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RECCo response to: Smart Secure Electricity Systems (SSES) Programme: Licensing Consultation – Proposals on load control licence regulations and licence conditions

We welcome the opportunity to respond to this consultation. Our non-confidential response represents the views of the Retail Energy Code Company Ltd (RECCo) and is based on our role as operator of the Retail Energy Code (REC). RECCo is a not-for-profit, corporate vehicle ensuring the proper, effective, and efficient implementation and ongoing management of the REC arrangements. We seek to promote trust, innovation and competition, whilst maintaining focus on positive consumer outcomes.

We support the policy intent to enable consumer-led flexibility (CLF) to scale, while ensuring appropriate protections for consumers and the electricity system. In our view, the key implementation challenge is not simply to license "signal senders", but to ensure the end-to-end consumer journey works in practice, including how load control arrangements interact with core retail market processes and protections.

The consultation material makes clear both the scale of ambition and the risks that sit behind the new regime. The Clean Flexibility Roadmap targets scaling consumer-led flexibility from around 2.5GW today to up to 12GW by 2030, and the accompanying impact assessment expects 10–12GW of consumer-led flexibility capacity by 2030. As this scales, load control becomes system-critical: NESO estimates that an unplanned and sudden shift of 300MW of electrical load (for example via a cyber-attack at a stressed system peak) could trigger blackouts, and the impact assessment highlights foreseeable consumer risks such as "lock-in" and barriers to switching providers unless devices are replaced. Against that evidence base, implementation should prioritise interoperable, portable consumer journeys (consent, enrolment, ongoing operation, complaint/exit/switching) and avoid parallel arrangements that would later need costly retrofit.

While our response addresses each consultation question, we would emphasise the following overarching points:

- **A joined-up approach is essential to preserve consumer trust and effective retail competition:** Load control arrangements will often be experienced by consumers as part of their retail energy proposition, even where delivered by separate entities. If CLF develops as an adjacent, loosely connected layer, there is a material risk of fragmented accountabilities, inconsistent consumer protections, and poorer consumer outcomes. We therefore consider it important that implementation choices are made with the "whole journey" in mind (from consumer consent, to enrolment, to ongoing operation, to complaint/exit/switching), and with clear interfaces to established retail arrangements.

  We also note that the Flexibility Market Asset Registration (FMAR) programme is being designed to act as a "single source of truth" for assets participating in flexibility markets, aligned with Data Sharing Infrastructure (DSI) approaches and with mechanisms to incorporate updates over time. We are working with Elexon on the interactions between FMAR, the Consumer Consent Solution (CCS) and MHHS, and

these mechanisms will be crucial to meeting the Government's Net Zero objectives. It is therefore important that consumer consent, market onboarding and governance arrangements are not developed in silos: aligning FSP participation with REC-governed CCS arrangements would strengthen interoperability and reuse across intersecting programmes, reduce duplication and delivery risk, and support clearer end-to-end outcomes for consumers and the system.

- **The intersection between CLF contracts and supply tariffs may create misalignment and consumer detriment if not managed:** Many CLF propositions assume a particular tariff basis and/or consumer baseline against which "savings" or remuneration are calculated. However, consumers can and do change supplier and tariff over time — including moving onto time-of-use and increasingly dynamic pricing products. A change in tariff can therefore change (or undermine) the economics of a CLF contract, potentially in ways that run counter to the aims of that contract. For example:
    - where consumers move onto a dynamic tariff, the tariff itself may already provide strong price signals; layering automated load control on top can expose consumers to outcomes they do not anticipate (including paying more at certain times, or receiving lower benefits than expected);
    - where CLF remuneration is framed as "bill savings", a tariff change can create confusion or dispute about whether the CLF service is delivering value, and for whom; and,
    - if the CLF arrangement creates friction, cost, or functional loss when a consumer switches supplier/tariff, this can become a de facto barrier to switching, weakening the fundamentals of retail competition and increasing the risk of lock-in.

- **The risks appear foreseeable and preventable:** In our view, even with well-intentioned market participants, the coexistence of a retail supply contract and one or more CLF contracts at the same premises creates foreseeable coordination risks that can—and should—be designed out from the outset. This is because both the retail supply contract and the CLF contract(s) may influence how and when electricity is consumed, and how costs and benefits are allocated. As load control scales, system operability will increasingly depend on clear arrangements for "signal primacy", given that multiple parties may seek to influence the same premises, device or asset. There is a practical risk that Suppliers, aggregators, network schemes and Customers themselves may send competing signals to the same asset and, without an enforceable hierarchy, such conflicts could both undermine consumer interests and create operational risks for the electricity system. We therefore encourage DESNZ and Ofgem to ensure that the licensing regime, and the associated code-led grid stability arrangements, anticipate and address how these conflicts will be prevented and managed in practice.

- **Implementation should hard-wire consumer protections and portability "by design":** To minimise consumer detriment and preserve competitive outcomes, we consider the regime should place particular weight on: clear and comparable consumer disclosures; requirements to reassess service suitability following material changes (including tariff changes); simple and effective routes for consumers to pause, exit or switch without disproportionate fees or loss of device functionality; and strong expectations around consent, data access, and ongoing consent management.

More broadly, we consider that CLF will only reach mass market scale if it integrates cleanly with established retail arrangements, not least trusted consent mechanisms, interoperable data access, and switching processes. We therefore encourage continued focus on how the load control regime will align with, and where necessary "plug into", these wider market frameworks so consumers retain genuine choice, mobility, and protection as the market develops.

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We would be happy to discuss any of the points raised in our response.

Yours sincerely,

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Appendix: RECCo response to consultation questions

Q1: With reference to regulation 4 and inserting new sub-sections (3J)(a) and (3K) into section 4 of the Electricity Act 1989, do you agree with the proposed load controller licensable activity, noting that it distinctly captures organisations creating a load control signal, changing a load control signal, and controlling the timing of sending a load control signal where controlling the timing of sending a load control signal is for the purpose of effecting load control? Please explain your answer and if you disagree provide alternative suggestions.
Yes. RECCo supports the proposed drafting of the *load controller* licensable activity. By distinctly capturing (i) creating a load control signal, (ii) changing a load control signal, and (iii) controlling the timing of sending a signal (where that timing control is for the purpose of effecting load control), the definition is more likely to bring into scope the parties that *materially determine* load control outcomes, and reduces the risk of accountability gaps created through supply-chain structuring. To support consumer trust and proportionality, we recommend that Department for Energy Security and Net Zero (DESNZ) and/or Ofgem accompany the drafting with clear guidance (and examples) confirming that "controlling the timing" is intended to capture decision-making discretion over dispatch/scheduling (including via automation/optimisation), and not parties that merely provide technical transmission, routing, or hosting services without discretion.
Q2: With reference to regulation 4 and inserting a new sub-section (3J)(b) into section 4 of the Electricity Act 1989, do you agree with the proposed FSP licensable activity? Please explain your answer and if you disagree provide alternative suggestions.
RECCo supports the proposed drafting to make Flexibility Service Provider (FSP) activity a licensable activity. In our view, it appropriately targets the consumer-facing point of accountability - i.e. the organisation that "assume[s] responsibility for managing the relationship with the consumer by entering into a contract… to provide for the sending of a load control signal… at that consumer's premises". This is consistent with RECCo's focus on protecting the end-to-end consumer journey and preserving effective retail competition as flexibility scales. We also recommend that implementation guidance makes clear that an organisation may act as both an FSP and a load controller, and that where delivery is outsourced, FSP obligations should be capable of being flowed down contractually/technically to avoid accountability gaps.
Q3: With reference to regulations 4 (amending section 4 of the Electricity Act 1989) and 6 (amending section 6 of the Electricity Act 1989), do you agree with the rest of the proposed drafting to make load control a licensable activity and authorising Ofgem to grant load control licences? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.
RECCo is generally supportive of the drafting to establish load control as a licensable activity and to authorise Ofgem to grant load control licences. We consider this provides necessary legal clarity and enforceability for a nascent but potentially system-critical activity, and creates a stable foundation for innovation while enabling Ofgem to apply proportionate, risk-based conditions over time. As in our response to Q2, we suggest DESNZ/Ofgem provide clear guidance on how the regime will operate where roles overlap (FSP/load controller) and where services are delivered through supply chains, to ensure end-to-end accountability as the market moves towards mass-market propositions.
Q4: Do you agree with the ESA definitions outlined in this section and the intent to align the ESA definitions of the exemptions order with first phase ESA regulations (where applicable), noting that organisations will need to identify whether they are required to hold a licence based on the scope and definitions outlined (although,

please also note it is only load controllers and FSPs that exclusively undertake out of scope activity that will not require a licence)? If not, please specify the definitions you disagree with, alternative suggestions or ways to mitigate your implementation concerns and your rationale.

We support the proposed approach to Energy Smart Appliance (ESA) definitions and the intent to align the exemptions order definitions with the first-phase ESA regulations (where applicable). Aligning the in-scope ESA definitions for Electric Vehicle Smart Charge Points (EVSCPs), electrical heating appliances and Battery Energy Storage System(s) (BESS) with the ESA regulations should materially reduce unnecessary complexity for market participants and provide greater clarity and consistency as the regime scales.

We also agree with the principle of using the Energy Act 2023 definitions for "energy smart appliance" and "load control signal", including the clarification that licensing scope should turn on the fact of load control being effected (including where mediated by systems such as Home Energy Management Systems), rather than the technical route by which a signal is delivered.

Q5: Do you agree with using the small business consumer definition to determine the additional consumer-based exemption for FSPs? Please explain your answer and if you disagree provide alternative suggestions.

Yes, we support using the existing small business consumer definition to determine the additional consumer-based exemption for FSPs. This approach appropriately targets the licensing regime at domestic and small non-domestic consumers, while allowing an exemption for FSPs that only contract with larger non-domestic consumers (and therefore do not present the same consumer protection rationale).

Using an established definition that is already embedded in the wider retail energy framework helps to preserve alignment with existing supply-market concepts and obligations, avoids introducing an additional (and potentially conflicting) threshold for "small business", and reduces implementation complexity for organisations operating across both supply and flexibility propositions. It also supports the consultation's stated intent to align the new arrangements with existing frameworks that consumers (and market participants) are already familiar with.

To aid operability, we suggest any accompanying guidance makes clear the practical steps an FSP should take to determine status (e.g., appropriate customer declarations and reasonable checks), so the exemption is usable in practice without creating disproportionate administrative burden.

Q6: Do you think government should consider any further exemptions? If so, please specify which exemption(s), the approach you would take to the exemption(s) and your rationale.

The government's recognition that consumer-facing load control is a nascent, fast-evolving market, supports the targeted use of exemptions as a deliberate mechanism to enable innovation while the regime beds in. Alongside licensing, exemptions can help strike an appropriate balance between robust consumer protections and avoiding undue barriers to entry, testing and iteration.

RECCo considers that carefully scoped exemptions - potentially complemented by creative use of the regulatory sandbox - could provide a proportionate route for new propositions to be trialled and improved, while ensuring that the full licensing framework applies where risks to consumers are higher and/or services scale.

We support the proposed technology-scope exemptions, including where load control is delivered exclusively via technologies that are out of scope in the first phase (for example certain ESAs or private EV charging), provided eligibility criteria are clear and enforceable.

RECCo also supports consumer-type exemptions where appropriate. Some business consumers (including some within the "small business" definition) may be energy-savvy and partnering with FSPs to develop energy management solutions. These "sophisticated buyers" could reasonably opt to waive or tailor certain protections

to access innovative products that might not otherwise be offered, subject to strong governance, transparency and safeguards for less informed or vulnerable consumers.

Q7: Do you agree with a 12-month transitional period being written into legislation? Please explain your answer and if you disagree, provide alternative suggestions.

RECCo is not opposed in principle to a transitional/grace period, recognising the need for an orderly move to mandatory licensing and for businesses to adapt to a new regulatory framework. However, we do not consider it appropriate for the transition to be justified wholly or in part on providing Ofgem time to assess and process applications. We would expect all such applications to be processed in a timely manner in keeping with other types licence applications, which generally do not take 12 months. The case for a transitional period should instead be rooted in ensuring a smooth and safe market transition for consumers and the electricity system, with clear expectations on implementation readiness.

We also consider there may be a more proportionate way to manage burden, particularly for smaller and early-stage providers, than relying on a blanket transitional period. DESNZ's own analysis indicates that compliance costs are likely to fall disproportionately on smaller organisations, notably where requirements involve largely "fixed" costs such as governance and management controls and consumer-protection processes. This has also been highlighted by industry commentators given the nascency of the sector, and the impact assessment recognises that only a relatively small number of (often small) organisations may initially be in scope.

Taken together, this supports exploring more targeted proportionality mechanisms. For example, scaling the commencement or intensity of certain requirements by objective indicators such as the number of contracted consumers/ESAs or the volume of controlled capacity, while maintaining a consistent baseline of core protections from market entry.

In that context, we suggest Government and Ofgem give further consideration to scaling the application of certain licence requirements by reference to the scale of a load control business, rather than (or in addition to) a fixed time-based grace period. This could mirror approaches used elsewhere in retail regulation where certain obligations were phased in as licensees reach defined thresholds (e.g., by customer numbers or comparable objective metrics). For load control, this could be framed using measurable indicators such as: number of contracted consumers/ESAs, aggregate controlled capacity, or other risk-based thresholds, while maintaining a consistent baseline of core consumer protections across the market. This would also be consistent with the broader policy intent to ensure requirements are proportionate to risk (as already reflected in the consultation's use of threshold-based approaches in other areas, e.g. cyber).

More generally, we note DESNZ is already considering routes such as exemptions and potential derogations to mitigate costs for micro and small businesses, and we would welcome further exploration of such mechanisms (including threshold-based commencement of specific obligations) to ensure proportionality without delaying the introduction of the licensing perimeter itself.

Q8: With reference to regulations 8-15 and Schedule 1, do you agree with the proposed amendments to the Electricity Act 1989, the Utilities Act 2000 and the Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) Regulations 2019, noting that Ofgem are separately consulting on the detail of the load control licence application form? Please explain your answer and if you disagree provide alternative suggestions where relevant.

RECCo broadly supports Regulations 8–15 as appropriate consequential amendments that ensure the new "carrying on a load control activity" concept is properly integrated into the existing statutory framework.
In particular, we support Regulations 8–14, which extend established Electricity Act 1989 tools and duties to load control activity (including safety-related regulation, Ofgem's general functions, information handling protections,

security of supply direction-making powers, and the ability to request statistical information). This is a sensible approach that promotes regulatory coherence and avoids gaps in oversight.

We also support Regulation 15 and Schedule 1, which (i) bring load control activity within scope of Ofgem's impact assessment duty under the Utilities Act 2000, and (ii) update the 2019 licence application regulations so that applications for a load control licence are supported by the relevant information and documentation required through the application process.

The proposed commencement approach also appears pragmatic, with the consequential Electricity Act amendments taking effect after a lead-in period.

Q9: With reference to regulation 16 and Schedule 2, do you agree with the approach to bring FSPs within scope of the existing statutory framework to regulate complaints handling standards and ADR, noting that this:

a. Will require FSPs to comply with regulations 1 -7, and 11 of The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008;

b. Will require FSPs to participate in the Energy Ombudsman ADR scheme. Please explain your answer and if you disagree provide alternative suggestions.

RECCo supports the proposed approach to extend established consumer complaints handling standards and access to Alternative Dispute Resolution (ADR) to Flexibility Service Providers (FSPs). Aligning FSPs with the existing framework, and requiring participation in a single, recognised ADR scheme (the Energy Ombudsman), should provide consumers with a clear and familiar route to redress where issues cannot be resolved directly with the provider.

To ensure the arrangements operate effectively and proportionately in a multi-party flexibility context, we recommend the following points are addressed through guidance and implementation:

- **"No wrong door" escalation and clear signposting:** Consumers may not distinguish between issues caused by an FSP's flexibility service and those linked to their supplier/tariff. Requirements should therefore ensure clear, consistent signposting and effective referral arrangements between suppliers and FSPs so consumers are not passed between parties.
- **Clarity of scope for multi-party complaints:** Guidance should set expectations on how complaints should be handled where multiple parties contribute to the consumer outcome (e.g. device manufacturer, FSP, supplier), including evidence-sharing and timeliness, while maintaining clear accountability to the consumer.
- **Proportionate reporting and administration:** We support the principle of annual reporting on compliance, but consider the reporting requirements should be scaled to avoid disproportionate burden where complaint volumes are low (e.g. simplified "nil return" reporting where no complaints are received), consistent with the consultation's stated objective of proportionality for smaller entrants.

REC accession would also improve regulatory coherence by clarifying where issues should be addressed through established code assurance and dispute pathways versus licence enforcement. In particular, where a complaint or compliance issue relates to consent capture, consent evidence, portability, or CCS processes, routing this through the REC governance framework reduces ambiguity and duplication. This "single source of truth" approach should also support faster resolution and clearer accountability for consumers and market participants.

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Overall, RECCo agrees that the proposed complaints and ADR arrangements are an important part of building consumer confidence in flexibility services, provided implementation guidance supports seamless consumer journeys and avoids unnecessary administrative burden, particularly for low-volume and early-stage providers.

Q10: With reference to paragraph 2(3) of Schedule 2 of the draft regulations, do you agree that regulation 9 of The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 should not apply to FSPs until a future time when government and Ofgem deem it appropriate to extend consumer advocacy services to this market? Please explain your answer and if you disagree suggest when you think it would be appropriate for consumer advocacy services to extend to this market, whether that be for the launch of the licence or another specific time.

RECCo understands that the approach to consumer advocacy/advice services for consumer-facing load control has not yet been settled. We therefore agree it is appropriate, on an interim basis, to temporarily disapply the relevant requirements in the Consumer Complaints Handling Standards Regulations for load control licensees. However, we consider this should be subject to a clear, timebound delay. In particular, the temporary disapplication should be achieved through a sunset provision in the Regulations, so that the exemption automatically expires (or triggers a mandatory review) by a defined date unless explicitly extended following consultation. This would provide market certainty, maintain momentum to complete the consumer advocacy framework, and ensure that appropriate consumer support and escalation routes are introduced within a reasonable and transparent timeframe.

Q11: With reference to licence condition 3 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this licence condition, noting that to meet the requirement the licensee would need to have direct ownership or legally enforceable rights over assets, mechanisms or arrangements such as but not limited to premises, facilities, staff, equipment, IT systems and brand name? Please explain your answer and if you disagree provide alternative suggestions.

RECCo supports Standard Condition 3 (Operational capability) and welcomes its close alignment with the electricity supply licence operational capability principle Standard Licence Condition (SLC) 4A. Using a familiar framework should promote consistent regulatory expectations and confidence that licensees have the people, systems and processes needed to comply with obligations and manage consumer harm risks.

However, load control activity differs from supply: services are typically digital and automated and may rely on interoperability with third-party systems and consumer-owned Energy Smart Appliances (ESAs), rather than assets owned or operated by the licensee. Ofgem/DESNZ should therefore ensure guidance on “robust capability” and “sufficient control” is applied proportionately and reflects these realities. For clarity, the condition (or guidance) could state it applies to the licensee’s regulated load control/FSP activity and related systems, and does not extend to responsibility for the design, manufacture or general operation of consumer ESAs, beyond ensuring interfaces and load control signals are safe and fit for purpose.

Q12: In the impact assessment accompanying this consultation we assume that licence condition 3 creates no additional costs. Do you agree with this assumption? If not, please provide a rationale and details of the additional costs that condition 3 would entail for your organisation. When calculating these costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include as much supporting evidence as possible in your response.

While we would not expect compliance with Standard Condition 3 to be entirely without cost, we agree that it represents a reasonable baseline expectation for any firm undertaking load control activity, reflecting the need to maintain appropriate governance, systems, processes and operational oversight. We also note that, when the equivalent operational capability principle was introduced into the electricity supply licence, no material incremental costs were identified, and it has not, to our knowledge, been an area where supply licensees have subsequently sought relief from the obligation.

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Q13: With reference to licence condition 4 and the relevant definitions in licence conditions 1 and 2, do you agree that the drafting of this licence condition is the right approach to proportionately promote financial responsibility in the market? Please explain your answer and if you disagree provide alternative suggestions.
RECCo notes that the intent of Standard Condition 4 (Capital and Liquidity) overlaps to some extent with existing company law requirements around solvency and directors' duties. However, we support its inclusion in the load control licence as a clear, ex ante and enforceable regulatory expectation, consistent with the comparable financial responsibility provisions in the electricity supply licence. In particular, it provides Ofgem with an appropriate basis to monitor whether a licensee is operating sustainably, without relying solely on insolvency-based triggers or after-the-fact remedies. We also support the associated notification of key events. These notifications can provide an early warning of deteriorating financial resilience and potential consumer/system risks, enabling proportionate supervisory engagement before issues crystallise into disorderly market exit or consumer detriment.
Q14: With reference to licence condition 5 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions.
RECCo supports the proposed Fit and Proper Person requirements. We note these are broadly comparable to the provisions applied to electricity supply licensees, and represent a well-established, proportionate safeguard to help ensure that licensed parties (and those exercising material influence over them) can be trusted to meet their obligations and manage consumer and system risks appropriately. Applying an equivalent standard in the load control regime should promote regulatory consistency, support confidence in the market, and help deter poor conduct and avoidable harm.
Q15: Which additional costs would your organisation face for complying with licence conditions 4 and 5? Please comment on the management cost assumptions in the impact assessment. When calculating these costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.
RECCo will not be a load control licensee and has therefore no comment on the expected compliance costs.
Q16: With reference to licence condition 6 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this condition, noting that we have not included obligations related to data retention? Please explain your answer and if you disagree provide alternative suggestions.
RECCo supports the intent of Standard Condition 6 (Provision of information), noting it is broadly aligned with the equivalent obligation in the electricity supply licence. A clear, enforceable requirement to provide information to Ofgem (and, where relevant, the Secretary of State) is an important underpinning for effective supervision, monitoring and enforcement. We also agree it is appropriate that the condition is tailored to reflect the differing nature of load control activity compared with supply, including the omission of supply-specific data retention requirements where these are not relevant or necessary to administer the load control regime.
Q17: With reference to licence condition 7 and the relevant definitions and interpretation set out in licence conditions 1 and 2, do you agree with the proposed drafting of this condition? Please explain your answer and if you disagree provide alternative suggestions.
RECCo agrees with, and supports, the proposed drafting of licence condition 7. We consider the "open and cooperative" obligation to be an appropriate, proportionate foundation for regulatory oversight in a nascent market, and it complements (rather than duplicates) the more specific information-request powers elsewhere in the standard conditions. In particular, we support the proactive self-reporting requirement in 7.2, including

where actions or omissions may give rise to a likelihood of customer detriment, and the legal privilege carve-out in 7.3.

Condition 7 also has clear precedent in the electricity supply licence. Electricity Supply SLC 5A adopts the same structure and core obligations (open/cooperative; disclose relevant circumstances - particularly those creating a likelihood of detriment; and privilege protection).

Q18: With reference to licence condition 8 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this condition? Please explain your answer and if you disagree provide alternative suggestions.

RECCo is generally supportive of the drafting and intent of licence condition 8, which provides a clear mechanism for aligning the load control licensing regime with existing industry code frameworks and supporting a coherent approach as the market develops.

However, notwithstanding our overall support, we note that the draft condition 8 framework (and the "Industry Code" definition it relies on) omits the REC. For the reasons set out elsewhere in our response, particularly the expected operational and consumer-facing interdependencies between load control arrangements and established retail market processes, we consider the REC should be added to the list of codes for the purposes of condition 8. This would help avoid creating a regulatory boundary that does not reflect operational reality and, as flexibility is scaled towards a mass-market proposition, could risk misalignment between the load control regime and retail market governance. Adding the REC would also support consistent, end-to-end delivery as arrangements evolve.

Q19: With reference to 8.4 – 8.10 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed provisions to support the functioning interaction between codes and the licence? If not, please specify which provisions you disagree with and your rationale.

RECCo agrees with the intent of conditions 8.4–8.10 and supports the objective of ensuring the licence and code frameworks operate coherently and proportionately as load control scales. Notwithstanding that the draft condition 8 framework (and the "Industry Code" definition it relies on) captures the Balancing and Settlement Code, the Connection and Use of System Code and the Distribution Use of System Agreement and the Grid/Distribution Codes but omits the REC (which we consider should be added), these provisions provide an important foundation for future-proofing governance and delivery.

8.4–8.6 provides a pragmatic mechanism for Ofgem to direct relief from specific code-compliance obligations where these would otherwise be duplicative or unnecessary. This is consistent with established precedent in the electricity supply licence, including the "Licence Lite" approach, under which a direction can relieve a supplier of certain industry code obligations where robust alternative arrangements exist.

We also support 8.7–8.8 on consequential change: load control licensees should not be able to frustrate cross-code alignment where modifications are needed to keep the overall framework workable.

Finally, strongly support 8.9–8.10 to ensure licensees are fully engaged in future transformational change (including Significant Code Reviews and wider code reform), with clear obligations to cooperate in planning, implementation, systems/process integration, testing, data provision/cleansing and milestone delivery, reducing delivery risk and supporting timely, effective reform.

Q20: Do you agree with our intention to create a framework to empower industry to manage grid stability risks posed by load controllers, by having a licence condition that requires load controllers to accede to, and comply with the relevant sections of The Grid Code via Connection and Use of System Code (CUSC) and The

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Distribution Code via Distribution Connection and Use of System Agreement (DCUSA)? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

RECCo agrees with the intention behind Q20. Grid stability and safety risks arising from load control are systemic in nature, and it is appropriate that load controllers are brought within a clear, enforceable framework that supports consistent operational standards and coordinated risk management across the sector.

However, while we recognise the Government's stated desire to keep regulation proportionate in a nascent market, we consider there is also merit in "starting with the end point in mind": designing early arrangements that reduce fragmentation, minimise consumer harm, and avoid having to retrofit protections later at greater cost and complexity. This is consistent with RECCo's view that transitional governance should be structured around a clear end goal, strengthening risk management and supporting a seamless transition to enduring arrangements.

Consumer outcomes and operational risk are intertwined with retail arrangements

Although Q20 is framed in terms of technical code accession, we think it is important to recognise that the load control "user journey" will be experienced by consumers as part of the retail energy market, not as a separate adjacent market. RECCo has previously noted that positioning consumer-led flexibility as standalone risks confusion and could inhibit mass-market uptake; governance therefore needs to manage interdependencies and ensure interoperable data/consent access and portability (and to prevent tying/exclusivity that could cause consumer harm).

In practice, participation in load control (and switching between flexibility providers) will require close integration with existing retail market arrangements, including:

- **Consent capture/management:** (increasingly expected to be delivered through the Consumer Consent Solution (CCS));
- **Parallel, and potentially integrated, "switching" type journeys:** (e.g. switching between flexibility service propositions, and interactions with existing supplier relationships);
- **Consistent governance, performance assurance and dispute resolution:** that consumers can rely on, especially where control of devices and data access is involved.

DESNZ's consultation itself recognises that Government is still exploring switching barriers and the potential need for further intervention as the market develops—which reinforces the value of designing today's framework so that it can scale without repeated structural change.

Further consideration should be given to requiring load control licensees to be REC Parties from the outset

Against that backdrop, RECCo recommends that Government and Ofgem consider whether load control licensees should be required to become REC Parties from the outset (or, at minimum, to accede to those REC provisions that govern the relevant consumer-facing arrangements they will rely upon). This would be consistent with the underlying design logic in Condition 8 - where parties participate in, or rely on, central industry infrastructure to deliver system-critical or consumer-critical outcomes, it is proportionate that they sit within the relevant governance and assurance framework.

This is because key consumer-facing enablers (notably the CCS, and existing switching arrangements) are being progressed through REC governance, and RECCo has previously noted that—at a minimum—switching arrangements sit within the REC ecosystem. Requiring REC Party status would provide a single, coherent basis for:

- access to, and compliance with, the CCS and associated assurance/dispute pathways;

- consistent application of consumer-protection-by-design principles; and
- reducing the risk of parallel, duplicative (or conflicting) contractual frameworks emerging across multiple providers.

Importantly, the CCS design work is explicitly premised on avoiding "parallel or inconsistent frameworks" by adopting and extending proven REC mechanisms, minimising time/cost, and focusing governance on consumer trust and assurance that consent is handled consistently, auditably and safely across market participants. The CCS consultation also highlights that incorporating CCS within the REC reduces complexity for participants and supports scalability as new services and use cases emerge.

In our view, it would be counterproductive if load control licensees must (a) meet licence-driven consumer-facing obligations in practice, but (b) sit outside the principal code governance arrangements that are being designed to operationalise those obligations consistently at scale.

Why this should be a minimal and proportionate burden

We consider REC Party status would be a minimal incremental burden, for three reasons:

1. Cost impact can be kept low and predictable. RECCo's existing cost recovery model already recovers significant costs via suppliers as the key contributors (a familiar proxy for retail market share). In the CCS context specifically, the consultation proposes continuing supplier funding for an initial period post go-live to encourage uptake and avoid disproportionate costs on early adopters.

2. Governance obligations can be tightly scoped to what is actually needed. Load control licensees would, in any event, be expected to comply with core behavioural/assurance obligations through bilateral user agreements to access services like CCS (or similar requirements duplicated elsewhere). REC Party status can therefore be designed to require adherence only to the relevant REC schedules/requirements needed for participation—rather than imposing the full set of obligations designed for suppliers.

3. It reduces duplication and future rework. If the market evolves toward deeper integration of consent and switching journeys (as is likely), it will be more efficient to establish the "landing zone" early—rather than creating interim non-code arrangements that later need to be migrated into the REC governance model.

Suggested way forward (pragmatic and "end-state aligned")

RECCo therefore supports code accession for grid stability purposes (CUSC/DCUSA) as proposed in Q20, but recommends Government also consider:

- explicitly recognising the retail code interdependencies (CCS and switching in particular); and
- requiring load control licensees to become REC Parties at market entry, with obligations limited to the provisions necessary to support the consumer journey and avoid duplication with licence or other codes.

This approach would remain consistent with the Government's wish to keep the regime proportionate, while materially reducing the risk of consumer harm and market fragmentation as load control scales.

Q21: With reference to licence condition 9 and the relevant definitions in licence conditions 1 and 2, do you agree with the draft cyber security licence conditions, noting that many are modelled on the NIS Regulations but adapted for load controllers? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

RECCo supports licence condition 9 and the related definitions. The proposed cyber requirements adopt a well-understood, risk-based model consistent with the Network and Information Systems (NIS) Regulations, including

proportionate organisational/technical controls, annual assurance and timely incident reporting. We also support the use of NIS-aligned definitions to promote consistency and reduce interpretive complexity. This approach is consistent with RECCo's Consumer Consent Solution, which similarly seeks to build market trust through reuse of recognised security standards and certifications, risk-based assurance, and strong baseline technical controls. We encourage DESNZ/Ofgem to ensure guidance and assurance processes avoid duplication (e.g., where organisations already meet equivalent standards) and remain proportionate as the market scales.

Q22: Do you agree with proposed 18-month period for newly licensed organisations to demonstrate meeting CAF requirements? Please provide your views on whether this period is appropriate, whether Ofgem's discretion to grant extensions is sufficient, and if there are any specific factors or challenges that should be considered when finalising the implementation timeline.

RECCo supports the proposed 18-month period for newly licensed organisations to demonstrate compliance with the Cyber Assessment Framework (CAF)-based cyber requirements. Given the scope and maturity expectations associated with CAF, this transitional window provides a pragmatic and proportionate timeframe for new entrants to design, implement and evidence the necessary governance, controls, assurance processes and operational readiness, without creating an undue barrier to market entry in a nascent sector.

We also consider that this approach supports the regime's objectives by enabling organisations to embed cyber resilience properly from the outset, rather than encouraging "tick-box" compliance. RECCo welcomes Ofgem's ability to apply flexibility where justified (including extensions where there are evidenced sector-wide or organisation-specific constraints), provided expectations are clear and progress towards compliance is actively monitored.

Q23: With reference to licence condition 10 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

RECCo supports the intent of Standard Condition 10 (Load control check). The obligation to pay due regard to the impacts of load control instructions on both the energy smart appliance and the wider electricity system, and to implement appropriate controls, is an important safeguard to reduce the risk of unintended or adverse outcomes. We also support the requirement that data used to inform load control decisions is trusted and validated and checked for irregularities, as this helps reduce the risk of anomalous behaviour, consumer detriment and avoidable system impacts.

Q24: Which additional costs would your organisation face for complying with licence condition 9? Please comment on the cyber security cost assumptions in the impact assessment. When calculating additional costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.

RECCo will not be a load control licensee and has therefore no comment on the expected compliance costs.

Q25: Do you agree with the definition of small business consumer for the purposes of determining which non-domestic consumers are in scope of consumer protections? Please explain your answer and if you disagree provide alternative suggestions.

Consistent with our response to Q5, RECCo supports the use of the existing "small business consumer" definition as the threshold for determining which non-domestic consumers should be in scope of the consumer protection licence conditions. This provides a clear and familiar boundary, supports alignment across adjacent regulatory frameworks, and avoids introducing a new definition that could increase complexity and create interpretive risk.

We recognise that in practice an FSP may need to rely on customer declaration (and updates where a consumer moves above or below the threshold). However, RECCo agrees this implementation challenge would arise under

any alternative threshold and is not, of itself, a sufficient reason to broaden scope to all non-domestic consumers or adopt a bespoke definition. To support consistent application, we would welcome DESNZ/Ofgem providing clear guidance and a proportionate approach to evidence/assurance, particularly for smaller and nascent market participants.

Q26: With reference to licence condition 11 and the relevant definitions in licence conditions 1 and 2, do you agree with the drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

RECCo agrees with the drafting of licence condition 11 and supports its alignment with the comparable protections in the electricity supply licence (in particular the principles-based approach underpinning SLC0 and the Standards of Conduct framework). This helps establish a consistent baseline of expected behaviours for consumer-facing interactions, which is important for building consumer trust and supporting an effective, competitive CLF market.

We also support the explicit application of the condition to the licensee and any Representatives. In practice, CLF propositions are likely to be marketed, sold and operated through partner channels (e.g. installers, device manufacturers, platforms, brokers). Ensuring the FSP remains accountable for the conduct of those acting on its behalf aligns with the way the supply licence captures third-party activity (including Third Party Intermediaries (TPIs)) via "representatives", and helps reduce the risk of consumer harm and inconsistent outcomes across retail-adjacent journeys.

Q27: With reference to licence condition 12 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

RECCo agrees with the proposed drafting of licence condition 12 and supports its alignment with the equivalent provisions in the electricity supply licence (SLC25). We consider it appropriate that the licence requires FSPs to recommend services that are suitable to customers' characteristics and/or preferences, prohibits misleading or high-pressure selling practices, and requires key terms (including "Principal Terms") and rewards structures to be clear and comprehensible.

We particularly welcome that condition 12 applies to the licensee and its Representatives. This is important given the likely role of third parties in customer acquisition and service delivery and is, in substance, consistent with the supply-licence approach to TPIs/third parties (captured through representative obligations). We also note Government's stated intention that third parties should be subject to a regulatory framework; as Ofgem develops and implements that framework, we would welcome fully complementary provisions across retail and load control licensing so that consumer protections and accountability are consistent regardless of channel or intermediary.

Q28: Do you agree with the terms that are included in the "Principal Terms" definition? If not, please specify which terms you disagree with.

RECCo supports the proposed definition of "Principal Terms". We agree it appropriately focuses on the information most likely to affect a consumer's decision to enter into a contract for load control services—namely price/charges, contract duration (including renewal/extension), termination rights (including any exit fee), the nature and value of any rewards, and the options for (and implications of) engaging a different Flexibility Service Provider.

In our view, this strikes a sensible balance between proportionality in a nascent market and ensuring consumers can make informed choices, compare offerings, and exit or switch provider without unexpected consequences—thereby supporting trust and minimising the risk of consumer detriment as the market develops.

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Q29: Do you think there should be any additional terms included in the "Principal Terms" definition? If so, please provide suggestions.
We suggest and additional principle term around communications and transparency arrangements that will apply under the Contract, including (as applicable) how and when the customer will be notified of load control events (and any material changes to the service), what information will be provided about such events (including any impacts on the customer), and what records or history will be made available to the customer.
Q30: Which additional costs would your organisation face for complying with licence conditions 11 and 12, as well as the requirement to offer complaints procedures and contribute to dispute resolutions? Please comment on the customer protection cost assumptions in the impact assessment. When calculating additional costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.
RECCo will not be a load control licensee and has therefore no comment on the expected compliance costs.
Q31: With reference to licence condition 13 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.
RECCo supports the proposed intent of Condition 13, including the requirement that FSPs must not act in any way that unduly prevents, restricts or delays a customer from entering into a contract with another FSP, and the wider expectation that exit steps are clear, not unduly onerous, and that any notice period is not unreasonably long. However, we note that the "non-hindrance" element is currently framed only around switching between FSPs (i.e. entering a contract with another FSP). In practice, the consumer's ability to realise value from consumer-led flexibility is likely to be closely interdependent with their *supply* arrangements, particularly where propositions are linked to time-of-use tariffs, bundled offerings, and other retail constructs. We consider that "ease of switching" and "data portability" are core enablers of consumer benefit realisation in these models (and not simply switching between flexibility providers). Accordingly, RECCo suggests Government and Ofgem consider extending Condition 13 so that it also covers *not hindering the customer from switching supplier and/or switching to another supply tariff*, where that change is requested by the customer (and subject to any legitimate contractual obligations being met). This would better align with the established retail principle that consumers should be able to move supplier without undue friction, reflected in supply licence provisions that prohibit unjustified transfer blocking and require suppliers to complete transfers promptly (e.g. general prohibition on blocking except as permitted, and obligation to complete a supplier transfer as soon as reasonably practicable and, in any event, within five working days of the relevant date). We also encourage Government and Ofgem to consider reciprocal protections in the supply licence (or equivalent enduring retail arrangements) so that suppliers do not impede (whether directly or indirectly) a consumer's ability to: • enter into a contract with an FSP; or • switch between FSPs, particularly given the foreseeable risk of conflicts of interest where a supplier may also act as an FSP (or have commercial arrangements with an FSP). This reciprocal framing would help ensure that consumers are not "caught in the middle" of misaligned incentives across the supply and flexibility markets and would reinforce the

consultation's stated intent to protect consumers from unfair contractual terms or activity that could block or delay switching.

We also note that at government's request, we are developing REC governance for tariff data interoperability under the Smart Secure Electricity Systems (SSES) programme. This work is intended to create a common framework for sharing tariff information between suppliers, smart devices and consumers so that Energy Smart Appliances can interpret and respond to tariff signals across different suppliers—supporting automation, cost optimisation and consumer-led flexibility. This underlines that the consumer journey for flexibility propositions is inherently linked to retail tariff structures and switching arrangements and reinforces the case for Condition 13 to protect consumers' ability to move between supply tariffs (as well as between FSPs).

Q32: Do you think that load controllers should also be subject to a requirement similar to licence condition 13.2? If so, please provide your rationale.

RECCo recognises the intent of Condition 13.2 in protecting consumers from unfair activity or terms that could block or delay switching between flexibility services. However, we do not currently consider it necessary (or proportionate) to place an equivalent "non-hindrance" obligation directly on load controllers. The licence framework defines Consumer-Led Flexibility and the Contract as arrangements between the Customer and the Flexibility Service Provider (as the consumer-facing party). Consistent with this, Government also notes that - at least for the first phase - it is important that FSPs remain the single point of responsibility for consumers seeking to switch, and that introducing specific requirements on load controllers could convolute the desired consumer outcome (with further consideration to follow as interoperability work develops).

In practice, we would expect Condition 13.2 to be delivered via the FSP's commercial and technical arrangements with any load controller, ensuring those arrangements do not introduce contractual or technical lock-in and enable the FSP to comply. We would support keeping this under review and consulting on targeted load controller obligations in future if evidence shows they can materially frustrate switching outcomes.

Q33: Government wants to build its evidence base for more detailed policy appraisal. Could you set out how additional costs could potentially arise for FSPs from complying with licence condition 13 and could you quantify these? When calculating additional costs, please exclude existing costs which your organisation may already face in relation to these conditions. Please include an explanation of the additional costs you may face, such as additional FTE, and why the additional costs are necessary to comply. Please include as much supporting evidence as possible in your response.

RECCo will not be a load control licensee and has therefore no comment on the expected compliance costs.

Q34: With reference to licence condition 14 and the relevant definitions in licence conditions 1 and 2, do you agree with the proposed drafting of this licence condition? Please explain your answer and if you disagree provide alternative suggestions for achieving the same outcome.

RECCo supports the principle in standard condition 14 that any exit fee should be reasonable and proportionate, and in particular should not exceed the licensee's direct economic loss associated with termination (including, where relevant, the cost of any bundled non-CLF element already provided).

However, we have some concern about the breadth of what could be treated as a "Non-CLF Product" within a "Tied Bundle" (noting the consultation envisages bundles that could include services such as supply or telecoms). While we agree with the intent to prevent exit fees being used to lock consumers in, the proposed definitions risk leaving too much discretion to individual FSPs, with "reasonableness" only being clarified through precedent after harm has occurred.

From a competition perspective, high switching costs and tying of unrelated services can weaken consumer mobility and dilute the competitive discipline created by the threat of switching - particularly as CLF scales

towards mass-market propositions. We therefore suggest Government/Ofgem provide additional guidance (or illustrative examples) on what is likely to be considered "reasonable and proportionate" in a bundled context - e.g., limiting any exit fee to genuinely unrecovered, evidenced costs that are directly attributable to the CLF proposition (such as subsidised equipment recoverable on a transparent, pro-rata basis), and avoiding fees that effectively deter consumers from exiting individual products/services they no longer require.

Q35: Do you think licence condition provisions enabling derogations from certain licence obligations should be included in the load control standard licence conditions, either to mitigate risks of duplicative regulation or for other reasons? Please explain your answer and provide a rationale. If you think derogations from certain licence obligations should be included, please specify which licence obligations you think these should apply to.

We support inclusion of a provision that enables Ofgem to grant derogations from specified load control licence obligations where appropriate, subject to clear criteria, transparency and safeguards. This would provide a pragmatic tool to manage proportionality in a nascent market, including where obligations may be duplicative of requirements already met under another regulatory regime (for example, where an entity is already subject to comparable controls via an existing Ofgem licence or equivalent arrangements), or where a time-limited derogation is justified to support an orderly transition.

This approach is consistent with established precedent in the electricity and gas supply licences, where Standard Condition 2.7 expressly recognises the Authority's power to grant a "derogation" (including scope/period/conditions) and to revoke or amend such instruments following consultation, with instruments to be in writing.

We also consider this should be viewed alongside the potential use of a regulatory sandbox to enable controlled testing of innovative propositions. Where sandbox arrangements are used and shown to be effective, we would expect the evidence and lessons learned to inform the enduring framework - potentially through targeted, proportionate licence modifications (and/or associated code changes) so that successful innovations can be scaled without relying on repeated case-by-case derogations.