

Constraint Management Zone (CMZ) Services Agreement

Between:

(1) **Western Power Distribution (South West) plc, Western Power Distribution (South Wales) plc, Western Power Distribution (East Midlands) plc and Western Power Distribution (West Midlands) plc** (company numbers: 02366894, 02366985, 02366923 and 03600574 respectively) whose registered offices are at Avonbank, Feeder Road, Bristol, BS2 0TB ("WPD"); and

(2) _____ **Limited** (company number: _____) whose registered office is at _____ (the "**Participant**").

Date of Agreement (date of signature by both parties)	
WPD Authorised Person(s)	[insert name(s), address and email address of WPD individual(s)]
Participant Authorised Person(s)	[insert name(s), address and email address of Participant individual(s)]

1. General Acknowledgement

The Participant hereby acknowledges that: (a) the provision of, or the permitting by the Participant of the remote despatch by WPD of, Demand Response pursuant to this Agreement and the participation in CMZ service programme is entirely voluntary and (b) Contract Award does not guarantee that any Services will be required by WPD or commit WPD to requiring any, or any particular level of, such Services.

2. Participant Warranty and Indemnity

2.1 The Participant warrants to WPD that the provision by it, or the permitting by the Participant of the despatch by WPD, of Demand Response will not cause the Participant:

- (a) to be in breach of the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) (available from WPD on request) or of any regulations made under Section 29 of the Electricity Act 1989 or of any other enactment relating to safety or standards applicable in respect of the business of the Participant;
- (b) to be in breach of any provisions of the Grid Code or (where applicable) the Distribution Code or make its compliance with any provision of either of these impossible;
- (c) (where any Site is Embedded (as defined in the Grid Code)) to be in breach of or to otherwise be non-compliant with any connection agreement governing the terms of connection of any plant and apparatus to, and/or any agreement for the supply of

electricity to the plant or for the acceptance of electricity into, and its delivery from, any electrical distribution or transmission system;

- (d) to be in breach of any restrictions and conditions attaching to relevant authorisations of the Environment Agency; or
- (e) to be in breach of any other agreement or arrangement of whatever nature with any other person.

2.2 If at any time during the term in which Demand Response may be provided by the Participant or despatched by WPD, this would cause the Participant to be in breach or non-compliance as described in clause 2.1, the Participant agrees that it will, in advance of any despatch by WPD or Instruction to despatch issue a notification of unavailability or, following the despatch by WPD or receipt of an Instruction, not comply with such Instruction or operate the Manual Override.

2.3 In the event that, in contravention of clause 2.2, Demand Response is despatched which causes the Participant to be in breach or non-compliance as described in clause 2.1 above, then Demand Response shall be deemed to be unavailable from the Site during any Accepted Arming Window or Accepted Availability Window (as relevant) and the Participant shall indemnify WPD against all and any claims made against WPD arising out of or resulting from such breach or non-compliance. Such indemnity shall include any legal costs and expenses reasonably incurred in the contesting of such claims including court costs and reasonable attorney's fees and other professional advisors' fees.

2.4 In the event of any such claim referred to in clause 2.3 above being made against WPD, WPD shall as soon as reasonably practicable give notice of the claim together with all relevant supporting documentation to the Participant. The Participant shall be entitled, upon written notice to WPD and subject to WPD receiving from the Participant such reasonable undertakings as WPD shall reasonably require to assume, at its own expense, sole conduct of all proceedings relating to such claim including the right to contest such claim in the name of WPD and WPD shall supply the Participant with all information, assistance and particulars reasonably required by the Participant in connection therewith. WPD shall not accept, settle, pay or compromise any such claim without the prior written approval of the Participant (such approval not to be unreasonably withheld or delayed). The Participant shall reimburse WPD's reasonable expenses incurred in connection with the provision of any such information, assistance or particulars in the contesting of any such claim.

2.5 The amount or amounts for which the Participant may be liable to WPD pursuant to paragraph 2.3 shall not exceed the sum of £250,000, provided that, in the event that the Participant's liability pursuant to paragraph 2.3 equals or exceeds £250,000, WPD may by notice in writing immediately terminate this Agreement.

3. Electricity Regulations

To the extent that the terms of this Agreement conflict with any of the rights or obligations of the parties under the Electricity Act 1989, the Utilities Act 2000, the Energy Acts 2008 – 2016, the National Terms of Connection and any other licences, codes or industry agreements related to such legislation (the "**Electricity Regulations**"), the terms of the Electricity Regulations shall prevail.

4. Site(s) / Group

4.1 The Participant may provide, or make available for the provision of, Demand Response in respect of Services from a single Site or a Group.

4.2 The Participant may add Sites via the ‘add site’ function located on the ‘Availability’ page of the Customer Portal for each CMZ as follows:

- (a) each Site shall be detailed in the form set out on the ‘Availability’ page of the Customer Portal for each CMZ;
- (b) such proposed Site shall be subject to approval by WPD (at its sole discretion);
- (c) each Site shall be effective for the purposes of this Agreement from the date that it is confirmed as approved by WPD;
- (d) Site details may be edited by the Participant, however any withdrawal of a Site must be requested via email to wpdflexiblepower@westernpower.co.uk.

WPD and the Participant agree to be bound by the terms of this Agreement (as defined in paragraph 1.1 (Definitions and Interpretations) of the terms and conditions attached at Schedule 3).

<p>Signed on behalf of Western Power Distribution (South West) plc:</p> <p><i>Signature:</i> _____</p> <p><i>Name:</i> _____</p> <p><i>Role:</i> _____</p>
<p>Signed on behalf of Western Power Distribution (South Wales) plc:</p> <p><i>Signature:</i> _____</p> <p><i>Name:</i> _____</p> <p><i>Role:</i> _____</p>
<p>Signed on behalf of Western Power Distribution (West Midlands) plc:</p> <p><i>Signature:</i> _____</p> <p><i>Name:</i> _____</p> <p><i>Role:</i> _____</p>
<p>Signed on behalf of Western Power Distribution (East Midlands) plc:</p> <p><i>Signature:</i> _____</p> <p><i>Name:</i> _____</p> <p><i>Role:</i> _____</p>
<p>Signed on behalf of: [Participant] :</p> <p><i>Signature:</i> _____</p> <p><i>Name:</i> _____</p> <p><i>Role:</i> _____</p>

Schedule 1

(Services)

1. By 23:59 hours on each Wednesday (or as otherwise agreed between the parties), the Participant shall notify Central Control of any Site(s) / Group that is **available** for the despatch of Demand Response, the Service(s) that the Site(s) / Group is available for and the capacity it is declaring in respect of such Site(s) / Group and Service (provided that this shall not exceed the Maximum Capacity) during the following Week and the relevant Minimum Utilisation Period, Maximum Utilisation Period and Weekly Limit. In the absence of any notification to the contrary in respect of a particular Site / Group, WPD shall be entitled to assume that that Site / Group is **available** for the despatch of Demand Response at all times for all Services and for the most recently declared capacity (up to the Maximum Capacity), Minimum Utilisation Period, Maximum Utilisation Period and Weekly Limit (or the Maximum Capacity, Minimum Utilisation Period, Maximum Utilisation Period and Weekly Limit set out in the Customer Portal if no declarations or updated declarations have been made).
2. By 1200 hours on each Thursday (or as otherwise agreed between the parties), Central Control shall confirm to the Participant the Arming Windows and/or Availability Windows available during the following Week.
3. If, at any time, the Participant becomes aware that Demand Response will not be available for despatch from a Site / Group for any time during a Committed Arming Window, Committed Availability Window and/or any other period of time or on the basis for which availability was declared or deemed declared pursuant to paragraph 1 above, then it shall update Central Control of such change as soon as reasonably practicable, including details of the Site(s) / Group, the Service the relevant period of time that will be unavailable and/or any other changes in the declaration or deemed declaration..
4. Notwithstanding any notification or deemed notification that Demand Response is available for despatch:
 - 4.1 WPD may determine that, based on any Site / Group and asset status monitoring data and information available to it (including where no data or information is available as a result of a failure of the control or communications systems), and taking into account any asset or Site / Group operational capabilities agreed between WPD and the Participant from time to time, Demand Response is unavailable for despatch for any period during any Accepted Arming Window, Accepted Availability Window and/or other period of time which has not been declared or deemed to be unavailable;
 - 4.2 in the event that the Manual Override to trigger emergency withdrawal of Demand Response is operated by the Participant during an Accepted Arming Window, Accepted Availability Window and/or other period of time, or if no Demand Response is provided for a period of time during an Accepted Arming Window, Accepted Availability Window and/or other period of time following an Instruction, then Demand Response shall be deemed to be unavailable following operation of the Manual Override or for the period of failure to provide any Demand Response during that Accepted Arming Window, Accepted Availability Window and/or other period of time; and
 - 4.3 unless otherwise agreed with the Participant, Demand Response shall be deemed to be unavailable from a Site / Group during each Accepted Arming Window, Accepted Availability Window (or part thereof) and/or other period of time previously notified, or deemed to be

notified, as being available that overlaps with a Recovery Period or in respect of any Accepted Arming Window, Accepted Availability Window or other period of time previously notified, or deemed to be notified, as being available (or part thereof) which, were Demand Response to be despatched during such Accepted Arming Window, Accepted Availability Window (or part thereof) or other period of time previously notified, or deemed to be notified, as being available, the Minimum Utilisation Period in respect of such despatch would exceed the relevant Weekly Limit.

5. Where:
 - 5.1 WPD has determined, in accordance with paragraph 4.1 above, that Demand Response is not available for despatch from a Site / Group, then it shall notify the Participant of this as soon as reasonably practicable thereafter. Upon such notification (and without prejudice to paragraph 5 of Schedule 3), the Participant shall investigate and shall provide a report to WPD setting out the reasons why Demand Response was unavailable for despatch;
 - 5.2 the Participant operates the Manual Override to trigger emergency withdrawal of Demand Response during an Accepted Arming Window, Accepted Availability Window or other period of time or if no Demand Response is provided for a period of time following an Instruction from WPD, then the Participant shall, as soon as practicable thereafter, provide a report to WPD setting out the reasons why such Manual Override was operated or Demand Response not provided following an Instruction.
6. WPD may, in any Accepted Arming Window, Accepted Availability Window or other period of time in respect of a Site / Group which has not been declared or deemed to be unavailable at that time to provide Services, issue a notice (an "**Instruction**") requiring the Participant to provide Demand Response, or may itself remotely despatch Demand Response from that Site / Group.
7. Where WPD remotely despatches Demand Response this shall be notified by Central Control to the Participant and shall, unless otherwise agreed between WPD and the Participant, operate continuously for a minimum of the declared (or deemed declared) Minimum Utilisation Period until the earlier of:
 - 7.1 the expiry of the declared (or, where relevant, deemed declared) Maximum Utilisation Period or the Weekly Limit;
 - 7.2 any other time as required by WPD; and
 - 7.3 the end of the Accepted Arming Window, Accepted Availability Window or other period of time declared as available by the Participant in respect of a Site / Group (as relevant)provided that if the time set out in 7.2 or 7.3 above would be prior to the end of the Minimum Utilisation Period, Demand Response shall be operated until the end of the Minimum Utilisation Period.
8. Where WPD issues an Instruction requiring the Participant to provide Demand Response the Participant shall, within the Response Time and unless otherwise agreed between WPD and the Participant, provide Demand Response from the Site / Group continuously for a minimum of the declared (or deemed declared) Minimum Utilisation Period until the earlier of:
 - 8.1 the expiry of the declared (or, where relevant, deemed declared) Maximum Utilisation Period or the Weekly Limit;

- 8.2 any other time as required by WPD; and
- 8.3 the end of the Accepted Arming Window, Accepted Availability Window or other period of time declared as available by the Participant in respect of a Site / Group (as relevant),
- provided that if the time set out in 8.2 or 8.3 above would be prior to the end of the Minimum Utilisation Period, Demand Response shall be operated until the end of the Minimum Utilisation Period.
9. In the event that, in respect of the despatch of Demand Response in accordance with paragraph 6 in any Accepted Arming Window, Accepted Availability Window or other period of time previously notified, or deemed to be notified, as being available at any Site / Group:-
- 9.1 Demand Response is not provided at a level of at least the required level of Contracted Capacity less any applicable grace factor (each as set out in Part E of Schedule 2) as measured at the minute in which the Response Time ends;
- 9.2 the volume in MWh of Demand Response provided is less than the required level of Contracted Capacity less any applicable grace factor (each as set out in Part E of Schedule 2) as multiplied by the number of hours (including parts thereof) comprised in the period from the expiry of the Response Time until the first to occur of the times described in paragraphs 7.1, 7.2 or 7.3 or 8.1, 8.2 or 8.3 (as relevant); or
- 9.3 Demand Response is not provided continuously at a level of at least the required level of Contracted Capacity less any applicable grace factor (each as set out in Part E of Schedule 2) from the expiry of the Response Time until the first to occur of the times described in paragraphs 7.1, 7.2 or 7.3 or 8.1, 8.2 or 8.3 (as relevant),
- then the Service Charges otherwise payable by WPD to the Participant shall be reduced in accordance with Schedule 2.

Schedule 2

(Payment and Performance Calculations)

PART A: Introduction

1. Definitions and interpretation

In this Schedule 2, terms shall be defined and interpreted in accordance with the Terms and Conditions in Schedule 3, unless the context otherwise requires or such terms are defined below:

"Arming Fee" has the meaning given in to it in Paragraph 3) of this Part A of Schedule 2 below;

"Arming Payment" means any payment calculated in accordance with Paragraph 2 of Part B of this Schedule 2 below;

"Arming Settlement Period" means each full thirty (30) minute period within an Accepted Arming Window, as described in Paragraph 2.2 of this Part A of Schedule 2 below;

"Availability Fee" has the meaning given in to it in Paragraph 1.3(d) of this Part A of Schedule 2 below;

"Availability Payment" means any payment calculated in accordance with Paragraph 3 of Part B of this Schedule 2 below;

"Availability Settlement Period" means each full thirty (30) minute period within an Accepted Availability Window, as described in Paragraph 1.2 of this Part A of Schedule 2 below;

"Constraint Event Delivery Proportion" has the meaning given to it in Paragraph 5 of Part B of this Schedule 2 below;

"Delivery Proportion" has the meaning given to it in Paragraph 4.2 of Part B of this Schedule 2 in respect of WPD Dynamic Services and/or WPD Secure Services, and/or in Paragraph 2.2 of Part C of this Schedule 2 in respect of WPD Restore Services below;

"Delivery Target Threshold" has the meaning given to it in Paragraph 2.1 of Part C of Schedule 2;

"Event Delivery Proportion" has the meaning given to it in Paragraph 5 of Part B of this Schedule 2 below;

"Grace Factor" has the meaning given to it in Paragraph 4 of Part B of this Schedule 2;

"Monthly Delivery Proportion" has the meaning given to it in Paragraph 5 of Part B of this Schedule 2 below;

"Payable Overdelivery" means the % of overpayment above 100% that will be available in respect of Utilisation Payments for WPD Restore Services as set out in Paragraph 2.1 of Part C of this Schedule 2;

"Payment Proportion" means the value calculated in accordance with Paragraph 4 of Part B of this Schedule 2 in respect of WPD Dynamic Services and/or WPD Secure Services, and/or in Paragraph 2 of Part C of this Schedule 2 in respect of WPD Restore Services below;

"Penalisation Multiplier" has the meaning given to it in Paragraph 4.3 of Part B of this Schedule 2 in respect of WPD Dynamic Services and/or WPD Secure Services, and/or in Paragraph 2.3 of Part C of this Schedule 2 in respect of WPD Restore Services below;

"Reconciliation Grace Factor" has the meaning given to it in Paragraph 5.5 of Part B of this Schedule 2 below;

"Utilisation Cost" has the meaning given to it in Paragraph 2) of this Part A of Schedule 2 below;

"Utilisation Payment" means any payment in respect of WPD Dynamic Services and/or WPD Secure Services calculated in accordance with Paragraph 3 of Part B of this Schedule 2 below, and/or any payment in respect of WPD Restore Services calculated in accordance with Paragraph 1 of Part C of this Schedule 2 below;

"Utilisation Settlement Period" means each full one (1) minute period during a Utilisation event, as described in Paragraph 2.2 of this Part A of Schedule 2 below.

2. General

2.1 For WPD Dynamic Services, there are two primary payments: Utilisation Payments and Availability Payments. For WPD Secure Services, there are two primary payments: Utilisation Payments and Arming Payments. For WPD Restore Services, there is one payment: the Utilisation Payment. Utilisation Payments are made when Demand Response is despatched where a *constraint event* is in progress. Arming Payments are paid for every Accepted Arming Window in respect of the Site(s) / Group (s). Availability Payments are paid for every Accepted Availability Window in respect of the Site(s) / Group (s).

2.2 Arming Payments, Availability Payments and Utilisation Payments are calculated at a different granularity called the Arming Settlement Period, the Availability Settlement Period and the Utilisation Settlement Period. The constants used to convert between MWh values and the individual time segments are (SP_u) and (SP_a), which correspond to the fraction of an hour for Utilisation, availability and arming. The Utilisation Settlement Period is 1 minute. The Arming Settlement Periods and Availability Settlement Periods are 30 minutes i.e.:

$$SP_u = \frac{1}{60} \text{ and } SP_a = 0.5$$

2.3 In respect of each Site(s) / Group there are four constant values:

- 1) The Contracted Capacity (CC_s), given in MW;
- 2) A Utilisation Cost (UC_s), which is the payment per MWh delivery by the Site(s) / Group during a Utilisation. The Utilisation Cost will be determined by WPD in respect of each of the WPD Dynamic Services, the WPD Secure Services and the WPD Restore Services and set out on the Customer Portal from time to time, provided that any change to the then exiting rate shall be notified by Central Control to the Participant no later than 1 month before such changed rate will take effect;

- 3) An Arming Fee (AF_s), which is the payment for arming availability in respect of an Accepted Arming Window at a Site(s) / Group (s). This is a payment per MW per hour of availability. The Arming Fee will be determined by WPD from time to time and confirmed by Central Control provided that any change to the then exiting rate shall be notified by Central Control to the Participant no later than 1 month before such changed rate will take effect;
 - 4) An Availability Fee (AC_s), which is the payment for availability in respect of an Accepted Availability Window at a Site(s) / Group. This is a payment per MW per hour of availability. The Availability Fee will be determined by WPD and set out on the Customer Portal from time to time, provided that any change to the then exiting rate shall be notified by Central Control to the Participant no later than 1 month before such changed rate will take effect.
- 2.4 Payments are calculated on a month-by-month basis. The calculations in this Schedule 2 determine the Utilisation Payments, the Availability Payments and the Arming Payments due to a Site(s) / Group for a given month.
- 2.5 For WPD Dynamic Services and WPD Secure Services, for each month, (m), there is a list of Arming Windows or Availability Windows (as appropriate) and a list of constraint events, which are written as (AW_m) and (E_m) for Arming of Secure services and (AP_m) and (E_m) for Availability of Dynamic services. The top-level calculations will loop through these lists, but the bulk of the work is performed for an individual Arming Window or Availability Window and an individual constraint event.

PART B: WPD Dynamic Services and WPD Secure Services**1. WPD Secure Services Arming Payment**

1.1 Arming Payments for an Accepted Arming Window are determined as the sum for all Arming Settlement Periods in that Contracted Arming Window, based on binary values for availability during each Arming Settlement Period.

1.2 ST_{aw} and FT_{aw} are written for the start and finish time of the given Accepted Arming Window.

1.3 The raw Arming Payment given to a Site(s) / Group for an Accepted Arming Window is as follows:

Where the Arming Fee is a payment per MW per hour:

$$AWP_{aw,s} = \left(\sum_{j=ST_{aw}}^{FT_{aw}} AF_{s,aw} \cdot SP_{aw} \cdot CC_s \cdot SA_{s,j} \right)$$

Where:

$AWP_{aw,s}$ is the Arming Window Payment for Site(s) / Group (s) during an Accepted Arming Window (aw)

$\sum_{j=ST_{aw}}^{FT_{aw}}$ sums the payment for every Arming Settlement Period in the Accepted Arming Window, from start to finish time inclusive

AF_s is the Arming Fee for that Site(s) / Group and Accepted Arming Window on a per MW per hour basis

SP_{aw} is the Arming Settlement Period

CC_s is the Contracted Capacity

$SA_{s,j}$ is the availability for each Arming Settlement Period for the Site(s) / Group within an Accepted Arming Window which is supplied as binary data into the system, based on the reporting and the conditions outlined elsewhere in the Agreement

2. WPD Dynamic Services Availability Payment

2.1 Availability Payments for an Accepted Availability Window are determined as the sum for all Availability Settlement Periods in that Accepted Availability Window, based on binary values for availability during each Availability Settlement Period.

2.2 ST_{aw} and FT_{aw} are written for the start and finish time of the given Accepted Availability Window.

2.3 The raw Availability Payment given to a Site(s) / Group for an Accepted Availability Window is as follows:

Where the Availability Fee is a payment per MW per hour:

$$AP_{s,w} = \left(\sum_{j=ST_w}^{FT_w} AC_s \cdot SP_a \cdot CC_s \cdot SA_{s,j} \right)$$

Where:

$AP_{s,w}$ is the Availability Payment for Site(s) / Group (s) during an Accepted Availability Window (w)

$\sum_{j=ST_w}^{FT_w}$ sums the payment for every Availability Settlement Period in the Accepted Availability Window, from start to finish time inclusive

$AC_{s,w}$ is the Availability Fee for that Site(s) / Group and Accepted Availability Window on a per MW per hour basis

SP_a is the Availability Settlement Period

CC_s is the Contracted Capacity

$SA_{s,j}$ is the availability for each Availability Settlement Period for the Site(s) / Group within an Accepted Availability Window which is supplied as binary data into the system, based on the reporting and the conditions outlined elsewhere in the Agreement

3. Utilisation Payment

3.1 For a Site(s) / Group (s), Utilisation Payments for WPD Dynamic Services and WPD Secure Services are calculated per-constraint Utilisation event (e). Each constraint Utilisation event has a start time (ST_e) and a finish time (FT_e), such that $ST_e < FT_e$.

3.2 The Utilisation Payment for a Site(s) / Group (s) per constraint Utilisation event (e) is calculated as follows:

$$U_{s,e} = \sum_{j=ST_e}^{FT_e} CC_s \cdot UC_s \cdot SP_u \cdot PP(CC_s, AD_{s,j})$$

Where:

$U_{s,e}$ is the Utilisation Payment for Site(s) / Group (s) during each constraint Utilisation event (e)

$\sum_{j=ST_e}^{FT_e}$ sum of the Utilisation Settlement Periods during the constraint Utilisation event

CC_s Contracted Capacity,

UC_s Utilisation Cost,

SP_u Settlement Period of the Site(s) / Group, as defined above. $AD_{s,j}$ is the actual, metered MW delivery of the Site(s) / Group (s) for each Utilisation Settlement

Period during the constraint Utilisation event (j). In the payment calculations, there is no difference between Generator Sites and Demand Reduction Sites, since this value is the 'reported to grid' value

PP is the Payment Proportion and works out what fraction of the full price is due to the Site(s) / Group for every Utilisation Settlement Period based on the Contracted Capacity and the actual delivery.

4. Payment Proportion

A margin of error as set out in Part E of this Schedule 2, known as the Grace Factor (GF) is allowed in respect of under-delivery of the Contracted Capacity (CC).

- 4.1 at a Site(s) / Group (assessed against each of the metrics set out at paragraph 9 of Schedule 1). Delivery of equal to or greater than the required level of Contracted Capacity less the applicable Grace Factor is awarded the full Utilisation Payment. A deduction from the full payment will be made for delivery of less than the required level of Contracted Capacity less the applicable Grace Factor.
- 4.2 The Delivery Proportion ($DP_{s,j}$) is defined as the ratio of actual MW delivery (calculated from the baseline set out in Part D of this Schedule 2) to Contracted Capacity. This ratio is a value that represents a percentage and rounded to two significant figures to ensure it represents a whole percentage.
- 4.3 The Grace Factor determines the acceptable under-delivery for a Site(s) / Group. For every % point under that level, a fixed proportion as set out in Part E of this Schedule 2, called the Penalisation Multiplier, (PM) of the full payment is deducted. Over-delivery is capped, and paid at Contracted Capacity.
- 4.4 Thus, the Payment Proportion is a value between 0 and 1 (or 0 and 100%). The calculation contains two separate cases:

$$1) \text{ if } DP_{s,j} \geq (1 - GF), PP_{s,j} = 1$$

$$2) \text{ if } DP_{s,j} < (1 - GF), PP_{s,j} = \text{Max}(0, 1 - GF - PM \cdot [1 - GF - DP_{s,j}])$$

5. Monthly Reconciliation

- 5.1 In addition to the above, the Arming Payments and Availability Payments for a Site(s) / Group are subject to a monthly reconciliation based on the Site's / Group's individual Utilisation performance over the month.
- 5.2 This is calculated as follows: the Monthly Delivery Proportion ($MDP_{s,m}$) for a Site(s) / Group for a given month is

$$MDP_{s,m} = \frac{\sum_{e \in E_m} \text{Min}(1, EP_{s,e})}{\#E_m}$$

i.e. the capped proportion of average deliveries in a given month.

Where:

$e \in E_m$ is the Delivery Proportion during each and every constraint Utilisation event in the set of constraint Utilisation events for the month (m)

$\#E_m$ is the number of constraint Utilisation events in the month

$Min(1, EP_{s,e})$ caps the Delivery Proportion during each and every constraint Utilisation event at 100%, even if the Site(s) / Group over-delivers. The Constraint Event Delivery Proportion $EP_{s,e}$ for a Site(s) / Group and a Utilisation event is defined below.

5.3 In order to define the Constraint Events Monthly Delivery Proportion, we first need the Event Delivery Proportion (EDP). For each individual constraint Utilisation event the total, uncapped Delivery Proportions for each Utilisation Settlement Period are summed.

$$EDP_{s,e} = \left(\sum_{j=ST_e}^{FT_e} DP_{s,j} \right) / (FT_e - ST_e + 1)$$

5.4 As such, the Delivery Proportion for each Utilisation Settlement Period of the constraint Utilisation event is calculated. It is important to note that this is uncapped. This does not apply across constraint Utilisation events in the month, as shown in the $MDP_{s,m}$ calculation.

5.5 When calculating the Constraint Event Delivery Proportion, the Event Delivery Proportions are also given a grace factor, called the Reconciliation Grace Factor (RGF). Thus the Constraint Event Proportion is:

1) if $1 \leq EDP_{s,e} + RGF < 1 + RGF$, $EP_{s,e} = 1$

2) otherwise $EP_{s,e} = EDP_{s,e}$

6. Monthly Arming Window and Availability Window Payments

The monthly Arming Payment and Availability Payment for a Site(s) / Group for a given month is calculated as follows:

$$AP_{s,m} = \left(\sum_{w \in M} AP_{s,w} \right) \cdot MDP_{s,m}$$

That is, the total Arming Payments and Availability Payments due for the Site(s) / Group for the month multiplied by the Constraint Event Delivery Proportion.

7. Monthly Utilisation Payments

Similarly, the monthly Utilisation Payments due for a given Site(s) / Group in a month is calculated as the sum of the individual Utilisation Payments:

$$UP_{s,m} = \left(\sum_{e \in M} UP_{s,e} \right)$$

PART C: WPD Restore Services

1. Utilisation Payment

- 1.1 For a Site(s) / Group (s), Utilisation Payments for WPD Restore Services are calculated per-constraint Utilisation event (e). Each constraint Utilisation event has a start time (ST_e) and a finish time (FT_e), such that $ST_e < FT_e$.
- 1.2 The Utilisation Payment for a Site(s) / Group (s) per constraint Utilisation event (e) is calculated as follows:

$$U_{s,e} = \sum_{j=ST_e}^{FT_e} CC_s \cdot UC_s \cdot SP_u \cdot PP (CC_s, AD_{s,j})$$

Where:

$U_{s,e}$ is the Utilisation Payment for Site(s) / Group (s) during each constraint Utilisation event (ce)

$\sum_{j=ST_e}^{FT_e}$ sum of the Utilisation Settlement Periods during the constraint Utilisation event

CC_s Contracted Capacity,

UC_s Utilisation Cost,

SP_u Settlement Period of the Site(s) / Group, as defined above.

PP is the Payment Proportion and works out what fraction of the full price is due to the Site(s) / Group for every Utilisation Settlement Period based on the Contracted Capacity and the actual delivery.

$AD_{s,j}$ is the actual, metered MW delivery of the Site(s) / Group (s) for each Utilisation Settlement Period during the constraint Utilisation event j . In the payment calculations, there is no difference between Generator Sites and Demand reduction Sites, since this value is the 'reported to grid' value

2. Payment Proportion

- 2.1 Delivery of the Contracted Capacity at a Site(s) / Group (assessed against each of the metrics set out at paragraph 9 of Schedule 1) of equal to or greater than the target delivery threshold set out in Part E of this Schedule 2, the Delivery Target Threshold (DTT) is awarded the Utilisation Payment "at rate" (i.e. the payment % will equate to the delivery %), provided that delivery over the required level of Contracted Capacity will be paid up to a maximum Payable Over-delivery (PO) of the Contracted Capacity as set out in Part E of this Schedule 2. A deduction from full payment of will be made based on the rules below for delivery of less than target delivery threshold of Contracted Capacity.
- 2.2 The Delivery Proportion ($DP_{s,j}$) is defined as the ratio of actual MW delivery (calculated from the baseline set out in Part D of this Schedule 2) to Contracted Capacity. This ratio is a

value that represents a percentage and is rounded to two significant figures to ensure it represents a whole percentage.

2.3 The Delivery Target Threshold (*DTT*) determines the acceptable under-delivery for a Site(s) / Group. For every % point under that level, a fixed proportion as set out in Part E of this Schedule 2, called the Penalisation Multiplier, (*PM*) of the full payment is deducted.

2.5 Thus, the Payment Proportion is a value between 0 and 1+*PO* (or 0 and 100%+*PO*%). The calculation contains three cases:

1) if $DP_{s,j} \geq (1 - DTT)$ and $DP_{s,j} \leq 1 + PO$, $PP_{s,j} = DP_{s,j}$

2) if $DP_{s,j} < (1 - DTT)$, $PP_{s,j} = \text{Max}(0, 1 - DTT - PM \cdot [1 - DTT - DP_{s,j}])$

3) if $DP_{s,j} > 1 + PO$, $PP_{s,j} = 1 + PO$

PART D: Baseline for Measuring Actual Delivery

1. For Demand Reduction Sites, delivery of Demand Response will be measured at the point of supply. The lowest level of demand that a Site can reliably reduce its demand to at any point during weekdays will be established on a month by month basis (unless otherwise agreed by the parties) by taking demand between 3pm and 8pm (Monday to Friday) over a period of the first three (3) weeks of the previous month. This consumption will then be totalled and divided by any de-rating factor agreed between WPD and the Participant and will be used to establish the monthly average demand which will then become the baseline from which delivery of Demand Response will be measured.

2. For Generation Sites, delivery of Demand Response will be measured at the output terminals of the generator. In respect of "standby generators", the baseline will be set at 0. In respect of "parallel operation generators" including, for example, CHP installations, then a distinction will be made between a Site that does **not** generate to the extent that it exports during the hours of 3pm to 8pm on any weekday, in which case the Site will be treated in the same way as a Demand reduction Site above, and a Site that does export, in which case the same principles as used in respect of Demand Reduction will be apply to data collected from the generator during the three week period.

PART E: Payment Mechanism Values

This Part E may be updated from time to time in writing as agreed between the parties. Any agreed update shall be deemed to be incorporated into this Part E and this part E shall be read and construed accordingly.

1. WPD Dynamic Services:

Attribute	Value
Grace Factor (<i>GF</i>)	5%
Penalisation Multiplier (<i>PM</i>)	3
Reconciliation Grace Factor (<i>RGF</i>)	0%

2. WPD Secure Services:

Attribute	Value
Grace Factor (<i>GF</i>)	5%
Penalisation Multiplier (<i>PM</i>)	3
Reconciliation Grace Factor (<i>RGF</i>)	0%

3. WPD Restore Services:

Attribute	Value
Delivery Target Threshold (<i>DTT</i>)	80%
Payable Over-delivery (<i>PO</i>)	10%
Penalisation Multiplier (<i>PM</i>)	2

Schedule 3

(Terms and Conditions)

It is agreed as follows:

1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

"Accepted Arming Window" means a Committed Arming Window in respect of a Site / Group which is notified by WPD in the Customer Portal as being required by WPD for WPD Secure Services;

"Accepted Availability Window" means a Committed Availability Window in respect of a Site / Group which is notified by WPD in the Customer Portal as being required by WPD for WPD Dynamic Services;

"Agreement" means this agreement (including the Terms and Conditions and any other schedule or annexure to it) made between the parties;

"Applicable Legislation" means all Policies and laws, statutes, acts, regulations, codes, judgments, orders, directives or determinations applicable to the performance of the Services;

"Arming Window" means, for each Site / Group, the window of time during which WPD Secure Services may be required to be available during an Operational Period as notified pursuant to paragraph 2 of Schedule 1;

"Authorised Persons" means the individuals of WPD and the Participant specified as the authorised person on the front page of this Agreement;

"Availability Window" means, for each Site / Group, the window of time during which WPD Dynamic Services may be required to be available during an Operational Period as notified pursuant to paragraph 2 of Schedule 1;

"Business Day" means any day other than a Saturday or a Sunday on which banks are open for domestic business in the City of London;

"CDM Regulations" means the Construction (Design and Management) Regulations 2015 and any amendment thereto;

"Cease Time" means the end of the minute during which WPD ceases, or requires the cessation of, the despatch of Demand Response in accordance with this Agreement;

"Central Control" means the WPD control facility from where the network is monitored and managed. Unless otherwise set out in this Agreement or agreed between parties from time to time, any notice or other communication with Central Control shall be via the Customer Portal;

"Committed Arming Window" means an Arming Window (or any part thereof) in respect of which a notification or assumption of availability pursuant to paragraphs 1 or 3 of Schedule 1 corresponds;

"Committed Availability Window" means an Availability Window (or any part thereof) in respect of which a notification or assumption of availability pursuant to paragraphs 1 or 3 of Schedule 1 corresponds;

"Contract Award" means a notification of contract award by WPD to the Participant in respect of an invitation to tender issued by WPD and **"Awarded a Contract"** shall be construed accordingly;

"Contracted Capacity" means the target net MW of Demand Response at a Site / Group as set out in the Participant's declarations or deemed declarations made pursuant to paragraph 1 and/or 3 of Schedule 1 up to the Maximum Capacity;

"Customer Portal" means the password protected customer area of the flexible power website accessible via <http://www.flexiblepower.co.uk/>;

"Date of Agreement" means the date specified as the date of signature on the front page of this Agreement;

"Demand" the demand of MW and Mvar of electricity;

"Demand Response" means the increase of net export of active power to, or the reduction of net import of active power from, WPD's distribution system from or to a Site(s) / Group. The delivery method for providing Demand Response for each Site / Group is set out in the Customer Portal;

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

"Distribution Code" means the Distribution Code of Licensed Distribution Network Operators of Great Britain (available to view at www.dcode.org.uk);

"Event End Time" means the earlier to occur of the events set out in paragraphs 7 or 8 (as relevant) of Schedule 1;

"Expected Availability" means those Arming Windows and Availability Windows which it is agreed between WPD and the Participant from time to time would be likely to be declared or deemed available and constitute a Committed Arming Window or Committed Availability Window (as appropriate);

"Generation" means the electrical output (in MW) of any apparatus which produces electricity;

"Good Industry Practice" means the degree of skill, care, prudence and foresight and operating practice that would reasonably and ordinarily be expected from time to time of a skilled and experienced operator

engaged in the same type of undertaking under the same or similar circumstances and conditions;

"Group" means multiple Sites that are aggregated and regarded as a single entity as identified on the 'Availability' page of the Customer Portal and provided that such aggregated Sites may be metered on a single metering output and receive a single Instruction and requirement to cease or from which Demand Response may be despatched and ceased as a single unit;

"Instruction" has the meaning given in paragraph 6 of Schedule 1;

"Manual Override" means the emergency withdrawal of Demand Response which can be activated via the API or outstation by the Participant in respect of each Site / Group;

"Maximum Capacity" means the maximum MW of Demand Response committed by the Participant in respect of each applicable Service in a CMZ as set out in the Participant's response to the relevant invitation to tender issued by WPD;

"Maximum Utilisation Period" means the period of time in respect of a Site / Group beginning at the time at which either the output of that Site / Group is greater than 0MW or the Demand is less than the Contracted Capacity as set out in the Customer Portal as the same may be updated from time to time;

"Minimum Utilisation Period" means the period of time in respect of a Site / Group beginning at the time at which either the output of that Site / Group is greater than 0MW or the Demand is less than the Contracted Capacity (including any ramping period) as set out in the Customer Portal as the same may be updated from time to time;

"Operational Day" means the period from 0500 hours on one day to 0500 hours on the following day;

"Operational Period" means the duration for which a Service may be required by WPD which shall, in respect of each Service requirement, and unless such Service requirement or this Agreement is terminated earlier in accordance with its terms, be for a minimum period of one (1) year from the date of Contract Award in respect of such Service requirement as may be extended in accordance with paragraph 2.2;

"Policies" means any instructions, rules or policies issued by WPD from time to time, including without limitation Policy Document: LE7 Relating to Bribery;

"Recovery Period" means the period specified in the Customer Portal, which commences upon expiry of the earlier of the Cease Time, the Maximum Utilisation Period or relevant Accepted Arming Window or Accepted Availability Window (as relevant), for which the Site / Group is not available to be despatched;

"Response Time" means the maximum period of time (in minutes) which is permitted to elapse from despatch of Demand Response by WPD or issue of an Instruction by WPD (as relevant) to achieving the

Contracted Capacity at the relevant Site / Group in connection with the Services at set out in the Customer Portal;

"Service Charges" means the charges for the Services calculated in accordance with Schedule 2;

"Services" means any or all of the WPD Dynamic Services, WPD Restore Services and/or the WPD Secure Services;

"Settlement Period" means the period defined as such in of Schedule 2;

"Site" means each effective site included in the 'Availability' page of the Customer Portal and approved by WPD as a Site in accordance with the process set out at Clause 4;

"Term" means the duration of this Agreement;

"Utilisation" means, in respect of a Site / Group, any despatch of Demand Response which is provided continuously until the Event End Time and **"Utilised"** shall be construed accordingly;

"VAT" means value added tax chargeable under English law for the time being and any similar, additional tax;

"Week" a period of seven Operational Days commencing at 05.00 hours on a Monday and terminating at 05.00 hours on the next following Monday;

"Weekly Limit" means, in relation to any Week in respect of any Site / Group, the weekly limit as set out in the Customer Portal;

"WPD Dynamic Services" means the WPD 'dynamic' constraint management zone services (as further explained in WPD's "CMZ Payment and Contract Assistance Notes" document) required in a CMZ identified by WPD in respect of which the Participant has been Awarded a Contract to which this Agreement is expressed to apply and to be provided by the Participant pursuant to Schedule 1 including, for the avoidance of doubt, the permitting by the Participant of remote despatch of Demand Response by WPD from a Site / Group;

"WPD Restore Services" means the WPD 'restore' constraint management zone services (as further explained in WPD's "CMZ Payment and Contract Assistance Notes" document) required in a CMZ identified by WPD in respect of which the Participant has been Awarded a Contract to which this Agreement is expressed to apply and to be provided by the Participant pursuant to Schedule 1 including, for the avoidance of doubt, the permitting by the Participant of remote despatch of Demand Response by WPD from a Site / Group;

"WPD Secure Services" means the WPD 'secure' constraint management zone services (as further explained in WPD's "CMZ Payment and Contract Assistance Notes" document) required in a CMZ identified by WPD in respect of which the Participant has been Awarded a Contract to which this Agreement is expressed to apply and to be provided by the

Participant pursuant to Schedule 1 including, for the avoidance of doubt, the permitting by the Participant of remote despatch of Demand Response by WPD from a Site / Group.

1.2 In this Agreement, unless the context otherwise requires: (a) words in the singular include the plural and vice versa and words in one gender include any other gender; (b) a reference to a statute or statutory provision includes: (i) any subordinate legislation (as defined in Section 21(1), Interpretation Act 1978) made under it; (ii) any repealed statute or statutory provision which it re-enacts (with or without modification); and (iii) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it; (c) general words shall not be given a restrictive meaning where they follow one or more specific terms indicating a particular category of act, matter or thing or where they are followed by examples, and the words "including" and "in particular" (or similar) shall not limit the generality of any preceding words, and (d) references to: (i) any party include its successors in title and permitted assigns; (ii) a "person" include any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality); (iii) clauses and schedules are to clauses and schedules of this Agreement and references to sub-clauses and paragraphs are references to sub-clauses and paragraphs of the clause or schedule in which they appear; and (iv) the headings are for convenience only and shall not affect the interpretation of this Agreement.

2. Commencement and Duration

2.1 This Agreement shall commence on the Date of Agreement and shall (unless terminated at an earlier date in accordance with paragraph 12 (Termination)) continue in force until expiry or termination of the final Operational Period in respect of a Service requirement to which this Agreement applies.

2.2 WPD may extend the Operational Period in respect of any Service to which this Agreement applies by any further period or periods as required by giving not less than one (1) month's notice in writing to the Participant before expiry of the then current Operational Period. Upon giving such notice such Operational Period shall be extended by the period set out in the notice until the earlier of the end of that extended Operational Period (unless extended again in accordance with this paragraph 2.2) or termination in accordance with paragraph 12 (Termination)

3. Services

3.1 The Participant and WPD shall during the Term of this Agreement, carry out their obligations as set out in Schedule 1 in accordance with Applicable Legislation and the terms of this Agreement.

3.2 WPD may sub-contract its obligations under Schedule 1 to any third party.

3.3 The Participant may not assign, transfer, charge or otherwise encumber, declare a trust over or deal in any other manner with this Agreement or any right, benefit or interest under it without the prior written consent of WPD.

3.4 The Participant shall maintain the plant and apparatus comprising each Site / Group to such a standard that the Participant can meet its obligations to provide, or permit the despatch by WPD of, Demand Response in accordance with the terms of this Agreement, and otherwise in accordance with Good Industry Practice.

4. Payment

4.1 In consideration of the provision by the Participant of the Services in accordance with the terms of this Agreement, WPD shall pay to the Participant the Service Charges.

4.2 WPD will, within 1 week following the end of each month calculate the Service Charges for the preceding month in accordance with Schedule 2 in respect of the provision of Services and provide a statement setting out the calculations to the Participant.

4.3 By the end of the month in which the Service Charges calculations statement is received from WPD, the Participant shall either raise an invoice in respect of the amount shown in the statement, or confirm if the calculations are disputed and provide full details of the same to WPD. If the Participant disputes any calculations, then within 1 month following resolution or determination of such dispute it shall raise an invoice for the agreed amount.

4.4 Each invoice must: (a) contain all the following information: (i) the Site(s) / Group where the Services have been carried out; (ii) the period to which the invoice relates; (iii) the Participant's or, as relevant, WPD's details for payment; (iv) the Service Charges for the period of the invoice, excluding VAT; and (v) any other information that may reasonably be requested; and (b) in respect of an invoice sent to WPD, be sent to: Western Power Distribution, Accounts Payable, Elliott Road, Prince Rock, Plymouth, Devon, PL4 0SD or, in respect of an invoice sent to the Participant, be sent to the Participant Authorised Person identified on page 1 of this Agreement, and (c) be dated the date that it is issued.

4.5 All invoices shall be paid within 28 days of the date of invoice.

4.6 All sums payable under this Agreement shall be exclusive of VAT. The payor of any sums shall pay an amount equal to such VAT to the payee in addition to any sum or consideration on receipt of a valid VAT invoice from the payee.

4.7 If the payor fails to pay to the payee any undisputed amount payable by it under this Agreement, the payee may charge the payor interest on the overdue amount from the due date up to the

date of actual payment at the rate of 4% per annum above the base rate of the Bank of England. Such interest shall accrue from day to day.

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

5. Performance

5.1 Where, in respect of any Site / Group a Service Failure (as defined in paragraph 5.4) occurs, WPD may serve a notice on the Participant requiring the Participant to (a) put forward within the time period set out in the notice, and subsequently implement in accordance with its terms, a rectification plan for improving performance and/or reducing the number of occurrences of unavailability, which such rectification plan may include (at the discretion of WPD) a repeat of any commissioning tests undertaken on initial installation of the relevant plant or apparatus, (b) propose a variation to the Contracted Capacity or (c) take any other action as may be specified by WPD (acting reasonably).

5.2 Where (a) (i) no acceptable rectification plan has been provided within the required time period, or (ii) the rectification plan has not been implemented in accordance with its terms, and (iii) in respect of either (i) or (ii), the Participant's performance in respect of the Service Failure the subject of the notice given under paragraph 5.1 has not significantly improved (as determined by WPD) in the month following the date of the notice, (b) no acceptable variation to the Contracted Capacity has been proposed by the Participant, or (c) any other action specified by WPD has not been taken, then WPD may, at its discretion, terminate (with immediate effect by notice) this Agreement or to require a variation.

5.3 Where WPD requires a variation to the Agreement pursuant to paragraph 5.2 above, WPD shall give notice of this to the Participant. If the Participant disputes or does not accept (in accordance with its terms) any required variation, then WPD shall have the option to terminate (with immediate effect by notice) the Agreement.

5.4. For the purposes of this paragraph 5, a **Service Failure** shall mean where, in respect of a Site / Group, (a) WPD has been entitled, in accordance with this Agreement, to make performance adjustments of 20% or more to the Service Charges in any 2 consecutive months or in three or more months in any six (6) month period; or (b) the number of Arming Windows and Availability Windows which are subject to a declaration or notification of unavailability, or which are otherwise deemed to be unavailable, is greater than 20% of the Expected Availability.

6. Contract Management

6.1 The Participant hereby appoints the Participant's Authorised Person who shall have the authority

contractually to bind the Participant on all matters relating to this Agreement.

6.2 The Authorised Persons shall be available to meet at least once every quarter to review the parties' performance under this Agreement if required in writing (email sufficient) by either party.

7. Monitoring and Metering and Despatch Equipment

7.1 The Participant's provision of Demand Response and the amount of Demand Response provided shall be monitored, metered and determined by reference to the minute by minute metering data communicated to Central Control and for such purpose the Participant shall permit WPD to collect, and on request shall provide or procure the provision to WPD of, accurate minute by minute metering data in respect of each Site(s) / Group.

7.2 The Participant shall (a) permit and grant free and unrestricted rights of access to and over and egress from the Sites to WPD and/or its agents or sub-contractors (upon reasonable notice) in order to install, inspect, maintain, test, repair, replace, renew, alter, use and remove any Despatch Equipment; (b) take proper care of the Despatch Equipment and ensure that it is properly protected and either insured to its full replacement value (and ensure that WPD's interest is noted on the relevant insurance policy) or, if damaged or destroyed as a result of the Participant's failure to do so, pay for the cost of its repair and/or replacement; (c) notify WPD immediately upon becoming aware of any failure or likely failure of the Despatch Equipment to monitor the provision of Demand Response; (d) notify WPD as soon as reasonably practicable upon becoming aware of any adverse conditions which may affect the Despatch Equipment and comply with WPD's instructions relating to its care in such conditions; (e) not change the location of the Despatch Equipment without WPD's prior written consent; (f) comply with any reasonable instructions of WPD in respect of such Despatch Equipment.

7.3 The Participant shall indemnify WPD for any costs incurred by WPD as a result of any failure by the Participant to comply with the provisions of paragraph 7.4.

7.4. The Participant shall reimburse to WPD the reasonable costs incurred by WPD in installing, and maintaining the Despatch Equipment from the Sites if this Agreement is terminated due to an act or default by Participant.

8. Liability

8.1 Subject to paragraph 8.3 and without prejudice to paragraph 8.2, WPD's liability to the Participant (save in respect of payment of the Service Charges) shall not exceed two million pounds sterling (£2,000,000) and WPD shall not be liable for any other payments incurred by the Participant in the provision of the Services.

8.2 Subject to paragraph 8.3, and save where this Agreement provides for an indemnity, neither party shall be liable to the other for any losses arising from a breach of this Agreement other than for losses directly resulting from such breach and which, at the date of this Agreement was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of physical damage to the property of the other or any third party, and provided further that liability for such losses shall not exceed one million pounds sterling (£1,000,000) per incident or series of related incidents.

8.3 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; its fraud or fraudulent misrepresentation; and any other liability which cannot by law be excluded or limited.

8.4 Subject to paragraph 8.3 above, and save where this Agreement provides for an indemnity, neither party shall be liable to the other for (a) any loss of profits, loss of revenue, loss of use, loss of contract or loss of goodwill; (b) any indirect or consequential losses; or (c) loss resulting from the liability of the other party to any other person save as provided for in paragraphs 8.2 and/or 8.3 above.

9. Confidentiality

Except with the consent of the disclosing party or as required by law, a court order or by any relevant regulatory or government authority or to the extent that information has come into the public domain through no fault of the receiving party, each party shall treat as strictly confidential all commercial and technical information relating to the other party received or obtained as a result of entering into or performing this Agreement including but not limited to information which relates to the provisions or subject matter of this Agreement, to any other party or to the negotiations of this Agreement.

10. Anti-Bribery

The Participant shall not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 and shall promptly report to WPD any request or demand for any undue financial or other advantage of any kind received or offered by the Participant in connection with this Agreement.

11. Force Majeure

Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to an event beyond the reasonable control of that party.

12. Termination and consequences of termination or expiry

12.1 Either party may by notice in writing immediately terminate this Agreement or one or more Operational Period in respect of a Service to which this Agreement applies, if the other party commits a material breach of this Agreement which in the case of a breach capable of remedy shall not have been remedied within 30 days of the receipt of a notice identifying the breach and requiring its remedy.

12.2 WPD may by notice in writing terminate the Agreement with immediate effect by notice on or at any time after the happening of any of the following: (a) the passing of a resolution for the Participant's winding-up or the making by a court of competent jurisdiction of an order for the winding-up or the dissolution of the Participant; (b) the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrancer of, any of the Participant's assets; (c) the Participant making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally; (d) the Participant ceasing to do business at any time for 30 consecutive days, or (e) if any of the circumstances described in regulation 89(1) of the Utilities Contracts Regulations 2016 arise or apply.

12.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement or any Operational Period in respect of a Service to which this Agreement applies on giving one (1) month's written notice to the other.

12.4 All rights and obligations of the parties shall cease to have effect immediately on termination or expiry of this Agreement except that termination or expiry shall not affect: (a) the accrued rights and obligations of the parties at the date of termination; (b) the continued existence and the validity of the rights and obligations of the parties under paragraphs 1, 8, 9, 13 and 14; and (c) any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement.

12.5. On expiry or termination, however caused, the Participant will remove and return to WPD the Despatch Equipment within 2 months of such expiry or termination. If the Participant fails to remove and return the Despatch Equipment to WPD within 2 months of expiry or termination, with without prejudice to WPD's right to enter the Site in order to recover the same (in which case the Participant will reimburse to WPD the reasonable costs incurred by WPD in such removal), the Participant shall pay to WPD a late return fee of £5000.

13. Dispute Resolution

13.1 Subject to paragraph 13.3, if a dispute arises out of or in connection with this Agreement, the parties shall: (a) within 30 days of written notice of the

dispute being received by the receiving party in good faith seek to resolve the dispute through negotiations between the parties' senior representatives who have the authority to settle it; and (b) not pursue any other remedies available to them until at least 30 days after the first written notification of the dispute.

13.2 The appointed representatives shall use reasonable endeavours to resolve the dispute. If the dispute is not resolved in accordance with this paragraph, either party may propose to the other in writing that the matter be referred to a non-binding mediation. If the parties are unable to agree on a mediator either party may apply to the Centre for Dispute Resolution (CEDR) to appoint one.

13.3 Nothing in this paragraph shall prevent any party from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary to avoid irreparable damage.

14. Intellectual Property

14.1 All intellectual property rights owned by or licensed to WPD shall at all times both during the term of the Agreement and after its termination or expiry, belong to WPD and the Participant shall not make any use of such intellectual property other than to the extent reasonably necessary in performing its obligations pursuant to this Agreement provided that nothing in this paragraph 14 shall operate so as to exclude any non-excludable rights of the Participant. The Participant shall indemnify WPD against any costs or losses arising from any breach of this paragraph 14.1.

14.2 If WPD agrees, the Participant may be permitted to take such copies of the data from Despatch Equipment as may be reasonably necessary in performing its obligations pursuant to this Agreement. Upon termination or expiry of this Agreement, the data and any copies of the data in any medium taken by the Participant shall, at WPD's option, be returned to WPD or disposed of in such manner as WPD in its absolute discretion may deem appropriate.

15. CDM Regulations

15.1 WPD and the Participant agree that the Participant is to be treated for the purposes of the CDM Regulations as the only Client (as defined in the CDM Regulations).

15.2 The Participant agrees to undertake all the obligations of a Client (including appointing any Principal Contractor and/or Principal Designer (as defined in the CDM Regulations)) and to ensure that the installation of the Despatch Equipment is carried out in accordance with the CDM Regulations.

15.3 The Participant shall indemnify and keep WPD indemnified against liability for any breach of the Participant's obligations under or in connection with this paragraph 15.

16. General

16.1 This Agreement (and any appendices attached to it) sets out the entire agreement and understanding between the parties and supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Agreement.

16.2 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

16.3 The rights, powers and remedies conferred on either party by this Agreement and the remedies available to either party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise.

16.4 Either party may, in whole or in part, release, compound, compromise, waive, or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by the other party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.

16.5 The Participant acknowledges that it has entered into this Agreement in reliance only upon the representations, warranties, conditions and promises specifically contained or incorporated in this Agreement and, subject to paragraph 8.3, WPD shall have no liability to the Participant in respect of any other representation, warranty, condition or promise made prior to the date of this Agreement, unless it was made fraudulently, or implied into this Agreement.

16.6 No single or partial exercise, or failure or delay in exercising any right, power or remedy by either party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.

16.7 No announcement concerning the terms of this Agreement shall be made by or on behalf of either party without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

16.8 Nothing in this Agreement or in any document referred to in it or in any arrangement contemplated by it shall create a partnership or joint venture between the parties or render a party the agent of the other, nor shall a party hold itself out as such (whether by an oral or written representation or by any other conduct) and neither party shall enter into or have authority to enter into any engagement, or make any representation or warranty on behalf of, or pledge the credit of, or otherwise bind or oblige the other party.

16.9 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

16.10 Unless otherwise set out in this Agreement, any notice to either party under this Agreement shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to the party personally, be left at, or sent by prepaid first class post or prepaid recorded delivery to the address of the party as set out on the front page of this Agreement or as otherwise notified in writing from time to time. A notice shall be deemed to have been served at the time of delivery, if delivered personally, or 48 hours after posting.

16.11 No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

16.12 Unless otherwise expressly provided, no variation of this Agreement shall be valid unless it is

in writing (which excludes email) and signed by or on behalf of each of the parties by its respective authorised representatives. The expression "variation" includes any variation, supplement, deletion or replacement, however effected.

16.13 This Agreement and any dispute, claim or obligation (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by the laws of England and Wales.

16.14 Subject to paragraph 13, the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this Agreement, its subject matter or formation.

This Agreement has been signed on the date stated as the "Date of Agreement" on the front page of this Agreement.