

**DCP 127 – Legal Drafting**

**Gas First – Tripartite Model**

**Add the following to the Contents Page**

**SECTION 2C – DISTRIBUTOR TO GAS SUPPLIER RELATIONSHIPS** ... xxx

*[Add reference to clauses 52A – 52F]*

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**SECTION 2D – ELECTRICITY SUPPLIER TO GAS SUPPLIER RELATIONSHIPS** ... xx

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*[Add reference to clauses 52G – 52L]*

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**Amend the Introduction as follows**

(F) The Gas Supplier Parties have agreed to accede to this Agreement in order to allow them to install, operate, inspect, maintain, repair, renew, reposition, replace and remove Smart Metering Comms Hub Devices.

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(G) DCUSA Ltd is a company established under this Agreement to facilitate the operation of this Agreement.

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(H) The Parties and DCUSA Ltd have agreed to give effect to, and to be bound by, this Agreement in accordance with an Accession Agreement.

**Amend the following definitions in Clause 1 as follows**

**Company**

has:

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(a) in respect of Section 2A, the meaning given that term in Clause 15.1;

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(b) in respect of Section 2B, the meaning given that term in Clause 36.1;

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(c) in respect of Section 2C, the meaning given to that term in Clause 52A.1; and

(d) in respect of Section 2D, the meaning given to that term in Clause 52G.4.

**Connectee**

means, in respect of:

- (a) Section 2A 2C or 2D and a Customer Installation, the relevant Customer;
- (b) Section 2A and a Generation Installation, the relevant Generator;
- (c) Section 2A and a User Installation, the User; and
- (d) Section 2B, a person whose premises are connected to the Company's Distribution System or a person whose premises are connected to the User's System (as determined in accordance with Clause 36.4).

**Customer**

means:

- (a) in respect of Section 2A, a person to whom a User proposes to supply, or for the time being supplies, electricity through an Exit Point, or from whom a User, or any Relevant Exempt Supplier, is entitled to recover charges, compensation or an account of profits in respect of electricity supplied through an Exit Point; and
- (b) in respect of Section 2B 2C or 2D, any owner or occupier of premises in Great Britain who is supplied or requires to be supplied with electricity, and includes an electricity supplier when acting on behalf of such a person.

**De-energise**

means:

- (a) in respect of Section 2A 2C or 2D, deliberately to prevent the flow of electricity:

- (i) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or
- (ii) in the case of an Entry Point, via the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, any one or more of the relevant Entry Points) from,  
  
a Connected Installation, for any purpose other than a System Outage on the Company's Distribution System (and cognate expressions shall be construed accordingly); and
- (b) in respect of Section 2B, deliberately to prevent the flow of electricity through a Connection Point for any purpose other than a System Outage on the Company's Distribution System (and cognate expressions shall be construed accordingly).

**Electricity Supplier** has the meaning given to that expression in Clause 52G.1

**Gas Meter Asset Manager** has the meaning given to the expression 'Meter Asset Manager' in condition 1 of the standard conditions applicable to Gas Supply Licences.

**Gas Supplier** has:

(a) in respect of Section 2C, the meaning given to that term in Clause 52A.2; and

(b) in respect of Section 2D, the meaning given

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that term in Clause 52G.2.

**Gas Supplier Parties**

means a Party that holds a Gas Supply Licence (whether or not that Party is also a Supplier Party and/or a DG Party).

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**Gas Supply Licence**

means a licence to supply gas granted pursuant to Section 7A of the Gas Act 1986.

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**Metering Point**

means the point, determined according to the principles and guidance given at Schedule 9 of the Master Registration Agreement, at which a supply to (export) or from (import) a Distribution System:

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- (a) is or is intended to be measured; or
- (b) where metering equipment has been removed, was or was intended to be measured; or
- (c) in the case of an Unmetered Supply under the Unmetered Supplies Procedure, is deemed to be measured,

where in each case such measurement is for the purposes of ascertaining a Supplier/DG Party liabilities under the Balancing and Settlement Code.

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*[Note: this and other similar changes (Supply Contract, Power Purchase Contract, Registered) have been made so that these definitions work when used in Section 2C and 2D without having to add an interpretation clause in those Sections to say what we mean by User (ie electricity supplier not gas supplier)*

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**Party Category**

means, as the context requires, one of the following categories:

- (a) the DNO Parties collectively;
- (b) the IDNO/OTSO Parties;
- (c) the Supplier Parties collectively;
- (d) the DG Parties collectively;

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(e) the Gas Supplier Parties collectively,

save that, in determining which Party Categories are eligible to vote on a particular Change Proposal, the IDNO Parties and the OTSO Party may be considered separately, so that the IDNO Parties may be eligible to vote on a Change Proposal and the OTSO Party not (or vice versa).

**Power Purchase Contract**

means a contract between a Supplier Party, and a Generator for the purchase by the Supplier Party of electricity generated by such Generator and (if agreed in such contract) the sale of electricity to the Generator by the Supplier Party.

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**Re-energise**

means:

- (a) in respect of Section 2A 2C or 2D, deliberately to allow the flow of electricity:
  - (i) in the case of an Exit Point, from the Distribution System through the relevant Exit Point (or, in the case of an Unmetered Supply, any one or more of the relevant Exit Points) to; and/or
  - (ii) in the case of an Entry Point, to the Distribution System through the relevant Entry Point (or, in the case of an Unmetered Supply, any one or more of the relevant Entry Points) from,

a Connected Installation, where such flow of electricity was previously prevented by De-energisation Works (and cognate expressions shall be construed accordingly); and

- (b) in respect of Section 2B, deliberately to allow the flow of electricity through a Connection Point, where such flow was previously prevented by De-energisation Works (and cognate expressions shall be construed accordingly).

**Registered**

means, in respect of a [Supplier/DG Party](#), and:

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- (a) a Metering Point, that that [Party](#), is registered in respect of that Metering Point under and in accordance with the Master Registration Agreement; and

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- (b) a Metering System, that that [Party](#), is registered in respect of that Metering System under and in accordance with the BSC.

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**Responsible Gas Supplier**

means, in respect of any Premises, the Gas Supplier Party that is registered under the Supply Point Administration Agreement (as defined in condition 1 of the standard conditions applicable to Gas Supply Licences) as responsible for a gas supply point at that Premises.

**Smart Metering Comms Hub Device**

means a device installed at a Premises that enables data to be communicated to the Gas Supplier (or its appointed data communications company) from a gas smart meter within the Premises (and vice versa), and shall include any equipment associated with that device (including its power supply unit).

**Supply Contract**

means a contract (whether oral, in writing or deemed)

between a Supplier Party, or any Relevant Exem **Deleted:** User

Supplier, and a Customer for a supply of electricity to such Customer through an Exit Point.

**Amend Clause 4.2 as follows**

4.2 An Applicant may not be admitted as a Party if:

4.2.1 it is already a Party; or

4.2.2 (in the case of all Applicants other than the OTSO Party or those applying to be a Gas Supplier Party) the Panel believes that the Applicant has no reasonable prospect of satisfying the relevant conditions precedent set out in Clause 16 in the six-month period following its application to be so admitted; or

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4.2.3 (in the case of only the OTSO Party or those applying to be DNO Parties or IDNO Parties) the Panel believes that the Applicant has no reasonable prospect of satisfying the relevant conditions precedent set out in Clause 37 in the six-month period following its application to be so admitted. [Note: CPs for Gas Supplier Parties do not seem necessary as only CP in BG drafting was that the party has a gas supply licence and it needs such a licence to be a Gas Supplier Party (as defined).]

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**Add a new Clause 6.1A as follows**

6.1A The Gas Supplier Parties will not be separately represented on the Panel. Accordingly, each reference in this Clause 6 to a 'Party Category' or the 'Party Categories' shall be reference to each Party Category or all Party Categories other than the Party Category representing the Gas Supplier Parties.

**Amend Clause 8.9.1 as follows**

8.9.1 in the case of each DG Party (in its capacity as such), the OTSO Party and  
each Gas Supplier Party (in its capacity as such), be zero; and

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**Amend Clause 9.5 as follows**

9.5.5 Section 2C (Distributor to Gas Supplier Relationships) and Section 2D  
(Electricity Supplier to Gas Supplier Relationships)

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9.5.6 Schedule 2A (Mandatory Terms for Contracts), Schedule 2B (National Terms of Connection), Paragraph 6.1 of Schedule 5 (Disputes Under Approval and Permission Procedures), Paragraph 13 of Schedule 8 (Rota Load Block Alpha Identifiers), Schedule 16 (Common Distribution Charging Methodology), Schedule 17 (EHV Distribution Charging Methodology A), Schedule 18 (EHV Distribution Charging Methodology B) Schedule 19 (Portfolio Billing), and Schedule 21 (Portfolio Billing for Nested Networks); and

9.5.7 Clause 1 (Definitions and Interpretation), but only to the extent that it materially affects the interpretation of any of the provisions listed in Clauses 9.5.1 to 9.5.6.

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**Amend Clause 12.3 as follows**

12.3 The IDNO/OTSO Parties, the Supplier Parties, the DG Parties and the Gas Supplier Parties shall cast their votes on a corporate group basis, so that all of the Parties in each such Party Category that fall within a single Group shall collectively have only one vote. The DNO Parties shall cast their votes individually, so that each such Party has one vote. References in this Clause 12 and in Clause 13 to a “Group” shall, therefore, in the case of DNO Parties only, be taken as references to a “Party”.

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**Amend Clause 12.9 as follows**

12.9 In the case of:

12.9.1 the Party Category comprising the IDNO/OTSO Parties;

12.9.2 the Party Category comprising the Gas Supplier Parties; or

12.9.2 any other Party Category where five or fewer Groups in that Party Category cast their vote,

each Group in the Party Category shall have an equal Weighted Vote, calculated by dividing 100% by the number of Groups within that Party Category who cast their vote.

.....

**Add a new Section 2C as follows**

**SECTION 2C – DISTRIBUTOR TO GAS SUPPLIER RELATIONSHIPS**

*[page break]*

**SCOPE OF SECTION 2C**

This Section 2C and the Schedules referred to in it set out the terms and conditions pursuant to which a DNO/IDNO Party shall allow a Gas Supplier Party to install and thereafter maintain Smart Metering Comms Hub Devices.

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**52A. INTERPRETATION OF SECTION 2C**

**Party Obligations**

52A.1 In this Section 2C, in the Schedules when applied pursuant to this Section 2C, and in the terms defined in Clause 1 when used in this Section 2C or those Schedules, a reference to a **Company** is a reference to each Party that is either a DNO Party or an IDNO Party separately and individually and, where an obligation is imposed on, or a right granted to, a Company, that obligation is imposed on, and that right is granted to, each such Party separately and independently.

52A.2 In this Section 2C, in the Schedules when applied pursuant to this Section 2C, and in the terms defined in Clause 1 when used in this Section 2C or those Schedules, a reference to a **Gas Supplier** is:

52A.2.1 a reference to each Party that is a Gas Supplier Party, separately and individually and, where an obligation is imposed on, or a right is granted to, a Gas Supplier, that obligation is imposed on, and that right is granted to, each such Party separately and independently; and

52A.2.2 when made in relation to a Company and any period of time, a reference to each Gas Supplier (separately, individually and to the relevant extent) who is (or was), during that period, the Responsible

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Gas Supplier for a Premises connected to that Company's Distribution System.

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52A.3 This Section 2C, and the Schedules when applied pursuant to it, shall:

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52A.3.1 only create rights and obligations between DNO/IDNO Parties (on the one hand) and Gas Supplier Parties (on the other), and shall not create rights or obligations between DNO/IDNO Parties and other DNO/IDNO Parties or between Gas Supplier Parties and other Gas Supplier Parties;

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52A.3.2 not apply to the OTSO Party or to Supplier/DG Parties;

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52A.3.3 only create obligations between a Company and a Gas Supplier to the extent that, and in relation to those periods for which, that Gas Supplier is (or was) a Responsible Gas Supplier for a Premises connected to that Company's Distribution System; and

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52A.3.4 not impose any obligations between a Company and a Gas Supplier in relation to periods for which that Gas Supplier is (or was) not a Responsible Gas Supplier for a Premises connected to that Company's Distribution System.

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#### References in Relation to Companies and Gas Suppliers

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52A.4 In this Section 2C, in the Schedules when applied pursuant to this Section 2C, and in the terms defined in Clause 1 when used in this Section 2C or those Schedules, references to:

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52A.4.1 an Exit Point are, when made in relation to a Company, references to an Exit Point on that Company's Distribution System;

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52A.4.2 a Premises are, when made in relation to a Gas Supplier and any period of time, references to a Premises for which the Gas Supplier is (or was) the Responsible Gas Supplier during that period of time;

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52A.4.3 a Connectee, Connected Installation, Connection Agreement, Metering Point, Premises or Smart Metering Comms Hub Device.

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are (when made in relation to a Company) references to a Connectee, Connected Installation, Connection Agreement, Metering Point, Premises or Smart Metering Comms Hub Device relating to an Exit Point on such Company's Distribution System; or

52A.4.3 a Connectee, Connected Installation, Connection Agreement, Exit Point, Metering Point or Smart Metering Comms Hub Device, are (when made in relation to a Gas Supplier and any period of time) references to a Connectee, Connected Installation, Connection Agreement, Exit Point, Metering Point or Smart Metering Comms Hub Device relating to a Premises for which the Gas Supplier was the Responsible Gas Supplier during that period of time.

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## **52B. DE-ENERGISATION AND RE-ENERGISATION WORKS**

### **Requirements for those undertaking Works**

52B.1 De-energisation Works and Re-energisation Works carried out by or on behalf of the Gas Supplier pursuant to this Clause 52B shall only be carried out by a person working on behalf of a Gas Meter Asset Manager engaged by the Gas Supplier.

### **Good Industry Practice**

52B.2 The Company and the Gas Supplier shall each act in accordance with Good Industry Practice when carrying out, or procuring the carrying out of, any De-energisation Works or Re-energisation Works.

### **Works Undertaken by the Gas Supplier**

52B.3 If, in respect of an Exit Point for which the supply of electricity is metered directly by putting the full electrical current through the meter (known as 'whole current metering'), the Gas Supplier wishes to:

52B.3.1 install a Smart Metering Comms Hub Device at a Premises where there is not, at that time, already a Smart Metering Comms Hub

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Device that can communicate with both the Gas Supplier (or its appointed data communications company) and the gas metering equipment at the Premises; or

52B.3.2 operate, inspect, maintain, repair, renew, reposition, replace and/or remove a Smart Metering Comms Hub Device that was installed at the Premises prior to that time (whether or not on behalf of the Gas Supplier).

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then the Gas Supplier may (to the extent reasonably required in order to do so, and with no prior notice to the Company) De-energise the Exit Point at that Premises in order to do so; provided that the Gas Supplier Re-energises that Exit Point as soon as reasonably practicable thereafter.

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52B.4 If the Gas Supplier resolves to De-energise and/or Re-energise an Exit Point pursuant to Clause 52B.3, then the Gas Supplier shall:

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52B.4.1 decide on the extent and nature of the De-energisation Works and Re-energisation Works, and shall undertake such De-energisation Works and Re-energisation Works at its own cost; and

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52B.4.2 comply with the Relevant Instruments and the Distribution Code in relation to the De-energisation Works and Re-energisation Works.

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*[Note: I presume there is no need to notify these de-energisations and re-energisations under the MRA/BSC?]*

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*[Note: as agreed, I have removed the indemnities. Liability will arise (subject to the caps and other limits on liability) where a Gas Supplier fails to comply with this clause – ie breaches Good Industry Practice or Relevant Instruments. It is therefore possible for a Gas Supplier to damage the equipment of a distributor (and vice versa) without being in breach – ie where damage arises despite compliance with GIP and RI.]*

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Right to be Connected

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52B.5 Subject to the provisions of this Section 2C, the Gas Supplier has the right for any Smart Metering Comms Hub Device installed in accordance with this Section 2C to be and to remain connected to the Company's Distribution System.

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52B.6 The Company does not guarantee that it will convey electricity through the Distribution System to the Smart Metering Comms Hub Device at all times, or that electricity so conveyed will be free of variations in voltage or frequency.

*[Note: I have added basic 'connection' rights above, but on reflection I am not sure they are necessary. The Gas Supplier has the right to install and maintain the comms hub, and the distributor has agreed not to interfere with the comms hub – is that enough? No 'connection' terms apply to electricity meter in favour of electricity supplier.]*

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#### Company's Right to De-energise

52B.7 The Company may, at any time with no prior notice to the Gas Supplier, De-energise any Exit Point if:

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52B.7.1 the Company is entitled to do so pursuant to the Connection Agreement relating to such Exit Point; or

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52B.7.2 the Company is entitled to do so pursuant to the Relevant Instruments or Section 2A;

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52B.7.3 the Company is instructed, pursuant to the terms of the Connection and Use of System Code or the Balancing and Settlement Code, to do so;

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52B.7.4 the Company reasonably considers it necessary to do so for safety or system security reasons;

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52B.7.5 the Company reasonably considers it necessary to do so to avoid interference with the regularity or efficiency of its Distribution System (including where the Smart Metering Comms Hub Device is interfering with the Company's Distribution System);

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52B.7.6 an accident or emergency occurs or threatens to occur which requires the Company to do so to avoid the risk of personal injury to any person or physical damage to the property of the Company, its officers, employees or agents, or the property of any other person;

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52B.7.7 the rights of the Gas Supplier are suspended in accordance with Clause 54.2; or

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52B.7.8 subject to the terms of a replacement agreement, this Agreement is terminated, or the Gas Supplier ceases to be a Party in accordance with the provisions of Clause 54,

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52B.8 If the Company resolves to De-energise an Exit Point pursuant to Clause 52B.7, then;

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52B.8.1 the Company shall decide on the extent and nature of the De-energisation Works required to De-energise the Exit Point;

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52B.8.2 the Company shall Re-energise the Exit Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended (and shall determine the extent and nature of the Re-energisation Works required to Re-energise the Exit Point); and

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52B.8.3 there shall be no charge to the Gas Supplier in respect of such De-energisation Works and/or Re-energisation Works, except where the Company resolves to De-energise an Exit Point because of the Smart Metering Comms Hub Device or a breach by the Gas Supplier of this Agreement (in which case the Gas Supplier shall pay the Company's reasonable costs incurred in relation to the De-energisation Works and the subsequent Re-energisation Works).

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#### Other Matters

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52B.9 For the avoidance of doubt, the Gas Supplier shall only be entitled to Re-energise an Exit Point that has been De-energised by (or on behalf of) the Gas Supplier pursuant to this Agreement.

52B.10 In undertaking De-energisation Works and Re-energisation Works pursuant to this Clause 52B, the Company may reposition the Smart Metering Comms Hub Device (or any part of it) provided that such repositioning does not affect the operation of the Smart Metering Comms Hub Device (or any part of it).

52B.11 Where the Gas Supplier has no further need for the Smart Metering Comms Hub Device (and there is no reasonable prospect of the Gas Supplier, or any future Gas Supplier, needing to use that Smart Metering Comms Hub Device in the future), then the Gas Supplier shall remove that Smart Metering Comms Hub Device (or, to the extent consistent with Good Industry Practice, render it inoperable in accordance with Good Industry Practice). Where a Smart Metering Comms Hub Device has been rendered inoperable pursuant to this Clause 52B.11, then the Company shall at any time thereafter be entitled to remove and dispose of that Smart Metering Comms Hub Device.

52B.12 The Gas Supplier shall be entitled to use the enquiry service established by the Company pursuant to Condition 8 of its Distribution Licence as if the Gas Supplier were a Connectee.

#### Non-Interference

52B.13 The Gas Supplier shall not (and shall ensure that its Gas Meter Asset Manager when acting in its capacity as such shall not) interfere with the Company's Distribution System save to the extent expressly authorised to do so in this Clause 52B or any other agreement between the Gas Supplier and the Company.

52B.14 The Company shall not interfere with the Smart Metering Comms Hub save to the extent expressly authorised to do so in this Clause 52B or any other agreement between the Gas Supplier and the Company.

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#### 52C. METER OPERATION CODE OF PRACTICE AGREEMENT

52C.1 The Gas Supplier shall procure that the Gas Meter Asset Manager which carries out De-energisation Works and/or Re-energisation Works in respect of

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an Exit Point shall be party to the Meter Operation Code of Practice Agreement, and shall comply with the Meter Operation Code of Practice Agreement in relation to those works.

52C.2 The Company shall be party to, and shall comply with, the Meter Operation Code of Practice Agreement.

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## 52D. PROVISION OF INFORMATION

### Dangerous Incidents

52D.1 Where the Gas Supplier (or any of its contractors or agents) receives a report or enquiry from any person about any matter or incident that does or is likely to:

52D.1.1 cause danger or require urgent attention in relation to the supply or distribution of electricity in the Company's Distribution Services Area through the Distribution System; or

52D.1.2 affect the maintenance of the security, availability and quality of service of the Distribution System.

the Gas Supplier shall notify the Company of such report or enquiry in a prompt and appropriate manner having regard to the nature of the incident to which the report relates. The Gas Supplier shall notify the Company by telephone or post using the telephone number and postal address identified in the Company's Security and Safety of Supplies Statement or such other telephone number as may from time to time be notified in writing by the Company.

### Damage or Interference

52D.2 The Gas Supplier shall (and shall ensure that its contractors and agents shall) in a prompt and appropriate manner having regard to the nature of the incident, inform the Company where the Gas Supplier has (or in the case of

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the Gas Supplier's contractors and agents, such contractors and agents have reason to believe:

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52D.2.1 that there has been damage to the Electrical Plant or Electric Lines owned by the Company; or

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52D.2.2 that there has been interference with any electricity metering equipment at an Entry Point or an Exit Point on the Company's Distribution System that has prevented such metering equipment from correctly registering the quantity of electricity supplied.

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unless the Gas Supplier believes that the damage or interference was caused by the Company.

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52D.3 Where the Gas Supplier has reason to believe that any damage or interference reported by it (or by its contractors or agents) under Clause 52D.2 has been caused by a criminal act, it shall provide the Company with such information as is reasonably required for investigating the incident and resolving any safety concerns arising out of it.

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## 52E. CONFIDENTIALITY RESTRICTIONS ON THE COMPANY

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### Confidential Information

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52E.1 In this Clause 52E, Confidential Information means any information which the Company or any Affiliate or Related Undertaking of the Company:

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52E.1.1 receives from the Gas Supplier under this Agreement; or

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52E.1.2 receives from any Connectee, which, if received from the Gas Supplier, would fall within Clause 52E.1.1; or

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52E.1.3 receives from the Gas Supplier in error, but which would usually be considered to be confidential.

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and the provisions of this Clause 52E shall apply to such Confidential Information, save where the Gas Supplier notifies or otherwise gives prior

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written agreement to the Company that such Confidential Information need not be treated as confidential.

### **Restrictions on Use and Disclosure**

52E.2 Where the Company or any Affiliate or Related Undertaking of the Company receives or acquires Confidential Information, the Company shall (and shall procure that such Affiliate or Related Undertaking shall):

52E.2.1 not use the Confidential Information for any purpose other than as required or expressly permitted under this Agreement or any other agreement entered into between the Company and the Gas Supplier for the provision of services by the Distribution Business of the Company;

52E.2.2 without prejudice to Clause 52E.2.1, not use the Confidential Information in a manner which may obtain for the Company or any Affiliate or Related Undertaking of the Company (as the case may be) any commercial advantage in the operation of a Supply Business;

52E.2.3 not authorise access to nor disclose any Confidential Information other than:

(A) to such of the employees of the Company or any Affiliate or Related Undertaking of the Company as require to be informed thereof for the effective performance of the Company's obligations under this Section 2C or any other agreement entered into between the Company and the Gas Supplier for the provision of services by the Distribution Business of the Company or for the effective operation of the Distribution Business;

(B) to such agents, consultants, professional or other advisors, and contractors as require to be informed thereof or to provide advice which is in connection with the operation of the Company's Distribution Business;

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(C) to the Authority;

(D) information which the Company or any Affiliate or Related Undertaking of the Company (as the case may be) is required or permitted to make disclosure of:

(i) in compliance with the duties of the Company or any Affiliate or Related Undertaking of the Company (as the case may be) under the Act or any other requirement of a Competent Authority;

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(ii) in compliance with the provisions of any Relevant Instruments;

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(iii) in compliance with any other requirement of law;

(iv) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or

(v) pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal of competent jurisdiction; or

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(E) for the purposes levying charges (where applicable); and

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52E.2.4 take all reasonable steps to ensure that any such person as is referred to in sub-clauses 52E.2.3(A) and (B) to whom the Company or any Affiliate or Related Undertaking of the Company (as the case may be) discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it was provided and does not disclose that Confidential Information otherwise than in accordance with the provisions of this Clause 52E.

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## Other Matters

52E.3 The Company warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The Company undertakes to comply with the Data Protection Act in the performance of this Agreement.

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52E.4 The Gas Supplier agrees that where the Company uses or discloses Confidential Information in accordance with this Clause 52E, such Confidential Information need not be treated as confidential for the purposes of Condition 42 of the Distribution Licence to the extent of such use or disclosure.

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52E.5 The Company undertakes that, in any case where information to be disclosed by it under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it, or the Gas Supplier, as the case may be, promptly to perform its obligations under this Section 2C, provided that where the consent of the Connectee is required to be obtained for the purposes of this Section 2C, the Gas Supplier (and not the Company) shall have the obligation to obtain such consent under Clause 52F.

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**52F. CONFIDENTIALITY RESTRICTIONS ON THE GAS SUPPLIER**

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**Confidential Information**

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52F.1 In this Clause 52F, Confidential Information means:

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52F.1.1 any information (whether in writing, in disc or electronic form, or otherwise) which has been properly disclosed by the Company under this Agreement but which would usually be considered to be confidential; and

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52F.1.2 any information which is marked as confidential or which is

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provided together with a covering letter or fax indicating its confidential nature,

and, to the extent that any Affiliate or Related Undertaking of the Gas Supplier is in possession of Confidential Information, the Gas Supplier shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 52F.2 to 52F.4 (inclusive) as if in each such Clause there was substituted for the Gas Supplier the name of the Affiliate or Related Undertaking.

#### Restrictions on Use and Disclosure

52F.2 The Gas Supplier hereby undertakes to the Company that it will preserve the confidentiality of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes, Confidential Information except:

52F.2.1 in the circumstances set out in Clause 52F.3;

52F.2.2 to the extent otherwise required or expressly permitted by this Agreement or any other agreement entered into between the Company and the Gas Supplier for the provision of services by the Distribution Business of the Company; or

52F.2.3 with the prior consent in writing of the Company.

52F.3 The circumstances set out in this Clause 52F.3 are:

52F.3.1 where the Confidential Information, before it is furnished to the Gas Supplier, is in the public domain;

52F.3.2 where the Confidential Information:

(A) is acquired by the Gas Supplier in circumstances in which this Clause 52F does not apply;

(B) is acquired by the Gas Supplier in circumstances in which this Clause 52F does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 52F; or

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(C) (after it is furnished to the Gas Supplier) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the Gas Supplier of its obligations in this Clause 52F; or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation, and the Gas Supplier is aware of such breach;

52F.3.3 if the Gas Supplier is required or permitted to make disclosure of the Confidential Information to any person:

(A) in compliance with any requirement of a Competent Authority;

(B) in compliance with the provisions of any Relevant Instrument;

(C) in compliance with any other law or regulation;

(D) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or

(E) pursuant to the rules of the Electricity Arbitration Association or pursuant to any judicial or arbitral process or tribunal of competent jurisdiction; or

52F.3.4 the disclosure of Confidential Information to any Affiliate or Related Undertaking of the Gas Supplier, to the employees, directors, agents, consultants and professional advisers of the Gas Supplier, or any Affiliate or Related Undertaking of the Gas Supplier, in each case on the basis set out in Clause 52F.4.

52F.4 The Gas Supplier shall take all reasonable steps to ensure that any such person as is referred to in Clause 52F.3.4 to whom the Gas Supplier discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not disclose that Confidential Information otherwise than in accordance with this Clause 52F.

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52F.5 The Gas Supplier warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The Gas Supplier undertakes to comply with the Data Protection Act in the performance of this Agreement.

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52F.6 The Gas Supplier undertakes that, in any case where information to be disclosed under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it or (as the case may be) the Company promptly to perform its obligations under this Section 2C.

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**Add a new Section 2D as follows**

**SECTION 2D – ELECTRICITY SUPPLIER TO GAS SUPPLIER  
RELATIONSHIPS**

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**SCOPE OF SECTION 2D**

This Section 2D and the Schedules referred to in it set out the terms and conditions pursuant to which a Supplier Party shall allow a Gas Supplier Party to install and thereafter maintain Smart Metering Comms Hub Devices.

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**52G. INTERPRETATION OF SECTION 2D**

**Party Obligations**

52G.1 In this Section 2D, in the Schedules when applied pursuant to this Section 2D, and in the terms defined in Clause 1 when used in this Section 2D or those Schedules, a reference to an **Electricity Supplier** is:

52G.1.1 a reference to each Party that is a Supplier Party separately and individually and, where an obligation is imposed on, or a right granted to, an Electricity Supplier, that obligation is imposed on, and that right is granted to, each such Party separately and independently; and

52G.1.2 when made in relation to a Gas Supplier and any period of time, a reference to the Electricity Supplier who is (or was), during that period, Registered in respect of the Metering Point associated with the Exit Point at a Premises for which the Gas Supplier is (or was) the Responsible Gas Supplier during that period.

52G.2 In this Section 2D, in the Schedules when applied pursuant to this Section 2D, and in the terms defined in Clause 1 when used in this Section 2D or those Schedules, a reference to a **Gas Supplier** is:

52G.2.1 a reference to each Party that is a Gas Supplier Party separately and

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individually and, where an obligation is imposed on, or a right is granted to, a Gas Supplier, that obligation is imposed on, and that right is granted to, each such Party separately and independently; and

52G.2.2 when made in relation to an Electricity Supplier and any period of time, a reference to each Gas Supplier who is (or was), during that period, the Responsible Gas Supplier for a Premises in respect of which the Electricity Supplier is (or was) Registered during that period.

52G.3 This Section 2D, and the Schedules when applied pursuant to it, shall:

52G.3.1 only create rights and obligations between Supplier Parties (on the one hand) and Gas Supplier Parties (on the other), and shall not create rights or obligations between Supplier Parties and other Supplier Parties or between Gas Supplier Parties and other Gas Supplier Parties;

52G.3.2 not apply to the OTSO Party or to DNO/IDNO Parties; and

52G.3.3 only create obligations between an Electricity Supplier and a Gas Supplier to the extent that, and in relation to those periods for which, that Electricity Supplier is (or was) Registered in respect of the Metering Point associated with the Exit Point at a Premises for which the Gas Supplier is (or was) the Responsible Gas Supplier (and not otherwise).

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#### **References in Relation to Electricity Suppliers and Gas Suppliers**

52G.4 In this Section 2D, in the Schedules when applied pursuant to this Section 2D, and in the terms defined in Clause 1 when used in this Section 2D or those Schedules, references to:

52G.4.1 an Exit Point are, when made in relation to an Electricity Supplier and any period of time, references to an Exit Point relating to a Metering Point for which that Electricity Supplier is (or was) Registered during that period;

52G.4.2 a Premises are, when made in relation to a Gas Supplier and any period of time, references to a Premises for which the Gas Supplier is (or was) the Responsible Gas Supplier during that period of time;

52G.4.3 a Connectee, Connected Installation, Contract, Exit Point, Premises or Smart Metering Comms Hub Device, are (when made in relation to an Electricity Supplier and any period of time) references to a Connectee, Connected Installation, Contract, Exit Point, Premises or Smart Metering Comms Hub Device relating to a Metering Point for which that Electricity Supplier is (or was) Registered during that period;

52G.4.3 a Connectee, Connected Installation, Contract, Exit Point, Metering Point or Smart Metering Comms Hub Device, are (when made in relation to a Gas Supplier and any period of time) references to a Connectee, Connected Installation, Contract, Exit Point, Metering Point or Smart Metering Comms Hub Device relating to a Premises for which the Gas Supplier was the Responsible Gas Supplier during that period of time; or

52G.4.4 a Distribution System or Company, are respectively (when made in relation to an Exit Point) references to an Exit Point on that Distribution System or to the DNO/IDNO Party that operates that Distribution System.

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## **52H. DE-ENERGISATION AND RE-ENERGISATION WORKS**

### **Requirements for those undertaking Works**

52H.1 De-energisation Works and Re-energisation Works carried out by or on behalf of the Gas Supplier pursuant to this Clause 52H shall only be carried out by a person working on behalf of a Gas Meter Asset Manager engaged by the Gas Supplier.

### **Good Industry Practice**

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52H.2 The Electricity Supplier and the Gas Supplier shall each act in accordance with Good Industry Practice when carrying out, or procuring the carrying out of, any De-energisation Works or Re-energisation Works.

**Works Undertaken by the Gas Supplier**

52H.3 If, at any time, the Gas Supplier wishes to:

52H.3.1 install a Smart Metering Comms Hub Device at a Premises at which there is not, at that time, already a Smart Metering Comms Hub Device that can communicate with both the Gas Supplier (or its appointed data communications company) and the gas metering equipment at the Premises; or

52H.3.2 operate, inspect, maintain, repair, renew, reposition, replace and/or remove a Smart Metering Comms Hub Device that was installed at the Premises prior to that time (whether or not on behalf of the Gas Supplier).

then the Gas Supplier may (to the extent reasonably required in order to do so, and with no prior notice to the Electricity Supplier) De-energise the Exit Point at that Premises in order to do so; provided that the Gas Supplier Re-energises that Exit Point as soon as reasonably practicable thereafter.

52H.4 If the Gas Supplier resolves to De-energise and/or Re-energise an Exit Point pursuant to Clause 52H.3, then the Gas Supplier shall:

52H.4.1 decide on the extent and nature of the De-energisation Works and Re-energisation Works, and shall undertake such De-energisation Works and Re-energisation Works at its own cost; and

52H.4.2 comply with the Relevant Instruments and the Distribution Code in relation to the De-energisation Works and Re-energisation Works.

**Electricity Supplier's Right to De-energise**

52H.5 The Electricity Supplier may, at any time with no prior notice to the Gas Supplier, De-energise any Exit Point if:

52H.5.1 the Electricity Supplier is entitled to do so pursuant to the Contract relating to such Exit Point; or

52H.5.2 the Electricity Supplier is entitled to do so pursuant to the Relevant Instruments or Section 2A.

52H.6 If the Electricity Supplier resolves to De-energise an Exit Point pursuant to Clause 52H.5, then:

52H.6.1 the Electricity Supplier shall decide on the extent and nature of the De-energisation Works required to De-energise the Exit Point;

52H.6.2 the Electricity Supplier shall Re-energise the Exit Point as soon as is reasonably practicable after the circumstance giving rise to such De-energisation has ended (and shall determine the extent and nature of the Re-energisation Works required to Re-energise the Exit Point); and

52H.6.3 there shall be no charge to the Gas Supplier in respect of such De-energisation Works and/or Re-energisation Works.

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#### **Other Matters**

52H.7 For the avoidance of doubt, the Gas Supplier shall only be entitled to Re-energise an Exit Point that has been De-energised by (or on behalf of) the Gas Supplier pursuant to this Agreement.

52H.8 In undertaking De-energisation Works and Re-energisation Works pursuant to this Clause 52H, the Electricity Supplier may reposition the Smart Metering Comms Hub Device (or any part of it) provided that such repositioning does not affect the operation of the Smart Metering Comms Hub Device (or any part of it).

52H.9 In undertaking De-energisation Works and Re-energisation Works pursuant to this Clause 52H, the Gas Supplier may reposition the electricity metering equipment (or any part of it) at the Premises provided that such repositioning

does not affect the operation of such electricity metering equipment (or any part of it).

52H.10 Where the Gas Supplier has no further need for the Smart Metering Comms Hub Device (and there is no reasonable prospect of the Gas Supplier, or any future Gas Supplier, needing to use that Smart Metering Comms Hub Device in the future), then the Gas Supplier shall remove that Smart Metering Comms Hub Device (or, to the extent consistent with Good Industry Practice, render it inoperable in accordance with Good Industry Practice). Where a Smart Metering Comms Hub Device has been rendered inoperable pursuant to this Clause 52H.10, then the Electricity Supplier shall at any time thereafter be entitled to remove and dispose of that Smart Metering Comms Hub Device.

#### Non-Interference

52H.11 The Gas Supplier shall not (and shall ensure that its Gas Meter Asset Manager when acting in its capacity as such shall not) interfere with the electricity metering equipment at a Premises save to the extent expressly authorised to do so in this Clause 52H or any other agreement between the Gas Supplier and the Electricity Supplier.

52H.12 The Electricity Supplier shall not interfere with the Smart Metering Comms Hub save to the extent expressly authorised to do so in this Clause 52H or any other agreement between the Gas Supplier and the Electricity Supplier.

*[page break]*

#### 52I. METER OPERATION CODE OF PRACTICE AGREEMENT

52I.1 The Gas Supplier shall procure that the Gas Meter Asset Manager which carries out De-energisation Works and/or Re-energisation Works in respect of an Exit Point shall be party to the Meter Operation Code of Practice Agreement, and shall comply with the Meter Operation Code of Practice Agreement in relation to those works.

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52I.2 The Electricity Supplier shall procure that the Meter Operator Agent appointed for each Metering Point supplied by the User shall be party to the Meter

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Operation Code of Practice Agreement, and shall comply with the Meter  
Operation Code of Practice Agreement in relation to that Metering Point.

[Note: are either of the above necessary?]

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## **52J. PROVISION OF INFORMATION**

### **[Danger] Damage or Interference**

52J.1 The Gas Supplier shall (and shall ensure that its contractors and agents shall)  
in a prompt and appropriate manner having regard to the nature of the  
incident, inform the Electricity Supplier where the Gas Supplier has (or in the  
case of the Gas Supplier's contractors and agents, such contractors and agents  
have) reason to believe that there has been damage to or interference with any  
electricity metering equipment at a Premises (unless the Gas Supplier believes  
that the damage or interference was caused by the Electricity Supplier)[, or  
that the electricity metering equipment otherwise presents a danger]. [Note:  
include reference to danger?]

52J.2 The Electricity Supplier shall (and shall ensure that its contractors and agents  
shall) in a prompt and appropriate manner having regard to the nature of the  
incident, inform the Gas Supplier where the Electricity Supplier has (or in the  
case of the Electricity Supplier's contractors and agents, such contractors and  
agents have) reason to believe that there has been damage to or interference  
with the Smart Metering Comms Hub Device (unless the Electricity Supplier  
believes that the damage or interference was caused by the Gas Supplier)[, or  
that the Smart Metering Comms Hub Device otherwise presents a danger].  
[Note: include reference to danger?]

52J.3 [For the purposes of giving notice under Clause 52J.1 or 52J.2, the Gas  
Supplier or the Electricity Supplier (as applicable) shall use its reasonable  
endeavours to establish the identity of the Electricity Supplier or Gas Supplier  
(as applicable) to whom notice should be given. Where the Gas Supplier or the  
Electricity (as applicable) is unable to establish the identity of the person to

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whom notice should be given, it shall give such notice to the [United Kingdom Revenue Protection Association].]

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## **52K. CONFIDENTIALITY RESTRICTIONS ON THE GAS SUPPLIER**

### **Confidential Information**

52K.1 In this Clause 52K, Confidential Information means:

52K.1.1 any information (whether in writing, in disc or electronic form, or otherwise) which has been properly disclosed by the Electricity Supplier under this Agreement but which would usually be considered to be confidential; and

52K.1.2 any information which is marked as confidential or which is provided together with a covering letter or fax indicating its confidential nature,

and, to the extent that any Affiliate or Related Undertaking of the Gas Supplier is in possession of Confidential Information, the Gas Supplier shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 52K.2 to 52K.4 (inclusive) as if in each such Clause there was substituted for the Gas Supplier the name of the Affiliate or Related Undertaking.

### **Restrictions on Use and Disclosure**

52K.2 The Gas Supplier hereby undertakes to the Electricity Supplier that it will preserve the confidentiality of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes, Confidential Information except:

52K.2.1 in the circumstances set out in Clause 52K.3;

52K.2.2 to the extent otherwise required or expressly permitted by this Agreement or any other agreement entered into between the



Electricity Supplier and the Gas Supplier; or

52K.2.3 with the prior consent in writing of the Electricity Supplier.

52K.3 The circumstances set out in this Clause 52K.3 are:

52K.3.1 where the Confidential Information, before it is furnished to the Gas Supplier, is in the public domain;

52K.3.2 where the Confidential Information:

(A) is acquired by the Gas Supplier in circumstances in which this Clause 52K does not apply;

(B) is acquired by the Gas Supplier in circumstances in which this Clause 52K does apply and thereafter ceases to be subject to the restrictions imposed by this Clause 52K; or

(C) (after it is furnished to the Gas Supplier) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the Gas Supplier of its obligations in this Clause 52K; or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation, and the Gas Supplier is aware of such breach;

52K.3.3 if the Gas Supplier is required or permitted to make disclosure of the Confidential Information to any person:

(A) in compliance with any requirement of a Competent Authority;

(B) in compliance with the provisions of any Relevant Instrument;

(C) in compliance with any other law or regulation;

(D) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or

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(E) pursuant to the rules of the Electricity Arbitration Association or pursuant to any judicial or arbitral process or tribunal of competent jurisdiction; or

52K.3.4 the disclosure of Confidential Information to any Affiliate or Related Undertaking of the Gas Supplier, to the employees, directors, agents, consultants and professional advisers of the Gas Supplier or any Affiliate or Related Undertaking of the Gas Supplier, in each case on the basis set out in Clause 52K.4.

52K.4 The Gas Supplier shall take all reasonable steps to ensure that any such person as is referred to in Clause 52K.3.4 to whom the Gas Supplier discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not disclose that Confidential Information otherwise than in accordance with this Clause 52K.

#### **Other Matters**

52K.5 The Gas Supplier warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The Gas Supplier undertakes to comply with the Data Protection Act in the performance of this Agreement.

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## **52L. CONFIDENTIALITY RESTRICTIONS ON THE ELECTRICITY SUPPLIER**

### **Confidential Information**

52L.1 In this Clause 52L, Confidential Information means:

52L.1.1 any information (whether in writing, in disc or electronic form, or otherwise) which has been properly disclosed by the Gas Supplier under this Agreement but which would usually be considered to be confidential; and

52L.1.2 any information which is marked as confidential or which is provided together with a covering letter or fax indicating its confidential nature,

and, to the extent that any Affiliate or Related Undertaking of the Electricity Supplier is in possession of Confidential Information, the Electricity Supplier shall procure that such Affiliate or Related Undertaking observes the restrictions in Clauses 52L.2 to 52L.4 (inclusive) as if in each such Clause there was substituted for the Electricity Supplier the name of the Affiliate or Related Undertaking.

#### **Restrictions on Use and Disclosure**

52L.2 The Electricity Supplier hereby undertakes to the Gas Supplier that it will preserve the confidentiality of, and not directly or indirectly reveal, report, publish, disclose or transfer or use for its own purposes, Confidential Information except:

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52L.2.1 in the circumstances set out in Clause 52L.3;

52L.2.2 to the extent otherwise required or expressly permitted by this Agreement or any other agreement entered into between the Electricity Supplier and the Gas Supplier; or

52L.2.3 with the prior consent in writing of the Gas Supplier.

52L.3 The circumstances set out in this Clause 52L.3 are:

52K.3.1 where the Confidential Information, before it is furnished to the Electricity Supplier, is in the public domain;

52L.3.2 where the Confidential Information:

(A) is acquired by the Electricity Supplier in circumstances in which this Clause 52L does not apply;

(B) is acquired by the Electricity Supplier in circumstances in which this Clause 52L does apply and thereafter ceases to be

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subject to the restrictions imposed by this Clause 52L; or

(C) (after it is furnished to the Electricity Supplier) enters the public domain,

otherwise (in any such case) than as a result of (i) a breach by the Electricity Supplier of its obligations in this Clause 52L; or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation, and the Electricity Supplier is aware of such breach;

52L.3.3 if the Electricity Supplier is required or permitted to make disclosure of the Confidential Information to any person:

(A) in compliance with any requirement of a Competent Authority;

(B) in compliance with the provisions of any Relevant Instrument;

(C) in compliance with any other law or regulation;

(D) in response to a requirement of any Stock Exchange or the Panel on Takeovers and Mergers or any other regulatory authority (whether or not similar to those bodies); or

(E) pursuant to the rules of the Electricity Arbitration Association or pursuant to any judicial or arbitral process or tribunal of competent jurisdiction; or

52L.3.4 the disclosure of Confidential Information to any Affiliate or Related Undertaking of the Electricity Supplier, to the employees, directors, agents, consultants and professional advisers of the Electricity Supplier or any Affiliate or Related Undertaking of the Electricity Supplier, in each case on the basis set out in Clause 52L.4.

52L.4 The Electricity Supplier shall take all reasonable steps to ensure that any such person as is referred to in Clause 52L.3.4 to whom the Electricity Supplier discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not disclose

that Confidential Information otherwise than in accordance with this Clause 52L.

**Other Matters**

52L.5 The Electricity Supplier warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement. The Electricity Supplier undertakes to comply with the Data Protection Act in the performance of this Agreement.

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**Amend 'Whereas' Section of Schedule 9 (Accession Agreement)**

(E) The Gas Supplier Parties have agreed to accede to the DCUSA in order to allow them to install, operate, inspect, maintain, repair, renew, reposition, replace and remove Smart Metering Comms Hub Devices.

(F) DCUSA Ltd is a company established under the DCUSA to facilitate the operation of the DCUSA.

(G) The New Party wishes to become a party to, and bind itself by, and DCUSA Ltd has agreed (on behalf of the DCUSA Parties) to admit the New Party as a party to, the DCUSA in accordance with the terms and conditions of this Accession Agreement.

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**Wragge & Co LLP  
12 September 2012**