

## Confidentiality Ring: Relevant Party

### REVIEW OF THE SMART METERING COST ALLOWANCE IN THE DEFAULT TARIFF CAP UNDERTAKINGS GIVEN BY [Name of Relevant Party] REGARDING ACCESS TO THE CONFIDENTIALITY RING FOR DISCLOSED MATERIALS

#### 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. The Default Tariff Cap methodology includes a Smart Metering Net Cost Change ("**SMNCC**") allowance. This allowance reflects the change in smart metering costs from the 2017 baseline (part of operating costs) to subsequent cap periods. In November 2018 the Authority set SMNCC values for the first two cap periods.
- (2) On [xx] October 2019 the Authority published its consultation (the "**Consultation**") setting out its proposal to update the SMNCC allowance for the fourth cap period (from 1 April 2020 to 30 September 2020) and subsequent tariff cap periods using the updated non-pass-through SMNCC model based on the new Smart Metering Implementation Programme Cost Benefit Analysis ("**SMIP CBA**") developed by the Department for Business, Energy and Industrial Strategy ("**BEIS**").
- (3) The Authority has decided to disclose the data described in Schedule 1/the model (the "**Disclosed Material**") by means of a confidentiality ring commencing on the [xx] October 2019 (the "**Confidentiality Ring**"). A reference to the Disclosed Material in these undertakings includes references to any part of the Disclosed Material.
- (4) The Disclosed Material contains information that is confidential to BEIS and is provided by BEIS for disclosure as part of the 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 Material may also include information 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 Confidentiality Ring and the Disclosed Material is restricted to the Authorised Attendees of the **Relevant Party**<sup>1</sup>. For the avoidance of doubt an Authorised Attendee will include employees of the Relevant Party and / or third party advisers. Access is provided for

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<sup>1</sup> A **Relevant Party** for the purposes of these undertakings could be any party which will be affected by this Consultation, specifically domestic 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 Consultation. Where a supply licence holder has any Affiliate Licensees (as defined in SLC1 of the gas and electricity supply licences), the licence holder and any Affiliate Licensees together constitute a Relevant Party.

the sole purpose of allowing the Authorised Attendees of a Relevant Party, on behalf of the Relevant Party, to review and understand the Disclosed Material in order to prepare submissions and representations to the Consultation (“**the Permitted Purpose**”).

(6) Access to the Confidentiality Ring will only be granted to an Authorised Attendee:

- a) who has been approved, in writing, by the Authority
- b) who has provided written undertakings acceptable to the Authority ("**Individual Undertakings**");
- c) if the Relevant Party has provided written undertakings acceptable to the Authority (“**the Authorised Relevant Party Undertakings**”); and
- d) in accordance with the arrangements in recital (8) (each such Attendee being an “**Authorised Attendee**”).

(7) The number of Authorised Attendees is limited to six for each Relevant Party.

(8) The arrangements for obtaining the Authority's approval of an Authorised Attendee and for giving undertakings in respect of an Authorised Attendee are:

- a) Two weeks prior to access to the Confidentiality Ring being granted to any Authorised Attendee, the Relevant Party must provide to the Authority in writing a compliance document setting out how it will comply with the terms of this undertaking, including what measures it will put in place to ensure continued compliance with this undertaking and confirmation of the Authorised Attendees’ compliance with their respective Individual Undertakings. The compliance document must be signed by a member of Relevant Party’s Board<sup>2</sup>. The Authority may reject the compliance document if it is of the opinion (acting reasonably) that the evidence supplied by the Relevant Party is not sufficient to validate compliance with the undertakings. In this event, the Relevant Party will have to resubmit a revised compliance document to the Authority. Only once this compliance document has been approved by the Authority will the Authorised Attendees of the Relevant Party gain access to the Confidentiality Ring.
- b) notice of not less than 1 **Working Day** must be given to the Authority of the date on which the Authorised Attendee first wishes to be granted access to the Confidentiality Ring (“**the Access Date**”);
- c) by 12pm on the Working Day before the Access Date the Individual Undertakings signed by the Authorised Attendee and the Authorised Relevant Party Undertakings

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<sup>2</sup> Board means a member of the board of the Relevant Party, as listed in the Relevant Party’s company annual report.

signed on behalf of the Relevant Party by a member of its Board, must be provided to (and received by) the Authority; and

- d) before the Authorised Attendee attempts to access the Confidentiality Ring, confirmation in writing must be obtained from the Authority that it has approved the Authorised Attendee and has accepted the signed Individual Undertakings and signed Authorised Relevant Party Undertakings.

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).

- (9) Subject to the Individual Undertakings and the Authorised Relevant Party Undertakings, the Authority will make the Disclosed Material available to the Authorised Attendees through an external hard drive ('the Hard Drive'). The Authority will make available one Hard Drive per Relevant Party. The Authorised Attendee must give no less than 1 Working Day's notice to the Authority of their intention to collect the Hard Drive, and in doing so must specify the date on which the Authorised Advisers intend to collect the Hard Drive. Following written confirmation by the Authority of its acceptance of the Authorised Attendees collection date, the Authorised Attendees will be permitted to collect the Hard Drive from the Authority's offices<sup>3</sup> between 09.30 and 17:00 on any Working Day during the Confidentiality Ring period. The collection of the Hard Drive must be recorded in a manner that sufficiently evidences that the Authorised Attendee has received the Hard Drive. For example, by signing a record sheet provided by the Authority.
- (10) Each Authorised Attendee will be permitted to download the Disclosed Material from the Hard Drive into a secure folder on computers with the specifications set out below at either the Authorised Attendees' premises or at the Relevant Party's premises (the "Permitted Premises") and such computers must only be accessible by the Authorised Attendees (each a 'Secure Computer'). The Authorised Attendees will ensure they conduct their review of the Disclosed Materials in a private environment within the Permitted Premises and shall use a privacy screen on their monitor at all times. The Authorised Attendees will be permitted to download the Disclosed Material onto a maximum of six Secure Computers (each permitted download resulting in a '**Permitted Copy**'). Each Secure Computer must have the following specifications:
  - a) It must be password-protected;
  - b) It may be networked to the other Secure Computers but shall not in any event be connected to the internet.
- (11) Disclosure of the Disclosed Material, or any other part thereof, by the Authorised Attendees and/or Relevant Party other than in accordance with the Individual Undertakings and/or the Authorised Relevant Party Undertakings is not permitted without the Authority's express and prior written consent. Breach of the Individual Undertakings by an Authorised

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<sup>3</sup> Ofgem London Offices 10 S Colonnade, Canary Wharf, London E14 4PU

Attendee and/or the Authorised Relevant Party Undertakings by the Relevant Party may result in the Authority:

- a) terminating the Authorised Attendee's and/or Relevant Party's access to the Confidentiality Ring and refusing the Authorised Attendee and/or Relevant Party 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);
  - b) terminating the Authorised Attendee's and/or Relevant Party's right to hold the information, and demanding it be deleted or returned immediately;
  - c) taking additional steps in relation to that particular Relevant Party and Authorised Attendee 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;
  - d) taking appropriate legal action to protect the data;
  - e) where relevant, referring the breach to the Authorised Attendee's regulatory body which may decide to take disciplinary action in relation to the breach;
  - f) informing BEIS of the breach.
- (12) 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 Material for anything other than the Permitted Purpose, would be a contravention of the UA 2000.

## **NOW THEREFORE**

In consideration for our Authorised Attendees being granted access to the Confidentiality Ring, we, [*Name of Relevant Party*], agree:

### *General*

1. To give Authorised Attendees access to the Disclosed Material and only in accordance with the terms of the Individual Undertakings given by those Authorised Attendees. In addition, we agree to give any permitted Non-Authorised Person access to the Disclosed Material in accordance with the terms of this undertaking. We will ensure that our Authorised Attendees and any permitted Non-Authorised Person have full knowledge of their obligations under this Undertaking and we will take all steps to ensure that our Authorised

Attendees and any permitted Non-Authorised Person comply with the terms of this Undertaking and any Individual Undertakings that they have executed (where applicable) including, for the avoidance of doubt, ensuring appropriate guidance and legal support is available to Authorised Attendees and any permitted Non-Authorised Person. We will be liable for the actions or omissions of our Authorised Attendees or Non-Authorised Persons in relation to the Disclosed Material as if they were our actions or omissions.

2. To notify the Authority immediately if we become aware of or suspect that there has been a breach of:
  - a) this Undertaking;
  - b) any Individual Undertakings given by an Authorised Attendee; or
  - c) any Undertaking given by any other person.
3. We will take all steps, to the extent that it is within our control, to stop and where possible reverse any breach we become aware of.
4. To hold the Disclosed Material in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make available in any manner the Disclosed Material to any other person (being a "**Non-Authorised Person**") without the consent of the Authority except to:
  - a. another Authorised Attendee of the Relevant Party; or
  - b. a member of the Authority's staff.
5. We may request the Authority for consent to disclose material to a Non-Authorised Person for the purpose of facilitating the Permitted Purpose where there is a clear and demonstrable need for the Non-Authorised Person to receive the information to facilitate the Permitted Purpose. We will not make any disclosure to the Non-Authorised Person until such consent has been obtained from the Authority. We will be liable for the actions or omissions of any Non-Authorised Person to whom we have disclosed Relevant Material and Documents.
6. We will not make use of the Disclosed Material for any purpose other than the Permitted Purpose. For the avoidance of doubt, we will not use the Disclosed Material to make submissions to the Authority or BEIS on other matters related to smart meters or otherwise.
7. To keep secure at all times the Disclosed Material and the Permitted Copies and any other document prepared (in or on the Secure Computers) by, or provided to, us, which contains or refers to the Disclosed Material (together the 'Relevant Material and Documents'). Relevant Material and Documents in electronic form must be kept only in or on the Secure

Computers. In respect of the Relevant Materials and Documents which are in physical copy we will ensure that these are securely stored and locked away when not in use and kept separate from the regular work of the Authorised Attendees.

8. We will notify the Authority immediately if any Authorised Attendee ceases to be engaged or employed by us before:
  - a. if there is an appeal against a decision of the Authority in connection with the Consultation in which [Name of Party] is a party or is intervening, the conclusion of the appeal;
  - b. if there is no such appeal, the expiry of the period for bringing such an appeal.
9. On the expiry of the period for bringing an appeal in respect of any decision relating to the Consultation we agree to:
  - a. To delete the Relevant Material and Documents from the secure computer(s) so that no reference to the Disclosed Material is readily available to any person (and measures will be taken to ensure no copies remain in either the recycle bin or in a backup system).
  - b. In so far as not covered by (a) above, to destroy or return to the Authority the Relevant Material and Documents; and
  - c. To notify the Authority of the manner of, and date of, the destruction and/or deletion of the Relevant Material and Documents.

Unless a copy of any document containing the Disclosed Materials is required to be retained by the Relevant Party for compliance with any applicable law, legislation or court order.

10. We will commit to fulfil what we have set out in the compliance document.
11. Once we conclude our participation in the Confidentiality Ring we will provide a Compliance Statement signed by a member of our Board in the form provided for in Schedule 2 to this undertaking, to confirm that we have complied with the terms in this undertaking and that the Authorised Attendee has complied with the term of their executed undertaking.

## **PROVIDED THAT**

The above undertakings shall not apply to any part of the Disclosed Material that:

- i) 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;
- ii) is information that has previously been disclosed by the Authority to the Relevant Party without obligations of confidence;
- iii) at the time of disclosure is in the public domain or subsequently comes into the public domain, except through breach of the Individual Undertaking, or any other Relevant Party in relation to the Confidentiality Ring; or
- iv) 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 we 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.

We have given full and informed consent to the terms of these undertakings, including the restrictions placed upon us and the Authorised Attendees on the disclosure of information by this Undertaking.

.....  
for and on behalf of  
[                    ]

Date .....

**SCHEDULE 1**

**Smart Metering Costs**

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## SCHEDULE 2

### Compliance Statement

The following statement should be printed on the Relevant Party's headed paper and signed by a member of the Relevant Party's board, as listed in the Relevant Party's company's annual report:

Statement of Compliance with the undertakings given by [Name Of Relevant Party]  
regarding access to the Confidentiality Ring for Disclosed Materials

*I [member of Relevant Party's board, as listed in Relevant Party's annual report] can confirm to the best of my knowledge, having made reasonable enquiries, that we [Relevant Party] have complied with the Undertakings set out above.*

*I can confirm that I have satisfied myself that the Authorised Attendees have complied with their respective Individual Undertakings.*

*Yours sincerely*

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for and on behalf of

[signed by a member of our board, as listed in our company's annual report]

Date .....