

WESTERN POWER
DISTRIBUTION



Serving the Midlands, South West and Wales

**AGREEMENT RELATING TO
THE PROVISION OF
DEMAND SIDE MANAGEMENT SERVICES
BETWEEN**

**WESTERN POWER DISTRIBUTION (SOUTH WEST) PLC,
WESTERN POWER DISTRIBUTION (SOUTH WALES) PLC,
WESTERN POWER DISTRIBUTION (EAST MIDLANDS) PLC,
WESTERN POWER DISTRIBUTION (WEST MIDLANDS) PLC**

AND

[Customer Name and Address]

This Agreement is made on

2012

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 office is at Avonbank, Feeder Rd, Bristol BS2 0TB ("WPD"); and
- (2) [customer name] whose registered office is at [address] (the "Customer")

BACKGROUND TO THIS AGREEMENT:

1. Under certain network conditions, the WPD Network to which the Customer is connected may require reinforcement in order to meet WPD's design standards for security of supply.
2. In order to avoid, defer or minimise the need or extent of the reinforcement of WPD's Network, the Customer has agreed to provide the Demand Side Management Services ("DSM Services") set out in this Agreement.
3. In consideration for the DSM Services, WPD has agreed to reduce charges to the Customer's supplier in line with the revised output from the EDCM (EHV Distribution Charging Methodology).

IT IS AGREED as follows:-

1 Definitions

In this Agreement the following words or expressions shall have the following meanings:

Agreement means this document together with the Schedules;

DSM Maximum Capacity has the meaning given to it in Schedule 1;

DSM Maximum Demand has the meaning given to it in Schedule 1;

DSM Payment has the meaning given to it in Schedule 2;

DSM Services mean the services detailed in Schedule 1;

DSM Time Periods has the meaning given to it in Schedule 1;

WPD's Network means the electricity network and associated assets under WPD's operational control;

Force Majeure means any event preventing any Party from performing any or all of its obligations which arises from or is attributable to acts, events omissions or accidents beyond the reasonable control of the Party so prevented;

Insolvent means, in relation to a Party, that:

- (a) an order is made or resolution passed for it to be wound up, except in connection with a solvent amalgamation or reconstruction of that Party;
- (b) an appointment is made of a manager, receiver, or administrator in respect of its assets or undertaking;
- (c) an application is made for an administrative order in respect of that Party; or
- (d) it is or is deemed to be unable to pay its debts according to s123 of the Insolvency Act 1986;

Maximum Import Capacity has the meaning given to it in the Distribution Connection and Use of System Agreement

Parties means the parties that are named in and have executed this Agreement, and Party shall be construed accordingly;

Termination Date is #End Date#.

2 Interpretation

2.1 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) references to:
 - (i) any party include its permitted successors in title and permitted assigns;
 - (ii) 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;
 - (iii) the headings are for convenience only and shall not affect the interpretation of this Agreement.

2.2 the Schedules form an integral part of this Agreement and have the same legal effect as if their provisions were set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules;

- 2.3 all references to agreements, documents or other instruments includes them (subject to relevant approvals) as varied, substituted, novated or assigned from time to time;
- 2.4 references to a number of days, unless otherwise specified, such number refers to calendar days;
- 2.5 a reference to a statute or other statutory provision includes:
- (a) any subordinate legislation (as defined in Section 21(1) Interpretation Act 1978) made under it;
 - (b) any repealed statute or statutory provision which it re-enacts (with or without modification); and
 - (c) any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it;

3 Commencement and Duration

- 3.1 This Agreement will commence on the date of the Agreement and will continue until terminated subject to clause 6.

4 DSM Services

- 4.1 The Customer will provide the DSM Services detailed in Schedule 1 of this Agreement.
- 4.2 Where the Customer provides the DSM Services, WPD will reduce charges to the Customer's supplier in line with the revised output from the EDCM.
- 4.3 Where the Customer fails to provide the DSM Services, in part or in full, within the WPD may revise charges to the Customer's supplier to reflect the Customer's failure to provide the DSM services.
- 4.4 For the avoidance of doubt, where the Customer has been de-energised due to events on WPD's Network, the Customer will continue to provide DSM Services on re-energisation.
- 4.5 The minimum demand reduction capacity the Customer can offer is 25% of its Maximum Import Capacity.

5 Assignment

- 5.1 Neither Party may assign, transfer or novate its respective rights, obligations, benefits or burdens pursuant to this Agreement without the written consent of the other Party, such consent not to be unreasonably withheld or delayed.

6 Termination

- 6.1 Either Party may terminate this Agreement by giving the other Party 3 months' notice in writing (or such lesser period as may be agreed between the Parties).

6.2 Without prejudice to any right or remedy a Party may have against the other for breach of this Agreement, either Party may, with immediate effect by notice in writing to the other party, terminate this Agreement on or at any time after the happening of any of the following events:

- (a) the Customer or WPD failing in any material respect to comply with any of its obligations under this Agreement, and (if such failure is capable of remedy) the failure is not remedied to the reasonable satisfaction of WPD within 30 days of the Party so failing receiving notice of the occurrence thereof and requiring the same to be remedied;
- (b) the other Party passing a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or the dissolution of the other party;
- (c) any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to the other party or any steps are taken for the appointment of a receiver or administrative receiver, or an encumbrancer takes possession of or sells any of the other party's assets;
- (d) the other party makes an arrangement or composition with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally;
- (e) the other party ceases to carry on business at any time for 30 consecutive days;
- (f) the other party is unable to pay its debts (within the meaning of that term under section 123, Insolvency Act 1986);

6.3 In the event that WPD terminates this agreement charges to the Customer's supplier will no longer reflect DSM services.

6.4 This Agreement will terminate automatically at the Termination Date.

6.5 The termination of this Agreement for whatever reason or cause shall be without prejudice to any other rights or obligations which may have accrued or become due between any of the Parties prior to or on the date of termination, and any provisions, rights or obligations stated to take effect on termination shall remain in full force and effect.

7 Limitation of Liability

7.1 Neither Party excludes or limits its liability under this Agreement for:

- (a) death or personal injury caused by its negligence;
- (b) fraudulent misrepresentation; or

- (c) any other type of liability which cannot by law be excluded or limited.
- 7.2 Neither Party shall be liable hereunder for any loss of use, loss of profit, loss of contract or indirect, special or consequential loss even if a Party has been advised of the possibility of such loss or damage.
- 7.3 Neither Party shall be liable to the other Party for loss arising from a breach of this Agreement other than for loss directly resulting from such breach and which at the Commencement Date was reasonably foreseeable as likely to result in the ordinary course of events from such breach and which resulted from:
- (a) physical damage to the property of the other Party, its officers, employees or agents; and/or
 - (b) the liability of such other Party to another person for loss in respect of physical damage to the property of another person.
- 7.4 Subject to clause 8.1 each Party limits its liability under this Agreement, whether such liability arises in contract, tort (including without limitation negligence) or otherwise to a maximum liability of the DSM Payment for all claims or series of claims under this Agreement.

8 Force Majeure

- 8.1 If either Party is unable to carry out its obligations under this Agreement due to a circumstance of Force Majeure, this Agreement shall remain in full force and effect but save as otherwise provided herein all each Parties' obligations shall be suspended without liability for a period equal to the circumstance of Force Majeure provided that:
- (a) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
 - (b) no obligations of any Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure; and
 - (c) the non-performing Party shall use all reasonable efforts to remedy its inability to perform.

9 Contracts (Rights of Third Parties) Act 1999

No express term of this Agreement nor any term implied under it is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

10 Governing Law and Jurisdiction

- 10.1 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.
- 10.2 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.

11 General

- 11.1 A Party's failure to enforce, at any time or for any period of time, any provision of this Agreement, or to exercise any right or remedy shall not constitute a waiver of that provision, right or remedy or prevent such Party from enforcing any or all provisions of this Agreement and exercising any rights or remedies.
- 11.2 To be effective any waiver must be in writing.
- 11.3 The rights and remedies provided herein are cumulative and do not exclude any other right or remedy provided by law or otherwise available except as expressly set forth herein.

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Schedule 1

DSM Services

Demand Reduction

1. The Customer has agreed, in the time periods specified in paragraph 2 below, to reduce demand to no more than **XX** MVA (the 'DSM Maximum Capacity')
2. WPD has notified the Customer of the following time periods where the Customer will undertake demand reduction (the 'DSM Time Periods') as:-

#start date# to #end date#; #start day# to #end day#; #start time# to #end time# (excluding/including Bank Holidays);
3. WPD may propose a change to the DSM Time Periods detailed above at any time subject to agreement with the Customer. At least one month's notice should be given to the Customer about the proposed change and the aggregated time specified should not exceed **XXXX** hours per annum.
4. During the DSM Time Periods the Customers' maximum demand (the 'DSM Maximum Demand') will not exceed the DSM Maximum Capacity.
5. Successful delivery of the services will be established by ex-post examination of tariff metering data or by real time monitoring of the DSM Maximum Demand via WPD's current or power measurement transducers installed at the electricity intake on the Customer's premises.

SIGNED BY:

Name

Position

For and on behalf of

[Customer Name]

SIGNED BY:

Name

Position

For and on behalf of

WPD

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