

Annex 5. EU Exit – Notice of proposed modifications to the licence conditions of the Smart Meter Communication Licence

To: All holders of a Smart Meter Communication Licence

Electricity Act 1989

Section 11A(2)

&

Gas Act 1986

Section 23(2)

Notice of statutory consultation on a proposal to modify the conditions of the Smart Meter Communication Licence.

1. The Gas and Electricity Markets Authority ('the Authority') proposes to modify the conditions under Part 3 of the Smart Meter Communication Licence of Smart DCC Ltd granted or treated as granted under section 7AB(2) and (4) of the Gas Act 1986 and section 6(1A) and (1C) of the Electricity Act 1989 ('the DCC Licence') by amending under section 23(1)(a) of the Gas Act and section 11A(1)(a) of the Electricity Act:
 - SLC1 (Definitions for the Conditions of this Licence)
 - SLC8 (Security controls for the Authorised Business)
 - SLC27 (Indebtedness and transfers of funds)
 - SLC28 (Disposal of Relevant Business Assets)
 - SLC29 (Provision of Information by the Licensee)set out in set out in Annex 5.1.a and 5.1.b to this Notice.
2. The modifications we propose to make are to reflect the changes in the legislative framework that will be implemented in the event that the United Kingdom (UK) leaves the European Union (EU) without a deal.
3. The effect of these proposed modifications is to ensure that the references in the licence to EU law (e.g. Directives, Regulations and Commission decisions) shall be read as references to such EU law as it had effect immediately before exit day subject to any further amendments as may be contained in statutory instruments made under the European Union (Withdrawal) Act 2018. As far as possible, the modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change the current policy positions as reflected in the licence conditions.
4. The proposed modifications and the reasons why they are proposed are stated in Annex 5.1.a to this Notice. The effect of the proposed changes is set out in paragraph 3 of this Notice. Further information concerning the proposed modifications is contained in the letter entitled 'Preparing for EU Exit: statutory consultation on consequential licence

modifications in the event the UK leaves the EU without a deal' which can be found at www.ofgem.gov.uk.

5. Any representations with respect to the proposed licence modification/modifications must be made on or before 15 February 2019 to: Heather Stewart, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to EUExit@ofgem.gov.uk.
6. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.
7. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

Cathryn Scott
Director, Wholesale Markets & Commercial

Duly authorised on behalf of the
Gas and Electricity Markets Authority

14 January 2019

Annex 5.1.a. Smart Meter Communication Licence Modification Table

Standard Licence Condition	Current Wording	Proposed change	Reasons for change
1.4	New definition	<u>“legally binding decision of the European Commission or the Agency for the Co-operation of Energy Regulators” means any relevant legally binding decision of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not Retained EU law.</u>	<p>The licence contains a reference to this phrase in Condition 23. Post EU exit, future decisions of the Commission and the Agency will no longer have any legal effect in the UK. However, decisions made prior to Exit Day are to continue to have effect. The introduction of these new definitions will achieve this.</p> <p>The terminology is consistent with the amendment that will be made by regulations 10 and 41 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 (the “Regulations”)¹ to section 4C of the Gas Act and section 3E of the Electricity Act.</p>
1.4	New definition	<u>“Retained EU Law” has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018.</u>	This definition is required to give effect to the new references to “Retained EU Law”.
8.4	In particular, the system of controls to which	In particular, the system of controls to which paragraph 8.3	This proposal is required because the

¹ The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 were published in draft on 17th December 2018 (<https://assets.publishing.service.gov.uk/media/5c17d12140f0b60c70c4ba79/Regulations.pdf>) and have been laid in draft before the sifting committees of both Houses of Parliament. The modifications that are proposed to the licence are on the assumption that the draft Regulations will be made and come into force in their published format before any proposed licence modification is to take effect. Cross references to the Regulations reflect the numbering in the published draft as at the date of this notice.

Standard Licence Condition	Current Wording	Proposed change	Reasons for change
	<p>paragraph 8.3 refers must include measures designed to ensure that:</p> <p>(a) equipment transported, installed, or operated by the Licensee for the purposes of the Authorised Business is protected against unauthorised access;</p> <p>(b) the supply, repair, and maintenance of such equipment, and the supply of spare parts for it, are at all times under the control of the Licensee;</p> <p>(c) all premises used for or in connection with the conduct of the Authorised Business are physically secured and monitored;</p> <p>(d) equipment and data that are no longer required for any of the purposes of the Authorised Business are securely disposed of or deleted;</p> <p>(e) data processed by the Licensee for the purposes of the Authorised Business is not held outside the European Economic Area; and</p> <p>(f) where data is to be transferred, it is transferred in a secure manner.</p>	<p>refers must include measures designed to ensure that:</p> <p>(a) equipment transported, installed, or operated by the Licensee for the purposes of the Authorised Business is protected against unauthorised access;</p> <p>(b) the supply, repair, and maintenance of such equipment, and the supply of spare parts for it, are at all times under the control of the Licensee;</p> <p>(c) all premises used for or in connection with the conduct of the Authorised Business are physically secured and monitored;</p> <p>(d) equipment and data that are no longer required for any of the purposes of the Authorised Business are securely disposed of or deleted;</p> <p>(e) data processed by the Licensee for the purposes of the Authorised Business is not held outside <u>the United Kingdom and/or</u> the European Economic Area; and</p> <p>(f) where data is to be transferred, it is transferred in a secure manner.</p>	<p>UK is leaving the European Economic Area alongside leaving the EU. This extends it to include the UK.</p>
8.15	<p>The Licensee must at all times:</p> <p>(a) remain a company that is incorporated in the European Economic Area;</p> <p>(b) procure the SMKI Service (within the meaning that is given to</p>	<p>The Licensee must at all times:</p> <p>(a) remain a company that is incorporated in the <u>United Kingdom and/or the</u> European Economic Area;</p> <p>(b) procure the SMKI Service (within the meaning that is</p>	<p>This proposal is required because the UK is leaving the European Economic Area alongside leaving the EU. This amendment extends the</p>

Standard Licence Condition	Current Wording	Proposed change	Reasons for change
	<p>that term in Schedule 5 to this Licence), except to such extent as is otherwise permitted by the SEC, from Relevant Service Capability the provision and management of which are carried on within the United Kingdom; and</p> <p>(c) ensure that all sites and systems that the Licensee relies upon to detect and prevent events that:</p> <ul style="list-style-type: none"> (i) appear to be anomalous; and (ii) may have the potential to impact on the Supply of Energy to Energy Consumers, <p>are configured, operated, and maintained within the United Kingdom.</p>	<p>given to that term in Schedule 5 to this Licence), except to such extent as is otherwise permitted by the SEC, from Relevant Service Capability the provision and management of which are carried on within the United Kingdom; and</p> <p>(c) ensure that all sites and systems that the Licensee relies upon to detect and prevent events that:</p> <ul style="list-style-type: none"> (i) appear to be anomalous; and (ii) may have the potential to impact on the Supply of Energy to Energy Consumers, <p>are configured, operated, and maintained within the United Kingdom.</p>	<p>requirement placed on licensees to UK registered companies post EU exit. This extends it to include the UK.</p>
27.14B	<p>For the purposes of paragraph 27.14A, a “Secure Account” is a bank account held within the European Economic Area in the name of the Licensee that:</p> <p>(a) is separate from any bank account or bank accounting arrangement, however described, that is held in the name of or is otherwise operated by or on behalf of any Affiliate or Related Undertaking of the Licensee; and</p> <p>(b) is so structured and controlled that the revenues accruing to it and</p>	<p>For the purposes of paragraph 27.14A, a “Secure Account” is a bank account held within the <u>United Kingdom and/or the European Economic Area</u> in the name of the Licensee that:</p> <p>(a) is separate from any bank account or bank accounting arrangement, however described, that is held in the name of or is otherwise operated by or on behalf of any Affiliate or Related Undertaking of the Licensee; and</p> <p>(b) is so structured and controlled that the revenues accruing to it and any interest that is earned on them can only</p>	<p>This proposal is required because the UK is leaving the European Economic Area alongside leaving the EU. This extends it to include the UK.</p>

Standard Licence Condition	Current Wording	Proposed change	Reasons for change
	any interest that is earned on them can only be used for the purposes of the Authorised Business of the Licensee as carried on under this Licence.	be used for the purposes of the Authorised Business of the Licensee as carried on under this Licence.	
27.14C	<p>To the extent provided for in the SEC, the Licensee may direct SEC Parties to pay amounts due by way of certain Service Charges relating to the provision of Communications Hubs into a bank account held in the name of a person (other than the External Service Provider) engaged (indirectly pursuant to an External Service Provider Contract) in the business of financing those Communications Hubs. The Licensee must ensure that:</p> <p>(a) such bank account is one which bears a reasonable rate of interest, which is held within the European Economic Area, and which is exclusively used to receive payments of such amounts;</p> <p>(b) the payment of such amounts into such bank account is in settlement of the Licensee’s obligation under the External Service Provider Contract (or any direct agreement entered into by the Licensee in relation to the External Service Provider Contract)</p>	<p>To the extent provided for in the SEC, the Licensee may direct SEC Parties to pay amounts due by way of certain Service Charges relating to the provision of Communications Hubs into a bank account held in the name of a person (other than the External Service Provider) engaged (indirectly pursuant to an External Service Provider Contract) in the business of financing those Communications Hubs. The Licensee must ensure that:</p> <p>(a) such bank account is one which bears a reasonable rate of interest, which is held within the <u>United Kingdom and/or the</u> European Economic Area, and which is exclusively used to receive payments of such amounts;</p> <p>(b) the payment of such amounts into such bank account is in settlement of the Licensee’s obligation under the External Service Provider Contract (or any direct agreement entered into by the Licensee in relation to the External Service Provider Contract) to pay an equivalent amount in respect of those Communications Hubs (unless</p>	<p>This proposal is required because the UK is leaving the European Economic Area alongside leaving the EU. This extends it to include the UK.</p>

Standard Licence Condition	Current Wording	Proposed change	Reasons for change
	<p>to pay an equivalent amount in respect of those Communications Hubs (unless returned under paragraph 27.14C(c));</p> <p>(c) any amounts paid by a SEC Party into such bank account in error are returned to that SEC Party as soon as reasonably practicable after the error is identified (together with any interest earned);</p> <p>(d) an amount equal to the interest that accrues to such bank account (excluding that referred to in paragraph 27.14C(c)) is paid to the Licensee as soon as reasonably practicable after it so accrues;</p> <p>(e) the only withdrawals made from such bank account are in the amounts the Licensee is due to pay under its obligations referred to in paragraph 27.14C(b) and are made when the Licensee is due to pay the same (or are otherwise made in compliance with the Licensee’s obligations under paragraphs 27.14C(c), (d) or (f)); and</p> <p>(f) once the Licensee has paid all of the amounts that it is (or will become) liable to pay under the External</p>	<p>returned under paragraph 27.14C(c);</p> <p>(c) any amounts paid by a SEC Party into such bank account in error are returned to that SEC Party as soon as reasonably practicable after the error is identified (together with any interest earned);</p> <p>(d) an amount equal to the interest that accrues to such bank account (excluding that referred to in paragraph 27.14C(c)) is paid to the Licensee as soon as reasonably practicable after it so accrues;</p> <p>(e) the only withdrawals made from such bank account are in the amounts the Licensee is due to pay under its obligations referred to in paragraph 27.14C(b) and are made when the Licensee is due to pay the same (or are otherwise made in compliance with the Licensee’s obligations under paragraphs 27.14C(c), (d) or (f)); and</p> <p>(f) once the Licensee has paid all of the amounts that it is (or will become) liable to pay under the External Service Provider Contract (or any direct agreement entered into by the Licensee in relation to the External Service Provider Contract) in respect of those Communications Hubs, an amount equal to the balance then held in the bank account is promptly paid to the Licensee.</p>	

Standard Licence Condition	Current Wording	Proposed change	Reasons for change
	<p>Service Provider Contract (or any direct agreement entered into by the Licensee in relation to the External Service Provider Contract) in respect of those Communications Hubs, an amount equal to the balance then held in the bank account is promptly paid to the Licensee.</p>		
28.10	<p>The Licensee may dispose of or relinquish operational control over any Relevant Business Asset without Prior Notice to the Authority if the transaction in question in relation to that asset is required by or under any enactment, or any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or by a regulation or directive of the Council or Commission of the European Union.</p>	<p>The Licensee may dispose of or relinquish operational control over any Relevant Business Asset without Prior Notice to the Authority if the transaction in question in relation to that asset is required by or under any enactment, or any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or by a regulation or directive of the Council or Commission of the European Union <u>that forms part of Retained EU Law.</u></p>	<p>This limits the definition in light of EU law crystallising on exit and directives not forming part of retained EU law.</p>
29.23	<p>Legislation means any applicable provision of:</p> <ul style="list-style-type: none"> (a) a public general Act of Parliament; (b) subordinate legislation within the meaning of the Interpretation Act 1978; (c) a regulation or directive of the Council or Commission of the European Union. 	<p>Legislation means any applicable provision of:</p> <ul style="list-style-type: none"> (a) a public general Act of Parliament; (b) subordinate legislation within the meaning of the Interpretation Act 1978; (c) a regulation or directive of the Council or Commission of the European Union <u>that forms part of Retained EU Law.</u> 	<p>This limits the definition in light of EU law crystallising on exit and directives not forming part of retained EU law.</p>

Annex 5.1.b. Smart Meter Communication Change Marked Licence

We have included the sections of the licence conditions we propose to remove or amend below. Deletions are shown in strike through and new text is double underlined.

Part A: Definitions arranged in alphabetical order

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

Legally binding decision of the European Commission or the Agency for the Co-operation of Energy Regulators means any relevant legally binding decisions of the European Commission and/or the Agency, but a binding decision does not include a decision that is not, or so much of a decision as is not Retained EU Law.

Retained EU Law has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018.

Condition 8. Security controls for the Authorised Business

Introduction

- 8.1 This condition requires the Licensee to install, operate, and maintain adequate and proportionate security controls that are designed to protect the integrity of the physical, organisational, and information assets of the Authorised Business.
- 8.2 The requirements of this condition are without prejudice to the obligations imposed on the Licensee by:
- (a) Condition 7 (General controls for the Authorised Business) in respect of corporate governance, internal control, and risk management;
 - (b) Condition 10 (Protection of Confidential Information) in respect of the duty to prevent unauthorised disclosure of Confidential Information; and
 - (c) such requirements or other provisions of the SEC as may apply in respect of security controls relating to the conduct of the Authorised Business.

Part A: Requirements for Licensee's control of physical security

- 8.3 The Licensee must at all times have in place a system of controls that is designed to ensure the security of all equipment, networks, processes, procedures, and data used in or for the purposes of carrying on the Authorised Business so as to minimise opportunities for theft, fraud, or other unauthorised interference or misuse that whether directly or indirectly could cause any interruption or cessation of Services.

- 8.4 In particular, the system of controls to which paragraph 8.3 refers must include measures designed to ensure that:
- (a) equipment transported, installed, or operated by the Licensee for the purposes of the Authorised Business is protected against unauthorised access;
 - (b) the supply, repair, and maintenance of such equipment, and the supply of spare parts for it, are at all times under the control of the Licensee;
 - (c) all premises used for or in connection with the conduct of the Authorised Business are physically secured and monitored;
 - (d) equipment and data that are no longer required for any of the purposes of the Authorised Business are securely disposed of or deleted;
 - (e) data processed by the Licensee for the purposes of the Authorised Business is not held outside the United Kingdom and/or the European Economic Area; and
 - (f) where data is to be transferred, it is transferred in a secure manner.

Part B: Requirements for Licensee's control of organisational security

- 8.5 The Licensee must verify (by such means as may be appropriate in each case) the backgrounds of its existing and all new personnel engaged in or for the purposes of carrying on the Authorised Business.
- 8.6 Without prejudice to its obligations under Part E below, the Licensee's duty under paragraph 8.5 includes a requirement to take all appropriate steps within its power to ensure that any agents and contractors of the Licensee (including, in particular, its External Service Providers) establish and maintain arrangements that are equivalent in their effect to those established and maintained by the Licensee for the purposes of that paragraph.
- 8.7 The Licensee must have in place an appropriate framework for security management that provides for an appropriately qualified Chief Information Security Officer to be directly responsible to the Licensee's board of directors for ensuring that:
- (a) the Licensee's security policies are communicated to all of its staff;
 - (b) training that is tailored to the security roles and responsibilities of different staff within the Licensee's organisation is provided on a regular basis;
 - (c) each person engaged in or for the purposes of the Authorised Business is (and remains) (i) a fit and proper person to be so engaged, and (ii) suitably qualified and appropriately trained to be so engaged; and

(d) the Licensee is at all times compliant with the requirements of this condition and (to the extent applicable) of the SEC with respect to security controls for the Authorised Business.

8.8 This paragraph applies if, in premises that are occupied by (i) the Licensee or an External Service Provider and (ii) some other person, there is any area that must be kept secure in order to maintain the security of the Authorised Business.

8.9 Where paragraph 8.8 applies, the Licensee must ensure that:

(a) the area to which that paragraph refers (which may be the whole or any part of the area occupied by the Licensee or an External Services Provider within the premises in question) is designated as a Secure Area; and

(b) an appropriate level of security in relation to the Secure Area is maintained (in particular, by ensuring that no person gains access to such area unless it is a person whose name is on a register maintained by the Licensee or the External Service Provider for that purpose, or who is supervised by such a person).

Part C: Requirements for Licensee's control of information security

8.10 The Licensee must, within 12 months after it first provides Core Communication Services under or pursuant to the SEC, hold appropriate certification by a body that is accredited by the United Kingdom Accreditation Service in relation to the following standards of the International Organisation for Standards ("ISO") with respect to the resilience, reliability, and security of information assets, processes, and systems used for the purposes of carrying on the Authorised Business:

(a) ISO/IEC 27001:2005 (under the title of *Information Technology – Security Techniques – Information Security Management Systems*); and

(b) any equivalent standard of the ISO that updates or replaces that standard.

Part D: Requirement to maintain a Register of Security Incidents

8.11 The Licensee must:

(a) maintain a register of every incident (as may be defined in accordance with such provisions of the SEC as are applicable) arising from a failure (whether actual or apparent) or an absence of any of the security controls established, operated, and maintained by the Licensee pursuant to this condition ("the Register of Security Incidents");

- (b) record each such incident in the Register of Security Incidents immediately upon becoming aware of it;
- (c) immediately inform such body as is required by the provisions of the SEC to be so informed of the incident as soon as the Licensee has become aware of it; and
- (d) within such timescale as is specified by the Authority, provide the Authority with a report that details:
 - (i) the nature, cause, and impact (or likely impact) of the incident,
 - (ii) the action taken by the Licensee to remedy or minimise the immediate or expected consequences of the incident, and
 - (iii) the action taken (or proposed to be taken) by the Licensee to ensure that the incident does not recur, or that the risk of recurrence is minimised.

8.12 The Licensee must also:

- (a) make the Register of Security Incidents available to the Authority for its inspection at all times; and
- (b) provide the Authority with a copy of the Register of Security Incidents on the expiry or any revocation of this Licence.

Part E: Requirements in respect of the Licensee's contracts

- 8.13 The Licensee must not enter into any contractual arrangement with any person (including, in particular, any External Service Provider) that does not contain appropriate provisions requiring such steps to be taken as may be necessary to facilitate the Licensee's fulfilment of its obligations under this condition and under or pursuant to the SEC in respect of the ongoing security of its physical, organisational, and information assets.
- 8.14 The provisions mentioned in paragraph 8.13 include, in relation to the expiry or any termination of an External Service Provider Contract:
 - (a) requirements for an External Service Provider to return or provide to the Licensee any equipment or other physical or organisational assets and any information assets that are essential to the ongoing secure conduct of the Authorised Business; and
 - (b) requirements for the Licensee to revoke any security credentials that are held by the External Services Provider pursuant to that contract.

Part F: Legal and operational location of the Licensee

8.15 The Licensee must at all times:

- (a) remain a company that is incorporated in the United Kingdom and/or the European Economic Area;
- (b) procure the SMKI Service (within the meaning that is given to that term in Schedule 5 to this Licence), except to such extent as is otherwise permitted by the SEC, from Relevant Service Capability the provision and management of which are carried on within the United Kingdom; and
- (c) ensure that all sites and systems that the Licensee relies upon to detect and prevent events that:
 - (i) appear to be anomalous; and
 - (ii) may have the potential to impact on the Supply of Energy to Energy Consumers,

are configured, operated, and maintained within the United Kingdom.

Part G: Interpretation

8.16 For the purposes of this condition:

Chief Information Security Officer means the person having the duties set out at paragraph 8.8 and who is qualified as a senior security manager.

Register of Security Incidents has the meaning that is given to that term in paragraph 8.11(a).

Secure Area has the meaning that is given to that term in paragraph 8.9(a).

Condition 27. Indebtedness and transfers of funds

Introduction

27.1 This condition places restrictions on the Licensee's ability to incur debt, or create security, or have exposure to the financial risks of other persons, and applies for the purpose of ensuring that such liabilities as the Licensee may assume will only be liabilities relating to its conduct of the Authorised Business.

Part A: General prohibition of certain transactions

27.2 In addition to complying with the requirements of Condition 28 (which restricts the Licensee's ability to dispose of Relevant Business Assets), the Licensee must not, without the Authority's consent following the Licensee's disclosure of all material facts, enter into any transaction or commitment of a type described or referred to in the provisions of this Condition 27 that does not comply with the restrictions that are applicable to it under those provisions.

Part B: Restricted Transactions Category 1

27.3 The Licensee must not create or continue or permit to remain in effect any mortgage, charge, pledge, lien or other form of security or encumbrance, or undertake any Indebtedness to any other person, or enter into any guarantee or any obligation to any other person, except in accordance with each of the following requirements:

- (a) the transaction in question must be on an arm's length basis;
- (b) it must be on normal commercial terms;
- (c) it must be for a Permitted Purpose; and
- (d) if it is within the ambit of Condition 28 (Disposal of Relevant Business Assets), it must comply with the requirements of that condition.

Part C: Restricted Transactions Category 2

27.4 The Licensee must not transfer, lease, license, or lend any sum or sums, asset, right, or benefit to any Affiliate or Related Undertaking of the Licensee except by way of any of the following transactions:

- (a) a dividend or other distribution out of distributable reserves; or
- (b) a repayment of capital; or
- (c) a payment properly due for any goods, services, or assets provided on an arm's length basis and on normal commercial terms; or
- (d) a transfer, lease, licence, or loan of any sum or sums, or of any asset, right, or benefit, that is on an arm's length basis, on normal commercial terms, and is made in compliance with the Payment Condition described in

paragraph 27.5; or

(e) a repayment of, or payment of interest on, a loan that is not prohibited by the provisions of Part B above; or

(f) payments for group corporation tax relief calculated on a basis that does not exceed the value of the benefit received; or

(g) an acquisition of shares or other investments that is not inconsistent with the requirements of Condition 9 (Independence and autonomy of the Licensee) and that is made on an arm's length basis and on normal commercial terms.

27.5 The Payment Condition referred to in paragraph 27.4 is that the consideration due in respect of the transaction in question must be paid in full when the transaction is entered into, unless either:

(a) the counter-party to the transaction has and maintains until payment is made in full an Investment Grade Issuer Credit Rating as defined in Appendix 1 of Condition 26 (Financial stability and financial security); or

(b) the obligations of that counter-party are fully and unconditionally guaranteed throughout the period during which any part of the consideration remains outstanding by a guarantor that has and maintains such a rating.

27.6 The provisions of this Part C are subject to the provisions of Part D below.

Part D: Circumstances that trigger the provisions of Part E

27.7 Where any of the four circumstances described in the following paragraphs of this Part D applies, the Licensee must not, except with the Authority's consent, enter into or complete any transaction of a type described or referred to in Part C except in accordance with the provisions of Part E below.

27.8 Circumstance 1 is that arrangements providing assurance of the Licensee's financial stability to which the Authority has consented under Part A of Condition 26 have for whatever reason ceased to be legally effective.

27.9 Circumstance 2 is that, as part or the whole of the arrangements to which paragraph 27.8 refers, the Licensee holds any credit rating of a type approved by the Authority for the purpose of those arrangements, and either:

(a) that credit rating is under review for possible downgrade; or

(b) the Licensee has been placed on “credit watch” or “rating watch” (within the meaning of those terms as used by reputable credit rating agencies in Great Britain) with a negative designation with respect to that rating.

27.10 Circumstance 3 is that the Licensee:

(a) has given the Authority a certificate in the form of Certificate B3 as set out in Appendix 1 to Condition 24 (Availability of all necessary resources) for the purposes of Part B of that condition, and has not subsequently given the Authority a certificate in the form of Certificate B1 or Certificate B2 as set out in that Appendix 1; or

(b) has given the Authority a certificate in the form of Certificate D3 as set out in Appendix 2 to Condition 24 (Availability of all necessary resources) for the purposes of Part D of that condition, and has not subsequently given the Authority a certificate in the form of Certificate D1 or Certificate D2 as set out in that Appendix 2; or

(c) has informed the Authority of any circumstance of the type referred to at Part F of Condition 24, and has not subsequently given the Authority a certificate in the form of Certificate B1 or Certificate B2 as set out in Appendix 1 to that condition, or (as the case may be) in the form of Certificate D1 or D2 as set out in Appendix 2 to that condition.

27.11 Circumstance 4 is that the Licensee has materially breached any formal covenant or similar arrangement relating to its financial affairs that it has entered into with a bank or finance provider, unless one of the following applies:

(a) the Licensee has remedied the breach, or has renegotiated the covenant or arrangement, to the satisfaction of the counter-party concerned and the remedy or renegotiation (as the case may be) has been notified to the Authority; or

(b) in response to a written request from the Licensee, the Authority has either confirmed in Writing, before the breach occurs, that the breach in question will not trigger the provisions of Part E, or has not provided a substantive response to such a written request within seven days after receiving it.

Part E: Restricted Transactions Category 3

27.12 Where any of the circumstances described in Part D above applies, the Licensee must not, without the consent of the Authority following the Licensee’s disclosure of all material facts, transfer, lease, license, or lend any sum or sums, or any asset, right, or benefit, to any Affiliate or Related Undertaking of the Licensee except by way of one of the following transactions:

- (a) a payment properly due for any goods, services, or assets in relation to commitments entered into before the date on which the relevant circumstance under Part D arose, and which are provided on an arm's length basis and on normal commercial terms; or
- (b) a transfer, lease, licence, or loan of any sum or sums, asset, right, or benefit on an arm's length basis, on normal commercial terms, and where the value of the consideration due in respect of the transaction in question is payable wholly in cash and is also paid in full when the transaction is entered into; or
- (c) a repayment of, or payment of interest on, a loan that is not prohibited by the provisions of Part C above and that was contracted before the date on which the relevant circumstance under Part D arose, provided that such payment is not made earlier than the original due date for payment in accordance with its terms; or
- (d) payments for group corporation tax relief calculated on a basis that does not exceed the value of the benefit received, so long as they are not made before the date on which the amounts of tax so relieved would otherwise have been due.

Part F: Restricted Transactions Category 4

- 27.13 The Licensee must not enter into any agreement or incur any commitment that incorporates a Cross-Default Obligation.
- 27.14 But that prohibition does not prevent the Licensee from giving any guarantee that is permitted by and compliant with the requirements of Part B above.

Part F1: Ring-fencing of the Licensee's revenues

27.14A Subject to paragraph 27.14C, the Licensee must ensure that all revenues that:

- (a) accrue to the Licensee from Service Charges levied in accordance with the provisions of Condition 18 (Charging Methodology for Services) and of Condition 19 (Charging Statement for Services); or
- (b) are otherwise received by the Licensee in relation to the carrying on of the Authorised Business of the Licensee,

are paid into and held and maintained in a Secure Account (but without prejudice to the full and timely disbursement from that account of all monies that are properly payable by the Licensee).

27.14B For the purposes of paragraph 27.14A, a “**Secure Account**” is a bank account held within the United Kingdom and/or the European Economic Area in the name of the Licensee that:

- (a) is separate from any bank account or bank accounting arrangement, however described, that is held in the name of or is otherwise operated by or on behalf of any Affiliate or Related Undertaking of the Licensee; and
- (b) is so structured and controlled that the revenues accruing to it and any interest that is earned on them can only be used for the purposes of the Authorised Business of the Licensee as carried on under this Licence.

27.14C To the extent provided for in the SEC, the Licensee may direct SEC Parties to pay amounts due by way of certain Service Charges relating to the provision of Communications Hubs into a bank account held in the name of a person (other than the External Service Provider) engaged (indirectly pursuant to an External Service Provider Contract) in the business of financing those Communications Hubs. The Licensee must ensure that:

- (a) such bank account is one which bears a reasonable rate of interest, which is held within the United Kingdom and/or the European Economic Area, and which is exclusively used to receive payments of such amounts;
- (b) the payment of such amounts into such bank account is in settlement of the Licensee’s obligation under the External Service Provider Contract (or any direct agreement entered into by the Licensee in relation to the External Service Provider Contract) to pay an equivalent amount in respect of those Communications Hubs (unless returned under paragraph 27.14C(c));
- (c) any amounts paid by a SEC Party into such bank account in error are returned to that SEC Party as soon as reasonably practicable after the error is identified (together with any interest earned);
- (d) an amount equal to the interest that accrues to such bank account (excluding that referred to in paragraph 27.14C(c)) is paid to the Licensee as soon as reasonably practicable after it so accrues;
- (e) the only withdrawals made from such bank account are in the amounts the Licensee is due to pay under its obligations referred to in paragraph 27.14C(b) and are made when

the Licensee is due to pay the same (or are otherwise made in compliance with the Licensee's obligations under paragraphs 27.14C(c), (d) or (f)); and

(f) once the Licensee has paid all of the amounts that it is (or will become) liable to pay under the External Service Provider Contract (or any direct agreement entered into by the Licensee in relation to the External Service Provider Contract) in respect of those Communications Hubs, an amount equal to the balance then held in the bank account is promptly paid to the Licensee.

27.14D The Licensee will:

(a) keep records, in a form that may be readily inspected and analysed, of every financial transaction or financial event relating to the operation of the Secure Account or any bank account of the nature referred to in paragraph 27.14C; and

(b) if the Authority so requests, provide the Authority with access to such records for inspection by it at any time.

Part G: Interpretation

27.15 A transaction by the Licensee is on an arm's length basis for the purposes of this condition if it is on terms that:

(a) are fair and reasonable to the other party to the transaction; and

(b) are no more favourable to that party than those that it could reasonably expect to obtain in any comparable arm's length transaction with someone other than the Licensee.

27.16 For the purposes of this condition:

Cross-Default Obligation means a term of any agreement or arrangement under which the Licensee's liability to pay or repay any debt or other sum arises or is increased or accelerated, or is capable of arising or increasing or of being accelerated, because of a default (however described or defined) by any person other than the Licensee, unless:

(a) that liability can arise only as the result of a default by a Subsidiary of the Licensee;

(b) the Licensee holds a majority of the voting shares in that Subsidiary and has the right to appoint or remove a majority of its board of directors; and

(c) that Subsidiary carries on business only for a purpose that is a purpose of the Mandatory Business of the Licensee as described in Condition 6 (Authorised Business of the Licensee).

Indebtedness includes any obligation, whether incurred solely by the Licensee or jointly with any other person, and whether as principal or surety, for the payment or repayment of money, whether present or future, actual or contingent.

Investment Grade and **Issuer Credit Rating** are each to be read in accordance with the explanatory provisions set out in Appendix 1 of Condition 26 (Financial stability and financial security).

Payment Condition has the meaning given to that term in paragraph 27.5.

Condition 28. Disposal of Relevant Business Assets

Introduction

28.1 This condition prevents the Licensee from taking any action that is or would be a Disposal of or Relinquishment of Operational Control over any Relevant Business Asset except in accordance with the provisions set out below.

Part A: Exclusion of any novations directed by the Authority

28.2 This condition does not apply to any Disposal of a Relevant Business Asset that consists of the novation (as directed by the Authority) to any Successor Licensee pursuant to Condition 43 (Arrangements for the handover of business) of:

(a) the whole of the Licensee's interest in any External Service Provider Contract within the meaning of Condition 16 (Procurement of Relevant Service Capability)

on terms that are substantially the same as those contained in Schedule 2 to this Licence; or

(b) the whole of the Licensee's interest under the Smart Energy Code on such terms as are required to be provided for within that document by virtue of paragraph 24(a) of Condition 22 (The Smart Energy Code).

Part B: Duty to maintain a Register of Relevant Business Assets

- 28.3 Within six months after Licence Commencement Date, the Licensee must have in place and give the Authority a copy of a Register of Relevant Business Assets that identifies and records particulars of the Relevant Business Assets of the Licensee.
- 28.4 The Relevant Business Assets that are to be identified and particularised within the Register of Relevant Business Assets consist of:
- (a) every External Service Provider Contract to which the Licensee is, or is likely to become, a party in accordance with Condition 16 (Procurement of Relevant Service Capability);
 - (b) any other asset (however described and in whatever form, whether tangible or intangible) that is considered to be essential to the Licensee's ability to carry on the Authorised Business in accordance with this Licence; and
 - (c) any contractual right to receive any sum or sums or any other financial asset from another person.
- 28.5 The Licensee must:
- (a) review the Register of Relevant Business Assets at least once in each Regulatory Year for the purpose of ensuring that its contents remain at all times consistent with the requirements of this condition; and
 - (b) provide the Authority with a copy of the Register as revised from time to time following any such review.
- 28.6 The Authority may at any time, following consultation with the Licensee, direct the Licensee to modify the Register of Relevant Business Assets in such manner and to such extent as may be specified in the direction.

Part C: Requirement to obtain the Authority's prior consent

- 28.7 Except where the provisions of Part D or Part E below apply, the Licensee:
- (a) must give the Authority at least two months' Notice of its intention to dispose of or relinquish operational control over any Relevant Business Asset, together with such further information as the Authority may request relating to that asset, or to the circumstances of the intended Disposal or Relinquishment of Operational Control, or to the intentions with regard to those matters of the person who proposes to acquire the asset or operational control over it; and

(b) may dispose of or relinquish operational control over that Relevant Business Asset if (and only if) the Authority consents to the transaction in question or does not inform the Licensee in Writing of any objection to it within the Notice Period.

28.8 A consent by the Authority under paragraph 28.7(b) may be given subject to the acceptance by the Licensee, or by any third party in favour of whom the Relevant Business Asset is proposed to be disposed or to whom operational control would be relinquished, of such conditions as may be specified in that consent.

Part D: Exemptions from Part C by virtue of a general consent

28.9 The Licensee may dispose of or relinquish operational control over any Relevant Business Asset without Prior Notice to the Authority:

(a) if the Authority has for the purposes of this condition issued a direction containing a general consent (whether or not subject to conditions) to individual transactions of a specified description, or to the Disposal of or Relinquishment of Operational Control over any Relevant Business Assets of a specified description; and

(b) the transaction or Relevant Business Asset in question is of a description to which that general consent applies and will be in accordance with any conditions to which the consent is subject; or

(c) if Part E below applies.

Part E: Exemptions from Part C under a statutory requirement

28.10 The Licensee may dispose of or relinquish operational control over any Relevant Business Asset without Prior Notice to the Authority if the transaction in question in relation to that asset is required by or under any enactment, or any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or by a regulation or ~~directive~~ of the Council or Commission of the European Union that forms part of Retained EU Law.

Part F. Interpretation

28.11 For the purposes of this condition, and in relation to a Relevant Business Asset:

Disposal means any of the following:

- (a) a novation, transfer, or other passing of that asset (whether or not for value) to a person other than the Licensee; or
- (b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) that asset; or
- (c) the grant of any mortgage, charge or other form of security over that asset or

(d) where the asset comprises a contractual arrangement of any kind, any variation of its terms that would be likely to reduce or otherwise impair the efficiency and effectiveness of the Licensee’s provision of Services under or pursuant to this Licence, and references to “dispose” are to be read accordingly.

Notice Period means the period of the Notice given to the Authority under paragraph 28.7(a) with respect to the Licensee’s intention in relation to the asset.

Register of Relevant Business Assets has the meaning that is given to that term in paragraph 28.3.

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

Condition 29. Provision of Information by the Licensee

Introduction

29.1 This condition imposes on the Licensee duties to provide Information (subject to certain exceptions) when requested to do so by the Authority or the Secretary of State, and also requires the Licensee to obtain legally enforceable undertakings in respect of those duties from persons who ultimately control the Licensee.

Part A: General obligation to provide Information

29.2 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to exercise any functions given or transferred to it by or under any Legislation, the Licensee must give that Information to the Authority within the time and in the form requested.

29.3 After receiving a request from the Secretary of State for Information that he may reasonably require or that he considers may be necessary to enable him to perform any functions given or transferred to him by or under any Legislation, the Licensee must give that Information to the Secretary of State within the time and in the form requested.

29.4 Information that is provided under paragraph 29.2 or 29.3 must be accompanied or supplemented by such explanations as the Authority or the Secretary of State (as the case may be) may reasonably require.

29.5 This Part A is subject to the provisions of Part C below.

Part B: Provision of information in response to standing request

- 29.6 The Authority may by Notice put in place (and may from time to time revise after consulting the Licensee) a standing request requiring the Licensee to provide it with such Information, at such times or in relation to such periods of time, and in such manner as may be specified in the Notice, including prior Information about such actions proposed to be taken by the Licensee as may be so specified.
- 29.7 The Secretary of State may by Notice put in place (and may from time to time revise after consulting the Licensee) a standing request requiring the Licensee to provide him with such Information, at such times or in relation to such periods of time, and in such manner as may be specified in the Notice, including prior Information about such actions proposed to be taken by the Licensee as may be so specified.
- 29.8 Information that is provided under paragraph 29.6 or 29.7 must be accompanied or supplemented by such explanations as the Authority or the Secretary of State (as the case may be) may reasonably require.
- 29.9 This Part B is subject to the provisions of Part C below.

Part C: Limits of the obligation to provide Information

- 29.10 Neither this condition nor any other condition of this Licence requires the Licensee to give the Authority or the Secretary of State:
- (a) any Information for any such purpose as is referred to in section 38 of the 1986 Act or section 28 of the 1989 Act (each dealing with the power to require information for enforcement purposes) that the Licensee could not be compelled to produce or provide under such section; or
 - (b) any Information that the Licensee would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.
- 29.11 Neither this condition nor any other condition of this Licence requires the Licensee to give Information to the Authority or the Secretary of State in respect of any functions of the Authority under section 34 of the 1986 Act or section 47 of the 1989 Act (each dealing with the general duty of the Authority to keep matters under review).
- 29.12 But the Licensee must, if requested by the Authority, give reasoned comments on the accuracy and text of any information that the Authority proposes to publish pursuant to section 35 of the 1986 Act or section 48 of

the 1989 Act (each dealing with the publication by the Authority of information and advice in relation to consumer matters).

Part D: Sufficiency of Information provision by the Licensee

- 29.13 The power of the Authority or (as the case may be) of the Secretary of State under this condition to request Information is additional to that person's power to call for Information under or pursuant to any other condition of this Licence.
- 29.14 But where the Licensee provides Information to the Authority or (as the case may be) the Secretary of State in accordance with any other condition of this Licence, such provision will be presumed to be sufficient for the purposes of that condition unless in either case that person states by Notice to the Licensee that in its opinion such further Information as is specified in that Notice will be required to enable it to exercise its functions.

Part E: Procurement of an Information Undertaking

- 29.15 The Licensee must procure a legally enforceable undertaking ("the Information Undertaking") in favour of itself, in a form specified by the Authority with effect from the grant of this Licence, from each company or other person that the Licensee knows or should reasonably know is at any time an Ultimate Controller of the Licensee.
- 29.16 The terms that must be given full and binding effect by virtue of the Information Undertaking procured under paragraph 29.15 are that the Ultimate Controller (in this condition only, "the Information Covenantor"):
- (a) will give to the Licensee; and
 - (b) will procure that any person (including a corporate body) that is a Subsidiary of, or is controlled by, the Information Covenantor (other than the Licensee itself or any Subsidiary of the Licensee) will give to the Licensee,
- all such Information as may be necessary to enable the Licensee to comply with its obligations under Parts A and B above.
- 29.17 The Information Undertaking that is to be procured under paragraph 29.15:
- (a) must have been obtained before the end of seven days after the date on which the corporate body or person in question becomes an Ultimate Controller of the Licensee; and

(b) must be stated to remain in full force and effect for as long as the Licensee is the holder of this Licence and the Information Covenantor remains an Ultimate Controller of the Licensee.

Part F: Evidence of compliance and the duty to enforce

- 29.18 Whenever the Licensee has obtained an Information Undertaking in accordance with paragraph 29.17(a), it must:
- (a) give the Authority evidence of its compliance without delay, including a certified copy of the undertaking;
 - (b) at all times comply with any direction from the Authority to enforce the undertaking; and
 - (c) immediately inform the Authority in Writing if it becomes aware that the undertaking has ceased to be legally enforceable or that there has been any breach of its terms.

Part G: Restriction of arrangements with an Ultimate Controller

- 29.19 Except where the Authority otherwise consents, the Licensee must not enter (directly or indirectly) into any agreement or arrangement with any Ultimate Controller of the Licensee or, where the Ultimate Controller is a corporate body, with any of the Subsidiaries of such an Ultimate Controller (other than a Subsidiary of the Licensee itself) at any time when:
- (a) an Information Undertaking is not in place in relation to the Ultimate Controller; or
 - (b) there is an unremedied breach of an Information Undertaking that is in place in relation to that Ultimate Controller; or
 - (c) the Licensee is in breach of the terms of any direction given by the Authority under paragraph 29.18(b).

Part H: Information required from agents and contractors

- 29.20 This paragraph applies to the Licensee in relation to its dealings with any person who is materially connected with the carrying on of the Authorised Business (including, in particular, any External Service Provider) but who is outside the jurisdiction of an Information Undertaking obtained under Part E above.
- 29.21 Where paragraph 29.20 applies, the Licensee must not enter into or be a party to any agreement or arrangement with the person mentioned in that paragraph that does not contain rights enabling the Licensee to procure from that person and to provide to the Authority or (as the case may be) the

Secretary of State any Information that is requested under or pursuant to this condition.

- 29.22 Paragraph 29.21 applies (for the avoidance of doubt) to any request for Information that may be needed in order to facilitate the handover of the Licensee's Authorised Business to a Successor Licensee in accordance with the provisions of Condition 43 (Arrangements for the handover of business).

Part I: Interpretation

- 29.23 For the purposes of this condition:

Information means information in any form or medium, however conveyed or stored, and of any description specified by the Authority or the Secretary of State, and includes any documents, accounts, estimates, returns, records, certificates, or reports, and data of any kind, whether or not prepared specifically at the request of the Authority or the Secretary of State, and any and all Confidential Information within the meaning of Condition 10 (Protection of Confidential Information).

Information Covenantor has the meaning given to that term in paragraph 29.16.

Information Undertaking has the meaning given to that term in paragraph 29.15.

Legislation means any applicable provision of:

- (a) a public general Act of Parliament;
- (b) subordinate legislation within the meaning of the Interpretation Act 1978;

a regulation or ~~directive~~ of the Council or Commission of the European Union that forms part of Retained EU Law.