

## **Memorandum of Understanding (MoU) between the Department for Business, Energy and Industrial Strategy (BEIS) and UK Government Investments Limited (UKGI)**

### **1. Purpose**

- 1.1 This MoU sets out the broad terms of engagement between BEIS and UKGI in relation to the services UKGI provides to BEIS on a range of assets (the **Assets**) and projects (the **Projects**) (the Assets and Projects together, the **Activities**) for which BEIS Ministers are accountable. It seeks to ensure that UKGI and BEIS have a clear common understanding of the basis on which they will work together, including roles and responsibilities, accountabilities, working relationships and scope of activities. These ways of working are summarised in the attached principles included as Annex 5.
- 1.2 In addition to this MoU, BEIS and UKGI may agree additional working protocols or Framework Documents, including the governance, objectives, and timeframe of engagement, for individual Activities, which documents will take precedence over this MoU in the event of any conflict.
- 1.3 Both parties are committed to delivering the terms of this MoU but it is not intended to create legal obligations or to be legally binding. Consequently, it has no legal force, but rather provides the framework for how the parties will work together at official level and will be reviewed on a regular basis to ensure it remains fit for purpose.

### **2. Background**

- 2.1 UKGI is a limited company, wholly-owned by HM Treasury, which provides independent corporate finance and corporate governance advice to government departments in relation to identified Projects. UKGI also performs the shareholder role for BEIS Assets.

### **3. UKGI approach**

- 3.1 UKGI will provide independent advice to BEIS and its Ministers. Any direct engagement with Assets or Projects will formally be as an agent of BEIS.
- 3.2 UKGI will provide its advice in a manner consistent with the Civil Service's core values of integrity, honesty, objectivity, and impartiality.
- 3.3 UKGI will have access to sensitive or confidential information in respect of the Activities. UKGI will treat BEIS's sensitive or confidential information and the advice it provides to BEIS with the same degree of confidentiality as that minister might expect of his or her own officials, in accordance with the Civil Service Code. HMT has acknowledged the confidentiality obligations to which UKGI is subject. BEIS officials will also treat UKGI's sensitive or confidential information with the same degree of confidentiality it applies to BEIS information.
- 3.4 BEIS will have responsibility for developing or formulating policy in relation to the Activities. UKGI consider BEIS's and wider Government objectives when providing its services.

### **4. Accountabilities and responsibilities**

- 4.1 The Principal Accounting Officer of the Treasury (**HMT PAO**) has overall responsibility and accountability for UKGI, both for its policy direction, and for its wider corporate finance objectives and activities through the UKGI Accounting Officer, in accordance with Chapter 3 of Managing Public Money (**MPM**). The HMT PAO, via the UKGI Accounting Officer is accountable for the assets and liabilities of UKGI being a public entity within its accounting and budgetary boundary.

- 4.2 The accountability to Parliament for the Activities in which UKGI is involved will be:
- Ministerial level: BEIS Ministers
  - Principal Accounting Officer level: BEIS Permanent Secretary
  - Senior Official level: UKGI/BEIS
- 4.3 At BEIS's request, UKGI senior officials will join BEIS in any investigation or representation of the Activities including, but not limited to, National Audit Office reports, Public Accounts Committee hearings, and BEIS Committee hearings.
- 4.4 BEIS Communications will manage formal communications relating to the Activities with content input from the relevant BEIS team and UKGI as required. UKGI will be permitted re-post any formal press releases from BEIS relating to the Activities on its intranet and external website.
- 4.5 UKGI staff may be appointed to sit on an Asset's board and in such instances a separate letter of appointment between the UKGI staff member and the Asset shall be agreed. One purpose of such an appointment will be to enable the Asset's board to benefit from a broader government perspective and for BEIS to benefit from a timely and nuanced understanding of the developments in the relevant Asset. UKGI and BEIS acknowledge that a UKGI staff member appointed to an Asset's board will have duties to both the Asset and BEIS in the exercise of their appointment. In the cases where conflicts of interest arise, these will be dealt with on an individual basis.
- 4.6 In rare instances (where required by MPA), UKGI staff will assume the role of Senior Responsible Officer for individual Projects, in which case a separate letter from BEIS Permanent Secretary will set out the accountability lines for the specific Project.
- 4.7 UKGI will not be accountable for the Asset's project or programme delivery by virtue of the shareholder role it performs.
- 5. Finance, Legal and Procurement**
- 5.1 For the avoidance of doubt BEIS will retain control of, and is beneficially entitled to, all financial distributions relating to the Activities.
- 5.2 If required, UKGI may assist with the procurement and management of legal and other professional advice in respect of the Activities. BEIS is responsible for paying consultancy and advisors' fees incurred by UKGI in respect of the Activities. Any advice received by UKGI in this context is BEIS's advice and accordingly UKGI will ensure that it is treated in a manner that is consistent with its confidential and (in relation to legal advice) legally privileged status.
- 5.3 UKGI does not provide legal advice or manage any legal claims relating to the Asset on behalf of BEIS nor will it provide procurement or other assurance advice or expertise in respect of any other aspect of the Activities (except for procurements of professional external advisers which it undertakes for BEIS itself).
- 6. Working relationships**
- 6.1 BEIS and UKGI agree to work together as one team to ensure the delivery of the objectives set for the Activities. The parties shall endeavour to make the working arrangements function as efficiently, openly and collaboratively as possible.
- 6.2 UKGI may, where appropriate, advise BEIS Permanent Secretary, BEIS Ministers and the BEIS Secretary of State directly in relation to the Activities. UKGI will ensure that the

relevant BEIS officials for each of the Activities are sighted on all such direct advice before it goes up and copied into the final advice. Where UKGI provides advice to BEIS which BEIS does not wish to follow, this will be recorded in the relevant submissions or internal notes/briefings as appropriate.

- 6.3 UKGI will work directly with the Assets or Projects acting as an agent on behalf of BEIS, and UKGI will be the main point of day to day contact between BEIS and the Assets or Projects.
- 6.4 BEIS will ensure that UKGI are invited to all meetings and relevant to the Activities and will provide UKGI with the information UKGI requires to perform its role in relation to the Activities. BEIS will ensure that appropriately senior officials attend relevant governance meetings in relation to the Activities.
- 6.5 UKGI will provide BEIS with regular reporting and information in relation to the Activities as mutually agreed. UKGI Shareholder teams will meet regularly with the relevant BEIS Directors General accountable for the Assets to update them and discuss key issues, including matters due for discussion at Assets' board meetings.
- 6.6 UKGI will ensure that all its documents are filed on UKGI's systems in such a way as to ensure business continuity at the end of any arrangement.
- 6.7 UKGI and BEIS will periodically review UKGI's engagement with BEIS. Both parties will jointly:
  - Monitor progress against objectives for the Activities;
  - Identify areas where further UKGI support is required or where an existing arrangement is no longer required;
  - Plan and prioritise future objectives for the Activities; and
  - Provide timely and high quality feedback on the relationship.

## **7. Dispute Resolution**

Where a dispute arises over any aspect relating to the Activities the matter will be referred for resolution to BEIS and UKGI officials. If the matter is not resolved to the satisfaction of both parties, within a reasonable period, either party may refer the matter for consideration and resolution by the BEIS PAO and UKGI AO.

## **8. Scope of services**

- 8.1 **Projects:** Where agreed between the parties, UKGI will provide the following (non-exhaustive) types of corporate finance and/or corporate governance services in relation to identified Projects:
  - Preparing and executing BEIS corporate asset sales;
  - Advising BEIS on major financial interventions into corporate structures;
  - Advising BEIS on major negotiations with corporates; and
  - Advice on Projects/Assets involving a complex commercial or governance transformation.

Current projects are listed in Annex 1 and require regular process update meetings with the relevant BEIS DG. New requests for support on BEIS projects will be agreed via email with the relevant DG in accordance with paragraph 8.3 below.

- 8.2 **Assets:** The UKGI shareholder role consists of the activities set out below. In relation to these activities, UKGI will provide advice to the relevant ministers and Principal Accounting Officer, in consultation with BEIS officials.

***Establish and maintain appropriate and effective corporate governance foundations which govern the department-asset relationship***

- I. work with BEIS and the Assets to **establish and maintain appropriate corporate governance documents and systems**, through up to date and fit for purpose governance documents, including Framework Documents, Articles of Association where relevant, board Terms of Reference, chair letter.

***Promote effective objectives, business planning and performance against business plan***

- II. assess and challenge from an owner's perspective the Assets' **Business Plans**, the clarity of the objectives, the quality of the Business Plan and the financial, and where relevant commercial, strength underpinning it, and its effectiveness as a tool for the Assets.
- III. monitor and challenge the Assets and their boards as to the **performance** against their Business Plan or equivalent document, in terms of how the Asset is performing as an organisation (as opposed to monitoring the success of the policy delivery itself).
- IV. if there is a UKGI shareholder representative on the board, challenge the Assets Business Cases, and other HMG approvals outside the Asset's executive delegations, through that NED position on the Asset board *only* (this will be limited to the degree of challenge that any non-executive board member can provide. UKGI is not responsible for formally reviewing such business cases, providing advice to the department and ministers, or obtaining HMG approval for Business Cases, unless explicitly agreed otherwise).

***Promote strong corporate capability***

- V. through the UKGI shareholder team, as well as the UKGI shareholder representative on the Asset's board, promote the **strength of the Asset's governance systems which support organisational performance**, by providing high level challenge to the Asset (and
  - a. governance framework compliance – defined as the Asset's view on its compliance with its governance framework (as set out in its Framework Document, delegated authorities, and any other specified governance documents), and
  - b. the adequacy and strength of the Asset's reporting to the department on these issues.

***Promote effective leadership (high quality boards and senior management)***

- a. promoting high quality and diverse boards, challenging the boards capability and effectiveness, and monitoring the Asset's succession planning
- b. promoting the implementation of effective board composition, recruitment, remuneration and appointment processes
- c. acting as the shareholder non-executive director on the Asset's board
- d. giving a view on the Asset's board level executive capability in relation to its responsibilities, and remuneration



***Promote effective relationships between BEIS and the Assets***

- a. (UKGI) building effective relationships with the Asset's board and senior management
- b. promoting effective interfaces and communications between the department and the Asset, including through regular shareholder meetings
- c. maintaining an effective regular meeting "rhythm" with the Asset chair, board and executive to ensure appropriate flow of information (management information) between the Asset, UKGI and BEIS, including effective reporting to BEIS

***Supporting and supplementing the activities above by providing a Shareholder NED on the Asset's board***

- VIII. act as government shareholder representative on the Asset's board, through:
  - a. providing an appropriate board member to carry out the non-executive director role effectively, drawing on the support and analysis from the UKGI shareholder team
  - b. being a member of the Asset's Remuneration Committee, Audit and Risk Committee, Nominations Committee,
  - c. acting as an interlocutor between the department and the Asset's board
  - d. providing a view to the department on the strength of the Asset's board

- 8.3 As at the date of entry into this MoU, the Activities in relation to which UKGI will provide its services to BEIS are set out in Annex 1. The profile of work UKGI undertakes for BEIS may alter over time, and accordingly the parties agree to update this MOU regularly. Amendments to the Annex identifying ongoing Activities may be effected by an exchange of emails between the parties.

**9. Data protection**

- 9.1 In respect of any personal data shared with UKGI for the purpose of it performing its obligations under this memorandum, the Parties acknowledge that UKGI is the processor, and BEIS the controller. UKGI will only process personal data in accordance with BEIS's written instructions from time to time (which may be specific instructions or standing instructions of general application), unless such processing is required by any law to which UKGI is subject, in which case UKGI shall (to the extent permitted by law) inform BEIS of that legal requirement before carrying out the processing.
- 9.2 The parties agree that the processing of personal data to the extent required for UKGI to provide services to BEIS in respect of the Activities listed in Annex 1, as amended from time to time, shall be considered a standing instruction of general application.
- 9.3 For the purposes of this paragraph, personal data, processor and controller shall each have the meaning given to them in the prevailing data protection legislation, including, but not limited to, the General Data Protection Regulation.

Signed by

.....  
for and on behalf of The Secretary of State for the BEIS

Date: .....

Signed by

.....  
for and on behalf of UK Government Investments Limited

Date: .....

## **Annex 1**

### **Activities as at October 2019**

#### **Assets**

British Business Bank

Electricity Settlements Company (NED only role – see Annex 2)

Land Registry

Low Carbon Contracts Company (NED only role – see Annex 2)

National Nuclear Laboratory

Nuclear decommissioning authority

Nuclear Liabilities Fund (no UKGI NED)

Ordnance Survey

Post Office Ltd

UK Green Infrastructure platform

Urenco (excluding decommissioning fund)

#### **Projects**

BisCo

Deep Sea Mining Working Group

New Nuclear\*

Special Situations

Inward Mergers and Acquisitions

\* UKGI will advise BEIS on their analysis of delivery approaches for low carbon energy projects. Primarily this will involve advising on the financeability of a regulated asset base model for new nuclear, including input into the structuring, market engagement, and developer engagement workstreams (among others). Where UKGI has relevant expertise, the team will in addition provide some 'light touch' advice on other financing approaches for nuclear (e.g. government-led) and approaches to financing other low carbon technologies, such as carbon capture and storage.

**Annex 2 – DRAFT subject to team confirmation****Assets for which UKGI provides a NED only**

With respect to LCCC and ESC, as at the date of execution of this MoU UKGI does not perform the shareholder role set out in paragraph 8.2 above (whether in conjunction with BEIS or otherwise). Instead UKGI employees are appointed as non-executive directors (NEDs) on the board of each company. Their duties as NEDs are as set out in the Companies Act. In addition, these NEDs will assist BEIS by:

- Meeting with BEIS officials (expected to include the relevant BEIS shareholder team, and Policy and Client teams where applicable), and BEIS Ministers when appropriate, to discuss relevant Departmental/Ministerial interests so that the NEDs will have an up to date understanding of these;
- Participating in other discussions with BEIS officials as required on matters of interest relating to the companies;
- Providing insights into the views of BEIS with respect to the companies at the relevant board meetings to the extent required to aid the companies' decision making; and
- Where appropriate, helping to resolve any issues as "honest broker" between the relevant BEIS team and the companies.

These NEDs are not responsible for managing other forms of communication, information flows or updates between the companies and the relevant BEIS teams



### **Annex 3**

#### **Nuclear Liabilities Fund**

[updated NLF MoU detailing UKGI role to be appended]

**Annex 4**

**Urenco**

[Letter to BEIS re Urenco role to be appended]

## **Annex 5**

### **BEIS and UKGI principles – *embedding effective ways of working***

1. BEIS Director Generals are accountable for the Partner Organisations in their business areas. When they work on BEIS assets/projects, UKGI teams report to BEIS Director Generals. *[Source: BEIS organogram]*
2. Leadership teams in UKGI and BEIS are committed to the BEIS-UKGI relationship – monitoring progress against agreed objectives, sharing good practice and honest feedback, and periodically reviewing the effectiveness of our engagement, including the MoU.
3. UKGI will provide independent advice to BEIS and its ministers in a manner consistent with the Civil Service's core values. When UKGI works directly with BEIS assets/projects, it will be acting as an agent of BEIS and the main point of day-to-day contact.
4. UKGI and BEIS officials will work as one team, engaging efficiently and in a spirit of openness and collaboration. Teams may develop tailored governance arrangements and ways of working for specific assets/projects.
5. BEIS will have responsibility for policy development in relation to its assets/projects. UKGI will consider BEIS and wider Government objectives in providing its services. When UKGI provides direct advice to the BEIS Permanent Secretary, SoS and Ministers, BEIS officials will be sighted in advance and copied.
6. UKGI and BEIS will treat each other's sensitive or confidential information with the same confidentiality a BEIS Minister might expect of their officials. HMT acknowledges these obligations on UKGI.