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## **Confidentiality Ring Undertakings: Firm**

### **Review of the smart metering cost allowance in the Default Tariff Cap**

#### **UNDERTAKINGS GIVEN BY [Name of Firm ] REGARDING ACCESS TO THE CONFIDENTIALITY RING FOR DISCLOSED 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. The Default Tariff Cap methodology includes a Smart Metering Net Cost Change ("**SMNCC**") allowance. This allowance reflects the change in smart costs from the 2017 baseline (part of operating costs) to subsequent cap periods.
- (2) The Authority proposes to publish its consultation on 22 October 2019 (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 “**Disclosed Data**”) by means of a confidentiality ring commencing on the 22 October 2019 (the “**Data Confidentiality Ring**”). A reference to the Disclosed Data in these undertakings includes references to any part of the Disclosed Data. The Authority may identify additional information to be disclosed as part of the Disclosed Data after the commencement of the Data Confidentiality Ring. In this event, the Authority will notify the Firm that this subsequent disclosure forms part of the Disclosed Data and accordingly these undertakings shall apply equally to this subsequent disclosure.
- (4) The Disclosed Data 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 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 Data Confidentiality Ring and the Disclosed Data is restricted to the external legal and/or economic advisers of the “**Relevant Party**”<sup>1</sup>. Access is provided for the sole purpose of allowing the advisers of a Relevant Party, on behalf of the Relevant Party, to review and understand the Disclosed Data, in order to:
  - a) prepare submissions and representations to the Consultation; and
  - b) where necessary to enable the Relevant Party (if relevant) to prepare and conduct an appeal against any decision of the Authority in connection with any decision in respect of the SMNCC resulting from the 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.

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<sup>1</sup> 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.

c) (“**the Permitted Purpose**”).

(6) Access to Data the Confidentiality Ring will only be granted to an Authorised Adviser<sup>2</sup>:

- a) who has been approved, in writing, by the Authority;
- b) who has given written undertakings acceptable to the Authority ("**Adviser Undertakings**");
- c) in respect of whom the Adviser’s firm/ employer (“**the Firm**”), has provided written undertakings acceptable to the Authority (the "**Firm Undertakings**");
- d) if the Relevant Party has provided written undertakings acceptable to the Authority (“**the Relevant Party Undertakings**”);
- e) if the Firm has provided, in writing, a Compliance Document (as defined below in recital 6A acceptable to the Authority and

in accordance with the arrangements in recital (8) (each such Adviser being an “Authorised Adviser”).

(6A) Prior to access to the Data Confidentiality Ring being granted to any Authorised Adviser, the Firm 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 Adviser’s compliance with their respective Adviser Undertakings. The Compliance Document should explain as a minimum:

- a. Security Arrangements: Processes to store electronic and physical copies of the Disclosed Data, and in doing so maintain their confidentiality in accordance with the Undertakings.

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<sup>2</sup> For the purposes of these undertakings an Adviser will include the partners, members, employees and consultants of the Authorised Firm.

- b. Working Environment Arrangements: Processes to ensure that Advisers can work on the Disclosed Data and discuss their contents, and in doing so maintain their confidentiality in accordance with the Undertakings.
- c. Support Arrangements: Processes to ensure that Advisers are aware of their responsibilities and the arrangements the Firm has in place, that sufficient monitoring and governance is in place to maintain confidentiality, and that support and guidance is available to Advisers.

The Compliance Document must be signed by a suitably senior person of the Firm (as determined by the Authority, acting reasonably). The Authority may reject the Compliance Document if it is of the opinion that the evidence supplied by the Firm 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 (“**Approved Compliance Document**”) will the Authorised Attendees of the Relevant part gain access to the Model Confidentiality Ring. Such arrangement contained in the Approved Compliance Document shall be “**Permitted Arrangements**”.

(7) The number of Authorised Advisers is limited to ten for each Relevant Party.

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

- a) 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 Data Confidentiality Ring (**‘the Access Date’**);
- b) 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 and the Relevant Party Undertakings signed on behalf of the Relevant Party, must be provided to (and received by) the Authority; and
- c) before the Adviser attempts to access the 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 the signed Relevant Party 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)

(9) Subject to the Adviser Undertakings, the Firm Undertakings and the Relevant Party Undertakings, the Authority will:

- a) make the Disclosed Model available to the Authorised Advisers via a secure encrypted email (the "**Secure Encrypted Email**") and to receive the Secure Encrypted Email, the Firm will provide the Authority with an Authorised Adviser's name, role, and professional email address;
- b) provide the Secure Encrypted Email within 1 Working Day of receipt of the information requested in (a) above;
- c) make the Disclosed Model available from the time the Consultation is published 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.

(10) Each Adviser will be sent the Disclosed Data via the Secure Encrypted Email and will be permitted to download the Disclosed Model onto a computer or into a secure folder on a server at the Firm's premises.

(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**'). Permitted Copies must be stored and worked with in accordance with the Approved Compliance Document and the Permitted Arrangements.

(11) Disclosure of the Disclosed 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 or of the Firm Undertakings by the Firm may result in the Authority:

- a) In the case of a breach by an Authorised Adviser, terminating the Authorised Adviser's access to the 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);

- b) In the case of a breach by a Firm, terminating the Firm's participation in the Data Confidentiality Ring and refusing a request to participate in any subsequent disclosure room or confidentiality ring run by the Authority, whether relating to the consultation of the updated SMNCC allowance 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);
- c) terminating the Authorised Adviser's and/or Firm's right to hold the information, and demanding it be deleted or returned immediately;
- d) taking additional steps in relation to that particular Authorised Advisor 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;
- e) taking appropriate legal action to protect the data;
- f) where relevant, referring the breach to the regulatory body of the Authorised Adviser or Firm which may decide to take disciplinary action in relation to the breach and
- g) 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 Data Material for anything other than the Permitted Purpose, would be a contravention of the UA 2000.

(13) [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.

## **NOW THEREFORE**

[Name of Firm], which has been engaged by [Name of the Relevant Party] in connection with the Consultation, undertake to the Authority that:

1. It will give only the Authorised Advisers of [Name of Firm] access to the Disclosed Data and only in accordance with the terms of the Adviser Undertakings given by the Authorised Advisers of [Name of Firm];
2. It will notify the Authority immediately if it becomes aware of or suspects that there has been any breach of:
  - a. this Undertaking;
  - b. the Adviser Undertakings given by any Adviser of the Relevant Party;
  - c. the other Firm Undertakings given in respect of any of the Authorised Advisers of the Relevant Party’;
  - d. the Relevant Party Undertakings given by [ name of relevant party]
  - e. any other Undertakings given by any other person in relation to the Consultation;  
and
3. It will notify the Authority immediately if any Authorised Adviser ceases to be at [Name of Firm] before:
  - a. if there is an appeal against a decision of the Authority in connection with the Consultation in which the Relevant 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.
4. 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.

5. To hold the Disclosed Data in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make available in any manner the Disclosed Data to any other person (being a "**Non-Authorised Person**") without the consent of the Authority except to:
  - a. another Authorised Adviser of the Relevant Party; or
  - b. a member of the Authority's staff.
6. 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.
7. We will not make use of the Disclosed Data for any purpose other than the Permitted Purpose.
8. To keep secure at all times the Disclosed Data Material and the Permitted Copies and any other document prepared by, or provided to, us, which contains or refers to the Disclosed Data Material (together the 'Relevant Material and Documents') in accordance with the agreed Permitted Arrangements.
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 so that no reference to the Disclosed Data 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 Data 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 reach the expiry of the period referred to in recital 9 above, we will provide a Compliance Statement signed by a suitably senior person of the Firm (as determined by the Authority, acting reasonably), 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 Adviser has complied with the term of their executed undertaking.
12. Further, [Name of Firm] undertakes to the Authority to use all reasonable endeavours to ensure that the Authorised Advisers at [Name of Firm] comply with the Individual Undertakings which they have given. [Name of Firm] acknowledges that it is fully aware of the Individual Undertakings that its Authorised Advisers have given.

## **PROVIDED THAT**

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

- i) belongs or relates solely to the [Name of Party] or to [Name of Party] 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 [Name of 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 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 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, [Name of Firm] 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 [Name of Firm] 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.

[Name of Relevant Party] has given full and informed consent to the terms of these undertakings and the Individual Undertakings given by Authorised Advisers of [name of Firm] including the restrictions placed upon these Authorised Advisers on the disclosure of information by these Undertaking.

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for or on behalf of

Date.....

## **SCHEDULE 1 Smart Metering Costs**

*The Disclosed Data comprises of the following:*

- *Underlying data book A*
- *Underlying data book B*
- *And any subsequent disclosure which Authority has notified the Firm of as forming part of the Disclosed Data pursuant to recital 3 above.*