

Flexibility Services Standard Agreement

EBR Article 18 Consultation Proposed
changes to the Flexibility Services
Standard Agreement

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Dear industry and colleagues,

In accordance with Commission Regulation (EU) 2017/2195 of 23 November 2017 as converted into assimilated EU law and amended (EBR), we – the National Energy System Operator (NESO) – propose to update our terms and conditions related to Balancing by amendments to the contract terms currently in force related to certain of our Balancing Services. These amendments are designed to implement the Flexibility Market Rule concerning the Flexibility Services Standard Agreement which is the subject of consultation by Elexon in its role as Market Facilitator.¹

These amendments comprise a new set of General Terms and Conditions that we shall publish, and updates to our Balancing Services Glossary of General Terms and Rules of Interpretation, and will impact on the prevailing suite of service terms and conditions governing our relevant balancing products.

The consultation will run from 26 June 2026 to 27 July 2026.

An Article 18 mapping assessment has also been included within this consultation package setting out how NESO considers the proposed amendments map across to the terms and conditions related to balancing described by Article 18 of EBR.

Please provide responses via [EBR Article 18 consultation on Flexibility Services Standard Agreement – Fill out form](#). If you have questions about this consultation or how to respond, please email box.futureofbalancingservices@neso.energy with the subject ‘Standard Agreement.’

Yours sincerely,

Edwin Tammas-Williams
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¹ [Assessment Consultation: Standard Agreement for Flexibility Services \(FLX CP001\) - Flexibility Markets](#)

Introduction

Alignment across NESO and DNO services can help flexibility providers move more easily across markets, lowering barriers to entry. Ofgem designated Elexon as the Market Facilitator with a remit to drive such alignment. To fulfil its role, Elexon may establish Flexibility Market Rules (FMR) which we are required to comply with per our ESO licence.

Elexon is now consulting on an FMR to promote alignment in general legal terms and conditions ('contract boilerplate') that underpin flexibility markets. It requires that NESO and DNOs should use the contract clauses and defined terms specified in the FMR. NESO and DNOs may deviate from these provisions, but deviations must be logged to help flexibility providers identify any differences.

These general terms and conditions reflect an updated version of the Energy Networks Association's (ENA's) Standard Agreement,² which we use as part of our existing service terms and conditions. We will still use product specific contract terms (notably our suite of Service Terms and Procurement Rules); the general terms and conditions the subject of the FMR and this consultation will sit alongside and underpin those product specific provisions, in much the same way the ENA's Standard Agreement does now. This consultation provides stakeholders an opportunity to review and comment on our approach to embedding these new baseline terms.

Summary of changes

1. We have established a new NESO document: 'Flexibility Services Standard Agreement – General Terms and Conditions'

This is a new document containing general terms and conditions, designed to compliantly reflect the contract boilerplate contained in Elexon's standard agreement included in its Flexibility Market Rule. We have included some deviations from Elexon's version, to ensure that it is usable for NESO's services.

2. We have updated our existing 'Balancing Services Glossary of General Terms and Rules of Interpretation'

We propose to amend the definition of Flexibility Services Standard Agreement in our General Glossary to refer to the new NESO Flexibility Services Standard Agreement instead of the ENA's Standard Agreement.

The Flexibility Market Rule includes defined terms and some rules of interpretation, alongside the contract boilerplate. Rather than migrate those definitions and rules into our new NESO Flexibility Services Standard Agreement, we have instead made

² <https://www.energynetworks.org/publications/standard-agreement-for-flexibility-services-ver-3.0>

appropriate amendments to the definitions and rules of interpretation contained in our General Glossary, again with some deviations to ensure that it is usable for NESO’s services.

Together, we consider these changes will bring us substantially into alignment with Elexon’s Flexibility Market Rule across our service terms and conditions.

Consultation process and Elexon’s Flexibility Market Rule

In its Flexibility Market Rule consultation, Elexon is seeking feedback on the changes it has made to the ENA’s Standard Agreement. We invite respondents who wish to comment on these changes to do so via Elexon’s consultation.

To avoid duplication, we focus in this consultation on how we have incorporated the content of this Flexibility Market Rule (contract boilerplate, definitions and rules of interpretation) into our service terms and conditions. That means we are specifically seeking feedback on:

- (i) whether we have properly and compliantly embedded the content of the Flexibility Market Rule into our service terms and conditions, and
- (ii) the deviations from Elexon’s standard agreement we propose.

We invite responses until 27 July 2026.

While our consultations have distinct scopes, we intend to share all responses with Elexon, unless respondents set out their response is confidential. By considering responses to its own and our consultation in the round, we think Elexon will be better placed to finalise its Flexibility Market Rule.

Accounting for both responses to this consultation and any changes Elexon makes to the content of its Flexibility Market Rule, we will finalise our proposed amendments after our own consultation ends and submit to Ofgem. Per the EBR, insofar as our amendments concern our terms and conditions related to Balancing described by Article 18 of EBR, Ofgem will have two months to decide whether to approve. We intend to update our service terms and conditions following and subject to Ofgem approval. We will set out specific dates in our submission.

Proposals and consultation questions

Alongside this consultation letter, we are publishing the ‘Flexibility Services Standard Agreement General Terms and Conditions’ (clean and redline version tracked against the standard agreement in the Flexibility Market Rule) and the Balancing Services Glossary of General Terms and Rules of Interpretation (clean and redline version tracked against the current published version).

Structure of the documents

At present, various of our service terms and conditions make reference to individual clauses contained in the ENA Standard Agreement (v#3), and that agreement is defined in our Balancing Services Glossary of General Terms and Rules of Interpretation (General Glossary) as the ‘Flexibility Services Standard Agreement’.

Elexon has established a Flexibility Market Rule that requires NESO and DNOs to use a specific set of general terms and conditions, an accompanying glossary, and rules of interpretation. The content reflects the ENA’s Standard Agreement with some updates following Elexon’s engagement with its workgroup.

We propose to:

Establish a NESO document titled ‘Flexibility Services Standard Agreement – General Terms and Conditions’ that reflects the general terms and conditions in Elexon’s standard agreement but includes some deviations from Elexon’s version, to ensure that it is usable for NESO’s services.

Update the existing NESO document titled ‘Balancing Services Glossary of General Terms and Rules of Interpretation’ to:

- include definitions from Elexon’s standard agreement and its rules of interpretation. This avoids definitions and interpretation rules being split across or duplicated in multiple documents. Again, we will include some deviations from Elexon’s version, to ensure that it is usable for NESO’s services
- change the definition of Flexibility Services Standard Agreement so as to refer to the new NESO Flexibility Services Standard Agreement document instead of the ENA’s Standard Agreement.

These changes mean that where our existing product service terms and conditions refer to the Flexibility Services Standard Agreement, it is the NESO version that shall apply. Because the overall structure and clause numbering has not changed as a result of migration of the general terms and conditions from the ENA’s Standard Agreement

across to the new Flexibility Market Rule, this should avoid the necessity for updating the clause referencing in our various service terms and conditions.

Deviations from Elexon’s proposal

Elexon’s Flexibility Market Rule and associated governance arrangements allow NESO and DNOs to deviate from the text in the standard agreement, but require that they log these deviations.

We have made several deviations to make the provisions relevant, workable and suitable for NESO. We welcome Elexon considering whether it should bring its baseline terms into alignment with our proposals, though otherwise we propose to log our deviations in the deviation log.

These deviations are set out in full or otherwise referred to in the redline version of the documents accompanying this consultation:

- In the new NESO document ‘Flexibility Services Standard Agreement General Terms and Conditions’ deviations are indicated by track changes.
- Since our General Glossary is an extant and live NESO document, we use track changes to show changes from the live terms. These changes include the insertion of new definitions provided by the FMR (adapted as appropriate to make relevant, workable and suitable for NESO) as well as amendments to existing definitions so they align with the equivalent in the FMR where we are content to make that alignment without deviation. In some cases, we have flagged alternative definitions (our existing defined term and a different FMR definition) and will consider if and how to align following response to our consultation.

We summarise the material deviations below:

Exclusion of the recitals. These are not relevant or applicable to NESO’s role and service terms which do not reflect bilateral agreements signed by NESO and the provider, but are general terms which providers accede to as part of prequalification processes.

Exclusion of para A2.6 and A2.7 around precedence of Flexibility Market Rules. We consider these inappropriate and mix up Flexibility Market Rules with contract terms.

Exclusion in full of service failure (para 8). Provisions relating to service failure are already dealt with by individual service terms with each provider.

Exclusion of limits of audits provided by para 4.3.3. Audits should be risk based and proportionate which may be more often than provided in Elexon’s text.

Exclusion of para 7.4 around termination. This provides that parties can terminate on 90 days’ notice, which would not work for contracts with a term shorter than 90 days.

Regarding Force Majeure provided by para 9. We believe it is not practical to require the parties to have a meeting following each force majeure declaration.

The termination right for either party after 2 months of a continuous force majeure event is also inappropriate as whether any such right is appropriate will be heavily influenced by the nature of the contract and circumstances, and in particular the term of the contract.

Regarding arbitration and expert determination in para 17. We propose that the London Court of International Arbitration rules should apply which is consistent with our service terms and conditions and industry codes. We also consider it is inappropriate to allow a party to unilaterally refer a dispute to expert determination – this should only be where a provision in the Service Terms envisages expert determination.

Indemnity caps and paras 15.2 and 15.7. In relation to the specific proposal to cap liability under the compliance indemnities, our preference will be for such indemnities to remain uncapped in light of the severity of the relevant underlying obligations and the potential exposure to regulatory penalties and reputational damage. To the extent that a capped framework is proposed, we would need to consider this on the basis of a separate, higher liability cap from that which is currently set out in the Standard Agreement.

Liability, Indemnity and Insurance (paragraph 10)

Separately to deviations, Elexon’s FMR requires NESO to adopt one of two options with respect to liability caps as provided by paragraph 10.1:

- Option 1 – Set cap: a fixed cap based on whether the relevant DER is connected to the Distribution System or Transmission System; or
- Option 2 – Capacity-based cap: a cap determined by reference to the Relevant Capacity of the Flexibility Services from which the relevant claim arises.

We propose to use option 1 which reflects the terms in the ENA’s Standard Agreement to which we currently make reference.

Questions

1. Do you agree that our proposals to establish a new NESO Flexibility Services Standard Agreement Document and amend our General Glossary brings into effect Elexon’s Flexibility Market Rule? If not, can you please explain?

2. Do you agree with our proposals for material deviations from Elexon’s boilerplate general terms and conditions? If there are any you disagree with, could you please specify to which deviations this applies and explain?
3. Where NESO’s existing definition in our General Glossary differs from the equivalent definition in Elexon’s Flexibility Market Rule, which definition do you prefer and please explain why you have that preference?
4. On liability caps, do you agree with our proposal to apply option 1? If you disagree, could you please explain?
5. Do you agree with our proposal that compliance indemnities (para 15.2 and 15.7) should remain uncapped? If you disagree, could you please explain your answer?
6. Do you have any additional comments or observations regarding the proposed changes?

Annex 1 – EBR Article 18 mapping for the NESO Flexibility Services Standard Agreement

Please note: The table below cross references the terms and conditions related to balancing described in Article 18 of Commission Regulation (EU) 2017/2195 of 23 November 2017 (as converted into assimilated EU law, and as amended by the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019/532) and subsequent legislation (“**EBR Article 18**”) against the corresponding parts of the relevant contractual provisions. This cross referencing includes the terms and conditions designed to compliantly reflect the contract boilerplate contained in Elexon’s standard agreement included in its Flexibility Market Rule.

Nothing in this table shall prejudice or otherwise affect the operation of the GB codes and relevant contractual provisions, and furthermore in the event of any conflict or inconsistency between this table and EBR Article 18 the latter shall prevail.

Table 1 – Mandatory Elements

Below is the mapping of EBR Article 18 to relevant clauses of the proposed NESO Flexibility Services Standard Agreement General Terms and Conditions. Where an element of Article 18 is not included, that is because there is no clause in those General Terms and Conditions which map to it..

Article	Text	Code or Document	Section
18.5.b	the rules, requirements and timescales for the procurement and transfer of balancing capacity pursuant to Articles 32 and 34;	Flexibility Services Standard Agreement General Terms and Conditions	9 – Transfers, sub-contracting and Change in Ownership

Article	Text	Code or Document	Section
18.5.e	the rules and conditions for the assignment of each balancing energy bid from a balancing service provider to one or more balance responsible parties pursuant to paragraph 4 (d);	Flexibility Services Standard Agreement General Terms and Conditions	9 – Transfers, sub-contracting and Change in Ownership
18.5.f	the requirements on data and information to be delivered to the connecting TSO and, where relevant, to the reserve connecting DSO to evaluate the provisions of balancing services pursuant to Article 154(1), Article 154(8), Article 158(1)(e), Article 158(4)(b), Article 161(1)(f) and Article 161(4)(b) of Regulation (EU) 2017/1485;	Flexibility Services Standard Agreement General Terms and Conditions	4 – Records and Audits
18.5.i	the rules for the settlement of balancing service providers defined pursuant to Chapters 2 and 5 of Title V;	Flexibility Services Standard Agreement General Terms and Conditions	5 – Charges and Payments

Article	Text	Code or Document	Section
18.5.j	a maximum period for the finalisation of the settlement of balancing energy with a balancing service provider in accordance with Article 45, for any given imbalance settlement period;	Flexibility Services Standard Agreement General Terms and Conditions	5 – Charges and Payments
18.5.k	the consequences in case of non-compliance with the terms and conditions applicable to balancing service providers.	Flexibility Services Standard Agreement General Terms and Conditions	6 – Termination