

FRAMEWORK CONTRACT

BETWEEN

UK POWER NETWORKS (OPERATIONS) LIMITED

AND

[]

FRAMEWORK CONTRACT FOR THE PROVISION OF FLEXIBILITY SERVICES

UK POWER NETWORKS (OPERATIONS) LIMITED
NEWINGTON HOUSE
237 SOUTHWARK BRIDGE ROAD
LONDON
SE1 6NP

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THIS CONTRACT is made the _____ day of _____ 2019

BETWEEN:

1. **UK Power Networks (Operations) Limited** (registered number 3870728) whose registered office is at Newington House, 237 Southwark Bridge Road, London SE1 6NP including its successors and assigns ("the Company");

AND

2. [_____] (registered number [_____]) whose registered office is at [_____] ("the Provider").

WHEREAS:

- (A) The Company is entering into agreements with various providers (including the Provider) whereby the provider intends for the purposes of the Contract to have operational control over the Facility comprised in the Flexible Unit contracts to provide Flexibility Services to Zones as set out in the Schedules. Such Flexibility Services relate to actions taken by the provider either to reduce consumption or increase generation to help manage the local electricity network and is typically taken at times of peak electricity demand as described in this Contract.
- (B) This Contract sets out the terms on which the Provider will offer such Flexibility Services to the Company in relation to the identified Zones as listed in Schedule Two. The Provider has agreed to supply the Flexibility Services on the terms and conditions contained in this Contract.

NOW THE PARTIES AGREE as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In the Contract the following words and expressions shall have the following meanings:-

- | | |
|------------------------------|--|
| "Accepted End Time" | means the date and time (to the nearest minute) as notified in accordance with Clause 11 at which the Accepted MW is no longer required to be delivered; |
| "Accepted MW" | means the MW accepted in accordance with Clause 11; |
| "Accepted Start Time" | means the date and time (to the nearest minute) as notified in accordance with Clause 11 at which the Accepted MW shall be delivered; |
| "Act" | means the Electricity Act 1989 or any amendment and re-enactment thereof; |

“Active Facility”	means a Facility providing Flexibility Services at any given time as declared by the Provider in the Performance Report;
“Active Power”	means the product of voltage and the in-phase component of alternating current measured in units of Watts and standard multiples thereof i.e: 1000 Watts = 1kW 1000 kW = 1MW 1000 MW = 1GW;
"Affiliate"	means a company or corporation which is:- (i) the ultimate Holding Company of that company; (ii) a Subsidiary of that company; (iii) a Subsidiary of the ultimate 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;
“Allocation Process”	means the process to allocate new, re-allocate, or remove Facilities from and to Flexible Units as set out in Schedule Four;
“Alternate Baseline”	means the baseline methodology as set out in Schedule Six;
"Authority"	means the gas and electricity markets authority appointed for the time being pursuant to the Act;
“Availability Payment”	means the payment calculated in accordance with Schedule Five;
“Background IPR”	means any and all Intellectual Property Rights that are owned by or licensed to either party and which are or have been developed independently of this Agreement (whether prior to the Commencement Date or otherwise);
“Bespoke Baseline”	means the baseline methodology as set out in Schedule Six;
"Business Day"	means a day on which clearing banks in the City of London are open for normal banking transactions;
“Capability Parameters”	means the parameters as specified in Schedule Two;

“Cease Instruction”	means an instruction to stop delivering the Flexibility Services in accordance with Clause 9;
"Change of Control"	means change of control as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company;
"Commencement Date"	shall be [] 2019;
"Company’s Staff"	means the Company’s employees, officers, agents or subcontractor’s but does not include Staff;
"Competent Authority"	means the Secretary of State, the Authority, or any local or national agency, authority, department, inspectorate, regulatory body, minister, ministry official, statutorily constituted consumer committees and other representative bodies, or public or statutory person (whether autonomous or not) of the government of the United Kingdom or of the European Community, acting ostensibly within its authority;
"Confidential Information"	<p>means all information in respect of the business and financing of any of the Distribution Licensees and /or the Company including:</p> <ul style="list-style-type: none"> (i) any payment methods, finance, prices; (ii) business processes and documentation; (iii) data; (iv) a relevant Distribution Licensee’s distribution business; (v) information received as a result of performance of the Flexibility Services; <p>in connection with the Flexibility Services and other services provided to the Company before the date of this Contract;</p>
"Contract"	means this framework contract including the Schedules and any Appendices thereto;
“Data Protection Legislation”	means all legislation and regulations relating to the protection of personal data including without limitation (i) the UK Data Protection Act 2018 (ii) the EU General Data Protection Regulation 2016 (Regulation 2106/679) or “ GDPR ”) and any applicable Member State national laws related to derogations under the GDPR (iii) the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 (which implement the EU e-privacy Directive (Directive 2002/58/EC)), as amended from time to time, and (iv) all other applicable data privacy

and information security laws and regulations, as well as any guidance and/or mandatory codes of practice issued from time to time by the UK Information Commissioner relating to the processing of personal data or privacy;

“Default Baseline”	means the baseline methodology as set out in Schedule Six;
“Deficiency”	means a percentage calculated as set out in Schedule Four;
“Delivery Season”	means the months and days as set out in Schedule Two;
"Dispute Resolution Procedure"	means the procedure set out in Clause 29 for resolving disputes between the Parties;
"Distribution Licensees"	means any one or more of Eastern Power Networks plc (company number 2366906), London Power Networks plc (company number 3929195) and South Eastern Power Networks plc (company number 3043097), UK Power Networks (IDNO) Limited (company number 06489447) and any other holder of a licence issued under section 6 of the Electricity Act 1989 within the same group of companies as the Company;
“Distribution System”	means the system for the distribution of electricity;
"Electrical Line and Electrical Plant"	means the definition of electrical plant and electric lines in section 64 (1) of the Act;
“Event of Default”	has the meaning set out in Clause 16;
“Facility”	means the machinery, apparatus, materials, articles and items of any kind utilised for the provision of the Flexibility Services;
“Fee Parameters”	has the meaning set out in Schedule Two;
“Flexibility Services”	means the delivery onto the Distribution System of an increase in export or a reduction in import of Active Power specified in a Utilisation Instruction and provided in accordance with the terms of this Contract;
“Flexible MW”	means the parameter set out in Schedule Two;
“Flexible Unit”	means a Facility, or notional Facility consisting of two or more Facilities, as set out in Schedule One;
“End Time”	means the date and time (to the nearest minute) as

notified in accordance with Clause 9 at which the Flexible MW is no longer required to be delivered;

"Good Industry Practice"

means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking seeking in good faith to comply with its contractual obligations, complying with all applicable law, statute, regulations and codes of practice under the same or similar circumstances and having regard to applicable British and European standards;

"Indirect Loss"

means without limitation loss of use, loss of production, loss of profits, loss of contract, pure economic loss, loss of business, depletion of goodwill, loss of bargain and any consequential loss of whatever nature;

"Intellectual Property Rights"

means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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;

"Legislation"

means:

- (i) any Act of Parliament or subordinate legislation within the meaning of section 21(1) Interpretation Act 1978; or
- (ii) any exercise of the Royal Prerogative and any enforceable community right within the meaning of the European Communities Act 1972; or
- (iii) any guidance, regulation, direction, Standards or Codes of Practice, determination or instruction of the Secretary of State, the Authority or Audit Commission or other Competent Authority

	with which the Provider and/or the Company is bound to comply; in each case within the United Kingdom, European Community or the European Union;
"Losses"	means any direct loss, damage, cost or expense;
"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 Two;
"Maximum Utilisations"	means the maximum number of times that Flexibility Services can be delivered in a Service Window as specified in Schedule Two;
"Metered Time Period"	means the time interval of the meter data;
"Optional Service Period"	means in respect of a Flexible Unit, periods during the term of the Contract that are not Service Periods;
"Optional Services"	means a request made under Clause 11;
"Optional Utilisation Baseline"	means the baseline methodology used for payment of Optional Services specified in Schedule Two;
"Optional Utilisation Fee"	means the fee for providing Optional Services as specified in Schedule Two;
"Optional Utilisation Request"	means a request for Flexibility Services from the Company in respect of a Flexible Unit during an Optional Service Period;
"Party"	means the Provider or the Company and "Parties" shall be construed accordingly;
"Payment Certificate"	means a statement from the Company of Availability Payments and Utilisation Payments;
"Performance Report"	means a report in relation to each Active Facility in a Flexible Unit, based on minute-by-minute meter readings, providing details of the availability and delivery of Flexibility Services prepared by the Provider in a form satisfactory to the Company and submitted in accordance with Sub-Clause 6.2;
"Proving Test"	means the test(s) in accordance with Clause 7;
"Post Tender Milestones"	means the milestones to be satisfied by the PTM Date as defined in Schedule Three;
"PTM Date"	means the date(s) as set out in Schedule Three;

“Recovery Time”	means the time from the End Time of the previous instruction to the earliest Start Time of the next instruction prior to reaching the Maximum Run Time as specified in Schedule Two;
“Reference Days”	means the five days used to calculate the Default Baseline in accordance with Schedule Six;
“Reference Years”	means the year used to calculate the Default Baseline in accordance with Schedule Six;
“Remedy Notification”	means in respect of a Flexible Unit, a notification from the Provider informing the Company of availability following an Unavailability Notification;
“Requested End Time”	means the date and time (to the nearest minute) as notified in accordance with Clause 11 at which the Requested MW is no longer required to be delivered;
“Requested MW”	means the MW requested in accordance with Clause 11;
“Requested Start Time”	means the date and time (to the nearest minute) as notified in accordance with Clause 11 at which the Requested MW shall be delivered;
“Response Time”	means the time from the Utilisation Instruction to delivery of the Flexible MW as specified in Schedule Two;
“Service Period”	means the period as specified in Schedule Two;
“Service Window”	means a continuous period of time during the day as defined in Schedule Two;
"Specification"	means the specification set out in Schedule Two and the Flexibility Services specification set out in a Utilisation Instruction;
"Staff"	means any or all of the Provider's employees, officers, agents or Sub-contractors;
“Start Time”	means the date and time (to the nearest minute) as notified in accordance with Clause 9 at which the Flexible MW shall be delivered;
"Sub-contractor"	means any persons or corporate entity who delivers the Flexibility Services on behalf of the Provider;
"Termination Date"	means the date upon which the Contract terminates in

accordance with the provisions of this Contract;

"Third Party"	means any person who is not a Party to this Contract and "Third Parties" shall be construed accordingly;
"Third Party Services"	means services delivered from an Active Facility that materially increase imports or reduce exports of Active Power from the Distribution System relative to the Baseline (MW) including but not limited to balancing services, imbalance management, charging of large energy storage devices and any other similar service;
"Unavailability Notification"	means in respect of a Flexible Unit, a notice of unavailability to provide Flexibility Services in accordance with Clause 10;
"Utilisation Event"	means the period between the Start Time and End Time in accordance with Clause 9;
"Utilisation Instruction"	means an instruction to deliver Flexibility Services in accordance with Clause 9;
"Utilisation Payments"	means payments calculated in accordance with Schedule Five;
"VAT"	means Value Added Tax as provided for in the Value Added Tax Act 1994 and Legislation (whether delegated or otherwise) supplemental thereto or in any primary or secondary Legislation;
"Warranty or Warranties"	means the warranties and representations of the Provider set out in Clause 22;
"Zone"	means the feeding area of the network asset being managed and to which the Flexibility Services is delivered as set out in Schedule Two;

1.2 In the Contract unless the context otherwise requires any reference to

- 1.2.1 a "Sub-Clause", "Clause" or a "Schedule" is a reference to a sub-clause, clause or a schedule in the Contract;
- 1.2.2 the words "includes" and "including" shall be construed as being by way of illustration or emphasis only and shall not be construed nor shall they take effect as limiting the generality of any foregoing words;
- 1.2.3 a statute, statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time;

- 1.2.4 another contract or any deed code of practice or other instrument shall be construed as a reference to that other contract, deed, code of practice or other instrument as the same may have been or may from time to time be amended, varied, supplemented or novated; and
- 1.2.5 the masculine shall include the feminine and any reference to the singular shall include the plural and vice versa in each case.
- 1.3 The Clause and Schedule headings of the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.4 If there is any conflict between any of the provisions in the main body of this Contract and the Schedules the matter shall be determined in accordance with the following order of priority:
 - 1.4.1 the body of this Contract;
 - 1.4.2 the Schedules and Appendices
 - 1.4.3 the Utilisation Instruction

2 NATURE OF CONTRACT

- 2.1 This Contract is a framework contract under which the Company may from time to time procure the provision of the Flexibility Services by the Provider. It is not a guarantee of Utilisation Instructions and does not constitute a contract for the exclusive provision of Flexibility Services. It sets out the terms and conditions which are applicable should the Company procure Flexibility Services from the Provider under this Contract. The Company reserves the right to contract with other providers for the type of work covered by this Contract.
- 2.2 The Provider agrees that the Provider's standard terms of business will not apply to the provision of Flexibility Services.

3 DURATION

- 3.1 This Contract will commence on the Commencement Date and shall continue for a term as set out in Schedule Two unless terminated in accordance with Clause 30, or extended under Clause 3.2.
- 3.2 The Parties may extend the Contract term by written agreement.

4 SERVICES TO BE PROVIDED BY THE PROVIDER

- 4.1 The Parties acknowledge that the Provider hereby agrees to make available and deliver Flexibility Services at the Zone in accordance with the terms of this Contract.

- 4.2 The Provider shall provide the Flexibility Services to the Company using the Flexible Unit(s) in accordance with Schedule Two and as otherwise provided in this Contract.

5 PRE-DELIVERY

- 5.1 The Company shall monitor in respect of a Flexible Unit the Provider's progress in achieving the Service Period, Capability Parameters and Service Requirements as set out in Schedule Two prior to the start of each Delivery Season, by reference to the Post Tender Milestones in Schedule Three. The Provider shall provide to the Company by the PTM Date reasonable evidence of satisfaction of the Post Tender Milestones.
- 5.2 If the Company considers that the requirements of the Post Tender Milestones in respect to a Flexible Unit have not been satisfied and, in the Company's reasonable opinion, there is no reasonable prospect of the Provider being capable of satisfying the Post Tender Milestones within two (2) months after the PTM Date, the Company may choose to remove the Flexible Unit from the Contract by written notice given to the Provider as soon as reasonably practicable after the PTM Date. The Flexible Unit may be re-added to the Contract at the Company's discretion.
- 5.3 For the avoidance of doubt, any incorrect, wrong or inadvertent declaration given by the Provider in attesting to the achievement of any Post Tender Milestones (where applicable) shall constitute a material breach of the terms of this Contract and, in such event, the provisions of Clause 30 shall apply.
- 5.4 The Provider shall undertake and pass the Proving Test in relation to the Flexible Unit in accordance with Clause 7 at least one (1) month (or as otherwise agreed by the Company) before the start of the first Delivery Season, and prior to each Delivery Season thereafter, or when no Delivery Season is specified in Schedule Two, on notification to the Provider by the Company.
- 5.5 The Provider shall ensure that all Facilities in relation to the Flexible Unit required to deliver Flexibility Services in accordance with Schedule Two are notified to the Company at least four (4) months before the start of the Delivery Season through the Allocation Process set out in Schedule Four. Where the Provider fails to notify the Company, the Company shall consider the Provider to have declared that no additional Facilities shall be allocated.
- 5.6 The Provider shall ensure that all Facilities required to deliver Flexibility Services in accordance with Schedule Two, 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 Clause 5.4.
- 5.7 Where the Company determines that the Provider in respect of a Flexible Unit is unable to deliver Flexibility Services in accordance with Schedule Two by the start of the relevant Delivery Season, and in its reasonable opinion there is no reasonable prospect that the Provider will be able to deliver within one month following the start of the Delivery Season, then the Company shall be entitled to remove the Flexible Unit from the Contract automatically on written notice.

6 MONITORING BY THE COMPANY

- 6.1 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.
- 6.2 Without prejudice to the generality of Clause 6.1, the Company shall assess the availability of Flexibility Services and 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.
- 6.3 Without prejudice to the generality of Clauses 6.1 and 6.2, for the purpose of monitoring the amount of Flexibility Services delivered from a Flexible Unit, the Provider shall include minute by minute data associated with each Active Facility covering a period of time satisfactory to the Company in the Performance Report.
- 6.4 The Company reserves the right to collect any meter data that it reasonably requires for the purpose of this Contract 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 Facility, and to perform any action that the Company considers reasonably necessary to facilitate such collection and use of meter data.
- 6.5 At the request of the Company, the Provider shall make available to the Company technical information in relation to the meter at the Facility, 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.
- 6.6 Where the Provider in respect of a Flexible Unit is determined by the Company to have failed to provide Flexibility Services during a Utilisation Event with reference to the Service Requirements in Schedule Two, the Company may notify the Provider (by email) of such failure and that it shall undertake a Proving Test in accordance with Clause 7 within fourteen (14) days from the notification of the failure.

7 PROVING TEST

- 7.1 The Provider shall propose a date for the Proving Test in relation to a Flexible Unit as required under Clause 5.4 and 6.5 within seven (7) Days from receiving notification from the Company, with a view to (acting reasonably) agreeing the detailed programme for the Proving Test consistent with the principles in Clause 7.2.
- 7.2 The Proving Test shall assess, in respect to the Flexible Unit, the Provider's ability to:
- 7.2.1 Receive and respond to instructions from the Company;
 - 7.2.2 Deliver its Flexible MW by the Response Time;

7.2.3 Sustain its Flexible MW for an agreed fixed period; and

7.2.4 Demonstrate delivery from the metered data from each Facility within the Flexible Unit.

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.

- 7.3 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 no Availability Payments shall fall due or payable to the Provider until the Provider is available in accordance with Clause 7.4.
- 7.4 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.
- 7.5 Each Party shall bear its own cost in relation to a Proving Test, and no Utilisation Payment shall be paid by the Company to the Provider in respect of any Flexibility Services conducted pursuant to Clause 7.
- 7.6 The Company shall have the right to access and attend the Facility 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 Facility.
- 7.7 Where the Provider has in respect of a Flexible Unit failed three or more consecutive Proving Tests conducted in accordance with Clause 7, the Company may at its absolute discretion, remove the Flexible Unit from this Contract in writing to the Provider at any time.

8 MONITORING BY THE PROVIDER

- 8.1 The Provider shall install and commission all necessary communication and monitoring equipment to be able to provide Flexibility Services in accordance with this Contract, which shall include but not be limited to receiving instructions from the Company in accordance with Clause 9.
- 8.2 The availability and delivery of Flexibility Services from the Facility shall be monitored and metered by the Provider for the duration of the Contract.
- 8.3 The Provider shall make available to the Company in accordance with Clause 6, minute by minute meter data for all Facilities measured in MW Active Power, metered from the point of common coupling with the Distribution System, or at the terminals of the Facility where so approved by the Company.

9 UTILISATION INSTRUCTIONS

- 9.1 During the Service Period, the Company may, but is not obliged to, issue a Utilisation Instruction specifying for a Flexible Unit:
 - 9.1.1 the identity of the Zone to which the Utilisation Instruction relates;
 - 9.1.2 the Start Time of the Utilisation Instruction; and optionally
 - 9.1.3 the End Time of the Utilisation Instruction.
- 9.2 Where the End Time is not specified in the Utilisation Instruction, the End Time shall be the earlier of:
 - 9.2.1 the end time of the Service Window in which the Start Time occurred; or
 - 9.2.2 the End Time as specified in a Cease Instruction, which shall also specify for the Flexible Unit, the Zone to which the Utilisation Instruction relates.
- 9.3 The Company shall notify the Provider of a Utilisation Instruction and a Cease Instruction either by text, email or telephone, or any such method which is approved by the Company. Any notification made by telephone shall be confirmed by the Company by email.
- 9.4 The Utilisation Instruction and/or Cease Instruction will notify the Provider in respect of a Flexible Unit, a Start Time and/or End Time to be in the future. In the event that the Start Time or End Time relative to the time of the Utilisation Instruction and/or Cease Instruction is less than the Response Time of the Flexible Unit as set out in Schedule Two, the Start Time or End Time shall be deemed to be the Response Time from the time of the instruction.
- 9.5 The Company may in its absolute discretion provide more than one Utilisation Instruction and Cease Instruction per Service Window.
- 9.6 The Provider shall deliver or procure the delivery of Flexibility Services in accordance with each Utilisation Instruction, Cease Instruction, and Schedule Two of the Contract, and Clause 16 (Event of Default) shall apply in respect of any failure by the Provider to comply with this Clause 9.6.
- 9.7 In respect of a Flexible Unit that fails to deliver Flexibility Services in accordance with Utilisation Instructions at a Delivery Performance of at least 60% as calculated in Schedule Five then Clause 16 (Events of Default) shall apply.
- 9.8 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.

9.9 Subject to Clause 15.10, where:

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

9.9.2 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.

9.10 Any exercise by the Company of its rights under clause 9.9 shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

10 DECLARATIONS OF UNAVAILABILITY

10.1 If the Provider is aware that the Flexible Unit will not be available for any upcoming Service Period:

10.1.1 the Provider shall issue to the Company an Unavailability Notification (by e-mail using the form in Schedule Eight) as soon as reasonably practicable of such non-availability (including identification of the affected times); and

10.1.2 thereafter, the Flexible Unit shall be deemed to be not available and, consequently, no Availability Payments shall fall due to the Provider in respect of the Flexible Unit for the times stated in the notification issued by the Provider pursuant to Clause 10.1.1 and 10.3.

10.2 Unavailability Notifications submitted after the Provider has received a Utilisation Instruction from the Company declaring non-availability for time periods during the Utilisation Event will not be a valid notification of non-availability in terms of payments calculated in accordance with Schedule Five.

10.3 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 via a Remedy Notification (by email using the form in Schedule Eight).

10.4 For the avoidance of doubt, any periods of non-availability resulting from having delivered Flexibility Services following instruction from the Company as a result of the Maximum Run Time, Recovery Time, and Maximum Utilisation parameters of a Flexible Unit as set out in Schedule Two, are not deemed as non-availability for the calculation of Availability Payments.

10.5 The Provider shall not provide Third Party Services during the Service Period without the Company's prior written consent. The Provider shall not declare

unavailability in order to provide Third Party Services. Breach of this Clause 10.5 shall constitute a material breach and may result in termination of this Contract.

- 10.6 Subject to Clause 10.4, in respect of a Flexible Unit that fails to be available for at least 70% of the Service Period in a month then Clause 16 (Events of Default) shall apply.
- 10.7 Subject to Clause 10.4, where the Provider fails to provide an Unavailability Notification within twenty four (24) hours of becoming aware that the Flexible Unit is not or will not be available for any Service Period Clause 16 (Events of Default) shall apply.

11 OPTIONAL SERVICES

11.1 The Company may request Flexibility Services from the Provider for Optional Service Periods, by sending an Optional Utilisation Request (by email using the form in Schedule Eight or any other method as approved by the Company) specifying for a Flexible Unit:

11.1.1 the Zone to which the Optional Utilisation Request relates;

11.1.2 the Requested Start Time;

11.1.3 the Requested End Time; and

11.1.4 the Requested MW.

11.2 The Provider may accept the request by responding (by email or any other method as approved by the Company) to the Optional Utilisation Request within fifteen (15) minutes from the time of the request, setting out:

11.2.1 the Accepted Start Time, which cannot be earlier than, but must be no later than thirty (30) minutes from, the Requested Start Time;

11.2.2 the Accepted End Time, which can be no later than the Requested End Time but otherwise has to be at least thirty (30) minutes from the Accepted Start Time; and

11.2.3 the Accepted MW, which shall be at least 0.1MW and can be no greater than the Requested MW.

11.3 Where the Provider fulfils the conditions set out in Clause 11.2, the Provider shall provide the Flexibility Services to the Company using the Flexible Unit(s) in accordance with the Accepted Start Time, Accepted End Time and Accepted MW.

- 11.4 If the Provider fails to respond in accordance with Sub- Clause 11.2 within fifteen (15) minutes from the issue of the Optional Utilisation Request, the Provider will be deemed to have declined the request.
- 11.5 No Utilisation Payments shall be due to the Provider by the Company for any Flexibility Services delivered in excess of the Optional Utilisation Request.
- 11.6 The Provider may set and vary the Optional 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.
- 11.7 The Company may request the Provider to extend the Service Period, and as soon as reasonably practicable after receipt of this request:
- 11.7.1 the Provider shall issue a non-binding indication to the Company whether it reasonably believes that it can provide the request;
 - 11.7.2 the Parties shall discuss and agree in good faith whether the request shall proceed.
- 11.8 In the event that the Parties agree that the request shall proceed, the Parties shall vary Schedule Two in accordance with Clause 17 (and all remaining terms and conditions of this Contract shall apply, to the extent applicable).

12 ASSIGNMENT, SUB-CONTRACTING AND TRANSFER

- 12.1 The Provider shall not assign any of its rights or benefits, or sub-contract any of its duties or obligations under the Contract to any Third Party without the prior written consent of the Company. The Company may assign any of its rights or benefits under this Contract to a Third Party without the Provider's consent.

13 CONTRACT PERSONNEL

- 13.1 The Company and the Provider shall each appoint a representative whose names are to be given to the other Party and be updated from time to time as necessary. These persons shall be responsible for ensuring the performance of this Contract.

14 PROVIDER'S PERFORMANCE OBLIGATIONS

- 14.1 The Provider shall provide the Flexibility Services in no order of precedence in accordance with
- 14.1.1 the Contract;
 - 14.1.2 the Specification; and
 - 14.1.3 Good Industry Practice.

- 14.2 It is agreed that it is the responsibility of the Provider to have satisfied itself prior to providing Fee Parameters to have raised in writing with the Company any queries or matters requiring clarification before any Flexibility Services are provided. To the extent that the Provider has not raised such queries or sought such clarification in this manner the Provider shall be deemed to be satisfied with and have accepted all such details and requirements provided by the Company for all purposes.
- 14.3 The Provider shall provide the Company with all reasonable assistance in relation to any investigation of a Competent Authority at the Company's own cost. This Clause 14.3 shall survive expiry of the term or the termination of the Contract for any reason whatsoever.

Records and Information

- 14.4 The Provider shall maintain (and retain for at least seven years following their creation) and provide to the Company full, true, clear, concise and up to date Records in respect of the Flexibility Services. Such records shall be kept in such a way that they can be verified by the Company.
- 14.5 The Company shall be permitted access to all such records relating to the Contract or any Utilisation Instructions that it requires and the Provider must promptly provide all such information as well as whatever reasonable assistance may be required by the Company. The Company shall have the right to inspect, verify, copy and audit all data, records and other information associated with its obligations with the Contract. The Provider shall provide such data, records and other information to the Company at the Company's reasonable request.
- 14.6 The Provider shall disclose the existence of any agreement or arrangement a Flexible Unit that provides Flexibility Services under this Contract has with National Grid.
- 14.7 The Provider shall disclose the existence of any agreement or arrangement a Flexible Unit, or Facilities, that provides Flexibility Services under this Contract has with a Third Party, where such agreement or arrangement may affect the performance of the Services.
- 14.8 The Provider shall disclose any change of circumstances to the Company which may affect the delivery of the Services.

Performance Reporting

- 14.9 For the avoidance of doubt, no approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Company nor any enquiry or inspection which the Company may make or have carried out for its benefit or on its behalf will operate to reduce, extinguish, exclude, limit or modify the Providers obligations under the Contract.
- 14.10 The time and dates specified for the provision of the Flexibility Services are of the essence in this Contract.

15 TERMS OF PAYMENT

- 15.1 In considerations of the provision of the Flexibility Services, the Company shall pay the Provider the Availability Payment and Utilisation Payment in accordance with Schedule Five.
- 15.2 Subject to Schedule Five, 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 8.3 the Company shall issue a Payment Certificate to the Provider (which, for the avoidance of doubt, shall contain details of any adjustments to the Availability Payment and/or Utilisation Payment permitted pursuant to Schedule Five.
- 15.3 Within ten (10) Business Days of receipt of a Payment Certificate, the Provider (acting reasonably) shall review its content and either;
- 15.3.1 confirm its agreement to the Company by submitting an invoice for the Availability Payment and Utilisation Payment for the relevant calendar month (such items shall be sent to the address shown on the Payment Certificate);
- 15.3.2 raise a dispute in relation to all or any part of the Payment Certificate.
- 15.4 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 element(s). Within five (5) Business Days of any such agreement, the Company shall reissue an amended Payment Certificate and, thereafter, Clause 15.3 shall apply.
- 15.5 Subject to Clause 15.7, a payor shall pay all sums due under this Contract 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.
- 15.6 All sums payable under the Contract 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.
- 15.7 A payor (acting in good faith) may dispute all or any part of an invoice issued by the other Party under this Contract. 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 Clause 15.6 from the date specified for payment thereof as set out in the relevant invoice.

15.8 If the Provider fails to submit the information to the Company in accordance with Clause 15.3 within ninety (90) days of:

15.8.1 the date on which any Flexibility Services were provided to the Company or were due to be invoiced by the Provider, whichever is later; or

15.8.2 the date on which any other costs were incurred under this Contract, or were due to be invoiced by the Provider, whichever is later,

then the Provider shall be deemed to have waived its right to payment for such Services and/or costs incurred and shall not raise an invoice in relation thereto. The Provider shall bear the costs of such Flexibility Services and/or costs itself and the Company shall be entitled to return any invoice submitted after ninety (90) days of the relevant date(s) referred to above to the Provider unpaid.

15.9 Time is of the essence in respect of the Company submitting invoices in accordance with this Clause 15.

15.10 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 Contract or otherwise.

16 EVENT OF DEFAULT

16.1 In the event that the Provider in respect of a Flexible Unit fails to comply with its obligations under Clause 9.6, 10.6, or 10.7 such event shall be an "Event of Default". The Parties agree that where three (3) or more Event of Default occur during any month in respect of a Flexible Unit, the Company may in its absolute discretion remove the Flexible Unit from the Contract.

17 VARIATIONS

17.1 Subject to Clause 9.7, no variations to the terms of this Contract shall be effective unless made in writing and signed by the authorised signatories of each Party.

18 SITE AND FACILITY MAINTENANCE

18.1 The Provider shall provide and maintain its Facility to ensure the safety of the public and Staff and protect the environment.

18.2 The Provider shall submit to the Company details of the Facility used.

- 18.3 The Provider shall use reasonable endeavours to procure that the Provider maintains (i) its Facility; and (ii) any equipment required (in each case) to react to a Utilisation Instruction and/or Optional Utilisation Request to a standard which the Provider reasonably believes is sufficient to maintain availability and provide the Flexibility Services in accordance with the terms of the Contract.
- 18.4 The Company shall have the right acting reasonably to inspect the Facility and the site of Flexible Unit management used by the Provider in providing the Flexibility Services and if in the Company's reasonable opinion it is unsuitable it shall not be used in the provision of the Flexibility Services and the Company shall not allow any extension of time or be liable for any extra costs incurred by the Provider in respect of providing replacement Facility.
- 18.5 The Provider shall allow or procure for the Company such access to the Facility and the Provider's site of Flexible Unit management as the Company may reasonably require for the purposes of inspecting the Facility and Flexible Unit management during the Provider's working hours and provided that the Company has given the Provider at least 10 Business Days' notice of any requirement for such access.

19 INSURANCE

- 19.1 Without thereby limiting its responsibilities under Clause 22, the Provider shall procure appropriate insurances required by law and necessary for the safe and efficient performance of this Contract, with a reputable insurance company in the European Union or the United Kingdom, and as a minimum shall keep in force and hold throughout the Contract term , insurance for each insurable risk to a minimum limit as follows:
- 19.1.1 Employer's liability of £5 million any one claim or number of claims arising out of one event.
- 19.1.2 Public liability of £5 million for any occurrence or series of occurrences arising out of the same event, but limited to £20 million in the annual aggregate.
- 19.2 If the Company agrees to the engagement of a Sub-contractor in connection with the provision of the Flexibility Services, the Provider will ensure that the Sub-contractor maintains appropriate insurance to the extent set out in Clause 19.
- 19.3 The Provider shall provide the Company with evidence of all its insurance in the form of a copy of a brokers letter at all times when requested by the Company.
- 19.4 The Provider shall give immediate notice to the Company in the event of any accident or damage that is likely to form the subject of a claim under the Provider's insurance policies in relation to the Services provided under this Contract and shall give all information and assistance in respect thereof that the Company may require. The Provider shall not negotiate any payment, settlement or admit or repudiate any claim without their written consent of the Company and shall permit the Company to take proceedings in the name of the Provider to recover compensation or secure an

indemnity from any Third Party in respect of any of the matters covered by the said insurance.

- 19.5 The Provider's insurance shall include an indemnity to the Company as principal only to the extent required by the Contract.

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 The Intellectual Property Rights in any documentation or product arising out of the performance of the Contract shall vest in the Company unless otherwise specifically agreed in writing by the Company. The Parties agree that any existing Intellectual Property Rights owned by the Provider shall remain its property.

- 20.2 The Company shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Provider or its licensors, including:

20.2.1. The Intellectual Property Rights in the Providers' software which is used by the Provider in the provision of the Services;

20.2.2. The Provider's Background Intellectual Property Rights.

21 WARRANTY OBLIGATIONS

- 21.1 The Provider hereby warrants that:

21.1.1 it shall ensure that the Provider's Staff and Sub-contractors assigned to provide the performance of the Flexibility Services possess the necessary skill and experience required to properly provide the Flexibility Services;

21.1.2 it shall ensure that its Staff and Sub-contractors comply with all Legislation;

21.1.3 all information it provides to the Company shall be complete and accurate.

21.1.4 all Flexibility Services, shall be carried out with reasonable skill and care;

21.1.5 It shall pay due regard to the environment and it shall act to preserve air, water, animal and plant life by minimising any adverse effects arising due the performance of the Contract;

21.1.6 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 Contract .

- 21.2 This Contract has been entered into by the Company in reliance upon the Warranties to the intent that each of the Warranties shall be construed as a separate independent warranty so that the Company shall without prejudice to its other rights and remedies have a separate claim and a right of action in respect of every breach of Warranty.

- 21.3 If a breach of Warranty shall occur the Company shall inform the Provider in writing stating so far as is practicable the nature of the breach. If the Provider re-performs any part of its obligations the above Warranties shall apply to that part of the Flexibility Services so replaced, added or renewed.
- 21.4 Without prejudice to any right or remedy, the Company shall be entitled to claim damages from the Provider for breach of Warranty.

22 INDEMNITY

- 22.1 Subject to Clause 22.2, 22.4 22.5 and 22.6, the Provider shall indemnify and keep indemnified the Company against injury (including death) to any persons or loss or damage to any property including Losses, which may arise out of the breach of Contract, in tort (including negligence), breach of statutory duty or the failure or delay to perform its obligations under this Contract where such delay is in breach of the Contract and against all claims, demands, proceedings, damages, costs (including legal costs), charges and expenses whatsoever in respect thereof or in relation thereto.
- 22.2 Nothing in the Contract shall limit or purport to limit the liability of any Party for death or personal injury caused by the negligence or breach of contract of that Party or for fraudulent misrepresentation.
- 22.3 The provisions of this Clause 22 shall survive the termination of the Contract for any reason whatsoever.
- 22.4 Neither Party shall be liable to the other Party for any Indirect Loss.
- 22.5 The Provider shall not be liable to the Company for any customer interruptions or customer minutes lost as a result of the provision of Flexibility Services.
- 22.6 The aggregate liability of the Provider under this Contract whether for breach of contract, tort (including negligence) breach of statutory duty, indemnity or otherwise shall:
- 22.6.1 not exceed the insurance levels in respect of any claim for which the Provider is required to provide insurance in accordance with Clause 19 of this Contract
- 22.6.2 subject to clause 22.6.1 be limited to £200,000.
- 22.7 The Company's aggregate liability under this Contract whether for breach of Contract tort (including negligence), breach of statutory duty or otherwise shall be limited to £150,000.
- 22.8 The Company shall not be liable for loss resulting from the liability of the Provider to any other person resulting from an act or omission of the Provider's Staff, agents or Sub-contractors.

23 COMPLIANCE WITH LEGISLATION

23.1 The Provider hereby warrants to the Company that, as at the Commencement Date, the provision by it of the Flexibility Services will not cause the Provider:

23.1.1 to be in breach of the Electrical Safety, Quality and Continuity Regulations 2002 (as amended from time to time) or of any regulations made under Section 29 of the Electricity Act 1989 relating to safety or standards applicable in respect of the business of;

23.1.2 to be in breach of any provision of the Grid Code (where applicable) or the Distribution Code of its host Public Distribution System Operator or make its compliance with any provision of either the Grid Code or the Distribution Code impossible;

23.1.3 to be in breach of or to otherwise be non-compliant with any Connection Agreement and/or any agreement for the supply of electricity or acceptance of electricity from a Distribution System;

23.1.4 to be in breach of any provision of its licence granted pursuant to Section 6 of the Electricity Act 1989 (if any);

23.1.5 to be in breach of any restrictions and conditions attaching to relevant authorisations of the Environment Agency; or

23.1.6 to be in breach of section 105 of the Utilities Act 2000.

23.2 If, at any time during the Term, the provisions of Flexibility Services would cause the Provider to be in breach or non-compliance as described in Clause 23 (whether by reason of any change or modification to the agreements, codes and legal requirements referred to therein since the Commencement Date or otherwise), the Provider agrees that it will not accept a Utilisation Instruction and/or Optional Utilisation Request issued by the Company hereunder and, where it declines to accept a Utilisation Instruction and/or Optional Utilisation Request on such grounds, the Provider will:

23.2.1 notify the Company within twenty five (25) minutes of receipt of the Utilisation Instruction and/or Optional Utilisation Request; and

23.2.2 provide (to its reasonable satisfaction) a written statement and all such supporting evidence as shall be necessary to demonstrate how compliance would cause such breach or non-compliance.

24 CONFIDENTIALITY AND ANNOUNCEMENTS

24.1 The Provider agrees:

- 24.1.1 to maintain as confidential and not to use or disclose to any Third Party any Confidential Information derived in connection with the provision of the Flexibility Services, without the consent of the Company in its absolute discretion, except that which is reasonably necessary for the proper performance of the Contract;
- 24.1.2 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such Staff who have reasonable need to see and use it in the performance of their obligations under the Contract;
- 24.1.3 that the Confidential Information shall not be used for its own benefit or for the benefit of its Staff and/or Sub-contractors and for any other purpose other than performance of its obligations under this Contract; and
- 24.1.4 that the Confidential Information shall not be disclosed to Customers or Third Parties who may use the Confidential Information to acquire an advantage over or act to the detriment of the Company, its Affiliates and/or the Distribution Licensees.
- 24.1.5 to make all Staff and Sub-contractors aware of the confidential nature of the Confidential Information and the provisions of this Clause 24 and without prejudice to the generality of the foregoing to take all such steps as shall from time to time be reasonably necessary to ensure compliance by its Staff and Sub-contractors with the provisions of this Clause 24.
- 24.1.6 The obligations in this Clause 24 shall continue in full force and effect during the term of and after the termination of the Contract, provided however that the following shall not be subject to such restrictions to:
 - 24.1.6.1 any information which was lawfully in the possession of the Provider prior to its disclosure by the Company; or
 - 24.1.6.2 any information which is in or shall lawfully become available to the Provider from a source independent of the Company; or
 - 24.1.6.3 any information which is in or shall come into the public domain through no fault of the Provider; or
 - 24.1.6.4 any information which either Party is required to disclose to comply with the requirements of a recognised Stock Exchange or the Director General of Electricity Supply or with any statutory or regulatory obligations; or

24.1.6.5 any disclosure to OFGEM or the Competition Markets Authority or any other Competent Authority from time to time.

24.2 The Provider shall return all Confidential Information in the Provider's possession and that of its Staff and Sub-contractors immediately upon termination of this Contract.

24.3 The provisions of this Clause 24 shall survive the termination of this Contract.

24.4 At the Company's request, the Provider shall procure that its Sub-contractors enter into confidentiality contracts directly with the Company.

24.5 No announcements may be made by the Provider in relation to the Contract without the prior written consent of the Company to any announcement and the content and form of such announcement.

24.6 Notwithstanding the provisions of Clause 24.1, the Company shall be entitled to disclose copies of the Contract and associated documents without the Provider's consent to:

24.6.1 Eastern Power Networks plc, London Power Networks plc and South Eastern Power Networks plc;

24.6.2 any of the Company's' Affiliates;

24.6.3 any Third Party providing services to any of the Company's' Affiliates;

24.6.4 any Competent Authority having a statutory right to require the same;

24.6.5 any recognised Stock Exchange in accordance with its rules;

24.6.6 any court arbitrator or administrative tribunal in the course of proceedings before it to which the Provider's is a party;

24.6.7 any Third Party that requires such Confidential Information or knowledge of this Contract as a result of inter alia any proposed or actual corporate reconstruction, reorganisation, sale, divestment, proposal or acquisition on the part of the Company or any of the Company's' Affiliates.

provided that the Company shall inform the entities described in Clauses 24.6.1 to 24.6.6 of the confidential nature of the information contained in the Contract and associated documents and shall use its reasonable endeavours to procure that such entities comply with the obligations of confidentiality contained in this Contract.

- 24.7 The Company may disclose, publish, use and share the Providers data and other information relating to this Contract and the provision of the Flexibility Services in an anonymised or aggregated format and/or otherwise to Third Parties.
- 24.8 The Company may disclose to National Grid (or as otherwise agreed between the Company and the Provider) the location of the Facility, and all operational data (including but without limitation, service type, volume, and instructions).

25 ANTI-BRIBERY

25.1 The Provider shall:

- 25.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 25.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct has been carried out in the UK;
- 25.1.3 have and shall maintain in place throughout the term of this Contracts its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 25.1.4 promptly report to the Company and request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this Contract;
- 25.1.5 immediately notify the Company(in writing) if a foreign public official becomes an officer or employee of the Provider or acquires a direct or indirect interest in the Provider, and the Provider warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract;
- 25.1.6 within one (1) months of the date of this Contract, and annually thereafter, certify to the Company in writing signed by an officer of the Provider and all persons associated with it under Clause 25.2. The Provider shall provide such supporting evidence of compliance as the Company may reasonably request.

25.2 The Provider shall ensure that any person associated with the Provider who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this Clause 25(Relevant Terms). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Company for any breach by such persons of any of the Relevant Terms.

26 REPUTATION

26.1 In the provision of the Flexibility Services the Provider will:

- 26.1.1 act in the utmost good faith to the Company;
- 26.1.2 not, and will ensure that its Staff and agents will not, act or omit to act in any way which could bring the Company or its Affiliates or their name or any trademark or logo owned by them into disrepute, or which could be damaging or detrimental to their continuing reputation or goodwill; and
- 26.1.3 keep the Company informed regularly of, and promptly respond to any requests relating to, the progress of the Flexibility Services and of all other material facts which may affect the Provider's role or relationship with the Company

26.2 In addition to all other warranties contained in this Contract, the Provider warrants and represents that it shall provide the Flexibility Services in a manner which does not adversely affect the name, image, reputation or business of the Company or its Affiliates (as relevant).

26.3 The Company may terminate this Contract immediately by giving written notice to the Provider if:

- 26.3.1 there is a Change of Control of the Provider which adversely affects the Provider's ability to deliver the Flexibility Services, and such termination shall not be considered a material breach of the Agreement by the Provider;
- 26.3.2 the Provider breaches any of its obligations under Clause 27 (Data Protection), Clause 24 (Confidentiality) and in each case such breach is material and irremediable;
- 26.3.3 subject to Clause 21, the Provider has failed to remedy a breach of any of its warranties or representations or the Company discovers a material misrepresentation by the Provider; or
- 26.3.4 the Provider does or omits to do anything which may materially damage or impair the business or reputation of the Company or prejudice the security of its premises or system.

27 DATA PROTECTION

27.1 Notwithstanding any other provision of the Contract the Provider as a data controller shall:-

27.2 Observe and comply with such of the provisions of the Data Protection Legislation as shall apply to the Provider in relation to any and all personal data which may be disclosed to or acquired by it as a result of or in connection with the Services;

- 27.3 ensure that its staff members are appropriately trained to handle and process the personal data in accordance with the technical and organisational security measures together with the Data Protection Legislation, as amended from time to time and any guidance and have entered into confidentiality agreements relating to the processing of personal data;
- 27.4 ensure that the personal data it processes is processed fairly and lawfully with legitimate grounds for the duration of this Contract;
- 27.5 Ensure that all such personal data is adequate, relevant and not excessive in relation to the purposes for which it is held, used or disclosed by the Provider, such purpose being necessary for the purposes of the Services and, insofar as is practicable, shall ensure that the data is accurate; and
- 27.6 Exercise appropriate security and other measures to prevent unauthorised access to or accidental or unauthorised alterations, disclosure, destruction or loss of such personal data.
- 27.7 The Provider shall keep all discs, tapes and other media on which personal data is stored secure and shall release these only to those of its personnel who require access to them for the performance of the Services, and shall indemnify the Company against all losses, claims, expenses (including legal expenses) costs and all other sums that Company may incur as a result of the Provider failing to do so.

28 FORCE MAJEURE

- 28.1 Neither Party shall be in breach of this Contract or liable for any delay in the performance or, or failure to fully perform, any of its obligations under or pursuant to this Contract to the extent such failure or delay from any cause or circumstance whatsoever beyond the reasonable control of the Party seeking to rely on this Clause (such cause or circumstance being a "Force Majeure Event"), including but not limited to one or more of the following:
- 28.1.1 act of God, fire, explosion or serious accident;
- 28.1.2 war, hostilities, civil disturbance or act of terrorism;
- 28.1.3 storm, lightning, flood or other extreme adverse weather conditions;
- 28.1.4 the act of any government or authority, including refusal of any licence or consent;
- 28.1.5 occurrence of industrial action or disturbance;
- 28.1.6 interruption or failure of electrical supply,

provided that the Party seeking to rely on this clause gives written notice to the other Party as soon as reasonably practicable after becoming aware of the Force Majeure Event outlining (i) the form of the Force Majeure Event; and (ii) its reasonable estimate of the likely duration of the Force Majeure Event; and (iii) its knowledge or reasonable anticipation of the consequences of the Force Majeure Event for each Party under the Contract.

28.2 As soon as reasonably practicable following receipt of a notice under Clause 28.1 the Parties shall meet to discuss (in good faith) the corresponding Force Majeure Event. Furthermore, in the case of any failure or delay under Clause 28.1:

28.2.1 the Party seeking to rely on that clause shall use reasonable endeavours to perform its relevant obligations as soon as possible;

28.2.2 each Party shall use reasonable endeavours to mitigate any adverse consequences of the Force Majeure Event; and

28.2.3 either Party shall have the right to terminate this Contract with immediate effect on giving written notice to the other Party if the Force Majeure Event continues uninterrupted for a period of three (3) calendar months (or more).

29 DISPUTE RESOLUTION

29.1 All disputes or differences which shall at any time hereafter arise between the Provider and the Company under this Contract relating to the rights, duties and liabilities of the Parties hereunder or any matter or event connected with or arising out of the Contract (a "Relevant Event") shall be referred in the first instance to the representative at Clause Thirteen as soon as reasonably practicable following the Relevant Event arising. Failure to resolve the Relevant Event shall mean escalation to a senior manager (or their nominee) of each of the Parties within ten (15) Business Days of the Relevant Event arising and they shall endeavour to reach and implement a mutually acceptable solution within thirty (30) Business Days.

29.2 If any dispute or difference is not resolved under Clause 29.1, then either Party shall have the right to refer that dispute or difference for adjudication by serving written notice on the other.

29.2.1 The Parties shall within 3 (three) Business Days of the notice being issued agree upon a suitable adjudicator. Failing agreement, either Party shall apply for an appointment to the President of the Institution of Engineering and Technology, or to the President (or equivalent) or any other professional body or institution which the Company in its absolute discretion considers to be more appropriate having regards to the nature of the dispute, (whilst at the same time serving a copy of the application on the other Party) whose written notification of an appointment of an adjudicator shall be served on both Parties and shall be binding on both Parties.

29.3 Performance of the Contract shall continue during adjudication unless the Company shall order the suspension thereof or of any part thereof, and if any such suspension

shall be ordered the Provider shall pay its own costs and expenses arising from such suspension.

30 TERMINATION

30.1 The Contract may be terminated:

30.1.1 if a Party commits a material breach of any term of the Contract (other than one falling within Clause 28 (Force Majeure) above), by the other Party giving the other 21 (twenty one) days written notice specifying the nature of the breach or, where the breach is capable of being remedied, on the expiry of 21(twenty one) days after service of a written notice by the injured Party where the other Party has failed to initiate and proceed without delay to remedy the breach complained of;

30.1.2 forthwith by either Party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986, or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors, or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other Party, or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other Party or for the making of an administration instruction (otherwise than for the purpose of an amalgamation or reconstruction);

30.1.3 forthwith by the Company where there is a Change of Control of the Provider;

30.1.4 forthwith by the Company should the Provider fail to comply with the requirements of, Clause 21 (Warranty), Clause 22 (Indemnity), Clause 25 (Anti Bribery); Clause 30 (Termination), and any sub-clauses thereunder.

30.1.5 the Provider has persistent or significant testing non-compliances.

30.2 Any termination of the Contract pursuant to this Clause 30 shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder, or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

30.3 Following termination of the Contract the Provider shall forthwith at the Provider's cost:

30.3.1 return to the Company all Confidential Information and records held by the Provider or Sub-contractors;

- 30.3.2 deliver to the Company for approval a statement of account detailing all monies due to it under the Contract;
 - 30.3.3 deliver to the Company all records;
 - 30.3.4 submit to the Company all invoices for payment in connection with the provision of the Flexibility Services within three (3) months from the date of termination. All outstanding work shall be identified by the Provider and notified to the Company.
- 30.4 Where the Company terminates the Contract under Clause 30.1 it shall pay to the Provider the relevant amounts due for all Flexibility Services provided, in accordance with the Contract up to the date of such termination.

31 INVALIDITY AND SEVERABILITY

If any provision of the Contract or part thereof is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, or by the Commission of the European Union, or the Secretary of State, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Contract or part thereof which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

32 WAIVER

The waiver by either Party of a breach or default of any of the provisions of the Contract by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other Party.

33 NOTICES

33.1 Method

- 33.1.1 Unless provided otherwise in this Contract and save for any required telephone communication, communications in respect of operational matters, and Clause 33.1.2, each notice or other communication to be given by a Party under this Contract shall be given in writing in English and shall be sent to the address of the other Party set out against its name in Schedule Seven.
- 33.1.2 Any notifications required by this Contract to be given in any of the forms set out in Schedule Eight shall be by email (to the email address(es) specified in Schedule Seven or as may otherwise be notified in writing by the relevant Party to the other) save as otherwise agreed by the Parties.

33.2 Any notice or other communication given by any Party shall be deemed to have been received:

33.2.1 in the case of a notice given by hand, at the time of day of actual delivery;

33.2.2 if posted, by 10am on the second Business Day following the day on which it was despatched by first class mail postage prepaid; and

33.2.3 if sent by email or fax , at the time of transmission

Provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received the next Business Day.

33.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

33.4 All notices hereunder shall be in writing addressed to the appropriate representatives of the Parties at their respective addresses set forth in the Contract. A notice shall be deemed to have been given if sent by first class post on the third Business Day after posting, if sent by facsimile transmission before 2.30pm Monday to Friday on the date of transmission (at any other time the facsimile transmission shall be deemed to be received on the next Business Day), or if delivered by hand on the date of delivery.

34 THIRD PARTY RIGHTS

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Contract 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 other than the Distribution Licensees shall be entitled independently of the other to enforce all of the terms of this Contract.

35 NO AGENCY OR PARTNERSHIP

35.1 Nothing in this Contract 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.

35.2 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.

36 SURVIVAL

Termination or expiry of this Contract shall not prejudice or affect any right or obligation of a Party which is expressed to continue after the date of termination or expiry or which, having fallen due on or before the date of termination or expiry, remains to be performed or discharged at such date and, notwithstanding any other

provisions of this Contract Clauses 19 (Insurance), 21 (Warranty Obligations), 22 (Indemnity), 25 (Anti Bribery), 30 (Termination) and any other Clauses and Schedules as are necessary to give effect to the intention of the Parties shall continue in full force and effect and shall survive the termination or expiry of this Contract.

37 ENTIRE AGREEMENT

The Contract including the Schedules and any Utilisation Instructions constitutes the entire Contract between the Parties with respect to its subject matter and supersedes all previous contracts and understandings between the Parties. Each Party acknowledges and confirms to the other Party that it does not enter into the Contract in reliance on any representation or warranty or other undertaking not fully reflected in the terms of the Contract and its only remedy is for breach of contract PROVIDED THAT this shall not exclude any liability which either Party would otherwise have to the other in respect of any statements made fraudulently prior to the date of the Contract.

38 INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that the Parties may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the provisions of this Contract and that accordingly each Party shall be entitled, without proof of any special damages, to seek remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this Contract.

39 REMEDIES CUMULATIVE

The rights and remedies of each of the Parties under or pursuant to this Contract are cumulative, may be exercised as often as such Party considers appropriate and are in addition to its rights and remedies under general law.

40 GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in all respects in accordance with the laws of England and Wales and the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts.

IN WITNESS whereof the Parties have entered into the contract on the day and year first written above.

Signed by:

Date:

.....

Name:

Title:

for and on behalf of **UK POWER NETWORKS OPERATIONS LIMITED**

Signed by:

Date:

.....

Name:

Title:

For and on behalf of [insert Provider details]

SCHEDULE ONE – FACILITIES

Zone _____

Flexible Unit ID _____

Facility ID	Facility Address	MPAN	Metering Point	Flexible MW	Maximum Run Time	Technology/process type	Reference Year	Baseline (MW)

SCHEDULE TWO

Part 1 – Contract Parameters

End Date:

	Zone			
	Flexible Unit ID	TBD		
	End Date			
Service Period	Delivery Season			
	Service Window 1 From			
	Service Window 1 To			
	Service Window 2 From			
	Service Window 2 To			
Fee Parameters	Availability Fee (£/MW/h)			
	Utilisation Fee (£/MWh)			
	Optional Utilisation Fee (£/MWh)			
Capability Parameters	Flexible MW (MW)			
	Maximum Run Time (hours)			
	Response Time (mins)			
	Recovery Time (mins)			
	Maximum Utilisations (per Service Window)			
Baseline Parameters	Baseline (MW)			
	Baseline Methodology			
	Optional Baseline Methodology			

Part 2 – Service Requirements

In this Schedule, expressions defined in the Invitation to Tender (ITT) and used in this Schedule have the meaning set out in the ITT.

5.1.1	The flexible Facilities making up the FU shall be connected and capable of exporting to or importing from the feeding area of the network asset(s) subject to the limitation (represented by the zone) during intact and under first circuit outage of that network asset(s).
5.1.2	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. Flexible or timed connections are permissible, subject to the conditions of the connection. Those less than 16A per phase shall be compliant with the requirements of EREC G83 or G98.
5.1.3	The FU shall be able to deliver on instruction a reduction in imports or an increase in export, from or onto the distribution network.

5.1.4	The Flexible MW is the volume of additional consumption or generation that can be adjusted flexibly relative to a defined baseline level. It shall be at least 50kW from one or more Facilities making up the FU, can be delivered reliably and in full, is fixed for the duration of the service period, and must be within the conditions of each Facility's connection agreement.
5.1.5	The FU shall have a single set of capability parameters, and shall be a single point of communication and control.
5.1.6	The Response Time (lead-time from the time of the instruction to full delivery) from a FU shall be 30 minutes or less.
5.1.7	The Flexible MW shall be sustainable for at least 30 minutes, and up to the tendered Maximum Run Time. The Maximum Run Time of the FU can be less than the Service Window.
5.1.8	The FP shall be able to receive text, email and telephone instructions or any other method as agreed with UK Power Networks, and have appropriate systems and processes in place to deliver flexibility from its Facilities according to the instruction and its contracted capability.
5.1.9	Each Facility making up the Flexible Unit shall have minute-by-minute metering of sufficient accuracy to enable UK Power Networks to monitor the provision of flexibility services. The data shall be made available to UK Power Networks on request and at the end of every month. The metering point shall be at the boundary between the site on which the Facility is located and the distribution network, or on the terminals of the Facility if approved by UK Power Networks. The Provider should be able to provide technical details of the meter and a single line diagram of each Facility on request.
5.1.10	The FU can run for other purposes during the Service Window, subject to it not increasing demand on the network. It is the responsibility of the FP to ensure that they can deliver the contracted service on instruction.

SCHEDULE THREE – POST TENDER MILESTONES AND DELIVERY PLAN

The Provider shall satisfy these Post Tender Milestones by the PTM Date in accordance with Clause 5. The Provider shall comply with the delivery plan set out in Appendix A to this Schedule Three.

Delivery Season	Milestone #	Flexible Unit ID	Post Tender Milestones	PTM Date

Appendix A to Schedule Three
Delivery Plan

SCHEDULE FOUR - ALLOCATION PROCESS

1. The Provider may notify the Company (by email) indicating that the Provider would like to:
 - (a) Propose new Facilities;
 - (b) Reallocate an existing Facility from a Flexible Unit to another Flexible Unit, or in the case of an existing Facility that has not been allocated, allocate that Facility to a Flexible Unit; and
 - (c) Remove an existing Facility.
2. Where the Provider proposes a new Facility, the Provider shall submit all details of the Facility using the template available from the Company. The Company shall evaluate whether the Facility meets the Service Requirements set out in Schedule Two Part 2 and the requirements of this Contract.
3. When notifying the Company of a re-allocation or removal of a Facility, the Provider shall include the name of the Facility, the Flexible Unit that the Facility is being re-allocated or removed from, the Flexible Unit that the Facility is being allocated to, and a reason for the change.
4. The Provider shall (re)calculate the Default Baseline to the Company's satisfaction using a template available from the Company for the Facility(ies) affected by the allocation in accordance with Schedule Six. The calculation shall be submitted to the Company, and should contain all relevant metered data for each Facility with calculations clearly shown.
5. The Provider shall ensure that by allocating Facilities, it should not reduce the Capability Parameters of the Flexible Unit(s) as set out in Schedule Two. Where the Provider declares to the Company in respect of a Flexible Unit any shortfalls in the Capability Parameters, or the allocation or Proving Test results in a reduction to any of the Capability Parameters then the Company may at its sole discretion apply the Deficiency calculation as set out below.
6. The Company shall calculate a Deficiency, where:

$$Deficiency = 1 - \frac{new\ Flexible\ MW \times new\ Maximum\ Run\ Time}{Flexible\ MW \times Maximum\ Run\ Time},$$

and, new Flexible MW and new Maximum Run Time is declared by the Provider or as determined by the Company following an allocation.

7. Where the Deficiency equals or exceeds 30%, the Company in its absolute discretion may remove the Flexible Unit from the Contract by giving written notice. Where the Deficiency is less than 30%, the Company shall update Schedule Two with revised Capability Parameters, and lower the Availability Fee equal to the Availability Fee x Deficiency.
8. The allocation proposed by the Provider shall be subject to the Company's approval, and the Company shall respond in writing (by email) as soon as reasonably practicable indicating if the change has been approved or rejected. Where

approved the change shall be effective from the date and time as notified in writing by the Company to the Provider. The Company may notify the Provider of a Proving Test in respect of the Flexible Unit effected by the allocation and Clause 7 shall apply.

7. The Provider may only make one allocation request a month.

SCHEDULE FIVE - PAYMENT

Utilisation

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 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

\sum_i is the summation for each Metered Time Period i in a Service Period or an Optional Service Period (as the context requires) during month m that Flexible Unit s was the subject of a Utilisation Instruction or an Optional 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)

Availability

The Availability Payment for month m (AP_m) shall be calculated as follows:

$$AP_m = (\sum_s \sum_i CM * DI * AF * MP)$$

Where:

\sum_s is the summation for each Flexible Unit s;

\sum_i is the summation for each Metered Time Period i in the Service Period during month m in which Flexibility Services was available from Flexible Unit s;

AF is the Availability Fee for the Flexible Unit s (expressed in £/MW/h);

DP is the delivery performance in the month calculated as $(\sum_s \sum_i CD / \sum_s \sum_i ED)$, where ED is zero, take the average of DP for the two most recent months where ED was not zero; and

MP is the monthly performance factor, as calculated from the below table.

If DP is...	MP =
≥ 90%	1
< 90% AND ≥ 80%	0.8
< 80% AND ≥ 70%	0.7
< 70% AND ≥ 60%	0.6
< 60%	0

Payment mechanism

Payment may be made by BACS where agreed with the Provider.

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

Accounts Payable
PO Box 1184
Crawley
RH10 0FL

SCHEDULE SIX - BASELINE METHODOLOGY

Default Baseline

1. The baseline methodology is intended to ensure an additional level of Flexibility Services when compared with the most recent (representative) historic period used to plan the network.
2. The default baseline for each Facility within the Flexible Unit shall be calculated by the Provider using the template and approved by UK Power Networks, as follows:
 - (a) The Company shall specify on request for each Zone the ten days of highest peak demand (Reference Days) from the Reference Year, being the most recent comparable period to the Delivery Season at the time of allocation;
 - (b) The baseline, for each Facility, shall be the average (mean) of the half hourly meter data of the Facility across the Reference Days, during the coincident Service Window periods (where exports are positive, and imports negative);
 - (c) The Flexible MW will be nominated by the Provider as the additional amount of flexibility that can be provided relative to the baselines;
 - (d) The baseline for the Flexible Unit is derived during the term of the contract by summing the Active Facility baselines depending on which Facilities are used to deliver the service as notified by the Provider to UK Power Networks in the Performance Report.
3. The Provider shall submit its calculation including all relevant meter data used, showing clearly the calculations, and explaining the aggregation methodology employed where applicable. This is subject to approval from the Company.
4. The Provider can enter an appeals process by notifying the Company (by email) to consider an Alternative Baseline. This may apply where meter data for setting the Default Baseline is not available, if operations during the reference year can be justified to be materially different to the Delivery Season, or for changing the Optional Utilisation Baseline. If the Provider disagrees with the relevant Alternative Baseline, it can propose a Bespoke Baseline. This can take any form, but the Company retains the right to propose variants or to reject the request.
5. Note that the baseline methodology cannot be changed during the contract term, without the Company's approval.

Optional Utilisation Baseline:

6. Last Observation Baseline: Applicable to generation or storage sites, defined as the average export of the site in the half hour preceding a Utilisation Instruction.

7. Recent History Baseline: Applicable to demand sites, this is a rolling baseline taken as the average of metered consumption during the Service Window(s) on the five weekdays (and/or weekends if applicable) preceding a Utilisation Instruction

SCHEDULE SEVEN – COMMUNICATION

In accordance with Clause 33.1.1

The Company
Address: Newington House, 237 Southwark Bridge Road, London, SE1 6NP
For the attention of:
Copy to:

Provider

Address:

For the attention of:
Copy to:

In accordance with Clause 33.1.2, notification of forms shall be by email to:

The Company:

Provider:

All other operational matters

Provider

Text

Email

Telephone

SCHEDULE EIGHT – NOTIFICATION FORMS

UNAVAILABILITY NOTIFICATION / REMEDY NOTIFICATION

In accordance with Clause 10, this is a notification of [unavailability / availability] of Flexibility Services.

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

OPTIONAL UTILISATION REQUEST

In accordance with Clause 11, this is an Optional Utilisation Request for Flexibility Services.

	The Company <i>To be completed by the Company</i>	[Provider] <i>To be completed by the Provider</i>
Zone ID:		
Flexible Unit ID:		
	Requested Start Time: <i>[dd/mm/yy hh:mm]</i>	Accepted Start Time: <i>[dd/mm/yy hh:mm]</i>
	Requested End Time: <i>[dd/mm/yy hh:mm]</i>	Accepted End Time: <i>[dd/mm/yy hh:mm]</i>
	Requested MW:	Accepted MW:
Name:		
Date/Time:		