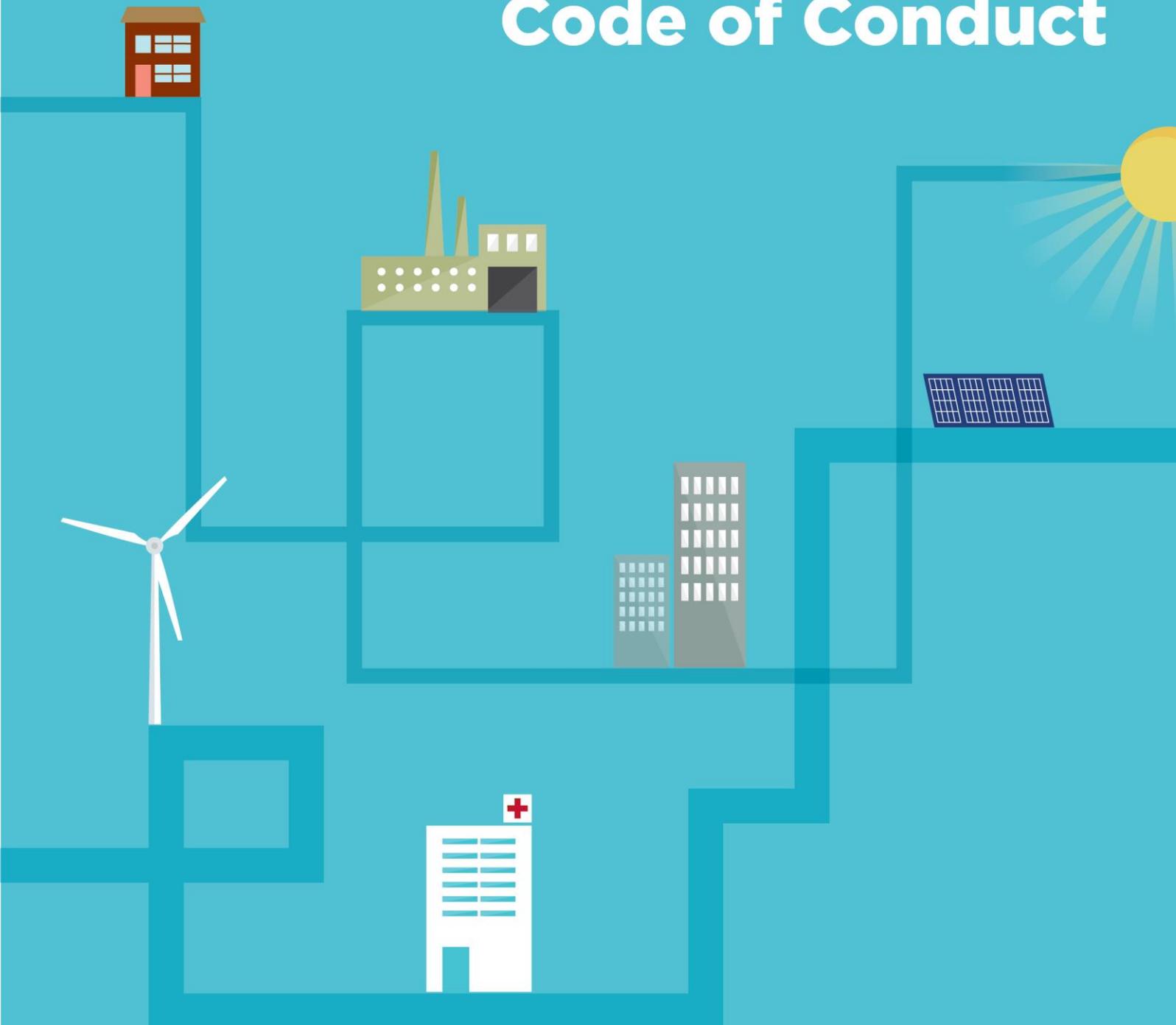




# Demand Side Response Code of Conduct



**Demand Side Response Code of Conduct, Version V.1**  
**Published 5 November 2018**

**CUSTOMER NOTICE**

Eligible Customers should refer to Rule 1.3.1 of the Code, the [Disclaimer](#) and [Terms & Conditions](#) available on the Association for Decentralised Energy website.

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## PART 1. Genesis

### Context

While a rapidly growing market, Demand Side Response (DSR) is not new. Long before current energy management technologies were available, utilities and large commercial and industrial consumers were working together to reduce demand at times of energy system peak demand and help balance the network.

Today's DSR market is seeing an increasing number of new market entrants who are developing the technologies, aggregation models, and products that serve a wider number of customers.

Increased use of DSR is demonstrating the technology's potential to increase efficiency and provide businesses with a new revenue stream. Thousands of additional UK businesses can further reduce their cost of energy using demand side technologies and approaches. The Association for Decentralised Energy (ADE) calculates that in 2017 16% of the UK's peak electricity requirement – or 9.8 gigawatts (GW) – could be provided by businesses shifting demand away from busy periods and by making better use of on-site generation. If utilised, this could save UK energy consumers £600 million by 2020 and £2.3 billion by 2035.

As energy is not their primary business, commercial and industrial sites that want to take advantage of these savings can choose to work with DSR "aggregators", who specialise in coordinating or aggregating demand response from individual consumers to better deliver power system services. Aggregators have technical and policy expertise which can help sites fully capture the benefits of DSR, providing a route to market for those businesses that do not want to invest time and capital into energy specialisation.

### The industry challenge

With many energy users new to DSR, it is important they feel confident about the service they will receive from these aggregators. Trust in how aggregators communicate with and deliver solutions to customers is essential.

To achieve this trust, customers need to have a **common set of standards by which to compare aggregators and their claims**. With a growing marketplace and increasing numbers of new entrants, it is equally important that customers can quickly **understand which DSR aggregators meet those standards**.

### Mission statement

#### How the Code seeks to address the industry challenge

The DSR Code of Conduct (and the Scheme) is designed to address this industry challenge, by setting out rules by which Scheme Members must agree to abide by. These rules cover the behaviour that *ought to be ordinarily expected* from Scheme Members in business activities which affect DSR customer service, which include:

- a) pre-sales activities, advertising, websites, and other marketing;
- b) sales visits and unsolicited contact;
- c) any arrangements for installing and connecting the customer to the electricity transmission and/or distribution network;

- d) the standard of any installation and other on-site work;
- e) technical due diligence and site visits;
- f) the pre-Contractual proposal and Contract itself;
- g) dispatch and payments; and
- h) the action that will be taken to deal with any complaints,

Note: (a) to h)) and any related activities and services thereto which relate to DSR, altogether, the "**Business Activities**").

These Business Activities are dealt with under five main categories in the Code as follows: (i) sales and marketing; (ii) technical due diligence and site visits (iii) proposal and pre-Contractual information (iv) customer contracts and (v) complaints.

In adopting these main standards, the DSR Code of Conduct aims to build customer trust in the DSR aggregator sector.

The Code covers Non-Domestic DSR customers only. If the domestic DSR market develops and there is an identified market need, the Code may be reviewed by the Scheme Administrator to establish whether it should be extended to cover the domestic market and Domestic Customers. Where the Scheme Administrator determines that the Code should be so extended, it will publish a notice of such determination on the Scheme Website and, if applicable, a new version of the Code.

The Scheme Administrator is responsible for enforcing the DSR Code of Conduct against the Scheme Member in the manner permitted by the Code, the Bye Laws and the requisite Scheme Membership Agreement.

### **Building assurance in the market**

The DSR Code of Conduct provides this assurance by creating a **voluntary Scheme** where participant DSR aggregators agree to work with customers in an honest and transparent manner, while providing evidence of product benefits and fair contracts.

The Scheme will be open to all Eligible Scheme Members (being those businesses set out in 1.1.1.1 to 1.1.1.3).

Creating a baseline standard for sales methodology and customer service practices will ultimately serve all DSR aggregators and help market forces decide which services and technologies best fit different customers.

The Code will initially apply to commercial, industrial and public-sector energy users, as the household DSR market remains embryonic. However, the principles in the DSR Code of Conduct may be extended to apply to all consumers, allowing for expansion to the household market in future.

### **Code outcomes**

The Code aims to deliver the following outcomes in relation to each category:

#### **1. Sales and marketing**

A relationship between aggregators and customers must be initiated in an honest and technically proficient manner. Accordingly, sales materials must be accurate, and sales representatives must behave with honesty and integrity.

The Code requires sales staff to be properly trained to communicate technicalities to customers and provide honest data to back up product claims. Additionally, staff must behave in a manner that does not deceive, pressure, or harass potential customers. To assure that these rules are followed, aggregators must keep up to date records of customer communications.

These minimum requirements help ensure that sales materials and representatives enable customers to make decisions based on accurate information, thereby driving high performance throughout the industry.

## **2. Technical due diligence and site visit**

Cybercrime is a significant threat to the security of the electricity grid and energy supply. The Code ensures that best practices to protect electronic data and assets are considered as systems are implemented. Similarly, protection of customer data is one of the most important aspects of a business-to-business relationship. Scheme Members must strictly adhere to rules and regulations relevant to the handling and protection of customer data.

Additionally, the Code sets standards to help members prevent electronic invasion or theft of data, as well as procedures to react and strengthen systems in the event of cyberattack. These standards ensure that members are able to plan ahead of, and react to, the rapidly changing needs of cybersecurity.

Equally important, the Code requires that member installations are built to ensure protection of employees and that liability coverage is provided in the unlikely event of an accident.

## **3. Proposals and pre-contractual information**

The marketing period leading up to final agreement is a critical time for customers to weigh the benefits and value of proposals. Accordingly, the Code places emphasis on the development of proposals that are fair and accurate and do not deceive customers into signing up for services that they do not want or need.

The Code, therefore, requires that all relevant benefits are clearly laid out, any fees are clear and thoroughly explained and the requirements of operating within various government or industry schemes are clearly presented to customers.

## **4. Customer Contracts**

A customer must be presented with a Contract that clearly states its terms and makes the customer aware of their risks, liabilities, and obligations. This ensures that aggregators and customers enter into agreements that are mutually beneficial.

## **5. Complaints and Code violations**

Finally, Scheme Members will provide customers with continued support after a Contract has been agreed to. By providing standards for members to process, respond to and register complaints, the Code aims to create mechanisms to resolve disputes between these parties that arise in a timely and attentive manner. Continued adherence to the standards of the Code helps to ensure that it remains a foundational part of members' customer business operations.

## **Process for developing the Code**

The text for the DSR Code of Conduct was developed through a steering committee made up of aggregators, suppliers, and industrial customers and their representatives. Ofgem and BEIS attended these committee meetings as observers.

Just as important as the commitments set out by the Code are the mechanisms available to the Compliance Panel to assess whether members are complying with the provisions of the Code. It is vital that customers have assurance that an aggregator is meeting the Code standards when they are advertising themselves as a Scheme Member. Please refer to section 1.3 titled "Compliance with the Code and Sanctions".

## PART 2. DSR Code of Conduct

### 1. Introduction

#### 1.1 Purpose and scope

- 1.1.1 The aim of the Code is to set, basic, generally acceptable standards in relation to the Business Activities of:
- 1.1.1.1 DSR aggregators;
  - 1.1.1.2 electricity suppliers who act as aggregators; and
  - 1.1.1.3 businesses active in the DSR aggregation sector, who have agreed to comply with the Code as a member of the Scheme (the "**Scheme Member**"), when such Scheme Member is interacting with and providing a DSR service to Non-Domestic (both existing and potential) customers, in order to give confidence to that category of DSR customers in the offerings and service standards (as they relate to the Business Activities) of the Scheme Member.
- 1.1.2 The Code covers **Non-Domestic DSR customers** only (which shall include Micro Business Customers), who are supplied or require to be supplied with electricity at premises other than Domestic Premises.
- 1.1.3 If the domestic DSR market develops and there is an identified market need, the Code may be reviewed by the Scheme Administrator to establish whether it should be extended to cover the domestic market and Domestic Customers. Where the Scheme Administrator determines that the Code should be so extended, it will publish a notice of such determination on the Scheme Website and, if applicable, a new version of the Code.
- 1.1.4 The Code is governed by Bye-Laws which set out the terms and basis of the relationship between the Scheme Administrator, Board, Scheme Committee, Compliance Panel, Appeals Panel, Flex Assure and Scheme Members. The rules of the Code apply as basic requirements for the Business Activities of a Scheme Member. If any part of the Code shall become or be declared illegal, invalid, prohibited or unenforceable for any reason whatsoever or is in breach of applicable law or regulation, such part shall be deemed to be deleted and the remainder of the Code shall remain in full force and effect.
- 1.1.5 Compliance with the Code is a key obligation of each Scheme Member pursuant to its requisite membership agreement between it and Flex Assure (the "**Scheme Membership Agreement**") which sets out membership terms of Scheme Members. The Code is the overarching document and in the event of a conflict between it and the Bye Laws and/or the Scheme Membership Agreement, the following hierarchy shall be followed: the Code, the Bye Laws, and the Scheme Membership Agreement.

- 1.1.6 On joining the Scheme (the date of joining, the “**Joining Date**”), Scheme Members undertake and agree to abide by:
- 1.1.6.1 the Bye-Laws;
  - 1.1.6.2 their Scheme Membership Agreement; and
  - 1.1.6.3 the Code, for the duration of their membership of the Scheme.
- 1.1.7 Flex Assure reserves the right to unilaterally and without any liability whatsoever (to the fullest extent permitted by law) terminate its Scheme Membership Agreement (with immediate effect) with Scheme Members who cannot demonstrate to the reasonable satisfaction of Flex Assure, adherence to the Code, the Bye-Laws and/or their Scheme Membership Agreement.
- 1.1.8 The Code requires certain standards of conduct (as they apply to the Business Activities) that cover the lifecycle of the relationship between customers and Scheme Members. Neither the Code, Bye-Laws or Scheme Membership Agreement will apply to:
- 1.1.8.1 any customer Contracts; and
  - 1.1.8.2 interactions (in whatever form and which shall include offerings), with DSR customers, entered into and/or occurring prior to the Joining Date and no subsequent amendment, variation, novation, assignment or restatement (occurring after the Joining Date) of such customer Contract shall enable that customer Contract to fall within the scope of this Rule 1.1.7.
- 1.1.9 The Code provides for an additional framework for dealings between DSR customers and Scheme Members. The Code does not override the existing provisions of the UK and European Competition Law. In particular, the provisions relating to unconscionable conduct, misleading or deceptive conduct and misuse of market power continue to apply.
- 1.1.10 Eligible Scheme Members are those businesses set out in 1.1.1.1 to 1.1.1.3 above, who have a contract with Non-Domestic customer(s) for the provision of DSR aggregation services (“**Scheme Members**”).
- 1.1.11 Scheme Members agree to comply with the requirements of the Code when they join the Scheme and every time they renew their membership.

## **1.2 Interpretation**

- 1.2.1 A reference to **writing** or **written** includes letter, email and fax.
- 1.2.2 Guidance (marked **G** under the requisite rule directly above it to which that guidance shall relate) in the Code is mainly used to:
- 1.2.2.1 provide context underpinning the Rule;
  - 1.2.2.2 explain the implications of other Rules;

- 1.2.2.3 indicate possible means of compliance;
- 1.2.2.4 give some examples of permissible and non-permissible actions under that Rule (which are not exhaustive); or
- 1.2.2.5 recommend a particular course of action or arrangement, guidance is not binding and **need not be followed** to achieve compliance with the relevant Rule. However, if a Scheme Member can demonstrate to the Compliance Panel, through the provision of evidence, that on a **balance of probabilities**, they have acted in accordance with the guidance, the Compliance Panel will treat that person as having complied with the Rule to which that guidance relates.

Where a Rule requires compliance to a legal or regulatory requirement, the Scheme Member must demonstrate that they have fully adhered to the relevant law or regulation.

### 1.3 Compliance with the Code and sanctions

1.3.1 Flex Assure is willing to work together with Scheme Members to ensure that they comply with the standards set out in the Code. Flex Assure reserves the right to monitor whether the Code is complied with by Scheme Members using the following methods: (i) **Scheme Member self-declaration**<sup>1</sup>, (ii) **declaration from Non Domestic customers who have a contract** entered into after the Joining Date with a Scheme Member for the provision of DSR services ("**Eligible Customer**")<sup>2</sup>, and (iii) the right to conduct **audits** (including onsite audits)<sup>3</sup>. Eligible Customers should refer to the **Disclaimer** and **Terms & Conditions** available on the Flex Assure website before submitting a declaration form. The Scheme is **not an alternative dispute resolution service** to, inter alia, settle complaints between Eligible Customers and Scheme Members. Furthermore, neither the Scheme nor its bodies are in a position to give or assist with reconciliation.

1.3.2 Scheme Members must inform (in writing) their customers (which are Eligible Customers) that:

- 1.3.2.1 the Scheme Member is a member of the Scheme; and

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<sup>1</sup> the method for a Scheme Member self-declaration is set out in the Scheme Membership Agreement.

<sup>2</sup> please see the Eligible Customer Complaint Form at Schedule 2 which should be submitted to the Scheme Administrator to make this declaration.

<sup>3</sup> audits shall be carried out in the manner stated in the Byelaws and requisite Scheme Membership Agreement.

- 1.3.2.2 the customer may obtain a copy of the Code in an accessible format, free of charge, through online access to the Scheme Website.
- 1.3.3 The Compliance Panel may investigate reported alleged breaches of the Code in accordance with it, the Bye-Laws and Scheme Membership Agreement.
- 1.3.4 Following a hearing of the Compliance Panel, upon the Compliance Panel issuing a determination that considering the evidence put forward, on a **balance of probabilities**, a Scheme Member has failed to comply with any part of the Code (a "**Non-Compliance Determination**") (and, if applicable, an unsuccessful appeal to such Non-Compliance Determination to the Appeals Panel), the Compliance Panel will have the power to impose any (or a combination) of the following sanctions:
- 1.3.4.1 to decide that the reported conduct does not warrant any further action;
  - 1.3.4.2 in the instance of a Level 1 violation<sup>4</sup> only, to issue a written warning;
  - 1.3.4.3 to suspend the Scheme Member for a period of time it deems fit (the permissible length of such suspension being that which is allowed for the requisite level of violation of the breach as detailed in Schedule 3) (the relevant period, the "**Suspension Period**");
  - 1.3.4.4 to expel the Scheme Member from the Scheme;
  - 1.3.4.5 to require the Scheme Member to draft a re-compliance plan and submit proof that the violation has been rectified (a subsequent Audit may be further conducted by Scheme Administrator to ensure full rectification);
  - 1.3.4.6 for the duration of the Suspension Period, set the Scheme Member status on the Scheme Website as: "*Membership under review pending corrective action*" and provide details of the elements of the Code breached by the Scheme Member;
  - 1.3.4.7 suspend the Scheme Member's ability to use the Scheme Logo (the use of which denotes that it is a Scheme-compliant Member), including in but not limited to any of the Scheme Member's marketing materials, websites, emails, contracts, for such period determined by the Compliance Panel;

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<sup>4</sup> please see description of violation rankings and accompanying suspension periods in Schedule 3.

- 1.3.4.8 in the instance of a Level 3 violation only, expel the Scheme Member from the Scheme by terminating the Scheme Membership Agreement and set the Scheme Members status on the Scheme Website as "Member expelled", following which it may remove the Scheme Member's name from the Scheme list of members published on the Scheme Website;
  - 1.3.4.9 following a removal of the Scheme Member pursuant to the Code, the Compliance Panel may instruct Flex Assure to only re-admit the (former) Scheme Member to the Scheme, following the applicable Suspension Period, only if the (former) Scheme Member: (i) pays the full cost of a compliance Audit and (ii) successfully passes such compliance Audit before being re-admitted to the Scheme; and
  - 1.3.4.10 to require the Scheme Member to fulfil remedial actions to rectify such violation within a reasonable time (determined by the Compliance Panel at their sole discretion),  
  
as shall be detailed in the Non-Compliance Determination. A Non-Compliance Determination is binding upon the person or categories of person to whom they are addressed. Details of the levels of violations and accompanying suspension are set out in Schedule 3 and may be varied from time to time along with the Code.
- 1.3.5 No person (including but not limited to a Scheme Member and/or Eligible Customer) may insist on a specific sanction being imposed by the Compliance Panel. The Compliance Panel has complete (sole) discretion over what sanction it may or may not impose.

#### **1.4 Third parties**

- 1.4.1 Without prejudice to 1.5, where a Scheme Member contracts with a third-party (including but not limited to a sub-contractor) for the provision of DSR aggregation services to a customer, the Scheme Member is responsible for ensuring compliance of that third-party with the Code. There is no difference in the standards and requirements applied to contracted third parties and their employees from those applied to a Scheme Member and its employees.

#### **1.5 Sub-contracting requirements**

- 1.5.1 If someone other than the Scheme Member will install or supply other services under the Contract (the "**Contractor**"), the Scheme Member must provide the customer, in writing, the name of the Contractor and describe what scope of work they will do.

1.5.2 The Scheme Member will inform the customer (in writing) that the Scheme Member is responsible for the activities of Contractors appointed by it, and that the customer should inform the Scheme Member if there are any problems.

**G** Scheme Members will be deemed to have complied with Rule 1.5.2, if the Scheme Member follows one of the following procedures:

**Procedure 1**

- the Scheme Member sends an acknowledgement form to the customer which sets out that the Scheme Member is responsible for the activities of its Contractors; and
- The customer either: (i) returns a signed acknowledgement and/or (ii) acknowledges receipt and confirms it has read and understood its contents.

**Procedure 2**

- the Scheme Member, in the Contract, contractually agrees that it is responsible for any Contractors appointed by it; and
- points out to the customer (in writing which shall include via e-mail) the relevant clause in the Contract.

Rule 1.5.2 does not apply to contractors appointed by the customer only.

**1.6 Code structure**

1.6.1 The Code is divided into the five parts, as follows: sales and marketing, technical due diligence and site visits, proposal and pre-contractual information, customer contracts, and complaints. Schedules 1 – 3 appended to the Code form part of it.

**1.7 Variation of the Code**

1.7.1 If a Change in Law occurs or is shortly to occur and that Change in Law requires any changes to be made to the Code, following receipt of written consent from the Scheme Committee, Flex Assure shall:

1.7.1.1 give notice of those changes on the Scheme Website; and

1.7.1.2 publish an updated version of the Code on the Scheme Website with the requisite changes being made,

and the Bye-Laws and Scheme Membership Agreement shall be deemed to be varied to incorporate the updated Code, and the Scheme Member shall unconditionally and fully accept such variations (such acceptance being effective from the date of publication).

1.7.2 Flex Assure may only amend the Code if it has obtained prior written approval from the Scheme Committee, following which an amendment shall be effective upon both the Flex Assure:

1.7.2.1 providing notice; and

1.7.2.2 publishing the amended Code,

on the Scheme Website. Such variation shall be deemed amended as at the effective date of such notice without the need for further formality. Rule changes shall not apply retrospectively (unless required to by law).

## 1.8 Code violations

1.8.1 Should an Eligible Customer wish to report a breach of the Code by a Scheme Member, it should complete the form attached to the Code at Schedule 2, appending any relevant evidence to it which is not subject to a duty of confidentiality, and submit both to Flex Assure via the Scheme Website. Eligible Customers must also ensure that such submission complies with any applicable instructions detailed on the Scheme Website in force at the time.

1.8.2 Eligible Customers reporting a breach of the Code ("**Reporting Customer**") must not be discriminated against by any Scheme Member. Any investigation of reported Code Violations will be conducted with utmost confidentiality. Details of the information will only be forwarded to the Scheme Member if the Reporting Customer agrees or if in Flex Assure's sole discretion, it is necessary to do so to clarify the situation.

 Scheme Members will be deemed to have complied with Rule 1.8.2, if they:

1. When continuing to provide DSR services to a Reporting Customer:

- do not structure or change their charges (including payment terms) in such a way as to discriminate unfairly between a Reporting Customer and other customers; and
- do not change the level of service provided by it to the Reporting Customer following the Reporting Customer reporting a breach pursuant to the Code.

2. When seeking to enter into a new contract with a Reporting Customer:

- do not offer terms and pricings that are materially divergent from that offered to non- Reporting Customers who are in the same customer category as the Reporting Customer and who have similar DSR requirements.

The Code recognises that Scheme Members may not continuously offer the same contract terms and pricings, therefore, if a Reporting Customer does not receive an offer equally as good as that received by it previously, this will not be considered as unfair discrimination if the Scheme Member

can demonstrate to the Compliance Panel that other customers in the same category as the Reporting Customer and who have similar DSR requirements, have been offered terms and pricing not materially divergent than those offered to the Reporting Customer.

- 1.8.3 Should you have any questions, or bring up any issue relevant to the Code please contact John Bryant on email [dsrcode@theade.co.uk](mailto:dsrcode@theade.co.uk) or on phone 0203-031-8740.

## 2. Sales and marketing

### 2.1 Advertising and sales promotion

2.1.1 Scheme Members must ensure that their advertising does not infringe:

- 2.1.1.1 Advertising Standards Agency (ASA) Sales Promotion and Direct Marketing (The CAP Code); and
- 2.1.1.2 UK Code of Broadcast Advertising (The BCAP Code); and
- 2.1.1.3 Business Protection for Misleading Marketing Regulations (as judicially determined), and each Scheme Member must, in a periodic (start 2 years from enrolment or risk based) Audit, provide details to the Scheme Administrator, on the amount of its violations of this rule, solely in relation to the Scheme members activities in the UK, including Northern Ireland, non-domestic DSR aggregator market, which have occurred in the period to which the Audit relates. If within such period, over four violations have occurred, the Compliance Panel, as soon as reasonably practicable, must issue a written warning to that Scheme Member and will request the Flex Assure to post such warning on the Scheme Website.

2.1.2 Scheme Members must ensure that any representations (which shall include but are not limited to verbal statements, advertising and sales materials) are accurate, current to the best of their knowledge and do not intentionally deceive customers into making decisions under false pretences.

 Examples of permissible and non-permissible actions under this rule 2.1.2 are set out below:

Do Not	Do
<ul style="list-style-type: none"> <li>- Knowingly or negligently use outdated pricing information. (The Code considers that a price validity period should be provided and a detailed methodology for how prices and conclusions about the market has been evaluated. Prices should be fully justifiable at the time quoted and based on</li> </ul>	<ul style="list-style-type: none"> <li>- Clearly and directly identify which future prices are estimated.</li> <li>- Clearly and directly inform customers of assumptions used in pricing forecasts, and such assumptions should be based on verifiable sources.</li> <li>- Clearly and directly identify how much of a total amount of revenue</li> </ul>

<p>historic prices or best endeavours to predict future trends).</p> <ul style="list-style-type: none"> <li>- Knowingly overestimate a customer’s potential enrollment kW value in a DSR scheme to inflate the perceived value to a customer.</li> <li>- Guarantee a certain level of performance or result without the proper supporting information setting out on what basis that guarantee is being made.</li> <li>- Omit to provide (in writing) known or likely future costs, changes to charges and assumed benefits.</li> <li>- Base Member DSR price/value claims on scenarios where such price/value is more than likely unachievable.</li> </ul>	<p>and / or is to be shared between the customer and Scheme Member.</p> <ul style="list-style-type: none"> <li>- Provide third-party links to pricing that is publicly available.</li> <li>- Clearly caveat revenue and/or savings projections with risks and assumptions, including which services are subject to success in tenders.</li> <li>- Outline clearly in proposals any upfront costs, technical requirements or upgrades/work required for sites to participate in services.</li> <li>- To the extent known at the time when entering the Contract, set out any key sensitivities and associated, additional assumptions or potential changes to costs or benefits in any quote or sales material (for example, potential changes resulting from tariff changes, structural market changes)</li> </ul>
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**2.1.3 Scheme Members must ensure that any use of the Scheme Logo in advertising materials is used in good faith. When practical, advertising materials including the Scheme Logo should refer to or include a copy of the Code.**

**G** Scheme Members must not abuse the Scheme Logo, and should:

- Only use the Scheme Logo when permitted to do so (not when, for example, the Scheme Member’s status on the Scheme Website is set as “Suspended pending member rectification of non-compliance”).
- Not permit third parties (including but not limited to sub-contractors) to use the Scheme logo without prior written permission from the Flex Assure.

2.1.4 All performance claims, testimonials and claims about energy savings, technical performance, financial payback or income from DSR services in advertisements and sales promotions must:

- 2.1.4.1. be clearly attributed to a source and are not the personal opinions or advice of those making representation which shall not be expressed to influence customer decisions;
- 2.1.4.2. withstand third-party scrutiny regarding reasonable underlying assumptions, and shall be made available to the Scheme Administrator upon request;
- 2.1.4.3. follow accounting best practices; and
- 2.1.4.4. include a statement of the level of risk to the customers potential revenue.

 Please also refer to Rule 2.1.2 and that Rule's guidance.

## 2.2 Sales behaviour

2.2.1 Scheme Members will be held responsible for all sales-related actions of their employees and of those who sell on their behalf.

2.2.2 Scheme Members must deal with customers politely and promptly.

 No Scheme Member should wilfully or flagrantly disregard customer communications and should respond to these without undue delay. Scheme Members should be aware that when a customer feels strongly enough that his or her customer expectations have not been met, he or she may make a Complaint. Scheme Members must respond to any DSR customer Complaints in as positive a manner as soon as practicable and always aim to find a solution acceptable to both parties. This includes for instance:

- Responding to DSR customers within a reasonable period of time from the moment any Complaint is raised, as set out in a customer service policy or standard.
- Drawing the DSR customer's attention to how the Scheme Member will seek to resolve the issue with accompanying anticipated (reasonable)<sup>5</sup> timescales and responding within such timescales or providing notice to the DSR customer that the timescales will not be met upon becoming aware of the same and confirming a reasonable time within which it will be met.
- At the beginning of a contractual relationship and thereafter, upon the DSR customer raising a Complaint, referring the DSR customer to (i) the Scheme Member's customer Complaints procedure and (ii) stating in communications that if the DSR customer is not satisfied with the

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<sup>5</sup> What is reasonable will depend on the circumstances and nature of the complaint.

level of service or response to its Complaint it may also make a Complaint, under this Scheme, to Flex Assure.

2.2.3 Scheme Members whose employees (including but not limited to sales representatives) or any third parties contracted by it make unsolicited contact with customers by telephone must:

- 2.2.3.1. provide customers with clear and accurate identification at the beginning of every call;
- 2.2.3.2. ensure customer contact complies with the Code;
- 2.2.3.3. comply with Ofcom's Persistent Misuse Policy, including but not limited to ensuring the customer's preferences are captured and adhered to at all times, including requests for cessation of unwanted repetitive contact;
- 2.2.3.4. terminate the contact immediately if the customer asks them to do so;
- 2.2.3.5. not contact the customer again regarding non-domestic DSR services if such customer has requested not to be contacted further; and
- 2.2.3.6. comply with the guidelines regarding registered users of the Corporate Telephone Preference Service.

All Scheme Members should produce, on demand to the Scheme Administrator, a copy of (to the extent permissible by law) all written communication (including email, letters, contractual information and marketing materials) which shall be kept on file for the minimum period of 2 years, in order to enable Flex Assure to determine compliance with the requirements of rule 2.2.3. In addition, Each Scheme Member must, in a periodic (starting 2 years from enrolment or risk based) Audit, provide details to the Scheme Administrator, on the amount of its violations of these regulations which have occurred in the period to which the Audit relates. If within such period, over four violations have occurred, the Compliance Panel, as soon as reasonably practicable, must issue a written warning to that Scheme Member and will request Flex Assure to post such warning on the Scheme Website.

2.2.4 Scheme Members must ensure that all DSR customer-facing employees, in particular sales representatives acting on their behalf, are given training to ensure that any contact with customers complies with the Code, and the law.

☐ Scheme Members shall be deemed to have complied with Rule 2.2.4, if they establish and periodically (and not less than every three years from the Scheme Member joining the Scheme) run an internal compliance-training program (which may be delivered through assigned learning) for

customer-facing employees (including, but not limited to sales representatives), pursuant to which such employees are educated on laws and the rules of the Code that apply to their day-to-day job responsibilities. To demonstrate that these employees have a firm understanding of the matters set out in this guidance, such compliance-training program may require the employees to answer multiple choice questions on the program content and achieve an adequately high pass mark (over 90%).

Scheme Members may maintain a record showing:

- sample materials of the compliance training program delivered; and
- which employees have completed the training program (including the date of such training) and their respective pass mark.

Please refer to Rule 2.2.6 for record keeping requirements under the Code.

The Code recognises that Scheme Member employees who are not customer-facing employees may not require training and, as such, no training is expected nor required for this category of employees.

**2.2.5** Scheme Members shall ensure that all customer-facing employees (including but not limited to sales representatives) and any third parties contracted by it are subject to the rules of the Code.

 Scheme Members may require customer-facing employees and third parties contracted by it to sign an acknowledgement that they:

- have been provided with a copy of the Code;
- will personally abide by the Code;
- will not assist others in violating the Code;
- will report any perceived violation to their line manager and/or senior management;
- will act as requested to remediate any potential violations or violations of the Code; and
- will complete training on the Code and other assigned learning in a timely manner.

**2.2.6** Scheme Members must keep records (for a minimum of 2 years) of all applicable sales training that individual staff undertake and be able to supply all records of training to the Scheme Administrator, as and when requested (and no later than 10 Working Days from written request). All sales training materials must adhere to the Code.

**2.2.7** A copy of the Code (including any updated versions), must be provided or made available to employees and sales representatives acting on behalf of the Scheme Member.

**2.2.8** Scheme Members are responsible for the behaviour of anyone visiting a customer's site on their behalf.

## 2.3 Competition

2.3.1 Scheme Members must comply with current Competition and Markets Authority regulations and not engage in any form of communication or establish an implicit or explicit agreement with a competitor (which may or may not be another Scheme Member) which has the effect or attempts to:

- 2.3.1.1. fix, stabilise or control prices, credit terms, discounts or rebates;
- 2.3.1.2. allocate Contracts or markets, customers or territories;
- 2.3.1.3. boycott certain customers, business providing DSR services or other Scheme Members;
- 2.3.1.4. refrain from or limit the or sale of any product or service.

and each Scheme Member must, in a periodic (starting two years from enrolment or risk based) Audit, provide details to the Scheme Administrator, on the amount of its violations of this rule, solely in relation to the Scheme members activities in the UK, including Northern Ireland, non-domestic DSR aggregator market, which have occurred in the period to which the Audit relates. If within such period, over four violations have occurred, the Compliance Panel, as soon as reasonably practicable, must issue a written warning to that Scheme Member and will request Flex Assure to post such warning on the Scheme Website.

 Examples of permissible and non-permissible actions under this Rule 2.3.1 are set out below:

Do Not	Do
<p>Work with a competitor to:</p> <ul style="list-style-type: none"> <li>- fix prices directly or indirectly</li> <li>- allocate or carve up customers or markets (whether geographical, sectoral or by scale)</li> <li>- fix any other terms and conditions</li> <li>- discuss any aspect of your pricing (credit terms, discounts, margins, rebates)</li> <li>- control or limit service offerings</li> </ul>	<ul style="list-style-type: none"> <li>- Compete vigorously</li> <li>- Find out as much as you can about competitors from public or independent third-party sources (always note the source)</li> </ul>

<ul style="list-style-type: none"> <li>- discuss tender offers or customer quotes</li> <li>- not provide DSR services to certain customers</li> <li>- reach any “understanding” regarding any of the above</li> </ul> <p>Make knowingly false statements about a competitor that cannot be substantiated by publicly available information.</p>	
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## 2.4 Record keeping

- 2.4.1 Scheme Members must keep a record, for a minimum of 2 years from any sales activity, or (where a Contract has been entered into) 1 year after the end of the term of the Contract howsoever arising, of the written information provided to a customer during a sales visit including but not limited to printed or electronic sales communication with customers that they or their representatives make. This record may be kept in printed form, digitally or in any other format and must include all site-specific performance calculations on which they have based predictions of savings or periods of recovery.
- 2.4.2 Scheme Members must supply all relevant records to the Scheme Administrator as and when requested, and in any event, no later than 10 Working Days from written request.

## 3. Technical due diligence and site visits

### 3.1 Data privacy

- 3.1.1 Scheme Members must comply with their obligations under the General Data Protection Regulation 2016/679, Data Protection Act 1998 & 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (and all other laws and regulations relating to data protection and privacy) in the collection and processing of the data of customers, and each Scheme Member must, in a periodic (starting not less than two years from enrolment) Audit, provide details to the Scheme Administrator, on the amount of its judicially determined violations of the laws and regulations referred to in this rule, solely in relation to the Scheme members activities in the UK, including Northern Ireland, non-domestic DSR aggregator market, which has occurred in the period to which that Audit relates. If within such period, over four violations have occurred, the Compliance Panel, as soon as reasonably practicable, must issue a written warning to that Scheme Member and will request Flex Assure to post such warning on the Scheme Website.

- 3.1.2 Each Scheme Member must inform its customers (in writing) that information concerning the customer may be disclosed to the Scheme Administrator for the purpose of determining that Scheme Member's compliance with the Code, Contracts and requisite Scheme Membership Agreement, and Scheme Members must procure and obtain (in writing) prior customer consent for such disclosure.
- 3.1.3 Each Scheme Member will not prohibit or otherwise impede the Scheme Administrator from contacting its customers for the purpose of ascertaining that Scheme Member's compliance with the Code.

### 3.2 Cyber security

- 3.2.1 Scheme Members must take appropriate and proportionate technical and organisational measures to manage cyber risks to their systems to ensure security of their cyber systems and provide proper response in the event of a system failure.

**G** In relation to security of the cyber system: Scheme Members will be deemed to have complied with Rule 3.2.1, if they:

- Have a written procedure to ensure effective cybersecurity in their organisation that
  - Follows as much as reasonably possible the international Standard for information security management systems (ISMSs) as specified in the ISO/IEC 27000 group of standards; and
  - Follows National Cyber Security Centre guidance where appropriate (e.g. NCSC's "10 steps to cyber security"  
<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>" or "Cyber Assessment Framework"  
<https://www.ncsc.gov.uk/guidance/nis-directive-cyber-assessment-framework>
  - Nominate a competent person or authority for cybersecurity within their organisation
  - Be ISO27001 compliant
  - For DSR services that rely on industrial controllers, follow as far as possible provisions in IEC62443 in relation to cybersecurity of the industrial control equipment; and
  - For aggregated energy solutions that depend on software or data contained the cloud, follows the additional recommendations of the Cloud Security Alliance's Cloud Controls Matrix (CCM); and
  - Follows best guidance that may be issued from time-to-time by the power system transmission and distribution operators and the NCSC with respect to cybersecurity of remotely operated switched load attached to the electricity network.

- Have a procedure to review their cybersecurity at least yearly to ensure it is kept up-to-date and fit-for-purpose
- Can demonstrate that they follow the written procedure within their organisation by means of keeping effective records and Audit trail

In relation to security of the electricity network:

- Scheme members should recognise the wider potential system impacts to the electricity system that can occur in the event of a cybersecurity breach of a demand management system; and
- Follow any guidance issued by the grid system operators and the NCSC from time-to-time in relation to protecting the network from a known cybersecurity risk.

In relation to proper response in the event of a system failure:

- Follow the procedure outlined in Section 3.2.4; and
- Where the system failure has the potential for causing disruption to electricity supply to third parties:
  - Inform the relevant transmission and distribution network operators
  - In event of a breach that could lead to supply disruption on a regional and national scale, inform the power system regulator, NCSC, BEIS and Ofgem of the nature of the risk and potential impacts.

**3.2.2 Scheme Members must provide customers (in writing) with an overview of the precautions referred to in Rule 3.2.1, including their cybersecurity measures and the steps they take to ensure that data is secure.**

**3.2.3 Scheme Members should apply best practices to protect customer information:**

**G** Scheme Members must take consideration of best practices to protect information and are encouraged to use hardware that:

- a) is provided with cryptographic device identifications, and is tested for security capabilities, gaps in security, and is able to detect the presence of malware;
- b) contains software that ensures that all access must be authenticated;
- c) contains secure firmware, passwords and other embedded private or confidential information that is encrypted or otherwise secured against unauthorised access;
- d) is designed to permit data to be only provided to authenticated requests;
- e) uses penetration testing to ensure their systems are well-protected against cyberattacks; and

- f) provides documented signatories for access to the controlling devices; addressing any DSR-specific vulnerabilities by ensuring that information input is validated for format and reasonability,

Scheme Members must also consider and ensure the hardware used is adequate to meet the objectives referred to in Rule 3.2.4.

#### 3.2.4 In order to prevent future cyber-attacks, Scheme Members must apply best practices following a cyber-security event

**G** Scheme Members will be deemed to have complied with Rule 3.2.4, if they:

- a) notify all customers in writing, no later than 5 Working Days following the discovery by it of a cyber-security breach;
- b) for any affected customer, specify, in the notice, which data was compromised, change relevant passwords and take all reasonable steps available to it as are practicable in the circumstances to mitigate the vulnerability and deploy revised software/firmware to fix the vulnerability as soon as possible; and
- c) monitor and store logs that capture all cyber security events, including security parameter changes, changes in certificate status, invalid login attempts, detection of malware and related actions of connected equipment.
- d) Work with other scheme members to inform them of any potential vulnerability or threats and steps that need to be taken in order to rectify them.

### 3.3 Health, safety and environment

3.3.1 Scheme Members must comply with relevant laws and regulations governing health and safety at work, and each Scheme Member must, in a periodic (start 2 years from enrolment or risk based) Audit, provide details to the Scheme Administrator, on the amount of its judicially determined violations of the laws and regulations referred to in this rule, solely in relation to the Scheme members activities in the UK, including Northern Ireland, non-domestic DSR aggregator market, which has occurred in the period to which that Audit relates. If within such period, over four violations have occurred, the Compliance Panel, as soon as reasonably practicable, must issue a written warning to that Scheme Member and will request Flex Assure to post such warning on the Scheme Website.

**G** Scheme Members must be committed to creating an environment which is safe, healthy and secure for its employees, customers and third parties and should identify any dangers and remove or eliminate them. If a Scheme Member cannot remove or eliminate something dangerous, it should put suitable controls in place. Scheme Members must give its employees suitable equipment and protective clothing free of charge (if appropriate) and have safety procedures in place to protect them.

Scheme Members are encouraged to use internationally recognised safety-management systems and safe work systems.

Scheme Members must not take disciplinary action against its employees for informing about any safety concerns they have. Scheme Member employees have the right to refuse to work in any unsafe conditions until the Scheme Member has dealt with their concerns.

- 3.3.2 Scheme Members must also comply with laws and regulations governing the carriage, storage and disposal of waste, and each Scheme Member must, in a periodic (start 2 years from enrolment or risk based) Audit, provide details to the Scheme Administrator, on the amount of its judicially determined violations of the laws and regulations referred to in this rule, solely in relation to the Scheme members activities in the UK, including Northern Ireland, non-domestic DSR aggregator market, which has occurred in the period to which that Audit relates. If within such period, over four violations have occurred, the Compliance Panel, as soon as reasonably practicable, must issue a written warning to that Scheme Member and will request the Flex Assure to post such warning on the Scheme Website.

### **3.4 Public liability insurance**

- 3.4.1 Scheme Members must ensure that insurance is in place to cover liabilities to customers which may arise under that customer's requisite Contract to at least the value of that Contract or as required by law.
- 3.4.2 A Scheme Member's insurance provider must be FCA-regulated.
- 3.4.3 When requested by customers Scheme Members must provide customers (in writing) with clear and accurate information about the insurance coverage referred to in 3.4.1 that they have in place including the extent of the coverage, the contact details of the provider and any relevant limits to its territorial coverage.

### **3.5 Site visit conduct**

- 3.5.1 When visiting customer sites, Scheme Members must:
- 3.5.1.1. Make best efforts to arrive on time and as scheduled, and notify the customer if unforeseen circumstances intervene;
  - 3.5.1.2. show relevant identification on request;
  - 3.5.1.3. be polite and professional at all times; and
  - 3.5.1.4. wear appropriate clothing for the visit (in consideration of the purpose of such visit).
  - 3.5.1.5. endeavour to provide adequate warning to the customer of any planned visit.

### **3.6 Standards of installation**

- 3.6.1 Scheme Members must:

- 3.6.1.1. ensure that equipment is installed safely, and is capable of meeting the customer requirements, as specified in that customer's requisite Contract;
- 3.6.1.2. ensure that components remain accessible for future maintenance;
- 3.6.1.3. meet any applicable regulations such as BS7671 for electrical installations.
- 3.6.1.4. provide customers with any necessary maintenance and care instructions for all equipment provided to ensure continued reliable operation and safety.
- 3.6.1.5. display safety and hazard notices where appropriate; and
- 3.6.1.6. consult with customer health and safety officials where appropriate.

## 4. Proposal and pre-contractual information

### 4.1 Proposal and quotation

4.1.1 Scheme Members must provide the customer with a thorough written proposal before the arrangement is agreed to and the Contract signed that includes, at a minimum:

- 4.1.1.1 Full detail of the confirmed and potential benefits and deliverables that the customer can be expected to receive under the terms of the agreement;
- 4.1.1.2 service delivery requirements from the customer;
- 4.1.1.3 any financial estimates; and
- 4.1.1.4 a detailed quotation.

Any additional details that remain to be agreed before the Contract is signed must be made clear to the customer.

4.1.2 Scheme Members will provide the customer with a written estimate that is based on the information the customer has given them and make clear whether the numbers used in the estimate are definite figures or assumptions.

4.1.3 Scheme Members must follow a transparent and understandable quotation process, which at a minimum should meet the following requirements:

- 4.1.3.1 is a formal quotation (written or electronic) that is:
  - i. presented in a recordable manner; and
  - ii. signed or endorsed by a clearly identified individual, be they an employee or third-party representative, who is duly authorised by the Scheme Member to do so;
- 4.1.3.2 details the term that the quote will be valid for;
- 4.1.3.3 contains a clear and transparent payment methodology, including:
  - i. the range of services being entered into and how expected revenue is calculated as well as the customer's flexibility requirements;
  - ii. in the event that a revenue share agreement exists, the percentage split between the Scheme Member and the customer;
  - iii. any other fees and/or fixed costs and how these are calculated, including the treatment of VAT;
  - iv. any potential charges or benefits that may impact the customer;
  - v. when relevant, notice that change to market values could affect customer revenues and how these

changes may be passed through to or impact the customer;

- vi. consequences of over-dispatch and under-dispatch, whether this will generate any non-delivery penalties, and how those will be passed through to or impact the customer;
- vii. payment schedule;
- viii. charges for any work and hourly fixed rate or daily rates for any service not included in the quotation that will be provided by the aggregator or the aggregator's Contractor; and
- ix. impacts of planned and unplanned availability;

4.1.3.4 contain a clear and transparent statement that the conditions of the customer's Contract with their Energy Supply Contract [with their energy suppliers] may influence the benefits received by the customer which shall include, at a minimum:

- i. an offer to the customer for the Scheme Members to review conditions of the Customers supply contract to better support the Customer;
- ii. include reference to any specific terms relating to the Energy Supplier's recourse regarding imbalance inputs and forecast accuracy; and
- iii. where relevant, technical prerequisites e.g: available Connection Capacity to deliver DSR services with the Network Operator"; and

4.1.3.5 a clear and transparent statement of the operational parameters under which the customer will be dispatched, including but not limited to:

- i. the conditions under which the customer will be dispatched and the notice period for dispatch; and
- ii. the process for notifying the customer if the Scheme Member enters the customer's flexibility into a market different to the one the proposal was based upon, if that alters the stated operational parameters, unless otherwise agreed; the Member will notify the customer of any changes to the customer's market and the impacts on potential earnings or operations;
- iii. if there are changes to these operational parameters, the customer should be notified of and agree to those changes before they are enacted.

4.1.4 The quotation referred to in Rule 4.1.3 must also contain the following:

- 4.1.4.1 an itemised list of all reasonably foreseeable survey, design, installation of assets and any other services, including any relevant costs or impacts on site operations;
- 4.1.4.2 additional metering and monitoring services the customer will be expected to pay for;
- 4.1.4.3 site conditions and special circumstances beyond the control of the Scheme Member which may result in extra chargeable work not covered by the quote, and (if any) hourly, fixed rate or daily rates which may apply in this situation;
- 4.1.4.4 items and services not included in the quotation, which the customer will need to provide to complete the work, including permissions and approvals;
- 4.1.4.5 a brief estimate of the timetable for installing any assets and carrying out any work at the customer's site; and
- 4.1.4.6 a note of any of the above requirements that cannot be met and an accompanying explanation as to why not.

## **4.2 Record keeping**

- 4.2.1. For a minimum of two years from date of submission or (where a Contract has been entered into) one year after the end of the term of the Contract howsoever arising, Scheme Members must keep a secure record of the proposal and quotation provided to a customer, including all site-specific performance calculations on which they have based predictions of savings or periods of recovery. This record could be kept in printed form, digitally or in any other format.
- 4.2.2 Following receipt of a written request, Scheme Members must supply all records it is required to keep under the Code to the Scheme Administrator (and no later than 10 Working Days from such written request).

## **5 Customer Contracts**

### **5.1 Entering into Contract**

5.1.1 Before the customer enters into the Contract the Scheme Member must, in writing:

- 5.1.1.1 bring the Code to the attention of the customer;
- 5.1.1.2 inform the customer that they are entering into a legally binding Contract; and
- 5.1.1.3 inform the customer that it may owe legal obligations to other parties (apart from the Scheme Member) as a result of the customer entering into the Contract and provide details on what those legal obligations are and to whom they are owed.

### **5.2 Terms of Contract**

5.2.1 All terms of Contract must be communicated in writing to the customer in a clear and concise manner and to consistently use industry recognised terms.

5.2.2 The Contract must state:

- 5.2.2.1 the governing law applicable to it; and
- 5.2.2.2 the courts that have jurisdiction over it.

5.2.3 The terms of Contract must include:

- 5.2.3.1 an annexed quotation that meets the requirements listed in section 4.1.4;
- 5.2.3.2 the term of the Contract and any renewal processes or requirements; and
- 5.2.3.3 a statement on the Scheme Member's risks, obligations, liabilities and guarantees, and the customer's risks, obligations, liabilities and guarantees, including at a minimum:
  - i. liability during the installation, operation, and removal of assets, and who is liable for the assets when the Contract ends;
  - ii. the customer's termination rights, process for termination, liability for assets following termination, associated termination fees or compensation, and both the Scheme Member's and the customer's notice period for termination;

### **5.3 Record keeping**

5.3.1 For a minimum of 2 years from date of submission or (where a Contract has been entered into) 1 year after the end of the term of the Contract howsoever arising, Scheme Members must keep a record of the Contract, including:

- 5.3.1.1 A copy of the proposed Contract, any revisions that were shared with a customer and the final, signed Contract. This record could be kept in printed form, digitally or in any other format; and
  - 5.3.1.2 Evidence that Rule 6.1.1 was met.
- 5.3.2 Scheme Members must supply all relevant records to the Scheme Administrator, as and when requested (and no later than 10 Working Days from such written request), subject to prior customer consent for such disclosure being in place.

## **6. Complaints procedures and audit**

### **6.1 Complaints procedure**

- 6.1.1 Scheme Members must inform customers in writing about their Complaints procedure and either:
  - 6.1.1.1 provide details on where to access a copy; or
  - 6.1.1.2 provide the customer with a copy of the Complaints procedure.
- 6.1.2 Scheme Members shall ensure that as a minimum, the following information is available in the Scheme Member's Complaints procedure:
  - 6.1.2.1 how to contact a Scheme Member with a Complaint and how to raise a Complaint;
  - 6.1.2.2 the information required from the customer to register and process a Complaint;
  - 6.1.2.3 the steps a Scheme Member will take, and the timescale, to resolve a Complaint;
  - 6.1.2.4 the steps a customer can take if they are unable to resolve the Complaint within 40 Working Days with the Scheme Member; and
  - 6.1.2.5 the process the Scheme Member has if the complaint is not able to be resolved within 40 Working Days or the customer does not agree with the action taken to resolve the Complaint.

### **6.2 Resolving a complaint**

- 6.2.1 Scheme Members must co-operate fully with the customer throughout the Complaints procedure.
- 6.2.2 Scheme Members must, within 40 Working Days after the Complaint has been raised, take all reasonable steps to:
  - 6.2.2.1 investigate the Complaint;
  - 6.2.2.2 conclude the investigation; and

- 6.2.2.3 provide the customer with a written summary of the action (if any) that has or will be taken in response to the Complaint.
- 6.2.3 If the customer does not agree with the action taken under 6.2.2 by the Scheme Member to resolve the Complaint, the Scheme Member must provide details, in writing, of the next steps to resolve the Complaint by reference to the provisions set out in the Contract to the extent that those provisions apply to such Complaint.
- 6.2.4 A customer is not required to participate in independent mediation or arbitration unless mutually agreed and may choose to deal with the matter in other ways, including by taking legal action.
- 6.2.5 If the customer and Scheme Member agree to refer the dispute through independent mediation or arbitration, the Scheme Member must co-operate fully with the process by reference to the rules and/or agreement governing it.

### **6.3 Customer representatives**

- 6.3.1 A customer may nominate a representative to deal with their Complaint by notifying the Scheme Member (in writing) of the nominee's name and contact details.
- 6.3.2 Scheme Members shall deal with the representative as if they are the customer. All communications usually addressed to the customer relating to the Complaint will be addressed to the representative directly using the contact details they provide and copied to the customer.

### **6.4 Record keeping**

- 6.4.1 For a minimum of 2 years after the Complaint was raised or (where a Contract has been entered into) 1 year after the end of the term of the Contract howsoever arising, Scheme Members must keep a record with the following information:
  - 6.4.1.1 nature of the Complaint and area of the Scheme Member's organisation the Complaint refers to;
  - 6.4.1.2 industry or business sector the DSR customer belongs to;
  - 6.4.1.3 type of DSR service the DSR customer was providing, if applicable;
  - 6.4.1.4 whether the Complaint was resolved within 40 Working Days and what action was taken;
  - 6.4.1.5 the number of business days taken to resolve the Complaint; and
  - 6.4.1.6 if the Complaint could not be resolved within 40 Working days, the next steps that were taken and the final outcome of the Complaint.

6.4.2 Scheme Members shall supply all records of complaints to the Scheme Administrator at least once per year and as and when requested (and no later than 10 Working Days from such written request).

## **6.5 Audits**

Any Audit evidence required to be provided to the Scheme Administrator pursuant to this Code must be true and accurate in all respects and not materially misleading at the date of its submission.

## Schedule 1 Definitions

“**ADE**” means the Association for Decentralised Energy.

“**Aggregator**” means a company that contracts with individual demand sites to provide a single DSR service. Within the scope of the Code this includes a third-party company assisting a single demand site to provide DSR services as well as companies contracting with multiple demand sites.

“**Appeals 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, as defined in the Bye-Laws.

“**Audit**” means the assessment by an auditor of Scheme Members DSR activities (as may be required by the Scheme Administrator under the 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.

“**Balance**” means ensuring that the electricity system supply matches demand.

“**Balancing Services**” means services procured by the system operator to balance demand and supply and to ensure the security and quality of electricity supply across the transmission system.

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

“**Bye-Laws**” shall mean the latest version of the DSR Code of Conduct Bye-Laws available on the Scheme Website. The Bye-Laws comprise Scheme Bye-Laws and Company Bye-Laws.

“**Business Activities**” shall have the meaning given to it in Part 1.

“**Capacity Market**” shall mean the Capacity Market support scheme for electricity generation designed to ensure the security of electricity supply in the UK, introduced as part of the UK Government's Electricity Market Reform, pursuant to (inter alia) the Energy Act 2013.

“**Change in Law**” means the coming into effect of a new law or a change in law or a fundamental change in the judicial interpretation of law after the date of publication of the version of this Code.

“**Code**” or “**DSR Code of Conduct**” means this code or a later version of it as shall be published on the Scheme Website.

“**Code Violation**” means the infringement of the requirements of this Code or any later version of the Code that is published on the Scheme website by a Scheme Member.

“**Complaint**” means any formal complaint submitted by an Eligible Customer to the Scheme Administrator against a Scheme Member, where such expression of dissatisfaction is related a breach of the Code in any one or more of the Scheme Member’s DSR products or the manner in which it has dealt with the Customer in its provision or prosed provision of DSR services.

“**Compliance Panel**” means a panel set up by the Scheme Administrator from time to time for the purpose of evaluating Eligible Customer Complaints against Scheme

Members and Audits of Scheme Members' DSR related activities, as defined in the Bye-Laws.

**"Contract"** means the contract for the provision of DSR services entered into between an Eligible Customer and a Scheme Member.

**"Contractor"** means a contractor hired by the Scheme Member to deliver a portion of the services defined in the Contract between an Eligible Customer and a Scheme Member.

**"Disclaimer"** means a notice on the Scheme Website limiting liability for any outcomes from the use of the Website and the Scheme materials.

**"Domestic Customers"** shall have the meaning given to it in Condition 1 of the Standard Conditions of Electricity Supply Licence.

**"Domestic Premises"** shall have the meaning given to it in Condition 6 of the Standard Conditions of Electricity Supply Licence.

**"DSR"** means demand side response, where energy users change their electricity consumption patterns in response to a signal or incentive; to match supply with demand when fluctuations occur; and to shift demand, including reducing peak demand.

**"Eligible Customer"** means a DSR customer or potential DSR customer of a Scheme Member with whom sales or marketing activities have taken place since the Scheme Members Joining Date into membership of the Scheme.

**"Energy Supply Contract"** means a contract between the Eligible Customer and their Energy Supplier to provide electricity supply services.

**"FCA"** means the Financial Conduct Authority.

**"Joining Date"** means the date on which the Scheme accepts an application to join the Scheme from a DSR service provider and the DSR provider signs the Membership Agreement and is listed on the Scheme Website as a Scheme Member.

**"Micro Business Customer"** shall have the meaning given to it in standard condition 7A of the Standard Conditions of Electricity Supply Licence.

**"Non-Compliance Determination"** shall have the meaning given to it in rule 1.3.4 and means a determination by the Compliance Panel that considering the evidence put forward, on a balance of probabilities, a Scheme Member has failed to comply with any part of the Code.

**"Non-Domestic"** shall have the meaning given in and is to be interpreted in accordance with standard condition 6 (Classification of premises) of the Standard Conditions of Electricity Supply Licence.

**"Reporting Customer"** shall have the meaning given to it in Rule 1.8.2 and means Eligible Customers reporting a breach of the Code to the Scheme Administrator.

**"Risk Notification"** means a formal notification made by a party other than an Eligible Customer or potential customer to the Scheme Administrator via the Scheme Website of a Scheme Member's DSR activities which may indicate a Code Violation.

**"Scheme"** means the scheme operated and administered by Flex Assure Limited to which the Code and the Bye-Laws apply.

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

**"Scheme Committee"** means a committee established by the Scheme as defined in the Bye-Laws and is to provide independent oversight of the operation of the Scheme.

**"Scheme Company"** means Flex Assure Limited which is an independent company sponsored by the Association for Decentralised Energy, established to operate the Scheme.

**"Scheme Logo"** means a branded logo owned by the Scheme which is provided to Scheme members to indicate active membership of the Scheme, subject to the Bye-Laws and Scheme Membership Agreement.

**"Scheme Member"** shall have the meaning given to it in Rule 1.1.1 and means businesses active in the DSR aggregation sector who have agreed to comply with the Code as a member of the Scheme.

**"Scheme Membership Agreement"** shall have the meaning given to it in Rule 1.1.4 and means an agreement which sets out membership terms of Scheme Members.

**"Scheme Website"** shall mean the website of the Scheme at the following address [www.flexassure.co.uk](http://www.flexassure.co.uk)

**"Standard Conditions of Electricity Supply Licence"** means the Electricity Supply Licences which set out the conditions that all electricity suppliers must adhere to in order to supply energy to domestic and non-domestic consumers.

**"Suspension Period"** shall have the meaning given to it in rule 1.3.4 and means a period of time, as it deems fit, that the Compliance Panel suspends the Scheme Member from the Scheme for breaching the Code.

**"Terms and Conditions"** means the standard provisions for use of the Scheme complaints mechanism as listed on the Scheme Website; and

**"Working Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

## Schedule 2 Eligible Customer Complaint Form

Eligible Customers are reminded to refer to the guidance for submitting this form as available on the Scheme Website.

### SECTION A: INFORMATION ABOUT YOU

#### 1. Firstly, please give us your details:

Company name	
Company representative making this complaint and their title	
Company address Address line 1 Address line 2 Town County Post code	
Phone number	
Email	

#### 2. How would you like us to contact you? (please circle as appropriate)

Email        /        Post        /        Phone

#### 3. Have you used our service before? (this is so we can link our records)

Yes        /        No

#### 4. Which Scheme Member are you complaining about?

Company name	
Company address Address line 1 Address line 2 Town County Post code	

**5. Details of the sales representative adviser or business who originally sold or service you're complaining about and the Rule of the Code that you believe they have violated (if different from the name above):**

Name	
Company address Address line 1 Address line 2 Town County Post code	

**SECTION B: WHAT HAS HAPPENED SO FAR?**

**1. Have you already complained to the Scheme Member?**

Yes / No

**2. If yes, when did you complain to the Scheme Member? (dd/mm/yyyy)**

**3. Has the Scheme Member you're complaining about sent you its final written response to your complaint?**

Yes / No

**4. Has there been any court action relating to your complaint (or is any planned)?** If yes, please enclose copies of relevant paperwork.

Yes / No

**5. What Rule of the Code do you think has been breached (please provide details as to why)?**

Please attach any relevant documents, which are not subject to any confidentiality undertaking and which may be shared with us by law.

## DECLARATION

**Finally, please read and sign this declaration.**

- I would like Flex Assure to look into whether the Scheme Member has breached the Code
- To the best of my knowledge, everything I have told you is correct.
- I understand that you will need to use and keep personal information about me, for example, how to contact me and details about my complaint.
- I understand that this might include collecting information about me from the Scheme Member I've complained about and possibly sharing information with other parties, for example, other businesses that may have been involved in my complaint.
- I acknowledge that neither the Scheme nor its bodies are in a position to give or assist with reconciliation and that the Scheme will only look at whether a breach of the Code has occurred by the Scheme Member.
- I acknowledge that the Scheme is not an alternative dispute resolution service.
- I have read and agree on behalf of my company to the Scheme Terms and Conditions.
- I have read and understood the Disclaimer.
- I am permitted to disclose the documents attached to this form.
- I understand that I can withdraw my consent at any time, but if I do so you will not be able to look at my complaint further.

**Signature:**

**Date:**

**Print name:**

**Company Name:**

**Submitted by email to Flex Assure ([dsrcode@theade.co.uk](mailto:dsrcode@theade.co.uk))**

### Schedule 3 Violation rankings and applicable suspension periods

Please note, the suspension periods set out in the table below are without prejudice to any other sanctions which the Compliance Panel may impose under the Code, Scheme Bye-Laws or Scheme Membership Agreement.

<b>Level of Violation</b>	<b>Description of Violation</b>	<b>Minimum penalty and permissible length of suspension:</b>
Level 1	First confirmed violation	Written warning to Scheme Member from the Scheme Administrator (recorded) and demand for corrective action plan.
Level 2	Second confirmed violation or first flagrant violation	<p>1 Three-month minimum suspension up to a maximum of six months from the Scheme. Suspension will be continuing up until the successful completion of an Audit assessment confirming that the requisite corrective action specified in the Non-Compliance Determination has been taken by the Scheme Member.</p> <p>2 “Membership under review pending corrective action” status posted on Scheme Website during the suspension period.</p> <p>3 Notwithstanding the maximum period of suspension specified above, the length of such period of suspension shall be extend by the duration that the Scheme Member hasn’t met the corrective action specified in the requisite Non-Compliance Determination.</p>

3.1	Level 3	Three confirmed open violations or flagrant violation	Twelve months minimum expulsion from the Scheme.  "Member Expelled" posted on Scheme website.  Site audit to be carried out at Scheme Members expense to confirm compliance prior to re-instalment, as defined in the Scheme Bye-Laws.
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