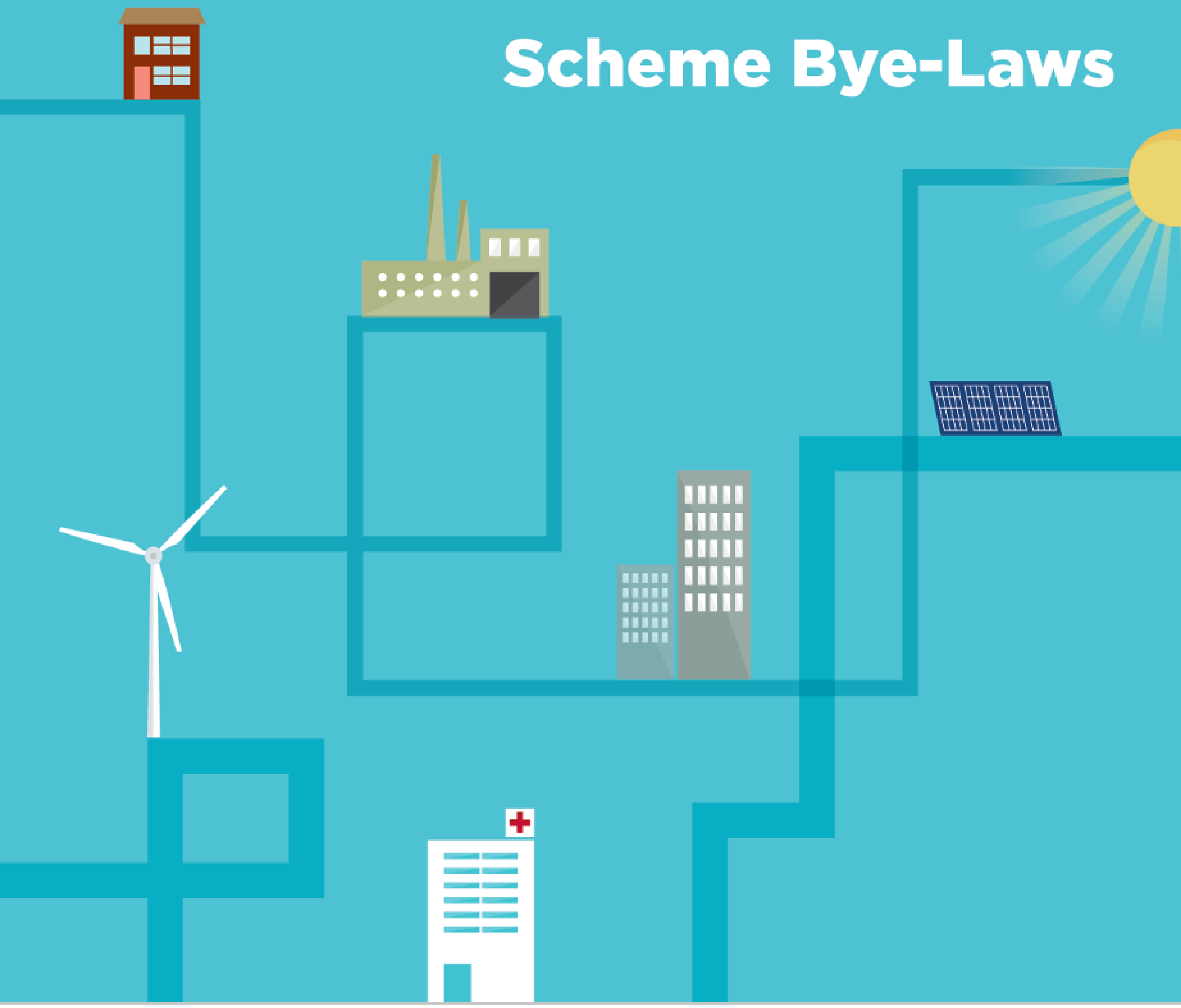
Flex Assure Scheme Bye-Laws



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WHEREAS:

(A) The Scheme has been established in order to offer protection to both domestic and business flexibility service customers in England, Wales and Scotland by establishing common industry-wide standards in relation to the way in which flexibility customers are treated by service providers.

(B) These Scheme Bye-Laws govern the way in which the Scheme will apply to Scheme Members who successfully accede to this scheme.

(C) The current version of these Scheme Bye-Laws will be maintained on the Website.

These Scheme Bye-Laws shall be interpreted according to the provisions of Schedule 1 (Definitions).

1 Becoming a Scheme Member

1.1 A Prospective Scheme Member who wishes to become a Scheme Member shall submit a completed Application Form together with the required supporting documentation, as specified in the Application Form.

1.2 Following receipt of an Application Form and Supporting Evidence, the Scheme Administrator shall conduct a preliminary review to ascertain whether the Application Form has been duly completed. If the Application Form has, in the opinion of the Scheme Administrator:

1.2.1 not been duly completed, the Scheme Administrator shall return the Application Form to the Prospective Scheme Member indicating where information is missing from or inaccurately completed in the Application Form; or

1.2.2 been duly completed, the Scheme Administrator shall notify the Prospective Scheme Member by email (to the address stated in the Application Form) that the Application Form has been duly completed and is accepted.

1.3 Notification pursuant to paragraph 1.2.2 shall not be, and shall not be deemed to be, an indication or confirmation that the Prospective Scheme Member will become a Scheme Member.

1.4 Where an Application Form is returned to a Prospective Scheme Member pursuant to paragraph 1.2.1, the Prospective Scheme Member shall be entitled to revise and update the Application Form and resubmit it to the Scheme Administrator in accordance with the process set out in paragraph 1.1. Paragraphs 1.2-1.4 shall apply to any re-submitted Application Form on the same terms.

1.5 As soon as reasonably practicable following notification by the Scheme Administrator pursuant to paragraph 1.2.2 the Scheme Administrator will assess the Application Form (and such supporting documentation as specified in the Application Form) to determine whether the Company to which the Application Form relates is compliant with the applicable Scheme Requirements. The Scheme Administrator may request a Prospective Scheme Member to provide additional information which the Scheme Administrator considers is required to enable it to properly perform the assessment.

1.6 The Scheme Administrator shall use reasonable endeavours to update each Prospective Scheme Member on the timescales relating to the processing of their Application Form pursuant to paragraph 1.5.

1.7 The Scheme Administrator may reject any application by a Prospective Scheme Member where it is of the opinion that the Prospective Scheme Member does not meet the Scheme Requirements. Any such rejection will be communicated to the Prospective Scheme Member by email to the address specified on the Application Form. In such circumstances, the Scheme Administrator shall specify the reasons for the rejection.

1.8 Prospective Scheme Members shall be entitled to update and resubmit an Application Form following rejection and in these circumstances the provisions of this section 1 shall apply on the same terms to any such resubmitted Application Form.

1.9 If the Scheme Administrator determines that the Prospective Scheme Member is compliant with the requirements of the Scheme, the Scheme Administrator shall send to the Prospective Scheme Member an offer which shall comprise:

1.9.1 A Scheme Membership Agreement;

1.9.2 An invoice for the Scheme Annual Fee; and

1.9.3 An invoice for the Scheme Registration Fee.

1.10 Following receipt of the Scheme Membership Agreement, the Prospective Scheme Member shall duly sign it and provide 2 originals to the Scheme Administrator. The Scheme Administrator shall then countersign the 2 copies of the Scheme Membership Agreement. The Scheme Administrator shall not countersign and execute the Scheme Membership Agreement until it has received payment from the Prospective Scheme Member of the applicable Scheme Annual Fee and Registration Fee (as invoiced and issued in accordance with paragraph 1.9) in cleared funds. Following signature, one original fully signed Scheme Membership Agreement will be returned by the Scheme Administrator to the Prospective Scheme Member (who will on execution of such agreement be a Scheme Member) and the other original will be retained by the Scheme Administrator.

1.11 Following signature by both parties of the Scheme Membership Agreement, the Scheme Administrator shall thereafter (and, ideally, within 14 Days):

1.11.1 enter the Scheme Member in the Member Register;

1.11.2 send the Scheme Member Documentation by email or post (to the relevant address specified in the Application Form) depending on the form of service requested in the Application Form; and

1.11.3 issue a Scheme Membership Certificate to the Scheme Member.

1.11.4 issue copies of the Scheme Logo and HOMEFlex Mark to the Scheme

Member

1.12 A Scheme Member shall inform the Scheme Administrator promptly on becoming aware that any Declaration made during the Application Process or following entry in the Member Register is no longer true or accurate. If the Scheme Administrator considers that a Declaration has not been made in good faith, or is false or misleading, the provisions of section 11 shall apply.

1.13 A review of a selection of successful and unsuccessful application decisions made by the Scheme Administrator pursuant to this section 1 may be carried out annually in respect of application decisions made during the preceding twelve months by a person selected (and deemed to be appropriate for carrying out such review) by the Scheme Company from time to time. The Scheme Administrator will provide all reasonable assistance to any person carrying out such annual review.

2 Operation of the Scheme

2.1 Fees

2.1.1 The Scheme Annual Fees and the Scheme Registration Fee shall be determined annually by the Company Directors and will apply from 1 April each year. In doing so the Company Directors shall act reasonably and have regard to:

(a) the value of the Scheme to Scheme Members and Energy Flexibility Customers;

(b) the operational costs of the Scheme;

(c) Any third-party funding provided to the Scheme;

(d) the not-for-profit status of the Scheme Company; and

(e) the Scheme Objectives.

2.1.2 The Scheme Administrator shall invoice each Scheme Member for its Scheme Annual Fee 30 Days before the anniversary of the date on which the Scheme Membership Agreement was fully signed.

2.1.3 All Scheme Annual Fees and Scheme Registration Fees invoiced by the Scheme Administrator and issued to Scheme Members (or Prospective Scheme Members as the case may be) pursuant to sections 1 and 2 shall be paid in cleared funds by the Scheme Members (or Prospective Scheme Members as the case may be) without set-off or deduction within 30 Days of receipt of an invoice. Such date shall be known as the Due Date.

2.1.4 The Scheme Annual Fees (or any part thereof) will not be refundable in the event that:

(a) the Scheme Member resigns during the year for which the Scheme Annual Fee has already been paid; and/or

(b) a Scheme Member is removed from the Scheme by the Scheme Administrator due to a Participation Default.

2.1.5 At its sole discretion the Scheme Administrator may, in exceptional circumstances, permit a Scheme Member to pay the Scheme Annual Fee by instalments, subject to addition of reasonable service or interest costs where applicable.

2.1.6 In the event that it is resolved or ordered that the Scheme Company should be wound up or dissolved in accordance with applicable Law:

(a) following settlement of all debts and liabilities, including in relation to the winding up or dissolution of the company, to the extent there are any remaining Scheme Annual Fee and Scheme Registration Fee proceeds held by the Scheme Company, these will be distributed to current Scheme Members prior to such winding up or dissolution taking effect; and

(b) the amount of proceeds paid or distributed to each Scheme Member in accordance with paragraph 2.1.6(a) shall be proportionate to that Scheme Member's total Scheme Annual Fee and Scheme Registration Fee contributions over the course of that Scheme Member’s membership, up to the date of the resolution or order that the Scheme Company shall be wound up or dissolved.

2.1.7 For the avoidance of doubt, the following persons shall not be entitled to claim or participate in any payment or distribution upon a dissolution or winding up of the Scheme Company pursuant to paragraph 2.1.6 above:

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(a) any Scheme Member whose membership has been terminated pursuant to paragraph 17.1.1; and

(b) any Scheme Member that has resigned from the Scheme or has served a Resignation Notice pursuant to paragraph 17.2.1,

on or before the date of the resolution or order that the Scheme Company shall be wound up or dissolved.

2.2 Reporting

2.2.1 The Scheme Administrator may from time to time request that a Scheme Member report key statistics in relation to the services it provides to its Energy Flexibility Customers. Following receipt of such a request, a Scheme Member shall as soon as reasonably practicable provide to the Scheme Administrator (save to the extent it is prohibited from doing so by Law and only to the extent permitted by the Scheme Member's customer contracts), a report in the form published by the Scheme Administrator on the Website from time to time. These reports may be used to prepare an Annual Report and may also be used by the Scheme Administrator to monitor compliance with the Scheme and highlight any potential risks of compliance resulting in the need for an Audit.

2.3 Scheme Participation

2.3.1 Entry of a Scheme Member in the Member Register shall be conclusive evidence of the Scheme Member's participation in the Scheme.

2.3.2 If a Scheme Member considers that the Member Register is inaccurate it shall immediately notify the Scheme Administrator setting out which elements of its registration it considers inaccurate and shall provide evidence in support of a revised entry. The Scheme Administrator shall consider any such notification on its receipt and shall, if it in its sole discretion (acting reasonably) considers the Member Register to be inaccurate, alter the Member Register as it considers appropriate to rectify such inaccuracy.

2.3.3 A Scheme Member shall inform the Scheme Administrator promptly, and in any case within 28 Days, if there is any change in contact details of the designated Scheme Primary Contact.

3 Use of the Scheme Logo and Flex Assure Mark

3.1 The Parties acknowledge that:

3.1.1 the purpose of the Scheme Logos and the Flex Assure and HOMEFlex Mark is to provide Energy Flexibility Customers with a quick and meaningful way to identify Flexibility Services Providers that offer a high level of service and specific assurances as set out in the Scheme;

3.1.2 the Scheme Logos and (other than in relation to the Scheme Company, the Scheme Administrator, ADE and any other person selected by the Scheme Company) the Flex Assure & HOMEflex Marks can only be used by Scheme Members, and these are the visual signals Energy Flexibility Customers can use to identify those suppliers that adhere to the Scheme's requirements.

3.2 In upholding the purposes of the Scheme Logos and/or the Flex Assure and HOMEFlex Marks as set out in clause 3.1, the Parties acknowledge that:

3.2.1 it is an offence under the Consumer Protection from Unfair Trading Regulations 2008 to claim to be a signatory to a code of conduct when the trader is not, or to display a trust mark, quality mark or equivalent (including the Scheme Logo and/or the Flex Assure and HOMEFlex Marks) without having obtained the necessary authorisation; and

3.2.2 the Scheme Logos and the Flex Assure and HOMEFlex Marks must be used consistently to ensure that Energy Flexibility Customers are given clear messages about both the Scheme and Scheme Members.

3.3 Scheme Members shall be entitled to use the Flex Assure and HOMEFlex Marks and entitled to and actively encouraged to use the Scheme Logos on materials, including, stationery, promotional material, advertisements, websites, name plaques and display material solely for the purposes of identifying its participation in the Scheme and in accordance with the terms and requirements set out below.

3.4 Only Scheme Members, are entitled to use the Scheme Logos and (other than in relation to the Scheme Company, the Scheme Administrator, ADE and any other person selected by the Scheme Company) the Flex Assure and HOMEFlex Marks. Scheme Members shall not allow any third party to use the Scheme Logos and/or the Flex Assure and HOMEFlex Marks for any purpose, including affiliates, subcontractors or firms providing leads to or taking leads from Scheme Members, unless they are also Scheme Members.

3.5 Scheme Members shall:

3.5.1 at all times use the applicable version of the Scheme Logos for the membership year as notified by the Scheme Administrator to the Scheme Member;

3.5.2 comply with the requirements of these Scheme Bye-Laws and all reasonable directions of the Scheme Administrator with respect of the use of the Scheme Logos and/or the Flex Assure and HOMEFlex Marks;

3.5.3 provide the Scheme Administrator with a link to the website where using the Scheme Logos and/or the Flex Assure and HOMEFlex Marks on its website; and

3.5.4 notify the Scheme Administrator of any unauthorised use of the Scheme Logos and/or the Flex Assure and HOMEFlex Marks and/or any complaints that the use of the Scheme Logo and/or the HOMEFlex Mark infringes a third party's rights.

3.6 Scheme Members shall not:

3.6.1 alter or distort the Scheme Logos and/or the Flex Assure and HOMEFlex Marks in any way and must use the Scheme Logo and the Flex Assure and HOMEFlex Marks in the same colour(s), shapes and proportions as shown in Schedule 3;

3.6.2 use the Scheme Logos and/or the Flex Assure and HOMEFlex Marks in a way to imply endorsement by the Scheme Company of its flexibility services arrangements or in any other way that is not compatible with the scope and purpose of the Scheme;

3.6.3 use the Scheme Logos and/or the Flex Assure and HOMEFlex Marks in a way which misleads customers as to which of the Scheme Member's activities are covered by the Scheme;

3.6.4 apply for nor obtain registration in respect of any goods or services in any jurisdiction of:

(a) the Scheme Logos and/or the Flex Assure and HOMEFlex Marks; or

(b) any trade or service mark which consists of, comprises, or is confusingly similar to, the Scheme Logos and/or the Flex Assure and HOMEFlex Marks;

3.6.5 use any other trademarks or logos of the Scheme Company, ADE and/or the Scheme and/or any trade or service mark which consists of, comprises, or is confusingly similar to such marks; or

3.6.6 do, or omit to do, or permit to be done or omitted, any act which will or may weaken, damage or be detrimental to, the purpose of the Scheme Logos and/or the Flex Assure and HOMEFlex Marks or the good name, goodwill and reputation associated with the Scheme Logos, the Flex Assure and HOMEFlex Marks, the Scheme, the Scheme Company or ADE, or which may invalidate or jeopardise any registration of the Scheme Logos and/or the Flex Assure and HOMEFlex Marks whether by using it in any way which could allow them to become generic, lose their distinctiveness, become liable to mislead the public, or otherwise.

3.7 In the event that a Scheme Member leaves the Scheme and/or otherwise ceases to be a Scheme Member for any reason, it shall immediately stop using the Scheme Logos and the Flex Assure and HOMEFlex Marks and all materials bearing the Scheme Logos and/or the Flex Assure and HOMEFlex Marks and shall notify the Scheme Administrator (providing evidence) that it has done so [or a declaration].

3.8 A breach of any of the terms in this section 3 may lead to disciplinary action under section 11 and may result in the removal of the Scheme Member from the Scheme. The Scheme Administrator is entitled to refer any Scheme Member to the Compliance

Panel if it forms the opinion that the Scheme Member in question has engaged in conduct which brings the Scheme into disrepute (which for the avoidance of doubt shall include misuse of the Scheme Logos and/or the Flex Assure and HOMEFlex Marks). The Scheme Administrator is also entitled to require, on written notice, that a Scheme Member suspends and/or otherwise stops using the Scheme's materials (including but not limited to the Scheme Logos and the Flex Assure and HOMEFlex Marks and all materials bearing the Scheme Logos and/or Flex Assure and HOMEFlex Marks).

3.9 The Scheme Company is the owner of the Scheme Logos and the Flex Assure and HOMEFlex Marks and any and all goodwill derived from the use of the Scheme Logos and the Flex Assure and HOMEFlex Marks by a Scheme Member shall belong to the Scheme Company. The Scheme Company shall be entitled to amend the Scheme Logos on an annual basis and the Flex Assure and HOMEFlex Marks at any time and such amendment shall not be subject to the modification process set out in section 16. Reference in these Scheme Bye-Laws to the Scheme Logos and/or the Flex Assure and HOMEFlex Marks shall be to the Scheme Logos and/or the Flex Assure and HOMEFlex Marks as amended from time to time pursuant to this paragraph 3.9.

4 Energy Flexibility Customer Protection

4.1 A Scheme Member shall take all reasonable steps to promote the benefits of the Scheme to Energy Flexibility Customers and will not mislead existing or prospective Energy Flexibility Customers in any way as to the benefits of the Scheme or their participation in the Scheme.

4.2 A Scheme Member must follow appropriate business practices and procedures to ensure that it can meet its responsibilities to Energy Flexibility Customers as set out in the Flex Assure and HOMEFlex Codes. This includes ensuring that it retains and allocates sufficient financial resources and staff to carry out any agreements with Energy Flexibility Customers.

4.3 A Scheme Member shall at all times maintain appropriate insurance in accordance with any requirements specified in the Flex Assure and HOMEFlex Codes of Conduct (as relevant to that Scheme Member) to cover potential liability to Energy Flexibility Customers which may be caused by them or their subcontractors in connection with the activity of supplying services to an Energy Flexibility Customer. The Scheme Member shall make available to the Scheme Administrator upon request full details of the insurance cover including the name and address of the provider, the limits of liability, the excess and any limitations of cover.

5 Data Protection

5.1 The Scheme Company and the Scheme Member will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Scheme.

5.2 Without prejudice to paragraph 6.1, the Scheme Member shall comply with any notification requirements under the Data Protection Legislation and shall procure similar compliance by all its employees, agents and subcontractors who are involved in the performance of obligations arising under the Scheme of those same notification requirements.

5.3 The Scheme Member shall ensure that it has in place appropriate technical and contractual measures to ensure the security of any personal data it collects and/or has custody or control over as a result of its participation in the Scheme. The Scheme Member shall guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data as required under current Data Protection Legislation. The Scheme Member shall also (save to the extent it is prohibited from doing so under the Data Protection Legislation):

5.3.1 provide the Scheme Administrator with such information as the Scheme Administrator may reasonably require to satisfy itself that the Scheme Member is complying with its obligations under the Data Protection Legislation;

5.3.2 promptly notify the Scheme Administrator of any breach of the security measures required to be put in place pursuant to this paragraph 5.3; and

5.3.3 ensure that it does not knowingly or negligently do, or omit to do, anything which places the Scheme Administrator in breach of the Scheme Administrator's obligations under the Data Protection Legislation.

6 Compliance with the Scheme

6.1 Scheme Members shall not make any statement, whether orally or in writing, in print or via any other medium, which is designed to bring, or which may have the effect of bringing, the Scheme into disrepute.

6.2 Scheme Members shall comply with the terms of the Scheme Membership Agreement the Scheme Documentation in their entirety and shall ensure that all of its employees, agents and any other parties who act on its behalf are informed of the requirements of the Scheme and the responsibilities placed upon these persons by the Scheme, and are provided with copies of all relevant Scheme Documentation.

6.3 Scheme Members shall ensure that all its employees, agents, and any other parties who act on its behalf have received adequate training on the requirements of the Scheme and shall take all reasonable precautions to ensure compliance with those requirements.

7 Customer Complaints

7.1 Where an Energy Flexibility Customer of a Scheme Member contacts the Scheme Administrator with a Complaint, the Scheme Administrator will initially direct the Energy Flexibility Customer to pursue their complaint through the processes set out in the Scheme Member's internal complaints handling process. If the Complaint has not been resolved by the Scheme Member’s internal complaints process, or a deadlock letter has been issued, then the Scheme Administrator shall be entitled, and reserves the right, to direct the Energy Flexibility Customer to the Scheme’s relevant Complaint process for the type of Energy Flexibility Customer relationship. For a domestic or microbusiness Energy Flexibility Customer, this shall be in accordance with section 8.

7.2 Where the Scheme Administrator has been made aware of a number of Complaints or Infringement Notifications made against a particular Scheme Member the Scheme Administrator may subject that Scheme Member to an Audit pursuant to section 10.

8 INDEPENDENT DISPUTE RESOLUTION

8.1.1 A Supply of Service Agreement has been agreed with the Independent Dispute Resolution Service, in respect of all disputes between a Scheme Member and a domestic or microbusiness Customer.

8.1.2 Scheme Members agree to be bound by and act in accordance with the Energy Ombudsman Terms of Reference and the Energy Ombudsman Scheme Rules. Non-compliance with any term of either will be a ground for disciplinary action against the Scheme Member in accordance with section 11 of these Scheme Bye Laws.

8.1.3 Scheme Members shall, on entering into a Contract with a domestic or microbusiness Customer for Energy Flexibility Services, provide such Customer with details of the Independent Dispute Resolution Service and how to access it.

8.1.4 Scheme Members shall be given an 8 week period from the date of receiving written notification of a Complaint by a domestic or microbusiness Customer to resolve the Complaint.

8.1.5 Provided that the Customer's Complaint is eligible for referral to the Independent Dispute Resolution Service in accordance with the Energy Ombudsman Terms of Reference, and the Complaint remains unresolved after the period specified in clause 8.1.4, the Scheme Member must notify the Customer of the option to refer the Complaint to the Independent Dispute Resolution Service. Such referral shall be at the sole discretion of the Customer, and the Scheme Member shall agree to any eligible request. In respect of any Complaint referred to the Independent Dispute Resolution Service in accordance with this paragraph 8.1.4, the Scheme Member shall pay any relevant fees, participate reasonably in the process and co-operate with the Independent Dispute Resolution Service (which includes disclosing information reasonably required by the Independent Dispute Resolution Service in order to consider a Complaint). Without prejudice to paragraph 8.1.2, the Scheme Member agrees to comply with and implement any final decisions issued to it by the Independent Dispute Resolution Service including payment of costs and charges. The rights contained in paragraphs 8.1.4 and this 8.1.5 are not subject to the Scheme Member's individual complaint handling procedures.

8.1.6 If there is a dispute between the Scheme Member and the Customer as to whether the Complaint is eligible for referral, such dispute shall be raised with the Independent Dispute Resolution Scheme.

8.1.7 Any Complaint that is referred to the Independent Dispute Resolution Service shall be processed in accordance with the Energy Ombudsman Terms of Reference.

8.1.8 Once an unresolved Complaint has been referred to the Independent Dispute Resolution Service the Scheme Member will not be permitted to resign from the Scheme until such time as the application for resolution of the Complaint has been acknowledged by the Independent Dispute Resolution Service.

8.1.9 Costs of the Independent Dispute Resolution Service will be set out in the Fees Schedule, and the Scheme Administrator shall notify Scheme Members of any change to the Fees Schedule. Upon acknowledgement of a Complaint, the relevant Scheme Member will be liable to pay all associated costs of Complaint resolution (as set out in the Fees Schedule), even if the Scheme Member has resigned from the Scheme. In accordance with the Supply of Service Agreement, with which the Energy Ombudsman Terms of Reference require Scheme Members to comply, a Scheme Member may not recoup the costs of Complaint resolution from the Customer making the Complaint.

8.1.10 Any award or decision issued by the Independent Dispute Resolution Service shall be notified to the Scheme Member and the Scheme Administrator in accordance with the Energy Ombudsman Scheme Rules. The Scheme Administrator may provide details of such award or decision and related Complaint to the Non-Compliance Panel and may use such award or decision and related Complaint as evidence in relation to any subsequent Disciplinary Procedure under section 11.

9 Monitoring

The Scheme Administrator shall conduct Monitoring in order to ensure that Scheme Members are compliant with the Scheme. Monitoring will be undertaken in line with Monitoring Guidelines published by the Scheme Administrator from time to time on the Website.

In carrying out the Monitoring, the Scheme Administrator will assess the effectiveness of the Scheme in delivering improved performance standards for Energy Flexibility Customers.

9.1 The Scheme Administrator may take into account and record any information it receives which is relevant to a Scheme Member's compliance with the Scheme from any source including but not limited to:

9.1.1 Complaints;

9.1.2 reports submitted by Scheme Members pursuant to paragraph 2.2.1;

9.1.3 Infringement Notifications from third parties;

9.1.4 Audits;

9.1.5 Monitoring;

9.1.6 publicly available information including media reports;

9.1.7 monitoring and evaluation mechanisms; and

9.1.8 disciplinary proceedings.

9.2 The Scheme Administrator shall assess any information it receives about a Scheme Member to determine whether it suggests non-compliance with or a potential breach of the Scheme.

9.3 If the Scheme Administrator considers, in its sole discretion acting reasonably and with regard to the objects of the Scheme, that a Scheme Member is not in compliance with the Scheme, the Scheme Administrator will take such steps as it considers necessary in order to promote high standards of Energy Flexibility Customer quality and protection and compliance with the Scheme. This may include selecting the Scheme Member for an Audit.

9.4 To the extent not permitted by clause 9.5, the Scheme Administrator may share information received or collected from the Scheme Member, as a part of Monitoring, on receiving written approval from the Scheme Member (not to be unreasonably withheld or delayed), with the Department of Energy Security and Net Zero, the National Energy System Operator, Ofgem, the Trading Standards Institute and/or the Companies Investigation Branch or as otherwise required by Law.

9.5 Scheme Members hereby provide consent to the Scheme Administrator to share information in accordance with this section to the extent that such information is already publicly available. For the avoidance of doubt, any information received or collected that is not publicly available will be subject to the consent procedure set out in paragraph 9.4 above.

9.6 On an annual basis, the Scheme Administrator may publish on the Website an Annual Report. The Annual Report will include, but not be limited to, the following statistics for the period covered by the Annual Report:

9.6.1 the number of Energy Flexibility Customers covered by the Scheme;

9.6.2 the number of Scheme Members participating in the Scheme;

9.6.3 the number of Scheme Members that have resigned from the Scheme;

9.6.4 statistics of Energy Flexibility Customers covered by the Scheme;

9.6.5 complaint data from Scheme Members;

9.6.6 complaint data from the Website;

9.6.7 Infringement Notifications; and

9.6.8 Energy Flexibility Customer feedback on protections offered by the Scheme.

9.7 In preparing an Annual Report, the Scheme Administrator shall anonymise all Energy Flexibility Customer data. Data pertaining to Scheme Members will only be anonymised either on written request by such Scheme Member to the Scheme Administrator prior to the publication of the Annual Report or as required by Data Protection Legislation.

The Scheme Administrator may provide copies of the Annual Report to DESNZ, the National Energy System Operator, Ofgem, the Scottish Ministers, Trading Standards Institute departments and/or the Companies Investigation Branch at its discretion and to other appropriate persons on request.

10 Audits

10.1 **Eligibility for Audit**

10.1.1 Any Scheme Member is eligible for, and agrees to undergo, an Audit in accordance with the Audit Guidelines, where any of the criteria listed in paragraphs 10.1.2 or 10.1.3 apply.

10.1.2 A Scheme Member is eligible for an Audit in any particular year if one or more of the following criteria are satisfied:

(a) The Committee or the Independent Dispute Resolution Service (as applicable) considers (in its absolute discretion) that:

i. a significant number of Complaints from Eligible Customers has been made against the Scheme Member;

ii. any number of Complaints have been made against the Scheme Member with sufficient severity to merit an Audit; or

iii. a significant number of Infringement Notifications has been received from third parties with regard to the Scheme Member's flexibility service related activities;

(b) The Scheme Member has been suspended from membership or was previously expelled from the Scheme and wishes to return after completion of a suspension period as defined in the Relevant Codes of Conduct;

(c) data submitted pursuant to paragraph 2.2.1 gives the Scheme Administrator reasonable cause to consider that an Audit would be in the interests of improving the service provided to Energy Flexibility Customers;

(d) where paragraph 9.8.1(b) applies; or

(e) where the Scheme Administrator, in its sole discretion acting reasonably and in accordance with the objects of the Scheme, recommends to the Committee that an Audit is undertaken in accordance with the Audit Guidelines, and such recommendation is upheld by the Committee.

10.1.3 Without prejudice to paragraph 10.1.2, each Scheme Member shall be subject to an Audit at least once in every (4) year period, even if the criteria in paragraph 10.1.2 are not satisfied

10.2 **Audit outcome categories**

10.2.1 Pass: The Scheme Member has sufficiently demonstrated compliance with the relevant Flex Assure Code(s) of Conduct.

10.2.2 Incomplete: The Scheme Member's Audit Questionnaire and supporting evidence are incomplete, or indicate minor infringements, which the Auditor considers correctable within the timeline for resubmission as set out in the Audit Guidelines. The Scheme Member is required to revise and resubmit the Audit Questionnaire and supporting evidence in accordance with the Audit Guidelines.

10.2.3 Pending evidence of compliance: The Scheme Member has not sufficiently demonstrated compliance with the relevant Code(s) of Conduct, and is required to submit a Remediation Plan for implementation in accordance with the timelines set out in the Audit Guidelines. During the remediation period, the Scheme Member enters enhanced monitoring and is required to submit monthly progress updates to the Scheme Administrator. Upon implementation of the Remediation Plan, the Scheme Member will be deemed to have passed the Audit.

10.2.4 Non-compliant: If remedial actions are not implemented by the date specified by the Auditor (acting in accordance with the Audit Guidelines), the Scheme Member will be deemed to have failed the audit, and disciplinary procedures will commence in accordance with Section 11 of these Scheme Bye-Laws.

10.3 **Beginning of Audit Process**

10.3.1 Once the Scheme Administrator has determined that a Scheme Member shall undergo an Audit it shall notify the Scheme Member of that determination, in accordance with the Audit Guidelines. The notification will define the type of Audit to be carried out as set out in Schedule 4.

10.3.2 On receipt of a notice from the Scheme Administrator under paragraph 10.3.1, the Scheme Member shall provide the Scheme Administrator with the relevant information and documentation listed in Schedule 4.

10.3.3 The Scheme Member shall provide the Auditor with access during business hours to such documentation and facilities pertaining to the supply of energy flexibility services to Eligible Customers as the Auditor may reasonably require.

10.3.4 The Scheme Administrator shall provide the Auditor with copies of all relevant information in its possession in respect of the Scheme Member that is subject to the Audit, including but not limited to details of any Complaints and any data submitted by the Scheme Member under paragraph 3.2 and paragraph 10.3.2.

10.4 **Assessment**

10.4.1 The Scheme Administrator shall ensure that the Auditor shall, in accordance with the Audit Guidelines, assess the Scheme Member's flexibility services activities and associated documentation against the criteria set out in the Scheme Documents, including in relation to compliance with the requirements of these Scheme Bye-Laws pertaining to the use of Scheme Logos and/or Flex Assure and HOMEFlex Marks and inclusion of other materials that may confer inappropriate advantage if used in a manner not in line with those requirements.

10.4.2 If considered necessary to carry out the Audit the Scheme Member shall allow access to the Auditor to visit any of the offices or facilities of the Scheme Member carrying out the Business Activities where requested by the Auditor in writing to both the Scheme Member and the Scheme Administrator.

10.4.3 A Scheme Member may request a different date for a visit by the Auditor by sending a written notice to the Auditor and the Scheme Administrator within 5 Working Days of receipt of the Auditor's notice pursuant to paragraph 10.4.2 specifying why the notified date is not, in the Scheme Member's reasonable opinion, acceptable and proposing an alternative date within 30 Days of the original date.

10.4.4 On a visit by the Auditor, the Scheme Member shall:

(a) cooperate with the Auditor in good faith;

(b) provide access to its offices, relevant records, properties and facilities; and

(c) use all reasonable endeavours, by means of their relationship with the Energy Flexibility Customer, to secure access to Energy Flexibility Customers and/or the equipment and/or properties of Energy Flexibility Customers, as the Auditor may reasonably require in order to perform its duties under the Scheme and the Scheme Documentation.

10.4.5 For the avoidance of doubt and without limiting the effect of paragraph 10.4.4, if considered necessary to complete an Audit the Auditor is entitled to conduct spot checks of any of the following:

(a) the installation of any Scheme Member's equipment at an Eligible Customer's property, if applicable (subject to receiving any required approval and access from the Eligible Customer);

(b) interviews with Energy Flexibility Customers (subject to gaining access);

(c) interviews with Energy Flexibility Customer facing staff;

(d) bills issued by the Scheme Member to their Energy Flexibility Customers;

(e) offline marketing materials;

(f) training materials and staff training logs;

(g) the Scheme members Complaints log; and

(h) any other item, document or location the Auditor considers, in its sole discretion reasonably necessary (subject to gaining any necessary third party approvals and access) to assess the Scheme Member's compliance with the Scheme.

10.4.6 If a visit by an Auditor is cancelled by the Scheme Member with less than 5 Working Days' notice of the scheduled date of the visit, the Scheme Administrator shall be entitled to charge the Scheme Member for any costs incurred by the Auditor in connection with the visit, including travel and subsistence costs. Such costs shall be payable within 30 Days of the date of invoice, being the Due Date. A new date for an Audit will then be notified to the Scheme Member in accordance with paragraph 9.3.1.

10.5 **Reporting**

10.5.1 In relation to a Scheme Member who is subject to an Audit, the Auditor shall send a copy of a report (an "**Audit Report**") to the Scheme Administrator within an agreed amount of time, as set out in the Auditor Guidelines, as amended from time to time. The Audit Report shall:

(a) assign scores to the Scheme Member's compliance with the requirements of the Scheme and confirm the outcome of the Audit. The Audit Guidelines shall specify the scoring mechanism used by the Auditor and set the minimum score needed for the Scheme Member to pass;

(b) specify all the Scheme requirements which the Scheme Member is in compliance with and those in which it is not, together with the Auditor's recommendations which, if carried out by the Scheme Member, would bring the Scheme Member's performance into compliance with the requirements of the Scheme.

10.6 **Passing an Audit**

10.6.1 Where a Scheme Member has passed an Audit, the Scheme Administrator shall notify the Scheme Member of this finding and no further action will be taken in respect of that Audit.

10.6.2 Passing an Audit does not preclude the Scheme Member from being subject to any further Audit at any time in accordance with the provisions of 10.2.1 and the Audit Guidelines.

10.7 **Incomplete Audit**

10.7.1 If the Auditor is unable to pass an audit due to minor concerns or incomplete evidence but does not consider these to demonstrate serious violation of the Relevant Codes of Conduct, the auditor may mark the audit as incomplete and request revised evidence.

10.7.2 The Scheme Administrator shall send a letter notifying the Scheme Member of the decision. The Scheme Administrator shall include:

(a) the original requirement from the Audit Questionnaire;

(b) the auditor's assessment;

(c) the revised evidence and/or remedial action required.

10.7.3 In accordance with the timeline set out in the Audit Guidelines, the Scheme Member shall respond using the Audit Response Form provided. The Scheme Member shall provide:

(a) revised evidence; and/or

(b) evidence for the remedial action undertaken

10.7.4 In accordance with the timeline set out in the Audit Guidelines, the Auditor will assess the completed Audit Response Form and:

(a) determine that the Scheme Member has satisfied the requirements and categorise the audit as passed, in which case the Scheme Administrator will send a letter to the Scheme Member informing that the audit has been passed and highlighting any areas still needing attention, which the Auditor may focus on in future audits; or

(b) recommend that the Audit be categorised as "Pending evidence of compliance" in accordance with paragraph 9.8.

10.8 **Pending evidence of compliance**

10.8.1 Where the Auditor determines that the Scheme Member has demonstrated substantial failings, or where an Audit has been marked incomplete and the Scheme Member is unable to provide the required evidence within the specified time period, the Audit shall be marked as "Pending evidence of compliance".

10.8.2 In accordance with the Audit Guidelines, the Scheme Administrator shall send a letter notifying the Scheme Member of the decision. The letter shall include:

(a) the original requirement from the Audit Questionnaire;

(b) the Auditor's assessment;

(c) the remedial action required;

(d) the timeline for implementation and reasoning for this.

10.8.3 The Scheme Member shall prepare a Remediation Plan in response to any areas of non-compliance as set out in the Audit Report, and the Scheme Member is entered into Enhanced Monitoring in accordance with paragraph 10.8.6 and the Audit Guidelines.

10.8.4 In accordance with the timeline set out in the Audit Guidelines, the Scheme Member must submit to the Scheme Administrator and the

Auditor a Remediation Plan specifying the actions they plan to undertake and a plan and timeline for completion. The Auditor shall, by written notice to the Scheme Administrator, either:

(a) approve the Remediation Plan; or

(b) if the Remediation Plan is deemed insufficient to bring the Scheme Member's performance into compliance with the requirements of the Scheme, provide written comments on the Remediation Plan.

10.8.5 Pursuant to paragraph 10.8.4 if the Auditor does not approve the Remediation Plan, the Scheme Administrator shall, in accordance with the Audit Guidelines, request that the Scheme Member submit an Updated Remediation Plan, addressing the Auditor's comments. The auditor shall, by written notice to the Scheme Administrator, in accordance with the timelines set out in the Audit Guidelines, either:

(a) approve the Updated Remediation Plan; or

(b) if the Updated Remediation Plan is deemed insufficient to bring the Scheme Member's performance into compliance with the requirements of the Scheme, recommend to the Scheme Administrator that the Audit is marked as failed, in which case paragraph 10.9 shall apply.

10.8.6 Pursuant to paragraphs 10.8.4 and 10.8.5 upon the Auditor's approval of the Remediation Plan or Updated Remediation Plan, as applicable, the Scheme Member shall be entered into Enhanced Monitoring in accordance with the procedures set out in the Audit Guidelines.

10.9 Failing an Audit

10.9.1 A Scheme Member shall be deemed to have failed an audit if:

(a) pursuant to paragraph 10.8.5, the Auditor determines that the Updated Remediation Plan is not sufficient to bring the Scheme Member's performance into compliance with the Scheme, in which case the Auditor shall recommend that the Scheme Administrator commence Disciplinary Procedure; or

(b) pursuant to paragraph 10.8.6 the Scheme Administrator considers that the Scheme Member is not implementing the Remediation Plan or Updated Remediation Plan (as applicable) in accordance with its terms, in which case the Scheme Administrator may, at its sole discretion, instruct the Auditor to carry out a further Audit or commence the Disciplinary Procedure, or both.

1.9 Audit costs

10.9.2 If a Scheme Member has failed an Audit it shall be liable to pay directly to the Auditor all costs of the Auditor for such failed Audit in the event that the Auditor invoices its costs directly to the Scheme Member. Such costs shall be paid on the terms set out in the Auditor's invoice.

10.9.3 If a Scheme Member has failed an Audit it shall, where the Auditor invoices the Scheme Administrator directly for its costs in relation to the failed Audit, indemnify the Scheme Administrator against all costs of the Auditor in relation to the failed Audit. Such costs shall be invoiced by the Scheme Administrator and paid by the Scheme Member in accordance with section 18of these Scheme Bye-Laws.

10.9.4 Without prejudice to 10.9.1 and 10.9.2 above, if a Scheme Member has not failed an Audit but the Committee decides in its absolute discretion, and acting in accordance with the Audit Guidelines and with regard to the objects of the Scheme, that the Scheme Member should bear the costs of that Audit, then payment shall be made as if the terms of 10.9.1 or 10.9.2 apply (as applicable to the costs of that Audit) but such clause shall be read without the word "failed".

11 Disciplinary Procedure

11.1 Determination of non-compliance

11.1.1 In accordance with the terms of these Scheme Bye-Laws, the Scheme Administrator may commence the Disciplinary Procedure and, subject to the approval by the Committee and the Board of the Compliance Panel appointed, refer a matter to the Compliance Panel by serving a notice on the Scheme Member and the Compliance Panel. The notice shall specify:

(a) the Scheme Member who is the subject of the Disciplinary Procedure;

(b) details of the Scheme Member's non-compliance with the requirements of the Scheme which led to the commencement of the Disciplinary Procedure;

(c) confirmation of the Auditor's determination that the Scheme Member has demonstrated serious failings requiring immediate intervention as defined in the Audit Guidelines; and

(d) a brief summary of the relevant factual background.

11.1.2 Within 30 Days of a referral made in accordance with paragraph 11.1.1 the Compliance Panel shall convene a Hearing and consider the matter referred to it. Proceedings of the Compliance Panel shall be conducted in accordance with section 12

11.1.3 The Compliance Panel shall determine whether a Scheme Member is non-compliant with the requirements of the Scheme and if so, the sanctions to be imposed in accordance with this section 11.

11.1.4 Once the Compliance Panel has reached a determination in accordance with paragraph 11.1.3 it shall issue its written Determination to the Scheme Member and the Scheme Administrator within 14 Days of the Hearing. The written Determination shall include the reasons for its determination and shall be accompanied by a transcript of the Compliance Panel Hearing. The Scheme Administrator shall publish the

Compliance Panel's written Determination (but not the transcript) on the Website. Any commercially sensitive information will be redacted prior to publication on the Website. Notwithstanding section 8 of the Scheme Membership Agreement (Schedule 2), by joining the Scheme, Scheme Members consent to such publication.

11.1.5 In reaching its Determination, the Compliance Panel may impose such sanctions upon the Scheme Member as the Compliance Panel sees fit (acting reasonably and in accordance with the objects of the Scheme), and both the Determination and the sanctions shall be binding, save and except in the case where the Scheme Member successfully appeals the Determination in accordance with paragraph 11.2.

11.2 **Appeals**

11.2.1 A Scheme Member may appeal a Determination of the Compliance Panel made under paragraph 11.1.3 by written notice to the Scheme Administrator within 14 Days of receiving the Determination and on payment of the Appeal Fee, provided that no appeal may be made which relies on new or additional facts which were not put before the Compliance Panel for consideration, other than any new or additional facts which became known after the Determination of the Compliance Panel, which the Scheme Member could not reasonably have been expected to be aware of at the time of referral to the Compliance Panel. Any notice given by the Scheme Member under this paragraph shall include written copies of all documentation on which it proposes to rely for its appeal.

11.2.2 On receipt by the Scheme Administrator of a notice of appeal pursuant to paragraph 11.2.1 any sanctions imposed by the Compliance Panel will be suspended until the Appeals Panel has delivered its written Determination.

11.2.3 The Scheme Administrator shall use reasonable endeavours to acknowledge receipt of a notice of appeal from the Scheme Member pursuant to paragraph 11.2.1 within 7 Days of receiving such notice.

11.2.4 Following the issuance of an acknowledgement in accordance with paragraph 11.2.3, the Scheme Administrator shall:

(a) notify the Appeals Panel of the appeal and provide written copies of the notice of appeal and accompanying documentation;

(b) in consultation with the members of the Appeals Panel and the Scheme Member, set a date for the appeal Hearing and notify the members of the Appeal Panel and the Scheme Member of such date;

(c) provide details of the Hearing of the Compliance Panel to the Appeals Panel; and

(d) provide the Appeals Panel with all documentation submitted to the Compliance Panel, and copies of the Compliance Panel's Determination.

11.2.5 Proceedings before the Appeals Panel shall be conducted in accordance with section 12 below.

11.2.6 The Appeals Panel shall issue its written Determination including the reasons for its decision to the Scheme Administrator and Scheme Member within 14 Days of the Hearing. The Scheme Administrator shall publish the Appeal Panel's written Determination on the Website. Any commercially sensitive information will be redacted prior to publication on the Website. Notwithstanding section 8 of the Scheme Membership Agreement (Schedule 2), by joining the Scheme, Scheme Members consent to such publication.

11.2.7 In making its Determination, the Appeals Panel may:

(a) uphold the Scheme Member's appeal in whole or in part;

(b) uphold the Scheme Member's appeal in whole or in part and impose conditions or sanctions to be stipulated by the Appeals Panel in its sole discretion and having regard to the sanctions available to the Compliance Panel; or

(c) dismiss the appeal and uphold the Determination of the Compliance Panel.

11.2.8 The Determination of the Appeals Panel shall be final and binding. The Scheme Member shall comply with the Determination of the Appeals Panel including any conditions, sanctions or terms imposed on them as part of the Determination and pay any monies awarded in costs, in accordance with clauses 12.8 and/or 13.2.4 below, within 30 Days of the date of invoice (being the Due Date) to be issued by the Scheme Administrator following the Determination.

11.2.9 If expelled from the Scheme, the Scheme Member shall immediately cease to:

(a) use any Scheme Logo and HOMEFlex Mark on its website or anywhere else (including, but not limited to, on any of its marketing material or in communication with Energy Flexibility Customers or other third parties);

(b) describe itself or hold itself out as a Scheme Member or as being in any way connected to the Scheme; and

(c) use the Scheme Company Materials.

12 Proceedings of the Compliance Panel

12.1 A Hearing of the Compliance Panel shall be considered quorate if it is attended by at least 3 members of the Panel, including the Chair, of which the majority are not:

12.1.1 officers or employees of the Scheme Member which is the subject of the Disciplinary Procedure or have held such a position within 3 years prior to the date of the Hearing; or

x

12.1.2 are otherwise engaged by such Scheme Member at the time of the Hearing or have been so engaged by the Scheme Member within 3 years prior to the date of the Hearing.

12.2 All Hearings before the Compliance Panel shall be held in private and shall be confidential. The Compliance Panel shall conduct its deliberations in private.

12.3 The Scheme Member and the Scheme Administrator may attend the Hearing and both shall have the opportunity to make submissions to the Compliance Panel and to reply to the other's submissions.

12.4 If requested by the Compliance Panel, the Scheme Administrator shall arrange for a third party to make an audio recording of the Hearing.

12.5 By joining the Scheme, Scheme Members consent to the recording of the Hearing. The Scheme Administrator shall always consent to the Hearing being recorded. Both the Scheme Member and the Scheme Administrator shall ensure that all employees, agents or third parties attending the Hearing are aware that consent has been supplied and shall obtain the consent of those employees, agents or third parties to the extent required by Law.

12.6 The audio recording shall be retained by the Scheme Administrator for at least 12 months following the Hearing.

12.7 The Compliance Panel shall provide its Determination of the case in writing to both the Scheme Administrator and the Scheme Member within 14 Days of the Hearing.

12.8 The Compliance Panel may award costs, limited to the direct costs of convening and running the Compliance Panel, against the Scheme Administrator or the Scheme Member as part of its Determination. The party against whom these costs are awarded shall pay the costs within 30 Days of the date of invoice (being the Due Date), such invoice to be issued by the Panels Secretariat following the Determination.

13 Proceedings of the Appeals Panel

13.1 The Appeals Panel shall run on the process set out in section 11.1 except that:

13.1.1 all references to "Compliance Panel" shall be deemed to be references to "Appeals Panel"; and

13.1.2 the Scheme Administrator and the Scheme Member may only attend the Appeals Panel if they have been invited by the Appeals Panel to provide a submission.

13.2 Decisions of the Appeals Panel

13.2.1 In making its Determination the Appeals Panel may have regard to the following:

(a) the conduct of the Scheme Member;

(b) any substantive issues including the compliance of the Scheme Member and the Scheme Administrator with the Scheme;

(c) the proportionality in respect of any sanctions applied by the Compliance Panel; and

(d) the fairness and reasonableness of any costs imposed.

13.2.2 An appeal will only be upheld if it is found by the Appeals Panel on the balance of probabilities that:

(a) the Compliance Panel's determination or part thereof was irrational, and/or based on a fundamental error of fact and/or based on a clear misunderstanding of the Scheme;

(b) there has been a serious procedural or regulatory error;

(c) the sanctions imposed are not in reasonable proportion to the findings made by the Compliance Panel; or

(d) the costs imposed (if any) were not fair and reasonable in the circumstances.

13.2.3 The Appeals Panel shall provide its Determination in writing to both the Scheme Administrator and the Scheme Member within 14 Days of the Hearing.

13.2.4 The Appeals Panel may award costs limited to the direct costs of convening and running the Appeals Panel, against the Scheme Administrator or the Scheme Member as part of its Determination. The party against whom these costs are awarded shall pay the costs within 30 Days of the date of invoice (being the Due Date), such invoice to be issued by the Panels Secretariat following the Determination.

14 Panels Secretariat

14.1 The Panels Secretariat is independent of the Scheme Administrator and the Scheme and provides secretariat assistance to the Compliance Panel and Appeals Panel.

14.2 The Panels Secretariat shall attend all Hearings of the Compliance Panel and Appeals Panel.

14.3 Scheme Members acknowledge that the Panels Secretariat shall provide such assistance to the Compliance Panel and Appeals Panel as delegated to it by the Compliance Panel and the Appeals Panel (as applicable) in preparation for, during, or after a Hearing. The assistance to be provided by the Panels Secretariat may include:

14.3.1 convening Hearings;

14.3.2 accepting service of documentation to the Compliance Panel and/or the Appeals Panel;

14.3.3 preparing documents relating to Hearings for circulation to Panel Members;

14.3.4 preparing a transcript of Hearings;

14.3.5 preparing and issuing determinations following Hearings to the Scheme Administrator and the relevant Scheme Members; and

14.3.6 preparing invoices in relation to a Panel's recoverable costs as determined in accordance with the Company Bye-Laws.

14.4 Any service of documentation to the Compliance Panel or Appeals Panel must also be sent at the same time to the Panels Secretariat.

15 Service of Documentation

15.1 Where documentation, an application, request or notice is due to be provided to a Scheme Member, the Scheme Administrator, an Auditor, the Compliance Panel or the Appeals Panel, or other relevant third party, that documentation will be deemed to have been served:

15.1.1 if it is delivered by hand, upon signature of a delivery receipt or at the time the notice is left at the proper address;

15.1.2 if it is sent by pre-paid first-class post or other next Working Day delivery service, at 09.00 on the second Working Day after posting or at the time recorded by the delivery service; or

15.1.3 if it is sent by email, at the time of transmission if sent prior to 5.30pm on a Working Day, or in any other case at 10am on the Working Day after the date of transmission.

15.2 However served, a record of sending the notice must be retained by the serving Party and made available upon request.

15.3 The address for service of information and/or notices to the Scheme Administrator is the postal/email address for the Scheme set out on the Website.

15.4 The address for service of information and/or notices to the Panels Secretariat is the postal/email address for the Panels Secretariat set out on the Website.

15.5 The address for service of information and/or notices to a Scheme Member is the postal/email address of the Scheme Primary Contact.

15.6 Notwithstanding paragraph 15.1.3, Resignation Notices and/or any other notices of termination served pursuant to these Scheme Bye-Laws may not be served by email by either the Scheme Administrator or a Scheme Member.

16 Modification of the Scheme Documentation

16.1 **Modification proposals**

16.1.1 Proposals to modify any provision of the Scheme Documentation may be originated by:

(a) a direction of the Committee;

(b) the Scheme Administrator;

(c) Scheme Members by submitting the proposal in writing or via the website to the Scheme Administrator; or

(d) other interested third parties by submitting the proposal in writing or via the website to the Scheme Administrator.

16.1.2 Any proposals submitted in accordance with paragraph 16.1.1 shall be referred to as "Modification Proposals".

16.2 **Initial review**

16.2.1 The Committee will not consider a Modification Proposal:

(a) from a Scheme Member unless 2 other Scheme Members have confirmed in writing that they support the Modification Proposal; or

(b) from an interested third party unless the Committee supports the development of the Modification Proposal on the basis that it reasonably considers that the proposal, on the face of it, may (if made) better facilitate achievement of the Scheme Objectives.

16.2.2 The Committee shall carry out an initial review of the Modification Proposal to determine whether, on the face of the proposal, the proposed modification (if made) would or would be likely to better facilitate achievement of the Scheme Objectives. The Committee may, in its absolute discretion (acting reasonably and with regard to the objects of the Scheme), carry out this initial review in any manner it considers appropriate to discharge its obligations under paragraph 16.2.1(b) and this paragraph 16.2.2.

16.2.3 On the basis of the initial review, the Committee shall determine whether the modification, which is set out in the Modification Proposal would, if made:

(a) not better facilitate or not be likely to better facilitate achievement of the Scheme Objectives, in which case the modification proposal should not be developed further;

(b) better facilitate or be likely to better facilitate achievement of the Scheme Objectives, in which case the Modification Proposal:

i. should be developed further in accordance with paragraph 16.3 (the "**Fast Track Procedure**"); or

ii. should be developed further in accordance with paragraph

16.4 (the "**Standard Procedure**"),

16.2.4 The Committee shall publish its determination under paragraph 16.2.3 on the Website.

16.3 **Fast Track Procedure**

16.3.1 *Application of Fast Track Procedure*

The Committee may only elect to develop a modification set out in a Modification Proposal further in accordance with the Fast Track Procedure if the proposed modification to the Scheme Documentation is/are:

(a) to correct errors which are of a typographical, grammatical or similar nature;

(b) to correct manifest errors which do not amount to a substantive change to the provisions of the Scheme; or

(c) changes of a minor nature which do not amount to a substantive change to the provisions of the Scheme.

16.3.2 *Modification report*

Where paragraph 16.3.1 applies, the Committee shall within 30 Days submit a modification report to the Board which shall include:

(a) a description of the proposed modification (as referenced in the Modification Proposal);

(b) the party who proposed the modification and, where the proposer is:

i. a Scheme Member, the 2 other Scheme Members who supported the proposed modification; or

ii. an interested third party, confirmation that the Committee supports the proposed modification pursuant to paragraph 16.2.1(b);

(c) the proposed drafting changes to the Scheme Documentation necessary to implement the proposed modification;

(d) any proposed drafting changes to the Company Bye-Laws that would be required as a result of the implementation of the proposed modification;

(e) the costs and benefits of the proposed modification;

(f) the reasons why the Committee is satisfied that the proposed modification would better facilitate achievement of the Scheme Objectives; and

(g) its reasons why the Fast Track Procedure was applicable, and together with the modification report, the Committee shall submit to the Board any correspondence, evidence or other supporting information which the Committee relied upon for this purpose.

16.3.3 The Committee shall publish its modification report (anonymised and redacted where necessary so as to protect any confidential or commercially sensitive information) together with any associated correspondence, evidence or other supporting information on the Website.

16.4 **The Standard Procedure**

Development of a proposed modification

16.4.1 Where the Standard Procedure applies, the Committee shall develop the proposed modification, including:

(a) its assessment of whether:

i. the proposed modification (if made) would better facilitate the achievement of the Scheme Objectives; or

ii. an alternative modification would better facilitate the achievement of the Scheme Objectives as compared with the proposed modification;

(b) the drafting changes to the Scheme Documentation necessary to implement the proposed modification (or alternative modification where applicable);

(c) any drafting changes to the Company Bye-Laws that would be required as a result of the implementation of the proposed modification (or the alternative proposal, where applicable); and

(d) the costs and benefits of the implementing the proposed modification (or any alternative modification where applicable).

Working groups

16.4.2 In developing the proposed modification, the Committee may:

(a) establish and delegate to one or more working groups (comprised of any number of sitting Committee Members) the assessment of the modification of certain aspects of the proposed modification (or alternative modification where applicable). The composition of such working groups shall be determined by the Committee having regard to the need for such working groups to have the technical or commercial expertise necessary to carry out the assessment in an efficient and effective manner; and

(b) procure specialist technical, financial and legal support.

Consultation

16.4.3 The Committee shall consult Scheme Members and other interested third parties in relation to all modification proposals developed under paragraph 16.4.1 (and any alternative modification where applicable) as and when necessary (and at least once) given the complexity, significance and impact on the Scheme of the proposals.

16.4.4 To carry out the consultation, the Committee shall publish on the Website a modification proposal consultation document, which shall include:

(a) a description of the proposed modification;

(b) the party who proposed the modification and where the proposer is:

i. a Scheme Member, the 2 other Scheme Members who supported the proposed modification; or

ii. an interested third party, confirmation that the Committee supports the proposed modification pursuant to paragraph 16.2.1(b);

(c) the current proposed drafting changes to the Scheme Documentation necessary to implement the proposed modification (and any alternative modification where applicable);

(d) the current proposed drafting changes to the Company Bye-Laws that would be required as a result of the implementation of the proposed modification (or the alternative modification, where applicable);

(e) any specific questions in relation to the proposed modification (or alternative modification where applicable);

(f) the consultation period and deadline by which Scheme Members and other interested parties may submit their responses for consideration. The Committee shall ensure that the consultation period shall be no less than 4 weeks, or such longer period as the Committee considers necessary, taking into account the circumstances and nature of the proposed modification; and

(g) the address (postal and email) to which consultation responses may be submitted.

16.4.5 The Committee shall make clear in its proposed modification consultation document that all consultation responses received shall be published on the Website unless the respondent expressly requests otherwise.

16.4.6 Together with its modification proposal consultation document, the Committee shall publish any associated correspondence, evidence or other supporting information on the Website, redacted and anonymised as the Committee considers appropriate.

Committee response

16.4.7 The Committee shall review all consultation responses and shall take into account all matters raised in the further development of the proposed modification (or alternative modification where applicable).

16.4.8 Following the end of the consultation period, the Committee shall publish on the Website a modification proposal response which shall include:

(a) a description of the modification proposal;

(b) the party who proposed the modification and where the proposer is:

i. a Scheme Member, the 2 other Scheme Members who supported the proposed modification; or

ii. an interested third party, confirmation that the Committee supports the proposed modification pursuant to paragraph 16.2.1(b);

(c) whether the Committee has identified an alternative modification;

(d) a summary of the consultation responses received (including in relation to any specific questions raised for consultation by the Committee);

(e) the Committee's response to the consultation responses received including:

i. any associated changes to the substance or the drafting of the proposed modification (or alternative modification where applicable); and/or

ii. any changes to the Committee's analysis of the proposed modification (or alternative modification where applicable);

(f) next steps (including timescales).

16.4.9 Together with the modification proposal response (anonymised and redacted where necessary so as to protect any confidential information), the Committee shall publish all non-confidential consultation responses on the Website.

Submission of the modification report to the Board

16.4.10 When the Committee has completed the development of the proposed modification (or alternative modification where applicable), the Committee shall submit a modification report to the Board. The modification report shall include:

(a) a description of the proposed modification;

(b) the party who proposed the modification and where the proposer is:

i. a Scheme Member, the 2 other Scheme Members who supported the proposed modification; or

ii. an interested third party, confirmation that the Committee supports the proposed modification pursuant to paragraph 16.2.1(b);

(c) whether the Committee has identified an alternative modification;

(d) the finalised drafting to implement the proposed modification or alternative proposal where applicable;

(e) the finalised drafting changes to the Company Bye-Laws which are required as a result of the implementation of the proposed modification (or the alternative proposal, where applicable);

(f) the costs and benefits of the Committee's recommendation;

(g) a summary of the consultation process, the consultation responses and the Committee's response; and

(h) the Committee's recommendation to the Board whether or not to approve the proposed modification or the alternative modification (where applicable) together with the reasons why it is satisfied that the recommendation better facilitates the achievement of the Scheme Objectives.

16.4.11 Together with the modification report, the Committee shall provide the Board with copies (paper or electronic at the discretion of the Committee) of:

(a) the modification proposal consultation document;

(b) the consultation responses;

(c) the modification proposal response; and

(d) any associated correspondence, evidence or other supporting information.

16.4.12 The Committee shall publish its modification report (anonymised and redacted where necessary so as to protect any confidential information) together with any associated correspondence, evidence or other supporting information on the Website.

16.5 **Board determination**

16.5.1 On receipt of the Committee's modification report pursuant to paragraphs 16.3.2 or 16.4.10, the Board shall convene a meeting to consider whether or not to approve the proposed modification (or alternative modification where applicable) as recommended in the modification report.

16.5.2 The Board shall approve the proposed modification if:

(a) it is satisfied that the proposed modification (or alternative modification proposal where applicable) would (if made) better facilitate the achievement of the Scheme Objectives; and

(b) the proposed modification, if implemented, would be consistent with the Articles of Association.

16.5.3 The Scheme Administrator shall publish on the Website a summary of the Board's determination (anonymised and redacted where necessary so as to protect any confidential information) which shall include the Board's reasons for its decision.

16.5.4 Following publication of the summary of the Board's determination, the Scheme Administrator shall implement the Board's determination. Where the Board has approved the proposed modification or alternative modification, the Scheme Administrator shall thereafter:

(a) modify the relevant Scheme Documentation in accordance with the modification report;

(b) ensure that the updated Scheme Documentation is published on the Website;

(c) notify Scheme Members of the Board's determination; and

(d) provide Scheme Members with updated copies of the Scheme Documentation, and notify Scheme Members (where applicable) of any action they must take and the date by when such action must be taken in order to implement the Board's determination, with the date being no less than 15 Working Days after the date of notice.

17 Termination of Participation

17.1 **Termination of a Scheme Membership**

17.1.1 The Scheme Administrator may, by notice, terminate a Scheme Member’s participation in the Scheme with immediate effect:

(a) where the Scheme Member has failed to pay any amount, it owes, under or pursuant to these Scheme Bye-Laws, and the Scheme Member has failed to remedy such non-payment within 30 Days of the date of a notice from the Scheme Administrator;

(b) from the date on which the Scheme Member has been expelled from the Scheme in accordance with the Disciplinary Procedure;

(c) where the Scheme Member has failed to comply with the conditions of a Determination of the Compliance Panel and the Scheme Member has failed to remedy such non-compliance within 30 Days of the date of a notice from the Scheme Administrator; or

(d) where the Scheme Member is Insolvent,

(each being a "**Participation Default**").

17.2 **Resigning from the Scheme**

17.2.1 A Scheme Member may choose to resign from the Scheme by issuing a Resignation Notice to the Scheme Administrator setting out the reasons for the Scheme Member's decision to resign from the Scheme and the date, being not less than 30 Days from the date of the notice on which the Scheme Member wishes the Resignation Notice to take effect. The provisions of section 15 will apply in respect of service of notices pursuant to this paragraph 17.2.1.

17.2.2 On receipt of a Resignation Notice, the Scheme Administrator shall send a confirmation receipt by email to the Scheme Member.

17.3 **Consequences of Resignation or Participation Default**

17.3.1 Where the Scheme Administrator has terminated a Scheme Member's participation in the Scheme due to a Participation Default, or where a Scheme Member has resigned:

(a) the Scheme Member shall notify all Energy Flexibility Customers via email within 30 Days of the date of termination or resignation (as applicable) that it is no longer a Scheme Member;

(b) the Scheme Member shall (without prejudice to paragraph 11.2.9), immediately cease to:

i. use any Scheme Logo and HOMEFlex Mark on its website or anywhere else (including, but not limited to, on any of its marketing material or in communication with Energy Flexibility Customers or other third parties);

ii. describe itself or hold itself out as a Scheme Member or as being in any way connected to the Scheme; and

iii. use the Scheme Company Materials;

(c) the Scheme Administrator shall indicate the Scheme Member Status on the Member Register and the Website as “Resigned” or “Expelled” as appropriate; and

(d) the Scheme Administrator will only retain Scheme Member's data as would be required to record sufficient details of the Scheme Member's termination from the Scheme.

18 Enforcement of Payments and Interest on Late Payments

18.1 All amounts invoiced pursuant to and in accordance with these Scheme Bye-Laws shall, unless otherwise specified, be paid in cleared funds by the party to whom the invoice is addressed without set-off or deduction within 30 Days of receipt of an invoice.

18.2 The Scheme Administrator may undertake actions to recover any monies as a debt owed to the Scheme by a Prospective Scheme Member or a Scheme Member (as the case may be) which have not been paid within the periods required under these Scheme Bye-Laws. This action may be in respect of the Scheme Annual Fee, the Registration Fee and/or costs associated, Audits and the Disciplinary Procedure.

18.3 If the Scheme Administrator does not receive by the Due Date payment of any amount invoiced pursuant to these Scheme Bye-Laws, the Scheme Administrator shall be entitled to receive simple interest on the outstanding amount at the rate which is from time to time equivalent to the base rate of National Westminster Bank plc plus 1 percent or, if there is no such base rate, such base rate as the Scheme Administrator may designate for the purposes hereof. Interest shall accrue from the applicable Due Date. The Scheme Administrator shall be entitled to this payment without formal notice or certification and without prejudice to any other right or remedy.

SCHEDULE 1 – DEFINITIONS

In these Scheme Bye-Laws, unless the context otherwise requires, the following terms shall have the meanings given to them below:

"ADE"	means The Association for Decentralised Energy, being a company limited by guarantee and incorporated in England and Wales with the company number 917116, which acts as sponsor of the Scheme.
"Annual Report"	means a report issued by the Scheme Administrator and published on the Website which provides details of the Scheme activities and any relevant reporting or statistics relating to participation in the Scheme.
"Appeal Fee"	means a fee payable on submission of an application to appeal to the Appeals Panel as set out from time to time in the Fees Schedule.
"Appeal(s) Panel"	means a panel set up by the Scheme to evaluate appeals undertaken by Scheme Members against penalties and sanctions imposed upon them by the Compliance Panel.
"Application Form"	means the application form for the Scheme membership (as amended, supplemented, or replaced from time to time) as published on the Scheme Website or available upon request from the Scheme Administrator.
"Application Process"	means the process under which a Prospective Scheme Member completes and submits an Application Form for membership of the Scheme.
"Articles of Association"	means the articles of association of the Scheme Company (as amended, supplemented or replaced from time to time).
"Audit"	means the assessment by an Auditor of a Scheme Member's flexibility services supply contract (as may be required by the Scheme Administrator under these Scheme Bye-Laws) against the criteria laid down in the Scheme to check whether a Scheme Member is acting in accordance with the Scheme's requirements as defined in the Relevant Codes of Conduct and these Scheme Bye-Laws (as amended, supplemented or replaced from time to time).
"Audit Guidelines"	means guidelines provided by the Scheme Administrator defining the procedures involved in an Audit of a Scheme Members flexibility service activities.
"Auditor"	means the Scheme Administrator or a person independent of the Scheme Administrator who is appointed by the Scheme Administrator to conduct Audits.
"Audit Report"	means the report described in paragraph 10.5 and is a report compiled by the Auditor which provides the results of an audit on a particular Scheme Member.
"Background Materials"	means all materials, documents or information, provided by the Scheme Member or the Scheme Company, as applicable, to the other party or used by the Scheme Member or the Scheme Company, as applicable, in relation to these Scheme Bye-Laws and/or the Scheme, which existed prior to the commencement of the Membership Period or which have been developed independently of the Scheme and/or these Scheme Bye-Laws (whether prior to the commencement of the Membership Period or otherwise).

"Board" means the board of directors of the Scheme Company as appointed from time to time in accordance with the Articles of Association.

"Business Activities" has the meaning given to it in the Industrial and Commercial Code of Conduct.

"Chair" means the person appointed from time to time as the chairperson of the Committee, Compliance Panel or Appeals Panel as the context requires.

"Code / Code of Conduct" means a set of standards for marketing, sales and provision of energy flexibility services developed by SSEN, the ADE, its members and stakeholders and utilised by the Scheme Company as standards for the Scheme (as amended, supplemented or replaced from time to time), forming part of the Scheme and which set out a common minimum standard in the quality of service for Energy Flexibility Customers, set out in the document entitled Household or Microbusiness Energy Flexibility Code of Conduct, as updated in accordance with the terms of the Scheme Documentation, from time to time.

"Committee" means the independent committee set up in accordance with the Company Bye-Laws for oversight of the Scheme.

"Company Bye-Laws" means the bye-laws of the same name (as amended, supplemented or replaced from time to time) as published on the Website.

"Company Directors" means directors of the Scheme Company appointed from time to time in accordance with the Articles of Association.

"Competent Authority" means any local or national agency, authority, department, inspectorate, minister, ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom or the European Union.

"Compliance Panel" means a panel appointed by the Scheme Administrator from time to time in accordance with paragraph 5.2 (*Appointment of the Compliance* Panel) of the Company Bye-Laws for the purpose of determining whether or not a Scheme Member is non-compliant with the Relevant Codes of Conduct and the Scheme.

"Complaint" means any expression of dissatisfaction made by an Eligible Customer against a Scheme Member, where such dissatisfaction is related to any one or more of the Scheme Member's flexibility service products or the manner in which it has dealt with the Customer in its provision of energy flexibility services, where a response is either provided by the Service Provider which is not to the Complainant's satisfaction, a Deadlock Letter is issued or eight weeks have passed since the date the Complaint is raised.

"Data Protection Legislation" means the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 1998, The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"Day" means a calendar day.

"Deadlock Letter" means notice from a Service Provider to a Complainant that it is unable or unwilling to resolve the Complaint to the Complainant's satisfaction and provided details of Energy Ombudsman's service including appropriate contact details.

"Declaration" means a written declaration given by a director or authorised representative on behalf of a Prospective Scheme Member pursuant to an Application Form.

"DESNZ" means the Governmental Department for Energy Security and Net Zero or any successor from time to time.

"Determination" means a decision by the Compliance Panel or the Appeals Panel as the context requires.

"Disciplinary Procedure" means the procedures described in section 11.

"Due Date" means the date specified by the Scheme Administrator by which invoices must be settled.

"Eligible Customer" means an Energy Flexibility Customer or potential Energy Flexibility Customer of a Scheme Member with whom sales or marketing activities have taken place since the Scheme Member Joining Date into membership of the Scheme.

"Energy Flexibility Customer" means a customer of a Flexibility Services Provider to whom that Flexibility Services Provider provides, or is to provide, Energy Flexibility Services. Within this compliance scheme, the customer will either be referring to a A) domestic customer: a customer supplied with electricity at a domestic premises or B) Micro-business customer: a business that i) employs fewer than ten employees (or their fulltime equivalent) and has an annual turnover or balance sheet no greater than £2 million; ii) or uses no more than 100,000 kWh of electricity per year; iii) or uses no more than 293,000 kWh of gas per year"

"Energy Flexibility Services" means the coordination, aggregation or optimisation of Flexible Energy Assets.

"Energy Ombudsman Scheme Rules" means the Energy Ombudsman's Scheme Rules as published by the Energy Ombudsman on its website and updated from time to time.

"Energy Ombudsman Terms of Reference" means the Energy Ombudsman's Terms of Reference as published by the Energy Ombudsman on its website and updated from time to time.

"Enrolment Audit" means a review by the Scheme Administrator or Auditor of the documentation and evidence provided by a Prospective Scheme Member as specified in the Application Form.

"Fast Track Procedure" has the meaning given to it in paragraph 16.2.3 of these Scheme Bye-Laws.

"Fees Schedule" means a schedule showing fees payable by the Scheme Member for participation in the Scheme which is published on the Website.

"HOMEFlex Mark" means the branded logo owned by the Scheme and identified in Part 2 of Schedule 3 (as adapted or updated from time to time by the Scheme Company).

"Flexibility Services Provider" means any actor providing Energy Flexibility Services to one or more Energy Flexibility Customer(s).

"Flexible Energy Assets" means assets capable of modifying energy generation and/or consumption in response to an external request, signal or price.

"Guidelines" means guidelines forming part of the Scheme developed and maintained by the Committee in accordance with the Company Bye-Laws (as amended, supplemented or replaced from time to time).

"Hearing" means a hearing of the Compliance Panel or the Appeals Panel.

"Independent Dispute Resolution Service" means the Energy Ombudsman, appointed by the Scheme under a Supply of Service Agreement as the dispute resolution service in respect of Complaints against Scheme Members made by domestic or microbusiness Customers, and operated in accordance with the Energy Ombudsman Terms of Reference and Energy Ombudsman Scheme Rules.

"Infringement Notifications" means a notification to the Scheme Administrator, via the Website, by a party other than an Eligible Customer of a Scheme Member's infringement of the standards of the Relevant Codes of Conduct or these Scheme Bye-Laws.

"Insolvent" means in respect of a Scheme Member, where it becomes bankrupt, goes into liquidation, or has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or liquidator for the benefit of its creditors, or if any act is done or event occurs which has a similar effect to any of these acts or events.

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, registered or unregistered trademarks, service marks, rights in goodwill or to sue for passing off, rights in design, database right, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Launch Date" means the date on which the Scheme is launch and commences activity.

"Law" means any applicable statute or proclamation or any delegated or subordinate legislation; any applicable guidance, direction or determination with which the Scheme, Scheme Member and/or the Eligible Customer is bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to them; and any applicable judgement of a relevant court of law which is binding in England, Wales, Scotland or Northern Ireland.

"Member Register" means a list posted on the Website of current Scheme Members and their status under the Scheme as defined in the Relevant Codes of Conduct.

"Member Status" means the current status of the Scheme Member in the Scheme, as posted by the Scheme Administrator from time to time on the Member Register and the Scheme Website.

"Membership Period"	means the period during which the Scheme Member remains a member of the Scheme in accordance with the Scheme and these Scheme Bye-Laws.
"Modification Proposal"	means a proposal made by any interested party to modify any of the Scheme Documentation.
"Monitoring"	means activities carried out by or on behalf of the Scheme Administrator to check Scheme Members compliance with the Scheme.
"Monitoring Guidelines"	means guidelines on Monitoring provided by the Scheme Administrator and published on the Website.
"Ofgem"	means the Office of Gas and Electricity Markets or any successor from time to time.
"Panel"	means the Compliance Panel and/or the Appeals Panel, as the context may require.
"Panel Member"	means a member of one or more Panel(s) appointed by the Scheme Administrator from time to time.
"Panels Secretariat"	means a person(s) appointed from time to time by the Scheme Administrator in accordance with paragraph 4.1 (*Appointment of the Panels Secretariat*) of the Company Bye-Laws, independent of the Scheme Administrator and the Scheme who provides secretariat assistance to the Compliance Panel and the Appeals Panel.
"Parties"	means the Parties under a Scheme Membership Agreement.
"Participation Default"	has the meaning given to it in paragraph 16.1.1 of these Scheme Bye-Laws.
"Periodic Audit"	means an Audit carried out by an Auditor or Scheme Administrator at regular periodic intervals, as defined by these Scheme Bye-Laws, on a Scheme Member's compliance with the requirements of the Scheme.
"Prospective Scheme Member"	means a potential member of the Scheme.
"Reinstatement Audit"	means an Audit carried out by an Auditor or the Scheme Administrator on a previously expelled Scheme Member that has applied to re-join the Scheme
"Remediation Plan"	means a programme of actions (a timetable for such actions) which the Scheme Member proposes to take in order to remedy any non-compliance with the Scheme as soon as reasonably practicable.
"Resignation Date"	means the date of resignation declared in a Resignation Notice.
"Resignation Notice"	means a notice issued by the Scheme Member notifying the Scheme Administrator of their intent to resign from membership of the Scheme.
"Risk Based Audit"	means an Audit carried out by an Auditor or the Scheme Administrator on a Scheme Member that is triggered by either Customer Complaints or/and Infringement Notifications and is considered by the Committee to be appropriate.
"Scheme"	means Flex Assure, being a scheme to establish a common standard for the conduct of Flexibility Services Providers, and to provide assurance of a level of quality and service which is: a) set out in these Scheme Bye-Laws, the Relevant Codes of Conduct and the Guidelines; and

b) sponsored by the ADE, administered by the Committee (with support by the Scheme Administrator) and overseen by the Board.

"Scheme Administrator" means the administrator assigned by the Board to administer the Scheme.

"Scheme Annual Fee" means the annual fee payable by Scheme Members in respect of participation in the Scheme.

"Scheme Bye-Laws" means this document (as amended, supplemented or replaced from time to time)"Scheme Company" means **Flex Assure Limited**, registered with company number 11652552, a company limited by guarantee, having its registered office at 6th Floor Heron House, 10 Dean Farrar Street, London, SW1H 0DX and being a wholly owned subsidiary company of the ADE and responsible for administering the Scheme.

"Scheme Company Materials" means any and all materials including documents, reports, text and artwork whether in paper, electronic or magnetic format, belonging to or licensed to the Scheme Company (other than by the Scheme Members) and made available to the Scheme Members in relation to the Scheme, including: (i) the Scheme Logo; (ii) the HOMEFlex Mark (iii) the Website; and (iv) the Scheme Documentation.

"Scheme Company Materials Developments" means any materials produced by or for the Scheme Member based on or incorporating the whole or any part of the Scheme Company Materials, including altered or adapted versions of the Scheme Company Materials.

"Scheme Documentation" means collectively these Scheme Bye-Laws, the Relevant Codes of Conduct, the Guidelines, the Scheme Membership Agreement and the Application Form.

"Scheme Logo" means the branded logo owned by the Scheme and identified in Part 1 of Schedule 3 (as adapted or updated from time to time by the Scheme Company).

"Scheme Member" means a member of the Scheme who has committed through the Scheme Membership Agreement to adhere to the Relevant Codes of Conduct, these Scheme Bye-Laws and the Company Bye-Laws in the provision of energy flexibility services to business customers.

"Scheme Membership Agreement" means the membership agreement in the form set out in Schedule 2, entered into or to be entered into by the Scheme Company and a Prospective Scheme Member in order for that Prospective Scheme Member to become a Scheme Member.

"Scheme Member Documentation" means the documentation to be sent to a Scheme Member on its entry into the Scheme.

"Scheme Member Joining Date" means the date on which the Scheme Company accepts an application to join the Scheme from a Flexibility Services Provider and the Flexibility Services Provider signs the Membership Agreement and is listed on the Scheme Website as a Scheme Member.

"Scheme Member Personnel" means the employees, agents and contractors of the Scheme Member (including the employees, agents and contractors of any sub-contractor of the Scheme Member).

"Scheme Objectives" means the principal objectives for the ADE creating the Scheme and the Scheme Company.

"Scheme Primary Contact"	means the person specified as such in an Application Form and as recorded in the Member Register.
"Scheme Registration Fee"	means a one-time, initial fee payable by Scheme Members on first joining the Scheme.
"Scheme Requirements"	means: a) provision by the Prospective Scheme Member to the Scheme Administrator of the evidence set out in Part 1 (*Enrolment Audit*) of Schedule 4 (*Audit Requirements*) to these Scheme Bye-Laws in a form satisfactory to the Scheme Administrator (acting reasonably), taking into account the following sections of the Relevant Codes of Conduct: b) payment of the Scheme Annual Fee; c) payment of the Scheme Registration Fee; and d) any authorisation or other document, opinion or assurance which the Scheme Administrator reasonably considers to be necessary.
"Standard Procedure"	has the meaning given to it in paragraph 16.2.3 of these Scheme Bye-Laws.
"Supporting Evidence"	means the supporting evidence required for a Membership Application, as set out in Schedule 4.
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for general business in London.
"Website"	means the Scheme website: www.flexassure.**org** or such updated reference as notified by the Scheme Administrator.

1.1 Paragraph and other headings are for convenience only and shall not affect the construction thereof.

1.2 Unless the context otherwise requires, any reference to a "paragraph" is to a paragraph of these Scheme Bye-Laws, any reference to a "section" is to a section of these Scheme Bye-Laws, and any reference to a "Schedule" is to a schedule of these Scheme Bye-Laws.

1.3 Any reference to any Law shall be deemed to include any amendment, replacement or re-enactment thereof for the time being in force.

1.4 Any reference to any person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and shall be deemed to include its successors in title or assignees.

1.5 Any use of the term "including" (or a derivation of that term) shall be construed as meaning including, without limitation.

1.6 Except where the context otherwise requires, the words denoting the singular include the plural and vice versa and words denoting any gender include all genders.

1.7 Reference to a party means, unless the context otherwise requires, a reference to the Scheme Company or a Scheme Member.

1.8 Any reference in these Scheme Bye-Laws to any action, proceeding, right, remedy or other legal concept or doctrine available or applicable under the laws of England and Wales shall (in relation to any jurisdiction other than England and Wales) be taken to be a reference to the action, proceeding, right, remedy or other legal concept or doctrine available or applicable under the laws of that other jurisdiction which is most closely analogous to the corresponding action, proceeding, right, remedy or other legal concept or doctrine available or applicable under the laws of England and Wales.

SCHEDULE 2 - FORM OF SCHEME MEMBERSHIP AGREEMENT

Membership Agreement

Agreement made this (   ) day of (   ) [   ] between:

FLEX ASSURE LIMITED. being a company limited by guarantee registered in England with registered number 11652552 and whose registered office is situated at 10 Dean Farrar Street, London SW1W 0DX ("the Scheme Company"); and

[NAME OF SCHEME MEMBER] being a company registered in [England and Wales] / [Scotland] / [Northern Ireland] with registered number [   ] and whose registered office is situated at (   ) ("the Scheme Member"),

together the "Parties".

WHEREAS

(A) The Scheme Company operates and administers the Scheme (as defined in the Flex Assure Scheme Bye-Laws, as appended to this Agreement and amended supplemented or replaced from time to time) as published on www.flexassure.org] (the "Bye-Laws")) in order to promote and facilitate the provision of reputable standards of service for energy flexibility services to customers in England, Wales, Northern Ireland and Scotland.

(B) The Scheme Member has applied to become a Scheme Member, and has received a Membership Offer on behalf of the Scheme Company.

IT IS AGREED AS FOLLOWS;

1. **Interpretation**

   In this Agreement, unless otherwise specified, capitalised terms shall have the meanings given in the Bye-Laws.

2. **Confirmations**

2.1 The Parties acknowledge that, as at the date of this Agreement, the Scheme Company considers that the Scheme Member has satisfied all the Scheme Requirements necessary to be admitted to the Scheme as a member including payment of the Scheme Annual Fee and Scheme Registration Fee.

2.2 The Scheme Member further acknowledges that in making the determination referred to in clause 2.1 above, the Scheme Company has relied fully upon the accuracy of the information submitted to it by the Scheme Member.

2.3 In consideration of the payment of the Scheme Registration Fee, receipt of which is hereby acknowledged by the Scheme Company, and annual payment of the Scheme Annual Fee, with effect from the date of this Agreement and on the terms and conditions set out in this Agreement, the Scheme Company hereby admits the Scheme Member as a member of the Scheme.

2.4 From the date of this Agreement, the Scheme Member hereby agrees to be admitted to the Scheme and undertakes to perform in accordance with and be bound by the Scheme and the terms of all Scheme Documentation.

2.5 [The provisions of the schedule attached hereto shall apply and the Bye-Laws shall be construed and given effect accordingly in relation to the Scheme Member.][1]

2.6 The Scheme Member confirms that at all times during its membership of the Scheme it will comply with all Data Protection Legislation.

3. **Limitation of Liability**

3.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by Law, excluded from this Agreement and the Bye-Laws.

3.2 The Scheme Company (including its employees, contractors, board, committee and panel members) shall not be liable to any Scheme Member for any loss (including but not limited to loss of profit, loss of business, loss of anticipated savings or any special, indirect, consequential or pure economic loss), costs, damages, charges or expenses, claim, damage, or liability, incurred by the Scheme Member in connection with the Scheme.

3.3 Clause 3.2 shall not exclude or limit the Scheme Company's liability for:

(a) fraud or fraudulent misrepresentation; and

(b) death or personal injury caused by negligence.

3.4 The Scheme Member acknowledges and agrees that given the not-for-profit nature of the Scheme Company and the nature of its activities being for the benefit of the Scheme Members and their customers, the provisions of this Clause 3 are fair and reasonable.

4. **Anti-Bribery**

4.1 The Scheme Member shall comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

4.2 The Scheme Member shall maintain its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with Clause 4.1 and will enforce them where appropriate.

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[1] This Clause will only be included in the Membership Agreements of Scheme Members operating in Northern Ireland or Scotland, where the Scheme Company and the Scheme Member agree that changes to the Bye-Laws may be necessary to reflect the specific requirements for activities in these locations.

4.3 The Scheme Member shall ensure that any person associated with it who is performing services or providing goods in relation to its flexibility services Business Activities does so only on the basis of a written contract which imposes on such person terms equivalent to this Clause 4, and shall be responsible for the observance and performance by such persons of such terms. For the purposes of this Clause 4.3 a person associated with the Scheme Member includes any subcontractor or Agent of the Scheme Member.

5. **Waiver**

Failure to exercise, or any delay in exercising, any right or remedy under this Agreement or at Law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

6. **Severance**

6.1 If any provision of this Agreement (or any part of any provision) is found by any Competent Authority to be invalid, illegal or unenforceable, that provision or part provision shall:

6.1.1 to the extent required, be deemed not to form part of this Agreement and the validity and enforceability of the other provisions of this Agreement shall not be affected; and

6.1.2 provided that the Scheme Company is satisfied that any such modifications need not be implemented in accordance with the modification procedure set out in section 15 of the Bye-Laws, apply with the minimum modification necessary to make it legal, valid and enforceable; or

6.1.3 the Scheme Company shall, or shall instruct the Scheme Administrator to on its behalf, in good faith amend such provision such that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the Scheme Company's original intentions, and submit such amendment to the Scheme Committee for approval.

7. **Third-Party Rights**

No person other than the parties to this Agreement shall be entitled to enforce any term thereof and the provisions of the Contracts (Rights of Third parties Act) 1999 and any application of jus quaesitum tertio are hereby excluded.

8. **Confidentiality**

8.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clauses 8.2 and 8.3.

8.2 Each party may disclose following notification, but without consent, the other party's confidential information:

8.2.1 to the parties identified in paragraph 8.6 of the Bye-Laws (and successors and assignees of those parties from time to time), its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Bye-Laws. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 8; and

8.2.2 as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority.

8.3 The Scheme Company may disclose confidential information to the Committee, Board, Compliance Panel, Appeals Panel, as well as contractors and consultants employed by the Scheme Company, for the purposes required by the Scheme.

8.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement and the Bye-Laws.

9. Governing Law and Jurisdiction

9.1 This Agreement and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes and claims) shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the jurisdiction of the courts of England and Wales only.

9.2 The Scheme Company may agree with any Scheme Member whose flexibility services Business Activities take place outside England and Wales such variations to this Agreement as the Scheme Company and the Scheme Member in question agree to be appropriate in the circumstances to take account of any special requirements or considerations of the jurisdiction in which the Business Activities are located. No variations shall be agreed in accordance with this Clause 9.2, unless the Scheme Company is satisfied that any such variations need not be implemented in accordance with the modification procedures set out in section 15 of the Bye-Laws.

9.3 Any variations made under Clause 9.2 shall be recorded in a schedule to this Agreement.

10. Assignment/Novation

The Scheme Member shall not assign, transfer, charge, mortgage, grant security, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement without the Scheme Company's prior written consent. The Scheme Company's consent shall not be unreasonably withheld or delayed.

11. Intellectual Property

11.1 All Intellectual Property Rights in the Background Materials of the Scheme Member and/or the Scheme Company, as applicable shall remain vested in that party or its licensors, as applicable.

11.2 The Scheme Member acknowledges and agrees that all Intellectual Property Rights in and to the Scheme Company Materials are owned by the Scheme Company or its licensors, as applicable, and shall, notwithstanding the terms of this Agreement, remain vested in the Scheme Company or its licensors. Unless otherwise expressly provided in this Agreement, the Scheme Member shall not acquire any proprietary right, title or interest in or to any Intellectual Property Rights in the Scheme Company Materials.

11.3 The Scheme Company hereby grants to the Scheme Member, or shall procure the grant to the Scheme Member of, a non-exclusive, revocable, non-transferable, royalty-free licence during the Membership Period to use the Scheme Company Materials for the purpose only of fulfilling the Scheme Member's obligations, and receiving the benefit of its rights, under the Scheme. All Intellectual Property Rights in and to the Scheme Company Materials Developments shall vest in the Scheme Company upon creation. The Scheme Member hereby irrevocably assigns to the Scheme Company by way of present and future assignment (as applicable) and with full title guarantee its whole right, title and interest in and to such Intellectual Property Rights free from all liens, charges and encumbrances at no cost to Scheme Company and without imposing further conditions with the intent that the same shall vest in the Scheme Company immediately or, in the case of such materials not yet in existence, that the Intellectual Property Rights shall so vest immediately upon coming into existence.

11.4 With effect from the point at which the Intellectual Property Rights in the Scheme Company Materials Developments referred to in Clause 11.3 shall vest in the Scheme Company, the Scheme Company shall grant to the Scheme Member a non-exclusive, non-sublicensable, revocable, non-transferable, royalty-free licence during the Membership Period to use such items for the purpose only of fulfilling the Scheme Member's obligations, and receiving the benefit of its rights, under this Agreement.

11.5 The Scheme Member shall, and shall procure that the Scheme Member Personnel shall, at the request of the Scheme Company, execute promptly all such assignments, deeds or documents, and shall (and shall procure that the Scheme Member Personnel shall) do promptly all such things as the Scheme Company may deem necessary or desirable to vest in the Scheme Company or perfect the vesting in the Scheme Company of the rights referred to in Clause 11.3.

11.6 The Scheme Member undertakes to the Scheme Company to procure from the Scheme Member Personnel irrevocable and unconditional waivers in favour of the Scheme Company of any and all moral rights to which such persons may be entitled in respect of any Scheme Company Materials Developments created by them in the course of fulfilling the Scheme Member's obligations, and/or receiving the benefit of its rights, under this Agreement.

11.7 The Scheme Company makes no warranties or representations in relation to the Scheme Company Materials. Without limiting the foregoing:

11.7.1 the Scheme Member acknowledges and understands that the Scheme Company Materials are provided on an "as is" basis; and

11.7.2 the Scheme Company makes no warranty of any kind that the Scheme Company Materials will meet the Scheme Member's requirements, achieve any intended result, be accurate or complete.

11.8 The Scheme Company shall not be responsible for, and shall have no liability in respect of, any claim brought against the Scheme Member for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Scheme Member's receipt or use of the Scheme Company Materials."

12. **VAT**

All charges mentioned in this Agreement are exclusive of Value Added Tax which shall be added where so required by Law and be payable by the Scheme Member.

13. **Force Majeure**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement (other than the obligation to pay money) if such delay or failure result from a force majeure event, which means any event or circumstance (or combination of events or circumstances) beyond the reasonable control of either party. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

14. **No Partnership or Agency**

Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name of or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15. **Survival**

15.1 Any provision of this Agreement or the Bye-Laws that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement or of a Scheme Member's membership, including without limitation sections and/or paragraphs 1, 3.7, 3.8, 15, 17.3, 18 and Schedule 1 of the Bye-Laws, and Clauses 1, 3, 4, 5, 8, 9, 11, 12 and 15 of this Agreement shall remain in full force and effect.

15.2 Termination of this Agreement or of a Scheme Member's membership of the Scheme shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement or the Bye-Laws which existed at or before the date of termination.

16. **Entire Agreement**

The Bye-Laws together with this Agreement constitute the whole agreement between the parties and supersede and extinguish any previous arrangement, understanding or agreement between them relating to the subject matter of the Bye-Laws or this Agreement.

17. **Counterparts**

This Agreement may be executed in counterparts.

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

Signed by --

For and on behalf of FLEX ASSURE LIMITED.

Signed by --

For and on behalf of [Name of Scheme member]

SCHEDULE 3 –SCHEME LOGO AND FLEX ASSURE MARK

PART 1, SCHEME LOGO

The Scheme Logo for Scheme Members

THE SCHEME LOGOS MUST NOT BE ALTERED OR DISTORTED IN ANY WAY.

Minimum size and clear zone for the Scheme Logos is 25mm.

The logo can be adapted / updated at any time by the Scheme Company.

SCHEDULE 3 - PART 2, HOMEFLEX MARK

THE FLEX ASSURE MARKS MUST NOT BE ALTERED OR DISTORTED IN ANY WAY.

Minimum size and clear zone for the HOMEFlex Mark is 25 mm.

The logo can be adapted / updated at any time by the Scheme Company.

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SCHEDULE 4 – SUPPORTING EVIDENCE FOR A MEMBERSHIP APPLICATION

To the extent permitted under applicable data protection laws and in accordance with the confidentiality provisions of any relevant consumer contract, a Prospective Scheme Member, should, on application provide the following details in support of its Application:

(a) a copy of the Prospective Scheme Member's company registration documentation;

(b) name, position and contact details of the "Scheme Primary Contact";

(c) current liability insurance coverage certificates relating to the provision of energy flexibility services to their customers;

(d) a copy of the Prospective Scheme Member's Cyber Security policy;

(e) evidence of the Scheme Member's sales training program and staff training records;

(f) evidence of how the Prospective Scheme Member records marketing and sales contact and interactions with Eligible Customers;

(g) evidence of the Prospective Scheme Member's standard complaint resolution mechanism and records of Eligible Customer disputes and Complaints. Any domestic and microbusiness providers should also show evidence of joining the Energy Ombudsman's alternative dispute resolution scheme; and

(h) details of any sub-contractors or third parties performing DSR-Related functions relevant to the Codes.