

## NGET Standard Conditions

## Part A INTERPRETATION, APPLICATION AND PAYMENTS

Condition	Comment
A1 Definitions and interpretation	<p>General – The current style for Condition A1 is to have a full stop at the end of each definition. The proposed draft does not follow this in some places and we suggest should be made consistent. We also presume that all definitions will be ordered alphabetically in the modified licence.</p> <p><i>“Authority Website”, “Final Determinations” and “Regulatory Year”</i> are all terms used in and defined in Condition B15 (RIGS) so do not need to be defined in Condition A1.</p> <p><i>“Financial Resilience Report”</i> – ‘...paragraph/...’ should be deleted.</p> <p><i>“Instrument Credit Rating”</i> – For clarity, instead of ‘a rating which, the Authority directs, is equivalent...’, we propose ‘a rating <u>which the Authority directs as being equivalent...</u>’.</p> <p><i>“Issuer Credit Rating”</i> – We are not clear why the changes have been made to this definition. The changes appear to attempt to merge the definitions of Issuer Credit Rating and Investment Grade and it appears that this may have been in error. The concept of Issuer Credit Rating needs to be retained for the drafting of Condition B10 to work. As an exception to this, we acknowledge that Ofgem may wish to amend sub-paragraph (e). However, as above for clarity, instead of ‘a rating which, the Authority directs, is equivalent...’, we propose ‘a rating <u>which the Authority directs as being equivalent...</u>’.</p> <p><i>“Investment Grade”</i> - As above for clarity, instead of ‘a rating which, the Authority directs, is equivalent...’, we propose ‘a rating <u>which the Authority directs as being equivalent...</u>’.</p> <p><i>“Potential Mitigating Actions”</i> - This definition should be extended to include reference to improvement of the Significant Instrument Credit Rating as this is a potential trigger for the requirement to set out such actions. We propose: “<u>means actions designed to improve the Issuer Credit Rating, Significant Instrument Credit Rating or financial resilience;</u>...”.</p> <p><i>“Price Control Period”</i> – This defined term is used in proposed Condition B10 but is currently defined only in Special Conditions. The definition should be added in Condition A1.</p> <p>Table, “Regulatory Year”: We see no rationale to define this term by including a reference to 05:00. This has not been consulted on and is a change from the current defined term “Relevant Year” which makes no such reference to 05:00. It appears that Ofgem has sought to align the definition with the definition of “Regulatory Year” that is to be used in the GT licence. The existing definition of “Formula Year” which this will replace does refer to 05:00 but this is to align with the definition of “Gas Year” and associated terms. There is no such rationale in the electricity transmission licence. If Ofgem intends to retain the change then please can it explain the reason for this.</p>

## A7 Offshore Transmission Implementation

No comments. We agree with the removal of this condition

### Part B GENERAL

Condition	Comment
B10 – Credit rating of the licensee and resulting obligations	<p>Title – It appears to us that ‘...<i>resulting obligations</i>’ is unclear (as the obligations are not the result of credit ratings). We propose changing the heading to ‘<i>Credit rating of the licensee and Negative Rating Actions</i>’.</p> <p>1. – ‘<i>Negative Rating Actions</i>’ can be removed here, since Negative Rating Actions lead to obligations in respect of Published Rating Reports and Financial Resilience Reports (already included in the paragraph).</p> <p>3. – It appears to us that ‘...<i>related Published Rating Report</i>...’ might be misconstrued. Our understanding is that ‘...<u>relevant Published Rating Report</u>’ is the intention and we propose changing to this wording. We have not been provided with a capitalised definition for “<i>Working Days</i>” and we suggest that this is lower case.</p> <p>3(a) – Our understanding is that the obligation here is to ‘<i>notify the Authority of the <u>Negative Rating Action</u></i>...’ and we request that this change is made. If the obligation is broader, we request that 3(a) should also apply only where permitted by the relevant rating agency (as with 3(b)).</p> <p>4 – The licence drafting here does not clearly align with the intent stated in Ofgem’s <i>reasons and effects</i> document (para 2.24). This is because the paragraph reads as if the obligation applies only where the circumstances in (a)-(c) arise <u>and there is a subsequent</u> Negative Rating Action, rather than as intended that the obligation applies whenever those circumstances arise. We propose changing paragraph 4 to ‘...<i>If paragraph [5] applies, the licensee must provide the Authority with a Financial Resilience Report during the period of [60] days beginning with the date of the Negative Rating Action referred to in paragraph [5].</i>’ New paragraph 5 would begin ‘<i>This paragraph applies where:...</i>’ and would then include the sub-paragraphs (a)-(c).</p> <p>4.(c) – In addition to the points above, we understand that ‘<i>negative watch</i>’ should be capitalised as this term is defined.</p> <p>6.(e) – There is a typo here. We propose ‘<i>that the licensee <u>considers to be appropriate</u></i>’.</p>
B12 System Operator – Transmission Owner Code	<p>1(b) The drafting in this paragraph has changed since the September informal consultation version and the proposed changes here are not reflected in the B12 issues log circulated alongside the consultation:</p>

	<ul style="list-style-type: none"> <li>• Previous drafting referred to revenue net of payments to offshore transmission owners. This has now been removed and replaced with reference to electricity interconnector licensees. Given the drafting comments in the issues log, the inconsistency with paragraph 4.8 of the reasons and effects document and the lack of any rationale for this change we are assuming that this is an error. Please can Ofgem confirm;</li> <li>• Drafting now refers to revenue net of payments to the Authority and the Agency. This drafting is not reflected in the issues log or the reasons and effects document. Please can Ofgem clarify the rationale for the change;</li> <li>• The drafting states “net of payments <u>to</u> ....., <u>and</u> special condition 3.5 (Legacy etc) of the system operator’s licence. This drafting does not currently make sense and will need amendment if it is intended to refer to payments made under condition 3.5 of the ESO licence. In addition, this drafting is not reflected in the issues log. or the reasons and effects document. Please can Ofgem clarify the rationale for the change.</li> </ul> <p>6(b). The reference to sub-paragraph 6(b)(vA) is correct and should not be changed. It appears in the current licence and is, for instance, cross referred to in 6(b)(vi).</p> <p>6GE. After “where” in line 1, the text beginning “the Authority reasonably considers” should be sub-paragraph (a) and the text after “and/ or” should be sub-paragraph (b) (as per the existing licence condition).</p> <p>6H. This should be shown as a change from the current licence as the current reference here in the existing licence to 6F is an error.</p>
B13 BETTA Implementation	No comments. We agree with the removal of this condition
B14 BETTA run-off arrangements scheme	No comments. We agree with the removal of this condition
B15 Regulatory Instructions and Guidance RIGS	<p>9: cross refer to “paragraph 8” not “B15.8”</p> <p>20: In the definition of “Annual Report”, amend to read “under this condition”</p>
B16 Electricity Network Innovation Strategy [Sign Off John Wilson]	<p>8 (a) and (b): remove closed bracket after cross reference to paragraph 7 and 6 respectively.</p> <p>9: Definition of “Innovation Project” in paragraph 9. In addition to the reference to Special Condition 5.2 (RIIO2 NIA) we query whether this definition should also refer to Special Condition 5.3 (Carry over NIA)</p>
B23 Data Assurance Requirements	Part A paragraph 3, as a result of the previous text being deleted there is no definition of “Data Assurance Guidance”. Suggest the following is added to the new Part E:

“Data Assurance Guidance means the document issued by the Authority from time to time pursuant to a direction under Part B paragraph 6, the scope and conditions of which are set out in paragraph 8;”

Part A previous paragraph 4: We note that Ofgem has not provided a response to our previous comment on this in the information licence consultation and no change has been made to the drafting we therefore repeat the comment again below.

We would reiterate again our views provided via the LDWG and Issues Logs that equivalent drafting to that which is set out in paragraph 4 of the current ET and GT Licence should be reinstated. This ensures that where data is provided by a licensee under other licence conditions, which themselves provide for a different level of accuracy and/or reliability, the data will be treated as meeting the requirements of Standard Licence Condition B23 or Standard Special Condition A55 (as appropriate), ensuring the licensee is not found to have breached its Data Assurance obligations whilst complying with any specific licence requirements relating to the particular data in question. Such conflicting obligations create uncertainty under the licence as it is not clear which obligation should apply. We do not agree with the justification that Ofgem previously provided in the Issues Logs for the removal of this drafting and would request again that it is reinstated.

#### B24 Housekeeping

General – We raised serious concerns with the introduction of this mechanism and the lack of clear justification for it in our response to the September informal licence drafting consultation. We have not been able to locate a response in either the *reasons and effects* document or the Final Determinations. In short, the process removes licensees’ right of appeal to the CMA in respect of “*minor*” changes through the housekeeping condition, but what is “*minor*” is not made clear and does not expressly align with non-substantive which is our understanding of the intention. Ofgem has also not explained why the mechanism is justified. The change we propose below would align more closely with our understanding of the policy intention.

3. - Ofgem should be required to (actively) consult the working group on the issue. The current provision does not explain how the working group will be in a position to have and convey views on the issue. We propose changing the drafting to ‘*the Authority will consult the Housekeeping Modification Working Group*’.

4. - Grammatical error. “*are a Housekeeping Modification*” should be “*is a Housekeeping Modification*”. In addition, to be clear what the direction may cover, we propose the following addition “*..., it may modify the licence by direction to implement the intended modification*”.

6. - There is a formatting error and 5(c) has fallen within paragraph 6.

6(a) – For consistency, we propose referring to “*the modification...*” (singular).

7. Definition of “*Housekeeping Modification Working Group*” – On the basis that the definitions will be included within the condition, we propose that ‘*under SLC B24 condition*’ should be replaced with ‘*under this condition*’. We note that Ofgem has provided no further detail on this working group and we request that further details on its terms of reference and constitution are provided prior to Ofgem making its licence decision. Our understanding is that representatives from licensees will be able to join the group.

7. Definition of “*Housekeeping Modification*” – We propose that, if Ofgem considers such a mechanism to be justified, the definition of ‘*Housekeeping Modification*’ should be expressly limited to those types of changes which are listed. In other words replacing the opening words with ‘*means any of the following changes:...*’. There should also be an “*and*” connecting the list.

If no change is made given Ofgem has not given further explanation of its policy intention, our understanding is that (in line with accepted legal principles) “*minor changes*” in the condition is to be interpreted in line with the list which follows it and is therefore limited to changes which are non-substantive.