

OMBUDSMAN SERVICES

Terms of Reference

Contents

Generic Terms of Reference for Ombudsman Services

- 1 Purpose and Scope
- 2 Governance of the Service
- 3 Ombudsman's principal aim
- 4 Acceptance of a complaint
- 5 Provision of information
- 6 Handling complaints and the Ombudsman's investigation
- 7 The Ombudsman's final decision
- 8 Powers and duties of the Ombudsman
- 9 Limits on the Ombudsman's powers
- 10 Charges
- 11 Duties of each Participating company
- 12 Termination of Participating company's membership
- 13 Notices
- 14 Review of the Terms of Reference
- 15 Amendments of the Terms of Reference
- 16 Interpretation

Annex 1: Terms of Reference for Ombudsman Services: Communications

- 1 Interpretation
- 2 Eligibility to become a Participating Company in Ombudsman Services: Communications
- 3 Services
- 4 Complainants
- 5 Limits on the Ombudsman's powers
- 6 Sector Liaison Panel

Annex 2: Terms of Reference for Ombudsman Services: Energy

- 1 Interpretation
- 2 Eligibility to become a Participating Company in Ombudsman Services: Energy
- 3 Services
- 4 Complainants
- 5 Limits on the Ombudsman's powers
- 6 Sector Liaison Panel

Annex 3: Terms of Reference for Ombudsman Services: Property

- 1 Interpretation
- 2 Eligibility to become a Participating Company in Ombudsman Services: Property
- 3 Services
- 4 Complainants
- 5 Limits on the Ombudsman's powers
- 6 Provision of Information
- 7 Charges and Fees
- 8 Sector Liaison Panel
- 9 Powers and duties of the Ombudsman

Annex 4: Terms of Reference for Ombudsman Services: Copyright Licensing

- 1 Interpretation
- 2 Eligibility to become a Participating Company in Ombudsman Services: Copyright Licensing
- 3 Services
- 4 Complainants
- 5 Limits on the Ombudsman's powers
- 6 Sector Liaison Panel

Annex 5: Terms of Reference for The Green Deal Ombudsman and Investigation Service

- 1 Interpretation
- 2 Eligibility to become a Participating Company in Ombudsman Services: Green Deal
- 3 Services
- 4 Complainants
- 5 Referral of a complaint from the Ombudsman to the Secretary of State
- 6 Limits on the Ombudsman's powers
- 7 Finding of alleged breach requiring variation of the Green Deal plan

Appendix

Conditions for Subsequent Action by the Secretary of State

- A1 Conditions for breach: disclosure and acknowledgment
- A2 Conditions for breach: consent
- A3 Decision as to breach: disclosure and acknowledgment, consent
- A4 Cancellation of liability of bill payer: disclosure and acknowledgement, consent
- A5 Compensation: disclosure and acknowledgement, consent

OMBUDSMAN SERVICES

Terms of Reference

These are the Terms of Reference approved by the Board in accordance with the Articles of Association of Ombudsman Services Ltd (the Company) (hereinafter referred to as Ombudsman Services). Certain expressions used in these Terms of Reference and Annexes are either defined in Paragraph 16 below or otherwise in the Articles.

1 Purpose and Scope

1.1 **Purpose, Scope and Complaints** - The main purpose of the Service is:

- (a) the receipt and handling of unresolved complaints made to Participating Companies by any of their customers as defined in the annex of these Terms of Reference;
- (b) the resolution, settlement and/or withdrawal of such unresolved complaints or disputes between a Participating Company and any of their customers;
- (c) where appropriate, the provision of remedies and redress in respect of matters that form the subject-matter of such unresolved complaints or disputes;

in respect of the supply or provision (or failure to supply or provide) by Participating Companies of certain services.

1.2 **Services** - The services provided by Participating Companies which will be covered by, and fall within the jurisdiction of, the Ombudsman and Ombudsman Services are the services as defined in the annex of these Terms of Reference.

1.3 **Eligibility of Potential Participating Companies to join Ombudsman Services** - Potential Participating Companies shall be eligible to join Ombudsman Services upon satisfying the criteria in the annex to these Terms of Reference.

1.4 **Jurisdiction** - Upon becoming a Participating Company to the extent that they offer, supply or provide services specified in the annex a Participating Company shall accept and be subject to the jurisdiction of Ombudsman Services and the Ombudsman in relation to complaints regarding such services.

1.5 **Complainants** – The Ombudsman and Ombudsman Services shall only have jurisdiction in relation to a complaint against a Participating Company if the person making the complaint satisfies the criteria laid down in the annex of these Terms of Reference.

2 Governance of the Service

2.1 The Chief Ombudsman (hereinafter referred to as The Ombudsman) is appointed by, and responsible to, the Board. In determining any complaints made in accordance with these Terms of Reference, the Ombudsman shall act independently of the Board, any Sector Liaison Panel, the Participating Company and Complainants.

2.2 The Board shall determine eligibility of Potential Participating Companies in accordance with the annex.

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OS:GD Annex 010813 Status: Approved

2.3 The Service shall be administered by the Company in accordance with the Articles and the Terms of Reference.

3 Ombudsman's principal aim

The Ombudsman's principal aim is to receive complaints made by complainants in accordance with these Terms of Reference and to consider and, where appropriate, investigate such complaints in order to encourage and/or facilitate the terms of their resolution, settlement and/or withdrawal.

4 Acceptance of a complaint

4.1 The Ombudsman has an absolute discretion to decide whether a complaint is within the Ombudsman's jurisdiction, as prescribed by these Terms of Reference or in the annex.

4.2 The Ombudsman has an absolute discretion to refuse to accept (or to terminate consideration of) a complaint, if he/she considers that the complainant has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Participating Company(ies) to which such complaint relates.

5 Provision of information

5.1 Upon accepting a complaint for consideration, the Ombudsman shall inform the relevant Participating Company that the complaint has been accepted and may require the Participating Company to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of the complaint.

5.2 The Ombudsman may additionally require a complainant to disclose any documents and to provide any information that the Ombudsman may lawfully and reasonably request relating to his or her consideration of a complaint.

5.3 Information passed to the Ombudsman deemed relevant to the investigation of a complaint will be taken account of and disclosed in the investigation report unless reasons are given setting out circumstances justifying non-disclosure. These circumstances should be limited and exceptional (for example, issues such as personal security of the complainant, or member or a third party). If the request for confidentiality is accepted, the Ombudsman will notify the other party that there is confidential material which the Ombudsman does not propose to disclose, the basis on which it is withheld and, as far as possible, the gist of the evidence.

5.4 The Ombudsman's decision (in his sole discretion) as to whether to keep any information in confidence from any party shall be final and binding.

5.5 In exceptional circumstances, where the Ombudsman considers it necessary (as a matter of sole discretion) a site visit, expert report or a face-to-face meeting (or hearing) may be arranged

6 Handling complaints and the Ombudsman's investigation

- 6.1 The Ombudsman will seek to achieve a mutually acceptable settlement of a complaint wherever practical and appropriate.
- 6.2 If the complaint is not resolved by a mutually acceptable settlement or withdrawn, the Ombudsman may conduct a formal investigation of the complaint.
- 6.3 The procedure for the conduct of an investigation will be such as the Ombudsman considers appropriate in the particular circumstances of the case and may require such assistance of the parties to the complaint (including in relation to access, information and submissions and written or oral submissions) as the Ombudsman may consider reasonable and appropriate.
- 6.4 Where an investigation has been conducted the Ombudsman will inform, in writing, the Complainant and the Participating Company concerned of the Ombudsman's conclusion reached or decision made and suggested remedies and, in each case, the reasons for them, and will invite their comments thereon, to be received within a specified period thereafter.
- 6.5 If, after investigation, the Ombudsman considers that the Participating Company (against which a complaint has been made) is already offering (and continues to offer) a fair and reasonable settlement (even if it is not acceptable to the complainant), or if the Ombudsman considers that no settlement is required, the Ombudsman may exercise discretion to terminate consideration of the complaint.
- 6.6 In handling complaints, carrying out investigations and reaching any Final Decision (as provided for hereunder) it shall be the duty of the Ombudsman:
- (a) to proceed fairly and in accordance with the principles of natural justice;
 - (b) to make reasoned decisions in accordance with what is fair and reasonable in all the circumstances having regard to principles of law, good practice, equitable conduct and good administration;
 - (c) to decide whether to continue or discontinue the consideration of a complaint;
 - (d) save with the prior written consent of the relevant parties and subject to paragraphs 6.6 (a) and 6.6 (e) not to disclose the fact of, parties to or details of any complaint, its resolution or enforcement to persons other than the parties to the complaint, the Board and such officers, employees, agents and advisers of each of such persons as are duly authorised for such purposes;
 - (e) to have regard to any applicable rule of law, the terms of any relevant contract, any relevant judicial authority or regulatory provision, any relevant codes of conduct or practice, any guidance of a general nature given by the Board and what is, in the Ombudsman's opinion, best practice in the handling of complaints; and
 - (f) to give reasons for any conclusion reached or decision made.

6.7 Notwithstanding paragraphs 6.6(a) and 6.6(e) above, the Ombudsman shall not be bound by any legal rule of evidence or by the past conduct or decisions of, or the past Remedies or Awards imposed by the Ombudsman.

7 The Ombudsman's Final Decision

7.1 If at any stage during the process of the Ombudsman's investigation both the complainant and the relevant Participating Company accept any conclusion reached or decision made then such will become the binding settlement of the dispute.

7.2 If either the complainant or the relevant Participating Company or both do not accept any conclusion reached or decision made, then the Ombudsman will issue a Final Decision, or, as indicated in the relevant annex, a recommendation, including his or her reasons therefore. Such Final Decision or recommendation shall be made after considering any representations the complainant or the relevant Participating Company or both may make in relation to the investigation report and suggested remedies.

7.3 When a binding settlement of the dispute is issued (paragraph 7.1 above) or the Ombudsman issues a Final Decision (either under paragraph 7.1 or 7.2 above) which concludes that the Participating Company has not acted fairly or reasonably, the Ombudsman will set out his or her reasons in writing and may, subject to paragraphs 7.5 and 7.6 below, impose any of the following Remedies requiring the Participating Company to:

- (a) provide an apology or explanation to the complainant;
- (b) award to the complainant compensation not exceeding the limit detailed in the annex per complaint (an Award);
- (c) take some other practical action of direct benefit to the complainant; or
- (d) provide any combination of the above Remedies.

Each remedy set out in paragraphs 7.3(a) to 7.3(d) above shall be referred to as a Remedy and any combination thereof as Remedies.

7.4 The Ombudsman may also, as a result of considering a complaint, make recommendations to the Participating Company about changing its policies or procedures, including in relation to the provision of its services.

7.5 The total value of all Remedies to be provided or complied with by a Participating Company to or for the direct benefit of a Complainant in respect of a complaint shall not exceed the limit detailed in the annex.

7.6 No Award or Remedy shall contain a punitive element nor be of greater amount than in the reasonable opinion of the Ombudsman is appropriate to compensate the complainant for loss or damage or inconvenience suffered by reason of the acts or omissions of the Participating Company against and in respect of which the Award or Remedy is made.

7.7 The Ombudsman will determine which Participating Company will pay the case fee and provide the remedy.

7.8 No Award or Remedy will be made against a Complainant.

- 7.9 The Final Decision shall be issued in writing and shall state the Remedies to be provided and a summary of the Ombudsman's reasons for reaching the Final Decision. A copy of the Final Decision shall be given to the Complainant and the relevant Participating Company together, in the case of the Complainant, with an acceptance form (addressed to the Ombudsman) (the Acceptance Form) to be duly completed and signed by the Complainant and returned to the Ombudsman within 28 days of the date of the Final Decision (the Acceptance Period). The Final Decision shall state that if, within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable), the complainant replies to and accepts the Final Decision in full and final settlement of the subject matter of the complaint (by duly completing, signing and returning the relevant Acceptance Form), the Final Decision shall, save in the event of fraud or manifest error, be binding on the complainant and the relevant Participating Company.
- 7.10 If the complainant does not reply to the Final Decision within the Acceptance Period (or such longer period as the Ombudsman may consider appropriate), then the Final Decision will not be binding on the complainant or the relevant Participating Company and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 7.11 If within the Acceptance Period (or such longer period as the Ombudsman may consider reasonable) the complainant replies to the Final Decision but does not accept it in full and final settlement of the subject matter of the complaint, then the Final Decision will not be binding on the complainant or the relevant Participating Company and it will be open to the complainant to initiate any other proceedings to which the complainant is entitled in pursuit of the complaint.
- 7.12 If the Final Decision becomes binding on the complainant and the relevant Participating Company in accordance with paragraph 7.9, the Ombudsman shall notify the relevant Participating Company of such fact within 14 days of his or her receipt of the complainant's duly completed and signed Acceptance Form. The relevant Participating Company shall then provide the Remedy (including any Award) to the complainant within 28 days of the Ombudsman's notification.
- 7.13 If the Final Decision does not become binding on the complainant and the relevant Participating Company(ies) in accordance with paragraph 7.10 or 7.11, then the Ombudsman shall notify the complainant and the relevant Participating Company of such fact within 14 days following the end of the Acceptance Period (or such longer period as the Ombudsman may consider reasonable).

8 Powers and duties of the Ombudsman

- 8.1 The Ombudsman shall have the following powers and duties:
- (a) to report to the Board of the Company on the non-compliance with a Final Decision of the Ombudsman (including in relation to any Awards or Remedies imposed by the Ombudsman) by a Participating Company;
 - (b) to ensure, so far as reasonably practicable, equality of access to Ombudsman Services by complainants irrespective of age, disability, gender, race, religion or sexual orientation;

- (c) to enter into Memoranda of Understanding with any bodies the Ombudsman considers appropriate on matters of common interest, including the exchange of information (subject to paragraph 6.6(d)above);
- (d) to encourage and promote good practice by Participating Companies in the handling of complaints they receive;
- (e) to encourage develop and sustain discussions with Participating Companies , trade and professional bodies, consumer bodies and other bodies considered appropriate through the creation of a Sector Liaison Panel about matters relevant to Ombudsman Services;
- (f) to refer to the Board complaints received by him or her about Ombudsman Services and/or the Ombudsman; and
- (g) to recommend systemic changes in policy or procedure relating to dispute handling within a Service Sector and, in his discretion, to publish such recommendations;
- (h) to publish from time to time data, such as volumes, or information on cases such as a digest of complaints or case studies in anonymised forms

8.2 The Ombudsman shall have the power to delegate, subject (where necessary) to the approval of the Board, any of the Ombudsman's powers and duties to members of staff provided that, in delegating any such powers and duties, the Ombudsman shall exercise all reasonable care and skill to ensure that the delegate discharges all such powers and duties in accordance with the standards expected of the Ombudsman himself/herself; and that complainants retain the right for a review of their case by the Ombudsman (or an appointed deputy)

9 Limits on the Ombudsman's powers

9.1 The Ombudsman shall not accept a complaint for consideration unless

- (a) the complainant gave the relevant Participating Company notice of the matter which is the subject of the complaint within twelve months of first knowing of the matter, or as specified in the relevant annex; and
- (b) either (i) the Participating Company has sent the complainant a letter saying that it is unable or unwilling itself to resolve the complaint to the complainant's satisfaction and providing details of the existence of Ombudsman Services and appropriate contact details for the Ombudsman (a deadlock letter), or (ii) the Participating Company has not issued a deadlock letter within 8 weeks of the complainant's notice (as referred to in paragraph 9.1(a) above) or such longer period as the Ombudsman may consider reasonable, or (iii) other requirements, as stated in the relevant annex, or (iv) the complainant has encountered sustained difficulty in registering a complaint with a Participating Company; and
- (c) the complaint is made to the Ombudsman within six months of the issue of the deadlock letter or, if no deadlock letter has been issued, within nine months of the complainant first giving notice of the complaint to the Participating Company (as referred to in paragraph 9.1(a) above). The Ombudsman has discretion, however, to

accept a complaint made out of time if satisfied that there are exceptional reasons to justify the delay.

9.2 The Ombudsman shall not accept a complaint about a matter:

- (a) of which the complainant had notice before the date when the relevant Participating Company joined Ombudsman Services;
- (b) to the extent such matter has been or is the subject of court proceedings or arbitration or some other independent procedure for the determination of disputes brought by the complainant (unless such proceedings, arbitration or other procedure have been abandoned, stayed or suspended either by or with the consent of the relevant court, arbitral or procedural body or with the written consent of the relevant Participating Company);
- (c) which either does not concern or relate to the Complainant or to a service of the relevant Participating Company falling within the jurisdiction of Ombudsman Services;
- (d) which concerns or relates to terms of employment or other personnel issues of, in each case, the complainant;
- (e) if it appears to the Ombudsman that it is more appropriate that the complaint be dealt with by a court, by arbitration, by a sector regulatory determination or under another complaints or conciliation procedure;
- (f) if it appears to the Ombudsman that the complaint is frivolous or vexatious;
- (g) to the extent that the complaint relates to a Participating Company's commercial judgement in determining whether and, if so, on what terms a service is to be provided.

9.3 In relation to any matter forming the subject of a complaint in respect of which the Ombudsman has previously reached a decision or conclusion (a Concluded Complaint), the Ombudsman shall not accept or consider:

- (a) a new complaint the subject matter of which and the parties to which are the same (or substantially the same) as those addressed in relation to the Concluded Complaint; or
- (b) a request to reconsider the Concluded Complaint, unless, in exceptional circumstances, the Ombudsman is of the opinion that (i) significant evidence or facts not available at the time of, or not taken into account in, the Ombudsman's consideration of the Concluded Complaint have come to the attention of the Ombudsman, and (ii) had such evidence or facts been so available or taken into account it is reasonably likely that the decision or conclusion reached in relation to the Concluded Complaint would have been substantially different.

10 Charges

10.1 The Ombudsman will make no charge to complainants for the consideration of their complaints.

11 Duties of each Participating Company

11.1 Each Participating Company undertakes to:

- (a) contemporaneous with becoming a Participating Company, execute a deed poll (the "Deed Poll") or a Supply of Service Agreement (in the form set out by the Board from time to time) which shall, inter alia, enable a complainant to enforce any Remedy and/or Award directly against Participating Companies unless specified otherwise in the annex.
- (b) ensure that it and, as appropriate, each of its relevant subsidiary undertakings complies with, observes and performs the obligations and duties of a Participating Company under the Terms of Reference, the Articles, the Deed Poll or Supply of Service Agreement and/or otherwise in connection with Ombudsman Services.
- (c) submit to any consideration or investigation of a complaint by the Ombudsman and Ombudsman Services to which it is a party, pursuant to and in accordance with these Terms of Reference;
- (d) comply with any Final Decision (including any Remedy and Award) which, in accordance with these Terms of Reference, is made by the Ombudsman against it and is duly accepted by the Complainant and which is binding on it and the relevant complainant under these Terms of Reference;
- (e) maintain and operate an adequate internal complaints procedure for the resolution of complaints in relation to matters which could be the subject of consideration or investigation by the Ombudsman and Ombudsman Services, being a procedure under which the complaint, if not previously resolved, settled or withdrawn is addressed by the dispatch of a deadlock letter (as defined below);
- (f) provide information to complainants regarding Ombudsman Services in accordance with its complaint handling procedures and encourage any such complaint, which is not resolved, settled or withdrawn, to be dealt with under the jurisdiction of the Ombudsman and Ombudsman Services, including (without limitation) by giving due and reasonable consideration to any request by a complainant for such Participating Company's written consent to abandon, stay or suspend any court proceedings, arbitration or other procedures as are referred to in paragraph 9.2(b) above;
- (g) Each Participating Company or, in accordance with the annex, the relevant third party on such Participating Company's behalf, shall (within the relevant period from time to time prescribed for such) pay to the Company such subscriptions and case fees as shall be demanded or imposed from time to time, by or on behalf of the Company, in accordance with such scales of subscriptions and case fees as shall (from time to time) be determined by the Company.

11.2 For the avoidance of doubt any such Deed Poll or Supply of Service Agreement executed prior to the date of these Terms of Reference unless otherwise therein provided shall continue to have full force and effect as if effected under these Articles as amended.

12 Termination of Participating Company's membership

- 12.1 The Board shall have the right and discretion to remove a Participating Company from the Service with immediate effect on written notice to such Participating Company in the event of such Participating Company ceasing trading, being wound up or dissolved by voluntary or involuntary proceedings, entering into a voluntary arrangement with its creditors or on the appointment of an administrator, administrative receiver, receiver or liquidator in respect of such Participating Company.
- 12.2 Any Participating Company may also be removed from the Service for any reason for any persistent or serious failure not provided for in Paragraph 12.1 above to comply with the scheme's rules or the Ombudsman's decision provided that not less than 21 days' prior written notice shall be sent to the Participating Company whose removal is in question specifying the intention to propose such removal from the Service and the general nature of the grounds on which such removal is proposed. Such notice shall set out the procedure under which removal is being considered.
- 12.3 A Participating Company may only terminate its membership with Ombudsman Services by giving not less than six months' notice ending on the 31st March in writing to the Director of Corporate Services
- 12.4 Termination of its participation in the Service by or removal of a Participating Company from the Service as provided for in Paragraphs 12.1, 12.2 and 12.3
- (a) shall not entitle the Participating Company to repayment of the whole or any part of any charge or case fee previously paid by it;
 - (b) shall be without prejudice to the Participating Company's liability to pay any charge or case fee which has become or becomes due and payable by it
 - (c) shall be without prejudice to any other accrued rights, entitlements, obligations and/or liabilities of the Participating Company ; and
 - (d) shall be without prejudice to the Participating Company's obligation to:
 - (i) comply with any Final Decision which, in accordance with the Terms of Reference, is made by the Ombudsman against it and is accepted by the complainant and which is, therefore, binding on it in accordance with the Terms of Reference; and
 - (ii) provide to the Complainant (within the period prescribed by the Terms of Reference and/or such Final Decision) any Remedy (including any Award) made under any such Final Decision, provided, in each case, that the complaint or dispute to which such Final Decision relates was made to the Ombudsman prior to such cessation;
 - (e) shall be without prejudice to the Participating Company's obligation to remain liable in respect of complaints or disputes against it, or with it, which originated whilst it was a Participating Company as if it remained a Participating Company.

- 12.5 Should a Service Sector decide to end its participation in the Service then;
- (a) each Participating Company (or, in accordance with the relevant Terms of Reference, the relevant third party on such Participating Company's behalf) shall be required to give not less than twelve months' notice ending on the 31st March in writing to the Director of Corporate Services.
 - (b) each Participating Company (or, in accordance with the relevant Terms of Reference, the relevant third party on such Participating Company's behalf) shall in addition be liable pro rata for all the Company's consequential expenditures arising from that termination including but not limited to the costs of redundancy, rental liabilities for property and equipment, and associated liabilities whenever arising from the Service for that Service Sector;
 - (c) each Participating Company (or, in accordance with the relevant Terms of Reference, the relevant third party on such Participating Company's behalf) of that Service Sector shall not be entitled to be reimbursed any funds of the Company held in reserve until all obligations incurred by virtue of 12.4 or this 12.5 have been satisfied and then only at the discretion of the Company pro rata in respect of any reserve to which the relevant Participating Company (or, in accordance with the relevant Terms of Reference, the relevant third party on such Participating Company's behalf) may be deemed to have contributed and the decision of the Company in the apportionment and identification of such reserves shall be final.

13 Notices

- 13.1 Any notice or document may be served on or delivered to the Company or Participating Company, the Ombudsman or the Secretary, as the case may be, in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied.
- 13.2 The accidental failure to send, or the resultant non-receipt by any person entitled to, any notice of or other document relating to any meeting or other proceeding shall not invalidate the relevant meeting or other proceeding.

14 Review of the Terms of Reference

- 14.1 The Board will complete a review of these Terms of Reference periodically at intervals of not more than three years. Such reviews will include (without limitation) consideration as to whether there is evidence of complainants seeking to abuse the right to complain in order to evade or delay the payment of money or the performance of any other obligation rightfully owed by them to any Participating Company of Ombudsman Services.

15 Amendment of the Terms of Reference

- 15.1 The provisions of paragraphs of these Terms of Reference (together with any definitions used within such paragraphs) may only be amended by the Board and after consulting with and taking due account of the views of the Sector Liaison Panel and Participating Companies and such other bodies as the Board considers appropriate.

16 Interpretation

- 16.1 Unless the context otherwise requires, the definitions and interpretations set out below shall apply to these Terms of Reference and any Annexes, in addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

“Articles” means the Articles of Association from time to time of the Company;

“Board” means the board of directors of the Company;

“Company” means the Ombudsman Service Limited;

“Final Decision” means a Final Decision made by the Ombudsman pursuant to and as referred to in these Terms of Reference;

“person” includes any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to person or it, shall be construed so as to include references to such persons, to any natural or legal person and to a person’s legal personal representatives and successors;

“Ombudsman Service” means Ombudsman Services which the Company administers in accordance with the Articles and the Terms of Reference;

“Participating Company/Companies” means a person who has subscribed to participate in the Service in respect of a Service Sector and has joined the Service in accordance with the relevant Terms of Reference (and (as the context so requires) each and/or any of its subsidiary undertakings from time to time) and which has put relevant services and/or products under the jurisdiction of the Chief Ombudsman and the Service **Person** including any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to **person, he, she or it**, shall be construed so as to include references to such persons, to any natural or legal person and to a person's legal personal representatives and successors;

“Potential Participating Company/Companies” means a person who is not a Participating Company but who, if they subscribed to be a Participating Company would be eligible to be so under the Terms of Reference;

“Remedy” and “Remedies” shall have the meaning attributed to them in paragraph 7 above;

Subsidiary undertaking has the meaning given in Section 1159(1) of the Act; and

- 16.2 Words importing the singular number include the plural and vice versa.
- 16.3 Words importing the masculine include the feminine and vice versa.
- 16.4 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time modified, amended re-enacted or supplemented.

- 16.5 Unless the context otherwise requires, references to paragraphs and sub-paragraphs are to paragraphs and sub-paragraphs of these Terms of Reference.
- 16.6 These Terms of Reference are to be read and construed subject to the Articles and, in the event and to the extent of any conflict or inconsistency between the provisions of these Terms of Reference and the provisions of the Articles (including the definitions and interpretation therein), the provisions of the Articles shall prevail and apply.

Annex 1: Terms of Reference for Ombudsman Services: Communications

1. Interpretation

Unless the context otherwise requires, the definitions and interpretations set out below shall apply in addition to those in the Terms of Reference. In addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

'Award' means the compensation awarded to the Complainant not exceeding £10,000 (inclusive of VAT (if any)) per complaint;

"Customer" means any person who is party to a contract with an Ombudsman Services: Communications Member for the supply or provision of any service falling within the jurisdiction of the Ombudsman and Ombudsman Services: Communications;

"Domestic customer" means a customer who uses or requests for use any service falling within the jurisdiction of the Ombudsman and the Ombudsman Services: Communications for purposes which are outside his or her trade, business or profession;

"Ombudsman Services: Communications" means the Ombudsman Service provided to Ombudsman Services: Communications participating companies;

"PCP" means a provider of a public electronic communications network, a provider of a public electronic communications service or a person who makes available facilities that are associated facilities by reference to a public electronic communications network or a public electronic communications service and "PCPs" shall be construed accordingly;

“Participating Company/Companies” means a person who has subscribed to participate in the Service in respect of a Service Sector and has joined the Service in accordance with the relevant Terms of Reference and as the context so requires, each and/or any of its subsidiary undertakings from time to time) and, which has put relevant services and/or products under the jurisdiction of the Ombudsman and the Service **Person** includes any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to **person, he, she or it**, shall be construed so as to include references to such persons, to any natural or legal person and to a person's legal personal representatives and successors;

“Potential Participating Company/Companies” means a person who is not a Participating Company but who, if they subscribed to be a Participating Company would be eligible to be so under the Terms of Reference;

“Sector Liaison Panel/SLP” means the Sector Liaison Panel referred to in Paragraph 6 of this annex;

“Small Business Customer” means a customer who uses or requests for use any service and/or product falling within the jurisdiction of the Ombudsman and Ombudsman Services: Communications in connection with or for the purposes of a small business; the meaning of small business is to be determined by the Board (from time to time), and, following such determination, published by the Board whether by amendment to these Terms of Reference or otherwise.

2. **Eligibility to become a Participating Company in Ombudsman Services: Communications**

Any public communications providers (**PCPs**) in the United Kingdom shall be eligible to become a Participating Company in the Ombudsman Services: Communications.

3. **Services**

The services provided by Participating Companies of the Ombudsman Services: Communications which will be covered by, and fall within the jurisdiction of, the Ombudsman and the Ombudsman Services: Communications are

- a) services and/or products provided to domestic and/or small business customers which fall within the scope of “electronic communications services” as the same are defined under Section 32(2) of the Communications Act 2003 or may be included from time to time within the jurisdiction of Ofcom (together the **Statutory Services and Products**); and/or
- b) such services and products that are not **Statutory Services and Products** which shall with the agreement of a Participating Company and the Board fall within the jurisdiction of the Ombudsman and the Ombudsman Services: Communications;

4. Complainants

The Ombudsman and the Ombudsman Services: Communications shall only have jurisdiction in relation to a complaint against a Participating Company if the person making the complaint:

- a) was, at the time the subject matter of the complaint arose:
 - i. a domestic customer of such Participating Company ; and/or
 - ii. a small business customer of such Participating Company; or
- b) had, at or prior to the time the subject matter of the complaint arose, applied or been solicited (by or on behalf of such Participating Company) to be a customer falling within the scope of sub-paragraphs
- c) is acting on behalf (and with the written consent) of any person falling within the scope of sub-paragraphs a.i, a.ii or b, or
- d) is a user of a service or product which (i) is the subject matter of the complaint and (ii) is supplied or provided (or has been applied or solicited to be supplied or provided) to any person falling within the scope of sub-paragraphs 4.a.to 4.c above, and has the written consent of such person to make such complaint, each of the persons falling within the scope of sub-paragraphs 4.a to 4.c above being a complainant and together complainants.

5. Limits on the Ombudsman's powers

The Ombudsman shall not accept a complaint about a matter:

- a. which concerns or relates to equipment not purchased or rented from the relevant participating company or cabling or wiring inside the relevant complainant's premises;
- b. which concerns a dispute solely between providers of telecommunications services and/or products falling within the jurisdiction of Ombudsman Services Communications in relation to the provision of such services and/or products.

6. Sector Liaison Panel

The Ombudsman Services: Communications shall constitute a Sector Liaison Panel whose constitution and remit will be determined from time to time by the Board.

Annex 2: Terms of Reference for Ombudsman Services: Energy

1. Interpretation

Unless the context otherwise requires, the definitions and interpretations set out below shall apply in addition to those in the Terms of Reference. In addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

'Award' means the compensation awarded to the Complainant not exceeding £10,000 (inclusive of VAT (if any)) per complaint;

'customer' means any person who is party to a contract with a Participating Company of the Ombudsman: Energy for the supply or provision of any service falling within the jurisdiction of the Ombudsman and Ombudsman Services: Energy. For the avoidance of doubt, where the context allows, it includes a person who is connected to or seeks to be connected to, the network owned or operated by a Participating Company;

'domestic customer' means a customer who uses or requests for use any service falling within the jurisdiction of the Ombudsman and the Ombudsman Services: Energy for purposes which are outside his or her trade, business or profession;

'Energy Network Operator' means a distributor of energy who holds a UK gas transporter and/or electricity distribution licence;

'Energy Supplier' means a provider of energy who holds a supply licence for the supply of gas and/or electricity to domestic and small business customers;

'licences' refers to:

- (a) Gas licences:
 - (i) a licence under section 7A(1) of the Gas Act 1986 (supply licences);
 - (ii) a licence under section 7(2) of the Gas Act 1986 (transportation licences);
- (b) Electricity licences:
 - (i) a licence under section 6(1)(d) of the Electricity Act 1989 (supply licences);
 - (ii) a licence under section 6(1)(c) of the Electricity Act 1989 (distribution licences);

'Ombudsman Services: Energy' means the Ombudsman Service provided to Energy Suppliers and Energy Network Operators;

‘Participating Company’ means an Energy Supplier or Energy Network Operator admitted into the Energy Ombudsman Service by the Board in accordance with these Terms of Reference and, as the context so requires, each and/or any of its subsidiary undertakings from time to time which has put its relevant services under the jurisdiction of the Ombudsman and the Energy Ombudsman Service;

‘Sector Liaison Panel/ SLP’ means the Sector Liaison Panel referred to in Paragraph 6 of this annex;

‘Small Business Customer’ means a business customer as defined by Ofgem from time to time;

‘Small Supplier’ means an Energy Supplier who has less than 1 million customers.

2. Eligibility to become a Participating Company in the Ombudsman Services: Energy

Energy Suppliers who hold a supply licence in respect of domestic and Small Business Customers for the supply of gas and/or electricity and electricity distributors and gas transporters who hold a licence for electricity distribution or gas transportation are eligible to become members of the Ombudsman Services: Energy.

3. Services

The services provided by Participating Companies of the Ombudsman Services: Energy which will be covered by, and fall within the jurisdiction of, the Ombudsman and the Ombudsman Services: Energy are the services associated with the metering and billing of customers for the supply of energy, the transfer of customers between energy suppliers, sales of products and services and the provision of regulated products and services by holders of a gas transportation licence or electricity distribution licence.

4. Complainants

The Ombudsman and the Ombudsman Service shall only have jurisdiction in relation to a complaint against a Participating Company if the person making the complaint:

(a) was, at the time the subject matter of the complaint arose, a customer with an effective contract or deemed contract with a Participating Company;

(b) was, at the time the subject matter of the complaint arose, a customer with a grievance with a transfer to or from a Participating Company; or

(c) was at the time the subject of the complaint arose connected to the network of a Participating Company, or would have been so;

(d) is acting on behalf (and with the written consent) of any person falling within the scope of sub-paragraphs (a), (b) and (c) above; and

(e) falls within the scope of (a), (b), (c) or above and has given the Participating Company sufficient time, as set out in paragraph 9.1 (b) of the Terms of Reference an opportunity to address complaint(s) against them using their own internal procedures or has encountered sustained difficulty in registering a complaint with a Participating Company.

5. Limits on the Ombudsman's powers

The Ombudsman shall not accept a complaint about a matter:

- a) which concerns or relates to pipework, conduit, cabling or wiring which is not the responsibility of an Energy Ombudsman Service Member;
- b) which concerns a dispute solely between providers of energy supply, electricity distribution and gas transportation services falling within the jurisdiction of the Ombudsman Services: Energy in relation to the provision of such services.

6. Sector Liaison Panel

The Ombudsman Services: Energy shall constitute a Sector Liaison Panel whose constitution and remit will be determined from time to time by the Board.

Annex 3: Terms of Reference: for Ombudsman Services: Property

1. Interpretation

Unless the context otherwise requires, the definitions and interpretations set out below shall apply in addition to those in the Terms of Reference. In addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

'Award' means the compensation awarded to the Complainant not exceeding £25,000 (inclusive of VAT (if any)) per complaint;

'consumer' means any individual who is acting for purposes which are outside his business, trade or profession. For estate agency work, this will also mean any actual or potential buyer or seller of a residential property;

'Non-RICS Member Firm' means either a firm which is not a member firm of RICS or an individual surveyor and/or estate agent which is not a member of RICS or employed by or contractually engaged by a firm which is a member firm of RICS, in accordance with RICS' membership rules in force from time to time;

'Ombudsman Services: Property' means the Ombudsman Service provided to Ombudsman Services: Property participating companies;

'Participating Company/Companies' means a person who has subscribed to participate in the Service in respect of a Service Sector and has joined the Service in accordance with the relevant Terms of Reference and as the context so requires each and/or any of its subsidiary undertakings from time to time) and which has put relevant services and/or products under the jurisdiction of the Ombudsman and the Service
Person includes any body, body corporate, government, state or agency of any government or state, or any joint venture, association or partnership, and references (express or implied) to **person, he, she or it**, shall be construed so as to include references to such persons, to any natural or legal person and to a person's legal personal representatives and successors;

'Potential Participating Company/Companies' means a person who is not a Participating Company but who, if they subscribed to be a Participating Company would be eligible to be so under the Terms of Reference;

'RICS' means the Royal Institution of Chartered Surveyors;

'RICS Member Firm' means either a firm which is a member firm of RICS or an individual surveyor and/or estate agent member of RICS not employed by or contractually engaged by a firm which is a member firm of RICS, or individual members of RICS, in accordance with RICS' membership rules in force from time to time;

'RICS Regulatory Regime' shall have the meaning provided in paragraph 3. (a) below;

'Sector Liaison Panel/ SLP' means the Sector Liaison Panel referred to in Paragraph 8 of this sector annex;

2. **Eligibility to become a Participating Company in Ombudsman Services: Property**

Any surveying organisation, management agent organisation, estate agent organisation, letting agent organisation or individual property professional shall be eligible to become a Participating Company in the Ombudsman Services: Property.

RICS member firms will not be required to execute a deed poll as set out in paragraph 11.1 (a) of the terms of reference.

3. **Services**

The services provided by Participating Companies of the Ombudsman Services: Property which will be covered by, and fall within the jurisdiction of, the Ombudsman and the Ombudsman Service are:

- c) services supplied to consumers which fall within the scope of the regulatory requirements placed upon RICS Member Firms by RICS under RICS' regulatory regime which applies to RICS Member Firms from time to time (hereinafter referred to as the "RICS Regulatory Regime"); and
- d) any other services supplied to consumers for which an ombudsman redress system may be required by statute or otherwise by any applicable regulatory body's mandatory or voluntary regulatory regime, from time to time, whether such services are provided by RICS Member Firms or Non-RICS Member Firms (hereinafter together referred to as the "Relevant Services").

4. **Complainants**

The Ombudsman and the Service shall only have jurisdiction in relation to a complaint against a Participating Company if:

- (a) the complaint is made by the consumer or a nominated representative of the consumer (and such nominated representative has the written consent of the consumer); and
- (b) the Service Member's internal complaints handling procedure has been exhausted but the complainant has not accepted the relevant Participating Company final view or offer of settlement and no more than six months have elapsed since that view/offer was made known to the complainant; or
- (c) more than 8 weeks have elapsed since the complainant first made his/her complaint to the Participating Company but no action has taken place, nor offer of settlement made by the Participating Company, or the complainant has encountered sustained difficulty in registering or progressing a complaint with a Participating Company;
- (d) no more than 12 months have elapsed since the complainant made the initial complaint to the relevant Service Member;

5. Limits on the Ombudsman's Powers

The Ombudsman shall not accept a complaint about a matter which concerns a dispute solely between providers of services falling within the jurisdiction of the Service in relation to the provision of such services.

6. Provision of Information

- e) Information passed to the Ombudsman will be disclosed to the other party unless reasons are given setting out circumstances justifying non-disclosure. These circumstances should be limited and exceptional (for example, issues such as personal security of the Complainant, or member or a third party). If the request for confidentiality is accepted, the Ombudsman will notify the other party that there is confidential material which the Ombudsman does not propose to disclose, the basis on which it is withheld and, as far as possible, the gist of the evidence;
- f) In exceptional circumstances, where the Ombudsman considers it necessary (in his/her sole discretion) a site visit, expert report or a face-to-face meeting (or hearing) may be arranged.

7. Charges and Fees

- g) RICS shall be responsible for the collection of any annual subscriptions of RICS Member Firms to the Service and shall be invoiced directly for such subscriptions by the Service.
- h) Any Participating Companies which are Non-RICS Member Firms shall be responsible for the payment of their own annual subscriptions to either RICS or the Company as appropriate.
- i) Participating Companies shall be obliged to pay any required case fees to the Company in respect of Service in accordance with the Articles and shall be invoiced directly with respect to such case fees.
- j) In the event that any Participating Companies which are RICS Member Firms default or fail to pay any case fees (in accordance with the Articles and these Terms of Reference) or fully implement any Final Decision of the Ombudsman within the stipulated period (in accordance with paragraph 7.12) the RICS shall be solely responsible for the payment of any such fees and the enforcement of any such Final Decision of the Ombudsman.

8. Sector Liaison Panel

The Ombudsman Services: Property shall constitute a Sector Liaison Panel whose constitution and remit will be determined from time to time by the Board.

9. Powers and duties of the Ombudsman

In relation to estate agency the Ombudsman or his appointed deputy (ies) should not , during three years prior to assuming the present function, have occupied a position in the industry to be regulated, remunerated or otherwise, which may cast about his/her independence from the industry and his/her ability to reach impartial decisions.

Annex 4: Terms of Reference for Ombudsman Services: Copyright Licensing

1. Interpretation

Unless the context otherwise requires, the definitions and interpretations set out below shall apply in addition to those in the generic Terms of Reference. In addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

‘Award’ means the compensation awarded to the Complainant not exceeding £5,000 (inclusive of VAT (if any)) per complaint;

‘Collective Management Organisation’ or ‘CMO’, means a body that either owns rights or administers them on behalf of third parties, and licenses the use of copyright materials (the list of CMOs and their purposes is shown in Table 1). Once a CMO has joined the scheme, it becomes a ‘Participating Company’ (see below);

‘Complainant’ means a licensee or member of a Participating Company who is eligible to complain to Ombudsman Services: Copyright Licensing about a service supplied by that organisation, as defined in Tables 2, 3 and 4 and who has fulfilled the requirements of the relevant organisation’s internal complaints process or has had sustained difficulty in registering a complaint;

‘Customer’ means any person who is party to a contract with a Participating Company of Ombudsman Services: Copyright Licensing for the supply or provision of any service falling within the jurisdiction of the Ombudsman and Ombudsman Services: Copyright Licensing. For the avoidance of doubt, where the context allows, it includes a person who is either a Licensee or a member of a Participating Company or someone who applies to take a Licence;

‘Licence’ means an agreement by a Participating Company to grant broadcast, performance, publication, copying, digital use or other use rights of the copyright material to the person applying and paying to do so;

‘Licensee’ means a customer who has been granted a Licence or applies for a Licence to broadcast, perform, publish or otherwise use copyright material owned or administered by a Participating Company which falls within the jurisdiction of the Ombudsman and the Ombudsman Services: Copyright Licensing, as defined in Tables 2 and 4;

‘Member’ means a person who has joined, or is otherwise represented by, a Participating Company, whose copyright material is administered on his or her behalf by that Company and whose eligibility to complain to the Ombudsman is defined in Tables 2 and 3;

‘Ombudsman Services: Copyright Licensing’ means the Ombudsman Service provided to CMOs, their Members and/or Licensees;

‘Participating Company’ means a CMO that has put itself under the jurisdiction of Ombudsman Services: Copyright Licensing for the purposes of resolving outstanding complaints and admitted into the Ombudsman Service by its Board in accordance with

these Terms of Reference and, as the context so requires, each and/or any of its subsidiary undertakings from time to time which has put its relevant services under the jurisdiction of the Ombudsman and Ombudsman Service;

'Sector Liaison Panel' (SLP) means the Sector Liaison Panel referred to in Paragraph 6 of this annex;

'User' means a person who is, or is thought to be, using copyright material and is contacted by a Participating Company with a view to (a) ascertaining their status, in respect of such alleged use, and (b), if the use is occurring (or has occurred), negotiating a Licence.

2. **Eligibility to become a Participating Company in the Ombudsman Services: Copyright Licensing**

CMOs who own or administer copyright materials on behalf of third parties are eligible to become Participating Companies of the Ombudsman Services: Copyright Licensing.

3. **Services**

The services provided by Participating Companies of the Ombudsman Services: Copyright Licensing which may be covered by, and fall within the jurisdiction of, the Ombudsman and the Ombudsman Services: Copyright Licensing are the services associated with the:

- (a) licensing of Customers for the broadcast, use, performance, publication copying, digital use or other use of copyright materials owned or administered by a Participating Company; and
- (b) membership of the Participating Company by the originators or owners of the copyright material on whose behalf it administers the material.

4. **Complainants**

The Ombudsman and the Ombudsman Service: Copyright Licensing shall only have jurisdiction in relation to a complaint against an Participating Company if the person making the complaint (see Table 2 for societies' coverage, Tables 3 (CMO Members) and 4 (CMO Licensees) for the complaint types and Table 5 for potential outcomes, that are within the Ombudsman's jurisdiction):

- (a) was, at the time the subject matter of the complaint arose, a Customer or User; or
- (b) was at the time the subject of the complaint arose an applicant for a Licence; or
- (c) was, at the time the subject of the complaint arose, a Member of a Participating Company; or
- (d) is acting on behalf (and with the written consent) of any person falling within the scope of sub-paragraphs (a), (b) and (c); and
- (e) falls within the scope of (a), (b), (c) or (d) above and has given the Participating Company sufficient time, as set out in paragraph 9.1 (b) of the Terms of Reference an opportunity to address complaint(s) against it using its own internal procedures or has encountered sustained difficulty in registering a complaint with a Participating Company.

5. Limits on the Ombudsman’s powers

In addition to the requirements of section 9 of the Terms of Reference, the Ombudsman shall not accept a complaint about a matter:

- (a) which concerns or relates to the Licence fees, tariffs, terms and conditions quoted or charged by the Participating Company or any other matter that is within the jurisdiction of the Copyright Tribunal; or
- (b) which concerns a dispute by a party outside the jurisdiction of the Ombudsman, as determined by Tables 1, 2, 3 and 4.

6. Sector Liaison Panel

Ombudsman Services: Copyright Licensing may constitute a Sector Liaison Panel whose constitution and remit will be determined from time to time by the Board.

**Table 1
Participating CMO Companies**

Abbrev.	Company Name & Purpose
ALCS	Authors’ Licensing & Collecting Society Ltd. - protects and promotes the rights and interests of writers.
BECS	British Equity Collecting Society Ltd. – was established in 1998 by Equity to enforce its members’ rights in the UK and collect revenue from the compulsory collective administration of rights in other EU member states. BECS sought individual mandates from performers and now has over 27,500 individual members who have appointed BECS to act as their sole and exclusive agent to collect, distribute and administer “Performers Remuneration”. This covers the Rental Right, any blank tape or other levies on copying media or devices, the cable retransmission of programmes incorporating their performance or any other right of a similar collective character which the Board of Management resolves should fall to be collected by BECS. BECS also works as an agent for Broadcasters and Equity to manage and distribute micro payments and royalties negotiated by the Union.
CLA	The Copyright Licensing Agency Ltd. - licenses the copying and digital use of extracts from books, journals, magazines and other electronic and printed publications to enable the efficient sharing of information across organisations without risking copyright infringement.
DACS	Design & Artists’ Copyright Society Ltd. – is a visual arts rights management organisation, established in 1983, that provides three services for artists: ‘Payback’, ‘Artist’s Resale Right’ and ‘Copyright Licensing’.
Directors UK	Directors UK Ltd. - is the professional association representing British film and television directors. It performs dual roles as a collecting society administering payments for film and TV directors for the secondary use of their works and as a representative body campaigning and providing support services to members. It currently has over 5,000 members.
ERA	Educational Recording Agency Ltd. - issues licences for educational establishments to record and access recordings derived from radio and television broadcast output including the repertoire of

Abbrev.	Company Name & Purpose
	ERA's members and for these to be used for non-commercial educational purposes (an ERA Licence is required to use the recordings as teaching resources).
NLA	Newspaper Licensing Agency Ltd. - provides organisations with permission and access to newspaper content when and how needed, including permission to copy and access over 1,500 titles either directly using 'Clipsearch' or via a media monitoring agency.
PRS	Performing Right Society (for Music) Ltd. – ensures that those who wish to play or perform our music outside the home environment can do so by getting the permission they need to play the music they want and ensure that the creators of music are rightfully paid for the use of their work.
PPL (PPL & V(ideo)PL)	Phonographic Performance Ltd. - ensures that those who invest their time, talent and money to make recorded music are fairly paid for their work, through licensing recorded music played in public or broadcast.
PLS	Publishers Licensing Society Ltd. - oversees collective licensing on behalf of publishers for book, journal and magazine copying, including the transition to the digital age.

Table 2
The Ombudsman's Jurisdictional Coverage Amongst CMOs

Society	Members	Licensees
ALCS	Yes	No
BECS	Yes	No
CLA	No	Yes
DACS	Yes	No
Directors UK	Yes	No
ERA	Yes	Yes
NLA	No	Yes
PRS	Yes	Yes
PPL	Yes	Yes
PLS	(Mandating publishers) Yes	No

**Table 3
Exclusions & Inclusions for CMO Members**

Society Name	Excluded	Included
ALCS	Royalty distribution policies, membership fees, copyright law, court actions, membership terms and conditions	Customer service, royalty distribution errors, non-compliance with policies or Code procedures, unreasonable delays or misinformation
BECS	as for ALCS	Customer service, non-compliance with policies or Code procedures, unreasonable delays or misinformation
CLA	N/A	N/A
DACS	as for ALCS	as for ALCS
Directors UK	as for ALCS	as for ALCS
ERA	as for ALCS	Non-compliance with policies or Code of Conduct procedures
NLA	N/A	N/A
PRS	as for ALCS	as for ALCS
PPL	as for ALCS	as for ALCS
PLS	as for ALCS	as for ALCS

**Table 4
Exclusions & Inclusions for CMO Licensees**

Society	Excluded	Included
ALCS	N/A	N/A
BECS	N/A	N/A
CLA	Licensing policies, licence fees, copyright law, court actions, licence terms and conditions	Customer service, non-compliance with policies or Code procedures, unreasonable delays, failures or errors, misinformation
DACS	N/A	N/A
Directors UK	N/A	N/A
ERA	as for CLA	Customer service, non-compliance with policies or Code of Conduct procedures
NLA	as for CLA	as for CLA
PRS	as for CLA	as for CLA
PPL	as for CLA	as for CLA
PLS	N/A	N/A

**Table 5
Potential Ombudsman Outcomes**

Society	Members	Licensees
ALCS	Recommendation to Board of Directors, implementation not automatic	N/A
BECS	Recommendation to Board of Directors, implementation not automatic	N/A
CLA	N/A	Final Decision to be implemented automatically when accepted by complainant
DACS	Recommendation to Board of Directors, implementation not automatic	N/A
Directors UK	Recommendation to Board of Directors, implementation not automatic	N/A
ERA	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant
NLA	N/A	Final Decision to be implemented automatically when accepted by complainant
PRS	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant
PPL	Recommendation to Board of Directors, implementation not automatic	Final Decision to be implemented automatically when accepted by complainant
PLS	Recommendation to Board of Directors, implementation not automatic	N/A

Annex 5: Terms of Reference for The Green Deal Ombudsman and Investigation Service

1 Interpretation

Unless the context otherwise requires, the definitions and interpretations set out below shall apply in addition to those in the generic Terms of Reference. In addition, to the extent not otherwise set out below and not otherwise inconsistent herewith, the definitions and interpretations included in Article 1 of the Articles shall also apply to these Terms of Reference:

‘Award’ means the compensation awarded to the complainant not exceeding £25,000 (inclusive of VAT) per complaint;

‘Breach of Consent complaint’ is a complaint about a failure to obtain necessary consent or consents for a Green Deal plan and/or Green Deal measure(s);

‘Customer’ means any person who is party to a contract with a participating company of the Green Deal Ombudsman and Investigation Service for the supply or provision of any service falling within the jurisdiction of the Green Deal Ombudsman and Investigation Service;

‘DECC’ means the UK Department of Energy & Climate Change;

‘Disclosure and Acknowledgement complaint’ is a complaint about the failure to disclose or acknowledgement the existence of a Green Deal plan;

‘Energy Supplier’ means a provider of energy who holds a supply licence for the supply of gas and/or electricity to domestic and small business customers;

‘FOS’ means the Financial Ombudsman Services;

‘Green Deal Advisor’ means a Green Deal accredited advisor providing advice and information to existing or potential customers of Green Deal services;

‘Green Deal Assessor Organisation’ means any Green Deal accredited company or organisation (or if a sole trader is themselves a Green Deal Advisor) that employs Green Deal Advisors to undertake assessments of suitability for the Green Deal on behalf of actual or potential customers of a Green Deal Provider;

‘Green Deal Installer’ means any Green Deal accredited company or organisation that undertakes installation of materials or equipment according to a Green Deal plan and on behalf of customers of a Green Deal Provider;

‘Green Deal Provider’ means any company or other organisation that undertakes to provide finance for any service or equipment under the Green Deal legislation and is registered as such by the Green Deal Oversight and Registration Body;

‘Green Deal Oversight and Registration Body’ (‘GD ORB’) means the organisation appointed by DECC to manage the Green Deal system and processes;

‘Improver’ means the occupier or owner who makes the arrangement to make energy efficiency improvements to the property.

‘licences’ refers to:

(a) Gas licences:

- (i) a licence under section 7A(1) of the Gas Act 1986 (supply licences);
- (ii) a licence under section 7(2) of the Gas Act 1986 (transportation licences);

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OS: E Annex: 011013 Status: Approved
OS:P Annex: 170712 Status: Approved
OS:C Annex: 011013 Status: Approved

OS: CPL Annex 201112 Status: Approved
OS:GD Annex 010813 Status: Approved

(b) Electricity licences:

- (i) a licence under section 6(1)(d) of the Electricity Act 1989 (supply licences);
- (ii) a licence under section 6(1)(c) of the Electricity Act 1989 (distribution licences);

'OIS' means the Ombudsman & Investigation Services, otherwise known as 'the Green Deal Ombudsman and Investigation Service';

'Ombudsman Services: Energy' (also known as 'EOS') means the Ombudsman Service provided to energy suppliers and energy network operators;

'The Green Deal Ombudsman and Investigation Service' means the Ombudsman Service provided to Green Deal Providers, the Green Deal registration and oversight body and the Secretary of State for Energy & Climate Change;

'Participating Company' means a Green Deal Provider registered with the Green Deal Oversight and Registration Body and admitted into the Green Deal Ombudsman and Investigation Service by the board in accordance with these Terms of Reference and, as the context so requires, each and/or any of its subsidiary undertakings from time to time which has put its relevant services under the jurisdiction of the Green Deal Ombudsman and Investigation Service;

2 Eligibility to become a participating company in Ombudsman Services: Green Deal

Only persons registered and approved as a Green Deal Provider by the Green Deal Oversight and Registration Body may be admitted as a participating company.

3 Services

The services provided by Participating Companies of the Green Deal Ombudsman and Investigation Service which will be covered by, and fall within the jurisdiction of the Green Deal Ombudsman and Investigation Service are the services associated with a Green Deal plan. This shall include that part of the electricity bill provided periodically by the Green Deal customer's energy supplier and identified as such on the bill.

4 Complainants

4.1 The persons entitled to make a complaint in relation to an alleged breach of the regulations, the framework provisions, or the Green Deal plan are:

- (a) the improver;
- (b) a person whose consent was necessary for the inclusion of payments for the energy efficiency improvement in the energy bills for the property and who does not fall within paragraph (a);
- (c) a person whose consent was necessary for the installation of the energy efficiency improvement at the property and who does not fall within paragraph (b);
- (d) a person who became the bill payer after the installation of the energy efficiency improvement at the property;
- (e) a person who takes ownership or occupies the property after the installation of the energy efficiency improvement, but is not the bill payer;
- (f) the Secretary of State;

(g) a person who is acting on behalf of any of the above, such as authorised agents, solicitors or third parties acting with the person's express consent, executors or those with power of attorney.

4.2 The persons entitled to make a complaint in relation to an alleged breach of the disclosure and acknowledgement provisions are:

(a) a person who became the bill payer after the installation of the energy efficiency improvement at the property

(b) a person who takes ownership or occupies the property after the installation of the energy efficiency improvement, but is not the bill payer [4.2 (a) above];

(c) a person who is acting on behalf of any of the above, such as authorised agents, solicitors or third parties acting with the person's express consent, executors or those with power of attorney.

4.3 The persons entitled to make a complaint in relation to an alleged breach of consent are:

(a) the improver;

(b) a person whose consent was necessary for the inclusion of payments for the energy efficiency improvement in the energy bills for the property and does not fall within paragraph (a);

(c) a person whose consent was necessary for the installation of the energy efficiency improvement at the property and who does not fall within paragraph (b);

(d) a person who is acting on behalf of any of the above, such as authorised agents, solicitors or third parties acting with the person's express consent, executors or those with power of attorney.

5 Referral of a complaint from the Ombudsman to the Secretary of State

5.1 Where the Ombudsman considers that a breach has occurred, and the breach requires the exercise of the powers of the Secretary of State, then the Ombudsman will refer the complaint together with the report of the outcome of the Ombudsman's investigation to the Secretary of State.

6 Limits on the Ombudsman's powers

The Ombudsman shall not accept a complaint for consideration unless:

(a) a Green Deal plan is in place; and

(b) a complaint (which may be about the Provider, the Installer or the Assessor) has been made to the Green Deal Provider (except a complaint relating to disclosure and acknowledgement which can be brought to the ombudsman without first referring to the Green Deal Provider):

(i) for alleged breach of framework and Green Deal plan (the relevant requirements) is within six years of the date on which the alleged breach occurred;

(ii) for alleged breach of disclosure and acknowledgement is within ninety (90) days of the first energy bill received by the bill payer after taking ownership or

occupation of the property or being told by the energy supplier of the existence of a green deal plan;

The Ombudsman shall not accept a complaint about a matter:

- (a) which concerns or relates to subjects that are the province of the FOS, the EOS, the Green Deal Oversight and Registration Body or any other body appointed by DECC to officiate or supervise Green Deal participants but will signpost or otherwise transfer the complainant to the appropriate body or inform the complainant of the existence of and contact details for that body;
- (b) which concerns a complaint about any of the above organizations, but will signpost, or otherwise transfer the complainant to DECC;
- (c) which is a complaint about an energy assessor and a Green Deal plan is not in place, (the complainant should refer the complaint to the energy assessor to handle as required within the assessor services specification).

The Ombudsman will transfer all complaints about alleged failures to take a consumer credit modifying step to the Financial Ombudsman Service.

7 Finding of alleged breach requiring variation of the Green Deal plan

- 7.1 Where the ombudsman determines that a breach has occurred requiring variation or cancellation of the Green Deal plan, the Ombudsman may:
 - (a) give notice to the Secretary of State of the determination and the reasons,
 - (b) recommend to the Secretary of State to make a determination that a breach as occurred.
- 7.2 Where the ombudsman has determined that a breach of the disclosure and acknowledgement provisions has occurred or that there has been a breach requiring variation of the Green Deal plan, the Ombudsman will report the findings to the Secretary of State who may:
 - (a) cancel or vary the liability of the bill payer;
 - (b) require the person in breach to pay compensation.

Appendix

Conditions for Subsequent Action by the Secretary of State

Following a referral of an investigation from the ombudsman, the Secretary of State may determine a complaint as set out below.

A1 Conditions for breach: disclosure and acknowledgement

- A1.1 This regulation sets out the conditions, one of which the Secretary of State must be satisfied is met in order to determine that a breach of the disclosure and acknowledgement provisions has occurred.
- A1.2 The first condition is about disclosure:-
- (a) the energy performance certificate was not received by the relevant person, or
 - (b) the energy performance certificate was received by the relevant person, but did not contain the up to date green deal information.
 - (c) the energy performance certificate was received by the recipient after the specified time, or
- A1.3 The second condition is about acknowledgment:-
- (a) the contract did not contain the acknowledgment,
 - (b) the contract contained wording concerning the liability of the bill payer to make payments under the green deal plan and that certain terms of that plan were binding on the bill payer, but the wording is not an acknowledgment.
- A1.4 But in any case where the second condition is met, the Secretary of State must be satisfied, that the complainant, or the bill payer if different, has suffered substantive detriment as a result of the breach of the condition.
- A1.5 In determining whether the complainant, or the bill payer if different, has suffered substantive detriment, the Secretary of State may have regard to whether that person or the bill payer, if different, knew at the relevant time, that the bill payer would be liable to make payments under the green deal plan, and that certain terms of that plan would be binding on the bill payer.
- A1.6 In this regulation, “relevant time” means a reasonable period of time prior to entering into the contract.

A2 Conditions for breach: consent

- A2.1 This regulation sets out the condition, which the Secretary of State must be satisfied is met, in order to determine that a breach of the consent provisions has occurred.
- A2.2 The condition is, that a necessary permission or consent to the installation of the energy efficiency improvement at the property has not been obtained, whether or not the permission or consent was sought after the energy efficiency improvement was installed.

A3 Decision as to breach: disclosure and acknowledgement, consent

- A3.1 Where the Secretary of State determines that a breach has occurred he must give notice to the Provider of the determination, which specifies:-
- (a) the obligation breached,
 - (b) the act which constitutes the breach,
 - (c) the identity of the person responsible, and
 - (d) a statement of the reasons for the determination.
- A3.2 Where the Secretary of State determines that no breach has occurred, the Secretary of State must give notice to:-
- (a) the Provider,
 - (b) the bill payer,
 - (c) the complainant, where that person is not the bill payer.

A4 Cancellation of liability of bill payer: disclosure and acknowledgement, consent

- A4.1 Where the Secretary of State is satisfied that a breach of the disclosure and acknowledgement provisions has occurred, the Secretary of State must require the Provider to cancel the liability of the bill payer to make payments under the green deal plan.
- A4.2 If there is a breach of the Consents provisions, where the Secretary of State is satisfied that the energy efficiency improvement has been removed from the property, the Secretary of State must require the Provider to cancel the liability of the bill payer to make payments under the green deal plan.
- A4.3 Where the Secretary of State is not satisfied that the improvement has been removed from the property, the Secretary of State may require the Provider to cancel the liability of the bill payer to make payments under the plan.
- A4.4 Any requirement imposed under paragraph (1), (3) or (4) must specify the date on which the requirement to cancel takes effect.
- A4.5 For the purposes of paragraph (5), the date specified may be prior to the date on which the determination that a breach occurred was made.
- A4.6 At the same time as requiring the Provider to cancel the liability of the bill payer, the Secretary of State may:-
- (a) require the Provider to give notice to the bill payer:-
 - (i) that the liability of the bill payer under the plan has been cancelled;
 - (ii) of the date on which the cancellation took effect;
 - (iii) of the total amount to be refunded to the bill payer as a result of the Secretary of State's determination;
 - (iv) that the bill payer and any future bill payer at the property may not be held liable to make any payments in relation to the green deal plan;
 - (b) require the Provider to notify the relevant energy supplier to cease forthwith collecting any further payment from the bill payer.
- A4.7 The Secretary of State must give notice to the relevant energy supplier of the cancellation of the liability of the bill payer and the date on which the requirement took effect.

A5 Compensation: disclosure and acknowledgement, consent

- A5.1 Where the Secretary of State has imposed a requirement on the Provider to cancel the liability of the bill payer to make payments under section A4, the Secretary of State must require the person in breach to pay compensation to the Provider in respect of the cancellation.
- A5.2 Where the disclosure and acknowledgement provisions have been breached, and the Secretary of State is satisfied that a person other than the notifier is wholly or partly responsible for the breach, the Secretary of State may reduce the compensation required to be paid by the notifier of such sum as the Secretary of State may think fit.
- A5.3 The compensation required to be paid may not exceed the indebtedness under the green deal plan (at the effective date), less the rebate on early settlement, but including the compensatory amount, where applicable.
- A5.4 The Secretary of State may require the compensation to be paid in a fixed sum on a date he specifies, or in instalments over such period, on such dates and of such sums as the Secretary of State thinks fit.
- A5.5 Where more than one person was responsible for the breach, or, more than one breach occurred, which was committed by more than one person, the Secretary of State may require those persons to pay compensation in such proportions and on such terms as the Secretary of State may think fit.
- A5.6 The Secretary of State must give notice of the requirements as to compensation to the Provider.
- A5.7 The Provider must:-
- (a) calculate the compensation required to be paid by the debtor or debtors in accordance with the notice;
 - (b) give notice to the debtor or debtors of the requirements as to compensation including the amount of compensation payable.
- A5.8 Any sum required to be paid pursuant to this regulation shall be recoverable by the Provider as a debt.
- A5.9 In this regulation:-
- (a) "compensatory amount" means an amount equal to the cost which the creditor has incurred as a result only of the [debtor's] indebtedness being discharged at the relevant time, within the meaning of section 95 of the Consumer Credit Act 1974(a);
 - (b) "creditor" shall have the meaning set out in section 189(1) of the 1974 Act;
 - (c) "debtor" means the person required to pay compensation;
 - (d) "rebate" means rebate of charges for credit within the meaning of section 95 of the 1974 Act;
 - (e) "effective date" means:-
 - (i) the date on which the breach occurred;
 - (ii) where the person who was the payee on the date the sanction was imposed was not the payee on the date of the breach, the receipt date;
 - (iii) where the sanction is in respect of a failure to take a consumer credit modifying step, such date, that the Secretary of State considers appropriate.
 - (f) the "settlement date" has the meaning given in regulation 4 of the Consumer Credit (Early Settlement) Regulations 2004(a).