

Standard Condition BI - Regulatory Accounts -

We note that this is largely modelled on D licence condition 42, except for 3 b(viii) below.

We would like to discuss whether these accounts are necessary in addition to statutory accounts.

Part A: Application and purpose

1. This condition applies for the purposes of ensuring that:
 - (a) the licensee prepares and publishes regulatory accounts within the meaning of paragraph 3 (b); and
 - (b) that the licensee maintains (and secures that any affiliate or related undertaking of the licensee maintains) such accounting records, other records and reporting arrangements for the consolidated transmission business as are necessary to enable the licensee to comply with that obligation

Part B: Preparation of accounts

2. For the purposes of this condition, but without prejudice to paragraph 6, the licensee shall prepare regulatory accounts for each financial year ending on 31 March.
3. Unless the Authority otherwise consents, the licensee must:
 - (a) keep or cause to be kept for a period approved by the Authority, but not less than the period referred to in section 222{5Xb) of the Companies Act 1985 and in the manner referred to in that section, such accounting records and other records as are necessary so that the revenues, costs, assets, liabilities, reserves, and provisions of, or *reasonably attributable to, each of the businesses referred to in paragraph 1* are separately identifiable in the accounting records of the licensee (and of any affiliate or related undertaking of the licensee) from those of any other business of the licensee; and
 - (b) prepare, on a consistent basis from such accounting records in respect of each financial year, regulatory accounts (including notes thereto and statements of

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the accounting policies adopted) (if the licensee comprising;

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- (i) a profit and loss account (or, as appropriate, an income statement);
- (ii) a statement of total recognised gains and losses (or, as appropriate, a statement of changes in equity and if appropriate a statement of recognised income and expense);

(iii) a balance sheet;

(iv) a cash flow statement;

(v) a corporate governance statement *in respect of the whole business to which this licence relates;*

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Comment [j2]: Unclear what this is adding.

(vi) a directors' report in respect of the *whole business to which this licence relates;*

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(vii) an operating and financial review in respect of *the whole business to which this licence relates;* and

Comment [j3]: Unclear what this is adding.

(viii) - *not in D licence*

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a statement showing separately and in appropriate detail the amounts of any revenue, cost, asset, liability, reserve or provision which has either been:

Comment [j4]: REFERENCE S TO CHARGES TO OR FROM "ANY ULTIMATE CONTROLLER" ARE SIGNIFICANT CHANGES THAT HAVE NOT BEEN EXPLAINED IN CONSULTATION PAPER, FULL DISCUSSION IS NEEDED ON THE CHANGES PROPOSED.

(aa) *charged from any ultimate controller of the licensee, together with any subsidiary of such ultimate controller (other than the licensee or its subsidiaries) in relation to the provision of goods or services to the licensee;*

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(bb) *charged from the licensee together with any subsidiary of the licensee in relation to the provision of goods or services to any ultimate controller of the licensee together with any subsidiaries of such ultimate controller (other than the licensee or its subsidiaries); or*

(cc) *determined by apportionment or allocation to the licensee or between any other business of the licensee or affiliate or related undertaking together with a description of the basis of the apportionment or allocation;*

provided that the obligations in (aa), (bb) and (cc) above shall only apply to goods and services received or supplied for the purposes of the consolidated transmission business.

4. {this is not in the distribution licence} Unless the Authority so specifies in directions issued for the purposes of this condition, or with the Authority's prior written approval, which shall not be unreasonably withheld, the licensee shall not in relation to the regulatory accounts in respect of a financial year change the bases of charge or apportionment or allocation referred to in paragraph 3(b)(viii) from those applied in respect of the previous financial year.
5. {this is not in the distribution licence} Where, in relation to the regulatory accounts in respect of a financial year, the licensee has, in accordance with paragraph 4 above, changed such bases of charge or apportionment or allocation or changed any of its accounting policies or the application of those accounting policies from those adopted for the immediately preceding financial year, the licensee shall, if directed by the Authority in writing, in addition to preparing regulatory accounts on those bases which it has adopted, also prepare such regulatory accounts on the bases and the accounting policies and the application of its accounting policies which applied in respect of that immediately preceding financial year.
6. Regulatory accounts and information in respect of a financial year prepared under paragraph 3(b) shall, so far as reasonably practicable and unless otherwise approved by the Authority having regard to the purposes of this condition, have the same content and format as the most recent or concurrent statutory accounts of the licensee prepared under sections 226 and 226A or, where appropriate, section 226B of the Companies Act 1985 and shall comply with all relevant accounting and reporting standards currently in force which have been issued or adopted by the Accounting Standards Board or, if the regulatory accounts and information have been prepared under section 226B of the Companies Act 1985, by the International Accounting Standards Board.

Part C: Audit and delivery of accounts

7. Unless the Authority otherwise consents, the licensee shall:

- (a) procure, in relation to its regulatory accounts:
 - (i) an audit by an appropriate auditor of such parts of those accounts and the directors' report and operating and financial review as are specified in the Companies Act 1985 as being required to be so audited as if the licensee were a quoted company and they were the statutory accounts of the licensee prepared under sections 226 and 226A or, as appropriate, section 226B of the Companies Act 1985 drawn up to 31 March, and
 - (ii) a report by that auditor, addressed to the Authority, stating whether in the auditor's opinion those accounts fairly present the financial position, financial performance and cash flows of or reasonably attributable to the licensee in accordance with the requirements of this condition; and

- (b) deliver to the Authority those accounts and the auditor's reports referred to in sub-paragraph (a)(ii) and paragraph 8 as soon as is reasonably practicable, and in any event prior to their publication under Part D and not later than 31 July following the end of the financial year to which the regulatory accounts relate.

Comment [j5]: Suggest keep at 30 September to help spread workload of regulatory submissions

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- 8. The licensee shall take all appropriate steps within its power to procure, in relation to its regulatory accounts:
 - (a) that the audit referred to in paragraph 7(a)(i) verifies whether the obligation to avoid discrimination and cross-subsidies specified in Article 19 of Directive 2003/54/EC of the European Parliament and of the European Council of 26 June 2003 has been respected by the licensee; and
 - (b) that the appropriate auditor reports separately on that matter from his report under paragraph 7(a)(ii) addressed to the Authority.

- 9. For the purposes of paragraphs 7 and 8, the licensee must, at its own expense, enter into a contract of appointment with an appropriate auditor which

Comment [j6]: Definition (see D licence)

includes a term requiring that the audit of the regulatory accounts of the licensee must be conducted by that auditor 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 either section 226 A or 226B of the Companies Act 1985.

Part D: Publication of regulatory accounts

10. Unless the Authority otherwise directs, after consulting the licensee, the licensee shall publish its regulatory accounts with the exception of the part of such regulatory accounts which shows separately the amounts charged, apportioned or allocated and describes the bases of charge or apportionment or allocation respectively required under paragraph 3(b)(viii), and any other information agreed by the Authority in writing to be confidential:

- (a) as a stand-alone document in accordance with this condition;
- (b) **by** 31 July following the end of the financial year to which the accounts relate;
- (c) on a website used by the licensee in its ordinary course of business (where the regulatory accounts should be reasonably accessible to any person requiring them); and
- (d) in any other manner which, in the opinion of the licensee, is necessary to secure adequate publicity for the accounts.

Comment [J7]: See comment above on timescales

11. A copy of the regulatory accounts must be provided free of charge:

- (9) to the Consumer Council no later than the date on which the regulatory accounts are published; and
- (b) to any person requesting a copy.

Part E: Interpretation

12. References in this condition to sections of the Companies Act 1985 are references to those provisions as amended, substituted or inserted by the relevant provisions of the Companies Act 1989, and if such provisions of the Companies Act 1989 are not in force at the date on which this condition takes effect, it must be construed as if such provisions were in force at such date.
13. A consent under paragraph 3 or directions under paragraphs 4 or 5 may be given in relation to some or all of the requirements of the relevant paragraph and subject to such conditions as the Authority considers appropriate or necessary having regard to the purposes of this condition.
14. In this condition:
 - (a) "consolidated transmission business" means the consolidation, for regulatory accounting purposes, of the businesses referred to in the definition of "transmission business" as defined in standard condition A1 (Definitions and Interpretation)
 - (b) "corporate governance statement" means a statement which describes how the principles of good corporate governance have been applied to the licensee and which a quoted company is required to prepare pursuant to the Combined Code on Corporate Governance issued under the Financial Services Authority's listing rules and interpretations on corporate governance (and, for the purposes of this condition, the requirement for a quoted company to prepare such a statement is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).
 - (c) "directors' report" means a report having the coverage and content of the directors' report which a quoted

company is required to prepare pursuant to sections 234, 234ZZA and 234ZZB of the Companies Act 1985 (and, for the purposes of this condition, the requirement for a quoted company to prepare such a report is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).

- (d) "operating and financial review" means a review having the coverage and content of the operating and financial review which a quoted company is required to prepare pursuant to section 234AA of the Companies Act 1985 and in accordance with Schedule 7ZA thereof (and, for the purposes of this condition, the requirement for a quoted company to prepare such a review is to be taken as a requirement for the licensee to do so whether or not it is a quoted company).
- (e) "quoted company" has the meaning attributed to it by the Companies Act 1985.

Standard Condition B2. Change of Financial Year – similar to D licence

1. The definition of "financial year" in Standard Condition A1 (Definitions and Interpretation) shall, for the purpose only of the statutory accounts of the licensee, cease to apply to the licensee from the date at which the licensee sends a notice to the Authority for that purpose.
2. Such notice shall:
 - (a) specify the date from which, for the purpose set out at paragraph 1, the current and subsequent financial years of the licensee shall run; and
 - (b) continue in effect until revoked by the licensee issuing a further notice.
3. The licensee may, for the purpose only of its statutory accounts, change its financial year from that previously notified by sending to the Authority a new notice pursuant to paragraph 1 which specifies the licensee's new financial year-end.
4. Where the licensee sends the Authority a new notice, the previous notice shall be revoked, as provided by paragraph 2(b), and the licensee's financial year-end shall change with effect from the date specified in the new notice.
5. The provisions of this condition shall not:
 - (a) apply to the financial year of the licensee as defined in Standard Condition A1 (Definitions and Interpretation) for the purpose of accounts or other information produced in compliance with Standard Condition B1 (Regulatory Accounts) and Standard Condition B15 (Price Control Review Information); or
 - (b) affect the licensee's obligations in respect of the payment of licence fees under standard condition A4 (Payments by Licensee to the Authority).

Standard Condition B6. Restriction on Activity and Financial Ring Fencing – similar to D licence

1. Save as provided by paragraphs 3 and 4, the licensee shall not conduct any business or carry on any activity other than the transmission business.
2. The licensee shall not without the prior written consent of the Authority hold or acquire shares or other investments of any kind except:
 - (a) shares or other investments in a body corporate the sole activity of which is to carry on business for a permitted purpose;
 - (b) shares or other investments in a body corporate which is a subsidiary of the licensee and incorporated by it solely for the purpose of raising finance for the transmission business; or
 - (c) 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 (or a successor body) from time to time for listed companies in the United Kingdom.
3. Subject to the provisions of paragraph 2, nothing in this condition shall prevent:
 - (a) any affiliate in which the licensee does not hold shares or other investments from conducting any business or carrying on any activity;
 - (b) the licensee from holding shares as, or performing the supervisory or management functions of, an investor in respect of any body corporate in which it holds an interest consistent with the provisions of this licence;
 - (c) the licensee from performing the supervisory or management functions of a holding company in respect of any subsidiary; or
 - (d) the licensee from carrying on any business or conducting any activity to which the Authority has given its consent in writing.

4. Nothing in this condition shall prevent the licensee or an affiliate or related undertaking of the licensee in which the licensee holds shares or other investments (a "relevant associate") from conducting de minimis business as defined in this paragraph so long as the limitations specified in this paragraph are complied with:
- (a) For the purpose of this paragraph, "de minimis business" means any business or activity carried on by the licensee or a relevant associate or relevant associates other than:
 - (i) transmission business; and
 - (ii) any other business activity to which the Authority has given its consent in writing in accordance with paragraph 3(d).

 - (b) The licensee or a relevant associate may carry on de minimis business provided that neither of the following limitations is exceeded, namely:
 - (i) the aggregate turnover of all the de minimis business carried on by the licensee and the equity share of the aggregate turnover of all the de minimis business carried on by all its relevant associates does not in any period of twelve months commencing on 1 April of any year exceed 2.5 per cent of the aggregate turnover of the transmission business, as shown by the most recent audited regulatory accounts of the licensee produced under paragraph 3(b) of standard condition B1 (Regulatory Accounts); and
 - (ii) the aggregate amount (determined in accordance with sub-paragraph (d) below) of all investments made by the licensee in de minimis business, carried on by the licensee and all relevant associates, does not at any time after the date at which this condition takes effect in the transmission licence of the licensee exceed 2.5 per cent of the sum of the share capital in issue, the share premium and the consolidated reserves (including retained earnings) of the licensee as shown by the most recent audited regulatory accounts of the licensee produced under paragraph 3(b) of standard condition B1 (Regulatory Accounts) then available.

- (c) For the purpose of sub-paragraph (b) above, "investment" means any form of financial support or assistance given by or on behalf of the licensee for the de minimis business whether on a temporary or permanent basis and including (without limiting the generality of the foregoing) any commitment to provide any such support or assistance in the future.

- (d) At any relevant time, the amount of an investment shall be the sum of:
 - (i) the value at which such investment was included in the audited historical cost balance sheet of the licensee as at its latest accounting reference date to have occurred prior to the date this condition comes into effect in the transmission licence of the licensee (or, where the investment was not so included, zero);
 - (ii) the aggregate gross amount of all expenditure (whether of a capital or revenue nature) howsoever incurred by the licensee in respect of such investment in all completed accounting reference periods since such accounting reference date; and
 - (iii) all commitments and liabilities (whether actual or contingent) of the licensee relating to such investment outstanding at the end of the most recently completed accounting reference period, less the sum of the aggregate gross amount of all income (whether of a capital or revenue nature) howsoever received by the licensee in respect of such investment in all completed accounting reference periods since the accounting reference date referred to in sub-paragraph (d)(i).

5 For the purposes of paragraph 4, "equity share", in relation to any shareholding, means the nominal value of the equity shares held by the licensee in a relevant associate, as a percentage of the nominal value of the entire issued equity share capital of that relevant associate.

Standard Condition B7. Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to itself such resources, including (without limitation) management and financial resources, personnel, fixed and moveable assets, rights, licences, consents and facilities, on such terms and with all such rights, as shall ensure that it is at all times able:
 - (a) to properly and efficiently carry on the transmission business; and
 - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to the transmission business including, without limitation, its duty to develop and maintain an efficient, coordinated and economical system of electricity transmission.

2. The licensee shall by 31 July of each year submit to the Authority a certificate, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, in one of the following forms:
 - (a) "After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business *and activities authorised by the licence held in accordance with its obligations under the Electricity Act 1989* for a period of 12 months from the date of this certificate."
 - (b) "After making enquiries, and having taken into account in particular (but without limitation) any dividend or other distribution which might reasonably be expected to be declared or paid by the licensee, the directors of the licensee have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on

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Comment [J8]: purpose of this inclusion?

the transmission business *and activities authorised by the licence held in accordance with its obligations under the Electricity Act 1989* for a period of 12 months from the date of this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the licensee to carry on the transmission business."

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(c) "In the opinion of the directors of the licensee, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business *and activities authorised by the licence held in accordance with its obligations under the Electricity Act 1989* for a period of 12 months from the date of this certificate."

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Comment [j10]: Purpose of this inclusion?

3. The licensee shall submit to the Authority with that certificate:

(i) a statement of the main factors which the directors of the licensee have taken into account in giving the certificate, together with a confirmation of the availability of financial facilities; and

(ii) *a cashflow forecast, movement in net debt and analysis of net debt.*

Comment [j11]: we have seen no case for the new requirements inserted here, these are not covered in the consultation paper, and we are not aware of problems since the DPCR review licence changes, which did not include these requirements. They would also require significant additional auditing and other resources.

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4. The documents submitted to the Authority in accordance with paragraph 3 shall be approved by a resolution of the board of directors of the licensee and must be signed by a director of the licensee pursuant to that resolution.

5. The licensee shall inform the Authority in writing immediately if the directors of the licensee become aware of any circumstance which causes them no longer to have the reasonable expectation expressed in the most recent certificate given under paragraph 2.

6. The licensee shall require that each certificate provided in accordance with paragraph 2 is accompanied by a report prepared by its auditors and addressed to the Authority stating whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement and cashflow forecast, movement in net debt, analysis of net debt submitted with it and, on the

other hand, any information which they obtained during their audit work on the regulatory accounts of the licensee prepared pursuant to standard condition B1 (Regulatory Accounts).

7. The directors of the licensee shall not declare or recommend a dividend, and the licensee shall not make any other form of distribution within the meaning of section 263 of the Companies Act 1985, or redeem or repurchase any share capital of the licensee unless prior to the declaration, recommendation or making of the distribution (as the case may be) the licensee has issued to the Authority a certificate complying with the following requirements of this paragraph:

(a) The certificate shall be in the following form:

"After making enquiries, the directors of the licensee are satisfied:

(i) that the licensee is in compliance in all material respects with all obligations imposed on it by standard condition B4 (Provision of Information to the Authority), standard condition B6 (Restriction on Activity and Financial Ring Fencing), standard condition B7 (Availability of Resources), standard condition B8 (Undertaking from Ultimate Controller), standard condition BIO (Credit Rating) and standard condition B9 (Indebtedness) of its licence; and

(ii) that the making of a distribution of [] on [] will not, either alone or when taken together with other circumstances reasonably foreseeable at the date of this certificate, cause the licensee to be in breach to a material extent of any of those obligations in the future."

(b) The certificate shall be signed by a director of the licensee and must have been approved by a resolution of the board of directors of the licensee passed not more than 14 days before the date on which the declaration, recommendation or payment will be made.

- (c) Where the certificate has been issued in respect of the declaration or recommendation of a dividend, the licensee shall be under no obligation to issue a further certificate prior to payment of that dividend, provided that such payment is made within six months of the issuing of that certificate.

Standard Condition B9. Indebtedness

1. In addition to the requirements of standard condition B3 (Disposal of Relevant Assets), the licensee shall not without the prior written consent of the Authority (following the disclosure by the licensee of all material facts):
 - (a) create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance whatsoever, undertake any indebtedness to any other person or enter into any guarantee or any obligation otherwise than:
 - (i) on an arm's length basis;
 - (ii) on normal commercial terms;
 - (iii) for a permitted purpose; and
 - (iv) (if the transaction is within the ambit of standard condition B3 (Disposal of Relevant Assets)) in accordance with that condition;
 - (b) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee otherwise than by way of:
 - (i) a dividend or other distribution out of distributable reserves;
 - (ii) repayment of capital;
 - (iii) payment properly due for any goods, services or assets provided on an arm's length basis and on normal commercial terms;
 - (iv) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and made in compliance with the payment condition referred to in paragraph 2;
 - (v) repayment of or payment of interest on a loan not prohibited by subparagraph (a);
 - (vi) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received; or

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(vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition B6 (Restriction on Activity and Financial Ring Fencing) made on an arm's length basis and on normal commercial terms,

provided however, that the provisions of paragraph 3 below shall prevail in any of the circumstances described or referred to therein;

(c) enter into an agreement or incur a commitment incorporating a cross-default obligation; or

(d) continue or permit to remain in effect any agreement or commitment incorporating a cross-default obligation subsisting *on the date this condition comes into effect* {change to 1 4 2007?} in the licensee's transmission licence save that the licensee may permit any cross-default obligation in existence at that date to remain in effect for a period not exceeding twelve months from that date, provided that the cross-default obligation is solely referable to an instrument relating to the provision of a loan or other financial facilities granted prior to that date and the terms on which those facilities have been made available as subsisting on that date are not varied or otherwise made more onerous;

Comment [j12]: Definition?
(see d licence)

provided however that the provisions of sub-paragraphs 1(c) and (d) shall not prevent the licensee from giving any guarantee permitted by and compliant with the requirements of sub-paragraph (a).

2. The payment condition referred to in paragraph 1(b)(iv) is that the consideration due in respect of the transaction in question is paid in full when the transaction is entered into unless either:

(a) the counter-party to the transaction has and maintains until payment is made in full an investment grade issuer credit rating; or

(b) the obligations of the counter-party to the transaction are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor which has and maintains an investment grade issuer credit rating.

3. Except with the prior consent of the Authority, the licensee shall not after 1st April 2008 enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 4, if:

- (a) the licensee does not hold an investment grade issuer credit rating;
- (b) where the licensee holds more than one issuer credit rating, one or more of the ratings so held is not investment grade; or
- (c) any issuer credit rating held by the licensee is BBB- by Standard & Poor's Ratings Group or Fitch Ratings Ltd or Baa3 by Moody's Investors Service, Inc. (or such higher issuer credit rating as may be specified by any of these credit rating agencies from time to time as the lowest investment grade credit rating), or is an equivalent rating from another agency that has been notified to the licensee by the Authority as of comparable standing for the purposes of standard condition BIO (Credit Rating) and:
 - (i) is on review for possible downgrade; or
 - (ii) is on Credit Watch or Rating Watch with a negative designation;

or, where neither (i) nor (ii) applies:

- (iii) the rating outlook of the licensee as specified by any credit rating agency referred to in sub-paragraph (c) which at the relevant time has assigned the lower or lowest investment grade issuer credit rating held by the licensee has been changed from stable or positive to negative.

4. Where paragraph 3 applies, the licensee may not without the prior written consent of the Authority (following disclosure of all material facts) transfer, lease, license or lend any sum or sums, asset, right or benefit to any affiliate or related undertaking of the licensee as described or referred to in paragraph 1(b), otherwise than by way of:

- (a) payment properly due for any goods, services or assets in relation to commitments entered into prior to the date on which the circumstances described in paragraph 3 arise, and which are provided on an arm's length basis and on normal commercial terms;
- (b) a transfer, lease, licence or loan of any sum or sums, asset, right or benefit on an arm's length basis, on normal commercial terms and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is paid in full when the transaction is entered into;
- (c) repayment of, or payment of interest on, a loan not prohibited by paragraph 1(a) and which was contracted prior to the date on which the circumstances in paragraph 3 arise, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; and
- (d) payments for group corporation tax relief or for the surrender of Advance Corporation Tax calculated on a basis not exceeding the value of the benefit received, provided that the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

5. In this condition:

"investment grade"

has *for the purposes of this condition* the meaning given in paragraph 2 of standard condition BIO (Credit Rating).

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"issuer credit rating"

has *for the purposes of this condition* the meaning given in paragraph 2 of standard condition BIO (Credit Rating).

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Standard Condition BIO. Credit Rating – similar to D licence changes

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating.
2. In this condition:

"issuer credit rating" means:

- (a) an issuer rating by Standard & Poor's Ratings Group or any of its subsidiaries;
- (b) an issuer rating by Moody's Investors Service Inc. or any of its subsidiaries;
- (c) an issuer *default* rating (or equivalent such rating) by Fitch Ratings Ltd or any of its subsidiaries; or
- (d) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (a), (b) or (c) and issued by:

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- (i) *any of the credit rating agencies referred to in sub-paragraphs (a), (b) or (c);* or

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Comment [j15]: new

- (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.

In relation to any issuer credit rating, **"investment grade"** means: (a) unless sub-paragraph (b) below applies:

- (i) an issuer rating of not less than BBB- by Standard & Poor's Ratings Group or any of its subsidiaries;

- (ii) an issuer rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries;
 - (iii) an issuer *default* rating of not less than BBB- by Fitch Ratings Ltd or any of its subsidiaries; or
 - (iv) a rating which, in the opinion of the Authority, notified in writing to the licensee, is equivalent to those referred to in sub-paragraphs (i), (ii) and (iii) and issued by:
 - (aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii) or (iii); or
 - (bb) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in both the United Kingdom and the United States of America.
- (b) such higher rating as may be specified by those agencies from time to time as the lowest investment grade credit rating.

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Standard Condition B15. Price Control Review Information

Part A: Application and purpose

1. This condition takes effect from [DATE TO BE INSERTED] and applies in respect of the price control review information of the licensee relating to the relevant year commencing [DATE TO BE INSERTED] and each succeeding relevant year for the purposes set out in paragraph 2.
2. Those purposes are:
 - (a) to ensure that the licensee maintains (and secures 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 prepare price control review information for submission to the Authority in accordance with the requirements of this condition;
 - (b) to establish, by 1st April 2007, a common set of rules, issued by direction of the Authority after consultation with the licensee, which are to apply to the collection and preparation of price control review information for submission to the Authority by the licensee and every other transmission licensee ("the price control review reporting rules"); and thereby:
 - (c) to facilitate any review or modification by the Authority of the requirements of any of the charge restriction conditions of this licence ("a **price control review**").

Comment [J16]: Timescale needs to be realistic.

Part B: Preparation of price control review information

3. Unless and insofar as the Authority otherwise consents, the licensee must:
 - (a) keep or cause to be kept for a period approved by the Authority, but not less than the period referred to in section 222(5)(b) of the Companies Act 1985 and in the manner referred to in that section, such accounting records and other records as are necessary to ensure that the price control review information of, or reasonably attributable to the

transmission business is separately identifiable in the accounting records of the licensee (and of any affiliate or related undertaking of the licensee); and

- (b) prepare and submit to the Authority, on a consistent basis from such accounting records, in respect of each financial year, price control review information for such aspects of the consolidated transmission business and of the business of each affiliate or related undertaking of the licensee that either directly or indirectly provides goods and services to the licensee or forms part of the consolidated transmission business, either separately or consolidated, and in such manner and in respect of such financial year as may be required under the price control review reporting rules.

Part C : Delivery and review of price control review

- 4. (a) Unless and insofar as the Authority otherwise consents, the licensee must deliver the price control review information to the Authority as soon as is reasonably practicable following the end of the financial year to which such information relates and in any event not later than 31 July following the end of the financial year to which such information relates or, if later, the date determined by the Authority and set out in a direction issued pursuant to paragraph (b).

(b) The Authority may issue directions stating the date by which each transmission licensee must deliver the price control review information to the Authority.
- 5. The Authority may, in addition to any audit of the regulatory accounts of the licensee carried out in accordance with standard condition B1 (Regulatory Accounts), review, or arrange for a person nominated by the Authority ("a reviewer") to review, matters in the price control review information in respect of which the Authority requires clarification.
- 6. Subject to paragraph 7, the licensee, in relation to the purposes of any review carried out under paragraph 5:

- (a) shall give the Authority or (as the case may be) the reviewer all such assistance as it or he may reasonably require; and
 - (b) shall (and must procure, insofar as it is able to do so, that any affiliate or related undertaking of the licensee, any person by whom it procures the performance of any obligation under this condition and any auditor of such person, or of the licensee or any affiliate or related undertaking of the licensee, shall) co-operate fully with the Authority or (as the case may be) with the reviewer so as to enable him to carry out and complete his review for the Authority.
7. Where a reviewer has been nominated in accordance with paragraph 5, the licensee's performance of its obligations under paragraph 6 in relation to the reviewer is conditional on the reviewer's having entered into an agreement with the licensee to maintain confidentiality on reasonable terms.

Part D: Establishment of the price control review reporting rules

8. Subject to paragraph 9, the price control review reporting rules shall be issued by direction of the Authority for the purposes of this condition generally. The Authority may from time to time modify the price control review reporting rules in accordance with the provisions of Part F of this condition.

9. Before issuing a direction under paragraph 8, the Authority shall (a)

give notice to all relevant? transmission licensees :

Deleted: all

- (i) stating that it intends to issue the price control review reporting rules,
- (ii) setting out the contents of those rules and the date on which it is proposed that the direction should take effect, and
- (iii) specifying the period (not being less than 28 days from the date of the notice) within which representations or objections with respect to those rules may be made;

- (b) consider any representations or objections which are duly made and not withdrawn; and
- (c) give reasons for its decision

10. The licensee shall take all appropriate steps within its power:

- (a) in conjunction and co-operation with every other named/onshore? transmission licensee; and
- (b) in accordance with a programme of work and an associated timetable established and directed by the Authority in consultation with all transmission licensees;

to develop the price control review reporting rules for implementation pursuant to this condition by **DATE TO BE INSERTED**

Comment [j17]: see date in 2(b)

Deleted: [

Part E: Content of the price control review reporting rules

11. Subject to paragraphs 12 to 15, the price control review reporting rules may, in relation to any requirement of this condition in respect of the price control review information without limitation, specify:

- (a) the meaning to be applied to words and phrases (other than those defined in this or any other condition of this licence) used in connection with such information;
- (b) the methodology for calculating or deriving numbers comprising any part of such information;
- (c) requirements as to the form and manner in which such information must be recorded;
- (d) requirements as to the standards of accuracy and reliability with which such information must be recorded;
- (e) requirements as to the form and the content of such information;

- (f) requirements as to the manner in which such information must be provided to the Authority; and
- (g) requirements as to those parts of such information which may fall to be considered by a reviewer and the nature of that consideration;

and (having particular regard to the provisions of section 105 of the Utilities Act 2000) may also specify which (if any) of the information provided under this condition is to be subject to publication by the Authority.

12. The price control review reporting rules may not:
- (a) exceed what is necessary to achieve the purposes of this condition, having regard in particular to the materiality of the costs likely to be incurred by the licensee in complying therewith; or
 - (b) purport to have effect with respect to the interpretation of any other condition of this licence or the fulfilment by the licensee of any obligation imposed in respect of any matter which is the subject of any such condition.

Part F: Modification of the price control review reporting rules

13. The Authority may modify, in whole or in part, any price control review reporting rules established in accordance with Part D of this condition, in accordance with the following provisions of this Part F.
14. Subject to paragraph 15, where the Authority considers that it is necessary to modify the price control review reporting rules in order to provide more accurate, consistent, useful or comparable information for the purposes of a price control review, it may do so by issuing a direction to that effect where it:

- (a) has first given notice to all relevant? transmission licensees:
 - (i) stating that it proposes to make the modification,

- (ii) setting out the text of the modification, the purpose and effect of the modification and the date on which it is proposed to come into effect, and
 - (iii) specifying the period (not being less than 28 days from the date of the notice) within which representations or objections with respect to the proposed modification may be made;
 - (b) has considered any representations or objections which are duly made and not withdrawn; and
 - (c) has given reasons for its decisions.
15. Where a modification of the price control review reporting rules relates to the introduction into those rules of a requirement to provide:
- (a) a new category of price control review information; or
 - (b) an existing category of price control review information to a greater level of detail,

and in either case such information has not previously been collected by the licensee (whether under the provisions of the price control review reporting rules or otherwise), it shall not be a breach of that requirement for the licensee to provide estimates in respect of that category, for the year in which the modification is made and for any preceding year, derived from such other information available to the licensee as may be appropriate for that purpose.

Part G: Interpretation

16. A consent under paragraph 3 or 4 may be given in relation to some or all of the requirements of the relevant paragraph and subject to such conditions as the Authority considers appropriate or necessary having regard to the purposes of this condition.

17. For the purposes of this condition:

"consolidated transmission business" has the meaning given in paragraph 14 of standard condition BI (Regulatory Accounts).

"price control review information" means the information required to be submitted by the licensee pursuant to this condition, and is to be interpreted in accordance with the price control review reporting rules.

"relevant year" in this condition shall mean a year beginning on 1st April of each calendar year and ending on 31st March of the following calendar year.

Relevant transmission licensee?

Standard Condition B16 - Price Control Revenue Reporting and associated Information

PART A: Application and Purpose

1. The purpose of this condition is to secure the collection of specified information, to an appropriate degree of accuracy by the licensee so as to enable the Authority to effectively monitor the compliance of the licensee with charge restrictions applicable to it.

Deleted: revenue of the consolidated transmission business.

PART B: Revenue Reporting rigs and specified information

2. For the purposes of this condition:
 - (a) "revenue reporting rigs" means the instructions and guidance issued by the Authority for the purposes of this condition as modified from time to time by a direction under paragraph 11 and subject to paragraphs 12-14 which may include (without limitation):
 - (i) provisions with respect to the meaning of words and phrases used in defining specified information;
 - (ii) requirements for recording specified information which are reasonably necessary to enable an appropriate auditor to determine the accuracy and reliability of specified information;
 - (iii) requirements as to the form and manner in which specified information shall be provided to the Authority (including templates for doing so); and
 - (iv) requirements as to the form and manner in which specified information shall be recorded and the standards of accuracy and reliability with which it shall be recorded.
3. The licensee shall establish and maintain appropriate systems, processes and procedures to measure and record specified information from [DATE TO BE INSERTED] (not being earlier than the date on which this licence condition comes into force) and in accordance with the regulatory instructions and guidance (including any associated information therein) for the time being in force pursuant to this condition.
4. The licensee shall collect the information required by the revenue reporting rigs issued pursuant to this condition from the date on which such revenue reporting rigs are issued by the Authority.

Comment [J18]: undefined (see d licence)

Comment [J19]: what is this adding to para. 3?

PART C : Information to be provided to the Authority

5. The licensee shall comply with the relevant provisions and information requirements of the revenue reporting rigs issued pursuant to this condition.
6. The licensee shall provide the Authority with:
 - (a) the information specified in Template [XX] of the revenue reporting rigs by no later than 31 July following the end of the relevant year to which such information relates;
 - (b) the information specified in Template [XX] of the revenue reporting rigs by no later than 1 April of the relevant year to which such information relates, being the licensee's estimate of that information made on or before 1 April.

PART D: Audit Requirements

7. The information referred to in paragraph 6(a) shall be accompanied by a report addressed to the Authority from the auditors, stating whether in their opinion:
 - (a) the information provided in accordance with paragraph 6 has been properly prepared; and
 - (b) the amounts presented are in accordance with the licensee's records which have been maintained in accordance with paragraph 3 of this condition
8. The licensee shall require that the report from the auditors, referred to in paragraph 7, is accompanied by a letter from the auditors to the Authority detailing the procedures that the auditors have followed in reaching their opinion.
9. For the purposes of paragraph 7, the licensee shall at its own expense enter into a contract of appointment with the auditors which includes a term requiring that the audit be conducted in accordance with all relevant auditing standards in force on the last day of the financial year to which the audit relates as would be appropriate.

10. The licensee shall (and must procure, insofar as it is able to do so, that any affiliate or related undertaking of the licensee shall) co-operate fully with the auditors so as to enable them to complete and report to the Authority on any audit carried out in accordance with paragraph 7.

PART E: Modification to the revenue reporting rigs

11. Where the Authority considers that the revenue reporting rigs should be modified in such ways as are necessary to more effectively achieve the purposes of this condition, the Authority may, subject to paragraphs 12 to 14, modify the revenue reporting rigs by issuing a direction to all transmission licensees.
12. Before issuing a direction under paragraph 11, the Authority, by notice given to all transmission licensees, shall:
 - (a) state that it proposes to make a modification, and set out the date on which it proposes that this should take effect;
 - (b) set out the text of the modification, the purpose and effect of the modification, and the reasons for proposing it; and
 - (c) specify the time (not less than 28 days from the date of the notice) within which representations or objections with respect to the proposed modification may be made,

and consider any representations or objections which have been duly made and are not withdrawn, and give reasons for its decision.

13. Any modification of the revenue reporting rigs under paragraph 11 to introduce an additional category of specified information or to enlarge an existing category of information shall not exceed what may reasonably be requested from the licensee by the Authority under paragraph 1 of standard condition B4 (Provision of Information to the Authority).
14. The provisions of the revenue reporting rigs may not exceed what is necessary to achieve the purposes of this condition or purport to have effect with respect to the interpretation of any other condition of this licence or the fulfilment by the

licensee of any obligation imposed in respect of any matter which is the subject of any such condition.

15. For the purposes of this condition

"consolidated transmission business" has the meaning given in paragraph 14 of standard condition B1 (Regulatory Accounts).

Comment [j20]: Need for this term?

"relevant year" in this condition shall mean a year beginning on 1st April of each calendar year and ending on 31st March of the following calendar year...

Comment [j21]: Need for this?