1. **Comments on Clause 4.4**

Clause 4.4 of the Exposure Draft provides:

*'A* ***DNSP*** *must ensure that any provider of services to the* ***DNSP*** *does not engage in conduct which, if the* ***DNSP*** *engaged in the conduct itself, would be contrary to the* ***DNSP's***  *obligations under clause 4 of this* ***Guideline****.'*

For the reasons set out below, Energex considers that the only provisions of clause 4 that are necessary to extend to a service provider are those in clause 4.3.2, in relation to the treatment of confidential information.

The principal obligation in clause 4.1 (in clause 4.1(b)), is not to discriminate between an 'affiliated entity' and it actual or potential competitors. The DNSP will be in breach of that obligation if it does so in its own capacity or by medium of an agent, including a contactor.

In relation to the obligations contained in clause 4.2:

* + 1. clauses 4.2.1 and 4.2.- the definition of “staff” used in the physical separation/co-location and staff sharing provisions in clauses 4.2.1 and 4.2.2 respectively, already extends to direct and indirect contractors of the DNSP, and employees of direct and indirect contractors of the DNSP;
		2. clause 4.2.3 dealing with branding restrictions, appropriately rests with the branding of the DNSP. It is not a matter for the Ring-fencing Guidelines to regulate the branding of a service provider to the DNSP.
		3. Clauses 4.2.4 and 4.3.5 contain obligations in relation to establishing public registers for offices and staff, and information, should be obligations that sit solely with the DNSP, and not extend to service providers of the DNSP.

The remaining substantive obligation in clause 4 is clause 4.3.2, which imposes certain requirements on the DNSP in relation to confidential information. Energex accepts that there is a legitimate need to ensure that any information disclosed to service providers in accordance with clause 4.3.3(c) be managed in accordance with the obligations that apply to the DNSP itself.

On this basis, the amended drafting of clause 4.4 has replaced the reference to clause 4 generally, to clause 4.3.2 specifically.

In addition, the amended drafting limits the scope of requirements to be imposed on a service provider to those in relation to the services outsourced by the DNSP to the service provider.

1. **Suggested drafting**

## 4.4 Service providers

A **DNSP** must use its best endeavours to ensure that any provider of services to the **DNSP** does not, in relation to those services it provides to the DNSP, engage in conduct which, if the **DNSP** engaged in the conduct itself, would be contrary to the **DNSP**’s obligations under clause 4.3.2 of this **Guideline**.