

Changes to the Ring Fence Conditions in Network Operator Licences

Appendices

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Overview:

The Ring Fence Conditions in gas and electricity network operator licences provide assurance that network operators always have the financial and operational resources necessary to fulfil their obligations under legislation and their licences. This document sets out the position of the Gas and Electricity Markets Authority on prospective changes to five existing licence conditions (across several licence types) and on a proposed new condition relating to board composition for some licensees.

The proposed changes are intended to ensure that the Ring Fence continues to play an effective role in safeguarding the investments in energy infrastructure which are financed by consumers through their gas and electricity bills. They reflect the changing opportunities and risks faced by network licensees, their status as "Protected Energy Companies" and the essential nature of the infrastructure which they own and operate. The proposals in this document have been informed and influenced by the responses received to our earlier consultations, which were of a high quality and addressed both policy and drafting aspects.

This paper provides licensees and other stakeholders with an opportunity to comment on the updated draft licence modifications which have been developed following the consultation exercise which took place in 2011. Having considered any responses, we currently expect to issue statutory licence modification proposals during September 2012.

Context

Our principal objective is to protect the interests of existing and future energy consumers. Gas and electricity networks form a vital part of the infrastructure in Great Britain and since 2009 we have been updating the policies and procedures in place to manage the risk that a network operator could be affected by financial distress. This work has been carried out against the backdrop of ongoing economic concerns in Europe and elsewhere.

We have published two consultations (in March 2010 and March 2011) on updates and improvements to the suite of ring fence conditions in gas and electricity network licences. These conditions form an important part of the regulatory framework for managing risks associated with financial distress because they are intended to ensure that network operators always have the financial and operational resources necessary to fulfil their obligations under legislation and their licences. In October 2011 the Authority decided that we should proceed with a package of proposed modifications to the ring fence conditions and this document sets out the revised modifications which we currently expect to formally propose in the autumn of 2012. This is an opportunity for licensees and other stakeholders to comment on the developed drafting approach and to raise any new factors which they consider should be taken into account.

We have shown the prospective licence modifications as marked-up changes to the existing conditions in supplementary appendices 4 to 8 to this document. This presentation is, however, without prejudice to the Authority's consideration of responses to this document or to a statutory consultation on licence modifications.

Associated documents

- a) Changes to the Ring Fence Conditions in Network Operator Licences – Main Document (Ref 85/2012)
- b) [Ofgem website page with Consultation on Proposed Modifications to the Ring Fence Conditions and published stakeholder responses](#)
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=268&refer=Networks/Policy>
- c) [Ofgem website page with Initial Impact Assessment/Consultation \(Ref 30/10\), CEPA report to Ofgem \(October 2009\) and published stakeholder responses](#)
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=268&refer=Networks/Policy>
- d) [Minutes of Gas and Electricity Market Authority meeting – 13 October 2011](#)
<http://www.ofgem.gov.uk/About%20us/Authority/AuthorityMinutes/Documents1/Authority-Minutes-October%202011.pdf>
- e) [Regulatory Ringfence Update letter dated 13 March 2012](#)
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=367&refer=Networks/Policy>

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Appendix 4 – Draft Modifications: Electricity Distribution Licence Standard Conditions

Summary

This appendix shows the proposed modifications to Standard Conditions in the Electricity Distribution Licence. Additions are shown in red text and deletions in dark red text and struck through.

Condition 26. Disposal of Relevant Assets **and restrictions on charges over Receivables**

General prohibition

- 26.1 The licensee must not take any action that is or would be a Disposal of, or a Relinquishment of Operational Control over, any Relevant Asset except in accordance with the provisions of this condition.
- 26.2 Subject to paragraph 26.3, the licensee must not, after 1 April 2013, grant any mortgage, charge, or other form of security over any Receivable except in accordance with the provisions of this condition.
- 26.3 The licensee may permit any mortgage, charge, or other form of security over any Receivable in effect at the date mentioned in paragraph 26.2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope of the mortgage, charge, or other form of security insofar as it applies to the licensee's Receivables.

Arrangements for specific cases

- 26.42 Except where paragraph 26.47, 26.8 or 26.510 applies, the licensee:
- (a) (i) must give the Authority not less than two months' Notice of its intention to dispose of or relinquish operational control over any Relevant Asset, together with such further information as the Authority may request relating to that asset, or to the circumstances of the intended Disposal or Relinquishment of Operational Control, or to the intentions in regard to those matters of the person who proposes to acquire the asset or operational control over it; and
 - ~~(b)~~ (ii) may dispose of or relinquish operational control over that Relevant Asset if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (a)(i);
- and
- (b) (i) must give the Authority not less than two months' Notice of its intention to grant any mortgage, charge, or other form of security over any Receivable or class or classes of Receivables together with such further information as the Authority may request relating to that

Receivable, class or classes of Receivables or to the circumstances of the intended grant of the mortgage, charge, or other form of security; and

- (ii) may grant a mortgage, charge, or other form of security over that Receivable or class or classes of Receivables if (and only if) the Authority either consents to the transaction in question or does not inform the licensee in Writing of any objection to it within the Notice period specified in sub-paragraph (b)(i).

26.5 In considering any Notice given by the licensee under paragraph 26.4(b)(i), the Authority shall not unreasonably withhold its consent to the transaction in question.

26.36 A consent by the Authority under paragraph 26.2(b)4(a)(ii) or 26.4(b)(ii) may be given subject to the acceptance by the licensee, or by any third party to the transaction in question, in favour of whom the Relevant Asset is proposed to be disposed or operational control is proposed to be relinquished, of such conditions as may be specified in that consent.

Arrangements for other cases

26.47 The licensee may dispose of or relinquish operational control over any Relevant Asset where:

- (a) the transaction in question or the asset in question is of a class or description to which the provisions of the General Consent set out at Appendix 1 (which is part of this condition) apply; and
- (b) the transaction in question satisfies and is in accordance with all such conditions and requirements as may apply to it under those provisions in relation to that asset.

26.8 The licensee may grant a mortgage, charge, or other form of security over a Receivable or class or classes of Receivables where:

- (a) the indebtedness of the licensee that is to be secured represents the novation or rollover of existing indebtedness; and
- (b) the proceeds of the indebtedness of the licensee that is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

26.9 For the purposes of paragraph 26.8, what is meant in any particular case by:

- (a) “existing indebtedness”; and
- (b) “proceeds of the indebtedness”

is to be treated as a question of fact.

Statutory requirement

26.510 The licensee may:

- (a) dispose of or relinquish operational control over any Relevant Asset; or
- (b) grant a mortgage, charge, or other form of security over any Receivable or class or classes of Receivables,

where the ~~Disposal or Relinquishment of Operational Control~~ transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.

Interpretation

26.116 In this condition, in relation to a Relevant Asset or, as applicable, a Receivable:

Disposal means (whether under the law of England and Wales or under the law of Scotland) any of the following:

- (a) a transfer of that asset (whether or not for value) to a person other than the licensee; or
- (b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or
- (c) the grant of any mortgage, charge, or other form of security over that asset; or
- (d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land,

and references to “dispose” are to be read accordingly.

Obsolete means that the asset no longer performs its required function either in an efficient manner or at all (whether through wear and tear, obsolescence, damage, failure, unsafe operation, or advances in technology) and includes equipment that the licensee has decided to render obsolete as a result of inspection.

Prior Notice means Notice given to the Authority under paragraph 26.24(a)(i) of the licensee’s intention in relation to the asset.

Receivable means a contractual right to receive any sum or sums or any other financial asset from another person.

Redundant means that the asset is no longer required or necessary to enable the licensee to comply with its obligations under the Act or this licence in relation to its Distribution System (but a Relevant Asset may not be regarded as being Redundant solely because it is in the ownership or control of a third party).

Relinquishment of Operational Control includes entering into any agreement or arrangement under which operational control of the asset is not or ceases to be under the sole management of the licensee, and “relinquish” and any related expressions in this context are to be read accordingly.

Retail Prices Index means, in relation to a valuation of the asset under paragraph A5 of Appendix 1, the general index of retail prices published by the Office for National Statistics (or any other successor body) ~~Board~~ each month in respect of all items.

Value means the estimated price that could be expected to be received in the market at the time of the Disposal of the asset.

26.127 Appendix 1 follows immediately below.

Appendix 1: General Consent

- A1. As provided for under paragraph 26.74, the licensee may dispose of or relinquish operational control over any Relevant Asset without Prior Notice:
- (a) in accordance with the provisions of Part A below, for the Disposal of a Relevant Asset; and
 - (b) in accordance with the provisions of Part B below, for the Relinquishment of Operational Control over a Relevant Asset.

PART A: CATEGORIES OF DISPOSAL

Disposal Category 1

- A2. The licensee may dispose of a Relevant Asset without giving Prior Notice if:
- (a) the asset is Obsolete or Redundant; or
 - (b) the Disposal will not constitute the Disposal of a legal (rather than an equitable) interest until the asset is Obsolete or Redundant; or
 - (c) where the asset comprises only land above or below which an electric line (but not electrical plant) of the licensee is situated, the Disposal complies with paragraph A3.
- A3. For the purposes of paragraph A2(c), the Disposal must be on terms that will permit the electric line (including any replacement of it) to remain in position for as long as it forms part of the licensee's Distribution System under a wayleave, easement, or other legal estate which in any such case includes sufficient rights of access in favour of the licensee for the purposes of inspection, maintenance, replacement, or repair as may reasonably be necessary to enable that line to remain in operation as part of the licensee's Distribution System.
- A4. The consent in paragraph A2 does not apply in any of the following cases.
- A5. It does not apply in respect of a Relevant Asset if the Value:
- (a) of that asset; or
 - (b) of that asset and other related Relevant Assets that are being or are intended to be disposed of at the same time; or
 - (c) of that asset and other Relevant Assets which together formed part of the licensee's Distribution System and are being declared Obsolete or Redundant at the same time or as part of the same operation,
- exceeds, in the Regulatory Year beginning on 1 April 2008, £200,000 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2008.
- A6. It does not apply in respect of a Relevant Asset that is Obsolete, unless an appropriate replacement or alternative arrangement has been installed in the licensee's Distribution System, or is being or is intended to be installed in such a manner that continuity of the function of that system is achieved.
- A7. It does not apply if the Disposal of the Relevant Asset constitutes a sale and leaseback arrangement.
- A8. It does not apply if the Relevant Asset is intended to remain in operational use but not under the operational control of the licensee and its Value exceeds, in the Regulatory Year beginning on 1 April 2008, £20,000 or, in any subsequent Regulatory Year, that amount increased by the same percentage by which the Retail Prices Index on 1 April in that year is greater than the Retail Prices Index on 1 April 2008.

Disposal Category 2

- A9. The licensee may without giving Prior Notice dispose of any Relevant Asset to a wholly owned Subsidiary if before the Disposal it has given the Authority a document duly executed by the Subsidiary and the licensee (in a form capable of being enforced by the Authority) that undertakes to the Authority that:
- (a) the Subsidiary, in respect of the Relevant Asset, will comply with the provisions of this condition and standard condition 6 (Provision of Information to the Authority) as if it were the licensee; and
 - (b) the licensee will not cause or permit the Subsidiary to cease to be its wholly owned Subsidiary without the Authority's consent to the Disposal of the Relevant Asset owned by the Subsidiary.

Disposal Category 3

- A10. The licensee may without giving Prior Notice grant to a third party an easement, wayleave, licence, or similar right over any land or property in which the licensee has a legal or beneficial interest and which is a Relevant Asset, except where the grant of such a right would have a material adverse effect on the licensee's ability to use or develop the land for the purposes of its Distribution Business.

Disposal Category 4

- A11. The licensee may without giving Prior Notice dispose of any Relevant Asset to another Electricity Distributor so long as:
- (a) that Electricity Distributor is subject to the provisions of this condition and standard condition 6 (Provision of Information to the Authority); and
 - (b) the licensee will remain able to fulfil the duties imposed on it by or under this licence after the Disposal of the asset.

PART B: RELINQUISHMENT OF OPERATIONAL CONTROL

Ending of licensee's sole management of operational control

- B1. The licensee may, without giving Prior Notice, enter into an agreement or arrangement whereby operational control of a Relevant Asset (which, for the avoidance of doubt, may comprise the whole of the licensee's Distribution System) ceases to be under the licensee's sole management in any case where the agreement or arrangement ("the transaction") complies in every respect with all of the requirements set out in this Part B.

Primary characteristics of the transaction

- B2. The transaction must be consistent with all applicable conditions of this licence.
- B3. Any other consent or clearance required under statute or under this licence in respect of the transaction must have been obtained.
- B4. The transaction must be one that provides for the supply of a service or the provision of a resource in relation to a Relevant Asset by a counter-party ("the resource provider") on behalf of the licensee.
- B5. The resource provider must be and remain an Affiliate of the licensee but must not be a Holding Company of the licensee.
- B6. The transaction must be effected by contract made between the licensee and the resource provider.
- B7. That contract must be binding and enforceable both in Great Britain and in any other jurisdiction in which the resource provider has its principal place of business and must conform to the requirement of paragraph B8.

Mandatory provisions of the relevant contract

- B8. The requirement of this paragraph is that the contract in question must contain provisions to the effect set out as follows.
- B9. The contract must ensure that no force majeure or equivalent provision in the contract is permitted to excuse any failure by the licensee, or by the resource provider acting on its behalf, to comply with the licensee's statutory or licence obligations unless (and to the extent that) the event or circumstance in question would have excused the licensee under this licence if it had itself performed the service or provided the resource.
- B10. The contract must ensure that the responsibility for the performance of all the obligations to which the contract relates is clearly specified, subject to the overriding requirement that the licensee remains ultimately responsible for all statutory and licence obligations applicable to the licensee's business.
- B11. The contract must ensure that the resource provider covenants with the licensee to refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations.
- B12. The contract must ensure that the resource provider (i) discloses to the licensee the basis or bases of all charges for services provided or supplies made under the contract, together with sufficient information and analysis to support the basis for the calculation of the total

sum payable by the licensee, and (ii) may not raise any objection to, or seek to prevent, disclosure of such information to the Authority.

- B13. The contract must ensure that the licensee will be free, at any time after the fifth anniversary of the commencement of the contract, without penalty and on reasonable Notice, to resource any service or supply from an alternative source of its own choice if more favourable terms become available.
- B14. The contract must ensure, finally, that the resource provider is under an obligation to give the licensee any information within its possession or control that the licensee may from time to time require in order to enable it to:
- (a) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority);
 - (b) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee; or
 - (c) monitor adherence by the resource provider to the terms and conditions of the contract.

Undertakings from Ultimate Holding Company

B15. The licensee must procure:

- (a) from that company or other corporate body that is from time to time the Ultimate Holding Company of the licensee and the resource provider; or
- (b) from such other corporate body as the Authority may from time to time designate,

acknowledgements and legally enforceable undertakings in favour of the licensee on the terms set out in the Model Form below (which is part of this condition).

B16. Those acknowledgements and undertakings:

- (a) must have been obtained before the end of seven days after the date on which the company or other corporate body in question (“the covenantor”) becomes the licensee’s Ultimate Holding Company; and
- (b) must remain in force for as long as the covenantor remains the Ultimate Holding Company.

B17. For the purposes of paragraphs B15 and B16, “Ultimate Holding Company” means the company or other corporate body that is the Holding Company of both the licensee and the resource provider and is not itself a Subsidiary of another company or corporate body.

Evidence of compliance and duty to enforce

B18. Whenever the licensee obtains the acknowledgements and undertakings in accordance with paragraph B15, it must:

- (a) give the Authority evidence of its compliance without delay (including a copy of the acknowledgements and undertakings in question); and

- (b) at all times comply with any direction from the Authority to enforce any of those undertakings.

Reporting obligation in respect of breach

- B19. The licensee must inform the Authority immediately in Writing if the licensee's directors become aware that any undertaking procured under the provisions of this Part B has ceased to be legally enforceable or that its terms have been breached.

Restriction of arrangements with resource provider

- B20. Except with the Authority's consent, the licensee must not obtain or continue to obtain the service or resource in question from the resource provider at any time when:
- (a) the acknowledgements and undertakings specified at paragraph B15 are not in place; or
 - (b) there is an unremedied breach of any undertaking that is in place; or
 - (c) the licensee is in breach of the terms of any direction given by the Authority under paragraph B18(b).
- B21. The Model Form mentioned in paragraph B15 follows immediately below

MODEL FORM: ACKNOWLEDGEMENTS AND UNDERTAKINGS

Acknowledgements

- MF1. That it is in the best interests of the covenantor that the licensee complies with its statutory and licence obligations.
- MF2. That all matters relating to the enforcement of the licensee's rights under the relevant contract are to be reserved to the licensee's directors without regard to other interests.

Undertakings

- MF3. To procure that the resource provider will:
- (a) refrain from any action that would be likely to cause the licensee to breach any of its statutory or licence obligations;
 - (b) provide the licensee with any information within its possession or control that the licensee may from time to time require in order to enable the licensee to:
 - (i) comply with any request by the Authority for Information under standard condition 6 (Provision of Information to the Authority), or
 - (ii) assess the performance or position of the resource provider or any of its subsidiaries with respect to the provision of any service or supply made to the licensee, or
 - (iii) monitor adherence by the resource provider to the terms and conditions of the contract;
 - (c) not show undue preference to, or unduly discriminate against, the licensee in the provision to it of supplies or services; and
 - (d) not take any action that would constitute a Disposal of, or Relinquishment of Operational Control over, any Relevant Asset (other than to the licensee upon the ending or termination of any relevant contract in accordance with its terms) except in accordance with the requirements of this condition and of any consent given by the Authority under it.
- MF4. To procure that any contract between the licensee and the resource provider will comply with the requirements set out in Part B of this General Consent and will not be amended so as to cease in any way to be compliant with those requirements.
- MF5. To procure that the resource provider has and maintains resources and operating capacity at a level sufficient to ensure efficient performance of the contract and the efficient discharge of the licensee's relevant obligations.

Condition 30. Availability of resources

General obligation

- 30.1 The licensee must at all times act in a manner designed to ensure that it has available to itself such resources, including management and financial resources, personnel, fixed and moveable assets, rights, licences, consents, and facilities, on such terms and with all such rights, as will enable it to:
- (a) properly and efficiently carry on its Distribution Business; and
 - (b) comply in all respects with its obligations under this licence and such obligations under the Act as apply to the Distribution Business, including its duty to develop and maintain an efficient, co-ordinated, and economical system of electricity distribution.

.....Delete all subsequent existing text and replace with the text shown below:

Certificates for the Authority in relation to financial resources

- 30.2 The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1F**

"After making enquiries and having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors 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 Distribution Business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2F**

"After making enquiries, and subject to what is explained below, having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors 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 the Distribution 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 on the Distribution Business [*followed by a description of the factors concerned*]."

or

(c) **Certificate 3F**

“In the opinion of the licensee’s directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate.”

Statement of factors and report by auditors in relation to financial resources certificate

30.3 The licensee must ensure that the certificate given to the Authority under paragraph 30.2 is accompanied by:

- (a) a statement of the main factors that the licensee’s directors have taken into account in giving that certificate including reference to:
 - (i) the main financial resources and financial facilities available to the licensee; and
 - (ii) the most recent cash flow statement prepared for the licensee;and
- (b) a report prepared by its auditors and addressed to the Authority that states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under standard condition 44 (Regulatory Accounts) on the licensee’s Regulatory Accounts.

Certificates for the Authority in relation to operational resources

30.4 The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee’s board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1R**

“After making enquiries the licensee’s directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate.”

or

(b) **Certificate 2R**

“After making enquiries, and subject to what is explained below, the licensee’s directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities available to itself to enable the licensee to

carry on the Distribution 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 on the Distribution Business [*followed by a description of the factors concerned*].”

or

(c) **Certificate 3R**

“In the opinion of the licensee's directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the Distribution Business for a period of 12 months from the date of this certificate.”

Statement of factors in relation to operational resources certificate

- 30.5 The licensee must ensure that the certificate given to the Authority under paragraph 30.4 is accompanied by a statement of the main factors that the licensee's directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain standard licence conditions

- 30.6 The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

“After making enquiries the licensee's directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard condition 40 (Credit rating of the licensee) and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)].”

or

(b) **Certificate 2C**

“In the opinion of the licensee's directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity

and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard condition 40 (Credit rating of the licensee) and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)].”

Obligation to report any adverse circumstances

30.7 The licensee must inform the Authority in Writing immediately if:

- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 30.2(a), 30.2(b), 30.4(a) or 30.4(b); or
- (b) the directors of the licensee consider that any adverse circumstance that caused them to give the Authority a certificate in form of Certificate 3F under paragraph 30.2(c) or Certificate 3R under paragraph 30.4(c) has materially worsened.

Certificates for the Authority in relation to dividends

30.8 The directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.

30.9 The first requirement is that the certificate must be in the following form:

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

- (a) that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all the obligations imposed on it by standard condition 6 (Provision of Information to the Authority), standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business), standard condition 30 (Availability of resources), standard condition 31 (Undertaking from Ultimate Controller), [standard condition 40 (Credit rating of the licensee), and standard condition 41 (Restriction of Indebtedness and transfers of funds)] [amended standard condition BA 3 (Credit rating of licensee), and amended standard condition BA 4 (Indebtedness)]; and
- (b) that the making of a distribution, redemption, or repurchase of [value] on [date] 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.”

30.10 The second and third requirements are that the certificate:

- (a) must have been approved by a resolution of the licensee’s board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and

(b) must be signed by a director of the licensee.

30.11 Where the certificate given under paragraph 30.8 relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Requirement to maintain an Intervention Plan

30.12 The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and at all times thereafter, maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 30.15 below.

30.13 The requirement for the information described in any of sub-paragraphs (a) to (k) in paragraph 30.15 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Variation of provision for certain licensees

30.14 If the licensee is not a Distribution Services Provider, paragraph 30.3(b) has effect as if, for the reference to “audit work under standard condition 44 (Regulatory Accounts) on the licensee’s Regulatory Accounts” there were substituted a reference to “audit work on the licensee’s most recent annual accounts as referred to in standard condition 31A (Accounts)”.

Interpretation

30.15 In this condition:

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources, and facilities of the licensee;
- (b) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;
- (d) the tax affairs of the licensee;
- (e) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee’s assets;

- (g) the systems and processes by which the licensee carries on the Distribution Business with information on any significant contractual arrangements, including those that impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over Relevant Assets to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
- (k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

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Condition 31. Undertaking from Ultimate Controller

Obligation to procure undertaking

- 31.1 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, in a form specified by the Authority in a direction issued for the purposes of this condition generally, and on the terms set out in paragraph 31.2.
- 31.2 Those terms are that the Ultimate Controller (“the covenantor”):
- (a) will refrain from any action; and
 - (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the covenantor (other than the licensee and any Subsidiary of the licensee) will refrain from any action,
- that would be likely to cause the licensee to breach any of its obligations under the Act or this licence.
- 31.3 The undertaking to be procured under paragraph 31.1:
- (a) must have been obtained before the end of seven days after the date on which the company or person in question becomes an Ultimate Controller of the licensee; and
 - (b) must remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an Ultimate Controller of the licensee.

Evidence of compliance and duty to enforce

- 31.4 Whenever the licensee obtains an undertaking in accordance with paragraph 31.3(a), it must:
- (a) give the Authority evidence of its compliance without delay, including a copy of the undertaking in question; and
 - (b) at all times comply with any direction from the Authority to enforce that undertaking.
- 31.5 The licensee must, on or before 31 July in each Regulatory Year, provide the Authority with a schedule of the undertakings obtained in accordance with paragraph 31.1 that are in force at the time, together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, reapprising that Ultimate Controller of the terms of the undertaking that it has given.

Reporting obligation in respect of breach

- 31.65 The licensee must inform the Authority immediately in Writing if the licensee’s directors become aware that any undertaking procured under the provisions of this condition has ceased to be legally enforceable or that its terms have been breached.

Restriction of arrangements with Ultimate Controller

31.76 Except with the Authority's consent, the licensee must not enter (directly or indirectly) into any agreement or arrangement with any Ultimate Controller of the licensee or, where the Ultimate Controller is a corporate body, with any of the subsidiaries of such a corporate Ultimate Controller (other than a Subsidiary of the licensee) at any time when:

- (a) an undertaking procured under paragraph 31.1 is not in place in relation to that Ultimate Controller; or
- (b) there is an unremedied breach of any such 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 31.4(b).

Condition 40. Credit rating of the licensee

Licensee's obligation

40.1 The licensee must take all appropriate steps within its power to ensure that at all times it maintains an Investment Grade Issuer Credit Rating (which is to be interpreted in accordance with the provisions of paragraphs 40.2 to 40.4).

Meaning of Issuer Credit Rating

40.2 For the purposes of paragraph 40.1, an Issuer Credit Rating is any of the following:

- (a) an issuer rating by Standard & Poor's Ratings Group or any of its subsidiaries;
- (b) an issuer rating by Moody's Investors Services Inc or any of its subsidiaries;
- (c) an issuer senior unsecured debt rating by Fitch Ratings Ltd or any of its subsidiaries;
- (d) an issuer or senior unsecured rating by DBRS Ratings Limited or any of its affiliates; or
- (ed) a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b), (c) or (ed) and is issued by:
 - (i) any of the credit rating agencies referred to in those sub-paragraphs, or
 - (ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Meaning of Investment Grade

40.3 Subject to paragraph 40.4, an **Investment Grade**, in relation to any Issuer Credit Rating within the meaning of paragraph 40.2, is any of the following:

- (a) an issuer rating of not less than BBB– by Standard & Poor's Ratings Group or any of its subsidiaries; or
- (b) an issuer rating of not less than Baa3 by Moody's Investors Service Inc or any of its subsidiaries; or
- (c) an issuer senior unsecured debt rating of not less than BBB– by Fitch Ratings Ltd or any of its subsidiaries
- (d) an issuer or senior unsecured rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; or
- (ed) a rating which, in the Authority's opinion given by Notice to the licensee, is equivalent to any of those specified in sub-paragraph (a), (b), (c) or (ed) and is issued by:
 - (i) any of the credit rating agencies referred to in those sub-paragraphs, or
 - (ii) any other reputable credit rating agency which, in the Authority's opinion given by Notice to the licensee, has comparable standing in both the United Kingdom and the United States of America.

Variation of rating by agency

- 40.4 If a rating higher than a particular rating set out in paragraph 40.3 is at any time specified by the credit rating agency in question as its lowest investment grade credit rating, that higher rating is to be taken as the relevant Investment Grade for the purposes of that paragraph.

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Condition 41. Restriction of Indebtedness and transfers of funds

General prohibition

- 41.1 In addition to complying with the requirements of standard condition 26 (Disposal of Relevant Assets **and restrictions on charges over Receivables**), the licensee must not, without the consent of the Authority following the licensee's disclosure of all material facts, enter into any transaction or commitment of a type described or referred to in this condition that does not comply with the restrictions applicable to it under this condition.

Part A: Restricted Category 1

- 41.2 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 undertake any Indebtedness to any other person, or enter into any guarantee or any obligation, except in accordance with all of the following requirements:
- (a) the transaction in question must be on an arm's length basis;
 - (b) it must be on normal commercial terms;
 - (c) it must be for a Permitted Purpose; and
 - (d) if it is within the ambit of standard condition 26 (Disposal of Relevant Assets **and restrictions on charges over Receivables**), it must comply with the requirements of that condition.

Part B: Restricted Category 2

- 41.3 The licensee must not transfer, lease, license, 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 dividend or other distribution out of distributable reserves; or
 - (b) a repayment of capital; or
 - (c) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
 - (d) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit that is on an arm's length basis, on normal commercial terms, and is made in compliance with the payment condition described in paragraph 41.4 or
 - (e) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 41.2; or
 - (f) 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
 - (g) an acquisition of shares or other investments that is in conformity with paragraphs 29.2 and 29.3 of standard condition 29 (Restriction of activity and financial ring-fencing of the Distribution Business) and is made on an arm's length basis and on normal commercial terms.

41.4 The payment condition referred to in paragraph 41.3(d) is that the consideration due in respect of the transaction in question must be 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 that~~ has and maintains an Investment Grade Issuer Credit Rating.

41.5 The provisions of this Part B are subject to the provisions of Part C below.

Part C: Circumstances that trigger the provisions of Part D

41.6 The following paragraphs of this Part C set out each of the circumstances in which the licensee must not, except with the Authority's consent, enter into or complete any transaction of a type described or referred to in Part B except in accordance with the provisions of Part D below.

41.7 The circumstance described by this paragraph is that the licensee does not hold an Investment Grade Issuer Credit Rating.

41.8 The circumstance described by this paragraph is that the licensee holds more than one Issuer Credit Rating and one or more of the ratings so held is not Investment Grade.

41.9 The circumstance described by this paragraph is that the licensee holds an Issuer Credit Rating that is BBB– by Standard & Poor's Ratings Group or Fitch Ratings Ltd, or is Baa3 by Moody's Investors Service Inc, **or BBB (low) by DBRS Ratings Ltd or any of its affiliates**, or is such higher Issuer Credit Rating as may be specified by any of those 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 40 (Credit rating of the licensee), and:

- (a) the rating in question is under review for possible downgrade; or
- (b) the licensee is on Credit Watch or Rating Watch with a negative designation;
or, where neither sub-paragraph (a) nor (b) applies:
- (c) the licensee's rating outlook, as specified by any credit rating agency referred to in this paragraph 41.9 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.

41.10 The circumstance described by this paragraph is that the licensee has:

- (a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 30.2 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition;**

(b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 30.4 of standard condition 30 (Availability of resources) and:

- (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an affiliate or related undertaking of the licensee, and
- (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

(c) informed the Authority of any circumstance of the type referred to at paragraph 30.7 of standard condition 30 (Availability of resources) and:

- (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or
- (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an affiliate or related undertaking of the licensee; and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

41.11 The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant pertaining to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in Writing to the Authority;

or

- (c) in response to a written request from the licensee, either the Authority has confirmed in Writing, before the breach occurs, that the breach in question shall not trigger the provisions of Part D, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

Part D: Restricted Category 3

41.120 Where any of the circumstances described or referred to under Part C applies, the licensee may not, without the consent of the Authority following the licensee's 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 except by way of any of the following transactions:

- (a) a payment properly due for any goods, services, or assets in relation to commitments entered into before the date on which the relevant circumstance under Part C arose, and which are provided on an arm's length basis and on normal commercial terms; or
- (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; or
- (c) a repayment of, or payment of interest on, a loan that is not prohibited by paragraph 41.2 and which was contracted before the date on which the relevant circumstance under Part C arose, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; or
- (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, so long as the payments are not made before the date on which the amounts of tax thereby relieved would otherwise have been due.

Part E: Restricted Category 4

41.113 ~~Subject to paragraph 41.12, the~~ The licensee must not:

- (a) enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation; ~~or~~
- (b) ~~continue or permit to remain in effect any agreement or commitment that incorporates a Cross-Default Obligation subsisting at the date on which this condition takes effect in this licence.~~

41.12 ~~The licensee may permit any Cross-Default Obligation in existence at the date mentioned in paragraph 41.11(b) to remain in effect for a period of not more than 12 months from that date, so long as:~~

- (a) ~~the Cross-Default Obligation is referable solely to an instrument that relates to the provision of a loan or other financial facilities granted before that date; and~~
- (b) ~~the terms on which those facilities have been made available as at that date are not varied or made more onerous.~~

41.143 Nothing in paragraph 41.113 ~~or 41.12~~ prevents the licensee from giving any guarantee that is permitted by and compliant with the requirements of Part A.

Part F: Interpretation

41.154 In this condition:

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 being accelerated, because of a default (however it may be described or defined) by any person other than the licensee, unless:

- (a) that liability can arise only as the result of a default by a Subsidiary of the licensee;
- (b) the licensee holds a majority of the voting shares in that Subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (c) that Subsidiary carries on business only for a purpose within sub-paragraph (a) or (b) of the definition of Permitted Purpose set out in standard condition 1 (Definitions for the standard conditions).

Investment Grade has the meaning given in standard condition 40 (Credit rating of the Licensee).

Issuer Credit Rating has the meaning given in standard condition 40 (Credit rating of the Licensee).

Condition 43A. Requirement for Sufficiently Independent Directors

43A.1 Except and to the extent that the Authority consents otherwise, the licensee must ensure that at all times after a date which is the later of:

- (a) 1 April 2014; and
- (b) 12 months after this condition comes into effect in respect of the licensee,

it has at least two non-executive directors who meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5 below. In this condition such directors are referred to as “sufficiently independent directors”.

43A.2 A sufficiently independent director must:

- (a) be a natural person;
- (b) have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the licensee;
- (c) not have any executive duties within the Distribution Business.

43A.3 Except and to the extent that the Authority consents otherwise, and subject to paragraph 43A.4, a sufficiently independent director must not be, and must not have been during the 12 months before his appointment as a director of the licensee or the coming into force of this condition (whichever is the later):

- (a) an employee of the licensee; or
- (b) a director or employee of any affiliate or related undertaking of the licensee.

43A.4 The reference to ‘director’ in sub-paragraph 43A.3(b) does not include appointment as a non-executive director of:

- (a) an affiliate or related undertaking of the licensee that is the holder of a gas transporter licence or an electricity transmission or electricity distribution licence;
- (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a Permitted Purpose (as that term is defined in Standard Condition 1 (Definitions for the standard conditions)); or
- (c) a qualifying group company.

43A.5 A sufficiently independent director must not:

- (a) have, or have had during the 12 months before his appointment as a director or the coming into force of this condition (whichever is the later), any material business relationship with the licensee or any affiliate or related undertaking of the licensee;
- (b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the licensee or the interests of any affiliate or related undertaking of the licensee; or

- (c) receive remuneration from the licensee or any affiliate or related undertaking of the licensee apart from a director's fee and reasonable expenses.

43A.6 For the purposes of sub-paragraphs 43A.5(a) and 43A.5(c) respectively:

- (a) the holding of a small number of shares or associated rights shall not, of itself, be considered a material business relationship; and
- (b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the licensee or any affiliate or related undertaking shall not be considered to be remuneration.

43A.7 The licensee must notify the Authority of the names of its sufficiently independent directors within 14 days of the coming into force of this condition and must notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 43A.1 of this condition.

43A.8 The terms of appointment of each sufficiently independent director must include a condition stipulating that both the licensee and the appointee will use their best endeavours to ensure that the appointee remains sufficiently independent during his term of office, having particular regard to the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5.

43A.9 A term of appointment for a sufficiently independent director may not be for longer than eight years, but an individual may be reappointed thereafter provided that he continues to meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5.

43A.10 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 personal reasons.

43A.11 If at any time the licensee has fewer than two sufficiently independent directors because of a removal or resignation or other reason (including death or incapacity), the licensee must take all appropriate steps within its power to ensure that a new director is, or new directors are appointed to fulfil the obligation in paragraph 43A.1 of this condition as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.

Interpretation

43A.12 In this condition "qualifying group company" means:

- (a) an immediate parent company of the licensee that holds 100% of the shares of the licensee and no other shares except for shares in one or more wholly-owned subsidiaries, each of which is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence; and

(b) the parent company of a group whose other members may only include :

- (i) a company meeting the criteria set out in sub-paragraph (a); and
- (ii) intermediate holding companies between the parent company concerned and a company meeting the criteria set out in sub-paragraph (a) provided that such intermediate holding companies:
 - (aa) have no shareholders other than the parent company concerned or another intermediate holding company; and
 - (bb) hold no shares other than shares in a company meeting the criteria set out in sub-paragraph (a) or shares in another intermediate holding company;

and

(c) intermediate holding companies meeting the criteria set out in sub-paragraph (b)(ii).

Appendix 5 - Draft Modifications: Electricity Distribution Licence Amended Standard Conditions

Summary

This appendix shows the proposed modifications to the Amended Standard Conditions in the Electricity Distribution Licences held by Independent Distribution Network Operators¹. Additions are shown in red text and deletions in dark red text and struck through.

Standard Condition BA3. Credit Rating of Licensee

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.
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; or
 - (c) an issuer senior unsecured debt rating by Fitch Ratings Ltd or any of its subsidiaries;
 - (d) an issuer or senior unsecured rating by DBRS Ratings Limited or any of its affiliates; or
 - (~~de~~) 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) or (d) and issued by:
 - (i) any of the credit rating agencies referred to in subparagraphs (a), (b)-~~or~~, (c) or (d); or
 - (ii) any other reputable credit rating agency which, in the opinion of the Authority, notified in writing to the licensee, has comparable standing in 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;

¹ The Amended Standard Conditions in the licence held by UK Power Networks (IDNO) Ltd vary from those in other Independent Distribution Network Operators, but the proposed modifications will be substantively the same

- (ii) an issuer rating of not less than Baa3 by Moody's Investors Service Inc. or any of its subsidiaries;
 - (iii) an issuer senior unsecured debt rating of not less than BBB by Fitch Ratings Ltd or any of its subsidiaries;
 - (iv) an issuer or senior unsecured rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; 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 (ai), (bii), (iii) or (eiv) and issued by:
 - aa) any of the credit rating agencies referred to in sub-paragraphs(ai), (bii), (iii) or (eiv) 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 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.

Standard Condition BA4. Indebtedness

1. In addition to the requirements of standard condition 296 (Disposal of Relevant Assets ~~and restrictions on charges over Receivables~~) ~~as in force at 31 May 2008~~, the licensee ~~shall~~ **must** 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 or continue or permit to remain in effect 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) ~~in accordance with standard condition 296 (Disposal of Relevant Assets and restrictions on charges over Receivables)~~, ~~(if the transaction is within the ambit of)~~ 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 sub-paragraph (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
 - (vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition BA2 (Restriction on Activity and Financial Ring Fencing) ~~as in force at 31 May 2008~~, made on an arm's length basis and on normal commercial terms,provided, however, that the provisions of paragraph 3 or 49 below, as the case may be, shall prevail in any 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 at date of this 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,~~ provided, however, that the provisions of sub-paragraphs (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. Where the Authority has not granted permission for the use of alternative arrangements in accordance with paragraph 1 of **standard condition BA3** (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph ~~5~~10, if: **any of the circumstances set out in paragraphs 4 to 8 applies.**
4. **The circumstance described by this paragraph is that (a) the licensee does not hold an investment grade issuer credit rating;**
5. **The circumstance described by this paragraph is that (b) where the licensee holds more than one issuer credit rating; and one or more of the ratings so held is not investment grade;**
6. **The circumstance described by this paragraph is that (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 BBB (low) by DBRS Ratings Ltd or any of its affiliates** (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 BA3 (Credit Rating of Licensee) and:
- (ia) is on review for possible downgrade; or
- (bii) is on Credit Watch or Rating Watch with a negative designation; or, where neither (ai) nor (iib) applies:

- (ciii) the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub-paragraph (e)6~~ 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.

7. The circumstance described by this paragraph is that the licensee has:

- (a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 30.2 of standard condition 30 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition; or
- (b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 30.4 of standard condition 30 (Availability of resources) and:
 - (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an affiliate or related undertaking of the licensee, and
 - (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;or
- (c) informed the Authority of any circumstance of the type referred to at paragraph 30.7 of standard condition 30 (Availability of resources) and:
 - (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or
 - (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an affiliate or related undertaking of the licensee; and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

8. The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant pertaining to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in Writing to the Authority;

or

- (c) in response to a written request from the licensee, either the Authority has confirmed in Writing, before the breach occurs, that the breach in question shall not trigger the provisions of Part D, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

49. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 1 of ~~standard condition~~ BA3 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph ~~5~~10, if:

- (a) the alternative arrangements for which the Authority has granted permission are not maintained in accordance with the conditions imposed by the Authority when giving written permission pursuant to paragraph 1 of standard condition BA3 (Credit Rating of Licensee); ~~or~~
- (b) either of the circumstances described in paragraphs 7 and 8 applies.

~~5~~10. Where, under the provisions of either paragraph 3 or paragraph 9, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b) ~~paragraph 3 or 4 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 ~~prohibiting~~ circumstances ~~described in paragraph 3 or 4 arise~~ arose, 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 ~~prohibiting~~ circumstances ~~in paragraph 3 or 4 arise~~ arose, 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.

116. In this condition:

| | |
|----------------------------|---|
| “cross-default obligation” | <p>means a term of any agreement or arrangement whereby the licensee’s liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, increasing or of acceleration by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:</p> <ul style="list-style-type: none">a) that liability can arise only as the result of a default by a subsidiary of the licensee,b) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors, andc) that subsidiary carries on business only for a purpose within paragraph (a) of the definition of permitted purpose set out in standard condition BA2 (Restriction on Activity and Financial Ring Fencing) as in force at 31 May 2008. |
| “indebtedness” | <p>means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.</p> |
| “investment grade” | <p>has the meaning given in paragraph 2 of standard condition BA3 (Credit Rating of Licensee)</p> |
| “issuer credit rating” | <p>has the meaning given in paragraph 2 of standard condition BA3 (Credit Rating of Licensee).</p> |

Appendix 6 - Draft Modifications: Electricity Transmission Licence Standard Conditions

Summary

This appendix shows the proposed modifications to Standard Conditions in the Electricity Transmission Licence. Additions are shown in red text and deletions in dark red text and struck through.

SECTION B: General *[applicable to onshore transmission owners]*

Condition B3: Disposal of relevant assets *and restrictions on charges over receivables*

1. The licensee ~~shall~~ **must** not dispose of or relinquish operational control over any relevant asset ~~otherwise than~~ **except** in accordance with the ~~following paragraphs~~ **provisions** of this condition.
2. Subject to paragraph 3, the licensee must not, after 1 April 2013, grant any mortgage, charge, or other form of security over any receivable except in accordance with the provisions of this condition.
3. The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope of the mortgage, charge, or other form of security insofar as it applies to the licensee's receivables.
24. Save as provided in paragraph ~~3~~ **5** or, **as applicable, 6, or 8** the licensee shall give to the Authority not less than two months' prior written notice of:
 - (a) its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; **or**
 - (b) its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further information as the Authority may request relating to such receivable, class or classes of receivables

or the circumstances of the intended grant of the mortgage, charge, or other form of security.

35. Notwithstanding paragraphs 1 and 2 4(a), the licensee may dispose of or relinquish operational control over any relevant asset **where:-**

(a) ~~where:(i)~~ the Authority has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:

(~~aa~~i) transactions of a specified description; or

(~~bb~~ii) the disposal of or relinquishment of operational control over relevant assets of a specified description; and

(~~ii~~) the transaction or the relevant assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject;

or

(b) ~~where~~ the disposal or relinquishment of operational control in question is ~~required by or under any enactment or subordinate legislation or where the relinquishment of operational control in question is~~ to another transmission licensee and is required by or under standard condition B12 (System Operator – Transmission Owner Code).

6. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables where:

(a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and

(b) the proceeds of the indebtedness of the licensee which is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

7. For the purposes of paragraph 6, what is meant in any particular case by:

(a) "existing indebtedness"; and

(b) "proceeds of the indebtedness"

is to be treated as a question of fact.

8. Notwithstanding paragraphs 1, 2 and 4, the licensee may dispose of or relinquish operational control over any relevant asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.
49. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any relevant asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable as is specified in any notice given under paragraph 24 in circumstances where:
- (a) the Authority confirms in writing that it consents to such disposal or relinquishment or grant (which consent may be made subject to acceptance by the licensee or any third party to the transaction in question, in favour of whom the relevant asset is proposed to be disposed or operational control is proposed to be relinquished to of such conditions as the Authority may specify); or
 - (b) the Authority does not inform the licensee in writing of any objection to such disposal, or relinquishment or grant of control within the notice periods referred to in paragraph 24.
10. In considering any Notice given by the licensee under paragraph 4(b), the Authority shall not unreasonably withhold its consent to the transaction in question.
511. In this condition:
- | | |
|------------|---|
| "disposal" | includes |
| | <ul style="list-style-type: none">(a) in relation to disposal of a relevant asset situated in England and Wales any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge or grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition;(b) in relation to disposal of a relevant asset situated in Scotland, the grant of any disposition, conveyance, contract of excambion, |

any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party or the grant of any servitude right, wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land;

and "dispose" and cognate expressions shall be construed accordingly.

"receivable"

means a contractual right to receive any sum or sums or any other financial asset from another person.

"relevant asset"

means any asset for the time being forming part of the national electricity transmission system, any control centre for use in conjunction therewith and any legal or beneficial interest in (or right, title or interest in) land upon which either of the foregoing is situate (which for the purposes of property located in Scotland means any estate, interest, servitude or other heritable or leasehold right in or over land including any leasehold interests or other rights to occupy or use and any contractual or personal rights in favour of the licensee relating to the occupation, use or acquisition of such property).

"relinquishment of operational control"

includes, without limitation, entering into any agreement or arrangement whereby operational control of a relevant asset or relevant assets is not or ceases to be under the sole management of the licensee.

Condition B7: Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to it 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, co-ordinated and economical system of electricity transmission.

.....Delete all subsequent existing text and replace with the text shown below:

Certificates for the Authority in relation to financial resources

2. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1F**

"After making enquiries and having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors 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 for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2F**

"After making enquiries, and subject to what is explained below, 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 licensee's directors 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 the transmission 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 on the transmission business *[followed by a description of the factors concerned]*."

or

(c) **Certificate 3F**

"In the opinion of the licensee's directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business for a period of 12 months from the date of this certificate."

Statement of factors and report by auditors in relation to financial resources certificate

3. The licensee must ensure that the certificate given to the Authority under paragraph 2 is accompanied by:

- (a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate including reference to:
 - (i) the main financial resources and financial facilities available to the licensee; and
 - (ii) the most recent cash flow statement prepared for the licensee;and
- (b) a report prepared by its auditors and addressed to the Authority which states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under standard condition B1 (Regulatory Accounts) on the licensee's regulatory accounts.

Certificates for the Authority in relation to operational resources

4. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1R**

"After making enquiries the licensee's directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transmission business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2R**

"After making enquiries, and subject to what is explained below, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transmission 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 on the transmission business [*followed by a description of the factors concerned*]."

or

(c) **Certificate 3R**

"In the opinion of the licensee's directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transmission business for a period of 12 months from the date of this certificate."

Statement of factors in relation to operational resources certificate

5. The licensee must ensure that the certificate given to the Authority under paragraph 4 is accompanied by a statement of the main factors that the licensee's directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain standard licence conditions

6. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

"After making enquiries the licensee's directors consider that at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the 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 B10 (Credit Rating) and standard condition B9 (Indebtedness).

or

(b) **Certificate 2C**

"In the opinion of the licensee's directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the 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 B10 (Credit Rating) and standard condition B9 (Indebtedness).

Obligation to report any adverse circumstances

7. The licensee must inform the Authority in Writing immediately if:

- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 4(a) or 4(b); or
- (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.

Certificates for the Authority in relation to dividends

- 8. The directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.
- 9. The first requirement is that the certificate must be in the following form:

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

 - (a) that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all the 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 B10 (Credit Rating) and standard condition B9 (Indebtedness);

and

 - (b) that the making of a distribution, redemption, or repurchase of [value] on [date] 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.”
- 10. The second and third requirements are that the certificate:

- (a) must have been approved by a resolution of the licensee's board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and
 - (b) must be signed by a director of the licensee.
- 11. Where the certificate given under paragraph 8 relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Requirement to maintain an Intervention Plan

- 12. The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and at all times thereafter maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 14 below.
- 13. The requirement for the information described in any of sub-paragraphs (a) to (k) in paragraph 14 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Interpretation

- 14. In this condition:

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources, and facilities of the licensee;
- (b) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;
- (d) the tax affairs of the licensee;

- (e) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee's assets;
- (g) the systems and processes by which the licensee carries on the transmission business with information on any significant contractual arrangements, including those that impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over relevant assets '(as that term is defined in Standard Condition B3 (Disposal of relevant assets)) to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
- (k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

Condition B8: Undertaking from ultimate controller

1. The licensee shall procure from each company or other person which the licensee knows or reasonably should know is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller ("the covenantor") will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is subsidiary of, or is controlled, by, the covenantor (other than the licensee and its subsidiaries) will refrain from any action which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an ultimate controller of the licensee.
2. The licensee shall:
 - (a) 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 1;
 - (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) comply with any direction from the Authority to enforce any such undertaking;and shall not, save with the consent in writing 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 corporate ultimate controller (other than the subsidiaries of the licensee) at a time when,
 - (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller, or
 - (ii) there is an unremedied breach of such undertaking; or
 - (iii) the licensee is in breach of the terms of any direction issued by the Authority under sub-paragraph (c).
3. The licensee must, on or before 31 July of each year, provide the Authority with a schedule of the undertakings obtained in accordance with paragraph 1 that are in force at that time, together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, reapprising that Ultimate Controller of the terms of the undertaking that it has given.

Condition B9: Indebtedness

1. In addition to the requirements of standard condition B3 (Disposal of relevant assets **and restrictions on charges over receivables**), 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 **and restrictions on charges over receivables**) 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 sub-paragraph (a);
 - (vi) payments for group corporation tax relief or for the surrender thereof calculated on a basis not exceeding the value of the benefit received; or

- (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 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;~~

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 49, if ~~any of the circumstances set out in paragraphs 4 to 8 applies~~.

4. ~~(a)~~ The circumstance described by this paragraph is that the licensee does not hold an investment grade issuer credit rating.
5. ~~(b)~~ where The circumstance described by this paragraph is that the licensee holds more than one issuer credit rating, and one or more of the ratings so held is not investment grade; ~~or~~
6. ~~(c)~~ The circumstance described by this paragraph is that 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 BBB (low) by DBRS Ratings Ltd or any of its affiliates, (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 B10 (Credit Rating) and:
- ~~(a)~~ is on review for possible downgrade; or
 - ~~(b)~~ is on Credit Watch or Rating Watch with a negative designation;
- or, where neither ~~(a)~~ nor ~~(b)~~ applies:
- ~~(c)~~ the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub-~~paragraph ~~(c)~~ 6 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.
7. The circumstance described by this paragraph is that the licensee has:
- (a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 2 of standard conditionB7 (Availability of resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition; or
 - (b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 4 of standard conditionB7 (Availability of resources) and:
 - (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an affiliate or related undertaking of the licensee, and

- (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

- (c) informed the Authority of any circumstance of the type referred to at paragraph 7 of standard condition B7 (Availability of Resources) and:

- (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or
- (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an affiliate or related undertaking of the licensee; and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

8. The circumstance described by this paragraph is that the licensee has, after 1 April 2013, materially breached any formal covenant pertaining to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in writing to the Authority;

or

- (c) in response to a written request from the licensee, either the Authority has confirmed in writing, before the breach occurs, that the breach in

question shall not trigger the provisions of paragraphs 3 and 9, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

94. Where, under the provisions of paragraph 3 ~~applies~~, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b), 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 (as described or referred to in paragraph 1(b)) to any affiliate or related undertaking of the licensee, 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 prohibiting circumstances ~~arose 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 prohibiting circumstances ~~arose 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 the surrender thereof 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.

SECTION A: INTERPRETATION, APPLICATION AND PAYMENTS

Condition A1: Definitions and interpretation

Substitute modified definitions as follows:

"investment grade"

means in relation to any issuer credit rating **or instrument credit rating unless otherwise specified**

(a) unless sub-paragraph (b) below applies:

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

(ii) **an issuer** rating of not less than Baa3 by Moody's Investors Services 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;

(iv) **in relation to issuer credit rating only, a rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; or**

(v) 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~~ (iv) and issued by:

- (aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii), (iii) ~~or~~ (iv); 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.

“issuer credit rating”

means

- (a) an issuer rating by Standard & Poors Ratings Group or any of its subsidiaries
- (b) an issuer rating by Moody’s Investors Services Inc. or any of its subsidiaries;

(c) an issuer default rating by Fitch Ratings Ltd or any of its subsidiaries;

(d) an issuer or senior unsecured rating by DBRS Ratings Limited or any of its affiliates; or

~~(d)~~(e) 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), (c) or (d) and issued by:

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

(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.

Insert definition as follows:

"instrument credit rating"

means

(a) a Long-Term Issue Credit Rating by Standard & Poor's Ratings Group or any of its subsidiaries;

- (b) a Long-Term Corporate Obligation Rating by Moody's Investors Services Inc. or any of its subsidiaries;
- (c) a rating on the Structured, Project & Public Finance Obligations Long Term Ratings Scale by Fitch Ratings Ltd or any of its subsidiaries;
- (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:
- (i) any of the credit rating agencies as referred to in sub-paragraphs (a), (b), or (c); or
 - (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.

Condition B22: Requirement for Sufficiently Independent Directors

1. Except and to the extent that the Authority consents otherwise, the licensee must ensure that at all times after a date which is the later of:
 - (a) 1 April 2014; and
 - (b) 12 months after this condition comes into effect in respect of the licensee,it has at least two non-executive directors who meet the criteria set out in paragraphs 2, 3, and 5 below. In this condition such directors are referred to as “sufficiently independent directors”.
2. A sufficiently independent director must:
 - (a) be a natural person;
 - (b) have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the licensee; and
 - (c) not have any executive duties within the licensee’s business.
3. Except and to the extent that the Authority consents otherwise, and subject to paragraph 4, a sufficiently independent director must not be, and must not have been during the 12 months before his appointment as a director of the licensee or the coming into force of this condition (whichever is the later):
 - (a) an employee of the licensee; or
 - (b) a director or employee of any affiliate or related undertaking of the licensee.
4. The reference to ‘director’ in sub-paragraph 3(b) does not include appointment as a non-executive director of:
 - (a) an affiliate or related undertaking of the licensee that is the holder of a gas transporter licence or an electricity transmission or electricity distribution licence;
 - (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a permitted purpose(as that term is defined in Standard Condition A1 (Definitions for the standard conditions)); or
 - (c) a qualifying group company.

5. A sufficiently independent director must not:
- (a) have, or have had during the 12 months before his appointment as a director or the coming into force of this condition (whichever is the later), any material business relationship with the licensee or any affiliate or related undertaking of the licensee;
 - (b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the licensee or the interests of any affiliate or related undertaking of the licensee; or
 - (c) receive remuneration from the licensee or any affiliate or related undertaking of the licensee apart from a director's fee and reasonable expenses.
6. For the purposes of sub-paragraphs 5(a) and 5(c) respectively:
- (a) the holding of a small number of shares or associated rights shall not, of itself, be considered a material business relationship; and
 - (b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the licensee or any affiliate or related undertaking shall not be considered to be remuneration.
7. The licensee must notify the Authority of the names of its sufficiently independent directors within 14 days of the coming into force of this condition and must notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 1 of this condition.
8. The terms of appointment of each sufficiently independent director must include a condition stipulating that both the licensee and the appointee will use their best endeavours to ensure that the appointee remains sufficiently independent during his term of office, having particular regard to the criteria set out in paragraphs 2, 3, and 5.
9. A term of appointment for a sufficiently independent director may not be for longer than eight years, but an individual may be reappointed thereafter provided that he continues to meet the criteria set out in paragraphs 2, 3, and 5.
10. 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 personal reasons.

11. If at any time the licensee has fewer than two sufficiently independent directors because of a removal or resignation or other reason (including death or incapacity), the licensee must take all appropriate steps within its power to ensure that a new director is, or new directors are appointed to fulfil the obligation in paragraph 1 of this condition as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.

Interpretation

12. In this condition “qualifying group company” means:
- (a) an immediate parent company of the licensee that holds 100% of the shares of the licensee and no other shares except for shares in one or more wholly-owned subsidiaries, each of which is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence; and
 - (b) the parent company of a group whose other members may only include :
 - (i) a company meeting the criteria set out in sub-paragraph (a); and
 - (ii) intermediate holding companies between the parent company concerned and a company meeting the criteria set out in sub-paragraph (a) provided that such intermediate holding companies:
 - (aa) have no shareholders other than the parent company concerned or another intermediate holding company; and
 - (bb) hold no shares other than shares in a company meeting the criteria set out in sub-paragraph (a) or shares in another intermediate holding company;
- and
- (c) intermediate holding companies meeting the criteria set out in sub-paragraph (b)(ii).

SECTION E: Offshore Transmission Owner Standard Conditions

Condition E8: Availability of Resources

1. The licensee shall at all times act in a manner calculated to secure that it has available to it 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, co-ordinated and economical system of electricity transmission.

.....Delete all subsequent existing text and replace with the text shown below:

Certificates for the Authority in relation to financial resources

2. Unless otherwise directed by the Authority, subject to paragraph 3, the licensee must within 7 days of the date that this condition comes into effect and then by 31 July in each subsequent calendar year, give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1F**

"After making enquiries and having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors 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 for a period of 24 months (as two distinct 12 month periods) from the date of its last published regulatory accounts."

or

(b) **Certificate 2F**

"After making enquiries, and subject to what is explained below, 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 licensee's directors 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 the transmission business for a period of 24 months (as two distinct 12 month periods) from the date of its last published regulatory accounts.

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 on the transmission business [*followed by a description of the factors concerned*]."

or

(c) **Certificate 3F**

"In the opinion of the licensee's directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transmission business for a period of 24 months (as two distinct 12 month periods) from the date of its last published regulatory accounts."

3. Where a certificate under paragraph 2 is to be submitted within 7 days of the date that this condition comes into effect, paragraphs 2(a), 2(b) and 2(c) have effect in relation to the licensee as if, for the reference to "from the date of its last published statutory accounts" in each of those sub-paragraphs there were substituted a reference to "from the date that condition E8 (Availability of resources) comes into effect in that licence".

Statement of factors and report by auditors in relation to financial resources certificate

4. Subject to paragraph 5, the licensee must ensure that any certificate given to the Authority under paragraph 2 is accompanied by:
- (a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate including reference to:
 - (i) the main financial resources and financial facilities available to the licensee; and
 - (ii) the most recent cash flow statement prepared for the licensee;
 - (b) a cashflow forecast;

- (c) an analysis of net debt and of movement in net debt;
and
 - (d) a report prepared by its auditors and addressed to the Authority which states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the items referred to under sub-paragraphs (a) to (c) and, on the other hand, any information that they obtained during their audit work under standard condition E2 (Regulatory Accounts) on the licensee's regulatory accounts.
5. Where a certificate under paragraph 2 is to be submitted within 7 days of the date that this condition comes into effect, the following applies:
- (a) sub-paragraphs 4(c) and 4(d) shall not have effect in relation to the licensee
and
 - (b) the statement of main factors under sub-paragraph 4(a), in respect of a certificate provided in accordance with paragraph 2 should provide the reasons why the directors of the licensee believe they are able to make the declarations contained within the certificate without the need for an auditor's report as described in sub-paragraph 4(d). Such reasons may include references to due diligence work carried out before this licence was granted.

Certificates for the Authority in relation to operational resources

6. Subject to paragraph 7, the licensee must within 7 days of the date that this condition comes into effect and then by 31 July in each subsequent calendar year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:
- (a) **Certificate 1R**

"After making enquiries the licensee's directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transmission business for a period of 24 months (as two distinct 12 month periods) from the date of its last published regulatory accounts."

or

(b) **Certificate 2R**

"After making enquiries, and subject to what is explained below, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transmission business for a period of 24 months (as two distinct 12 month periods) from the date of its last published regulatory accounts.

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 on the transmission business [*followed by a description of the factors concerned*]."

or

(c) **Certificate 3R**

"In the opinion of the licensee's directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transmission business for a period of 24 months (as two distinct 12 month periods) from the date of its last published regulatory accounts."

7. Where a certificate under paragraph 2 is to be submitted within 7 days of the date that this condition comes into effect, paragraphs 6(a), 6(b) and 6(c) have effect in relation to that licence holder as if, for the reference to "from the date of its last published statutory accounts" in each of those sub-paragraphs there were substituted a reference to "from the date that condition E8 (Availability of resources) comes into effect in that licence".

Statement of factors in relation to operational resources certificate

8. The licensee must ensure that any certificate given to the Authority under paragraph 6 is accompanied by a statement of the main factors that the licensee's directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain standard licence conditions

9. Subject to paragraph 2, the licensee must within 7 days of the date that this condition comes into effect and then by 31 July in each subsequent calendar year, give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

"After making enquiries the licensee's directors consider that at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by standard condition E5 (Provision of information to the Authority), standard condition E7 (Restriction on Activity and Financial Ring Fencing), standard condition E8 (Availability of Resources), standard condition E9 (Undertaking from ultimate controller), standard condition E11 (Credit Rating of Licensee) and standard condition E10 (Indebtedness).

or

(b) **Certificate 2C**

"In the opinion of the licensee's directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by standard condition E5 (Provision of information to the Authority), standard condition E7 (Restriction on Activity and Financial Ring Fencing), standard condition E8 (Availability of Resources), standard condition E9 (Undertaking from ultimate controller), standard condition E11 (Credit Rating of Licensee) and standard condition E10 (Indebtedness).

Obligation to report any adverse circumstances

10. The licensee must inform the Authority in writing immediately if:
- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 3(a), 3(b), 5(a) or 5(b); or

- (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in form of Certificate 3F under paragraph 3(c) or Certificate 3R under paragraph 5(c) have materially worsened.

Certificates for the Authority in relation to dividends

11. The directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.
12. The first requirement is that the certificate must be in the following form:

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

 - (a) that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all the obligations imposed on it by standard condition E5 (Provision of information to the Authority), standard condition E7 (Restriction on Activity and Financial Ring Fencing), standard condition E8 (Availability of Resources), standard condition E9 (Undertaking from ultimate controller), standard condition E11 (Credit Rating of Licensee) and standard condition E10 (Indebtedness);

and

 - (b) that the making of a distribution, redemption, or repurchase of [value] on [date] 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.”
13. The second and third requirements are that the certificate:
 - (a) must have been approved by a resolution of the licensee’s board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and
 - (b) must be signed by a director of the licensee.

14. Where the certificate given under paragraph 12 relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Requirement to maintain an Intervention Plan

15. The licensee must prepare by 1 April 2014 and at all times thereafter, maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 17 below.
16. The requirement for the information described in any of sub-paragraphs (a) to (k) in paragraph 17 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Interpretation

17. In this condition:

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources, and facilities of the licensee;
- (b) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;
- (d) the tax affairs of the licensee;
- (e) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee's assets;

- (g) the systems and processes by which the licensee carries on the transmission business with information on any significant contractual arrangements, including those that impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over relevant assets '(as that term is defined in Standard Condition E4 (Disposal of relevant assets)) to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
- (k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including regulatory reporting requirements.

Condition E9: Undertaking from ultimate controller

1. The licensee shall procure from each company or other person which the licensee knows or reasonably should know is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller ("the covenanter ") ~~confirms that the licence holder is both the owner and operator of the transmission system and that the covenanter~~ will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is subsidiary of, or is controlled, by, the covenanter (other than the licensee and its subsidiaries) will refrain from any action which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenanter remains an ultimate controller of the licensee.
2. The licensee shall:
 - (a) 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 1;
 - (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) comply with any direction from the Authority to enforce any such undertaking;and shall not, save with the consent in writing 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 corporate ultimate controller (other than the subsidiaries of the licensee) at a time when,
 - (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller, or
 - (ii) there is an unremedied breach of such undertaking; or
 - (iii) the licensee is in breach of the terms of any direction issued by the Authority under sub-paragraph (c).

3. The licensee must, on or before 31 July of each year, provide the Authority with a schedule of the undertakings obtained in accordance with paragraph 1 that are in force at that time, together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, reapprising that Ultimate Controller of the terms of the undertaking that it has given.

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Condition E10: Indebtedness

1. In addition to the requirements of standard condition E4 (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 E4 (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 sub-paragraph (a);

- (vi) payments for group corporation tax relief or for the surrender thereof calculated on a basis not exceeding the value of the benefit received; or
- (vii) an acquisition of shares or other investments in conformity with paragraph 2 of standard condition E7 (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 **or, as applicable, paragraph 9** 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 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;

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.

.....Delete all subsequent existing text and replace with the text shown below:

3. Where the Authority has not granted permission for the use of alternative arrangements in accordance with paragraph 2 of standard condition E11 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 10, if any of the circumstances set out in paragraphs 4 to 8 applies.
4. The circumstance described by this paragraph is that the licensee does not hold an investment grade issuer credit rating or instrument credit ratings which meet the requirement set out at paragraph 1(b) of standard condition E11 (Credit Rating of Licensee).
5. The circumstance described by this paragraph is that the licensee holds more than one issuer credit rating or instrument credit rating and one or more of the ratings so held is not investment grade.
6. The circumstance described by this paragraph is that any issuer credit rating or instrument 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 BBB (low) by DBRS Ratings Ltd (in the case of issuer credit ratings only) or any of its affiliates (or such higher issuer credit rating or instrument 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 E11 (Credit Rating of Licensee) and:
 - (a) is on review for possible downgrade; or
 - (b) is on Credit Watch or Rating Watch with a negative designation;or, where neither (a) nor (b) applies:
 - (c) the rating outlook of the licensee as specified by any credit rating agency referred to in paragraph 6 which at the relevant time has assigned the lower or lowest investment grade issuer credit rating or instrument credit rating held by the licensee has been changed from stable or positive to negative.
7. The circumstance described by this paragraph is that the licensee has:
 - (a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 3 of standard condition E8 (Availability of resources) and has not subsequently given the

Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition; or

- (b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 5 of standard condition E8 (Availability of resources) and:

- (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an affiliate or related undertaking of the licensee, and
- (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

- (c) informed the Authority of any circumstance of the type referred to at paragraph 8 of standard condition E8 (Availability of resources)

and:

- (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or
- (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an affiliate or related undertaking of the licensee;
and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

- 8. The circumstance described by this paragraph is that the licensee has after 1 April 2013, materially breached any formal covenant pertaining to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;

- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;

and in either case (a) or (b) the remedy or renegotiation has been notified in writing to the Authority; or
 - (c) in response to a written request from the licensee, either the Authority has confirmed in writing, before the breach occurs, that the breach in question shall not trigger the provisions of paragraph 10, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.
9. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 2 of standard condition E11 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 10, if:
- (a) the alternative arrangements for which the Authority has granted permission are not maintained in accordance with the conditions imposed by the Authority when giving written permission pursuant to paragraph 1 of standard condition E11 (Credit Rating of Licensee); or
 - (b) either of the circumstances described in paragraphs 7 and 8 applies.
10. Where, under the provisions of either paragraph 3 or paragraph 9, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b), 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 prohibiting circumstances arose, 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 prohibiting circumstances arose, 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 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.

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Condition E11: Credit Rating of Licensee

1. The licensee shall use all reasonable endeavours to ensure that the licensee maintains at all times:
 - (a) an investment grade issuer credit rating; or
 - (b) investment grade instrument credit ratings for debt instruments that it has issued and whose aggregate nominal value is at least 75% of a figure equating to the licensee's total assets minus total liabilities as shown in its most recent statutory accounts; or
 - (c) such alternative financial arrangements to which the Authority has given its consent in writing.
2. The licensee may propose to the Authority alternative financial arrangements which may include, but is not limited to, providing a security, for example in the form of a deposit or an unconditional irrevocable letter of credit, the latter being exercisable under English law within GB drawn on a bank with a credit rating equivalent to at least "A-" with a credit rating agency recognised by Ofgem (ie Standard & Poors, Moodys, or Fitch) residing in a country with a credit rating of at least "A" to a value equal to twelve months gross operating expenditure. Such a proposal by the licensee shall contain sufficient information to enable the Authority to consider whether the proposed alternative financial arrangements demonstrate sufficient financial standing.
3. The Authority may consent to alternative financial arrangements proposed by the licensee under paragraph 2, subject to any conditions that the Authority considers to be appropriate.

Appendix 7 – Draft Modifications: Gas Transporter Licence Standard Special Conditions

Summary

This appendix shows the proposed modifications to Standard Special Conditions in the Gas Transporter Licences held by National Grid Gas plc (in respect of the National Transmission System and its distribution networks) and the other four gas distribution network operators (GDNs). Additions are shown in red text and deletions in dark red text and struck through.

Standard Special Condition A27: Disposal of Assets and restrictions on charges over Receivables

1. The licensee shall not dispose of or relinquish operational control over any transportation asset otherwise than in accordance with the ~~provisions following paragraphs~~ of this condition.
2. Subject to paragraph 3, the licensee must not, after 1 April 2013, grant any mortgage, charge, or other form of security over any receivable except in accordance with the provisions of this condition.
3. The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope of the mortgage, charge, or other form of security insofar as it applies to the licensee's receivables.
24. Save as provided in paragraph ~~36~~, 7, or 9 the licensee shall give to the Authority not less than two months' prior written notice of:
 - (a) its intention to dispose of or relinquish operational control over any transportation asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; or
 - (b) its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further

information as the Authority may request relating to such receivable, class or classes of receivables or the circumstances of the intended grant of the mortgage, charge, or other form of security.

~~2A~~5. The following provisions of this paragraph shall apply where the transportation asset comprises a significant part of an independent system operated by the licensee on the appointed day which remains an independent system:

- (a) Save where the Secretary of State otherwise agrees, the licensee shall neither agree to dispose of, nor dispose of, its right to operate such a transportation asset unless it has put in place or procured, or will with effect from no later than the date of such disposal put in place or procure, a suitable alternative arrangement and any question arising under this sub-paragraph as to whether an alternative arrangement is or will be suitable shall be determined by the Secretary of State.
- (b) The licensee shall notify the Secretary of State no less than 60 days in advance of the proposed disposal and if the Secretary of State directs the licensee within 30 days of such notification, not to proceed with the disposal on grounds that it, and / or the person to whom the independent system will be disposed of, will not comply with such suitable alternative arrangement as the Secretary of State shall determine, the licensee shall comply with the direction.
- (c) The licensee shall at all times comply with the alternative arrangements in respect of independent systems operated by the licensee.

36. Notwithstanding paragraphs 1 and ~~24~~(a), the licensee may dispose of or relinquish operational control over a transportation asset –
where:

- (a) ~~(i)~~ the Authority has issued directions for the purposes of this condition generally containing a general consent (whether or not subject to conditions) to:
 - ~~(i)~~~~(aa)~~ transactions of a specified description; or
 - ~~(ii)~~~~(bb)~~ the disposal of or relinquishment of operational control over an asset of a specified description; and
- ~~(b)~~~~(ii)~~ the transaction or the assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject.~~:-or~~

~~(b) — where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation.~~

7. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables where:

- (a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and
- (b) the proceeds of the indebtedness of the licensee which is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

8. For the purposes of paragraph 7, what is meant in any particular case by:

- (a) “existing indebtedness”; and
- (b) “proceeds of the indebtedness”

is to be treated as a question of fact.

9. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any transportation asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.

104. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any transportation asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable as is specified in any notice given by the licensee under paragraph 24 where:

- (a) the Authority confirms in writing that it consents to such disposal or relinquishment or grant (which consent may be made subject to acceptance, by the licensee or any third party to the transaction in question, in favour of whom the asset is proposed to be disposed or operational control is proposed to be relinquished to, of such conditions as the Authority may specify); or

- (b) the Authority does not inform the licensee in writing of any objection to such disposal, ~~or~~ relinquishment ~~or grant of control~~ within the notice period referred to in paragraph 24.

115. If ~~the a~~ transportation asset comprises a significant part of the gas conveyance system in Great Britain, notwithstanding that ~~the a~~ disposal of or relinquishment of operational control over the asset is permitted under paragraph 36, 9 or 410, the licensee shall notify the Secretary of State at least 60 days in advance of the proposed disposal of or relinquishment of operational control over the asset; and if the Secretary of State directs the licensee, within 30 days of such notification, not to proceed with the disposal of or the relinquishment of operational control over the asset, the licensee shall comply with the direction.

12. In considering any Notice given by the licensee under paragraph 4(b), the Authority shall not unreasonably withhold its consent to the transaction in question.

136. In this condition-

“**alternative arrangements**” means, in respect of relevant premises, arrangements for the conveyance of gas to protect the interests of consumers at such premises, as determined by the Secretary of State as suitable under sub-paragraph 2A(a) of this condition in this licence or the equivalent condition in the licence of any other relevant gas transporter

“**appointed day**” means 1 March 1996

“**disposal**” means

- (a) in relation to disposal of a transportation asset situated in England and Wales includes, any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge, or the grant of any other encumbrance, or the permitting of any encumbrance to subsist or any other disposition to a third party

- (b) in relation to disposal of a transportation asset situated in Scotland, includes the grant of any disposition, conveyance, contract of excambion, any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party or the grant of any servitude right, wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land

and “dispose” and “cognate” expressions shall be construed accordingly;

“receivable”

means a contractual right to receive any sum or sums or any other financial asset from another person

“relevant premises”

means

- (a) any premises connected to a system to which this licence relates which was an independent system on the appointed day and which remains an independent system; and
- (b) any premises of domestic customers subsequently connected, in pursuance of section 10 of the Act, to a system to which this licence relates which was an independent system on the appointed day and which remains an independent system.

“relinquishment of operational control”

includes, without limitation, entering into any agreement or arrangement whereby operational control of a transportation asset or transportation assets is not or ceases to be under the sole management of the licensee.

“transportation asset”

means any part of the pipe-line system to which this licence relates or any part of any facility being one –

- (a) used by the licensee only for the diurnal storage of gas or for the storage of gas in connection with the operation of its independent systems; and
- (b) required for the proper performance of its duty under section 9(1) of the Act,

together with any estate or interest in land required for the utilisation of that system or of such a facility.

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Standard Special Condition A37: 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 transportation business of the licensee;
and
 - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of gas transportation.

.....Delete all subsequent existing text and replace with the text shown below:

Certificates for the Authority in relation to financial resources

2. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:
 - (a) Certificate 1F

“After making enquiries and having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors 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 transportation business for a period of 12 months from the date of this certificate.”

or

(b) Certificate 2F

“After making enquiries, and subject to what is explained below, 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 licensee’s directors 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 the transportation 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 on the transportation business [followed by a description of the factors concerned].”

or

(c) Certificate 3F

“In the opinion of the licensee’s directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate.”

Statement of factors and report by auditors in relation to financial resources certificate

3. The licensee must ensure that the certificate given to the Authority under paragraph 2 is accompanied by:

- (a) a statement of the main factors that the licensee’s directors have taken into account in giving that certificate including reference to:
 - (i) the main financial resources and financial facilities available to the licensee; and
 - (ii) the most recent cash flow statement prepared for the licensee;

and

- (b) a report prepared by its auditors and addressed to the Authority which states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under Standard Special Condition A30 (Regulatory Accounts) on the licensee's Regulatory Accounts.

Certificates for the Authority in relation to operational resources

- 4. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

- (a) Certificate 1R

“After making enquiries the licensee's directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities available to itself to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate.”

or

- (b) Certificate 2R

“After making enquiries, and subject to what is explained below, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents and facilities available to itself to enable the licensee to carry on the transportation 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 on

the transportation business [followed by a description of the factors concerned].”

or

(c) **Certificate 3R**

“In the opinion of the licensee’s directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate.”

Statement of factors in relation to operational resources certificate

5. The licensee must ensure that the certificate given to the Authority under paragraph 4 is accompanied by a statement of the main factors that the licensee’s directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain Standard Special Licence Conditions

6. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee’s board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

“After making enquiries the licensee’s directors consider that, at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by Standard Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness).”

or

(b) Certificate 2C

“In the opinion of the licensee’s directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by Standard Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness).”

Obligation to report any adverse circumstances

7. The licensee must inform the Authority in writing immediately if:
- (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 4(a) or 4(b); or
 - (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.

Certificates for the Authority in relation to dividends

8. The directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.
9. The first requirement is that the certificate must be in the following form:
- “After making enquiries, the directors of the licensee are satisfied:
- (a) that the licensee is in compliance in all material respects with all of the obligations imposed on it by Standard Special Condition A26 (Provision of Information to the Authority), Standard Special Condition A36 (Restriction on

Activity and Financial Ring Fencing), Standard Special Condition A37 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Special Condition A38 (Credit Rating of the Licensee) and Standard Special Condition A39 (Indebtedness).”

- (b) that the making of a distribution, redemption, or repurchase of [value] on [date] 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.”
10. The second and third requirements are that the certificate:
- (a) must have been approved by a resolution of the licensee’s board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and
 - (b) must be signed by a director of the licensee.
11. Where the certificate given under paragraph 8 relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Requirement to maintain an Intervention Plan

12. The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and at all times thereafter, maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 15 below.
13. The requirement for the information described in any of sub-paragraphs (a) to (k) in paragraph 15 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Interpretation

14. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “licensee” shall mean this legal entity.

15. In this condition:

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources, and facilities of the licensee;
- (b) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;
- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;
- (d) the tax affairs of the licensee;
- (e) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee’s assets;
- (g) the systems and processes by which the licensee carries on the transportation business with information on any significant contractual arrangements, including those that impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over transportation assets (as that term is defined in Standard Special Condition A27 (Disposal of Assets and restrictions on charges over Receivables)) to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;

- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
- (k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

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Standard Special Condition A38: Credit Rating of the Licensee

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 by Fitch Ratings Ltd or any of its subsidiaries;
- (d) an issuer or senior unsecured rating by DBRS Ratings Limited or any of its affiliates; or
- (~~e~~) 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), (c) or (~~e~~) and issued by:
 - (i) any of the credit rating agencies referred to in sub-paragraphs (a), (b), (c) or (~~e~~); or
 - (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

(iv) an issuer or senior unsecured rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; 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), (iii) and (iv) and issued by:

(aa) any of the credit rating agencies referred to in sub-paragraphs (i), (ii), (iii) or (iv); 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.

3. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “licensee” shall mean this legal entity.

Standard Special Condition A39: Indebtedness

1. In addition to the requirements of Standard Special Condition A27 (Disposal of Assets **and restrictions on charges over Receivables**), 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 Special Condition A27 (Disposal of Assets **and restrictions on charges over Receivables**)) 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 sub-paragraph (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
 - (vii) an acquisition of shares or other investments in conformity with paragraph 2 of Standard Special Condition A36 (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 at 13 December 1999, 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,~~

provided, however, that the provisions of sub-paragraphs (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 enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 49, if ~~any of the circumstances set out in paragraphs 4 to 8 applies.~~
4. ~~The circumstance described by this paragraph is that (a)~~ the licensee does not hold an investment grade issuer credit rating.;
5. ~~The circumstance described by this paragraph is that (b) where~~ the licensee holds more than one issuer credit rating; ~~and~~ one or more of the ratings so held is not investment grade.;; ~~or~~

6. The circumstance described by this paragraph is that ~~(e)~~ 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 BBB (low) by DBRS Ratings Ltd or any of its affiliates (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 Special Condition A38 (Credit Rating of the Licensee) and:

- (a) ~~(i)~~ is on review for possible downgrade; or
- (b) ~~(ii)~~ is on Credit Watch or Rating Watch with a negative designation;
or, where neither ~~(ia)~~ nor ~~(iib)~~ applies:
- (c) ~~(iii)~~ the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub-paragraph (e)~~ 6 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.

7. The circumstance described by this paragraph is that the licensee has:

- (a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 2 of Standard Special Condition A37 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition; or
- (b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 4 of Standard Special Condition A37 (Availability of Resources) and:
 - (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an affiliate or related undertaking of the licensee, and
 - (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;

or

- (c) informed the Authority of any circumstance of the type set out in paragraph 7 of Standard Special Condition A37 (Availability of Resources) and:
 - (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or
 - (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an affiliate or related undertaking of the licensee; and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.
8. The circumstance described by this paragraph is that the licensee has after 1 April 2013, materially breached any formal covenant pertaining to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:
- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
 - (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;
- and in either case (a) or (b) the remedy or renegotiation has been notified in writing to the Authority;
- or
- (c) in response to a written request from the licensee, either the Authority has confirmed in writing, before the breach occurs, that the breach in question shall not trigger the provisions of paragraphs 3 and 9, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.
94. Where under the provisions of paragraph 3 applies, the licensee is prohibited from entering into or completing and transaction of a type referred to or described in paragraph 1(b), 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 ~~prohibiting~~ circumstances ~~arose 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 ~~prohibiting~~ circumstances ~~arose 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.

105. In this condition:

“cross-default obligation”

means a term of any agreement or arrangement whereby the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, of increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:

- (i) that liability can arise only as the result of a default by a subsidiary of the licensee;
- (ii) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority

of its board of directors; and

- (iii) that subsidiary carries on business only for a purpose within paragraphs 1(a), 1(b), 1(c) or 1(d) of the definition of permitted purpose set out in Standard Special Condition A32 (Definition of Permitted Purpose).

“indebtedness”

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.

“investment grade”

has the meaning given in paragraph 2 of Standard Special Condition A38 (Credit Rating of the Licensee).

“issuer credit rating”

has the meaning given in paragraph 2 of Standard Special Condition A38 (Credit Rating of the Licensee).

- 116.** Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “**licensee**” shall mean this legal entity.

Standard Special Condition A42: Requirement for Sufficiently Independent Directors

1. Except and to the extent that the Authority consents otherwise, the licensee must ensure that at all times after a date which is the later of:
 - (a) 1 April 2014; and
 - (b) 12 months after this condition comes into effect in respect of the licensee, it has at least two non-executive directors who meet the criteria set out in paragraphs 2, 3, and 5 below. In this condition such directors are referred to as “sufficiently independent directors”.
2. A sufficiently independent director must:
 - (a) be a natural person;
 - (b) have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the licensee; and
 - (c) not have any executive duties within the transportation business.
3. Except and to the extent that the Authority consents otherwise, and subject to paragraph 4, a sufficiently independent director must not be, and must not have been during the 12 months before his appointment as a director of the licensee or the coming into force of this condition (whichever is the later):
 - (a) an employee of the licensee; or
 - (b) a director or employee of any affiliate or related undertaking of the licensee.
4. The reference to ‘director’ in sub-paragraph 3(b) does not include appointment as a non-executive director of:
 - (a) an affiliate or related undertaking of the licensee that is the holder of a gas transporter licence or an electricity transmission or electricity distribution licence;
 - (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a Permitted Purpose (as that term is defined in Standard Special Condition A32 (Definition of Permitted Purpose)); or
 - (c) a qualifying group company.
5. A sufficiently independent director must not:
 - (a) have, or have had during the 12 months before his appointment as a director or the coming into force of this condition (whichever is the later), any

material business relationship with the licensee or any affiliate or related undertaking of the licensee;

- (b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the licensee or the interests of any affiliate or related undertaking of the licensee; or
 - (c) receive remuneration from the licensee or any affiliate or related undertaking of the licensee apart from a director's fee and reasonable expenses.
6. For the purposes of sub-paragraphs 5(a) and 5(c) respectively:
- (a) the holding of a small number of shares or associated rights shall not, of itself, be considered a material business relationship; and
 - (b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the licensee or any affiliate or related undertaking shall not be considered to be remuneration.
7. The licensee must notify the Authority of the names of its sufficiently independent directors within 14 days of the coming into force of this condition and must notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 1 of this condition.
8. The terms of appointment of each sufficiently independent director must include a condition stipulating that both the licensee and the appointee will use their best endeavours to ensure that the appointee remains sufficiently independent during his term of office, having particular regard to the criteria set out in paragraphs 2, 3, and 5.
9. A term of appointment for a sufficiently independent director may not be for longer than eight years, but an individual may be reappointed thereafter provided that he continues to meet the criteria set out in paragraphs 2, 3, and 5.
10. 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 personal reasons.

11. If at any time the licensee has fewer than two sufficiently independent directors because of a removal or resignation or other reason (including death or incapacity), the licensee must take all appropriate steps within its power to ensure that a new director is, or new directors are appointed to fulfil the obligation in paragraph 1 of this condition as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.
12. Where the holder of this licence owns one or more relevant gas transporters, the licences for which are held in a single legal entity, references in this condition to “licensee” shall mean that single entity.

Interpretation

13. In this condition “qualifying group company” means:
 - (a) an immediate parent company of the licensee that holds 100% of the shares of the licensee and no other shares except for shares in one or more wholly-owned subsidiaries, each of which is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence; and
 - (b) the parent company of a group whose other members may only include :
 - (i) a company meeting the criteria set out in sub-paragraph (a); and
 - (ii) intermediate holding companies between the parent company concerned and a company meeting the criteria set out in sub-paragraph (a) provided that such intermediate holding companies:
 - (aa) have no shareholders other than the parent company concerned or another intermediate holding company; and
 - (bb) hold no shares other than shares in a company meeting the criteria set out in sub-paragraph (a) or shares in another intermediate holding company;
- and
- (c) intermediate holding companies meeting the criteria set out in sub-paragraph (b)(ii).

Appendix 8 - Draft Modifications: Gas Transporter Licence Standard Conditions

Summary

This appendix shows the proposed modifications to Standard Conditions in the Gas Transporter Licence. Additions are shown in red text and deletions in dark red text and struck through.

Condition 29: Disposal of Assets and restrictions on charges over Receivables

1. The licensee shall not dispose of or relinquish operational control over any transportation asset or storage asset otherwise than in accordance with the ~~following paragraphs~~ provisions of this condition.
2. Subject to paragraph 3, the licensee must not, after 1 April 2013, grant any mortgage, charge, or other form of security over any receivable except in accordance with the provisions of this condition.
3. The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope of the mortgage, charge, or other form of security insofar as it applies to the licensee's receivables.
24. Save as provided in paragraph ~~35~~, 6, or 8, the licensee shall give to the Authority not less than two months' prior written notice of:
 - (a) its intention to dispose of or relinquish operational control over any transportation asset or storage asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; or
 - (b) its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further information as the Authority may request relating to such receivable, class or classes of receivables

or the circumstances of the intended grant of the mortgage, charge, or other form of security.

35. Notwithstanding paragraphs 1 and 24(a), the licensee may dispose of or relinquish operational control over a transportation asset or storage asset where:-

(a) ~~where:~~ (i) the Authority has issued directions for the purposes of this condition generally containing a general consent (whether or not subject to conditions) to:

~~(aa)~~(i) transactions of a specified description; or

~~(bb)~~(ii) the disposal of or relinquishment of operational control over an asset of a specified description; and

(b) ~~(ii)~~ the transaction or the assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject; ~~or.~~

~~(b) where the disposal or relinquishment of operational control in question is required by or under any enactment or subordinate legislation.~~

6. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables where:

(a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and

(b) the proceeds of the indebtedness of the licensee which is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).

7. For the purposes of paragraph 6, what is meant in any particular case by:

(a) "existing indebtedness"; and

(b) "proceeds of the indebtedness"

is to be treated as a question of fact.

8. Notwithstanding paragraphs 1, 2, and 4 the licensee may dispose of or relinquish operational control over any transportation asset or storage asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of

the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union

49. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any transportation asset or storage asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable as is specified in any notice given by the licensee under paragraph 24 where:

- (a) the Authority confirms in writing that it consents to such disposal or relinquishment or grant (which consent may be made subject to acceptance, by the licensee or any third party to the transaction in question in favour of whom the asset is proposed to be disposed or operational control is proposed to be relinquished to, of such conditions as the Authority may specify); or
- (b) the Authority does not inform the licensee in writing of any objection to such disposal, or relinquishment of control or grant within the notice period referred to in paragraph 24.

510. If the a transportation asset comprises a significant part of the gas conveyance system in Great Britain, notwithstanding that the a disposal of or relinquishment of operational control over the asset is permitted under paragraph 35, 8 or 49, the licensee shall notify the Secretary of State at least 60 days in advance of the proposed disposal of or relinquishment of operational control over the asset; and if the Secretary of State directs the licensee, within 30 days of such notification, not to proceed with the disposal of or the relinquishment of operational control over the asset, the licensee shall comply with the direction.

11. In considering any Notice given by the licensee under paragraph 4(b), the Authority shall not unreasonably withhold its consent to the transaction in question.

612. In this condition -
"disposal" means:

- (a) in relation to disposal of a transportation asset or storage asset situated in England and Wales includes any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge, or grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition;
- (b) in relation to disposal of a transportation asset or storage asset situated in Scotland includes the grant of any disposition, conveyance, contract of excambion, any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party, or the grant of any servitude right,

wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land

and "dispose" and cognate expressions shall be construed accordingly;

"receivable" means a contractual right to receive any sum or sums or any other financial asset from another person;

"storage asset" means -

- (a) an offshore gas storage installation;
- (b) storage cavities in natural strata;
- (c) containers for the storage of gas in a liquid state,

or anything used in connection with the provision of such facilities;

"transportation asset" means any part of the licensee's pipe-line system or any part of any facility being one -

- (i) used by the licensee only for the diurnal storage of gas or for the storage of gas in connection with the operation of its independent systems; and
- (ii) required for the proper performance of its duty under section 9(1) of the Act,

together with any estate or interest in land required for the utilisation of that system or of such a facility.

712. If the Authority, having regard, in particular, to any representations made to it by the licensee and other persons and to the extent to which there ~~is~~ is competition in relation to the storage of gas in particular categories of the facilities mentioned in sub-paragraph (a), (b) or (c) of the definition of "storage asset" in paragraph 612 ~~and its view on that question~~, considers it appropriate that that definition should be modified by the omission of sub-paragraph (a), (b) or (c), then the sub-paragraph in question shall be omitted with effect from a date specified in a notice relating thereto published by the Authority for the purposes of this condition generally.

Condition 44: 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 transportation business of the licensee; and
 - (b) to comply in all respects with its obligations under this licence and such obligations under the Act as apply to those activities authorised by this licence including, without limitation, its duty to develop and maintain an efficient, co-ordinated and economical system of gas transportation.

.....Delete all subsequent existing text and replace with the text shown below:

Certificates for the Authority in relation to financial resources

2. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1F**

"After making enquiries and having taken into account in particular (but without limitation) any dividend or other distribution that might reasonably be expected to be declared or paid by the licensee, the licensee's directors 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 transportation business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2F**

"After making enquiries, and subject to what is explained below, 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 licensee's

directors 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 the transportation 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 on the transportation business [followed by a description of the factors concerned]."

or

(c) **Certificate 3F**

"In the opinion of the licensee's directors, the licensee will not have sufficient financial resources and financial facilities available to itself to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate."

Statement of factors and report by auditors in relation to financial resources certificate

3. The licensee must ensure that the certificate given to the Authority under paragraph 2 is accompanied by:

(a) a statement of the main factors that the licensee's directors have taken into account in giving that certificate including reference to:

- (i) the main financial resources and financial facilities available to the licensee; and
- (ii) the most recent cash flow statement prepared for the licensee;

and

(b) a report prepared by its auditors and addressed to the Authority which states whether or not the auditors are aware of any inconsistencies between, on the one hand, that certificate and the statement submitted with it under sub-paragraph (a) and, on the other hand, any information that they obtained during their audit work under Standard Condition A30 (Regulatory Accounts) on the licensee's Regulatory Accounts.

Certificates for the Authority in relation to operational resources

4. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1R**

"After making enquiries the licensee's directors have a reasonable expectation that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate."

or

(b) **Certificate 2R**

"After making enquiries, and subject to what is explained below, the licensee's directors have a reasonable expectation, subject to what is explained below, that the licensee will have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transportation 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 on the transportation business [followed by a description of the factors concerned]."

or

(c) **Certificate 3R**

"In the opinion of the licensee's directors, the licensee will not have sufficient operational resources including management, personnel, fixed and moveable assets, rights, licences, consents, and facilities available to itself to enable the licensee to carry on the transportation business for a period of 12 months from the date of this certificate."

Statement of factors in relation to operational resources certificate

5. The licensee must ensure that the certificate given to the Authority under paragraph 4 is accompanied by a statement of the main factors that the licensee's directors have taken into account in giving that certificate.

Certificate for the Authority in relation to compliance with certain Standard Licence Conditions

6. The licensee must by 31 July each year give the Authority a certificate that has been approved by a resolution of the licensee's board of directors and signed by a director of the licensee pursuant to that resolution and is in one of the following forms:

(a) **Certificate 1C**

"After making enquiries the licensee's directors consider that at the time of their approval of this certificate, the licensee is in compliance in all material respects with all of the obligations imposed on it by Standard Special Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of the Licensee) and Standard Condition 47 (Indebtedness)."

or

(b) **Certificate 2C**

"In the opinion of the licensee's directors, the licensee is not at the time of their approval of this certificate in compliance in all material respects with all of the obligations imposed on it by Standard Special Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of the Licensee) and Standard Condition 47 (Indebtedness)."

Obligation to report any adverse circumstances

7. The licensee must inform the Authority in writing immediately if:
 - (a) the directors of the licensee become aware of any circumstance that causes them no longer to have the reasonable expectations expressed in the most recent certificate given under paragraph 2(a), 2(b), 4(a) or 4(b); or
 - (b) the directors of the licensee consider that any adverse circumstances that caused them to give the Authority a certificate in form of Certificate 3F under paragraph 2(c) or Certificate 3R under paragraph 4(c) have materially worsened.

Certificates for the Authority in relation to dividends

8. The directors of the licensee must not declare or recommend a dividend, and the licensee must not make any other form of distribution within the meaning of sections 829, 830, 849 and 850 of the Companies Act 2006, or redeem or repurchase any share capital of the licensee, unless before declaring, recommending, or making the distribution, redemption, or repurchase (as the case may be) the licensee has given the Authority a certificate that complies in all respects with the three requirements set out below.
9. The first requirement is that the certificate must be in the following form:

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

 - (a) that the licensee is in compliance in all material respects with all of the obligations imposed on it by Standard Special Condition 24 (Provision of Information to the Authority), Standard Condition 43 (Restriction on Activity and Financial Ring Fencing), Standard Condition 44 (Availability of Resources), Standard Condition 45 (Undertaking from Ultimate Controller), Standard Condition 46 (Credit Rating of the Licensee) and Standard Condition 47 (Indebtedness)."
 - (b) that the making of a distribution, redemption, or repurchase of [value] on [date] 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."

10. The second and third requirements are that the certificate:
- (a) must have been approved by a resolution of the licensee's board of directors passed not more than 14 days before the date on which the declaration, recommendation, or payment is to be made; and
 - (b) must be signed by a director of the licensee.
11. Where the certificate given under paragraph 8 relates to the declaration or recommendation of a dividend, the licensee is under no obligation to issue a further certificate before paying that dividend so long as such payment is made within six months of the date on which the certificate was given.

Requirement to maintain an Intervention Plan

12. The licensee must prepare by 1 April 2014, or within 12 months of this condition coming into effect in respect of the licensee, whichever is the later, and at all times thereafter, maintain an Intervention Plan fulfilling the criteria described in the definition of Intervention Plan in Paragraph 14 below.
13. The requirement for the information described in any of sub-paragraphs (a) to (k) in paragraph 14 below to be included in the Intervention Plan will be satisfied if the plan provides details of other documents or records (including electronic records) where that information can be readily obtained and those documents or records are either maintained by the licensee itself or are available to the licensee at all times under a legal or contractual right.

Interpretation

14. In this condition:

Intervention Plan means a document or set of documents (which may be in a suitably secure electronic format) containing information that would be sufficient to allow an energy administrator (within the meaning of Chapter 3 of Part 3 of the Energy Act 2004) readily to obtain information on:

- (a) the financial assets, resources, and facilities of the licensee;
- (b) the non-financial assets, rights, and resources of the licensee including information on key management and operational personnel and information technology systems;

- (c) the liabilities of the licensee, including contingent and contractual liabilities, with counterparty and maturity information;
- (d) the tax affairs of the licensee;
- (e) the personnel of the licensee and any pension schemes sponsored or administered by the licensee;
- (f) any mortgages, charges, or other forms of security over the licensee's assets;
- (g) the systems and processes by which the licensee carries on the transportation business with information on any significant contractual arrangements, including those that impose obligations on the licensee;
- (h) any arrangements under which the licensee has relinquished operational control over transportation assets (as that term is defined in Standard Condition 29 (Disposal of Assets and restrictions on charges over Receivables)) to an affiliate or related undertaking;
- (i) any contractual rights to receive cash or other financial assets from any affiliate or related undertaking of the licensee;
- (j) any contractual obligations to deliver cash or other financial assets to any affiliate or related undertaking of the licensee; and
- (k) the licensee's arrangements and procedures for ensuring compliance with legislative requirements and with its obligations under this licence, including price control reporting requirements.

Condition 45: Undertaking from Ultimate Controller

1. The licensee shall procure from each company or other person which is at any time an ultimate controller of the licensee a legally enforceable undertaking in favour of the licensee in the form specified by the Authority that that ultimate controller ("the covenantor") will refrain from any action, and will procure that any person (including, without limitation, a corporate body) which is a subsidiary of or controlled by, the covenantor (other than the licensee and its subsidiaries) will refrain from any action, which would then be likely to cause the licensee to breach any of its obligations under the Act or this licence. Such undertaking shall be obtained within 7 days of the company or other person in question becoming an ultimate controller and shall remain in force for as long as the licensee remains the holder of this licence and the covenantor remains an ultimate controller of the licensee.

2. The licensee shall:

- (a) 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 1;
- (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) comply with any direction from the Authority to enforce any such undertaking;

and shall not, save with the consent in writing of the Authority, enter (directly or indirectly) into any agreement or arrangement with any ultimate controller of the licensee or any of the subsidiaries of any such corporate ultimate controller (other than the subsidiaries of the licensee) at a time when –

- (i) an undertaking complying with paragraph 1 is not in place in relation to that ultimate controller; or
- (ii) there is an unremedied breach of such undertaking; or
- (iii) the licensee is in breach of the terms of any direction issued by the Authority under paragraph 2 of this condition.

3. The licensee must, on or before 31 July of each year, provide the Authority with a schedule of the undertakings obtained in accordance with paragraph 1 that are in force at that time, together with a confirmation that the licensee has sent each of the Ultimate Controllers concerned a letter, within the preceding 12 months, reapprising that Ultimate Controller of the terms of the undertaking that it has given.

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Condition 46: Credit Rating of Licensee

1. The licensee shall take all appropriate steps to ensure that the licensee maintains at all times an investment grade issuer credit rating, or with the prior written permission of the Authority, any such arrangements as the Authority considers appropriate.
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 by Fitch Ratings Ltd or any of its subsidiaries;
 - (d) an issuer or senior unsecured rating by DBRS Ratings Limited or any of its affiliates; or
 - (ed) 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), (c) or (d) and issued by:
 - (i) any of the credit rating agencies referred to in sub-paragraphs (a), (b), (c) or (d) or;
 - (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.
3. 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;
 - (iv) an issuer or senior unsecured rating of not less than BBB (low) by DBRS Ratings Limited or any of its affiliates; 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), (iii) and (iv) and issued by:
 - (aa) any of the credit rating agencies referred to in subparagraphs (i), (ii), (iii) or (iv); 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.

Condition 47: Indebtedness

1. In addition to the requirements of Standard Condition 29 (Disposal of Assets **and restrictions on charges over Receivables**), 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 or continue or permit to remain in effect 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 29 (Disposal of Assets **and restrictions on charges over Receivables**)) 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 sub-paragraph (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
 - (vii) an acquisition of shares or other investments in conformity with paragraph 2 of Standard Condition 43 (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 or 49 below (as the case may be) 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 at the date in which this condition came into effect, 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,~~

provided, however, that the provisions of sub-paragraphs (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. Where the Authority has not granted permission for the use of alternative arrangements in accordance with paragraph 1 of Standard Condition 46 (Credit Rating of licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 510, if ~~any of the circumstances set out in paragraphs 4 to 8 applies.~~
4. ~~(a) The circumstance described by this paragraph is that:~~ the licensee does not hold an investment grade issuer credit rating.;
5. ~~(b) The circumstance described by this paragraph is that where~~ the licensee holds more than one issuer credit rating; ~~and~~ one or more of the ratings so held is not investment grade; ~~or.~~

6. ~~(e)~~ The circumstance described by this paragraph is that 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 BBB (low) by DBRS Ratings Ltd or any of its affiliates (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 46 (Credit Rating of Licensee) and such rating:
- (a) ~~(i)~~ is on review for possible downgrade; or
 - (b) ~~(ii)~~ is on Credit Watch or Rating Watch with a negative designation;
or, where neither ~~(ia)~~ nor ~~(iib)~~ applies:
 - (c) ~~(iii)~~ the rating outlook of the licensee as specified by any credit rating agency referred to in ~~sub~~-paragraph ~~(e)~~ 6 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.
7. The circumstance described by this paragraph is that the licensee has:
- (a) given the Authority a certificate in the form of Certificate 3F under the requirement set out in paragraph 2 of Standard Condition 44 (Availability of Resources) and has not subsequently given the Authority a certificate in the form of Certificate 1F or Certificate 2F as set out in the same condition; or
 - (b) given the Authority a certificate in the form of Certificate 3R under the requirement set out in paragraph 4 of Standard Condition 44 (Availability of Resources) and:
 - (i) the opinion expressed in the certificate arises in whole or in part from circumstances affecting an affiliate or related undertaking of the licensee, and
 - (ii) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or Certificate 2R as set out in the same condition;
- or
- (c) informed the Authority of any circumstance of the type set out in paragraph 7 of Standard Condition 44 (Availability of Resources) and:
 - (i) the circumstances giving rise to the licensee's report relate to the licensee's financial resources and the licensee has not subsequently

given the Authority a certificate in the form of Certificate 1F or 2F as set out in the same condition; or

- (ii) the circumstances giving rise to the licensee's report relate to the licensee's operational resources and:
 - (aa) relate in whole or in part to circumstances affecting an affiliate or related undertaking of the licensee; and
 - (bb) the licensee has not subsequently given the Authority a certificate in the form of Certificate 1R or 2R as set out in the same condition.

8. The circumstance described by this paragraph is that the licensee has after 1 April 2013, materially breached any formal covenant pertaining to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

- (a) the licensee has remedied the breach to the satisfaction of the counterparty concerned;
- (b) the licensee has renegotiated the covenant or arrangement to the satisfaction of the counterparty concerned;
and in either case (a) or (b) the remedy or renegotiation has been notified in writing to the Authority; or
- (c) in response to a written request from the licensee, either the Authority has confirmed in writing, before the breach occurs, that the breach in question shall not trigger the provisions of paragraph 10, or the Authority has not provided a substantive response to such a written request within seven days of receiving it.

49. Where the Authority has granted permission for the use of alternative arrangements in accordance with paragraph 1 of Standard Condition 46 (Credit Rating of Licensee), then except with the prior consent of the Authority, the licensee shall not enter into or complete any transaction of a type referred to or described in paragraph 1(b) save in accordance with paragraph 510, if:

- (a) the alternative arrangements for which the Authority has granted permission are not maintained in accordance with the conditions imposed by the Authority when giving written permission pursuant to paragraph 1 of Standard Condition 46 (Credit Rating of Licensee); or
- (b) either of the circumstances described in paragraphs 7 and 8 applies.

510. Where under the provisions of either paragraph 3 or paragraph 9, the licensee is prohibited from entering into or completing any transaction of a type referred to or described in paragraph 1(b) ~~paragraph 3 or 4 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 prohibiting circumstances ~~arose described in paragraph 3 or 4 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 prohibiting circumstances ~~in paragraph 3 or 4 arise arose~~, 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.

611. In this condition:

"cross-default obligation"

means a term of any agreement or arrangement whereby the licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated or is capable of arising, of increasing or of being accelerated by reason of a default (howsoever such default may be described or defined) by any person other than the licensee, unless:

- (i) that liability can arise only as the result of a default by a subsidiary of the

licensee;

- (ii) the licensee holds a majority of the voting rights in that subsidiary and has the right to appoint or remove a majority of its board of directors; and
- (iii) that subsidiary carries on business only for a purpose within paragraph (a) of the definition of permitted purpose set out in Standard Condition 32
(Interpretation of Section C)

"indebtedness"

means all liabilities now or hereafter due, owing or incurred, whether actual or contingent, whether solely or jointly with any other person and whether as principal or surety, together with any interest accruing thereon and all costs, charges, penalties and expenses incurred in connection therewith.

"investment grade"

has the meaning given in paragraph 2 of Standard Condition 46 (Credit Rating of Licensee)

"issuer credit rating"

has the meaning given in paragraph 2 of Standard Condition 46 (Credit Rating of Licensee)

Appendix 9 – Draft Form of Ultimate Controller Undertaking

Summary

This appendix contains a draft example of the form of Ultimate Controller Undertaking which the Authority proposes to specify for future use. This example relates to the Electricity Distribution Licence; equivalent forms are proposed for other types of licence.

Direction issued by the Gas and Electricity Markets Authority to all holders of Electricity Distribution Licences treated as granted under section 6(1)(c) of the Electricity Act 1989 ('the licensees') under paragraphs 2 and 3 of Standard Condition 6 (Provision of Information to the Authority) and paragraphs 1 and 2 of Standard Condition 31 (Undertaking from Ultimate Controller) of the Electricity Distribution Licence, and

Notice of reasons under section 49A of the Electricity Act 1989 for the decision to issue the direction

WHEREAS

- A. Each of the licensees is the holder of a distribution licence ('the licence') granted or treated as granted by the Gas and Electricity Markets Authority ('the Authority') under section 6(1)(c) of the Electricity Act 1989 ('the Act').
- B. The licence imposes requirements for the licensees to procure certain undertakings from each of their Ultimate Controllers as defined in Standard Condition 1 (Definitions for the standard conditions) of the licences. The requirements are contained in Standard Condition 6 (Provision of Information to the Authority) ('SLC 6') and Standard Condition 31 (Undertaking from Ultimate Controller) ('SLC 31') of the licence (together 'the conditions').
- C. The conditions each provide for the Authority to specify the form of the requisite ultimate controller undertakings on the terms set out in the conditions as follows:
 - (i) Under paragraph 3 of SLC 6 the terms are that the Ultimate Controller ('the Information covenantor'):
 - (a) will give to the licensee; and
 - (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the Information Covenantor (other than the licensee and any Subsidiary of the licensee) will give to the licensee,all such Information as may be necessary to enable the licensee to comply with its obligation under paragraph 6.1 of SLC 6.
 - (ii) Under paragraph 2 of SLC 31 the terms are that the Ultimate Controller ('the covenantor'):
 - (a) will refrain from any action; and
 - (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the covenantor (other than the licensee and any Subsidiary of the licensee) will refrain from any action,

that would be likely to cause the licensee to breach any of its obligations under the Act or this licence.

- D. The Authority considers that it is now appropriate to issue a direction specifying the form of undertakings to be procured by licensees for the following reasons:
- (i) to ensure that ultimate controller undertakings obtained by the licensees meet all of the requirements of the conditions;
 - (ii) to provide for consistency in the terms of ultimate controller undertakings across licensees and ultimate controllers; and
 - (iii) to facilitate the provision of undertakings by new licensees or by existing licensees when their ultimate controllers change as a result of corporate transactions

NOW the Authority pursuant to paragraphs 2 and 3 of SLC 6 and paragraphs 1 and 2 of SLC 31 and for the purpose of specifying the forms of undertakings for the purposes of those conditions generally **HEREBY DIRECTS** that any undertakings procured to meet the requirements of the conditions are to follow the form set out in the Schedule to this Direction (not to be taken as excluding any further terms that be necessary or amendments necessary due to the particular circumstances of a case) unless the Authority directs that a different form should be followed and/or varies or revokes this Direction, including its Schedule, in writing upon reasonable notice.

This document also constitutes a notice for the purpose of section 49A(1)(c) of the Act stating the reasons for the Authority's decision to issue the Direction.

Dated: XX XXX 201X

.....
Senior Partner, Smarter Grids and Governance

**Duly authorised on behalf of the
Gas and Electricity Markets Authority**

Schedule to Direction issued by the Gas and Electricity Markets Authority
dated XX XXX 2012

Form of Ultimate Controller Undertakings:

THIS DEED made on day of between:

- (1) [ULTIMATE CONTROLLER] (a company registered in [] with number [] and whose registered office is at []) (the “**Covenantor**”);
- and
- (2) [Company] (a company registered in England with number xxx and whose registered office is at []) (the “**Licensee**”);

WHEREAS:

- (A) The Licensee is bound by certain obligations under the Electricity Act 1989 (the “Act”) and the licence granted under section 6(1)(c) of the Act (the “Licence”).
- (B) Standard Condition 6 (Provision of Information to the Authority) and Standard Condition 31 (Undertaking from Ultimate Controller) of the Licence require the Licensee to procure from any person who is an ultimate controller of the Licensee enforceable undertakings in respect of:
- i. the provision of information by the Licensee to the Gas and Electricity Markets Authority (the “Authority”), and
 - ii. the conduct of that person in relation to compliance by the Licensee with its statutory and Licence obligations.
- (C) The Covenantor is an ultimate controller of the Licensee.

NOW THIS DEED WITNESSES as follows:

UNDERTAKINGS

The Covenantor hereby undertakes in favour of the Licensee:

1. To give the Licensee, and to procure that any person (including, without limitation, a corporate body) which is a subsidiary of, or controlled by, the Covenantor (other than the Licensee and any of its subsidiaries) will give to the Licensee, in such manner and at such times as the Licensee may require, all such information as may be necessary to enable the Licensee to furnish to the Authority such information and reports as the Authority may reasonably require or as may be necessary for the purpose of performing:
 - i. the functions conferred on it by or under the Act, the Energy Act 2004 and the Energy Act 2008; and
 - ii. any functions transferred to or conferred on it by or under the Utilities Act 2000.
2. To refrain from any action, and to procure that any person (including, without limitation, a corporate body) which is a subsidiary of, or is controlled by, the Covenantor (other than the Licensee and any of its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to breach any of its obligations under the Act or the Licence.

GENERAL

3. The undertakings given under this deed shall remain in full force and effect until such time as the Licensee ceases to hold the Licence or the Covenantor ceases to be an ultimate controller of the Licensee.

4. For the purposes of this deed;
- i. Any reference to an Act of Parliament shall include any statutory modification or re-enactment thereof after the date on which this deed is executed,
 - ii. Any reference to the Licence shall include any modifications to the Licence after the date on which this deed is executed, and
 - iii. words and expressions defined for the purpose of any provision of such an Act or of the Licence held by the Licensee shall have the same meaning when used in this deed.
5. The Covenantor and the Licensee hereby exclude the operation of the Contracts (Rights of Third Parties) Act 1999.
6. This deed is governed by and shall be construed in accordance with English law.

IN WITNESS of which, this deed has been executed and delivered on the date first appearing on page 1.

EXECUTED AS A DEED BY

The Common Seal of

[Name of Ultimate Controller]

was hereunto affixed in the presence of

_____ Authorised signatory

[or]

[Name of Ultimate Controller]

Acting by two directors or a director and the company secretary

_____ Director

_____ Director/Company Secretary



And

EXECUTED AS A DEED BY

The Common Seal of

[Name of Licensee]

was hereunto affixed in the presence of

_____ Authorised signatory

[or]

[Name of Licensee]

Acting by two directors or a director and the company secretary

_____ Director

_____ Director/Company Secretary

DRAFT