Email: retailpriceregulation@ofgem.gov.uk

Date: 15 August 2022

Confidentiality Ring Undertakings: Adviser

**DISCLOSURE RELATING TO THE TRUE-UP PROCESS FOR COVID 19 COSTS**

# UNDERTAKINGS GIVEN BY [Name of the Adviser] REGARDING ACCESS TO THE CONFIDENTIALITY RING FOR DISCLOSED COVID-19 TRUE-UP MODEL & DATA

**WHEREAS**

1. The Domestic Gas and Electricity (Tariff Cap) Act 2018 ("**the Act**") places a duty on the Gas and Electricity Markets Authority ("**the Authority**") to implement a temporary cap on Standard Variable Tariffs and default rates (“**the Default Tariff Cap**”). On 6 November 2018, the Authority published the final Decision to implement the Default Tariff Cap which took effect on and from 1 January 2019.
2. The Authority proposes to publish the consultation on the Publication Date[[1]](#footnote-2) to seek stakeholder views before confirming decisions on the true-up process for COVID-19 costs for cap period 10a & 10b (1 April 2023 to 30 September 2023) onwards (the “**COVID-19** **True-Up Consultation**”).
3. The Authority has decided to disclose the data described in Schedule 1 (the “**Disclosed COVID-19 True-Up Model & Data**”) by means of a confidentiality ring commencing on the Publication Date (the **“COVID-19 True-Up Model & Data Confidentiality Ring”)**. A reference to the Disclosed COVID-19 True-Up Model & Data in these undertakings includes references to any part of the Disclosed COVID-19 True-Up Model & Data. The Authority may identify additional information to be disclosed as part of the Disclosed COVID-19 True-Up Model & Data after the commencement of the COVID-19 True-Up Model & Data Confidentiality Ring. In this event, the Authority will notify the Adviser that this subsequent disclosure forms part of the Disclosed COVID-19 True-Up Model & Data and accordingly these undertakings shall apply equally to this subsequent disclosure.
4. The Disclosed COVID-19 True-Up Model & Data contains information that is confidential to suppliers and is provided by suppliers as part of the COVID-19 True-Up Consultation on the basis that appropriate protections are put in place to ensure the continued confidentiality of the material. The Authority considers that the Disclosed COVID-19 True-Up Model & Data also includes information about particular third-party businesses and consequently that information is caught by the prohibition on disclosure in section 105 Utilities Act 2000 (**“UA 2000**”). The Authority may disclose such information in a manner consistent with the ‘disclosure gateways’ contained in section 105 UA 2000.
5. Access to the COVID-19 True-Up Model & Data Confidentiality Ring and the Disclosed COVID-19 True-Up Model & Data is restricted to the external legal and/or economic advisers of the “**Relevant Party”**.[[2]](#footnote-3) Access is provided for the “**Permitted Purpose”** that is the sole purpose of allowing the advisers of a Relevant Party, on behalf of the Relevant Party, to review and understand the Disclosed COVID-19 True-Up Model & Data, in order to:
6. prepare submissions and representations to the COVID-19 True-Up Consultation; and
7. to enable the Relevant Party (if relevant) to prepare and conduct an appeal against any decision of the Authority in connection with the COVID-19 True-Up Model Consultation, including an appeal in which the Relevant Party is, or is intending to apply to be, an intervener, in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal.
8. Access to the COVID-19 True-Up Model & Data Confidentiality Ring will only be granted to an Authorised Adviser[[3]](#footnote-4) in accordance with the arrangements in recital (9):
9. who has been approved, in writing, by the Authority;
10. who has given written undertakings acceptable to the Authority ("**Adviser Undertakings**");
11. in respect of whom the Adviser’s firm/ employer (“**the Firm**”), has provided written undertakings acceptable to the Authority (the "**Firm Undertakings**"); and
12. if the Firm has provided, in writing, an Approved Compliance Document (as defined in the Firm Undertakings) acceptable to the Authority.
13. The total number of Authorised Advisers is limited to ten (10) for each Relevant Party. Once Authorised Advisers are agreed, the Authority will not permit alternative persons to be exchanged for those already agreed persons.
14. The arrangements for obtaining the Authority's approval of an Adviser and for giving undertakings in respect of an Adviser are:
15. notice of not less than 1 **Working Day** must be given to the Authority of the date on which the Adviser first wishes to be granted access to the COVID-19 True-Up Model & Data Confidentiality Ring (‘**the Access Date**’);
16. by 17:00 on the Working Day before the Access Date the Adviser Undertakings signed by the Adviser and, if relevant, the Firm Undertakings signed on behalf of the Firm, must be provided to (and received by) the Authority; and
17. before the Adviser attempts to access the COVID-19 True-Up Model & Data Confidentiality Ring confirmation in writing must be obtained from the Authority that it has approved the Adviser and has accepted the signed Adviser Undertakings and, if relevant, accepted the signed Firm Undertakings and approved the Compliance Document.

A **Working Day** is any day of the week, Monday to Friday, 09:30 to 17:00 on which the Authority’s offices are open (and excludes public or bank holidays).

1. Subject to the Authority receiving the signed Adviser Undertakings and the Firm Undertakings, the Authority will:
2. make the Disclosed COVID-19 True-UpModel & Data available to the Authorised Adviser via a Huddle Workspace (the **“Huddle Workspace”**). In order to receive the COVID-19 True-Up Model & Data via the Huddle Workspace, the Firm must provide the Authority with the Authorised Adviser’s name, role, and professional email address;
3. provide access to the Huddle Workspace within 1 Working Day of receipt of the information requested in (a) above;
4. provide access to the Huddle Workspace on the Publication Date if the information in (a) above is received in advance, or not longer than 1 Working Day after their application if received after the Consultation Publication Date; and
5. remove the Authorised Adviser’s access rights to the Huddle Workspace after 48 hours. The Authorised Adviser will need to download the COVID-19 True-Up Model & Data from the Huddle Workspace during this time.
6. Each Authorised Adviser will be granted access to the Huddle Workspace and will be permitted to download the Disclosed COVID-19 True-Up Model & Data (each permitted download resulting in a ‘**Permitted Copy**’ and each copy of a ‘Permitted Copy’ whether in part, adjusted, or altered is itself a ‘**Permitted Copy**’) within 48 hours of being granted access to the Huddle Workspace. Permitted Copies must be downloaded, stored and worked with in accordance with the Approved Compliance Document and the Permitted Arrangements (as defined in the Firm Undertakings).
7. Disclosure of the Disclosed COVID-19 True-Up Model & Data, or any other part thereof, by the Authorised Advisers other than in accordance with the Adviser Undertakings is not permitted without the Authority's express and prior written consent. Breach of the Adviser Undertakings by an Authorised Adviser may result in the Authority:
8. terminating the Authorised Adviser’s access to the COVID-19 True-Up Model & Data Confidentiality Ring and refusing the Authorised Adviser access to any subsequent disclosure room or confidentiality ring run by the Authority, whether relating to the Consultation or update of any other allowance contained in the Default Tariff Cap for a prescribed period of time, such period to be determined by the Authority at its sole discretion (acting reasonably);
9. terminating the Authorised Adviser’s and/or Firm’s right to hold the information, and demanding it be deleted or returned immediately;
10. taking additional steps in relation to that particular Authorised Adviser and Firm in any future exercises involving the disclosure of confidential information, such as the imposition of more onerous restrictions, additional requirements and guarantees or refusal of access;
11. taking appropriate legal action to protect the data;
12. where relevant, referring the breach to the Authorised Adviser’s regulatory body which may decide to take disciplinary action in relation to the breach; and
13. informing other parties of the breach, as deemed necessary by the Authority.
14. Section 105 of the UA 2000 makes it an offence to disclose information other than in a manner that is consistent with the UA 2000. The Authority considers that any further disclosure of the Disclosed COVID-19 True-Up Model & Data for anything other than the Permitted Purpose, would be a contravention of the UA 2000.
15. [Name of Firm] has been instructed by [Name of Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Party] in relation to the Consultation. [Name of Adviser] is [employed by [Name of Firm] as a [legal/economic adviser] [a partner in [Name of Firm]].

**NOW THEREFORE**

I, [*Name of Adviser*] [*Job title*] at [*Name of Firm*], who has been engaged by [*Name of Relevant Party*] in connection with the Consultation undertake to the Authority in my own name:

1. To use the Disclosed COVID-19 True-Up Model & Data for, and only for, the Permitted Purpose in accordance with the Permitted Arrangements.
2. Save as provided in paragraph 5 to hold the Disclosed COVID-19 True-Up Model & Data in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make available in any manner the Disclosed COVID-19 True-Up Model & Data to any other person (being a "**Non-Authorised Person**") without the consent of the Authority except to:
   1. another Authorised Adviser of the Relevant Party; or
   2. a member of the Authority's staff; or
   3. an Approved Person.
3. Not to make any electronic or non-electronic copy in any format of the Disclosed COVID-19 True-Up Model & Data other than the Permitted Copies, save that I may copy the Disclosed COVID-19 True-Up Model & Data for, and only for, the purposes of preparing a report or submission within the scope of the Permitted Purpose.
4. To ensure that, save as provided in paragraph 5, any document (including any report or submission) I prepare, or analysis I undertake, which contains or refers to the Disclosed COVID-19 True-Up Model & Data or which allows any data contained within the Disclosed COVID-19 True-Up Model & Data to be inferred is not used, disclosed or made available in any way to:
5. disclose the Disclosed COVID-19 True-Up Model & Data to any Non-Authorised Person; or
6. enable or assist any Non-Authorised Person to gain an understanding of the market position of any other party other than the Relevant Party.
7. I may, in order to facilitate the Permitted Purpose and at the discretion of the Relevant Party, prepare reports for submission to Ofgem which relates to any information I propose to disclose to the Relevant Party that relates to the Disclosed COVID-19 True-Up Model & Data prior to providing such report to the Relevant Party. Ofgem will either approve the report, or provide redactions as necessary and once approved the report will become a ‘**Non-Confidential Report**’. I will ensure, including by making any necessary redactions, that (i) the restrictions in paragraph 4 are complied with in relation to any such Non-Confidential Report; and that (ii) the Non-Confidential Report is only shared with Relevant Party after the Authority has confirmed in writing to an Authorised Adviser of the Relevant Party that the Non-Confidential Report or submission does not include any of the Disclosed COVID-19 True-Up Model & Data and meets the requirements in paragraph 4.
8. To keep secure at all times the Disclosed COVID-19 True-Up Model & Data, the Permitted Copies and any other document prepared by, or provided to, me, which contains or refers to the Disclosed COVID-19 True-Up Model & Data (together the ‘**Relevant Material and Documents**’). In respect of the Relevant Materials and Documents which are in physical copy I will ensure that these are securely stored and locked away when not in use and kept separate from my regular work and in accordance with the Permitted Arrangements.
9. On the expiry of the period for bringing an appeal in respect of any decision relating to the Consultation I agree to:
   1. to delete the Permitted Copies so that the Disclosed COVID-19 True-Up Model & Data is not readily available to any person (measures must be taken to ensure no copies remain in either the recycle bin or in a backup system);
   2. in so far as not covered by (a) above, and subject to paragraph 9 below, to destroy or return to the Authority the Relevant Material and Documents or, where the Relevant Material and Documents are in electronic form, to delete them so that they are not readily available to any; and
   3. to notify the Authority of the manner of, and date of, the destruction and/or deletion of the Relevant Material and Documents.
10. To ensure that each Firm retains no more than one copy of any Non-Confidential Reports and to return to the Authority, save as provided in paragraph 9 below, the copy of any Non-Confidential Reports at the conclusion of the period within which any appeal may be brought concerning the Authority’s decision.
11. If it is required to comply with [Name of Firm]’s professional indemnity insurance policy or any applicable law, legislation or court order, the Authorised Advisers of [Name of Firm] may retain one copy of the Relevant Materials and Documents. I will ensure that:
    1. the copy is stored securely in accordance with the undertaking in paragraph 6;
    2. the Authority is notified of the retention at the conclusion of the period within which any appeal may be brought concerning the Authority’s decision; and
    3. the Authority is consulted as far as practicable prior to any disclosure of the copy under [Name of Firm]’s professional indemnity insurance policy or any applicable law, legislation or court order.
12. To notify the Authority immediately if I become aware of or suspect that any of the Relevant Party’s Authorised Advisers have failed to comply with the Adviser Undertakings, or any of the firms that such Authorised Advisers represent have failed to comply with the Firm Undertakings.

**PROVIDED THAT**

The above undertakings shall not apply to any part of the Disclosed COVID-19 True-Up Model & Data that:

1. belongs or relates solely to the Relevant Party or to the Relevant Party's business and which does not include any confidential information belonging to, relating to or deriving solely or partially from any other party;
2. is information that has previously been disclosed by the Authority to the Relevant Party without obligations of confidence;
3. at the time of disclosure is in the public domain or subsequently comes into the public domain, except through breach of the Adviser Undertaking, or any other of the Undertakings given by external legal and/or economic advisers for [Name of the Relevant Party]or any other Relevant Party in relation to the COVID-19 True-Up Model & Data Confidentiality Ring; or
4. is required to be disclosed by law, legislation or court order, as long as, and unless prohibited by law, legislation or court order, I consult with the Authority as far as practicable prior to the proposed disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure.

**AND IN AGREEMENT THAT**

This Undertaking shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the courts of England and Wales to hear and decide any action or proceedings which may arise out of, or in connection with these undertakings.

If not already done so, I will ensure that I am familiar with and understand my duties and obligations in accordance with the Compliance Document and Permitted Arrangements prior to gaining access to the COVID-19 True-Up Model & Data Confidentiality Ring.

[Name of Relevant Party] has given full and informed consent to the terms of these undertakings, including the restrictions placed upon [Name of Adviser] on the further disclosure of information, subject to the undertakings above.

……………………………  
[*Name o*f *Adviser*] [*Name of Firm] [Job Title]*

*Date.....*

# SCHEDULE 1

COVID-19 True-Up Model & Data

*The Disclosed* *COVID-19 True-Up Model & Data comprises of the following:*

* *The COVID-19 True-Up Model & Data*
* *The COVID-19 True-Up Model & Data: Alternative method*
* *And any subsequent disclosure which Authority has notified the Adviser of as forming part of the Disclosed COVID-19 True-Up Model & Data pursuant to recital 3 above.*

1. The Authority currently expects that the Publication Date will be in Autumn 2022 [↑](#footnote-ref-2)
2. A **Relevant Party** for the purposes of these undertaking could be any party which will be affected by this Consultation, specifically supply licence holders, Citizens Advice or Citizens Advice Scotland and any other party which the Authority determined in its absolute discretion as likely to be affected by the proposed Consultation. [↑](#footnote-ref-3)
3. For the purposes of these undertakings Advisers will include the partners, members, employees and consultants of the Authorised Firm. [↑](#footnote-ref-4)