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Confidentiality Ring Undertakings: Firm

DISCLOSURE RELATING TO (A) REVIEW OF THE SMART METERING NET COST CHANGE ALLOWANCE AND (B) INTRODUCTION OF A CAP LEVEL FOR PREPAYMENT METER CUSTOMERS IN THE DEFAULT TARIFF CAP

UNDERTAKINGS GIVEN BY [Name of Firm] REGARDING ACCESS TO THE CONFIDENTIALITY RING FOR DISCLOSED SMNCC & PPM 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 consultations on [12 May 2020] setting out its proposals to adjust the methodology it will use to calculate the Default Tariff Cap in in the fifth cap period (from 1 October 2020 to 31 March 2021) and subsequent cap periods. The consultations set out proposals to:
 - (i) update the Smart Metering Net Cost Change allowance for credit customers ("**SMNCC**"), which reflects the change in smart metering costs from the 2017 baseline (part of operating costs) to subsequent cap periods (the "**SMNCC Consultation**"); and
 - (ii) introduce a cap level in the Default Tariff Cap for default tariff customers with prepayment meters (the "**PPM Consultation**") (together, "**the SMNCC & PPM Consultations**").

- (3) The Authority has decided to disclose the data described in Schedule 1 (the “**Disclosed SMNCC & PPM Data**”) by means of a confidentiality ring commencing on the [12 May 2020] (the “**SMNCC & PPM Data Confidentiality Ring**”). A reference to the Disclosed SMNCC & PPM Data in these undertakings includes references to any part of the Disclosed SMNCC & PPM Data. The Authority may identify additional information to be disclosed as part of the Disclosed SMNCC & PPM Data after the commencement of the SMNCC & PPM Data Confidentiality Ring. In this event, the Authority will notify the Firm that this subsequent disclosure forms part of the Disclosed SMNCC & PPM Data and accordingly these undertakings shall apply equally to this subsequent disclosure.
- (4) The Disclosed SMNCC & PPM Data contains information that is confidential to BEIS and is provided by BEIS for disclosure as part of the SMNCC & PPM Consultations on the basis that appropriate protections are put in place to ensure the continued confidentiality of the material. The Authority considers that the Disclosed SMNCC & PPM 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 SMNCC & PPM Data Confidentiality Ring and the Disclosed SMNCC & PPM Data is restricted to the external legal and/or economic advisers of the “**Relevant Party**”¹. 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 SMNCC & PPM Data, in order to:
- a) prepare submissions and representations to the SMNCC & PPM Consultations; and
 - b) to enable the Relevant Party (if relevant) to prepare and conduct an appeal against any decision of the Authority in connection with the Consultations, 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.

¹ 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. 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.

(6) Access to the SMNCC & PPM Data Confidentiality Ring will only be granted to an Authorised Consultant² in accordance with the arrangements in recital (9):

- a) who has been approved, in writing, by the Authority;
- b) who has given written undertakings acceptable to the Authority ("**Consultant Undertakings**");
- c) in respect of the Consultant'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**"); and
- e) if the Firm has provided, in writing, an Approved Compliance Document (as defined below in recital 7) acceptable to the Authority.

(7) Prior to access to the SMNCC & PPM Data Confidentiality Ring being granted to any Authorised Consultant, 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 Consultant's compliance with their respective Consultant Undertakings. The Compliance Document should explain as a minimum:

- a. Security Arrangements: Processes to store electronic and physical copies of the Disclosed SMNCC & PPM Data, and in doing so maintain their confidentiality in accordance with the Undertakings.
- b. Working Environment Arrangements: Processes to ensure that Consultants can work on the Disclosed SMNCC & PPM Data and discuss their contents, and in doing so maintain their confidentiality in accordance with the Undertakings.
- c. Support Arrangements: Processes to ensure that Consultants 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 Consultants.

The Compliance Document must be signed³ 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

² For the purposes of these undertakings a Consultant will include the partners, members, employees and consultants of the Authorised Firm.

³ In normal circumstances, this would be a signature. However, in the current extraordinary circumstances, we will accept email confirmation from the person.

of the opinion that the evidence supplied by the Firm is not sufficient to validate compliance with the Undertakings. In this event, the Firm 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 Consultants of the Firm gain access to the SMNCC & PPM Data Confidentiality Ring. Such arrangement contained in the Approved Compliance Document shall be “**Permitted Arrangements**”.

- (8) The number of Authorised Consultants is limited to ten (10) for each Relevant Party.
- (9) The arrangements for obtaining the Authority's approval of an Consultant and for giving undertakings in respect of a Consultant are:
- a) notice of not less than 1 **Working Day** must be given to the Authority of the date on which the Consultant first wishes to be granted access to the SMNCC & PPM Data Confidentiality Ring (**‘the Access Date’**);
 - b) by 17:00 on the Working Day before the Access Date the Consultant Undertakings signed by the Consultant 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 Consultant attempts to access the SMNCC & PPM Data Confidentiality Ring confirmation in writing must be obtained from the Authority that it has approved the Consultant and has accepted the signed Consultant Undertakings and 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)

- (10) Subject to the Consultant Undertakings, the Firm Undertakings and the Relevant Party Undertakings, the Authority will:
- a) make the Disclosed SMNCC & PPM Data available to the Authorised Consultants 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 Consultant’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 SMNCC & PPM Data 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.

(11) Each Consultant will be sent the Disclosed SMNCC & PPM Data via the Secure Encrypted Email and will be permitted to download the Disclosed SMNCC & PPM 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**'). Permitted Copies must be downloaded, stored and worked with in accordance with the Approved Compliance Document and the Permitted Arrangements.

(12) Disclosure of the Disclosed SMNCC & PPM Data, or any other part thereof, by the Authorised Consultants other than in accordance with the Consultant Undertakings is not permitted without the Authority's express and prior written consent. Breach of the Consultant Undertakings by an Authorised Consultant or of the Firm Undertakings by the Firm may result in the Authority:

- a) In the case of a breach by an Authorised Consultant, terminating the Authorised Consultant's access to the SMNCC & PPM Data Confidentiality Ring and refusing the Authorised Consultant 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 SMNCC & PPM 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 Consultant'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 Consultant 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 Consultant or Firm which may decide to take disciplinary action in relation to the breach and

g) informing other parties of the breach, as deemed necessary by the Authority.

(13) 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 SMNCC & PPM Data for anything other than the Permitted Purpose, would be a contravention of the UA 2000.

(14) [Name of Firm] has been instructed by [Name of Relevant Party], which is a Relevant Party, for the purpose of providing [legal/economic] advice to [Name of Relevant 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 Consultants of [Name of Firm] access to the Disclosed SMNCC & PPM Data and only in accordance with the terms of the Consultant Undertakings given by the Authorised Consultants of [Name of Firm] and to give any Approved Persons (defined in paragraph 6 below) access to the Disclosed SMNCC & PPM Data in accordance with the terms of this Undertaking;
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 Consultant Undertakings given by any Consultant of the Relevant Party;
 - c. the other Firm Undertakings given in respect of any of the Authorised Consultants 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.
3. It will notify the Authority immediately if any Authorised Consultant 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 SMNCC & PPM Data in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make available in any manner the Disclosed SMNCC & PPM Data to any other person (being a "**Non-Authorised Person**") without the consent of the Authority except to:
 - a. another Authorised Consultant of the Relevant Party; or
 - b. a member of the Authority's staff; or
 - c. an Approved Person.
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. At this point, the Non-Authorised Person will become an "**Approved Person**". We will be liable for the actions or omissions of any Approved Persons to whom we have disclosed Relevant Material and Documents as defined in paragraph 8 below.
7. We will not make use of the Disclosed SMNCC & PPM Data for any purpose other than the Permitted Purpose.
8. To keep secure at all times the Disclosed SMNCC & PPM Data and the Permitted Copies and any other document prepared by, or provided to, us, which contains or refers to the Disclosed SMNCC & PPM Data (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 SMNCC & PPM 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 SMNCC & PPM Data 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 Consultants and any Approved Persons have full knowledge of their obligations under this Undertaking and we will take all steps to ensure that our Authorised Consultants and any Approved Persons comply with the terms of this Undertaking and any Consultant Undertakings that they have executed (where applicable) including, for the avoidance of doubt, ensuring appropriate guidance and legal support is available to Authorised Consultants and any Approved Persons. We will be liable for the actions or omissions of our Authorised Consultants or Approved Persons in relation to the Disclosed SMNCC & PPM Data as if they were our actions or omissions.
11. We will commit to fulfil what we have set out in the Approved Compliance Document.
12. Once we reach the expiry of the period referred to in paragraph 9 above, we will provide a Compliance Statement signed⁴ 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 each Authorised Consultant 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 Consultants at [Name of Firm] comply with the Consultant Undertakings which they have given. [Name of Firm] acknowledges that it is fully aware of the Individual Undertakings that its Authorised Consultants have given.

⁴ In normal circumstances, this would be a signature. However, in the current extraordinary circumstances (Covid-19), we will accept email confirmation from the person.

PROVIDED THAT

The above undertakings shall not apply to any part of the Disclosed SMNCC & PPM Data that:

- i) belongs or relates solely to the [name of Firm] or to [name of Firm'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 [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 Consultant 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 SMNCC & PPM Data 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 Consultant Undertakings given by Authorised Consultants of [name of Firm] including the restrictions placed upon these Authorised Consultants on the disclosure of information by these Undertaking.

.....
for or on behalf of []

Date.....

SCHEDULE 1

Smart Metering Costs and PPM Cap Level

The Disclosed SMNCC & PPM Data comprises of the following:

- *Underlying data book: Annual Supplier Return data*
- *Underlying data book: Debt modelling*
- *Underlying data book: IT costs*
- *Underlying data book: Premature Replacement Charges*
- *Underlying data book: Markering costs*
- *Underlying data book: Meter rental costs*
- *And any subsequent disclosure which Authority has notified the Firm of as forming part of the Disclosed SMNCC & PPM Data pursuant to recital 3 above.*

SCHEDULE 2

Compliance Statement

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

Statement of Compliance with the undertakings given by [Name of Firm] regarding access to the SMNCC & PPM Data Confidentiality Ring

I [suitably senior person] [job title] can confirm to the best of my knowledge, having made reasonable enquiries, that we [Firm] have complied with the Undertakings set out above.

I can confirm that I have satisfied myself that the Authorised Consultants have complied with their respective Undertakings.

Yours sincerely

.....
for and on behalf of

[signed by suitably senior person]

Date