

DATED: _____



FLEXIBILITY SERVICES AGREEMENT

between

[SP DISTRIBUTION PLC][SP MANWEB PLC]

and

[SERVICE PROVIDER]

PLEASE NOTE: THIS DRAFT AGREEMENT IS PROVIDED FOR INFORMATION ONLY AND IS INDICATIVE ONLY AND SUBJECT TO REVIEW AND / OR AMENDMENT PRIOR TO SIGNING.

CONTENTS

1	DEFINITIONS AND INTERPRETATION	4
2	AGREEMENT COMMENCEMENT AND DURATION	8
3	SERVICES.....	8
4	THE SERVICE PROVIDER’S OBLIGATIONS	8
5	SITES	10
6	PRICING, PAYMENT AND FEE.....	10
7	SERVICE FAILURE	11
8	MONITORING AND METERING.....	12
9	DISPATCH EQUIPMENT	12
10	TESTING AND COMMISSIONING.....	13
11	TERMINATION RIGHTS	14
12	RECORDS	15
13	CONFIDENTIALITY	15
14	DATA PROTECTION.....	16
15	CDM REGULATIONS.....	16
16	INTELLECTUAL PROPERTY RIGHTS	16
17	PUBLICITY	16
18	LIMITATION OF LIABILITY	17
19	FORCE MAJEURE.....	18
20	DISPUTES.....	18
21	MISCELLANEOUS	18
SCHEDULE 1 – SITES		21
1	SITES AND ASSETS	21
SCHEDULE 2 – THE SERVICES		22
1	SERVICE REQUIREMENTS	22
2	PROCESS	22
3	UTILISATION OF THE SERVICE OUTSIDE A SERVICE WINDOW	24
SCHEDULE 3 – FEE CALCULATION		26
1	ABBREVIATIONS	26
2	GENERAL TERMS.....	26
3	AVAILABILITY FEE	26
4	UTILISATION FEE	27
5	MONTHLY PERFORMANCE ADJUSTMENT FACTOR	27

6	CALCULATING THE BASELINE POSITION	29
	SCHEDULE 4 – KEY DATA FOR THIS AGREEMENT	30
	SCHEDULE 5 – ESCALATION LEVEL	31
	SCHEDULE 6 – UNAVAILABILITY EXPLANATION FORM	32

DRAFT

AGREEMENT dated as of date of last signature below.

BETWEEN:-

(A) **[SP DISTRIBUTION PLC**, a company incorporated in Scotland (Registered Number:- SC189125) having its Registered Office at Ochil House, 10 Technology Avenue, Hamilton International Technology Park, Blantyre, Scotland, G72 0HT]

[SP MANWEB PLC, a company incorporated in England and Wales (Registered Number:- 02366937) having its Registered Office at 3 Prenton Way, Prenton, CH43 3ET] (the “**Company**”);
and

(B) **[INSERT SERVICE PROVIDER NAME]**, a company incorporated in **[England and Wales][Scotland]** (Registered Number:- **[insert number]**) having its Registered Office at **[insert registered address]** (the “**Service Provider**”), together the “**Parties**” and each a “**Party**”.

BACKGROUND:-

- (1) The Company, as owner and operator of the local distribution network, has a requirement for the provision of Services (as hereinafter defined) to aid the management and operation of the distribution network, and to help prevent network constraints. The Company wishes to contract with site owners and/or operators of suitable sites for the provision of such Services.
- (2) The Service Provider is the owner and/or operator of sites that have the capability to provide Services and wishes to make available each site for the provision of such Services. The Company will pay the Service Provider for these Services in accordance with this Agreement.
- (3) The Company wishes to appoint the Service Provider to provide the Services and the Service Provider has agreed to provide the Services to the Company, on and subject to the terms of this Agreement. The Service Provider acknowledges that entering into this Agreement for the provision of the Services is voluntary.

IT IS AGREED as follows:-

1 **DEFINITIONS AND INTERPRETATION**

In this Agreement and the recitals, unless the context otherwise requires, the following expressions shall have the meanings set out below.

“**Act**” means the Electricity Act 1989 including any modification, extension, or re-enactment thereof and the sub-ordinate legislation made thereunder;

“**Affiliate**” means any holding company or subsidiary company of a Party, or any company which is a subsidiary of such holding company and “holding company” and “subsidiary” have the meanings given in Section 1159 of the Companies Act 2006;

“Agreement” means the clauses of this Agreement together with the Schedules and any other documents expressly incorporated into this Agreement;

“Applicable Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body;

“Assets” means the electricity generators, electricity storage or electrical load, and other Site and Service Provider equipment, used in the provision of the Services;

“Availability Status” means Available or Unavailable;

“Available” means that the Services, in accordance with the Service Requirements and the Instruction, is available to be delivered to the Company for the duration of the Service Window.

“Authority” means the Gas and Electricity Markets Authority;

“Baseline Position” means the assumed import/export position of the Site(s) had it not been providing Services;

“CDM Regulations” means the Construction (Design and Management) Regulations 2007;

“Commencement Date” means the date of execution of this Agreement;

“Company Personnel” means all employees, agents, consultants and contractors of the Company, its Affiliates and/or any authorised sub-contractors that are engaged from time to time in connection with the performance of the Company’s obligations under this Agreement;

“Confidential Information” means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and/or suppliers of a Party (and/or any its Affiliates) together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Contracted Response Time” means the time period within which Services must be delivered, in accordance with the Service Requirements and the Instruction. For the avoidance of doubt, the full Contracted Service Capacity must be delivered within the Contracted Response Time.

“Contracted Service Capacity” means the MW and/or MVA quantity of the Services. This is the net change in Site import/export that the Services delivers, as compared against the Baseline Position and measured by the Service Meter;

“Contracted Service Duration” means the maximum continuous time period for which the Services, at the Contracted Service Capacity, must be capable of being delivered;

“Data Protection Legislation” means all applicable laws, statutes, bye-laws, regulations, orders, regulatory policies, guidance or industry codes and/or rules of court relating to the processing of

personal data and/or privacy (including, but not limited to, (a) Regulation (EU) 2016/679 (the “**GDPR**”), (b) the Privacy and Electronic Communications (EC Directive) Regulations 2003, and (c) any data protection and privacy laws enacted in replacement of (a) or (b) and/or as a result of the GDPR ceasing to have direct effect in the UK (in each case as amended, updated or re-enacted from time to time)), and all applicable guidance and codes of practice issued by the Information Commissioner and/or any other relevant regulatory body from time to time;

“**Dispatch Equipment**” means any equipment (including any routers, computers, input / output notes and cables, software) provided by the Company in respect of the provision of the Services under this Agreement;

“**Dispute**” means any dispute, difference or question of interpretation arising out of or in connection with this Agreement;

“**Distribution Code**” means the Distribution Code of Licenced Distribution Network Operators of Great Britain;

“**Electricity Regulations**” means the Act, 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;

“**Expiry Date**” means the date this Agreement expires, as defined in Schedule 4 and as can be extended pursuant to Clause 2.2 **Error! Reference source not found.**;

“**Fee**” has the meaning given to it in Clause 6 (Pricing, Payment and Fee);

“**Force Majeure**” means any event or circumstance which is beyond either the Company’s or the Service Provider’s (as the case may be) reasonable control or its employees and which results in or causes its failure to perform any of its obligations under the Agreement, provided that: (a) lack of funds; or (b) any failure or fault in the Assets, including insufficient fuel, shall not constitute Force Majeure;

“**Good Industry Practice**” means the exercise of the degree of care, skill and diligence, which would reasonably be expected from a reputable company within the relevant industry or business sector;

“**Instruction**” means each instruction to the Service Provider instructing it to commence delivery of the Services, issued by or on behalf of the Company as per the means set out in Schedule 4 (as may be amended by the written agreement of both Parties, each acting reasonably);

“**Intellectual Property Rights**” means copyright and related rights, patents, know how, trademarks, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Personal Data” has the meaning given to it in the applicable Data Protection Legislation;

“Process” has the meaning given to it in the applicable Data Protection Legislation;

“Schedules” means the schedules annexed to and forming part of this Agreement;

“Service Failure” means where, in respect of a Site(s):

- (a) the Company has been entitled, in accordance with this Agreement, to use Monthly Performance Adjustment Factors of 0.6 or less in any two (2) consecutive months or in three (3) or more months in any six (6) month period; or
- (b) the number of Service Windows which are declared Unavailable, or which are otherwise deemed to be Unavailable, is greater than 15% in any one calendar month;

“Service Meter” means the measuring equipment, as defined by the Company in Clause 8 and Schedule 4 of this Agreement, that shall be used to determine delivery of the Service;

“Service Meter Data” means the meter data recorded at the Service Meter at the Site(s) listed in Schedule 1;

“Service Recovery Time” means the minimum time required between the end of a Service delivery and the commencement of the next Service delivery, as defined in Schedule 4;

“Service Requirements” means the specification that the Services must be capable of meeting, as defined in paragraph 1.1 of Schedule 2;

“Service Window” means the time periods during which the Service Provider agrees to make Available, and provide in accordance with this Agreement, the Services to the Company, as defined in Schedule 4;

“Services” means the services described in Schedule 2, which are to be provided by the Service Provider from the Sites and in accordance with the Service Requirements;

“Sites” means the Service Provider’s sites which are detailed in Schedule 1 (as may be supplemented from time to time in accordance with Clause 5.2);

“Stop Instruction” means an instruction from the Company to the Service Provider, instructing the Service Provider to cease delivery of the Services;

“Term” has the meaning given to it in Clause 2.1 (Commencement and Duration); and

“Testing and Commissioning Test” means the tests, described in Clause 10, undertaken to determine whether the Services can be delivered in accordance with the Service Requirements and an Instruction;

“Unavailable” means that the Services, in accordance with the Service Requirements, is not available to be delivered to the Company.

“Working Day” means any day other than a Saturday or a Sunday or a bank holiday in England and Wales.

1.1 In this Agreement, unless the context otherwise requires:-

1.1.1 the singular includes the plural and vice versa;

1.1.2 reference to a gender includes the other gender and the neuter; and

1.1.3 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it.

1.2 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 If there is any conflict between the Clauses and any Part of the Schedules, the latter shall prevail.

1.4 To the extent that the terms of this Agreement conflict with any of the rights or obligation of the Parties under the Electricity Regulations, the terms of the Electricity Regulations shall prevail.

2 **AGREEMENT COMMENCEMENT AND DURATION**

2.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with Clause 11 (Termination Rights), shall continue until the Expiry Date (such period being the “**Term**”) and terminate automatically without notice, unless extended pursuant to Clause 2.2.

2.2 The Parties may, at their sole discretion and by agreement, extend the Contract Term by written agreement.

3 **SERVICES**

3.1 Subject to the Company’s compliance with this Agreement and the performance of its obligations hereunder, the Service Provider shall provide the Services in accordance with this Agreement.

4 **THE SERVICE PROVIDER’S OBLIGATIONS**

4.1 The Service Provider shall provide the Services:-

4.1.1 using reasonable skill, care and diligence;

4.1.2 in accordance with Good Industry Practice; and

4.1.3 in compliance with Applicable Law.

4.2 The Service Provider shall maintain or procure the maintenance of the Assets to such a standard that the Service Provider can meet its obligations to provide the Services in accordance with the terms of the Agreement.

4.3 Without prejudice to its other obligations under and/or pursuant to this Agreement, the Service Provider warrants and undertakes to the Company that:-

- (a) it has the right, power, capacity and authority to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement does not conflict with the terms of any other agreement or regulations to which the Service Provider is party or by which it is bound, including but not limited to:
 - (i) any connection agreement governing the terms of connection of any Sites to, and/or any agreement for the supply of electricity to any Sites or for the acceptance of electricity into, and its delivery from, any electrical distribution or transmission system;
 - (ii) the Electricity Safety, Quality and Continuity Regulations 2002 (as amended from time to time) or of any regulations made under Section 29 of the Act or of any other enactment relating to safety or standards applicable in respect of the business of the Service Provider; and/or
 - (iii) any provisions of the Distribution Code and (where applicable) the Grid Code;
- (c) any other agreements which prevent or otherwise restrict in any way the Service Provider's provision of the Services have been terminated;
- (d) that the Service Provider shall use all reasonable endeavours to avoid undertaking any activities, such as Asset maintenance, in a manner which will prevent or otherwise restrict in any way the Service Provider's provision of the Services;
- (e) it has and shall continue to have all licences, permissions, authorisations, consents and permits required to make the Assets and Site(s) available for the purposes of the Services and to perform its obligations under and/or pursuant to this Agreement; and
- (f) it shall comply with all Applicable Laws in respect of the performance of its obligations under and/or pursuant to this Agreement, including (without limitation) all health and safety laws and regulations.

- 4.4 The Service Provider is and remains responsible for health and safety compliance at the Sites. The Company shall use best endeavours to ensure that the Company's Personnel, when working at the Sites, comply with the Service Provider's health and safety policies and practices (as notified to the Company and the Company's Personnel in advance of work commencing) in place at the relevant Site(s).
- 4.5 The Service Provider shall notify the Company as soon as reasonably practicable in the event that the Service Provider becomes aware of any fact, circumstance or issue which may impact upon the provision of the Services. The Parties shall thereafter discuss and endeavour to agree (each Party acting reasonably) the steps to be taken by the Service Provider and/or the Company (as appropriate) to mitigate any such impact.
- 4.6 Insofar as any Site is occupied by an Affiliate of the Service Provider or any other third party from time to time, the Service Provider shall be responsible for ensuring that where any provision in this Agreement imposes an obligation on the Service Provider to do or refrain from doing a particular thing in relation to a Site or any Assets at such Site, the relevant Affiliate or third party complies with that obligation as if it were the named "Service Provider" party to this Agreement.

5 SITES

- 5.1 The Service Provider may provide Services from a single Site or a group of Sites (as detailed in Schedule 1).
- 5.2 The Service Provider shall be entitled to propose additional Sites to the Company for inclusion in Schedule 1 of this Agreement. The Company shall be under no obligation to accept the proposal of an additional Site by the Service Provider, pending the Company's technical review and consideration of the suitability for such Site and Assets to participate in the provision of the Services.
- 5.3 If the Company does accept an additional Site proposed by the Service Provider pursuant to Clause 5.2, such Site and Asset shall be incorporated in Schedule 1 of this Agreement.

6 PRICING, PAYMENT AND FEE

- 6.1 In consideration of the provision of the Services by the Service Provider in accordance with the terms of this Agreement, the Company shall pay to the Service Provider the Fee in respect of the Services.
- 6.2 The Service Provider shall only be eligible for the Fee after the Services have successfully completed the testing and commissioning stage (Clause 10). No Fee shall be due for any period before this point.
- 6.3 The Fee shall be calculated on a calendar monthly basis, in accordance with Schedule 3.
- 6.4 To allow the Company to calculate the Fee, the Service Provider must submit the Service Meter Data to the Company.
- 6.4.1 The Service Meter Data should be submitted to the company within 10 Working Days of the end of the month.

6.4.2 The Service Meter Data must be recorded and submitted for the whole month, not just the Service Windows. The Service Meter Data must not be redacted or edited in anyway before it is sent to the Company.

6.5 Once the Company has received the Service Meter Data, the Company will calculate the Fee for that month in accordance with the provisions of Schedule 3. The Company shall then provide the Service Provider with a Statement setting out the calculation of these values, showing the Availability Fee, Utilisation Fee and Performance Adjustment Factor for that month. The Company has 15 Working Days to complete this. This time period extended by each day that the Company needs to seek clarity on the Service Meter Data.

6.6 The Service Provider shall promptly submit an invoice in respect of the amount shown in the statement. In the event that the Service Provider disputes the calculations provided by the Company, the Service Provider shall provide full details to the Company of the dispute and an invoice shall be raised within 1 month of the resolution or determination of such dispute.

6.7 All invoices shall be paid by the Company within 45 days of the date of invoice.

6.8 All sums payable under this Agreement shall be exclusive of VAT, which shall be payable at the applicable rate.

6.9 Without prejudice to any other right or remedy that it may have, if the Company fails to make a payment to the Service Provider on the date such payment is due under Clause 6.7, interest shall accrue on the overdue amount at the rate of 3% per annum above the base lending rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and the Company shall pay to the Service Provider the interest together with the overdue amount.

6.10 For the avoidance of doubt, fuel, maintenance and all other such costs associated with the delivery of the Services, unless expressly covered by the terms of this Agreement, shall be borne by the Service Provider.

7 **SERVICE FAILURE**

7.1 In the event of a Service Failure by the Service Provider, the Company may serve a notice on the Service Provider requiring the Service Provider to:

7.1.1 implement a rectification plan for improving performance and/or reducing the number of occurrences in which the Services are Unavailable, which may include, at the Company's discretion, a repeat of all or part of a Testing and Commissioning Test (Clause 10);

7.1.2 propose a variation to the Contracted Service Capacity;

7.1.3 take any other action that may be specified by the Company in order to alleviate a Service Failure (as reasonably required in the circumstances).

7.2 Where the Service Provider fails to comply with the terms of Clause 7.1, or the Service Provider's performance in respect of the Service Failure notified by the Company does not significantly improve in the month following the date of the notice, the Company shall be entitled to terminate this Agreement immediately.

8 **MONITORING AND METERING**

8.1 This Agreement requires the Service Provider to have in place a Service Meter at every Site. The requirements that this Service Meter must meet are set out in this Clause 8 and Schedule 4.

8.2 The Service Meter must be commissioned before the start of the Testing and Commissioning Test. The Service Company must provide any information, as reasonably requested, to the Company about the Service Meter.

8.3 The Service Meter must be positioned such that it records the full site net import and export.

8.4 The Service Meter must meet comply with Schedule 7 of the Act and the latest version of the relevant Balancing and Settlement Code of Practice.

8.5 Where there is already a meter that meets the requirements of the Service Meter, then that existing meter can be designated as the Service Meter for this Agreement.

8.6 The Service Provider must maintain or procure the maintenance of the Service Meter to such a standard that the Service Provider can meet its obligations to provide the Services in accordance with the terms of the Agreement.

9 **[DISPATCH EQUIPMENT**

9.1 The Service Provider shall ensure that the Company (acting through the Company's Personnel) is given such information, assistance and free and unrestricted access to the Sites and the Assets as the Company and/or the Company's Personnel may reasonably require in order to install, inspect, maintain, test, repair, replace, renew, alter, use and remove any Dispatch Equipment.

9.2 The Service Provider shall take proper care of the Dispatch Equipment and ensure that it is properly protected and either insured to its full replacement value or, if damaged or destroyed as a result of the Service Provider's failure to do so, pay for the cost of its repair and/or replacement.

9.3 The Service Provider shall notify the Company immediately upon becoming aware of any failure or likely failure of the Dispatch Equipment to monitor the provision of the Services and notify the Company as soon as reasonably practicable upon becoming aware of any adverse conditions which may affect the Dispatch Equipment and comply with the Company's instructions relating to its care in such conditions.

9.4 The Service Provider shall:

9.4.1 not change the location of the Dispatch Equipment without the Company's prior written consent; and

9.4.2 comply with any reasonable instructions of the Company in respect of such Dispatch Equipment.

9.5 The Service Provider shall indemnify the Company for any costs incurred by the Company as a result of any failure by the Service Provider to comply with the provisions of Clause 9.]

10 TESTING AND COMMISSIONING

10.1 By entering into this Agreement, the Service Provider agrees to undertake and pass a Testing and Commissioning Test at least one (1) month (or as otherwise agreed by the Company) before the start of the first Service Window.

10.2 The date of the Testing and Commissioning Test shall be arranged by mutual agreement of the Parties. When proposing a date, the Service Provider should use reasonable endeavours to give the Company at least ten (10) working days' notice.

10.3 The Testing and Commissioning Test shall assess the Services for the ability to meet the Company's requirements, including:

10.3.1 Be delivered in response to Instructions;

10.3.2 Deliver its Contracted Service Capacity within the Contracted Response Time;

10.3.3 Sustain its Contracted Service Capacity for the Contracted Service Duration; and

10.3.4 Cease delivery in response to a Stop Instruction.

10.4 The Service Provider shall make available to the Company the relevant Service Meter Data as soon as reasonably practicable but no later than five (5) Working Days after the date of the Testing and Commissioning Test.

10.5 On receipt of the relevant Service Meter Data, the Company has five (5) Working Days to determine whether the Services passed or failed the Testing and Commissioning Test and notify the Service Provider accordingly.

10.6 If the Service Provider fails the Testing and Commissioning Test, the Service Provider shall arrange to repeat the Testing and Commissioning Test. These additional Testing and Commissioning Tests shall follow the process in Clauses 10.1-10.5. Should the Service Provider fail the Testing and Commissioning Test on three occasions the Company reserves the right to terminate this Agreement. Any further Testing and Commissioning Test beyond these three are only by the agreement of the Company.

10.7 Only upon successful completion of the Testing and Commissioning Test can the Services be deemed Available. No Fees will be due or payable until the Services have successfully completed the Testing and Commissioning Test.

10.8 Each Party shall bear its own cost in relation to any Testing and Commissioning Test.

11 **TERMINATION RIGHTS**

11.1 Either Party can terminate the Agreement by giving notice to that effect to the other Party if:

11.1.1 a material breach by the other Party remains unremedied for 30 days after service by the Party who is not in breach of notice requiring the other Party to remedy such breach (provided that "material breach" shall not include any circumstances of Force Majeure); or

11.1.2 the other Party fails to pay any amount owing under the Agreement within 60 days of the due date for payment; or

11.1.3 the other Party becomes insolvent or subject to an administration order; or a petition is presented or an order is made or a meeting is convened to consider a resolution, or a resolution is passed, for its liquidation, winding-up or dissolution or an administration application is made or notice of an intention to appoint an administrator is served in respect of the other Party (otherwise, in each case, than for the purpose of a bona fide solvent amalgamation or reconstruction); or the other Party makes any composition, scheme or arrangement with (or assignment for the benefit of) its creditors or a voluntary arrangement is made in accordance with Part 1 of the Insolvency Act 1986; or a trustee, receiver, administrative receiver or manager is appointed over all or part of its business, property or assets; or for the purposes of Section 123 of the Insolvency Act 1986 the other Party is deemed unable to pay its debts; or, if the other Party is an individual or a partnership, that individual or partnership, or any of its partners, is sequestrated or becomes apparently insolvent or makes any composition, scheme or arrangement with, or grants any trust deed or any assignment for the benefit of, its creditors; or

and in each case the Agreement will terminate upon the expiry of such notice.

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

11.3 The Company can terminate the Agreement by giving notice to that effect to the Service Provider where:

11.3.1 it is required to do so by or under Applicable Law or by any regulatory authority (including, for the avoidance of doubt, where it is or becomes unlawful or impractical for the Company to provide the Services (in whole or in part)); and/or

11.3.2 the other Party ceases to hold any licences, consents or approvals which it is required to hold under Applicable Law in respect of the Services and/or the Assets.

11.4 Upon termination or expiry of the Agreement, the Service Provider shall remove and return the Dispatch Equipment to the Company within a period of one (1) month following such termination or expiry. If the Service Provider fails to remove and return the Dispatch Equipment, the Company shall be entitled to access the Site(s) and remove any such Dispatch Equipment and the Service Provider shall be liable to the Company in respect of the reasonable costs incurred by the Company in such removal.

12 RECORDS

12.1 Each Party shall keep or cause to be kept proper and accurate records of all matters relating to the performance of its obligations under this Agreement (the “**Records**”). The Records shall be maintained in a form suitable for audit purposes, shall be kept separate from any other records of that Party and shall be retained for the period required by any applicable statutory provision and in any event during the term of this Agreement and for a period of not less than three (3) years thereafter.

12.2 Either Party may, on reasonable notice to the other Party and during normal working hours, inspect and review such Records for the purposes of verifying the other Party’s compliance with its obligations under this agreement and/or to meet any other audit or information requirement that may be required by applicable law and/or any regulatory body or the authority.

13 CONFIDENTIALITY

13.1 Subject to Clause 13.2, each Party shall treat as confidential and shall not disclose to any other person any of the commercial, technical and/or contractual provisions of the Agreement or any commercial, technical or other confidential information relating to the business of the other Party which is disclosed to and/or acquired by that Party subject to this duty of confidentiality during the course of the Agreement.

13.2 Clause 13.1 shall not apply to:

13.2.1 any disclosure which is necessary for the proper performance of the Agreement;

13.2.2 any disclosure which is required by law (including any order of a Court of competent jurisdiction) or by the Authority;

13.2.3 any disclosure which is required by an industry code or other industry agreement with which the Company has a legal obligation to comply;

13.2.4 any disclosure to a Party’s professional advisers provided always that such professional advisers are bound by duties of confidentiality;

13.2.5 any disclosure by the Company to one of the Company’s Affiliates provided that the same level of confidentiality as set out in Clause 13.1 shall apply;

13.2.6 any disclosure which is agreed by the Parties in advance of disclosure; and/or

13.2.7 any information which is already in the public domain.

14 **DATA PROTECTION**

14.1 The Parties do not envisage any Processing of Personal Data under this Agreement. In the event of any such Processing, each Party shall comply with the Data Protection Legislation.

15 **CDM REGULATIONS**

15.1 The Company and the Service Provider agree that the Service Provider is to be treated for the purposes of the CDM Regulations as the only Client (as defined in the CDM Regulations).

15.2 The Service Provider 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 Dispatch Equipment is carried out in accordance with the CDM Regulations.

15.3 The Service Provider shall indemnify and keep the Company indemnified against liability for any breach of the Service Provider's obligations under or in connection with this Clause 15.

16 **INTELLECTUAL PROPERTY RIGHTS**

16.1 The Parties acknowledge and agree that, except as expressly stated to the contrary in this Agreement, neither Party shall acquire, under and/or pursuant to this Agreement, any title, right or interest in or to the other Party's Intellectual Property Rights that existed prior to the date of this Agreement and/or were developed independently of this Agreement.

16.2 Any and all Intellectual Property Rights developed, created or produced in the course of or in connection with the Services otherwise shall be owned by the Company, and the Service Provider hereby assigns to the Company all right, title and interest in and to the said Intellectual Property Rights. This assignment shall either take effect on the Commencement Date or as a present assignment of future rights that shall take effect immediately on the coming into existence of the relevant Intellectual Property Rights. If requested by the Company to do so, the Service Provider shall execute all documents and undertake all such further acts as the Company may reasonably require in order to perfect this assignment.

17 **PUBLICITY**

17.1 Subject to Clause 13 and 17.2, the Company shall be entitled to make publicity releases and/or announcements regarding either this Agreement and/or the Company's activities under the Agreement.

17.2 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. In the event that the other Party grants its approval to any use of its name, brand and/or logo, it may make such approval subject to such conditions and restrictions on use as it considers appropriate.

18 LIMITATION OF LIABILITY

- 18.1 Neither Party shall be liable for any breach of the Agreement directly or indirectly caused by Force Majeure.
- 18.2 Subject to Clause 18.6 and save (subject as hereinafter provided) where any provision of the Agreement provides for an indemnity, neither Party nor any of its employees shall in any circumstances whatsoever be liable to the other Party for any loss of profit, loss of business, loss of revenue, loss of use, loss of contract, loss of anticipated saving, loss of goodwill, or economic loss or any special, indirect or consequential loss or damage of any nature whatsoever, or any losses resulting from the liability of the other Party to any person howsoever arising save as provided in Clause 18.4.
- 18.3 Subject to Clause 18.2 and 18.6 and save where any provision of the Agreement provides for an indemnity, neither Party (the “**Party Liable**”) nor any of its employees shall be liable to the other Party for loss arising from any breach of the Agreement other than for loss directly resulting from such breach and which at the date of the Agreement was reasonably foreseeable as likely to result in the ordinary course of events from such breach and which resulted from physical damage to the property of the other Party, its employees or that of any other person in circumstances in which that other person would be entitled to claim in respect of such damage against such other Party, provided that the liability of either Party in respect of claims for such loss or damage shall not exceed £1,000,000 per incident or series of related incidents.
- 18.4 Nothing in the Agreement shall exclude or limit the liability of the Party Liable for:
- 18.4.1 fraudulent misrepresentation; or
 - 18.4.2 death or personal injury resulting from the negligence of the Party Liable or any of its employees and the Party Liable shall indemnify and keep indemnified the other Party and its employees from and against all such and any loss or liability which the other Party and its employees may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the Party Liable or any of its employees.
- 18.5 The rights and remedies provided by the Agreement to the Parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies (express or implied) and provided by common law or statute in respect of the subject matter of the Agreement, including any rights either Party may possess in tort or delict (as applicable) which shall include actions brought in negligence and/or nuisance. Accordingly, the Parties hereby waive to the fullest extent possible all such rights and remedies provided by common law or statute and releases the Party Liable to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in the Agreement and undertakes not to enforce any of the same except as expressly provided in the Agreement.
- 18.6 Save as otherwise expressly provided in the Agreement, Clause 18 in so far as it excludes or limits liability shall override any other provision of the Agreement, provided that nothing in Clause 18 shall exclude or restrict or otherwise prejudice or affect any of:

18.6.1 the rights, powers, duties and obligations of either the Company or the Service Provider which are conferred or created by the Act, the CDM Regulations, the Regulations or any other regulations made under the Act; or

18.6.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act or otherwise.

18.7 Clause 18 shall survive termination of the Agreement and shall be construed as separate and several terms.

19 **FORCE MAJEURE**

19.1 If either Party is unable to carry out any of its respective obligations under the Agreement due to Force Majeure, the Agreement shall continue but, unless otherwise provided for in the Agreement, both the Company's and the Service Provider's respective obligations other than any obligation as to payment shall be suspended without liability for the period of such Force Majeure.

19.2 If the period of the suspension of performance exceeds 3 months, then either Party may immediately terminate the Agreement by giving notice to that effect to the other Party.

20 **DISPUTES**

20.1 The Company and the Service Provider shall endeavour to resolve all Disputes at an operational level. If any Dispute cannot be resolved by the Parties at an operational level, either Party may escalate the Dispute to the Parties' relevant representatives in accordance with the levels of escalation set out in Schedule 5 of this Agreement.

20.2 Subject always to Clause 20.4, if the Dispute cannot be resolved by escalation pursuant to Clause 20.1 then the Company may, at any time and at its sole discretion, refer the Dispute to resolution by an expert. The expert shall be agreed between the Parties, or, if the Parties are unable to reach agreement, selected by either the President for the time being of the Royal Institution of Chartered Surveyors or the Chairman for the time being of the Institution of Civil Engineers (as chosen by the Company having regard to the nature of the relevant matter(s) to which the Dispute relates). The expert shall act as an expert and not an arbitrator and the decision of the expert shall be final and binding, save in the case of manifest error.

20.3 Where the Company does not exercise its rights pursuant to Clause 20.2 to refer a Dispute to an expert, the Company may refer that dispute for determination by a Court of competent jurisdiction in accordance with Clause 21.13 (Governing Law and Jurisdiction).

20.4 Nothing in this Agreement shall prevent either Party from raising Court proceedings in order to preserve or enforce its proprietary or other rights.

21 **MISCELLANEOUS**

Entire Agreement

21.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement to the exclusion of any other terms and conditions. The Service Provider acknowledges that the Service Provider has not entered into the Agreement in reliance wholly or partly on any statement or representation made by the Company or on the Company's behalf save insofar as such statement or representation is expressly set out in the Agreement.

Waiver

21.2 Any failure or delay by either Party to enforce any of its rights shall not be construed as a waiver of those rights. Any waiver of rights by either Party in relation to any breach by the other Party must be in writing and shall not be construed as a waiver of that Party's rights in relation to any other breach.

Assignment and Sub-Contracting

21.3 Subject to Clause 21.4 below, neither Party shall assign or transfer any or all of its whole rights and obligations under and in terms of the Agreement to another party without the prior written consent of the other Party, provided that consent to any assignment of the Agreement by the Company to one of the its Affiliates shall not be unreasonably withheld or delayed.

21.4 Either Party may assign or charge any or all of its whole rights under and in terms of the Agreement by way of security.

21.5 Either Party shall have the right to sub-contract the performance of any of its obligations or duties arising under the Agreement. The sub-contracting by either Party of the performance of any obligations or duties under the Agreement shall not relieve that Party from liability for performance of such obligation or duty.

Severance

21.6 If any provision of this Agreement is found to be illegal or unenforceable in whole or in part, that provision (or part provision) shall be severed and the other provisions of this Agreement and the remainder of the relevant provision shall continue in full force and effect.

Variation

21.7 No variation to this Agreement shall be binding upon the Parties unless made in writing and signed by an authorised representative of each of the Parties.

Status

21.8 Nothing in this Agreement shall create any employment, joint venture or similar relationship between the Parties or render one Party an agent or partner of the other or any of its Affiliates. Neither Party shall have any right or power to bind the other Party and/or any of its Affiliates to any obligation.

Third Party Rights

21.9 For the purposes of The Contracts (Rights of Third Parties) Act 1999, or the *jus quaesitum tertio* the Agreement does not create any right or remedy enforceable by any person other than the Parties.

Notices

21.10 With the exception of:

21.10.1 declarations of Availability Status;

21.10.2 Instructions;

21.10.3 Stop Instructions; and

21.10.4 any notices and communications required for a Testing and Commissioning Test or activities set out in Clause 6, Schedule 2 and Schedule 3;

any notice or other communication required to be given to a Party under or in connection with this Agreement must be in writing and must be delivered to the other Party personally or sent by prepaid first-class post, recorded delivery post or by commercial courier, to its registered office.

21.11 Any notice sent by post or courier shall be deemed to have been received on the second Working Day after dispatch and any notice delivered personally shall be deemed to have been received on the first Working Day after dispatch. For the purposes of this Clause 21.11, “writing” shall not include e-mails and for the avoidance of doubt notice given under this Agreement shall not be validly served if sent by e-mail.

Counterparts

21.12 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

Governing Law and Jurisdiction

21.13 The Agreement shall be construed and implemented: (i) in accordance with English law and the Parties agree to submit to the non-exclusive jurisdiction of the English and Welsh courts if the whole of the Sites are in England and Wales; and (ii) in accordance with Scots law and the Parties agree to submit to the non-exclusive jurisdiction of the Scottish courts if the whole or any part of a Site is in Scotland.

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1 – SITES

1 SITES AND ASSETS

Site Reference	Address Associated with MPAN	MPAN	Contracted Service Capacity (specify MW or MVar)
-----------------------	-------------------------------------	-------------	---

DRAFT

SCHEDULE 2 – THE SERVICES

1 SERVICE REQUIREMENTS

1.1 The Service Provider will provide the Services to the following Service Requirements:

Detail	Service Requirement
Type of Service	[Post Fault or Restore] plus details
Contracted Service Capacity	As defined in Schedule 4
Contracted Service Duration	As defined in Schedule 4
Contracted Response Time	As defined in Schedule 4
Service Recovery Time	As defined in Schedule 4
Service Minimum On-time	As defined in Schedule 4

1.2 The Service Provider will make available, and provide in accordance with this Agreement and these Service Requirements, the Services to the Company during the Service Windows. The Service Windows for this Agreement are set out in Schedule 4.

2 PROCESS

2.1 Declaration of Unavailability of the Services

2.1.1 The communication method for declaring the Availability Status is as defined in Schedule 4.

2.1.2 The default assumption will be that the Services will be Available in the Service Windows. Therefore, if the Services are Available, the Service Provider does not need to declare the Availability Status to the Company, subject to paragraph 2.1.4 of this Schedule 2.

2.1.3 If the Services are or will be Unavailable, the Service Provider must declare that to the Company at least 24 hours before the start of the Service Window, or within [X minutes] of it becoming Unavailable if it relates to a Service Window for which an Instruction has already been issued. If the Services become Unavailable less than 24 hours before the start of the Service Window, the Service Provider must declare that to the Company as soon as possible, and at least within [X minutes] of the change of the Availability Status.

2.1.4 If the Service has been declared Unavailable to the Company, but then subsequently becomes Available, the Service Provider must declare that to the Company as soon as possible, and at least within [X minutes] of the change of the Availability Status.

2.1.5 The Service should only be Unavailable due to unplanned technical reasons. For all Service Windows where the Service is Unavailable, the Service Provider must complete the template form in Schedule 6 and send it to the Company within one Working Day, to provide the reason why the Services were Unavailable.

2.2 Utilisation of the Services

2.2.1 The communication method for issuing Instructions and Stop Instructions is as defined in Schedule 4.

2.2.2 If the Company has a requirement for the Services, it will issue an Instruction to the Service Provider. The Instruction can be issued at any time up to [X days] before the Services are required.

2.2.3 The Instruction:

(a) will specify whether the Services are to start immediately (i.e. within the Contracted Response Time) or at a certain time within the Service Window. If the Instruction does not contain this information, the Service Provider should request this information;

(b) may specify when the Services should cease delivery (the “End Time”). If the Instruction does not contain this information, the Service Provider should stop delivering the Services in accordance with paragraph 2.2.8 of this Schedule 2; and

(c) shall respect the Service Requirements.

2.2.4 Upon receipt of an Instruction, the Service Provider should immediately confirm receipt of the Instruction.

2.2.5 Upon receipt of an Instruction, the Services should be delivered in accordance with the Service Requirements and the Instruction, unless a Stop Instruction is issued by the Company.

2.2.6 If at any point after receipt of an Instruction or commencement of delivery of the Services, the Service Provider becomes aware that they cannot deliver the Services in accordance with the Service Requirements or the Instruction, the Service Provider should notify the Company immediately, and at least within [X minutes].

2.2.7 For all occurrences where the Service Provider cannot deliver the Services in accordance with the Service Requirements and the Instruction, the Service Provider must complete the template form in Schedule 6 and send it to the Company within one Working Day, to explain why that was the case.

2.2.8 The Service Provider should stop delivering the Services at the earliest of the following events:

(a) the End Time of the delivery of the service, where that information has been conveyed in the Instruction; or

(b) the issue of a Stop Instruction by the Company. A Stop Instruction can be issued at any time after the corresponding Instruction has been issued. Where a Stop Instruction is issued whilst the Services are being delivered, the Service Provider should cease delivery of the Services within [X seconds] of receipt of the Stop Instruction. Where a Stop Instruction is issued before the Services has started to be delivered, the Service Provider should not commence delivery of that Service;

(a) the end of the Service Window for which the Services have been Instructed (unless the Service is to be utilised outside a Service Window in accordance with paragraphs 3.1-3.7 of this Schedule 2); or

(b) once the Service has been delivered for the Contracted Service Duration.

3 UTILISATION OF THE SERVICE OUTSIDE A SERVICE WINDOW

3.1 The Company may instruct the Service Provider to provide Services that are delivered partly or wholly outside Service Windows.

3.2 The Service Provider is under no obligation to accept these Instructions. Refusal to accept such an Instruction will not impact the Fee paid for any Services delivered within Service Windows and will not affect the Monthly Performance Adjustment Factor.

3.3 The declaration of unavailability process (paragraph 2.1 of this Schedule 2) does not apply for such Instructions.

3.4 The Services shall be instructed as per paragraph 2.2 of this Schedule 2.

3.5 No Availability Fee shall be paid for such Instructions. The Utilisation Fee shall be calculated as below, where SPAF is calculated as per paragraph 5.2.1 of Schedule 3:

$$UF (\text{£}) = \text{Service Delivered (MWh)} \times \text{UR (\text{£/MWh})} \times \text{SPAF}$$

3.6 The Service Performance Adjustment Factor for such Instructions shall not be used to determine the Monthly Performance Adjustment Factor.

3.7 The Baseline Position for such Instructions shall be the average import/export position of the Site(s) at the same time of day, on the same day of the week, for the last four weeks.

DRAFT

SCHEDULE 3 – FEE CALCULATION

1 ABBREVIATIONS

1.1 The formulae in this Schedule 3 use the following abbreviations:

AF	-	Availability Fee
AR	-	Availability Rate
CSC	-	Contracted Service Capacity
h	-	hour
MPAF	-	Monthly Performance Adjustment Factor
SD	-	Service Delivered
SI	-	Service Instructed
SPAF	-	Service Performance Adjustment Factor
UF	-	Utilisation Fee
UR	-	Utilisation Rate

2 GENERAL TERMS

2.1 The Fee shall be the sum of the applicable components:

Type of Service	Availability Fee	Utilisation Fee
Post Fault	Yes	Yes
Restore	No	Yes

2.2 This Schedule 3 sets out how they will be calculated.

2.3 The Fee shall be paid by the Company to the Service Provider in accordance with Clause 6 of this Agreement.

2.4 All calculations set out in this Schedule 3 shall be done by the Company.

3 AVAILABILITY FEE

3.1 Where applicable, the Company shall pay the Service Provider an Availability Fee for each Service Window that the Services are Available, subject to paragraph 3.4 of this Schedule 3. This Availability Fee shall be calculated as follows.

$$AF (\text{£}) = \text{Duration of Service Window (hours)} \times \text{CSC (MW)} \times \text{AR (£/MW/h)} \times \text{MPAF}$$

- 3.2 For this Agreement, the Availability Rate is as per Schedule 4.
- 3.3 The Monthly Performance Adjustment Factor shall be calculated as per paragraph 5 of this Schedule 3.
- 3.4 The Availability Fee shall be set to £0 for any Service Window where:
- 3.4.1 the Availability Status has changed during that Service Window; or
- 3.4.2 the Service Provider notifies the Company of the Availability Status less than 4 hours before the commencement of that Service Window.

4 UTILISATION FEE

- 4.1 Where applicable, the Company shall pay the Service Provider a Utilisation Fee for each occurrence that the Services are delivered following an Instruction. This Utilisation Fee shall be calculated as follows for Services that are instructed to be delivered during a Service Window:

$$UF (\text{£}) = \text{Service Delivered (MWh)} \times \text{UR (\text{£/MWh})} \times \text{MPAF}$$

- 4.2 If the Service Delivered is greater than the Service Instructed, then the Service Instructed value shall be used instead of the Service Delivered value.
- 4.3 For this Agreement, the Utilisation Rate is as per Schedule 4.
- 4.4 The Monthly Performance Adjustment Factor and Service Delivered shall be calculated as per paragraph 5 of this Schedule 3.

5 MONTHLY PERFORMANCE ADJUSTMENT FACTOR

- 5.1 The Monthly Performance Adjustment Factor is used to reduce the Availability Fee and Utilisation Fee where the Services have not been delivered in accordance with the Service Requirements and Instruction.
- 5.2 The Monthly Performance Adjustment Factor is calculated for each month in two stages:
- 5.2.1 For each Instruction in that month, the Service Performance Adjustment Factor is calculated:

$$\text{SPAF} = \text{Volume Factor}$$

- 5.2.2 A Service Performance Adjustment Factor will not be calculated for any Instructions issued when the Services were declared Unavailable.

5.2.3 Where the Services were declared Available and the Service Provider refused to accept or enact the Instruction, the Service Performance Adjustment Factor shall be calculated as if the Instruction had been accepted.

5.2.4 The month's Monthly Performance Adjustment Factor is the average of the three (3) lowest Service Performance Adjustment Factors within that month. Where there have been fewer than three (3) Instructions within that month, the Monthly Performance Adjustment Factor shall be the average of all that month's Service Performance Adjustment Factors.

5.2.5 Where there have been no Instructions in that month, the previous month's Monthly Performance Adjustment Factor shall be used. If there are no Instructions in the first month of Service Windows, then a Monthly Performance Adjustment Factor of 1 shall be used.

5.3 The Volume Factor is a measure of the volume (MWh) of Services delivered compared to what was instructed:

$$\text{Volume Factor} \propto \frac{\text{Service Delivered (MWh)}}{\text{Service Instructed (MWh)}}$$

5.3.1 The Volume Factor for each Instruction shall be determined as follows:

For each Service resulting from an Instruction	Volume Factor
If $SD/SI \geq 1$	1
If $1 > SD/SI \geq 90\%$	0.9
If $0.9 > SD/SI \geq 0.8$	0.8
If $0.8 > SD/SI \geq 0.6$	0.6
If $SD/SI < 0.6$	0

5.3.1 The Service Delivered is the actual MWh reduction in energy import or increase in energy export compared to the Baseline Position, delivered in response to an Instruction. This shall be determined from the Service Meter Data.

5.3.2 The Services Instructed are the MWh reduction in energy import or increase in energy export compared to the Baseline Position, that would have been delivered if the Services had been delivered at the full Contracted Service Capacity and in accordance with the Instruction.

6 CALCULATING THE BASELINE POSITION

6.1 NOT USED.

6.2 To allow the Company to determine the Baseline Position for each Service Window:

6.2.1 For Sites that are operational at the time of this Agreement, the Service Provider must provide the Company with the most recent 24 months of meter data for the Site(s). Where there is less than 24 months of meter data for the Site(s), all the meter data must be provided. This meter data must be provided within 20 Working Days of the Commencement Date. In addition to the meter data, the Service Provider must provide any information reasonably requested by the Company to help it ascertain the Baseline Position.

6.2.2 For Sites that are not yet operational at the time of this Agreement, the Service Provider must provide any information reasonably requested by the Company to help it ascertain the Baseline Position.

6.3 Upon receipt of this meter data and/or other information, the Company has 20 Working Days in which to determine the Baseline Position for each Service Window. Different Service Windows can have different Baseline Positions. Where there is meter data, the Company will determine the Baseline Positions based on the historic import/export positions of the Site(s) at similar time periods to the Service Windows.

6.4 Once the Company has determined the Baseline Positions, it will inform the Service Provider of the Baseline Positions and the method used to determine them. The Service Provider will then have the opportunity to provide comment.

6.5 The Company and the Service Provider must agree the Baseline Positions before the Testing and Commissioning Test commences. Once agreed, the Baseline Positions will remain fixed for the duration of the Agreement, unless both the Company and the Service Provider agree to change them.

SCHEDULE 4 – SERVICE SPECIFIC DATA

Parameter	Service Requirement
Contracted Service Capacity	X MW or X MVAR net change in import / export, as compared against the Baseline Position and measured by the Service Meter. [DEFINE AS REQUIRED]
Contracted Service Duration	Maximum X hours [DEFINE AS REQUIRED]
Contracted Response Time	Maximum X seconds [DEFINE AS REQUIRED]
Service Recovery Time	Maximum X minutes [DEFINE AS REQUIRED]
Service Minimum On-time	[DEFINE AS REQUIRED]
Service Windows	[DEFINE AS REQUIRED]
Availability Rate	£X/MW/h [DEFINE AS REQUIRED]
Utilisation Rate	£X/MWh [DEFINE AS REQUIRED]
Expiry Date	[DEFINE AS REQUIRED]
Service Meter	As per Clause 8 and: Must record MW in, MW out, MVAR in and MVAR out. Must record these in one-minute resolution.
Method for declaring Availability Status, Instruction and Stop Instruction	[DEFINE AS REQUIRED]

SCHEDULE 5 – ESCALATION LEVEL

Without prejudice to the terms of Clause 20 of the Agreement, any Disputes between the Parties will be escalated by the Parties as follows:

Escalation Level	Company Representative	Service Provider Representative
1	Relevant Company Authorised Person	[NOTE – TO BE POPULATED]
2	Relevant Company Commercial Management Team member	[NOTE – TO BE POPULATED]
3	Relevant Company Commercial & Performance Manager	[NOTE – TO BE POPULATED]

SCHEDULE 6 – UNAVAILABILITY EXPLANATION FORM

In accordance with paragraphs 2.1.5 and 2.2.7 of Schedule 2, for each Service Window where the Services are Unavailable, and for each occurrence where the Service Provider cannot deliver the Service in accordance with an Instruction (defined as being an SPAF value of <0.8), the Service Provider must complete and send this form to the following e-mail address by the end of the following Working Day:

Return to: [e-mail address]

Service Provider Name	
Site address	
Site MPAN	
Service Window of incident (date/time)	
Reason	

NAME (signed): _____

NAME (printed): _____

DATE: _____

E-MAIL: _____

SUBSCRIBED for and on behalf of

SP DISTRIBUTION PLC / SP MANWEB PLC

by

and

at

on the day of 2019

.....
Authorised Signatory (Control)

.....
Authorised Signatory (Business)

SUBSCRIBED for and on behalf of

[SERVICE PROVIDER]

by

at

on the day of 2019

.....
Director/Authorised Signatory