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Confidentiality Ring Undertakings: 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 MODEL

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.
- (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 Model**”) by means of a confidentiality ring commencing on the 22 October 2019 (the “**Model Confidentiality Ring**”). A reference to the Disclosed Model in these undertakings includes references to any part of the Disclosed Model. The Authority may identify additional information to be disclosed as part of the Disclosed Model after the commencement of the Model Confidentiality Ring. In this event, the Authority will notify the Relevant Party that this subsequent disclosure forms part of the Disclosed Model and accordingly these undertakings shall apply equally to this subsequent disclosure.
- (4) The Disclosed Model 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 Model may also include information caught by the prohibition on disclosure in section 105 Utilities Act 2000 (“**UA 2000**”)¹. The Authority may disclose such information in a manner consistent with the ‘disclosure gateways’ contained in section 105 UA 2000.
- (5) Access to the Model Confidentiality Ring and the Disclosed Model is restricted to the “**Authorised Attendees**” of the **Relevant Party**². For the avoidance of doubt an Authorised Attendee will include employees of the Relevant Party and / or third party advisers. Access is provided for the sole purpose of allowing the Authorised Attendees of a Relevant Party, on behalf of the Relevant Party, to review and understand the Disclosed Model in order to:
- a) prepare submissions and representations to the Consultation; and
 - b) (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

¹ The Disclosed Model does not contain information that is commercially sensitive from the perspective of suppliers. However, please note that this is confidential from a market wide perspective and could not be made public.

² 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.

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.

(“**the Permitted Purpose**”).

(6) Access to the Model 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 (“**Attendee Undertakings**”);
- c) if the Relevant Party has provided written undertakings acceptable to the Authority (“**the Relevant Party Undertakings**”);
- d) if the Relevant Party 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 Attendee being an “**Authorised Attendee**”)

(6A) Prior to access to the Model 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 Attendees Undertakings. The Compliance Document should explain as a minimum:

- a. Security Arrangements: Processes to store electronic and physical copies of the Disclosed Model, and in doing so maintain their confidentiality in accordance with the Undertakings.
- b. Working Environment Arrangements: Processes to ensure that Authorised Attendees can work on the Disclosed Model and discuss their contents, and in doing so maintain their confidentiality in accordance with the Undertakings.
- c. Support Arrangements: Processes to ensure that Authorised Attendees are aware of their responsibilities and the arrangements the Relevant Party has in place, that

sufficient monitoring and governance is in places to maintain confidentiality, and that support and guidance is available to Authorised Attendees.

The Compliance Document must be signed by a suitably senior person of the Relevant Party (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 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 (the “**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 Attendees is limited to ten 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) 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 Model Confidentiality Ring (**‘the Access Date’**);
- b) by 17:00 on the Working Day before the Access Date the Attendee Undertakings signed by the Authorised Attendee 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 Authorised Attendee attempts to access the Model Confidentiality Ring, confirmation in writing must be obtained from the Authority that it has approved the Authorised Attendee and has accepted the signed Attendee Undertakings and 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 Attendee Undertakings and the Relevant Party Undertakings, the Authority will:

- a) make the Disclosed Model available to the Authorised Attendees via a secure encrypted email (the “**Secure Encrypted Email**”) and to receive the Secure Encrypted

Email, the Relevant Party will provide the Authority with an Authorised Attendee'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 Authorised Attendee will be sent the Disclosed Model from via the Encrypted Email and will be permitted to download the Disclosed Model onto a computer or into a secure folder on a server at the Authorised Attendees' or Relevant Party'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 Model, or any other part thereof, by the Authorised Attendees and/or Relevant Party other than in accordance with the Attendee Undertakings and/or the Relevant Party Undertakings is not permitted without the Authority's express and prior written consent. Breach of the Attendee Undertakings by an Authorised Attendee and/or the 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 Model 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. To the extent that the Disclosed Model contains materials subject to section 105 of the UA 2000 the Authority considers that any further disclosure of the Disclosed Model 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 Model Confidentiality Ring, we, [*Name of Relevant Party*], agree:

1. To give Authorised Attendees access to the Disclosed Model and only in accordance with the terms of the Attendee Undertakings given by those Authorised Attendees and to give any permitted Non-Authorised Person access to the Disclosed Model Material in accordance with the terms of this Undertaking.
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 Attendee Undertakings given by an Authorised Attendee;
 - c) any Firm Undertaking given by a Firm instructed by the Relevant Party in relation to the Consultation or
 - d) any Adviser Undertaking given by any Adviser
 - e) any Undertaking given by any other person.

3. It will notify the Authority immediately if any Authorised Attendee ceases to be an employee of the Relevant Party or 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 Model in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make available in any manner the Disclosed Model 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.
6. 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 as defined in recital 8 below.
7. We will not make use of the Disclosed Model for any purpose other than the Permitted Purpose. For the avoidance of doubt, we will not use the Disclosed Model to make submissions to the Authority or BEIS on other matters related to smart meters or otherwise.
8. To keep secure at all times the Disclosed Model and the Permitted Copies and any other document prepared by, or provided to, us, which contains or refers to the Disclosed Model (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 from the secure computer(s) so that no reference to the Disclosed Model 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 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 Model Material as if they were our actions or omissions.
11. We will commit to fulfil what we have set out in the Compliance Document.
12. 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 Relevant Party (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 Attendee has complied with the term of their executed undertaking.
13. 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.
14. We will take all steps to ensure that our Authorised Attendees, Firms and Advisers comply with the terms of this Undertaking and any Undertakings that they have executed.

PROVIDED THAT

The above undertakings shall not apply to any part of the Disclosed Model 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, we 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

The Disclosed Model comprises of the following:

- *The new SMNCC model*
- *And any subsequent disclosure which Authority has notified the Relevant Party/ of as forming part of the Disclosed Model pursuant to recital 3 above.*

SCHEDULE 2

Compliance Statement

The following statement should be printed on the Relevant Party’s headed paper and signed by a suitably senior person of the Relevant Party (as determined by the Authority, acting reasonably):

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

I [suitably senior person] [job title] 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 Undertakings.

Yours sincerely

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for and on behalf of

[signed by suitably senior person]

Date