

# Open Networks Project

## Flexibility Services Standard Agreement - 2021 Consultation Overview

August 2021 | Version 1

## Introduction

### About ENA

Energy Networks Association (ENA) represents the owners and operators of licences for the transmission and/or distribution of energy in the UK and Ireland. Our members control and maintain the critical national infrastructure that delivers these vital services into customers' homes and businesses.

### About Open Networks

Launched in January 2017, ENA's Open Networks Project is laying the foundations for a smart energy grid in Great Britain and informing future developments in Ireland and Northern Ireland. It is a key initiative to deliver Government policy set out in Ofgem and BEIS' Smart Systems and Flexibility Plan, the Government's Industrial Strategy and the Clean Growth Plan.

ENA's Open Networks Project is key to enabling the delivery of Net Zero by:

- Opening local flexibility markets to demand response and distributed energy resources, increasing renewable energy and new low-carbon technology, and removing barriers to participation
- Providing opportunities for these flexible resources to connect to our networks faster
- Opening data to allow these flexible resources to identify the best locations to invest
- Delivering efficiencies between the network companies to plan and operate secure efficient networks

In order to facilitate open debate and discussion across the industry, all outputs from the project are being published on [ENA's website](#) alongside annual reports that summarise progress and achievements.

### Open Networks Flexibility Development

To deliver net zero and meet our carbon commitments, while providing reliable and secure electricity supplies at least cost, GB needs: more sources of renewable energy connected to the networks, an electricity system that can facilitate both the production and consumption of electricity more flexibly, and regulatory and policy frameworks that support this transition.

Generation is becoming more distributed and variable, and consumers are benefitting from new ways of managing their energy usage. GB's net zero carbon ambition is driving significant transformation of the electricity system, locally at distribution level and nationally at transmission. System flexibility enables networks to deliver this more efficiently.

The Open Networks Project is a critical contributor to the wider whole energy system transition to net zero carbon; and in particular the Ofgem/BEIS Transitioning to a Net Zero Energy System: [Smart system and Flexibility Plan 2021](#).

## Purpose of this consultation

The purpose of this consultation is to seek views from stakeholders on our Flexibility Services Standard Agreement (Standard Agreement) developments to date in order for us to update and adapt our work accordingly. Therefore, the questions in this consultation are structured to:

- encourage as many stakeholders as possible, from a wide variety of viewpoints, to engage with our development work on flexibility;
- provide feedback on the content of our work to date; and
- help inform and shape the future work to be undertaken by ENA and the Open Networks Project.

**Everyone is welcome to respond:** Feedback is welcomed from all stakeholders, including but not limited to: network users; energy market participants; independent distribution network operators; aggregators; suppliers; DER producers; Flexibility Service Providers; consumers and consumer groups; community energy schemes; new and existing business models; and technology businesses.

## How to engage and respond

This consultation will be open for eight weeks and closes on **22<sup>nd</sup> October 2021**. Please send your responses to the consultation by email to [opennetworks@energynetworks.org](mailto:opennetworks@energynetworks.org).

While the consultation is open, you are invited to a webinar on [22<sup>nd</sup> September 2021](#). This will introduce the Standard Agreement, discuss the major changes and implications, and provide the opportunity to feedback on the consultation. Further details on these events will be provided on ENA's [events webpage](#) and communicated to stakeholders on the project's mailing list. You can sign up for this mailing list on our [website](#) and ask questions by [emailing the Open Networks project](#).

All consultation responses are intended to be published on ENA's website, therefore if your response is confidential and not for publication, please notify us clearly. Or, if elements of your organisation's response are confidential then please provide us with a full version for consideration and a non-confidential version for publication.

**How we will use your feedback:** Once this consultation closes and all responses are received, they will be summarised in a separate report. This summary report will be published by the end of November 2021.

## The Development of a Standard Agreement

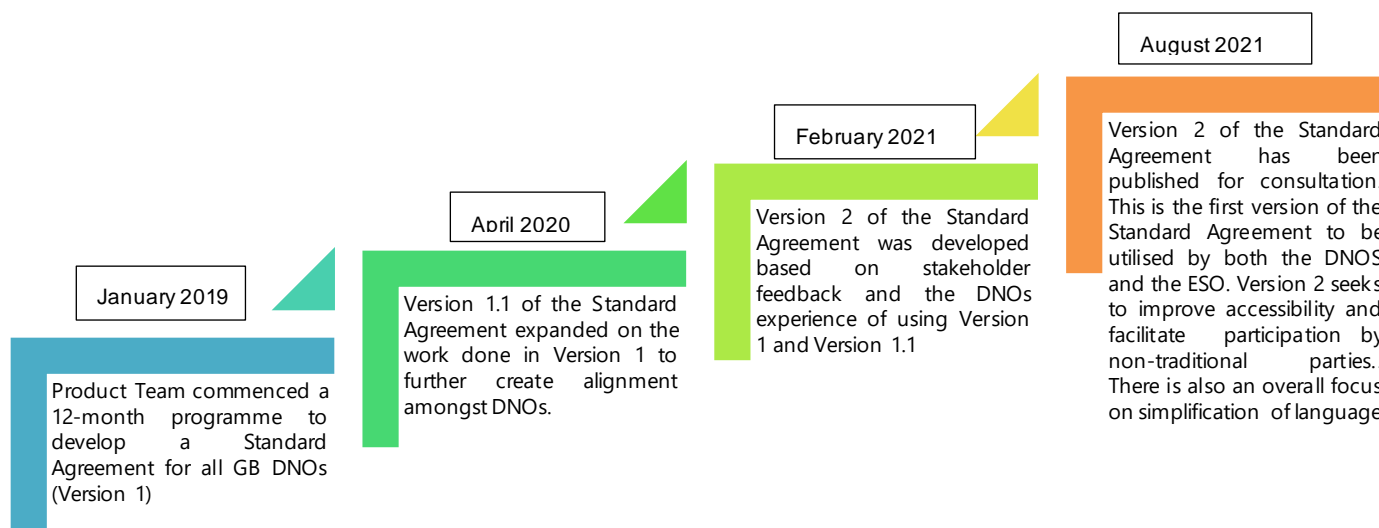
Over the last few years, the UK has seen major growth in the amount of Flexibility Services utilised by Distribution Network Operators (DNOs) to manage constraints on the networks. Pre-2019, and the formation of the Standard Agreement, each DNO utilised separate contracts, and the ESO used another suite of contracts for the transmission based services; meaning a provider with assets across the country could engage with seven different sets of requirements, terms and clauses.

As more services became available and more providers entered into this evolving market, the need for alignment and accessibility in the enabling service contracts became critical to support the growth within this market. Over the last 18 months the ENA Open Networks Project has undertaken significant work to evolve the contractual arrangements for Distribution flexibility services. From a starting point of largely discrete arrangements across the country, networks have worked with service providers to develop a Standard Agreement for services. This consultation is the next milestone of this development work, with the drafting of a Standard Agreement for both Distribution and ESO services.

This development work started in January 2019, when the ENA Open Networks WS1A P4 commenced a 12-month programme to develop a Standard Agreement to be utilised by GB DNOs when procuring flexibility services (Version 1). In April 2020, the Product Team implemented Version 1.1 of the Standard Agreement for procuring flexibility services by all GB DNOs. [Version 1.2 of the Standard Agreement](#) (released February 2021) was improved, based on stakeholder feedback and the DNOs' experience of using Version 1 and 1.1. This addressed feedback suggesting amendments to liability, indemnity, and insurance (L, I & I) elements. It also included a review of the ability and evolution required to enable DNOs adopt a framework approach to securing flexibility services, similar to the ESO's suite of services. Version 1.2 compresses the core "Contract" to 20 pages, with 7 Schedules, providing increased alignment with the ESO's approach.

An [Evolution Paper](#) was published ahead of Version 2, exploring key challenges to achieving full alignment of DNO and ESO commercial arrangements. This paper described the extent to which the ESO and DNO procurement/contract processes currently differ and sets out an approximate timetable for delivering future alignment.

It is important to highlight that a key difference between DNO and ESO procurement of flexibility services, is that ESO services are procured generally through auction style framework agreements, which have evolved over a far longer period than the DNOs have offered services. Distribution based services are still comparatively new, utilising more traditional bi-lateral based contracts. Version 2 of the Standard Agreement brings these two approaches closer together in the ESO/DNO Standard Agreement. There is an overall focus on inclusion and increased participation, as Version 2 builds incorporates more extensive changes to facilitate participation by aggregators and non-traditional parties. Furthermore, Version 2 also lays emphasis on conciseness and simplification of language. As Distribution flexibility service markets become more fluid, it is anticipated that the procurement processes will also align further, with the DNOs benefitting from the experience and learnings the ESO has gathered over the years.



## Version 2: Major Updates to the Standard Agreement and Specific Questions

### 2021 Product 4 (ON21 WS1A P4): Improvement to Existing Commercial Arrangements - Standard Agreement for Procuring Flexibility Services.

[Version 2 of the Standard Agreement](#) has now been published for consultation. This version of the Standard Agreement addresses feedback received on the Liabilities and Indemnities work and creates a single approach for implementation by both DNOs and the ESO. Residual stakeholder feedback from previous rounds have also been addressed in Version 2. It is useful to highlight that the direct use of the Standard Agreement has been reviewed during the development of Version 2, with specific focus on

- Accessibility;
- Simplification of language and conciseness of clauses;
- Inclusion of aggregated assets in addition to single DERs;
- Liability and Indemnities;
- Obligations imposed on Providers
- Data, equipment and access rights

In each case, the P4 team have endeavoured, as they have throughout the whole contract, to ensure the contract and schedules are balanced, offering mutuality and clarity on the requirements of specific clauses, as well as maintaining a commitment to fairness, apparent in previous versions.

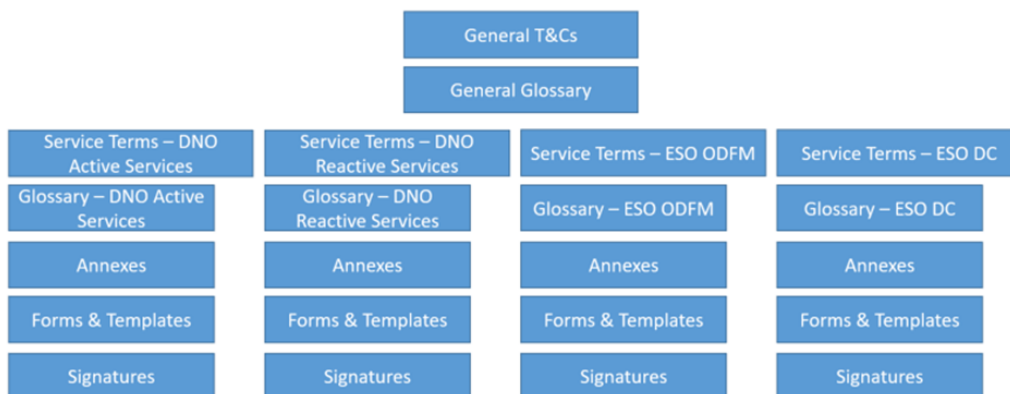
### Updates to the Standard Agreement Resulting from Previous Stakeholder Feedback

Feedback Area	Feedback	Response
<b>Inclusion of aggregators</b>	The standard contract needs adjusting to ensure it works for aggregators, including the aggregation of demand response from smaller assets.	Building on updates made in Version 1.2, which include, the removal of singular terminology and the use of pluralised statements to reflect applicability to aggregators and aggregated assets, Version 2 incorporates more extensive changes which provide the flexibility for providers to contract either as asset owners or aggregators. This includes aspects such as the provision of requisite documents for assets under development.
<b>Providers Obligations</b>	In terms of access, obligation on the Company to comply with reasonable requirements for site access. (e.g. health and safety requirements and having to cooperate on scheduling – it's not acceptable to many customers to give DSOs an unrestricted right of entry, even with notice).	This clause has been further relaxed within Version 2.
<b>Liabilities and Indemnities</b>	Harmonisation of the liabilities and Indemnities provisions across DNOs and the ESO.	<p>The liabilities and indemnities provision has been updated to align with the ESO's dual cap approach. Thus, under the Standard Agreement, there is a general cap on liability for asset damage, with specific limits for the DNOs and the ESO. Furthermore, specific indemnities as relevant to the services, are set out in the schedules.</p> <p>Lower limits have been set for DNOs as compared with the ESO, to accommodate relatively smaller providers.</p> <p>The dual-cap approach is implemented across the ESO's services and has undergone specific and sustained engagement within the ESO's contractual change processes.</p> <p>It is critical to note that capping of liabilities balances the DNO/ESO risk for the failure of</p>

		<p>service provision and resultant costs of alternative solutions or in some cases asset damage and outage related penalties against the financial burden placed on service providers within the Liabilities and Indemnities sections of the agreement, which had previously been seen as a potential blocker to participation.</p> <p>Furthermore, it is important to highlight that the cap options are purely for contractual failures such as the non-provision of services or material breaches, some liabilities &amp; indemnities such as those relating to fraud, death and or personal injury are and will continue to be exceptions to this cap.</p>
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### Other Key Updates to the Standard Agreement

Further Amendments to the Standard Agreement	
<b>Framework Structure</b>	Version 2 successfully secures alignment between the ESO and DNO by introducing a framework contractual structure, which allows contracts to be awarded, ranging from day ahead (auction-style) agreements to bilateral contracts.
<b>Service Based Schedules</b>	Version 2 utilises service- based schedules, which define how each service is to be procured and provided. The structure makes it easier for providers to follow what is required per service and enables any service/ contractual documents to be isolated, in the event of industry consultation. Please see diagram below.



Further Amendments to the Standard Agreement	
<b>Records and Audit</b>	Version 2 makes a distinction between financial, contractual and performance data and the ensuing data retention obligations.
<b>Confidentiality</b>	The confidentiality provisions have been amended to retain the simplicity in Version 1.2, whilst also allowing the sharing/publication of relevant data to enable greater industry transparency.
<b>Dispute Resolution</b>	Version 2 adopts a layered approach to dispute resolution, with disputing parties having access to a range of dispute resolution mechanisms, including negotiation, mediation, arbitration and expert determination. This approach ensures that parties are afforded the opportunity to explore amicable settlement through negotiation before recourse is had to other forms of dispute resolution including mediation, arbitration, expert determination and litigation.
<b>Inclusion of Community Bodies/Charitable Groups and Smaller Scale DER</b>	Updates have been made within Version 2 to recognise participation by entities other than 'body corporates,' thereby accommodating small scale flexibility service providers, community bodies and charitable groups. Overall, this ensures increased participation in the provision of flexibility services and drives competition in the market.
<b>Termination for Convenience</b>	Version 2 retains each party's right to termination for convenience. The Product Team considered that it would be particularly useful for smaller providers to have this right, so as to not be locked into the contract.
<b>Termination Due to Change in Ownership</b>	All references to 'Change of Ownership' being a material breach of the contract have been excluded from Version 2. The clause has also been updated/relaxed to ensure that the Company can only terminate for change of ownership, if the new Provider/ controlling entity fails to meet reasonable due diligence checks.

### Additional Points

- External legal review has been carried out by CMS.
- Version 2 will not be the final version as we will look to move to a framework procurement of services model.
- The ESO will continue to sign off Forms A, B and C pre-award, whilst the DNOs will use a Post-Contract Award Notice, until procurement steps align.



### Implementation Across ESO and DNO Services

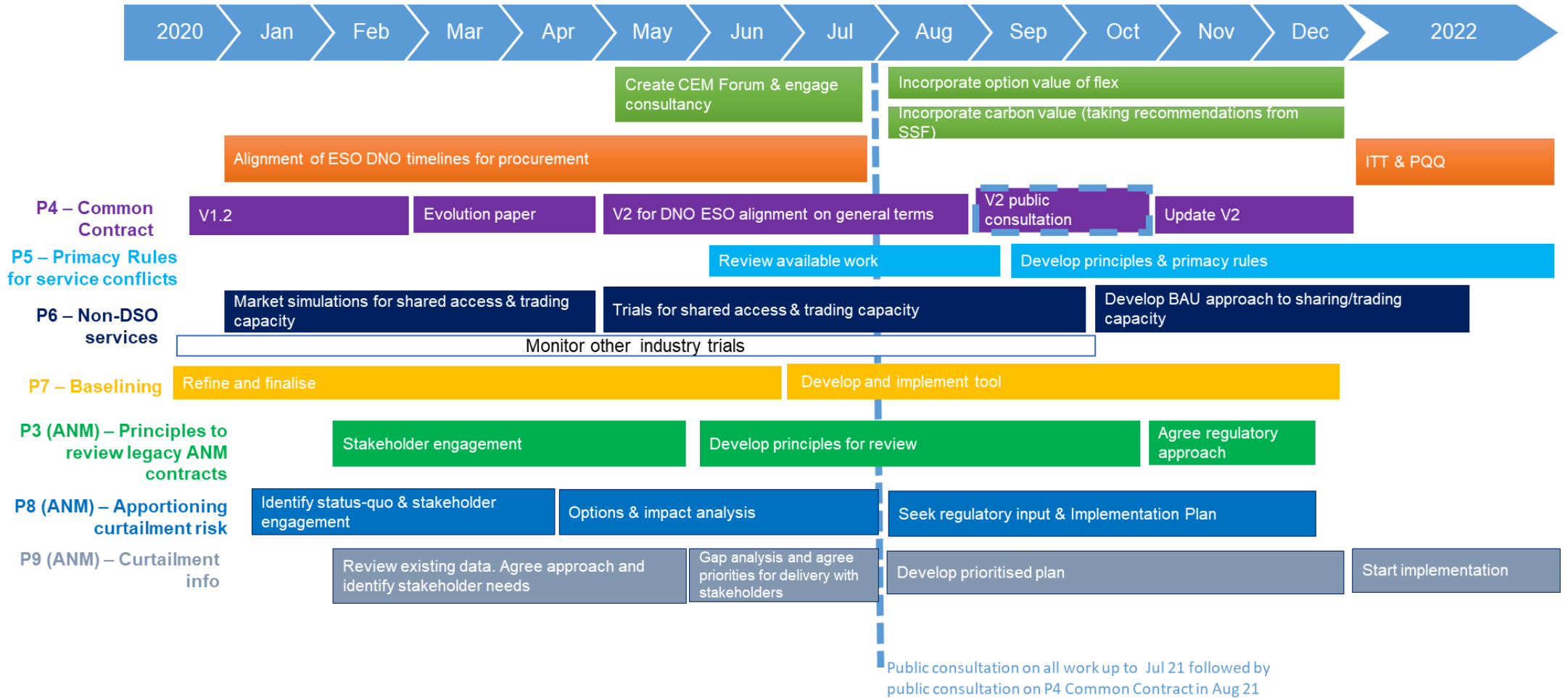
The ESO has structured its contributions around the Dynamic Containment (DC) and Optional Downward Flexibility Management (ODFM) services and is committed to adopting the Standard Agreement for its future product launches. Compliance with Article 18 of the Electricity Balancing Guidelines (EBGL) and Clean Energy Package requirements will mean that this adoption will take place as standard, i.e., following further industry consultation, followed by approval of the changes by the Industry Regulator. We are looking to ensure this is progressed in an efficient manner, which reduces the burden on industry resource whilst ensuring delivery as soon as possible. We will provide an update on our proposed approach in early 2022.

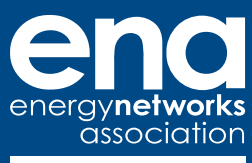
Following consultation and approval, it is envisaged that the DNOs would be able to utilise the Standard Agreement for its four standard services: Sustain, Secure, Dynamic and Restore and also Reactive services which are now being adopted by DNOs within business-as-usual activities.

### Consultation questions:

There are no specific questions from the P4 Product team, we would prefer stakeholders review the contract and supporting detail in full offering feedback and insights on the documents, it's useability and accessibility overall. We also welcome any questions or opportunities to expand on the updates should you need any additional supporting information.

## Appendix 1- Product Development Plan from PID





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