

Annex A: Example Terms of Grant of a Code Manager Licence

This annex is provided for information only. It sets out example terms of grant of a code manager licence to assist stakeholders in understanding how the proposed modifications to the standard conditions of the code manager licences for the Balancing and Settlement Code (BSC) and Retail Energy Code (REC) would operate in practice. We are not consulting on these example terms of grant. The example terms of grant may change subject to future policy development, consultation and legal review.

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Part 1: Terms of the Licence

1. This licence granted under the Relevant Legislation authorises [CODE MANAGER NAME] (a company registered in England and Wales under company registration number [XXXXXXX]) ("the licensee") whose registered office is situated at [ADDRESS], to perform the code manager function in relation to [DESIGNATED DOCUMENT], subject to:
 - (a) the standard conditions of code managers' licences referred to in Part 2 below, which shall have effect in the licence, subject to such amendments to those conditions, if any, as are set out in Part 3 below (together "the conditions");
 - (b) the special conditions, if any, set out in Part 4 below ("the special conditions"); and
 - (c) such Schedules hereto, if any, as may be referenced in the conditions, the special conditions or the terms of the licence.
2. This licence is subject to transfer, modification or amendment in accordance with the provisions of the Act, the special conditions or the conditions.
3. This licence shall come into force on [START DATE] and unless revoked in accordance with the provisions of Schedule 2 shall continue until determined by not less than 5 years notice in writing given by the Authority to the Licensee, such notice must not be served earlier than a date being 5 years after the Licence comes into force.
4. The provisions of section 46(1) of the Gas Act 1986 (and/or) 109(1) of the Electricity Act 1989 (service of documents) shall have effect as if set out herein and as if for the words "this Part or regulations made under this Part" there were substituted the words "this licence". A document may also be serviced by electronic means provided that the Authority has indicated its willingness to receive documents of that description by electronic means and the document is sent to the number or address most recently specified for that purpose.
5. Without prejudice to sections 11 and 23(1) of the Interpretation Act 1978, Parts 1 to 5 inclusive of, and the Schedules to, this licence shall be interpreted and construed in like manner as an Act of Parliament passed after the commencement of the Interpretation Act 1978.
6. References in this licence to a provision of any enactment, where after the date of this licence:

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(a) the enactment has been replaced or supplemented by another enactment, and

(b) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter,

shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

Part 2: Standard conditions

1. Standard Conditions in effect in this licence

[LIST STANDARD CONDITIONS IN EFFECT]

2. Standard conditions not in effect in this licence

[WHERE APPLICABLE, LIST STANDARD CONDITIONS NOT IN EFFECT]

Part 3: Amended standard conditions particular to this licence

[WHERE APPLICABLE, LIST AMENDED STANDARD CONDITIONS IN EFFECT]

Part 4: The special conditions

[WHERE APPLICABLE, LIST SPECIAL CONDITIONS IN EFFECT]

Part 5: Interpretation

1. For the purposes of this licence ‘Relevant Legislation’ is to be read as:
 - (a) Section 7AC(1) of the Gas Act 1986, and, or;
 - (b) Section 6(1)(g) of the Electricity Act 1989.
2. Pursuant to Part 5 (1) of this condition, (a) and (b) shall be read as ‘the Act’ throughout this licence.
3. Where the [DESIGNATED DOCUMENT] identified in paragraph 1 (1) of Part 1 of this licence is both a designated gas licence document and a designated electricity licence document within the meaning of the Acts, this licence is granted under both section 7AC(1) of the Gas Act 1986 and section 6(1)(g) of the Electricity Act 1989. In those circumstances, both Acts apply concurrently to authorise the Licensee to perform the function of code manager in relation to the [DESIGNATED DOCUMENT], and reference in this licence to “the Act” shall be construed accordingly as references to both Acts.

SCHEDULE 1 – Specified Area

Great Britain, the territorial sea adjacent to Great Britain and any Renewable Energy Zone, or at a place that is not a Renewable Energy Zone but is in an area designated under section 1(7) of the Continental Shelf Act 1964.

where: Renewable Energy Zone has the meaning given by section 84(4) of the Energy Act 2004.

SCHEDULE 2 - Revocation

1. The Authority may at any time revoke this Licence by giving the Licensee:
 - (a) at least 24 hours' Notice in the case of any of the Emergency Revocation Events set out in Section A below;
 - (b) at least seven days' Notice in the case of the Grant Revocation Event set out in Section B below; and
 - (c) at least 30 days' Notice in the case of any of the Other Revocation Events set out in Section C below.

Part A: Emergency Revocation Event

2. The Emergency Revocation Event is if the Licensee:
 - (a) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
 - (b) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
 - (c) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
 - (d) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
 - (e) becomes subject to an order for winding-up by a court of competent jurisdiction.
3. For the purpose of paragraph 2(a):
 - (a) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for "£750" there was substituted "£100,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee; and
 - (b) The Licensee shall not be deemed to be unable to pay its debts if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures, or if any such demand is satisfied before the

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expiration of such period as may be stated in any notice given by the Authority under paragraph 1(a).

Part B: Grant Revocation Event

4. The Grant Revocation Event (to which the Authority's power of revocation under paragraph 1(b) relates) is if the Authority is satisfied that a material mis-statement of fact was made by, or on behalf of, the Licensee during or in connection with the code manager selection process.
5. For the purposes of the paragraph above, the code manager selection process includes the following:
 - (a) Eligibility assessment;
 - (b) Licencing assessment; and
 - (c) Implementation and assurance assessment.

Part C: Other Revocation Event

6. The Other Revocation Events (to which the Authority's power of revocation under paragraph 1(c) relates) are:
 - (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
 - (b) the Licensee fails to comply with a final order and such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Electricity Act 1989 or under section 30 of the Gas Act 1986 could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
 - (c) the Licensee fails to pay any financial penalty by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Electricity Act 1989 or under section 30E of the Gas Act 1986 could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
 - (d) if the Licensee fails to comply with:

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- i. an order made by the court under section 34 of the Competition Act 1998;
 - ii. an order made by the Authority under Sections 158 or 160 of the Enterprise Act 2002;
 - iii. an order made by the CMA under Sections 76, 81, 83, 84 and 161 of the Enterprise Act 2002;
 - iv. an order made by the Secretary of State under Sections 66, 147, 160 or 161 of the Enterprise Act 2002;
- (e) if the Licensee has ceased (other than as directed by the Authority under these Terms) to carry on any part of the Code Manager Business;
- (f) if the Authority considers that the Licensee has breached, or is breaching, any condition of this Licence, or any statutory requirement imposed on the Licensee in consequence of or in connection with this Licence, in a manner or to an extent that is so serious as to make it inappropriate for the Licensee to continue to hold this Licence;
- (g) The Licensee breaches (or fails to take all appropriate steps to prevent some other person causing it to breach) standard licence condition 7 (Restrictions on the Licensee becoming a Related Undertaking); or
- (h) The Authority is satisfied (whether having regard to the conduct of the Licensee under this Licence or otherwise) that the Licensee no longer is, or never was, a fit and proper person to carry on the Code Manager Business.