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for energy consumers

Code Manager Standard Licence Conditions

Annex A to the Energy Code Reform:
Government and Ofgem Response to the
Consultation on Code Manager Licence
Conditions and Code Modification Appeals to
the CMA



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Interpretation

1 Definitions

Introduction

- 1.1 This condition sets out most of the defined words and expressions (all of which begin with capital letters) that are used in the standard conditions of this Licence.
- 1.2 Definitions arranged in alphabetical order.
- 1.3 In this licence unless the context otherwise requires:

Affiliate means, in relation to any person, any holding company, within the meaning of section 1159 of the Companies Act 2006, of that person, any subsidiary of that person, or any subsidiary of a holding company of that person.

Agency means an agency established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast).

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 to which Part F of standard condition 5 (Regulatory Accounts) of this licence refers.

Alternative Modification Proposal means an alternative solution to the issue identified by a Modification Proposal.

Annual Budget means a document, prepared and published by the Licensee in accordance with part D of standard condition 20 (Annual Budget of the Licensee) and including all the information required by that 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.

Arm's length basis in relation to a transaction entered into by the Licensee within the scope of standard condition 12 (Indebtedness and Transfer of Funds), means a transaction on terms that would reasonably be considered normal commercial terms

when entered into by two or more unrelated and unaffiliated parties agreeing to do business, acting independently and in their self-interest.

Assimilated Law has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018.

Authority is the Gas and Electricity Markets Authority that is established under section 1 of the Utilities Act 2000.

Authority-consent modification has the meaning given to it in paragraph 27.5(k) in standard condition 27 (Code Maintenance and Modification).

Budget Appeal means an appeal made to the Authority in accordance with standard condition 21 (Appeals to the Authority on the Annual Budget of the Licensee).

Business Handover Plan means a plan prepared by the Licensee setting out how the Licensee will facilitate an orderly handover of the Code Manager Business to a Successor Licensee, in accordance with standard condition 31 (End of Licence Arrangements).

Central System Delivery Body means the person responsible for operating or procuring the operation of a Central System, where “Central System” has the definition in section 184 of the Energy Act 2023.

Certificate of Adequacy has the meaning given in standard condition 11 (Availability of all Necessary Resources).

Charging Party/ies means any person required by the Relevant Code to pay Core Charges.

Code Manager means the holder of a Code Manager Licence.

Code Manager Business means the business carried out by the Licensee in performance of the activity authorised by [Part [] of Terms of Grant] of this Licence.

Code Manager Cost Recovery Methodology means the methodology set out in the Relevant Code in accordance with standard condition 22 (Code Manager Cost Recovery Methodology).

Code Manager Cost Recovery Statement has the meaning given in Part A of standard condition 23 (Code Manager Cost Recovery Statement).

Code Manager of Last Resort means a Code Manager selected as a replacement for another Code Manager in accordance with regulation 7 of the Code Manager Selection Regulations 2024.

Code Manager of Last Resort Direction means a direction given by the Authority to a Code Manager requiring them (subject to any terms or conditions which the direction

may contain) to accept a Code Manager Licence and perform the function of code manager in relation to a Designated Document.

Code Manager Licence is a licence granted pursuant to section 6(1)(g) of the Electricity Act 1989 or section 7AC of the Gas Act 1986.

Code Manager Objectives means the objectives set out in standard condition 3 of this Licence (Code Manager Objectives).

Code Manager Performance Indicator has the meaning given in Part A of standard condition 25 (Performance Incentives).

Code Manager Performance Report means a report prepared by the Licensee containing the information specified in Part C of standard condition 25 (Performance Incentives).

Code Party/ies means persons who are party to the Relevant Code (including the Licensee).

Consultation Phase means the period starting on the date on which the Authority publishes a notice under s.193(1) of the Energy Act 2023 and ending on the date on which the Authority publishes a notice of decision under s.193(5) of the Energy Act 2023.

Core Charge(s) means charges issued by the Licensee in accordance with the Cost Recovery Methodology, for the performance of Code Manager Business, except for charges issued under standard condition 24 (Usage-based Charges).

Corporate Governance Statement means a statement, prepared by the Licensee, setting out how it has complied during the previous Financial Year with the relevant principles of the UK Corporate Governance Code.

Cost item means a category or line item of expenditure within the Annual Budget of the Licensee related to the Code Manager Business.

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.

Customer has the meaning given to it in the standard conditions of the electricity supply licence and the standard conditions of the gas supply licence.

Delivery Plan means a document, prepared by the Licensee, in accordance with the requirements of standard condition 29 of this Licence (Production and execution of a Delivery Plan consistent with the Strategic Direction).

Designated Document means a document that is:

- a) maintained in accordance with the conditions of a licence granted for the purposes of s.4 of the Electricity Act 1989 and s.5 of the Gas Act 1986; and
- b) designated under either s.182 of the Energy Act 2023 or Schedule 12 to the Energy Act 2023.

Directors' Report has the meaning given in standard condition 5 (Regulatory Accounts).

Draft Annual Budget means a document, prepared and published by the Licensee in accordance with part B and C of standard condition 20 (Annual Budget of the Licensee) and including all the information required by that condition.

Draft Work Plan means a document, prepared and published by the Licensee in the preceding Financial Year, that contains the information specified in paragraph 20.5 of standard condition 20 (Annual Budget of the Licensee).

Electricity Supplier has the meaning given to it in the standard conditions of the electricity supply licence and standard conditions of the gas supply licence.

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.

Energy Licence means any licence (including this Licence) that is granted, or treated as granted, under sections 7, 7A, or 7AB of the Gas Act 1986 or under section 6 of the Electricity Act 1989.

Energy Licensee means the holder of a licence granted for any of the purposes set out in section 4 of the Electricity Act 1989 and section 5 of the Gas Act 1986.

External Service Provider means any person from whom Service Capability is procured by the Licensee in accordance with standard condition 7 (Procurement of Service Capability) for the purpose of supporting the performance of Code Manager Business under or pursuant to the Relevant Code.

External Service Provider Contract means, as between the Licensee and an External Service Provider, any legally binding arrangement (however described) that has been entered into for the provision by the External Service Provider to the Licensee of Service Capability.

Fast-track Self-governance Modification has the meaning given to it in paragraph 27.5(l) of standard condition 27 (Code Maintenance and Modification).

Financial Conduct Authority means the body of that name that was created as one of the successors to the Financial Services Authority by the Financial Services Act 2012.

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

Gas Supplier has the meaning given to it in the standard conditions of the electricity supply licence and standard conditions of the gas supply licence.

Handover Period means the whole of the period, beginning with the date notified to the Licensee by the Authority that the Authority intends to revoke this Licence, 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 standard condition 31 (End of Licence Arrangements).

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.

Industry Code means a multilateral code or agreement, whether or not it is at the relevant time a Designated Document, created and maintained pursuant to a licence granted by the Authority under section 6 of the Electricity Act 1989 or under sections 7, 7ZA, 7A, 7AA, 7AB, or 7AC of the Gas Act 1986.

Intellectual Property Rights (IPR) means patents, trademarks, 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, 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.

Issue means an issue that a person has identified in relation to the Relevant Code that they consider warrants a modification to that code.

Last Resort Supply Direction has the meaning given to it in the standard conditions of the electricity supply licence and the standard conditions of the gas supply licence.

Licence means this Code Manager Licence.

Licence Commencement Date means the date on which this Licence takes effect.

Licensee is the person to whom this Licence was granted.

Material Economic and Operational Assets are those assets, mechanisms or arrangements used or needed by the Licensee to carry on the Code Manager

Business including, but not limited to, premises, facilities, staff, equipment, Intellectual Property Rights and IT systems.

Modification Hurdle has the meaning given to it in paragraph 27.6(a) of standard condition 27 (Code Maintenance and Modification).

Modification Procedure has the meaning given to it in paragraph 27.3(c) of standard condition 27 (Code Maintenance and Modification).

Modification Proposal means a proposal for modification that has been accepted by the Licensee.

Proposer has the meaning given in the Relevant Code.

Modification Suspense Period means:

- a) in relation to a matter within the scope of a Significant Code Review, the period starting on the date the review starts, as specified by the Authority, and ending on the date determined under paragraph 27.19 of standard condition 27 (Code Maintenance and Modification);
- b) in relation to a Proposed Direct Modification, the Consultation Phase.

Non-Executive Director means a director who has no executive duties and who is not considered an employee of the Licensee.

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

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 the Work Plan, where the forecast costs and expenses are less than the actual costs and expenses.

Performance Measurement Period means a period beginning with 1st April and ending with the following 31st March, in which Code Manager Performance Indicators are to be measured in accordance with standard condition 25 (Performance Incentives).

Permitted Business means any business or activity carried out by the Licensee that is not the Code Manager Business and in relation to which the Licensee has obtained the prior written consent of the Authority under Part A of standard condition 17 (Restriction on Activity and Investment).

Permitted Purpose means:

- a) the Code Manager Business;
- b) the Permitted Business; and

- c) payment or transactions made or undertaken by the Licensee in accordance with Part C of standard condition 12 (Indebtedness and Transfer of Funds).

Preceding Financial Year means, for the purposes of standard condition 20 (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 standard condition 20 relate.

Proposed Direct Modification means a proposal by the Authority to modify an Industry Code pursuant to s.192 of the Energy Act 2023.

Proposed Modification means the modifications proposed under a Modification Proposal and all (if any) related Alternative Modification Proposals, and Proposed Modification means any of those modifications.

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

Recoverable Costs means the costs incurred by the Licensee in the relevant Financial Year in the course of carrying on its Code Manager Business; 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.

Regulation means Regulation (EU) 2019/943 (as modified by SI 2020/1006) and/or Regulation (EU) 2024/1789.

Regulatory Accounts means the accounts of the Licensee produced in accordance with standard condition 5 (Regulatory Accounts).

Related Materials means published documents (including webpages) that have been created and/or are maintained by the Licensee and relate to the Relevant Code, including code subsidiary and guidance documents.

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 Business means the Code Manager Business and any Permitted Business carried out by the Licensee.

Relevant Code is the code(s) specified in [Part [] of Terms of Grant] of this Licence.

Relevant Code Objectives are the objectives set out in [forthcoming Special Condition X].

Relevant Conflict of Interest means financial or other interests that might prejudice the discharge by the Licensee of its functions under this Licence.

Relevant 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 in the energy sector.

Restricted Transaction means the transactions and commitments described in Part B, Part C and Part D of standard condition 12 (Indebtedness and Transfer of Funds).

Revocation Event means any event or circumstance set out in [Part [] of Terms of Grant] of this Licence in which the Authority may revoke this Licence.

Self-governance Modification has the meaning given to it in paragraph 27.5(k) of standard condition 27 (Code Maintenance and Modification).

Senior Staff means the Licensee's executive directors and, if applicable, other employees with significant control and influence over the management of the Licensee's organisation; it does not include the Licensee's Non-Executive Directors.

Service Capability means capability procured in accordance with standard condition 7 (Procurement of Service Capability) for the purposes of supporting the provision of the Code Manager Business under or pursuant to the Relevant Code.

Significant Code Review means a review of one or more matters which the Authority considers is likely to:

- a) relate to the Relevant Code (either on its own or alongside other Industry Codes); and
- b) be of particular significance in relation to its statutory duties; and for which the Authority has issued a notice specifying scope and start date of the review.

Significant Managerial Responsibility or Influence means where a person plays a role in:

- a) the making of decisions about how the whole or a substantial part of the Licensee's activities are to be managed or organised; or

- b) the actual managing or organising of the whole or a substantial part of those activities.

Stakeholder Advisory Forum (SAF) means the body required by standard condition 27 (Code maintenance and modification) of this Licence.

Strategic Direction Statement means a statement prepared and published by the Authority under section 190 of the Energy Act 2023 setting out a strategic direction for Designated Documents.

Subsidiary means a subsidiary within the meaning given to that term in section 1159 of the Companies Act 2006.

Successor Licensee means the person that is to succeed (or has succeeded) the Licensee as holder of a Code Manager Licence in relation to the Relevant Code (and may include any person considering applying to be that licence holder).

Sufficient Control means having either direct ownership of or legally enforceable rights over Material Economic and Operational Assets so that the Licensee can legally rely on them and enjoy the benefit of them.

Sufficiently Independent Director means a person appointed in accordance with standard condition 16 (Sufficiently Independent Directors).

Transfer Date means the date on which the Licensee must cease to carry on the Code Manager Business and the Successor Licensee assumes responsibility for it, in accordance with the licence granted to that Successor Licensee.

UK Corporate Governance Code means the document published by the Financial Reporting Council (or any successor body).

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 actual costs and forecast costs in the Annual Budget and Work Plan, where forecast costs exceed actual costs.

Usage-based Charges means charges, issued by the Licensee for the performance of Code Manager Business, in accordance with standard condition 24 (Usage-based charging).

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 in the preceding Financial Year, that contains the information specified in paragraph 20.5 of standard condition 20 (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.

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 [] of Terms of Grant] of this Licence.

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, or 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 Unless the context otherwise requires, any reference to a statute or subordinate legislation or regulations is a reference to that statute or subordinate legislation or regulations as supplemented, amended, re-enacted or re-cast from time to time.
- 2.5 The heading or title of any chapter, condition, part, appendix, 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. Unless the context otherwise requires:
 - a) any reference in the conditions of this Licence to a part, appendix, 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, firms, 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 (and with any terms or conditions to which the direction may be subject) given to it by the Authority or the Secretary of State under any provision of this Licence that provides for such direction to be given.
- 2.10 The Licensee must have regard to any guidance on the standard conditions of this Licence which the Authority may issue and may, from time to time, revise.

Part C: Specific application of powers

- 2.11 Unless a contrary intention appears, any power of the Authority or 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 terms or conditions as the Authority or the Secretary of State thinks will be appropriate 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.
- 2.12 Unless a contrary intention appears, any power of the Authority or 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 terms and conditions as the Authority or Secretary of State thinks will be appropriate in all the circumstances of the case; and
 - b) to make it again under that power.
- 2.13 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 valid only if given or made in Writing.
- 2.14 Where any consent, derogation, approval, designation, determination, decision, or other instrument given or made by the Authority or Secretary of State under any provision of this Licence is given or made subject to any terms or conditions, it (or he) may also direct the Licensee to comply with such terms or conditions.

Part D: Specification or determination of dates

- 2.15 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

- 2.16 Unless specified otherwise, 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 Scotland, that day is to be excluded from the calculation.

Part F: Reading of words without limitation

- 2.17 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

- 2.18 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 that term is used in the Relevant Energy Legislation.

Part H: Requirements to provide or publish documents

- 2.19 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.
- 2.20 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

- 2.21 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.

- 2.22 Without prejudice to the generality of paragraph 2.21, every direction, derogation, consent, approval, designation, determination, decision, or other instrument given or made by the Authority or 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: 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 [] of Terms of Grant] 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 K: References to Licensee’s functions

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

Nature and Conduct of the Licensee's Business

3 Code Manager Objectives

Introduction

3.1 The purpose of this condition is to establish the Code Manager Objectives.

Part A: Objectives of the Licensee

3.2 The Code Manager Objectives are:

- a) the full and prompt implementation of the Relevant Code in accordance with its terms and provisions;
- b) to conduct its Code Manager Business transparently and openly, subject to the express provisions of the Licence and the Relevant Code, and to any other duties of confidence owed to third parties;
- c) the implementation of the Relevant Code in a fair manner and without undue discrimination between Code Parties or Code Parties of a particular class;
- d) the implementation of the Relevant Code as economically and efficiently as is reasonably practicable;
- e) to facilitate cross-code coordination and collaboration between Code Managers, Central System Delivery Bodies, SAFs and any other relevant bodies established under a Designated Document;
- f) the promotion of positive outcomes for Energy Consumers;
- g) the delivery of the strategic priorities set out in the relevant sections of the current Strategic Direction Statement; and
- h) to facilitate innovation in relation to the activities governed by the Relevant Code.

3.3 The Licensee must carry on the Code Manager Business in a manner that is:

- a) consistent with the full and proper discharge of the functions and responsibilities of the Licensee under the Licence and the Relevant Code; and
- b) most likely to facilitate achievement of the Code Manager Objectives.

- 3.4 The Licensee must not carry out its Permitted Business in a way that would conflict with the achievement of the Code Manager Objectives.

4 Corporate governance arrangements

- 4.1 This condition 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.
- 4.2 The Licensee must, unless and to the extent that the Authority otherwise consents, comply with the relevant principles of the UK Corporate Governance Code that has effect pursuant to the listing rules of the Financial Conduct Authority.
- 4.3 The Licensee must, by not later than 31 July in each Financial Year, provide to the Authority a Corporate Governance Statement that sets out how the Licensee has complied during the previous Financial Year with the relevant principles of the UK Corporate Governance Code.
- 4.4 The Licensee must incorporate the Corporate Governance Statement into:
 - a) its annual statutory report and accounts; and
 - b) its Regulatory Accounts prepared under Condition 5 (Regulatory Accounts).

5 Regulatory Accounts

Introduction

- 5.1 This condition applies to the Licensee in respect of each separate Financial Year of this Licence and has effect for the purpose of ensuring that the Licensee:
- a) prepares and publishes Regulatory Accounts 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

- 5.2 For the purposes of this condition, but without prejudice to the requirements of Part C below, the Licensee must prepare Regulatory Accounts for each Financial Year.
- 5.3 The Licensee must keep or cause to be kept for a period 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 and other records as are necessary to ensure that all of the revenues, costs, assets, liabilities, reserves, and provisions of, or reasonably attributable to the Relevant Business of the Licensee are separately identifiable as such in those records (and in those of any Affiliate or Related Undertaking of the Licensee).
- 5.4 The Regulatory Accounts are to be prepared on a consistent basis and must have the contents specified in Part B below.

Part B: Required contents of the Regulatory Accounts

- 5.5 The Regulatory Accounts prepared for each Financial Year must comprise:
- a) an income statement and a statement of comprehensive income, distinguishing between:
 - i. the Code Manager Business and Permitted Business; and
 - ii. Core Charges and Usage-based Charges
 - b) a statement of financial position (or, as appropriate, a balance sheet);
 - c) a statement of cash flows (or, as appropriate, a cash flow statement);
 - d) the Corporate Governance Statement prepared by the Licensee in accordance with standard condition 4 (Corporate Governance Arrangements); and

- e) a Directors' Report in respect of the Relevant Business of the Licensee.

5.6 The requirement under paragraph 5.5(e) of this condition for the Licensee to include a Directors' Report 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 the Directors' Report has the coverage and content of the directors' report that a Quoted Company is required to prepare under chapter 5 of part 15 of the Companies Act 2006.

Part C: Consistency required with the statutory accounts

- 5.7 The Licensee must ensure, so far as is reasonably practicable and except where the Authority otherwise consents, that Regulatory Accounts and information prepared in accordance with Parts A and B above:
- a) are consistent with the most recent or concurrent statutory accounts of the Licensee prepared under Part 15 of the Companies Act 2006; and
 - b) comply with the requirements applicable to a Quoted Company, whether or not the Licensee is such a company, in Chapter 4 Part 15 of the Companies Act 2006 with respect to the preparation of annual accounts and the requirements of the applicable accounting framework under which it prepares them.

Part D: Audit and delivery of the Regulatory Accounts

- 5.8 Except where the Authority otherwise consents, the Licensee must:
- a) procure an audit by an Appropriate Auditor of such parts of its Regulatory Accounts 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 Appropriate 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, the Relevant Business in accordance with the requirements of Part A above; and
 - c) deliver those accounts and the auditor's report required under subparagraph (b) to the Authority as soon as is reasonably practicable, and in any event before their publication under Part E below and not later than 31 July after the end of the Financial Year to which the Regulatory Accounts relate.

Part E: Terms of appointment of the Appropriate Auditor

- 5.9 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 Financial 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

- 5.10 The Licensee must enter into a contract of appointment with an Appropriate Auditor procured in accordance with Part D of this condition 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 standard condition 14 (Prohibition on cross-subsidies) and 15 (Duties arising from the Licensee's special position) with respect to the prohibition of cross-subsidy and discrimination.
- 5.11 The contract of appointment must require that the Agreed Upon Procedures are to be conducted in relation to each Financial 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 it has, in a manner consistent with the relevant auditing standards, completed the Agreed Upon Procedures in respect of the Financial Year under report; and
 - b) sets out their findings for the Authority's attention.

Part G: Publication and provision of the Regulatory Accounts

- 5.12 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 31st July after the end of the Financial 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.
- 5.13 A copy of the Regulatory Accounts must be provided free of charge to any person who requests a copy.

6 Operational Capability

Introduction

6.1 The purpose of this condition is to ensure that the Licensee has and maintains robust internal capability, systems and processes.

Internal capability

6.2 The Licensee must ensure it has and maintains robust internal capability, systems and processes to:

- a) carry out the Code Manager Business efficiently and effectively; and
- b) comply with relevant legislative and regulatory obligations.

The operational capability principle

6.3 The Licensee must have Sufficient Control over Material Economic and Operational Assets.

7 Procurement of Service Capability

Introduction

7.1 This condition sets out the requirements that apply to the Licensee's procurement of Service Capability.

Part A: Duties with regards to procurement of third parties

7.2 The Licensee may procure a third party to carry out a function necessary for the carrying on of the Code Manager Business, subject to and in accordance with the requirements of this Part A.

7.3 External Service Provider Contracts must be compliant with the requirements set out in Part B below.

7.4 When procuring services from an External Service Provider, the Licensee must have due regard to:

- a) the good standing, conduct, and financial capacity of the External Service Provider; and
- b) the capability and capacity of the External Service Provider to deliver the specified Service Capability.

7.5 The Licensee must not, unless the Authority consents otherwise, be a party to any External Service Provider Contract where there exists in relation to the External Service Provider a Relevant Conflict of Interest.

Part B: Mandatory contents of third-party contracts

7.6 When procuring or receiving services from an External Service Provider, the Licensee must:

- a) be a party to (which includes accepting an assignment or novation of) an External Service Provider Contract with each External Service Provider;
- b) always manage and enforce that External Service Provider Contract, and
- c) ensure that the External Service Provider Contract contains the mandatory contents set out in this Part B.

7.7 The first mandatory content is appropriate controls on the External Service Provider conducting further subcontracting when fulfilling the activities specified in the contract.

7.8 The second mandatory content is appropriate controls such that the Licensee is satisfied of continued compliance with this Licence.

- 7.9 The third mandatory content is appropriate provisions in respect of liability for any loss or damage incurred by the Licensee due to the action, or inaction, of the External Service Provider (or any subcontractor thereof or subcontractor to a subcontractor etc.).
- 7.10 The fourth mandatory content is appropriate provisions to ensure business continuity, including ensuring that:
- a) the services provided under the External Service Provider Contract will continue without material interruption during any Handover Period; and
 - b) the whole of the Licensee's interest under the External Service Provider Contract may be novated to a Successor Licensee; and
 - c) on and from the Transfer Date, the Successor Licensee has access to the services provided under that External Service Provider Contract in order for it to meet its obligations under its Code Manager Licence for the Relevant Code.
- 7.11 The fifth mandatory content is appropriate controls regarding the impact of IPR ownership and IPR licensing on:
- a) the development of effective competition in the provision to the Licensee of services of the kind to be delivered by the External Service Provider;
 - b) the integration (into the Code Manager Business) of services provided by External Service Providers collectively; and
 - c) the ability 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 intellectual property created or held by any of their predecessors.
- 7.12 The Licensee must ensure that any steps taken under this Part B comply with any provisions in this Licence and the Relevant Code.
- 7.13 In determining what constitutes appropriate controls and provision for each mandatory content in an External Service Provider Contract, the Licensee must exercise reasonable judgement and ensure that the existence, nature and extent of those controls are proportionate, having regard to, among other things:
- a) the nature and purpose of the contract;
 - b) the identity and characteristics of the External Service Provider;
 - c) the duration of the contract;
 - d) the type of Service Capability being provided; and

- e) the impact of the contract on the Licensee's ability to carry on its Code Manager Business in accordance with this Licence, in particular the requirements on independence of the Licensee (standard conditions 15 to 19) and the Code Manager Objectives (standard condition 3).

8 Fit and proper requirement

8.1 The Licensee must not appoint or have in place a person in a position of Significant Managerial Responsibility or Influence who is not a fit and proper person to occupy that role.

8.2 The Licensee must:

- a) have and maintain robust processes, systems and governance in place to ensure that any person holding a position of Significant Managerial Responsibility or Influence in the Licensee is fit and proper to occupy that role; and
- b) carry out regular assessments on such person(s) to ensure that they remain fit and proper to occupy that role.

In complying with paragraphs 8.1 to 8.2, the Licensee must have regard to and take account of all relevant matters including, but not limited to, whether the individual has:

- a) been responsible for, contributed to or facilitated any misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity (or provided a service elsewhere which, if provided in Great Britain, would be a regulated activity);
- b) any relevant unspent criminal convictions in any jurisdiction, in particular fraud or money laundering;
- c) any insolvency history, including undischarged bankruptcy, debt judgements or County Court Judgements;
- d) been disqualified from acting as a director of a company;
- e) been a person with Significant Managerial Responsibility or Influence at a current or former licensed Code Manager, in respect of whose Code Manager Business, the Authority issued a Code Manager of Last Resort Direction (including where they were a person of Significant Managerial Responsibility or Influence at that licensed Code Manager within the 12 months prior to the Code Manager of Last Resort Direction being issued);
- f) been a person with Significant Managerial Responsibility or Influence at a current or former licensed Gas Supplier or Electricity Supplier in respect of whose Customers' premises the Authority issued a Last Resort Supply Direction (including where they were a person with Significant Managerial Responsibility or Influence at that licensed Gas Supplier or Electricity Supplier within the 12 months prior to the Last Resort Supply Direction being issued); and

- g) been refused, had revoked, restricted, or terminated any form of authorisation, or had any disciplinary, compliance, enforcement or regulatory action taken by any regulatory body or Industry Code body in any jurisdiction whether as an individual, or in relation to a business in which that person was in a position of Significant Managerial Responsibility or Influence.

8.3 In deciding whether a person is fit and proper, the Licensee must give particular regard to circumstances in which the relevant person has a background in the energy sector in Great Britain and the previous actions of that person resulted in or contributed towards significant consumer or market detriment.

9 Term limits for Non-Executive Directors

- 9.1 The Licensee must ensure that each Non-Executive Director of the Licensee shall hold office for a term not exceeding three years; but such a person shall be eligible for re-appointment on expiry of such term.

Financial and Operational Controls

10 Not-for-profit requirement

10.1 The Licensee must carry out the Code Manager Business on a not-for-profit basis

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11 Availability of all necessary resources

Introduction

11.1 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 on the Code Manager Business.

Part A: General obligations under this condition

11.2 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 standard condition 20 (Annual Budget of the Code Manager)) 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 the Code Manager Business.

Part B: Certificate of adequacy

11.3 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

11.4 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 Code Manager Business 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 Code Manager Business 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 Code Manager Business" [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 Code Manager Business for a period of 12 months from the date of this certificate."

12 Indebtedness and transfer of funds

Introduction

12.1 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

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

12.3 Paragraphs 12.4, 12.5, and 12.6 are without prejudice to any further restrictions provided in the Relevant Code.

Part B: Restricted Transactions Category 1

12.4 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) for a Permitted Purpose.

Part C: Restricted Transactions Category 2

12.5 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 Code Manager Business;
- 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 standard condition 17 (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

- 12.6 The Licensee must not enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation.
- 12.7 The prohibition in paragraph 12.6 does not prevent the Licensee from giving any guarantee that is permitted by and compliant with the requirements of Part B above.

13 Assurance of the financial stability of the Licensee

Introduction

- 13.1 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 on its Relevant Business.

Arrangements for providing assurance

- 13.2 For the purpose of providing assurance as to its continuing financial stability, the Licensee must, within three months of 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.
- 13.3 Any proposal submitted by the Licensee in accordance with paragraph 13.2 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.

14 Prohibition on cross-subsidies

- 14.1 The Licensee must ensure that no cross-subsidy is given to, nor received from:
- a) any Affiliate or Related Undertaking; and/or
 - b) any Permitted Business.
- 14.2 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 14.1.

Arrangement for the Licensee's Independence

15 Duties arising from the Licensee's special position

Introduction

- 15.1 The purpose of this condition is to ensure that the Licensee does not unduly discriminate nor distort competition.
- 15.2 This condition applies (subject to paragraph 15.4 and 15.6) in relation to the Licensee's Code Manager Business.

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

- 15.3 In undertaking its Code Manager Business, 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 persons of a particular class or description.
- 15.4 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 15.3.

Part B: Not prevent nor distort competition

- 15.5 The Licensee must at all times carry out its Code Manager Business in a way that is most likely to ensure that it does not restrict, prevent, or distort competition:
- a) in or for any licensable activity under the Relevant 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 governed by the Relevant Code.
- 15.6 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 15.5.

16 Sufficiently Independent Directors

Introduction

16.1 The purpose of this condition is to strengthen the independence and autonomy of the Licensee from other entities (including Affiliates of the Licensee and Code Parties) by placing minimum requirements with respect to having Sufficiently Independent Directors.

Requirements on having Sufficiently Independent Directors

16.2 Unless the Authority consents otherwise, and subject to paragraph 16.10, the Licensee must ensure that at all times no fewer than 50% of its directors, excluding the chair of its board, are Sufficiently Independent Directors.

16.3 In addition to the requirement set out in 16.2, the Licensee must ensure that the chair of its board meets the requirements of a Sufficiently Independent Director, as defined in this condition 16.

16.4 A Sufficiently Independent Director must:

- a) be a natural person; and
- 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.

16.5 A Sufficiently Independent Director must not hold or, 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 be or, in that period, have been:

- a) an employee or executive director of the Licensee;
- b) a director or employee of an Affiliate of the Licensee;
- c) a director or employee of a Code Party other than the Licensee; or
- d) a director or employee of any External Service Provider contracted by the Licensee.

16.6 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 Code Party;

- b) hold a remit to represent the interests of any Code Party or class of Code Party, or particular shareholder or group of shareholders of the Licensee or the interests of any Affiliate of the Licensee; or
- c) receive remuneration from the Licensee, any Affiliate of the Licensee, or Code Party, apart from a director's fee and reasonable expenses from the Licensee.

16.7 For the purposes of sub-paragraphs 16.6(a), 16.6(b) and 16.6(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, any Affiliate of the Licensee or Code Parties shall not be considered to be remuneration.

16.8 The Licensee must notify the Authority in writing of the names of its Sufficiently Independent Directors within 14 days of this Licence being granted and any new directors being appointed, for the purpose of fulfilling the obligation in paragraph 16.2 of this condition.

16.9 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.

16.10 If, because of a removal or resignation or other reason (including death or incapacity) the requirements in paragraph 16.2 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 16.2 as soon as is reasonably practicable.

17 Restrictions on activity and investment

Introduction

17.1 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

17.2 The Licensee must not, unless the Authority consents to the performance of Permitted Business, conduct any business or carry on any activity other than the Code Manager Business.

Part B: Restriction on investments

17.3 The Licensee must not, subject to paragraph 17.4 or unless the Authority consents otherwise, hold or acquire shares or other investments of any kind.

17.4 The requirement imposed by paragraph 17.3 does not apply for investments acquired in the usual and ordinary course of the Licensee's treasury management operations, subject to the Licensee maintaining in force, in relation to those operations, a system of internal controls which complies with best corporate governance practice as required (or, in the absence of any such requirement, recommended) by the UK listing authority from time to time for listed companies in the United Kingdom.

18 Restriction on the Licensee becoming a Related Undertaking

Introduction

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

Restrictions on the Licensee becoming a Related Undertaking

18.2 The Licensee must use its reasonable 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 party where that could be deemed to cause a Relevant Conflict of Interest. In particular, it must not become a Related Undertaking of:

- a) a party of the Relevant Code or any other person to whom the Licensee provides any services as part of its Code Manager Business;
- 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 18.3) exert a material influence over the conduct of the affairs of:
 - i. any party of the Relevant Code;
 - ii. any other person to whom the Licensee provides any services as part of its Code Manager Business; or
 - iii. any External Service Provider from whom Service Capability is or is likely to be procured by the Licensee.

18.3 In paragraph 18.2(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.

18.4 Where the Licensee is aware that any person of a description within paragraph 18.2 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 any relevant

Revocation Event in [Part [] of Terms of Grant] of this Licence and notify the Authority as soon as reasonably practicable.

19 Ultimate Controller undertaking

Introduction

19.1 This condition requires the Licensee to obtain and provide the Authority with evidence of 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 this Licence.

Part A: General obligation to procure undertakings

19.2 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 19.3.

19.3 Those terms of the undertaking 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.

19.4 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

19.5 Whenever the Licensee has obtained an undertaking in accordance with paragraph 19.4, 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 19.2;
- 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.

- 19.6 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 19.2 is not in place in relation to that Ultimate Controller;
 - 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 19.5(c).

Budgets and Cost Recovery

20 Annual Budget of the Licensee

Introduction

20.1 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 related to its Code Manager Business.

Part A: Expenditure and Recoverable Costs

20.2 The Licensee must take all reasonable steps to ensure that it incurs no expenditure which is demonstrably uneconomical, wasteful or inefficient.

20.3 Economy, efficiency and wastefulness will be considered on the basis of the knowledge and information that should have been reasonably available to the Licensee at the time of incurring the expenditure.

Part B: Content of Draft Annual Budget and Work Plan

20.4 For the forthcoming Financial Year, the Licensee must 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; and
- b) an estimate of any reduction in the total amount to be recovered from Charging Parties in respect of Recoverable Costs during the forthcoming Financial Year as a result of any outstanding Underspend that it anticipates will remain at the end of the Preceding Financial Year.

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

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

20.6 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.

20.7 In setting out the Licensee's reasonable and justifiable estimate of the Recoverable Costs, the Licensee must present in the Work Plan those costs and expenses in a

comprehensive, accurate, coherent and transparent manner. This includes any costs relating to Service Capability.

- 20.8 Where it has an impact on the content of, or supports transparency and understanding of, the Annual Budget or the Work Plan (including any drafts of these documents), the Licensee must include in these publications the relevant details of activities and costs relating to the Permitted Business, including any forecasts of such activities and costs and how they are to be funded. These relevant details must be clearly distinguished as relating to the Permitted Business.
- 20.9 For avoidance of doubt, the Licensee must also include any costs that relate to both the Code Manager Business and the Permitted Business in the Annual Budget and Work Plan, setting out the basis on which such costs are apportioned between the Code Manager Business and the Permitted Business.

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

20.10 Ahead of the start of each Financial Year the Licensee must:

- a) provide a copy of the Draft Annual Budget and Work Plan to all Code Parties, as well as Citizens Advice, Citizens Advice Scotland and Consumer Scotland, and invite comments on them;
- b) provide a copy of the Draft Annual Budget and Work Plan to the 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.

20.11 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 21 days within which comments may be received by the Licensee.

20.12 As soon as reasonably practicable, the Licensee must publish on its Website:

- a) all responses received to the consultation on the Draft Annual Budget and Work Plan, unless 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 20.10(b); and
 - ii. those comments provided by Citizens Advice, Citizens Advice Scotland or Consumer Scotland.

Part D: Publication of the Annual Budget and Work Plan

20.13 Not later than 31 March in the Preceding Financial Year, the Licensee must prepare and publish on its Website:

- a) the Annual Budget and Work Plan; and
- b) an explanation of how the Licensee has taken account of comments received in the course of the consultation in any revisions to the Annual Budget and Work Plan and a comprehensive explanation of why any revisions to the Budget and Work Plan have, or have not, been made.

20.14 The Annual Budget prepared and published in accordance with paragraph 20.12 must include:

- a) the Licensee's most recent estimate of the total Underspend from the Preceding Financial Year;
- b) a figure for the total Recoverable Costs and a figure for the amount (after counting the deduction referred to inc) to be recovered from Charging Parties in respect of those Recoverable Costs in the forthcoming Financial Year; and
- c) where applicable, a detailed breakdown of how the estimated total Underspend from the previous Financial Year has been deducted from the total Recoverable Costs in determining the amount to be recovered from Charging Parties in the forthcoming Financial Year.

Part E: Overspend and Underspend

20.15 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 must promptly:

- a) notify all Charging Parties, giving details of changes required to the Annual Budget and Work Plan to correct or eliminate the anticipated overspend or underspend; 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

20.16 The Annual Budget and Work Plan relating to each Financial Year may be amended by the Licensee from time to time where it no longer reflects the Licensee's estimates and/or costs already incurred. 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 and the reason(s) for the proposed amendment(s);
- 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, Citizens Advice Scotland 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.

20.17 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 21 days (the 'consultation period') within which comments may be received by the Licensee.

20.18 As soon as reasonably practicable following the closure of the consultation period, 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. those comments received from the Stakeholder Advisory Forum as a result of the requirement in paragraph 20.15(c); and
 - ii. a summary of any comments provided by Citizens Advice or Consumer Scotland.

20.19 As soon as reasonably practicable 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 a comprehensive explanation of why any revisions to the Annual Budget and Work Plan have, or have not, been made; and

c) publish the revised Annual Budget and/or revised Work Plan on its Website.

20.20 The requirement to consult set out in this Part F does not apply where the Licensee amends the Annual Budget in the course of complying with a Direction issued by the Authority in accordance with condition 21.6 of this Licence.

21 Appeals to the Authority on the Annual Budget of the Licensee

Part A: Appeals to the Authority on the Code Manager's Annual Budget

- 21.1 The Licensee must ensure that the Relevant Code contains a process enabling any Code Party, Citizens Advice, Citizens Advice Scotland and Consumer Scotland to raise an appeal against:
- a) the Annual Budget published in accordance with Part D of standard condition 20 (Annual Budget of the Licensee); or
 - b) a revised Annual Budget published in accordance with part F of standard condition 20 by issuing a notice to the Authority within 14 days of the publication of the Annual Budget or revised Annual Budget.
- 21.2 Any appeal brought under the process established in the Relevant Code must be specific to one or more individual Cost Item and must specify which item(s) the appeal is being raised in respect of.
- 21.3 The Authority may give notice that it dismisses the appeal where it considers that the appeal is trivial or vexatious or considers that it does not make a prima facie case that it meets one of the appeal grounds set out in paragraph 21.4 or that it has no reasonable prospect of success.
- 21.4 The grounds for appeal are:
- a) the Cost Item in question was not presented in the Annual Budget, Revised Annual Budget, or Work Plan in accordance with the requirements for those documents specified in the Licence;
 - b) the Cost Item in question was not properly consulted on in accordance with standard condition 20 of this Licence, or the Licensee failed to have reasonable regard to the consultation responses submitted;
 - c) the Cost Item in question is not, or not all of it is, a Recoverable Cost as defined in this Licence;
 - d) the Cost Item in question is an inappropriate provision for the activity in question; or
 - e) the Cost Item in question will, or is likely to, prejudice unfairly the interests of one or more Parties, or cause them to be in breach of the Relevant Code, the Energy Licences and/or Law.

21.5 Unless the Authority directs otherwise, the Licensee must incur no further costs in respect of those Cost Item(s) subject to an appeal under this condition, except insofar as necessary in order to comply with legally binding obligations.

Part B: directions from the Authority

21.6 Having made its assessment of an appeal, the Authority may issue a direction to the Licensee directing them to:

- a) make no changes to the Cost Item;
- b) make a revision to the Annual Budget and Work Plan;
- c) revise the Annual Budget to change the Cost Item in question to a figure which the Authority reasonably considers to be a more appropriate forecast of the likely cost to be incurred, whether higher or lower than the original figure; or
- d) revise the Annual Budget to remove the Cost Item in question entirely and make suitable revision to its Annual Budget and Work Plan.

22 Code Manager Cost Recovery Methodology

Introduction

22.1 The purpose of this condition is to establish the requirements for, and the Licensee's obligations relating to, the Code Manager Cost Recovery Methodology.

General requirements for the Code Manager Cost Recovery Methodology

22.2 The Code Manager Cost Recovery Methodology is a methodology, provided for in the Relevant Code, that 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 the Code Manager Business.

22.3 The Licensee must, except where the Authority consents otherwise, comply with the provisions of the Code Manager Cost Recovery Methodology set out in the Relevant Code.

23 Code Manager Cost Recovery Statement

Introduction

23.1 The purpose of this condition is to establish the requirements for the Licensee to prepare and comply with a Cost Recovery Statement that enables Charging Parties to estimate the amounts payable for the performance of the Code Manager Business.

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

23.2 The Licensee must prepare and publish to its Website a statement ("Code Manager Cost Recovery Statement"), that sets out the basis on which Core Charges (and where appropriate, Usage-based Charges) will be calculated and payable to the Licensee for the performance of the Code Manager Business under or pursuant to the Relevant Code. The first Code Manager Cost Recovery Statement must be in a form approved by the Authority.

23.3 The Code Manager Cost Recovery Statement must:

- a) relate to the performance by the Licensee of the Code Manager Business;
- 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 is submitted;
- c) where appropriate, be prepared in accordance with standard condition 24 (Usage-based Charges);
- d) be prepared to reflect the Annual Budget in force under standard condition 20 (Annual Budget of the Licensee) at the time at which the Code Manager Cost Recovery Statement has effect; and
- e) be presented in such form and with appropriate detail as will enable any Charging Party to make a reasonable estimate of the Core Charges and, where appropriate, Usage-based Charges, that are payable by that party for the performance of the Code Manager Business.

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

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

- a) introducing charges for new groups of Charging 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 text within the Code Manager Cost Recovery Statement.

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

23.5 Except where the Authority otherwise consents, the Licensee must ensure every Core Charge (and Usage-based Charges where included in the statement) 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.

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

23.6 Without prejudice to Part E below, the Licensee must periodically review the Code Manager Cost Recovery Statement in force under this condition and, at least once in each Financial Year (subject to part E), make any changes that are necessary to the statement to ensure it continues to comply with Part A of this condition.

23.7 The changes mentioned in paragraph 23.6 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 amendment to, an Annual Budget in accordance with standard condition 20 (Annual Budget of the Licensee).

23.8 The Licensee must publish the Code Manager Cost Recovery Statement, as and when revised, on its Website.

23.9 The Licensee must provide a copy of the Code Manager Cost Recovery Statement to any person who requests a copy.

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

23.10 This Part E 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, for example as a result of the publication of, or amendment to, the Annual Budget.

23.11 The Licensee must, unless the Authority consents otherwise, at least one month 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 reasons for and 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 each Charging Party.

23.12 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 23.11; 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).

23.13 The Licensee may only amend the Code Manager Cost Recovery Statement more than once in a Financial 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 23.11 with respect to the immediately preceding amendment.

24 Usage-based charging

Introduction

24.1 The purpose of this condition is to specify the basis on which the Licensee may issue Usage-based Charges.

Issuing Usage-based Charges

24.2 The Licensee must fund the Code Manager Business through Core Charges as determined in accordance with the Cost Recovery Methodology as established in standard condition 22, except where the requirements in paragraph 24.3 and 24.4 are met, and notwithstanding the requirements of 24.5.

24.3 The Licensee may issue a Usage-based Charge or charges where doing so would:

- a) be proportionate (including, but not limited to, consideration of whether the charge warrants the administrative cost of charging directly); and
- b) better facilitate efficient use of the Licensee's services (including, but not limited to, where a Code Party has discretion over whether (and to what extent) it uses a service).

24.4 The Usage-based Charge or charges must be cost reflective (that the charge reflects the costs of carrying out the activity).

24.5 The Licensee must not issue a Usage-based Charge:

- a) where it is explicitly specified in the Relevant Code that an activity that is part of the Code Manager Business should be funded through Core Charges; and/or
- b) for an activity that is part of the Code Manager Business that is for the benefit of all Code Parties or a class of Code Parties.

Performance Incentives and Remuneration

25 Performance Incentives

Introduction

- 25.1 The purpose of this condition is to establish the Licensee's obligations relating to the development, implementation and maintenance of processes for measuring and reporting its performance in carrying out its Code Manager Business.
- 25.2 The requirements in this condition are intended to facilitate scrutiny of the Licensee's performance by industry, the Authority and other interested parties.

Part A: General requirements for Code Manager Performance Indicators

- 25.3 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 25.8.
- 25.4 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 the Code Manager Business, which may include an indication of what constitutes a high level of performance as well as a minimum acceptable level of performance.
- 25.5 The Licensee must publish the Code Manager Performance Indicators, as from time to time revised, on its Website.

Part B: Requirement to monitor performance

- 25.6 The Licensee must implement arrangements for monitoring its performance, adequate to allow the Licensee to report in respect of its Code Manager Performance Indicators, as required by Part A of this condition.
- 25.7 The Licensee must periodically review and update the arrangements required under paragraph 25.6.

Part C: Code Manager Performance Report

- 25.8 The Licensee must, within 28 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 Code Manager Business, 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. considerations of the requirement to perform at a minimum acceptable standard set out in Part D below, including, if applicable, any areas of improvement and plans to address these; and
 - iii. a description of the methodology employed to determine the levels of performance achieved during the previous Performance Measurement Period.

25.9 The Licensee must, within 28 days following the end of each Performance Measurement Period:

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

Part D: Requirement to perform at a minimum acceptable standard

25.10 The Licensee must execute its Code Manager Business to an acceptable minimum standard. The Licensee's performance shall be considered:

- a) in light of stakeholder feedback and expectations, as gathered through channels including but not limited to:
 - i. surveys commissioned by the Licensee or the Authority;
 - ii. written evidence of feedback, such as email correspondence or consultation responses; and
 - iii. Stakeholder Advisory Forums; and
- b) against the performance indicators set out in the Relevant Code, in particular, if applicable, the indicators for a minimum acceptable level of performance.

25.11 The Licensee's performance referenced in 25.10 shall be considered holistically and proportionately, taking into account the nature, frequency, or materiality of any performance issues, and recognising that isolated or minor deviations from expected standards may not, in themselves, constitute a failure to meet the minimum acceptable standard.

Part E: Modification of the Code Manager Performance Indicators

25.12 The Licensee must, for the purpose of ensuring that the Code Manager Performance Indicators will continue to achieve the requirement in paragraph 25.4:

- 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 Measurement Period) as it believes are appropriate or necessary.

26 Remuneration policy

Introduction

26.1 The purpose of this condition is to set out:

- a) a requirement on the Licensee to implement a remuneration policy for its Senior Staff; and
- b) the Licensee's obligations when assessing and deciding on performance related remuneration of Senior Staff.

Requirements regarding the Remuneration Policy

26.2 The requirements set out in this condition 26 only applies to the Licensee's Code Manager Business, and should not restrict the Licensee from implementing other remuneration policies with regards to any Permitted Business.

26.3 Within 28 days of Licence Commencement Date, unless the Authority consents otherwise, the Licensee must develop a "Remuneration Policy" that must, at a minimum, include the requirements set out in this condition.

26.4 The Remuneration Policy must:

- a) describe the principles, practices, procedures and systems that the Licensee must follow when remunerating its Senior Staff for their contribution to the delivery of Code Manager Business; and
- b) describe the principles and methodologies for awarding performance related remuneration to Senior Staff. The principles and methodologies must enable assessment of and consider:
 - i. an individual's contribution and work towards the Code Manager Performance Indicators;
 - ii. feedback from code parties and the Authority on an individual's performance and/or the Licensee's as a whole; and
 - iii. the impact of any instances of the Licensee's non-compliance with this Licence or enforcement actions against the Licensee.

26.5 In developing the part of the Remuneration Policy that relates to performance related remuneration of Senior Staff, the Licensee must consult at least two persons that would meet the requirements of a "Sufficiently Independent Director of the Licensee" (as defined in standard condition 16), and must have regard to their input.

26.6 The Licensee must:

- a) publish the Remuneration Policy on its Website; and
- b) periodically review the Remuneration Policy, no less than every three years, and publish any revised updates.

26.7 The Licensee must only make performance related payments to Senior Staff in line with the Remuneration Policy, as implemented in line with this condition 26.

26.8 For the purposes of this condition, performance related remuneration refers to one-off performance related pay, distinct from contractual salaries.

Governance, Delivery and Reporting

27 Code maintenance and modification

Part A: General

27.1 The Licensee must at all times have in force and maintain the Relevant Code.

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

27.3 The Relevant Code is a document that:

- a) has been designated by the Secretary of State under section 182(1)(b) of the Energy Act 2023;
- b) provides for the arrangements in [special condition x];
- c) includes procedures for modification of the Relevant Code ("Modification Procedures"), including modification of the Modification Procedures themselves, as required by Part B and Part C;
- d) provides for the establishment of a Stakeholder Advisory Forum in accordance with Part D; and
- e) is designed to facilitate the achievement of the Relevant Code Objectives.

Part B: Modification procedures

27.4 The Relevant Code may not be modified except:

- a) by the Licensee in accordance with provisions of this Part B; or
- b) by the Secretary of State or the Authority pursuant to a power conferred in legislation.

27.5 The Modification Procedures must provide for:

- a) the establishment of a pre-modification process, including for the raising of Issues, a triage process and its criteria;
- b) the criteria and process for designating a party for the purpose of permitting that party to raise a proposal for modification;
- c) proposals for modification of the Relevant Code to be raised by any Proposer and the requirements that such a proposal must meet;

- d) the basis on which the Licensee may decline to accept a proposal for modification that does not meet those requirements;
- e) the establishment of cross-code processes;
- f) where a Modification Proposal has been accepted by the Licensee, Alternative Modification Proposals to be raised by a Proposer;
- g) the basis on which a Modification Proposal may be withdrawn by the Proposer or the Licensee;
- h) the criteria for;
 - i) raising Alternative Modification Proposals that may be progressed through the Modification Procedures;
 - ii) who can raise an Alternative Modification Proposal;
 - iii) the basis on which the Licensee may decline to accept an Alternative Modification Proposal in accordance with those criteria, or (where already accepted) combine or discard, such Alternative Modification Proposals;
- i) the matters required (in relation to Significant Code Reviews) in condition 27.16;
- j) the process by which the Licensee may take ownership of a Modification Proposal, or an Issue, as requested by a Proposer;
- k) the criteria and process by which Modification Proposals will be classified by the Licensee, according to the materiality of the proposal (including whether it would be likely to have a material effect on existing or future Energy Consumers), as being "Self-Governance" or "Authority-Consent" for the purposes of paragraphs (i) and (m) below, including provisions as to appeal required by Condition 27.11;
- l) the criteria and process by which a Self-Governance Modification Proposal may be classified by the Licensee as 'Fast-Track', and the basis on which the procedures referred to in paragraph (o) may be compressed or varied in relation to a Fast-Track Modification Proposal;
- m) the Licensee to modify the Relevant Code pursuant to an Authority-Consent Modification Proposal only with the consent of the Authority;
- n) the basis on which the Licensee may (without the consent of the Authority) modify the Relevant Code pursuant to a Self-Governance Modification Proposal;
- o) how the Licensee prioritises Modification Proposals to progress through the Modification Procedures, including the criteria used for prioritising them;

- p) the procedures by which a Modification Proposal is to be consulted on, developed and assessed, and a Modification Report prepared, consulted on (in draft) and finalised;
- q) the criteria by and basis on which the Licensee may vary or disapply those procedures in cases of urgency, and the role (if any) of the Authority in approving any such variation or disapplication;
- r) the basis on which the Licensee will seek to ensure that less well-resourced Code Parties can make known their views about Modification Proposals;
- s) the Stakeholder Advisory Forum to provide its assessment of a Modification Proposal as provided in paragraph 27.7;
- t) the Code Manager to make its assessment of a Modification Proposal in accordance with paragraph 27.6; and
- u) those assessments of the Stakeholder Advisory Forum and Licensee to be made without regard to whether the Modification Proposal was raised in consequence of a Strategic Direction Statement.

27.6 The Licensee must:

- a) assess the Modification Proposal and each (if any) Alternative Modification Proposal, as to whether it meets the following requirement (the "Modification Hurdle"):
 - i. the relevant Proposed Modification would, as compared with the existing provisions of the Relevant Code, better facilitate achieving the Relevant Code Objectives; and
 - ii. no other Proposed Modification would better facilitate achieving the Relevant Code Objectives than the relevant Proposed Modification.
- b) in the case of Self-Governance Modification Proposals:
 - i. if the Licensee assesses that a Proposed Modification meets the Modification Hurdle, decide to modify the Relevant Code accordingly; or
 - ii. if the Licensee assesses that no Proposed Modification meets the Modification Hurdle, decide not to modify the Relevant Code;
- c) in the case of Authority-Consent Modification Proposals:
 - i. if the Licensee assesses that a Proposed Modification meets the Modification Hurdle, recommend to the Authority that the Proposed Modification of the Relevant Code should be made and that any other Proposed Modification should not be made; or

- ii. if the Licensee assesses that no Proposed Modification meets the Modification Hurdle, recommend to the Authority that no Proposed Modification of the Relevant Code should be made.

27.7 Without limitation of the wider consultation required by the Modification Procedures, the Licensee must engage closely with the SAF during the progress of a Modification Proposal through the Modification Procedures, and in the process of making a decision or recommendation (under standard condition 27.6) on a Modification Proposal, including obtaining from the SAF its written assessment as to the same matters as are set out (for the Licensee) in that condition.

27.8 For each Modification Proposal (together with all, if any, Alternative Modification Proposals), the Licensee must prepare, provide to the Authority and the Stakeholder Advisory Forum and publish a report ("Modification Report") that includes:

- a) an assessment of the impact of the Modification Proposal and each Alternative Modification Proposal on consumers;
- b) a statement of how the Modification Procedures have operated in relation to the Modification Proposal and any Alternative Modification Proposals;
- c) a summary of the views expressed by respondents through consultation on the Modification Proposal, as required by standard condition 27.5(p), to the Licensee, including views on each Alternative Modification Proposal in the course of its progress through the Modification Procedures, and copies of all representations made by these respondents in consultation on the draft Modification Report;
- d) the Licensee's assessment required under condition 27.6 and a detailed explanation of the reasons for that assessment;
- e) the assessment of the Stakeholder Advisory Forum required under condition 27.7 including their reasons for their assessment;
- f) how the Licensee has had regard to the assessment and views of the SAF in making its assessment; and where the Licensee's assessment differs from that of the SAF, an explanation of the Licensee's reasons for the difference; and
- g) the recommendation (in the case of an Authority-Consent Modification Proposal) or decision (in the case of a Self-Governance Modification Proposal) of the Licensee as to whether a Proposed Modification should be made, in accordance with paragraph 27.6.

27.9 Following its assessment of a Modification Report for an Authority-Consent Modification Proposal, the Authority may:

- a) consent to the modification of the Relevant Code in accordance with a Proposed Modification specified in that report where, in the opinion of the Authority, that

Proposed Modification facilitates achieving the Relevant Code Objectives (taken as a whole and without priority as between them):

- i. better than the existing provisions of the Relevant Code; and
- ii. as well as, or better than, any other Proposed Modification specified in the report.

noting that the Authority may, notwithstanding that it considers the requirements in (i) and (ii) above have been met, refuse consent where it considers that giving consent would be inconsistent with its principal objective or other statutory duties..

- b) refuse consent to the modification of the Relevant Code in accordance with the Proposed Modification (or if there are Alternative Modification Proposals, with any of the Proposed Modifications) specified in the report; or
- c) direct the Licensee to revise and re-submit (send-back) the Modification Report where the Authority:
 - i. is not satisfied that the Licensee has demonstrated in the Modification Report that it has taken into account (in accordance with paragraph 27.8) the views of the SAF in forming its recommendation on the Proposed Modification(s), or
 - ii. is not satisfied that the Licensee has sufficiently assessed whether one of the Proposed Modifications would better facilitate achieving the Relevant Code Objectives than the other(s); or otherwise considers that it cannot form an opinion on consenting or refusing consent to the Proposed Modification(s) in accordance with paragraph 27.9(a) or 27.9(b),and the direction may specify a timeframe for the Modification Report to be submitted; or
- d) if the Authority decides to publish a notice under s.193(1) of the Energy Act 2023 of a Proposed Direct Modification in respect of any of the matters addressed by the Modification Report, suspend a decision about the Proposed Modification(s) specified in the report for the duration of the Consultation Phase.

27.10 Where the Authority consents to the Licensee making a modification proposed in an Authority-Consent Modification Proposal, the Licensee must modify the Relevant Code accordingly.

27.11 The Relevant Code must contain provisions that:

- a) allow any party to appeal to the Authority:

- i. a decision of the Licensee to designate, or not to designate, a party for the purpose of permitting that party to raise a Modification Proposal, on the grounds specified in condition 27.12(a);
- b) allow a Proposer to appeal to the Authority:
 - i. a decision of the Licensee to decline to accept a Modification Proposal, on the grounds specified in 27.12(b);
 - ii. a decision of the Licensee that a Modification Proposal is a Self-Governance Modification Proposal, or that a Self-Governance Modification Proposal is Fast-Track, on the grounds specified in condition 27.12(c); and
 - iii. a decision of the Licensee to modify, or not to modify, the Relevant Code in accordance with a Self-Governance Modification Proposal, on the grounds specified in condition 27.12(d);
- c) allow the Authority:
 - i. to determine whether the grounds for appeal are met; and
 - ii. to decline to hear an appeal that in its opinion is brought for reasons that are trivial or vexatious, or has no reasonable prospect of success;
- d) where upon an appeal under paragraph (b)(i) the Authority decides that a Modification Proposal is not a Self-Governance Modification Proposal or is not Fast-Track, provide for that Modification Proposal to be treated in accordance with any further decision and/or direction of the Authority; and
- e) require the Licensee to give effect to any decision or direction of the Authority given upon an appeal under paragraph (b)(ii).

27.12 The grounds for appeal are that:

- a) the appealing party is likely to be unfairly prejudiced by the decision to designate, or not designate, a party for the purpose of raising a modification;
- b) the appealing party is likely to be unfairly prejudiced by the decision to decline to accept a Modification Proposal;
- c) the appealing party is likely to be unfairly prejudiced by the Relevant Code being, or not being, modified in accordance with the Modification Proposal; or
- d) the Licensee has wrongly assessed whether or not the Proposed Modification meets the Modification Hurdle set out in condition 27.6(a).

Part C: Significant Code Reviews and direct modifications

27.13 This Part C applies in relation to a:

- a) Significant Code Review; and
- b) Proposed Direct Modification.

27.14 For the purposes of this Part C, the Authority may direct the Licensee:

- a) to raise a Modification Proposal where:
 - i. the Authority reasonably considers the modifications are necessary to comply with or implement the Regulation; and/or any Relevant Legally Binding Decisions of the European Commission and/or the Agency; or
 - ii. the Modification Proposal is in respect of a Significant Code Review;
- b) to assist the Authority with a Significant Code Review, and in developing a Proposed Direct Modification, whether prior to or during the Consultation Phase; and
- c) to seek the advice of the Stakeholder Advisory Forum in connection with providing such assistance as may be required pursuant to a direction issued under standard condition 27.14(b).

27.15 The assistance referred to in standard condition 27.14(b) may include (but is not limited to) the Licensee:

- a) collating and canvassing views from Code Parties and the Stakeholder Advisory Forum, including less well-resourced Code Parties, on the proposal; and
- b) providing advice on the proposal.

27.16 The Modification Procedures must provide:

- a) for facilitating compliance by the Licensee with any direction given by the Authority under standard condition 27.14 and 27.17(a);
- b) that the Authority may itself raise a Modification Proposal in the event that either standard condition 27.14(a)(i) or 27.14(a)(ii) apply;
- c) that Modification Proposals about matters within the scope of a Significant Code Review or a Proposed Direct Modification may not be raised during the Modification Suspense Period except:
 - i. where the Authority determines that a Modification Proposal may be raised, or
 - ii. at the direction of, or by, the Authority;

- d) that where any Modification Proposal has been raised before the start of, or is raised during, a Modification Suspense Period the Licensee must:
 - i. where the Licensee considers that the Modification Proposal falls within the scope of a Significant Code Review or Proposed Direct Modification, notify the Authority as soon as practicable, unless the Authority otherwise permits, of the existence of that proposal and of the Licensee's assessment of the proposal and any representations the Licensee has received from any other person; and
 - ii. if the Authority so directs, suspend the progress of the Modification Proposal through the Modification Procedures until the Modification Suspense Period has ended;
- e) that Modification Proposals raised in relation to a Significant Code Review:
 - i. will be accepted into the Modification Procedures by the Licensee;
 - ii. (if raised by the Licensee) will not be withdrawn without the Authority's prior consent;
- f) for compliance by the Licensee with any direction(s) issued by the Authority under this condition setting and/or amending a timetable (in relation to a Modification Proposal falling within the scope of standard condition 27.14(a)) for:
 - i. (where applicable) the Licensee to raise the Modification Proposal; and/or
 - ii. the completion of each of the procedural steps outlined in the direction (including any steps that differ from the Modification Procedures referred to in standard condition 27.5), to the extent that they are relevant;
- g) that the Authority's published conclusions in relation to a Significant Code Review shall not fetter the assessments carried out by the Stakeholder Advisory Forum and the Licensee in their consideration of a Modification Proposal falling within the scope of standard condition 27.15;
- h) for the provisions described in standard condition 27.18; and
- i) that where a Modification Proposal has been made in accordance with 27.17(a), or by the Authority under 27.17(b) and which fall within the scope of condition 27.14(a), the Authority may issue a direction (a "backstop direction"), which requires such proposal(s) and any alternatives to be withdrawn and which causes the Modification Suspense Period to recommence.

27.17 Within 28 days after the Authority has published any of its Significant Code Review conclusions, whether in respect of all or any of the matters (in whole or in part) in scope of the review, the Authority may:

- a) issue a direction to the Licensee to raise a Modification Proposal in respect of those matters;
- b) itself raise a Modification Proposal in respect of those matters;
- c) publish a statement that it will take neither of the actions in sub-paragraphs (a) and (b) in respect of those matters; or
- d) issue a statement that it will continue work on the Significant Code Review in respect of the matters included in its published conclusions.

27.18 The Modification Suspense Period in relation to a matter within the scope of that Significant Code Review ends:

- a) where the Authority has issued a direction to raise, or itself has raised, a Modification Proposal under Condition 27.17(a) or (b), on the date on which (as provided in Condition 27.17) the Authority either:
 - i. consents to the modifying of the Relevant Code in accordance with that Modification Proposal; or
 - ii. refuses such consent;
- b) on the date on which the Authority publishes a statement under condition 27.17(c);
- c) if by the end of the 28-day period referred to in condition 27.17 the Authority has taken none of the actions specified in that condition; or
- d) if the Authority issues a statement under condition 27.17(d), on the date:
 - i. the Authority issues a statement confirming that the Modification Suspense Period has ended; or
 - ii. one of the circumstances in conditions 27.17(a) or 27.17(b) occurs (irrespective of whether such circumstance occurs within 28 days after the Authority has published any of its Significant Code Review conclusions), whichever is earlier.

27.19 A Significant Code Review ends in respect of each matter within its scope on the date the Modification Suspense Period ends in respect of that matter.

27.20 Where the Authority publishes its Significant Code Review conclusions in parts, the 28-day period referred to in standard condition 27.17 shall run from the date of each respective published conclusion.

27.21 The Modification Suspense Period in relation to a Proposed Direct Modification ends:

- a) on the date the Authority publishes a notice of decision under s.193(5) of the Energy Act 2023; or
- b) if the Secretary of State directs the Authority not to make the Proposed Direct Modification pursuant to s.193(4) of the Act, on the date the Authority publishes that it has received the direction.

Part D: Stakeholder Advisory Forum

27.22 The Relevant Code must provide for:

- a) the establishment of a Stakeholder Advisory Forum (the Forum);
- b) the membership of the Forum, to include:
 - i. a member who is independent of any Code Party and the Licensee and who (or whose independent alternate) will act as chairperson of meetings of the Forum; and
 - ii. up to two members to be appointed by Citizens Advice or Consumer Scotland;
- c) the basis on which the members of the Forum will be appointed and removed;
- d) the procedures by which the Forum will conduct its business, including quoracy arrangements;
- e) appropriate requirements in cases where an individual member of the Forum has, by virtue of their relationship with a Code Party, a conflict of interest in respect of a matter specifically relating to that Code Party that is brought to the Forum;
- f) the duties of members of the Forum, including the duty to act impartially and without undue regard to the particular interests of the person or persons by whom they were appointed as member or of any Code Party by whom they are employed or engaged;
- g) the functions of the Forum; and the Relevant Code may provide for the Licensee with the consent of the Forum to assign functions to the Forum additional to those prescribed in the Relevant Code;
- h) that sub-committees of the Forum may be established, for particular purposes, by or with the approval of the Licensee;
- i) the basis on which, at the request of the Forum, the Licensee will provide it with information about the operation of the Relevant Code, including appropriate limits on the provision to, or restrictions on the use and disclosure by, the Forum of information that is commercially sensitive; and
- j) the Licensee to provide secretariat support to the Forum.

27.23 The functions of the Stakeholder Advisory Forum must include providing advice to the Licensee on the impact of a Modification Proposal and making the assessment required under standard condition 27.7.

Part E: Further provisions in relation to the Relevant Code

27.24 The Licensee must provide assistance, in so far as reasonably practicable and on reasonable request:

- a) to all persons with an interest in the Modification Procedures (including in particular small participants and innovators); and
- b) to the extent relevant, consumer representatives that request the Licensee's assistance in relation to the Relevant Code.

27.25 The assistance referred to in 27.24 shall include, but not be limited to, assistance with:

- a) drafting a Modification Proposal;
- b) understanding the operation of the Relevant Code;
- c) their involvement in and representation during the progress of a Modification Proposal through the Modification Procedures (including, but not limited to meetings of the Forum and any workgroup established under the Modification Procedures); and
- d) accessing information relating to Modification Proposals and / or modifications.

27.26 The Relevant Code must 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 request direction by the Authority under standard condition 30 "Provision of information to, and co-operation with, the Authority".

27.27 If the Licensee is aware that a consequential modification of the Relevant Code is necessary solely for the purpose of giving full and timely effect to a modification of another Industry Code, the Licensee must:

- a) (unless another Proposer has done so) raise an appropriate Modification Proposal, and
- b) progress the appropriate Modification Proposal (by whomever proposed) through the Modification Procedures on a timely basis and with the requisite priority for the purpose mentioned above (but without prejudice to the Licensee's assessment under condition 27.6).

27.28 The Licensee must maintain and (upon each modification being made) publish on its Website an up-to date version of the Relevant Code, reflecting all modifications made to it, and arrange for it to be otherwise made available to any person who requests it.

28 Ease of use of the code

Introduction

28.1 The purpose of this condition is to ensure the Licensee takes steps to improve the ease with which stakeholders (whether codes parties or otherwise) can understand, engage with and access the Relevant Code and Related Materials.

Requirements on ease of use of the code

28.2 The Licensee must take all reasonable steps to ensure persons find the Relevant Code and any Related Materials (including any digital versions of these codes and materials) as easy as practicable to:

- a) access, such that persons can easily locate, open and view the Relevant Code and Related Materials;
- b) understand; and
- c) engage with, such that persons can easily navigate the Relevant Code and Related Materials to find the information they need.

29 Production and execution of a Delivery Plan consistent with the Strategic Direction

Introduction

29.1 This condition imposes obligations on the Licensee to prepare, publish and implement a plan that details how the Licensee will facilitate delivery of the requirements of the annual Strategic Direction Statement (SDS).

Part A: General requirements for the Delivery Plan

29.2 The Licensee must publish a draft Delivery Plan alongside each Draft Annual Budget published in accordance with standard condition 20 (Annual Budget of the Licensee).

29.3 The Delivery Plan (and any draft) must set out and explain the Licensee's plans to ensure the Relevant Code is maintained and developed (which may include identifying, assessing, proposing and implementing modifications of the Relevant Code) in line with the direction set by the Strategic Direction Statement. In particular, the Delivery Plan must:

- a) must set out the relevant actions and milestones (both that the Licensee expects to take and that the Licensee expects other parties to take) for implementation of the Strategic Direction Statement insofar as it relates to the Relevant Code, as well as the Licensee's good faith estimate of timescales;
- b) must be a complete and documented explanation, presented in a coherent and consistent manner, including as appropriate the methods, context and assumptions that apply for the purpose of implementing the Strategic Direction Statement insofar as it relates to the Relevant Code;
- c) must, where published within a document that contains other published material, clearly identify the content that fulfils the Licensee's obligations under this condition;
- d) must, where the plan does not set out how the Licensee will facilitate delivery of one or more elements of the SDS that relate to the Relevant Code, include a clear, evidence-based reasoning for this exclusion; and
- e) may include more than one scenario for facilitating delivery of aspects of the SDS, with a clear, evidence-based reasoning for the inclusion of such scenario(s).

29.4 The plans set out and explained in the Delivery Plan (and any draft) should cover at least the 12-month period commencing on the date of publication of the Delivery Plan.

29.5 After publishing the draft Delivery Plan in accordance with paragraph 29.2, the Licensee must:

- a) allow at least 21 days from publication for representations;
- b) consider all representations received;
- c) no later than the publication of the final budget in accordance with standard condition 20, publish on its Website the final Delivery Plan;
- d) provide an explanation of how the Licensee has taken account of comments received in the course of the consultation in any revisions to the draft Delivery Plan; and
- e) provide a comprehensive explanation of any revisions made.

29.6 The Licensee must:

- a) take all reasonable steps to implement the relevant actions and milestones (including, where appropriate, facilitating the delivery of these by other persons) that the Licensee included in the Delivery Plan in accordance with paragraph 29.3; and
- b) ensure that steps taken under paragraph a) comply with any provisions in the Licence and the Relevant Code.

Part B: Delivery Plan Directions

29.7 The Authority may at any time, after consulting the Licensee and such other persons as it considers appropriate to consult in relation to the matter, direct the Licensee to:

- a) issue the draft or final Delivery Plan in a form specified by the Authority; and/or
- b) revise the draft or final Delivery Plan in such manner, in each case with effect from such time, and to such extent as may be specified in the direction.

Part C: Reporting on progress against the Delivery Plan

29.8 Except for the first Delivery Plan, each Delivery Plan must include a report on progress towards the outcomes contained in the previous Delivery Plan, including references to the status of the actions and milestones described in accordance with paragraph 29.3.

29.9 The Licensee must provide to the Authority any information about progress towards commitments in the Delivery Plan that the Authority may reasonably request.

Part D: General availability of the Delivery Plan

29.10 The Licensee must ensure that a copy of the Delivery Plan:

- a) is published on its Website; and
- b) is also otherwise available to any person who requests it.

30 Provision of information to, and co-operation with, the Authority

Introduction

30.1 This condition imposes on the Licensee duties to provide information (subject to certain exceptions) when requested to do so by the Authority, and requires the Licensee to be open and cooperative with the Authority.

Provision of information to, and co-operation with, the Authority

30.2 The Licensee must be open and cooperative with the Authority.

30.3 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 perform any functions given or transferred to it by or under any legislation, the Licensee must give that information to the Authority when and in the form requested.

30.4 After receiving a request from the Authority for reasoned comments on the accuracy and text of any information relating to the Licensee's activities under or pursuant to this Licence which the Authority proposes to publish, the Licensee must give such comments to the Authority when and in the form requested.

30.5 In calling for information under this condition 30, the Authority may call for information under or pursuant to any other condition.

30.6 Pursuant to paragraph 30.2, the Licensee must disclose to the Authority, in writing or orally, any circumstance relating to the Licensee of which the Authority would reasonably expect notice in order to perform its statutory functions, including, but not limited to, anything that may put at risk the Licensee's ability to carry on the Code Manager Business. Such disclosure should be given as soon as the circumstance arises, or (if later) the Licensee becomes aware of it.

30.7 The Licensee is not required to comply with paragraphs 30.3 and 30.6 if the Licensee could not be compelled to produce or give the information in evidence in civil proceedings before a court.

Arrangements for Intervention and Continuity

31 End of licence arrangements

Introduction

- 31.1 This condition imposes duties on the Licensee that are designed to ensure an orderly handover of the Code Manager Business (and, where appropriate, Intellectual Property Rights related to any Permitted Business) to a Successor Licensee in the event of the revocation of this Licence.
- 31.2 Nothing in this condition prevents the Business Handover Plan of the Licensee from containing different provisions for different cases or for different circumstances, in recognition of the factual, legal, and qualitative differences between possible revocation events.

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

- 31.3 Where a Handover Period is in force for the purposes of this condition under Part B below, the Licensee must arrange to cease carrying out the Code Manager 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 Code Manager Business on the Transfer Date in accordance with its obligations under the Licence; and
 - c) is most likely to ensure an effective and orderly handover with, in particular, no adverse impact on the quality and efficiency with which the Code Manager Business is delivered.
- 31.4 In discharging its general duty under this Part A, the Licensee must:
- a) take all reasonable steps to comply with and give effect to the Business Handover Plan as approved by the Authority under the provisions of Part C below;
 - b) if so required by the Authority, provide such reasonable support and assistance (including information) as may be specified by the Authority to persons taking part in any process to determine the identity of a Successor Licensee; and

- c) pay to the Successor Licensee, such sum of money as equates to any credit balance accrued by the Licensee following payment of costs and outgoings attributable to the period up to the Transfer Date (calculated by reference to the Licensee's actual income and expenditure as well as that set out in the then current Annual Budget).

31.5 Without prejudice to the Licensee's obligations contained in 31.4a), the Authority may, at any time during a Handover Period, issue a direction requiring the Licensee to carry out one or more commitments in the Business Handover Plan.

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

31.6 The Authority may at any time notify the Licensee that a Handover Period is in force, or will come into force, with effect from the date on which (or any date after which) the Authority provides the Licensee the notice specifying it considers that a Revocation Event has arisen or is likely to arise.

31.7 A notification given under this Part B must (having regard to the particular Revocation Event that the Authority considers has arisen or is likely to arise) specify:

- a) a Transfer Date; or
- b) how a Transfer Date will be identified.

31.8 The Authority may withdraw or amend a notification given under this Part 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

31.9 Within 12 months after the Licence Commencement Date, the Licensee must submit to the Authority for approval a draft 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 (but not limited) to such matters as are mentioned in Parts E and F, below, with respect to the contents of the Business Handover Plan.

31.10 For the purpose of meeting the requirements of this condition, the Licensee must:

- a) publish the draft Business Handover Plan on its Website;
- b) send a notification of the publication of the draft Business Handover Plan to:
 - i. all Code Parties;
 - ii. Citizens Advice;
 - iii. Consumer Scotland;
 - iv. the Stakeholder Advisory Forum; and

- v. any other parties as the Licensee considers appropriate;
- c) allow at least 28 days from publication for representations to be made; and
- d) consider all representations made within the period specified.

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

31.12 The Authority may approve the Business Handover Plan where it is satisfied that the Business Handover Plan, as submitted to it under paragraph 31.9 or with any modifications directed by it under paragraph 31.11 will enable the Licensee to fulfil its general duty under Part A during a Handover Period.

31.13 The Licensee must publish to its Website a Business Handover Plan that has been approved by the Authority in accordance with paragraph 31.12.

Part D: Requirement to keep the Business Handover Plan updated, including periodically reviewing the plan

31.14 The Licensee must ensure that the Business Handover Plan is kept up-to-date and at all times continues to be a document that accurately reflects the requirements of the standard conditions of the Licence.

31.15 Without prejudice to standard condition 31.14 above, the Licensee must:

- a) within 28 days of becoming aware of any information which may impact on the ability of the Business Handover Plan to meet those requirements, and in any case at least once every five years:
 - i. review the Business Handover Plan;
 - ii. propose to the Authority such modifications (if any) of the Business Handover Plan as it thinks are appropriate or necessary for the purpose of better complying with those requirements; and
 - iii. submit a report to the Authority stating that a review has been carried out in accordance with this paragraph 31.15; and
- b) where directed by the Authority:
 - i. review the Business Handover Plan; or
 - ii. submit the latest version of the Business Handover Plan to the Authority for approval.

31.16 The Authority may direct the Licensee to modify the content of the Business Handover Plan in such manner and to such extent as may be specified in the direction.

Part E: Mandatory contents of the Business Handover Plan

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

31.18 The first mandatory matter is provision (including mandatory terms to be included in such contracts) for securing the novation to the Successor Licensee of the whole of the Licensee's interest under any agreement or arrangement that is an External Service Provider Contract.

31.19 The second mandatory matter is provision for the Successor Licensee to be provided with access to the Licensee's up-to-date and accurate records of expenditure against the Annual Budget, to the extent required to enable the Successor Licensee to:

- a) take over and carry out the Code Manager Business;
- b) calculate any over-recovery or under-recovery of expenditure relative to the then current Annual Budget as at the Transfer Date or at the end of the relevant Financial Year, as the case may be; and
- c) carry out and fulfil its Licence obligations as Licensee for the Relevant Code.

31.20 The third mandatory matter is provision for securing the novation to the Successor Licensee of Intellectual Property Rights for the purpose of meeting the requirements of Part G of this condition, including an explanation of any risks to the ability to novate Intellectual Property Rights to the Successor Licensee, and their mitigations.

31.21 The fourth mandatory matter, where any appropriate contents in Part F below are not included in the Business Handover Plan, is a justification for this omission.

Part F: Other appropriate contents of the Business Handover Plan

31.22 Without prejudice to the requirements of Part E 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 Code Manager 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 (which may be identified at team level as opposed to individual) 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 Code Manager Business, and where applicable Permitted 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 ability of either or both of the Licensee and Successor Licensee to propose modifications of the Business Handover Plan to the Authority, 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; and
- f) provision for the Licensee to grant an indemnity to the Successor Licensee for liability, including the cost of legal proceedings, arising out of or in connection with the conduct of the Licensee on or before the Transfer Date.

Part G: Novation by the Licensee of intellectual property rights to its successors

31.23 This Part G applies to the treatment of any Intellectual Property Rights (IPRs) of the Licensee arising from or in consequence of any of the functions exercised by the Licensee under or by virtue of all or any of the Relevant Energy Legislation, this Licence and the Relevant Code and in particular, any IPRs that:

- a) are used or have been created by the Licensee as part of its carrying on of the Relevant Business;
- 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 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 Relevant Business.

31.24 The Licensee must, on the expiry or revocation of this Licence, novate all such Intellectual Property Rights (including any associated licences for their use) to a Successor Licensee.

31.25 The novation to which paragraph 31.24 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 Relevant Business.

31.26 The Authority may at any time, following consultation with:

- a) the Licensee; and
- b) where appropriate, any other person likely to be materially affected,

give a direction to the Licensee that relieves it of any one or more of its obligations under this Part G of this condition to such extent, for such period of time, and subject to such conditions as may be specified in that direction.

32 Code manager of last resort

- 32.1 If the Authority decides to select the Licensee to be a Code Manager of Last Resort, the Authority may, following consultation with the Licensee, give to it a Code Manager of Last Resort Direction.
- 32.2 Nothing in this condition 32 prevents the Authority from issuing a Code Manager of Last Resort Direction to the Licensee in relation to the same Designated Document if:
- a) a Code Manager of Last Resort Direction previously given to a Code Manager (other than the Licensee) has expired or is about to expire; or
 - b) the Authority has revoked or intends to revoke that Code Manager of Last Resort Direction.

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