Email: priceprotectionpolicy@ofgem.gov.uk

Date: [TO INSERT]

# Confidentiality Ring Undertakings: Firm

**DISCLOSURE RELATING TO THE DEBT-RELATED COSTS ADJUSTMENT ALLOWANCE AND OPERATING COST ALLOWANCES REVIEW**

**UNDERTAKINGS GIVEN BY [INSERT FIRM NAME] REGARDING ACCESS TO THE CONFIDENTIALITY RING FOR DISCLOSED DEBT-RELATED COSTS AND OPERATING COST 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 consultations on the Publication Date[[1]](#footnote-2) to seek stakeholder views before confirming decisions on the debt-related costs adjustment allowance and operating cost allowances review that, at this stage, are intended for implementation in cap period 14b (1 July 2025 to 30 September 2025) onwards (the “**Consultation**”).
3. The Authority has decided to disclose the data described in Schedule 1 (the “**Disclosed Model & Data**”) by means of a confidentiality ring commencing on the Publication Date (the **“Model & Data Confidentiality Ring”)**. A reference to the Disclosed Model & Data in these undertakings includes references to any part of the Disclosed Model & Data. The Authority may identify additional information to be disclosed as part of the Disclosed Model & Data after the commencement of the Model & Data Confidentiality Ring. In this event, the Authority will notify the Firm that this subsequent disclosure forms part of the Disclosed Model & Data and accordingly these undertakings shall apply equally to this subsequent disclosure.
4. The Disclosed Model & Data contains information that is confidential and is provided 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 & 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 Model & Data Confidentiality Ring and the Disclosed Model & Data is restricted to the external legal and/or economic advisers of [insert Relevant Party name] “**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 Model & Data, in order to:
6. prepare submissions and representations to the 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 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 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, [insert Firm name], (“**the Firm**”), has provided written undertakings acceptable to the Authority (the "**Firm Undertakings**");
12. in respect of whom the Relevant Party has provided written undertakings acceptable to the Authority (“the **Relevant Party Undertakings**”); and
13. if the Firm has provided, in writing, an Approved Compliance Document (as defined below in recital 7) acceptable to the Authority.
14. Prior to access to the Model & 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:
	1. Security Arrangements: Processes to store electronic and physical copies of the Disclosed Model & Data, and in doing so maintain their confidentiality in accordance with the Undertakings.
	2. Working Environment Arrangements: Processes to ensure that Advisers can work on the Disclosed Model & Data and discuss their contents, and in doing so maintain their confidentiality in accordance with the Undertakings.
	3. 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[[4]](#footnote-5) by a suitable 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 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**”) will the Authorised Advisers of the Firm gain access to the Model & Data Confidentiality Ring. Such arrangement contained in the Approved Compliance Document will be “**Permitted Arrangements**”.

1. The total number of Authorised Advisers (and Authorised Attendees – as defined in the Relevant Party Undertaking) 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.
2. The arrangements for obtaining the Authority's approval of a Adviser and for giving undertakings in respect of a Adviser are:
3. 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 Model & Data Confidentiality Ring (‘**the Access Date**’);
4. 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
5. before the Adviser attempts to access the 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 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).

1. Subject to the Authority receiving the signed Adviser Undertakings, the Firm Undertakings, and the Relevant Party Undertakings the Authority will:
2. make the Disclosed Model & Data available to the Authorised Advisers via a Huddle workspace (“the **“Huddle Workspace”**). In order to receive the Disclosed 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;
5. remove the Authorised Adviser’s access rights to the Huddle Workspace after 48 hours. The Authorised Adviser will need to download the Disclosed 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 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.
7. Disclosure of the Disclosed 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 or of the Firm Undertakings by the Firm may result in the Authority:
8. in the case of a breach by an Authorised Adviser, terminating the Authorised Adviser’s access to the 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. in the case of a breach by a Firm, terminating the Firm’s participation in the Model & 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 or updated of any allowance contained within the Default Tariff Cap for a prescribed period of time, such period to be determined by the Authority at its sole discretion (acting reasonably);
10. terminating the Authorised Adviser’s and/or Firm’s right to hold the information, and requiring it be deleted or returned immediately;
11. 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;
12. taking appropriate legal action to protect the data;
13. where relevant, referring the breach to the Authorised Adviser’s regulatory body or Firm which may decide to take disciplinary action in relation to the breach; and
14. informing other parties of the breach, as deemed necessary by the Authority.
15. 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 Model & Data for anything other than the Permitted Purpose, would be a contravention of the UA 2000.
16. The Firm has been instructed by the Relevant Party, which is a Relevant Party, for the purpose of providing economic advice to the Relevant Party in relation to the Consultation.

**NOW THEREFORE**

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

1. It will give only the Authorised Advisers of the Firm access to the Disclosed Model & Data and only in accordance with the terms of the Adviser Undertakings given by the Authorised Advisers of the Firm and to give any Approved Persons (defined in paragraph 6 below) access to the Disclosed Model & Data in accordance with the terms of this Undertaking.
2. It wil notify the Authority immediately if it becomes aware of, or suspects that there has been, any breach of:
	1. this Undertaking;
	2. the Adviser Undertakings given by any Adviser of the Relevant Party;
	3. the other Firm Undertakings given in respect of any of the Authorised Advisers of the Relevant Party;
	4. the Relevant Party Undertakings given by the Relevant Party;
	5. any other Undertakings given by any other person in relation to the Adviser.
3. It will notify the Authority immediately if any Authorised Adviser ceaser to be at the Firm before:
	1. the conclusion of any appeal against a decision of the Authority in connection with the Consultation in which the Relevant Party is a party or is intervening; or
	2. 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 is within our control, to stop and where possible reverse any breach we become aware of.
5. To hold the Disclosed Model & Data in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make available in any manner the Disclosed 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.
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 facilititate 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 disclose Relevant Material and Documents as deined in paragraph 8 below.
7. We will not make used of the Disclosed Model & Data for any purpose other than the Permitted Purpose.
8. To keep secure at all times the Disclosed Model & Data, the Permitted Copies and any other document prepared by, or provided to, us, which contains or refers to the Disclosed Model & Data (together the ‘**Relevant Material and Documents**’) 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 we agree:
	1. to delete the Relevant Material and Documents so that no reference to the Disclosed Model & Data is 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, to destroy or return to the Authority the Relevant Material and Documents; and
	3. 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 Model & Data is required to be retained by the Relevant Party for compliance with any applicable law, legislation, or court order.

1. We will ensure that our Authorised Advisers and any Approved Persons have full knowledge of their obligations under this Undertaking and we will take all steps to ensure that our Authorised Advisers and any Approved Persons comply with the terms of this Undertaking and any Adviser Undertakings that they have executed (where applicable) including, for the avoidance of doubt, ensuring appropriate guidance and legal support is available to Authorised Advisers and any Approved Persons. We will be liable for actions or omissions of our Authorised Advisers or Approved Persons in relation to the Disclosed Model & Data as if they were our actions or omissions.
2. We will commit to fulfil what we have set out in the Approved Compliance Document.
3. Once we reach the expiry of the period referred to in paragraph 9 above, we will provide a Compliance Statement signed[[5]](#footnote-6) 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 Adviser has complied with ther terms of their executed undertaking.
4. Further, the Firm undertakes to the Authority to use all reasonable endeavours to ensure that the Authorised Advisers at the Firm comply with the Adviser Undertakings which they have given. The 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 Model & Data that:

1. belongs or relates solely to the Firm or to the Firm'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 the Relevant Partyor any other Relevant Party in relation to the 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, the 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 the 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.

The Firm has given full and informed consent to the terms of these undertakings and the Adviser Undertakings given by Authorised Advisers of the Firm, including the restrictions placed upon these Authorised Advisers on the disclosure of information by these undertakings.

……………………………
for and on behalf of [insert FIRM name]

*Date...................................*

**SCHEDULE 1**

**DEBT-RELATED COSTS AND OPERATING COST MODEL & DATA**

*The Disclosed* *Model & Data comprises of the following:*

* *the debt-related costs model & data;*
* *the operating cost model & data; and*
* *any subsequent disclosure which Authority has notified the Adviser of as forming part of the Disclosed 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 Model and 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 Advisers have complied with their respective Undertakings.*

*Yours sincerely*

……………………………

for and on behalf of

[signed by suitably senior person]

Date …………………….

1. The Authority currently expects that the Publication Date will be on 12 December 2024. [↑](#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)
4. In normal circumstance, this would be a signature. However, in extraordinary circumstances (such as the lockdowns associated with the COVID-19 pandemic). We will accept email confirmation from the person. [↑](#footnote-ref-5)
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