

Electricity Market Reform (EMR)
Draft modifications to the Transmission Licence
of National Grid Electricity Transmission plc (NGET)

Special Condition 2N: Electricity Market Reform Functions

Introduction

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

Part A: Objectives

2N.2 In performing the EMR Functions the licensee shall act in the manner best calculated to secure:

- (a) the efficient and effective carrying on of the EMR Functions;
- (b) compliance with the principles appearing to it to represent best regulatory practice; and
- (c) that none of the licensee's businesses, nor any business of any Affiliate or Related Undertaking of the licensee, obtains an unfair commercial advantage as a result of the licensee carrying out the EMR Functions, including through any arrangements the object or effect of which is that the exercise of the EMR Functions is unduly influenced in favour of those businesses.

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

2N.3 Without prejudice to the licensee's obligations under Standard Condition B5 (Prohibition of Cross-subsidies), Standard Condition B6 (Restriction on Activity and Financial Ring Fencing) and Special Condition 2C (Prohibited Activities and Conduct of the Transmission Business), the licensee shall at all times conduct its business including carrying out the EMR Functions separately from the Relevant Other Competitive Businesses.

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

- (a) the Relevant Other Competitive Businesses are conducted entirely by corporate entities which are separate from that of the licensee and the licensee does not, directly or indirectly, hold any shares or other investments:
 - (i) in any of the Relevant Other Competitive Businesses;
 - (ii) in any corporate entity which conducts any of the Relevant Other Competitive Businesses or which exercises or otherwise has control of any of the Relevant Other Competitive Businesses or any of the assets

used in or dedicated to any of the Relevant Other Competitive Businesses; or

- (iii) which give the holder an entitlement to vote at the general meetings of any of the corporate entities which conduct the Relevant Other Competitive Business or in any company which exercises or otherwise has control of any of the Relevant Other Competitive Businesses;
- (b) the licensee's accounts are maintained and to the extent required by law audited and reported separately from those of the Relevant Other Competitive Businesses and those of any corporate entity which conducts Relevant Other Competitive Business;
- (c) persons engaged in, or in respect of, the management or operation (to and including the members of the senior management team reporting to the board of directors) of the licensee are not simultaneously engaged either full or part time in or by any of the Relevant Other Competitive Businesses or any corporate entity which conducts Relevant Other Competitive Business, other than in the provision of Shared Services;
- (d) arrangements are in place which are effective in restricting access by persons engaged in, or engaged in respect of, the management or operation of any of the Relevant Other Competitive Businesses to the premises or parts of premises (excluding communal areas such as reception areas, meeting rooms and bathroom and kitchen/dining facilities) which are occupied by persons engaged in, or in respect of, the management or operation of the licensee; and
- (e) the licensee establishes and maintains in force a code of conduct governing the disclosure of Confidential EMR Information by persons carrying out EMR Functions.

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

- 2N.5 The licensee shall by no later than [●] establish an EMR Data Handling Team and shall thereafter operate, supervise and manage the EMR Data Handling Team in a manner best calculated to secure compliance with this condition.
- 2N.6 The EMR Data Handling Team shall, in presenting Confidential EMR Delivery Plan Information to a person who is not a member of the EMR Data Handling Team, use its best endeavours to ensure that it is not possible for such person to identify the generating station or unit, or the owner or operator thereof, which is the subject of that Confidential EMR Delivery Plan Information. For the avoidance of doubt nothing in this condition shall prevent the EMR Data Handling Team from simultaneously carrying out EMR Analytical Functions.
- 2N.7 The licensee shall:
- (a) require each member of the EMR Data Handling Team to

- (i) sign a non-disclosure agreement in a form agreed with the Authority and annexed to the EMR compliance statement pursuant to paragraph 2N.19(b)(ii); and
 - (ii) comply with a policy set out in the EMR compliance statement governing the transfer of employees into and out of the carrying out of the EMR Functions; and
 - (b) ensure that the EMR Data Handling team is supervised and managed by a manager responsible for the control of the Confidential EMR Delivery Plan Information disclosed to persons carrying out the EMR Data Handling Functions, and for ensuring that the EMR Data Handling Team members comply with the obligations in paragraph 2N.6.
- 2N.8 The licensee shall by no later than [●] establish an EMR Administrative Team and shall thereafter operate, supervise and manage the EMR Administrative Team in a manner best calculated to secure compliance with this condition.
- 2N.9 The EMR Administrative Team shall be responsible for carrying out the EMR Administrative Functions and shall, in presenting Confidential EMR Administrative Information to a person who is not a member of the EMR Administrative Team, its best endeavours to ensure that it is not possible for such person to identify the generating station or unit, or the owner or operator thereof, which is the subject of that Confidential EMR Administrative Information.
- 2N.10 The licensee shall ensure that each member of the EMR Administrative Team shall:
- (a) sign a non-disclosure agreement in a form agreed with the Authority and annexed to the EMR compliance statement pursuant to paragraph 2N.19(c)(ii);
 - (b) not be, while a member of the EMR Administrative Team, simultaneously engaged in, or in respect of, any activity of the licensee other than EMR Functions; and
 - (c) assigned to the EMR Administrative Team for a minimum of [three] months per posting, no posting to be repeated within a period of [one year],
- other than in exceptional circumstances, as determined by the licensee with the Authority's prior consent.
- 2N.11 The EMR Administrative Team shall be accommodated in premises or parts of premises where arrangements are in place which are effective in restricting access by persons engaged in, or engaged in respect of, the management or operation of the Transmission Business, or any Affiliate, Related Undertaking or business of the licensee other than the EMR Functions (excluding communal areas such as reception areas, meeting rooms and bathroom and kitchen/dining facilities).

Part D: Restrictions on the use of Confidential EMR Information

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

- (a) treat and keep all Confidential EMR Information as confidential;
- (b) ensure that any Confidential EMR Information is not directly or indirectly disclosed to any other person other than as provided in paragraph 2N.13;
- (c) not use any Confidential EMR Information for any purpose (including, but not limited to, any competitive or commercial purpose) other than that of performing the EMR Functions; and
- (d) without prejudice to the generality of (c) above, ensure that Confidential EMR Information is not disclosed to or solicited or used by the Transmission Business, any other business of the licensee or any Relevant Other Competitive Businesses.

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

- (a) Confidential EMR Information:
 - (i) which is required by, or by virtue of, any requirement of law or by, or by virtue of, the rules of any governmental or other regulatory authority having jurisdiction over the licensee;
 - (ii) which is authorised in advance in writing by the Authority or the person to whom such Confidential EMR Information relates; or
 - (iii) to such other bodies or persons as may be required to allow them to perform functions conferred under the Energy Act, provided that such disclosure is made only to the extent necessary and is conducted in accordance with the [applicable rules];
- (b) Confidential EMR Delivery Plan Information to or by the EMR Data Handling Team;
- (c) Confidential EMR Administrative Information to or by the EMR Administrative Team;
- (d) Confidential EMR Information other than Confidential EMR Delivery Plan Information or Confidential EMR Administrative Information, to or by employees, agents, contractors and advisers of or to the licensee other than persons referred to in paragraph 2N.19(a)(vi); or
- (e) Confidential EMR Information to persons engaged in, or in respect of, the provision of Shared Services, on a need to know basis, to allow them to carry out their respective functions;

PROVIDED THAT:

- (A) in each case, such disclosure is made for the sole purpose of enabling the licensee to perform its EMR Functions; and
- (B) in the case of:
 - (I) disclosure of Confidential EMR Delivery Plan Information by the EMR Data Handling Team; or
 - (II) disclosure of Confidential EMR Administrative Information by the EMR Administrative Team,

such disclosure is made after appropriate measures have been taken pursuant to paragraph 2N.6 or 2N.9 (as appropriate) to protect from disclosure the source or subject of the Confidential EMR Information.

2N.14 [In case of reasonable doubt as to whether Information constitutes:

- (a) Information within the meaning of the exclusion in sub-paragraph (c) of the definition of Confidential EMR Information; or
- (b) Information within the meaning of sub-paragraph (b) of the definition of Confidential EMR Delivery Plan Information,

the licensee may seek a direction from the Authority as to whether the information in question does fall within the scope of either such definition.]

Part E: EMR Compliance Statement

- 2N.15 The licensee shall, unless the Authority otherwise consents or directs, have in place by no later than [30] days after this condition comes into effect a statement (the “**EMR compliance statement**”) approved by the Authority, describing the practices, procedures and systems by which the licensee will secure compliance with the EMR Relevant Duties.
- 2N.16 If the Authority does not indicate that it does not approve the EMR compliance statement or any revision of it within 60 days after receipt of that statement, the EMR compliance statement submitted to the Authority shall be deemed to be approved by the Authority.
- 2N.17 The licensee shall, at least every 12 months or at such other interval as the Authority may agree, review the description set out in the EMR compliance statement prepared in accordance with paragraph 2N.15 and shall revise such EMR compliance statement as necessary to ensure that the description set out in it continues to be complete and accurate in all material respects. The licensee shall alter the form of the EMR compliance statement only with the approval of the Authority.
- 2N.18 The licensee shall send a copy of the EMR compliance statement prepared in accordance with paragraph 2N.15, and each revision of it made in accordance with paragraph 2N.17, to the Authority. The licensee shall publish a copy of such EMR compliance statement and revision of it on its website.

2N.19 The EMR compliance statement published under paragraph 2N.15 or revised under paragraph 2N.17 shall in particular (but without prejudice to the generality of paragraphs 2N.15 and 2N.17) set out how the licensee will ensure the confidentiality of:

- (a) Confidential EMR Information by means which shall include, but need not be limited to:
 - (i) compliance with the requirements set out in paragraph 2N.12;
 - (ii) requiring adherence to the code of conduct referred to in paragraph 2N.4(e) by those subject to it to form part of the licensee's performance assessment and disciplinary policies;
 - (iii) establishing and maintaining a training policy designed to ensure that employees, agents, contractors and advisers receive such initial and continuing training as is necessary to enable the licensee to comply with the requirements of this condition;
 - (iv) ensuring that the persons performing the EMR Functions do not share any communication or electronic networks and systems with any Affiliate, Related Undertaking or business of the licensee, unless measures are in place to prevent employees of those Affiliates, Related Undertakings or businesses having access to those networks and systems used by persons performing the EMR Functions, provided that this provision shall not preclude any persons carrying out EMR Functions from accessing a shared intranet system if Confidential EMR Information is not accessible by any Affiliate, Related Undertaking or business of the licensee by means of that system;
 - (v) ensuring that the persons performing the EMR Data Handling Functions and the EMR Administrative Functions do not share any communication or electronic networks and systems as between them, unless measures are in place to prevent persons performing each of those EMR Functions from having access to the networks and systems used by the persons performing the other EMR Functions, provided that this provision shall not preclude any persons performing EMR Data Handling Functions or EMR Administrative Functions from accessing a shared intranet system if Confidential EMR Delivery Plan Information or Confidential EMR Administrative Information is not accessible by persons other than the members of the EMR Data Handling Team or the EMR Administrative Team, as applicable, by means of that system;
 - (vi) identifying the persons to whom Confidential EMR Information should never be disclosed by reference to the functions of those persons; and
 - (vii) maintaining a list of persons to whom Confidential EMR Information has been disclosed or who have access to Confidential EMR Information (whether on a regular or an occasional basis),

and the licensee shall provide a copy of the list maintained under subparagraph (vii) above, on request, to the Authority;

- (b) Confidential EMR Delivery Plan Information by means which shall include, but need not be limited to:
 - (i) compliance with the requirements set out in paragraph 2N.12;
 - (ii) establishing, maintaining and where appropriate enforcing the non-disclosure agreement referred to in 2N.7(a)(i);
 - (iii) establishing and maintaining appropriate systems for the recording, processing and storage of Confidential EMR Delivery Plan Information;
 - (iv) establishing and maintaining information system security policies; and
 - (v) establishing and maintaining document management and security policies; and

- (c) Confidential EMR Administrative Information by means which shall include, but need not be limited to:
 - (i) compliance with the requirements set out in paragraph 2N.12;
 - (ii) establishing, maintaining and where appropriate enforcing the non-disclosure agreement referred to in 2N.10(a);
 - (iii) maintaining the EMR Administrative Team in accordance with paragraphs 2N.10(b), 2N.10(c) and 2N.11;
 - (iv) introducing appropriate systems for the recording, processing and storage of Confidential EMR Administrative Information;
 - (v) establishing and maintaining information system security policies; and
 - (vi) establishing and maintaining document management and security policies.

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

- 2N.20 The licensee shall ensure, following consultation with the Authority, that a competent person (who shall be known as the “EMR compliance officer”) shall be appointed for the purpose of facilitating compliance by the licensee with the EMR Relevant Duties.
- 2N.21 The licensee shall appoint a single responsible director for the purpose of ensuring the performance of, and overseeing the duties and tasks of, the EMR compliance officer set out in paragraph 2N.25 and the licensee’s compliance with its EMR Relevant Duties. That director shall report to the board of directors of the licensee.
- 2N.22 The licensee shall procure that the EMR compliance officer:

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

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

2N.23 The licensee shall ensure that the EMR compliance officer is not engaged in the management or operation of the Transmission Business or any Relevant Other Competitive Businesses.

2N.24 The licensee shall make available to the EMR compliance officer details of any complaint or representation received by it from any person in respect of a matter arising under or by virtue of the EMR Relevant Duties.

2N.25 The duties and tasks of the EMR compliance officer shall include:

- (a) providing advice and information to the licensee (including individual directors of the licensee) and the single responsible director appointed under paragraph 2N.21 for the purpose of ensuring the licensee's compliance with the EMR Relevant Duties;
- (b) monitoring the effectiveness of the practices, procedures and systems adopted by the licensee in accordance with the EMR compliance statement referred to at paragraph 2N.15;
- (c) advising whether, to the extent that the implementation of such practices, procedures and systems require the co-operation of any other person, they are designed so as reasonably to secure the required co-operation;
- (d) investigating any complaint or representation made available to him in accordance with paragraph 2N.24;
- (e) recommending and advising upon the remedial action which any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee (including individual directors of the licensee) and the single responsible director appointed under paragraph 2N.21, for the purpose of ensuring implementation of:
 - (i) the practices, procedures and systems adopted in accordance with the EMR compliance statement referred to at paragraph 2N.19; and
 - (ii) any remedial action recommended in accordance with sub-paragraph (e); and
- (g) reporting:

- (i) within [30] days of the licence modification becoming effective; and
- (ii) thereafter annually,

to the single responsible director appointed under paragraph 2N.21, as to his activities in respect of the EMR Relevant Duties during the period covered by the report, including the fulfilment of the other duties and tasks assigned to him by the licensee.

2N.26 As soon as is reasonably practicable and in any event no later than [90] days following the initial report and each subsequent annual report of the EMR compliance officer, the licensee shall produce a report in a form approved by the Authority:

- (a) as to its compliance with the EMR Relevant Duties during the period since the last report; and
- (b) as to its implementation of the practices, procedures and systems adopted in accordance with the EMR compliance statement referred to at paragraph 2N.19.

2N.27 The report produced in accordance with paragraph 2N.26 shall in particular:

- (a) detail the activities of the EMR compliance officer during the relevant period covered by the report;
- (b) refer to such other matters as are or may be appropriate in relation to the implementation of the practices, procedures and systems adopted in accordance with the EMR compliance statement referred to at paragraph 2N.15;
- (c) set out the details of any investigations conducted by the EMR compliance officer, including:
 - (i) the number, type and source of the complaints or representations on which such investigations were based;
 - (ii) the outcome of such investigations; and
 - (iii) any remedial action taken by the licensee following such investigations;
- (d) be accompanied by a compliance certificate in a form approved by the Authority, approved by a resolution of the board of directors of the licensee and signed in good faith by the single responsible director pursuant to that resolution, on the licensee's compliance with the EMR Relevant Duties and certifying that, to the best of that director's knowledge, information and belief having made due and careful enquiry, the report of the EMR compliance officer fairly represents the licensee's compliance with the EMR Relevant Duties.

2N.28 The licensee shall, as soon as reasonably practicable and in any event no later than [14] days after the compliance certificate is approved by a resolution of the board of directors of the licensee as required by paragraph 2N.27(d), submit to the Authority a

copy of the report and compliance certificate produced in accordance with paragraph 2N.27, and shall publish copies of each of them on its website.

2N.29 The licensee shall appoint an Independent Examiner for the purpose of providing a written report to the Authority:

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

2N.30 The Independent Examiner's report shall be provided to the Authority within [three] working days of the licensee receiving it from the Independent Examiner.

2N.31 The Independent Examiner's report shall be commissioned at such intervals as the Authority shall approve.

Part G: General

2N.32 Should the licensee cease to perform the EMR Functions:

- (a) paragraphs 2N.12 to 2N.14 shall continue in force; and
- (b) the other obligations under this condition shall remain in force for such time and on such terms as the Authority shall determine.

Part H: Definitions

2N.33 In this condition:

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

- (a) all Information that is in or has entered the public domain otherwise than as a direct or indirect consequence of any breach of this licence;
- (b) all Information which the licensee can demonstrate was lawfully in its written records prior to the date of disclosure of the same by the owner of the Confidential EMR Information or which it received from a third party independently entitled to disclose it; and
- (c) all Information properly received in the usual course of the licensee's activities pursuant to paragraphs (a) to (c) (inclusive) of the definition of Permitted Purpose.

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

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

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

in each case, where such Information is:

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

“EMR Administrative Functions” means any administrative EMR Functions conferred on the licensee under the Energy Act.

“EMR Administrative Team” means the team established or to be established by the licensee in accordance with paragraph 2N.8.

“EMR Analytical Functions” means any analytical EMR Functions conferred on the licensee under the Energy Act.

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

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

“EMR Functions” has the same meaning as the term “EMR functions” in the Energy Act.

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

“Energy Act” means the [Energy Act 2013¹].

¹ This assumes that the Energy Bill 2013-14 will be enacted in substantially its form as at 31 July 2013.

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

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

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

“Relevant Other Competitive Business” means the business of:

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

“Shared Services” means legal, regulatory, company secretarial, human resources, internal audit, taxation, treasury, finance and accounting, insurance, information systems, investor relations, facilities management and health and safety services.