

## **SECTION F: COMMUNICATIONS AND DATA**

### **1. INTRODUCTION**

1.1 This Section F sets out:

1.1.1 general obligations of confidentiality, including restrictions on the circumstances in which Confidential Information may be Disclosed by a Party to its Affiliates, Related Undertakings, employees or to any third parties; and

1.1.2 restrictions on the circumstances in which information may be provided by a Party to a Transmission Owner under this Code.

### **2. GENERAL CONFIDENTIALITY**

2.1 Each Party undertakes that it shall at all times:

2.1.1 keep all Confidential Information confidential and, except as expressly permitted under sub-paragraph 2.1.3, not Disclose any Confidential Information to any of its Affiliates, Related Undertakings, employees or to any other person;

2.1.2 not copy or use in any manner any Confidential Information for any purposes other than the Permitted Activities;

2.1.3 provide copies of the Confidential Information only to those Business Personnel who properly require access to the Confidential Information and always on a strict need-to-know basis solely for or in relation to the Permitted Activities, and inform each of them of the restrictions contained in this Section F; and

2.1.4 procure that any Business Personnel or other person(s) to whom it discloses Confidential Information observe(s) the restrictions set out in this Section F, and be responsible for any failure by such person(s) to observe such restrictions.

2.2 Nothing in this paragraph 2 shall apply to:

2.2.1 any Confidential Information which has entered the public domain otherwise than as a direct or indirect result of any contravention of this Section F; or

2.2.2 any Confidential Information which, after it is furnished to Business Personnel:

2.2.2.1 is acquired by a Party in circumstances in which this paragraph 2 does not apply; or

2.2.2.2 is acquired by a Party in circumstances in which this paragraph 2 does apply and thereafter ceases to be subject to the restrictions imposed by this paragraph 2,

otherwise than as a direct or indirect result of any contravention of this Section F or any other confidentiality obligation binding upon the person Disclosing such Confidential Information; or

2.2.3 any Confidential Information Disclosed to any person where the Disclosing Party, in making the Disclosure, is expressly permitted or required to make such Disclosure to such person:

2.2.3.1 in compliance with the duties of such Disclosing Party under any Relevant Instrument or any other Legal Requirement or requirement of a Competent Authority; or

2.2.3.2 in compliance with the conditions of the Disclosing Party's Transmission Licence; or

2.2.3.3 in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-Overs and Mergers; or

2.2.3.4 pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the Disclosing Party or its Affiliates or Related Undertakings; or

2.2.4 any Confidential Information to the extent that a Disclosing Party is expressly permitted or required to Disclose that information under the terms of this Code; or

2.2.5 any Confidential Information in relation to the affairs of a User, to the extent that the Disclosing Party is expressly permitted or required to Disclose that information under any arrangement with such User; or

2.2.6 a Disclosure of any Confidential Information by the Disclosing Party to the Authority or any other Competent Authority.

2.3 For the avoidance of doubt, nothing in this paragraph 2 shall apply to any Disclosure of Confidential Information by NGESO to the extent that it is expressly permitted or required to Disclose such Confidential Information under the terms of an Other Code.

2.4 Each Party undertakes that, having regard to the activities in which any Business Person of such Party is engaged and the nature and effective life of any Confidential Information divulged to him by virtue of such activities, such Party shall not

unreasonably continue (taking into account any industrial relations concerns reasonably held by it) to divulge Confidential Information to any such Business Person in relation to whom such Party has become aware of his intention to become engaged as an employee or agent of any other person who is:

2.4.1 authorised by Licence or Exemption to generate, participate in the transmission of, distribute or supply electricity; or

2.4.2 an electricity broker or who is known to be engaged in the writing of electricity sale and purchase contracts (which shall include the entering into or acquiring the benefit of a contract conferring rights or obligations by way of option, in relation to or by reference to the sale, purchase or delivery of electricity at any time or the price at which electricity is sold or purchased at any time); or

2.4.3 known to be retained as a consultant to any such person who is referred to in sub-paragraphs 2.4.1 and 2.4.2,

save where the Party could not, in all the circumstances, reasonably be expected to refrain from divulging to such Business Person Confidential Information which is required for the proper performance of his duties.

2.5 Without prejudice to the other provisions of this paragraph 2, each Party shall procure that any additional copies made of the Confidential Information, whether in hard copy or computerised form, will clearly identify the Confidential Information as confidential.

2.6 Notwithstanding any other provision of the Code, the provisions of this paragraph 2 shall continue to bind each Party after its cessation as a Party for whatever reason.

### **3. RESTRICTIONS ON THE PROVISION OF INFORMATION BETWEEN THE PARTIES**

3.1 For the avoidance of doubt, any provision of this Code which provides for co-operation and assistance between the Parties or which otherwise permits or requires the provision of information between the Parties shall remain subject to the restrictions set out in this paragraph 3.

3.2 A Party shall not Disclose any information which it receives under or pursuant to this Code to a Transmission Owner other than in the course of performing its respective rights and obligations under this Code.

3.3 A Party shall not Disclose any Transmission Information or User Data to a Transmission Owner under this Code or otherwise other than:

3.3.1 as, and to the extent, set out in Schedule Three; and

- 3.3.2 any incidental information which is reasonably required to support or clarify, or that is otherwise directly related to, information Disclosed under sub-paragraph 3.3.1.
- 3.4 Paragraphs 3.2 and 3.3 shall not apply to:
- 3.4.1 information that is in the public domain (otherwise than as a direct or indirect result of any contravention of this Section F); or
- 3.4.2 any information which the Disclosing Party is expressly permitted or required to Disclose to the Transmission Owner:
- 3.4.2.1 in compliance with the duties of such Disclosing Party under any Relevant Instrument or any other Legal Requirement or requirement of a Competent Authority; or
- 3.4.2.2 in compliance with the conditions of the Disclosing Party's Transmission Licence; or
- 3.4.2.3 in response to a requirement of any stock exchange or regulatory authority or the Panel on Take-Overs and Mergers; or
- 3.4.2.4 pursuant to the arbitration rules of the Electricity Arbitration Association or pursuant to any judicial or other arbitral process or tribunal having jurisdiction in relation to the Disclosing Party or its Affiliates or Related Undertakings; or
- 3.4.3 any information which the Disclosing Party has first made available to all Parties and all Other Code Parties on equivalent terms (including, without limitation, as to charges and non-Disclosure obligations) and otherwise in accordance with paragraph 3.5.
- 3.5 For the purpose of sub-paragraph 3.4.3 above, a Party shall make available information by publishing a notice on the Code Website stating that such information is available (or, where the Disclosing Party is a Transmission Owner, by forwarding such notice to NGESO, which notice NGESO shall then promptly publish on the Code Website).
- 3.6 For the avoidance of doubt, nothing in this paragraph 3 shall be taken to limit or restrict the information which may be Disclosed by a Party to NGESO under this Code.
- 3.7 Information which a Party is permitted or obliged to Disclose to any other Party pursuant to this Code shall not be regarded as being in the public domain by reason only of being so Disclosed.

3.8 Notwithstanding any other provision of the Code, the provisions of this paragraph 3 shall continue to bind each Party after its cessation as a Party for whatever reason.

