# Flexibility Services Standard Agreement
# **General Terms and Conditions**

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**Website** https://www.neso.energy

~~1.1. Flexibility Services Standard Agreement – General Terms & Conditions~~

~~The baseline Standard Agreement – General Terms & Conditions is set out below.~~

~~**THIS AGREEMENT** is made on [●] 20[●]~~

~~**BETWEEN:**~~

~~[●] (registered number [●]) whose registered office is at [●] (the "**Company**"); and~~

~~**[●] 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~~NESO~~, 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~~NESO ~~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~~NESO ~~will pay the Provider for these Flexibility Services in accordance with this Agreement.~~
3) ~~The Company~~NESO ~~wishes to appoint the Provider to provide the Flexibility Services and the Provider has agreed to provide the Flexibility Services to the Company~~NESO~~, on and subject to the terms and conditions contained herein.~~

~~IT IS AGREED:~~

## ~~Glossary and Interpretation~~

~~1. Introduction~~

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

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

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

## 1. Defined Terms

1.1. Unless the context otherwise requires, terms used in these General Terms and Conditions shall have the meanings given to each (if any) in the Glossary of General Terms and Rules of Interpretation or (to the extent included therein) in any Service Glossary.

## 2. Rules of Interpretation

2.1. The rules of interpretation set out in the Glossary of General Terms and Rules of Interpretation shall apply to these General Terms and Conditions.

~~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.~~

~~2.1.6. A table of contents and headings are for convenience only and shall be ignored in construing the terms of the Agreement.~~

~~2.1.7. 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.~~

~~2.1.8. 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.~~

~~2.1.9. 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.~~

~~2.1.10. The Parties shall interpret and perform this Agreement in a manner that gives effect to any Flexibility Market Rule which is in force and which prescribes requirements for the performance, administration, calculation or assessment of any obligation under or in connection with this Agreement, as introduced, amended, replaced or supplemented from time to time in accordance with the Market Facilitator Change Management Process, without the Parties being required to re-sign or amend this Agreement.~~

~~2.1.11. Priority of documents~~

~~2.1.12. If there is any conflict or ambiguity between a Flexibility Market Rule referred to in paragraph A2.6 and any provision of this Agreement, the following order of priority shall apply, but only to the extent of the conflict:~~

~~2.1.13. the relevant Flexibility Market Rule referred to in paragraph A2.6;~~

~~2.1.14. Associated Documents; and~~

~~2.1.15. General Terms and Conditions and Glossary.~~

~~2.1.16. Nothing in paragraph A2.6 or A2.7 shall require a Party to act contrary to Applicable Law, any applicable licence condition, any applicable Industry Code, or any regulatory approval requirement.~~

## 3. ~~Glossary~~General Terms and Conditions

~~In the Agreement, any capitalised terms not listed in this glossary shall have the meaning given to the term in the Market Facilitator Global Glossary. Subject to the aforementioned and 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:~~

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| ~~**“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~~ |

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| | ~~"**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 CompanyNESO which states (howsoever expressed) that it is governed by or subject to this Glossary and Rules of Interpretation, 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 CompanyNESO for the duration of the Service Window;~~ |
| ~~**"Availability Payment"**~~ | ~~as may be defined in the Service Terms (or by any equivalent term defining payments to be made by NESO to the Provider for making a Flexibility Service Available); has the meaning given to it in the Service Terms;~~ |
| ~~**"Balancing Services Activity"**~~ | ~~has the meaning attributed to it in the NESO's 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 CompanyNESO is located in England and Wales and in the City of Edinburgh where the CompanyNESO is located in Scotland;~~ |
| ~~**"Business Hours"**~~ | ~~between 9:00 am and 5:00 pm on a Business Day;~~ |
| ~~**"Change in Ownership"**~~ | ~~means:~~<br>~~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~~<br>~~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;~~ |

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| **"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 Transmissionany part of the 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 CompanyNESO 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 CompanyNESO, 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 **Error! Reference source not found.**7.1of the General Terms and Conditions; |
| **"Defect"** | an issue that may arise with the DER equipment, metering or the communication interface between the CompanyNESO 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 a Distribution System Operatorthe holder of a Distribution Licence; |
| **"Distribution System Operator"** | an owner and/or operator of a Distribution System holding a Distribution Licence; |

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| ~~**"DSO Flexibility Services"**~~ | ~~flexibility services provided to a Distribution System Operator within the scope of the Governance Framework Document which give the Distribution System Operator the ability to manage the load at a specific point of its electricity network at certain points in time;~~ |
| ~~**"Expert"**~~ | ~~an independent expert appointed for the purposes of expert determination;~~ |
| ~~**"Flexibility Services"**~~ | ~~meansthe applicable NESO Services , 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;~~ |
| ~~**"Flexibility Market Catalogue"**~~ | ~~means the catalogue of all relevant parameters (as defined in the Flexibility Market Rules), as set out in the Implementation Monitoring Governance Document~~ |
| ~~**"Flexibility Market Rule"**~~ | ~~means any rule, document or requirement designated by the Market Facilitator as a Flexibility Market Rule, as amended from time to time in accordance with the Market Facilitator Change Management Process, subject to any applicable regulatory approval.~~ |
| ~~**"Force Majeure Event"**~~ | ~~any event or circumstance which is beyond either the CompanyNESO'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"**~~ | ~~these 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;~~ |
| ~~**"Glossary of General Terms and Rules of Interpretation"**~~ | ~~the document of that title published by NESO from time to time;~~ |
| ~~**"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;~~ |

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| ~~**"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 CompanyNESO is located in England and Wales or alternatively Scotland where the CompanyNESO 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;~~ |
| ~~**"Market Facilitator"**~~ | ~~means the Market Facilitator role performed in accordance with the Authority's decision letter dated 29 July 2024 and pursuant to the Governance Framework Document;~~ |
| ~~**"Material Adverse Effect"**~~ | ~~any event or circumstance which, in the opinion of the CompanyNESO:~~<br>~~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~~<br>~~b) is likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the CompanyNESO;~~ |
| ~~**"MPAN"**~~ | ~~meter point administration number;~~ |
| ~~**"MSID"**~~ | ~~metering system identifier;~~ |
| ~~**"NESO"**~~ | ~~means National Energy System Operator Limited (company number: 11014226) (and any successor to its role);~~ |
| ~~**"NESO Licence"**~~ | ~~the Electricity System Operator Licence treated as granted to NESO under section 6(1)(da) of the Act;~~ |
| ~~**"NESO Service"**~~ | ~~has the meaning given in the NESO Licence;~~ |
| ~~**"Network"**~~ | ~~that part of the System (including a Distribution System) adjacent to which the relevant DER and/or Site is locatedthe electricity network operated by the Company to which the DER is connected;~~ |

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| ~~**"Non-Terminating Party"**~~ | ~~has the meaning given in paragraph **Error! Reference source not found.**7.4 of the General Terms and Conditions;~~ |
| ~~**"Party"**~~ | ~~each of the CompanyNESO 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 CompanyNESO to the Provider or by the Provider to the CompanyNESO from time to time;~~ |
| ~~**"Personal Data"**~~ | ~~has the meaning given to it in Data Protection Law;~~ |
| ~~**"Plant"**~~ | ~~fixed and movable items used in the generation and/or supply and/or transmission and/or distribution of electricity other than Apparatus;~~ |
| ~~**"Retail Energy Code"**~~ | ~~the retail energy code administered by the Retail Energy Code Company Ltd;~~ |
| ~~**"Rules of Interpretation"**~~ | ~~the rules of interpretation set out under the heading Rules of interpretation;~~ |
| ~~**"Service Failure"**~~ | ~~as may be defined in the Service Terms (or by any equivalent term defining a failure by the Provider to make available and/or deliver a Flexibility Service);~~ |
| ~~**"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"**~~ | ~~aAs may be defined in the Service Terms (or by any equivalent term defining a period during which NESO requires delivery of a Flexibility Service);~~ |
| ~~**"Service Terms"**~~ | ~~means the service-specific terms applicable to the provision of Flexibility Services for the relevant sub-market, as published by the CompanyNESO, which may be set out in one or more documents and may include, where applicable, procurement rules, separate service-specific terms, and any other sub-market documents expressly stated to 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 CompanyNESO, as may be defined in the Service Terms (if applicable) (or by any equivalent term defining such time periods);~~ |
| ~~**"Site"**~~ | ~~means the site or sites 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 CompanyNESO 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 TransmissionNESO 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;~~ |
| ~~**"System"**~~ | ~~has the meaning given in Section 11 of the Connection and Use of System Code;~~ |
| ~~**"TCM"**~~ | ~~transmission constraint management;~~ |
| ~~**"Term"**~~ | ~~the duration of the Agreement as specified by the CompanyNESO in the Service Terms;~~ |
| ~~**"Terminating Party"**~~ | ~~has the meaning given in paragraph **Error! Reference source not found.**7.1 of the General Terms and Conditions;~~ |

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| **"Termination Notice"** | has the meaning given in paragraph **Error! Reference source not found.**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 National Eelectricity Ttransmission Ssystem (NETS), as defined in Section 11 of the Connection and Use of System Code; |
| **"Unavailability"** (or **"Unavailable"**) | a status where the Flexibility Services, in accordance with the Service Requirements, are not Available to be delivered to the CompanyNESO; |
| **"Utilisation Instruction"** | an instruction by the CompanyNESO to the Provider to deliver Flexibility Services; |
| **"Utilisation Payments"** | has the meaning given to itas may be defined in the Service Terms (or by any equivalent term defining payments to be made by NESO to the Provider for delivery of energy including pursuant to a Utilisation Instruction). |



General Terms and Conditions

**Table of Contents**

# 1. Introduction

1.1. These General Terms and Conditions shall apply to the provision of Flexibility Services by the Provider to ~~the Company~~NESO.

1.2. References to the "Agreement" in these General Terms and Conditions mean these General Terms and Conditions, the Glossary of General Terms and Rules of Interpretation, 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~~NESO;

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

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

3.1.6. n~~N~~ot u~~U~~sed;

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

3.1.8. in relation to any Flexibility Service, promptly notify ~~the Company~~NESO of any arrangement, commitment or~~,~~ participation in another F~~f~~lexibility S~~s~~ervice or in a DSO Flexibility Service, or planned outage affecting a DER under an active call off contract, where this could reasonably affect Availability, performance, or delivery of thate Flexibility Service~~s~~. No notification is required for DER not under an active call off contract. For the purposes of the notice to be given by the Provider pursuant to this paragraph 3.1.8, the Provider shall not be required to disclose to ~~the~~

~~Company~~NESO any third-party agreement or commercially sensitive or confidential information;~~.~~

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~~NESO. If ~~the Company~~NESO identifies that the DER is registered with more than one Provider, ~~the Company~~NESO will notify both Providers. The DER will remain registered with the existing Provider until sufficient evidence of the Provider to which the ~~Asset~~ DER is registered has been provided to ~~the Company~~NESO'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~~NESO or commit ~~the Company~~NESO 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~~the Service Terms, four (4) years after expiry or termination of the Agreement where such records relate to Performance Data.

4.3. ~~The Company~~NESO, 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' notice (or such other period as may be specified in the Service Terms or required by Applicable Law)~~-~~, to the Provider and during normal working hours, inspect and review the records, as described in paragraph 4.2 for the purposes of :

4.3.1. verifying the Provider's compliance with its obligations under the Agreement where ~~the Company~~NESO has reasonable grounds to suspect a material breach of the Agreement or other non-compliance by the Provider, including, without limitation, where ~~the Company~~NESO reasonably considers there may be an issue in relation to service delivery, performance, Availability, or whether any required customer consent has been obtained and evidenced;

4.3.2. satisfying any audit, inspection, information or investigation requirement arising under Applicable Law or requested by any regulatory body, including the Authority; or

4.3.3. verifying the Provider's compliance with its obligations under the Agreement on a proactive basis~~, provided that any such audit or inspection under this paragraph 4.3.3 shall be limited to no more than one (1) occasion in any rolling twelve (12) month period~~.

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

4.5. The Provider shall ensure that all paperwork issued by or on behalf of the Provider to ~~the Company~~NESO (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 company duly incorporated and 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.

~~5.1.8.~~5.1.7.

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~~NESO at all times that:

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

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

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

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

5.2.3. it has not, and shall not, in connection with this Agreement, engage in any anti-competitive conduct, including, without limitation, collusion, coordination, signalling, the sharing of competitively sensitive information with any actual or potential provider, or any exclusionary or market-sharing arrangement intended to restrict competition for the provision of Flexibility Services to ~~the Company~~NESO. For the avoidance of doubt, this paragraph 5.2.3 does not prohibit legitimate arm's length commercial arrangements between the Provider and its customers, asset owners or other counterparties, including pricing and revenue arrangements, provided that such arrangements do not involve anti-competitive conduct or breach Applicable Law.

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~~NESO 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~~NESO as required by the ~~Annexes~~Service Terms;

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~~NESO on request) or any other enactment relating to health and safety or standards, the Grid Code, Distribution Code, any Connection Agreement, any agreement for the supply of electricity, any restrictions and conditions attaching to relevant authorisations of the Environment Agency.

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

## 6. Charges and Payments

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

## 7. Termination

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

7.1.1. subject to paragraph 7~~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~~11~~.6 or 11~~1~~.7 of these General Terms and Conditions applies.

~~7.1.~~7.2. Not used.

~~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~~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~~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. paragraph~~s~~ ~~8.3 or~~ 1~~3~~5.10 of these General Terms and Conditions appl~~ies~~y; or

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

~~7.3.~~7.4. Not used.

~~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);
~~7.6.3.~~7.6.4. Not used;
~~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); ~~and~~
~~7.6.11.~~7.6.12. not used; and
~~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~~NESO for approval a final invoice detailing all monies due to it under the Agreement; and

7.8.2. submit to ~~the Company~~NESO 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~~NESO terminates the Agreement as a result of a material and/or persistent breach by the Provider pursuant to paragraph 7~~7~~.1.1, ~~the Company~~NESO may recover from the Provider any and all costs, losses and expenses reasonably incurred by ~~the Company~~NESO 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~~NESO, provided that the liability of the Provider in respect of this paragraph 7.9~~7.7~~9 shall not exceed the Transmission Limit ~~liability cap applicable under the liability cap approach selected by the System Operator under paragraph 10.1~~.

7.10. The Parties agree that any costs, losses and expenses incurred by ~~the Company~~NESO pursuant to paragraph 7.9~~7.7~~9 shall be deemed direct losses and costs of ~~the Company~~NESO and accordingly not be subject to paragraph 10.~~10.~~3.

## 8. ~~Service Failure~~Not used

~~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~~NESO ~~may require the Provider to:~~**

~~8.2.1. provide the Company~~NESO ~~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~~NESO~~'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~~NESO ~~in order to alleviate a Service Failure (as reasonably required in the circumstances).~~

~~8.3. In the event that:~~

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

~~8.3.2. the Provider's proposals are not accepted by the Company~~NESO ~~(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~~NESO ~~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;

~~1.3.0.~~9.2.2. not used; and

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.

~~9.3.~~9.4. Not used.

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

## 10. Liability, Indemnity and Insurance

10.1. Subject to paragraph 10~~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~~

~~10.1.1.~~ Not used; 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,

~~10.1.4.~~

~~[Note: System Operator to use the wording below when applying Option 1 Liability approach – Set cap]~~

~~10.1.5.~~

~~10.1.6.~~and provided further that the liability of any Party in respect of all claims for the losses referred to in this paragraph 10~~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.

~~[Note: System Operator to use the wording below when applying Option 2 Liability approach – cap linked to Relevant Capacity]~~

~~10.1.7.~~10.1.3.

~~and provided further that the liability of any Party under or in connection with the Agreement for all claims for the losses referred to in this paragraph 10.1 arising from the same incident or series of related incidents shall not exceed the applicable capacity-based cap set out below, determined by reference to the Relevant Capacity and whether the relevant DER is connected to the Distribution System or the Transmission System:~~

| ~~**Relevant Capacity**~~ | ~~**Distribution System**~~ | ~~**Transmission System**~~ |
|---|---|---|
| ~~Up to 0.1MW~~ | ~~£20,000~~ | ~~£100,000~~ |
| ~~More than 0.1MW and up to 0.25MW~~ | ~~£35,000~~ | ~~£100,000~~ |
| ~~More than 0.25MW and up to 0.5MW~~ | ~~£50,000~~ | ~~£100,000~~ |
| ~~More than 0.5MW and up to 1MW~~ | ~~£100,000~~ | ~~£100,000~~ |
| ~~More than 1MW and up to 2MW~~ | ~~£150,000~~ | ~~£200,000~~ |
| ~~More than 2MW and up to 5MW~~ | ~~£200,000~~ | ~~£200,000~~ |
| ~~More than 5MW and up to 10MW~~ | ~~£200,000~~ | ~~£300,000~~ |
| ~~More than 10MW and up to 25MW~~ | ~~£200,000~~ | ~~£400,000~~ |
| ~~More than 25MW~~ | ~~£200,000~~ | ~~£500,000~~ |

~~For the purposes of this paragraph 10.1, Relevant Capacity means the aggregate capacity, measured in MW, accepted, awarded, contracted or otherwise committed under the relevant Service Terms or Contract Award for the Flexibility Services from which the relevant claim arises. Where those Flexibility Services are provided through an aggregation or portfolio, Relevant Capacity shall be determined by reference to the aggregate MW of that aggregation or portfolio. The applicable capacity-based cap shall be determined by reference to the Relevant Capacity applicable at the time the matter giving rise to the claim arose.~~

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~~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~~10~~.1.3 and 10~~10~~.2.

10.4. Subject to paragraph 10~~10~~.~~2, and~~2 and save where any provision of the Agreement provides for an indemnity or states that a different cap applies, the liability of any Party in respect of all claims for the losses referred to in paragraph 10~~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~~NESO 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~~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~~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~~.

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~~10~~.

## 11. Transfers, sub-contracting and Change in Ownership

11.1. Where pursuant to paragraph 2~~4~~4:

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

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

11.2. Save as provided for in paragraph 11~~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~~NESO 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 an Electricity System Operator Licence granted under section 6(1)(da) of the Act~~Transmission Licence with responsibility for carrying out the Balancing Services Activity; or (iii) to an Affiliate of the Company but only where such Affiliate of the Company holds a Distribution Licence or a Transmission Licence~~.

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

11.5. Not u~~U~~sed.

11.6. If a Change in Ownership of the Provider occurs, or is proposed to occur, the Provider shall notify ~~the Company~~NESO in writing as soon as reasonably practicable and, where legally and contractually permissible, in advance, and shall provide such supporting information as ~~the Company~~NESO may reasonably require. ~~The Company~~NESO may terminate the Agreement under paragraph 7~~7~~.1.3 in connection with a Change in Ownership only where it reasonably determines that the Change in Ownership has resulted in, or is reasonably likely to result in, a material adverse effect on the Provider's solvency, creditworthiness, satisfaction of any applicable commercial qualification requirements, or ability to perform its obligations under this Agreement.

11.7. A solvent intra-group reorganisation shall not of itself entitle ~~the Company~~NESO to terminate this Agreement. ~~The Company~~NESO may only terminate under paragraph 7~~7~~.1.3 in connection with such a reorganisation where:

(a) ~~the Company~~NESO has notified the Provider in writing of the grounds for its concern in reasonable detail;

(b) the Provider has been given a reasonable opportunity to provide information and, where applicable, proposals to address those concerns; and

(c) following consideration of that information, ~~the Company~~NESO reasonably determines that the reorganisation has resulted in, or is reasonably likely to result in, a material adverse effect on the Provider's solvency, creditworthiness, satisfaction of any applicable commercial qualification requirements, or ability to perform its obligations under this Agreement.

## 12. Confidentiality

12.1. ~~The Company~~NESO is required to disclose certain information in accordance with this Agreement under obligations within its ~~Distribution Licence or Transmission~~NESO 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. ~~The Company~~NESO, as applicable, shall be entitled to share information relating to the Agreement for the purpose of industry coordination in relation to network or system constraint management, electricity network optimisation and the management of actual or potential conflicts between flexibility services, and ~~the Company~~NESO shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or ~~the Company~~NESO's activities under the Agreement. It shall not be a breach of this paragraph 12~~2~~ where ~~the Company~~NESO 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. NESO planning outputs;

12.1.6. distribution~~Company~~ outages;

12.1.7. transmission outages; and

12.1.8. any additional ~~Company~~ NESO related information as may be required,

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

12.2. Subject to paragraphs 12~~2~~.1, 12~~2~~.3.4 and 12~~2~~.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~~NESO'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~~2~~.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~~2~~.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~~2~~.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~~2~~.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~~2~~.1, neither Party shall use the name, brands and/or logos of the other Party for any purpose without the other Party's prior written approval (such approval not to be unreasonably withheld or delayed).

## 13. Intellectual Property Rights

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

13.2. All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Agreement and after its termination or expiry, belong to or be licensed to the Party providing that intellectual property and neither Party shall make any use of the other Party's intellectual property other than to the extent reasonably necessary in performing its obligations pursuant to the Agreement, provided that nothing in this paragraph 13~~3~~.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:
neither Party nor any of its officers, employees, agents or subcontractors:

~~1.1.1.~~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;

~~1.1.2.~~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;

~~1.1.3.~~15.1.3. they shall notify the other Party without delay in writing if they become aware of, or have reason to believe, that they, or any of their officers, employees, agents or subcontractors, have breached or potentially breached any obligations under this paragraph 15~~5~~.1. Such notice may initially be given on the basis of the information then available and shall be supplemented, following reasonable investigation, with such further details as are reasonably available concerning the circumstances of the breach or potential breach;

~~1.1.4.~~15.1.4. they shall use reasonable endeavours to ensure that contracts with subcontractors and suppliers engaged in connection with the provision of the Flexibility Services include anti-slavery and human trafficking provisions which are appropriate to the nature of the relevant subcontract or supply arrangement and which are intended to support compliance outcomes consistent with those set out in this paragraph 15~~5~~.1; and

~~1.1.5.~~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. Each Party (the "Indemnifying Party") shall indemnify the other Party against any losses, incurred by or awarded against that other Party, as a result of any breach by the Indemnifying Party of anti-slavery and human trafficking laws, statutes, regulations and codes or the Modern Slavery Act 2015. Such~~,~~

~~provided that the~~ liability of the Indemnifying Party under this paragraph 1~~5~~5.2 shall be uncapped.~~not exceed [£ ● ].~~

~~[Note: System Operator to insert their respective cap]~~

15.3. The Provider will permit ~~the Company~~NESO 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 1~~5~~5. 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~~NESO 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~~NESO 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~~NESO or any other Affiliate of ~~the Company~~NESO 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~~NESO or any Affiliate of ~~the Company~~NESO, 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~~NESO or any other Affiliate of ~~the Company~~NESO 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~~NESO and has been approved by ~~the Company~~NESO before execution of the Agreement.

15.7. Each Party (the "Indemnifying Party") shall indemnify the other Party against any losses incurred by or awarded against that other Party as a result of any breach by the Indemnifying Party of anti-corruption and anti-bribery laws, statutes, regulations and codes or the Bribery Act 2010~~,~~. Such ~~provided that the~~ liability of the Indemnifying Party under this paragraph 155.7 shall be uncapped.~~not exceed [£ ● ].~~

~~[Note: System Operator to insert their respective cap]~~

15.8. The Provider agrees to provide ~~the Company~~NESO 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 155 by the Provider shall be deemed a material breach of the Agreement for the purposes of paragraphs 77.1.1 and 77.9.

## 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; and

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 the purposes of notices of the Agreement, where agreed between the Parties. Such email notices shall be deemed to have been received on the Day of sending, or where outside of Business Hours on the first Business Day thereafter.

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

16.5. This paragraph 16~~6~~ 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~~7~~.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. a~~A~~rbitration; or

17.3.2. an Expert for determination (insofar as permitted or required by any relevant provision in the applicable Service Terms); or

17.3.3. such other process as is agreed between the Parties.

17.4. For the avoidance of doubt, paragraphs 17~~7~~.2 and 17~~7~~.3 shall not preclude a Party from raising arbitration proceedings (or where other processes have been agreed under paragraph 17~~7~~.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 15~~7~~ would not be suitable~~-~~.

17.5. In the event that the Parties cannot agree any other process under paragraph 17~~7~~.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~~7~~.3.1 to arbitration, the following provisions shall apply:

17.6.1. The rules of the London Court of International Arbitration shall apply unless otherwise agreed in writing by the Parties;

~~17.6.1.~~17.6.2. ~~If the Company is incorporated in England and Wales, t~~The seat of arbitration shall be London~~. If the Company is incorporated in Scotland, the seat of arbitration shall be Edinburgh~~;

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

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

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

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

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

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

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

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

*Expert determination*

17.7. Where any dispute is referred in accordance with paragraph 17~~7~~.3.2 to an Expert for determination, the following provisions shall apply:

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

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

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

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

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

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

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

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

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

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

## 18. Severance

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

18.2. ~~The Company~~NESO 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~~Not used

~~Where executed in counterparts:~~

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

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

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

## 24. Governing Law and Jurisdiction

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

~~***[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*~~ *e* | | |
| ~~***[COMPANY]***~~ | ~~)~~ | ~~.........................................~~ |
| | | ~~Director/Duly Authorised Signatory~~ |

| | | |
|---|---|---|
| ~~*Signed*~~ | ~~)~~ | |
| | ~~)~~ | |
| | ~~)~~ | |
| ~~*for and on behalf of:*~~ | | |
| ~~***[PROVIDER]***~~ | ~~)~~ | ~~……………………………………~~ |
| | | ~~Director/Duly Authorised Signatory~~ |