

**To: Smart DCC Limited**

**Gas Act 1986 – Section 23(1)(a)  
Electricity Act 1989 – Section 11A(1)(a)**

**Modification of the conditions of the smart meter communication licence**

1. The licensee to whom this document is addressed is the holder of smart meter communication licences granted or treated as granted under section 7AB(2) and (4) of the Gas Act 1986 ('the Gas Act') and section 6(1A) and (1C) of the Electricity Act 1989 ('the Electricity Act') ('the smart meter communication licence').
2. Under section 23(2) of the Gas Act and section 11A(2) of the Electricity Act the Gas and Electricity Markets Authority ('the Authority')<sup>1</sup> gave notice on 17 December 2015 ('the Notice') that we propose to modify the conditions of the smart meter communication licence. We stated that any representations to the modification proposal must be made on or before 22 January 2016.
3. A copy of the Notice was sent to the Secretary of State in accordance with section 23(4)(b) of the Gas Act and section 11A(4)(b) of the Electricity Act, and we have not received a direction that the change should not be made.
4. We received ten responses to the Notice, which we carefully considered. We have placed all non-confidential responses on our website. Our response to these comments is set out in the accompanying decision publication, Decision: DCC's role in developing a Centralised Registration Service – 17 May 2016.
5. It is necessary to make a number of minor alterations to the modifications set out in the Notice. These alterations are shown highlighted in yellow in the attached Schedule 1. The reasons for any differences between the modifications set out in the Notice and the modifications reflected in Schedule 1 are to reflect the separation of the penalty interest rate licence changes in a re-issued penalty interest rate statutory consultation; address minor issues of clarification identified by us and by respondents as set out in our accompanying decision publication; correct minor typographical errors; and to include necessitated consequential changes as a result of licence modifications introduced in February 2016.
6. We are making these licence changes to give Smart DCC Limited new obligations and set out the funding arrangements for its role in the Switching Programme. Further reasoning is set out in the documents published by the Authority referred to below:
  - a) Decision: DCC's role in developing a Centralised Registration Service – 17 May 2016
  - b) Proposals for DCC's role in developing a Central Registration Service (CRS) and penalty interest proposals: Consultation – 17 December 2015.
  - c) Updated Target Operating Model and Delivery Approach - 17 November 2015
  - d) Switching Significant Code Review (SCR) and requests for expressions of interest to participate in Programme workshops - 17 November 2015
  - e) DCC's role in developing a Central Registration Service (CRS) and penalty interest proposals: Consultation – 28 July 2015.
  - f) Moving to reliable next-day switching: Decision - 10 February 2015
7. The effect of these licence changes are described in the documents referred to in

---

<sup>1</sup> The terms "the Authority", "we" and "us" are used interchangeably in this document.

paragraph 6 of this Modification.

8. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 23B of the Gas Act and/or section 11C of the Electricity Act, Rule 5.7 of the CMA's Energy Licence Modification Appeals Rules<sup>2</sup> requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-confidential notice setting out the matters required in Rule 5.2. Smart DCC Limited is the relevant licence holder in relation to this modification. The meaning of 'relevant licence holder' is set out in section 23(10) of the Gas Act and section 11A(10) of the Electricity Act.

Under the powers contained in section 23(1)(a) of the Gas Act and section 11A(1)(a) of the Electricity Act, the Authority hereby modifies the licence conditions of the smart meter communication licence in the manner specified in attached Schedule 1. This decision will take effect from 14 July 2016.

This document is notice of the reasons for the decision to modify the smart meter communication licence as required by section 38A(2) of the Gas Act and section 49A(2) of the Electricity Act.

**The Official Seal of the Gas and Electricity Markets Authority  
here affixed is authenticated by the signature of**



.....  
**Rob Salter-Church**  
**Partner, Consumers and Competition**  
**Duly authorised on behalf of the**  
**Gas and Electricity Markets Authority**

**17 May 2016**

---

<sup>2</sup> This guidance was published by the Competition Commission in September 2012. On 1 April 2014, the Competition Commission was abolished and its functions transferred to the Competition and Markets Authority (CMA).

For the avoidance of doubt, proposed additions to the smart meter communication licence that were not included in the notice of statutory consultation are highlighted in yellow and shown as double underlined. Proposed deletions to the smart meter communication licence that were not included in the notice of statutory consultation are highlighted yellow and shown as strikethrough.

Proposed additions to the smart meter communication licence that were also contained within the notice of statutory consultation are shown as double underlined. Proposed omissions to the smart meter communication licence, that were also contained within the notice of statutory consultation, are shown as strikethrough. These changes are not highlighted in yellow.

We have only shown those licence conditions where modifications are proposed.

# **SCHEDULE 1**

# **PART 3 OF THIS LICENCE :**

## **THE CONDITIONS**

### **CONDITIONS OF THIS LICENCE**

	<b>page</b>
<b>Chapter 1: Interpretation, contact details, and payments</b>	<b>14</b>
Condition 1: Definitions for the Conditions of this Licence	15
Condition 2: Rules of interpretation for this Licence	27
Condition 3: Addresses for the purposes of this Licence	30
Condition 4: Licensee's payments to the Authority	31
<b>Chapter 2: Nature and conduct of the Licensee's business</b>	<b>33</b>
Condition 5: General Objectives of the Licensee	34
Condition 6: Authorised Business of the Licensee	36
Condition 7: General controls for the Authorised Business	39
Condition 8: Security controls for the Authorised Business	42
<b>Chapter 3: Arrangements for the Licensee's independence</b>	<b>46</b>
Condition 9: Independence and autonomy of the Licensee	47
Condition 10: Protection of Confidential Information	51
Condition 11: Duties arising from Licensee's special position	53
Condition 12: Appointment and duties of Compliance Officer	56
<b>Chapter 4: Start-up and future development obligations</b>	<b>59</b>
Condition 13: Arrangements relating to the Transition Objective	60
Condition 14: Licensee's future development objectives	64
Condition 15: Incorporation of <u>the Centralised</u> Energy Registration Services	66
<b>Chapter 5: General arrangements for Services</b>	<b>70</b>
Condition 16: Procurement of Relevant Service Capability	71
Condition 17: Requirements for the provision of Services	79
Condition 18: Charging Methodology for Service Charges	88
Condition 19: Charging Statement for Service Charges	93
Condition 20: Determination of disputes by the Authority	96

<b>Chapter 6: Arrangements for Industry Codes</b>	<b>98</b>
Condition 21: Roles in relation to Core Industry Documents	99
Condition 22: The Smart Energy Code	101
Condition 23: Change control for the Smart Energy Code	110
<b>Chapter 7: Financial and ring-fencing provisions</b>	<b>114</b>
Condition 24: Availability of all necessary resources	115
Condition 25: Undertakings from an Ultimate Controller	121
Condition 26: Financial stability and financial security	123
Condition 27: Indebtedness and transfers of funds	127
Condition 28: Disposal of Relevant Business Assets	133
<b>Chapter 8: Provision of regulatory information</b>	<b>136</b>
Condition 29: Provision of Information by the Licensee	137
Condition 30: Requirements for the Regulatory Accounts	141
Condition 31: Reporting of Quality of Service Information	145
Condition 32: Reporting of Price Control Information	147
Condition 33: Regulatory Instructions and Guidance	149
Condition 34: Annual Service Report to the Authority	151
<b>Chapter 9: Price Control Conditions of this Licence</b>	<b>154</b>
Condition 35: Definitions for the Price Control Conditions	155
Condition 36: Determination of Licensee's Allowed Revenue	158
Condition 37: Assessment of Mandatory Business costs	165
Condition 38: Determination of the BMP Adjustment	168
Condition 39: Determination of External Contract Gain Share	170
Condition 40: Determination of the VAS Contribution	174
Condition 41: Disapplication of Price Control Conditions	175
<b>Chapter 10: Arrangements for intervention and continuity</b>	<b>178</b>
Condition 42: Management Orders for the Licensee	179
Condition 43: Arrangements for the handover of business	182
Condition 44: Treatment of Intellectual Property Rights	187
<b>Chapter 11: Other Provisions</b>	<b>190</b>
Condition 45: Provision of Market Share Information to the Central Delivery Body	191

## Condition 1. Definitions for the Conditions of this Licence

### Introduction

- 1.1 Part A of this condition sets out most of the defined words and expressions (all of which begin with capital letters) that are used in the Conditions of this Licence.
- 1.2 But:
- (a) where defined words and expressions are used only in a particular condition, their definitions are included in that condition; and
  - (b) some defined words and expressions that are used only in the Price Control Conditions in Chapter 9 of this Licence are set out, with their definitions, at Condition 35 (Definitions for the Price Control Conditions).
- 1.3 References in this Licence to “premises” (whether as such or as “Premises” as part of a defined term) include any land, building, or structure.

### Part A: Definitions arranged in alphabetical order

- 1.4 In the Conditions of this Licence, unless the context otherwise requires:

<b>1986 Act</b>	means the Gas Act 1986.
<b>1989 Act</b>	means the Electricity Act 1989.
<b>Additional Licence Term</b>	has the meaning that is given to that term in paragraph 6 of Part 1 of this Licence (Terms in Respect of Grant).
<b>Affiliate</b>	means, in relation to any person, any Holding Company of that person, any Subsidiary of that person, or any Subsidiary of a Holding Company of that person.
<b>Agreement for Services</b>	means an agreement with the Licensee under or pursuant to Condition 17 (Requirements for the provision of Services) for the provision of Services, whether on terms as prescribed by or determined in accordance with the provisions of the SEC, or otherwise.
<b>Authorised Activity</b>	means the activity of providing within the area of Great Britain a Smart Meter Communication Service as defined at paragraph 4 of Part 1 (Terms in Respect of Grant) of this Licence.
<b>Authorised Business of the Licensee</b>	means the whole of the business carried on by the Licensee under this Licence, comprising the Mandatory Business (see below) and the Permitted Business (see also below), as is set out with further detail in Parts A to C of Condition 6 (Authorised Business of the Licensee).
<b>Authority</b>	means the Gas and Electricity Markets Authority that is established under section 1 of the Utilities Act 2000.

**Centralised  
Registration Service**

has the meaning given to that term in Part C of Condition 15  
(Incorporation of the Centralised Registration Service)

**Charging Methodology  
for Service Charges**

means the methodology of that name that is designated by the Secretary of State for the purposes of Condition 18 (Charging Methodology for Service Charges) and has been incorporated into the SEC for the purpose of determining the charges payable for Mandatory Business Services provided by the Licensee under or pursuant to the SEC.

**Charging Statement  
for Service Charges**

means the statement of that name that sets out the basis on which charges are made for the provision by the Licensee of Mandatory Business Services under or pursuant to the SEC and is in a form that is approved for the purposes of Condition 19 (Charging Statement for Service Charges).

**Commercial Activities**

includes, in particular, Energy Efficiency Services, Energy Management Services, Energy Metering Services, and Energy Price Comparison Services, in each case in relation to the Supply of Energy (or its use) under the Principal Energy Legislation.

**Communications  
Hub**

means a component, forming a part of the Smart Metering System installed at an Energy Consumer's premises, which as a minimum:

- (a) consists of the devices or other apparatus identified in;  
and
- (b) has the functional capability specified by and complies with the other requirements of,

a version of the CH Technical Specification which is Valid on the date on which those devices or apparatus are provided by the DCC to a SEC Party pursuant to Part E of Condition 17 (Requirements for the provision of Services) and in accordance with the provisions of the SEC.

**Communications Hub  
Technical Specification**

means the Communications Hub Technical Specification (which may be referred to as the "CH Technical Specification" in this Licence), being the document (or part of a document) which:

- (a) identifies itself as such; and
- (b) applies in respect of a Communications Hub installed or provided for the purposes of the Supply of Energy.

**Competition  
Commission**

means the body of that name established by section 45 of the Competition Act 1998 [but see note on page 24].

**Compliance**

means the statement of that name that is approved by the

<b>Statement</b>	Authority for the purposes of Condition 10 (Protection of Confidential Information).
<b>Confidential Information</b>	means information that is provided to the Licensee (whether directly or indirectly) by any person in connection with the Authorised Business of the Licensee, including information that is provided under or pursuant to the Smart Energy Code or the provisions of any External Service Provider Contract to which the Licensee is a party (and includes any personal data and sensitive personal data within the meaning of the Data Protection Act 1998).
<b>Conditions</b>	means all of the Conditions of this Licence, including any Price Control Conditions and any other condition however described that has effect in it, and includes any Schedule to this Licence (but does not include any of the Terms in Respect of Grant or Terms in Respect of Revocation set out in Parts 1 and 2 respectively of this Licence).
<b>Core Communication Services</b>	means communication services (as specified and defined in the SEC) that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation and that are provided by the Licensee in accordance with Part B of Condition 17 (Requirements for the provision of Services).
<b>Designated Premises</b>	has the meaning that is given to that term on 10 February 2016: <ul style="list-style-type: none"> <li>(a) in relation to the supply of electricity, in standard condition 1 (Definitions for standard conditions) of the licences granted, or treated as granted, under section 6(1)(d) of the 1989 Act; and</li> <li>(b) in relation to the supply of gas, in standard condition 1 (Definitions for standard conditions) of the licences granted, or treated as granted, under section 7A(1) of the 1986 Act.</li> </ul>
<b>Domestic Energy Supplier</b>	means an Energy Supplier that is authorised by its Energy Supply Licence to supply Energy to Domestic Premises and that supplies Energy to such premises in accordance with that licence.
<b>Domestic Premises</b>	means premises at which a Supply of Energy is or will be taken wholly or mainly for domestic purposes (and is to be read in accordance with and subject to the provisions of standard condition 6 of the Energy Supply Licence).
<b>Elective Communication</b>	means communication services (excluding Core Communication Services) that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation and that are

<b>Services</b>	provided by the Licensee in accordance with Part C of Condition 17 (Requirements for the provision of Services).
<b><u>Electricity Distribution Licence</u></b>	<b><u>means a licence granted, or treated as granted, under section 6(1)(c) of the 1989 Act.</u></b>
<b>Electricity Meter</b>	means any meter that conforms to the requirements of paragraph 2 of Schedule 7 to the 1989 Act and is used for the purpose of measuring the quantity of electricity that is supplied to premises (and includes a Smart Meter).
<b>Enabling Services</b>	means services forming part of the Mandatory Business of the Licensee that fulfil an enabling role with respect to the provision of Core Communication Services and Elective Communication Services, and that consist of: <ul style="list-style-type: none"> <li>(a) the Enrolment Service;</li> <li>(b) the Communications Hub Service; and</li> <li>(c) Other Enabling Services.</li> </ul>
<b>Energy</b>	means either or both of gas (as supplied to premises under or pursuant to the 1986 Act) and electricity (as supplied to premises under or pursuant to the 1989 Act).
<b>Energy Consumer</b>	means a person who is supplied or requires to be supplied with Energy at any premises in Great Britain.
<b>Energy Efficiency Services</b>	means, in relation to any premises, services (which may include the supply or installation of products) provided to an Energy Consumer in order to improve efficiency and reduce wastage in the use of Energy at the premises.
<b>Energy Licence</b>	means any licence (including this Licence) that is granted, or treated as granted, under section 7, 7A, or 7AB of the 1986 Act or under section 6 of the 1989 Act.
<b>Energy Management Services</b>	means, in relation to any premises, services (which may include the supply or installation of products) provided to an Energy Consumer in order to measure, monitor, and manage the consumption of Energy at the premises with a view to ensuring that such consumption is cost-effective for and consistent with that consumer's requirements (and may include Energy Efficiency Services, Energy Metering Services, and Energy Price Comparison Services).
<b>Energy Meter</b>	means a Gas Meter or an Electricity Meter (and in either case may include a Smart Meter).
<b>Energy Metering Services</b>	means any or all of the services of commissioning, testing, installing, repairing, maintaining, removing, and replacing Energy Meters.

<b>Energy Networks</b>	means any or all of a pipe-line system within the meaning of section 7 of the 1986 Act, a distribution system as defined in section 4(4) of the 1989 Act, and a transmission system as defined in section 4(4) of the 1989 Act.
<b>Energy Network Licence</b>	means a licence granted, or treated as granted, under section 7 of the 1986 Act or section 6(1)(b) or (c) of the 1989 Act.
<b>Energy Network Licensee</b>	means a person who holds an Energy Network Licence and is either transmitting or distributing electricity, or conveying gas through pipes, in accordance with that licence.
<b>Energy Price Comparison Services</b>	means, in relation to any premises, services provided to an Energy Consumer for the purpose of enabling him to compare on a standardised basis the charges levied, or to be levied, by different Energy Suppliers in respect of the Supply of Energy by them to the premises.
<b>Energy Registration Services</b>	<del>has the meaning given to that term in Part D of Condition 15 (Incorporation of Energy Registration Services) with respect to the services that may be the subject of a direction given by the Secretary of State under that condition.</del>
<b>Energy Supplier</b>	means a person who holds an Energy Supply Licence and supplies Energy to premises in accordance with it.
<b>Energy Supply Licence</b>	means a licence granted, or treated as granted, under section 7A(1) of the 1986 Act or section 6(1)(d) of the 1989 Act.
<b>Enrolment Service</b>	means the service that is operated by the Licensee pursuant to Part D of Condition 17 (Requirements for the provision of Services) for the purpose of enrolling a Smart Metering System under the SEC.
<b>External Electronic Communication Network</b> <i>continued</i>	means a network used for communicating information to and from a Smart Meter that meets both of the following conditions: <ul style="list-style-type: none"> <li>(a) it is an electronic communications network within the meaning given to that term in section 32 of the Communications Act 2003; and</li> <li>(b) it does not form part of a Smart Meter.</li> </ul>
<b>External Service Provider</b>	means any person from whom Relevant Service Capability is procured by the Licensee (including a person from whom such capability is being procured by virtue of paragraph 6 of Condition 16) for the purpose of enabling the provision of Mandatory Business Services under or pursuant to the Smart Energy Code.
<b>External Service</b>	means, as between the Licensee and an External Service Provider, any arrangement (however described) that has

<b>Provider Contract</b>	been entered into for the provision by the External Service Provider to the Licensee of Relevant Service Capability (and includes every Legacy Procurement Contract for the provision of Fundamental Service Capability).
<b><u>Fundamental Registration Service Capability</u></b>	<u>means Relevant Service Capability that is provided in respect of the Centralised Registration Service and procured by the Licensee in accordance with Condition 16</u>
<b>Fundamental Service Capability</b>	has the meaning given to that term in Part J of Condition 16 (Procurement of Relevant Service Capability), as amplified by reference to the particulars set out in Schedule 1 to this Licence (Details of Fundamental Service Capability).
<b>Gas Meter</b>	means a meter that conforms to the requirements of section 17(1) of the 1986 Act for the purpose of registering the quantity of gas supplied through pipes to premises (and includes a Smart Meter).
<b><u>Gas Supply Licence</u></b>	<u>means a licence granted, or treated as granted, under section 7A(1) of the 1986 Act.</u>
<b><u>Gas Transporter Licence</u></b>	<u>means a licence granted, or treated as granted, under section 7(1) of the 1986 Act.</u>
<b>General Objectives of the Licensee</b>	means the objectives established by Condition 5 (General Objectives of the Licensee) for the Licensee's activities under this Licence, consisting of (i) the Interim General Objective and (ii) the Enduring General Objectives, as set out in Parts A and B respectively of that condition.
<b>General SEC Objectives</b>	means the objectives that the Smart Energy Code (or SEC) is designed to achieve, as listed in Part D of Condition 22 (The Smart Energy Code).
<b>HCALCS</b>	has the meaning that is given to that term on 10 February 2016 in standard condition 1 (Definitions for standard conditions) of the licences granted, or treated as granted, under section 6(1)(d) of the 1989 Act.
<b>HCALCS Technical Specification</b>	has the meaning that is given to that term on 10 February 2016 in standard condition 1 (Definitions for standard conditions) of the licences granted, or treated as granted, under section 6(1)(d) of the 1989 Act.
<b>Holding Company</b>	means, in relation to any person, a holding company as it is defined in section 1159 of the Companies Act 2006.
<b>IHD Technical Specification</b>	has the meaning that is given to that term on 10 February 2016 in standard condition 1 (Definitions for standard conditions) of the Energy Supply Licences.

<b>In-Home Display</b>	has the meaning that is given to that term on 10 February 2016 in standard condition 1 (Definitions for standard conditions) of the Energy Supply Licences.
<b>Information</b>	in relation to information requested by the Authority or the Secretary of State, has the meaning given to that term in Part I of Condition 29 (Provision of Information by the Licensee).
<b>Installation Date</b>	has the meaning that is given to that term on 10 February 2016 in standard condition 1 (Definitions for standard conditions) of the Energy Supply Licences.
<b>Legacy Procurement Contract</b>	means any arrangement relating to the procurement by the Licensee of Fundamental Service Capability that falls within the definition and other particulars set out in Schedule 1 to this Licence (Details of Fundamental Service Capability).
<b>Licence</b>	means this Smart Meter Communication Licence.
<b>Licence Application Process</b>	means the competitive tender process, as undertaken by the Secretary of State, that determined the grant of this Licence to the Licensee in accordance with the Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012.
<b>Licence Commencement Date</b>	means (except where the Secretary of State has otherwise directed) 23 September 2013.
<b>Licence Term</b>	means (subject to the provisions of Part 1 and Part 2 of this Licence with respect to continuation and revocation) the period that begins on Licence Commencement Date and ends on 22 September 2025 during which this Licence remains in force and is held by and applies to the Licensee.
<b>Licensee</b>	means Smart DCC Ltd, a company registered in England and Wales under number 08641679, whose registered office is at 17 Rochester Row, London SW1P 1QT, and who is the person that holds this Licence.
<b>Mandatory Business</b>	means that part of the Authorised Business of the Licensee that consists of the operation or provision, on behalf of or to SEC Parties (or other persons eligible to receive Mandatory Business Services, as described in Condition 17 (Requirements for provision of Services)), of Mandatory Business Services under or pursuant to the SEC.
<b>Mandatory Business Services</b>	means the services comprising the Mandatory Business of the Licensee, namely (i) the Core Communication Services, (ii) the Elective Communication Services, and (iii) the Enabling Services, <u>(iv) preparation for the Centralised Registration Service</u> in each case as operated or provided by the Licensee in accordance with the relevant provisions of

Condition 17 (Requirements for provision of Services) , or in respect to the preparation for the Centralised Registration Service, these may also be services provided by the Licensee in accordance with a direction given by the Authority in accordance with Condition 15.

**Master Registration Agreement**

means the document of that name maintained in a form approved by the Authority in accordance with standard condition 23 of the Electricity Distribution Licence.

**Minimal Services**

means services forming part of the Permitted Business of the Licensee that:

- (a) are not provided to any material extent from within capability or resources available to the Mandatory Business of the Licensee; and
- (b) do not exceed the limitation as to value imposed by paragraph 8(b) of Condition 6 (Authorised Business of the Licensee).

**Notice**

means prior notice given directly to a person in Writing (and includes a notification).

**Other Enabling Services**

means any Enabling Services forming part of the Mandatory Business of the Licensee (other than the Communications Hub Service and the Enrolment Service) that are specified and defined as such, whether in this Licence or the SEC.

**Permitted Business**

means that part of the Authorised Business of the Licensee that consists of the operation or provision, whether to SEC Parties or otherwise, of Permitted Business Services.

**Permitted Business Services**

means the services operated or provided by the Permitted Business of the Licensee, consisting of (i) any Value Added Services approved by the Authority in accordance with Part D of Condition 6 (Authorised Business of the Licensee) and (ii) any Minimal Services.

**Permitted Purpose**

means a purpose of any or all of the following things:

- (a) the Authorised Business of the Licensee;
- (b) any business or activity of the Licensee to which the Authority has given its consent under paragraph 6(c) of Condition 9 (Independence and autonomy of the Licensee); and
- (c) any payment or transaction made or undertaken by the Licensee in accordance with Part C of Condition 27 (Indebtedness and transfers of funds).

**PPMID**

has the meaning that is given to that term on 10 February 2016:

	<p>(a) in relation to the supply of electricity, in standard condition 1 (Definitions for standard conditions) of the licences granted, or treated as granted, under section 6(1)(d) of the 1989 Act; and</p> <p>(b) in relation to the supply of gas, in standard condition 1 (Definitions for standard conditions) of the licences granted, or treated as granted, under section 7A(1) of the 1986 Act.</p>
<b>PPMID Technical Specification</b>	has the meaning that is given to that term on 10 February 2016 in standard condition 1 (Definitions for standard conditions) of Energy Supply Licences.
<b>Price Control Condition</b>	means a condition the purpose of which, whether on its own or in combination with any other Price Control Condition, is to limit or control the charges of, or the revenue of, the Licensee (and the Conditions contained in Chapter 9 are the Price Control Conditions of this Licence).
<b>Principal Energy Legislation</b>	means the 1986 Act and the 1989 Act, read together so far as they apply for the purposes of this Licence in respect of the Supply of Energy under those Acts.
<b>Procurement Strategy for Relevant Service Capability</b>	means the statement of that name that sets out the strategy to be followed by the Licensee in procuring Relevant Service Capability and that was approved by the Secretary of State for the purposes of Condition 16 (Procurement of Relevant Service Capability).
<b>Regulatory Accounts</b>	means the accounts of the Licensee produced in accordance with the provisions of Condition 30 (Requirements for the Regulatory Accounts).
<b>Regulatory Instructions and Guidance</b>	means the document of that name (which may be referred to as “the RIGs” in this Licence) issued by the Authority under Condition 33 (Regulatory Instructions and Guidance) for purposes relating to the obligations of the Licensee under Condition 31 (Reporting of Quality of Service Information) and Condition 32 (Reporting of Price Control Information).
<b>Regulatory Year</b>	means a period of twelve months beginning on 1 April in any calendar year and ending on 31 March of the next calendar year (and the Licensee’s first Regulatory Year is deemed to have begun on 1 April 2013).
<b>Related Undertaking</b>	means, in relation to any person, any undertaking in which that person has a participating interest as defined in section 421A of the Financial Services and Markets Act 2000.
<b>Relevant Business Assets</b>	has the meaning that is given to that term in paragraph 4 of Condition 28 (Disposal of Relevant Business Assets) in respect of assets required to be identified in the Register of

	Relevant Business Assets maintained by the Licensee in accordance with that condition.
<b>Relevant Service Capability</b>	means capability procured (or provided from within the Licensee's own resources) in accordance with Condition 16 (Procurement of Relevant Service Capability) for the purposes of securing the provision of Mandatory Business Services under or pursuant to the Smart Energy Code.
<b>SEC</b>	means the Smart Energy Code [as to which, see below].
<b>SEC Arrangements</b>	means such arrangements (including all necessary systems, contracts, processes, procedures, resources, products, and facilities) as the Licensee is required to establish, procure, or otherwise have in place under or pursuant to the Smart Energy Code in connection with the provision of Services, whether on behalf of or to SEC Parties or otherwise.
<b>SEC Commencement Date</b>	means the date on which the Smart Energy Code has effect under this Licence (and, except where the Secretary of State may otherwise direct, is the same as the Licence Commencement Date).
<b>SEC Modification Arrangements</b>	means such arrangements established by the Smart Energy Code as are consistent with the requirements of Part B of Condition 23 (Change control for the Smart Energy Code) with respect to modifications of the SEC, but subject to the provisions of Part D of Condition 18 with respect to modifications of the Charging Methodology for Service Charges as incorporated into the SEC.
<b>SEC Panel</b>	means the panel established under the Smart Energy Code that is constituted in such manner and is responsible to such extent and for such activities and other matters (including the delegation of functions to committees of the panel) as may be specified in the SEC with respect to the governance and administration of the SEC.
<b>SEC Parties</b>	means persons (excluding the Licensee) who have acceded to the Smart Energy Code on such terms and conditions of accession as are set out in the SEC, and includes every holder of an Energy Licence who is required by a condition of that licence to be a party to and comply with the SEC.
<b>SECCo Ltd</b>	means the Smart Energy Code Company (being the joint venture company established pursuant to paragraph 26(c) of Condition 22 (The Smart Energy Code) for the purpose of acting as a corporate vehicle to assist the SEC Panel in exercising its powers, duties, and functions, including by entering into contracts for that purpose).

<b>Services</b>	means any or all of the Mandatory Business Services and Permitted Business Services the operation or provision of which comprises the Authorised Business of the Licensee (and “operation or provision” in this context includes the procurement of all necessary resources for that purpose).
<b>Service Charges</b>	means the charges levied by and payable to the Licensee in connection with the operation or provision of Mandatory Business Services under or pursuant to the SEC (and such charges may reflect, among other things, expenditure incurred for the purpose of investigating or securing the future operation or provision of such services as well as expenditure incurred in connection with the governance and administration of the Smart Energy Code).
<b>Smart Energy Code</b>	means the document of that name, as was designated by the Secretary of State under Condition 22 (The Smart Energy Code), that is maintained for the purposes of that condition, that is subject to modification pursuant to Condition 23 (Change control for Smart Energy Code), and that may be referred to in this Licence as “the SEC”.
<b>Smart Meter</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) an Energy Meter that can both send and receive information using an External Electronic Communications Network; or</li> <li>(b) an Energy Meter and a device that is associated with or is ancillary to that meter and that enables information to be sent to and received by the meter using an External Electronic Communications Network,</li> </ul> <p>and the related term “Smart Metering” when used as part of another defined term is to be read accordingly.</p>
<b>Smart Metering Equipment Technical Specification</b>	<p>means the Smart Metering Equipment Technical Specification (which may be referred to as the “SME Technical Specification” in this Licence), being the document (or part of a document) which:</p> <ul style="list-style-type: none"> <li>(a) identifies itself as such; and</li> <li>(b) applies in respect of an Energy Meter and any associated or ancillary device installed or provided for the purposes of the Supply of Energy (but excluding any In-Home Display, PPMID or HCALCS).</li> </ul>
<b>Smart Metering System</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in respect of any Designated Premises, a system installed at such premises for the purposes of the</li> </ul>

Supply of Energy to those premises which:

- (i) consists of an Energy Meter and any associated or ancillary devices identified in a version of the SME Technical Specification which is Valid on the Installation Date; and
  - (ii) as a minimum, has the functional capability specified by and complies with the other requirements of that version of the SME Technical Specification;
- (b) in respect of any Domestic Premises, a system installed at such premises for the purposes of the Supply of Energy to those premises which:
- (i) consists of an Energy Meter and any associated or ancillary devices identified in a version of the SME Technical Specification which is Valid on the Installation Date;
  - (ii) as a minimum, has the functional capability specified by, and complies with the other requirements of, that version of the SME Technical Specification; and

except where that version of the SME Technical Specification is the first version of that document which was designated on 18 December 2012, includes a Relevant Communications Hub (as defined on 10 February 2016 in paragraph 15 of standard condition 53 (Technical Specifications) of the Energy Supply Licences).

<b>Subsidiary</b>	means a subsidiary within the meaning given to that term in section 1159 of the Companies Act 2006.
<b>Successor Licence</b>	means a licence granted (or to be granted) by the Authority or the Secretary of State under section 7AB of the 1986 Act and section 6 of the 1989 Act for the purpose of authorising a person to carry on the Authorised Activity following the expiry or any revocation of this Licence.
<b>Successor Licensee</b>	means the person that is to succeed (or has succeeded) the Licensee as holder of a licence to carry on the Authorised Activity within Great Britain (and, if the context so permits, may include any person who has applied, or is considering whether to apply, to be that licence holder).
<b>Supply of Energy</b>	means either or both of the supply of gas pursuant to the 1986 Act and the supply of electricity pursuant to the 1989 Act, in each case within the meaning that is given to the

term “supply” in the respective Act.

**Supply Point Administration Agreement**

**means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition 30 of the Gas Supply Licence.**

**Terms in Respect of Grant**

means all of the matters that are set out in Part 1 of this Licence.

**Terms in Respect of Revocation**

means all of the matters that are set out in Part 2 of this Licence.

**Transition Objective**

has the meaning that is given to that term in paragraph 1 of Condition 13 (Arrangements relating to the Transition Objective) as applied to activities to be undertaken by the Licensee and other persons leading to the Completion of Implementation within the meaning given to that term in Condition 5 (General Objectives of the Licensee).

**Ultimate Controller**

means any of the following:

- (a) a Holding Company of the Licensee that is not itself a Subsidiary of another company; and
- (b) subject to notes 1 and 2 set out below, any person who (whether alone or with any person or persons connected with him) is in a position to control, or exercise significant influence over, the policy of the Licensee or the policy of any Holding Company of the Licensee by virtue of:
  - (i) rights under contractual arrangements to which he is a party or of which he is a beneficiary, or
  - (ii) rights of ownership (including any rights attached to or deriving from securities or rights under a trust) which are held by him or of which he is a beneficiary.

*see also notes 1 and 2 that follow*

*continued*

**note 1:** for the purposes of sub-paragraph (b), a person is connected with another person if he is a party to any arrangement regarding the exercise of any such rights as are described or referred to in that sub-paragraph.

**note 2:** sub-paragraph (b) does not include any director or employee of a corporate body in his capacity as such.

**Uniform Network Code**

**means the document of that name that is maintained in accordance with special condition A11 of the Gas Transporter Licence.**

**Valid**

in relation to a Technical Specification as defined in Part M of Condition 2 (Rules of interpretation for this Licence) has

the meaning that is given to that term in paragraph 2.26 of that Condition.

**Value Added Services**

means services forming part of the Permitted Business of the Licensee that:

- (a) are not Minimal Services;
- (b) are not related solely to the Supply of Energy (or its use) under the Principal Energy Legislation;
- (c) do not prejudice the Licensee's ability to carry on the Mandatory Business in accordance with the General Objectives of the Licensee; and
- (d) have been approved by the Authority in accordance with Part D of Condition 6 (Authorised Business of the Licensee).

**Website**

means a website controlled and used by the Licensee for the purposes of communicating and disseminating information as required by or for reasons relating to any of the provisions of this Licence.

**Writing**

includes writing that is sent or received by means of a public electronic communications network within the meaning given to that term in section 161 of the Communications Act 2003.

**note:** references throughout this Licence to the Competition Commission are to be treated, where the relevant provisions of the Enterprise and Regulatory Reform Act 2013 have come into force, as references to the Competition and Markets Authority (which is the Competition Commission's successor body created by that Act).

## **Condition 6. Authorised Business of the Licensee**

### **Introduction**

6.1 This condition sets out the composition of the Authorised Business of the Licensee and the Licensee's functions in relation to it (see Part A below), describes each of the Services that together comprise the Authorised Business (see Parts B and C below), and establishes a procedure by which the Licensee can ask the Authority to approve the enlargement of that business (see Part D below).

### **Part A: Authorised Business and the Licensee's functions**

6.3 The Authorised Business of the Licensee consists of the following two businesses:

- (a) the Mandatory Business (as to which, see Part B below); and
- (b) the Permitted Business (as to which, see Part C below).

6.4 The functions of the Licensee with respect to the Authorised Business are:

- (a) a duty to carry on the Mandatory Business at all times in accordance with this Licence; and
- (b) a power to carry on the Permitted Business in accordance with this Licence and subject to such requirements of this Condition 6 as apply.

### **Part B: Services forming the Mandatory Business of the Licensee**

6.5 The Mandatory Business of the Licensee comprises the provision, for and on behalf of parties to the Smart Energy Code, of the following Mandatory Business Services:

- (a) Core Communication Services, being communication services (as specified and defined in the SEC) that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation, and that are provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part B of Condition 17 (Requirements for the provision of Services);
- (b) Elective Communication Services, being communication services (excluding Core Communication Services) that relate solely to the Supply of Energy (or its use) under the Principal Energy Legislation, and that are provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part C of Condition 17; ~~and~~
- (c) Enabling Services (as to which, see paragraph 6.6), being services that fulfil an enabling role (including making provision for the testing of services and equipment, and for ensuring the security of services) relating to the provision of Core Communication Services and Elective Communication Services, and the procurement and utilisation of all such resources (including, in particular, the Fundamental Service Capability that is detailed at Schedule 1 to

this Licence) as may be necessary or expedient for the purposes of securing such provision; and

(d) The preparation for the Centralised Registration Service, in accordance with Condition 15.

6.6 The Enabling Services to which paragraph 6.5(c) refers are these:

- (a) the Enrolment Service, being the service operated by the Licensee under an Agreement for Services in accordance with Part D of Condition 17;
- (b) the Communications Hub Service, being the service provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part E of Condition 17; and
- (c) Other Enabling Services, being any Enabling Services that are specified and defined as such in this Licence or the SEC (other than the Communications Hub Service and the Enrolment Service) and that are provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part F of Condition 17.

6.7 In providing as a Mandatory Business Service any service that has not previously been provided as such, the Licensee must ensure that its provision of that new or amended service does not materially prejudice or impair its continuing ability to provide other Mandatory Business Services that it is obliged to provide pursuant to the requirements of this Licence and the Agreements for Services that it has entered into under it.

### **Part C: Services forming the Permitted Business of the Licensee**

6.8 The Permitted Business of the Licensee comprises the provision, whether for and on behalf of parties to the Smart Energy Code or otherwise, of the following Permitted Business Services:

- (a) such Value Added Services as the Authority may from time to time approve in accordance with the provisions of Part D below, and as may be provided by the Licensee under or pursuant to an Agreement for Services in accordance with Part G of Condition 17; and
- (b) Minimal Services (which need not be approved by the Authority but must not, in total, exceed a turnover value of £500,000 in any Regulatory Year).

### **Part D: Procedure for authorising any Value Added Services**

6.9 Where the Licensee wishes to provide a particular service as a Value Added Service forming part of its Permitted Business, it must first by Notice to the Authority, and subject to the provisions of this Part D, propose that the service should be so provided by the Licensee with effect from a date (“the Value Added Service Date”) that is specified in the Notice.

6.10 In addition to specifying the Value Added Service Date, a Notice to the Authority under paragraph 6.9 must:

- (a) describe in appropriate detail the nature, scope, and content of the proposed Value Added Service;
  - (b) confirm (with supporting evidence) that the Licensee has notified the nature, scope, and content of the proposed Value Added Service to any Relevant Regulator that should be so notified;
  - (c) explain how, in formulating the proposed Value Added Service, the Licensee has taken account of any advice, consent, or other representation received in response to a notification made under sub-paragraph (b);
  - (d) set out the Licensee's assessment of the impact of the proposed Value Added Service on the operating costs, technical efficiency, and security of all such aspects of the SEC Arrangements as would be affected by it;
  - (e) explain why, in the Licensee's opinion, the provision of the proposed Value Added Service (taking account of any benefits likely to accrue to the Mandatory Business of the Licensee from such provision) would be consistent with the General Objectives of the Licensee; and
  - (f) contain any other analysis or information that the Licensee considers may be relevant to the Authority's consideration of its proposal.
- 6.11 For the purpose of identifying any Relevant Regulator that should be notified under paragraph 6.10(b), the Licensee must have due regard to the substance of the proposed Value Added Service and the characteristics of the market or other environment in which that service (if approved) would be wholly or mainly provided.
- 6.12 The Licensee may only provide the proposed service as a Value Added Service forming part of its Permitted Business if the Authority gives the Licensee a direction approving its proposal, with or without amendment of the Value Added Service Date, and on the basis of such terms or conditions as the Authority may specify in that direction.
- 6.13 The terms or conditions mentioned in paragraph 6.12 may include requirements relating to the provision by the Licensee of additional financial security, pursuant to Part C of Condition 26 (Financial stability and financial security).
- 6.14 The Licensee may at any time before the Value Added Service Date withdraw a proposal that was the subject of a Notice under paragraph 6.9.

#### **Part E: Authority's guidance and directions under this condition**

- 6.15 The Authority may issue, and may from time to time revise, guidance regarding the procedure that it will follow and the criteria that it will take into account in considering whether and to what extent to exercise its power to give a direction under paragraph 6.12 allowing the Licensee to provide a Value Added Service.
- 6.16 A direction under paragraph 6.12 may require the Licensee to promptly initiate such modification procedures as may be applicable under the Smart Energy Code with respect to the incorporation of a new Value Added Service into the Permitted Business of the Licensee with effect from the Value Added Service Date.

## **Part F: Interpretation**

6.17 For the purposes of this condition:

**Relevant Regulator** means any person (excluding the Authority) that would have a statutory or other legal power to exercise any regulatory functions in relation to the provision (if approved) of the Value Added Service, and includes:

- (a) the Office of Communications established by section 1 of the Communications Act 2003;
- (b) the Information Commissioner appointed by section 6 of the Data Protection Act 1998; and
- (c) the Water Services Regulation Authority established by section 1A of the Water Industry Act 1991.

**Value Added Services Date** has the meaning given to that term in paragraph 6.9.

## **Condition 15. Incorporation of the Centralised Registration Service**

### **Introduction**

15.1 The purpose of this condition is to specify the Interim Centralised Registration Service Objective of the Licensee and the Licensee's duties with respect to it.

15.2 It sets out the requirements of the Licensee under the Authority's Switching Programme up to and including the point at which the Licensee procures Relevant Service Capability to deliver and operate a Centralised Registration Service.

15.3 The Transition Objective and/or General Objectives of the Licensee shall prevail in the event of a conflict between their provisions and the requirements imposed on the Licensee by the Interim Centralised Registration Service Objective.

### **Part A: Interim Centralised Registration Service Objective of the Licensee**

15.4 Subject to paragraphs 15.6 and 15.7, the Licensee must comply with the Interim Centralised Registration Service Objective by:

(a) contributing to the achievement of a full and timely design for an efficient, economical and secure Centralised Registration Service that would, if implemented, provide a platform for fast and reliable switching for all Supply Points in the GB market;

(b) making all relevant preparations for the procurement of Relevant Service Capability to deliver and operate a Centralised Registration Service; and

(c) procuring Relevant Service Capability to deliver and operate a Centralised Registration Service that:

(i) reflects the design of a Centralised Registration Service which has been designated by the Authority for this purpose (including any amendments to that designated design); and

(ii) would, if executed, in all likelihood, give effect to an efficient, economical and secure Centralised Registration Service that would provide a platform for fast and reliable switching for all Supply Points in the GB market.

15.5 For the purposes of paragraph 15.4(a), the Interim Centralised Registration Service Objective includes, but is not limited to, a duty to contribute to the development and documentation of the design of the Centralised Registration Service.

### **Part B: Requirement in respect of Authority direction**

15.6 The Licensee must comply with any direction issued to it by the Authority for the purposes of meeting the Interim Centralised Registration Service Objective in respect of the Licensee's obligations in this condition.

15.7 The Authority's power under paragraph 15.6 includes a power to direct that any or all of paragraphs 15.4 to 15.5 shall cease to have effect in this licence on such date and for such period as the Authority may specify.

### **Part C: Interpretation**

15.8 For the purposes of this condition:

Centralised Registration Service means a service provided by DCC pursuant to the Smart Energy Code which:

(1) includes (but is not limited to) the provision of services equivalent to those which are currently included within:

(a) such services relating to the supply of gas under the 1986 Act that fall within:

(i) the supply point information service provided under standard condition 31 of the Gas Transporter Licence as relate directly to (i) the provision of supply point information and (ii) the maintenance of a register of technical and other data required by Gas Shippers and Gas Suppliers for change of supplier purposes; and

(ii) the supply point administration service provided under or pursuant to the Supply Point Administration Agreement.

(b) such services relating to the supply of electricity under the 1989 Act that fall within:

(i) the metering point administration services as defined in standard condition 18 of the Electricity Distribution Licence and that are provided under or pursuant to the Master Registration Agreement; and

(ii) such other services provided under or pursuant to the Master Registration Agreement as relate directly to the maintenance of the Data Transfer Catalogue that forms part of that agreement, and

(c) where required, arrangements for the secure communication and exchange of data between parties and the Centralised Registration Service, and

(2) supports any further or alternative arrangements as may be identified as being required of the Centralised Registration Service by the Authority for the purposes of the Switching Programme.

Data Transfer Catalogue has the meaning given to that term in standard condition 1 of the Electricity Distribution Licence

Domestic Gas Supplier means a Gas Supplier in whose supply licence section B of the standard conditions incorporated into such a licence has effect

Electricity Distribution Licence means a licence granted, or treated as granted, under section 6(1)(c) of the 1989 Act

Gas Shipper and Gas Supplier mean, respectively, a person who holds a licence under section 7A(2) of the 1986 Act and a person who holds a licence under section 7A(1) of that Act

Gas Transporter Licence means a licence granted, or treated as granted, under section 7(1) of the 1986 Act

Interim Centralised Registration Service Objective has the meaning given to that term in Part A of this condition

Master Registration Agreement means the document that is required to be maintained in a form that is approved by the Authority in accordance with standard condition 23 of the Electricity Distribution Licence

Switching Programme means the Authority's programme to amend the services listed in part 1(a) and (b) of the definition of the Centralised Registration Service, for the purpose of providing fast and reliable switching

Supply Point means, for the purpose of this licence condition, Meter Points as defined in the Master Registration Agreement, Supply Meter Points as defined in the Uniform Network Code and any points where a supply of gas or electricity is taken, or where electricity is exported, as defined within the scope of the Switching Programme

Supply Point Administration Agreement means the document that is required to be maintained in a form that is approved by the Authority in accordance with standard condition 30 of the supply licence held by a Domestic Gas Supplier

Uniform Network Code means the document of that name that is maintained in accordance with special condition A11 of the Gas Transporter Licence

## **Condition 15. Incorporation of Energy Registration Services**

### **Introduction**

15.1— This condition applies for the purpose of achieving the incorporation of the Energy Registration Services into the Services provided by the Licensee under or pursuant to the SEC, at such time and to such extent as the Secretary of State may direct.

15.2— A direction under this condition has effect in conjunction with such modifications of conditions as the Secretary of State may also bring into effect at the same time (whether in this Licence or in any other Energy Licence) for the purpose of facilitating the incorporation of Energy Registration Services pursuant to this condition.

### **Part A: Secretary of State's power to direct incorporation**

~~15.3 Subject to paragraph 15.4, and at any time up to and including 31 October 2018, but not thereafter, the Secretary of State may direct the Licensee to secure the incorporation of Energy Registration Services into the Services provided by the Licensee under or pursuant to the SEC.~~

~~15.4 A direction under this Part A may only be given if the Secretary of State:~~

- ~~(a) has complied with the requirements of Part C below in respect of consultation with the persons mentioned in that Part; and~~
- ~~(b) is satisfied as to the economy, efficiency, and effectiveness with which Energy Registration Services will be provided as a consequence of the direction.~~

### **Part B: Scope and content of the Secretary of State's direction**

~~15.5 A direction under Part A above may (without limitation) specify or make provision for or in connection with any of the following matters:~~

- ~~(a) the particular Energy Registration Services that (having regard to the provisions of Part D below) are to be incorporated (with such modifications in respect of their purpose or quality as may be specified) into the Services provided by the Licensee under or pursuant to the SEC;~~
- ~~(b) the timeframes (which may differ as between different categories of Energy Registration Services) within which such incorporation is to be accomplished;~~
- ~~(c) the steps that are to be taken by the Licensee with the aim of securing such incorporation (which may include modifications of the SEC that the Licensee is to be required to initiate for the purpose of facilitating that aim);~~
- ~~(d) the implementation of charging principles applicable to Energy Registration Services following such incorporation (which may include modifications that the Licensee is to be required to make to the Charging Methodology for Service Charges in force under Condition 18, as contained in the SEC); and~~
- ~~(e) the imposing on the Licensee of requirements to enter into legal agreements or arrangements with, or to execute other kinds of instrument in favour of, one or more other holders of an Energy Licence under the Principal Energy Legislation, or one or more of the Central Registration Bodies, for the purpose of facilitating such incorporation.~~

~~15.6 A direction given under Part A above may also (without limitation) specify or make provision for or in connection with any of the following matters:~~

- ~~(a) the principles on which the Licensee is to accept such transfers to it of property (including rights in property), systems, and processes as are necessary to give effect to such incorporation and as are~~

capable of being agreed with third parties without prejudice to their interests;

(b) the referral to, and determination by, the Secretary of State (on terms to be set out in the direction) of any disputes arising between the Licensee and any of the persons referred to in sub paragraph (a) in connection with the matters covered by that sub paragraph; and

(c) such other matters as are necessary or expedient for the achievement of the incorporation, having regard to the matters as to which the Secretary of State must be satisfied under paragraph 15.4(b).

### **Part C: Requirement to consult before giving any direction**

15.7 Before giving the Licensee a direction under Part A above, the Secretary of State must consult:

(a) the Licensee;

(b) any other holder of an Energy Licence that is being modified as mentioned in paragraph 15.2;

(c) any SEC Parties not falling within sub paragraph (a) or (b);

(d) the Central Registration Bodies;

(e) the Authority; and

(f) such other persons as the Secretary of State considers it appropriate to consult in relation to the direction.

15.8 For the purposes of consultation under paragraph 15.7, the Secretary of State must:

(a) publish the text of the direction that he proposes to give to the Licensee;

(b) state the reasons why he proposes to give it; and

(c) allow a period of at least 28 days within which representations or objections may be made to him concerning the proposal.

15.9 The Secretary of State must have regard to any representations or objections duly received under paragraph 15.8, and must give reasons for his decisions.

### **Part D: Scope and content of Energy Registration Services**

15.10 The Energy Registration Services that may be the subject of a direction given by the Secretary of State under this condition, or that may be defined in that direction by reference to such criteria as are specified in it, may include:

~~(a) such services relating to the supply of gas under the 1986 Act as are set out in paragraph 15.11; and~~

~~(b) such services relating to the supply of electricity under the 1989 Act as are set out in paragraph 15.12;~~

~~subject, in either case, to any requirements that may be set out in the SEC as to the scope and operation of the services in question.~~

~~15.11 The Energy Registration Services to which paragraph 15.10(a) applies are:~~

~~(a) such services falling within the supply point information service provided under standard condition 31 of the Gas Transporter Licence as relate directly to (i) the provision of supply point information and (ii) the maintenance of a register of technical and other data required by Gas Shippers and Gas Suppliers for change of supplier purposes; and~~

~~(b) the services comprising the supply point administration service provided under or pursuant to the Supply Point Administration Agreement (being the document that is required to be maintained in a form that is approved by the Authority in accordance with standard condition 30 of the supply licence held by a Domestic Gas Supplier).~~

~~15.12 The Energy Registration Services to which paragraph 15.10(b) applies are:~~

~~(a) the services comprising metering point administration services as defined in standard condition 18 of the Electricity Distribution Licence and that are provided under or pursuant to the Master Registration Agreement (being the document that is required to be maintained in a form that is approved by the Authority in accordance with standard condition 23 of that licence); and~~

~~(b) such other services provided under or pursuant to the Master Registration Agreement (including any relevant Data Transfer Services provided by the Data Transfer Service under standard condition 37 of the Electricity Distribution Licence) as relate directly to the maintenance of the Data Transfer Catalogue that forms part of that agreement.~~

## **Part E: Interpretation**

~~15.13 For the purposes of this condition:~~

~~**Central Registration Bodies** means each of the companies incorporated under the following names in England and Wales (or any of their successors in title):~~

~~(a) Electralink Ltd, having the registered number 03271981;~~

~~(b) Elexon Ltd, having the registered number 3782949;~~

~~— (c) — MRA Service Company Ltd, having the registered number 3490321;~~

~~— (d) — SPAA Ltd, having the registered number 04365599; and~~

~~— (e) — Xoserve Ltd, having the registered number 5046877.~~

~~— **Data Transfer Catalogue, Data Transfer Service, and Data Transfer Services** —  
— have the meaning given to those terms respectively in standard condition 1 of the  
— Electricity Distribution Licence. —~~

~~— **Domestic Gas Supplier** means a Gas Supplier in whose supply licence section B of  
— the standard conditions incorporated into such a licence has effect.~~

~~— **Electricity Distribution Licence** means a licence granted, or treated as granted, under  
— section 6(1)(c) of the 1989 Act.~~

~~— **Energy Registration Services** has the meaning given to that term in Part D of this  
— condition.~~

~~— **Gas Shipper** and **Gas Supplier** mean, respectively, a person who holds a licence under  
— section 7A(2) of the 1986 Act and a person who holds a licence under section 7A(1) of  
— that Act.~~

~~— **Gas Transporter Licence** means a licence granted, or treated as granted, under section  
— 7(1) of the 1986 Act.~~

~~— **Master Registration Agreement** has the meaning given to that term in paragraph  
— 15.12(a).~~

~~— **Supply Point Administration Agreement** has the meaning given to that term in  
— paragraph 15.11(b).~~

~~—~~

## Condition 16. Procurement of Relevant Service Capability

### Introduction

- 16.1 This condition sets out requirements (Part A below) and principles (Part B below) that are to apply to the Licensee's procurement of Relevant Service Capability.
- 16.2 Relevant Service Capability is capability that is used (or is to be used) for the purposes of securing the provision of Mandatory Business Services under or pursuant to the Smart Energy Code (and includes Fundamental Service Capability).
- 16.3 This condition also requires the Licensee:
- (a) to take account of any guidance issued by the Secretary of State under Part C below in the form of a Public Interest Statement;
  - (b) to have in place a Procurement Strategy for Relevant Service Capability, in a form designated by the Secretary of State, that takes account of the principles established by this condition and of any guidance issued pursuant to it; and
  - (c) to comply with the provisions of Appendix 1 to this condition with respect to any Energy Supplier Contracts adopted by the Licensee.

### Part A: Requirements that are imposed on procurement activities

- 16.4 The Licensee must (subject to paragraph 16.6) procure Relevant Service Capability from External Service Providers on a competitive basis and under arrangements to be known as External Service Provider Contracts that are compliant with the principles established by Part B below ("the Part B Principles").
- 16.5 The duty imposed by paragraph 16.4 applies without exception to the procurement by the Licensee of such Relevant Service Capability as is specified as:
- (a) Fundamental Service Capability in Schedule 1 (which has effect as part of this condition) to this Licence; or
  - (b) Fundamental Registration Service Capability.
- 16.6 Relevant Service Capability that is not so specified may be provided by the Licensee from its own resources, or be procured from an Affiliate or Related Undertaking, or from elsewhere, if the Licensee, having had regard to the Part B Principles (excluding Principle 2), is satisfied that the procurement of such capability by that means:
- (a) would be the most economical and efficient option; or
  - (b) would be immaterial in terms of its value or use of resources within the overall context of the Mandatory Business of the Licensee.

### Part B: Principles that are applicable to procurement activities

- 16.7 This Part B establishes principles:
- (a) that are to apply to the Licensee's procurement of Relevant Service Capability; and

(b) taking account, except in respect of the Fundamental Registration Service Capability, of any guidance contained in a Public Interest Statement issued under Part D below.

- 16.8 Principle 1 is that Relevant Service Capability must be procured with due regard for the Licensee's ability (and the ability of any Successor Licensee) at all times to fully exercise the functions it has under or by virtue of the Principal Energy Legislation, this Licence, and the Smart Energy Code ("the Relevant Functions").
- 16.9 Principle 2 is that Relevant Service Capability must be procured competitively wherever practicable and proportionate, and with due regard for (i) the principles of equality and non-discrimination between economic operators and (ii) the employment of transparent and objective procurement processes.
- 16.10 Principle 3 is that Relevant Service Capability must be procured from suitable and appropriate organisations, having due regard to:
- (a) the good standing, conduct, and financial capacity of such organisations; and
  - (b) the capability and capacity of such organisations to deliver the Relevant Service Capability.
- 16.11 Principle 4 is that Relevant Service Capability must be procured in a manner that:
- (a) secures value for money in terms of the combination of quality and cost over the lifetime of the contract;
  - (b) delivers the required goods, services, or works to the appropriate standards according to the needs of service users;
  - (c) takes account of the potential need to replace from time to time the persons engaged in providing the capability; and
  - (d) incorporates (at a cost that is not disproportionate to any expected benefit) sufficient flexibility to adapt to changing service user requirements over the duration of the contract.
- 16.12 Principle 5 is that Relevant Service Capability must be procured under contractual arrangements that make provision for the full and enduring protection of business continuity, including:
- (a) appropriate provision to secure the Licensee's ability to exercise all of the Relevant Functions in the event of any material financial default of an External Service Provider;
  - (b) appropriate provision to secure the Licensee's ability to exercise all of the Relevant Functions in the event of any operational failure of an External Service Provider; and
  - (c) appropriate provision to secure the transfer or novation of the contract in the circumstances of a handover of the business of the Licensee to a Successor Licensee following the expiry or any revocation of this Licence (as to

which, see paragraph 14 of Condition 43 (Arrangements for the handover of business) for further relevant provision).

### **Part C: Public Interest Statement relating to procurement activities**

- 16.13 In applying the provisions of Parts A and B above to its procurement activities with respect to Fundamental Service Capability, the Licensee must take account of any guidance contained within a Public Interest Statement issued by the Secretary of State in accordance with this Part C.
- 16.14 Before issuing a Public Interest Statement, the Secretary of State must consult the Authority and the Licensee about the contents of the statement.
- 16.15 The purpose of a Public Interest Statement under this Part C is to provide guidance to the Licensee with respect to the public interest considerations that may need to be reflected in the scope and functionality of Fundamental Service Capability procured by the Licensee pursuant to the provisions of Parts A and B above.
- 16.16 Such guidance may, in particular, indicate how and to what extent the procurement of Fundamental Service Capability might be expected to contribute towards the achievement of any one or more of such energy policy outcomes as are set out in any strategy and policy statement designated by the Secretary of State for the purposes of Part 5 of the Energy Act 2013.
- 16.17 A Public Interest Statement issued in accordance with this Part C may be revised at any time by the Secretary of State following consultation with the Authority and the Licensee.
- 16.18 The Licensee must publish and maintain a Public Interest Statement (including any amended statement following a revision under paragraph 16.17) on its Website.

### **Part D: Procurement Strategy for Relevant Service Capability**

- 16.19 Except where the Secretary of State otherwise consents, the Licensee must within twelve months after the Licence Commencement Date have in place a statement of its Procurement Strategy for Relevant Service Capability.
- 16.20 That statement must have been approved by the Secretary of State for the purposes of this condition following consultation (subject to paragraph 16.23) with the Licensee and with the Authority, SEC Parties, and any other persons who are likely to be materially affected by the strategy.
- 16.21 The statement of the Procurement Strategy for Relevant Service Capability must explain the Licensee's conclusions with respect to the nature and extent of its procurement activities, in such detail and by including such information as may be appropriate for the purpose, with particular reference to:
- (a) the determination of the Relevant Service Capabilities necessary to enable the Licensee to exercise its Relevant Functions;
  - (b) the determination of which of those capabilities are to be procured from External Service Providers by means of a competitive process (having due regard to paragraph 16.6);

- (c) the determination of how and to what extent the required Relevant Service Capabilities reflect the guidance contained in any Public Interest Statement issued under Part C above;
  - (d) the determination of how the required Relevant Service Capabilities are to be assembled into discrete contracts; and
  - (e) the determination of a forward plan of the procurement activities necessary to secure those contracts.
- 16.22 The Licensee must take all appropriate steps within its power to comply with the provisions of any Procurement Strategy for Relevant Service Capability that is for the time being in force under this condition.
- 16.23 The consultation process that is required by virtue of paragraph 16.20 may be subject to the provisions of Part G below.

**Part E: Procedure for reviewing the procurement strategy**

- 16.24 The Licensee must, for the purposes of ensuring that its Procurement Strategy for Relevant Service Capability at all times continues to be a document that accurately reflects the requirements of this condition:
- (a) review that strategy at least once in each full Regulatory Year following the Secretary of State's designation of it under Part D above; and
  - (b) propose to the Authority such revisions (if any) of the strategy as the Licensee thinks are appropriate or necessary for the purpose of better complying with those requirements.
- 16.25 The Authority may at any time, after consulting the Licensee and such other persons as it considers should be consulted in relation to the matter (subject to paragraph 16.26), direct the Licensee to revise its Procurement Strategy for Relevant Service Capability in such manner, with effect from such time, and to such extent as may be specified in the direction.
- 16.26 The consultation process that is required by virtue of paragraph 16.25 may be subject to the provisions of Part G below.

**Part F: Availability of statement of the procurement strategy**

- 16.27 The Licensee must promptly and properly reflect every revision of its Procurement Strategy for Relevant Service Capability in a corresponding revision of the statement of that strategy that is in place by virtue of paragraph 16.19.
- 16.28 The Licensee must give the Authority and, where requested, the Secretary of State a copy of the statement of its Procurement Strategy for Relevant Service Capability and of each revision of that statement.
- 16.29 The Licensee must also (subject to paragraph 16.30) give a copy of the statement of its Procurement Strategy for Relevant Service Capability (or the most recent revision of it) to any SEC Party who requests a copy.

- 16.30 In discharging its duties under paragraph 16.29, the Licensee must comply with such restrictions or requirements (if any) with respect to the manner in which it does so as appear to the Authority to be necessary for the purpose of protecting the legitimate commercial interests of any person.

### **Part G: Undertakings required in respect of confidentiality**

- 16.31 This Part G applies where the Secretary of State or the Authority (as the case may be) is consulting, or proposing to consult:
- (a) persons under paragraph 16.20 with respect to the preparation and designation of a statement of the Licensee's Procurement Strategy for Relevant Service Capability; or
  - (b) persons under paragraph 16.25 with respect to any proposed revision of that strategy.
- 16.32 Where this Part G applies, the Secretary of State or the Authority (as the case may be) may require any person (including the Licensee) that is taking part, or that wishes to take part, in the relevant consultation process to enter into such undertakings to maintain the confidentiality (in whole or in part) of the document that is the subject of the consultation as appear to the Secretary of State or the Authority to be necessary for the purpose of protecting the legitimate commercial interests of any person.
- 16.33 An undertaking under paragraph 16.32 may be expressed to survive the expiry or any revocation of this Licence.

### **Part H: Retention of procurement strategy particulars and records**

- 16.34 The Licensee must maintain, for the full duration of the Licence Term, records and particulars of:
- (a) all Relevant Service Capability offered to it under or pursuant to its Procurement Strategy for Relevant Service Capability; and
  - (b) all contractual arrangements that it has entered into under or pursuant to its Procurement Strategy for Relevant Service Capability.
- 16.35 The Licensee must supply the Authority with any information that it reasonably asks for about the Licensee's procurement and use of Relevant Service Capability.

### **Part I: Arrangements for the adoption of Energy Supplier Contracts**

- 16.36 The Licensee must contribute to, implement, and give effect to such provisions of the SEC Adoption Process as are applicable to it.
- 16.37 The SEC Adoption Process comprises those provisions of the SEC that will apply by virtue of Part H of Condition 22 (The Smart Energy Code) to:
- (a) the process of assessing and determining Energy Supplier Contracts for the purpose of providing Relevant Service Capability to the Licensee pursuant to its procurement obligations under this condition; and

- (b) the adoption by the Licensee of any Energy Supplier Contracts that may be required to be so adopted as a consequence of that process.

16.38 Appendix 1 (which has effect as part of this condition) makes further provision with respect to matters arising from the SEC Adoption Process.

#### **Part J: Interpretation**

16.39 References to “capability” in this condition do not include capability required for the purpose of facilitating any incidental administrative, co-ordination, or contract management services associated with or ancillary to the provision of any Services.

16.40 For the purposes of this condition:

**Energy Supplier Contract** means a contractual arrangement (in whatever form and however described) that an Energy Supplier has entered into, whether before or after Licence Commencement Date, with any person other than the Licensee for the purpose of procuring and providing communication or data services with respect to Smart Metering Systems.

#### **Fundamental Service Capability:**

- (a) means Relevant Service Capability that is provided under Legacy Procurement Contracts (as they are defined and from time to time identified and described in Schedule 1 (Details of Fundamental Service Capability) to this Licence), including the provision of all such capability (including goods and products) as is necessary to enable the Licensee to provide, or arrange for the provision of, the Communications Hub Service pursuant to Part E of Condition 17 (Requirements for the provision of Services); and
- (b) is deemed to have been procured by the Licensee under this Condition 16, and not by any other person acting by or under any other means, despite anything to the contrary in Schedule 1 to this Licence.

**Part B Principles** has the meaning given to that term in paragraph 16.4, and refers to the principles listed in Part B of this condition.

**Public Interest Statement** has the meaning given to that term in paragraph 16.15.

**Relevant Functions** has the meaning that is given to that term in paragraph 16.8.

**SEC Adoption Process** has the meaning given to that term in paragraph 16.37.

#### **Part K: Further relevant provision**

16.41 Condition 44 (Treatment of Intellectual Property Rights) sets out and makes further provision relating to the Licensee’s management and development of the External Service Provider Contracts to which it is a party pursuant to this Condition 16.

16.42 Appendix 1 follows immediately below.

## **Condition 21. Roles in relation to Core Industry Documents**

### **Introduction**

21.1 This condition sets out the Licensee's compliance duties (where applicable) in relation to the Core Industry Documents specified in Parts A to C below and the Licensee's rights (where applicable) to receive such information arising from activities carried on in accordance with those documents as it needs for the exercise of its functions.

### **Part A: Compliance duties relating to the Smart Energy Code**

21.2 The Licensee must be a party to and comply with the Smart Energy Code that has been designated by the Secretary of State for the purposes of Condition 22 (The Smart Energy Code).

21.3 The Licensee must also take all appropriate steps within its power to ensure that the Smart Energy Code is maintained as a document in force under this Licence that is at all times consistent with the requirements of Condition 22.

### **Part B: Compliance with the provisions of the Fuel Security Code**

21.4 The Licensee must comply with the provisions of the Fuel Security Code.

21.5 The Fuel Security Code has effect as a condition of this Licence.

### **Part C: Rights in relation to certain other Core Industry Documents**

21.6 Where an arrangement of the kind mentioned in paragraph 31(b) of Condition 22 is in force in relation to a Core Industry Document that is listed in paragraph 7 of this Condition 21, the Licensee will be entitled to be supplied with such information arising from activities carried on in accordance with that document as it reasonably requires for the exercise of its functions under the Principal Energy Legislation, this Licence, and the SEC.

21.7 The Core Industry Documents to which paragraph 21.6 refers are:

- (a) the Balancing and Settlement Code;
- (b) the Distribution Connection and Use of System Agreement;
- (c) the Master Registration Agreement;
- (d) the Supply Point Administration Agreement; and
- (e) the Uniform Network Code.

21.8 But, subject to the requirements of Part A above, the Licensee is not to be regarded as, and may not be required to become, a party to a Core Industry Document except with the consent of the Authority and then only to such extent as it may specify.

### **Part D: Consequential changes in Core Industry Documents**

21.9 If any consequential change is required in a Core Industry Document to which the Licensee is a party, the Licensee must take all reasonable steps to secure, and not

take any unreasonable steps to prevent or delay, the making or implementation of that consequential change (but see paragraph 21.11).

21.10 For the purposes of paragraph 21.9, a consequential change is any modification that is required to be made to a Core Industry Document solely in order to give full and timely effect to a modification made to that or any other Core Industry Document.

21.11 Paragraph 21.9 is without prejudice to:

- (a) any rights of appeal that the Licensee may have in relation to decisions made by the Authority under a Core Industry Document; and
- (b) any rights of approval, veto, or direction that the Authority or the Secretary of State may have in relation to changes to a Core Industry Document.

## Part E: Interpretation

21.12 For the purposes of this condition:

**Balancing and Settlement Code** means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition C3 of the Electricity Transmission Licence.

**Core Industry Document** means:

- (a) any or all of the documents specified under Parts A to C above; and
- (b) any other document designated by the Authority for the purposes of this condition following consultation with the Licensee.

**Distribution Connection and Use of System Agreement** means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition 22 of the Electricity Distribution Licence.

~~**Electricity Distribution Licence** and **Electricity Transmission Licence** mean, respectively, a licence granted, or treated as granted, under section 6(1)(c) of the 1989 Act and a licence granted, or treated as granted, under section 6(1)(b) of the 1989 Act.~~

**Electricity Transmission Licence** means a licence granted, or treated as granted, under section 6(1)(b) of the 1989 Act.

**Fuel Security Code** means the document of that name designated by the Secretary of State under section 7(4)(b) of the 1989 Act as a condition of every licence of any type granted, or treated as granted, under section 6 of that Act.

~~**Gas Supply Licence** and **Gas Transporter Licence** mean, respectively, a licence granted, or treated as granted, under section 7A(1) of the 1986 Act and a licence granted, or treated as granted, under section 7(1) of the 1986 Act.~~

~~**Master Registration Agreement** means the document of that name maintained in a form approved by the Authority in accordance with standard condition 23 of the Electricity Distribution Licence.~~

**Supply Point Administration Agreement** means the document of that name that is maintained in a form approved by the Authority in accordance with standard condition 30 of the Gas Supply Licence.

**Uniform Network Code** means the document of that name that is maintained in accordance with special condition A11 of the Gas Transporter Licence.

## **Condition 22. The Smart Energy Code**

### **Introduction**

- 22.1 This condition applies for the purpose of establishing (without limitation) the scope and contents of the Smart Energy Code (“the SEC”).
- 22.2 The Licensee must be a party to, comply with, and maintain and have in force the SEC by virtue of Part A of Condition 21 (Roles in relation to Core Industry Documents).

### **Part A: Mandatory features of the Smart Energy Code**

- 22.3 The Smart Energy Code is the document of that name that:
- (a) has effect under this Licence from the SEC Commencement Date;
  - (b) has been designated by the Secretary of State for the purposes of this condition, (i) in accordance with Part B below, (ii) having due regard to the requirement imposed by Part C below, and (iii) on the basis that the SEC is appropriately designed to achieve the General SEC Objectives set out in Part D below;
  - (c) makes provision for the technical, commercial, and operational arrangements set out in Part E below;
  - (d) makes provision in respect of the matters relating to SEC governance and SEC administration set out in Part F below;
  - (e) makes provision for the other matters relating to the contents of the SEC that are set out in Parts G and H below; and
  - (f) may be modified on and after SEC Commencement Date in accordance with the provisions of Condition 23 (Change control for Smart Energy Code).

### **Part B: Designation of the Smart Energy Code**

- 22.4 The Smart Energy Code has no effect under this Licence until it has been designated by the Secretary of State in a direction given for the purposes of this condition.
- 22.5 Before issuing a direction under paragraph 22.4, the Secretary of State must consult:
- (a) the Authority;
  - (b) every holder of an Energy Licence who is required by a condition of that licence to be a party to and comply with the Smart Energy Code; and
  - (c) such other persons as the Secretary of State considers it is appropriate to consult in relation to the matter.
- 22.6 For the purposes of consultation under paragraph 22.5, the Secretary of State must:
- (a) state that he proposes to designate the SEC and specify the date (or a method by which such date may be determined) on which he proposes that the SEC should have effect;

- (b) set out the text of the SEC and his reasons for proposing to designate it; and
  - (c) allow a period of at least 28 days within which representations or objections may be made to him concerning the proposal.
- 22.7 The Secretary of State must have due regard to any representations or objections duly received under paragraph 22.6, and give reasons for his decisions in relation to them.
- 22.8 The requirements imposed by this Part B may be satisfied by consultation before, as well as consultation after, the Licence Commencement Date.

### **Part C: Compatibility with Transition Objective under Condition 13**

- 22.9 During the period prior to the Completion of Implementation, as defined in Part D of Condition 5 (General Objectives of the Licensee), the General SEC Objectives set out in Part D below must be read and given effect, so far as it is possible to do so, in a way that is compatible with achieving the Transition Objective in the terms set out in paragraph 1 of Condition 13 (Arrangements relating to the Transition Objective).

### **Part D: General Objectives of the Smart Energy Code**

- 22.10 The General SEC Objectives that the Smart Energy Code must be designed to achieve are as follows.
- 22.11 The first General SEC Objective is to facilitate the efficient provision, installation, and operation, as well as interoperability, of Smart Metering Systems at Energy Consumers' premises within Great Britain.
- 22.12 The second General SEC Objective is to enable the Licensee to comply at all times with the General Objectives of the Licensee, and to efficiently discharge the other obligations imposed upon it by this Licence.
- 22.13 The third General SEC Objective is to facilitate Energy Consumers' management of their use of Energy through the provision to them of appropriate information by means of Smart Metering Systems.
- 22.14 The fourth General SEC Objective is to facilitate effective competition between persons engaged in, or in Commercial Activities connected with, the Supply of Energy under the Principal Energy Legislation.
- 22.15 The fifth General SEC Objective is to facilitate such innovation in the design and operation of Energy Networks as will best contribute to the delivery of a secure and sustainable Supply of Energy under the Principal Energy Legislation.
- 22.16 The sixth General SEC Objective is to ensure the protection of data and the security of data and systems in the operation of the SEC.
- 22.17 The seventh General SEC Objective is to facilitate the efficient and transparent administration and implementation of the SEC.
- 22.18 For the purposes of this condition and those of Condition 23 (Change control for the Smart Energy Code), the order in which the General SEC Objectives are listed in this Part D is of no significance.

### **Part E: Principal contents within the Smart Energy Code**

22.19 The SEC must include or make appropriate provision for or in connection with the following matters:

- (a) the terms on which the Licensee will arrange with each Domestic Energy Supplier to provide, in respect of a Smart Meter that is installed at Domestic Premises supplied with Energy by that supplier, a service by means of which information may be communicated to and from that meter on behalf of the supplier, whether for the purposes of compliance with the conditions of its Energy Supply Licence or otherwise;
- (b) the terms on which the Licensee will contract with any Energy Supplier (not being a Domestic Energy Supplier) or any other SEC Party to provide that person with a service by means of which information may be communicated to and from any Smart Meter installed at premises by that person;
- (c) arrangements designed to provide assurance that all Smart Metering Systems installed at Energy Consumers' premises for the purposes of the Supply of Energy consist of the apparatus identified in, have the functional capability specified by, and comply with the other requirements of the SME Technical Specification or CH Technical Specification (as the case may be) applicable at the date at which such systems are installed; and
- (d) the contractual and commercial arrangements necessary to secure the ownership, delivery, installation, repair, maintenance, and replacement of Communications Hubs pursuant to the Communications Hub Service.

22.20 The SEC must include or make appropriate provision for or in connection with the following matters:

- (a) details of all of the Mandatory Business Services (clearly distinguishing between Core Communication Services, Elective Communication Services, the Enrolment Service, the Communications Hub Service, ~~and~~ Other Enabling Services, and the preparation for the Centralised Registration Service) that are to be provided by the Licensee under or pursuant to the SEC;
- (b) procedures relating to any requirement for SEC Parties to make Smart Metering Systems available for use by other specified persons (including the Licensee) for specified purposes, whether under or pursuant to the SEC or otherwise;
- (c) terms and procedures for the implementation of charging, billing, and payment arrangements in respect of Services provided under or pursuant to the SEC for and on behalf of SEC Parties; and
- (d) terms and arrangements relating to (i) the ownership, licensing, and protection of any intellectual property rights created by or arising by virtue of the operation of any of the SEC Arrangements, and (ii) the treatment and allocation of any royalty revenues resulting from the exercise of such rights.

22.21 The SEC must include or make appropriate provision for or in connection with the following matters:

- ~~(a) arrangements, requirements, and procedures providing for the incorporation of Energy Registration Services into the SEC Arrangements, and for any transfers~~

~~\_\_\_\_\_ of property, rights, and liabilities necessary to give full and continuing effect to  
\_\_\_\_\_ such incorporation, with effect from a date to be determined in a direction given  
\_\_\_\_\_ to the Licensee by the Secretary of State under Condition 15 (Incorporation of  
\_\_\_\_\_ Energy Registration Services);~~

~~(a)(b)~~ requirements and procedures for the purposes of ensuring data protection and data and systems security in the operation of the SEC Arrangements; and

~~(b)(e)~~ terms providing for the limitation of the liability of the Licensee and SEC Parties in respect of loss or damage arising from the procurement, provision, or use of Services under or pursuant to the SEC.

22.22 The SEC must include or make appropriate provision for or in connection with the following matters:

(a) provision for or in connection with the governance and administration of the SEC (as to which, see Part F below);

(b) provision for or in connection with the incorporation of documents into the SEC (as to which, see Part G below);

(c) provision for or in connection with other SEC matters (as to which, see Part H below); and

(d) arrangements for modifying the SEC after consultation with SEC Parties (as to which, see Condition 23 of this Licence).

## **Part F: Governance and administration of the Smart Energy Code**

22.23 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

(a) a SEC Framework Agreement, to which the Licensee, every holder of an Energy Licence that is required by that licence to be a party to the SEC, and Other SEC Participants will be required to be party with effect from the SEC Commencement Date on such terms and conditions of accession as are set out in the SEC;

(b) provision for other persons (being persons who accept the terms and fulfil all of the conditions on which accession to the SEC is offered) to be admitted subsequently as parties to the SEC by entering into an Accession Agreement with SECCo Ltd acting for that purpose on behalf of all SEC Parties; and

(c) provision enabling any person who seeks to be admitted as a SEC Party pursuant to an Accession Agreement to request the Authority to determine any dispute as to whether that person has fulfilled the terms and conditions of accession.

22.24 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

(a) arrangements providing for the novation to a Successor Licensee (upon either the expiry of the Licence Term (or of any Additional Licence Term) within the meaning of Part 1 of this Licence, or any revocation of this Licence pursuant to a

Revocation Event under its Part 2) of the whole of the Licensee's interest under the SEC, on terms that require the Successor Licensee to assume all accrued rights or obligations of the Licensee and all accrued liabilities of the Licensee, in each case in respect of any act or omission relating to the SEC Arrangements on or at any time before the date of the novation; and

- (b) terms providing for the Licensee and such SEC Parties as are specified in the SEC to be contractually bound by some or all of the provisions of the SEC.

22.25 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements for the establishment, in accordance with such procedures for the election of members as are specified in the SEC, of a representative body, the SEC Panel, which is to be responsible, by way of such proceedings as are so specified (which may include voting procedures), for the governance and administration of the SEC;
- (b) provision for the appointment of an independent chairperson of the SEC Panel who is approved by the Authority;
- (c) provision for the Citizens Advice or Citizens Advice Scotland to appoint to the membership of the SEC Panel two persons (neither of them being a SEC Party) to represent to the Panel the interests of Energy Consumers ("the Consumer Members"); and
- (d) arrangements for the establishment, in accordance with such procedures as are specified in the SEC, of a body, the SMKI Policy Management Authority, which is to be responsible, by way of such proceedings as are so specified (which may include voting procedures), for the oversight and implementation of documents to be known as the Certificate Policies (whether or not incorporated into the SEC by virtue of the provisions of Part G below) that set out the roles and duties of SEC Parties and other persons in the management of the Smart Metering Key Infrastructure.

22.26 Without prejudice to such matters as are required to be included in the SEC by virtue of Part E above, the SEC must also include:

- (a) arrangements for the establishment and funding of a Secretariat to service the SEC Panel in connection with such matters of governance and administration as are specified in the SEC, including the maintenance of a conformed and up-to-date copy of the SEC as from time to time modified in accordance with such arrangements as are in place by virtue of Condition 23;
- (b) arrangements for the establishment and funding of a person to be known as the Code Administrator to advise and assist the SEC Panel (including, in particular, the Consumer Members), SEC Parties, and other interested persons with respect to the policy and administration of the SEC, to such extent and in relation to such matters as are specified in the SEC;
- (c) provision for the establishment of a joint venture company, SECCo Ltd, (i) the shareholders of which are to be such SEC Parties as may be specified for that purpose in the SEC, (ii) the sole business of which is to act as a corporate

vehicle to assist the SEC Panel in exercising its powers, duties, and functions (including by entering into contracts where necessary or desirable in order to implement any decision of the SEC Panel), and (iii) the affairs of which are to be conducted in accordance with good business practice;

- (d) arrangements for the establishment and funding of one or more bodies that may be required to support the Certificate Policy Management Authority in the implementation of the Certificate Policy, including arrangements that provide for such bodies to become SEC Parties to such extent, for such purposes, and in such circumstances as may be specified in the SEC; and
- (e) terms requiring the Code Administrator to act in accordance with any Code of Practice approved by the Authority that relates to the performance of their duties by persons or bodies responsible for administering documents of the kind that are described in Condition 21 (Roles in relation to Core Industry Documents).

### **Part G: Incorporation of documents into the Smart Energy Code**

22.27 Without prejudice to any of the matters set out in Parts E and F above, the contents of the SEC must also include:

- (a) provision for the incorporation into the SEC of the Charging Methodology for Service Charges as designated by the Secretary of State under Condition 18 (Charging Methodology for Service Charges) for the purposes of incorporation in accordance with the requirements of that condition;
- (b) provision for the incorporation into the SEC of one or more versions of the SME Technical Specification, the IHD Technical Specification, the PPMID Technical Specification, the HCALCS Technical Specification and the CH Technical Specification, in each case from a date designated by the Secretary of State under this condition;
- (c) provision for incorporation into the SEC of any Certificate Policy as designated by the Secretary of State under this condition; and
- (d) provision for the incorporation into the SEC, in each case as designated by the Secretary of State under this condition, of such other technical specifications and procedural or associated documents as the Secretary of State believes are required to support the fulfilment of rights or obligations already specified in the SEC, including, in particular, documents developed by the Licensee under Schedule 5 of this Licence with respect to the following matters:
  - (i) the interface that is to be used to exchange Registration Data (within the meaning given to that term in the SEC) between the Licensee and the persons providing such data to the Licensee,
  - (ii) the specification for the interface (or the interfaces) by means of which requests (or other communications) with respect to Services are to be sent between the Licensee and SEC Parties, and vice versa,
  - (iii) the matters with which SEC Parties have to demonstrate compliance in order to become eligible to receive or use Services,

- (iv) the application of appropriate security controls and security standards to business processes carried on under or pursuant to the SEC,
- (v) the detailed policy for managing incidents relating to the provision of Services, and the associated business continuity and disaster recovery procedures, and
- (vi) the procedures and arrangements required to support the trialling and testing programmes to be undertaken pursuant to the provisions of Condition 13 (Arrangements relating to the Transition Objective).

22.28 A document may:

- (a) be designated under this condition by the Secretary of State for incorporation into the SEC as part of his general designation of the SEC by way of direction under Part B above, or in any circumstances and at any time thereafter up to (but not later than) 31 October 2018;
- (b) where it is a document of a type described in sub-paragraphs 22.27(b), 22.27(c) and 22.27(d) of this condition and has first been designated under this condition by the Secretary of State, be re-designated by him on one or more occasions subject to such amendments as he considers requisite or expedient,

and where any document is re-designated by the Secretary of State in accordance with sub-paragraph (b) above, the other provisions of this Part G shall apply in relation to it in the same manner as if it were being designated for the first time, and references in those provisions to the document being designated shall be read as referring to it being re-designated.

22.29 The power of the Secretary of State under this condition to designate a document for incorporation into the SEC includes:

- (a) power to make such supplementary, incidental or consequential provision with respect to the SEC as he considers necessary or expedient for the purposes of, in consequence of, or for giving full and timely effect to the incorporation of that document; and
- (b) power to make such provision for the application of that document to SEC Parties, and for the subsequent governance of the document, as he believes is necessary or expedient for the purpose of facilitating the achievement of the General SEC Objectives.

22.30 The incorporation into the SEC of a document designated for such purpose under this condition is not to be treated as, and does not constitute, a modification of the SEC pursuant to any of the modification arrangements established for the SEC by virtue of the provisions of Condition 23 (Change control for the Smart Energy Code).

## **Part H: Other necessary matters for the Smart Energy Code**

22.31 Without prejudice to any of the matters set out in Parts E to G above, the contents of the SEC must also include:

- (a) provision enabling such SEC Parties (or categories of SEC Party) as are specified in the SEC to appoint agents (in accordance with such requirements regarding the eligibility of such persons as are so specified) for the purpose of exercising

such functions under or in connection with the SEC, in such circumstances and subject to such restrictions, as are so specified;

- (b) provision requiring SEC Parties who are also parties to one or more of the other Core Industry Documents mentioned in Condition 21 to establish arrangements for the purpose of ensuring that such information arising from activities carried on in accordance with those documents as the Licensee may reasonably require for the exercise of its functions under the Principal Energy Legislation, this Licence, and the SEC will be supplied to the Licensee at such times and in such form and manner as may be specified in the SEC;
- (c) provision for the establishment and operation of the SEC Adoption Process to facilitate the activities described at Part I of Condition 16 (Procurement of Relevant Service Capability) with respect to the adoption by the Licensee of Energy Supplier Contracts within the meaning that is given to that term in Part J of that condition;
- (d) provision for the Licensee to receive, from such SEC Parties as are specified in the SEC, such services or resources, for such purposes and on such terms, as are so specified;
- (e) provision for the vesting, ownership, and novation of intellectual property rights in SEC Materials within the meaning of Condition 44 (Treatment of Intellectual Property Rights) to be compliant with the requirements of that condition with respect to those matters;
- (f) provision for a copy of the SEC that is compliant with paragraph 22.26(a) to be published on behalf of the SEC Panel on its website;
- (g) provision for information about the operation of the SEC Arrangements to be supplied on request to the Authority or to be published by it or the SEC Panel;
- (h) provision for the SEC Panel to secure the compliance of any SEC Party with the requirements of sub-paragraph (g); and
- (i) provision for such other matters as may be appropriate, having regard to the requirement for the SEC to be maintained as a document that is designed to achieve the General SEC Objectives.

#### **Part I: Relief from obligations under the Smart Energy Code**

22.32 The Authority may (after consulting with the Licensee and, where appropriate, any other person likely to be materially affected) give a direction (“a derogation”) to the Licensee that relieves it of any one or more of its obligations under the Smart Energy Code to such extent, for such period of time, and subject to such conditions as may be specified in the direction.

#### **Part J: Interpretation**

22.33 Any reference in this condition to a matter that the SEC must include or for which it must make appropriate provision is a reference to that matter whether as included or provided for in the SEC on the SEC Commencement Date or as so included or

provided for at any time between that date and the Completion of Implementation (within the meaning that is given to that term in Part D of Condition 5).

22.34 For the purposes of this condition:

**Accession Agreement** has the meaning that is given to that term in paragraph 22.23(b).

**Certificate Policies** has the meaning that is given to that term in paragraph 22.25(d).

**Code Administrator** has the meaning that is given to that term in paragraph 22.26(b).

**Consumer Members** has the meaning that is given to that term in paragraph 22.25(c).

**Other SEC Participants** means every party to the SEC who is neither the Licensee nor the holder of an Energy Licence that requires that person to be a party to the SEC.

**SEC Adoption Process** has the meaning that is given to that term in paragraph 37 of Condition 16 (Procurement of Relevant Service Capability).

**SEC Framework Agreement** has the meaning given to that term in paragraph 22.23(a).

**Secretariat** has the meaning that is given to that term in paragraph 22.26(a).

**Smart Metering Key Infrastructure** means the arrangements in place under the SEC that govern the creation, management, distribution, use, storage, and revocation of digital certificates.

**SMKI Policy Management Authority** has the meaning that is given to that term in paragraph 22.25(d).

## **Condition 30. Requirements for the Regulatory Accounts**

### **Introduction**

- 30.1 This condition applies to the Licensee in respect of each separate Regulatory Year of this Licence (the first of which is deemed to run from 1 April 2013 to 31 March 2014) and has effect for the purpose of ensuring that the Licensee:
- (a) prepares and publishes Regulatory Accounts so as to ensure the provision to the Authority of annual regulatory accounting information that will enable it to assess the financial position of the Licensee on a consistent basis; and
  - (b) maintains (and ensures that any Affiliate or Related Undertaking of the Licensee maintains) such accounting records, other records, and reporting arrangements as are necessary to enable the Licensee to comply with that obligation.

### **Part A: Preparation of the Regulatory Accounts**

- 30.2 For the purposes of this condition, but without prejudice to the requirements of Part C below, the Licensee must prepare Regulatory Accounts for each Regulatory Year.
- 30.3 Except and so far as the Authority otherwise consents, the Licensee must comply with the obligations imposed by the following paragraphs of this Part A in relation to the preparation of Regulatory Accounts.
- 30.4 The Licensee must keep or cause to be kept for a period approved by the Authority, but no less than the period referred to in section 388(4)(b) of the Companies Act 2006 and in the manner referred to in that section, such accounting records and other records as are necessary to ensure that all of the revenues, costs, assets, liabilities, reserves, and provisions of, or that are reasonably attributable to, each of the Authorised Business Activities of the Licensee are separately identifiable in those records (and in those of any Affiliate or Related Undertaking of the Licensee).
- 30.5 The Regulatory Accounts are to be prepared on a consistent basis derived from the accounting records and other records referred to in paragraph 30.4 in respect of each Regulatory Year, and must have the contents specified in Part B below.

### **Part B: Required contents of the Regulatory Accounts**

- 30.6 The Regulatory Accounts prepared for each Regulatory Year must comprise:
- (a) the matters set out in paragraph 30.7; supported by
  - (b) the matters set out in paragraph 30.8.
- 30.7 The matters to which paragraph 30.6(a) refers are these:
- (a) an income statement and a statement of comprehensive income (or, as appropriate, a profit and loss account and a statement of total recognised gains and losses);
  - (b) a statement of changes in equity, if appropriate;
  - (c) a statement of financial position (or, as appropriate, a balance sheet);

- (d) a statement of cash flows (or, as appropriate, a cash flow statement);
- (e) the Corporate Governance Statement prepared by the Licensee in accordance with Part A of Condition 7 (General controls for the Authorised Business);
- (f) a Directors' Report in respect of the Authorised Business of the Licensee; and
- (g) a Business Review in respect of the Authorised Business of the Licensee.

30.8 The matters to which paragraph 30.6(b) refers are explanatory notes that:

- (a) provide a summary of the accounting policies adopted by the Licensee for the purpose of producing its Regulatory Accounts; and
- (b) disclose, in relation to the matters to which paragraph 30.7(a) refers, the Segmental Information for each of the Authorised Business Activities.

### **Part C: Consistency required with the statutory accounts**

30.9 The Licensee must ensure, so far as is reasonably practicable and except where the Authority otherwise consents, that Regulatory Accounts and information prepared in accordance with Parts A and B above:

- (a) have the same content and format as the most recent or concurrent statutory accounts of the Licensee prepared under Part 15 of the Companies Act 2006, subject to the inclusion of Segmental Information as specified under paragraph 30.8(b); and
- (b) comply with the requirements applicable to a Quoted Company, whether or not the Licensee is such a company, in Chapter 4 of the Companies Act 2006 with respect to the preparation of annual accounts and the requirements of the applicable accounting framework under which it prepares them.

### **Part D: Audit and delivery of the Regulatory Accounts**

30.10 Except where the Authority otherwise consents, the Licensee must:

- (a) procure an audit by an Appropriate Auditor of such parts of its Regulatory Accounts and the Directors' Report and Business Review as would be specified in the Companies Act 2006 as being required to be so audited if the Licensee were a Quoted Company and those accounts were the statutory accounts of the Licensee drawn up to 31 March and prepared under Part 15 of the Companies Act 2006;
- (b) procure a report by that auditor, addressed to the Authority, that states whether in the auditor's opinion those accounts fairly present the financial position, financial performance, and cash flows of, or that are reasonably attributable to, each of the Authorised Business Activities in accordance with the requirements of Part A above; and
- (c) deliver those accounts and the auditor's report required under sub-paragraph (b) to the Authority as soon as is reasonably practicable, and in any event

before their publication under Part G below and not later than 31 July after the end of the Regulatory Year to which the Regulatory Accounts relate.

**Part E: Terms of appointment of the Appropriate Auditor**

30.11 For the purposes of Part D above, the Licensee must, at its own expense, enter into a contract of appointment with an Appropriate Auditor that includes a term requiring that the audit of the Licensee's Regulatory Accounts must be conducted by that person in accordance with all such relevant auditing standards in force on the last day of the Regulatory Year to which the audit relates as would be appropriate for accounts prepared in accordance with the provisions of Part 15 of the Companies Act 2006.

**Part F: Agreed Upon Procedures for the Appropriate Auditor**

30.12 The Licensee must, at its own expense, enter into a contract of appointment with an Appropriate Auditor for the completion of Agreed Upon Procedures that are to apply for the purposes of enabling that person to review the Licensee's compliance with the requirements of Condition 11 (Duties arising from Licensee's special position) with respect to the prohibition of cross-subsidy and discrimination.

30.13 The contract of appointment must require that the Agreed Upon Procedures are to be conducted in relation to each Regulatory Year and that the Licensee will arrange for the Appropriate Auditor to address a report to the Authority by 31 July after the end of each such year that:

- (a) states that he has, in a manner consistent with the relevant auditing standards, completed the Agreed Upon Procedures issued by the Authority in respect of the Regulatory Year under report; and
- (b) sets out his findings for the Authority's attention.

**Part G: Publication and provision of the Regulatory Accounts**

30.14 Except where the Authority after consulting with the Licensee otherwise directs, the Licensee must publish its Regulatory Accounts (excluding any information agreed by the Authority to be confidential):

- (a) as a stand-alone document in accordance with this condition;
- (b) by 31 July after the end of the Regulatory Year to which the accounts relate;
- (c) on the Licensee's Website; and
- (d) in any other manner which, in the opinion of the Licensee, is necessary to secure adequate publicity for the accounts.

30.15 A copy of the Regulatory Accounts must be provided free of charge to any person who requests a copy.

**Part H: Interpretation**

30.16 The requirement under paragraph 30.7 of this condition for the Licensee to include a Directors' Report and a Business Review in its Regulatory Accounts is to be read

as if the requirement applied to the Licensee as a Quoted Company, whether or not it is such a company, such that:

- (a) the Directors' Report has the coverage and content of the directors' report that a Quoted Company is required to prepare under section 415 of the Companies Act 2006; and
- (b) the Business Review has the coverage and content of the business review that a Quoted Company is required to prepare under section 417 of that Act.

30.17 For the purposes of this condition:

**Agreed Upon Procedures** means procedures from time to time agreed between the Authority, the Appropriate Auditor, and the Licensee for the purpose of enabling the Appropriate Auditor to review and report to the Authority on matters relating to the requirements to which Part F of this condition refers.

**Appropriate Auditor** means:

- (a) if the Licensee is a company within the meaning of section 1 of the Companies Act 2006, a person appointed as auditor under Chapter 2 of Part 16 of that Act; or
- (b) in any other case, a person who is eligible for appointment as a company auditor under Part 42 of that Act.

**Authorised Business Activities** means each of the following activities carried on within the Authorised Business of the Licensee:

- (a) as part of the Mandatory Business:
  - (i) the procurement and provision of Core Communication Services,
  - (ii) the procurement and provision of Elective Communication Services,
  - (iii) the operation of the Enrolment Service,
  - (iv) the procurement and provision of the Communications Hub Service,~~and~~
  - (v) the procurement and provision of Other Enabling Services; **and**
  - (vi) the preparation for the Centralised Registration Service.
- (b) as part of the Permitted Business:
  - (i) the procurement and provision of Value Added Services, and
  - (ii) the procurement and provision of Minimal Services.

**Quoted Company** has the meaning given in section 385 of the Companies Act 2006.

**Segmental Information** means such financial and descriptive information about the Authorised Business Activities of the Licensee as would be disclosable under

International Financial Reporting Standard 8 (or Statement of Standard Accounting Practice 25) if each of those activities was an operating segment (or a reportable segment) of the Licensee within the meaning of those respective standards.

## Condition 35. Definitions for the Price Control Conditions

### Introduction

- 35.1 This condition has effect on and after 23 September 2013 as one of the Price Control Conditions of this Licence.
- 35.2 In this Licence, a Price Control Condition is any condition the purpose of which, whether on its own or in combination with any other Price Control Condition, is to limit or control the charges of, or the revenue of, the Licensee.

### Part A: Defined terms used in the Price Control Conditions

- 35.3 Part B below sets out most of the defined words and expressions (all of which begin with capital letters) that are used in the Price Control Conditions of this Licence, and gives their definitions next to them (“the Chapter 9 Particular Definitions”).
- 35.4 But words and expressions used in the Price Control Conditions that are defined for any of the purposes of this Licence in Condition 1 (Definitions for the Conditions of this Licence) have in this Chapter 9 the meaning given to them in that condition.

### Part B: The Chapter 9 Particular Definitions

- 35.5 In the Price Control Conditions, unless the context otherwise requires:

<b>Allowed Revenue</b>	means the total amount of revenue determined on an accruals basis in relation to each Regulatory Year in accordance with the Principal Formula set out at Part C of Condition 36 (Determination of the Licensee’s Allowed Revenue) after the deduction of value added tax (if any) and any other taxes based directly on the amount concerned.
<b>Average Specified Rate</b>	means the rate that is equivalent to the average value of the Official Bank Rate of the Bank of England during the period in respect of which the calculation falls to be made.
<b>Baseline Margin</b>	means in relation to each Regulatory Year an amount of additional revenue, over and above the sum of the Licensee’s Internal Costs and External Costs, that the Secretary of State has agreed shall be included (subject to the operation of the Baseline Margin Performance Adjustment) in the Licensee’s Allowed Revenue, and is determined in accordance with the provisions of Part C of Condition 36.
<b>Baseline Margin Implementation Performance Adjustment</b>	means the amount (if any) of reduction in the Baseline Margin determined in accordance with the provisions of Part B of Condition 38 so as to secure, with respect to the applicable period, the effect set out in Part A

of that condition.

**Baseline Margin  
Implementation  
Total**

means the Licensee's Baseline Margin, in total, for the period running from 23 September 2013 until the end of the Regulatory Year 2015/2016 (and, arising from the Licence Application Process, is calculated for the purposes of Schedule 3 to this Licence to have the value of £7.687 million, subject to adjustments for inflation as set out in paragraph 35.6.

**Baseline Margin  
Performance (BMP)  
Adjustment**

means the component of the Licensee's Allowed Revenue that is determined in accordance with Part E of Condition 36 and subject to the operation of the provisions of Condition 38 (Determination of the BMP Adjustment).

**Baseline Margin  
Operational  
Performance  
Adjustment**

means the amount (if any) of reduction in the Baseline Margin determined in accordance with the provisions of Part C of Condition 38 so as to secure, with respect to the applicable period, the effect set out in Part A of that condition.

**Centralised  
Registration Service  
Cost Adjustment**

means in relation to each Regulatory Year a cost adjustment to Centralised Registration Service Revenue that may be directed by the Authority. In the absence of a direction, this shall take the value of zero.

**Centralised  
Registration Service  
External Cost**

means in relation to each Regulatory Year the actual amount of the costs that were economically and efficiently incurred by the Licensee in procuring Fundamental Registration Service Capability during that period.

**Centralised  
Registration Service  
Internal Cost**

means in relation to each Regulatory Year the sum of the costs (excluding Internal Costs, External Costs, Pass-through Costs, Centralised Registration Service External Costs and Centralised Registration Service Pre-Agreed Costs) that were economically and efficiently incurred by the Licensee for the purposes of the provision of Mandatory Business Services

**Centralised  
Registration Service  
Performance  
Adjustment**

means in relation each Regulatory Year a Performance Adjustment to Centralised Registration Service Revenue that may be directed by the Authority. In the absence of a direction, this shall take the value of zero.

**Centralised**

means in relation each Regulatory Year cost that will

<b><u>Registration Service Pre-Agreed Cost</u></b>	<u>be directed by the Authority. In the absence of a direction, this shall take the value of zero.</u>
<b><u>Centralised Registration Service Revenue</u></b>	<u>Means in relation to each Regulatory Year, revenue for Centralised Registration Services calculated in accordance with Part D of Condition 36.</u>
<b>External Contract Gain Share</b>	means the component of the Allowed Revenue of the Licensee that is determined in accordance with the provisions of Condition 39 (Determination of External Contract Gain Share) so as to secure the effect set out in Part A of that condition.
<b>External Costs</b>	means in relation to each Regulatory Year the actual amount of the costs that were economically and efficiently incurred by the Licensee in procuring Fundamental Service Capability during that period.
<b>Internal Costs</b>	means in relation to each Regulatory Year the sum of the costs (excluding <u>Centralised Registration Service External Costs, Centralised Registration Internal Costs, Centralised Registration Service Pre-agreed Costs,</u> External Costs and Pass-Through Costs) that were economically and efficiently incurred by the Licensee for the purposes of the provision of Mandatory Business Services under or pursuant to the SEC (and may include costs incurred in respect of the governance and administration of the SEC that are not included in Pass-Through Costs).
<b>Pass-Through Costs</b>	means in relation to each Regulatory Year the sum of the amounts that are specified as Pass-Through Costs in paragraph 8 of Condition 36.
<b>Regulatory Year t</b>	means the particular Regulatory Year for the purposes of which any calculation is required to be made under the Price Control Conditions.
<b>Regulatory Year t-1</b>	means the Regulatory Year immediately preceding the Regulatory Year t (and any similar expressions are to be read accordingly).
<b>Regulated Revenue</b>	means in relation to each Regulatory Year the actual revenue, measured on an accruals basis: <ul style="list-style-type: none"> <li>(a) received by the Licensee through Service Charges that are levied in accordance with the provisions of Condition 18 (Charging Methodology for Services) and Condition 19 (Charging Statement for Services); <u>including any interest earned on Service Charges;</u> or</li> </ul>

- (b) otherwise received by the Licensee in relation to the carrying on of the Mandatory Business,

after the deduction of value added tax (if any) and any other taxes based directly on the amount concerned. Paragraph (a) above shall be deemed to include any and all amounts paid by SEC Parties under the SEC to persons (other than the External Service Provider) engaged (indirectly pursuant to an External Service Provider Contract) in the business of financing Communications Hubs.

**Value Added Service (VAS) Contribution**

means the component of the Allowed Revenue of the Licensee that is determined in accordance with the provisions of Condition 40 (Determination of the VAS Contribution) so as to secure the effect set out in Part A of that condition.

35.6 The value of the Baseline Margin Implementation Total shall be the sum of:

- (a) £1.769 million;
- (b) £3.194 million multiplied by the value of PIBM in Regulatory Year 2014/15; and
- (c) £2.724 million multiplied by the value of PIBM in Regulatory Year 2015/16,

where PIBM is the price index adjuster applied to the Baseline Margin in each Regulatory Year and calculated in accordance with Part C of Condition 36 (Determination of the Licensee's Allowed Revenue).

**Part C: Matters agreed by the Secretary of State**

**35.7** A reference in this condition or in any of the other Price Control Conditions to a value or amount agreed by the Secretary of State is a reference to that value or amount as agreed by the Secretary of State during or as a consequence of the Licence Application Process.

**Part D: Guide to abbreviated price control terms**

**35.8** Most of the defined terms in the Chapter 9 Particular Definitions set out above appear in formulas embedded in the Price Control Conditions in the following abbreviated forms:

Allowed Revenue	AR
Average Specified Rate	ASR
Baseline Margin	BM
Baseline Margin Implementation Performance Adjustment	BMIPA

Baseline Margin Implementation Total	BMIT
Baseline Margin Operational Performance Adjustment	BMOPA
Baseline Margin Performance Adjustment	BMPA
<u>Centralised Registration Service Cost Adjustment</u>	<u>CRSCA</u>
<u>Centralised Registration Service External Cost</u>	<u>CRSEC</u>
<u>Centralised Registration Service Internal Cost</u>	<u>CRSIC</u>
<u>Centralised Registration Service Performance Adjustment</u>	<u>CRSPA</u>
<u>Centralised Registration Service Pre-Agreed Cost</u>	<u>CRSPC</u>
<u>Centralised Registration Service Revenue</u>	<u>CRSR</u>
External Contract Gain Share	ECGS
External Costs	EC
Internal Costs	IC
Pass-Through Costs	PTC
Regulated Revenue	RR
Value Added Service Contribution	VASC

## **Condition 36. Determination of the Licensee's Allowed Revenue**

### **Introduction**

- 36.1 This condition has effect on and after 23 September 2013 as one of the Price Control Conditions of this Licence.
- 36.2 The purpose of this condition is to establish the mechanism for determining the amount of Allowed Revenue that may be recovered by the Licensee through Service Charges levied in respect of its provision of Mandatory Business Services.

### **Part A: Conditions supplementary to this condition**

- 36.3 This condition is supplemented by:
- (a) Condition 37 (Assessment of Mandatory Business costs), which provides for the Authority to determine the treatment of any costs associated with the provision of Mandatory Business Services that the Authority considers were not economically and efficiently incurred;
  - (b) Condition 38 (Determination of the BMP Adjustment), which provides for the Allowed Revenue to be adjusted upwards or downwards to reflect the Licensee's performance against certain specified incentives; and
  - (c) Condition 39 (Determination of External Gain Share) and Condition 40 (Determination of the VAS Contribution), which provide for the Allowed Revenue to be varied to reflect benefits arising from, respectively, the Licensee's management of External Service Provider Contracts and its provision of Value Added Services.

### **Part B: Duty of the Licensee with respect to Regulated Revenue**

- 36.4 The Licensee, in setting Service Charges for its Mandatory Business Services, must take all reasonable steps to secure that, in Regulatory Year t, its Regulated Revenue does not exceed a prudent estimate of its Allowed Revenue for that Regulatory Year.
- 36.5 For the purposes of paragraph 36.4, and subject to paragraph 36.6, a prudent estimate of Allowed Revenue is the Licensee's best estimate of Allowed Revenue as adjusted to ensure that (disregarding any within-year adjustments that may be permitted in circumstances prescribed by the Charging Methodology of the Licensee) the Service Charges as they apply for Regulatory Year t will not need to be amended in the course of that year except in response to a reasonably unlikely contingency.
- 36.6 The adjustment to which paragraph 36.5 refers must not be such as to result in an expectation that Regulated Revenue will significantly diverge from the Allowed Revenue in Regulatory Year t.

### **Part C: Determination of the Allowed Revenue (AR) term**

- 36.7 The amount of the Licensee's Allowed Revenue in relation to Regulatory Year t is to be determined in accordance with the following formula (in this condition, the Principal Formula):

$$AR_t = EC_t + IC_t \pm \underline{CRSR_t} + PTC_t + BM_t + BMPA_t + ECGS_t - VASC_t + K_t$$

36.8 In the Principal Formula above:

$AR_t$  means the amount of the Allowed Revenue in Regulatory Year t.

$EC_t$  means the actual amount of the Licensee's External Costs, as calculated for Regulatory Year t by the Licensee, except to such extent (if any) as may be otherwise directed by the Authority acting under Part B of Condition 37.

$IC_t$  means the actual amount of the Licensee's Internal Costs, as calculated for Regulatory Year t by the Licensee, except to such extent (if any) as may be otherwise directed by the Authority acting under Part B of Condition 37.

$CRSR_t$  means the amount of the Licensee's Centralised Registration Services Revenue, as calculated for Regulatory Year t in accordance with Part D.

$PTC_t$  means the total amount of Pass-Through Costs incurred by the Licensee in Regulatory Year t, and is the sum of:

- (i) the amount that is equal to the total annual fee paid by the Licensee to the Authority during Regulatory Year t as determined in accordance with Part A of Condition 4 (Licensee's payments to the Authority); and
- (ii) the amount that is equal to the payments made by the Licensee during Regulatory Year t to SECCo Ltd for purposes associated with the governance and administration of the SEC.

$BM_t$  means the amount of the Licensee's Baseline Margin that is specified for the Regulatory Year; t in Appendix 1 (which has effect as part of this condition) (or such other amount as may have been determined for that Regulatory Year pursuant to the provisions of Part D below), as multiplied by the price index adjuster (PIBM) for that year, which in the Regulatory Year 2013/14 shall have the value of 1 and in each subsequent Regulatory Year is derived from the following formula:

$$PIBM_t = \left[ 1 + \frac{RPI_t}{100} \right] \times PIBM_{t-1}$$

where  $RPI_t$  means the percentage change (whether it is positive or negative) between (i) the arithmetic average of the Retail Prices Index numbers published or determined with respect to each of the six months from July to December (inclusive) in Regulatory Year t-2, and (ii) the arithmetic average of the Retail Prices Index numbers published or determined with respect to the same months in Regulatory Year t-1 (and "Retail Prices Index" has the meaning given to that term in Part G below).

$BMPA_t$  means the Baseline Margin Performance Adjustment, as calculated for the Regulatory Year t in accordance with Part E below.

- ECGS<sub>t</sub> means the amount of revenue adjustment in respect of External Contract Gain Share, as calculated for Regulatory Year t in accordance with Condition 39 (Determination of External Contract Gain Share).
- VASC<sub>t</sub> means the amount of the Value Added Services Contribution, as calculated for Regulatory Year t in accordance with Condition 40 (Determination of the VAS Contribution).
- K<sub>t</sub> means the correction factor, whether positive or negative, as calculated for Regulatory Year t in accordance with the formula set out in Part F below.

#### **Part D: Centralised Registration Service Revenue term**

36.9 For the purposes of the Principal Formula, the total amount of the Centralised Registration Service Revenue (CRSR) will be calculated for Regulatory Year t in accordance with the following Formula:

$$\underline{CRSR_t = CRSEC_t + CRSIC_t + CRSPC_t + CRSCA_t + CRSPA_t}$$

36.10 In the formula above:

CRSEC<sub>t</sub> means the actual amount of the Licensee's Centralised Registration Service External Costs, as calculated for Regulatory Year t by the Licensee, except to such extent (if any) as may be otherwise directed by the Authority acting under Part B of Condition 37.

CRSIC<sub>t</sub> means the actual amount of the Licensee's Centralised Registration Service Internal Costs, as calculated for Regulatory Year t by the Licensee, except to such extent (if any) as may be otherwise directed by the Authority acting under Part B of Condition 37.

CRSPC<sub>t</sub> (a) means in relation to each Regulatory Year Centralised Registration Service Pre-Agreed Cost  
(b) the value of the CRSPC<sub>t</sub> term will be zero unless otherwise that maybe directed by the Authority, following consultation with the Licensee, the SEC Panel, and SEC Parties.

CRSCA<sub>t</sub> (a) means in relation to each Regulatory Year a cost adjustment to the pre-agreed cost.  
(b) the value of the term CRSCA<sub>t</sub> will be zero unless directed by the Authority, as set out in (c).  
(c) CRSCA<sub>t</sub> will be determined in accordance with provisions developed and populated by the Authority in a direction to be given to the Licensee following consultation with the Licensee, the SEC Panel, and SEC Parties.

CRSPA<sub>t</sub> (a) means in relation to each Regulatory Year a performance adjustment.

(b) the value of the term CRSPA<sub>t</sub> will be zero unless directed by the Authority, as set out in (c).

(c) CRSPA<sub>t</sub> will be determined in accordance with provisions developed and populated by the Authority in a direction to be given to the Licensee following consultation with the Licensee, the SEC Panel, and SEC Parties.

### **Part ED: Adjustment mechanism for the Baseline Margin term**

36.119 The amount of the Baseline Margin term as specified in Appendix 1 for any one or more of the Regulatory Years to which that Appendix applies may be varied in such manner and to such extent as may be directed by the Authority in accordance with and subject to the provisions of Appendix 2 (Adjustment mechanism for the BM term), which has effect as part of this condition.

### **Part EE: Calculation of the BMP Adjustment (BMPA) term**

36.120 For the purposes of the Principal Formula, the total amount of the Baseline Margin Performance Adjustment term (BMPA) will be calculated for Regulatory Year t in accordance with the following formula:

$$\text{BMPA}_t = \text{BMIPA}_t + \text{BMOPA}_t$$

36.131 For the purposes of paragraph 36.120, the value of the term BMIPA<sub>t</sub>:

- (a) shall be determined in accordance with the provisions of Part B of Condition 38 (Determination of the BMP Adjustment) until the end of the Regulatory Year in which Completion of Implementation (within the meaning given to that term in Condition 5 (General Objectives of the Licensee)) is achieved (or such earlier date as the Authority may specify in a direction given to the Licensee under paragraph 36.153); and
- (b) thereafter shall be zero.

36.142 For the purposes of paragraph 36.120, the value of the term BMOPA<sub>t</sub>:

- (a) shall be zero until the end of the Regulatory Year 2015/16 (or such later date as the Authority may specify in a direction given to the Licensee under paragraph 36.153); and
- (b) thereafter shall be determined in accordance with the provisions of Part C of Condition 38 (Determination of the BMP Adjustment).

36.153 A direction that is given for the purposes of paragraph 36.131 or 36.142 will be of no effect unless, before issuing it, the Authority has first:

- (a) by Notice given to the Licensee and published on the Authority's website, set out the revised date that it proposes to specify in the direction;

- (b) set out in that Notice a statement of the reasons why the Authority proposes to specify that date;
- (c) specified in the Notice the period (which may not be less than 28 days from the date of the Notice) within which representations may be made to the Authority about its proposals; and
- (d) considered any representations duly received in response to the Notice.

36.164 The Authority must have regard to any representations duly received in response to its Notice under paragraph 36.153 and must give reasons for its decisions in relation to them when giving the relevant direction.

**Part GF: Calculation of the correction factor (K)**

36.175 For the purposes of the Principal Formula, the correction factor (K) shall in the Regulatory Year 2013/2014 have the value of 0, and in each subsequent Regulatory Year shall be calculated in accordance with the following formula:

$$K_t = (AR_{t-1} - RR_{t-1} - BDC_{t-1}) \times \left[ 1 + \frac{(INT_t + ASR_t)}{100} \right]$$

36.186 In the formula for the K term above:

AR<sub>t-1</sub> means the amount of Allowed Revenue in Regulatory Year t-1.

BDC<sub>t-1</sub> means the contribution to bad debt within the Licensee's Internal Costs and Centralised Registration Service Internal Costs in Regulatory Year t-1, and will be zero except where the Licensee has failed to comply fully with its obligations under or pursuant to the SEC in relation to the management of SEC Parties' credit cover and the recovery of bad debt, in which event it will have such value as may be determined by the Authority.

RR<sub>t-1</sub> means the Regulated Revenue in Regulatory Year t-1.

ASR<sub>t</sub> means the Average Specified Rate, as defined in Condition 35(Definitions for the Price Control Conditions), in Regulatory Year t.

INT<sub>t</sub> means the interest rate adjustment in Regulatory Year t made in respect of the relevant amount of over-recovery of Regulated Revenue as determined in accordance with paragraph 36.17.

36.19 The value of the interest rate adjustment INT<sub>t</sub> is determined as follows:

- (a) if, in respect of Regulatory Year t-1, RR<sub>t-1</sub> exceeds the threshold of 110 per cent of AR<sub>t-1</sub>, the Licensee must, by no later than 31 July of the Regulatory Year t, explain and demonstrate to the Authority in writing why that event is justified. After considering the explanation provided and after consulting with the Licensee and SEC Parties, the Authority may direct the Licensee to apply the value of 3 to INT<sub>t</sub> for any proportion of the difference between

~~RR<sub>t-1</sub> and AR<sub>t-1</sub> that the Authority determines has not been justified by the Licensee; or~~

~~(b) if the Authority has not directed the Licensee to apply any value to INT<sub>t</sub>, it will take the value of 1; and~~

~~(c) the Authority may adjust the threshold percentage and the value of the interest rate adjustment INT<sub>t</sub> that are set out in paragraph (a) above in respect of any Regulatory Year by direction, after consulting with the Licensee and SEC Parties.~~

## **Part HG: Interpretation**

36.1~~97~~ For the purposes of this condition, **Retail Prices Index** means:

- (a) the general index of retail prices that is published by the Office for National Statistics each month in respect of all items; or
- (b) if that index in respect of any month that is relevant for the purposes of this condition has not been published on or before the last day of February, such price index as the Authority, after consultation with the Licensee, may determine to be appropriate; or
- (c) if there is a material change in the basis of that index, such other index as the Authority, after consultation with the Licensee, may determine to be appropriate.

36.~~2018~~ Appendices 1 and 2 follow immediately below.

### **Appendix 1: Values for the BM term (£ million and before adjustment for RPI) for each Regulatory Year (see Part C of this condition)**

2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
<b>1.769</b>	<b>3.194</b>	<b>2.724</b>	<b>2.041</b>	<b>2.008</b>	<b>2.059</b>	<b>2.443</b>
2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27
<b>1.959</b>	<b>1.869</b>	<b>1.875</b>	<b>2.035</b>	<b>1.840</b>	<b>0.762</b>	<b>n/a</b>

## **Appendix 2: Adjustment mechanism for the BM term**

### **Introduction**

- A1. In accordance with Part D above, and recognising the uncertainty attaching to the BM values as specified in Appendix 1 (above) at the Licence Commencement Date, this Appendix 2 enables adjustments to be proposed to those amounts and provides for the Authority to assess and determine any such proposals.

### **Part A: Requirements for the proposal of Relevant Adjustments**

- A2. Subject to the following provisions of this Part A, the Licensee may, by Notice given to the Authority, and the Authority may, by Notice given to the Licensee, propose a Relevant Adjustment to any one or more of the BM values specified in Appendix 1 for any one or more of the Regulatory Years to which that Appendix applies.
- A3. A Relevant Adjustment proposed (whether by the Licensee or the Authority) under paragraph A2 must relate to any variation (whether occurring as an aggregation of incremental but non-material changes or as a discrete but material change) that has taken place, or is likely to take place, in any one or more of the following aspects of the Mandatory Business of the Licensee:
- (a) the total volume of the activities comprising that business;
  - (b) the characteristics of the activities comprising that business;
  - (c) the mixture (whether by category or volume) of the activities comprising that business;
  - (d) the risks (whether financial or operational) to which the Licensee is exposed in the carrying on of that business; and
  - (e) the timescales or deadlines that the Licensee is required to meet (whether under this Licence or otherwise) in the carrying on of that business.
- A4. Notice given under paragraph A2 of a proposed Relevant Adjustment must:
- (a) refer to relevant information about actual or forecast levels of expenditure, use of resources, or performance of activities in the carrying on of the Mandatory Business of the Licensee that could not have been available when the values of the BM term in Appendix 1 were first agreed;
  - (b) demonstrate why, to what extent, and in which respects the variation to which the proposed Relevant Adjustment relates is a material change within the overall context of the Mandatory Business of the Licensee; and
  - (c) take account of any Relevant Adjustments previously determined under this Appendix 2.
- A5. Notice given under paragraph A2 of a proposed Relevant Adjustment must also:
- (a) detail the change (or changes) to the BM value (or values) that are proposed and the Regulatory Year (or Years) to which the change (or changes) would relate;

- (b) set out the basis of the calculation of those proposed changes; and
  - (c) explain why, in the opinion of the person making the proposal, the Relevant Adjustment is justified in all the circumstances of the case.
- A6. Notice given under paragraph A2 of a proposed Relevant Adjustment:
- (a) may be served at any time during the month of July (“the Application Window”) in any Regulatory Year (excluding the Regulatory Year 2013/14) provided that it complies in all respects with the provisions of this Part A;
  - (b) must be served within the first Application Window after the date on which the grounds for proposing the Relevant Adjustment first arose; and
  - (c) must contain an Adjustment Date (being the date on which it is proposed that the Relevant Adjustment should take effect), which may not be earlier than 1 April of the Regulatory Year immediately following the Regulatory Year in which the Notice has been served.

### **Part B: Authority’s power to determine Relevant Adjustments**

- A7. Where a proposal for a Relevant Adjustment has been duly made under paragraph A2, the Authority will, by direction given to the Licensee at any time before the end of the Determination Period, and subject to paragraphs A8 and A9, determine any adjustment that is to be made to any BM value specified in Appendix 1 for the Regulatory Year to which that BM value relates (excluding the BM value for the Regulatory Year 2013/14).
- A8. The Authority may, at any time within the Determination Period, by Counter-Notice given to the Licensee direct that the Determination Period is to be extended with effect from the date of its expiry by such a further period (which may not be longer than three months) as is specified in the Counter-Notice.
- A9. The Authority may, at any time within the Determination Period, direct the Licensee to supply any further information that the Authority considers is necessary to enable it to determine the proposed Relevant Adjustment.
- A10. In determining any adjustment under paragraph A7, the Authority will:
- (a) consult with the Licensee and with SEC Parties;
  - (b) have particular regard to the purposes the BM term is intended to serve within the Price Control Conditions and to the basis on which the values attributed to that term were agreed during the Licence Application Process with respect to the Licensee’s expected rate of return on its activities over time; and
  - (c) take no account of the general financial performance of the Licensee under the provisions, taken as a whole, of the Price Control Conditions.
- A11. A determination under paragraph A7 may:
- (a) confirm, reject, or amend the proposed Relevant Adjustment; and
  - (b) include such additional or consequential adjustments (if any) as the Authority thinks appropriate to the BM value (or values) for any Regulatory Year

(or Years) other than the Regulatory Year (or Years) set out in the proposed Relevant Adjustment.

### **Part C: Licensee's right to make a Relevant Adjustment**

A12. If the Authority has not determined a Relevant Adjustment proposed by the Licensee under paragraph A2 by the end of the Determination Period, and the proposal has not been withdrawn, the Relevant Adjustment will be deemed to have been made and Appendix 1 will have effect for all relevant purposes as if it had been amended accordingly with effect from the Adjustment Date.

### **Part D: Guidance for the purposes of this Appendix**

A13. The Authority may issue, and from time to time revise, guidance on the procedure that it will follow and the matters that it will take into account in determining a proposed Relevant Adjustment under paragraph A7.

A14. Guidance under paragraph A13 may, in particular, set out the principles, methods of assessment, and types of criteria that are likely to be applied by the Authority in determining any proposed Relevant Adjustment.

### **Part E: Interpretation**

A15. For the purposes of this Appendix:

**Adjustment Date** has the meaning that is given to that term in paragraph A6(c)

**Application Window** has the meaning that is given to that term in paragraph A6(a).

**Counter-Notice** has the meaning that is given to that term in paragraph A8.

**Determination Period** means the period running from the close of the Application Window at the end of July until the end of the first month of November after that closure, or such later date as may be directed by the Authority in a Counter-Notice served under paragraph A8.

**Relevant Adjustment** means an adjustment that is proposed in accordance with the requirements of Part A of this Appendix.

## Condition 37. Assessment of Mandatory Business costs

### Introduction

- 37.1 This condition has effect on and after 23 September 2013 as one of the Price Control Conditions of this Licence.
- 37.2 The purpose of this condition is to enable the Authority to monitor and assess certain costs associated with the provision of Mandatory Business Services in order to determine whether they were economically and efficiently incurred or, where that is not the case, whether such costs may be liable:
- (a) to be excluded from the mechanism for determining the Licensee's Allowed Revenue under Condition 36; or
  - (b) to be the subject of an undertaking given by the Licensee with respect to their future management.

### Part A: Submission of annual report on cost performance

- 37.3 The Licensee, in submitting Price Control Information to the Authority for the period of any Regulatory Year of this Licence ("the Relevant Regulatory Year") by 31 July in the next Regulatory Year, as required by Condition 32 (Reporting of Price Control Information), must at the same time submit to the Authority a report drawing upon the Price Control Information that includes the following two comparisons.
- 37.4 Comparison 1 is between:
- (a) the amount of the External Costs and Centralised Registration Service External Cost that were actually incurred for the Relevant Regulatory Year; and
  - (b) the amount of the External Costs and Centralised Registration Service External Cost that the Licensee estimated would be likely to be incurred for the Relevant Regulatory Year in its Licence Application Business Plan (and in all updated forecasts of expenditure submitted under Condition 32 by the Licensee).
- 37.5 Comparison 2 is between:
- (a) the amount of the Internal Costs and Centralised Registration Service Internal Cost that were actually incurred by the Licensee for the Relevant Regulatory Year; and
  - (b) the amount of the Internal Costs and Centralised Registration Service Internal Cost that the Licensee estimated it would be likely to incur for the Relevant Regulatory Year in its Licence Application Business Plan (and in all updated forecasts of expenditure submitted under Condition 32 by the Licensee).
- 37.6 The report submitted under paragraph 37.3 must also contain:

- (a) an explanation of any material divergence that is revealed by any of the two comparisons to which paragraphs 37.4 and 37.5 refer between the amount of the category of costs mentioned in sub-paragraph (a) of the comparison and the amount of the category of costs mentioned in sub-paragraph (b) of that comparison; and
- (b) a statement of any material revision arising from any such divergence that the Licensee thinks it is appropriate or necessary to make to any financial or operational matter included in its Licence Application Business Plan for the purposes of any of the remaining years of that plan.

37.7 Without prejudice to the requirements of paragraphs 37.4 and 37.5 with respect to the presentation of costs within the required report, all of the categories of cost mentioned in those paragraphs must be set out in that report in such manner and at such levels of detail as may be required by any Regulatory Instructions and Guidance issued by the Authority under Condition 33 that apply to the Price Control Information provided by the Licensee to the Authority under Condition 32.

### **Part B: Authority's powers with respect to certain costs**

37.8 Subject to paragraph 37.9, and after considering the report that has been submitted to it under paragraph 37.3, the Authority may:

- (a) direct that any External Costs and Centralised Registration Service External Cost or Internal Costs and Centralised Registration Service Internal Cost that it considers were not economically and efficiently incurred in the Relevant Regulatory Year (“the Unacceptable Costs”) are to be excluded from any future calculation of the Licensee’s Allowed Revenue under Condition 36; or
- (b) accept an undertaking given by the Licensee with respect to the Unacceptable Costs on terms that relate to either or both of:
  - (i) the Licensee’s future management of those costs, and
  - (ii) the Licensee’s future procurement of Relevant Service Capability.

37.9 In deciding whether to make a direction or to accept an undertaking under paragraph 37.8, the Authority must:

- (a) consult with the Licensee;
- (b) consider the extent to which the Licensee was able, or should have been able, to control or otherwise influence the occurrence of the Unacceptable Costs, taking due account of the Licensee’s role in procuring any Relevant Service Capability giving rise to those costs;
- (c) consider the likelihood that the Licensee will be able to recover any of the Unacceptable Costs through its future procurement of Relevant Service Capability; and
- (d) consider the likelihood that through appropriate future management actions the Licensee will be able to avoid, prevent, or mitigate a further occurrence of the same or any similar costs.

37.10 Paragraphs 37.8 and 37.9 are without prejudice to the power of the Authority to take account of any other matters that are revealed by or are capable of being derived from the Licensee's Price Control Information under Condition 32 and that the Authority considers would be relevant to its functions under this Condition 37 of monitoring and assessing certain costs associated with the provision of Mandatory Business Services during any Regulatory Year.

**Part C: Guidance for the purposes of this condition**

37.11 The Authority may issue, and from time to time revise, guidance about the procedure it will follow and the matters it will take into account in considering whether and to what extent to exercise its power to give a direction or accept an undertaking under paragraph 37.8.

37.12 Guidance under paragraph 37.11 may, in particular, set out the principles, methods of assessment, and types of criteria that are likely to be applied by the Authority in determining whether costs have been economically and efficiently incurred.

**Part D: Interpretation**

37.14 For the purposes of this condition:

**Licence Application Business Plan** means the plan of that name that:

- (a) was submitted by the Licensee in the course or as a consequence of the Licence Application Process;
- (b) contains the Licensee's estimates (which may be estimates that have been modified by the Licensee as a consequence of the Licence Application Process) of its revenues, costs, capital investments, and cashflows for each Regulatory Year of the Licence Term;
- (c) was taken into account by the Secretary of State in determining the grant of this Licence to the Licensee,

and to which the Licensee committed itself as a condition of that grant.

**Relevant Regulatory Year** has the meaning given to that term in paragraph 37.3.

**Unacceptable Costs** has the meaning given to that term in paragraph 37.8(a).