

**ENERGY**

ELECTRICITY

**MODIFICATIONS TO THE SPECIAL CONDITIONS OF NATIONAL  
GRID ELECTRICITY TRANSMISSION PLC'S TRANSMISSION  
LICENCE (EMR No. 1 of 2014)**



*Draft modifications to licences under section 6(1) of the Electricity Act 1989 laid before Parliament under section 64(2) of the Energy Act 2013; draft to lie for forty days pursuant to section 64(3) of that Act, during which period either House of Parliament may resolve not to approve the draft.*

## **ENERGY**

### **ELECTRICITY**

#### **MODIFICATIONS TO THE SPECIAL CONDITIONS OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC'S TRANSMISSION LICENCE (EMR No. 1 of 2014)**

The Secretary of State makes the following licence modifications in exercise of the powers conferred by sections 45, 64(8), (9) and (13) of the Energy Act 2013 (“the Act”).

The Secretary of State has consulted the holder of any licence being modified, the Gas and Electricity Markets Authority and such other persons as the Secretary of State considered appropriate in accordance with section 45(8) of the Act.

A draft of these licence modifications has been laid before Parliament in accordance with section 64(2) of the Act. Neither House of Parliament resolved, within the 40-day period referred to in section 64(3) of the Act, that the Secretary of State should not make the modifications.

#### **Interpretation**

1. In these modifications, “special conditions” means the special conditions of the electricity transmission licence granted or treated as granted to National Grid Electricity Transmission plc under section 6(1)(b) of the Electricity Act 1989.

#### **Modifications to the special conditions**

2. The special conditions are modified in accordance with paragraph 3 with effect from the day after the date on which this instrument is made.
3. Insert a new Special Condition 2N after Special Condition 2M as follows:

#### **“Special Condition 2N: Electricity Market Reform**

##### **Introduction**

2N.1 This condition sets out the licensee’s obligations as to its conduct in performing the EMR Functions.

##### **Part A: Objectives**

2N.2 The licensee shall:

- (a) in performing the EMR Relevant Duties, act in a manner best calculated to secure:
  - (i) the efficient and effective carrying on of the EMR Functions;
  - (ii) compliance with the principles appearing to it to represent best regulatory practice; and

- (b) in performing the EMR Functions, act in a manner best calculated to secure that none of the licensee's businesses, nor any business of any Associate of the licensee, obtains an unfair commercial advantage as a result of the licensee carrying out the EMR Functions, including through any arrangements the object or effect of which is that the exercise of the EMR Functions is unduly influenced in favour of those businesses.

**Part B: Legal and functional separation of National Grid Electricity Transmission plc and Relevant Other Competitive Businesses**

2N.3 Without prejudice to the licensee's obligations under Standard Condition B5 (Prohibition of cross-subsidies), Standard Condition B6 (Restriction on Activity and Financial Ring Fencing) and Special Condition 2C (Prohibited Activities and Conduct of the Transmission Business), the licensee shall at all times conduct its activities, including carrying out the EMR Functions, separately from the Relevant Other Competitive Businesses, provided that nothing in Part B of this Special Condition 2N shall prevent the licensee from complying with any Section E (offshore transmission owner of last resort) Direction made pursuant to Standard Condition B18 (Offshore Transmission Owner of Last Resort).

2N.4 Without prejudice to the generality of paragraph 2N.3, in order to comply with paragraph 2N.3 the licensee shall ensure that at a minimum:

- (a) the Relevant Other Competitive Businesses are conducted entirely by corporate entities which are separate from that of the licensee and the licensee does not, directly or indirectly, hold any shares or other investments:
  - (i) in any corporate entity which conducts any of the Relevant Other Competitive Businesses or which exercises or otherwise has control of any of the Relevant Other Competitive Businesses or any of the assets used in or dedicated to any of the Relevant Other Competitive Businesses; or
  - (ii) which give the holder an entitlement to vote at the general meetings of any of the corporate entities which conduct the Relevant Other Competitive Business or in any company which exercises or otherwise has control of any of the Relevant Other Competitive Businesses;
- (b) the licensee's accounts are maintained and to the extent required by law audited and reported separately from those of any corporate entity which conducts Relevant Other Competitive Business;
- (c) persons engaged in, or in respect of, the management or operation of the licensee (up to and including the members of the senior management team reporting to the licensee's board of directors) are not simultaneously engaged either full or part time in respect of any Relevant Other Competitive Business or any corporate entity which conducts Relevant Other Competitive Business, other than in the provision of Shared Services provided by the licensee to its Associates and the provision of services which constitute de minimis

business (as defined in Standard Condition B6 (Restriction on Activity and Financial Ring Fencing)) to the extent that:

- (i) the provision of those services by the licensee complies with the requirements of Standard Conditions B5 (Prohibition of cross-subsidies), B6 (Restriction on Activity and Financial Ring Fencing) and B9 (Indebtedness); and
- (ii) persons engaged in, or engaged in respect of, the management or operation of the EMR Functions are not simultaneously engaged in or in respect of a de minimis business as defined in Standard Condition B6 (Restriction on Activity and Financial Ring Fencing);
- (d) arrangements are in place which are effective in restricting access by persons engaged in, or engaged in respect of, the management or operation of any of the Relevant Other Competitive Businesses to any part of any premises which is occupied by persons engaged in, or in respect of, the management or operation of the licensee including persons engaged in the EMR Functions;
- (e) the systems for the recording, processing or storage of Confidential EMR Information used by persons engaged in, or engaged in respect of, the management or operation of the licensee's activities (including carrying out the EMR Functions) cannot be accessed by persons engaged in, or engaged in respect of, the management or operation of the Relevant Other Competitive Businesses; and
- (f) the licensee establishes and maintains in force a code of conduct governing the disclosure of Confidential EMR Information by persons carrying out EMR Functions.

**Part C: Establishment of the EMR Data Handling Team and the EMR Administrative Team**

2N.5 By no later than 7 days after this condition comes into effect, the licensee shall establish an EMR Data Handling Team and shall thereafter operate, supervise and manage the EMR Data Handling Team in a manner compliant with this condition.

2N.6 Without prejudice to the generality of paragraph 2N.5, in order to comply with paragraph 2N.5 the licensee shall in particular ensure that at a minimum:

- (a) the EMR Data Handling Team shall, in presenting Confidential EMR Delivery Plan Information to a person who is not a member of the EMR Data Handling Team, use all reasonable endeavours to ensure that it is not possible for such a person to identify the generation set, or the owner or operator thereof, which is the subject of that Confidential EMR Delivery Plan Information;
- (b) each member of the EMR Data Handling Team:

- (i) signs a non-disclosure agreement in a form agreed with the Authority and annexed to the EMR compliance statement pursuant to paragraph 2N.18(b)(ii); and
    - (ii) complies with a policy set out in the EMR compliance statement governing the transfer of employees into and out of the carrying out of the EMR Functions; and
  - (c) the EMR Data Handling team is supervised and managed by a manager responsible for the control of the Confidential EMR Delivery Plan Information disclosed to persons carrying out the EMR Data Handling Functions, and for ensuring that the EMR Data Handling Team members comply with the obligations in this paragraph 2N.6.
- 2N.7 By no later than 7 days after this condition comes into effect, the licensee shall establish an EMR Administrative Team and shall thereafter operate, supervise and manage the EMR Administrative Team in a manner compliant with this condition.
- 2N.8 The licensee shall ensure that the EMR Administrative Team is responsible for carrying out the EMR Administrative Functions and that, in presenting Confidential EMR Administrative Information to a person who is not a member of the EMR Administrative Team, the EMR Administrative Team shall use all reasonable endeavours to ensure that it is not possible for such a person to identify the generation set, or the owner or operator thereof, which is the subject of that Confidential EMR Administrative Information.
- 2N.9 The licensee shall ensure that each member of the EMR Administrative Team shall:
- (a) sign a non-disclosure agreement in a form agreed with the Authority and annexed to the EMR compliance statement pursuant to paragraph 2N.18(c)(ii);
  - (b) not be, while a member of the EMR Administrative Team, simultaneously engaged in, or in respect of, any activity of the licensee other than EMR Administrative Functions; and
  - (c) be, for periods of time agreed by the Authority and specified in the EMR compliance statement:
    - (i) assigned to the EMR Administrative Team for a minimum posting period; and
    - (ii) prohibited from engaging in, or in respect of, the management or operation of a Relevant Other Competitive Business at the conclusion of that member's posting.
- 2N.10 For the avoidance of doubt, paragraph 2N.9 shall not prevent members of the EMR Administrative Team from engaging in the licensee's recruitment, training and further education activities and such other activities:
- (a) as may be specified in the EMR compliance statement; or

(b) to which the Authority has given its prior written consent.

2N.11 The licensee shall ensure that the EMR Administrative Team is accommodated in premises or parts of premises where arrangements are in place which are effective in restricting access by persons who are not members of the EMR Administrative Team.

**Part D: Restrictions on the use of Confidential EMR Information**

2N.12 The licensee shall, and shall procure that its employees, agents, contractors and advisers shall:

- (a) treat and keep all Confidential EMR Information as confidential;
- (b) ensure that any Confidential EMR Information is not directly or indirectly disclosed to any other person other than as provided in paragraph 2N.13;
- (c) not use any Confidential EMR Information for any purpose other than:
  - (i) performing the EMR Functions;
  - (ii) carrying on the Balancing Services Activity;
  - (iii) any other purpose for which the licensee has obtained prior written consent from the Authority or which is specified in the EMR compliance statement; or
  - (iv) as permitted by regulation 65 of the Electricity Capacity Regulations 2014; and
- (d) without prejudice to (c) above, ensure that Confidential EMR Information is not disclosed to or solicited or used by the Transmission Business, any other business of the licensee or any Associate of the licensee which carries on any Relevant Other Competitive Business.

2N.13 Paragraph 2N.12 shall not apply to the disclosure of:

- (a) Confidential EMR Information:
  - (i) which is required by, or by virtue of, any requirement of law or regulation or by, or by virtue of, the rules of any governmental or other regulatory authority having jurisdiction over the licensee;
  - (ii) which is authorised in advance in writing by the Authority or the person to whom such Confidential EMR Information relates;
  - (iii) to such other bodies or persons exercising functions conferred by or under Chapters 2, 3 and 4 of Part 2 of the Energy Act 2013 to the extent that such disclosure is required to enable that body or person to carry out those functions; or
  - (iv) where such disclosure is permitted by regulation 65 of the Electricity Capacity Regulations 2014;

- (b) Confidential EMR Delivery Plan Information to or by the EMR Data Handling Team;
- (c) Confidential EMR Administrative Information to or by the EMR Administrative Team;
- (d) Confidential EMR Information other than Confidential EMR Delivery Plan Information or Confidential EMR Administrative Information, to or by employees, agents, contractors and advisers of or to the licensee other than persons referred to in paragraph 2N.18(a)(vi); or
- (e) Confidential EMR Information to persons engaged in, or in respect of, the provision of Shared Services, to the extent necessary to allow them to carry out their respective functions;

**PROVIDED THAT:**

- (A) in the case of disclosure in accordance with paragraphs 2N.13 (b), (c) and (d), such disclosure is made for the sole purpose of enabling the licensee to perform its EMR Functions;
- (B) in the case of:
  - (I) disclosure of Confidential EMR Delivery Plan Information by the EMR Data Handling Team; or
  - (II) disclosure of Confidential EMR Administrative Information by the EMR Administrative Team,
 such disclosure is made after all reasonable endeavours have been taken pursuant to paragraph 2N.6(a) or 2N.8 (as appropriate) to protect from disclosure the source or subject of the Confidential EMR Information; and
- (C) in the case where Confidential EMR Information is disclosed with the consent of the person to whom such information relates, the extent of such disclosure is consistent with the consent obtained.

**Part E: EMR Compliance Statement**

- 2N.14 By no later than 30 days after this condition comes into effect, the licensee shall, unless the Authority otherwise consents or directs, at all times have in place and comply with a statement (the “EMR compliance statement”) approved by the Authority, describing the practices, procedures and systems by which the licensee will secure compliance with the EMR Relevant Duties.
- 2N.15 Where the Authority does not indicate otherwise within 60 days of receipt of the EMR compliance statement, or any revision thereof, the EMR compliance statement shall be deemed to be approved by the Authority.
- 2N.16 The licensee shall, at least every 12 months or at such other interval as the Authority may direct, review the description set out in the EMR compliance statement and shall revise such EMR compliance statement as necessary to ensure that the description set



out in it continues to be complete and accurate in all material respects. The licensee shall alter the EMR compliance statement only with the approval of the Authority.

2N.17 The licensee shall send a copy of the EMR compliance statement, and each revision of it as and when it is made, to the Authority. The licensee shall publish a copy of such EMR compliance statement and each revision of it on its website.

2N.18 The EMR compliance statement shall in particular (but without prejudice to the generality of paragraphs 2N.14 and 2N.16) set out how the licensee will ensure the confidentiality of:

- (a) Confidential EMR Information by means which shall include, but need not be limited to:
  - (i) compliance with the requirements set out in paragraph 2N.12;
  - (ii) requiring adherence to the code of conduct referred to in paragraph 2N.4(f), by those subject to it, to form part of the licensee's disciplinary policies;
  - (iii) establishing and maintaining a training programme designed to ensure that employees, agents, contractors and advisers receive such initial and continuing training as is necessary to enable the licensee to comply with the requirements of this condition;
  - (iv) ensuring that the persons engaged in the business of any Associate or business of the licensee other than performing the EMR Functions do not have access to any parts of systems for the recording, processing or storage of Confidential EMR Information;
  - (v) ensuring that:
    - (A) any parts of systems used for the recording, processing or storage of:
      - i. Confidential EMR Delivery Plan Information can be accessed only by the EMR Data Handling Team;
      - ii. Confidential EMR Administrative Information can be accessed only by the EMR Administrative Team; and
    - (B) neither Confidential EMR Delivery Plan Information nor Confidential EMR Administrative Information can be accessed by any other persons;
  - (vi) identifying the persons to whom Confidential EMR Information should never be disclosed by reference to the functions of those persons; and
  - (vii) maintaining a list of persons to whom Confidential EMR Information has been disclosed or who have access to Confidential EMR

Information (whether on a regular or an occasional basis), a copy of which the licensee shall provide on request to the Authority;

- (b) Confidential EMR Delivery Plan Information by means which shall include, but need not be limited to:
  - (i) compliance with the requirements set out in paragraph 2N.12;
  - (ii) establishing, maintaining and where appropriate enforcing the non-disclosure agreement referred to in 2N.6(b)(i);
  - (iii) establishing and maintaining appropriate systems for the recording, processing and storage of Confidential EMR Delivery Plan Information;
  - (iv) maintaining the EMR Data Handling Team in accordance with paragraphs 2N.6(b)(ii) and 2N.6(c);
  - (v) establishing and maintaining information system security policies; and
  - (vi) establishing and maintaining document management and security policies; and
- (c) Confidential EMR Administrative Information by means which shall include, but need not be limited to:
  - (i) compliance with the requirements set out in paragraph 2N.12;
  - (ii) establishing, maintaining and where appropriate enforcing the non-disclosure agreement referred to in 2N.9(a);
  - (iii) maintaining the EMR Administrative Team in accordance with paragraphs 2N.9(b), 2N.9(c) and 2N.11;
  - (iv) establishing and maintaining appropriate systems for the recording, processing and storage of Confidential EMR Administrative Information;
  - (v) establishing and maintaining information system security policies; and
  - (vi) establishing and maintaining document management and security policies.

#### **Part F: Appointment of EMR compliance officer and EMR compliance reporting**

2N.19 The licensee shall ensure, following consultation with the Authority, that a competent person (who shall be known as the “EMR compliance officer”) shall be appointed for the purpose of facilitating compliance by the licensee with the EMR Relevant Duties. For the avoidance of doubt, the person appointed as EMR compliance officer

pursuant to this paragraph may also hold other compliance officer roles for the licensee or its Associates licensed under the Gas Act 1986.

2N.20 The licensee shall appoint a single responsible director (the “Single Responsible Director”) for the purpose of ensuring the performance of, and overseeing the duties and tasks of, the EMR compliance officer set out in paragraph 2N.24 and the licensee’s compliance with its EMR Relevant Duties. The Single Responsible Director shall report to the board of directors of the licensee in relation to the obligations set out in this Special Condition 2N.

2N.21 The licensee shall ensure that the EMR compliance officer:

- (a) is provided with such employees, premises, equipment, facilities and other resources; and
- (b) has such access to the licensee’s premises, systems, information and documentation,

as, in each case, the EMR compliance officer might reasonably expect to require for the fulfilment of the duties and tasks assigned to the EMR compliance officer pursuant to this Special Condition 2N.

2N.22 Except to the extent provided for in paragraph 2N.19, the licensee shall ensure that the EMR compliance officer is not engaged in the management or operation of the Transmission Business, any Associate, other business of the licensee or any Relevant Other Competitive Businesses.

2N.23 The licensee shall make available to the EMR compliance officer details of any complaint or representation received by it from any person in respect of a matter arising under or by virtue of the EMR Relevant Duties.

2N.24 The duties and tasks of the EMR compliance officer shall include:

- (a) providing advice and information to the licensee (including individual directors of the licensee) and the Single Responsible Director for the purpose of ensuring the licensee’s compliance with the EMR Relevant Duties;
- (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee to ensure its compliance with the EMR Relevant Duties and described in the EMR compliance statement;
- (c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to secure the required co-operation;
- (d) investigating any complaint or representation made available to the EMR compliance officer in accordance with paragraph 2N.23;
- (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable; and

- (f) reporting annually to the Single Responsible Director as to the EMR compliance officer's activities in respect of the EMR Relevant Duties during the period covered by the report.
- 2N.25 As soon as is reasonably practicable and in any event no later than 90 days following the annual report of the EMR compliance officer, the licensee shall produce a report in a form approved by the Authority:
- (a) as to its compliance with the EMR Relevant Duties during the period since the last report; and
  - (b) as to its implementation of the practices, procedures and systems adopted in accordance with the EMR compliance statement.
- 2N.26 The report produced in accordance with paragraph 2N.25 shall in particular:
- (a) detail the activities of the EMR compliance officer during the relevant period covered by the report;
  - (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems described in the EMR compliance statement;
  - (c) set out the details of any investigations conducted by the EMR compliance officer, including:
    - (i) the number, type and source of the complaints or representations on which such investigations were based;
    - (ii) the outcome of such investigations; and
    - (iii) any remedial action taken by the licensee following such investigations; and
  - (d) be accompanied by a compliance certificate in a form approved by the Authority, approved by a resolution of the board of directors of the licensee and signed in good faith by the Single Responsible Director pursuant to that resolution, on the licensee's compliance with the EMR Relevant Duties and certifying that, to the best of that director's knowledge, information and belief having made due and careful enquiry, the report of the EMR compliance officer fairly represents the licensee's compliance with the EMR Relevant Duties.
- 2N.27 The licensee shall, as soon as reasonably practicable and in any event no later than 14 days after the compliance certificate is approved by a resolution of the board of directors of the licensee as required by paragraph 2N.26(d), submit to the Authority a copy of the report and compliance certificate produced in accordance with paragraph 2N.26, and shall publish copies of each of them on its website.
- 2N.28 The licensee shall, if so directed by the Authority, appoint an Independent Examiner for the purpose of providing a written report to the Authority:

- (a) reviewing the practices, procedures and systems which have been implemented to secure compliance with this condition;
- (b) assessing the appropriateness of such practices, procedures and systems for securing compliance with the licensee's obligations under this condition; and
- (c) reporting on the licensee's compliance with the requirements of this condition.

2N.29 The Independent Examiner's report shall be provided to the Authority within three working days of the licensee receiving it from the Independent Examiner.

2N.30 The Independent Examiner's report shall be commissioned at such intervals as the Authority shall direct.

**Part G: General**

2N.31 Should the licensee cease to perform the EMR Functions:

- (a) paragraphs 2N.12 and 2N.13 shall continue in force to the extent required to protect Confidential EMR Information in accordance with the obligations set out in this condition; and
- (b) the other obligations under this condition shall remain in force for such time and on such terms as the Authority shall direct in writing.

**Part H: Definitions**

2N.32 In this condition:

**“Associate”** means:

- (a) an Affiliate or Related Undertaking of the licensee;
- (b) an Ultimate Controller (as defined in Standard Condition A1 (Definitions and interpretation)) of the licensee;
- (c) a Participating Owner of the licensee; or
- (d) a Common Control Company.

**“Common Control Company”** means any company, any of whose ultimate controllers (applying the definition in Standard Condition A1 (Definitions and interpretation) but substituting that company for the licensee) is also an ultimate controller of the licensee.

**“Confidential EMR Information”** means all Information disclosed to or acquired in any way (and whether directly or indirectly) by the licensee or any of its agents or representatives by virtue of the performance of EMR Functions by the licensee, but excluding:

- (a) all Information that is in or has entered the public domain otherwise than as a direct or indirect consequence of any breach of this licence;

- (b) all Information which the licensee can demonstrate was lawfully in its written records prior to the date of disclosure of the same by the owner of the Confidential EMR Information or which it received from a third party independently entitled to disclose it; and
- (c) all Information properly received in the usual course of the licensee's activities pursuant to paragraphs (a) to (c) (inclusive) of the definition of Permitted Purpose.

**“Confidential EMR Administrative Information”** means Confidential EMR Information disclosed to or acquired by the licensee by virtue of its role in performing EMR Administrative Functions.

**“Confidential EMR Delivery Plan Information”** means Confidential EMR Information which comprises either:

- (a) Information on the costs of low carbon electricity generation technologies; or
- (b) Information, the unauthorised disclosure of which would be adverse to the commercial interests of the Information provider,

in each case, where such Information is:

- (i) disclosed to or acquired by the licensee by virtue of its role in performing EMR Data Handling Functions; and
- (ii) specific to an individual energy industry participant, plant, facility, generating station or generation set, or the owner or operator thereof.

**“EMR Administrative Functions”** means any functions conferred on the licensee by or by virtue of:

- (a) the Electricity Capacity Regulations 2014, but excluding any functions conferred by or by virtue of Part 3 of those regulations;
- (b) any capacity market rules made by the Secretary of State pursuant to section 34(1) of the Energy Act and any capacity rules made by the Authority pursuant to section 34(3) of the Energy Act;
- (c) the Contracts for Difference (Allocation) Regulations 2014; and
- (d) any allocation framework made by the Secretary of State pursuant to section 13(2)(a) of the Energy Act.

**“EMR Administrative Team”** means the team established or to be established by the licensee in accordance with paragraph 2N.7.

**“EMR compliance statement”** is defined under paragraph 2N.14 of this Special Condition 2N.

“**EMR Data Handling Functions**” means the data anonymisation and data aggregation functions which shall be performed in order to achieve the objective specified in paragraph 2N.6(a).

“**EMR Data Handling Team**” means the team established or to be established by the licensee in accordance with paragraph 2N.5.

“**EMR Functions**” has the same meaning as the term “EMR functions” in Chapter 5 of Part 2 of the Energy Act 2013.

“**EMR Relevant Duties**” means the licensee’s obligations pursuant to this licence condition.

“**Energy Act**” means the Energy Act 2013.

“**Independent Examiner**” means a person or persons nominated by, and independent of, the licensee or any business of the licensee with the skill and knowledge to undertake an evaluation of the practices, procedures and systems implemented by the licensee in order to secure compliance with this condition.

“**Information**” means all information of whatever nature and in whatever form including, without limitation, in writing, orally, electronically and in a visual or machine-readable medium including CD ROM, magnetic and digital form.

“**Participating Interest**” has the meaning given in section 421A of the Financial Services and Markets Act 2000.

“**Participating Owner**” - For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a “Participating Owner”) if:

- (a) that other person holds a Participating Interest in the person; or
- (b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

“**Permitted Purpose**” shall have the meaning given in Standard Condition A1 (Definitions and interpretation).

“**Relevant Other Competitive Business**” means the business of:

- (a) participating in, or intending to participate in, a competitive tender exercise to determine a person to whom an offshore transmission licence is to be granted;
- (b) an Offshore Transmission Owner;
- (c) undertaking carbon capture and storage activities; or
- (d) owning and/or operating an entity whose activities require a licence under section 6(1)(e) of the Electricity Act 1989.

“**Shared Services**” means shared corporate services as specified in the EMR compliance statement.

“**Single Responsible Director**” has the meaning given in paragraph 2N.20 of this Special Condition 2N.”

Date

Minister of State  
Department of Energy and Climate Change



## GUIDANCE NOTE

*(This note is not part of the modifications)*

These licence modifications are made further to section 45 of the Energy Act 2013 (c. 32) (“the Act”) and modify the special conditions of the transmission licence granted under section 6(1)(b) of the Electricity Act 1989 (c. 29) to the national system operator, National Grid Electricity Transmission plc (“NGET”)<sup>1</sup>.

The purpose of these licence modifications is to require NGET to implement certain business separation measures to address potential conflicts of interest arising as a result of NGET carrying out the role of Electricity Market Reform (“EMR”) delivery body under Part 2 of the Act.

These licence modifications insert a new Special Condition 2N into the special conditions of NGET’s transmission licence titled “Electricity Market Reform”.

Part A requires NGET to comply with its obligations in Special Condition 2N in a manner best calculated to secure, firstly, the efficient and effective carrying on of its EMR functions of administering the contract for difference and capacity market and, secondly, compliance with the principles appearing to NGET to represent best regulatory practice. In addition, paragraph 2N.2(b) requires NGET to act in a manner best calculated to secure that none of NGET’s businesses, nor any business of NGET’s associated companies, obtains an unfair commercial advantage as a result of NGET carrying out the EMR delivery role.

Part B requires NGET to carry out its activities, including the performance of its EMR delivery functions, separately from the Relevant Other Competitive Businesses which are defined in Part H. Paragraph 2N.3 sets out an overarching requirement for NGET to implement this separation and Paragraph 2N.4 sets out further detail of the legal and functional separation measures that NGET must put in place. These include (i) requirements for the production of separate accounts, (ii) employee and managerial separation, restricting employees from working simultaneously for NGET and the Relevant Other Competitive Businesses (except where employees are working on shared corporate services or on de minimis business, as defined in Special Condition B6 of NGET’s transmission licence, but provided that no employee may work simultaneously on de minimis business and the EMR functions), (iii) physical separation, restricting employees working for the Relevant Other Competitive Businesses accessing the working areas of employees working for NGET, and (iv) information access restrictions.

Part C requires NGET to establish an EMR Data Handling Team and an EMR Administrative Team by no later than 7 days after the licence modifications come into effect and to maintain and operate those teams in accordance with paragraphs 2N.6 and 2N.8 to 2N.11 respectively. In particular, Part C requires NGET to use all reasonable endeavours to ensure that Confidential EMR Delivery Plan Information and Confidential EMR Administrative Information (as such terms are defined in Part H) is anonymised before such information is disclosed outside the EMR Data Handling and EMR Administrative Teams, so that the recipient is unable to identify the generation station or the owner or operator of the generation station which is the subject of that information.

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<sup>1</sup> Copies of licences are available at [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

Part D sets out NGET's confidentiality obligations in respect of Confidential EMR Information, as defined in Part H, and sets out restrictions on the disclosure and use of such information. In particular, Paragraph 2N.12(c) provides that NGET may only use Confidential EMR Information for performing its EMR delivery functions, for carrying on Balancing Services Activity (as defined in Standard Condition C1 of NGET's transmission licence) and for other purposes where the prior consent of the Gas and Electricity Markets Authority (the "Authority") has been obtained.

Part E sets out the process for the production, approval and review of an EMR compliance statement which describes the practices, procedures and systems by which NGET will secure compliance with its obligations under Special Condition 2N. Paragraph 2N.18 specifically requires that the EMR compliance statement details how NGET will ensure the confidentiality of Confidential EMR Information, Confidential EMR Delivery Plan Information and Confidential EMR Administrative Information.

Part F imposes an obligation on NGET to appoint a compliance officer for the purposes of facilitating compliance with NGET's obligations under Special Condition 2N. Under Paragraph 2N.20, NGET must also appoint a responsible director to ensure the performance of, and oversee, the duties and tasks of the EMR compliance officer and NGET's compliance with the requirements of Special Condition 2N. Paragraph 2N.24 sets out the duties of the EMR compliance officer, which includes reporting to the responsible director. Paragraph 2N.25 also requires NGET to produce a report, approved by the Authority) and covering the matters set out in paragraph 2N.26, on its compliance with the terms of Special Condition 2N and on its implementation of the practices, procedures and systems adopted in accordance with the EMR compliance statement. Under paragraph 2N.28, the Authority may also direct NGET to appoint an independent examiner to report to the Authority on NGET's compliance with the requirements of Special Condition 2N.

Part G provides that, if NGET ceases to perform the EMR delivery role, certain provisions of Special Condition 2N shall remain in force to the extent required to protect Confidential EMR Information. In addition, the Authority may direct that other provisions in Special Condition 2N shall continue in force.

Part H sets out definitions used in these licence modifications.

The Secretary of State will publish the modifications on the website of the Department of Energy and Climate Change as soon as reasonably practicable.