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### Ofgem

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### **Consultation Title: Annex C – Licence Changes**

Dear Joseph,

Thank you for the opportunity to respond to your statutory consultation on the Market Facilitator licence conditions.

#### Who we are

NESO lies at the heart of the energy system as an independent, public corporation responsible for planning Great Britain's electricity and gas networks, operating the electricity system and creating insights and recommendations for the future whole energy system.

At the forefront of our efforts is delivering value for consumers. We work with government, regulators and our customers to create an integrated future-proof system that works for people, communities, businesses and industry.

NESO's primary duty is to promote three objectives: enabling delivery of a cleaner, affordable and reliable energy system for current and future consumers. NESO will take a whole system approach, looking across natural gas, electricity and other forms of energy and will engage participants in all parts of the energy ecosystem to deliver the plans, markets and operations of the energy system of today and the future.

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### Our key points

We welcome the opportunity to respond to Ofgem's statutory consultation on the Market Facilitator licence conditions. We continue to see the Market Facilitator as a means to address a gap in today's arrangements by taking ownership for market coordination issues across NESO and all DNOs. The Market Facilitator can drive consensus on aligned arrangements, and we want to make sure Elexon is set up for success to do this. We have a positive working relationship with Elexon and are working collaboratively to put the processes in place to work effectively together from go-live.

We are pleased that Ofgem has taken account of our previous feedback and consider its changes, including with respect to the Ways of Working document, definitions of 'Market Facilitator Information,' and the references to the Governance Framework Document are important. We provide some suggestions for additional clarity:

- **Definitions:** We retain the view that definitions should cross-refer to relevant governance documents and parts of the regulatory framework.
- **Appeals mechanism:** The appeals mechanism, has been moved out of the licence and into the governance document. Given that this has a substantive impact on the obligations that will be in place under the licence, we request again that the Market Facilitator Governance Framework Document is embedded as a licence subsidiary document with the standard change provisions in place. We are not proposing the appeal mechanism goes back into the licence, but rather that a change process for governance documents goes into the licence.
- **Proportionality:** We retain the view that there is a risk of imposing disproportionate administrative and operational burdens through implementation monitoring. We propose a minor change to the drafting to assist with this.

We look forward to engaging with you further. Should you require further information on any of the points raised in our response please contact Laura Thomson, Regulatory Policy Manager at [laura.thomson@neso.energy](mailto:laura.thomson@neso.energy).

Yours sincerely

Rebecca Beresford

Director of Markets

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## Appendix 1 Consultation Question Responses

### Annex C – Licence Changes

#### Q1. Do you agree with the updated proposed Definitions to be added to the Standard Conditions of the Electricity Distribution Licence and the ESO Licence? Are any changes required?

In our response to the non-statutory consultation, we requested that definitions, particularly for Flexibility Market Rules (FMRs) and Market Facilitator, be made more robust, with explicit scope and clear cross-referencing to relevant governance documents to avoid ambiguity. We have also raised concerns about the necessity of standalone definitions such as Flexibility Market Asset Registration. Below, we set out our view on Ofgem’s changes for the statutory consultation:

Flexibility Market Asset Registration	We remain unclear on why this definition is necessary, given it would not have a substantive impact in the licence and suggest it should be removed from the licence text.
Flexibility Market Rules	Reflecting our previous response, we request that the definition of the FMRs references the Market Facilitator Governance Framework document.
Market Facilitator	As stated in our previous response, we suggest the definition is cross-referenced to the Market Facilitator Governance Framework document, rather than keeping the current general statement. It does not seem helpful to have a standalone description which does not reference the other parts of the regulatory framework.
Market Facilitator Information (ESO Licence)	We welcome the changes proposed by Ofgem. Rather than proposing any further changes to XX.5, we request that (c) should be updated to “the Market Facilitator <u>reasonably</u> considers necessary....”. This makes clear that, in addition to the request being reasonable, the perceived need on which that request is based must also be reasonable.
Market Facilitator Governance Framework Document	As stated in our previous response, we’d request that the standard provisions are added to refer to the scope of the document and the process for change as set out for other similar documents in the electricity system operator licence such as the NESO Performance Arrangements Governance Document and the FSO Transition Funding Governance Document.

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	This document has a substantive impact on the licence obligations by setting out the appeal process which will have effect. It is appropriate that it has a proper grounding in the licence.
Energy Balancing Regulation	We welcome Ofgem's changes.
NESO-Market Facilitator Ways of Working Document	As stated in our previous response, we note that the definition reads as if NESO and the Market Facilitator will be co-designing services, which is not the case. If retained, we suggest changes to refer to "...relating to the engagement on the design of NESO Services and other matters".

### **Q2. Do you agree with the updated proposed licence condition clauses for Flexibility Market Rules to be added to both licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?**

As set out in our response to the non-statutory consultation, we consider FMRs are about establishing aligned standards and coordination of markets. We asked for the scope of Flexibility Market Rules to be tightly defined within the licence, with clear processes for change and consultation, and for the Market Facilitator Governance Framework Document to be subject to standard provisions for scope and change.

As mentioned in the previous consultation, we request a change is made to state in the licence that the process for change will include a period of consultation with licensees. This seems a helpful inclusion to XX.3, given the change process is already referenced.

### **Q3. Do you agree with the updated proposed licence condition clauses for implementation monitoring to be added to both licences? Does the current drafting deliver the policy intent? Do you have any suggested changes?**

Ofgem's updates to the monitoring clauses are a welcome step, but as above we have proposed a minor but important change to the definition of '*Market Facilitator Information*' to note that in addition to the request being reasonable, the perceived need on which that request is based must also be reasonable.

On XX.6, we request that "sufficient quality" is made clearer as this is not a term currently used in our licences. We suggest that 'in such manner and format...' would be clearer and consistent with language used in other conditions

There remain risks that the scope of data requests is not yet sufficiently constrained, and there is the potential for substantial administrative burden. We will comment in the consultation on the Governance Document on this point.

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### **Q4. Do you agree with the updated proposed licence condition clauses for Market Facilitator input into NESO service design to be added to the ESO Licence? Does the current drafting deliver the policy intent? Do you have any suggested changes?**

- We welcome Ofgem’s removal of the wording that NESO must engage with Elexon “from an early stage” as we do not consider this would be clear.
- We also think it is right that Ofgem has removed the requirement to comply with the Ways of Working document. This ensures the document can remain flexible, adaptable, and ultimately useable at working level.
- We question whether the licence needs to include the contents of the ways of working document, as provided by xx.10. Particularly, we do not consider that ensuring strategic alignment is clear or necessarily right; the Market Facilitator and NESO are subject to different duties and have different responsibilities and accordingly we may not align strategically. We suggest the licence could instead provide that the ways of working document includes how NESO and Elexon will fulfil their obligations provided by the licence and the Governance Framework Document to the extent there is a case to collaborate with one another.
- The requirement to “fully engage” is not sufficiently clear to form a licence obligation and may create uncertainty around the extent of NESO’s obligations. We suggest removing “fully” or replacing with “reasonably” to make the language clearer.
- We would welcome Ofgem providing additional clarity on engagement with respect to the Balancing Mechanism, or for services and changes that do not trigger a formal consultation as described in xx.8. The drafting does not currently clearly cover engagement before such information consultation.

### **Q5. Do you have any additional comments or suggestions?**

We note the following additional comments, some of which we provided in our response to the non-statutory consultation:

- Ofgem should ensure all requirements are clearly justified, proportionate to their intended outcomes, and that mechanisms are in place to minimise unnecessary burden. Further consideration should be given to the overall objectives, scope, and expected delivery of the Market Facilitator to avoid ambiguity and overlapping responsibilities. We see essential for Ofgem to set out clear principles or a framework that defines the Market Facilitator’s role and avoids overlap with NESO’s role.
- We maintain that Ofgem should include a broad derogation provision in the new licence conditions to provide flexibility for circumstances that have not yet been anticipated, with clear criteria and governance for its use. Ofgem would only ever allow such a derogation to be granted if it were satisfied that this were in the interests of consumers.