

Demand Flexibility Service Service Terms

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Consultation Document

Contents

1.	Introduction	4
2.	Changes to these DFS Service Terms	4
3.	Defined Terms	4
4.	Interpretation	4
5.	Service Delivery	4
6.	Performance Monitoring	5
7.	Utilisation Payments	6
8.	Payment Procedure	6
9.	Grid Code and Distribution Code	78
10.	ABSVD	78
11.	Third Party Claims	89
12.	Provision of Other Services	89
13.	Communications	910
14.	Termination	910
15.	Force Majeure	10
16.	Liability, Indemnity and Insurance	4011
17.	Records and Audits	4011
18.	Assignment	4011
19.	Confidentiality	4011
20.	Intellectual Property Rights	4011
21.	Data Protection	4011
22.	Modern Slavery, Anti-bribery and Living Wage	4011
23.	Notices	4011
24.	Dispute Resolution	11
25.	Governing Law and Jurisdiction	4412
26.	Severance	4412
27.	Third Party Rights	4412
28.	No Agency or Partnership	4412
29.	Waiver	4412

30.	Entire Agreement	<u>4112</u>
31.	EMR	12
SCHEDULE 1 - UTILISATION PAYMENTS.....		<u>4314</u>
SCHEDULE 2 - PAYMENT PROVISIONS		<u>4415</u>

Consultation Draft

1. Introduction

1.1 These **DFS Service Terms** describe the requirements for provision of the **Demand Flexibility Service** and the basis upon which **NESO** shall make payments in respect thereof, and shall apply to a **Registered DFS Participant** and applicable **DFS Unit** where, in accordance with the **DFS Procurement Rules**, the **Registered DFS Participant's DFS BidSubmission** is accepted by **NESO**.

1.2 In these **DFS Service Terms**, each **Registered DFS Participant** referred to in paragraph 1.1 is referred to as a "**Service Provider**".

1.3 The submission by **NESO** of a **DFS Acceptance** shall create a legally binding obligation on the **Service Provider** to provide from the relevant **DFS Unit**, and for **NESO** to pay for, the applicable **Demand Reduction Service Volume** upon the terms of these **DFS Service Terms**. For the avoidance of doubt, neither a **Service Provider** nor **NESO** shall be under any obligation or commitment to provide or pay for the **Demand Flexibility Service** except pursuant to these **DFS Service Terms**.

1.4 These **DFS Service Terms** should be read alongside the **DFS Procurement Documentation** of which they form a part.

2. Changes to these DFS Service Terms

2.1 Subject always to paragraph 2.2, **NESO** may update these **DFS Service Terms** from time to time by publication of an updated version on its website, and each such updated version shall be effective from the date shown on its front cover provided always that any updated version shall not apply to any **DFS BidsSubmission** which were submitted prior to the date of publication except with the consent in writing of the relevant **Service Provider**.

2.2 To the extent required by the **Electricity Balancing Regulation** (and by reference to those provisions of the **DFS Procurement Documentation** constituting terms and conditions approved by the **Authority** as the terms and conditions related to balancing pursuant to Article 18 of the **Electricity Balancing Regulation**), any variation to these **DFS Service Terms** will be proposed and implemented in accordance with the applicable requirements in the **Electricity Balancing Regulation**.

3. Defined Terms

3.1 Unless the context otherwise requires, any capitalised term used in these **DFS Service Terms** shall have the meaning given to it (if any) in the prevailing **DFS Procurement Rules** or **Balancing Services Glossary of General Terms and Rules of Interpretation** (as the case may be).

4. Interpretation

4.1 The rules of interpretation set out in the **Balancing Services Glossary of General Terms and Rules of Interpretation** shall apply to these **DFS Service Terms**.

5. Service Delivery

5.1 Throughout each **Contracted Settlement Period**, the **Service Provider** shall procure the delivery of the **Demand Flexibility Service** in accordance with these **DFS Service Terms**.

~~5.2~~ Upon receipt of a **DFS Acceptance**, the **Service Provider** shall invoke the **DFS Initiation Measures** in a timely manner with the objective of ensuring that, throughout each **Contracted Settlement Period**, ~~the aggregate Demand and for each~~ of the **Unit Meter Points** comprising the **DFS Unit**:-

i. in the case of **Downwards Flexibility**:

1. where the **DFS Operational Baseline** is an aggregate net **Demand**, the aggregate net **Demand** remains lower than the applicable **DFS Operational Baseline** (ie reduced **Demand**) by at least the **Demand Reduction Volume-Service Volume** which for these purposes may include passing through zero MW to result in a net aggregate **Output**;
 2. where the **DFS Operational Baseline** is zero MW or an aggregate net **Output**, the aggregate net **Output** remains higher than the applicable **DFS Operational Baseline** by at least the **Service Volume**; and
- ii. in the case of **Upwards Flexibility**:-
1. where the **DFS Operational Baseline** is zero MW or an aggregate net **Demand**, the aggregate net **Demand** remains higher than the applicable **DFS Operational Baseline** (ie increased **Demand**) by at least the **Service Volume**;
 2. where the **DFS Operational Baseline** is an aggregate net **Output**, the aggregate net **Output** remains lower than the applicable **DFS Operational Baseline** (ie reduced **Output**) by at least the **Service Volume** which for these purposes may include passing through zero MW to result in a net aggregate **Demand**.

5-25.3 Without limiting paragraph 5.2, when invoking the **DFS Initiation Measures** with respect to a **DFS Unit**, the **Service Provider** shall not (and shall procure that none of ~~its~~ **Affiliates**) do or omit to do any act or thing which has the effect of displacing ~~consumption or demand~~ **Generation or Demand** from the **Premises Metered** by any **Unit Meter Point** allocated to it to any other **Premises**, and where the **Service Provider** is not the owner and/or occupier of such **Premises** it shall further procure that such owner and/or occupier does not do or omit to do any such act or thing.

5-35.4 With respect to each **DFS Unit**, the **Service Provider** shall procure the delivery to **NESO** of **Performance Data** and **Settlement Data** for each relevant **Unit Meter Point** relating to **Contracted Settlement Periods** so as to derive the **DFS Delivered Volumes** for monitoring and settlement purposes pursuant to paragraphs 6 and 8.

6. Performance Monitoring

5-46.1 To enable **NESO** to monitor the delivery of the **Demand Flexibility Service**, the **Service Provider** shall procure and retain for a period of not less than fifteen (15) months, and in a format specified by **NESO**, the data specified or referred to in paragraphs 6.2 to 6.5 inclusive ("**Performance Data**"),

6.2 Unless otherwise specified by **NESO** in writing from time to time, the **Performance Data** shall comprise, for each **DFS Unit** and for each **Contracted Settlement Period**, the individual **Half-Hourly Metered Data** together with all other data used by the **Service Provider** for the purpose of calculating the **DFS Operational Baseline** pursuant to Schedule 3 of the **DFS Procurement Rules** for each constituent **Unit Meter Point** allocated to that **DFS Unit** which is **Participating** during each **Contracted Settlement Period**.

5-56.3 The **Performance Data** shall also identify, for each **Unit Meter Point** referred to in paragraph 6.2, its prevailing status during the relevant **DFS Service Window** as either **Manually Initiated** or **Directly Instructable**, and:

- i. where **Directly Instructable**, the time of issue of the communication from the **Service Provider** to that **Unit Meter Point** to initiate delivery of **DFS**; or
- ii. where **Manually Initiated**, the time at which the owner and/or occupier of the **Premises** associated with that **Unit Meter Point** confirmed its intention to deliver **DFS**.

5-66.4 The **Performance Data** shall also identify, for each **Unit Meter Point** referred to in paragraph 6.2, its prevailing designation in the relevant **DFS Service Window** as either **Auto Opt-in or Manual Opt-In or Opt-Out**, and:

iii-i. where ~~Opt-In~~**Auto Opt-in** and **Participating**; or

iv-ii. where ~~Opt-Out~~**Manual Opt-In** and **Non-Participating**,

the time of notification from the owner and/or occupier of the relevant **Premises**.

6.5 The **Performance Data** shall also include, for each **Unit Meter Point** which is a **Sub-Meter** and **Participating** with respect to a **Contracted Settlement Period**, the individual **Half-Hourly Metered Data** for the associated **Boundary Meter** during that **Contracted Settlement Period** together with all other data used by the **Service Provider** for the purpose of calculating the **DFS Operational Baseline** pursuant to Schedule 3 of the **DFS Procurement Rules** (including the occurrence of an **Event Day**).

6.6 The **Service Provider** shall provide to **NESO** on request upon not less than ten (10) **Business Days**’ prior notice in writing, to the **DFS Assessment Platform** as soon as reasonably practicable, copies of all or any **Performance Data**.

5-76.7 For the purposes of paragraph 19 (*Confidentiality*) the **Service Provider** consents to **NESO** publishing (in a non-anonymised but aggregated format) all **Performance Data** on the **NESO Data Portal** and/or **NESO Data Analytics Platform**, or **Industry Information Website**, and/or in the **DFS Utilisation Reports**, for the purpose of illustrating the extent of delivery of the **Demand Flexibility Service**. For the avoidance of doubt, **NESO** does not intend to publish **Performance Data** at **Unit Meter Point** level.

6.8 In the case of any:-

i. failure to provide **Performance Data** in accordance with this paragraph 6; or

ii. deemed unavailability of a **DFS Unit** pursuant to paragraph 12-; or

iii. persistent poor delivery of **Service Volumes** from a **DFS Unit** (which for these purposes shall be the calculation of a performance factor K which is less than 50 percent either for five (5) or more consecutive **DFS Acceptances** or for ten (10) or more **DFS Acceptances** taking place in any three (3) month period),

then **NESO** may in its discretion:-

(a) **Deregister** the relevant **DFS Unit(s)** or any of them; and/or

(b) **Deregister** the **Service Provider** as a **Registered DFS Participant** or **Registered Service Provider**.

7. Utilisation Payments

5-87.1 **NESO** shall, in accordance with paragraph 8, make payments to the **Service Provider** (“**Utilisation Payments**”) calculated in accordance with the formulae in ~~Schedule 4~~SCHEDULE 1 ~~Schedule 4~~ and by reference to the **DFS Settlement Volumes**.

8. Payment Procedure

5-98.1 In respect of each calendar month during which the **Service Provider** has received a **DFS Acceptance**, and subject to timely receipt from the **Service Provider** of the **Settlement Data** referred to in paragraph 8.2, **NESO** shall send to the **Service Provider** a **Monthly Statement** setting out, in respect of each **DFS Unit**, its calculation for the preceding calendar month of:-

- i. the **Utilisation Payments** payable to the **Service Provider** pursuant to paragraph 7;
- ii. any adjustments made to previous **Monthly Statements**; and
- iii. the resulting net amount due to (or from, as the case may be) the **Service Provider**, and in respect thereof the provisions of SCHEDULE 2 Schedule 2 shall apply.

5.408.2 For the purposes of paragraph 8.1, and subject always to paragraph 8.3, for each **DFS Acceptance** received during any calendar week ending midnight Sunday, no later than 10:00 hours on the second Monday after expiry of that calendar week, the **Service Provider** shall send to **NESO**, via the **DFS Assessment Platform**, the following details ("**Settlement Data**"):

- i. name of **Service Provider**;
- ii. Event ID;
- ~~iii.~~ **DFS Unit ID**;
- ~~iii.~~iv. the **Utilisation Price** (£/MWh);
- ~~iv.~~v. start and end time of the **Contracted Settlement Period**;
- vi. confirmation of the applicable baselining methodology(ies) as shown in the Unit Meter Point Schedule;
- ~~v.~~vii. for that **Contracted Settlement Period**:-
 1. the **DFS Operational Baseline** (per **Settlement Period**);
 2. the **DFS Delivered Volume** (per **Settlement Period**);
 3. the aggregated **Half-Hourly Metered Data** for all constituent **Unit Meter Points** (per **Settlement Period**);

and in the case of 1, 2 and 3 above, **NESO** reserve the right to request such ~~demand~~ Demand and Generation volumes for each constituent **Unit Meter Point**.

5.448.3 For the purposes of paragraphs 8.1 and 8.2:-

- i. **Metered Data** in respect of a **Unit Meter Point** shall be excluded from **Settlement Data** if the **Unit Meter Point** is **Non-Participating** in the relevant **Contracted Settlement Period**; ~~and~~
- ii. where for any **Contracted Settlement Period** any **Metered Data** is unavailable in respect of any **Unit Meter Point** but is available for each of the adjoining **Settlement Periods**, the **Service Provider** may at its discretion interpolate from such available **Metered Data** the missing **Metered Data** for the **Contracted Settlement Period**, but subject thereto where any **Metered Data** is unavailable in respect of a **Unit Meter Point** that **Unit Meter Point** shall be excluded from the **Settlement Data**; and
- iii. where the Self-Nominated Baselining Methodology applies for a Unit Meter Point, the DFS Operational Baseline and DFS Delivered Volume insofar as related to that Unit Meter Point shall be derived from the Consolidated MPAN Forecast last submitted to NESO in accordance with Schedule 3 of the DFS Procurement Rules, and where no such Consolidated MPAN Forecast has been submitted by the time of the relevant Service Requirement (or where any submitted

Consolidated MPAN Forecast does not include an individual forecast for one or more Unit Meter Point(s) then NESO reserves the right to remove energy volumes associated with the relevant Unit Meter Point(s) from the calculation of Utilisation Payments.

5.428.4 In addition to submitting **Settlement Data** pursuant to this paragraph 8, the **Service Provider** shall procure the submission of energy volumes associated with each relevant **Unit Meter Point** as required under and for the purposes of the **ABSVD Methodology Statement** and paragraph 10.

8.5 In the event of a discrepancy with the **Settlement Data**, **NESO** reserves the right to remove energy volumes associated with the relevant **Unit Meter Point(s)** from its calculation of the **Utilisation Payments**.

8.6 For the avoidance of doubt, a discrepancy in the **Settlement Data** pursuant to paragraph 8.5 shall include any instance where the **DFS Operational Baseline** submitted by the **Registered DFS Participant** following a **DFS Acceptance** with respect to the relevant **DFS Unit** does not align with the forecasted **Output** shown in the **Consolidated MPAN Forecast** last submitted at the time of issue of the **Service Requirement**.

8.58.7 All **Settlement Data** shall be submitted to **NESO** in such format as may from time to time be specified by **NESO**.

9. Grid Code and Distribution Code

9.1 The provision by the **Service Provider** of the **Demand Flexibility Service** shall not relieve it of any of its obligations or affect such obligations (where applicable) set out in the **Grid Code** (including its obligations (if any) to provide **Demand** control when instructed by **NESO** pursuant to **Grid Code** OC6) or in the **Distribution Code** of any **Public Distribution System Operator**.

5.139.2 Without limiting paragraph 9.1, each **Service Provider** that is or becomes a **DRSC Liable User** shall, for the duration of each **Contracted Settlement Period**, comply in all respects with the **Demand Response Services Code** as it refers to **Demand Response Active Power Control**.

10. ABSVD

5.4410.1 For the purposes of (and in accordance with) the **ABSVD Methodology Statement**, subject always to paragraph 10.2, the **Service Provider** hereby consents (where applicable for and on behalf of the **Lead Party** of all relevant **Unit Meter Points**) to all and any energy volumes associated with delivery of the **Demand Flexibility Service** from **Unit Meter Points** (whether **Boundary Meters** or **Sub-Meters**) which are **Half Hourly Settled**, and also from **Sub-Meters** which are not **Half-Hourly Settled** where the associated **Boundary Meter** is **Half-Hourly Settled**, being included within the **Applicable Balancing Services Volume Data**.

5.4510.2 Paragraph 10.1 shall not apply with respect to **Boundary Meters** and any **Sub-meters** associated **Boundary Meter** which are 'Domestic' where the supplier of electricity to the **Premises Metered** by that **Boundary Meter** is not authorised under contractual arrangements with the owner and/or occupier of such **Premises** to participate in **DFS** with respect to such **Boundary Meter**.

5.4610.3 Where pursuant to paragraph 10.1 the **Service Provider** has consented to the inclusion within the **Applicable Balancing Services Volume Data** of energy volumes associated with the delivery of **DFS** from a **Unit Meter Point**, it shall procure the delivery to **NESO** of all relevant **Metered Data** and other information as may be required for such purpose, which where applicable shall be in accordance with the relevant **BSC Procedure**.

5.4710.4 For any **Unit Meter Point** which is a **Sub-Meter**, the **Metered Data** and other information required to be delivered to **NESO** pursuant to paragraph 10.3 shall be accompanied by the **MPAN** for the associated **Boundary Meter**.

11. Third Party Claims

11.1 The **Service Provider** undertakes to **NESO** that the availability and delivery of the **Demand Flexibility Service** from any **DFS Unit** pursuant to and in accordance with these **DFS Service Terms** will not at any time cause the **Service Provider** to be in breach of or to otherwise be non-compliant with any **Connection Agreement** and/or any agreement for the supply of electricity or related services to or from any constituent **Unit Meter Point** or any **Plant** and **Apparatus** associated with it.

5.4811.2 Notwithstanding paragraph 11.1, in the event that the **Service Provider** delivers the **Demand Flexibility Service** in accordance with these **DFS Service Terms** in consequence of which **NESO** suffers or incurs any loss in respect of a claim brought by any third party related to any actual or alleged breach or non-compliance by the **Service Provider** as described in paragraph 11.1, then the **Service Provider** shall indemnify **NESO** against all and any losses, liabilities, claims, expenses and demands suffered or incurred by **NESO** in connection therewith. Such indemnity shall include any legal costs and expenses reasonably incurred in the contesting of such claims including the court costs and reasonable attorney's fees and other professional advisors' fees. The **Parties** agree and accept that, for the purposes of paragraph 16 all such legal costs and expenses expressed to be the subject of such indemnity shall be treated as direct losses.

5.4911.3 In the event of any such claim referred to in paragraph 11.2 being made against **NESO**, **NESO** shall as soon as reasonably practicable give notice of the claim together with all relevant supporting documentation to the **Service Provider**. The **Service Provider** shall be entitled, upon written notice to **NESO** and subject to **NESO** receiving from the **Service Provider** such reasonable undertakings as **NESO** shall reasonably require to protect **NESO** against damage to its name and reputation, to assume at its own expense the sole conduct of all proceedings relating to such claim including the right to contest such claim in the name of **NESO**. **NESO** shall supply the **Service Provider** with all information, assistance and particulars reasonably required by the **Service Provider** in connection therewith. **NESO** shall not accept, settle, pay or compromise any such claim without the prior written approval of the **Service Provider** (not to be unreasonably withheld or delayed). The **Service Provider** shall reimburse to **NESO** all of its reasonable expenses incurred in connection with the provision of any such information, assistance or particulars in the contesting of any such claim.

12. Provision of Other Services

5.2012.1 The **Service Provider** undertakes to **NESO** that the availability and delivery of the **Demand Flexibility Service** from any **DFS Unit** pursuant to and in accordance with these **DFS Service Terms** will not at any time be impaired or otherwise prejudiced by the **Service Provider's** performance of any agreement with a third party (including another **Service Provider**) relating to any constituent **Unit Meter Point** or any associated **Plant** and **Apparatus**, including the making available and/or delivery of services to that third party by the **Service Provider** (whether by way of increases or reductions in **Generation** or **Demand** or stipulated running profiles, participation in any other services (including where part of a trial service) or otherwise, and whether to assist in the management, operation or protection of a **User System**). For the purposes of this paragraph 12.1, **NESO** agrees and acknowledges that (1) the **Demand Flexibility Service** may be provided from a **Unit Meter Point** simultaneously with delivery from that **Unit Meter Point** of an **Eligible DNO Flexibility Service**, and furthermore that a(2) a **Unit Meter Point** may deliver the **Demand Flexibility Service** whilst at the relevant time comprising (wholly or in part) a **CMU** which is the subject of a **Capacity Agreement** ~~but only for so long as **CMUs** are included, in each case unless otherwise stated (or to the extent and upon such conditions as **NESO** may stipulate)~~ in the **DFS Stacking List**.

5.2412.2 Notwithstanding paragraph 12.1, and without prejudice to paragraph 12.6, in the event that the **Service Provider** is unable to provide the **Demand Flexibility Service** (to any extent) in all or any part of any **Contracted Settlement Period** for any reason described

in paragraph 12.1, then the **Service Provider** shall promptly give a full explanation to **NESO**.

5.2212.3 Subject always to paragraph 12.4, the **Service Provider** hereby agrees to reimburse to **NESO** all and any additional costs and expenses incurred by it as a result of such inability including **NESO's** additional costs of alternative or replacement service provision.

5.2312.4 The amount or amounts for which the **Service Provider** may be liable to reimburse **NESO** pursuant to paragraph 12.3 in respect of any single instance of delivery of the **Demand Flexibility Service** shall not exceed in aggregate two hundred and fifty thousand pounds sterling (£250,000).

5.2412.5 Where, in relation to any **DFS Unit** and during any one or more **Settlement Periods** in a **Contracted Settlement Period**, a **Service Provider** is required under the terms of any agreement with **NESO** to provide from any constituent **Unit Meter Point** any other **Balancing Service** (except with respect to **Reactive Power**) the **Parties** agree and acknowledge that to the extent that such service provision is inconsistent or in conflict with the delivery of the **Demand Flexibility Service** (as determined by **NESO** acting reasonably) then the **Demand Flexibility Service** cannot be provided simultaneously with such other **Balancing Service**. Accordingly, unless pursuant to the terms for provision of and payment for such other **Balancing Services** the relevant constituent **Unit Meter Point** is deemed unavailable to provide the **Demand Flexibility Service** or except as may otherwise be specified by **NESO**, the relevant constituent **Unit Meter Point** shall be deemed unavailable to provide such other **Balancing Service**, and availability of the constituent **Unit Meter Point** to provide the **Demand Flexibility Service** pursuant to these **DFS Service Terms** shall prevail. For the purposes of this paragraph 12.5, **NESO** agrees and acknowledges that the **Demand Flexibility Service** may be provided from a **Unit Meter Point** simultaneously with delivery from that **Unit Meter Point** of a new **Balancing Service** or other service pursuant to a trial undertaken by **NESO** insofar as permitted by paragraph 4.7.8 of the **DFS Procurement Rules** unless otherwise stated (or to the extent and upon such conditions as **NESO** may stipulate) in the **DFS Stacking List**.

5.2512.6 Where, during any one or more **Settlement Periods** in a **Contracted Settlement Period**, a **Service Provider** or third party is making available and/or delivering services from a **Unit Meter Point** to a third party as more particularly described in paragraph 12.1, then that **DFS Unit** shall be deemed to be **Non-Participating** for the purposes of these **DFS Service Terms**.

13. Communications

5.2613.1 Any communications required by these **DFS Service Terms** to be given in writing shall unless otherwise provided in this paragraph 13 be made and deemed to have been received in accordance with paragraph 23 (*Notices*) save as may be otherwise agreed by the **Parties**.

13.2 The **Parties** consent to the recording of all telephone conversations between them relating in whole or in part to these **DFS Service Terms**, and each **Party** agrees to notify its employees of that consent and obtain their consent to that recording if required by **Law**.

14. Termination

14.1 Upon expiry of each **Contracted Settlement Period**, paragraphs 7.4 to 7.6 inclusive of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein but on the basis that all references therein to termination or expiry shall be construed as referring to that **Contracted Settlement Period**.

15. Force Majeure
- 15.1 Save for paragraphs 9.2.2 and 9.4 which shall not apply, paragraph 9 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.
16. Liability, Indemnity and Insurance
- 16.1 Paragraph 10 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.
17. Records and Audits
- 17.1 Paragraph 4 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.
18. Assignment
- 18.1 Paragraph 11 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.
19. Confidentiality
- 19.1 The provisions of paragraph 12 of the **Flexibility Services Standard Agreement** shall apply to all and any information provided by **NESO** or any **Registered DFS Participant** to the other (whether orally or in writing) pursuant to or in connection with these **DFS Service Terms** as if set out in full herein.
20. Intellectual Property Rights
- 20.1 The provisions of paragraph 13 of the **Flexibility Services Standard Agreement** shall apply to all **Intellectual Property Rights** owned by or licensed to either **Party** as if set out in full herein.
21. Data Protection
- 21.1 The provisions of paragraph 14 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.
22. Modern Slavery, Anti-bribery and Living Wage
- 22.1 The provisions of paragraph 15 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein, and without limitation as at the date of submission of each **DFS Acceptance** the **Service Provider** warrants, represents and undertakes to **NESO** in the manner set out in paragraph 15.1 thereof and indemnifies **NESO** as provided in paragraphs 15.2 and 15.7 thereof.
- 5.2722.2 Any breach of this paragraph 22 by the **Service Provider** shall be deemed a material breach of these **DFS Service Terms** for the purposes of paragraph 5.2.4 of the **DFS Procurement Rules**.
23. Notices
- 23.1 Save to the extent the manner of communication between the **Parties** is otherwise stipulated in these **DFS Service Terms**, paragraph 16 of the **Flexibility Services Standard Agreement** shall apply to any notice required to be submitted under these **DFS Service Terms** by either **NESO** or the **Service Provider** to the other as if set out in full herein.
- 5.2823.2 For the purposes of paragraph 23.1, the relevant contact details and addresses of each **Party** shall be those notified from time to time by that **Party** to the other pursuant to the **Registration and Pre-Qualification Procedure**.

24. Dispute Resolution

24.1 The provisions of paragraph 17 of the **Flexibility Services Standard Agreement** shall apply in relation to any dispute or difference of whatever nature however arising under, out of, or in connection with these **DFS Service Terms** as if set out in full herein, save that:-

- i. no **Party** shall have any right to refer any dispute to an **Expert** for determination except where the dispute is stated in these **DFS Service Terms** to be referable to an **Expert** for determination or otherwise agreed in writing by the **Parties** to be so referable;
- ii. nothing in this paragraph 24.1 shall prevent the **Parties** from agreeing to resolve any dispute or difference through the courts in which case paragraph 25.2 shall apply; and
- iii. where any dispute is referred to arbitration, the prevailing rules of the **London Court of International Arbitration** shall apply unless otherwise agreed in writing by the **Parties** (and paragraph 17 of the **Flexibility Services Standard Agreement** shall be read and construed accordingly).

25. Governing Law and Jurisdiction

25.1 Any claim, dispute or matter (whether contractual or non-contractual) arising under or in connection with these **DFS Service Terms** or their enforceability shall be governed by and construed in accordance with the laws of England and Wales.

~~5.29~~**25.2** Subject always to paragraph 24.1, **NESO** and each **Service Provider** submits to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or matter arising under or in connection with these **DFS Service Terms** or their enforceability and waives any objection to proceedings being brought in such courts or on the grounds that proceedings have been brought in an inconvenient forum.

26. Severance

26.1 The provisions of paragraph 18 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.

27. Third Party Rights

27.1 The provisions of paragraph 19 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.

28. No Agency or Partnership

28.1 The provisions of paragraph 20 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.

29. Waiver

29.1 The provisions of paragraph 21 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.

30. Entire Agreement

30.1 The provisions of paragraph 22 of the **Flexibility Services Standard Agreement** shall apply as if set out in full herein.

31. EMR

31.1 Notwithstanding any confidentiality obligations and any restriction on the use or disclosure of information set out in the **DFS Procurement Documentation**, the **Services Provider** consents to **NESO** and each of its subsidiaries using all and any information or data supplied to or acquired by it in any year under or in connection with any **Balancing Services Contract** for the purpose of carrying out its **EMR Functions**.

5.3031.2 For the purposes of this paragraph 31 only:-

- i. **“AF Rules”** has the meaning given to “allocation framework” in section 13(2) of the Energy Act 2013;
- ii. **“Capacity Market Rules”** means the rules created pursuant to section 34 of the Energy Act 2013 as modified from time to time in accordance with The Electricity Capacity Regulations 2014;
- iii. **“EMR Functions”** has the meaning given to “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013; and
- iv. **“EMR Document”** means The Energy Act 2013, The Electricity Capacity Regulations 2014, the Capacity Market Rules, The Contracts for Difference (Allocation) Regulations 2014, The Contracts for Difference (Electricity Supplier Obligation) Regulations 2014, The Contracts for Difference (Definition of Eligible Generator) Regulations 2014, The Electricity Market Reform (General) Regulations 2014, the AF Rules and any other regulations or instruments made under Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts) of Part 2 of the Energy Act 2013 which are in force from time to time.

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SCHEDULE 1 - UTILISATION PAYMENTS

Calculation of Settlement Value

A settlement value shall be established for each **DFS Acceptance** in accordance with the following formula:

$$S_{ie} = 0.5 * P_{ie} * Q_{ie} * K_{ie}$$

Where

- S_{ie} (£) is the settlement value for the **Demand Flexibility Service** calculated in respect of **DFS Unit i** for **Contracted Settlement Period e**
- P_{ie} is the applicable **Utilisation Price** specified in the relevant **DFS Bid**, in £/MWh, attributable to **Contracted Settlement Period e**
- Q_{ie} is the **Demand Reduction Service Volume** (MW), offered in the applicable **DFS Bid Submission** in respect of **DFS Unit i** and **Contracted Settlement Period e**
- K_{ie} is the performance factor in respect of **DFS Unit i** and **Contracted Settlement Period e** , calculated as follows:

$$\begin{array}{lll} K_{ie} = 1.2 & \text{if} & RV_{ie} \geq 120 \\ K_{ie} = 0.01 * RV_{ie} & \text{if} & 50 \leq RV_{ie} < 120 \end{array}$$

$$\begin{array}{lll} K_{ie} = 0.01 * ((2 * RV_{ie}) - 50) & \text{if} & 25 \leq RV_{ie} < 50 \\ K_{ie} = 0 & \text{if} & 0 \leq RV_{ie} < 25 \\ K_{ie} = 0.01 * RV_{ie} & \text{if} & -100 \leq RV_{ie} < 0 \\ K_{ie} = -1 & \text{if} & RV_{ie} < -100 \end{array}$$

Where:

V_{ie} is the **DFS Settlement Volume** in MWh, in respect of **DFS Unit i** and **Contracted Settlement Period e**

and

$$RV_{ie} = 100 * (V_{ie} / (Q_{ie} * 0.5))$$

SCHEDULE 2 - PAYMENT PROVISIONS

Where amounts falling due by or to **NESO** under these **DFS Service Terms** are expressed to be payable in accordance with this [SCHEDULE 2, Schedule 2](#), then with respect to all and any such amounts the following provisions shall apply.

1. On the eighth (8th) **Business Day** of each calendar month **NESO** shall send to the **Service Provider** a statement (the "**Monthly Statement**") setting out, for each **DFS Contract**, details of the following (to the extent applicable) in respect of the preceding calendar month, together with such other information as may be required to be provided under these **DFS Service Terms**:-
 - a) the aggregate number of hours of service provision, together with any **Applicable Balancing Services Volume Data**;
 - b) details of events of default or service failures, and any consequential amounts withheld by or payable to **NESO** with respect thereof;
 - c) the amounts payable by or to **NESO** as a result; and
 - d) in relation to all **DFS Acceptances**, the total net amount falling due to or from the **Service Provider**.
2. If the **Service Provider** disagrees with the content of any **Monthly Statement**, it may notify **NESO** in writing, with evidence upon which it relies in support of such disagreement, no later than the date falling ten (10) **Business Days** after receipt thereof, but in the absence of any such notification by such date the **Monthly Statement** shall be final and binding on the **Parties** subject only to paragraph 4.
3. Where a disagreement is notified by the **Service Provider** pursuant to paragraph 2, the **Parties** shall discuss and endeavour to resolve the same in good faith, and any revisions to a **Monthly Statement** agreed as a result thereof shall be reflected in a revised **Monthly Statement**, which shall promptly be issued by **NESO**. In the absence of agreement, the **Monthly Statement** shall be binding upon the **Parties** until such time as otherwise agreed in writing between the **Parties** or as may otherwise be determined by an **Expert** following a referral by either **Party** to an **Expert** for determination, and which in each case shall be reflected in a revised **Monthly Statement** which shall promptly be issued by **NESO**.
4. Where, having regard to any **Settlement Run** or to the results of any other monitoring by **NESO** of service delivery, **NESO** or the **Service Provider** discovers that some or all of any calculations and/or amounts falling due shown in any **Monthly Statement** are incorrect, then it shall promptly notify the other in writing whereupon **NESO** shall, at its discretion, revise the **Monthly Statement** and re-issue the same to the **Balancing Service Provider**, and the provisions of paragraphs 2 and 3 shall apply mutatis mutandis to such revised **Monthly Statement**.
5. In the absence of fraud, neither **NESO** nor the **Balancing Service Provider** may invoke the provisions of paragraph 4, with respect to the contents of any **Monthly Statement** (including any revised **Monthly Statement**) after the period of twelve (12) months has elapsed following submission of the original **Monthly Statement** in which the calculations and/or amounts in question were first stated, after which date such calculations and/or amounts shown in the last **Monthly Statement** (including any revised **Monthly Statement**) issued by **NESO** shall be final and conclusive.
6. No later than the eighteenth (18th) **Business Day** of each month, **NESO** will issue a self-billing invoice (or credit note) in accordance with paragraph 11 reflecting the **Monthly Statement** issued pursuant to paragraph 1 (as may have been revised pursuant to the foregoing

provisions), and no later than five (5) **Business Days** after such date of issue **NESO** shall pay to the **Service Provider** (or the **Service Provider** shall pay to **NESO**, as the case may be) the net amount shown as due from **NESO** to the **Service Provider** (or from the **Service Provider** to **NESO**, as the case may be) in that **Monthly Statement** (or revised **Monthly Statement**).

7. All payments shall be made in pounds sterling by direct bank transfer or equivalent transfer of immediately available funds to the other **Party's** bank account, details of which shall be as notified by each **Party** to the other from time to time in accordance with these **DFS Service Terms**.
8. If by virtue of the foregoing provisions, it is determined or agreed that:-
 - a) the **Service Provider** was entitled to a further payment from **NESO**, then the **Service Provider** shall be entitled to interest at the **Base Rate** on the amount of such further payment from the due date until the date of actual payment; or
 - b) the **Service Provider** was not entitled to any payment it has received, then **NESO** shall be entitled to interest at the **Base Rate** on such amount from the date of payment by **NESO** until the date of repayment by the **Service Provider** (or, as the case may be, until the date when **NESO** makes a payment to the **Service Provider** pursuant to paragraph 6 against which such amount is offset).
9. All amounts specified falling due and payable pursuant to these **DFS Service Terms** shall be exclusive of any **Value Added Tax** or other similar tax and **NESO** shall pay to the **Service Provider Value Added Tax** at the rate for the time being and from time to time properly chargeable in respect of the making available and/or provision of the **Demand Flexibility Service** under these **DFS Service Terms**.
10. Sums payable by one **Party** to the other pursuant this [SCHEDULE 2 Schedule 2](#) whether by way of charges, interest or otherwise, shall (except to the extent permitted by these **DFS Service Terms** or otherwise required by **Law**) be paid in full, free and clear of and without deduction, set-off or deferment in respect of any disputes or claims whatsoever provided that either **Party** shall be entitled to set off any payment due and payable by the other **Party** under this Schedule 2 against any payment it makes to that **Party** under this [SCHEDULE 2 Schedule 2](#).
11. For so long as the **Service Provider** is a **Registered DFS Participant**, the **Service Provider** agrees that **NESO** shall maintain a self-billing system whereby each **Monthly Statement** shall constitute a self-billing invoice for **VAT** purposes. Accordingly, **NESO** and the **Balancing Service Provider** shall enter into a self-billing agreement in accordance with **VAT** legislation and published guidance from HM Revenue and Customs from time to time, and agree to comply with all relevant requirements in relation to self-billing, and for such purpose the **Service Provider** hereby warrants and undertakes to **NESO** that:-
 - a) it is registered for **VAT** and will inform **NESO** forthwith if its ceases to be so registered or changes its **VAT** registration number;
 - b) it will account to HM Revenue and Customs for the **VAT** paid by **NESO** pursuant to paragraph 9; and
 - c) it will not issue its own **VAT** invoices for provision of the **Demand Flexibility Service**.