RobinHoodenergy
A not for profit company

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Sent via email to licensing@ofgem.gov.uk

**2nd December 2019**

Dear Vlada and James,

**Response to the Ofgem 'Supplier Licensing Review: Ongoing requirements and exit arrangements' consultation**

Robin Hood Energy is a not-for-profit gas and electricity supplier, with over 130,000 customers. We were set up by Nottingham City Council with the aim of tackling fuel poverty and providing consumers with a cheaper, fairer alternative to the six largest suppliers. We became a voluntary Warm Home Discount licensee in 2018, and have recently invested over £200,000 into a dedicated vulnerability team. We're proud to be leading the way in trying to help those members of society who need it the most.

We work with ten other local authorities, for example Leeds, Liverpool and Derby City Councils, by helping them to create their own white label tariff provider in partnership with us. We operate nationally, but have a regional focus on both Nottingham and our white label partner regions. We are pleased to be at the forefront of publicly owned energy supply.

We would like to thank Ofgem for the opportunity to respond to this consultation, and for their efforts in attending to this issue. We are supportive of the outcomes that Ofgem are seeking to achieve for the industry, and for consumers who experience detriment following a supplier failure. However, we have several concerns with the proposals in their current iteration, and encourage Ofgem to amend their proposals accordingly.

**Overarching question:**

1. Do you think the proposed package of reforms will help to reduce the likelihood of disorderly market exits, and the disruption caused for consumers and the wider market when suppliers fail? Are there other actions you consider we should take to help achieve these aims?

Robin Hood Energy principally support measures to address consumer and industry detriment as a result of supplier failures, however we are of the view that the current proposals will not reduce the likelihood of disorderly market exits, or the consequential impact to consumers and the industry. Specifically, we have considered whether we believe there is a direct relationship between these proposals and achieving the aims/purposes given by Ofgem (see appendix 1), and whether we expect that there will be a positive impact of each proposal with regard to its value. Our view is explained in our answers below, as are our proposals for alternative actions. However, we provide a brief summary of our proposals here for your ease:

to ensure that disruption to the market and consumers is reduced in the event of supplier failures, we propose that Ofgem considers how to socialise costs which cannot be met by certain types of consumer in the same period that suppliers are having to make payments for those unrecovered costs;

to ensure that market exits are less disorderly we propose that Ofgem considers the frequency of supplier payments and accommodation of the relevant portfolio (e.g. energy volume or customer numbers) at the time of payment;

to ensure compliance with the supply licence we propose that Ofgem considers auditing arrangements as are conducted under industry codes, subject to a suitable performance assurance framework;

to resolve any issues with the Supplier of Last Resort process concerning data quality, we propose that Ofgem considers changes to facilitate that process through amendments to resource providers that are acceded to industry codes;

to resolve any issues with activities governed by the administration process, we propose that Ofgem work with the relevant regulator to resolve them, and

to ensure that consumers and industry are protected from potential supplier failures, we propose that Ofgem seek to attend to below-price tariffs.

We note that we believe it is essential for any proposals that are implemented to be subject to a review at least annually during the decarbonisation transition, to ensure that the arrangements are fit-for-purpose and that the costs of the changes are providing value to consumers and the industry. Further, the costs associated with any measures implemented must be appropriately accommodated within price cap arrangements and consequently, the implementation of costly proposals should be adequately aligned.

We have further comments concerning some suggestions and actions that Ofgem have noted within the consultation but have not provided questions for, these are provided in appendix 6.

**Promoting better risk management:**

5. Do you agree with our proposed option to cost mutualisation protections? Are there other methods of implementing this proposed option? Please provide an explanation and, if possible any evidence, to support your position.

We recognise the intent to minimise consumer detriment under these proposals but we do not agree with the current proposals concerning cost mutualisation because we don't believe that they achieve the given aims/purposes (see appendix 1). Specifically, we feel that mandating suppliers to cover 50% of their credit balances is not a tangible guarantee of payment because there is no certainty that such guarantee would result in the incumbent supplier receiving such a payment. Whilst it may be possible for us to extend existing Parent Company Guarantees due to our particular circumstance, we do not feel that this will necessarily be a viable option for all suppliers within the industry. If it is not, the introduction of this requirement could result in either an immediate risk of supplier failure if enforcement action were to be taken where a supplier cannot secure such a guarantee, or a precedence for failing to comply with the condition, which would undermine its introduction. We do not think that it has been demonstrated that the potential cost of such a guarantee that suppliers could likely attain would outweigh the cost-per-consumer incurred in recent mutualisation events, or that credit balances present greater likely detriment to the industry

in the event of supplier failure than government scheme costs. Further points are raised in appendix 2.

The current arrangements with regards to suppliers' costs and cost recovery are misaligned: supplier payments are not recovered over the same period, and the costs that suppliers are expected to pay do not align with the cost-recovery activities that suppliers are permitted to undertake in accordance with their supply license conditions (SLCs) and with price cap (Prepayment Charge Restriction Order 2016, and Domestic Gas and Electricity (Tariff Cap) Act 2018).

Consumers in situations that the Government and their regulators recognise result in a diminished ability to make payments, or to make timely payments, are routinely exempted from such payments or have their contributions reduced. For example the National Insurance Contributions from those receiving social benefits, or the Tax contributions from those receiving lower wages etcetera. With specific regard to the energy sector, Ofgem and the Government commonly permit the socialisation of the costs attributable to certain 'higher cost-to-serve' consumers (Supply Licence Conditions 15, 22.6, and 28A, alongside recent initiatives such as the Hydro Benefit Replacement Scheme and Common Tariff Obligation etcetera).

It would therefore be our suggestion that either:

a) suppliers' payment requirements are amended to reflect reduced contributions from certain consumer types (vulnerable, those with 'ability to pay' struggles) such that cost recovery for supplier payments can be attained via socialisation from paying consumers within the relevant price cap and payment period, or
b) where consumers are permitted not to pay, or to pay over a term that exceeds suppliers' payment period (e.g. those subject to SLCs 0.7; 0A.6; 27, and/or 28B, to 'Breathing Space' arrangements, to the Debt Relief Order etcetera), suppliers' payment requirements be amended to reflect the payment term relevant to those consumers.

Noting of course that with the latter option there will still be a permissible debt position within the industry that cannot be easily or fully socialised under price cap arrangements within suppliers' payment periods.

There may be alternatives (akin to those being considered by BEIS under Flexible and Responsive Energy Retail Markets) to the suggestions above which equate to a direct alignment between the permitted cost-recovery, and the payments that suppliers are requirement to make, within period, such that the industry is not continually being put in a position of debt by the relevant regulatory obligations. Any such suggestion resulting in this outcome is something we feel that Ofgem need to consider to achieve their given aims (see appendix 1). We would contend that this is one of the only ways in which consumers and the market will be protected from costly market exits. Additionally we think that this proposal aligns more fully with both BEIS's intent to minimise market distortion e.g. "In the future energy retail market, businesses should not face policy obligations and responsibilities that distort competition between different businesses or business models. Any obligations and responsibilities they do face to deliver social and environmental objectives should involve minimal administrative burden, which could otherwise disproportionately burden small businesses and hinder competition." (Flexible and Responsive Energy Retail Markets), and with the industry view that "prevention is better than a cure".

We further believe that not only will such an outcome minimise overall debt in the industry and address the market distortion caused by the current distribution of higher 'cost-to-serve' consumers,

but where introduced alongside changes to both the payment-due dates of regulatory costs/government scheme costs (e.g. aligned due dates), and the frequency of such payments (e.g. monthly/quarterly), this will also yield greater confidence in the financial resilience of suppliers and therefore in the market.

We would additionally urge Ofgem to consider the basis for these payments with direct regard to portfolio (volume or customer numbers) at point of payment, rather than an out-dated and inapplicable point in time as a consequence of Ofgem and government initiatives to increase consumer switching activities. To ensure that any proposals are future-proofed we would also request that export be considered, particularly in the instance that single tariffs covering both import and export are permitted under Smart Export Guarantee (SEG) arrangements.

6. Do you agree with our proposal to introduce new milestone assessments for suppliers? Do you think the milestones we have proposed and the factors we intend to assess are the right ones? Are there additional factors we should consider to help us to identify where suppliers may be in financial difficulty?

At present we cannot agree with the proposed milestone assessments because the 'early steps' Ofgem propose are not sufficiently detailed to allow us to adequately assess whether supplier failure would be avoided, and if not, whether industry and consumer detriment would be mitigated. Sufficient detail of the proposed assessment, together with a viable business case, would need to be provided to demonstrate that these assessments would warrant regulatory intervention, resulting in value for consumers and the industry. We note here that where actions were taken as a result of such an assessment, and those actions may be understood as having contributed to a supplier failure, Ofgem may be at risk of legal action. We do not believe that this risk has been appropriately considered and would urge Ofgem to consider this point before progressing these proposals. We would also have expected to see a risk assessment framework from Ofgem for determining such targeted checks.

If we are correct in assuming that Ofgem would take actions under their enforcement rights then we presume that the assessments would be focused on compliance with licence conditions. In which instance it would be our suggestion that in order to ascertain how compliant a supplier is, Ofgem consider introducing an audit of the licence subject to an appropriate performance assurance framework. We would urge Ofgem to consider how this can be accommodated within exiting audits to ensure that suppliers are not unduly burdened, and that the audit process is economic and efficient.

However, if the assessments would be focussed on business plans for growth then we consider that Ofgem may not be suitably positioned to review the businesses operating within the market that they regulate:

a) Ofgem may not possess the expertise necessary to adequately assess each business model with regard to resourcing structures, hedging strategies, use of credit balances for operational plans over time etcetera. We would further highlight that we believe many of these growth plans would be a duplication of existing requirements for suppliers and would therefore constitute undue burden and inefficient cost. For example, systems and the processes that sit behind them are already subject to audit under industry codes (e.g.

the Balancing and Settlement Code and the Smart Energy Code). We would be interested to understand Ofgem's view on this point concerning ongoing growth assessments rather than entry-stage assessments,

b) Where Ofgem may hold this level of information (power purchase agreements, future strategies etcetera) about all supplier businesses within the industry, it may conflict with their ability to independently and objectively determine and introduce change within the industry. We would urge Ofgem to consider whether there is a risk of future challenges concerning anti-competitive regulation.

Further review of the current proposals is provided in appendix 3.

**More responsible governance and increased accountability:**
7. Do you agree with our proposal to introduce an ongoing fit and proper requirement? Are there additional factors, other than the ones we have outlined, that you believe suppliers should assess in conducting checks?

We do not believe that introducing an ongoing fit and proper requirement to existing supply businesses will necessarily prevent disorderly market exits, and achieve the aims that Ofgem have set out to achieve (see appendix 1). As such we do not agree with this proposal where it is implemented for existing employees.

It is likely that most supply businesses will already be undertaking the majority of the proposed checks on individuals that play a role in managing, organising, or making decisions about how activities are conducted within said business. It is therefore our view that a licence condition for these checks is unnecessary. For the checks concerning positions held within other supply businesses, the revocation, refusal, restriction or termination of authorisation, and disciplinary, compliance or enforcement action taken by any regulatory body in any jurisdiction, we believe that the necessary information is unattainable by both suppliers and Ofgem because it is unlikely to be held within the public domain. We do not therefore believe that these checks can be undertaken by a supplier or by Ofgem, and therefore feel that there is no value in this proposal because it will likely result in non-compliance which seems counter-intuitive to the aims/purposes of this consultation (see appendix 1). To be clear, we believe that positions held within previous supply businesses are not held within the public domain to the extent that a supplier would be able to determine whether the position involved making decisions about an organisation's activities or the management of those activities, except where such a position is that of a director. It could be that this was introduced into the recruitment process by way of self-certification, but where this could result in enforcement action we would have expected something less fallible. We do not believe that information concerning the revocation, refusal, or restriction of authorisation is publically available in any form, and again unless the only position within scope is that of a director we do not believe that information concerning the termination of authorisation is accessible either. Where information is concerning disciplinary, compliance or enforcement action taken by any regulatory body in any jurisdiction is publically available it is generally restricted to an organisation rather than an individual, and therefore we do not believe that a supplier could undertake such a check on an individual.

It is further our view that should a relevant person within an existing supply business be found to fail the fit and proper requirement, the business that said person worked for would be in breach of the

proposed requirement where they did not remove said person from their position. Where such a requirement is not part of the employment contract between said person and the associated supply business it is likely that the only recourse to secure such an outcome would be to buy said person out of their contract, this would likely entail a significant cost that we do not feel is justified in terms of the potential value that action could yield. To be clear, we are not of the view that a position involving significant management responsibility or influence within a previous supply business that has failed, has been sufficiently demonstrated to be an indication of future business failure. We are therefore unconvinced that this proposal could have a positive outcome and feel that any cost incurred in complying with such a requirement, would not therefore provide value for money.

**Increased market oversight:**
8. Do you agree with our proposal to require suppliers to produce living wills? What do you think we should include as minimum criteria for living will content?

We are uncertain as to the perceived value of this proposal, specifically where Ofgem highlight themselves that they do not believe a living will is capable of addressing the problems that the proposal was predicated on: data quality in a Supplier of Last Resort (SoLR) event. It is our view that a living will as proposed is unlikely to achieve any of the aims/purposes that Ofgem intend to achieve (appendix one), and that the proposal lacks the necessary incentive to ensure that a failing supplier would behave in accordance with the living will at the necessary point in time. We therefore feel that this proposal has no business case. Where such matters are resolved however, we would note that where living wills are created and not subject to review, they will likely become outdated by the point in time they are required in instances where systems or service providers have changed for example.

We would suggest that where Ofgem perceive that there are issues with the SoLR process, that amendments are made to facilitate that process. For example, where Ofgem are aware of information that would be useful for the incumbent supplier, they could mandate suppliers either through their licence or through a provisional order to ensure that such data is easily accessible, or is prepared for transfer where the conditions of a provisional order are not met and thus a SoLR event will be necessary. We would additionally request that Ofgem consider complimentary obligations on other parties where necessary such that existing, available, industry data is utilised to ensure efficiency. For example, the parties holding suppliers' data could be mandated to ensure ease of data transfer where said parties are subject to industry codes. We feel that this would better suit the "collect once, use many times" principle. It would also be possible to ensure that where suppliers contract with other parties for systems and platforms to hold their consumers' data, such a requirement is included within their contract. However, we would implore Ofgem to consider the likely cost of contract amendments to ensure that there is a viable business case for such a proposal. We also note that with this proposal, as well as Ofgem's proposal concerning continuity of services, it is likely that any contractual obligation on a service provider will be unenforceable where the contract between the failing supplier and such service providers has ended (where the failing supplier is in breach for example). We would request that Ofgem consider this point with regard to its impacts to the business case of this proposal. We note that in order to ensure consistency across supply businesses, any such data requirements would need to include standardised definitions, methodology and content.

With regard to service continuity with key service providers we would seek confirmation from Ofgem that any arrangements that they consider will not result in competitive advantages for some supply businesses during the SoLR process, for example where bidding suppliers are utilising the same service providers as the exiting supplier.

With regard to publication, we are again uncertain as to the perceived value. We would though that we have some concerns around unintended consequences: where consumers do not understand the purpose or content of the living wills it may result in less confidence in the market, and where price comparison websites use these wills to rank suppliers, reputational damage may be incurred where the wills are not standardised (and could therefore be perceived to be indications of failure).

9. Do you agree with our proposed scope for independent audits? Please provide rationale to support your view.

We agree with Ofgem's assertions that financial audits are outside of their remit and that they lack the necessary expertise to use such data to effectively achieve their aims/purposes (appendix 1). As such we feel that this proposal does not constitute 'proportionate' regulation. We further feel that there is no business case for this proposal because suppliers are already subject to annual finance audits, a requirement to undertake financial reporting (SLC 19A), and can be ordered to undertake an independent audit through a direction from Ofgem where Ofgem can establish a robust case for a supplier having failed to meet their obligations. We note that the requirement for financial reporting could be extended such that it applies to all supply businesses.

We would highlight again that Ofgem may wish to consider whether it could be perceived that they may not be able to independently and objectively regulate the industry where they hold this level of information (power purchase agreements, future strategies etcetera) about all supplier businesses.

In addition, we note that we do not believe that 'significant grounds' have been sufficiently defined to provide assurance that such a requirement would be applied consistently across suppliers in the industry. With regard to consistency we also note that where suppliers would be permitted to appoint their own auditor, it is likely that consistency and comparability would be limited despite Ofgem's terms of reference. Furthermore, it would likely be more efficient to utilise auditors that already have contracts for, and are experienced in the industry.

Where the proposed audits require no more information than is subject to the existing financial audit this constitutes unnecessary duplication and therefore inefficient cost; where the information contained in the mandated financial reporting requirement is not felt to be sufficient, the existing condition can be amended such that the costs of an additional audit are avoided.

Even if this proposal was not a duplication of existing requirements, we feel that where licence-compliance was audited in addition to the existing industry audits, this proposal would be unnecessary because such audits would proactively highlight any potential issues and the associated performance assurance framework should work to rectify them.

We are uncertain as to what Ofgem intend to achieve by using these audits "where it is necessary to build on our [Ofgem's] own existing market". We would seek clarification on this point.

**Exit arrangements:**

10. Do you agree with the near terms steps we propose to take to improve consumers' experience of supplier failures? Are there other steps you think we should be taking?

We understand that 'near term steps' refers to Ofgem's proposals concerning debt recovery undertaken by administrators. We note quite simply here that the administration process is a legal process which neither suppliers nor Ofgem have any legal rights or powers over. As such we do not believe that if such a requirement were to be introduced, any supplier could comply with it. In addition, we would seek clarification that Ofgem have acquired a legal view as to whether such a clause within a supply contract would be unlawful, and what the consequences would be for the entire supply contract if it were.

If Ofgem are not satisfied with the way in which administrators conduct debt recovery activities we would suggest that they work with the relevant regulator to address their concerns. Ofgem might also consider working with the Government to introduce cross-sectoral obligations for those in 'Vulnerable Situations'.

11. Do you think there is merit in taking forward further actions in relation to portfolio splitting or trade sales? What are your views of the benefits of these steps? Are there any potential difficulties you can foresee?

It is our view that portfolio splitting in the event of a SoLR will result in the same negative consequences as Ofgem note for trade sales. For example, if one supplier is permitted to acquire all of the consumers with a smart meter, and a second supplier therefore inherits traditionally-metered pre-payment consumers, then it is likely that the second supplier and ultimately their customers will need to bear the costs 'left behind' by the first gaining supplier due to the likely difference in debt positions. Furthermore, portfolio splitting may undermine the effectiveness of a SoLR process in such instances where there are higher-cost-to-serve consumers within a portfolio that suppliers do not wish to bid for.

Where such issues can be resolved, we acknowledge that there may be value in portfolio splitting.

**Appendix 1**

12. Do you think our draft supply licence conditions reflect policy intent?

It is our view that the draft legal text does not reflect policy intent; we explain this for each section below and provide further thoughts on the legal text itself.

**Operational capability**

Our full view of the proposals concerning operational capability requirements is provided in appendix 4, but our view of the draft legal text is given below.

It is our view that 'sufficient' is too subjective to permit the required level of clarity for suppliers to feel confident that they are complying with their obligation.

We further feel that 'serve' needs to be defined such that suppliers can understand the extent to which the obligation applies. For example, are business models that are predicated on on-line services going to be expected to provide a full contact centre service merely because other business models do?

We believe this lack of certainty may negatively affect a supplier's ability to comply with this obligation and therefore do not believe that the legal text will necessarily achieve the policy intent. We also note that the intent was given to introduce a principle-based requirement and yet the draft legal text sets the requirement as 'ensure'.

**Ongoing 'fit and proper' requirement**

The legal text is unclear: the defined term provided is "Significant Managerial Responsibility or Influence", yet 1.4d. and 1.4e. both state (in lower case) "significant *management* responsibility or influence". Using 1.1 and 1.2 as precedence, we have assumed that the aforementioned legal text is erroneous and that it was intended that both 1.4d. and 1.4e. were meant to apply to individuals with "Significant Managerial Responsibility or Influence".

As per our answer to question 7 we do not believe that this requirement is enforceable for any position other than a director for either 1.4d or 1.4e., which we do not believe meets the policy intent or the legal text requirements itself e.g. a person that held "Significant Managerial Responsibility or Influence". Even if the requirement in 1.2 were an 'all reasonable steps' obligation opposed to an 'ensure' obligation, neither supply businesses nor Ofgem would be able to acquire the necessary information to make the determinations required under 1.4.d and 1.4.e for any position other than a director.

In addition, we do not believe that if an individual were a person with "Significant Managerial Responsibility or Influence" at a current supplier, they could also be employed by another Supplier and thus 1.4d does not in our view fit readily with 1.1. To be clear we believe that an individual would have to terminate employment with a current Supplier before they could be employed by another, hence they could only have held such a position with a previous Supplier that triggered a SoLR event. We also note here that with the way in which Gas Supplier and Electricity Supplier have been defined, the concept of a 'former' Gas or Electricity Supplier does not exist because the 'former' would not hold a licence and would therefore not constitute a Gas or Electricity Supplier. We would therefore suggest that 'or held' would be required after 'who holds' in the aforementioned definitions.

With regard to the text provided aside 1.5, we do not believe that either a prospective employer or Ofgem would have any legal way to establish whether the previous actions of an individual resulted in or contributed to significant consumer or market detriment. This information is not publically available, and would not likely be permitted to be provided by a previous employer in their reference unless a causal relationship can be established between the actions taken and the resulting detriment. We therefore feel that this legal text will not yield the protections that Ofgem intend. We further feel that 'detriment' needs to be defined here so as to demonstrate that this is not simply a duplication of the requirement in 1.4.d.

With regard to the text provided aside 1.2, we believe that 'periodic' is too vague to provide the confidence required by supply businesses to ensure that they are complying with the given requirement. We further believe that this lack of clarity will fail to result in consistent application across supply businesses.

**Principle to be open and cooperative with the regulator**

Our full view of the proposals concerning operational capability requirements is provided in appendix 5, but our view of the legal is given below.

We feel that both "open and cooperative" and "Authority would reasonably expect notice" need to be defined such that suppliers have the confidence required to feel comfortable that they could comply with the relevant obligations.

**Independent audits**

It is our view that the legal text here does not meet the policy intent to permit Ofgem to require a supply business to undertake an independent audit. As given above, we concur with Ofgem that financial audits are not within their remit. Consequently we feel that the conditions concerning the audit being "necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation" could not be met.

We do not believe that the requirement to provide the audit in "the form requested" constitutes proportionate regulation where that requirement is not part of the terms of reference provided to the auditor by the Authority. To be clear, where the auditor provides the supplier with their audit in a form, which is not the form, requested by the Authority, it is likely that additional costs will be incurred and this seems to us to be disproportionate and inefficient.

**Other reporting and notifications – Change of control**

We feel that the draft legal text provided exceeds the policy intent by in-scoping more changes than are directly relevant to a change of control in a supply businesses.

We would highlight that the requirement to notify the Authority of any *changes* in the following matters listed under 1.2 create ambiguity:

"Whether the licensee supplies any Non-Domestic Customer";
"Whether the licensee supplies any Domestic Customer";
"Whether a Relevant Merger Situation has arisen", and
"Any significant changes that may affect how a licensee operates".

With regard to the first two, we do not believe the text is sufficiently clear to ensure that we do not have to notify Ofgem of where there is a change to the supply arrangements of each individual Non/Domestic Customer. To be clear 'any' could refer to either the individual consumers, or to that consumer category. Where the requirement does not extend to notifications following all change of supply activity we would suggest that refinements are made to the text.

We also note that we already report customer numbers to Ofgem, as do the registration agents, thus this information should already be available to Ofgem. As such this requirement appears to flout the "collect once, use many times" principle.

With regard to the latter two, we would expect that Ofgem required notification of a Relevant Merger Situation at the point in time that it arises, rather than when changes are made to the situation that has arisen, and that notification would be required for changes that affect how a licensee operates rather than when changes are made to those changes. As such we would again suggest that the draft text is refined for clarity.

However, we would urge Ofgem to check that a requirement for notification around merger situations does not conflict with either the CMA or with EU law.

**Other improvements to exit arrangements**

We are uncertain as to the proposal that predicated this text because it does not seemingly apply to either portfolio splitting or trade sales, which were the proposals under the corresponding header within the consultation document. As such we cannot comment upon the applicability of the draft legal text to policy intent.

However, we feel that where these requirements apply directly to commitments made within a SoLR application then the text itself should not place undue burden supply businesses.

**Customers in debt to the failing supplier**

As noted in our answer to question 10, we do not believe that the actions required by this text are legally enforceable by either a supply business or Ofgem with regard to the administration process. As such we do not believe that the text provided, or any other proposed text can achieve the policy intent.

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Appendix 1
Aims/Purposes

The following were noted as the purposes/aims of the current proposals, and we have therefore based our assessment around them:

1. To ensure that suppliers have effective risk management processes in place (executive summary, page 4 and 1.9, page 10*), wherein risk management refers to managed customer growth; preparedness to meet financial and regulatory obligations; appropriate systems and processes; quality customer service; sustainable use of customer credit balances, and identification and mitigation of risks to compliance or detriment to customers (2.3, page 15)
2. To ensure that suppliers maintain appropriate and responsible governance, and increase accountability among individuals with significant managerial responsibility or influence (executive summary, page 4 and section summary, page 26)
3. To ensure that Ofgem's market oversight is increased (executive summary, page 4), and that said oversight is proportionate (1.9, page 10*)
4. To mitigate the potential for consumer harm by strengthening Ofgem's regulatory regime to raise supplier standards of customer service and financial resilience (1.5, page 9)
5. To introduce more stringent, but proportionate, requirements so that both consumers and Ofgem have confidence that suppliers will deliver a level of service that is appropriate for an essential service (1.5, page 9)
6. To ensure that suppliers are prepared for growth and bear an appropriate share of their risk (1.9, page 10*)
7. To ensure that suppliers maintain the capacity and capability to deliver a quality service to their customers (1.9, page 10*)
8. To ensure that suppliers foster an open and constructive relationship with Ofgem (1.9, page 10*)
9. To ensure that there are appropriate protections for consumers in the event of supplier failure (1.9, page 10*)
10. To strengthen ongoing requirements to drive up standards and minimise any negative impact on the market and customers arising from market exit (1.11, page 10)
11. To enable Ofgem to take action against poor supplier practice (1.11, page 10)

*these are the overarching principles to be used to inform Ofgem's policy development;

** these were written in the reverse and so may be a misinterpretation on our part, however these are titled "What we aim to achieve" and have therefore been interpreted in that context.

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Appendix 2
Cost Mutualisation Protections

In addition to the points raised within the main response, we find that the proposals to cover 50% of credit balances are unclear. For example, is this a net credit balance; at what point in time should this balance be covered; are prepayment or pay-in-advance consumers exempt from this requirement; what are the arrangements to accommodate seasonal balance variations etcetera?

The point in time at which the balance is required to be covered, as well as seasonal balance variations, are in our view likely to cause a lot of difficulty for supply businesses in acquiring the required cover. Furthermore, without requirements to update the cover in accordance with continual changes to credit balances we do not believe that 50% of the credit balance of a failing supplier can be covered. It will not be known at the time of acquiring any such cover, what the credit balance will be at a future point in time.

Any potential exemptions to this requirement e.g. pre-payment customers, will likely yield anti-competitive outcomes with regard to which supply businesses are able to comply with this requirement and those that cannot attain the relevant cover. Forcing some supply businesses into non-compliance due to their portfolio, which is governed by the universal supply obligation for domestic consumers and the associated pre-payment metering obligation (SLCs 22.2 and 27.1), and therefore largely beyond the control of a supply business.

We would urge Ofgem to consider the points raised here in addition to those contained within the main consultation response, and review their proposals to ensure that they do not result in any unintended consequences for the industry, specifically those that may be considered to be anti-competitive.

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Appendix 3
Milestone Assessments

In addition to the points raised within the main response, we find that the proposals are unclear with regard to threshold crossers. For example, where a supplier has passed a milestone threshold and been subject to an assessment but their portfolio fluctuates back below the threshold, and then again above the threshold, will the supply business be subject to another assessment? If so, this seems to be both disproportionate and inefficient with regard to costs incurred.

Ofgem noted many trigger-points within their consultation that have not been accommodated within their proposal, and one such point in our view would be more indicative of future failures than the milestones suggested: below-price tariffs. If a supply business is pricing below cost it is unlikely that they will be able to meet the costs imposed on them by regulatory obligations, and is therefore likely that that business will not only distort the market with regard to other supply business acquisition and pricing (false pricing signals), but will also incur debt from which neither the consumers nor the industry will be protected from under the current proposals. We would therefore urge Ofgem to consider tackling below-price tariffs in place of some of their current proposals.

Where thresholds are eradicated for certain government scheme costs under the Future Energy Retail Market Review (ECO and WHD for example), it is likely that some of the milestones proposed will be outdated shortly after their implementation, therein negatively affecting any business-case associated with this proposal. We would therefore urge Ofgem to pay due consideration to the business-case of their proposals relevant to the time at which they may be implemented.

Without an established view of acceptable business planning there cannot be a level playing field in which businesses are assessed consistently, and our view is that business planning is outside of the remit of the industry regulator. We further feel that where there is an established performance assurance framework for licence-compliance and an audit thereof, this is an unnecessary task.

We would ask whether Ofgem have considered that these proposals may introduce a bias amongst new entrants for a business model based on shared resource providers, due to the likely ease and lower costs involved in assuring system and process readiness etcetera?

There seems to be no regard to key switching/acquisition points within the year e.g. April and October. For example, if a supply business has been gearing themselves toward a tariff offering that should permit growth in October, and they request a milestone assessment in August in readiness, they could find in September (the length of the assessment is yet to be provided) that they are prevented from growing as intended in October. This would have serious implications for such a business, not only in the waste cost incurred in gearing-up to that stage, but also with regard to potential growth opportunities in the months that follow. We believe that Ofgem need to give due consideration to this point such that there are no unintended consequences concerning the competitive nature of any such assessments.

In addition we note that the same consideration will be necessary for Ofgem to consider when determining whether or not these assessments would prohibit supply businesses from entering the SoLR selection process. We would further urge Ofgem to consider what could justify a business being

permitted to breach a milestone threshold without an assessment in the event of a SoLR, but not through their own preparations and campaigns, mergers which prevent a SoLR etcetera.

We further feel that these proposals are not future-proofed: in a market of Half-hourly (HH) supply, Distributed Energy Resources (DERs)/Demand Side Response (DSR), etcetera, we do not believe that the proposals will yield any insight of value because supplier business models will likely be extremely different with regard to costs incurred, spending habits, sustainably practice etcetera. For any proposals that Ofgem intend to pursue we would urge them consider future market conditions.

RobinHoodenergy
A not for profit company

Appendix 4
Operational Capability

The proposals that Ofgem have made concerning operational capability have not been defined such that a level playing field can be established across different business models. We believe that Ofgem need to give due consideration to this point such that there are no unintended consequences concerning applicability to different business models, and therefore no concerns around the competitive nature of these proposals.

We note however that both systems and processes are already subject to audits under existing industry codes, and that customer service is already regulated under existing obligations such as Standards of Conduct. These proposals therefore seem to be an inefficient duplication of existing requirements. To our knowledge Ofgem is permitted access to audit results and this therefore seems to further flout the “collect once, use many times” principle.

We feel that Ofgem need to provide greater clarity concerning the “swift action” they would take in the event that they felt a supply businesses did not have sufficient operating capability, processes or systems in place. As noted above, these are largely subject to existing audits and the associated performance assurance actions and we are keen to avoid disproportionate regulation in the form of two sets of enforcement/resolution action plans. Furthermore, where the existing performance assurance actions are targeted at increasing compliance in a sustainable way such as to remedy non-compliances without unduly affecting business operation, the enforcement actions that Ofgem have taken in their provisional orders have yet to result in an improved business.

RobinHoodenergy
A not for profit company

Appendix 5
Open and Cooperative

We are extremely concerned that Ofgem feel that this proposal is required; to be clear it is our view that under 'requests for information (RFIs)', and where sufficient remote services are available (e.g. dial-in details) suppliers do engage with Ofgem in an open and cooperative manner. To our mind this requirement is a duplication of existing requirements such as self-reporting, RFIs, false statements (Electricity Act 1989) etcetera and therefore yields no additional benefits to consumers or to the industry. Any additional obligation in this space is likely to place undue burden on supply businesses and would therefore not constitute proportionate regulation in our view.

Furthermore, the lack of definition around 'cooperative' appears to give Ofgem 'carte-blanche' governance over supplier activities with regard to Ofgem proposals and requirements, without any due regard to the burden that this will likely place on smaller businesses with less resource. Hence we not only feel that this is disproportionate and unnecessary, but we are also concerned as to the true intent of this requirement.

We do not believe that Ofgem have demonstrated that this proposal will yield the behavioural shift (we don't believe a behavioural shift is required) or swift resolution to non-compliance (no resolutions have been proposed within the consultation document) that Ofgem provide as their intent for this requirement, and we therefore feel that this proposal has no value and thus no business case.

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A not for profit company

Appendix 6
Proposals for which questions were not provided

**Reporting and Monitoring**

Notification of changes within a business will not yield any benefit because notification does not necessitate action. The proposals as written will not therefore achieve any of Ofgem's given aim/purposes, thus these proposals appear to have no business case. We would seek confirmation from Ofgem concerning the process they intend to sit behind these notifications, to ensure that the proposals are proportionate, do not duplicate existing processes, and have a positive business case.

**Industry-led changes**

In 1.13 of the consultation document Ofgem highlight that they may look to industry to lead the development of options for change. Where this is the case we would urge Ofgem to consider both the arrangements to facilitate input from all business models within the industry to ensure fair and well-informed considerations, and to engage heavily with prospective entrants to ensure that market arrangements are future-proofed, therein meeting the intent for Ofgem to have a licensing regime which facilitates effective competition and enables innovation.

**SoLR Changes**

In 5.3 of the consultation document Ofgem highlight that they intend to make interim changes to the SoLR process. We would seek confirmation from Ofgem that any such changes are, if not subject to consultation, at least published to suppliers in order that they may ensure that their SoLR processes can be amended accordingly ahead of any SoLR event, such that the SoLR process is not detrimentally affected by the changes.