by accessing the DPS Platform.