



Department for
Energy Security
& Net Zero

ofgem

Making a positive difference
for energy consumers

Selected Code Manager Standard Licence Conditions

Annex A to the Energy Code Reform:
Consultation on Code Manager Licensing
and Secondary Legislation

March 2024



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Note: In the proposed licence conditions below we have included some text in square brackets. This is to highlight areas where we intend to carry out further work to determine the licence text. It either highlights where there are two options for a particular piece of drafting, or it is a placeholder until we develop the drafting (including in light of responses to this consultation).

Interpretation

Definitions and Interpretation

Note: these definitions will appear either in the overarching definitions or in individual conditions, but are collated here for ease of reference.

Annual Budget: means a document, prepared and published by the Licensee no later than 31 March in the preceding Financial Year, that contains the information required in Part D of Condition 1 (Annual Budget of the Licensee), including an estimate of the costs and expenses that it anticipates will be incurred, and the revenue accrued, in the course of carrying out its Licensed Activity during the forthcoming Financial Year.

Arm's length basis: a transaction by the Licensee is on an arm's length basis for the purposes of Condition 11 (Indebtedness and Transfer of Funds) if it is on normal commercial terms and between two or more unrelated and unaffiliated parties agreeing to do business, acting independently and in their self-interest.

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.

Authority: is the Gas and Electricity Markets Authority.

Code Manager Cost Recovery Methodology: are the requirements set out in section [X] of the Relevant Code.

Code Manager Cost Recovery Statement: has the meaning given in Part A of Condition 3 (Code Manager Cost Recovery Statement).

Code Manager Licence: is a licence granted pursuant to clause 6 of the Electricity Act 1989 and clause 7AC of the Gas Act 1986.

Code Manager Performance Report: means a report, prepared by the Licensee, which contains the information specified in Part C of Condition 4 (Performance Incentives).

Code Manager Performance Indicator: has the meaning given to that term in Part A of Condition 4 (Performance Incentives).

Code Modification Arrangements: [will be defined in forthcoming sections of the 'Code maintenance and modification condition', to be consulted on in due course].

Core Charge(s): means charges issued by the Licensee for the performance of Relevant Code Manager Activities.

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 acceleration by reason of a default (however such default may be described or defined) by any person other than the Licensee.

Draft Annual Budget: means a document, prepared and circulated for comment by the Licensee no later than 1 November in the preceding Financial Year, which contains the

information specified in Part A of Condition 1 (Annual Budget of the Licensee), including an estimate of the costs and expenses that it anticipates will be incurred, and the revenue accrued, in the course of carrying out its Licensed Activity during the forthcoming Financial Year.

Energy: means either or both of gas (as supplied to premises under or pursuant to The Gas Act 1986) and electricity (as supplied to premises under or pursuant to the Electricity Act 1989).

Energy Consumer: means a person who is supplied or requires to be supplied with Energy at any premises in Great Britain.

External Service Provider: means any person from whom Service Capability is procured by the Licensee in accordance with [forthcoming condition [X] (Procurement of Service Capability)] for the purpose of supporting the performance of Relevant Code Manager Activities under or pursuant to the Relevant Code.

Financial Year: means a 12-month period beginning with 1st April and ending with the following 31st March.

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.

Licence: means this Code Manager Licence.

Licensed Activity/ies: are all activities carried out by the Licensee as required by [forthcoming licence Condition [X] (Relevant Business of the Licensee)].

Licence commencement date: means the date on which this Licence took effect.

Licensee: is the person to whom this Licence was granted.

Notice: means prior notice given directly to a person in Writing (and includes a notification).

Optional services: means services provided by the Licensee that:

- a) are not provided by way of carrying out the Relevant Code Manager Activity; and
- b) have been [authorised or permitted] in accordance with [forthcoming condition on authorisation of Optional Services]

Overspend: means, for a given Financial Year, the difference between the total actual costs and expenses incurred and the total costs and expenses forecast to be incurred in the Annual Budget and Work Plan, where the forecast costs and expenses are less than the actual costs and expenses.

Performance Measurement Period: means a period in each year beginning with 1st April and ending with the following 31st March, in which Code Manager Performance Indicators are to be measured in accordance with Condition 4 (Performance Incentives).

Permitted Purpose: means for the purpose of carrying out any or all of:

- a) the Licensed Activity of the Licensee;

- b) any Optional Services;
- c) any business or activity to which the Authority has given its consent in writing in accordance with [forthcoming clause(s) on authorisation of other business activities].

Preceding Financial Year: means, for the purposes of Condition 1 (Annual Budget of the Licensee), the Financial Year immediately preceding the Financial Year to which the Draft Annual Budget, the Annual Budget and the Work Plan prepared in accordance with Condition 1 relate.

Principal Energy Legislation: means:

- a) the Gas Act 1986;
- b) the Electricity Act 1989;
- c) the Utilities Act 2000;
- d) the Energy Act 2004;
- e) the Electricity and Gas Appeals (Designation and Exclusion) Order 2014;
- f) the Energy Act 2013;
- g) the Energy Act 2023; and
- h) any other applicable law or legislative provision.

Recoverable Costs: means the internal costs and external costs economically and efficiently incurred in the relevant Financial Year in the course of performing Relevant Code Manager Activities, where:

- a) External costs means in relation to each Financial Year the actual amount of the costs that are economically and efficiently incurred by the Licensee in procuring Service Capability for the purposes of the performance of Relevant Code Manager Activities under or pursuant to the Relevant Code during that period; and
- b) Internal costs means in relation to each Financial Year the sum of the costs, other than those falling under the definition of External costs in sub-paragraph (a) above, that are economically and efficiently incurred by the Licensee for the purposes of the performance of Relevant Code Manager Activities under or pursuant to the Relevant Code during that period.

This may include a reasonable contingency amount (to be returned or carried forward as Underspend to the extent not actually spent) to ensure budgets are stable and to cover unexpected events.

Regulatory Year: means a 12-month period beginning with 1st April and ending with the following 31st March.

Related Undertaking: means, in relation to any person, any undertaking in which that person has a participating interest as defined in section 421A of the Financial Services and Markets Act 2000.

Relevant Code: is the code(s) specified in [forthcoming Special Condition [1]] of this licence.

Relevant Code Manager Activities: are all activities carried out by the Licensee as required by [forthcoming licence Condition [X] (Relevant Business of the Licensee)], except for any activities the code manager carries out and funds through optional charges issued in accordance with [forthcoming condition on authorisation of Optional Services].

Relevant Code Objectives: the objectives set out and defined in [forthcoming Special Condition [1]].

Relevant Party/ies: is any person that is required by the Relevant Code to pay Core Charges.

Restricted Transaction: means the transactions and commitments described in Part B, Part C and Part D of Condition 11 (Indebtedness and Transfer of Funds).

Service Capability: means capability procured in accordance with [forthcoming Condition [X] (Procurement of Service Capability)] for the purposes of supporting the provision of Relevant Code Manager Activities under or pursuant to the relevant code.

Small Shareholding: [means Shares or investments that do not exceed £x in value, or y% in shareholding, and do not include appointment rights or veto rights].

Special Position: means the Licensee's position as the person licensed to carry out the Licensed Activity.

Stakeholder Advisory Forum: [to be developed].

Ultimate Controller: means any of the following:

- a) a holding company of the Licensee that is not itself a subsidiary of another company; or
- b) any person who (whether alone or with any person or persons connected with them) 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:
 - i) rights under contractual arrangements (except for the Relevant Code) to which they are a party or of which they are 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 them or of which they are a beneficiary.
- c) For the purposes of sub-paragraph b), a person is connected with another person if they are a party to any arrangement regarding the exercise of any such rights as are described or referred to in that sub-paragraph;
- d) Sub-paragraph b) does not include any director or employee of a corporate body in their capacity as such.

Underspend: means, for a given Financial Year, the difference between the total actual costs and expenses incurred and the total costs and expenses forecast to be incurred in the Annual Budget and Work Plan, where the forecast costs and expenses are greater than the actual costs and expenses incurred.

Website: means a free to access 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.

Work Plan: means a document, prepared and published by the Licensee no later than 1 November in the preceding Financial Year, that contains the information specified in paragraph 1.3 of Condition 1 (Annual Budget of the Licensee).

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 32 of the Communications Act 2003.

Code Manager Budgets

1. Annual Budget of the Licensee

Introduction

1.1 The purpose of this condition is to establish the Licensee's obligations relating to the preparation and circulation of the Annual Budget and Work Plan, which are required to set out an estimate of the costs and expenses that it anticipates will be incurred, and the net revenue accrued, in the course of carrying out its Licensed Activity during the forthcoming Financial Year.

Part A: Content of Draft Annual Budget and Work Plan

1.2 For the forthcoming Financial Year, the code manager must, no later than 1 November in the Preceding Financial Year, prepare a Draft Annual Budget, setting out the Licensee's reasonable and justifiable estimate of:

- a) the total Recoverable Costs that it anticipates will be incurred during the forthcoming Financial Year;
- b) the total net revenue it anticipates will be accrued from the provision of Optional Services during the forthcoming Financial Year; and
- c) an estimate of the reduction in the total Recoverable Costs to be recovered from Relevant Parties during the forthcoming Financial Year as a result of:
 - i) any outstanding Underspend that it anticipates will remain at the end of the Preceding Financial Year; and/or
 - ii) any revenue accrued from the provision of Optional Services.

1.3 Each Draft Annual Budget must be accompanied by a detailed Work Plan showing:

- a) all the activities and projects to which the relevant costs, expenses and revenues relate, including those relating to the provision of Optional Services; and
- b) the Licensee's reasonable and justifiable estimate of the Recoverable Costs relating to each of those activities and projects.

1.4 The total of the Recoverable Costs set out in the Work Plan must equal the total value of the estimated Recoverable Costs set out in the Draft Annual Budget.

- 1.5 In setting out the Licensee's reasonable and justifiable estimate of the costs and expenses that it anticipates will be incurred during the forthcoming Financial Year, the Licensee must present in the Work Plan those costs and expenses in a comprehensive, accurate, coherent and transparent manner. This includes any External Costs relating to service capability procured for the purposes of the performance of Relevant Code Manager Activities.

Part B: Consulting on the Draft Annual Budget and Work Plan

- 1.6 Ahead of the start of each Financial Year and in any event no later than by 1 November in the Preceding Financial Year, the Licensee must:
- a) provide a copy of the Draft Annual Budget and Work Plan to all parties to the Relevant Code, as well as Citizens Advice and Consumer Scotland, and invite comments on them;
 - b) provide a copy of the Draft Annual Budget and Work Plan to the relevant Stakeholder Advisory Forum, and invite comments on them from the Stakeholder Advisory Forum; and
 - c) provide a copy of the Draft Annual Budget and Work Plan to the Authority.
- 1.7 When providing copies of the Draft Annual Budget and Work Plan, the Licensee must, unless the Authority consents otherwise, allow a period of at least 28 days within which comments may be received by the Licensee.
- 1.8 Not later than 10 December in the Preceding Financial Year, the Licensee must publish on its website:
- a) all responses received to the consultation on the Draft Annual Budget and Work Plan, unless where the respondent requested that their response should not be published; and
 - b) a fair and accurate summary of the comments received in response to the consultation, including:
 - i) those comments received from the Stakeholder Advisory Forum as a result of the requirement in paragraph 1.6(b); and
 - ii) those comments provided by Citizens Advice or Consumer Scotland.
- 1.9 Not later than 1 January in the Preceding Financial Year, the Licensee must:
- a) after considering all comments received by the Licensee, make such further revisions to the Draft Annual Budget and Work Plan as the Licensee deems fit, having regard to the functions and responsibilities of the Licensee; and
 - b) publish on its Website:
 - i) the revised Draft Annual Budget and Work Plan;
 - ii) an explanation of how the Licensee has taken account of comments received in the course of the consultation in any revisions to the Draft Annual Budget and Work Plan and a comprehensive explanation of why any revisions to the Draft Budget and Work Plan have been made.

Part C: Directions from the Authority

- 1.10 Not later than 31 January in the Preceding Financial Year, the Authority may direct the Licensee to do any, or all, of the following:
- a) reconsider comments received in response to the consultation on the Draft Annual Budget and/or Work Plan and, having reconsidered those responses, apply any changes to the Draft Annual Budget and/or Work Plan as the Licensee deems fit, including, but not limited to, re-estimating any or all of the Recoverable Costs included in the Draft Annual Budget and/or Work Plan;
 - b) revise the Draft Annual Budget and/or Work Plan to provide additional financial evidence to support any or all of the Recoverable Costs specified in the Draft Annual Budget and/or Work Plan; and
 - c) provide to the Authority a statement from the Licensee's auditors or a firm of chartered accountants that, in the opinion of that person, the estimated costs and expenses specified in the Draft Annual Budget and Work Plan accurately present the costs and expenses that are reasonably attributable to each of the activities and projects to which they are assigned.
- 1.11 Where a Direction is issued under paragraph 1.10(a), the Licensee must, within the deadline stipulated in that Direction:
- a) inform the Authority of the steps it has taken in order to comply with that direction;
 - b) where the Licensee has made no changes to the Draft Annual Budget and/or Work Plan, provide to the Authority a comprehensive explanation of why the Licensee did not deem it fit to make changes.

Part D: Publication of the Annual Budget

- 1.12 Not later than 31 March in the Preceding Financial Year, the Licensee must:
- a) prepare the Annual Budget and publish that budget on its Website; and
 - b) where a Direction issued under Part C results in amendments to the Draft Annual Budget and/or Work Plan, publish on its Website an explanation of what changes, if any, have been made to the Draft Annual Budget and/or Work Plan as a result of that Direction.
- 1.13 The Annual Budget prepared and published in accordance with paragraph 1.12 must include:
- a) the Licensee's most recent estimate of the total Underspend from the previous Financial Year;
 - b) a figure for the total Recoverable Costs to be recovered from Relevant Parties in the forthcoming Financial Year;
 - c) the total net revenue it anticipates will be accrued in the forthcoming Financial Year from the provision of Optional Services; and
 - d) where applicable, a detailed breakdown of how:
 - i) the estimated total Underspend from the previous Financial Year; and

- ii) any revenue accrued in the previous Financial Year from the provision of Optional Services

has been deducted from the total Recoverable Costs to be recovered from Relevant Parties in the forthcoming Financial Year.

Part E: Overspend and Underspend

- 1.14 If, during the current Financial Year, the Licensee anticipates that the aggregate amount of its expenditure in the current Financial Year may materially differ from the amount estimated in the Annual Budget and Work Plan, taking into account any contingency, the Licensee shall promptly:
- a) notify all Parties, giving details of any changes required to the Annual Budget and Work Plan; and
 - b) amend the Annual Budget and Work Plan in accordance with the process set out in Part F of this condition.

Part F: Amendments to Annual Budgets

- 1.15 The Annual Budget and Work Plan relating to each Financial Year may be amended by the Licensee from time to time. Where the Licensee proposes that the Annual Budget and/or Work Plan should be revised, the Licensee must:
- a) provide a summary of the proposed amendment(s) to the Annual Budget and/or Work Plan;
 - b) provide the proposed revised Annual Budget and/or proposed revised Work Plan to all parties to the Relevant Code, as well as Citizens Advice and Consumer Scotland, and invite comments on them;
 - c) provide a copy of the proposed revised Annual Budget and/or proposed revised Work Plan to the Stakeholder Advisory Forum, and invite comments on them from the Stakeholder Advisory Forum; and
 - d) provide a copy of the revised Annual Budget and revised Work Plan to the Authority.
- 1.16 When providing copies of the revised Annual Budget and/or revised Work Plan, the Licensee must, unless the Authority consents otherwise, allow a period of at least 28 days (the 'consultation period') within which comments may be received by the Licensee.
- 1.17 Not later than 14 days following the closure of the consultation period on the revised Annual Budget and/or revised Work Plan under paragraph 1.15, the Licensee must publish on its Website:
- a) all responses received in response to the consultation on the revised Annual Budget and/or revised Work Plan, except where the respondent requested that their response should not be published; and
 - b) a fair and accurate summary of the comments received in response to the consultation, including:

- i) a summary of comments received from the Stakeholder Advisory Forum as a result of the requirement in paragraph 1.15(b); and
 - ii) a summary of any comments provided by Citizens Advice or Consumer Scotland.
- 1.18 Not later than 28 days following the closure of the consultation period on the revised Annual Budget and/or revised Work Plan, the Licensee must:
- a) after considering all comments received by the Licensee, make such further revisions to the revised Annual Budget and/or revised Work Plan as the Licensee deems fit, having regard to the functions and responsibilities of the Licensee;
 - b) publish on its Website an explanation of how the Licensee has taken account of comments received in the course of the consultation in any further revisions to the revised Annual Budget and revised Work Plan and an explanation of why any revisions to the Annual Budget and Work Plan have been made;
 - c) where a Direction issued under paragraph 1.19 has resulted in amendments to the revised Annual Budget, publish on its Website an explanation of what changes have been made, if any, to the revised Annual Budget and revised Work Plan as a result of the Direction issued by the Authority under paragraph 1.19; and
 - d) publish the revised Annual Budget and/or revised Work Plan on its Website.

Part G: Directions in relation to revised Annual Budgets

- 1.19 Not later than 14 days following the closure of the consultation period on the revised Annual Budget and revised Work Plan, the Authority may Direct the Licensee to do any, or all, of the following:
- a) reconsider comments received in response to the consultation on the revised Annual Budget and/or revised Work Plan and, having reconsidered those responses, apply any further changes to the revised Annual Budget and revised Work Plan as the Licensee deems fit, including, but not limited to, re-estimating any or all of the Recoverable Costs included in the revised Annual Budget and/or revised Work Plan;
 - b) further revise the Annual Budget and/or Work Plan to provide further financial evidence to support any or all of the Recoverable Costs specified in the revised Annual Budget and/or revised Work Plan; and
 - c) provide to the Authority a statement from the Licensee's auditors or a firm of chartered accountants that, in the opinion of that person, the costs and expenses specified in the revised Annual Budget and/or revised Work Plan accurately present the costs and expenses that are reasonably attributable to each of the activities and projects to which they are assigned.
- 1.20 Where a Direction is issued under paragraph 1.19(a), the Licensee must, within the deadline stipulated in that Direction:
- a) inform the Authority of the steps it has taken in order to comply with that Direction;
 - b) where no changes have been made to the revised Annual Budget and/or revised Work Plan, provide to the Authority a comprehensive and evidenced explanation of why the Licensee did not deem it fit to make changes.

Cost Recovery

2. Code Manager Cost Recovery Methodology

Introduction

- 2.1 The purpose of this condition is to establish the Licensee's obligations relating to the Code Manager Cost Recovery Methodology as modified from time to time in accordance with Condition 15 (Code Maintenance and Modification) and the Relevant Code.

General requirements for the Code Manager Cost Recovery Methodology

- 2.2 The Code Manager Cost Recovery Methodology must set out, in a complete, coherent and consistent manner, the methods, principles, and assumptions that apply for the purpose of determining the Core Charges payable for the performance of Relevant Code Manager Activities.
- 2.3 The Licensee, except where the Authority consents otherwise, must comply with the provisions of the Code Manager Cost Recovery Methodology set out in the Relevant Code.

3. Code Manager Cost Recovery Statement

Introduction

- 3.1 This condition requires the Licensee to:
- a) prepare a Code Manager Cost Recovery Statement in accordance with the Annual Budget in force under Condition 1 (Annual Budget of the Licensee) and the Code Manager Cost Recovery Methodology;
 - b) comply with the Code Manager Cost Recovery Statement, ensuring that every Core Charge levied by the Licensee for the performance of Relevant Code Manager Activities is formulated in compliance with the Code Manager Cost Recovery Statement, and
 - c) ensure the Code Manager Cost Recovery Statement enables any Relevant Party to estimate the amounts payable, in the period in which that Code Manager Cost Recovery Statement is in effect, by way of Core Charges for the performance by the Licensee of Relevant Code Manager Activities.

Part A: Requirements in respect of the Code Manager Cost Recovery Statement

- 3.2 The Licensee must, [upon / within X months after] the Licence Commencement Date, prepare and publish to its Website a Code Manager Cost Recovery Statement, that sets out the basis on which Core Charges will be calculated and payable to the Licensee for the performance of Relevant Code Manager Activities under or pursuant to the Relevant Code. The first Code Manager Cost Recovery Statement must be in a form approved by the Authority.

3.3 The Code Manager Cost Recovery Statement must:

- a) relate to the performance by the Licensee of Relevant Code Manager Activities;
- b) be prepared in accordance with the Code Manager Cost Recovery Methodology that is in effect at the time at which the Code Manager Cost Recovery Statement has effect;
- c) be prepared in accordance with the Annual Budget in force under Condition 1 (Annual Budget of the Licensee) at the time at which the Code Manager Cost Recovery Statement has effect; and
- d) be presented in such form and with such detail as will enable any Relevant Party to make a reasonable estimate of the Core Charges that are payable by that party for the performance of Relevant Code Manager Activities.

Part B: Maintenance of the Code Manager Cost Recovery Statement in approved form

3.4 The Code Manager Cost Recovery Statement must be in a form that is approved by the Authority. The Licensee must obtain further approval of the form of a Code Manager Cost Recovery Statement ahead of it making material changes to the form. A material change may include, but not be limited to:

- a) introducing charges for new groups of Relevant Parties to, for example, reflect changes to the Code Manager Cost Recovery Methodology,
- b) adding or removing sections of the Code Manager Cost Recovery Statement, or
- c) materially changing the prose within the Code Manager Cost Recovery Statement.

Part C: Cost Recovery in accordance with the Code Manager Cost Recovery Statement

3.5 Except where the Authority otherwise consents, the Licensee must ensure every Core Charge is in accordance with the Code Manager Cost Recovery Statement in the form in which it is in force under this condition at each time at which such Core Charges are to be paid.

[Depending on our approach to finalising the broader cost recovery framework, we may need to include an additional paragraph to disapply some types of charges from paragraph 3.5.]

Part D: Procedure for amending the Code Manager Cost Recovery Statement

3.6 This Part D only applies where the proposed amendment of the Code Manager Cost Recovery Statement would change the Core Charges issued in accordance with the Code Manager Cost Recovery Statement.

3.7 The Licensee must, not less than three months before the date on which it proposes to amend the Code Manager Cost Recovery Statement:

- a) give the Authority a Notice that sets out those proposals (that Notice must include a proposed amended version of the Code Manager Cost Recovery Statement), 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 (with the proposed amended Code Manager Cost Recovery Statement) to any Relevant Party.
- 3.8 Except if the Authority otherwise consents, the Licensee may only amend the Code Manager Cost Recovery Statement if;
- a) the Licensee has given Notice of the proposed amendment in accordance with paragraph 3.7; and
 - b) the amendment, when made, conforms to the proposals that were set out in that Notice (except for any necessary revisions resulting from the occurrence of a material change in any of the matters on which the assumptions set out in the statement to which the Notice refers were based, and then only to such extent as is necessary to reflect the change in such matters).
- 3.9 The Licensee may only amend the Code Manager Cost Recovery Statement more than once in a Regulatory Year if the Licensee has first given the Authority a statement of the factors that have led it to conclude that an additional amendment is necessary, explaining in particular why it did not take account of those factors when giving Notice under paragraph 3.7 with respect to the immediately preceding amendment.
- 3.10 Before making any amendment to the Code Manager Cost Recovery Statement pursuant to this Part D, the Licensee must give the Authority a revised Code Manager Cost Recovery Statement that sets out the amendments and specifies the date from which they will have effect.

Part E: Review and availability of the Code Manager Cost Recovery Statement

- 3.11 Without prejudice to Part D above, the Licensee must periodically review the Code Manager Cost Recovery Statement in force under this condition and, at least once in each Regulatory Year, make any changes that are necessary to the statement to ensure it continues to comply with Part A of this condition.
- 3.12 The changes mentioned in paragraph 3.11 include, in particular, any changes that are necessary to reflect:
- a) any modification of the Code Manager Cost Recovery Methodology, or;
 - b) any publication of, or modification to, an Annual Budget in accordance with Condition 1 (Annual Budget of the Licensee).
- 3.13 The Licensee must publish the Code Manager Cost Recovery Statement, as and when revised, on its Website.
- 3.14 The Licensee must provide a copy of the Code Manager Cost Recovery Statement to any person who requests a copy.

Code Manager Performance Incentives

4. Performance Incentives

Introduction

- 4.1 The purpose of this condition is to establish the Licensee's obligations relating to the development and maintenance of processes for measuring and reporting its performance in carrying out its Licensed Activity.
- 4.2 The requirements in this condition are intended to facilitate scrutiny of the Licensee's performance by industry, the Authority and the general public.

Part A: General requirements for Code Manager Performance Indicators

- 4.3 The Licensee must take all reasonable steps to ensure the Relevant Code contains a set of performance metrics which are to constitute the Code Manager Performance Indicators, and which are to be measured and reported on at least annually by the Licensee in accordance with paragraph 4.8.
- 4.4 The Code Manager Performance Indicators must include sufficient detail to enable, when taken as a whole, a thorough evaluation of the Licensee's performance in carrying out its Licensed Activity.
- 4.5 The Code Manager Performance Indicators, as from time to time revised, must be published on its Website.

Part B: Requirement to monitor performance

- 4.6 The Licensee must implement arrangements for monitoring its performance, adequate to allow the Licensee to report in respect of its performance as required by Part A of this condition.
- 4.7 The Licensee must review and update the arrangements implemented in accordance with the requirement in paragraph 4.6 from time to time.

Part C: Code Manager Performance Report

- 4.8 The Licensee must, within 30 days following the end of each Performance Measurement Period produce a Report (the Code Manager Performance Report) which must:
 - a) be a clear, coherent and comprehensive document including sufficient detail to enable, when taken as a whole, a thorough evaluation of the Licensee's performance in carrying out its Licensed Activity, and
 - b) set out:
 - i) the levels of performance achieved in respect of each Code Manager Performance Indicator during the previous Performance Measurement Period;

- ii) a description of the methodology employed to determine the Service Levels achieved during the previous Performance Measurement Period.

4.9 The Licensee must, within 30 days following the end of each Performance Measurement Period:

- a) provide a copy of the Code Manager Performance Report to Relevant Parties, the Stakeholder Advisory Forum and the Authority; and
- b) publish the most recent Code Manager Performance Report on its Website.

Part D: Modification of the Code Manager Performance Indicators

4.10 The Licensee must, for the purpose of ensuring that the Code Manager Performance Indicators will continue to achieve the requirement in paragraph 4.4:

- a) review the Code Manager Performance Indicators at least once in each Performance Measurement Period; and
- b) propose such modifications (if any) to the Code Manager Performance Indicators contained in the Relevant Code (to be in place for the subsequent Performance Management Period) as it believes are appropriate or necessary.

Conflicts of Interest

5. Duties arising from the Licensee's Special Position

Introduction

5.1 The purpose of this condition is to ensure that the Licensee always acts in a manner that is consistent with its Special Position as the person licensed to carry out the Licensed Activity.

5.2 This condition applies (subject to paragraph 5.4 and 5.6) in relation to its Licensed Activity.

Part A: Prohibition on engaging in preferential treatment or discriminatory behaviour

5.3 In undertaking its Licensed Activity, the Licensee must not:

- a) unduly prefer itself or any Affiliate over any persons or any class or description of persons; or
- b) unduly discriminate between any persons or any class or description of persons.

5.4 Anything done by the Licensee that is expressly required or permitted to be so done under or by virtue of this Licence, the Relevant Code or any applicable law or legislative provision, will not breach the requirements of paragraph 5.3.

Part B: Not prevent nor distort competition

- 5.5 The Licensee must at all times undertake its licensed activity in a way that is best calculated to ensure that it does not restrict, prevent, or distort competition:
- a) in or for any licensable activity under the Principal Energy Legislation, except for activity authorised under this Licence; or
 - b) in the provision of, or in any of the markets for, commercial activities that are connected with the markets that are wholly or in part governed by the Relevant Code under the Principal Energy Legislation.
- 5.6 Anything done by the Licensee that is expressly required or permitted to be so done under or by virtue of this Licence, the Relevant Code or any applicable law or legislative provision, will not breach the requirements of paragraph 5.5.

6. Restriction on activity and investments

Introduction

- 6.1 The purpose of this condition is to strengthen the independence of the Licensee by limiting the activities and investments it can undertake.

Part A: Restriction on activity

- 6.2 The Licensee must not, subject to paragraph 6.3 or unless the Authority consents otherwise, conduct any business or carry on any activity other than that which is necessary to carry out the Licensed Activity.
- 6.3 The requirement imposed by paragraph 6.2 does not apply:
- a) [To insert circumstances where it does not apply, if any. We will further develop the process for exceptions based on responses to this consultation.]
 - b) [To insert process or approach for receiving a derogation].

Part B: Restriction on investments

- 6.4 The Licensee shall not, subject to paragraph 6.5 or unless the Authority consents otherwise, hold or acquire shares or other investments of any kind.
- 6.5 The requirement imposed by paragraph 6.4 does not apply:
- a) [To insert circumstances where it doesn't apply, if any. We will further develop the process for exceptions based on responses to this consultation.]
 - b) [To insert process or approach for receiving a derogation].

7. Restrictions on the Licensee becoming a Related Undertaking

Introduction

7.1 The purpose of this condition is to strengthen the independence and autonomy of the Licensee from other entities (including External Service Providers and parties to the Relevant Code) by placing restrictions on who the Licensee may become a Related Undertaking of.

Restrictions on the Licensee becoming a Related Undertaking

7.2 The Licensee must use its best endeavours to, subject to the Authority having otherwise consented, ensure that it is not and/or does not at any time become a Related Undertaking of:

- a) a party of the Relevant Code or any other person to whom any services are provided as part of the Licensee's Licensed Activity; or
- b) any External Service Provider from whom a Service Capability is or is intended to be procured by the Licensee; or
- c) any person who is able to (including by, but not limited to, exercising the rights set out in paragraph 7.3) exert a material influence over the conduct of the affairs of:
 - i) any party of the Relevant Code; or
 - ii) any other person to whom any services are provided as part of the Licensee's Licensed Activity; or
 - iii) any External Service Provider from whom Service Capability is or is likely to be procured by the Licensee.

7.3 In paragraph 7.2(c), the rights referred to are:

- a) rights under contractual arrangements to which they are a party or of which they are a beneficiary; and/or
- b) rights of ownership (including any rights attached to or deriving from securities or rights under a trust) which are held by them or of which they are a beneficiary.

7.4 Where the Licensee is aware that any person of a description within paragraph 7.2 has caused or is likely to cause the Licensee to breach its requirements, the Licensee must draw that person's attention to the substance of both that paragraph and [to insert any other applicable paragraphs of the terms of this licence] and notify the Authority forthwith.

8. Sufficiently independent directors

Introduction

- 8.1 The purpose of this condition is to strengthen the independence and autonomy of the Licensee from other entities (including Affiliates of the Licensee and parties to the Relevant Code) by placing minimum requirements with respect to having sufficiently independent directors.

Requirements on having sufficiently independent directors

- 8.2 Subject to paragraph 8.10, the Licensee must ensure that at all times, depending on whichever is greater:
- a) it has two sufficiently independent directors; or
 - b) that 20% of its directors are sufficiently independent directors.
- 8.3 [We will consider whether it is necessary to set out a transition period to allow the Licensee to appoint these directors.]
- 8.4 A sufficiently independent director must:
- a) be a natural person;
 - b) in the reasonable opinion of the Licensee, have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the Licensee; and
 - c) not have any executive duties within the Licensee's business.
- 8.5 A sufficiently independent director must not during, at least, the past 12 months before their appointment as a director of the Licensee, have held a position that could be deemed to cause an unacceptable conflict of interest in their role as a sufficiently independent director. In particular, they must not have been:
- a) an employee of the Licensee;
 - b) a director or employee of an Affiliate of the Licensee;
 - c) a director or employee of a party to the Relevant Code; or
 - d) a director or employee of any External Service Provider contracted by the Licensee.
- 8.6 A sufficiently independent director must not:
- a) have, or have had during the 12 months before their appointment as a director, any material business relationship with the Licensee, any Affiliate of the Licensee, or a party of the Relevant Code;
 - b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the Licensee or the interests of any Affiliate of the Licensee, or the interests of any party of the Relevant Code; or

- c) receive remuneration from the Licensee, any Affiliate of the Licensee, or from a party of the Relevant Code apart from a director's fee and reasonable expenses.
- 8.7 For the purposes of sub-paragraphs 8.6(a), 8.6(b) and 8.6(c), respectively:
- a) a Small Shareholding shall not, of itself, be considered a material business relationship; and
 - b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the Licensee or any Affiliate of the Licensee shall not be considered to be remuneration.
- 8.8 The Licensee must notify the Authority in writing of the names of its sufficiently independent directors within 14 days of any new directors being appointed for the purpose of fulfilling the obligation in paragraph 8.2 of this condition.
- 8.9 The Licensee must notify the Authority in writing within 14 days if any sufficiently independent director is removed from office or resigns, giving reasons for the removal or (to the extent that they are known to the Licensee) the resignation. For the purposes of this requirement, the reasons for a resignation may, if appropriate, be stated to be for personal reasons.
- 8.10 If, because of a removal or resignation or other reason (including death or incapacity) the requirements in paragraph 8.2 are not met, the Licensee must use its best endeavours to ensure that a new director is, or new directors are, appointed to fulfil the obligation in paragraph 8.2 as soon as is reasonably practicable.

9. Ultimate Controller undertaking

Introduction

- 9.1 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 this Licence.

Part A: General obligation to procure undertakings

- 9.2 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 and on the terms set out in paragraph 9.3.
- 9.3 Those terms are that the Ultimate Controller ("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 any of its obligations under this Licence.

- 9.4 Such undertaking must be obtained within 7 days of the company or other person in question becoming an Ultimate Controller of the Licensee and 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

- 9.5 Whenever the Licensee has obtained an undertaking in accordance with paragraph 9.4, it must:
- a) without delay, deliver to the Authority evidence, including a copy of each such undertaking, that the Licensee has complied with its obligation to procure undertakings pursuant to paragraph 9.2;
 - b) inform the Authority immediately in writing if the directors of the Licensee become aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached; and
 - c) at all times comply with any direction from the Authority to enforce the undertaking.
- 9.6 The Licensee must not, save with the consent of the Authority, enter (directly or indirectly) into any agreement or arrangement with any Ultimate Controller of the Licensee or of any of the subsidiaries of any such Ultimate Controller (other than the subsidiaries of the Licensee) at any time when:
- a) an undertaking complying with paragraph 9.2 is not in place in relation to that 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 9.5(c).

Financial and Operational Controls

10. Availability of all necessary resources

Introduction

- 10.1 The purpose of this condition is to ensure that the Licensee will have at its disposal all of the resources necessary to enable it to carry out its Licensed Activity.

Part A: General obligations under this condition

- 10.2 The Licensee must at all times act in a manner calculated to ensure that it has available to itself, or has put in place appropriate measures (including by virtue of the

Annual Budget and any amendment of it under condition 1) to ensure it will have available to itself, either directly or under appropriate contractual arrangements, such resources (including, but not limited to, management and financial resources, personnel, fixed and moveable assets, rights, licences, and facilities), on such terms and with all such rights, as shall ensure that at all times it is able to properly and efficiently carry on its Licensed Activity.

Part B: Certificate of adequacy

- 10.3 The Licensee must by 30 April each year provide to the Authority a certificate (the 'Certificate of Adequacy') 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 (Certificate A1, or Certificate A2, or Certificate A3) prescribed in Appendix 1 (which has effect as part of this Condition).

Part C: Obligation to report in respect of adverse circumstances

- 10.4 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 A1 or Certificate A2 given to the Authority; or
 - b) consider that any of the adverse circumstances that caused them to give the Authority a certificate in the form of Certificate A3 have materially worsened.

Appendix 1: Certificate of Adequacy

- A1. In accordance with Part B of this condition, the Licensee is required by 30 April each year to provide to the Authority one of the following three forms of certificate:

Prescribed form of Certificate A1

- A2. "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have:
- a) sufficient financial resources and financial facilities; and
 - b) either directly or under appropriate contractual arrangements, sufficient operational resources (including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities)

available to itself to enable it to carry out its Licensed Activity for a period of 12 months from the date of this certificate."

Prescribed form of Certificate A2

- A3. "After making enquiries, the directors of the Licensee have a reasonable expectation that the Licensee will have:
- a) sufficient financial resources and financial facilities; and

- b) either directly or under appropriate contractual arrangements, sufficient operational resources (including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities)

available to itself to enable it to carry out its Licensed Activity for a period of 12 months from the date of this certificate.

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 out its Licensed Activity" [Licensee to provide, below, a description of those factors].

Prescribed form of Certificate A3

A4. "After making enquiries, the directors of the Licensee do not have a reasonable expectation that the Licensee will have:

- a) sufficient financial resources and financial facilities; and/or
- b) either directly or under appropriate contractual arrangements, sufficient operational resources (including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities)

available to itself to enable it to carry out its Licensed Activity for a period of 12 months from the date of this certificate."

11. Indebtedness and transfers of funds

Introduction

11.1 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 activities that are for a Permitted Purpose.

Part A: General prohibition of certain transactions

11.2 The Licensee must not, without the Authority's prior consent following the Licensee's disclosure of all material facts, enter into any Restricted Transaction.

11.3 Paragraphs 11.5, 11.6, and 11.7 are without prejudice to any further restrictions provided in the Relevant Code.

Part B: Restricted Transactions Category 1

11.4 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 incur any Indebtedness to any other person, or enter into any guarantee, otherwise than:

- a) on an arm's length basis;
- b) on normal commercial terms; and
- c) is for a Permitted Purpose.

Part C: Restricted Transactions Category 2

- 11.5 The Licensee must not transfer, lease, licence, 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 repayment of capital;
 - b) a payment properly due for any goods, services, or assets provided on an arm's length basis, on normal commercial terms and for the purpose of carrying out the Licensed Activity;
 - c) a transfer, lease, licence, or loan of any sum or sums, or of any asset, right, or benefit, that is on an arm's length basis, on normal commercial terms and for a Permitted Purpose;
 - d) a repayment of, or payment of interest on, a loan that is not prohibited by the provisions of Part B above; or
 - e) an acquisition of shares or other investments that is in conformity with the requirements of Condition 6 (Restriction on activity and investments) and that is made on an arm's length basis and on normal commercial terms.

Part D: Restricted Transactions Category 3

- 11.6 The Licensee must not enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation.
- 11.7 The prohibition in paragraph 11.6 does not prevent the Licensee from giving any guarantee that is permitted by and compliant with the requirements of Part B above.

12. Assurance of the financial stability of the Licensee

Note: in our consultation we describe two possible approaches for this condition, and seek comments from respondents. The drafting for each approach is provided below.

Option 1

- 12.1 The Licensee must have in place the necessary procedures, controls and policies to monitor its financial resources and ensure its ongoing financial stability.

Option 2

Introduction

- 12.2 The purpose of this condition is to require the Licensee to have in place and maintain arrangements that ensure it has and continues to have sufficient financial stability to enable it to carry out its Licensed Activity.

Part A: Arrangements for providing assurance

- 12.3 The Licensee must, within 3 months of the Licence Commencement Date, have in place and maintain arrangements that provide assurance as to its financial stability. These arrangements must be approved by the Authority on the basis that they provide a level of assurance that is sufficient to protect the interests of Energy Consumers.
- 12.4 Any proposal submitted by the Licensee in accordance with paragraph 12.3 must contain sufficient information to enable the Authority to consider whether the proposal demonstrates a sufficient level of assurance in respect of the Licensee's financial stability.

Part B: Terms and conditions of Authority approval

- 12.5 Any approval issued by the Authority may be subject to such terms and conditions as the Authority considers appropriate.

13. Prohibition on cross-subsidy

- 13.1 The Licensee must at all times ensure that in carrying on its Licensed Activity it gives no cross-subsidy to, nor receives any cross-subsidy from, any Affiliate or Related Undertaking of the Licensee.
- 13.2 Anything done or incurred by the Licensee that is expressly required or permitted to be so done or incurred under or by virtue of this Licence, the Relevant Code or any applicable law or legislative provision, will not breach the requirements of paragraph 13.1.

14. Restriction on profit

- 14.1 The Licensee must carry out its Licensed Activity on a not-for-profit basis.

Governance

15. Code maintenance and modification

- 15.1 The Licensee must at all times have in force and maintain the Relevant Code.
- 15.2 The Relevant Code is a document that:
- has been designated by the Secretary of State under section 182(1)(b) of the Energy Act 2023;
 - provides for the arrangements in special condition [1];

- c) includes the modification procedures required by paragraph [see Note at end of this condition];
- d) provides for the establishment of a Stakeholder Advisory Forum in accordance with paragraph [see Note at end of this condition];
- e) is designed to meet the Relevant Code Objectives set out in special condition [1].

15.3 The Licensee must be a party to and comply with the Relevant Code.

15.4 The Relevant Code may not be modified except:

- a) by the Licensee in accordance with the modification procedures specified in paragraph [see Note at the end of this condition];
- b) by the Secretary of State or the Authority pursuant to a power conferred in legislation.

15.5 The Licensee must comply with any direction by the Authority for information about the operation of the Relevant Code to be:

- a) provided to the Authority, and/or
- b) published.

15.6 The Relevant Code shall provide:

- a) for such matters arising under the Relevant Code to be referred to the Authority for determination as may be specified in the Relevant Code, and
- b) for the Licensee to be able to secure compliance with any direction by the Authority under paragraph 15.5.

15.7 The Licensee must:

- a) publish on its Website an up-to-date version of the Relevant Code, and arrange for it to be otherwise made available to any person who requests it; and
- b) ensure that published version is amended in accordance with any notice of modification published by the Authority under s. 193(5) Energy Act 2023.

[Note: further SLCs in this section will be consulted on in due course, including relating to core requirements of the code modification procedures].

This consultation annex is available from: www.gov.uk/government/consultations/energy-code-reform-code-manager-licensing-and-secondary-legislation

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