

Flexibility Services General Terms and Conditions

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Authorities

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1. Introduction

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

1.2 References to the “Contract” in these General Terms and Conditions mean these General Terms and Conditions, the Glossary, the Service Terms and Service Glossary, the Annexes, the Forms and Templates and the Signatures.

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

- 1.3.1 General Terms and Conditions;
- 1.3.2 Glossary;
- 1.3.3 Service Terms and Service Glossary;
- 1.3.4 Annexes;
- 1.3.5 Forms and Templates.¹

2. Changes to these General Terms and Conditions

2.1 The Company may update any of the General Terms and Conditions, Service Terms, Annexes and 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 in writing of the Provider, any updated version shall not apply to any Contract already in force at the time of publication.

3. Scope of Flexibility Services

3.1 The Flexibility Services shall be performed in accordance with the Service Terms.

4. Provider’s Obligations

4.1 The Provider will:

- 4.1.1 ensure or procure the Availability of the DER and perform the Flexibility Services in compliance with the terms of the Contract and all Applicable Laws, Statutory Requirements and Good Industry Practice;
- 4.1.2 provide the Flexibility Services in accordance with all UK health, safety and environment legislation and approved codes of practice;

¹ **Note:** Order of priority to be reviewed once the Service Terms and Annexes have been finalised.

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- 4.1.3 ensure that all technical, communication and data provision requirements set out in the Annexes are complied with at all times;
- 4.1.4 act diligently and in good faith in all of its dealings with the Company;
- 4.1.5 ensure that it is available on reasonable notice to provide such assistance or information as the Company may reasonably require in connection with the Flexibility Services;
- 4.1.6 at the request of the Company, make available to the Company information in relation to the metering equipment at the DER;
- 4.1.7 upon reasonable notice and within normal working hours, permit and grant (or secure) rights of access to the Site to the Company and/or its agents or sub-contractors as the Company may reasonably require in order to inspect and test the DER, or to install, maintain, replace or remove communication equipment belonging to the Company in relation to the provision of Flexibility Services in accordance with the Contract;
- 4.1.8 remedy any Defect of the Flexibility Services in accordance with Good Industry Practice and to the satisfaction of the Company; and
- 4.1.9 disclose the existence of any agreement or arrangement the Provider may have in respect of the DER that provides Flexibility Services under the Contract that could reasonably impact Availability of the DER or the ability of the Provider to perform its obligations under the Contract.

5. Record and Audits

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

5.2 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 Contract and for a period of no less than:

- 5.2.1 seven (7) years after expiry of the Contract where such records contain or relate to financial data] and/or contract data]; or
- 5.2.2 unless specified otherwise in the Annexes, four (4) years after expiry of the Contract where such records relate to Performance Data.

5.3 The Company, or a reputable independent third-party auditor nominated by it, may, on reasonable notice to the Provider and during normal working hours, inspect and review the records for the purposes of verifying the Provider's compliance with its obligations under the Contract and/or to meet any other audit or information requirement that may be required by Applicable Law and/or any regulatory body, including the Authority.

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

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

6. Representations and Warranties

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

- 6.1.1 to the extent the Party is a company, it is a duly incorporated company validly existing under the law of its jurisdiction of incorporation;
- 6.1.2 it has the right, power, capacity and authority to enter into and perform its obligations under the Contract;
- 6.1.3 the entry into and performance by it of the Contract does not and will not contravene or conflict with any Applicable Law or judicial or official order applicable to it;
- 6.1.4 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 Contract;
- 6.1.5 all information it provides to the other Party will be complete and accurate;
- 6.1.6 no Insolvency Event is continuing or might reasonably be anticipated; and
- 6.1.7 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.

6.2 Without prejudice to its other obligations under and/or pursuant to the Contract and in addition to the foregoing, the Provider warrants and undertakes to the Company at all times that:

- 6.2.1 the DER contracted to provide the Flexibility Services has, as applicable, either:
 - (a) live connection(s) to the Company's Network, associated MPAN or MSID and Connection Agreement(s); or
 - (b) a connection offer(s) pursuant to a live connection and that the connection(s) can be completed in time to meet the Service Requirements as specified in the Service Terms;
- 6.2.2 it 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 Contract, including but not limited to any authorisation required pursuant to the regulations, codes, agreements and arrangements referenced in paragraph 6.2.10;
- 6.2.3 it has neither fixed nor adjusted any Charge under or in accordance with any agreement or arrangement with any other person, and that it has neither communicated to a person (other than its professional advisers) the amount or approximate amount of any Charge in connection with the Contract (other than in confidence in order to obtain quotations necessary for insurance purposes) nor entered into any agreement or arrangement with any other person to restrain that other person from entering into an agreement for provision of Flexibility Services with the Company;
- 6.2.4 it shall disclose any change of circumstances which could affect the delivery of the Flexibility Services;

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- 6.2.5 where applicable, for each DER project in development, the Provider has (or has procured), and, if requested, will promptly provide to the Company a copy of, a defined schedule of design, build and commissioning (a "**Development Plan**") in respect of each DER;
- 6.2.6 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;
- 6.2.7 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 6.1.3 and 6.2.10, the Provider will not accept or comply with any Utilisation Instruction and will provide notification to the Company as required by the Annexes;
- 6.2.8 it is and remains responsible for (or if applicable, procuring of) health and safety compliance at the Sites providing the Flexibility Services;
- 6.2.9 where any 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 Contract 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 Contract; and
- 6.2.10 the provision of Flexibility Services will not cause it or the DER to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) (available from the Company on request) or any other enactment relating to 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.

6.3 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 Contract.

7. Charges and Payments

7.1 All Charges and other sums payable under the Contract shall be paid in accordance with the Annex.

8. Termination

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

- 8.1.1 the Defaulting Party is in material and/or persistent breach of the Contract;
- 8.1.2 an Insolvency Event occurs in relation to the Defaulting Party;
- 8.1.3 paragraphs 10.4 or 12.5 of these General Terms and Conditions apply.

8.2 For the purposes of paragraph 8.1.1, and without limitation, the following shall be deemed to be a material breach by a Party of the Contract:

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- 8.2.1 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 7, 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;
- 8.2.2 paragraphs 9.3 or 16.10 of these General Terms and Conditions apply; or
- 8.2.3 any other material breach by the Defaulting Party of any of its obligations under the Contract 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.

8.3 Either Party (the “**Terminating Party**”) may at any time on providing no less than ninety (90) Business Days prior written notice to the other Party (the “**Non-Terminating Party**”) request to terminate the Contract, taking effect on the date specified in the notice (a “**Termination Notice**”). Following receipt of a Termination Notice, the Non-Terminating Party shall within fourteen (14) Business Days notify the Terminating Party whether it consents to the Termination Notice, such consent not to be unreasonably withheld or delayed. Where the Non-Terminating Party fails to respond to a Termination Notice in accordance with this paragraph 8.3, the Non-Terminating Party shall be deemed to have accepted the Termination Notice.

Accrued liabilities

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

Surviving provisions

8.5 This paragraph and the following provisions of the Contract shall survive termination or expiry, without limit of time:

- 8.5.1 paragraph 5 (*Records and Audit*);
- 8.5.2 paragraph 7 (*Charges and Payment*);
- 8.5.3 paragraph 8 (*Termination*);
- 8.5.4 paragraph 9 (*Service Failure*);
- 8.5.5 paragraph 11 (*Indemnity, Liability & Insurance*);
- 8.5.6 paragraph 13 (*Confidentiality*);
- 8.5.7 paragraph 14 (*Intellectual Property Rights*);
- 8.5.8 paragraph 15 (*Data Protection*);
- 8.5.9 paragraph 18 (*Dispute Resolution*);
- 8.5.10 paragraph 22 (*Waiver*);
- 8.5.11 paragraph 25 (*Governing Law and Jurisdiction*);
- 8.5.12 Glossary; and

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

Consequences of termination or expiry

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

8.7 Following termination or expiry of the Contract, the Provider shall promptly at the Provider's cost:

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

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

8.8 Where the Company terminates the Contract as a result of a material and/or persistent breach by the Provider pursuant to paragraph 8.1.1, the Company shall be entitled to recover from the Provider the cost, loss and expenses reasonably incurred by the Company as a result of the termination, including where relevant appointing a replacement Provider. Such costs, losses and expenses shall be a debt due and immediately payable by the Provider to the Company subject to limitations of liability set out in paragraph 11.

9. Service Failure

9.1 Notwithstanding its obligations under paragraph 9.2, 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 as set out in the Service Terms.

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

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

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

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

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

9.3 In the event that:

9.3.1 the Provider fails to comply with the terms of paragraph 9.2;

9.3.2 the Provider's proposals are not accepted by the Company;

9.3.3 the Parties fail to reach agreement on any rectification actions; or

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

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such failure will be deemed a material breach of the Contract for the purposes of paragraph 8.1.1 of these General Terms and Conditions and paragraph 8.8 shall apply.

10. Force Majeure

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

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

10.2.1 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 Contract;

10.2.2 as soon as is reasonably practicable following notification pursuant to paragraph 10.2.1, the Parties shall meet to discuss how best to continue their respective obligations under the Contract; and

10.2.3 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 Contract.

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

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

11. Liability, Indemnity and Insurance

11.1 Subject to paragraph 11.2, and save where any provision of the Contract 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 Contract other than for loss directly resulting from such breach and which at the date of formation of the Contract was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

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

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

and provided further that the liability of any Party in respect of all claims for the losses referred to in this paragraph 11.1 shall not exceed (i) the Transmission Limit where such claims are in connection with, or relate

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to, DER connected to the Transmission System and (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.

11.2 Nothing in this Contract 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.

11.3 Subject to paragraph 11.2, and save where any provision of the Contract provides for an indemnity, neither Party nor any of its officers, employees or agents shall in any circumstances whatsoever be liable to the other Party for:

- 11.3.1 any loss of profit, loss of revenue, loss of use, loss of data, loss of contract or loss of goodwill; or
- 11.3.2 any indirect or consequential loss; or
- 11.3.3 loss resulting from the liability of the other Party to any other person howsoever and whensoever arising save as provided in paragraphs 11.1.2 and 11.2.

11.4 The Provider shall procure (and on request provide evidence to the Company of) appropriate insurances as required by law and necessary for the safe and efficient performance of the Contract to cover the liabilities set out in paragraph 11, with a reputable insurance company. Where possible the Provider shall add the Company as a named party on its insurance policies.

11.5 If the Provider appoints a sub-contractor in connection with the provision of the Flexibility Services, the Provider shall ensure that the sub-contractor maintains appropriate insurance to the extent set out in paragraph 11. If the Provider acts as an aggregator in connection with the provision of the Flexibility Services, it shall ensure that the DER owners and operators for which it acts maintain appropriate insurance to the extent set out in paragraph 11.

11.6 The Provider's liabilities under the Contract shall not be deemed to be released or limited by the Provider taking out the insurance policies referred to in paragraph 11.

12. [Assignment, Note: *if English*] [Assignment, Note: *if Scottish*] Sub-contracting and Change in Ownership

12.1 Save as provided for in paragraph 12.2, the Contract 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 Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed). 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.

12.2 The Company may assign or transfer the benefit or burden of the Contract or any other rights and/or obligations pursuant to these General Terms and Conditions to the holder of a Distribution Licence.

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12.3 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.

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

12.5 The Company reserves the right to terminate the Contract in accordance with paragraph 8.1.3 if a Change in Ownership of the Provider occurs and the new owner of the Provider fails to meet any of the Company's reasonable due diligence checks as notified to the Provider.

13. Confidentiality

13.1 The Company is required to disclose certain information in accordance with this Contract under obligations within its Distribution Licence, the Grid Code, the Transmission Code, the Connection and Use of System Code, the Distribution Code and the Fuel Security 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 may also share information relating to the Contract for the purpose of industry initiatives in relation to network constraint management and electricity network optimisation and the Company shall be entitled to make publicity releases and/or announcements regarding either this Contract and/or the Company's activities under the Contract. It shall not be a breach of this paragraph 13 where the Company discloses any such information.

13.2 Subject to paragraphs 13.1, 13.3.4 and 13.3.5, no public announcement or statement regarding the completion, performance or termination of the Contract shall be issued or made by the Provider without the Company's prior written approval (such approval not to be unreasonably withheld or delayed). Neither Party shall be prohibited from issuing or making any such public announcement or statement to the extent expressly permitted or if it is necessary to do so in order to comply with any Applicable Law or the regulations of any recognised stock exchange upon which the share capital of such Party is from time to time listed or dealt in.

13.3 Save as permitted by paragraph 13.1, 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 Contract. The restrictions imposed by this paragraph 13.3 shall not apply to the disclosure of any Confidential Information:

13.3.1 which is in or becomes part of the public domain otherwise than as a result of a breach of paragraph 13.3, 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;

13.3.2 which is required to be disclosed by law, an Industry Code or pursuant to any licence of the Party concerned;

13.3.3 to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a party;

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- 13.3.4 to any parent, subsidiary or fellow subsidiary undertaking on a “need to know” basis only. In this paragraph 13.3.4, the words “parent”, “subsidiary” and “undertaking” shall have the meanings as provided in sections 1159, 1161 and 1162 of the Companies Act 2006;
- 13.3.5 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 Contract and fulfil its obligations under the Contract.
- 13.4 Save as permitted by paragraph 13.1, 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).

14. Intellectual Property Rights

- 14.1 The Contract does not transfer any interest in Intellectual Property Rights.
- 14.2 All Intellectual Property Rights owned by or licensed to either Party shall at all times both during the Term of the Contract 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 Contract, provided that nothing in this paragraph 14.2 shall operate so as to exclude any non-excludable rights of either Party..

15. Data Protection

- 15.1 Each Party shall, at its own expense, ensure that it complies with all applicable Data Protection Law.
- 15.2 The Parties acknowledge that as at the date of the Contract, 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.

16. Modern Slavery, Anti-bribery and Living Wage

Modern slavery

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

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- 16.1.2 it shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- 16.1.3 it shall notify the Company immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Provider's obligations under this paragraph 16.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of Provider's obligations;
- 16.1.4 it shall include in its contracts with its subcontractors and suppliers' anti-slavery and human trafficking provisions that are at least as onerous as those set out in this paragraph 16.1; and
- 16.1.5 it will respond to all reasonable requests for information required by the Company for the purposes of completing Company's annual anti-slavery and human trafficking statement.

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

16.3 The Provider will permit the Company and its third party representatives, on reasonable notice during normal business hours, but without notice if there are reasonable grounds to suspect an instance of slavery and human trafficking, to access and take copies of records and any other information held at the premises and to meet with personnel and more generally to audit compliance with its obligations under this paragraph 16. The Provider shall give all necessary assistance to the conduct of such audits during the term of the Contract.

Anti-bribery

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

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

16.6 The Provider shall not:

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

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- 16.7 The Provider shall indemnify the Company against any losses, incurred by or awarded against the Company as a result of any breach of anti-corruption and anti-bribery laws, statutes, regulations and codes or the Bribery Act 2010.

Living wage

- 16.8 Where applicable the Provider agrees to:

16.8.1 pay all of its personnel who are directly employed by it in respect of the provision of the Flexibility Services; and

16.8.2 ensure all employees of its contractors and subcontractors performing the provision of the Flexibility Services are paid not less than the living wage for the Term of the Contract.

- 16.9 The Provider agrees to provide the Company with such reasonable assistance as it may require from time to time to enable it to perform any activity required by any relevant government, agency or competent authority in any relevant jurisdiction for the purpose of compliance with any anti-slavery laws or anti-bribery laws (including but not limited to the Modern Slavery Act 2015 and the Bribery Act 2010).

- 16.10 Any breach of this paragraph 16 by the Provider shall be deemed a material breach of the Contract for the purposes of paragraphs 8.1.1 and 8.8.

17. Notices

- 17.1 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 Annexes.

- 17.2 A notice shall be deemed to have been received:

17.2.1 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;

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

- 17.3 E-mail communications may be valid for notices the purposes of the Contract, 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.

- 17.4 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.

- 17.5 This paragraph 17 does not apply to the service of any legal proceedings, or other documents in any legal action or other method of dispute resolution.

18. Dispute Resolution

- 18.1 The Parties shall use good faith efforts to resolve any operational issue, dispute, claim or proceeding arising out of or relating to the Contract.

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18.2 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 Annexes, or as otherwise notified by either Party to the other) who have authority to settle the same or may refer the dispute to mediation.

18.3 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:

18.3.1 arbitration; or

18.3.2 an Expert for determination.

18.4 For the avoidance of doubt, clauses 19.2 and 19.3 shall not preclude a Party from raising arbitration 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.

Arbitration

18.5 Where any dispute is referred in accordance with paragraph 18.3.1 to arbitration, the following provisions shall apply:

18.5.1 If the Company is incorporated in England and Wales, the seat of arbitration shall be London. If the Company is incorporated in Scotland, the seat of arbitration shall be Edinburgh;

18.5.2 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;

18.5.3 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;

18.5.4 For the avoidance of doubt, both Parties confirm and agree that nothing in the Contract 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

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- (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.

- 18.5.5 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, 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

18.6 Where any dispute is referred in accordance with paragraph 18.3.2 to an Expert for determination, the following provisions shall apply:

- 18.6.1 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 considers appropriate;
- 18.6.2 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;
- 18.6.3 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;
- 18.6.4 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;
- 18.6.5 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;
- 18.6.6 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;
- 18.6.7 save to the extent otherwise expressly provided herein pending the determination by the Expert, any subsisting Contract shall continue to the extent possible for the Parties to perform their obligations; and
- 18.6.8 the Expert shall at their discretion be entitled to order that the costs of the reference of a dispute to them shall be paid by the Parties in whatever proportions they think fit.

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19. Severance

19.1 If any provision of the Contract 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 Contract, which shall continue in full force and effect notwithstanding such invalidity, unenforceability or illegality.

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

20. Third Party Rights

20.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 or where appropriate the Contracts (Third Party Rights) (Scotland) Act 2017, the 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 and Transmission Licensees (the Company) who shall be entitled to independently enforce all of the terms of the Contract.

21. No Agency or Partnership

21.1 Nothing in the 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.

21.2 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.

22. Waiver

22.1 No failure or delay by any Party to exercise any right, power or remedy under the Contract 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.

23. Entire Agreement

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

24. Counterparts

24.1 Where executed in counterparts:

24.1.1 the Contract shall not take effect until all of the counterparts have been delivered; and

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24.1.2 delivery will take place when the date of delivery is agreed between the Parties after execution of the Contract as evidenced by the date inserted in the Signatures.

24.2 Where not executed in counterparts, the Contract shall take effect after its execution upon the date agreed between the Parties as evidenced by the date inserted in the Signatures.

25. Governing Law and Jurisdiction

25.1 The validity, construction and performance of the Contract and any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with the Contract 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.

25.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of: (i) England and Wales if the Company is incorporated in England and Wales; and (ii) Scotland if the Company is incorporated in Scotland, over any claim, dispute or matter arising under or in connection with the Contract or its enforceability or the legal relationships established by the Contract (including non-contractual disputes or claims) and waives any objection to proceedings being brought in such courts or on the grounds that proceedings have been brought in an inconvenient forum.