APPENDIX A – SPECIFIC COMMENTS ON DRAFT LICENCE CONDITIONS

In addition to the comments provided on the final policy proposals, we have set out below our comments on the proposed drafting of the accompanying Licence Conditions. Given the short period of time afforded for this review, the comments below are not intended to be exhaustive.

We would be happy to discuss these comments in more detail if that would be beneficial.

General Comments

The draft Licence Conditions are overly complex and difficult to understand. They are also inconsistent in places with some duplication. This creates the real risk of incorrect interpretations being made by suppliers in implementing them, and of investments in systems and processes which unnecessarily over or under complies with the new obligations.

Ofgem should seek to simplify the drafting wherever possible, and commit to holding a reasonable number of industry workgroups where matters of interpretation can be discussed in open forum, before any final Ofgem decision on the Licence Condition drafting is made.

In particular, Ofgem should:

- Reduce the length of the Licence Conditions. By reducing repetition of words, terms and phrases, this will make their legal meaning and effect easier to understand;
- Avoid unnecessary use of cross-references. SLC23.4(c) for example, contains eight separate cross-references which must all be understood before the meaning of the Licence Condition can be properly determined. Again, this will make the Licence Conditions easier to understand;
- Ensure that defined terms used in more than one Licence Condition are moved to SLC1;
- Ensure that the use of defined terms that are specific to one Licence Condition only are kept to a minimum and only where strictly necessary. This will aid the interpretation of that Licence Condition;
- (To the extent that a defined term is required for a particular Licence Condition) ensure this causes no confusion with existing defined terms in SLC1 or in other Licence Conditions;
- Simplify the paragraph structures used in the drafting. A simplified structure would make it much easier to understand the policy intent behind the Licence Conditions.

Finally, the terms and conditions for energy contracts are already lengthy, and much work is underway to both reduce their length and improve customers' ability to understand them. The requirement in a number of the draft Licence Conditions for suppliers to ensure the terms and conditions are updated to reflect the new obligation therefore risks making these documents inaccessible. It is also likely to hinder any attempt to secure a "Plain English" accreditation. Ofgem should ensure that obligations are only reflected in the terms and conditions wherever *absolutely* necessary.

Specific Comments

SLC22A

Charges for Supply Activities and Separate Charges. We would welcome clarification of how the definitions "Charges for Supply Activities" and "Separate Charges" interplay with the definition of "Charges for the Supply of [Gas][Electricity]". The current definition creates some ambiguity here. We would also appreciate clarification that any deposit taken as security against credit default will not be classified as a Charge in this context. Security Deposits are an important way of providing credit to customers which otherwise be forced to take energy through a prepayment meter. Prohibiting them by exclusion from this list would not be in customers' interests.

We would also appreciate some clarity on what charges Ofgem envisage falling under 22A.6(j). Is it, for example, restricted to items where both the charge and the amount are set out in either Licence Condition or legislation, with a requirement on the supplier to recover that charge, or could it apply to any unquantified cost imposed as a result of licence condition or legislation?

We would also suggest that:

- In the list of "Charges for Supply Activities", "data processing" be listed in a separate paragraph (c) from "meter reading" as they are two very different activities and the remaining paragraphs re-numbered accordingly;
- Under "Separate charges", the words "removing, inspecting, re-installing" be added to paragraph (c) to correspond with rights under Gas Act Schedule 2B paragraph 5 and Electricity Act Schedule 6 paragraph 7;
- Under "Separate charges", paragraph (i) be amended to make it clear what the telephone charges related to. We would propose (i) be re-drafted as follows: (i) "charges that may be levied on a Domestic Customer from their telephone provider arising from premium rate telephone calls". The existing drafting is too broad and needs to exclude, for example, charges that a licensee may incur in order to provide a freephone telephone number for its customers (and which form part of Charges for Supply Activities), or standard local rate call charges which are no more than the price that a customer would ordinarily pay for making a telephone call.

SLC22B

As stated in the covering letter to this Appendix, the requirement in SLC22B.2 to make all tariffs RMR compliant by 31st December 2013 will lead to suppliers breaking commitments made to those customers on closed fixed term products.

In SLC22B.4, the definition of Discount should not preclude Licensees from being able to give a discount on a bill to a customer who is in payment difficulties (see our later comments against the new definition of Discount in SLC1).

SLC22B.5(a) and 22B.6(a) both say that the relevant Dual Fuel or online discount should be applied on a continuous basis. However 22B.5(f) and 22B.6(f) then state that the amount must be presented in £/year. For example, if the customer changes supplier part way through a year, will suppliers have to give the full amount of the discount or only the pro-rated amount? Ofgem should clarify this point.

The requirement for Discounts and Bundled Products to be common across *all* tariffs may create some issues for closed Fixed Term Contract customers. If, for example, a supplier increases the value of a Discounted Bundled Product, and similarly increases the unit rate to fund that additional benefit, we understand they would be required to provide the new Discounted Bundled Product benefit to customers on closed Fixed Term Contracts. They would however be unable to increase the unit rate to pay for this. If our interpretation is correct, the only way this could possibly work is if suppliers increase the unit rate still further for new customers in order to cross-subsidise the mandatory provision of the Discounted Bundled Product to existing closed Fixed Term Contract customers. Such a cross subsidy is likely to increase the costs of energy for new customers, suppressing switching in the process. We also consider it unjustifiable, from a customer interest point of view.

The reference to "pounds per sterling per year" in SLC22B.15(d) should be deleted. This looks to be a typographic error.

In SLC 22B.36:

- we suggest removing the definition of "[**Gas only] Affiliate**" (as well as removing the existing definition in clause 19A) and including this in SLC1 as this term is used in more than one Licence condition;

- the definition of "**Collective Switching Scheme**" contains subjective terms, such as "attractive" features and a "bulk" number of customers. These terms should be replaced with objective measures in order to allow suppliers to correctly and consistently interpret the obligation;
- We suggest for clarity, substitute "**Relevant Arrangements**" means either one Time of Use Arrangement or one Non- Time-of-Use Arrangement" for ""**Relevant Arrangements**" means one of each Time of Use Arrangement and one Non-Time-of-Use Arrangement."

In the schedule to SLC22B, under S22B.1, we are not clear as to why there is a separate definition of "Tariff" for this Licence condition and consider this drafting is likely to cause confusion and ambiguity. Does this mean for example that where Tariff is used elsewhere in the Licence conditions it could include the charges excluded for the purposes of S22B.1? We would welcome clarification from Ofgem on this point.

In the schedule to SLC22B, under S22B.1(c) we recommend the words "removing, inspecting, re-installing" are added to paragraph (c) to correspond with rights under Gas Act Schedule 2B paragraph 5 and Electricity Act Schedule 6 paragraph 7.

In the schedule to SLC22B, under S22B.1, we believe a new paragraph (i) should be inserted which reads "charges that may be levied on a Domestic Customer from their telephone provider arising from premium rate telephone calls" in line with our comments on paragraph (i) in the Separate Charges listed under SLC22A.6. The remaining paragraphs should be renumbered accordingly. If Ofgem does not believe this is an oversight, we would welcome an explanation of the policy intent here.

SLC22C

The drafting of SLC22C.3 does not make it clear whether suppliers are required to provide the Relevant Cheapest Tariff or Alternative Cheapest Tariff details on the end of fixed term contract notice.

SLC22C.9 prevents suppliers from making any adverse unilateral variation to the terms of any Fixed Term Contract. This will explicitly prevent suppliers from reducing the level or availability of any discount which may be offered to the customer during any contract term. However SLC22B.5(c) and SLC22B.6(c) and SLC22B.7(b) require suppliers to ensure that Discounts are applied equally across all tariffs in the market. The effect of this will be to prevent suppliers from ever making any adverse change to their Discount structure on any tariff anywhere, as long as they have at least one customer on a Fixed Term Contract. This is disproportionate and may prevent suppliers from offering discounts in the first place. We do not believe this is Ofgem's policy intent, and ask for it to be corrected as soon as possible, for example by allowing unilateral variations associated with changes to evergreen contract Discounts, or obliging discounts on all *live* tariffs to be identical.

SLC22C.12 specifies the wording which must be used for the Alternative Cheapest Tariff messaging on an end of fixed term notice for a prepayment customer, where the tariff advertised would require the customer to have a credit meter. This includes, at paragraph 22C.12(c)(iii), "a statement (in plain and intelligible language) to the effect that there may be restrictions on changing the Electricity/Gas Meter if the Domestic Customer has Outstanding Charges".

We are concerned that this could be interpreted by customers to mean that suppliers will automatically allow a prepayment customer to move from a prepayment meter to a credit meter if they settle all of their outstanding charges. This is not true, and the customer may also be required to pass a credit risk assessment before they are allowed to have a credit meter installed.

This clause also potentially contradicts the existing provisions of SLC22, which allows suppliers the right to offer a supply to a customer on specific terms. Suppliers have an important role in helping ensure customers do not get in to debt. It is therefore important this text is amended. We would suggest adding the following text to the end of SLC22C.12 (c) (iii) "or if the licensee has reasonable grounds to believe the Domestic Customer is likely to incur Outstanding Charges once the meter is

changed from a Prepayment Meter". This text should also be replicated at the end of SLC22D.16 (c) (iii).

SLC22CA.1: Please could Ofgem clarify in the Licence Conditions when these obligations will come into effect.

SLC22D

As above, in reference to SLC22C.12, SLC22.D.16 also contains potentially misleading commitments to prepayment customers about their ability to exchange their meter to a credit meter.

SLC25C

SLC25C.3 should be clarified to protect customers against "undue" detriment, and not all detriment per se. As currently drafted, suppliers could be found in breach of the Standards of Conduct for any act which is detrimental to the customer's interests, including an increase in price, the removal of supply following the detection of theft or a change of supplier objection arising due to an unpaid debt.

SLC25C.11: The reference to "cognate expressions" within the definition of "Fair" is ambiguous. Ofgem should make it clear exactly which terms they consider should be interpreted in accordance with SLC25C.3.

SLC31B

In SLC31B.12, in relation to the definition of "TIL Estimated Annual Costs", it would be helpful for Ofgem to clarify when VAT has to be applied i.e. at the end of the calculation or should the amounts in paragraph (i) 1), 2) and 3) already include VAT at the time we start the calculation? As currently defined, different interpretations may be made by different suppliers, creating customer confusion.

In Schedule 1 to SLC 31B, under Part 2, paragraph S1.11, please could Ofgem make it clear if licensees need to differentiate between Staggered Pricing and non-Staggered Pricing?

In Schedule 1 to SLC 31B, under Part 2, paragraphs S1.16, S1.19 and S1.21, we do not think the words "for medium consumption" are needed as this is already captured in the definition of "Ofgem Consumption Details".

In Schedule 1 to SLC 31B, under Part 2 and in reference to paragraphs S1.18 and S1.20, we believe the only time this happens is in relation to TIL's on Annual statement and bills or statements of account. We think it would be clearer to refer to the specific Licence Conditions that Ofgem has in mind here.

Amendments and additions to definitions in SLC1

Affiliate Licensee: This appears to be a repeat of the definition preceding it "Affiliate [Electricity/Gas] Licensee".

Discount: As drafted, this definition precludes licensees from being able to give a discretionary discount on a bill to a customer who is in payment difficulties, or write off an amount which is classified as either unrecoverable, uneconomical to recover or other such category of "bad debt". Ofgem should treat "write-offs" in the same way as they propose to treat "Compensation Payments".

There is considerable overlap between the proposed definition of Discount and Optional and Tied Bundle, with some propositions being captured under both definitions. In particular, where a Bundled product is offered free or at a discount it would be classified as a "benefit" but also as a Discount. As the treatment of Discounts and Bundles are different under the RMR, this conflict will create confusion and potentially different approaches to the implementation of the RMR by suppliers. Ofgem should resolve this by explicitly excluding Bundled Products from the definition of a Discount.

Estimated Annual Costs: The definition used here is unclear and the calculations are confusing. Specifically, we are uncertain whether:

- If a tariff is longer than 12 months: definition (b) should be used. Given the current calculations suppliers provide is under (a), we would appreciate confirmation this change is intentional.
- If a tariff has less than 12 months to run definition (a) applies, but the equation provided in (i) is confusing. We would appreciate it if Ofgem could either simplify the drafting here, or use their decision document to set out some worked examples of the calculation suppliers should use. If the intention is to provide an indication of annual costs, we recommend amending the drafting to allow the calculation to be pro-rated, as follows:

    1. Fixed term contract length remaining (e.g. 10 months or 304 days): ((annual consumption/365) x unit rate) x 304
    2. Cheapest evergreen tariff length in remainder of the year (e.g. 2 months or 61 days): ((annual consumption/365) x unit rate) x 61
    3. Estimated Annual Costs = 1 + 2

Estimated Annual Savings: We suggest Ofgem delete the word "Relevant" before "Alternative Cheapest Tariff and the Domestic Customer's Estimated Annual Costs".

Live Evergreen Tariff: We query whether there is really a need to have a separate definition for the singular and plural of Live Evergreen Tariff.

Discount: We believe the second reference to Discount (the one that follows the Live Evergreen Tariffs definition) should be labelled "Non-Contingent Discount". We would welcome clarity from Ofgem on this and on the definition itself as per our query above on Ofgem giving an example of something it considers to be a contingent discount.

Optional and Tied Bundles: As above, our interpretation is that there is considerable overlap between the proposed definition of Discount and Optional and Tied Bundle. In particular, where a Bundled product is offered free or at a discount it would be classified as a "benefit" but also as a Discount. As the treatment of Discounts and Bundles are different under the RMR, this conflict will create confusion. Ofgem should clarify this.

Furthermore, it is not clear how Ofgem define "continuously" in the context of the provision of Bundles. For example, is the discount to be applied continuously or the bundled product to be provided continuously? If the former, how will this work where the nature of the product requires a one-off discount, for example a carbon monoxide detector at "£x off"? If the latter, how will this work where the bundled product is consumable, for example in the given case of "concert tickets"[1]? We require clarification from Ofgem on this point before we could apply this rule in practice.

Amendments to SLC7

SLC7.6B seems unnecessary given the drafting of SLC7.6A which already bans a deemed contract having a fixed term period, a termination fee or notice requirement and also when considering the requirements of existing SLC25 and the new standards of conduct.

Amendments to SLC23

SLC23.3 will require suppliers to give notice of a unilateral variation whenever any change is made to the terms and conditions which are to the "disadvantage" of the customer. This is disproportionate, and would for example require suppliers to serve such a notice even for minor amendments to the terms and conditions that could be interpreted to be to the disadvantage of the customer. For example, any change to the terms and conditions which provided for a reasonable costs to be recovered from credit card payments or required a basic minimum level of purchase for prepayment

[1] The Retail Market Review – Final domestic proposals, Figure 4, page 51.

customers would in future lead to suppliers providing the customer with a right to terminate the contract. This is disproportionate and must be amended to exclude minor changes.

SLC23.4b. Please see the 3rd bullet point of paragraph 3 in the summary section of our consultation response for our comments on joint mailing.

SLC23.4 (e) (ii). Does Ofgem intend that the licensee detail every unilateral variation in its notice to customers or only those that are to the disadvantage of the customer?

SLC23.4C (c) (iii). Please see our comments in relation to SLC22C.12.

Schedule 1 to SLC23. We question whether it is strictly necessary for the guidance on how to complete the template for the unilateral variation notice to be spread across six different schedules.

Schedule 1 to SLC23, paragraph S1.11. Please could Ofgem confirm that the intent is not that these figures should be shown inclusive of VAT?

SLC23, Schedule 2, paragraph S2.12 and Schedule 4 paragraph S4.11. Different times of use will not necessarily reflect "day" or "night". The words "during each night period" should therefore be removed.

Amendments to SLC24

The requirement in SLC24.10 to maintain the customers terms and conditions if they receive notice of the customer's intent to change supplier within 20 working days of the end of their fixed term contract, will present significant operational complexity, and may be difficult to automate. It also risks exposing suppliers to an unknown amount of commercial loss. This in turn will increase suppliers risk and hedging costs – costs which will be passed on to the consumer. Ofgem should ensure that a specific cost benefit analysis of this proposal is undertaken. We would be happy to discuss the challenges associated with operationalising this requirement.

Similarly, SLC24.9 requires suppliers to continue to honour the customers old terms and conditions up to 20 working days after the end of their Fixed Term Contract if they subsequently take out a new Fixed Term Contract. This conflicts with the corresponding obligation to move customers on to the cheapest evergreen tariff at the end of their Fixed Term Contract. This may entail suppliers moving customers from a Fixed Term Contract to an evergreen deal, and then retrospectively changing their charges if they then subsequently take out a fixed term contract. This would be both a fundamental change to our systems and – given the potential for inaccurate bills - highly confusing to customers.

Finally, SLC24.10 appears to require suppliers to maintain a customer's terms and conditions up to 65 working days (or three months) after the end of their fixed term contract[2]. This is not a stated policy in the final proposals, and we would therefore appreciate clarification that it is intentional. The effect of this if accurate would be disproportionate, and would potentially lead to significant changes to the way in which one year fixed deals are priced, essentially forcing suppliers to hedge and price them as if they were fifteen month contracts.

Amendments to SLC31A

Generally, the way in which the Licence Conditions associated with the provision of the Annual Statement is drafted are very repetitive and risks confusion. For example SLC31.A.4 details what must be included in the Annual Statement. This is then repeated, but in more detail, in Schedule 4 to SLC31A. Our preference would be for Ofgem to simply state this information once within the Licence.

SLC31A.4(j) obliges suppliers to include the following text on the Annual Statement and Bill: "Remember – it might be worth thinking about switching your tariff or supplier". The schedule to the same licence condition (S1.13) however, suggests this phrase should be ""Remember – you always

[2] Suppliers must keep the terms and conditions the same for the customer if they change supplier for up to 20 working days after the end of their original tariff. If we notify them they have outstanding debt that must be paid off first however, the customer then has an additional 30 working days to pay this off and then switch - which could take an additional three weeks or 15 working days. 20+30+15 = 65 working days.

have the right to switch your tariff or your supplier." It is not clear why these phrases are different and which version suppliers would need to comply with.

In SLC31A.4(n), the term "Confidence Code" has not been defined. We also suggest the deletion of the word "consumer" before the reference to Domestic Customer.

In SLC31A.4(x). The term "Quick Response Code" has not been defined.

It is unclear what "in close proximity" means within SLC31.A.7. Ofgem should clarify how this will be interpreted. For example, does this mean the information has to be provided in the relevant box or can it be provided on a separate page?

SLC31A.7 (c) (iii). Please see same comment as for SLC23.4C (iii) and SLC22C.12.

SLC31A.12. We are concerned that an obligation to reflect all the terms of this standard condition in our standard terms and conditions of supply will make these extremely long and unwieldy.

The wording in Schedule 1 to SLC31.A does not reconcile with the visuals provided along with the final RMR proposals. For example, the draft SLC includes an obligation on suppliers to include additional information within the box on which elements are included in the calculation (e.g. VAT or discounts etc), information on what happens if there is a price increase, and potentially all the information required by SLC31A.7 to SLC31A.11. We can envisage that all this information may not fit in the space allotted for this on the Annual Statement.

We assume that the "Personal Projection" referred to in the consultation document is the same as the "Estimated Annual Costs" referred to in the draft Licence Conditions, but would appreciate confirmation of this from Ofgem.

S4.8 of Part 2 of Schedule 4 to SLC31A prevents suppliers from including any additional information in the Zones on customer communications beyond that listed in Part 2 (with the exception of QR Codes). This lack of flexibility, enshrined within Licence, is problematic and will create issues in future. For example, no provision is made to allow the inclusion of the information required in support of the Green Deal.

The requirement in SLC31.B.9 and SLC.31.C.11 to update the Tariff Information Label and Tariff Comparison Rate for Time of Use customers within two months of a direction from Ofgem is unreasonable. The work required to operationalise any future changes here may be significant. Ofgem should ensure that the Licence Condition is flexible on this point to allow a decision on the appropriate length of time to be taken at the point the decision is made.

S4.11(c) of Part 2 of Schedule 4 to SLC 31A suggests that we have to show the aggregate of the amount of money paid by the customer in the last 12 months and the amount still owed. SLC31A.4(g) however states that we must provide both of these figures. Ofgem should correct the apparent inconsistency here.

We consider that S4.11(d)(ii) of Part 2 of Schedule 4 to SLC 31A is poorly drafted and is difficult to understand.