

Gas Act 1986 and Electricity Act 1989

**SMART METER
COMMUNICATION
LICENCE**

granted pursuant to:

sections 7AB(2) and (4) of the Gas Act 1986

AND

sections 6(1A) and (1C) of the Electricity Act 1989

Commencement Date : 1 April 2013

SMART METER COMMUNICATION LICENCE

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**PART 1 OF THIS LICENCE : TERMS
IN RESPECT OF GRANT**

PART 1 : TERMS IN RESPECT OF GRANT

Introduction

1. This Smart Meter Communication Licence (“this Licence”) has effect and is to be read and treated as:
 - (a) a licence granted to the Licensee by the Secretary of State in exercise of the powers conferred by section 7AB(2) of the Gas Act 1986 (“the 1986 Act”) (insofar as the activity authorised by this Licence relates to the supply of gas under that Act); and
 - (b) a licence granted to the Licensee by the Secretary of State in exercise of the powers conferred by section 6(1A) of the Electricity Act 1989 (“the 1989 Act”) (insofar as the activity authorised by this Licence relates to the supply of electricity under that Act).
2. By virtue of paragraph 1:
 - (a) any obligation or requirement imposed by or under any provision of this Licence has effect as an obligation or requirement imposed by or under each of the licences that is mentioned in that paragraph; and
 - (b) the Licensee’s performance of any obligation or its compliance with any requirement so imposed is to be treated as its performance of that obligation or its compliance with that requirement for the purposes of each such licence.

Licence duration and Authorised Activity

3. This Licence has effect on Licence Commencement Date and remains in force until 31 March 2025 (“the Licence Term”), subject to paragraphs 6 to 11 of these Terms, the Conditions of this Licence as modified from time to time, and the fulfilment of any commitments set out in Schedule 3 to this Licence.
4. The activity that this Licence authorises the Licensee to carry on (“the Authorised Activity”) is the provision within the area of Great Britain of a Smart Meter Communication Service (being the activity of arranging with each Domestic Energy Supplier to provide a service, for such suppliers, of communicating information relating to the Supply of Energy under the Principal Energy Legislation to and from Smart Meters through which Energy is supplied to Domestic Premises) in accordance with the Conditions of this Licence.

Name and address of the Licensee

5. The Licensee (being the person who holds this Licence) is the [Data and Communications Company Ltd, a company registered in England and Wales under number 1234567], whose registered office is at [xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx].

Continuation of this Licence

6. The Authority may at any time after 31 March 2018, following consultation with the Licensee and subject to paragraphs 7 to 10 of these Terms, determine that this Licence is to continue:
 - (a) on the basis of the Conditions set out in the Licence at that time; or
 - (b) on the basis of such other Conditions as the Authority may impose pursuant to paragraph 16 of these Terms,

for a maximum further period of six Regulatory Years (“the Additional Licence Term”) beginning with the expiry of the Licence Term.

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7. A determination may only be made under paragraph 6 where the Authority is satisfied that the continuation of this Licence for an Additional Licence Term is necessary or expedient for any of the following purposes:
 - (a) to facilitate an efficient competitive tender process for determining the grant of a Successor Licence; or
 - (b) to facilitate an efficient handover of the Authorised Business of the Licensee to a Successor Licensee; or
 - (c) to secure that such requirements of this Licence as relate to the future procurement of Relevant Service Capability are met; or
 - (d) to ensure that energy industry activities (whether considered as a whole or otherwise) can continue to be carried on in an orderly and efficient manner.
8. In paragraph 7(d), “energy industry activities” refers to all those activities that are authorised to be carried on by licences granted, or treated as granted, under Part 1 of the 1986 Act or Part 1 of the 1989 Act.
9. A determination under paragraph 6 is of no effect unless the Authority has given the Licensee at least:
 - (a) six months’ Notice where the Additional Licence Term is a year or less; and
 - (b) one years’ Notice where the Additional Licence Term is more than a year.
10. The Authority’s power under paragraph 6 to determine the continuation of this Licence beyond the expiry of the Licence Term may be exercised more than once, but:
 - (a) the cumulative total of any periods of continuation so determined may not exceed the maximum duration of the Additional Licence Term specified in that paragraph; and
 - (b) except where the Licensee otherwise consents, the Authority may not make more than one determination to continue this Licence for a period of more than one Regulatory Year.

Revocation of this Licence

11. This Licence may be revoked in accordance with any of the provisions of Part 2 of this Licence (Terms in Respect of Revocation) that provide for revocation.

Conditions of this Licence

12. A reference to the Conditions of this Licence means all of its Conditions, including any Price Control Conditions and any other Condition however described that has effect in this Licence.
13. A reference to the Conditions of this Licence includes any Schedules to it.

Modification of Conditions

14. The Conditions of this Licence may be modified by either of the Secretary of State and the Authority as described in paragraphs 15 and 16 respectively.
15. The Secretary of State may at any time up to and including 31 October 2018, but not after that date, modify any condition of this Licence:
 - (a) for any of the purposes set out in section 88 of the Energy Act 2008; and
 - (b) in accordance with the procedures prescribed by section 89 of that Act.

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16. The Authority (and only the Authority) may at any time modify any condition of this Licence:
- (a) in accordance with the procedures prescribed by sections 23 and 23A of the 1986 Act and sections 11A and 11B of the 1989 Act; or
 - (b) pursuant to any modification procedure that is set out for the purposes of the Authority within that condition by virtue of section 7B(7) of the 1986 Act and section 7(5) of the 1989 Act.
17. Modification of the Conditions of this Licence by the Authority may be subject to the Secretary of State's exercise of the power of direction under section 23(5) of the 1986 Act and section 11A(5) of the 1989 Act.

Transfers of this Licence

18. This Licence is capable of being transferred in whole or in part by the Licensee in accordance with and subject to the provisions of section 8AA of the 1986 Act and section 7A of the 1989 Act.

General interpretation of this Licence

19. The Terms and Conditions of this Licence are to be read and understood as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
20. In this Licence, unless the context otherwise requires:
- (a) any word or expression that is defined in the 1986 Act, the 1989 Act, the Utilities Act 2000, or any of the Energy Acts 2004 to 2013 has the same meaning when used in this Licence; and
 - (b) any reference to an enactment or any other statutory provision is a reference to it as it may have been or may from time to time be amended, replaced, modified, consolidated, or re-enacted.

Interpretation of these Terms

21. Words and expressions used in this Part 1 that are defined terms for the purposes of any of the Conditions of this Licence have, for the purposes of this Part 1, the meaning that is given to them in this Licence in the form in which it was in force at 1 April 2013.

**PART 2 OF THIS LICENCE : TERMS
IN RESPECT OF REVOCATION**

PART 2 : TERMS IN RESPECT OF REVOCATION

Introduction

1. The Authority may at any time revoke this Licence by giving the Licensee:
 - (a) at least 24 hours' Notice in the case of any of the Emergency Revocation Events set out in Class A below;
 - (b) at least seven days' Notice in the case of the Grant Revocation Event set out in Class B below; and
 - (c) at least 30 days' Notice in the case of any of the Other Revocation Events set out in Class C below.
2. The Authority's powers of revocation under this Part 2 include a power to direct the Licensee to cease carrying on any or all of its activities under this Licence, while still remaining the holder of the Licence, in either of the following cases:
 - (a) for purposes connected with a handover of the Licensee's business, as provided for by Condition 43 (Arrangements for the handover of business) of this Licence, provided that three months' Notice of the Authority's direction is given; or
 - (b) for purposes arising from an occurrence of any Revocation Event however described under these Terms.

Class A: Emergency Revocation Events

3. The Emergency Revocation Events (to which the power of revocation under paragraph 1(a) relates) are as follows.
4. Emergency Revocation Event 1 is if the Licensee is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraph 5 below) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme or arrangement (other than for the purpose of reconstruction or amalgamation on terms and within such period as may previously have been approved by the Authority).
5. For the purposes of paragraph 4:
 - (a) section 123(1)(a) of the Insolvency Act 1986 has effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by Notice to the Licensee; and
 - (b) the Licensee will not be deemed to be unable to pay its debts if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures, or is satisfied before the expiry of such period as may be stated in any Notice given by the Authority under paragraph 1(a).
6. Emergency Revocation Event 2 is if the Licensee has a receiver (which expression includes an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) appointed in respect of the whole or any material part of its assets or undertaking.
7. Emergency Revocation Event 3 is if the Licensee has an administration order made in relation to it under section 8 of the Insolvency Act 1986.
8. Emergency Revocation Event 4 is if the Licensee passes any resolution for winding-up other than a resolution previously approved by the Authority.

9. Emergency Revocation Event 5 is if the Licensee becomes subject to an order for winding-up by a court of competent jurisdiction.

Class B: Grant Revocation Event

10. The Grant Revocation Event (to which the power of revocation under paragraph 1(b) relates) is if the Authority is satisfied that a material mis-statement of fact was made by, or on behalf of, the Licensee during or in connection with the Licence Application Process.

Class C: Other Revocation Events

11. The Other Revocation Events (to which the power of revocation under paragraph 1(c) relates) are as follows.
12. Other Revocation Event 1 is if the Licensee agrees in Writing with the Authority that this Licence should be revoked.
13. Other Revocation Event 2 is if any amount payable under Condition 4 of this Licence (Licensee's payments to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee Notice that the payment is overdue (but no such Notice may be given earlier than the sixteenth day after the day on which the amount payable became due).
14. Other Revocation Event 3 (subject to paragraph 15) is if the Licensee:
- (a) fails to comply with a Final Order or a Provisional Order which has been confirmed and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after it has given Notice of such failure to the Licensee; or
 - (b) fails to pay any Financial Penalty by the due date for such payment and such payment is not made to the Authority within three months after it has given Notice of such failure to the Licensee.
15. No Notice under paragraph 14 may be given by the Authority before the expiry of the period within which a Validity Application could be made by the Licensee or before the proceedings relating to any such application are finally determined.
16. Other Revocation Event 4 is if the Licensee fails to comply with:
- (a) an order made by the court under section 34 of the Competition Act 1998; or
 - (b) an order made by the Authority under section 158 or 160 of the Enterprise Act 2002; or
 - (c) an order made by the Competition Commission under section 76, 81, 83, 84, or 161 of the Enterprise Act 2002; or
 - (d) an order made by the Secretary of State under section 66, 147, 160, or 161 of the Enterprise Act 2002; or
 - (e) an enforcement notice served on it by the Information Commissioner under section 40 of the Data Protection Act 1998.
17. Other Revocation Event 5 is if the Authority considers that the Licensee has breached, or is breaching, any condition of this Licence, or any statutory requirement imposed on the Licensee in consequence of or in connection with this Licence, in a manner or to an extent that is so serious as to make it inappropriate for the Licensee to continue to hold this Licence.

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18. Other Revocation Event 6 is if the Licensee:
 - (a) itself breaches; or
 - (b) fails to take all appropriate steps within its power to prevent some other person from causing it to breach:
 - (i) any of the requirements of Part C of Condition 9 (Independence and autonomy of the Licensee); or
 - (ii) the requirements of any alternative arrangements in respect of corporate independence to which the Authority may have consented under Part D of that condition.
19. The appropriate steps mentioned in paragraph 18(b) include a duty on the Licensee to notify the Authority forthwith if the Licensee is or becomes aware that a breach has occurred or is likely to occur despite such steps as have been taken to prevent such breach.
20. Other Revocation Event 7 is if the Authority is satisfied (whether having regard to the conduct of the Licensee under this Licence or otherwise) that the Licensee no longer is, or never was, a fit and proper person to carry on the Authorised Activity.
21. Other Revocation Event 8 is if the Licensee has ceased (other than as directed by the Authority under paragraph 2 of these Terms) to carry on any part of the Authorised Activity.
22. Paragraphs 14 and 15 are to be read in accordance with the provisions of paragraphs 23 and 24 respectively.

Interpretation

23. For the purposes of paragraph 14:
 - (a) a Final Order is a final order within the meaning of section 28 of the 1986 Act or section 25 of the 1989 Act;
 - (b) a Provisional Order is a provisional order within the meaning of section 28 of the 1986 Act or section 25 of the 1989 Act 1989; and
 - (c) a Financial Penalty is a financial penalty within the meaning of section 30A of the 1986 Act or section 27A of the 1989 Act 1989.
24. For the purposes of paragraph 15, a Validity Application is an application made to the court by the Licensee:
 - (a) under section 30 of the 1986 Act or section 27 of the 1989 Act in the case of a Final Order or Provisional Order; or
 - (b) under section 30E of the 1986 Act or section 27E of the 1989 Act in the case of a Financial Penalty,

for the purpose of questioning the validity or effect of the order or the penalty, as the case may be, in accordance with law.
25. The provisions of section 46 of the 1986 Act and section 109 of the 1989 Act will apply to the extent that is relevant for the purposes of the service of any Notice under this Part 2.
26. Words and expressions used in this Part 2 that are defined terms for the purposes of any of the Conditions of this Licence have, for the purposes of this Part 2, the meaning that is given to them in this Licence in the form in which it was in force at 1 April 2013.

PART 3 OF THIS LICENCE :
THE CONDITIONS

CONDITIONS OF THIS LICENCE

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CHAPTER 1 : CONDITIONS 1 TO 4
Interpretation, contact details, and payments

Condition 1. Definitions for the Conditions of this Licence

Introduction

- 1.1 Part A of this condition sets out most of the defined words and expressions (all of which begin with capital letters) that are used in the Conditions of this Licence.
- 1.2 But:
- (a) where defined words and expressions are used only in a particular condition, their definitions are included in that condition; and
 - (b) some defined words and expressions that are used only in the Price Control Conditions in Chapter 9 of this Licence are set out, with their definitions, at Condition 35 (Definitions for the Price Control Conditions).
- 1.3 References in this Licence to “premises” (whether as such or as “Premises” as part of a defined term) include any land, building, or structure.

Part A: Definitions arranged in alphabetical order

- 1.4 In the Conditions of this Licence, unless the context otherwise requires:

1986 Act	means the Gas Act 1986.
1989 Act	means the Electricity Act 1989.
Additional Licence Term	has the meaning that is given to that term in paragraph 6 of Part 1 of this Licence (Terms in Respect of Grant).
Affiliate	means, in relation to any person, any Holding Company of that person, any Subsidiary of that person, or any Subsidiary of a Holding Company of that person.
Agreement for Services	means an agreement with the Licensee under or pursuant to Condition 17 (Requirements for the provision of Services) for the provision of Services, whether on terms as prescribed by or determined in accordance with the provisions of the SEC or otherwise.
Authorised Activity	means the activity of providing within the area of Great Britain a Smart Meter Communication Service as defined at paragraph 4 of Part 1 (Terms in Respect of Grant) of this Licence.
Authorised Business of the Licensee	means the whole of the business carried on by the Licensee under this Licence, comprising the Mandatory Business (see below) and the Permitted Business (see also below), as is set out with further detail in Parts A to C of Condition 6 (Authorised Business of the Licensee).
Authority	means the Gas and Electricity Markets Authority that is established under section 1 of the Utilities Act 2000.

Charging Methodology for Service Charges	means the methodology of that name that is designated by the Secretary of State for the purposes of Condition 18 (Charging Methodology for Service Charges) and has been incorporated into the SEC for the purpose of determining the charges payable for Mandatory Business Services provided by the Licensee under or pursuant to the SEC.
Charging Statement for Service Charges	means the statement of that name that sets out, in a form that is approved for the purposes of Condition 19 (Charging Statement for Service Charges), the basis on which charges are made for the provision of Mandatory Business Services under or pursuant to the SEC.
Commercial Activities	includes, in particular, Energy Efficiency Services, Energy Management Services, Energy Metering Services, and Energy Price Comparison Services, in each case in relation to the Supply of Energy (or its use) under the Principal Energy Legislation.
Communications Hub	means a component, forming a part of the Smart Metering System installed at an Energy Consumer’s premises, that enables data to be communicated to the Licensee from authorised devices within the premises that are connected to that system, and vice versa.
Communications Hub Service	means the service provided by the Licensee pursuant to Part E of Condition 17 (Requirements for the provision of Services) for the purpose of enabling Energy Suppliers to comply with their duties in respect of the installation of Smart Metering Systems at Energy Consumers’ premises.
Competition Commission	means the body of that name established by section 45 of the Competition Act 1998.
Compliance Statement	means the statement of that name that is approved by the Authority for the purposes of Condition 10 (Protection of Confidential Information).
Confidential Information	means information that is provided to the Licensee (whether directly or indirectly) by any person in connection with the Authorised Business of the Licensee, including information that is provided under or pursuant to the Smart Energy Code or the provisions of any External Service Provider Contract to which the Licensee is a party (and includes any personal data and sensitive personal data within the meaning of the Data Protection Act 1998).
Conditions	means all of the Conditions of this Licence, including any Price Control Conditions and any other condition however described that has effect in it, and includes any Schedule to this Licence (but does not include any of the Terms in Respect of Grant or Terms in Respect of Revocation set out in Parts 1 and 2 respectively of this Licence).

Core Communication Services	means communication services (as specified and defined in the SEC) that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation and that are provided by the Licensee in accordance with Part B of Condition 17 (Requirements for the provision of Services).
Domestic Energy Supplier	means an Energy Supplier who is authorised by its Energy Supply Licence to supply Energy to Domestic Premises and who supplies Energy to such premises in accordance with that licence.
Domestic Premises	means premises at which a Supply of Energy is or will be taken wholly or mainly for domestic purposes.
Elective Communication Services	means communication services that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation and that are provided by the Licensee in accordance with Part C of Condition 17 (Requirements for the provision of Services).
Electricity Meter	means any meter that conforms to the requirements of paragraph 2 of Schedule 7 to the 1989 Act and is used for the purpose of measuring the quantity of electricity that is supplied to premises (and includes a Smart Meter).
Enabling Services	means services forming part of the Mandatory Business of the Licensee that fulfil an enabling role with respect to the provision of Core Communication Services and Elective Communication Services, and that consist of: (a) the Enrolment Service; (b) the Communications Hub Service; and (c) Other Enabling Services.
Energy	means either or both of gas (as supplied to premises under or pursuant to the 1986 Act) and electricity (as supplied to premises under or pursuant to the 1989 Act).
Energy Consumer	means a person who is supplied or requires to be supplied with Energy at any premises in Great Britain.
Energy Efficiency Services	means, in relation to any premises, services (which may include the supply or installation of products) provided to an Energy Consumer with the aim of improving efficiency in the use of Energy at the premises, whether by way of improved operations and maintenance or otherwise, so as to reduce or eliminate its wastage.
Energy Licence	means any licence (including this Licence) that is granted, or treated as granted, under section 7, 7A, or 7AB of the 1986 Act or under section 6 of the 1989 Act.

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Energy Management Services	means, in relation to any premises, services (which may include the supply or installation of products) provided to an Energy Consumer in order to measure, monitor, and manage the consumption of Energy at the premises with a view to ensuring that such consumption is cost-effective for and consistent with his requirements (and may include Energy Efficiency Services, Energy Metering Services, and Energy Price Comparison Services).
Energy Meter	means a Gas Meter or an Electricity Meter (and in either case may include a Smart Meter).
Energy Metering Services	means any of the services of installing, commissioning, testing, repairing, maintaining, removing, and replacing Energy Meters.
Energy Networks	means any or all of: a pipe-line system within the meaning of section 7 of the 1986 Act, a distribution system as defined in section 4(4) of the 1989 Act, and a transmission system as defined in section 4(4) of the 1989 Act.
Energy Network Licence	means a licence granted, or treated as granted, under section 7 of the 1986 Act or section 6(1)(b) or (c) of the 1989 Act.
Energy Network Licensee	means a person who holds an Energy Network Licence and is either transmitting or distributing electricity, or conveying gas through pipes, in accordance with that licence.
Energy Price Comparison Services	means, in relation to any premises, services provided to an Energy Consumer for the purpose of enabling him to compare on a standardised basis the charges levied, or to be levied, by different Energy Suppliers in respect of the Supply of Energy by them to the premises.
Energy Registration Services	has the meaning given to that term in Part D of Condition 15 (Incorporation of Energy Registration Services) with respect to the services that may be the subject of a direction given by the Secretary of State under that condition.
Energy Supplier	means a person who holds an Energy Supply Licence and supplies Energy to premises in accordance with it.
Energy Supply Licence	means a licence granted, or treated as granted, under section 7A(1) of the 1986 Act or section 6(1)(d) of the 1989 Act.
Enrolment Service	means the service that is operated by the Licensee pursuant to Part D of Condition 17 (Requirements for the provision of Services) in order to ensure that a Smart Metering System is fit to be enrolled into the SEC Arrangements.
External Electronic Communication Network	means a network used for communicating information to and from a Smart Meter that:

<i>continued</i>	<p>(a) is an electronic communications network within the meaning given to that term in section 32 of the Communications Act 2003; and</p> <p>(b) does not form part of a Smart Meter.</p>
External Service Provider	means any person from whom Relevant Service Capability is procured by the Licensee (including a person from whom such capability is being procured by virtue of paragraph 6 of Condition 16) for the purpose of enabling the provision of Mandatory Business Services under or pursuant to the Smart Energy Code.
External Service Provider Contract	means, as between the Licensee and an External Service Provider, any arrangement (however described) that has been entered into for the provision by the External Service Provider to the Licensee of Relevant Service Capability (and includes every Legacy Procurement Contract).
Gas Meter	means a meter that conforms to the requirements of section 17(1) of the 1986 Act for the purpose of registering the quantity of gas supplied through pipes to premises (and includes a Smart Meter).
General Objectives of the Licensee	means the Licensee's objectives established by Condition 5 (General Objectives of the Licensee) for the carrying on of the Mandatory Business, consisting of the First General Objective and the Second General Objective as set out in Part A and Part B respectively of that condition.
General SEC Objectives	means the objectives that the Smart Energy Code (or SEC) is designed to achieve, as listed in Part C of Condition 22 (The Smart Energy Code).
Holding Company	means, in relation to any person, a holding company as it is defined in section 1159 of the Companies Act 2006.
Information	in relation to information requested by the Authority or the Secretary of State, has the meaning given to that term in Part H of Condition 29 (Provision of Information by the Licensee).
Legacy Procurement Contract	means any arrangement relating to the procurement by the Licensee of Relevant Service Capability that falls within the definition and other particulars set out in Schedule 1 to this Licence (Details of Fundamental Service Capability).
Licence	means this Smart Meter Communication Licence.
Licence Application Process	means the competitive tender process, as undertaken by the Secretary of State, that determined the grant of this Licence to the Licensee in accordance with the Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012.

GOVERNMENT RESPONSE TO CONSULTATION : ANNEX 1 – DRAFT DCC LICENCE

Licence Term	means (subject to the provisions of Part 1 and Part 2 of this Licence with respect to continuation and revocation) the period that begins on Licence Commencement Date and ends on 31 March 2025 during which this Licence remains in force and is held by and applies to the Licensee.
Licensee	means the [Data and Communications Company Ltd, a company registered in England and Wales under number 1234567], whose registered office is at [xxxxxxxxxxxxxx], and who is the person that holds this Licence.
Licence Commencement Date	means (except where the Secretary of State has otherwise directed) 1 April 2013.
Mandatory Business	means that part of the Authorised Business of the Licensee that consists of the operation or provision, on behalf of or to SEC Parties, of Mandatory Business Services under or pursuant to the SEC.
Mandatory Business Services	means the services comprising the Mandatory Business of the Licensee, namely (i) the Core Communication Services, (ii) the Elective Communication Services, and (iii) the Enabling Services, in each case as operated or provided by the Licensee in accordance with the relevant provisions of Condition 17 (Requirements for provision of Services).
Minimal Services	means services forming part of the Permitted Business of the Licensee that: (a) are not provided to any material extent from within capability or resources available to the Mandatory Business of the Licensee; and (b) do not exceed the limitation as to value imposed by paragraph 7(b) of Condition 6 (Authorised Business of the Licensee).
Notice	means notice given directly to a person in Writing (and includes a notification).
Other Enabling Services	means any Enabling Services forming part of the Mandatory Business of the Licensee (other than the Communications Hub Service and the Enrolment Service) that are specified and defined as such in the SEC.
Permitted Business	means that part of the Authorised Business of the Licensee that consists of the operation or provision, whether to SEC Parties or otherwise, of Permitted Business Services.
Permitted Business Services	means the services operated or provided by the Permitted Business of the Licensee, consisting of (i) any Value Added Services approved by the Authority in accordance with Part D of Condition 6 (Authorised Business of the Licensee) and (ii) any Minimal Services.

Permitted Purpose	means a purpose of any or all of the following things: <ul style="list-style-type: none">(a) the Authorised Business of the Licensee;(b) any business or activity of the Licensee to which the Authority has given its consent under paragraph 6 of Condition 9 (Independence and autonomy of the Licensee); and(c) any payment or transaction made or undertaken by the Licensee in accordance with Part C of Condition 27 (Indebtedness and transfers of funds).
Price Control Condition	means a condition the purpose of which, whether on its own or in combination with any other Price Control Condition, is to limit or control the charges of, or the revenue of, the Licensee (and the Conditions contained in Chapter 9 are the Price Control Conditions of this Licence).
Principal Energy Legislation	means the 1986 Act and the 1989 Act, read together so far as they apply for the purposes of this Licence in respect of the Supply of Energy under those Acts.
Procurement Strategy for Relevant Service Capability	means the statement of that name that sets out, in a form that is designated by the Secretary of State for the purposes of Condition 16 (Procurement of Relevant Service Capability), the strategy to be followed by the Licensee in procuring Relevant Service Capability.
Regulatory Accounts	means the accounts of the Licensee produced in accordance with the provisions of Condition 30 (Requirements for the Regulatory Accounts).
Regulatory Instructions and Guidance	means the document of that name (which may be referred to as “the RIGs” in this Licence) issued by the Authority under Condition 33 (Regulatory Instructions and Guidance) for purposes relating to the Licensee’s obligations under Condition 31 (Quality of Service Information reporting) and Condition 32 (Price Control Information reporting).
Regulatory Year	means a period of twelve months beginning on 1 April in any calendar year and ending on 31 March of the next following calendar year.
Related Undertaking	means, in relation to any person, any undertaking in which that person has a participating interest within the meaning of section 421A of the Financial Services and Markets Act 2000.
Relevant Business Assets	has the meaning that is given to that term in paragraph 4 of Condition 28 (Disposal of Relevant Business Assets) in respect of assets required to be identified in the Register of Relevant Business Assets maintained by the Licensee in accordance with that condition.

GOVERNMENT RESPONSE TO CONSULTATION : ANNEX 1 – DRAFT DCC LICENCE

Relevant Service Capability	means capability procured, or provided from within the Licensee’s own resources, in accordance with Condition 16 (Procurement of Relevant Service Capability) for the purposes of enabling the provision of Mandatory Business Services under or pursuant to the Smart Energy Code.
SEC	means the Smart Energy Code [and see further below].
SEC Arrangements	means such arrangements (including all necessary systems, contracts, processes, procedures, resources, products, and facilities) as the Licensee is required to establish, procure, or otherwise have in place under or pursuant to the Smart Energy Code in connection with the provision of Services, whether on behalf of or to SEC Parties or otherwise.
SEC Commencement Date	means the date on which the Smart Energy Code has effect under this Licence (and, except where the Secretary of State otherwise directs, is the same as the Licence Commencement Date).
SEC Modification Arrangements	means such arrangements established by the Smart Energy Code as are consistent with the requirements of Part B of Condition 23 (Change control for the Smart Energy Code) with respect to modifications of the SEC, but subject to the provisions of Condition 8 and Condition 18 respectively with respect to any modifications of the Statement of Security Requirements or the Charging Methodology for Service Charges as incorporated into the SEC.
SEC Panel	means the body established under the Smart Energy Code that is constituted in such manner and is responsible to such extent and for such activities and other matters as may be specified in the SEC with respect to the governance and administration of the SEC.
SEC Parties	means persons (excluding the Licensee) who have acceded to the Smart Energy Code on such terms and conditions of accession as are set out in the SEC, and includes every holder of an Energy Licence who is required by a condition of that licence to be a party to and comply with the SEC.
SECCo Ltd	means the Smart Energy Code Company (being the joint venture company established pursuant to paragraph 25(c) of Condition 22 (The Smart Energy Code) for the purpose of acting as a corporate vehicle to assist the SEC Panel in exercising its powers, duties, and functions (including by entering into contracts for that purpose).
Services	means any or all of the Mandatory Business Services and Permitted Business Services the operation or provision of which comprises the Authorised Business of the Licensee (and “operation or provision” in this context includes the procurement of all necessary resources for that purpose).

Service Charges	means the charges levied by and payable to the Licensee in connection with the operation or provision of Mandatory Business Services under or pursuant to the SEC (and such charges may reflect, among other things, expenditure incurred for the purpose of securing the future operation or provision of such services as well as expenditure incurred in connection with the governance and administration of the Smart Energy Code).
Smart Energy Code	means the document of that name, as designated by the Secretary of State under Condition 22 (The Smart Energy Code), that is maintained for the purposes of that condition (and may be referred to as “the SEC” in this Licence) and that is subject to modification pursuant to Condition 23 (Change control for Smart Energy Code).
Smart Meter	<p>means:</p> <ul style="list-style-type: none">(a) an Energy Meter that can both send and receive information using an External Electronic Communications Network; or(b) an Energy Meter and a device that is associated with or is ancillary to that meter and that enables information to be sent to and received by the meter using an External Electronic Communications network, <p>and the related term “Smart Metering” when used as part of another defined term is to be read accordingly.</p>
Smart Metering Equipment Technical Specification	means the document of that name (which may be referred to as “the SME Technical Specification” in this Licence) as designated by the Secretary of State for the purposes of the Energy Supply Licence with respect to the technical and functional capabilities of Smart Metering Systems.
Smart Metering System	<p>means a system installed at premises for the purposes of the Supply of Energy to the premises that, on the date on which it is installed, as a minimum:</p> <ul style="list-style-type: none">(a) consists of the apparatus identified in;(b) has the functional capability specified by; and(c) complies with the other requirements of, <p>the Smart Metering Equipment Technical Specification that is applicable at that date.</p>
Smart Metering Transition Scheme	means the scheme of that name that has been designated by the Secretary of State for the purposes of Condition 13 (Arrangements for transition to SMA Completion) and that may be modified from time to time in accordance with the provisions of that condition.

Statement of Security Requirements	means the statement of that name that is designated by the Secretary of State for the purposes of Condition 8 (Security controls for the Authorised Business) and that has been (or is to be) incorporated into the Smart Energy Code under or pursuant to that designation and that may be modified in accordance with such procedures as are specified for that purpose in that document.
Subsidiary	means a subsidiary within the meaning given to that term in section 1159 of the Companies Act 2006.
Successor Licence	means a licence granted (or to be granted) by the Authority or the Secretary of State under section 7AB of the 1986 Act and section 6 of the 1989 Act for the purpose of authorising a person to carry on the Authorised Activity following the expiry or any revocation of this Licence.
Successor Licensee	means the person that is to succeed (or has succeeded) the Licensee as holder of a licence to carry on the Authorised Activity within Great Britain (and, if the context so permits, may include any person who has applied, or is considering whether to apply, to be that licence holder).
Supply of Energy	means either or both of the supply of gas pursuant to the 1986 Act and the supply of electricity pursuant to the 1989 Act, in each case within the meaning that is given to the term “supply” in the respective Act.
Terms in Respect of Grant	means all of the matters that are set out in Part 1 of this Licence.
Terms in Respect of Revocation	means all of the matters that are set out in Part 2 of this Licence.
Ultimate Controller	means any of the following: <ul style="list-style-type: none">(a) a Holding Company of the Licensee that is not itself a Subsidiary of another company; and(b) subject to notes 1 and 2 set out below, any person who (whether alone or with any person or persons connected with him) is in a position to control, or exercise significant influence over, the policy of the Licensee or the policy of any Holding Company of the Licensee by virtue of:<ul style="list-style-type: none">(i) rights under contractual arrangements to which he is a party or of which he is a beneficiary, or(ii) rights of ownership (including any rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary.

see also notes 1 and 2 that follow

continued

note 1: for the purposes of sub-paragraph (b), a person is connected with another person if he is a party to any arrangement regarding the exercise of any such rights as are described or referred to in that sub-paragraph.

note 2: sub-paragraph (b) does not include any director or employee of a corporate body in his capacity as such.

Value Added Services

means services forming part of the Permitted Business of the Licensee that:

- (a) are not Minimal Services;
- (b) are not related solely to the Supply of Energy (or its use) under the Principal Energy Legislation;
- (c) do not prejudice the Licensee's ability to carry on the Mandatory Business in accordance with the General Objectives of the Licensee; and
- (d) have been approved by the Authority in accordance with Part D of Condition 6 (Authorised Business of the Licensee).

Website

means a website controlled and used by the Licensee for the purposes of communicating and disseminating information as required by or for reasons relating to any of the provisions of this Licence.

Writing

includes writing that is sent or received by means of a public electronic communications network within the meaning given to that term in section 161 of the Communications Act 2003.

Condition 2. Rules of interpretation for this Licence

Introduction

- 2.1 This condition sets out rules of interpretation, of both a general and a specific nature, that apply to the contents of this Licence.
- 2.2 The rules set out in this condition are additional to any general rules of interpretation that are stated in Part 1 of this Licence (Terms in Respect of Grant).

Part A: References within this Licence

- 2.3 Unless the context otherwise requires, any reference in the Conditions of this Licence to an industry code of any kind, an agreement, or a statement, methodology, scheme, or plan is a reference to it as modified, supplemented, transferred, novated, revised, or replaced from time to time.
- 2.4 The heading or title of any part, condition, schedule, or paragraph in the Conditions of this Licence is for convenience only and does not affect the interpretation of the text to which it relates.
- 2.5 Unless the context otherwise requires:
- (a) any reference in the Conditions of this Licence to a part, condition, schedule, or paragraph is a reference to it in the Conditions of this Licence;
 - (b) any reference in a condition of this Licence to a part, paragraph, or appendix is a reference to it in that condition; and
 - (c) any reference in the Conditions of this Licence to any natural or legal person includes that person's successors.
- 2.6 Any reference in the Conditions of this Licence to:
- (a) a provision of the Conditions of this Licence; or
 - (b) a provision of the conditions of any other type of Energy Licence,
- is to be read, if the Conditions of this Licence or the conditions of that other type of Energy Licence are subsequently modified, as a reference (so far as the context permits) to the corresponding modified provision of this Licence or of that other type of Energy Licence (as the case may be).
- 2.7 References in the Conditions of this Licence to persons include individuals, bodies corporate, unincorporated associations, and partnerships.

Part B: Licensee's performance of obligations

- 2.8 Where any obligation in this Licence is required to be performed by a specified date or time or within a specified period and the Licensee has failed to do so, the obligation will continue to be binding and enforceable after the specified date or time or after the end of the specified period, but without prejudice to all rights and remedies that are available against the Licensee in relation to its failure.

- 2.9 The Licensee must comply with a direction given to it by the Authority or (as the case may be) the Secretary of State under any provision of this Licence that provides for such direction to be given.

Part C: Specific application of powers

- 2.10 Unless a contrary intention appears, any power of the Authority or (as the case may be) of the Secretary of State under any provision of this Licence to give a direction, consent, derogation, approval, or designation, or to issue a statement, is a power:
- (a) to give or issue it to such extent, for such period of time, and subject to such conditions as the Authority or the Secretary of State thinks will be reasonable in all the circumstances of the case; and
 - (b) to revoke or amend it (after consulting with the Licensee) or to give or issue it again under that power.
- 2.11 Unless a contrary intention appears, any power of the Authority or (as the case may be) of the Secretary of State under any provision of this Licence to make a determination or a decision is a power:
- (a) to make it subject to such conditions as the Authority or the Secretary of State thinks will be reasonable in all the circumstances of the case; and
 - (b) to make it again under that power.
- 2.12 Any direction, consent, derogation, approval, designation, determination, decision, or other instrument given or made by the Authority or the Secretary of State under this Licence will be given or made in Writing.

Part D: Specification or determination of dates

- 2.13 In each case in which the Authority or the Secretary of State may specify a date under any provision of this Licence, either the date or the means by which that date is to be determined may be specified.

Part E: Calculation of periods of time

- 2.14 Periods of time under this Licence are to be calculated as follows:
- (a) where an act is required to be done within a specified period after or from a specified date, the period begins on the day immediately after that date;
 - (b) any day that is a Saturday or Sunday is to be included in the calculation of the period; but
 - (c) where the period would include Christmas Day, Good Friday, or a day that under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, that day is to be excluded from the calculation.

Part F: Reading of words without limitation

- 2.15 The words “include”, “includes”, “including”, and “in particular” where they appear in any provision of this Licence are to be read without limitation to the generality of the preceding words.

Part G: Particular interpretation of breach

- 2.16 In this Licence, “breach” (and any related expression) in relation to a condition, order, direction, or requirement (including a contractual requirement) includes a failure to comply with it, and is to be read as equivalent for all purposes to “contravene” (and any related expression) as used in the Principal Energy Legislation.

Part H: Requirements to provide or publish documents

- 2.17 Any requirement under this Licence for the Licensee to give a copy of a document to any person (including the Authority or the Secretary of State) may be satisfied by giving that person an electronic copy in an intelligible form.
- 2.18 Any requirement under this Licence for the Licensee to publish a document on its Website is a requirement to do so in a manner that ensures that the document is readily accessible from the home page of that Website.

Part I: Things done are to have continuing effect

- 2.19 Anything done under or because of a condition of this Licence, which is in effect immediately before that condition is modified, has continuing effect for so long as it is permitted or required by or under the modified condition.
- 2.20 Without prejudice to the generality of paragraph 2.19, every direction, consent, derogation, approval, designation, determination, decision, or other instrument given or made by the Authority or (as the case may be) the Secretary of State in relation to a condition of this Licence, which is in effect immediately before that condition is modified, will have continuing effect for so long as it is permitted or required by or under that modified condition.

Part J: Status of the Conditions of this Licence

- 2.21 The Conditions of this Licence are the conditions of a particular licence, and are not standard conditions within the meaning given to that term in the 1986 Act and the 1989 Act.

Part K: Authority’s determination of disputes

- 2.22 Section 4B(2)(a) of the 1986 Act and section 3D(3)(a) of the 1989 Act apply to any determinations of disputes made by the Authority under this Licence.

Part L: References to the Licensee

- 2.23 References to “the Licensee” in this Licence are references to the person to whom this Licence has been granted (see Part 1 of this Licence) and include any person to whom the whole or any part of this Licence has been transferred under section 8AA of the 1986 Act and section 7A of the 1989 Act.

Part M: References to Licensee’s functions

- 2.24 References in this Licence to the Licensee’s exercise of functions under or by virtue of the Principal Energy Legislation, this Licence, or the Smart Energy Code include the exercise of any powers, rights, or permissions conferred, as well as the performance of any requirements or duties imposed, on the Licensee.

Condition 3. Addresses for the purposes of this Licence

Introduction

- 3.1 The postal and electronic mail addresses of the Licensee, the Secretary of State, and the Authority are set out below for use with respect to the giving of Notice, the delivery of directions, and the exchange of correspondence and any other matters or material under or in connection with any of the purposes of this Licence.

Part A: Details with respect to the Licensee

3.2 **Party: The Licensee**

[Data and Communications Company]

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXX

relevant.person@dcc.com

Part B: Details with respect to the Secretary of State

3.3 **Party: The Secretary of State**

Department of Energy and Climate Change

3 Whitehall Place

London

SW1A 2AW

relevant.person@decc.gsi.gov.uk

Part C: Details with respect to the Authority

3.4 **Party: The Authority**

Office of Gas and Electricity Markets

9 Millbank

London

SW1P 9GE

relevant.person@ofgem.gov.uk

Part D: Alterations

- 3.5 A party under this condition may notify the other parties of any change to any of its details set out above for the purposes of this condition.
- 3.6 A notification under paragraph 3.5 is only effective on and from the date specified in it as the date on which the change is to take place.
- 3.7 The Licensee may alter so much of the details set out in this condition as may be necessary from time to time to reflect any changes to them of which it has become aware, whether by way of notification received under paragraph 3.5 or otherwise.

Condition 4. Licensee's payments to the Authority

Introduction

4.1 This condition requires the Licensee to pay to the Authority fees of the amount and at the times specified in or determined under Parts A and B below.

Part A: Total fee payable in respect of each Regulatory Year

4.2 In each Regulatory Year, the Licensee must pay to the Authority a fee that is the total sum of Amounts 1 to 4 set out below.

4.3 Amount 1 is the annual fee applicable to this Licence in respect of the Relevant Costs likely to be incurred by the Secretary of State during the coming year in the exercise of his functions under the Principal Energy Legislation in relation to the Licensee.

4.4 Amount 2 is the annual fee applicable to this Licence in respect of the Relevant Costs likely to be incurred by the Authority during the coming year in the exercise of its functions under the Principal Energy Legislation in relation to the Licensee.

4.5 Amount 3 is the Relevant Proportion of the costs estimated to have been incurred by the Competition Commission in the previous Regulatory Year in connection with any appeal made to it in respect of this Licence or any other Energy Licence granted under the Principal Energy Legislation.

4.6 Amount 4 is the Relevant Proportion of the difference (being a positive or a negative amount), if any, between:

- (a) any costs estimated by the Authority (having had regard to the views of the Competition Commission) in the previous Regulatory Year under paragraph 4.5; and
- (b) the actual costs of the Competition Commission in connection with appeals of the type referred to in paragraph 4.5 for the Regulatory Year before the previous Regulatory Year.

Part B: Payment of fees and treatment of late payment

4.7 The total annual fee determined in accordance with Part A above must be paid by the Licensee to the Authority in two instalments:

- (a) the first of which must be paid by 30 June in each year, if the Authority gives Notice to the Licensee of the amount of that instalment by 31 May in the year; and
- (b) the second of which must be paid by 31 January in each year, if the Authority gives Notice to the Licensee of the amount of that instalment by 1 January in the year.

4.8 If the Authority does not give Notice to the Licensee of the amount of the instalment by 31 May or (as the case may be) 31 January in the Regulatory Year, the Licensee must pay the amount in question to the Authority within 30 days after the date on which the Authority does give such Notice to the Licensee.

- 4.9 If the Licensee does not pay an amount due under this condition to the Authority within 30 days after the relevant payment date referred to in paragraph 4.7 or 4.8, it must with effect from that date pay simple interest on the amount at the rate that is equivalent to the average value of the Bank of England’s Official Bank Rate during the period of default.

Part C: Interpretation

- 4.10 For the purposes of this condition only:

- Relevant Costs**
- (a) in relation to Amount 1 (see paragraph 4.3), means costs notified to the Authority by the Secretary of State that have been estimated by the Secretary of State in accordance with principles established by him for the purposes of this condition following consultation with the Licensee, the Authority, and persons likely to be affected by the application of such principles; and
 - (b) in relation to Amount 2 (see paragraph 4.4), means costs estimated by the Authority in accordance with principles established by it for the purposes of this condition following consultation with the Licensee, the Secretary of State, and persons likely to be affected by the application of such principles.

Relevant Proportion means either the proportion of costs attributed to the Licensee in accordance with:

- (a) any order made by the Competition Commission under paragraph 13 of Schedule 22 to the Energy Act 2004; and
- (b) any order made by the Competition Commission under either or both of paragraph 12 of Schedule 4A to the 1986 Act and paragraph 12 of Schedule 5A to the 1989 Act,

or, in the absence of any such orders, means zero.

CHAPTER 2 : CONDITIONS 5 TO 8

Nature and conduct of Licensee's business

Condition 5. General Objectives of the Licensee

Introduction

- 5.1 The purpose of this condition is to establish the General Objectives of the Licensee under this Licence, and the Licensee's duty with respect to them.
- 5.2 The General Objectives of the Licensee consist of the First General Objective (see Part A below) and the Second General Objective (see Part B below).

Part A: First General Objective of the Licensee

- 5.3 The First General Objective of the Licensee is to carry on the Mandatory Business in the manner that is most likely to ensure the development, operation, and maintenance of an efficient, economical, and co-ordinated system for the provision of Mandatory Business Services under or pursuant to the Smart Energy Code.

Part B: Second General Objective of the Licensee

- 5.4 The Second General Objective of the Licensee is to carry on the Mandatory Business in the manner that is most likely to facilitate:
- (a) effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation;
 - (b) such innovation in the design and operation of Energy Networks as will best contribute to the delivery of a secure and sustainable Supply of Energy under the Principal Energy Legislation; and
 - (c) the reduction (by virtue of benefits arising from the provision of Value Added Services) of the charges payable for Mandatory Business Services.

Part C: Licensee's general duty under this Licence

- 5.5 It is the duty of the Licensee under this Licence to carry on the Mandatory Business at all times in accordance with the General Objectives of the Licensee.
- 5.6 In discharging that duty, the Licensee must have regard to the General Objectives in the round, weighing them as appropriate in each particular case.

Part D: Paramount position of the Mandatory Business

- 5.7 The Licensee must not carry on any activity, or any combination of activities, under or pursuant to the Permitted Business in a manner that prejudices or impairs, or would be likely to prejudice or impair, its ability to carry on the Mandatory Business at all times in accordance with the General Objectives of the Licensee.

Part E: Interpretation

- 5.8 For the purposes of this condition only:

First General Objective of the Licensee has the meaning given to that term in Part A of this condition.

Second General Objective of the Licensee has the meaning given to that term in Part B of this condition.

Condition 6. Authorised Business of the Licensee

Introduction

6.1 This condition sets out the composition of the Authorised Business of the Licensee and the Licensee's functions in relation to it (see Part A below), describes each of the Services that together comprise the Authorised Business (see Parts B and C below), and establishes a procedure under which the Licensee can ask the Authority to approve the enlargement of that business (see Part D).

Part A: Authorised Business and the Licensee's functions

6.2 The Authorised Business of the Licensee consists of the following two businesses:

- (a) the Mandatory Business (as to which, see Part B below); and
- (b) the Permitted Business (as to which, see Part C below).

6.3 The functions of the Licensee with respect to the Authorised Business are:

- (a) a duty to carry on the Mandatory Business at all times in accordance with this Licence; and
- (b) a power to carry on the Permitted Business in accordance with this Licence and subject to such requirements of this Condition 6 as apply.

Part B: Services forming the Mandatory Business of the Licensee

6.4 The Mandatory Business of the Licensee comprises the provision, for and on behalf of parties to the Smart Energy Code, of the following Mandatory Business Services:

- (a) Core Communication Services, being communication services (as specified and defined in the SEC) that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation, and that are provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part B of Condition 17 (Requirements for the provision of Services);
- (b) Elective Communication Services, being communication services that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation, and that are provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part C of Condition 17; and
- (c) Enabling Services (as to which, see paragraph 6.5), being services that fulfil an enabling role in relation to the provision of Core Communication Services and Elective Communication Services,

and the procurement, management, and utilisation of all such capability and resources as are necessary or expedient for the purposes of securing such provision.

6.5 The Enabling Services to which paragraph 6.4(c) refers are these:

- (a) the Enrolment Service, being the service operated by the Licensee under or pursuant to an Agreement for Services in accordance with Part D of Condition 17;

- (b) the Communications Hub Service, being the service provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part E of Condition 17; and
 - (c) Other Enabling Services, being any Enabling Services that are specified and defined as such in the SEC (other than the Communications Hub Service and the Enrolment Service) and that are provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part F of Condition 17.
- 6.6 In providing as a Mandatory Business Service any service that has not previously been provided as such, the Licensee must ensure that its provision of that new or amended service does not materially prejudice or impair its continuing ability to provide other Mandatory Business Services that it is obliged to provide pursuant to the requirements of this Licence and the Agreements for Services that it has entered into under it.

Part C: Services forming the Permitted Business of the Licensee

- 6.7 The Permitted Business of the Licensee comprises the provision, whether for and on behalf of parties to the Smart Energy Code or otherwise, of the following Permitted Business Services:
- (a) such Value Added Services as the Authority may from time to time approve in accordance with the provisions of Part D below, and as may be provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part G of Condition 17; and
 - (b) Minimal Services (which need not be approved by the Authority but must not, in total, exceed a turnover value of £500,000 in any Regulatory Year).

Part D: Procedure for authorising any Value Added Services

- 6.8 Where the Licensee wishes to provide a particular service as a Value Added Service forming part of its Permitted Business, it must first by Notice to the Authority, and subject to the provisions of this Part D, propose that the service should be so provided by the Licensee with effect from a date (“the Value Added Service Date”) that is specified in the Notice.
- 6.9 In addition to specifying the Value Added Service Date, a Notice to the Authority under paragraph 6.8 must:
- (a) describe in appropriate detail the nature, scope, and content of the proposed Value Added Service;
 - (b) confirm (with supporting evidence) that the Licensee has notified the nature, scope, and content of the proposed Value Added Service to any Relevant Regulator that should be so notified;
 - (c) explain how, in formulating the proposed Value Added Service, the Licensee has taken account of any advice, consent, or other representation received in response to a notification made under sub-paragraph (b);
 - (d) set out the Licensee’s assessment of the impact of the proposed Value Added Service on the operating costs and technical efficiency of such aspects of the SEC Arrangements as would be affected by it;

- (e) explain why, in the Licensee’s opinion, the provision of the proposed Value Added Service (taking account of any benefits likely to accrue to the Mandatory Business of the Licensee from such provision) would be consistent with the General Objectives of the Licensee; and
 - (f) contain any other analysis or information that the Licensee considers may be relevant to the Authority’s consideration of its proposal.
- 6.10 For the purpose of identifying any Relevant Regulator that should be notified under paragraph 6.9(b), the Licensee must have due regard to the substance of the proposed Value Added Service and the characteristics of the market within which that service (if approved) would be wholly or mainly provided.
- 6.11 The Licensee may only provide the proposed service as a Value Added Service forming part of its Permitted Business if the Authority gives the Licensee a direction approving its proposal, with or without amendment, and on the basis of such terms or conditions (if any) as the Authority may specify in that direction (which may include a variation of the Value Added Service Date).
- 6.12 The Licensee may at any time before the Value Added Service Date withdraw a proposal that was the subject of a Notice under paragraph 6.8.

Part E: Authority’s guidance and directions under this condition

- 6.13 The Authority may issue, and may from time to time revise, guidance regarding the procedure it will follow and the criteria it will take into account in considering whether and to what extent to exercise its power to give a direction under paragraph 6.11 allowing the Licensee to provide a Value Added Service.
- 6.14 A direction under paragraph 6.11 may require the Licensee to promptly initiate such modification procedures as may be applicable under the SEC with respect to the incorporation of a new Value Added Service into the Permitted Business of the Licensee with effect from the Value Added Service Date.
- 6.15 Any direction received by the Licensee under paragraph 6.11 must be copied by the Licensee without delay to all SEC Parties.

Part F: Interpretation

- 6.16 For the purposes of this condition only:

Relevant Regulator means any person (excluding the Authority) who would have statutory or other legal power to exercise any regulatory functions in relation to the provision (if approved) of the Value Added Service, and includes:

- (a) the Office of Communications established by section 1 of the Communications Act 2003;
- (b) the Information Commissioner appointed by section 6 of the Data Protection Act 1998; and
- (c) the Water Services Regulation Authority established by section 1A of the Water Industry Act 1991.

Value Added Services Date has the meaning given to that term in paragraph 6.8.

Condition 7. General controls for the Authorised Business

Introduction

7.1 This condition requires the Licensee to establish and maintain effective arrangements for corporate governance, internal control, and risk management so that the environment in which the Authorised Business is carried on is and will remain fit for purpose.

Part A: Requirement for corporate governance arrangements

7.2 This Part A applies to the Licensee as if it were a quoted company within the meaning of section 385 of the Companies Act 2006, whether or not it is such a company.

7.3 The Licensee must, unless and to the extent that the Authority otherwise consents, comply with the main principles of the UK Corporate Governance Code (“the Code”) that has effect pursuant to the listing rules of the Financial Services Authority.

7.4 The Licensee must, by not later than 31 July in each Regulatory Year beginning on and after 1 April 2014, provide to the Authority a Corporate Governance Statement that sets out how the Licensee has complied during the previous Regulatory Year with the main principles of the Code.

7.5 The Licensee must incorporate the Corporate Governance Statement into:

- (a) its annual statutory report and accounts; and
- (b) its Regulatory Accounts prepared and submitted to the Authority under Condition 30 (Requirements for the Regulatory Accounts).

Part B: Requirement for internal control arrangements

7.6 The Licensee must at all times have in place an Internal Control Document that sets out its systems and procedures for the internal control of the activities comprising the Authorised Business of the Licensee (“Authorised Business Activities”).

7.7 The first Internal Control Document must be approved by the Secretary of State and the Licensee must not materially revise it without the Authority’s prior approval.

7.8 The contents of the Internal Control Document must demonstrate that the Licensee has in place and maintains:

- (a) an appropriate organisational structure within which the Authorised Business Activities are planned, executed, controlled, and monitored effectively to achieve the General Objectives of the Licensee;
- (b) transparent and reliable audit trails for all processes, procedures, and internal financial controls relating to the Licensee’s management and operation of the Authorised Business Activities;
- (c) a monitoring process that provides control procedures for all the Authorised Business Activities and ensures that those procedures are followed; and
- (d) a formal procedure for identifying the lack in any particular respect of an effective system of internal control and for ensuring remedial action.

- 7.9 The Licensee must ensure that its statutory auditors are appointed on terms which (in addition to any report that they are required to make under any statutory provision or any other condition of this Licence) require them to report to the Licensee within four months after the end of each Regulatory Year on whether, in the course of any work performed by them for the Licensee, they have identified any material matters to indicate that the Licensee has not kept a proper set of books and records or has not operated an adequate system of internal financial control.
- 7.10 The Licensee must, on receiving a report under paragraph 7.9, promptly provide a copy to the Authority.

Part C: Requirement for risk management arrangements

- 7.11 The Licensee must establish and maintain a Risk Management Strategy that sets out a robust framework for the identification, evaluation, and management of risk with respect to the carrying on of the Authorised Business Activities of the Licensee (“Authorised Business Risk”).
- 7.12 The first Risk Management Strategy must be approved by the Secretary of State and the Licensee must not materially revise it without the Authority’s prior approval.
- 7.13 The Risk Management Strategy must, in particular:
- (a) explain the Licensee’s attitude to, capacity for, and tolerance of Authorised Business Risk;
 - (b) enable Authorised Business Risk to be identified across all of the Authorised Business Activities along with an assessment of the materiality in each case;
 - (c) require the maintenance of a permanent register of Authorised Business Risk;
 - (d) require the maintenance of a plan for the purpose of recovering or continuing Authorised Business Activities after any natural or human-induced disaster;
 - (e) contain evaluation criteria in respect of Authorised Business Risk which are to be reviewed annually; and
 - (f) provide for the allocation of resources in respect of Authorised Business Risk.

Part D: Document approval procedures and publication

- 7.14 Before approving the Licensee’s Internal Control Document or its Risk Management Strategy (or any revision of either), the Secretary of State must consult the Authority, SEC Parties, and such other persons as the Secretary of State considers it appropriate to consult, allowing them a period of at least 28 days within which to comment to him in Writing about the matter.
- 7.15 The Secretary of State must have due regard to any comments duly received under paragraph 7.14 and must give reasons for his decisions in relation to them.
- 7.16 The Licensee must:
- (a) give the Authority a copy of the Internal Control Document, of the Risk Management Strategy, and of each revision of either;

- (b) give a copy of the document or strategy, or most recent revision of either, to any person who asks for a copy; and
- (c) publish both the document and the strategy on its Website.

Part E: Interpretation

7.17 For the purposes of this condition only:

Authorised Business Activities has the meaning given to that term in paragraph 7.6.

Authorised Business Risk has the meaning given to that term in paragraph 7.11.

Corporate Governance Statement has the meaning given to that term in paragraph 7.4.

Internal Control Document has the meaning given to that term in paragraph 7.6.

Risk Management Strategy has the meaning given to that term in paragraph 7.11.

UK Corporate Governance Code has the meaning given to that term in paragraph 7.2.

Condition 8. Security controls for the Authorised Business

Introduction

- 8.1 This condition requires the Licensee to install, operate, and maintain adequate and proportionate security controls that are designed to protect the integrity of the physical, organisational, and information assets of the Authorised Business.
- 8.2 The requirements of this condition are without prejudice to the obligations imposed on the Licensee by:
- (a) Condition 7 (General controls for the Authorised Business) in respect of corporate governance, internal control, and risk management; and
 - (b) Condition 10 (Protection of Confidential Information) in respect of the duty to prevent unauthorised disclosure of Confidential Information.

Part A: Compliance with the Statement of Security Requirements

- 8.3 The Licensee must discharge its duties under this condition in accordance with the Statement of Security Requirements, as incorporated into the SEC.
- 8.4 The Statement of Security Requirements sets out the security requirements:
- (a) that have been designated by the Secretary of State as provisions of the SEC with effect from the Relevant Incorporation Date;
 - (b) that apply to the Licensee from that date by virtue of that designation;
 - (c) that may be modified in accordance with such procedures as are specified for that purpose in the SEC and by reference to Relevant Policy Objectives set out in the SEC that may be different from the General SEC Objectives; and
 - (d) that determine the adequacy and proportionality of the security controls that are the subject of the Licensee's duties under this condition, having regard to both the costs and the benefits of such controls.

Part B: Requirements with respect to incorporation and modification

- 8.5 By virtue of this Part B, and having full effect at all times on and after the Relevant Incorporation Date, the Statement of Security Requirements, as designated by the Secretary of State:
- (a) is to be incorporated into the Smart Energy Code as one of the matters that is required to be included in that document by virtue of the provisions of Part G of Condition 22 (The Smart Energy Code); and
 - (b) may be modified in accordance with such of the arrangements for which the Smart Energy Code is required to make provision by virtue of Condition 23 (Change control for the Smart Energy Code) as are specified by the SEC to be applicable to it, subject to the requirements of paragraph 8.6.
- 8.6 Those requirements are that any proposal raised under the SEC by the Licensee (or any other person) to modify the Statement of Security Requirements:

- (a) must have as its purpose the better achievement of such Relevant Policy Objectives as may be set out in the SEC with respect to the statement, instead of the better achievement of the General SEC Objectives set out at Part C of Condition 22; and
- (b) must be assessed by reference to those Relevant Policy Objectives, and not by reference to the General SEC Objectives.

Part C: Requirements for Licensee’s control of physical security

- 8.7 The Licensee must at all times have in place a system of controls that is designed to ensure the security of all equipment, processes, procedures, and data used in or for the purposes of carrying on the Authorised Business so as to minimise opportunities for theft, fraud, or other unauthorised interference or misuse that whether directly or indirectly could cause any interruption, loss, or cessation of Services.
- 8.8 In particular, the system of controls to which paragraph 8.7 refers must include measures designed to ensure that:
- (a) equipment installed and operated by the Licensee for the purposes of the Authorised Business cannot be accessed by unauthorised persons;
 - (b) the supply, repair, and maintenance of such equipment, and the supply of spare parts for it, are at all times under the control of the Licensee; and
 - (c) the security of each of the Licensee’s premises is maintained.

Part D: Requirements for Licensee’s control of organisational security

- 8.9 The Licensee must verify (by such means as may be appropriate in each specific case) the backgrounds of its existing and all new personnel engaged in or for the purposes of carrying on the Authorised Business.
- 8.10 Without prejudice to its obligations under paragraph 8.17 (see Part G below), the Licensee’s duty under paragraph 8.9 includes a requirement to take all appropriate steps within its power to ensure that any agents and contractors of the Licensee (including, in particular, its External Service Providers) establish and maintain arrangements equivalent in their effect to those established and maintained by the Licensee for the purposes of that paragraph.
- 8.11 The Licensee must at all times have in place an appropriate framework for security management that provides for a nominated person to be directly responsible to the Licensee’s board of directors for ensuring that:
- (a) the Licensee’s security policies are communicated to all its staff;
 - (b) staff training is provided on a regular basis with respect to the allocation of security roles and responsibilities within the Licensee’s organisation; and
 - (c) each person engaged in or for the purposes of the Authorised Business is (and remains) a fit and proper person to be so engaged.
- 8.12 This paragraph applies if, in premises that are occupied by (i) the Licensee or an External Service Provider and (ii) some other person, there is any area that must be kept secure in order to maintain the security of the Authorised Business.

- 8.13 Where paragraph 8.12 applies, the Licensee must ensure that:
- (a) the area to which that paragraph refers (which may be the whole or any part of the area occupied by the Licensee or an External Services Provider within the premises in question) is designated as a Secure Area; and
 - (b) an appropriate level of security in relation to the Secure Area is maintained (in particular, by ensuring that no person gains access to such area unless it is a person whose name is on a register maintained by the Licensee or External Service Provider for that purpose, or who is supervised by such a person).

Part E: Requirements for Licensee’s control of information security

- 8.14 The Licensee must comply with, and (if applicable) hold appropriate certification by a body accredited by the United Kingdom Accreditation Service in relation to, the following standards of the International Organisation for Standards with respect to the resilience, reliability, and security of its information assets:
- (a) ISO 27001:2005 (under the title of *Information Technology – Security Techniques – Information Security Management Systems*);
 - (b) ISO 27002:2005 (under the title of *Information Security Management*); and
 - (c) any equivalent standard of the ISO that updates, replaces, or supersedes either or both of those standards.
- 8.15 References to standards in paragraph 8.14 include any variations, additions to, or elaborations of those standards that may be applicable to the Licensee by virtue of any of the provisions of the SEC.

Part F: Requirement to maintain a Register of Security Incidents

- 8.16 The Licensee must:
- (a) maintain a register of every incident (as may be defined in accordance with the relevant provisions of the Statement of Security Requirements) arising from a failure (whether actual or apparent) or an absence of any of the security controls established, operated, and maintained by the Licensee pursuant to this condition (“the Register of Security Incidents”);
 - (b) record each such incident in the Register of Security Incidents immediately upon becoming aware of it;
 - (c) immediately inform such body as is required by the provisions of the SEC to be so informed of the incident as soon as the Licensee has become aware of it; and
 - (d) within such timescale as is specified by the Authority, provide the Authority with a report that details:
 - (i) the nature, cause, and impact (or likely impact) of the incident,
 - (ii) the action taken by the Licensee to remedy or minimise the immediate or expected consequences of the incident, and

- (iii) the action taken (or proposed to be taken) by the Licensee to ensure that the incident does not recur, or that the risk of recurrence is minimised.

8.17 The Licensee must also:

- (a) make the Register of Security Incidents available to the Authority for its inspection at all times; and
- (b) provide the Authority with a copy of the Register of Security Incidents on the expiry or any revocation of this Licence.

Part G: Requirement in respect of Licensee's contracts

8.18 The Licensee must not enter into any contractual arrangement with any person (including, in particular, any External Service Provider) that does not contain appropriate provisions requiring that person to take such steps as are necessary to facilitate the Licensee's fulfilment of its obligations under this condition in respect of the security of its physical, organisational, and information assets.

Part H: Interpretation

8.19 For the purposes of this condition only:

Register of Security Incidents has the meaning given to that term in paragraph 8.16(a).

Relevant Incorporation Date means the date on which the Statement of Security Requirements is designated by the Secretary of State for the purposes of this condition (or such later date as may be specified in or determined in accordance with that designation).

Relevant Policy Objectives has the meaning given to that term in paragraph 8.4(c) (and so must be interpreted by reference to the relevant provisions of the SEC).

Secure Area has the meaning given to that term in paragraph 8.13(a).

Statement of Security Requirements has the meaning given to that term in paragraph 8.4.

CHAPTER 3 : CONDITIONS 9 TO 12

Arrangements for the Licensee's independence

Condition 9. Independence and autonomy of the Licensee

Introduction

9.1 This condition establishes prohibitions and restrictions (subject to certain exceptions) in relation to the Licensee’s activities other than under this Licence, with a view to securing the independence and autonomy of the Licensee from other entities (including, in particular, SEC Parties and External Service Providers) whether inside or outside any wider corporate group to which the Licensee might belong.

Part A: General Prohibition of any unrelated business or activity

9.2 Subject to the provisions of Part B below, the Licensee must not carry on any business or undertake any activity other than a business or an activity of the Authorised Business (“the General Prohibition”).

9.3 In paragraph 9.2, “activity” includes:

- (a) holding an Energy Licence (other than this Licence) under Part 1 of the 1986 Act or Part 1 of the 1989 Act; and
- (b) holding investments:
 - (i) by way of shares, securities, members’ interests, or other interests or rights in any body corporate, or
 - (ii) by way of securities, members’ interests, or other interests or rights in any partnership or unincorporated association,

that carries on a business or undertakes an activity that does not form part of the Authorised Business.

Part B: Permitted exceptions to the General Prohibition

9.4 The Licensee may, with the Authority’s consent, hold or acquire:

- (a) shares or other investments in any wholly owned Subsidiary the sole activity of which is to carry on business for a Permitted Purpose; or
- (b) shares or other investments in any wholly owned Subsidiary that has been incorporated by the Licensee solely for the purpose of raising finance for the Authorised Business; or
- (c) (subject to paragraph 9.5) investments acquired in the usual and ordinary course of the Licensee’s treasury management operations.

9.5 The Licensee may only rely on the exception permitted by paragraph 9.4(c) if it has in place a system of internal controls in relation to its treasury management operations that complies with such best corporate governance practice as is required (or, in the absence of that, is recommended) from time to time by the UK listing authority (or a successor body) for listed companies in the United Kingdom.

9.6 Nothing in Part A above or Part C below prevents the Licensee from:

- (a) performing the supervisory or management functions of a Holding Company in respect of any Subsidiary; or

- (b) holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistent with the provisions of this condition; or
- (c) carrying on any business or conducting any activity to which the Authority has given its consent.

Part C: Restrictions relating to the Licensee’s corporate structure

- 9.7 Neither the Licensee nor a Subsidiary of the Licensee may at any time hold or acquire any investments by way of shares, securities, or other financial rights or interests in:
- (a) any SEC Party (or any Affiliate or Related Undertaking of such person) to whom any Services are provided as part of the Licensee’s Authorised Business; or
 - (b) any External Service Provider (or any Affiliate or Related Undertaking of such person) from whom service capability to enable the provision of such Services is procured pursuant to paragraph 4 of Condition 16 (Procurement of Relevant Service Capability).
- 9.8 The Licensee must ensure that no director of the Licensee is or at any time becomes a director or an employee of, or holds or acquires investments by way of shares, securities, or other financial rights or interests in:
- (a) any SEC Party (or any Affiliate or Related Undertaking of such person) to whom any Services are provided as part of the Licensee’s Authorised Business; or
 - (b) any External Service Provider (or any Affiliate or Related Undertaking of such person) from whom service capability to enable the provision of such Services is procured pursuant to paragraph 4 of Condition 16.
- 9.9 The Licensee must take all appropriate steps within its power to ensure that it is not and does not at any time become a Related Undertaking of:
- (a) a SEC Party or any other person to whom Services are provided as part of the Licensee’s Authorised Business; or
 - (b) an External Service Provider from whom Relevant Service Capability is or is likely to be procured pursuant to paragraph 4 of Condition 16; or
 - (c) any person who, whether by virtue of the investments he holds or otherwise, is able to exert a material influence over the conduct of the affairs of any SEC Party or (as the case may be) External Service Provider from whom Relevant Service Capability is procured pursuant to paragraph 4 of Condition 16.
- 9.10 The duty imposed on the Licensee by paragraph 9.9 includes, where the Licensee is aware that any person of a description within that paragraph has caused or is likely to cause the Licensee to breach its requirements, a duty to draw that person’s attention to the substance of both that paragraph and paragraph 18 of Part 2 of this Licence (Terms in Respect of Revocation) and to notify the Authority forthwith.
- 9.11 The Licensee must not, for any purpose, provide to itself any of the Services that are provided (whether to SEC Parties or otherwise) as part of its Mandatory Business.

Part D: Alternative arrangements to secure independence

- 9.12 The Licensee may propose, and the Authority may consent to, arrangements that do not conform in all respects with the restrictions imposed by Part C above if the Authority is satisfied that such arrangements will secure a sufficiently equivalent level of corporate independence for the Licensee.
- 9.13 The Authority’s consent to a proposal under this Part D may be subject to such terms and conditions as it considers appropriate in all the circumstances of the case.

Part E: Appointment of Sufficiently Independent Directors

- 9.14 Except where the Authority otherwise consents, at least two of the persons at any time appointed as the Licensee’s directors must be persons who are sufficiently independent from the Licensee and any of its Affiliates or Related Undertakings.
- 9.15 Those directors, who are to be known as the Sufficiently Independent Directors of the Licensee, must at all times be natural persons who:
- (a) have the skills, knowledge, experience, and personal qualities that are necessary for them to perform effectively as non-executive directors of the Licensee;
 - (b) are not required to perform any executive duties within the Authorised Business of the Licensee; and
 - (c) satisfy the requirements in respect of independence set out in this Part E (“the Independence Requirements”).
- 9.16 The first Independence Requirement is that, except where and to the extent that the Authority otherwise consents, a Sufficiently Independent Director must not be, and must not at any time during the 12 months preceding his appointment have been:
- (a) a director or an employee of the Licensee; or
 - (b) a director or an employee of any Affiliate or Related Undertaking of the Licensee.
- 9.17 The second Independence Requirement is that a Sufficiently Independent Director must not have, and must not at any time during the 12 months preceding his appointment have had, any material business relationship with the Licensee or any Affiliate or Related Undertaking of the Licensee.
- 9.18 The third Independence Requirement is that a Sufficiently Independent Director must at no time during his service as such hold any remit to represent the interests of:
- (a) any particular shareholder or group of shareholders of the Licensee; or
 - (b) any Affiliate or Related Undertaking of the Licensee.
- 9.19 The fourth Independence Requirement is that a Sufficiently Independent Director must not receive any remuneration from the Licensee or any Affiliate or Related Undertaking of the Licensee apart from a director’s fee and reasonable expenses (but, where applicable, this is subject to paragraph 9.20).

- 9.20 Paragraph 9.19 does not preclude the receipt or retention by a Sufficiently Independent Director of any benefit accrued as a result of employment by or service with the Licensee or with any Affiliate or Related Undertaking of the Licensee before the appointment of that person as a Sufficiently Independent Director.
- 9.21 The Licensee must notify the Authority of the names of its Sufficiently Independent Directors within 14 days of each appointment (or reappointment).
- 9.22 The terms of appointment of each Sufficiently Independent Director must include a condition that requires both the Licensee and the appointee to take all appropriate steps to ensure that the appointee continues to satisfy the Independence Requirements contained in this Part E during his term of service.
- 9.23 A term of service for a Sufficiently Independent Director may not be longer than six years, but an individual may be reappointed as a Sufficiently Independent Director once (and once only) provided that he continues to satisfy the Independence Requirements of this Part E (excluding paragraph 9.16(a) in respect of his previous appointment as a Sufficiently Independent Director).
- 9.24 The Licensee must notify the Authority within 14 days if any Sufficiently Independent Director is removed from office or resigns, setting out the reasons for the removal or (as far as they are known to the Licensee) for the resignation.
- 9.25 If at any time because of a removal or resignation or other reason (including death or incapacity) the Licensee has fewer than two persons serving as Sufficiently Independent Directors, the Licensee must take all appropriate steps within its power to ensure that a new such director is, or new such directors are, appointed so as to maintain the Licensee's compliance with the duty imposed by paragraph 9.14.

Part F: Interpretation

- 9.26 For the purposes of this condition only:

General Prohibition has the meaning given to that term in paragraph 9.2.

Independence Requirements are the requirements set out in paragraphs 9.16 to 9.19.

Sufficiently Independent Director has the meaning given to that term in paragraph 9.15.

Part G: Further provision

- 9.27 See Condition 12 (Appointment and duties of Compliance Officer), which makes further provision in relation to the subject matter of this Condition 9.

Condition 10. Protection of Confidential Information

Introduction

- 10.1 This condition requires the Licensee to take appropriate action to prevent disclosure of or unauthorised access to Confidential Information, to have in place a Compliance Statement that describes how the Licensee will comply with that requirement, and to use Confidential Information only for the purposes of the Authorised Business.

Part A: General Prohibition with respect to Confidential Information

- 10.2 The Licensee must neither disclose Confidential Information to, nor authorise access to Confidential Information by, any person except in accordance with the provisions of this condition (“the General Prohibition”).
- 10.3 The Licensee must put in place and at all times maintain managerial and operational practices, systems, and procedures that ensure it complies with the General Prohibition.
- 10.4 The Licensee’s duties under this Part A include a duty to take all appropriate steps within its power (including where necessary by way of contractual requirement) to ensure that any Affiliate or Related Undertaking of the Licensee, and any agent, consultant, or contractor of the Licensee, complies with the General Prohibition.

Part B: Matters to which the General Prohibition does not apply

- 10.5 The General Prohibition established by Part A above does not apply to any disclosure of or authorisation of access to Confidential Information:
- (a) that is expressly permitted or required by any provision of this Licence; or
 - (b) that is necessary for the exercise of any of the functions of the Licensee under the Principal Energy Legislation, this Licence, or the Smart Energy Code; or
 - (c) that is made or given with the prior consent of the Authority; or
 - (d) that is made or given to such employees of the Licensee or of any other person (as the case may be) as require to be so informed for the effective carrying on of the Mandatory Business and, where approved by the Authority, of the Permitted Business of the Licensee; or
 - (e) that is made or given to such of the agents, consultants, and contractors of the Licensee as require to be so informed for the effective carrying on of the Mandatory Business and, where approved by the Authority, the Permitted Business of the Licensee.
- 10.6 The General Prohibition also does not apply to any disclosure of or authorisation of access to Confidential Information that:
- (a) is made or given in compliance with any statutory duty of the Licensee, or with the rules of any recognised stock exchange or of any governmental, parliamentary, or regulatory authority having the force of law; or
 - (b) is already available in the public domain other than as a result of a breach of the General Prohibition or of any other duty of confidentiality.

Part C: Requirement for Compliance Statement to be in place

- 10.7 Except where the Authority otherwise consents, the Licensee must at all times have in place a Compliance Statement that is approved by the Authority and that describes the practices, procedures, and systems that the Licensee has adopted (or intends to adopt) to ensure compliance with its duties under Part A above in relation to the security and protection of Confidential Information.
- 10.8 If the Authority does not direct the Licensee to amend a Compliance Statement within 90 days after receiving it, the Licensee may treat the statement as approved by the Authority.
- 10.9 The Licensee may, with the Authority's approval, revise any Compliance Statement prepared in accordance with this Part C.
- 10.10 The Licensee must publish on its Website a copy of the Compliance Statement (or of any revision of it) that is in place under this Part C within 21 days after the Authority has approved it.
- 10.11 The Licensee must take all appropriate steps within its power to ensure that it complies with the terms of the Compliance Statement in place under this Part C.

Part D: No use of Confidential Information for improper purpose

- 10.12 The Licensee must not use Confidential Information for any purpose other than the effective carrying on of (i) the Mandatory Business of the Licensee and, where approved by the Authority, (ii) the Permitted Business of the Licensee, in each case subject to the General Prohibition imposed by Part A above and the exceptions to it that are permitted under Part B above.
- 10.13 Without prejudice to the requirements of paragraph 10.12, the Licensee must not use Confidential Information in any manner that might obtain for the Licensee, or for any other person, any unfair commercial advantage over any other person (whether before or after the expiry or any revocation of this Licence).

Part E: Interpretation

- 10.14 For the purposes of this condition only, **General Prohibition** has the meaning given to that term in paragraph 10.2.

Part F: Further provision

- 10.15 See Condition 12 (Appointment and duties of Compliance Officer), which makes further provision in relation to the subject matter of this Condition 10.

Condition 11. No abuse of the Licensee’s special position

Introduction

- 11.1 The purpose of this condition is to ensure that the Licensee always acts in a manner that is consistent with its position as the person that is licensed under the Principal Energy Legislation to carry on the Authorised Activity in Great Britain.
- 11.2 The provisions of Parts B and C of this condition do not limit the general effect of the requirement imposed on the Licensee by Part A.

Part A: General requirement in relation to competition

- 11.3 The Licensee must at all times manage and operate its Authorised Business in a way that is calculated to ensure that it does not restrict, prevent, or distort competition:
- (a) in any activity (other than the Authorised Activity) that is authorised by an Energy Licence under the Principal Energy Legislation; or
 - (b) in the provision of, or in any of the markets for, Commercial Activities that are connected with the Supply of Energy under the Principal Legislation.

Part B: Prohibition of provision or receipt of cross-subsidy

- 11.4 The Licensee must at all times ensure in carrying on its activities that:
- (a) the Authorised Business gives no cross-subsidy to, nor receives any cross-subsidy from, any Affiliate or Related Undertaking of the Licensee; and
 - (b) within the Authorised Business, the Mandatory Business gives no cross-subsidy to, nor receives any cross-subsidy from, the Permitted Business.
- 11.5 But anything done or incurred by the Licensee in a particular manner that is expressly required or permitted to be so done or incurred under or by virtue of any provision of the Principal Energy Legislation, this Licence, or the Smart Energy Code will not breach the requirements of paragraph 11.4.

Part C: Prohibition of undue preference and undue discrimination

- 11.6 This Part C applies (subject to paragraph 11.9) in relation to every activity that the Licensee is required or permitted to undertake by virtue of any of the provisions of the Principal Energy Legislation, this Licence, or the Smart Energy Code.
- 11.7 In undertaking each such activity, the Licensee must not:
- (a) unduly prefer itself or any Affiliate or Related Undertaking over any person or any class or description of persons; or
 - (b) unduly discriminate between any person or any class or description of persons.
- 11.8 In particular, the Licensee must not make charges for providing Mandatory Business Services under or pursuant to the Smart Energy Code to any person or class or description of persons that differ from the charges made for such provision to any other person or class or description of persons, except insofar as such differences reasonably reflect differences in the costs associated with such provision.

- 11.9 Anything done by the Licensee in a particular manner that is expressly required or permitted to be so done under or by virtue of any provision of the Principal Energy Legislation, this Licence, or the Smart Energy Code will not constitute undue preference or undue discrimination (as the case may be) for the purposes of this condition.

Part D: Arrangements for compliance to be in place

- 11.10 The Licensee must establish and maintain management systems, procedures, and arrangements that are designed to secure its compliance with its obligations under this condition.
- 11.11 The Licensee's obligation under paragraph 11.10 includes an obligation to take all appropriate steps within its power to ensure that any agents and contractors of the Licensee establish and maintain arrangements that are equivalent in their effect to those established and maintained by the Licensee for the purpose of complying with the requirements of this condition.

Part E: Interpretation

- 11.12 In this condition, any reference to an activity or business of the Licensee includes a reference to that activity or business if and to the extent that it is carried on by a third party acting on the Licensee's instruction or behalf.

Part F: Further provision

- 11.13 See Condition 12 (Appointment and duties of Compliance Officer), which makes further provision in relation to the subject matter of this Condition 11.

Condition 12. Appointment and duties of Compliance Officer

Introduction

- 12.1 This condition requires the Licensee to appoint a Compliance Officer for purposes relating to the Licensee's compliance with certain specified requirements under the Conditions of this Licence.
- 12.2 The Compliance Officer must produce an annual report for the Licensee's directors, which they must forward to the Authority along with a Compliance Report prepared by them, which must also be published on the Licensee's Website.

Part A: Purpose of the Compliance Officer's appointment

- 12.3 The Licensee must ensure, following appropriate consultation with the Authority, that a competent person (who is to be known as the Compliance Officer, and who must be fully independent of the interests of the Licensee) is appointed for the purposes of monitoring and facilitating the Licensee's compliance with the Chapter 3 Requirements specified at Part F below.
- 12.4 The functions of the Compliance Officer under this condition must be exercised with particular regard for the need of SEC Parties and External Service Providers to be fully and formally assured of the Licensee's compliance with the Chapter 3 Requirements.

Part B: Particular functions of the Compliance Officer

- 12.5 The Licensee must at all times ensure that the Compliance Officer is engaged for the performance of such tasks and duties as the Licensee considers should be assigned to him for the purposes specified at Part A above.
- 12.6 In particular, those tasks and duties for the Compliance Officer must include:
- (a) providing relevant advice and information to the Licensee for the purpose of facilitating its compliance with the Chapter 3 Requirements;
 - (b) monitoring the effectiveness of the practices, procedures, and systems adopted by the Licensee in accordance with the Compliance Statement required under Part C of Condition 10 (Protection of Confidential Information);
 - (c) advising whether, to the extent that the implementation of such practices, procedures, and systems requires the co-operation of any other person, they are designed so as reasonably to allow the required co-operation;
 - (d) investigating any complaint or representation that is made available to him in accordance with paragraph 12.9;
 - (e) recommending and advising on remedial action that any such investigation has shown to be necessary or desirable;
 - (f) providing relevant advice and information to the Licensee for the purposes of ensuring its effective implementation of the practices, procedures, and systems referred to at sub-paragraph (b), and of taking any remedial action recommended in accordance with sub-paragraph (e); and

- (g) reporting annually to the Licensee’s directors about his activities during the period covered by the report, including the fulfilment of any other duties assigned to him by the Licensee under this condition.

Part C: Licensee’s duties to the Compliance Officer

12.7 This Part C sets out the duties that the Licensee owes to the Compliance Officer.

12.8 The Licensee must ensure that the Compliance Officer:

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

as he might reasonably expect to require for the fulfilment of the tasks and duties assigned to him.

12.9 The Licensee must give the Compliance Officer a copy of any complaint or other representation that it receives from any person about a matter arising under or because of the Chapter 3 Requirements.

Part D: Contents of the Licensee’s Compliance Report

12.10 The Licensee must, as soon as is reasonably practicable after receiving each annual report of the Compliance Officer under paragraph 12.6(g), produce a report (“the Compliance Report”) about:

- (a) its compliance during the reporting year with the Chapter 3 Requirements; and
- (b) its implementation during that year of the practices, procedures, and systems maintained pursuant to the Compliance Statement that the Licensee is required to have in place under Part C of Condition 10 (Protection of Confidential Information).

12.11 The Compliance Report produced under paragraph 12.10 must, in particular, do the things described in the following paragraphs of this Part D.

12.12 It must detail the activities of the Compliance Officer during the reporting year.

12.13 It must refer to such other matters as may be appropriate in relation to the Licensee’s implementation during the reporting year of the practices, procedures, and systems adopted in accordance with the Compliance Statement in place under Condition 10.

12.14 It must set out the details of any investigations carried out by the Compliance Officer during the reporting year, including:

- (a) the number, type, and source of any complaints or representations on which those investigations were based;
- (b) the outcome of the investigations; and
- (c) any remedial action taken by the Licensee in response to them.

- 12.15 It must state the Compliance Officer’s opinion of the extent to which the Licensee complied with the Chapter 3 Requirements during the reporting year.

Part E: Publication of the Licensee’s Compliance Report

- 12.16 The Licensee must give the Authority and the SEC Panel a copy of each Compliance Report prepared by the Licensee in accordance with Part D above.
- 12.17 The Licensee’s Compliance Report given under paragraph 12.16 must be accompanied by a copy of the relevant annual report submitted by the Compliance Officer to the Licensee’s directors under paragraph 12.6(g).
- 12.18 The Licensee must, when sending any Compliance Report to the Authority and the SEC Panel, at the same time publish that report on its Website.

Part F: Interpretation

- 12.19 The requirement of paragraph 12.3 for a Compliance Officer to be fully independent of the interests of the Licensee does not preclude the appointment to that office of a person who may be paid by the Licensee for his services under this condition.
- 12.20 For the purposes of this condition only:

Chapter 3 Requirements means the requirements (including such prohibitions as are associated with them) established and imposed by:

- (a) Condition 9 (Independence and autonomy of the Licensee);
- (b) Condition 10 (Protection of Confidential Information); and
- (c) Condition 11 (No abuse of the Licensee’s special position).

Compliance Officer has the meaning given to that term in paragraph 12.3.

Compliance Report has the meaning given to that term in paragraph 12.10.

CHAPTER 4 : CONDITIONS 13 TO 15
Start-up and future development obligations

Condition 13. Arrangements for transition to SMA Completion

Introduction

13.1 This condition provides for a Smart Metering Transition Scheme to be designated by the Secretary of State for the purpose of progressively giving effect to the introduction and operation of Smart Metering Arrangements (“SMA”) during the period running as a whole from the SEC Commencement Date to the time of SMA Completion.

Part A: Objective of the scheme and the Licensee’s duty to comply

13.2 The Smart Metering Transition Scheme is the scheme, (i) designated by the Secretary of State for the purposes of this condition on or after the Licence Commencement Date, that (ii) imposes requirements on or makes provision for or in connection with the steps to be taken by the Licensee and other SEC Parties, (iii) with a view to securing a full, timely, and efficient transition from the SEC Commencement Date to the time of SMA Completion (“the Scheme Objective”).

13.3 The steps to be taken under or pursuant to the Smart Metering Transition Scheme for the achievement of the Scheme Objective may be expressed in the provisions of the scheme in relation to either (separately) or both (taken as a whole) of:

- (a) SMA Stage 1, being the period running from SEC Commencement Date to the introduction of SMA Service Provision; and
- (b) SMA Stage 2, being the period running from the introduction of SMA Service Provision to the time of SMA Completion.

13.4 The Licensee must comply with such provisions as may be applicable to it under the Smart Metering Transition Scheme established in accordance with Part B below, as modified from time to time in accordance with Part C below, and subject in each case to the requirements of Part D.

Part B: Matters for which the transition scheme may make provision

13.5 In relation to Smart Metering Arrangements, the Smart Metering Transition Scheme may, in particular, include requirements or make provision for or in connection with:

- (a) the modification of this Licence or of any other Energy Licence that imposes a duty of compliance in relation to the Smart Energy Code;
- (b) the modification of any Core Industry Document (including the Smart Energy Code) within the meaning of Condition 21 (Roles in relation to Core Industry Documents);
- (c) the performance by the Licensee of activities necessary to ensure compliance with any of the Conditions of this Licence or with any requirement imposed on the Licensee by a Legacy Procurement Contract or by any Core Industry Document to which it is a party by virtue of Condition 21; and
- (d) the establishment of Services that may be exempted from the requirements of Part A of Condition 16 (Procurement of Relevant Service Capability) relating to the procurement of service capability from External Service Providers.

- 13.6 In relation to Smart Metering Arrangements, the Smart Metering Transition Scheme may, in particular, include requirements or make provision for or in connection with:
- (a) the acceptance and subsequent operation of any Legacy Procurement Contract within the meaning of paragraph 1.3(a) of Schedule 1 to this Licence;
 - (b) the assessment by reference to specified criteria, and the subsequent acceptance and operation, of any Energy Supplier Communications Contract within the meaning of paragraph 1.3(b) of Schedule 1 to this Licence;
 - (c) the establishment and integration of Services and their associated systems and procedures that are provided for by or under Legacy Procurement Contracts;
 - (d) the adoption into the SEC Arrangements of Smart Metering Systems that have been installed at Energy Consumers' premises at any time before the time of SMA Service Provision;
 - (e) the introduction of interim charging arrangements as between the Licensee and other SEC Parties prior to the time of SMA Service Provision; and
 - (f) the co-ordination of the Licensee's introduction of Services in a manner that is consistent with the implementation plans of Energy Suppliers in respect of the installation of Smart Meters in compliance with the Energy Supply Licence.

- 13.7 In relation to Smart Metering Arrangements, the Smart Metering Transition Scheme may, in particular, include requirements or make provision for or in connection with:
- (a) the testing, trialling, set-up, and commencement (whether by the Licensee alone or in concert with some or all other SEC Parties) of systems, processes, and procedures comprising any part or the whole of the SEC Arrangements;
 - (b) the giving of indemnities against liabilities to which the Licensee or any other SEC Party might be exposed in consequence of any of the matters referred to in sub-paragraph (a);
 - (c) the referral to, and determination by, the Secretary of State (on terms to be set out in the scheme) of any disputes arising between SEC Parties (or between any class or description of such parties) in connection with matters covered by the scheme; and
 - (d) the timely and regular provision of specified information to the Secretary of State and the Authority concerning progress towards achievement of the Scheme Objective.

Part C: Power to direct modifications of the scheme

- 13.8 At any time after designating the Smart Metering Transition Scheme, the Secretary of State may direct in accordance with the provisions of the scheme that it is to be modified in the manner specified in the direction for the purpose of giving better effect to any of the matters described in Part B above.
- 13.9 The Licensee must comply with the Smart Metering Transition Scheme as modified by any direction under this Part C, in the manner and to the extent required by the direction, and with effect from the date of the direction or such later date as may be specified in it.

Part D: Procedural requirements relating to the scheme

- 13.10 Before designating the Smart Metering Transition Scheme under Part A above or directing any modification of the scheme under Part C above, the Secretary of State must consult the Authority, the Licensee, and other SEC Parties, setting out the text of the scheme or the direction (as the case may be) in draft and allowing all such persons a period of at least 28 days within which to make representations or objections with respect to the proposed designation or the proposed modification.
- 13.11 The Secretary of State must have due regard to any representations or objections duly received under paragraph 13.10, and must give reasons for his decisions.
- 13.12 The requirement imposed by paragraph 13.10 may be satisfied by consultation before, as well as consultation after, the Licence Commencement Date.

Part E: Scope of application and interpretation

- 13.13 The requirements of this condition will prevail in the event of any conflict with the requirements imposed on the Licensee by any other condition of this Licence.
- 13.14 This condition will be of no effect in, and may be omitted from, this Licence after a date (which must not be earlier than the date on which SMA Completion is expected to be achieved) that is to be specified in, or determined by reference to criteria set out in, a direction given for that purpose by the Secretary of State.
- 13.15 For the purposes of this condition only:

Scheme Objective has the meaning given to that term in paragraph 13.2

SMA means Smart Metering Arrangements (and is to be read as a reference to that expression when included in other terms defined below).

Smart Metering Arrangements means arrangements established and progressed by the Secretary of State that have as their overall objective the widespread installation and operation of Smart Meters at all Domestic Premises and at other premises in Great Britain in accordance with the policy objectives of the British government.

SMA Stage 1 and **SMA Stage 2** have the meaning given respectively to those terms in paragraphs 13.3(a) and 13.3(b).

SMA Completion means notification by the Secretary of State to the Licensee of the date on which, in the opinion of the Secretary of State, the Smart Metering Arrangements will have been, or will be expected to be, completed in accordance with their objective.

SMA Service Provision means the achieved readiness of the SEC Arrangements with respect to all of the matters for which the Smart Energy Code will need to make initial or enduring provision for the purpose of facilitating and supporting the Smart Metering Arrangements in accordance with their objective.

Smart Metering Transition Scheme has the meaning given to that term in paragraph 13.2.

Condition 14. Licensee’s future development objectives

Introduction

- 14.1 This condition requires the Licensee to establish and from time to time review and revise its future business development objectives, and set them out in a Development Plan that is available in the public domain.

Part A: Requirement to prepare and maintain the Development Plan

- 14.2 The Licensee must by not later than 31 July in each Regulatory Year (“the Planning Year”) prepare a Development Plan in a form approved by the Authority.
- 14.3 The Development Plan must set out and explain in appropriate detail the Licensee’s business development objectives for the five-year period consisting of the Planning Year and each of the four succeeding Regulatory Years.
- 14.4 Except where the Authority otherwise consents, the first Planning Year in respect of which the Licensee is required for the purposes of this condition to prepare and issue a Development Plan is the Regulatory Year beginning on 1 April 2014.
- 14.5 The Licensee must from time to time review, and where necessary revise without delay, the information set out in the Development Plan in order to ensure that it remains accurate and up-to-date in all material respects, and may alter the form of the plan with the Authority’s consent.
- 14.6 In preparing, reviewing, and revising its Development Plan, the Licensee must take all reasonable steps to ascertain and take account of the views of SEC Parties (in particular) about the matters covered by Part B below.

Part B: Types of information to be included in the Development Plan

- 14.7 The Development Plan must include such information and evaluation in respect of the following matters as may affect the Licensee’s determination of its business development objectives for the period covered by the plan:
- (a) the main trends and factors that are likely to affect the future development and performance of the Authorised Business in whole or in part;
 - (b) the opportunities likely to be available to the Licensee for developing the infrastructure, systems, and processes in place for the provision of Services under or pursuant to the Smart Energy Code;
 - (c) the current condition of any of such infrastructure, systems, and processes in terms of the capacity, loading, and utilisation factors applicable to them and the interdependence between them;
 - (d) the loading and utilisation of such infrastructure, systems, and processes by different types of Core Communication Services, Elective Communication Services, and Value Added Services; and
 - (e) the availability of spare capacity within any of such infrastructure, systems, and processes, and the scope for using it for the purpose of providing new or amended Services requested by SEC Parties.

- 14.8 The Development Plan must also include such information and evaluation in respect of the following matters as may affect the Licensee’s determination of its business development objectives for the period covered by the plan:
- (a) potential changes in the Licensee’s business processes or ways of working that would result in a more efficient provision of Services, or in overall productivity gains or the reduction of operational risk;
 - (b) the emergence of specific new or evolving relevant technologies that could improve the Licensee’s management and operation of the Authorised Business in whole or in part; and
 - (c) the assessment criteria and cost-benefit analyses that are used by the Licensee to determine its business development objectives with due regard for the matters set out in this Part B.
- 14.9 The information and evaluation to which paragraphs 14.7 and 14.8 refer must include such commentary as is appropriate about any longer-term matters that in the opinion of the Licensee could materially affect the determination of its business development objectives beyond the end of the period covered by the Development Plan.
- 14.10 The business development objectives of the Licensee must at all times be consistent with the General Objectives of the Licensee.

Part C: General availability and publication of the Development Plan

- 14.11 The Licensee must give the Authority a copy of each Development Plan prepared in accordance with this condition.
- 14.12 The Licensee must also (subject to paragraph 14.13):
- (a) give a copy of its current Development Plan to any person who asks for it; and
 - (b) publish that current plan on its Website.
- 14.13 In complying with the requirements of paragraph 14.12, the Licensee must have due regard to the need for excluding from the statement, so far as is practicable, any matter that relates to the affairs of a person if the publication of that matter would or might seriously and prejudicially affect his interests.
- 14.14 Any question arising under paragraph 14.13 as to whether publication of some matter that relates to the affairs of a person would or might seriously and prejudicially affect his interests is to be resolved by the Authority following consultation with that person.

Part D: Interpretation

- 14.15 For the purposes of this condition only:

Development Plan has the meaning given to that term in paragraph 14.3.

Planning Year has the meaning given to that term in paragraph 14.2.

Condition 15. Incorporation of Energy Registration Services

Introduction

- 15.1 This condition applies for the purpose of achieving the incorporation of the Energy Registration Services into Services provided by the Licensee under or pursuant to the SEC, at such time and to such extent as the Secretary of State may direct.
- 15.2 A direction under this condition has effect in conjunction with such modifications of conditions as the Secretary of State may also bring into effect at the same time (whether in this Licence or in any other Energy Licence) for the purpose of facilitating the incorporation of Energy Registration Services pursuant to this condition.

Part A: Secretary of State's power to direct incorporation

- 15.3 Subject to paragraph 15.4, and at any time up to and including 31 October 2018, but not thereafter, the Secretary of State may direct the Licensee to secure the incorporation of Energy Registration Services into the Services provided by the Licensee under or pursuant to the SEC.
- 15.4 A direction under this Part A may only be given if the Secretary of State:
- (a) has complied with the requirements of Part C below in respect of consultation with the persons mentioned in that Part; and
 - (b) is satisfied as to the economy, efficiency, and effectiveness with which Energy Registration Services will be provided as a consequence of the direction.

Part B: Scope and content of the Secretary of State's direction

- 15.5 A direction under Part A above may (without limitation) specify or make provision for or in connection with any of the following matters:
- (a) the particular Energy Registration Services that (having regard to the provisions of Part D below) are to be incorporated (with such modifications in respect of their purpose or quality as may be specified) into the Services provided by the Licensee under or pursuant to the SEC;
 - (b) the timeframes (which may differ as between different categories of Energy Registration Services) within which such incorporation is to be accomplished;
 - (c) the steps that are to be taken by the Licensee with the aim of securing such incorporation (which may include modifications of the SEC that the Licensee is to be required to initiate for the purpose of facilitating that aim);
 - (d) the implementation of charging principles applicable to Energy Registration Services following such incorporation (which may include modifications that the Licensee is to be required to make to the Charging Methodology for Service Charges in force under Condition 18, as contained in the SEC); and
 - (e) the imposing on the Licensee of requirements to enter into agreements or arrangements with, or to execute other kinds of instrument in favour of, one or more other holders of an Energy Licence under the Principal Energy Legislation, or one or more of the Central Registration Bodies, for the purpose of facilitating such incorporation.

- 15.6 A direction given under Part A above may also (without limitation) specify or make provision for or in connection with any of the following matters:
- (a) the principles on which the Licensee is to accept such transfers to it of property (including rights in property), systems, and processes as are necessary to give effect to such incorporation and as are capable of being agreed with third parties without prejudice to their interests;
 - (b) the referral to, and determination by, the Secretary of State (on terms to be set out in the direction) of any disputes arising between the Licensee and any of the persons referred to in sub-paragraph (a) in connection with the matters covered by that sub-paragraph; and
 - (c) such other matters as are necessary or expedient for the achievement of the incorporation, having regard to the matters as to which the Secretary of State must be satisfied under paragraph 15.4(b).

Part C: Requirement to consult before giving any direction

- 15.7 Before giving the Licensee a direction under Part A above, the Secretary of State must consult:
- (a) the Licensee;
 - (b) any other holder of an Energy Licence that is being modified as mentioned in paragraph 15.2;
 - (c) any SEC Parties not falling within sub-paragraph (a) or (b);
 - (d) the Central Registration Bodies;
 - (e) the Authority; and
 - (f) such other persons as the Secretary of State considers it appropriate to consult in relation to the direction.
- 15.8 For the purposes of consultation under paragraph 15.7, the Secretary of State must:
- (a) publish the text of the direction that he proposes to give to the Licensee;
 - (b) state the reasons why he proposes to give it; and
 - (c) allow a period of at least 28 days within which representations or objections may be made to him concerning the proposal.
- 15.9 The Secretary of State must have regard to any representations or objections duly received under paragraph 15.8, and must give reasons for his decisions.

Part D: Scope and content of Energy Registration Services

- 15.10 The Energy Registration Services that may be the subject of a direction given by the Secretary of State under this condition, or that may be defined in that direction by reference to such criteria as are specified in it, may include:
- (a) such services relating to the supply of gas under the 1986 Act as are set out in paragraph 15.11; and

- (b) such services relating to the supply of electricity under the 1989 Act as are set out in paragraph 15.12,

subject, in either case, to any requirements that may be set out in the SEC as to the scope and operation of the services in question.

15.11 The Energy Registration Services to which paragraph 15.10(a) applies are:

- (a) such services falling within the supply point information service provided under standard condition 31 of the Gas Transporter Licence as relate directly to (i) the provision of supply point information and (ii) the maintenance of a register of technical and other data required by Gas Shippers and Gas Suppliers for change of supplier purposes; and
- (b) the services comprising the supply point administration service provided under or pursuant to the Supply Point Administration Agreement that is required to be maintained in a form approved by the Authority in accordance with standard condition 30 of the supply licence held by a Domestic Gas Supplier.

15.12 The Energy Registration Services to which paragraph 15.10(b) applies are:

- (a) the services comprising metering point administration services as defined in standard condition 18 of the Electricity Distribution Licence that are provided under or pursuant to the Master Registration Agreement that is required to be maintained in a form approved by the Authority in accordance with standard condition 23 of that licence; and
- (b) such other services provided under or pursuant to the Master Registration Agreement (including any relevant Data Transfer Services provided by the Data Transfer Service under standard condition 37 of the Electricity Distribution Licence) as relate directly to the maintenance of the Data Transfer Catalogue that forms part of that agreement.

Part E: Interpretation

15.13 For the purposes of this condition only:

Central Registration Bodies means each of the companies incorporated under the following names in England and Wales (or any of their successors in title):

- (a) Electralink Ltd, having the registered number 03271981;
- (b) Elexon Ltd, having the registered number 3782949;
- (c) MRA Service Company Ltd, having the registered number 3490321;
- (d) SPAA Ltd, having the registered number 04365599; and
- (e) Xoserve Ltd, having the registered number 5046877.

Data Transfer Catalogue, Data Transfer Service, and Data Transfer Services have the meaning given to those terms respectively in standard condition 1 of the Electricity Distribution Licence.

Domestic Gas Supplier means a Gas Supplier in whose supply licence section B of the standard conditions incorporated into such a licence has effect.

Electricity Distribution Licence means a licence granted, or treated as granted, under section 6(1)(c) of the 1989 Act.

Energy Registration Services has the meaning given to that term in Part D of this condition.

Gas Shipper and **Gas Supplier** mean, respectively, a person who holds a licence under section 7A(2) of the 1986 Act and a person who holds a licence under section 7A(1) of that Act.

Gas Transporter Licence means a licence granted, or treated as granted, under section 7(1) of the 1986 Act.

Master Registration Agreement has the meaning given to that term in paragraph 15.12(a).

Supply Point Administration Agreement has the meaning given to that term in paragraph 15.11(b).

CHAPTER 5 : CONDITIONS 16 TO 20

General arrangements for Services

Condition 16. Procurement of Relevant Service Capability

Introduction

- 16.1 This condition sets out certain requirements (see Part A below) and principles (see Part B below) that are to apply to the Licensee's procurement of Relevant Service Capability.
- 16.2 Relevant Service Capability is capability that is used (or is to be used) for the purposes of enabling the provision of Mandatory Business Services under or pursuant to the Smart Energy Code (and includes Fundamental Service Capability).
- 16.3 This condition also requires the Licensee:
- (a) to take account of any guidance issued by the Secretary of State in accordance with Part C below with regard to the Licensee's procurement of Fundamental Service Capability; and
 - (b) to have in place a Procurement Strategy for Relevant Service Capability, in a form designated by the Secretary of State, that takes account of the principles established by this condition and of any guidance issued pursuant to it.

Part A: Requirements that are imposed on procurement activities

- 16.4 The Licensee must (subject to paragraph 16.6) procure Relevant Service Capability from External Service Providers on a competitive basis and under arrangements to be known as External Service Provider Contracts that comply with the principles established by Part B below ("the Part B Principles").
- 16.5 The duty imposed by paragraph 16.4 applies without exception to the procurement by the Licensee of such Relevant Service Capability as is specified as Fundamental Service Capability in Schedule 1 to this Licence (which has effect as part of this condition).
- 16.6 Relevant Service Capability that is not so specified may be procured by the Licensee from within its own resources, or from an Affiliate or Related Undertaking of itself, or from elsewhere, if the Licensee, having had regard to the Part B Principles (excluding Principle 2), is satisfied that the procurement of such capability by that means:
- (a) would be the most economical and efficient option; or
 - (b) would be immaterial in terms of its value or use of resources within the overall context of the Mandatory Business of the Licensee.

Part B: Principles that are applicable to procurement activities

- 16.7 This Part B establishes principles that are to apply to the Licensee's procurement of Relevant Service Capability, taking account of any guidance contained in a Public Interest Statement issued under Part C below.
- 16.8 Principle 1 is that Relevant Service Capability must be procured with due regard for the Licensee's ability (and the ability of any Successor Licensee) at all times to fully exercise the functions it has under or by virtue of the Principal Energy Legislation, this Licence, and the Smart Energy Code ("the Relevant Functions").

- 16.9 Principle 2 is that Relevant Service Capability must be procured competitively wherever practicable and proportionate, and with due regard for the principles of equality and non-discrimination between economic operators and for the employment of transparent and objective procurement processes.
- 16.10 Principle 3 is that Relevant Service Capability must be procured from suitable organisations, having due regard to:
- (a) the good standing, conduct, and financial capacity of such organisations; and
 - (b) the capability and capacity of such organisations to deliver the Relevant Service Capability.
- 16.11 Principle 4 is that Relevant Service Capability must be procured in a manner that:
- (a) secures value for money in terms of the combination of quality and cost over the lifetime of the contract;
 - (b) delivers the required goods, services, or works to the appropriate standards according to the needs of service users;
 - (c) takes account of the potential need to replace from time to time the persons engaged in providing the capability; and
 - (d) incorporates (at a cost that is not disproportionate to any expected benefit) sufficient flexibility to adapt to changing service user requirements over the duration of the contract.
- 16.12 Principle 5 is that Relevant Service Capability must be procured under contractual arrangements that make provision for the full and enduring protection of business continuity, including:
- (a) appropriate provision to secure the Licensee’s ability to exercise all of the Relevant Functions in the event of any material financial default of an External Service Provider;
 - (b) appropriate provision to secure the Licensee’s ability to exercise all of the Relevant Functions in the event of any operational failure of an External Service Provider; and
 - (c) appropriate provision to secure the transfer or novation of the contract in the circumstances of a handover of the Licensee’s business to a Successor Licensee following the expiry or revocation of this Licence (as to which, see paragraph 14 of Condition 43 (Arrangements for the handover of business) for further relevant provision).

Part C: Public Interest Statement relating to procurement activities

- 16.13 In applying the provisions of Parts A and B above to its procurement activities with respect to Fundamental Service Capability, the Licensee must take account of any guidance contained within a Public Interest Statement issued by the Secretary of State in accordance with this Part C.
- 16.14 Before issuing a Public Interest Statement, the Secretary of State must consult the Authority and the Licensee about the contents of the statement.

- 16.15 The purpose of a Public Interest Statement under this Part C is to provide guidance to the Licensee with respect to the public interest considerations that may need to be reflected in the scope and functionality of Fundamental Service Capability procured by the Licensee pursuant to the provisions of Parts A and B above.
- 16.16 Such guidance may, in particular, indicate how and to what extent the procurement of Fundamental Service Capability might be expected to contribute towards the achievement of any one or more of such energy policy outcomes as are set out in any strategy and policy statement designated by the Secretary of State for the purposes of [Chapter 8 of the Energy Act 2013].
- 16.17 A Public Interest Statement issued in accordance with this Part C may be revised at any time by the Secretary of State following consultation with the Authority and the Licensee.
- 16.18 The Licensee must publish and maintain a Public Interest Statement (including any amended statement following a revision under paragraph 16.17) on its Website.

Part D: Procurement Strategy for Relevant Service Capability

- 16.19 Except where the Secretary of State otherwise consents, the Licensee must within twelve months after the Licence Commencement Date have in place a statement of its Procurement Strategy for Relevant Service Capability.
- 16.20 That statement must be in a form that has been designated by the Secretary of State for the purposes of this condition following consultation (subject to paragraph 16.23) with the Authority, SEC Parties, and any other persons who are likely to be materially affected by the strategy.
- 16.21 The statement of the Procurement Strategy for Relevant Service Capability must explain, in such detail and by including such information as may be appropriate for the purpose, the Licensee's conclusions with respect to the nature and extent of its procurement activities, with particular reference to:
- (a) the determination of the Relevant Service Capabilities necessary to enable the Licensee to exercise its Relevant Functions;
 - (b) the determination of which of those capabilities are to be procured from External Service Providers by means of a competitive process (having due regard to paragraph 16.6);
 - (c) the determination of how and to what extent the required Relevant Service Capabilities reflect the guidance contained in any Public Interest Statement issued under Part C above;
 - (d) the determination of how the required Relevant Service Capabilities are to be assembled into discrete contracts; and
 - (e) the determination of a forward plan of the procurement activities necessary to secure those contracts.
- 16.22 The Licensee must take all appropriate steps within its power to comply with the provisions of any Procurement Strategy for Relevant Service Capability that is for the time being in force under this condition.

16.23 The consultation process that is required by virtue of paragraph 16.20 may be subject to the provisions of Part G below.

Part E: Procedure for reviewing the procurement strategy

- 16.24 The Licensee must, for the purposes of ensuring that its Procurement Strategy for Relevant Service Capability at all times continues to be a document that accurately reflects the requirements of this condition:
- (a) review that strategy at least once in each full Regulatory Year following the Secretary of State’s designation of it under Part D above; and
 - (b) propose to the Authority such revisions (if any) of the strategy as the Licensee thinks are appropriate or necessary for the purpose of better complying with those requirements.
- 16.25 The Authority may at any time, after consulting the Licensee and such other persons as it considers should be consulted in relation to the matter (subject to paragraph 16.26), direct the Licensee to revise its Procurement Strategy for Relevant Service Capability in such manner, with effect from such time, and to such extent as may be specified in the direction.
- 16.26 The consultation process that is required by virtue of paragraph 16.25 may be subject to the provisions of Part G below.

Part F: Availability of statement of the procurement strategy

- 16.27 The Licensee must promptly and properly reflect every revision of its Procurement Strategy for Relevant Service Capability in a corresponding revision of the statement of that strategy that is in place by virtue of paragraph 16.19.
- 16.28 The Licensee must give the Authority and, where requested, the Secretary of State a copy of the statement of its Procurement Strategy for Relevant Service Capability and of each revision of that statement.
- 16.29 The Licensee must also (subject to paragraph 16.30) give a copy of the statement of its Procurement Strategy for Relevant Service Capability (or the most recent revision of it) to any SEC Party who asks for it.
- 16.30 In discharging its duties under paragraph 16.29, the Licensee must comply with such restrictions or requirements (if any) with respect to the manner in which it does so as appear to the Authority to be necessary for the purpose of protecting the legitimate commercial interests of any person.

Part G: Undertakings required in respect of confidentiality

- 16.31 This Part G applies where the Secretary of State or the Authority (as the case may be) is consulting, or proposing to consult:
- (a) persons under paragraph 16.20 with respect to the preparation and designation of a statement of the Licensee’s Procurement Strategy for Relevant Service Capability; or
 - (b) persons under paragraph 16.25 with respect to any proposed revision of that strategy.

- 16.32 Where this Part G applies, the Secretary of State or the Authority (as the case may be) may require any person (including the Licensee) that is taking part, or that wishes to take part, in the relevant consultation process to enter into such undertakings to maintain the confidentiality (in whole or in part) of the document that is the subject of the consultation as appear to the Secretary of State or the Authority to be necessary for the purpose of protecting the legitimate commercial interests of any person.

Part H: Retention of procurement strategy particulars and records

- 16.33 The Licensee must maintain, for the full duration of the Licence Term, records and particulars of:
- (a) all Relevant Service Capability offered to it under or pursuant to its Procurement Strategy for Relevant Service Capability; and
 - (b) all contractual arrangements that it has entered into under or pursuant to its Procurement Strategy for Relevant Service Capability.
- 16.34 The Licensee must supply the Authority with any information that it reasonably asks for about the Licensee’s procurement and use of Relevant Service Capability.

Part I: Adoption of Energy Supplier Communications Contracts

- 16.35 Any dispute arising between the Licensee and an Energy Supplier with respect to the terms offered by the Licensee for the adoption of an Energy Supplier Communications Contract within the meaning of paragraph 1.3(b) of Schedule 1 to this Licence may, on the application of either party to the Authority, be determined by the Authority (or by an arbitrator appointed by it for that purpose) in such manner and by reference to such criteria as the Authority (or the arbitrator) considers appropriate to the case.

Part J: Interpretation

- 16.36 References to “capability” in this condition do not include capability required for the purpose of facilitating any incidental administrative, co-ordination, or contract management services associated with or ancillary to the provision of any Services.
- 16.37 For the purposes of this condition only:

Part B Principles has the meaning given to that term in paragraph 16.4, and refers to the principles listed in Part B of this condition.

Fundamental Service Capability means the Relevant Service Capability provided under Legacy Procurement Contracts (as defined, identified, and described in Schedule 1 to this Licence) and includes the provision of all such capability (including goods and products) as may be necessary to enable the Licensee to provide, or arrange for the provision of, the Communications Hub Service pursuant to Part E of Condition 17 (Requirements for the provision of Services).

Public Interest Statement has the meaning given to that term in paragraph 16.15.

Relevant Functions has the meaning given to that term in paragraph 16.8.

- 16.38 Condition 44 (Treatment of Intellectual Property Rights) is relevant to the Licensee’s management and development of External Service Provider Contracts pursuant to this Condition 16.

Condition 17. Requirements for the provision of Services

Introduction

- 17.1 This condition requires the Licensee to provide Services or, as the case may be, to offer terms for the provision of Services, whether at the request of SEC Parties or otherwise, in accordance with the requirements set out in this condition and subject to such exemptions as the condition permits.

Part A: General provisions applicable to this condition

- 17.2 Where the Licensee is required by any part of this condition to provide Services under or pursuant to an Agreement for Services on terms prescribed by, or determined in accordance with, the provisions of the SEC, such terms of the SEC as are expressed by the SEC to be contractually binding with respect to such provision will comprise the Agreement for Services that applies between the parties by virtue of the obligation of the Licensee to provide the Services.
- 17.3 The Licensee may, where it would be more economical, efficient, or effective to do so, offer to enter into an Agreement for Services under or pursuant to this condition on terms that relate to the Licensee's receipt of compliant requests from more than one person for the provision of the relevant Services, provided that the terms of that offer do not exclude an option for the Services to be provided to only one of the persons making those requests.
- 17.4 The Licensee may offer to enter into an Agreement for Services on terms that provide, in accordance with any relevant requirement of the Licensee's Charging Methodology for Service Charges, for the allocation and reimbursement of Service Charges among and between persons whose requests for such an agreement (whether because of the timing of those requests or otherwise) would reasonably justify such treatment.

Part B: Terms in respect of Core Communication Services

- 17.5 The Licensee must, on receiving a request from any SEC Party for the provision of any Core Communication Services that are specified and defined as such in the SEC, provide such services under or pursuant to an Agreement for Services on terms that are prescribed by, or determined in accordance with, the provisions of the SEC.
- 17.6 The Licensee's obligation to provide Core Communication Services under this Part B is subject to the provisions of Part D below.

Part C: Terms in respect of Elective Communication Services

- 17.7 The Licensee, on receiving a request from any SEC Party ("the Requester") for the provision of Elective Communication Services under or pursuant to the SEC, must deliver to the Requester as soon as is reasonably practicable, and in any event within 14 days after receiving the request, either:
- (a) an initial evaluation of the technical feasibility and the likely scale of the cost of satisfying that request for such provision; or
 - (b) notification that the initial evaluation indicates that a further and more detailed evaluation of the request is required.

- 17.8 Where paragraph 17.7(a) is applicable, and insofar as the Requester wishes to proceed with the request, the Licensee must offer within 28 days (except where the Requester agrees to a longer period, or where the Authority otherwise consents) to enter into an Agreement for Services with the Requester on such terms as may be agreed in respect of the provision.
- 17.9 Where paragraph 17.7(b) is applicable and the Requester wishes to proceed with the request, the Licensee must undertake and complete the further and more detailed evaluation as soon as is reasonably practicable, and for that purpose may require the Requester to pay evaluation expenses to such extent as is reasonable in all of the circumstances of the case.
- 17.10 In paragraph 17.9, “evaluation expenses” means expenses of a kind that:
- (a) are specified in or are determined in accordance with the Licensee’s Charging Methodology for Service Charges; and
 - (b) have been reasonably incurred by the Licensee in carrying out the further and more detailed evaluation to which that paragraph refers.
- 17.11 Insofar as the Requester wishes to proceed with the request in the light of the further and more detailed evaluation under paragraph 17.9 and has paid to the Licensee any amount that is payable by virtue of that paragraph, the Licensee must offer within 28 days (except where the Requester agrees to a longer period, or where the Authority otherwise consents) to enter into an Agreement for Services with that person on such terms as may be agreed in respect of the provision.
- 17.12 Where a request received by the Licensee under paragraph 17.7 does not comply with such requirements as may be specified in the SEC in relation to the submission of requests for the provision of Elective Communication Services, the Licensee must take reasonable steps to ensure that the request does so comply before acting upon it.
- 17.13 The Licensee’s obligation to offer terms under this Part C is subject to the provisions of Part D below.

Part D: Terms for the operation of the Enrolment Service

- 17.14 The Licensee is not required to provide Core Communication Services under Part B above, or to offer terms for an Agreement for Services in respect of any Elective Communication Services under Part C above, if the Smart Metering System to which such services would relate:
- (a) is not in all respects fit (within the requirements of the Enrolment Service) to be enrolled into the Smart Metering Inventory maintained under the SEC; or
 - (b) does not otherwise qualify to be so enrolled.
- 17.15 For the purposes of paragraph 17.14, a Smart Metering System is fit to be enrolled into the Smart Metering Inventory if it is compliant with all the arrangements that are specified in the SEC as being necessary to ensure that every such system installed at an Energy Consumer’s premises consists of the apparatus that is identified in, has the functional capability specified by, and complies with such other requirements of the SME Technical Specification as may be applicable at the date on which that Smart Metering System is installed.

- 17.16 The Licensee must carry on the activities of the Enrolment Service for the purpose of validating Smart Metering Systems for enrolment into the Smart Metering Inventory under or pursuant to an Agreement for Services on terms that are prescribed by, or are determined in accordance with, the provisions of the SEC.
- 17.17 The Licensee must, on receiving a request from any SEC Party for the enrolment into the Smart Metering Inventory of a metering system that does not qualify to be enrolled as a Smart Metering System, offer to enter into an Agreement for Services, on such terms as may be agreed in all the circumstances of the case, for:
- (a) the provision of advice to the SEC Party with respect to such requirements for the reconfiguration or modification of that metering system as must be satisfied to enable it to qualify for such enrolment; and
 - (b) where applicable, the carrying out of any reconfiguration or modification of systems operated by the Licensee that would be necessary to permit the enrolment of that metering system.
- 17.18 The Licensee may charge for services provided under paragraph 17.17 in accordance with and to the extent permitted by the provisions of its Charging Methodology for Service Charges.
- 17.19 Nothing in this Part D requires the Licensee to provide an Enrolment Service for the purposes of any Smart Metering System by means of which a Smart Meter Communication Service is proposed to be provided to any premises, or within any area containing premises, that falls within a category that is for the time being specified by the Licensee as a Service Exemption Category in any Statement of Service Exemptions in force under this condition.
- 17.20 Appendix 1 (which requires the Licensee to publish, maintain, and keep under review a Statement of Service Exemptions that has been approved by the Secretary of State and that may be modified as directed by the Authority) has effect as part of this condition for the purposes of paragraph 17.19.

Part E: Terms for provision of the Communications Hub Service

- 17.21 The Licensee must, on receiving a request from any SEC Party for the provision of Communications Hubs, arrange to provide such equipment in accordance with:
- (a) such requirements with respect to its technical specification and functional capabilities; and
 - (b) such arrangements as to its ownership, delivery, installation, maintenance, repair, and replacement,
- as may apply under or pursuant to an Agreement for Services on terms prescribed by, or determined in accordance with, the provisions of the SEC.
- 17.22 The Licensee must manage its duties under and pursuant to this Part E in a manner that is consistent with, and is designed to facilitate, the full and timely installation by Energy Suppliers of Smart Metering Systems at Energy Consumers' premises in accordance with such requirements of the Energy Supply Licence as apply to the activities associated with such installation.

Part F: Terms for the provision of Other Enabling Services

- 17.23 The Licensee must, on receiving a request from any SEC Party for the provision of any Other Enabling Service that is specified and defined as such in the SEC, provide that service under or pursuant to an Agreement for Services on terms prescribed by, or determined in accordance with, the provisions of the SEC.
- 17.24 Where a request received by the Licensee under paragraph 17.23 does not comply with such requirements as may be specified in the SEC in relation to the submission of requests for the provision of Other Enabling Services, the Licensee must take reasonable steps to ensure that the request does so comply before acting upon it.

Part G: Terms for the provision of Value Added Services

- 17.25 The Licensee, on receiving a request from any person for the provision of Value Added Services that have been approved by the Authority in accordance with Part D of Condition 6 (Authorised Business of the Licensee), may offer to enter into an Agreement for Services with that person on such terms (subject to paragraph 17.26) as may be agreed in respect of such provision.
- 17.26 Except where the Authority otherwise consents, the terms offered by the Licensee for entering into an Agreement for Services under paragraph 17.25 must include terms providing for the novation of that agreement that are substantially the same as those contained within the SEC in relation to the novation of any Agreement for Services in place by virtue of Parts B to F of this condition
- 17.27 Paragraph 17.26 should be read in conjunction with paragraph 23(a) of Condition 22 (The Smart Energy Code) and paragraph 15 of Condition 43 (Arrangements for the handover of business).

Part H: Charges and other terms in respect of Services

- 17.28 Paragraph 17.29 applies with respect to:
- (a) each Agreement for Services under or pursuant to this condition requiring the Licensee to provide Services on terms prescribed by, or to be determined in accordance with, the provisions of the SEC; and
 - (b) each offer by the Licensee to enter into an Agreement for Services under or pursuant to this condition on such terms as may be agreed.
- 17.29 In each case to which paragraph 17.28 refers, the agreement or the offer proposing an agreement (as the case may be) must set out:
- (a) the Service Charges to be paid under or pursuant to the relevant agreement (having regard to the requirements of paragraph 17.30); and
 - (b) such other detailed terms as are appropriate or necessary for the purposes of the relevant agreement and are not otherwise prescribed.
- 17.30 The Service Charges referred to in paragraph 17.29(a) must:
- (a) unless clearly inappropriate, be consistent with the relevant provisions of the Charging Methodology in force under Condition 18 (Charging Methodology for Service Charges) at the time of the agreement or offer; and

- (b) be presented so as to be directly referable to the provisions (if applicable) of the Charging Statement in force under Condition 19 (Charging Statement for Service Charges) at the time of the agreement or offer.

Part I: Exemption from obligations imposed by this condition

17.31 Paragraph 17.32 states the circumstances in which the Licensee is not obliged under this condition:

- (a) to provide Services under or pursuant to an Agreement for Services on terms prescribed by, or determined in accordance with, the provisions of the SEC; or
- (b) to enter into, or offer to enter into, an Agreement for Services with a person requesting terms for such an agreement.

17.32 The circumstances to which paragraph 17.31 refers are those in which providing the Services or (as the case may be) entering into, or offering to enter into, an agreement to do so would cause, or be likely to cause, the Licensee to be in breach of:

- (a) any of its functions under the Principal Energy Legislation; or
- (b) any applicable provision of the SEC; or
- (c) any of the Conditions of this Licence,

or if the person requesting terms does not agree to be bound, to the extent applicable to him, by the provisions of the SEC.

Part J: Determination of disputes between the parties

17.33 Any dispute arising between the Licensee and a SEC Party that relates to the terms offered by the Licensee for entering into an Agreement for Services under or pursuant to any provision of this condition that requires the Licensee to make such an offer may be referred by either party to the Authority for determination in accordance with such of the provisions of Condition 20 (Determination of disputes by the Authority) as may be applicable to the dispute.

Part K: Interpretation

17.35 For the purposes of this condition only:

Enrolment Service and **Smart Metering Inventory** have the meanings given to those terms respectively in Part D of this condition, subject to any further definition or other relevant provision that may be contained within the SEC.

Requester has the meaning that is given to that term in paragraph 17.7.

Service Exemption Category means either Service Exemption Category 1 or Service Exemption Category 2 (as the case may be), as described respectively at paragraph A3(a) and paragraph A3(b) of Appendix 1.

Statement of Service Exemptions means the document of that name containing the matters set out at Part A of Appendix 1.

17.36 Appendix 1 follows immediately below.

Appendix 1: Statement of Service Exemptions

Introduction

A1. In accordance with paragraph 17.20, this Appendix 1 has effect under this condition with particular reference to the provisions of paragraph 17.19.

Part A: Preparation and contents of the statement

A2. The Licensee must, within twelve months after the Licence Commencement Date, have prepared and put in place a Statement of Service Exemptions that:

- (a) sets out, in such detail as may be appropriate for the purpose, the matters that are described at paragraphs A3 and A6; and
- (b) has been approved by the Secretary of State following consultation with the Authority, External Service Providers, SEC Parties, and the Licensee.

A3. The matters to which paragraph A2(a) refers are:

- (a) Service Exemption Category 1, which must specify any types or configurations of premises in Great Britain to which a Smart Meter Communication Service need not for the time being be provided by virtue of the reason that is stated in paragraph A4; and
- (b) Service Exemption Category 2, which must specify any geographical areas in Great Britain within which a Smart Meter Communication Service need not for the time being be provided to premises by virtue of the reason that is stated in paragraph A5.

A4. The reason to which paragraph A3(a) refers is that, in each case falling within Service Exemption Category 1, the provision of a Smart Meter Communication Service:

- (a) would be technically impracticable; or
- (b) though technically practicable, could only be achieved at disproportionate cost, because of (i) the physical or other characteristics of the specified premises, or (ii) any other relevant consideration with respect to the premises.

A5. The reason to which paragraph A3(b) refers is that, in each case falling within Service Exemption Category 2, the provision of a Smart Meter Communication Service:

- (a) would be technically impracticable; or
- (b) though technically practicable, could only be achieved at disproportionate cost, because of (i) the insularity or the remoteness of the specified area, or (ii) any other relevant consideration with respect to the area.

A6. The Statement of Service Exemptions must also set out such steps as the Licensee has committed to take with a view to securing the eventual provision, by such means as may be technically practicable and at a cost that is not disproportionate, of a Smart Meter Communication Service to premises, or within areas, falling within a Service Exemption Category under paragraph A3.

- A7. The Licensee must do all that it reasonably can to comply with and take the steps that it is committed to take by virtue of paragraph A6, in accordance with such estimates as are provided in the Statement of Service Exemptions of the timeframe over which those steps are expected to be taken and completed.

Part B: Licensee’s duties with respect to the statement

- A8. For the purpose of ensuring that the Statement of Service Exemptions is maintained as a document that accurately reflects the provisions of paragraph 17.19 as amplified by the requirements of this Appendix 1, the Licensee must:
- (a) review the statement at least once in each full Regulatory Year following the Secretary of State’s approval of it under paragraph A2; and
 - (b) propose to the Authority such revisions (if any) of the statement as the Licensee thinks are appropriate or necessary as a result of that review.
- A9. The Authority may at any time, after consulting the Licensee and such other persons as it considers should be consulted in relation to the matter, direct the Licensee to revise the Statement of Service Exemptions in such manner, with effect from such time, and to such extent as may be specified in the direction.
- A10. The Licensee must:
- (a) give a copy of the Statement of Service Exemptions (or of any amended such statement following a revision under paragraph A9) to any person who asks for a copy; and
 - (b) publish and maintain the Statement of Service Exemptions (or any amended such statement following a revision under paragraph A9) on its Website.

Part C: Interpretation

- A11. This Part C applies for the purposes of paragraphs A4(b) and A5(b) with respect to the question of whether the provision of a Smart Meter Communication Service to premises, or within an area containing premises, that is within a Service Exemption Category under paragraph A3 can only be achieved at disproportionate cost.
- A22. That question is to be resolved by the Secretary of State or the Authority (as the case may be) in such manner and by reference to such factors as he or it considers appropriate, having particular regard to the national policy objective to secure the widespread installation and operation of Smart Meters at premises in Great Britain at a reasonable overall cost to the general body of Energy Consumers.

Condition 18. Charging Methodology for Service Charges

Introduction

18.1 This condition requires the Licensee to have in force, and comply with, a Charging Methodology for Service Charges that is designed to achieve certain specified policy objectives; that has been incorporated into the Smart Energy Code following its designation by the Secretary of State for the purposes of this condition; and that may be modified from time to time as provided for in the SEC and by reference to policy objectives that are different from the General SEC Objectives.

Part A: General requirements for the Charging Methodology

- 18.2 The Licensee must at all times have in force a Charging Methodology for Service Charges (“the Charging Methodology”).
- 18.3 The Charging Methodology is required to be a complete and documented explanation, presented in a coherent and consistent manner, of the methods, principles, and assumptions that apply for the purpose of determining the Service Charges payable for Mandatory Business Services provided under or pursuant to the SEC.
- 18.4 The Charging Methodology in force under this Part A at the Relevant Incorporation Date (see Part D below) must have been designated by the Secretary of State for the purposes of this condition in accordance with Part B below on the basis that it achieves the Relevant Policy Objectives set out in Part C.
- 18.5 The Charging Methodology, having been designated by the Secretary of State for the purposes of this condition, is to be incorporated into the Smart Energy Code in accordance with Part D below (which also makes special provision with respect to the modification of the Charging Methodology).
- 18.6 The Licensee, except where the Authority otherwise consents, must comply with the provisions of the Charging Methodology as modified from time to time in accordance with such provisions of this Condition 18 and the Smart Energy Code as are applicable to such modifications.
- 18.7 The Licensee must, for the purpose of ensuring that the Charging Methodology will continue to achieve the Relevant Policy Objectives:
- (a) review the methodology at least once in each Regulatory Year; and
 - (b) subject to the requirements of Part D below, propose such modifications (if any) of the methodology as it believes are appropriate or necessary for the purpose of enabling it to better achieve the Relevant Policy Objectives.

Part B: Matters relating to designation of the Charging Methodology

- 18.8 Subject to the provisions set out in this Part B, the Secretary of State may designate a Charging Methodology for the purposes of this condition if he is satisfied that it achieves the Relevant Policy Objectives.
- 18.9 Before designating a Charging Methodology for the purposes of this condition, the Secretary of State must consult:

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- (a) the Licensee;
 - (b) the Authority;
 - (c) SEC Parties (or such persons as the Secretary of State reasonably believes will become SEC Parties); and
 - (d) such other persons as the Secretary of State considers it appropriate to consult.
- 18.10 For the purposes of consultation under paragraph 18.9, the Secretary of State must:
- (a) publish the terms of the Charging Methodology that he proposes to designate for the purposes of this condition;
 - (b) state the reasons why he proposes to so designate it; and
 - (c) allow a period of at least 28 days within which representations or objections may be made to him concerning the proposal.
- 18.11 The Secretary of State must have due regard to any representations or objections duly received under paragraph 18.10, and give reasons for his decisions in relation to them.
- 18.12 The Secretary of State may designate a Charging Methodology for the purposes of this condition subject to such conditions as he considers appropriate, having regard to:
- (a) the need for any further action to be taken by the Licensee to ensure that the Charging Methodology better achieves the Relevant Policy Objectives; and
 - (b) the time by which such action must be completed.
- 18.13 The requirements imposed by this Part B may be satisfied by consultation before, as well as consultation after, the Licence Commencement Date.

Part C: Relevant Policy Objectives of the Charging Methodology

- 18.14 The Relevant Policy Objectives of the Charging Methodology consist of the First Relevant Policy Objective and the Second Relevant Policy Objective.
- 18.15 The First Relevant Policy Objective:
- (a) applies in relation to Smart Metering Systems installed (or to be installed) at Domestic Premises; and
 - (b) requires the Charging Methodology to ensure that Service Charges imposed under or pursuant to the SEC in respect of the operation or provision of Mandatory Business Services (excluding Elective Communication Services) for the purposes of such Smart Metering Systems do not distinguish (whether directly or indirectly) between Energy Consumers at Domestic Premises in different parts of Great Britain.
- 18.16 The Second Relevant Policy Objective is that, subject to compliance with the First Relevant Policy Objective, the Charging Methodology in respect of all of the Mandatory Business Services provided under or pursuant to the SEC must result in Service Charges that:
- (a) facilitate effective competition in the Supply of Energy (or its use) under the Principal Energy Legislation;

- (b) do not restrict, distort, or prevent competition in Commercial Activities that are connected with the Supply of Energy under that legislation;
- (c) do not deter the full and timely installation by Energy Suppliers of Smart Metering Systems at Energy Consumers' premises in accordance with their obligations under the Energy Supply Licence; and
- (d) do not unduly discriminate in their application and are reflective of the costs incurred by the Licensee, as far as is reasonably practicable in all of the circumstances of the case, having regard to the costs of implementing the Charging Methodology.

18.17 The Charging Methodology will achieve the Second Relevant Policy Objective if it is compliant with the provisions of paragraph 18.16 in the round, weighing them as appropriate in each particular case.

Part D: Incorporation of the Charging Methodology into the SEC

18.18 For the purposes of this Part D, the Relevant Incorporation Date is the date on which the Charging Methodology is designated by the Secretary of State in accordance with Part B above.

18.19 By virtue of this Part D, and having full effect from the Relevant Incorporation Date:

- (a) the Licensee's Charging Methodology for Services, as designated by the Secretary of State, is to be incorporated into the Smart Energy Code as one of the matters that is required to be included in that document by virtue of the provisions of Part G of Condition 22 (The Smart Energy Code); and
- (b) all of the SEC Modification Arrangements for which the Smart Energy Code is required to make provision under Condition 23 (Change control for the Smart Energy Code) are to be applied equally (to the extent that is relevant) to modifications under the SEC of the Charging Methodology for Services, subject to the requirements of paragraph 18.20.

18.20 Those requirements are that any proposal raised under the Smart Energy Code by the Licensee (or any other person) to modify the Charging Methodology:

- (a) must have as its purpose the better achievement of the Relevant Policy Objectives set out in Part C above, instead of the better achievement of the General SEC Objectives set out at Part C of Condition 22; and
- (b) must be assessed by reference to those Relevant Policy Objectives, and not by reference to the General SEC Objectives.

Part E: General availability of the Charging Methodology

18.21 The Licensee must ensure that a copy of the Charging Methodology in force under this condition:

- (a) is published on its Website; and
- (b) is also otherwise available to any person who requests it upon payment of an amount (if any) that does not exceed the reasonable costs of making and supplying that copy.

- 18.22 When any modification of the Charging Methodology is made, the Licensee must at the same time:
- (a) to such extent as may be necessary, revise the Charging Statement (or the most recent revision of it) published under Condition 19 (Charging Statement for Service Charges) so that the statement properly sets out the effect of the changes to the Charging Methodology and the date from which they will be implemented; and
 - (b) give the Authority a copy of that revised Charging Statement.
- 18.23 Further provision in respect of the Charging Statement mentioned in paragraph 18.22 is set out in Condition 19.

Part F: Interpretation

- 18.24 For the purposes of this condition only:

Relevant Incorporation Date has the meaning given to that term in paragraph 18.18.

Relevant Policy Objectives means the objectives of the Charging Methodology as set out in Part C of this condition.

First Relevant Policy Objective has the meaning given to that term in paragraph 18.15.

Second Relevant Policy Objective has the meaning given to that term in paragraph 18.16.

Condition 19. Charging Statement for Service Charges

Introduction

- 19.1 This condition requires the Licensee to prepare and comply with a Charging Statement for Service Charges that:
- (a) has been prepared in accordance with the Charging Methodology in force under Condition 18 (Charging Methodology for Service Charges); and
 - (b) will enable SEC Parties and any other persons to estimate the Service Charges that are payable for the provision by the Licensee of Mandatory Business Services (within the meaning of Part F below) under or pursuant to the SEC.
- 19.2 Every Service Charge levied by the Licensee for the provision of a Mandatory Business Service must be formulated in compliance with the Charging Methodology, whether or not the service in question falls within the coverage of paragraph 19.16.

Part A: Requirements in respect of the Charging Statement

- 19.3 The Licensee must ensure that it has at all times available a Charging Statement for Service Charges (“the Charging Statement”) that sets out the basis on which Service Charges will be payable to the Licensee for the provision of Mandatory Business Services under or pursuant to the SEC.
- 19.4 The Charging Statement available under this Part A must (subject to paragraph 19.16):
- (a) relate to each of the Mandatory Business Services operated or provided by the Licensee under or pursuant to the SEC;
 - (b) be prepared in accordance with and contain such information as is necessary to comply with the Charging Methodology in force under Condition 18 at the time at which the Charging Statement has effect; and
 - (c) be presented in such form and with such detail as will enable any SEC Party, or any other person entitled to receive Mandatory Business Services, to make a reasonable estimate of the Service Charges that he would be liable to pay under an Agreement for Services entered into with the Licensee under or pursuant to Condition 17 (Requirements for the provision of Services).

Part B: Maintenance of the Charging Statement in approved form

- 19.5 Subject to paragraph 19.6, the Licensee must maintain the Charging Statement in a form that is approved by the Authority.
- 19.6 The first Charging Statement of the Licensee must be in a form that is approved by the Secretary of State.

Part C: Charging in accordance with the Charging Statement

- 19.7 Except where the Authority otherwise consents, and subject to paragraph 19.8, every Agreement for Services must be so framed as to ensure that the Service Charges that are or become payable under it will comply with the Charging Statement in the form in which it is in force under this condition at each time at which such Service Charges are to be made under or pursuant to that agreement.

- 19.8 The requirement imposed by paragraph 19.7:
- (a) does not apply to an Agreement for Services in respect of any Value Added Services; and
 - (b) applies only to such as extent as is practicable to any Agreement for Services in respect of:
 - (i) an Elective Communication Service, or
 - (ii) an Enrolment Service.

Part D: Procedure for amending any of the Service Charges

- 19.9 The Licensee must, not less than three months before the date on which it proposes to amend its Service Charges in respect of any Agreement for Services:
- (a) give the Authority a Notice that sets out those proposals, together with an explanation of them (which must include a statement of any assumptions on which the proposals are based); and
 - (b) send a copy of the Notice to any person with whom the Licensee has entered into an Agreement for Services.
- 19.10 Except if the Authority otherwise consents, the Licensee may only amend its Service Charges in respect of any Agreement for Services if:
- (a) it has given Notice of the proposed amendment in accordance with paragraph 19.9; and
 - (b) the amendment, when made, conforms to the proposals that were set out in that Notice (except for any revisions made necessary because there has been a material change in any of the matters on which the assumptions set out in the statement mentioned in paragraph 19.9(a) were said to be based).
- 19.11 Before making any amendment of its Service Charges pursuant to this Part D, the Licensee must give the Authority a revised Charging Statement that sets out the amended Service Charges and specifies the date from which they will have effect.

Part E: Review and availability of the Charging Statement

- 19.12 Without prejudice to the requirements of Part D above, the Licensee must periodically review the information set out in a Charging Statement in force under this condition and, at least once in each Regulatory Year, make any changes that are necessary to that statement to ensure that such information continues to be accurate and reliable in all material respects.
- 19.13 The changes mentioned in paragraph 19.12 include, in particular, any changes that are necessary by virtue of the Licensee's duty under paragraph 22 of Condition 18 to ensure that the effects of any modification of the Charging Methodology in force under that condition are duly incorporated into the Charging Statement.
- 19.14 The Charging Statement, as from time to time revised, must be published in such manner as the Licensee believes will ensure adequate publicity for it (including on the Licensee's Website).

- 19.15 The Licensee must give or send a copy of the Charging Statement (or the most recent revision of it) to any person who requests a copy.

Part F: Interpretation

- 19.16 For the purposes of this condition only, **Mandatory Business Services** includes Elective Communication Services and Enrolment Services only to such extent as is practicable.
- 19.17 This condition should be read and construed in conjunction with Condition 18 (Charging Methodology for Service Charges).

Condition 20. Determination of disputes by the Authority

Introduction

- 20.1 This condition provides for the Authority to determine any dispute arising between the Licensee and a SEC Party about the terms on which certain Services are offered to be provided under or pursuant to the requirements of Condition 17 (Requirements for the provision of Services).
- 20.2 Provision is also made under Part C of this condition for certain other disputes arising between the Licensee and a SEC Party to be determined by the Authority.

Part A: Disputes over failure to enter into an Agreement for Services

- 20.3 This Part A applies if, after a period that to the Authority appears reasonable for the purpose, the Licensee has failed to enter into an Agreement for Services with any SEC Party (“the Requester”) who is entitled, or claims to be entitled, to have such an agreement with the Licensee pursuant to a request made to the Licensee under:
- (a) Part C of Condition 17 (with respect to the Licensee’s provision of Elective Communication Services); or
 - (b) paragraph 17 of Condition 17 (with respect to the Licensee’s provision of certain Enrolment Services).
- 20.4 Where this Part A applies, the Authority may, on the application of the Requester or the Licensee, determine any terms of the Agreement for Services in dispute between them in such manner as appears to it to be reasonable in all the circumstances of the case, having regard to each of the considerations (where relevant) set out below.
- 20.5 The first consideration is that the charges payable by the Requester to the Licensee under the Agreement for Services should be determined in accordance with and by reference to the Charging Methodology and the Charging Statement in force under, respectively, Condition 18 (Charging Methodology for Service Charges) and Condition 19 (Charging Statement for Service Charges).
- 20.6 The second consideration is that the Licensee should not be required to enter into the Agreement for Services if the Requester does not undertake to be bound, so far as is applicable, by the provisions of the Smart Energy Code.
- 20.7 The third consideration is that the Licensee’s performance of its obligations under the Agreement for Services should not cause the Licensee, or be likely to cause it, to be in breach of:
- (a) any of its functions under the Principal Energy Legislation; or
 - (b) any applicable provision of the SEC; or
 - (c) any of the Conditions of this Licence.
- 20.8 The fourth consideration is that the terms of an Agreement for Services determined by the Authority, and those of any other agreements entered into by the Licensee pursuant to requests under Part C or paragraph 17 of Condition 17 (as the case may be), should be in as similar a form as is practicable.

Part B: Licensee’s duty to implement a settled agreement

- 20.9 Insofar as the Requester wishes to proceed on the basis of an Agreement for Services as settled by the Authority under paragraph 20.4, the Licensee must enter into and implement such agreement without delay and in accordance with its terms.

Part C: Disputed consistency with methodology or statement

- 20.10 This Part C applies if the parties to an Agreement for Services in place by virtue of either Part C or paragraph 17 of Condition 17, or pursuant to a determination by the Authority under this condition, are in dispute as to whether the Service Charges levied, or to be levied, in accordance with that agreement comply with the Charging Methodology and Charging Statement in force under, respectively, Condition 18 and Condition 19 in relation to the period in respect of which the dispute arises.
- 20.11 Where this Part C applies, either party may refer the dispute to the Authority for it to determine whether the charges to which the dispute relates did, or would, comply with the relevant Charging Methodology or Charging Statement.

Part D: Procedure, provision for costs, and other matters

- 20.12 The procedure under this condition for determining a dispute is to be the procedure that the Authority considers is appropriate in all the circumstances of the case.
- 20.13 The Authority must send a copy of its determination, together with a full statement of the reasons for it, to both parties to the dispute.
- 20.14 The Authority may publish (in such manner as it considers appropriate) so much of any determination made under this condition as (having regard to the need to preserve commercial confidentiality) it considers should be published.
- 20.15 A determination under this condition may include such provision requiring either or both of the parties to the dispute to pay a sum in respect of the costs or expenses incurred by the Authority in making the determination as the Authority considers appropriate in all the circumstances of the case.

Part E: Interpretation

- 20.16 For the purposes of this condition, **Requester** has the meaning that is given to that term in paragraph 20.3.

CHAPTER 6 : CONDITIONS 21 TO 23
Arrangements for Core Industry Documents

Condition 21. Roles in relation to Core Industry Documents

Introduction

21.1 This condition sets out the Licensee's compliance duties (where applicable) in relation to the Core Industry Documents specified in Parts A to C below and the Licensee's rights (where applicable) to receive such information arising from activities carried on in accordance with those documents as it needs for the exercise of its functions.

Part A: Compliance duties relating to the Smart Energy Code

21.2 The Licensee must be a party to and comply with the Smart Energy Code that is designated by the Secretary of State for the purposes of Condition 22 (The Smart Energy Code).

21.3 The Licensee must also take all appropriate steps within its power to ensure that the Smart Energy Code is maintained as a document in force under this Licence that is at all times consistent with the requirements of Condition 22.

Part B: Compliance with the provisions of the Fuel Security Code

21.4 The Licensee must comply with the provisions of the Fuel Security Code.

21.5 The Fuel Security Code has effect as a condition of this Licence.

Part C: Rights in relation to certain other Core Industry Documents

21.6 Where an arrangement of the kind mentioned in paragraph 26(b) of Condition 22 is in force in relation to a Core Industry Document that is listed in paragraph 7 of this Condition 21, the Licensee will be entitled to be supplied with such information arising from activities carried on in accordance with that document as it reasonably requires for the exercise of its functions under the Principal Energy Legislation, this Licence, and the SEC.

21.7 The Core Industry Documents to which paragraph 21.6 refers are:

- (a) the Balancing and Settlement Code;
- (b) the Distribution Connection and Use of System Agreement;
- (c) the Master Registration Agreement;
- (d) the Supply Point Administration Agreement; and
- (e) the Uniform Network Code.

21.8 But, subject to the requirements of Part A above, the Licensee is not to be regarded as, and may not be required to become, a party to a Core Industry Document except with the consent of the Authority and to such extent as it may specify.

Part D: Consequential changes in Core Industry Documents

21.9 If any consequential change is required in a Core Industry Document to which the Licensee is a party, the Licensee must take all reasonable steps to secure, and not take any unreasonable steps to prevent or delay, the making or implementation of that consequential change (but see paragraph 21.11).

- 21.10 For the purposes of paragraph 21.9, a consequential change is any modification that is required to be made to a Core Industry Document solely in order to give full and timely effect to a modification made to that or any other Core Industry Document.
- 21.11 Paragraph 21.9 is without prejudice to:
- (a) any rights of appeal that the Licensee may have in relation to decisions made by the Authority under a Core Industry Document; and
 - (b) any rights of approval, veto, or direction that the Authority or the Secretary of State may have in relation to changes to a Core Industry Document.

Part E: Interpretation

- 21.12 For the purposes of this condition:

Balancing and Settlement Code means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition C3 of the Electricity Transmission Licence.

Core Industry Document means:

- (a) any or all of the documents specified under Parts A to C above; and
- (b) any other document designated by the Authority for the purposes of this condition following consultation with the Licensee.

Distribution Connection and Use of System Agreement means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition 22 of the Electricity Distribution Licence.

Electricity Distribution Licence and **Electricity Transmission Licence** mean, respectively, a licence granted, or treated as granted, under section 6(1)(c) of the 1989 Act and a licence granted, or treated as granted, under section 6(1)(b) of the 1989 Act.

Fuel Security Code means the document of that name designated by the Secretary of State under section 7(4)(b) of the 1989 Act as a condition of every licence of any type granted, or treated as granted, under section 6 of that Act.

Gas Supply Licence and **Gas Transporter Licence** mean, respectively, a licence granted, or treated as granted, under section 7A(1) of the 1986 Act and a licence granted, or treated as granted, under section 7(1) of the 1986 Act.

Master Registration Agreement means the document of that name maintained in a form approved by the Authority in accordance with standard condition 23 of the Electricity Distribution Licence.

Supply Point Administration Agreement means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition 30 of the Gas Supply Licence.

Uniform Network Code means the document of that name that is maintained in accordance with standard special condition A11 of the Gas Transporter Licence.

Condition 22. The Smart Energy Code

Introduction

- 22.1 This condition applies for the purpose of establishing (without limitation) the scope and contents of the Smart Energy Code (“the SEC”).
- 22.2 The Licensee must be a party to, comply with, and maintain and have in force the SEC by virtue of Part A of Condition 21 (Roles in relation to Core Industry Documents).

Part A: Mandatory features of the Smart Energy Code

- 22.3 The Smart Energy Code is the document of that name that:
- (a) has effect under this Licence from the date (except where the Secretary of State otherwise directs) on which this Licence comes into force (in this condition, “the SEC Commencement Date”);
 - (b) is designated by the Secretary of State for the purposes of this condition, (i) in accordance with Part B below, and (ii) on the basis that it achieves the General SEC Objectives set out in Part C below;
 - (c) makes provision for the technical, commercial, and operational arrangements set out in Part E below;
 - (d) makes provision in respect of the matters relating to SEC governance and SEC administration set out in Part F below;
 - (e) makes provision in respect of other SEC matters set out in Part G below; and
 - (f) may be modified on and after SEC Commencement Date in accordance with the provisions of Condition 23 (Change control for Smart Energy Code).

Part B: Designation of the Smart Energy Code

- 22.4 The Smart Energy Code has no effect under this Licence until it has been designated by the Secretary of State in a direction given for the purposes of this condition.
- 22.5 Before issuing a direction under paragraph 22.4, the Secretary of State must consult:
- (a) the Authority;
 - (b) every holder of an Energy Licence who is required by a condition of that licence to be a party to and comply with the Smart Energy Code; and
 - (c) such other persons as the Secretary of State considers it appropriate to consult in relation to the matter.
- 22.6 For the purposes of consultation under paragraph 22.5, the Secretary of State must:
- (a) state that he proposes to designate the SEC and specify the date (see paragraph 22.3(a) above) on which he proposes that the SEC should have effect;
 - (b) set out the text of the SEC and his reasons for proposing to designate it; and

- (c) allow a period of at least 28 days within which representations or objections may be made to him concerning the proposal.

22.7 The Secretary of State must have due regard to any representations or objections duly received under paragraph 22.6, and give reasons for his decisions in relation to them.

Part C: General Objectives of the Smart Energy Code

- 22.8 The General SEC Objectives that the Smart Energy Code must be designed to achieve are as follows.
- 22.9 The first General SEC Objective is to facilitate the efficient provision, installation, and operation, as well as interoperability, of Smart Metering Systems at Energy Consumers' premises within Great Britain.
- 22.10 The second General SEC Objective is to enable the Licensee to comply at all times with the General Objectives of the Licensee, and to efficiently discharge the other obligations imposed upon it by this Licence.
- 22.11 The third General SEC Objective is to facilitate Energy Consumers' management of their use of Energy through the provision to them of appropriate information by means of Smart Metering Systems.
- 22.12 The fourth General SEC Objective is to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation.
- 22.13 The fifth General SEC Objective is to facilitate such innovation in the design and operation of Energy Networks as will best contribute to the delivery of a secure and sustainable Supply of Energy under the Principal Energy Legislation.
- 22.14 The sixth General SEC Objective is to ensure the protection of data and the security of data and systems in the operation of the SEC.
- 22.15 The seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of the SEC.
- 22.16 For the purposes of this condition and those of Condition 23 (Change control for the Smart Energy Code), the order in which the General SEC Objectives are listed in this Part C is of no significance.

Part D: Transitional arrangements for the Smart Energy Code

- 22.17 The matters to which Parts E to G below refer (including matters in connection with the modification arrangements applying to the SEC pursuant to Condition 23) are subject to any requirements for them to be implemented or otherwise provided for on a transitional basis, whether under the provisions of the SEC or the provisions of any Smart Metering Transition Scheme designated by the Secretary of State for the purposes of Condition 13 (Arrangements for transition to SMA Completion).

Part E: Principal contents of the Smart Energy Code

- 22.18 The SEC must include or make appropriate provision for or in connection with the following matters:

GOVERNMENT RESPONSE TO CONSULTATION : ANNEX 1 – DRAFT DCC LICENCE

- (a) the terms on which the Licensee will arrange with each Domestic Energy Supplier to provide, in respect of a Smart Meter installed at Domestic Premises supplied with Energy by that supplier, a service by means of which information may be communicated to and by that meter on behalf of the supplier for the purposes of compliance with the conditions of its Energy Supply Licence;
 - (b) the terms on which the Licensee will contract with any Energy Supplier (not being a Domestic Energy Supplier) or any other SEC Party to provide that person with a service by means of which information may be communicated to and by any Smart Meter installed at premises by that person;
 - (c) arrangements for ensuring that all Smart Metering Systems installed at Energy Consumers' premises for the purposes of the Supply of Energy consist of the apparatus identified in, have the functional capability specified by, and comply with the other requirements of the SME Technical Specification applicable at the date at which such systems are installed; and
 - (d) requirements in respect of the technical specification, design, and functionality of Communications Hubs and the contractual and commercial arrangements necessary to secure their ownership, delivery, installation, repair, maintenance, and replacement pursuant to the Communications Hub Service.
- 22.19 The SEC must include or make appropriate provision for or in connection with the following matters:
- (a) details of all of the Mandatory Business Services (clearly distinguishing between Core Communication Services, Elective Communication Services, the Enrolment Service, the Communications Hub Service, and Other Enabling Services) that are to be provided by the Licensee under or pursuant to the SEC;
 - (b) procedures relating to any requirement for SEC Parties to make Smart Metering Systems available for use by other specified persons (including the Licensee) for specified purposes, whether under or pursuant to the SEC or otherwise;
 - (c) terms and procedures for the implementation of charging, billing, and payment arrangements in respect of Services provided under or pursuant to the SEC for and on behalf of SEC Parties; and
 - (d) terms and arrangements relating to (i) the ownership, licensing, and protection of any intellectual property rights created by or arising by virtue of the operation of any of the SEC Arrangements, and (ii) the treatment and allocation of any royalty revenues resulting from the exercise of such rights.
- 22.20 The SEC must include or make appropriate provision for or in connection with the following matters:
- (a) arrangements, requirements, and procedures providing for the incorporation of Energy Registration Services into the SEC Arrangements, and for any transfers of property, rights, and liabilities necessary to give full and continuing effect to such incorporation, with effect from a date to be determined in a direction given to the Licensee by the Secretary of State under Condition 15 (Incorporation of Energy Registration Services);

- (b) requirements and procedures for the purposes of ensuring data protection and data and systems security in the operation of the SEC Arrangements; and
- (c) terms providing for the limitation of the liability of the Licensee and SEC Parties in respect of loss or damage arising from the procurement, provision, or use of Services under or pursuant to the SEC.

22.21 The SEC must include or make appropriate provision for or in connection with the following matters:

- (a) provision for or in connection with the governance and administration of the SEC (as to which, see Part F below);
- (b) provision for or in connection with other relevant SEC matters (as to which, see Part G below); and
- (c) arrangements for modifying the SEC after consultation with SEC Parties (as to which, see Condition 23 of this Licence).

Part F: Governance and administration of the Smart Energy Code

22.22 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) a SEC Framework Agreement, to which the Licensee, every holder of an Energy Licence that is required by that licence to be a party to the SEC, and Other SEC Participants will be required to be party with effect from the SEC Commencement Date on such terms and conditions of accession as are set out in the SEC;
- (b) provision for other persons (being persons who accept the terms and fulfil all of the conditions on which accession to the SEC is offered) to be admitted subsequently as parties to the SEC by entering into an Accession Agreement with SECCo acting for that purpose on behalf of all SEC Parties; and
- (c) provision enabling any person who seeks to be admitted as a party to the SEC Framework Agreement, or as a SEC Party pursuant to an Accession Agreement, to request the Authority to determine any dispute as to whether that person has fulfilled the relevant terms and conditions of accession.

22.23 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements providing for the novation to a Successor Licensee (upon either the expiry of the Licence Term (or of any Additional Licence Term) within the meaning of Part 1 of this Licence, or any revocation of this Licence pursuant to a Revocation Event under its Part 2) of the whole of the Licensee's interest under the SEC, on terms that require the Successor Licensee to assume all accrued rights or obligations of the Licensee and all accrued liabilities of the Licensee, in each case in respect of any act or omission relating to the SEC Arrangements on or at any time before the date of the novation; and
- (b) terms providing for the Licensee and such other parties to the SEC Framework Agreement as are specified in the SEC to be contractually bound by some or all of the provisions of the SEC.

22.24 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements for the establishment, in accordance with such procedures for the election of members as are specified in the SEC, of a representative body, the SEC Panel, which is to be responsible, by way of such proceedings as are so specified (which may include voting procedures), for the governance and administration of the SEC;
- (b) provision for the appointment of an independent chairperson of the SEC Panel who is approved by the Authority; and
- (c) provision for the National Consumer Council to appoint to the membership of the SEC Panel a person (who must not be a SEC Party) to represent to the Panel the interests of Energy Consumers (“the Consumer Member”).

22.25 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements for the establishment and funding of a Secretariat to service the SEC Panel in connection with such matters of governance and administration as are specified in the SEC, including the maintenance of a conformed and duly certified copy of the SEC as from time to time modified in accordance with such arrangements as are in place by virtue of Condition 23;
- (b) arrangements for the establishment and funding of a person to be known as the Code Administrator to advise and assist the SEC Panel (including, in particular, the Consumer Member), SEC Parties, and other interested persons with respect to the policy and administration of the SEC, to such extent and in relation to such matters as are specified in the SEC;
- (c) provision for the establishment of a joint venture company, SECCo Ltd, (i) the shareholders of which are to be such SEC Parties as may be specified for that purpose in the SEC, (ii) the sole business of which is to act as a corporate vehicle to assist the SEC Panel in exercising its powers, duties, and functions (including by entering into contracts where necessary or desirable in order to implement any decision of the SEC Panel), and (iii) the affairs of which are to be conducted in accordance with good business practice; and
- (d) terms requiring the Code Administrator to act in accordance with any Code of Practice that is approved by the Authority and relates to the performance of their duties by persons or bodies responsible for administering documents of the kind that are described in Condition 21 (Roles in relation to Core Industry Documents).

Part G: Other matters for the Smart Energy Code

22.26 Without prejudice to any of the matters set out in Parts E and F above, the contents of the SEC must also include:

- (a) provision for the incorporation into the SEC of the Charging Methodology for Service Charges that is designated by the Secretary of State under Condition 18 (Charging Methodology for Service Charges) for the purposes of such incorporation in accordance with the requirements of that condition;

- (b) provision requiring SEC Parties who are also parties to one or more of the other Core Industry Documents mentioned in Condition 21 to establish arrangements under those documents for the purpose of ensuring that such information arising from activities carried on in accordance with the documents as the Licensee may reasonably require for the exercise of its functions under the Principal Energy Legislation, this Licence, and the SEC will be supplied to the Licensee at such times and in such form and manner as may be specified in the SEC;
- (c) provision for the incorporation into the SEC, and subsequent governance of, a Statement of Security Requirements as designated by the Secretary of State for the purposes of Condition 8 (Security controls for the Authorised Business);
- (d) provision for the vesting, ownership, and novation of intellectual property rights in SEC Materials within the meaning of Condition 44 (Treatment of Intellectual Property Rights) to be compliant with the requirements of that condition with respect to those matters;
- (e) provision for a copy of the SEC (i) to be published on the Licensee’s Website and (ii) to be supplied to any person who requests it, on payment of an amount not exceeding the reasonable costs of making and supplying that copy;
- (f) provision for information about the operation of the SEC Arrangements to be supplied on request to the Authority or to be published by it or the SEC Panel;
- (g) provision for the SEC Panel to secure the compliance of any SEC Party with the requirements of sub-paragraph (f); and
- (h) provision for such other matters as may be appropriate, having regard to the requirement for the SEC to be maintained as a document that is designed to achieve the General SEC Objectives.

Part H: Relief from obligations under the Smart Energy Code

22.27 The Authority may (after consulting with the Licensee and, where appropriate, any other person likely to be materially affected) give a direction (“a derogation”) to the Licensee that relieves it of any one or more of its obligations under the Smart Energy Code to such extent, for such period of time, and subject to such conditions as may be specified in the direction.

Part I: Interpretation

22.28 For the purposes of this condition only:

Accession Agreement has the meaning that is given to that term in paragraph 22.22(b)

Code Administrator has the meaning that is given to that term in paragraph 22.25(b).

Consumer Member has the meaning that is given to that term in paragraph 22.24(c).

Other SEC Participants means every party to the SEC who is neither the Licensee nor the holder of an Energy Licence that requires that person to be a party to the SEC.

SEC Framework Agreement has the meaning given to that term in paragraph 22.22(a).

Secretariat has the meaning that is given to that term in paragraph 22.25(a).

Condition 23. Change control for the Smart Energy Code

Introduction

- 23.1 This condition applies for the purpose of establishing an effective and transparent compliance and change control framework for the Smart Energy Code (“the SEC”) that is in force under this Licence by virtue of Condition 22 (The Smart Energy Code).
- 23.2 Any proposal by any person to modify the SEC must have as its purpose the better achievement of the General SEC Objectives set out at Part C of Condition 22 (or such Relevant Policy Objectives as may be applicable to the particular proposal by virtue of either Condition 8 or (as the case may be) Condition 18 of this Licence).

Part A: Compliance with the SEC Modification Arrangements

- 23.3 The Smart Energy Code (“the SEC”) in force under this Licence by virtue of Condition 22 may be modified at any time after the SEC Commencement Date that is referred to in that condition, subject to paragraph 23.4.
- 23.4 The SEC may only be modified in accordance with modification arrangements set out in the SEC (“the SEC Modification Arrangements”) that are consistent with and give full and complete effect to the requirements specified at Part B below.

Part B: Requirements for modifying the Smart Energy Code

- 23.5 The SEC Modification Arrangements for which the SEC must make provision must satisfy each of the following requirements.
- 23.6 The first requirement is that the SEC Modification Arrangements must provide for the Licensee and all other SEC Parties to meet periodically for the purpose of discussing the continuing development of the SEC, having regard to the General SEC Objectives.
- 23.7 The second requirement is that the SEC Modification Arrangements must provide for a timely and efficient process by which the SEC Panel can:
- (a) formally receive modification proposals from the Licensee, any other SEC Party, the Authority, the Consumer Member, or any other person or body that may be either designated for the purpose of making such proposals by the Authority or specified for such purpose by a provision of the SEC;
 - (b) consult on the merits of those proposals with the Licensee, other SEC Parties, the Consumer Member, and any other persons whose interests are materially affected by the SEC; and
 - (c) evaluate those proposals in the light of that consultation.
- 23.8 The third requirement is that the SEC Modification Arrangements must provide for the SEC Panel to have a report on any modification proposal (“a Modification Report”) prepared in a timely and efficient manner for submission to the Authority that:
- (a) sets out the terms proposed for the modification;
 - (b) fairly summarises the representations received during the consultation process under paragraph 23.7;

- (c) sets out the conclusions reached by the SEC Panel (or by such other body as may be specified for this purpose by the SEC) about the modification proposal in question, including whether in the SEC Panel’s opinion (or the opinion of that other body, as the case may be) the modification would, if made, better achieve the General SEC Objectives (or such Relevant Policy Objectives as may be applicable to the particular proposal by virtue of either Condition 8 or (as the case may be) Condition 18 of this Licence); and
 - (d) sets out a timetable for implementing the modification, if it were to be made, and the date with effect from which the modification (if made) would take effect.
- 23.9 The fourth requirement is that the SEC Modification Arrangements must provide for specified categories of modification (and those categories only) to be capable of:
 - (a) being processed and considered more urgently than any other categories of modification; or
 - (b) being made by the SEC Panel without the Authority’s approval.
- 23.10 The fifth requirement is that the SEC Modification Arrangements must provide:
 - (a) for every Modification Report to include an assessment of the quantifiable impact (if it is likely to be material) of the modification proposal on Greenhouse Gas emissions; and
 - (b) for that assessment to be conducted in accordance with any guidance issued for that purpose by the Authority about the evaluation of such emissions and the appropriate treatment of carbon costs.
- 23.11 The sixth requirement is that the SEC Modification Arrangements must provide for the Authority, if it considers that a Modification Report does not adequately analyse or fully consider the matter in question:
 - (a) to remit that Modification Report to the SEC Panel; and
 - (b) to direct the SEC Panel as to the nature of the further analysis or the further consideration that the Authority believes is required.
- 23.12 The seventh requirement is that the SEC Modification Arrangements must provide:
 - (a) for the Authority to bring forward a modification proposal of its own motion (or to direct the Licensee to bring forward such a proposal) by reference to particular policy considerations specified in the SEC for that purpose; and
 - (b) for any such modification proposal to be initiated, processed, and determined in accordance with such procedures as are set out in the SEC for the purpose of dealing with such a proposal by reason of its special status.
- 23.13 The eighth requirement is that the SEC Modification Arrangements must provide for the full and timely processing and determination of any modification proposal that is necessary to enable the Licensee, or any SEC Party, or any category of SEC Parties to implement or otherwise comply with any relevant binding decision of the European Commission or the Agency for the Co-operation of Energy Regulators.

- 23.14 The ninth requirement is that the SEC Modification Arrangements must contain provision for modifying the SEC Modification Arrangements.
- 23.15 The tenth requirement is that the SEC Modification Arrangements must provide for the SEC Panel to be required to make a modification of the SEC where the Authority is satisfied:
- (a) that the relevant modification proposal has been processed in accordance with all of the applicable SEC Modification Arrangements;
 - (b) that the modification, if made, would better facilitate the achievement of the General SEC Objectives (or such Relevant Policy Objectives as are applicable to the particular modification by virtue of either Condition 8 or (as the case may be) Condition 18 of this Licence); and
 - (c) that the making of that modification would be consistent with the Authority's principal objective and general duties under the Principal Energy Legislation.

Part C: Interpretation

- 23.16 This condition should be read in conjunction with and subject to:
- (a) Part B of Condition 8 (Security controls for the Authorised Business) and Part D of Condition 18 (Charging Methodology for Service Charges), which make special provision for the modification, respectively, of the Statement of Security Requirements as incorporated into the SEC and the Charging Methodology for Service Charges as incorporated into the SEC; and
 - (b) Part D of Condition 22 (The Smart Energy Code), which provides for any of the SEC Modification Arrangements that are established pursuant to this Condition 23 to be so established on a transitional basis where that is required by virtue of any provision of the SEC itself or any provision of the Smart Metering Transition Scheme designated by the Secretary of State for the purposes of Condition 13 (Arrangements for transition to SMA Completion).

Agency for the Co-operation of Energy Regulators means the body of that name established under Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009.

Consumer Member has the meaning given to that term in paragraph 24(c) of Condition 22.

Greenhouse Gas in relation to emissions has the meaning given to that term in section 92 of the Climate Change Act 2008.

Modification Report has the meaning given to that term in paragraph 23.8.

Relevant Policy Objectives means either such objectives as are set out in the SEC with respect to the Statement of Security Requirements designated by the Secretary of State for the purposes of Condition 8, or (as the case may be) the objectives set out in Part C of Condition 18 with respect to the Charging Methodology for Service Charges.

CHAPTER 7 : CONDITIONS 24 TO 28

Financial and ring-fencing provisions

Condition 24. Availability of all necessary resources

Introduction

24.1 This condition applies for the purpose of ensuring that the Licensee will at all times have at its disposal all of the resources necessary to enable it to carry on its Authorised Business in accordance with the functions it exercises under or by virtue of the Principal Energy Legislation, this Licence, and the Smart Energy Code.

Part A: General obligations under this condition

24.2 The Licensee must at all times act in a manner designed to ensure that it has available to itself, either directly or under appropriate contractual arrangements, such resources (including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities), on such terms and with all such rights, as will enable it to:

- (a) properly and efficiently carry on its Authorised Business; and
- (b) properly and efficiently exercise the functions it has under or by virtue of the Principal Energy Legislation, this Licence, and the Smart Energy Code, including, in particular, its duty to carry on the Mandatory Business at all times in accordance with the General Objectives of the Licensee.

Part B: Certificates for the Authority in relation to financial resources

24.3 The Licensee must by 31 July each year give the Authority a certificate that:

- (a) has been approved by a resolution of the Licensee's board of directors;
- (b) is signed by a director of the Licensee pursuant to that resolution; and
- (c) is in one of the three forms of certificate (that is to say, Certificate B1, or Certificate B2, or Certificate B3) prescribed for the purposes of this Part B in Appendix 1 (which has effect as part of this condition).

Part C: Statement of relevant factors and report by the auditors

24.4 The Licensee must ensure that the certificate given to the Authority under Part B above is accompanied by a statement of the main factors that the Licensee's directors have taken into account in giving that certificate, including reference to:

- (a) the main financial resources and financial facilities that are available to the Licensee; and
- (b) the most recent cashflow statement prepared for the Licensee.

24.5 The certificate must also be accompanied by a report prepared by the Licensee's auditors and addressed to the Authority that states whether or not the auditors are aware of any inconsistencies between (i) the certificate given by the Licensee's directors and the statement submitted with it, and (ii) any information that they have obtained during their audit work under Condition 30 (Requirements for the Regulatory Accounts) in relation to the Licensee's Regulatory Accounts.

Part D: Certificates for the Authority in relation to operational resources

- 24.6 The Licensee must by 31 July each year give the Authority a certificate that:
- (a) has been approved by a resolution of the Licensee’s board of directors;
 - (b) is signed by a director of the Licensee pursuant to that resolution; and
 - (c) is in one of the three forms of certificate (that is to say, Certificate D1, or Certificate D2, or Certificate D3) prescribed for the purposes of this Part D in Appendix 2 (which has effect as part of this condition).
- 24.7 The Licensee must ensure that the certificate given to the Authority under this Part D is accompanied by a statement of the main factors that the Licensee’s directors have taken into account in giving that certificate.

Part E: Certificates for the Authority in relation to Licence compliance

- 24.8 The Licensee must by 31 July each year give the Authority a certificate that:
- (a) has been approved by a resolution of the Licensee’s board of directors;
 - (b) is signed by a director of the Licensee pursuant to that resolution; and
 - (c) is in one of the two forms of certificate (that is to say, Certificate E1 or Certificate E2) prescribed for the purposes of this Part E in Appendix 3 (which has effect as part of this condition).

Part F: Obligation to report in respect of adverse circumstances

- 24.9 The Licensee must inform the Authority in Writing immediately if the directors of the Licensee:
- (a) become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent Certificate B1 or Certificate B2 given to the Authority; or
 - (b) become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent Certificate D1 or Certificate D2 given to the Authority; or
 - (c) consider that any of the adverse circumstances that caused them to give the Authority a certificate in the form of Certificate B3 or Certificate D3 have materially worsened.

Part G: Certificates for the Authority in relation to dividends

- 24.10 The directors of the Licensee must not declare or recommend a dividend, and the Licensee must not make any other form of distribution within the meaning of sections 829, 830, 849, and 850 of the Companies Act 2006 or redeem or repurchase any of its share capital, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the Licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.

24.11 The first requirement is that the certificate must be in the following form:

“After making enquiries, the directors of the Licensee are satisfied:

- (a) that the Licensee is in compliance in all material respects with all of the obligations imposed on it by Condition 9 (Independence and autonomy of the Licensee), Condition 24 (Availability of all necessary resources), Condition 25 (Undertakings from an Ultimate Controller), Condition 26 (Financial stability and financial security), Condition 27 (Indebtedness and transfers of funds), and Condition 29 (Provision of Information by the Licensee); and
- (b) that the making of a distribution, redemption, or repurchase of [*value*] on [*date*] will not, either alone or when taken in conjunction with any other circumstances reasonably foreseeable at the date of this certificate, cause the Licensee to be in breach to a material extent of any of those obligations in the future.”

24.12 The second and third requirements are that the certificate:

- (a) must have been approved by a resolution of the Licensee’s board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and
- (b) must be signed by a director of the Licensee.

24.13 Where the certificate given under paragraph 24.10 relates to the declaration or recommendation of a dividend, the Licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Part H: Appendices

24.14 Appendices 1, 2, and 3 follow immediately below.

Appendix 1: Certification of Financial Resources

- A1. In accordance with Part B of this condition, the Licensee is required by 31 July each year to give the Authority one of the following three forms of certificate prescribed for use by the Licensee for the purposes of that Part B.

Prescribed Form of Certificate B1

- A2. “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the Licensee, the Licensee’s directors have a reasonable expectation that the Licensee will have sufficient financial resources and financial facilities available to itself to enable the Licensee to carry on the Authorised Business for a period of 12 months from the date of this certificate.”

Prescribed Form of Certificate B2

- A3. “After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the Licensee, the Licensee’s directors have a reasonable expectation, subject to what is explained below, that the Licensee will have sufficient financial resources and financial facilities available to itself to enable the Licensee to carry on the Authorised Business for a period of 12 months from the date of this certificate.
- A4. “However, the directors of the Licensee would like to draw attention to the following factors, which may cast doubt on the Licensee’s ability to carry on the Authorised Business” [*followed by a description of those factors*].

Prescribed Form of Certificate B3

- A5. “In the opinion of the Licensee’s directors, the Licensee will not have sufficient financial resources and financial facilities available to itself to enable the Licensee to carry on the Authorised Business for a period of 12 months from the date of this certificate.”

Appendix 2: Certification of Operational Resources

- A1. In accordance with Part D of this condition, the Licensee is required by 31 July each year to give the Authority one of the following three forms of certificate prescribed for use by the Licensee for the purposes of that Part D.

Prescribed Form of Certificate D1

- A2. “After making enquiries, the Licensee’s directors have a reasonable expectation that the Licensee will have available to itself, either directly or under appropriate contractual arrangements, sufficient operational resources (including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities) to enable the Licensee to carry on the Authorised Business for a period of 12 months from the date of this certificate.”

Prescribed Form of Certificate D2

- A3. “After making enquiries, the Licensee’s directors have a reasonable expectation, subject to what is explained below, that the Licensee will have available to itself, either directly or under appropriate contractual arrangements, sufficient operational resources (including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities) to enable the Licensee to carry on the Authorised Business for a period of 12 months from the date of this certificate.
- A4. “However, the directors of the Licensee would like to draw attention to the following factors, which may cast doubt on the Licensee’s ability to carry on the Authorised Business” [*followed by a description of those factors*].

Prescribed Form of Certificate D3

- A5. “After making enquiries, the Licensee’s directors do not have a reasonable expectation that the Licensee will have available to itself, either directly or under appropriate contractual arrangements, sufficient operational resources (including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities) to enable the Licensee to carry on the Authorised Business for a period of 12 months from the date of this certificate.”

Appendix 3: Certification of Licence Compliance

- A1. In accordance with Part E of this condition, the Licensee is required by 31 July each year to give the Authority one of the following two forms of certificate prescribed for use by the Licensee for the purposes of that Part E.

Prescribed Form of Certificate E1

- A2. “After making enquiries, the Licensee’s directors consider that at the time of their approval of this certificate, the Licensee is in compliance in all material respects with all of the obligations imposed on it by Condition 9 (Independence and autonomy of the Licensee), Condition 24 (Availability of all necessary resources), Condition 25 (Undertakings from an Ultimate Controller), Condition 26 (Financial stability and financial security), Condition 27 (Indebtedness and transfers of funds), and Condition 29 (Provision of Information by the Licensee).”

Prescribed Form of Certificate E2

- A3. “In the opinion of the Licensee’s directors, after making enquiries, the Licensee is not, at the time of their approval of this certificate, in compliance in all material respects with all of the obligations imposed on it by Condition 9 (Independence and autonomy of the Licensee), Condition 24 (Availability of all necessary resources), Condition 25 (Undertakings from an Ultimate Controller), Condition 26 (Financial stability and financial security), Condition 27 (Indebtedness and transfers of funds), and Condition 29 (Provision of Information by the Licensee).
- A4. “The directors of the Licensee are unable to certify such compliance in respect of the following matters” [*followed by a statement of those matters*].

Condition 25. Undertakings from an Ultimate Controller

Introduction

25.1 This condition requires the Licensee to obtain and provide the Authority with legally enforceable undertakings given by persons who ultimately control the Licensee that they will refrain from taking any action that might cause the Licensee to breach or fail to discharge any of the functions that it is required to exercise under or by virtue of the Principal Energy Legislation, this Licence, or the Smart Energy Code.

Part A: General obligation to procure undertakings

25.2 The Licensee must procure from each company or other person that it knows or reasonably should know is at any time an Ultimate Controller of the Licensee a legally enforceable undertaking in favour of the Licensee, in a form specified by the Authority with effect from the grant of this Licence, the terms of which comply with the requirements of paragraph 25.3

25.3 Those requirements are that the Ultimate Controller (in this condition only, “the Covenantor”):

- (a) will refrain from any action; and
- (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the Covenantor (other than the Licensee and any Subsidiary of the Licensee) will refrain from any action,

that would be likely to cause the Licensee to breach or fail to discharge any of the functions it exercises under or by virtue of the Principal Energy Legislation, this Licence, or the Smart Energy Code.

25.4 The undertaking that is to be procured under paragraph 25.2:

- (a) must have been obtained before the end of seven days after the date on which the corporate body or person in question becomes an Ultimate Controller of the Licensee; and
- (b) must be stated to remain in full force and effect for as long as the Licensee remains the holder of this Licence and the Covenantor remains an Ultimate Controller of the Licensee.

Part B: Evidence of compliance and the duty to enforce

25.5 Whenever the Licensee has obtained an undertaking in accordance with paragraph 25.4(a), it must:

- (a) give the Authority evidence of its compliance without delay, including a certified copy of the undertaking;
- (b) at all times comply with any direction from the Authority to enforce the undertaking; and
- (c) immediately inform the Authority in Writing if it becomes aware that the undertaking has ceased to be legally enforceable or that there has been any breach of its terms.

Part C: Restriction of arrangements with an Ultimate Controller

- 25.6 Except where the Authority otherwise consents, the Licensee must not enter (directly or indirectly) into any agreement or arrangement with any Ultimate Controller of the Licensee or, where the Ultimate Controller is a corporate body, with any of the Subsidiaries of such an Ultimate Controller (other than a Subsidiary of the Licensee) at any time when:
- (a) an undertaking procured under paragraph 25.2 is not in place in relation to the Ultimate Controller; or
 - (b) there is an unremedied breach of any undertaking that is in place in relation to that Ultimate Controller; or
 - (c) the Licensee is in breach of the terms of any direction given by the Authority under paragraph 25.5(c).

Part D: Provision of an annual schedule of undertakings

- 25.7 The Licensee must, on or before 31 July each year, provide the Authority with a schedule specifying every undertaking that has been obtained from an Ultimate Controller in accordance with paragraph 25.2 and that is in force at the date of the schedule, together with confirmation that the Licensee has in Writing formally reminded each such Ultimate Controller, within the previous 12 months, of the terms of the undertaking which that person has given.

Part E: Interpretation

- 25.8 For the purposes of this condition only, **Covenantor** has the meaning given to that term in paragraph 25.3.

Condition 26. Financial stability and financial security

Introduction

26.1 This condition applies for the purposes (i) of providing assurance that the Licensee will have sufficient financial stability to enable it to access sources of liquidity and capital on reasonable terms, and (ii) of requiring the Licensee to provide financial security in such form as the Authority may approve.

Part A: Requirement to provide assurance of financial stability

26.2 For the purpose of providing assurance as to its continuing financial stability, the Licensee must, with effect from three months after the Licence Commencement Date, have in place and maintain arrangements with respect to that purpose that it has proposed to the Authority and to which the Authority has consented on the basis that they provide a level of assurance that is sufficient to protect the interests of Energy Consumers.

26.3 Any proposal submitted by the Licensee in accordance with paragraph 26.2 must contain sufficient information to enable the Authority to consider and decide whether it would be appropriate for the Authority to consent to the proposal in all the circumstances of the case.

26.4 A consent under paragraph 26.2 may be subject to such terms and conditions as the Authority considers appropriate, having particular regard to the purpose that the arrangements that are proposed to be put in place are required to fulfil.

Part B: Additional arrangements in respect of financial security

26.5 The Licensee must propose to the Authority, and obtain its consent to, an arrangement in respect of financial security that is additional to such arrangements as the Licensee may have in place under Part A above in respect of financial stability.

26.6 Any proposal under this Part B must be submitted to the Authority within three months after the Licence Commencement Date and must include:

- (a) provision requiring the Licensee to notify the Authority forthwith should any element of the proposed arrangement for whatever reason cease to be legally effective; and
- (b) sufficient information to enable the Authority to consider and decide whether in all the circumstances of the case it would be appropriate for it to consent to the proposal.

26.7 Any arrangement in place under this Part B must be in a form and substance that is approved by the Authority and that contains or is otherwise supported by express provision for the Authority at any time on reasonable Notice to direct:

- (a) that sums of such amount and on such terms as are specified in the direction are to be released from the arrangement; and
- (b) that those sums are to be applied by the Licensee, to such an extent, in such manner, and at such times as may be so specified, for either or both of the purposes referred to in paragraph 26.8.

- 26.8 Those purposes are:
- (a) the purpose of ensuring that any financial liabilities of the Licensee that remain or fall due to be met during a Handover Period within the meaning of Condition 43 (Arrangements for the handover of business) may be discharged, so far as is possible, before the expiry or any revocation of this Licence; and
 - (b) the purpose of securing the Licensee’s compliance with any requirement with respect to the application of funds imposed on it by virtue of a direction given under Condition 42 (Management Orders for the Licensee).
- 26.9 Arrangements arising under this Part B may include (for example only, and subject always to paragraph 26.11) a Financial Security Instrument, such as:
- (a) a parent company guarantee procured in favour of the Licensee in respect of the Relevant Sum from a Holding Company of the Licensee that has an Investment Grade Issuer Credit Rating; or
 - (b) an unconditional and irrevocable letter of credit, or a performance bond, or an insurance policy, in each case issued in favour of the Licensee in respect of the Relevant Sum by a financial institution that has an Investment Grade Issuer Credit Rating; or
 - (c) an escrow account containing the Relevant Sum that has been opened with a financial institution that has an Investment Grade Issuer Credit Rating.
- 26.10 References in paragraph 26.9 to an Investment Grade Issuer Credit Rating are to be read in accordance with the explanatory provisions of Appendix 1 (which has effect as part of this condition).
- 26.11 A Financial Security Instrument under paragraph 26.9, whether of a type mentioned in that paragraph or otherwise, must be expressed to be exercisable in Great Britain under English law.
- 26.12 The Authority’s consent to a proposal under this Part B may be subject to such terms and conditions as it considers appropriate in all the circumstances of the case.
- 26.13 An arrangement in place in accordance with this Part B must, from the date on which it was put in place, be maintained by the Licensee for the full remaining duration of the Licence Term or (where applicable) of the Licence Term as extended by an Additional Licence Term.

Part C: Interpretation

- 26.14 For the purposes of this condition only:

Financial Security Instrument has the meaning given to it in paragraph 26.9

Relevant Sum means a monetary amount that:

- (a) was determined by the Secretary of State for the purposes of Part B above during or as a consequence of the Licence Application Process; and
- (b) has been notified to the Licensee and the Authority in a direction issued by the Secretary of State for the purposes of that Part B with effect from the Licence Commencement Date.

Appendix 1 : Investment Grade Issuer Credit Ratings

Introduction

- A1. This Appendix 1 has effect under this Condition 26 with particular reference to the provisions of paragraph 26.9.
- A2. The provisions of this Appendix 1 are also relevant for the purposes of paragraph 5 of Condition 27 (Indebtedness and transfers of funds).

Part A: Meaning of Issuer Credit Rating (by specific rating agency)

- A3. For the purposes of paragraph 26.9, an Issuer Credit Rating is any of the following:
- (a) an issuer credit rating by Standard & Poor's Ratings Group or any of its Subsidiaries; or
 - (b) an issuer credit rating by Moody's Investors Services Inc or any of its Subsidiaries; or
 - (c) an issuer credit rating by Fitch Ratings Ltd or any of its Subsidiaries; or
 - (d) an issuer credit rating by DBRS Ratings Ltd or any of its Affiliates.

Part B: Meaning of Investment Grade (by specific rating agency)

- A4. Subject to Part C below, an Investment Grade, in relation to any Issuer Credit Rating within the meaning of Part A of this Appendix, is any of the following:
- (a) an issuer credit rating of at least A– by Standard & Poor's Ratings Group or any of its Subsidiaries; or
 - (b) an issuer credit rating of at least A3 by Moody's Investors Services Inc or any of its Subsidiaries; or
 - (c) an issuer credit rating of at least A– by Fitch Ratings Ltd or any of its Subsidiaries; or
 - (d) an issuer credit rating of at least A (low) by DBRS Ratings Ltd or any of its Affiliates.

Part C: Variation of Investment Grade by any rating agency

- A5. If a credit rating higher than a particular rating set out in Part B of this Appendix is at any time specified by the credit rating agency in question as its lowest investment grade credit rating, that higher rating is to be taken as the relevant Investment Grade for the purposes of that Part B.

Condition 27. Indebtedness and transfers of funds

Introduction

27.1 This condition places restrictions on the Licensee's ability to incur debt, or create security, or have exposure to the financial risks of other persons, and applies for the purpose of ensuring that such liabilities as the Licensee may assume will only be liabilities relating to its conduct of the Authorised Business.

Part A: General prohibition of certain transactions

27.2 In addition to complying with the requirements of Condition 28 (which restricts the Licensee's ability to dispose of Relevant Business Assets), the Licensee must not, without the Authority's consent following the Licensee's disclosure of all material facts, enter into any transaction or commitment of a type described or referred to in the provisions of this Condition 27 that does not comply with the restrictions that are applicable to it under those provisions.

Part B: Restricted Transactions Category 1

27.3 The Licensee must not create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance, or undertake any Indebtedness to any other person, or enter into any guarantee or any obligation to any other person, except in accordance with each of the following requirements:

- (a) the transaction in question must be on an arm's length basis;
- (b) it must be on normal commercial terms;
- (c) it must be for a Permitted Purpose; and
- (d) if it is within the ambit of Condition 28 (Disposal of Relevant Business Assets), it must comply with the requirements of that condition.

Part C: Restricted Transactions Category 2

27.4 The Licensee must not transfer, lease, license, or lend any sum or sums, asset, right, or benefit to any Affiliate or Related Undertaking of the Licensee except by way of any of the following transactions:

- (a) a dividend or other distribution out of distributable reserves; or
- (b) a repayment of capital; or
- (c) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
- (d) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis, on normal commercial terms, and is made in compliance with the Payment Condition described in paragraph 27.5; or
- (e) a repayment of, or payment of interest on, a loan that is not prohibited by the provisions of Part B above; or

- (f) payments for group corporation tax relief calculated on a basis not exceeding the value of the benefit received; or
- (g) an acquisition of shares or other investments that is not inconsistent with the requirements of Condition 9 (Independence and autonomy of the Licensee) and that is made on an arm's length basis and on normal commercial terms.

27.5 The Payment Condition referred to in paragraph 27.4 is that the consideration due in respect of the transaction in question must be paid in full when the transaction is entered into, unless either:

- (a) the counter-party to the transaction has and maintains until payment is made in full an Investment Grade Issuer Credit Rating as defined in Appendix 1 of Condition 26 (Financial stability and financial security); or
- (b) the obligations of that counter-party are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor that has and maintains such a rating.

27.6 The provisions of this Part C are subject to the provisions of Part D below.

Part D: Circumstances that trigger the provisions of Part E

27.7 Where any of the four circumstances described in the following paragraphs of this Part D applies, the Licensee must not, except with the Authority's consent, enter into or complete any transaction of a type described or referred to in Part C except in accordance with the provisions of Part E below.

27.8 Circumstance 1 is that arrangements providing assurance of the Licensee's financial stability to which the Authority has consented under Part A of Condition 26 have for whatever reason ceased to be legally effective.

27.9 Circumstance 2 is that, as part or the whole of the arrangements to which paragraph 27.8 refers, the Licensee holds any credit rating of a type approved by the Authority for the purpose of those arrangements, and either:

- (a) that credit rating is under review for possible downgrade; or
- (b) the Licensee has been placed on "credit watch" or "rating watch" (within the meaning of those terms as used by reputable credit rating agencies in Great Britain) with a negative designation with respect to that rating.

27.10 Circumstance 3 is that the Licensee:

- (a) has given the Authority a certificate in the form of Certificate B3 as set out in Appendix 1 to Condition 24 (Availability of all necessary resources) for the purposes of Part B of that condition, and has not subsequently given the Authority a certificate in the form of Certificate B1 or Certificate B2 as set out in that Appendix 1; or
- (b) has given the Authority a certificate in the form of Certificate D3 as set out in Appendix 2 to Condition 24 (Availability of all necessary resources) for the purposes of Part D of that condition, and has not subsequently given the Authority a certificate in the form of Certificate D1 or Certificate D2 as set out in that Appendix 2; or

- (c) has informed the Authority of any circumstance of the type referred to at Part F of Condition 24, and has not subsequently given the Authority a certificate in the form of Certificate B1 or Certificate B2 as set out in Appendix 1 to that condition, or (as the case may be) in the form of Certificate D1 or D2 as set out in Appendix 2 to that condition.

27.11 Circumstance 4 is that the Licensee has materially breached any formal covenant or similar arrangement relating to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

- (a) the Licensee has remedied the breach, or has renegotiated the covenant or arrangement, to the satisfaction of the counter-party concerned and the remedy or renegotiation (as the case may be) has been notified to the Authority; or
- (b) in response to a written request from the Licensee, the Authority has either confirmed in Writing, before the breach occurs, that the breach in question will not trigger the provisions of Part E, or has not provided a substantive response to such a written request within seven days after receiving it.

Part E: Restricted Transactions Category 3

27.12 Where any of the circumstances described in Part D above applies, the Licensee must not, without the consent of the Authority following the Licensee's disclosure of all material facts, transfer, lease, license, or lend any sum or sums, asset, right, or benefit to any Affiliate or Related Undertaking of the Licensee except by way of any of the following transactions:

- (a) a payment properly due for any goods, services, or assets in relation to commitments entered into before the date on which the relevant circumstance under Part D arose, and which are provided on an arm's length basis and on normal commercial terms; or
- (b) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit on an arm's length basis, on normal commercial terms, and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is also paid in full when the transaction is entered into; or
- (c) a repayment of, or payment of interest on, a loan that is not prohibited by the provisions of Part C above and that was contracted before the date on which the relevant circumstance under Part D arose, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; or
- (d) payments for group corporation tax relief calculated on a basis that does not exceed the value of the benefit received, so long as they are not made before the date on which the amounts of tax so relieved would otherwise have been due.

Part F: Restricted Transactions Category 4

7.13 The Licensee must not enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation.

27.14 But that prohibition does not prevent the Licensee from giving any guarantee that is permitted by and compliant with the requirements of Part B above.

Part G: Interpretation

27.15 A transaction by the Licensee is on an arm's length basis for the purposes of this condition if it is on terms that:

- (a) are fair and reasonable to the other party to the transaction; and
- (b) are no more favourable to that party than those that it could reasonably expect to obtain in any comparable arm's length transaction with someone other than the Licensee.

27.16 For the purposes of this condition only:

Cross-Default Obligation means a term of any agreement or arrangement under which the Licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated, or is capable of arising or increasing or of being accelerated, because of a default (however it may be described or defined) by any person other than the Licensee, unless:

- (a) that liability can arise only as the result of a default by a Subsidiary of the Licensee;
- (b) the Licensee holds a majority of the voting shares in that Subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (c) that Subsidiary carries on business only for a purpose that is a purpose of the Mandatory Business of the Licensee as described in Condition 6 (Authorised Business of the Licensee).

Indebtedness includes any obligation, whether incurred solely by the Licensee or jointly with any other person, and whether as principal or surety, for the payment or repayment of money, whether present or future, actual or contingent.

Investment Grade and **Issuer Credit Rating** are each to be read in accordance with the explanatory provisions set out in Appendix 1 of Condition 26 (Financial stability and financial security).

Payment Condition has the meaning that is given to that term in paragraph 27.5.

Condition 28. Disposal of Relevant Business Assets

Introduction

28.1 This condition prevents the Licensee from taking any action that is or would be a Disposal of or Relinquishment of Operational Control over any Relevant Business Asset except in accordance with the provisions set out below.

Part A: Exclusion of any novations directed by the Authority

28.2 This condition does not apply to any Disposal of a Relevant Business Asset that consists of the novation (as directed by the Authority) to any Successor Licensee, pursuant to Condition 43 (Arrangements for the handover of business), of:

- (a) the whole of the Licensee's interest in any External Service Provider Contract within the meaning of Condition 16 (Procurement of Relevant Service Capability), on terms that are substantially the same as those contained in Schedule 2 to this Licence; or
- (b) the whole of the Licensee's interest under the Smart Energy Code, on such terms as are required to be provided for within that document by virtue of paragraph 23(a) of Condition 22 (The Smart Energy Code).

Part B: Duty to maintain a Register of Relevant Business Assets

28.3 Within six months after Licence Commencement Date, the Licensee must have in place and provide to the Authority a copy of a Register of Relevant Business Assets that identifies and records particulars of the Relevant Business Assets of the Licensee.

28.4 The Relevant Business Assets that are to be identified and particularised within the Register of Relevant Business Assets consist of:

- (a) every External Service Provider Contract (within the meaning of Condition 16) to which the Licensee is, or is likely to become, a party by virtue of that condition; and
- (b) any other asset (however described and in whatever form, whether tangible or intangible) that is considered to be essential to the Licensee's ability to carry on the Authorised Business in accordance with this Licence.

28.5 The Licensee must:

- (a) review the Register of Relevant Business Interests at least once in each Regulatory Year for the purpose of ensuring that the contents of the Register remain consistent with the requirements of this condition; and
- (b) provide the Authority with a copy of the Register as revised from time to time following any such review.

28.6 The Authority may at any time, following consultation with the Licensee, direct the Licensee to modify the Register of Relevant Business Assets in such manner and to such extent as may be specified in the direction.

Part C: Requirement to obtain the Authority's prior consent

- 28.7 Except where the provisions of Part D or Part E below apply, the Licensee:
- (a) must give the Authority at least two months' Notice of its intention to dispose of or relinquish operational control over any Relevant Business Asset, together with such further information as the Authority may request relating to that asset, or to the circumstances of the intended Disposal or Relinquishment of Operational Control, or to the intentions with regard to those matters of the person who proposes to acquire the asset or operational control over it; and
 - (b) may dispose of or relinquish operational control over that Relevant Business Asset if (and only if) the Authority consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Prior Notice period.
- 28.8 A consent by the Authority under paragraph 28.7(b) may be given subject to the acceptance by the Licensee, or by any third party in favour of whom the Relevant Business Asset is proposed to be disposed or to whom operational control would be relinquished, of such conditions as may be specified in that consent.

Part D: Exemptions from Part C by virtue of a general consent

- 28.9 The Licensee may dispose of or relinquish operational control over any Relevant Business Asset without Prior Notice to the Authority:
- (a) if the Authority has for the purposes of this condition issued a direction containing a general consent (whether or not subject to conditions) to individual transactions of a specified description, or to the Disposal of or Relinquishment of Operational Control over any Relevant Business Assets of a specified description; and
 - (b) the transaction or Relevant Business Asset in question is of a description to which that general consent applies and will be in accordance with any conditions to which the consent is subject; or
 - (c) if Part E below applies.

Part E: Exemptions from Part C under a statutory requirement

- 28.10 The Licensee may dispose of or relinquish operational control over any Relevant Business Asset without Prior Notice to the Authority if the transaction in question in relation to that asset is required by or under any enactment, or any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or by a regulation or directive of the Council or Commission of the European Union.

Part F: Interpretation

- 28.11 For the purposes of this condition only, in relation to a Relevant Business Asset:

Disposal means any of the following:

- (a) a novation, assignment, transfer, or other passing of that asset (whether or not for value) to a person other than the Licensee; or

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- (b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or
- (c) the grant of any mortgage, charge, or other form of security over that asset; or
- (d) where the asset comprises a contractual arrangement of any kind, any variation of its terms that would be likely to reduce or otherwise impair the efficiency and effectiveness of the Licensee’s provision of Services under or pursuant to this Licence,

and references to “dispose” are to be read accordingly.

Prior Notice means Notice given to the Authority under paragraph 28.7(a) of the Licensee’s intention in relation to the asset.

Register of Relevant Business Assets has the meaning given to that term in paragraph 28.3.

Relinquishment of Operational Control includes entering into any agreement or arrangement under which operational control of the asset is not or will cease to be under the sole management of the Licensee, and “relinquish” and any related expressions in this context are to be read accordingly.

CHAPTER 8 : CONDITIONS 29 TO 34

Provision of regulatory information

Condition 29. Provision of Information by the Licensee

Introduction

29.1 This condition imposes on the Licensee duties to provide Information (subject to certain exceptions) when requested to do so by the Authority or the Secretary of State, and also requires the Licensee to obtain legally enforceable undertakings in respect of those duties from persons who ultimately control the Licensee.

Part A: General obligation to provide Information

29.2 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to exercise any functions given or transferred to it by or under any legislation, the Licensee must give that Information to the Authority within the time and in the form requested.

29.3 After receiving a request from the Secretary of State for Information that he may reasonably require or that he considers may be necessary to enable him to perform any functions given or transferred to him by or under any legislation, the Licensee must give that Information to the Secretary of State within the time and in the form requested.

29.4 Information that is provided under paragraph 29.2 or 29.3 must be accompanied or supplemented by such explanations as the Authority or the Secretary of State (as the case may be) may reasonably require.

29.5 This Part A is subject to the provisions of Part B below.

Part B: Limits of the obligation to provide Information

29.6 Neither this condition nor any other condition of this Licence requires the Licensee to give the Authority or the Secretary of State:

- (a) any Information for any such purpose as is referred to in section 38 of the 1986 Act or section 28 of the 1989 Act (each dealing with the power to require information for enforcement purposes) that the Licensee could not be compelled to produce or provide under such section; or
- (b) any Information that the Licensee would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.

29.7 Neither this condition nor any other condition of this Licence requires the Licensee to give Information to the Authority or the Secretary of State in respect of any functions of the Authority under section 34 of the 1986 Act or section 47 of the 1989 Act (each dealing with the general duty of the Authority to keep matters under review).

29.8 But the Licensee must, if requested by the Authority, give reasoned comments on the accuracy and text of any information that the Authority proposes to publish pursuant to section 35 of the 1986 Act or section 48 of the 1989 Act (each dealing with the publication by the Authority of information and advice in relation to consumer matters).

Part C: Sufficiency of Information provision by the Licensee

- 29.9 The power of the Authority or (as the case may be) of the Secretary of State to request Information under this condition is additional to that person’s power to call for Information under or pursuant to any other condition of this Licence.
- 29.10 Where the Licensee provides Information to the Authority or (as the case may be) the Secretary of State in accordance with any other condition of this Licence, such provision will be presumed to be sufficient for the purposes of that condition unless in either case that person states by Notice to the Licensee that in its opinion such further Information as is specified in that Notice will be required to enable it to exercise its functions.

Part D: Procurement of an Information Undertaking

- 29.11 The Licensee must procure from each company or other person that it knows or reasonably should know is at any time an Ultimate Controller of the Licensee a legally enforceable undertaking (“the Information Undertaking”) in favour of the Licensee, in a form specified by the Authority, the terms of which comply with the requirements of paragraph 29.12.
- 29.12 Those requirements are that the Ultimate Controller (in this condition only, “the Information Covenantor”):
- (a) will give to the Licensee; and
 - (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the Information Covenantor (other than the Licensee itself or any Subsidiary of the Licensee) will give to the Licensee,
- all such Information as may be necessary to enable the Licensee to comply with its obligations under Part A above.
- 29.13 The Information Undertaking that is to be procured under paragraph 29.11:
- (a) must have been obtained before the end of seven days after the date on which the corporate body or person in question becomes an Ultimate Controller of the Licensee; and
 - (b) must be stated to remain in full force and effect for as long as the Licensee is the holder of this Licence and the Information Covenantor remains an Ultimate Controller of the Licensee.

Part E: Evidence of compliance and the duty to enforce

- 29.14 Whenever the Licensee has obtained an Information Undertaking in accordance with paragraph 29.13(a), it must:
- (a) give the Authority evidence of its compliance without delay, including a certified copy of the undertaking;
 - (b) at all times comply with any direction from the Authority to enforce the undertaking; and

- (c) immediately inform the Authority in Writing if it becomes aware that the undertaking has ceased to be legally enforceable or that there has been any breach of its terms.

Part F: Restriction of arrangements with an Ultimate Controller

- 29.15 Except where the Authority otherwise consents, the Licensee must not enter (directly or indirectly) into any agreement or arrangement with any Ultimate Controller of the Licensee or, where the Ultimate Controller is a corporate body, with any of the Subsidiaries of such an Ultimate Controller (other than a Subsidiary of the Licensee) at any time when:
- (a) an Information Undertaking is not in place in relation to the Ultimate Controller; or
 - (b) there is an unremedied breach of an Information Undertaking that is in place in relation to that Ultimate Controller; or
 - (c) the Licensee is in breach of the terms of any direction given by the Authority under paragraph 29.14(b).

Part G: Information required from agents and contractors

- 29.16 This paragraph applies to the Licensee in relation to its dealings with any person who is materially connected with the carrying on of the Authorised Business (including, in particular, any External Service Provider) but who is outside the jurisdiction of an Information Undertaking obtained under Part D above.
- 29.17 Where paragraph 29.16 applies, the Licensee must not enter into or be a party to any agreement or arrangement with the person mentioned in that paragraph that does not contain rights enabling the Licensee to procure from that person and to provide to the Authority or (as the case may be) the Secretary of State any Information that is requested under or pursuant to this condition.
- 29.18 Paragraph 29.17 applies (for the avoidance of doubt) to any request for Information that may be needed in order to facilitate the handover of the Licensee's Authorised Business to a Successor Licensee in accordance with the provisions of Condition 43 (Arrangements for the handover of business).

Part H: Interpretation

- 29.19 For the purposes of this condition only:

Information means information in any form or medium, however conveyed or stored, and of any description specified by the Authority or the Secretary of State, and includes any documents, accounts, estimates, returns, records, certificates, or reports, and data of any kind, whether or not prepared specifically at the request of the Authority or the Secretary of State, and any and all Confidential Information within the meaning of Condition 10 (Protection of Confidential Information).

Information Covenantor has the meaning given to that term in paragraph 29.12.

Information Undertaking has the meaning given to that term in paragraph 29.11.

Condition 30. Requirements for the Regulatory Accounts

Introduction

- 30.1 This condition applies to the Licensee in respect of each separate Regulatory Year of this Licence (the first of which runs from 1 April 2013 to 31 March 2014) and has effect for the purpose of ensuring that the Licensee:
- (a) prepares and publishes Regulatory Accounts so as to ensure the provision to the Authority of annual regulatory accounting information that will enable it to assess the financial position of the Licensee on a consistent basis; and
 - (b) maintains (and ensures that any Affiliate or Related Undertaking of the Licensee maintains) such accounting records, other records, and reporting arrangements as are necessary to enable the Licensee to comply with that obligation.

Part A: Preparation of the Regulatory Accounts

- 30.2 For the purposes of this condition, but without prejudice to the requirements of Part C below, the Licensee must prepare Regulatory Accounts for each Regulatory Year.
- 30.3 Except and so far as the Authority otherwise consents, the Licensee must comply with the obligations imposed by the following paragraphs of this Part A in relation to the preparation of Regulatory Accounts.
- 30.4 The Licensee must keep or cause to be kept for a period approved by the Authority, but no less than the period referred to in section 388(4)(b) of the Companies Act 2006 and in the manner referred to in that section, such accounting records and other records as are necessary to ensure that all of the revenues, costs, assets, liabilities, reserves, and provisions of, or that are reasonably attributable to, each of the Authorised Business Activities of the Licensee are separately identifiable in those records (and in those of any Affiliate or Related Undertaking of the Licensee).
- 30.5 The Regulatory Accounts are to be prepared on a consistent basis derived from the accounting records and other records referred to in paragraph 30.4 in respect of each Regulatory Year, and must have the contents specified in Part B below.

Part B: Required contents of the Regulatory Accounts

- 30.6 The Regulatory Accounts prepared for each Regulatory Year must comprise:
- (a) the matters set out in paragraph 30.7; supported by
 - (b) the matters set out in paragraph 30.8.
- 30.7 The matters to which paragraph 30.6(a) refers are these:
- (a) an income statement and a statement of comprehensive income (or, as appropriate, a profit and loss account and a statement of total recognised gains and losses);
 - (b) a statement of changes in equity, if appropriate;
 - (c) a statement of financial position (or, as appropriate, a balance sheet);

- (d) a statement of cash flows (or, as appropriate, a cash flow statement);
- (e) the Corporate Governance Statement prepared by the Licensee in accordance with Part A of Condition 7 (General controls for the Authorised Business);
- (f) a Directors' Report in respect of the Authorised Business of the Licensee; and
- (g) a Business Review in respect of the Authorised Business of the Licensee.

30.8 The matters to which paragraph 30.6(b) refers are explanatory notes that:

- (a) provide a summary of the accounting policies adopted by the Licensee for the purpose of producing its Regulatory Accounts; and
- (b) disclose, in relation to the matters to which paragraph 30.7(a) refers, the Segmental Information for each of the Authorised Business Activities of the Licensee.

Part C: Consistency required with the statutory accounts

30.9 Regulatory Accounts and information prepared in accordance with Parts A and B above must, so far as is reasonably practicable and except where the Authority otherwise consents:

- (a) have the same content and format as the most recent or concurrent statutory accounts of the Licensee prepared under Part 15 of the Companies Act 2006, subject to the inclusion of Segmental Information as specified under paragraph 30.8(b); and
- (b) comply with the requirements applicable to a Quoted Company, whether or not it is such a company, in Chapter 4 of the Companies Act 2006 with respect to the preparation of annual accounts, and with the requirements of the applicable accounting framework under which it prepares them.

Part D: Audit and delivery of the Regulatory Accounts

30.10 Except where the Authority otherwise consents, the Licensee must:

- (a) procure an audit by an Appropriate Auditor of such parts of its Regulatory Accounts and the Directors' Report and Business Review as would be specified in the Companies Act 2006 as being required to be so audited if the Licensee were a Quoted Company and those accounts were the statutory accounts of the Licensee drawn up to 31 March and prepared under Part 15 of the Companies Act 2006;
- (b) procure a report by that auditor, addressed to the Authority, that states whether in the auditor's opinion those accounts fairly present the financial position, financial performance, and cash flows of, or that are reasonably attributable to, each of the Authorised Business Activities in accordance with the requirements of Part A above; and
- (c) deliver those accounts and the auditor's report required under sub-paragraph (b) to the Authority as soon as is reasonably practicable, and in any event before their publication under Part G below and not later than 31 July after the end of the Regulatory Year to which the Regulatory Accounts relate.

Part E: Terms of appointment of the Appropriate Auditor

- 30.11 For the purposes of Part D above, the Licensee must, at its own expense, enter into a contract of appointment with an Appropriate Auditor that includes a term requiring that the audit of the Licensee's Regulatory Accounts must be conducted by that person in accordance with all such relevant auditing standards in force on the last day of the Regulatory Year to which the audit relates as would be appropriate for accounts prepared in accordance with the provisions of Part 15 of the Companies Act 2006.

Part F: Agreed Upon Procedures for the Appropriate Auditor

- 30.12 The Licensee must, at its own expense, enter into a contract of appointment with an Appropriate Auditor for the completion of Agreed Upon Procedures that are to apply for the purposes of enabling that person to review the Licensee's compliance with the requirements of Condition 11 (No abuse of the Licensee's special position) with respect to the prohibition of cross-subsidy and discrimination.
- 30.13 The contract of appointment must require that the Agreed Upon Procedures are to be conducted in relation to each Regulatory Year and that the Licensee will arrange for the Appropriate Auditor to address a report to the Authority by 31 July after the end of each such year that:
- (a) states that he has, in a manner consistent with the relevant auditing standards, completed the Agreed Upon Procedures issued by the Authority in respect of the Regulatory Year under report; and
 - (b) sets out his findings.
- 30.14 If the Authority is satisfied that the Appropriate Auditor's report submitted under this Part F demonstrates that the Licensee has complied with the obligations to avoid discrimination and cross-subsidies as specified in Article 31 of Directive 2009/72/EC and Article 31 of Directive 2009/73/EC (and imposed on the Licensee by Condition 11 of this Licence), the report is to be deemed to represent the results of an audit of those obligations, as required by those Articles.

Part G: Publication and provision of the Regulatory Accounts

- 30.15 Except where the Authority after consulting with the Licensee otherwise directs, the Licensee must publish its Regulatory Accounts (excluding any information agreed by the Authority to be confidential):
- (a) as a stand-alone document in accordance with this condition;
 - (b) by 31 July after the end of the Regulatory Year to which the accounts relate;
 - (c) on the Licensee's Website; and
 - (d) in any other manner which, in the opinion of the Licensee, is necessary to secure adequate publicity for the accounts.
- 30.16 A copy of the Regulatory Accounts must be provide free of charge to any person who requests a copy.

Part H: Interpretation

30.17 The requirement under paragraph 30.7 of this condition for the Licensee to include a Directors' Report and a Business Review in its Regulatory Accounts is to be read as if the requirement applied to the Licensee as a Quoted Company, whether or not it is such a company, such that:

- (a) the Directors' Report has the coverage and content of the directors' report that a Quoted Company is required to prepare under section 415 of the Companies Act 2006; and
- (b) the Business Review has the coverage and content of the business review that a Quoted Company is required to prepare under section 417 of that Act.

30.18 For the purposes of this condition only:

Agreed Upon Procedures means procedures from time to time agreed between the Authority, the Appropriate Auditor, and the Licensee for the purpose of enabling the Appropriate Auditor to review and report to the Authority on matters relating to the requirements referred to at Part F of this condition.

Appropriate Auditor means:

- (a) if the Licensee is a company within the meaning of section 1 of the Companies Act 2006, a person appointed as auditor under Chapter 2 of Part 16 of that Act; or
- (b) in any other case, a person who is eligible for appointment as a company auditor under Part 42 of that Act.

Authorised Business Activities means each of the following activities carried on within the Authorised Business of the Licensee:

- (a) as part of the Mandatory Business:
 - (i) the procurement and provision of Core Communication Services,
 - (ii) the procurement and provision of Elective Communication Services,
 - (iii) the operation of the Enrolment Service,
 - (iv) the procurement and provision of the Communications Hub Service, and
 - (v) the procurement and provision of Other Enabling Services;
- (b) as part of the Permitted Business:
 - (i) the procurement and provision of Value Added Services, and
 - (ii) the procurement and provision of Minimal Services.

Quoted Company has the meaning given in section 385 of the Companies Act 2006.

Segmental Information means such financial and descriptive information about the Authorised Business Activities of the Licensee as would be disclosable under International Financial Reporting Standard 8 (or Statement of Standard Accounting Practice 25) if each of those activities was an operating segment (or reportable segment) of the Licensee within the meaning of those respective standards.

Condition 31. Quality of Service Information reporting

Introduction

- 31.1 This condition requires the Licensee to collect and provide the Authority with such Quality of Service Information at such times and in such manner as will enable the Authority to monitor the Licensee’s quality of service performance on a continuing basis, whether for purposes connected with the Licensee’s compliance with Condition 34 (Annual Service Report to the Authority), or with the Price Control Conditions contained in Chapter 9 of this Licence, or otherwise.
- 31.2 This condition should be read in conjunction with Condition 32 (Price Control Information reporting) and Condition 33 (Regulatory Instructions and Guidance).

Part A: Licensee’s obligations in respect of reporting

- 31.3 Except where the Authority otherwise consents, the Licensee must at all times act in accordance with so much of any Regulatory Instructions and Guidance (“RIGs”) issued by the Authority under Condition 33 (Regulatory Instructions and Guidance) as apply for the purposes of this Condition 31.
- 31.4 In particular, the Licensee must, for those purposes, have in place and maintain (and must ensure that any Affiliate or Related Undertaking of the Licensee, and any External Service Provider from whom Relevant Service Capability is procured pursuant to Condition 16, has in place and maintains) appropriate records, systems, processes, and procedures to enable the Licensee:
- (a) to measure, record, and collect such Quality of Service Information as may be specified from time to time in the RIGs; and
 - (b) to report Quality of Service Information in respect of such periods, in such a manner, and within such timeframes as are specified in the RIGs.

Part B: Application of the RIGs to this condition

- 31.5 Any RIGs issued by the Authority under Condition 33, so far as they apply for the purposes of this Condition 30:
- (a) may make provision for or in connection with any of the matters specified at Part A of Condition 33;
 - (b) may be modified or replaced in accordance with the procedures set out in Part B of Condition 33;
 - (c) may specify which (if any) of the Quality of Service Information reported to the Authority is to be subject to publication by the Authority (having regard to section 105 of the Utilities Act 2000); and
 - (d) must not exceed what is reasonably required to achieve the purposes of this Condition 31.
- 31.6 For purposes relating to enforcement, paragraph 31.7 applies where any question (“an Enforcement Question”) arises in connection with the Licensee’s compliance with any requirement imposed by this condition.

- 31.7 Where any provision of any RIGs issued by the Authority under Condition 33 applies for the purposes of this Condition 31 and the Licensee has acted in accordance with that provision, the Authority will take both those matters into account in determining the Enforcement Question.

Part C: Provision for the Authority to appoint a Reviewer

- 31.8 The Authority may itself review, or arrange for a person appointed by the Authority (a “Reviewer”) to review, any matters in the Quality of Service Information reported by the Licensee in respect of which the Authority requires clarification.
- 31.9 Subject to paragraph 31.12, the Licensee must give the Authority or (as the case may be) the Reviewer all such assistance as it or he may reasonably require for the purposes of any review carried out under this Part C.
- 31.10 The Licensee’s obligation to assist the Authority or a Reviewer under this Part C includes an obligation to allow it or him to carry out any inspections, measurements, or tests considered necessary in relation to any systems, processes, or procedures operated or maintained for or in relation to the requirements of this condition.
- 31.11 The Licensee’s obligation to assist the Authority or a Reviewer under this Part C also includes an obligation to ensure, so far as it can, that the following persons will also (if requested to do so) assist the Authority or that Reviewer:
- (a) any Affiliate or Related Undertaking of the Licensee;
 - (b) any External Service Provider from whom Relevant Service Capability is procured pursuant to Condition 16; and
 - (c) any auditor of such person, or of the Licensee, or of any Affiliate or Related Undertaking of the Licensee.
- 31.12 The Licensee is not required to perform its obligations in relation to a Reviewer and his functions unless the Reviewer has entered into an agreement with the Licensee to maintain confidentiality on reasonable terms.

Part D: Interpretation

- 31.13 For the purposes of this condition only:

Enforcement Question has the meaning given to that term in paragraph 31.6.

Quality of Service Information means such of the Specified Information contained in any RIGs issued by the Authority under Condition 32 as is required to be reported to the Authority in accordance with this condition, in such manner, to such extent, and subject to such further definition as may be set out in those RIGs.

Reviewer has the meaning given to that term in paragraph 31.8.

Condition 32. Price Control Information reporting

Introduction

- 32.1 This condition requires the Licensee to collect and provide the Authority with Price Control Information in such manner as will:
- (a) ensure that the Authority is provided with such information on a consistent basis in respect of each Regulatory Year of this Licence;
 - (b) enable the Authority to monitor the Licensee’s compliance with the Price Control Conditions contained in Chapter 9 of this Licence; and
 - (c) facilitate any review or modification by the Authority of those conditions.
- 32.2 This condition should be read in conjunction with Condition 31 (Quality of Service Information reporting) and Condition 33 (Regulatory Instructions and Guidance) and is relevant to (among other things) the exercise of the Authority’s power under Part B of Condition 37 (Monitoring and assessment of Licensee’s costs) to assess and disallow expenditure incurred by the Licensee.

Part A: Licensee’s obligations in respect of reporting

- 32.3 Except where the Authority otherwise consents, the Licensee must at all times act in accordance with so much of any Regulatory Instructions and Guidance (“RIGs”) issued by the Authority under Condition 33 (Regulatory Instructions and Guidance) as apply for the purposes of this Condition 32.
- 32.4 In particular, the Licensee must, for those purposes, have in place and maintain (and must ensure that any Affiliate or Related Undertaking of the Licensee, and any External Service Provider from whom Relevant Service Capability is procured pursuant to Condition 16, has in place and maintains) appropriate accounting records, systems, processes, and procedures to enable the Licensee:
- (a) to measure, record, and collect such Price Control Information as is specified from time to time in the RIGs; and
 - (b) to report Price Control Information to the Authority in respect of the period comprising each separate Regulatory Year of this Licence by not later than 31 July in the next following Regulatory Year.

Part B: Application of the RIGs to this condition

- 32.5 Any RIGs issued by the Authority under Condition 33, so far as they apply for the purposes of this Condition 32:
- (a) may make provision for or in connection with any of the matters specified at Part A of Condition 33;
 - (b) may be modified or replaced in accordance with the procedures set out in Part B of Condition 33;
 - (c) may specify which (if any) of the Price Control Information reported to the Authority is to be subject to publication by the Authority (having particular regard to section 105 of the Utilities Act 2000); and

- (d) must not exceed what is reasonably required to achieve the purposes of this Condition 32.
- 32.6 For purposes relating to enforcement, paragraph 32.7 applies where any question (“an Enforcement Question”) arises in connection with the Licensee’s compliance with any requirement imposed by this condition.
- 32.7 Where any provision of any RIGs issued by the Authority under Condition 33 applies for the purposes of this Condition 32 and the Licensee has acted in accordance with that provision, the Authority will take both those matters into account in determining the Enforcement Question.

Part C: Provision for the Authority to appoint a Reviewer

- 32.8 The Authority, notwithstanding any audit of the Regulatory Accounts of the Licensee carried out under Condition 30 (Requirements for the Regulatory Accounts), may:
- (a) itself review; or
 - (b) arrange for a person appointed by the Authority (a “Reviewer”) to review, any matters in the Price Control Information reported by the Licensee in respect of which the Authority requires clarification.
- 32.9 Subject to paragraph 32.11, the Licensee must give the Authority or (as the case may be) the Reviewer all such assistance as it or he may reasonably require for the purposes of any review carried out under this Part C.
- 32.10 The Licensee’s obligation to assist the Authority or a Reviewer under this Part C includes an obligation to ensure, so far as it can, that the following persons will also (if requested to do so) assist the Authority or that Reviewer:
- (a) any Affiliate or Related Undertaking of the Licensee;
 - (b) any External Service Provider from whom Relevant Service Capability is procured pursuant to Condition 16; and
 - (c) any auditor of such person, or of the Licensee, or of any Affiliate or Related Undertaking of the Licensee.
- 32.11 The Licensee is not required to perform its obligations in relation to a Reviewer and his functions unless the Reviewer has entered into an agreement with the Licensee to maintain confidentiality on reasonable terms.

Part D: Interpretation

- 32.12 For the purposes of this condition only:

Enforcement Question has the meaning given to that term in paragraph 32.6

Price Control Information means such of the Specified Information contained in any RIGs issued by the Authority under Condition 33 as is required to be reported to the Authority in accordance with this condition, in such manner, to such extent, and subject to such further definition as may be set out in those RIGs.

Reviewer has the meaning given to that term in paragraph 32.8(b).

Condition 33. Regulatory Instructions and Guidance

Introduction

- 33.1 The purpose of this condition is to state the contents of, and set out the modification arrangements for, any Regulatory Instructions and Guidance (“RIGs”) issued by the Authority under this condition with respect to the reporting and other obligations imposed on the Licensee by:
- (a) Condition 31 (Quality of Service Information reporting); and
 - (b) Condition 32 (Price Control Information reporting).

Part A: Scope of the matters for which the RIGs may make provision

- 33.2 In this Part A and in Part C below, the term “Specified Information” refers to both:
- (a) the Quality of Service Information that is the subject of Condition 31; and
 - (b) the Price Control Information that is the subject of Condition 32.
- 33.3 Subject to paragraph 33.4, the matters that may be included, or for which provision may be made, in any RIGs issued under this condition are:
- (a) a complete statement of the information that is to comprise the Specified Information;
 - (b) instructions and guidance on the Authority’s requirements with respect to the collection, recording, and provision of Specified Information;
 - (c) instructions and guidance on the standards of accuracy and reliability that are applicable to the recording of the Specified Information (including different classes of Specified Information);
 - (d) a timetable for the development of such systems, processes, and procedures as are required to achieve such standards for the Specified Information;
 - (e) provision with respect to the meaning of words and phrases used in defining the Specified Information;
 - (f) requirements as to the form and manner in which, or the frequency with which, the Specified Information must be recorded;
 - (g) requirements as to the form and manner in which, or the frequency with which, the Specified Information must be provided to the Authority; and
 - (h) provision about how the Authority may monitor and assess the Licensee’s compliance with the RIGs.
- 33.4 No Specified Information that is to be provided by the Licensee to the Authority under Condition 31 or Condition 32 by virtue of any requirement of any RIGs issued under this Condition 33 may exceed what could reasonably be requested from the Licensee by the Authority under Condition 29 (Provision of Information by the Licensee) (excluding any reference to paragraph 10 of that condition).

Part B: Modification and future development of the RIGs

- 33.5 Before modifying any RIGs already in force under this condition or issuing any new RIGs under it, the Authority, by Notice given to the Licensee, must:
- (a) state that it proposes to modify any RIGs or (as the case may be) issue new RIGs, and specify the date on which it proposes that the provisions of the modified or new RIGs should take effect;
 - (b) set out the text of the modified RIGs or (as the case may be) the new RIGs and the Authority’s reasons for proposing to issue them; and
 - (c) specify the time (which must not be less than a period of 28 days from the date of the Notice) within which representations or objections with respect to the proposal may be made.
- 33.6 The Authority must consider any representations or objections that are duly made and not withdrawn, and give reasons for its decision.
- 33.7 The Authority may modify RIGs or issue new RIGs by giving the Licensee a direction for that purpose after complying with the requirements of this Part B.
- 33.8 In this Part B, references to “new RIGs” include RIGs that are being issued for the first time under this condition, as well as RIGs that are replacing any RIGs already in force under it.
- 33.9 The Licensee must comply with any modified or new RIGs, subject to Part C below.

Part C: Requirements for new or more detailed information

- 33.10 This Part C applies if any modified or new RIGs have the effect of introducing for the purposes of Condition 31 or Condition 32 (as the case may be) a requirement to provide:
- (a) a new category of Specified Information; or
 - (b) an existing category of Specified Information to a greater level of detail, and such information has not previously been collected by the Licensee, whether under the provisions of the RIGs or otherwise.
- 33.11 Where this Part C applies, the Licensee may provide estimates to the Authority in respect of the relevant category of Specified Information:
- (a) for the Regulatory Year in which the modified RIGs or new RIGs first have effect; and
 - (b) for any preceding Regulatory Year specified by the Authority.
- 33.12 The estimates that are mentioned in paragraph 33.11 may be derived from such other information available to the Licensee as may be appropriate for that purpose.

Part D: Interpretation

- 33.13 For the purposes of this condition only, the act of issuing new RIGs has the effect (where relevant) of automatically revoking any existing RIGs.

Condition 34. Annual Service Report to the Authority

Introduction

- 34.1 This condition requires the Licensee to prepare and make an Annual Service Report to the Authority about Overall Service Performance during the previous Regulatory Year, and to publish that report on its Website.
- 34.2 This condition is without prejudice to such other reporting requirements as may be imposed on the Licensee under or pursuant to Condition 31 in respect of the Quality of Service Information mentioned in that condition.

Part A: Requirement to prepare an Annual Service Report

- 34.3 The Licensee must by not later than 31 July in each Regulatory Year commencing on and after 1 April 2014 prepare and submit to the Authority a report (“the Annual Service Report”) about Overall Service Performance during the previous Regulatory Year (“the Performance Year”).
- 34.4 The concept of Overall Service Performance to which paragraph 34.3 refers must be presented, analysed, and evaluated by the Licensee in its Annual Service Report by reference both separately and collectively, as appropriate, to:
- (a) the performance (both generally and in detail) of the Licensee in providing Services to SEC Parties under or pursuant to the Smart Energy Code (“the Licensee’s Performance”) during the Performance Year; and
 - (b) the performance (both generally and in detail) of each External Service Provider in providing such Relevant Service Capability as it was contracted to provide to the Licensee pursuant to Condition 16 (Procurement of Relevant Service Capability) (“the Providers’ Performance”) during the Performance Year.
- 34.5 The Annual Service Report should, in particular, identify and set out in appropriate detail all relevant operational and technical aspects of user service arising from the Licensee’s Performance and the Providers’ Performance during the Performance Year that the Licensee considers should be brought to the Authority’s notice, having regard to the functions that the Licensee is required to exercise under or by virtue of the Principal Energy Legislation, this Licence, and the Smart Energy Code.
- 34.6 The Authority may require the Annual Service Report of the Licensee to contain a statistical record based on appropriate performance measures with respect to either or both of the Licensee’s Performance and the Providers’ Performance during the Performance Year, including, in particular, details of any failures, loss of service, or other material faults within the overall expected reliability of such performance.
- 34.7 Any statistical record that is required to be presented in the Annual Service Report by virtue of paragraph 34.6 must have such content and be presented in such format and with respect to such periods of time as are specified in any direction issued by the Authority for the purposes of this condition.
- 34.8 The Authority must consult the Licensee, SEC Parties, and all External Service Providers before issuing any direction under paragraph 34.7.

Part B: Procedure for preparing the Annual Service Report

- 34.9 Before submitting an Annual Service Report to the Authority in accordance with Part A above, the Licensee must:
- (a) provide each of its External Service Providers with a copy of the report in draft;
 - (b) invite them to comment in Writing on such parts of the draft report as may be particularly relevant to their interests; and
 - (c) allow them a period of at least 28 days within which to make such comments.
- 34.10 The Licensee, in finalising its Annual Service Report for the Authority, must:
- (a) fairly and accurately summarise in that report any comments duly received under paragraph 34.9; and
 - (b) state in the report how and to what extent (if any) the Licensee has taken account of such comments.

Part C: General availability of the Annual Service Report

- 34.11 The Licensee must:
- (a) submit each Annual Service Report to the Authority in accordance with the requirements of paragraph 34.3; and
 - (b) at the same time provide copies of the report to the Secretary of State, the SEC Panel, and each External Service Provider of the Licensee.
- 34.12 The Licensee must also (subject to paragraph 34.13):
- (a) give a copy of the Annual Service Report to any person who requests it; and
 - (b) publish the report on its Website.
- 34.13 In complying with the requirements of paragraph 34.12, the Licensee must have due regard to the need for excluding from the statement, so far as is practicable, any matter that relates to the affairs of a person if the publication of that matter would prejudice, or be likely to prejudice, his commercial interests.
- 34.14 Any question arising under paragraph 34.13 as to whether the publication of some matter that relates to the affairs of a person would prejudice, or would be likely to prejudice, his commercial interests is to be resolved by the Authority following consultation with that person.

Part D: Interpretation

- 34.15 For the purposes of this condition only:
- Annual Service Report** and **Performance Year** have the meaning given to those terms respectively in paragraph 34.3.
- Licensee's Performance, Overall Service Performance, and Providers' Performance** have the meaning given to those terms respectively in paragraph 34.4

CHAPTER 9 : CONDITIONS 35 TO 41
Price Control Conditions of this Licence

Condition 35. Definitions for the Price Control Conditions

Introduction

- 35.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 35.2 In this Licence, a Price Control Condition is any condition the purpose of which, whether on its own or in combination with any other Price Control Condition, is to limit or control the charges of, or the revenue of, the Licensee.

Part A: Defined terms used in the Price Control Conditions

- 35.3 Part B below sets out most of the defined words and expressions (all of which begin with capital letters) that are used in the Price Control Conditions of this Licence, and gives their definitions next to them (“the Chapter 9 Particular Definitions”).
- 35.4 But words and expressions used in the Price Control Conditions that are defined for any of the purposes of this Licence in Condition 1 (Definitions for the Conditions of this Licence) have in this Chapter 9 the meaning given to them in that condition.

Part B: The Chapter 9 Particular Definitions

- 35.5 In the Price Control Conditions, unless the context otherwise requires:

Allowed Revenue	means the total amount of revenue determined on an accruals basis in relation to each Regulatory Year in accordance with the Principal Formula set out at Part C of Condition 36 (Determination of the Licensee’s Allowed Revenue) after the deduction of value added tax (if any) and any other taxes based directly on the amount concerned.
Average Specified Rate	means the rate that is equivalent to the average value of the Official Bank Rate of the Bank of England during the period in respect of which the calculation falls to be made.
Baseline Margin	means an amount of additional revenue, over and above the sum of the Licensee’s Internal Costs and External Costs, that the Secretary of State has agreed shall be included (subject to the operation of the Baseline Margin Performance Adjustment) in the Licensee’s Allowed Revenue, and is determined in accordance with Part D of Condition 36.
Baseline Margin Performance (BMP) Adjustment	means the component of the Licensee’s Allowed Revenue that is determined in accordance with Part E of Condition 36, subject to the operation of such maximum and minimum values as the Secretary of State has agreed should apply for that purpose and that are set out in that condition.

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Baseline Margin Performance Incentive Revenue	means the amount of the revenue that is determined in accordance with the provisions of Condition 38 (Determination of the BMP Incentive Revenue) so as to secure the effect set out in Part A of that condition.
External Contract Gain Share	means the component of the Licensee's Allowed Revenue that is determined in accordance with the provisions of Condition 39 (Determination of External Contract Gain Share) so as to secure the effect set out in Part A of that condition.
External Costs	means in relation to each Regulatory Year the actual amount of the costs that were economically and efficiently incurred by the Licensee in procuring Relevant Service Capability during that period.
Internal Costs	means in relation to each Regulatory Year the sum of the Predetermined Internal Costs and Variable Internal Costs that apply during that period for the purposes of the provision by the Licensee of Mandatory Business Services under or pursuant to the SEC, and may include costs incurred in respect of matters associated with the governance and administration of the SEC that are not included in Pass-Through Costs.
Pass-Through Costs	means those costs specified as such under the PTC term in paragraph 6 of Condition 36.
Predetermined Internal Costs	means in relation to each Regulatory Year the sum of the fixed cost amounts agreed for that period by the Secretary of State that apply for the purposes of the Licensee's provision of Mandatory Business Services under or pursuant to the SEC and that are specified in or may be determined in accordance with Table 1 as set out at Appendix 1 to Condition 36.
Regulatory Year t	means the particular Regulatory Year for the purposes of which any calculation is required to be made under the Price Control Conditions.
Regulatory Year t-1	means the Regulatory Year immediately preceding the Regulatory Year t.
Regulated Revenue	means in relation to each Regulatory Year the actual revenue, measured on an accruals basis, received by the Licensee through Service Charges levied in accordance with the provisions of Condition 18 (Charging Methodology for Services) and Condition 19 (Charging Statement for Services), or otherwise received by the Licensee in relation to the carrying on of the Mandatory Business, after the deduction of value added tax (if any) and any other taxes based directly on the amount concerned.

Value Added Service (VAS) Contribution	means the component of the Licensee’s Allowed Revenue that is determined in accordance with the provisions of Condition 40 (Determination of the VAS Contribution) so as to secure the effect set out in Part A of that condition.
Variable Internal Costs	means in relation to each Regulatory Year the actual amount of the costs (disregarding External Costs, Pass-Through Costs, and Predetermined Internal Costs) that were economically and efficiently incurred by the Licensee for the purposes of providing Mandatory Business Services during that period under or pursuant to the SEC.

Part C: Matters agreed by the Secretary of State

35.6 A reference in this condition or in any of the other Price Control Conditions to a value or amount agreed by the Secretary of State is a reference to that value or amount as agreed by the Secretary of State during or as a consequence of the Licence Application Process.

Part D: Guide to abbreviated terms

35.7 Some of the defined terms in the Chapter 9 Particular Definitions set out above appear in formulas embedded in the Price Control Conditions in the following abbreviated forms:

Allowed Revenue	AR
Average Specified Rate	ASR
Baseline Margin	BM
Baseline Margin Performance Adjustment	BMPA
Baseline Margin Performance Incentive Revenue	BMPIR
External Contract Gain Share	ECGS
External Costs	EC
Internal Costs	IC
Pass-Through Costs	PTC
Predetermined Internal Costs	PIC
Regulated Revenue	RR
Value Added Service Contribution	VASC
Variable Internal Costs	VIC

Condition 36. Determination of the Licensee’s Allowed Revenue

Introduction

- 36.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 36.2 The purpose of this condition is to establish the mechanism for determining the amount of Allowed Revenue that may be recovered by the Licensee through Service Charges levied in respect of its provision of Mandatory Business Services.

Part A: Conditions supplementary to this condition

- 36.3 This condition is supplemented by:
- (a) Condition 37 (Monitoring and assessment of the Licensee’s costs), which provides for the Authority to exclude from Allowed Revenue any of the External Costs or Variable Internal Costs of the Licensee that the Authority considers were not economically and efficiently incurred;
 - (b) Condition 38 (Determination of BMP Incentive Revenue), which provides for Allowed Revenue to be adjusted upwards or downwards to reflect the Licensee’s performance against certain specified incentives; and
 - (c) Condition 39 (Determination of External Gain Share) and Condition 40 (Determination of the VAS Contribution), which provide for Allowed Revenue to be varied to reflect benefits arising from, respectively, the Licensee’s management of External Service Provider Contracts and its provision of Value Added Services.

Part B: Duty of the Licensee not to exceed its Allowed Revenue

- 36.4 The Licensee, in setting Service Charges for its Mandatory Business Services, must take all reasonable steps to ensure that, in Regulatory Year t , its Regulated Revenue does not exceed its Allowed Revenue for that Regulatory Year.

Part C: Determination of the Allowed Revenue (AR) term

- 36.5 The amount of the Licensee’s Allowed Revenue in relation to Regulatory Year t is determined in accordance with the following formula (in this condition, the Principal Formula):

$$AR_t = EC_t + PIC_t + PTC_t + VIC_t + BM_t + BMPA_t + ECGS_t - VASC_t + K_t$$

- 36.6 In the Principal Formula above:

- AR_t means the amount of Allowed Revenue in Regulatory Year t .
- EC_t means the actual amount of the Licensee’s External Costs, as calculated for Regulatory Year t by the Licensee, except to such extent (if any) as may be otherwise directed by the Authority acting pursuant to Condition 37.
- PIC_t means the total amount of the Licensee’s Predetermined Internal Costs as agreed by the Secretary of State in respect of each Regulatory Year and as specified in or to be calculated in accordance with Table 1 set out at Appendix 1 (which has effect as part of this condition).

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- PTC_t means the total amount of Pass-Through Costs incurred by the Licensee in Regulatory Year t , and is the sum of:
- (i) the amount that is equal to the total annual fee paid by the Licensee to the Authority during Regulatory Year t as determined in accordance with Part A of Condition 4 (Licensee's payments to the Authority); and
 - (ii) the amount that is equal to the payments made by the Licensee during Regulatory Year t to SECCo Ltd for purposes associated with the governance and administration of the SEC.
- VIC_t means the actual amount of the Licensee's Variable Internal Costs, as calculated for Regulatory Year t by the Licensee, except to such extent (if any) as may be otherwise directed by the Authority acting pursuant to Condition 37.
- BM_t means the Licensee's Baseline Margin for Regulatory Year t , as set out in Part D below.
- $BMPA_t$ means the Baseline Margin Performance Adjustment, as calculated for Regulatory Year t in accordance with Part E below.
- $ECGS_t$ means the amount of revenue adjustment in respect of External Contract Gain Share, as calculated for Regulatory Year t in accordance with Condition 39 (Determination of External Contract Gain Share).
- $VASC_t$ means the amount of the Value Added Services Contribution, as calculated for Regulatory Year t in accordance with Condition 40 (Determination of the VAS Contribution).
- K_t means the correction factor, whether positive or negative, as calculated for Regulatory Year t in accordance with the formula set out in Part F below.

Part D: Specification of the Baseline Margin (BM) term

- 36.7 For the purposes of the Principal Formula, the amount of the Baseline Margin term (BM) will be as specified in Table 2 set out at Appendix 1 (which has effect as part of this condition) in respect of each particular Regulatory Year.

Part E: Calculation of the BMP Adjustment (BMPA) term

- 36.8 For the purposes of the Principal Formula, the amount of the Baseline Margin Performance Adjustment term (BMPA) will be calculated for Regulatory Year t in accordance with either of formulas A or B below, as the case may be:

[to be completed following Licence Application Process]

Part F: Calculation of the correction factor (K)

- 36.9 For the purposes of the Principal Formula, the correction factor (K) is calculated in accordance with the following formula:

$$K_t = (AR_{t-1} - RR_{t-1} - BDC_{t-1}) \times \left[1 + \frac{(ASR_t)}{100} \right]$$

36.10 In the formula for the K term above:

AR_{t-1} means the amount of Allowed Revenue in Regulatory Year t-1.

BDC_{t-1} means the contribution to bad debt within the Licensee's Internal Costs in Regulatory Year t-1, and will be zero except where the Licensee has failed to comply fully with its obligations in relation to the management of SEC Parties' credit cover and the recovery of bad debt under or pursuant to the SEC, in which event it will have such value as may be determined by the Authority.

RR_{t-1} means the Regulated Revenue in Regulatory Year t-1.

ASR_t means the Average Specified Rate, as defined in Condition 35 (Definitions for the Price Control Conditions), in Regulatory Year t.

36.11 Appendix 1 (containing Tables 1 and 2) follows immediately below.

Appendix 1 : Tables 1 and 2

Table 1: Values for the PIC term (see paragraph 36.6)

<i>Regulatory Year</i>	<i>2013/14 £m</i>	<i>2014/15 £m</i>	<i>2015/16 £m</i>	<i>2016/17 £m</i>	<i>2017/18 £m</i>	<i>2018/19 £m</i>
PIC Item 1	XX	XX	XX	XX	XX	XX
PIC Item 2	XX	XX	XX	XX	XX	XX
PIC Item 3	XX	XX	XX	XX	XX	XX
PIC Item 4	XX	XX	XX	XX	XX	XX
PIC Item 5	XX	XX	XX	XX	XX	XX
TOTAL	XX	XX	XX	XX	XX	XX
<i>Regulatory Year</i>	<i>2019/20 £m</i>	<i>2020/21 £m</i>	<i>2021/22 £m</i>	<i>2022/23 £m</i>	<i>2023/24 £m</i>	<i>2024/25 £m</i>
PIC Item 1	XX	XX	XX	XX	XX	XX
PIC Item 2	XX	XX	XX	XX	XX	XX
PIC Item 3	XX	XX	XX	XX	XX	XX
PIC Item 4	XX	XX	XX	XX	XX	XX
PIC Item 5	XX	XX	XX	XX	XX	XX
TOTAL	XX	XX	XX	XX	XX	XX

Table 2: Values for the BM term (see paragraph 36.7)

<i>Regulatory Year</i>	<i>2013/14 £m</i>	<i>2014/15 £m</i>	<i>2015/16 £m</i>	<i>2016/17 £m</i>	<i>2017/18 £m</i>	<i>2018/19 £m</i>
BM term	XX	XX	XX	XX	XX	XX
<i>Regulatory Year</i>	<i>2019/20 £m</i>	<i>2020/21 £m</i>	<i>2021/22 £m</i>	<i>2022/23 £m</i>	<i>2023/24 £m</i>	<i>2024/25 £m</i>
BM term	XX	XX	XX	XX	XX	XX

Condition 37. Monitoring and assessment of Licensee's costs

Introduction

- 37.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 37.2 The purpose of this condition is to enable the Authority to monitor and assess certain costs incurred by the Licensee in order to ascertain whether they were economically and efficiently incurred and are therefore able to be incorporated into the mechanism for determining the Licensee's Allowed Revenue under Condition 36.

Part A: Submission of report on Licensee's cost performance

- 37.3 The Licensee, in submitting Price Control Information to the Authority for the period of any Regulatory Year of this Licence ("the Relevant Regulatory Year") by 31 July in the next Regulatory Year, as required by Condition 32 (Price Control Information reporting), must at the same time submit to the Authority a report drawing upon the Price Control Information that includes the following three comparisons.
- 37.4 Comparison 1 is between:
- (a) the amount of the External Costs that the Licensee estimated it would be likely to incur for the Relevant Regulatory Year in its Licence Application Business Plan; and
 - (b) the amount of the External Costs that were actually incurred by the Licensee for the Relevant Regulatory Year.
- 37.5 Comparison 2 is between:
- (a) the amount of the Variable Internal Costs that the Licensee estimated it would be likely to incur for the Relevant Regulatory Year in its Licence Application Business Plan; and
 - (b) the amount of the Variable Internal Costs that were actually incurred by the Licensee for the Relevant Regulatory Year.
- 37.6 Comparison 3 is between:
- (a) the amount of the Predetermined Internal Costs as agreed by the Secretary of State with respect to the Relevant Regulatory Year, as set out by the Licensee in its Licence Application Business Plan; and
 - (b) the amount of the Predetermined Internal Costs that were actually incurred by the Licensee for the Relevant Regulatory Year.
- 37.7 The report submitted under paragraph 37.3 must also contain:
- (a) an explanation of any material divergence that is revealed by any of the three comparisons to which paragraphs 37.4 to 37.6 refer between the amount of the category of costs mentioned in sub-paragraph (a) of the comparison and the amount of the category of costs mentioned in sub-paragraph (b) of that comparison; and

- (b) a statement of any material revision arising from any such divergence that the Licensee thinks it is appropriate or necessary to make to any financial or operational matter included in its Licence Application Business Plan for the purposes of any of the remaining years of that plan.

37.8 Without prejudice to the requirements of paragraphs 37.4 to 37.6 with respect to the presentation of costs within the required report, all of the categories of cost mentioned in those paragraphs must be set out in that report in such manner and at such levels of detail as may be required by any Regulatory Instructions and Guidance issued by the Authority under Condition 33 that apply to the Price Control Information provided by the Licensee to the Authority under Condition 32.

Part B: Authority's power to disallow certain costs

37.9 The Authority:

- (a) after considering the report submitted to it under paragraph 37.3; and
- (b) following consultation with the Licensee,

may direct that any External Costs or any Variable Internal Costs that it considers were not economically and efficiently incurred by the Licensee during the Relevant Regulatory Year are to be excluded from any future calculation of the Licensee's Allowed Revenue under Condition 36.

37.10 Paragraph 37.9 is without prejudice to the power of the Authority to take account of any other matters revealed by or capable of being derived from the Licensee's Price Control Information under Condition 32 that the Authority considers would be relevant to its function under this Condition 37 of assessing the External Costs and Variable Internal Costs incurred by the Licensee in any Regulatory Year.

Part C: Guidance for the purposes of this condition

37.11 The Authority may issue, and from time to time revise, guidance about the procedure it will follow and the matters it will take into account in considering whether and to what extent to exercise its power to give a direction under paragraph 37.9.

37.12 Guidance under paragraph 37.11 may, in particular, set out the principles, methods of assessment, and types of criteria that are likely to be applied by the Authority in determining whether costs have been economically and efficiently incurred.

Part D: Interpretation

37.13 For the purposes of this Condition only:

Licence Application Business Plan means the plan submitted by the Licensee in the course of or as a consequence of the Licence Application Process, containing the Licensee's estimates of its revenues, costs, capital investments, and cashflows for each Regulatory Year of the Licence Term, that was taken into account by the Secretary of State in determining the grant of this Licence to the Licensee and to which the Licensee committed itself as a condition of that grant.

Relevant Regulatory Year has the meaning given to that term in paragraph 37.3.

Condition 38. Determination of the BMP Incentive Revenue

Introduction

- 38.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 38.2 The purpose of this condition is to establish the mechanism for determining the amount of the BMPIR term, representing the Baseline Margin Performance (BMP) Incentive Revenue, that applies in Part E of Condition 36 (Determination of Licensee's Allowed Revenue).

Part A: Intended effect of the application of the BMPIR term

- 38.3 The effect of the application of the BMPIR term in Condition 36 is to provide for an adjustment to the Licensee's Allowed Revenue (whether upwards or downwards) to reflect the performance of the Licensee against certain specified incentives.

Part B: Determination of the amount of the BMPIR term

- 38.4 For the purposes of Part E of Condition 36, which establishes the determination of the Baseline Margin Performance Adjustment term, the total amount of the BMPIR term is determined in accordance with the following formula (in this condition, the Principal Formula):

[*to be completed following Licence Application Process*]

Condition 39. Determination of External Contract Gain Share

Introduction

- 39.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 39.2 The purpose of this condition is to establish the mechanism for determining the amount of the External Contract Gain Share (ECGS) term that applies in Condition 36 (Determination of Licensee's Allowed Revenue) (and that will be zero unless and until such time as the Authority determines otherwise).

Part A: Intended effect of the application of the ECGS term

- 39.3 The effect of the application of the ECGS term in Condition 36 is to provide for an upward adjustment to the amount of the Licensee's Allowed Revenue that reflects some part of the net benefit that the Licensee has proposed to effect, or has effected, through amendments to the contracts that give rise to External Costs.

Part B: Determination of the amount of the ECGS term

- 39.4 For the purposes of Part C of Condition 36, which establishes the determination of the Licensee's Allowed Revenue, the total amount of the External Contract Gain Share term (ECGS) is determined in accordance with the following formula:

[to be completed following Licence Application Process]

Condition 40. Determination of the VAS Contribution

Introduction

- 40.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 40.2 The purpose of this condition is to establish the mechanism for determining the amount of the Value Added Services (VAS) Contribution term (VASC) that applies in Condition 36 (Determination of Licensee's Allowed Revenue) (and that will be zero unless and until such time as the Authority determines otherwise).

Part A: Intended effect of the application of the VASC term

- 40.3 The effect of the application of the VASC term in Condition 36 is to provide that some part of the net benefit that arises as a result of the Licensee's provision of Value Added Services is reflected in a reduction in the price that would otherwise be payable for service by persons receiving Mandatory Business Services.

Part B: Determination of the amount of the VASC term

- 40.4 For the purposes of Part C of Condition 36, which establishes the determination of the Licensee's Allowed Revenue, the total amount of the VAS Contribution term (VASC) is determined in accordance with the following formula:

$$VASC_t = \sum_{\text{all } k} [CVAS_{k,t}]$$

- 40.5 In the formula for the VASC term above:

$CVAS_{k,t}$ means the share of the net benefit arising in Regulatory Year t from the Licensee's provision of Value Added Service k that was agreed with the Authority when it approved the provision of that service under Part D of Condition 6 (Authorised Business of the Licensee).

Condition 41. Disapplication of the Price Control Conditions

Introduction

- 41.1 This condition has effect on and after 1 April 2013 as one of the Price Control Conditions of this Licence.
- 41.2 The purpose of this condition is to set out the process for a disapplication of the Price Control Conditions of this Licence in whole or in part.
- 41.3 Nothing in this condition overrides or limits the power of the Authority to modify any of the Conditions of this Licence (including pursuant to a Disapplication Request received under this condition) at any time in accordance with the procedure set out in the Principal Energy Legislation with respect to such modifications.

Part A: Conditions are to continue subject to disapplication

- 41.4 Subject to paragraph 41.3 above, the Price Control Conditions apply for as long as this Licence continues in force, but will cease to have effect (in whole or in part, as the case may be) if the Licensee gives a Disapplication Request to the Authority in accordance with the provisions of Parts B and C below and:
- (a) the Authority agrees in Writing to the Disapplication Request; or
 - (b) the application of the Price Control Conditions (in whole or in part, as the case may be) is terminated by Notice given by the Licensee in accordance with the provisions of Part D below.

Part B: Procedure for making a Disapplication Request

- 41.5 The Licensee may ask the Authority to consent to the disapplication of the Price Control Conditions (in whole or in part) by giving the Authority a Disapplication Request under this Condition 41.
- 41.6 A Disapplication Request must:
- (a) be in Writing addressed to the Authority;
 - (b) specify the Price Control Conditions (or any part or parts of them) to which the request relates;
 - (c) provide a full statement of the Licensee’s reasons for making the request;
 - (d) contain any other information or analysis that the Licensee considers sufficient to enable the Authority to fully assess the Disapplication Request; and
 - (e) state the date that is proposed by the Licensee (which must not be earlier than the appropriate date that is mentioned in Part C below) on or after which the specified Price Control Conditions (or part or parts of them) would cease to have effect (“the Disapplication Date”).
- 41.7 The Authority may require the Licensee to supply such further information as may be necessary to enable the Authority to decide whether it would be appropriate for it to consent to the Disapplication Request.

41.8 The Licensee may withdraw a Disapplication Request at any time.

Part C: Date from which a disapplication may take effect

41.9 Except where the Authority otherwise consents, a disapplication following the delivery of a Disapplication Request may not have effect until a date that is at least 18 months after the delivery of that request.

Part D: Licensee’s rights to terminate under a Disapplication Request

41.10 If the Licensee has given the Authority a Disapplication Request that complies with the requirements of this condition, it may subsequently give the Authority a Notice that terminates the application of the Price Control Conditions or the part or parts of them specified in that request:

- (a) in the circumstance described in Part E below, on or after the Disapplication Date (or with effect from any earlier date to which the Authority may have consented under Part C above); or
- (b) in the circumstance described in Part F below, on or after the Disapplication Date, so long as the Licensee gives Notice of the termination to the Authority within 30 days after the date of the direction given by the Competition Commission to which Part F refers with respect to the determination of the Licensee’s appeal.

Part E: Termination without involvement of the Competition Commission

41.11 The circumstance described in this Part E (to which paragraph 41.10(a) relates) is that, by the beginning of the period of six months that would end on the Disapplication Date, the Authority has not:

- (a) published a decision under the Relevant Provisions of the Principal Energy Legislation to modify the Price Control Conditions (in whole or in part) in response to the Disapplication Request; or
- (b) published a decision under the Relevant Provisions of the Principal Energy Legislation to modify this Condition 41 in response to the Disapplication Request so as to remove the Licensee’s right to give the Authority a Notice under paragraph 41.10(a) in relation to that request.

Part F: Termination after involvement of the Competition Commission

41.12 The circumstance described in this Part F (to which paragraph 41.10(b) relates) is that:

- (a) the Authority, acting in response to the Disapplication Request, has published a decision pursuant to either paragraph 41.11(a) or paragraph 41.11(b) by the beginning of the period of six months that would end on the Disapplication Date;
- (b) the Licensee has exercised its right in accordance with the Relevant Provisions of the Principal Energy Legislation to appeal to the Competition Commission against that decision of the Authority; and

- (c) the Competition Commission, acting under the Relevant Provisions of the Principal Energy Legislation, has:
 - (i) quashed the Authority’s decision, and
 - (ii) directed the Licensee to give Notice to the Authority terminating such of the Price Control Conditions specified in the Disapplication Request, in such manner and to such extent, as may be specified in that direction.

Part G: Interpretation

41.13 For the purposes of this condition only:

Disapplication Date has the meaning given to that term in paragraph 41.6(e).

Disapplication Request has the meaning given to that term in paragraph 41.6.

Relevant Provisions means:

- (a) in paragraph 41.11, both section 23(7) of the 1986 Act and section 11A(7) of the 1989 Act;
- (b) in paragraph 41.12(b), both section 23B(2) of the 1986 Act and section 11C(2) of the 1989 Act; and
- (c) in paragraph 41.12(c), both section 23E(2) of the 1986 Act and section 11F(2) of the 1989 Act.

CHAPTER 10 : CONDITIONS 42 TO 44
Arrangements for intervention and continuity

Condition 42. Management Orders for the Licensee

Introduction

42.1 This condition enables the Authority to make and keep in place a Management Order for as long as is necessary and appropriate (but no longer) to secure the proper running of the Authorised Business of the Licensee if it appears to the Authority that the circumstances described in this condition would justify such intervention.

Part A: Circumstances giving rise to a Management Order

42.2 This Part A applies if (and only if) the following two requirements are met.

42.3 Requirement 1 is that the Authority considers:

- (a) that an event within the meaning of paragraph 17 of Part 2 of this Licence (Terms in Respect of Revocation) has occurred, or is likely to occur; or
- (b) that there are significant financial or operational failings in the way in which the Licensee is carrying on the Authorised Business.

42.4 Requirement 2 is that the Authority is satisfied (having regard to its principal objective and general duties under the Principal Energy Legislation) that it is necessary and appropriate in all the circumstances of the case for it to take action under this condition.

42.5 Where this Part A applies, the Authority may give the Licensee a direction under this condition that contains a Management Order (see Part B below).

42.6 The giving of a direction under this condition is without prejudice to the Authority's exercise of any of the powers or duties to which Part C below refers.

42.7 If the Licensee receives a direction under this condition, it must do all such things as are necessary to give full effect to the provisions of the Management Order.

Part B: Matters for which a Management Order may provide

42.8 A Management Order may impose requirements in respect of, or make provision for or in connection with, any matter that the Authority considers is calculated to achieve the purpose of the Management Order, including, in particular, any of the matters that are authorised by this Part B (or any combination of such matters).

42.9 A Management Order may:

- (a) require the removal from office of all of the directors of the Licensee, or such directors as are specified in the order; and
- (b) provide for their replacement with individuals specified in or determined or appointed in accordance with the order.

42.10 A Management Order may:

- (a) require the suspension (either wholly, or in respect only of such functions as are specified in or determined in accordance with the order) of all of the directors of the Licensee, or such directors as are specified in the order; and

- (b) provide for the functions of the suspended directors to be performed during their suspension by individuals specified in or determined or appointed in accordance with the order.
- 42.11 A Management Order may require the Licensee to secure that any activity or other function of the Licensee that is specified in the order:
- (a) is performed, to the extent specified in the order, on behalf of the Licensee and at its expense, by such person as may be specified in the order; and
 - (b) is so performed in such a way as to achieve such objectives as are so specified,
- and may also require that any contract or other arrangement made by the Licensee with that person contains such terms and conditions as may be so specified or deals with such matters as may be so specified.
- 42.12 A Management Order may:
- (a) provide for the Authority to appoint or require the directors of the Licensee to appoint a suitably qualified person to act as adviser, at the Licensee's expense, in respect of the performance of any activity or other function of the Licensee that is specified in the order;
 - (b) require the Licensee to act in accordance with such recommendations or other advice as that person gives it;
 - (c) require that person to report to the Authority or the directors of the Licensee, in such manner and at such times as may be specified in the order, with respect to such matters as may be so specified; and
 - (d) provide for the Authority to vary, suspend, or terminate the appointment of any adviser appointed by the Authority or by the directors of the Licensee pursuant to the terms of the order.
- 42.13 A Management Order may require:
- (a) that funds of such amount and on such terms as are specified in the order are to be released to the Licensee from such Financial Security Instrument as is in place under Part B of Condition 26 (Financial stability and financial security); and
 - (b) that such funds are to be applied by the Licensee for such purposes, to such an extent, in such manner, and at such times as are so specified.
- 42.14 The Authority may revoke any direction under this condition, in whole or in part, if and to the extent that it considers that the purpose for which the Management Order was made has been achieved.

Part C: Application and scope of this condition

- 42.15 This condition is not to be read as limiting, and does not limit, any of such powers or duties of the Authority as would be exercisable in accordance with any enactment set out in paragraph 42.16 for any purpose arising under or because of this condition or any of the other Conditions of this Licence.

- 42.16 The enactments to which paragraph 42.15 refers are:
- (a) Part 2 (Terms in Respect of Revocation) of this Licence (with respect to the revocation of this Licence);
 - (b) sections 28 or 30A to 30F of the 1986 Act or sections 25 or 27A to 27F of the 1989 Act (with respect to the enforcement of obligations and imposition of financial penalties); and
 - (c) regulations made under section 41HC of the 1986 Act or section 56FC of the 1989 Act (with respect to the determination of a Successor Licensee).

Part D: Duration of this condition

- 42.17 This condition will be of no effect in this Licence from the date on which either or both of the Secretary of State and the Authority is able by virtue of an enactment to apply to the High Court for an order appointing a person to manage the business, affairs, and property of the Licensee for purposes and in circumstances substantially equivalent to those that apply under Chapter 3 of Part 3 of the Energy Act 2004 with respect to the making of an energy administration order in relation to a protected energy company.

Part E: Interpretation

- 42.18 For the purposes of this condition only, **Management Order** has the meaning that is given to that term at paragraph 42.8.

Condition 43. Arrangements for the handover of business

Introduction

- 43.1 This condition imposes duties on the Licensee that are designed to ensure that the Authorised Business will be transferred without disruption and in an orderly manner to a Successor Licensee in the event of the revocation or expiry of this Licence.
- 43.2 In accordance with paragraph 2 of Part 2 (Terms in Respect of Revocation) of this Licence, a revocation for the purposes of this condition may include a direction from the Authority to the Licensee to cease carrying on any or all of its activities under this Licence even though it still remains the holder of the Licence.
- 43.3 Nothing in this condition prevents the Business Handover Plan of the Licensee from containing different provision for different cases or for different circumstances, in recognition of the factual, legal, and qualitative differences between an event of Licence expiry and an act of Licence revocation.

Part A: Licensee's duties in respect of a business handover

- 43.4 Where a Handover Period is in force for the purposes of this condition under Part B below, the Licensee will by virtue of this Part A be under a general duty to arrange to cease carrying on the Authorised Business at the Transfer Date in a manner that:
- (a) is consistent with the Licensee's proper performance of its obligations under this Licence;
 - (b) will not prejudice or frustrate the ability of a Successor Licensee to commence carrying on the Authorised Business in accordance with its obligations under its licence; and
 - (c) is most likely to ensure an effective business handover with, in particular, no adverse impact on the quality and efficiency with which Services are delivered.
- 43.5 In discharging its general duty under this Part A, the Licensee must:
- (a) comply with and give effect to the Business Handover Plan as approved by the Authority under the provisions of Part C below;
 - (b) take no steps that would have the effect, directly or indirectly, of avoiding or circumventing any requirement or objective of that plan; and
 - (c) if so required by the Authority, provide such reasonable support and assistance (including information) as may be specified to persons taking part in any competitive tender process to determine the grant of a Successor Licence.

Part B: Authority's power to bring a Handover Period into force

- 43.6 The Authority may at any time notify the Licensee that a Handover Period is in force, or will come into force, with effect from:
- (a) such date as the Authority considers to be appropriate for the purposes of this condition, having regard to the date on which the Licence Term or any Additional Licence Term (within the meaning given to those expressions in Part 1 (Terms in Respect of Grant) of this Licence) will expire; or

- (b) the date on which (or any date after which) the Authority notifies the Licensee that it considers that a Revocation Event within the meaning of Part 2 of this Licence (Terms in Respect of Revocation) has arisen or is likely to arise.

43.7 A notification given under this Part B must specify a Transfer Date, being either:

- (a) the date on which the Licence Term (or Additional Licence Term) will expire; or
- (b) any earlier date on which, by virtue of a direction to be given by the Authority, the Licensee will cease to carry on the Authorised Business although still remaining the holder of this Licence.

43.8 The Authority may withdraw or amend a notification relating to paragraph 43.7(b) at any time if it considers it appropriate to do so in all the circumstances of the case.

Part C: Requirement to have a Business Handover Plan in place

43.9 Within 12 months after the Licence Commencement Date, the Licensee must submit to the Authority a Business Handover Plan prepared for the purposes of this condition that details how the Licensee will fulfil its general duty under Part A above during a Handover Period, with particular reference to such matters as are mentioned in Parts D and E below with respect to the contents of the plan.

43.10 In preparing a Business Handover Plan for submission to the Authority, the Licensee must take all reasonable steps to ascertain and take account of the views of External Service Providers and SEC Parties in relation to the proposed contents of the plan.

43.11 The Authority, after consulting the Licensee with respect to the Business Handover Plan submitted to it, may direct the Licensee to modify the contents of that plan in such manner and to such extent as may be specified in the direction.

43.12 The Authority may approve the Business Handover Plan for all of the purposes of this condition where it is satisfied that the plan, as submitted to it under paragraph 43.9 or with any modifications directed by it under paragraph 43.11, will enable the Licensee to fulfil its general duty under Part A during a Handover Period.

Part D: Mandatory contents of the Business Handover Plan

43.13 The Business Handover Plan must contain commitments, objectives, or other suitable provision for or in connection with the following four matters.

43.14 The first mandatory matter is provision for securing the novation (as directed by the Authority) to the Successor Licensee of the whole of the Licensee's interest under any agreement or arrangement that is an External Service Provider Contract within the meaning of Condition 16 (Procurement of Relevant Service Capability), on terms that are substantially the same as those set out in Schedule 2 to this Licence (Novation of External Service Provider Contracts).

43.15 The second mandatory matter is provision for securing the novation (as directed by the Authority) to the Successor Licensee of the whole of the Licensee's interest under the SEC (including, for the avoidance of doubt, every Agreement for Services that is in place in accordance with the provisions of Condition 17 (Requirements for the provision of Services)), on the terms required by virtue of paragraph 23(a) of Condition 22 (The Smart Energy Code).

- 43.16 The third mandatory matter is provision for securing that payment will be made, by agreement between the parties on a legally enforceable basis, of such sum of money by the Licensee to the Successor Licensee, or vice versa, as is calculated to be necessary for the purpose of fairly reflecting the benefit or burden (as the case may be) of such accrued under-recovery or over-recovery of Allowed Revenue as is finally found to have arisen at the Transfer Date in accordance with the formula set out at Part F of Condition 36 (Determination of the Licensee's Allowed Revenue).
- 43.17 The fourth mandatory matter is provision for securing the Licensee's ability at any time prior to the Transfer Date to have its interests fully and appropriately represented in the management, conduct, and settlement of any dispute arising as between the Successor Licensee and an External Service Provider, a SEC Party, or any other person that might reasonably be expected to affect the determination of the amount of any such under-recovery or over-recovery as is mentioned in paragraph 43.16.

Part E: Other appropriate contents of the Business Handover Plan

- 43.18 Without prejudice to the requirements of Part D above, the Business Handover Plan may, in particular, contain commitments, objectives, or other suitable provision for or in connection with the following matters:
- (a) the general co-operation of the Licensee with the Authority and the Successor Licensee in order to secure the continuity of, and an orderly handover of control of, the Authorised Business, the provision of supplies or services in connection with that business, and the effective operation of any asset in connection with it;
 - (b) the timetable, process and procedures, critical controls, contingency and risk management plans, transitional arrangements, and assistance services that are intended to be applicable for the purposes of facilitating and achieving the matters mentioned in sub-paragraph (a);
 - (c) the availability of appropriately skilled, qualified, and experienced members of the Licensee's staff for the purposes of attendance at such meetings with the Authority, the Successor Licensee, and other relevant parties as are necessary to facilitate and achieve the matters mentioned in sub-paragraphs (a) and (b);
 - (d) the treatment by the Licensee prior to the Transfer Date of all records, systems, documents, software, databases, information, and data held by it in connection with the carrying on of the Authorised Business (including the prevention of any third-party access to such things or, where the Authority so directs, the permanent deletion of any or all of them);
 - (e) the application or other appropriate treatment of any sums that are directed by the Authority to be released to the Licensee from such Financial Security Instrument as is in place under Part B of Condition 26 (Financial stability and financial security) for any of the purposes specified in that Part B, at such time or times as may be directed by the Authority; and
 - (f) the ability of either or both of the Licensee and Successor Licensee to propose modifications of the Business Handover Plan, and the Licensee's duty to make such (if any) of those modifications as the Authority may require it to make following consideration of the matter.

Part F: Requirement to review the Business Handover Plan

- 43.19 The Licensee must, for the purpose of ensuring that the Business Handover Plan will at all times continue to be a document that accurately reflects the requirements of this condition:
- (a) review the plan at least once in each Regulatory Year; and
 - (b) propose to the Authority such modifications (if any) of the plan as it thinks are appropriate or necessary for the purpose of better complying with those requirements.
- 43.20 The Authority may at any time, after consulting the Licensee, the External Service Providers, and SEC Parties, direct the Licensee to modify the Business Handover Plan in such manner and to such extent as may be specified in the direction.

Part G: Directions by the Authority during a Handover Period

- 43.21 Subject to paragraph 43.23, and after consulting with the parties, the Authority may issue directions to either or both of the Licensee and the Successor Licensee during a Handover Period with respect to the execution of the Business Handover Plan for the purpose of ensuring that the commitments and objectives of the plan are fulfilled and that the matters for which it makes provision in accordance with Parts D and E above are implemented in a full and timely manner.
- 43.22 Directions under paragraph 43.21 may require any or all of the following things to be done in such manner and to such extent as are specified in the direction in relation to the execution and implementation of the Business Handover Plan:
- (a) the transfer of property, rights, or liabilities from the Licensee to the Successor Licensee;
 - (b) the creation of rights in relation to property, rights, or liabilities in favour of the Successor Licensee;
 - (c) the creation of other rights and liabilities as between the Licensee and the Successor Licensee;
 - (d) that the Licensee enters into a written agreement with the Successor Licensee, or executes an instrument of another kind in favour of him;
 - (e) that the Licensee must pay compensation to the Successor Licensee, or to any third party affected by any of the matters mentioned in this paragraph 43.22.
- 43.23 No direction under paragraph 43.21 will be effective unless the Authority has first complied with the requirements of section 7B(5E) of the 1986 Act and section 7(3F) of the 1989 Act with respect to the rights of any person who would potentially be affected by the direction to be consulted about its proposed contents.
- 43.24 The Authority may at any time from the beginning of a Handover Period direct that any one or more of the Conditions of this Licence shall cease to have effect if and to such extent as the Authority considers this necessary or expedient for the purpose of facilitating the Licensee's compliance with its general duty under Part A above.

Part H: Interpretation

43.25 See Condition 44 (Treatment of Intellectual Property Rights), which makes further provision in connection with the subject matter of this Condition 43.

43.26 For the purposes of this condition only:

Business Handover Plan has the meaning given to that term in paragraph 43.9.

Handover Period means the whole of the period, beginning with the date notified to the Licensee by the Authority in accordance with paragraph 43.6 and ending on a date (which may not be earlier than the Transfer Date) that is specified in or is to be determined in accordance with that notification, during which the Licensee will be subject to the general duty and associated requirements set out in Part A of this condition.

Transfer Date has the meaning given to that term in paragraph 43.7.

Condition 44. Treatment of Intellectual Property Rights

Introduction

44.1 This condition sets out the general rules that are to apply to the treatment of rights in Intellectual Property (“Intellectual Property Rights” or “IPRs”) arising from or in consequence of any of the functions exercised by the Licensee under or by virtue of the Principal Energy Legislation, this Licence, and the Smart Energy Code.

Part A: Consideration of IPR issues in contract management

44.2 This Part A applies to the Licensee in all of its activities of managing and developing the External Service Provider Contracts (including every Legacy Procurement Contract) to which it is a party under or pursuant to Condition 16 (Procurement of Relevant Service Capability).

44.3 The Licensee must at all times carry on those activities with appropriate regard for the potential impacts of IPR ownership and IPR licensing on:

- (a) the development of effective competition in the provision to the Licensee of Relevant Service Capability;
- (b) the existing and future integration of the Services provided by the Licensee under or pursuant to the Smart Energy Code; and
- (c) the rights of:
 - (i) any External Service Provider, any successor to that person, or any Successor Licensee, and
 - (ii) any successor to either of those successors,to be able to use essential IPRs created or held by any of their predecessors.

Part B: Novation by the Licensee of IPRs to its successors

44.4 This Part B applies in relation to any IPRs of the Licensee that:

- (a) are used or have been created by the Licensee as part of its carrying on of the Mandatory Business; or
- (b) arise from and are held by or have been assigned to the Licensee, or that the Licensee has been licensed to use, under or pursuant to any External Service Provider Contract (including any Legacy Procurement Contract) to which the Licensee is party; or
- (c) have been novated, assigned, or otherwise transferred to the Licensee, or that the Licensee has been licensed to use, by any predecessor holding a licence to carry on the Authorised Activity.

44.5 The Licensee must, on the expiry of revocation of this Licence, novate all such IPRs (including any associated licences for their use) to a Successor Licensee:

- (a) in the case of any IPRs to which paragraph 44.4(a) refers, on a royalty-free, payment-free, and non-exclusive basis;

- (b) in the case of any other IPRs to which paragraph 44.4 refers, on terms that are not materially disadvantageous relative to those that had applied to the Licensee in carrying on the Mandatory Business; and
- (c) in all cases covered by paragraph 44.4, on terms designed to ensure in perpetuity that the IPRs in question can be novated on the same basis by the Successor Licensee to any person who is subsequently licensed to carry on the Authorised Activity.

44.6 The novation to which paragraph 44.5 refers relates only to the purposes for which the relevant IPRs and any associated licences for their use will be required in connection with the functions to be exercised by any Successor Licensee under or pursuant to its licence to carry on the Authorised Activity.

Part C: Other general requirements for the treatment of IPRs

- 44.7 Where the Licensee has created or relies on any IPRs as part of its carrying on of the Permitted Business, it must, upon the expiry or revocation of this Licence, grant a royalty-free, payment-free, and non-exclusive licence for their use to the Successor Licensee on terms ensuring that such licence may be novated in perpetuity.
- 44.8 The Licensee may not be party to any External Service Provider Contract under or pursuant to Condition 16 that does not expressly provide for the Licensee to license any successor to the External Service Provider to use such IPRs arising from that contract as are necessary to enable the successor to fulfil all the requirements of its own External Service Provider Contract so far as concerns the effective provision of Relevant Service Capability to the Licensee.

Part D: Intellectual Property Rights arising under the SEC

- 44.9 This Part D applies in relation to any and all documents, materials, reports, charts and tables, diagrams, specifications, and other works, ideas, inventions, designs, or proposals (in whatever form) arising out of or in connection with the designation, administration, operation, and development of the Smart Energy Code under or pursuant to Condition 22 (The Smart Energy Code) and Condition 23 (Change control for the Smart Energy Code), including any and all associated drafts and working papers (collectively, “the SEC Materials”).
- 44.10 By virtue of this Part D, and subject to paragraph 44.11, all IPRs subsisting in the SEC Materials, and the whole of the title to the SEC Materials:
- (a) will be owned by SECCo Ltd (being the company established pursuant to paragraph 25(c) of Condition 22 (The Smart Energy Code));
 - (b) will vest in SECCo Ltd upon their creation or acquisition; and
 - (c) may be authorised by the SEC Panel to be licensed or sub-licensed for any use that does not hinder, delay, or frustrate the continuing achievement of the General SEC Objectives.
- 44.11 Paragraph 44.10 does not apply to any IPRs subsisting in the SEC Materials (as defined in paragraph 44.9) that have been created by or arise from or that are otherwise associated with:

- (a) the activities undertaken by the Licensee for the purpose of carrying on the Authorised Business in accordance with this Licence; or
- (b) the operation, by an External Service Provider, of an External Service Provider Contract in accordance with its provisions.

Part E: Interpretation

44.12 For the purposes of this condition only:

Intellectual Property Rights means:

- (a) patents, trade marks, trade names, service marks, rights in designs, copyright (including rights in computer software), logos, rights in internet domain names, and moral rights, database rights, rights in know-how, and other intellectual property rights,
- (b) in each case, whether registered or unregistered or subject to an application for registration,

and includes any and all rights or forms of protection having equivalent or similar effect anywhere in the world.

SEC Materials has the meaning given to that term in paragraph 44.9.

**PART 4 OF THIS LICENCE :
SCHEDULES 1 TO 3**

SCHEDULES TO THIS LICENCE

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Schedule 1. Details of Fundamental Service Capability

Introduction

- 1.1 Condition 16 of this Licence (Procurement of Relevant Service Capability) provides that Fundamental Service Capability consists of the Relevant Service Capability that is or has been provided under Legacy Procurement Contracts as defined, identified, and described in this Schedule 1.
- 1.2 Part A below defines a Legacy Procurement Contract, while Part B below identifies each such contract in force under this Licence and provides brief particulars as to its subject matter, effective date, and purpose.

Part A: Definition of a Legacy Procurement Contract

- 1.3 A Legacy Procurement Contract is any contractual arrangement (in whatever form and however described) to which the Licensee is, or is to become, a party that relates to the procurement of Relevant Service Capability and that:
 - (a) has been assigned, transferred, or novated by the Secretary of State to the Licensee on or before the Licence Commencement Date, or has been in any other way inherited by the Licensee from the Secretary of State on or before that date (including under any requirement for the Licensee to enter into the arrangement pursuant to the grant of this Licence in accordance with the Licence Application Process); or
 - (b) has been assigned, transferred, or novated by any Energy Supplier to the Licensee at any time pursuant to a Smart Metering Transition Scheme under Condition 13 of this Licence (Arrangements for transition to SMA Completion) (“an Energy Supplier Communications Contract”).

Part B: Particulars of Legacy Procurement Contracts

- 1.4 The following are the Legacy Procurement Contracts in force under this Licence:
 - (1)
 - (2)
 - (3)
 - (4)
 - (5)
 - (6)
- 1.5 Subject to any restriction arising by virtue of paragraph 1.6, the Licensee must publish and maintain on its Website every Legacy Procurement Contract and every other External Service Provider Contract to which it is a party.
- 1.6 The Licensee’s obligation under paragraph 1.5 is subject in the case of each of the contracts to which it refers to the Licensee’s continuing compliance with such of the terms of that contract as may apply with respect to the maintenance of commercial confidentiality.

- 1.7 But the restriction imposed by paragraph 1.6 does not apply with respect to any matter withheld from publication by the Licensee by virtue of that restriction that nevertheless enters into the public domain by any means other than as a consequence of unauthorised publication by the Licensee, or by any Affiliate or Related Undertaking of the Licensee (or by any person to whom that matter has been lawfully disclosed by the Licensee or by any Affiliate or Related Undertaking of the Licensee).

Part C: Interpretation

- 1.8 References in this Licence to Legacy Procurement Contracts are references to each such contract as from time to time amended, supplemented, revised, or replaced, and include each such contract as novated to a Successor Licensee in the event of the expiry or any revocation of this Licence.

- 1.3 Words importing the plural include the singular, and vice versa, and references to one gender include all genders.
- 1.4 References to clauses in this Deed are references to the clauses of this Deed.
- 1.5 Any reference to a company includes a reference to any permitted successor in business or any assignee of that company.
- 1.6 Any reference to an enactment is a reference to it as it may have been, or may from time to time be, amended, modified, consolidated, or re-enacted.
- 1.7 Condition 2 of Party A’s Licence, which sets out rules of interpretation for that Licence, is relevant to such extent as may be applicable.

Clause 2: Novation of the Contract

- 2.1 In consideration of the mutual undertakings contained in this Deed, and with effect from 1 April 2025 (“the Effective Date”):
 - (a) Party A ceases to be a party to the Contract and Party C becomes a party to it in place of Party A;
 - (b) Party C undertakes to Party B to accept, observe, perform, and discharge all of the obligations and liabilities of Party A arising under the Contract in substitution for Party A;
 - (c) Party B agrees to the substitution of Party C in place of Party A and agrees that Party C may exercise and enjoy all of the rights of Party A arising under the Contract in substitution for Party A as if Party C had at all times been a party to the Contract; and
 - (d) Party B releases and discharges Party A from all claims, demands and liabilities, and obligations under the Contract (however arising and whether arising on, before, or after the Effective Date) and accepts the liabilities and obligations to it of Party C in place of Party A.

Clause 3: Further assurance under this Deed

- 3.1 Each of the parties agrees to perform (or procure the performance of) all further acts and things, and to execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably desirable in order to implement and give effect to this Deed.

Clause 4: Supremacy of the Successor Licence

- 4.1 Each of Party A and Party C agrees with the other that, in the event of any inconsistency between any of the terms of this Deed and any of the provisions of the Successor Licence, those provisions will prevail as between them but without prejudice to Party B’s rights under this Deed and the Contract.

Clause 5: Protection of confidential information

- 5.1 Each of the parties, both during the arrangements contemplated by this Deed and after such arrangements have terminated, will:

- (a) keep confidential the terms of this Deed and all information, whether in written or any other form, that has been disclosed to it by or on behalf of any other party pursuant to its respective obligations under this Deed and that by its nature ought to be regarded as confidential (including any business information in respect of that other party that is not directly applicable or relevant to any of the transactions contemplated by this Deed); and
- (b) procure that its officers, employees, and representatives will keep and treat as confidential all such documents and information.

5.2 Clause 5.1 does not apply to information:

- (a) that after the date of this Deed becomes published or otherwise available to the public, except in consequence of a wilful or negligent act or omission of a party to this Deed in breach of the obligations set out in Clause 5.1; or
- (b) that is required to be disclosed by any applicable law or by any recognised stock exchange or governmental or other regulatory or supervisory body or authority of competent jurisdiction to whose rules (whether or not having the force of law) the party making the disclosure is subject; or
- (c) that a party is required to disclose to a third party in order to perform any of its obligations under or pursuant to this Deed; or
- (d) that a party is required to disclose to the Authority or the Secretary of State in order to perform its obligations under the Licence or (as the case may be) the Successor Licence.

5.3 The provisions of this Clause 5 survive any termination of this Deed.

Clause 6: Exclusion of Third Party Rights

- 6.1 A person who is not a party to this Deed is not intended to have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

Clause 7: Provisions to be treated as severable

- 7.1 Every provision contained in this Deed is severable and distinct from every other such provision, and if at any time one or more of such provisions is found to be or becomes invalid, illegal, or unenforceable, the validity, illegality, or enforceability of the remaining such provisions will not in any way be affected.

Clause 8: Entire agreement and understanding

- 8.1 This Deed sets out the entire agreement and understanding between the parties with respect to the subject matter of this Deed.
- 8.2 But this Clause 8 does not exclude any liability for, or any remedy available in respect of, fraudulent misrepresentation by either party.

Clause 9: Signature by way of counterparts

- 9.1 This Deed may be executed in any number of counterparts, and this will have the same effect as if the signatures on the counterparts were on a single copy of this Deed.

Clause 10: Governing law and jurisdiction

- 10.1 This Deed is governed by and is to be construed in accordance with the provisions of English law.
- 10.2 The parties agree that the English courts will have exclusive jurisdiction in relation to any legal action or proceedings arising out of or in connection with this Deed.

EXECUTION

The parties have shown their acceptance of the terms of this Deed by executing it below as a deed on the date set out at the head of this Deed:

SIGNED by)
)
duly authorised for and on behalf)
of Party A)

SIGNED by)
)
duly authorised for and on behalf)
of Party B)

SIGNED by)
)
duly authorised for and on behalf)
of Party C)

Schedule 3. Matters associated with the grant of this Licence

Introduction

3.1 The purpose of this schedule is to ensure that certain commitments that were made by the Licensee, and accepted by the Secretary of State, during or in connection with the Licence Application Process are recorded under this Licence in a form that is clear, unambiguous, and unqualified for purposes connected with the interpretation of this Licence and its application to the Licensee.

Part A: Statements of Intent made by the Licensee

3.2 Before this Licence came into force, the Licensee made certain commitments to the Secretary of State (“the Statements of Intent”) during or in connection with the Licence Application Process about the Licensee’s intentions with respect to certain matters relating to the exercise of its functions under or pursuant to this Licence.

3.3 The Licensee acknowledges that the Statements of Intent were specifically addressed to the Secretary of State and were relied upon by him when determining the grant of this Licence to the Licensee.

3.4 The Licensee now further acknowledges that, by virtue of their incorporation into this Schedule 3, each of the Statements of Intent as restated in Part B below is to be treated for all the purposes of this Licence as a Relevant Condition.

Part B: Restatement of the Statements of Intent

3.5 The Statements of Intent now restated in this Part B are as follows:

- (1)
- (2)
- (3)
- (4)
- (5)

Part C: Interpretation

3.6 For the purposes of this schedule only:

Relevant Condition has, for the purposes of enforcement, the meaning given to that term in section 28(8) of the 1986 Act and section 25(8) of the 1989 Act.

Statements of Intent has the meaning given to that term in paragraph 3.2.

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