

DATE:

20[•]

FLEXIBILITY SERVICES AGREEMENT

Between

[COMPANY]
(as the Company)

and

[PROVIDER]
(as the Provider)

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

BETWEEN:

- (1) [●] **LIMITED/PLC**, a company incorporated in [England and Wales] [Scotland] (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 Site for the provision of such Flexibility Services, for example through aggregated or individual assets. The Company will pay the Provider for these Flexibility Services in accordance with this Agreement.
- (3) The Company wishes to appoint the Provider to provide the Flexibility Services and the Provider has agreed to provide the Flexibility Services to the Company, on and subject to the terms and conditions contained herein.

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

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

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

PART 1 – Details of the Flexibility Provider and Special Conditions

| Provider | Provider’s company number and registered office |
|----------------------------------|---|
| [●] | [●] |
| Contract number | [●] |
| 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 | [●] |
| Special Conditions | |
| The following provisions shall apply to the Agreement and, in the event of conflict, shall override the Conditions: | |
| 1. | ADDITIONAL TERMS |
| 1.1 | The additional definitions set out in Schedule 7 shall apply as if they were set out in Clause 1 of the Agreement. |
| 1.2 | The procurement and provision of dynamic flexibility services shall be made in accordance with the Discretionary Flexibility Services procedures set out in this Agreement. |
| 1.3 | Clause 11 shall not apply to the provision of dynamic flexibility services. |
| 1.4 | The reference to Clause 23 in Clause 9.8 is deleted and replaced with Clause 21. |
| 1.5 | Clause 15.4 below is added to this Agreement. <i>"Clause 15.4 The Company may disclose and publish certain information on its website that may include but may not be limited to providers' names, awarded prices, volumes, contract durations, dispatch information, performance. It shall not be a breach of this clause 15 for the Company to disclose and/or publish this information."</i> |
| 1.6 | Clause 15.2 is deleted and replaced with the following: <i>"Save as permitted by clause 15.1 and clause 15.4, or except with the consent of the disclosing party, or as required by law, a court order, or by any relevant regulatory, or government authority, or to the extent that information has come into the public domain through no fault of the receiving party, each Party shall treat as strictly confidential and shall not disclose all commercial and technical information relating to the other Party received or obtained as a result of entering into or performing this Agreement."</i> |

PART 2 – Commencement and Expiry Dates

| | |
|--------------------------|--------------------------|
| Commencement Date | [●] |
| Expiry Date | As set out in Schedule 1 |

[Note: the following signature blocks should be used if the Agreement is to be governed by English law. Scottish law signature blocks are on page 23 and must remain on this page]

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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CONDITIONS

1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

“**Availability Status**” means Available or Unavailable;

“**Authority**” means the Gas and Electricity Markets Authority;

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

“**Business Day**” means any day other than a Saturday or a Sunday or a bank holiday in [England and Wales] [the City of Edinburgh]; [*Note: Please delete as appropriate England and Wales or Scotland depending on location of the Site*]

“**Change in Ownership**” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Performance Report**” means a report in relation to the Flexibility Services provided by a DER, or groups of DER responding to Utilisation Instructions and Discretionary Utilisation Requests in accordance with Schedule 5;

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

“**Proving Test**” means the tests, more particularly described in Schedule 5, undertaken in accordance with Clause 5.4;

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

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

“**Requested End Time**” means the date and time (to the nearest minute) as notified in accordance with Clause 3 and/or 5 **Error! Reference source not found.** at which the Requested MW is no longer required to be delivered;

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

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

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

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

“**Service Meter**” means the measuring equipment, as defined by the Company in Schedule 5 of this Agreement, that shall be used to determine delivery of the Service;

“**Service Meter Data**” means the meter data recorded at the Service Meter at the Site(s) listed in Schedule 5;

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

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

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

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

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

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

“**Term**” means the duration of this Agreement;;

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

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

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

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

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

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

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

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

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

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

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

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

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

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

2. DURATION AND TERM

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

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

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

3. SCOPE OF FLEXIBILITY SERVICES

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

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

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

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

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

3.6 The Company may:

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

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

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

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

3.9 In performing the Flexibility Services pursuant to this Agreement, the Provider must comply with the technical requirements set out in Schedule 6.

4. VARIATION

- 4.1 Unless otherwise provided in Schedule 2, no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 4.2 The Provider may, with prior approval of the Company (in its sole discretion), change the DER providing the service(s) detailed in Schedule 3 by providing a minimum of thirty (30) days notice of the change and specifying that the new DER meets the technical, functional and non-functional requirements of the specified service.

5. MONITORING AND EQUIPMENT

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

6. RECORDS AND AUDIT

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

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

7. PROVIDER'S OBLIGATIONS

7.1 The Provider shall:

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

8. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

9. CHARGES AND PAYMENT

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

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

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

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

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

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

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

9.6 If the Company intends to pay less than the sum stated as due by the Company in the invoice it shall, not later than five (5) Business Days before the Due Date for Payment, give the Provider notice of that intention by issuing a notice which shall specify both the sum that it considers to be due to the Provider at the date the notice is given, or the sum which it considers is due from the Provider to the Company, and the basis on which that sum is calculated.

9.7 If either Party fails to make any payment due to the other under this Agreement by the Due Date for Payment, then the Party failing to pay shall pay interest on the overdue amount at a rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The relevant Party shall pay the interest together with the overdue amount. The Parties acknowledge that their liability under this Clause 9.7 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.

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

10. TERMINATION

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

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

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

Accrued liabilities

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

Surviving provisions

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

- 10.4.1 Clause 1 (*Definitions and interpretation*);
- 10.4.2 Clause 6 (*Records and Audit*);
- 10.4.3 Clause 9 (*Charges and Payment*);
- 10.4.4 Clause **Error! Reference source not found.** (*Consequences of Termination or Expiry*);
- 10.4.5 Clause 11.4(*Service Failure and Material Breach*);
- 10.4.6 Clause 3 (*Indemnity, Liability & Insurance*);
- 10.4.7 Clause 5 (*Confidentiality, Information Disclosure & Publicity*);
- 10.4.8 Clause 6 (*Intellectual Property Rights*);
- 10.4.9 Clause 18 (*Data Protection*);
- 10.4.10 Clause 21 (*Dispute Resolution*);
- 10.4.11 Clause 25 (*Waiver*); and
- 10.4.12 Clause 28 (*Governing Law and Jurisdiction*).

Consequences of termination or expiry

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

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

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

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

11. SERVICE FAILURE AND MATERIAL BREACH

11.1 Notwithstanding its obligations under Clause 11.2, the Provider shall notify the Company as soon as reasonably practicable upon becoming aware of the inability (howsoever caused) of the Provider to provide the Flexibility Services in all or any part of any contracted Service Window.

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

- a) provide the Company with a written explanation as to the cause of the failure of service delivery;
- b) implement a rectification plan for improving performance and/or reducing the number of occurrences of Unavailability, which may include at the Company's discretion, a repeat of any commissioning tests undertaken on initial installation and commissioning of the DER;
- c) propose a variation to the Service Requirements as specified in Schedule 1; or
- d) take any other action that may be agreed with the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).

11.3 If the Provider fails to comply with the terms of Clause 11.2, the Provider's proposals are not accepted by the Company, the Parties fail to reach agreement on actions or the Provider's performance in respect of the Service Failure notified by the Company does not significantly improve within thirty (30) days of the date of the notice, such failure will be deemed a material breach of this Agreement for the purposes of Clause 10.1.

11.4 Where the Company terminates this Agreement as a result of a material and/or persistent breach by the Provider under Clause 10.1, the Company shall be entitled to recover from the Provider the cost, loss and expenses reasonably incurred by the Company as a result of the termination, including where relevant appointing a replacement Provider. Such costs, losses and expenses shall be a debt due and immediately payable by the Provider to the Company subject to the cap of liabilities across this Agreement as stated in clause 13.

12. FORCE MAJEURE

12.1 A Party is not in breach or default of this Agreement to the extent that it is prevented, hindered or delayed in performing any of its obligations under this Agreement as a result of a Force Majeure Event.

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

- (a) The affected Party will notify the other Party as soon as reasonably practicable of:
 - (i) The occurrence and description of the Force Majeure Event;
 - (ii) The date on which the Force Majeure Event commenced and its likely duration (if known);
 - (iii) The effect of the Force Majeure Event on the Party's ability to perform its obligations under the Agreement.

- (b) The affected Party will use reasonable endeavours to mitigate the impact of the Force Majeure Event on its ability to perform its obligations under the Agreement.
- 12.3 If a Force Majeure Event prevents, hinders or delays a Party in performing its obligations under the Agreement for a continuous period of at least eight (8) weeks, either Party may terminate the Agreement on giving ninety (90) days written notice.

13. INDEMNITY, LIABILITY & INSURANCE

- 13.1 Subject to Clause 13.2 the Provider and Company shall indemnify each other against all Loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by either Party as a result of:
- 13.1.1 either Party's breach of this Agreement;
 - 13.1.2 any negligence or reckless act or omission committed by either Party in the course of performing this Agreement;
 - 13.1.3 Loss or damage to any property (including property of the Company or the Provider);
or
 - 13.1.4 all related actions, suits, claims, demands, costs, charges or expenses to the extent that the same is caused by any negligent act or omission or breach of statutory duty, regulation or by-law by a Party, its sub-contractors, or their respective servants or agents in connection with this Agreement.
- 13.2 Notwithstanding any other provision in this Agreement, the aggregate total liability of either Party to the other Party under or in connection with this Agreement whether in contract tort or delict or howsoever arising shall not exceed in aggregate the greater of (i) £250,000, and (ii) an amount equal to the total charges payable and already paid to the Provider under this Agreement. This Clause shall not limit or exclude either Party's liability:
- 13.2.1 in the case of fraud, misrepresentation or wilful misconduct;
 - 13.2.2 in the case of death or personal injury;
 - 13.2.3 in the case of breach of statutory duty; or
 - 13.2.4 where the Provider has invalidated such insurance referred to in this Clause [15] or has not complied with such insurance policies.
- 13.3 Notwithstanding anything to the contrary and subject to the conditions of Clause 11.4, neither Party shall have any liability to the other Party under this Agreement for any indirect or consequential loss of any kind howsoever caused.
- 13.4 The Provider shall procure (and on request provide evidence to the Company of) appropriate insurances as required by law and necessary for the safe and efficient performance of this Agreement to cover the liabilities set out in this Clause 13, with a reputable insurance company. Where possible the Provider shall add the Company as a named party on its insurance policies.
- 13.5 If the Provider appoints a sub-contractor in connection with the provision of the Flexibility Services, the Provider shall ensure that the sub-contractor maintains appropriate insurance to the extent set out in Clause 13.4. If the Provider acts as an aggregator in connection with the provision of the Flexibility Services, it shall ensure that the DER owners and operators for which it acts maintain appropriate insurance to the extent set out in Clause 13.

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

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

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

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

14.3 If ownership, occupancy or use (for the purpose of providing the Flexibility Services) of any Site changes, or may change, during the Term, the Provider shall immediately notify the Company of the same. The Company and the Provider shall if required, and at the reasonable request of the Company discuss the implications of the change and the options available to minimise any disruption that may be caused by the change.

14.4 The Company reserves the right to terminate this Agreement if a Change in Ownership of the Provider occurs and may treat a Change of Ownership as a material breach for the purposes of Clause 10.1. Any termination under clause 14.4 would be provided in writing and effective immediately

15. CONFIDENTIALITY, INFORMATION DISCLOSURE AND PUBLICITY

15.1 The Company is required to disclose certain information in accordance with this document under obligations within the Company Licence Agreement, the Grid Code, the Transmission Code, the Connection and Use of System Agreement, the Distribution Code and the Fuel Security Code. Information shared will include but may not be limited to providers names, awarded prices, volumes and contract durations. It shall not be a breach of this clause 15 for the Company to disclose this information. The Company may also share information relating to this Agreement for the purpose of industry initiatives in relation to network constraint management and electricity network optimisation.

15.2 Save as permitted by clause 15.1, or except with the consent of the disclosing party, or as required by law, a court order, or by any relevant regulatory, or government authority, or to the extent that information has come into the public domain through no fault of the receiving party, each Party shall treat as strictly confidential and shall not disclose all commercial and technical information relating to the other Party received or obtained as a result of entering into or performing this Agreement.

15.3 Save as permitted by clause 15.1 neither Party shall use the name, brands and/or logos of the other Party for any purpose without the other Party's prior written approval. In the event that the other Party grants its approval to any use of its name, brand and/or logo, it may make such approval subject to such conditions and restrictions on use as it considers appropriate. Written approval should not be unreasonably withheld. The Company shall be entitled to make publicity releases

and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 This Agreement does not transfer any interest in Intellectual Property Rights.
- 16.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's Intellectual Property other than to the extent reasonably necessary in performing its obligations pursuant to this Agreement, provided that nothing in this Clause 6 shall operate so as to exclude any non-excludable rights of either Party.

17. COMPANY PROPERTY

- 17.1 Each Party shall retain its rights in its own physical property used for the purposes of this Agreement. Any equipment, tools, drawings, specifications, data and other materials supplied by or on behalf of the Company to the Provider:
- 17.1.1 shall at all times be and shall remain the exclusive property of the Company;
 - 17.1.2 shall be held by the Provider in safe custody at its own risk and maintained and kept in good condition by the Provider until returned by the Company;
 - 17.1.3 shall be marked visibly by the Provider as the property of the Company; and
 - 17.1.4 shall not be disposed of other than in accordance with the written instructions of the Company nor used otherwise than as authorised by the Company in writing.

18. DATA PROTECTION

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

19. MODERN SLAVERY, ANTI-BRIBERY

- 19.1 The Provider undertakes, warrants and represents that:
- 19.1.1 neither the Provider nor any of its officers, employees, agents or subcontractors:
 - a) has committed an offence under the Modern Slavery Act 2015 (“**MSA Offence**”);
 - b) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

- 19.1.2 it shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
 - 19.1.3 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Company's obligations under this Clause 19. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations; and
 - 19.1.4 it shall include in its contracts with its subcontractors and suppliers' anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 19.
- 19.2 The Provider shall indemnify the Company against any Losses, incurred by or awarded against the Company as a result of any breach of anti-slavery and human trafficking laws, statutes, regulations and codes or the Modern Slavery Act 2015.
- 19.3 Any breach of this Clause 19 by the Provider shall be deemed a material breach of the Agreement for the purposes of Clause 10.1.
- 19.4 The Provider shall have suitable controls and compliance procedures in place and shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall promptly report to the Company any request or demand for any undue financial or other advantage of any kind received or offered by the Provider in connection with this Agreement.
- 19.5 The Provider agrees to:
- 19.5.1 pay all of its personnel who are directly employed by it in respect of the provision of the Services; and
 - 19.5.2 ensure all employees of its contractors and subcontractors performing the provision of the Services are paid not less than the living wage for the Term of this Agreement.

20. NOTICES

- 20.1 The processes for notices and communications in respect of operational matters are set out in Schedule 4.
- 20.2 All formal notices or other communications to be served under this Agreement ("**Non-Operational Notice**") shall be given in writing and shall be delivered or sent to the addresses for notice set out in Part 1 of the Flexibility Services Agreement or to such other address as each Party may have notified in writing to the other Party.
- 20.3 A Non-Operational Notice shall be delivered by hand, sent by pre-paid first-class post, or by recorded delivery post (or equivalent recorded postal delivery service).
- 20.4 A Non-Operational Notice or other communication shall be deemed to have been received:
- 20.4.1 if delivered by hand or recorded delivery post within Business Hours at the time of delivery or, if delivered by hand outside Business Hours, at the next start of Business Hours;
 - 20.4.2 if sent by first class post, at 9.00 a.m. on the second Business Day after posting.
- 20.5 E-mail communications may be valid for Non-Operational Notices the purposes of this Agreement, where agreed between the Parties. Such email notices shall be deemed to have been

received on the day of sending, or where outside of Business Hours on the first Business Day thereafter.

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

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

21. DISPUTE RESOLUTION

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

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

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

22. SEVERANCE

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

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

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

23. THIRD PARTY RIGHTS

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

24. NO AGENCY OR PARTNERSHIP

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

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

25. WAIVER

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

26. ENTIRE AGREEMENT

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

27. COUNTERPARTS

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

28. GOVERNING LAW AND JURISDICTION

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

[Note: the following signature blocks should be used if the Agreement is to be governed by Scottish law]

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties as follows:

THE COMPANY

EXECUTED by [COMPANY] acting by

..... Director
(Full Name)

.....
Signature

In the presence of:

..... Witness Full Name

..... Witness Signature

..... Witness Address

.....

THE PROVIDER

EXECUTED by [PROVIDER] acting by:

..... Director
(Full Name)

.....
Signature

In the presence of:

..... Witness Full Name

..... Witness Signature

..... Witness Address

.....

**SCHEDULE 1
SERVICE DESCRIPTION**

Permitted Extensions: *[Note: Insert no.]*

Extension Periods: *[Note: Insert duration]*

Part 1

Service Parameters

| | | |
|---|---|--------------|
| <i>Summary</i> | <i>Type of Service (Sustain/Secure + Dynamic)</i> | Dynamic |
| | <i>Zone</i> | |
| | <i>Flexible Unit ID</i> | |
| | <i>Contract start date</i> | |
| | <i>Contract end date</i> | |
| | <i>Contracted service commodity (Active/Reactive Power)</i> | Active Power |
| | <i>Direction of flexibility</i> | |
| <i>Service Periods/ Service Windows</i> | <i>Service Period</i> | |
| | <i>Contracted service days</i> | Mon-Sun |
| | <i>Service Window</i> | Any time |
| <i>Fee Parameters</i> | <i>Discretionary Utilisation Fee (£/MWh)</i> | |
| | <i>Maximum Discretionary Utilisation Fee (£/MWh)</i> | |
| <i>Capability Parameters</i> | <i>Flexible MW (MW)</i> | |
| | <i>Maximum Run Time (mins)</i> | |
| | <i>Contracted Response Time (mins)</i> | |
| | <i>Service Recovery Time (mins)</i> | |
| <i>Baseline Parameters</i> | <i>Baseline (MW)</i> | |
| | <i>Baseline Methodology</i> | |

Part 2
Service Requirements

Capability

1. Direction - the Flexible Unit shall be able to deliver a reduction in import/increase in export and/or an increase in import/reduction in export of active power from or onto the distribution network.
2. Capacity – Each individual DER making up a Flexible Unit has a maximum flexible capacity as defined below:
 - For generation and storage DERs, the maximum flexible capacity is the nameplate capacity of the DER;
 - For demand DERs, the maximum flexible capacity is the maximum reduction in consumption that could be delivered considering the chosen baseline methodology.

The Flexible MW of a Flexible Unit providing the Dynamic service is defined as the sum of the DER maximum flexible capacities comprising the Flexible Unit and shall be at least 10kW. The Provider is able to vary the capacity that can be delivered closer to real-time through Capability Declarations.

3. Run time - the Flexible Unit shall be capable of sustaining the Flexible MW for the duration of the Maximum Run Time, on instruction from UK Power Networks. The submitted Maximum Run Time shall be at least 30 minutes, and is fixed for the duration of the Agreement.
4. Response Time - the Response Time, as the minimum lead-time from the time of the Utilisation Instruction to full delivery, from a Flexible Unit shall be 120 minutes or less, and is fixed for the duration of the Agreement. Note that the Response Time should include any ramp up and ramp down times as well as lead-times in other markets which the Flexible Unit may participate in.

Connection

5. Point of connection - the DERs making up the Flexible Unit shall be electrically connected to the network asset(s) subject to the limitation during intact and under first circuit outage of that asset(s). In the majority of zones, the network asset(s) will be a substation. The DER should be connected within the Flexibility Zone or otherwise where deemed to be beneficial to the network. Compliance with this clause should be confirmed by UK Power Networks who will check each DER's MPAN.
6. Generator compliance - exporting generators and storage assets, greater than 16A per phase shall have a long-term parallel connection compliant with the requirements of EREC G59 or G99. Those less than 16A per phase shall be compliant with the requirements of EREC G83 or G98.

7. Restrictions in Connection Agreement – in providing the Flexibility Services, the DERs should not breach any part of their Connection Agreement with UK Power Networks. This includes, but is not limited to, allowed import and/or export capacity. Flexible connections or timed connections are permissible subject to the conditions of the connection which will be checked by UK Power Networks as part of the pre-qualification assessment.

Communications

8. Receiving instructions - the Provider shall be able to receive Capability Requests and Utilisation Instructions by email or API. The Flexible Unit shall be a single point of communication and control.

9. Acting on instructions – the Provider shall have appropriate systems and processes in place to provide Capability Declarations in response to Capability Requests and deliver flexibility from its DERs according to the Utilisation Instruction and its contracted capability.

Metering

10. Data resolution - each DER making up the Flexible Unit shall have metering with half-hourly resolution or higher (e.g. minute-by-minute).

11. Data accuracy - meter measurements should meet the accuracy requirements of the relevant Code of Practice applicable at the time of installation

12. Metering point - the metering shall be at the boundary between the site on which the DER is located and the distribution network, or on the terminals of the DER, where approved by UK Power Networks.

13. Meter details - the Provider shall provide technical details of the meter and a single line diagram of each DER on request. Note that a variety of metering device types are acceptable including transducers, analogue meters, pulsing meters and half-hourly meters.

14. Data provision - the Provider shall make the meter data available to UK Power Networks on request and at the end of every month in the monthly Performance Report.

1. DISCRETIONARY FLEXIBILITY SERVICES

- 1.1 From time to time, the Company may at its discretion request from the Provider, and subject to the Provider's Availability Status, Flexibility Services for Discretionary Service Periods ("Discretionary Flexibility Services").
- 1.2 The Company may request Discretionary Flexibility Services from the Provider by sending a Discretionary Utilisation Request in accordance with Schedule 4.
- 1.3 The Company may:
 - 1.3.1 withdraw any Discretionary Utilisation Request by providing written notice to the Provider at any time before the Provider has provided a response under and in accordance with section 1.2; and/or
 - 1.3.2 issue a Stop Instruction to the Provider in accordance with Schedule 4.
- 1.4 In performing the Discretionary Flexibility Services pursuant to this Agreement, the Provider must comply with the technical requirements set out in Schedule 6.
- 1.5 No Discretionary Utilisation Fee shall be due to the Provider by the Company for any Discretionary Flexibility Services delivered in excess of the Accepted MW.

SCHEDULE 2
FLEXIBILITY SERVICE CHARGES

Invoicing

1. In consideration of the provision of the Flexibility Services, the Company shall pay the Provider the Utilisation Fee in accordance with this Schedule 2.
2. Subject to this Schedule 2, within twenty (20) Business Days of the end of each calendar month, or if later within seventeen (17) Business Days of the date of receipt of the information required to be provided by the Provider in accordance with Clause 22 of Schedule 5 the Company shall issue a Payment Certificate to the Provider which, for the avoidance of doubt, shall contain details of any adjustments to the Utilisation Payment permitted pursuant to this Schedule 2.
3. Within ten (10) Business Days of receipt of a Payment Certificate, the Provider (acting reasonably) shall review its content and either;
 - 3.1 confirm its agreement to the Company by submitting an invoice for the Utilisation Fee for the relevant calendar month (such items shall be sent to the address shown on the Payment Certificate);
 - 3.2 raise a dispute in relation to all or any part of the Payment Certificate.
4. The Provider agrees that each invoice issued or accepted by it will include details of, as regards the Flexibility Services to which the invoice relates:
 - a) the date on and time at which the Flexibility Services were provided; and
 - b) the relevant Utilisation Fee details (if any).
5. If a dispute is raised by the Provider, the Parties shall discuss (in good faith) and agree within five (5) Business Days following notification of the dispute any necessary amendments to the Payment Certificate to satisfactorily rectify the disputed elements(s). Within five (5) Business Days of any such agreement, the Company shall reissue an amended Payment Certificate and, thereafter, Section 3 shall apply.
6. Subject to Section 7, a payor shall pay all sums due under this Agreement by no later than thirty (30) Business Days following receipt of an invoice. Such payments shall be made in the bank account notified by the payor to the payee from time to time.
7. All sums payable under the Agreement unless otherwise stated are exclusive of Value Added Tax (VAT). The payor shall pay interest on any amount due from the date on which payment was due to the date when it is received by the payee (both days inclusive) whether before or after judgement on a daily basis at a rate of 2% above the base rate of the Bank of England as quoted from time to time.

8. A payor (acting in good faith) may dispute all or any part of an invoice issued by the other Party under this Agreement. In such circumstances, the payor may withhold the disputed element of the invoice but shall not withhold payment of the undisputed element. If it shall be subsequently agreed or determined that any disputed sums are properly payable then interest shall be due and payable on those sums in accordance with Section 7 from the date specified for payment thereof as set out in the relevant invoice.

9. The Company shall be entitled to set off against a Provider's invoice any sums owed to the Company by the Provider provided that the Company gives prior written notice to the Provider of its intention to do so. The Company will give written notice to the Provider not later than at least five Business Days prior to the final date for payment of any sums payable hereunder specifying any amount proposed to be withheld and the ground or grounds for withholding such amount. Any exercise by the Company of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

10. Subject to Section 9 of this Schedule, where:

10.1 the Provider fails to respond to a Utilisation Instruction; and

10.2 takes action which is in conflict with the Utilisation Instruction;

the Company may make a deduction of 50% percent of the value of the next Payment Certificate.

11. All invoices should reference the statement number and be sent to:

Accounts Payable
PO Box 1184
Crawley
RH10 0FL

Calculation of utilisation volumes and charges (Dynamic Product)

12. The Utilisation Payment for month m (UP_m) shall be calculated as follows for the delivery of Flexibility Services:

$$UP_m = CD * UF$$

Where:

UF is the Discretionary Utilisation Fee for Flexible Unit s (expressed in £/MWh)

CD is the capped energy delivered for Flexible Unit s over Metered Time Period i (expressed in MWh) and is calculated:

$$CD = \sum_s \sum_i \text{Max}(\text{Min}((AM - BL)*DI, ED), 0)$$

\sum_s is the summation for each Flexible Unit s

Σ_i is the summation for each Metered Time Period i in a Service Period or an Dynamic Service Period (as the context requires) during month m that Flexible Unit s was the subject of a Utilisation Instruction or an Dynamic Utilisation Request that was accepted;
 AM is the average metered export for Flexible Unit s over Metered Time Period i (expressed in MW, imports are negative)
 BL is the Baseline for Flexible Unit s for Metered Time Period i (expressed in MW, imports are negative)
 DI is the number of hours within each Metered Time Period
 ED is the expected delivery for Flexible Unit s over Metered Time Period i (expressed in MWh), where

$$ED = CM * DI$$

CM is the Flexible MW or Accepted MW (expressed in MW)

Discretionary Utilisation Fee setting (Dynamic Product)

15. The Provider may set and vary the Dynamic Utilisation Fee by notifying the Company (by email or any other method as approved by the Company) at least one week before the start of the month in which the change will take effect, and as soon as reasonably practicable the Company will acknowledge receipt of the notification. The notified Dynamic Utilisation Fee will supersede the Dynamic Utilisation Fee for the relevant Flexible Unit as given in Schedule 1 and any previous notifications by the Provider.

16. Where the Provider sets the Discretionary Utilisation Fee at a level higher than the Maximum Discretionary Utilisation Fee in Schedule 1, the Company may not consider the Flexible Unit for utilisation until the Provider resets the Dynamic Utilisation Fee to a level equal to or less than the Maximum Discretionary Utilisation Fee.

Baseline for measuring delivery

17. The Baseline MW and Baseline Methodology for each DER can be found in Schedule 1 and Schedule 7.

**SCHEDULE 3
SITES/DER**

| | | |
|----------------------------------|--------------------------------|--|
| Zone and Flexible Unit ID | DER ID | |
| | DER Address/Postcode | |
| | MPAN | |
| | Metering Point | |
| | Flexible MW | |
| | Maximum Run Time (hrs) | |
| | Technology/process type | |

**SCHEDULE 4
COMMUNICATIONS**

“Accepted End Time” means the date and time (to the nearest minute) as notified in accordance with the below parameters in which the Accepted MW is no longer required to be delivered;

“Accepted MW” means the MW accepted in accordance with accordance with the below parameters;

“Accepted Start Time” means the date and time (to the nearest minute) as notified in accordance with the below parameters at which the Accepted MW shall be delivered;

Senior Representatives (see Clause 21):

| | |
|----------------------------------|---------------------------|
| Company’s Senior Representative | Name: Phone: Email: |
| Provider’s Senior Representative | Name: Phone: Email: |

Discretionary Utilisation Requests (Dynamic Product)

7. The Company may, but is not obliged to, issue a **Capability Request** that specifies for a given Flexible Unit:

7.1 the start date(s) and start time(s) of the Capability Request; and

7.2 the end date(s) and end time(s) of the Capability Request.

8. The Provider may, but is not obliged to, issue to the Company a **Capability Declaration**, in a format required by the Company, for the Flexible Unit specifying the maximum flexible capacity for the time periods requested. If no Capability Declaration is received by the Company within three (3) hours from the Capability Request, unless otherwise agreed with the Company, the Flexible Unit will be deemed to not be available for the requested time period.

9. The Company may, but is not obliged to, issue to the Provider, where the Provider has submitted a valid Capability Declaration, **Utilisation Instruction(s)** and **Stop Instruction(s)** for the Flexible Unit by specifying:

9.1 the Accepted MW, which can be from zero up to the maximum flexible capacity;

9.2 the Accepted Start Time of the Utilisation Instruction (Utilisation Instruction only); and

9.3 the Accepted End Time of the Utilisation Instruction (Stop Instruction, optional for Utilisation Instruction).

10. Where the Accepted End Time is not specified in the Utilisation Instruction, the Accepted End Time shall be deemed to be the earlier of:

10.1 the Accepted End Time as specified in a Stop Instruction;

10.2 the Maximum Run Time from the Accepted Start Time;

10.3 the end time of the Capability Request; and

10.3 three (3) hours from the Accepted Start Time.

11. The Company shall communicate with the Provider by email, API, or any other method as agreed between the Company and the Provider.

12. The Utilisation Instruction and/or Stop Instruction will notify the Provider in respect of a Flexible Unit, the Accepted Start Time and/or Accepted End Time to be in the future. In the event that the Accepted Start Time or Accepted End Time relative to the time of the Utilisation Instruction and/or Stop Instruction is less than the Response Time of the Flexible Unit as set out in Schedule 1, the Accepted Start Time or Accepted End Time shall be deemed to be the Response Time from the time of the instruction.

13. The Company may in its absolute discretion provide more than one Utilisation Instruction and Stop Instruction per Service Window.

14. The Company may introduce new systems, forms and processes from time to time. The Company will consult and communicate any changes with the Provider and the Provider shall act reasonably in implementing such new systems, forms and processes.

Notification of Unavailable DER

15. If the Provider is aware that the Flexible Unit will not be Available for any upcoming Service Period:

15.1. the Provider shall notify the Company that it is Unavailable by e-mail using the form in Appendix A to this Schedule 4, as soon as reasonably practicable (and in any event, within twenty four (24) hours of becoming aware) (“**Unavailability Notification**”).

16. Whilst a Flexible Unit is deemed Unavailable in accordance with Section 16 of this Schedule:

16.1. the Company shall not issue the Provider with any Discretionary Utilisation Instructions until the Provider has notified the Company that the Flexible Unit is Available in accordance with Section 17 of this Schedule 4.

17. The Provider shall use reasonable endeavours to procure that the Flexible Unit is made Available as soon as reasonably practicable and unless already specified in the Unavailability Notification, the Provider shall notify the Company as soon as reasonably practicable after becoming aware that the Flexible Unit is now Available by email using the form set out in Appendix A to this Schedule 4 (“**Remedy Notification**”).

Variations to Discretionary Utilisation Instructions

18. Following a Utilisation Instruction, the Company may, subject to and in accordance with the Contract, notify the Provider by telephone and/or email of a variation to the terms of the Utilisation Instruction. The Provider shall act reasonably and without delay in implementing such variation in accordance with its terms.

Reporting processes and requirements

19. The Provider shall submit to the Company a Performance Report in accordance with Sections 2 and 3 of Schedule 5 by email or by any other method agreed by the Company.

Escalations process

| <i>Escalation Level</i> | <i>Company Representative</i> | <i>Service Provider Representative</i> |
|-------------------------|--|--|
| 1 | <i>Relevant Company Authorised Person</i> | [●] |
| 2 | <i>Relevant Company Manager/Commercial Manager</i> | [●] |
| 3 | <i>Relevant Company Performance Manager</i> | [●] |

APPENDIX A TO SCHEDULE 4

FORM OF UNAVAILABILITY NOTIFICATION

In accordance with Clause 3.1 of the Agreement and Section 15 of Schedule 4, this is a notification of Unavailability of Flexibility Services.

| | | |
|------------------------|--|--|
| <i>Company Name:</i> | | |
| <i>Zone ID:</i> | | |
| <i>Flexible Unit:</i> | | |
| <i>From Date/Time:</i> | | <i>[Unavailable from]</i> |
| <i>To Date/Time:</i> | | <i>[Unavailable to]</i> |
| <i>Reason:</i> | | |
| <i>Name:</i> | | <i>[of individual making notification]</i> |
| <i>Date:</i> | | <i>[of notification]</i> |

FORM OF REMEDY NOTIFICATION

In accordance with Clause 3.1 of the Agreement and Section 14 of Schedule 4 this is a Remedy Notification.

| | | |
|------------------------|--|--|
| <i>Company Name:</i> | | |
| <i>Zone ID:</i> | | |
| <i>Flexible Unit:</i> | | |
| <i>From Date/Time:</i> | | <i>[Available from]</i> |
| <i>Reason:</i> | | |
| <i>Name:</i> | | <i>[of individual making notification]</i> |
| <i>Date:</i> | | <i>[of notification]</i> |

SCHEDULE 5
PERFORMANCE MONITORING

Monitoring by the Company and performance reporting

1. The availability of Flexibility Services and the amount of Flexibility Services delivered from a Flexible Unit shall be monitored by the Company from time to time.
2. Without prejudice to the generality of Section 1 of this Schedule 5, the Company shall assess the amount of Flexibility Services delivered from a Flexible Unit by reference to a Performance Report. The Provider shall submit to the Company a Performance Report by email or by any other method agreed by the Company (i) within seven (7) days following a request from the Company, and (ii) monthly during the Service Period, submitted no later than the tenth Business Day of the following month.
3. Without prejudice to the generality of Section 1 and 2 of this Schedule 5, for the purpose of monitoring the amount of Flexibility Services delivered from a Flexible Unit, the Provider shall include minute by minute or half-hourly data associated with each active DER covering a period of time satisfactory to the Company in the Performance Report.
4. At the request of the Company, the Provider shall make available to the Company technical information in relation to the meter at the DER, including but not limited to a manufacturers test certificate, single line diagram, and technical information from the manufacturer of the meter, which sets out the typical errors of the meter.

Proving test

5. The Provider shall undertake and pass the Proving Test in relation to the Flexible Unit in accordance with Sections 5-16 of this Schedule 5 at least one (1) week (or as otherwise agreed by the Company) before the start of the Delivery Season..
6. The Provider shall ensure that all DER's required to deliver Flexibility Services in accordance with Schedule 1, are ready to provide Flexibility Services by the start of the relevant Delivery Season, but (where relevant) no later than the date of a Proving Test pursuant to Section 5 of this Schedule 5.
7. Where the Provider is unable to undertake the Proving Test at least one week before the start of the Delivery Season for the Flexible Unit, then the Company shall be entitled to remove the Flexible Unit from the Agreement automatically on written notice.
8. The Provider shall propose a date for the Proving Test in relation to a Flexible Unit as required under Section 5 of this Schedule 5, with a view to (acting reasonably) agreeing the detailed programme for the Proving Test consistent with the principles in Section 9 of this Schedule 5.
9. The Proving Test shall assess, in respect to the Flexible Unit, the Provider's ability to:

9.1 Receive and respond to instructions from the Company;

9.2 Deliver its Flexible MW by the Response Time;

9.3 Sustain its Flexible MW for an agreed fixed period; and each DER within the Flexible Unit.

9.4 Demonstrate delivery from the metered data from

The Provider shall make available to the Company the relevant metered data as soon as reasonably practicable but no later than seven (7) days from the date of the Proving Test.

10. The Provider has the right to request a retest on one occasion in case they were not able to demonstrate the full contracted capabilities of the Flexible Unit in Schedule 1. The outcome of the second Proving Test shall be conclusive even if it results in lower Flexible MW than the first Proving Test.

11. Subject to Section 9 of this Schedule 5, where the outcome of the Proving Test evidences less Flexible MW than the parameter in Schedule 1, the Company shall update the Flexible MW of the Flexible Unit in Schedule 1 in accordance with the outcome of the Proving Test.

12. Where the Flexible Unit is determined by the Company to have failed the Proving Test, the Company shall notify the Provider thereof as soon as reasonably practicable thereafter, and the Flexible Unit shall be deemed to be unavailable with effect from the date and time of the failed Proving Test, and the Company will not issue the Provider with any Utilisation Instructions until the Provider passes a repeat Proving test in accordance with Clause 13 of this Schedule 5.

13. The Provider shall arrange with the Company a repeat of a Proving Test to take place during the period of fourteen (14) days after notification of a failed Proving Test. The availability of the Flexible Unit shall be deemed to have been restored if during this period the Provider passes the repeat Proving Test.

14. Each Party shall bear its own cost in relation to a Proving Test, and no Utilisation Fee shall be paid by the Company to the Provider in respect of any Flexibility Services conducted pursuant to Section 5-16 of this Schedule 5.

15. The Company shall have the right to access and attend the DER used by the Provider and the Provider's site of Flexible Unit management to witness the Proving Test, and the Provider shall allow or procure for the Company such access to the DER.

16. Where the Provider has in respect of a Flexible Unit failed two consecutive Proving Tests conducted in accordance with Sections 5-16 of this Schedule 5, the Company may at its absolute discretion, remove the Flexible Unit from this Contract in writing to the Provider at any time.

| Flex Zone | Delivery Season | Start Date | End Date | Proving Test Date | Flex MW |
|-----------|-----------------|------------|----------|-------------------|---------|
| | | | | | |

| | | | | | |
|--|--|--|--|--|--|
| | | | | | |
| | | | | | |

Monitoring by the provider

- 17. The Provider shall install and commission all necessary communication and monitoring equipment to be able to provide Flexibility Services in accordance with this Agreement, which shall include but not be limited to receiving instructions from the Company in accordance with Schedule 4.
- 18. The availability and delivery of Flexibility Services from the DER shall be monitored and metered by the Provider for the duration of the Contract.
- 22. The Provider shall make available to the Company in accordance with Sections 1-5 of this Schedule 5, minute by minute or half-hourly meter data for all DER's measured in MW active Power, metered from the point of common coupling with the Network, or at the terminals of the DER where so approved by the Company.

SCHEDULE 6
DESPATCH SYSTEMS/TECHNICAL REQUIREMENTS

NOT USED

SCHEDULE 7 - SPECIAL REQUIREMENTS

Additional Definitions

In this Agreement, the following words and expressions shall have the following meanings:

| | |
|---|---|
| “Baseline Methodology” | means the methodology set out in this Schedule 7; |
| “Capability Declaration” | means in respect of a Flexible Unit, a notice of capability to provide Flexibility Services in accordance with Section 8 of Schedule 4; |
| “Capability Parameters” | means the parameters as specified in Schedule 2; |
| “Capability Request” | means a request to provide a Capability Declaration in accordance with section 7 of Schedule 4; |
| “Code of Practice” | means the code which details the technical requirements for metering systems (https://www.elexon.co.uk/bsc-and-codes/bsc-related-documents/codes-of-practice/); |
| “Delivery Season” | means the months and days as set out in Schedule 1; |
| “Discretionary Utilisation Baseline” | means the baseline calculated using the methodology set out in Section 1 of this Schedule 7; |
| “Flexible Unit” | means a DER, or notional DER consisting of two or more DERs, as set out in Schedule 1; |
| “Maximum Run Time” | means the maximum time that the Flexible MW can be delivered continuously from a Flexible Unit per Service Window as specified in Schedule 1; |
| “Payment Certificate” | means a statement from the Company of Availability Fees and Utilisation Fees; |
| “Response Time” | means the time from the Utilisation Instruction to delivery of the Flexible MW as specified in Schedule 1; |
| “Unavailability Notification” | has the meaning given to it in Section 13 of Schedule 4. |

Baseline Methodology

Discretionary Utilisation Baseline (Dynamic Product)

1. The Discretionary Utilisation Baseline shall be either:

1.1 Last observation baseline: This baseline is defined as the average output of the FU in the last full half hour preceding a Utilisation Instruction.; or

1.2. Recent history baseline: For a Utilisation Instruction on a weekday, the baseline is calculated as the average metered output across the five most recent weekdays preceding the Utilisation Instruction (excluding prior utilisation event days). The average is calculated for the time period defined in the Utilisation Instruction. For weekends, the two most recent weekend days will be used.

as applicable to the Flexible Unit, as set out in Schedule 1.