

**SECTION I: DATA PRIVACY****II DATA PROTECTION AND ACCESS TO DATA****Without Prejudice**

- II.1 The obligations of the DCC and each User under this Section II are without prejudice to any other obligations they each may have under the Data Protection Act and other Relevant Instruments, including any such obligations they each may have concerning Processing of Personal Data.

**User Obligations****Consumption Data**

- II.2 Each User undertakes that it will not request, in respect of a Smart Metering System, a Communication Service or Local Command Service that will result in it obtaining Consumption Data, unless:
- (a) the User has the Appropriate Permission in respect of that Smart Metering System; and
  - (b) (where that User is not the Import Supplier, Export Supplier, Gas Supplier, Electricity Distributor or Gas Transporter for that Smart Metering System) the User has, at the point of obtaining Appropriate Permission and at such intervals as are reasonably determined appropriate by the User for the purposes of ensuring that the Energy Consumer is regularly updated of such matters, notified the Energy Consumer in writing of:
    - (i) the time periods (by reference to length) in respect of which the User obtains or may obtain Consumption Data;
    - (ii) the purposes for which that Consumption Data is, or may be, used by the User; and
    - (iii) the Energy Consumer's right to object or withdraw consent (as the case may be) to the User obtaining or using that Consumption Data, and the process by which the Energy Consumer may object or withdraw consent.

**Service Requests**

- 11.3 Each User undertakes that it will not send either a 'Join Service' or 'Unjoin Service' Service Request (respectively to join a Type 2 Device to, or unjoin it from, any Smart Meter or Device Associated with a Smart Meter) unless:
- (a) the User is the Responsible Supplier for the Smart Meter or Associated Device to which the Service Request is sent, and sends that Service Request for the purpose of complying with an obligation under its Energy Supply Licence; or
  - (b) the Energy Consumer at the premises at which the Smart Meter is located has given the User Unambiguous Consent, which has not been withdrawn, to (as the case may be):
    - (i) join that Type 2 Device to the Smart Meter or Associated Device, and the User has clearly informed the Energy Consumer before obtaining such Unambiguous Consent that a consequence of joining the Type 2 Device may be that Data relating to the Energy Consumer will be shared with third parties; or
    - (ii) unjoin it from the Smart Meter or Associated Device, save that the Responsible Supplier for a Smart Metering System at the premises need not obtain such Unambiguous Consent where it has reasonable grounds to believe that the Type 2 Device has Compromised or is likely to Compromise any Device forming part of that Smart Metering System (and the Responsible Supplier shall, where it unjoins a Type 2 Device in such circumstances, take all reasonable steps to inform the Energy Consumer that it has done so).

**Access to Records**

- 11.4 Each User undertakes that it will not access (pursuant to Section H8.16) or request (pursuant to Section H8.17) the information described in Section H8.16(c), unless:
- (a) the Energy Consumer at the premises at which the relevant Smart Meter is located has given the User Unambiguous Consent to do so and such consent has not been withdrawn; and

- (b) the information is accessed solely for the purpose of its provision to that Energy Consumer.

**Good Industry Practice**

- I1.5 Each User shall put in place and maintain arrangements designed in accordance with Good Industry Practice to ensure that each person from whom it has obtained consent pursuant to Section I1.2 to I1.4 is the Energy Consumer.

**Processing of Personal Data by the DCC**

- I1.6 It is acknowledged that, in providing the Services to a User, the DCC may act in the capacity of ‘data processor’ (as defined in the Data Protection Act) on behalf of that User in respect of the Personal Data for which that User is the ‘data controller’ (as defined in the Data Protection Act).
- I1.7 The DCC undertakes for the benefit of each User in respect of the Personal Data for which that User is the ‘data controller’ (as defined in the Data Protection Act) to:
  - (a) only Process that Personal Data for the purposes permitted by the DCC Licence and this Code;
  - (b) undertake the Processing of that Personal Data in accordance with this Code, (to the extent consistent with this Code) the instructions of the User and (subject to the foregoing requirements of this Section I1.5(b)) not in a manner that the DCC knows (or should reasonably know) is likely to cause the User to breach its obligations under the Data Protection Act;
  - (c) implement appropriate technical and organisational measures to protect that Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure (such measures to at least be in accordance with Good Industry Practice and the requirements of Section G (Security));
  - (d) not Process that Personal Data outside the European Economic Area;
  - (e) provide reasonable assistance to the User in complying with any subject access request with which the User is obliged to comply under the Data Protection Act

and which relates to the Processing of that Personal Data pursuant to this Code;

- (f) provide reasonable assistance to the User in complying with any enquiry made, or investigation or assessment initiated, by the Information Commissioner or any other Competent Authority in respect of the Processing of that Personal Data pursuant to this Code;
- (g) promptly notify the User in the event that the DCC Processes any of that Personal Data otherwise than in accordance with this Code (including in the event of unauthorised access to such Personal Data);
- (h) notify the User of any complaint or subject access request or other request received by the DCC with respect to the Processing of that Personal Data pursuant to this Code, and to do so within 5 Working Days following receipt of the relevant complaint or request; and
- (i) notify the User of any a complaint or request relating to the DCC's obligations (if any) under the Data Protection Act in respect of the Processing of that Personal Data pursuant to this Code.

### **Records**

- I1.8 The DCC and each User will each maintain in accordance with Good Industry Practice all such records and other information as is necessary to enable the DCC and each such User to demonstrate that it is complying with its respective obligations under Sections I1.2 to I1.5 and I1.7.

**I2 OTHER USER PRIVACY AUDITS****Procurement of the Independent Privacy Auditor**

I2.1 The Panel shall procure the provision of privacy audit services:

- (a) of the scope specified in Section I2.3;
- (b) from a person who:
  - (i) is suitably qualified, and has the necessary experience and expertise, to provide those services; and
  - (ii) is suitably independent in accordance with in Section I2.4,

and that person is referred to in this Section I2 as the “**Independent Privacy Auditor**”.

I2.2 Except where the contrary is required by the provisions of Section X (Transition), the Panel may appoint more than one person to carry out the functions of the Independent Privacy Auditor.

**Scope of Privacy Audit Services**

I2.3 The privacy audit services specified in this Section I2.3 are services in accordance with which, for the purpose of providing reasonable assurance that Other Users are complying with their obligations under Sections I1.2 to I1.5 (User Obligations), the Independent Privacy Auditor shall:

- (a) carry out Privacy Assessments at such times and in such manner as is provided for in this Section I2;
- (b) produce Privacy Assessment Reports in relation to Other Users that have been the subject of a Privacy Assessment;
- (c) receive and consider Privacy Assessment Responses;
- (d) otherwise, at the request of, and to an extent determined by, the Panel carry out an assessment of the compliance of any Other User with its obligations under Sections I1.2 to I1.5;

- (e) provide to the Panel such advice and support as may be requested by it from time to time, including in particular advice in relation to the suitability of any remedial action plan for the purposes of Section M8.4 of the Code (Consequences of an Event of Default);
- (f) provide to the Authority such advice and support as it may request in relation to any disagreements with a decision of the Panel in respect of which the Authority is required to make a determination in accordance with this Section I2; and
- (g) undertake such other activities, and do so at such times and in such manner, as may be further provided for in this Section I2.

### **Independence Requirement**

I2.4 The Independent Privacy Auditor shall be treated as suitably independent in accordance with this Section I2.4 only if it satisfies:

- (a) the requirements specified in Section I2.6; and
- (b) the requirement specified in Section I2.7.

I2.5 For the purposes of Sections I2.6 and I2.7:

- (a) a "Relevant Party" means any Party in respect of which the Independent Privacy Auditor carries out functions under this Section I2; and
- (b) a "Relevant Service Provider" means any service provider to a Relevant Party from which that Party acquires capability for a purpose related to its compliance with its obligations as an Other User under Section I1.2 to I1.5.

I2.6 The requirements specified in this Section I2.6 are that:

- (a) no Relevant Party or any of its subsidiaries, and no Relevant Service Provider or any of its subsidiaries, holds or acquires any investment by way of shares, securities or other financial rights or interests in the Independent Privacy Auditor;
- (b) no director of any Relevant Party, and no director of any Relevant Service Provider, is or becomes a director or employee of, or holds or acquires any

investment by way of shares, securities or other financial rights or interests in, the Independent Privacy Auditor; and

- (c) the Independent Privacy Auditor does not hold or acquire a participating interest (as defined in section 421A of the Financial Services and Markets Act 2000) in any Relevant Party or any Relevant Service Provider,

(but for these purposes references to a Relevant Service Provider shall not include the Independent Privacy Auditor where it acts in that capacity).

- I2.7 The requirement specified in this Section I2.7 is that the Independent Privacy Auditor is able to demonstrate to the satisfaction of the Panel that it has in place arrangements to ensure that it will at all times act independently of any commercial relationship that it has, has had, or may in future have with a Relevant Party or Relevant Service Provider (and for these purposes a 'commercial relationship' shall include a relationship established by virtue of the Independent Privacy Auditor itself being a Relevant Service Provider to any Relevant Party).

#### **Compliance of the Independent Privacy Auditor**

- I2.8 The Panel shall be responsible for ensuring that the Independent Privacy Auditor carries out its functions in accordance with the provisions of this Section I2.

#### **Other Users: Duty to Cooperate in Assessment**

- I2.9 Each Other User shall do all such things as may be reasonably requested by the Panel, or by any person acting on behalf of or at the request of the Panel (including in particular the Independent Privacy Auditor), for the purposes of facilitating an assessment of that Other User's compliance with its obligations under Sections I1.2 to I1.5.

- I2.10 For the purposes of Section I2.9, an Other User shall provide the Panel (or the relevant person acting on its behalf or at its request) with:

- (a) all such Data as may reasonably be requested, within such times and in such format as may reasonably be specified;
- (b) all such other forms of cooperation as may reasonably be requested, including in particular:

- (i) access at all reasonable times to such parts of the premises of that Other User as are used for, and such persons engaged by that Other User as carry out or are authorised to carry out, any activities related to its compliance with its obligations under Sections I1.2 to I1.5; and
- (ii) such cooperation as may reasonably be requested by the Independent Privacy Auditor for the purposes of carrying out any Privacy Assessment in accordance with this Section I2.

### Categories of Assessment

I2.11 For the purposes of this Section I2, there shall be the following three categories of privacy assessment:

- (a) a Full Privacy Assessment (as further described in Section I2.12);
- (b) a Random Sample Privacy Assessment (as further described in Section I2.13); and
- (c) a Privacy Self-Assessment (as further described in Section I2.14).

I2.12 A "**Full Privacy Assessment**" shall be an assessment carried out by the Independent Privacy Auditor in respect of an Other User to identify the extent to which that Other User:

- (a) is compliant with each of its obligations under Sections I1.2 to I1.5; and
- (b) has in place the systems and processes necessary for ensuring that it complies with each such obligation.

I2.13 A "**Random Sample Privacy Assessment**" shall be an assessment carried out by the Independent Privacy Auditor in respect of an Other User to identify the extent to which the Other User is compliant with each of its obligations under Sections I1.2 to I1.5 in relation to a limited (sample) number of Energy Consumers.

I2.14 A "**Privacy Self-Assessment**" shall be an assessment carried out by an Other User to identify the extent to which, since the last occasion on which a Privacy Assessment was carried out in respect of that Other User by the Independent Privacy Auditor, there has been any material change:

- (a) in the arrangements that the Other User has in place to comply with its obligations under Sections I1.2 to I1.5; or
- (b) in the quantity of Consumption Data being obtained by the Other User.

**The Privacy Controls Framework**

I2.15 The Panel shall develop and maintain a document to be known as the "**Privacy Controls Framework**" which shall:

- (a) set out arrangements designed to ensure that Privacy Assessments are carried out appropriately for the purpose of providing reasonable assurance that Other Users are complying with (or, for the purposes of Section H1.10(d) (User Entry Process Requirements), are capable of complying with) their obligations under Sections I1.2 to I1.5; and
- (b) for that purpose, in particular, specify the principles and criteria to be applied in the carrying out of any Privacy Assessment, including principles designed to ensure that Privacy Assessments take place on a consistent basis across all Other Users; and
- (c) make provision for determining the timing, frequency and selection of Other Users for the purposes of Random Sample Privacy Assessments.

I2.16 In developing the Privacy Controls Framework, and prior to making any subsequent change to it, the Panel shall consult with and have regard to the views of all Parties, Citizens Advice and Citizens Advice Scotland, and the Authority.

I2.17 The Panel shall ensure that an up to date copy of the Privacy Controls Framework is made available to all Parties and is published on the Website.

**Privacy Assessments: General Procedure**Privacy Controls Framework

I2.18 Each Privacy Assessment carried out by the Independent Privacy Auditor or an Other User shall be carried out in accordance with the Privacy Controls Framework.

The Privacy Assessment Report

I2.19 Following the completion of a Full Privacy Assessment or Random Sample Privacy Assessment, the Independent Privacy Auditor shall, in discussion with the Other User to which the assessment relates, produce a written report (a "**Privacy Assessment Report**") which shall:

- (a) set out the findings of the Independent Privacy Auditor on all the matters within the scope of the Privacy Assessment;
- (b) specify any instances of actual or potential non-compliance of the Other User with its obligations under Sections I1.2 to I1.5 which have been identified by the Independent Privacy Auditor;
- (c) set out the evidence which, in the opinion of the Independent Privacy Auditor, establishes each of the instances of actual or potential non-compliance which it has identified.

I2.20 The Independent Privacy Auditor shall submit a copy of each Privacy Assessment Report to the Panel and to the Other User to which that report relates.

The Privacy Assessment Response

I2.21 Following the receipt by any Other User of a Privacy Assessment Report which relates to it, the Other User shall as soon as reasonably practicable, and in any event by no later than such date as the Panel may specify:

- (a) produce a written response to that report (a "Privacy Assessment Response") which addresses the findings set out in the report; and
- (b) submit a copy of that response to the Panel and the Independent Privacy Auditor.

I2.22 Where a Privacy Assessment Report specifies any instance of actual or potential non-

compliance of an Other User with its obligations under Sections I1.2 to I1.5, the Other User shall ensure that its Privacy Assessment Response includes the matters referred to in Section I2.23.

- I2.23 The matters referred to in this Section are that the Privacy Assessment Response:
- (a) indicates whether the Other User accepts the relevant findings of the Independent Privacy Auditor and provides an explanation of the actual or potential non-compliance that has been identified; and
  - (b) sets out any steps that the Other User proposes to take in order to remedy and/or mitigate the actual or potential non-compliance, and identifies a timetable within which the Other User proposes to take those steps.
- I2.24 Where a Privacy Assessment Response sets out any steps that an Other User proposes to take in accordance with Section I2.23(b), the Panel (having considered the advice of the Independent Privacy Auditor) shall review that response and either:
- (a) notify the Other User that it accepts that the steps that the Other User proposes to take, and the timetable within which it proposes to take them, are appropriate to remedy and/or mitigate the actual or potential non-compliance specified in the Privacy Assessment Report; or
  - (b) seek to agree with the Other User such alternative steps and/or timetable as would, in the opinion of the Panel, be more appropriate for that purpose.
- I2.25 Where a Privacy Assessment Response sets out any steps that an Other User proposes to take in accordance with Section I2.23(b), and where those steps and the timetable within which it proposes to take them are accepted by the Panel, or alternative steps and/or an alternative timetable are agreed between it and the Other User in accordance with Section I2.24, the Other User shall:
- (a) take the steps that have been accepted or agreed (as the case may be) within the timetable that has been accepted or agreed (as the case may be); and
  - (b) report to the Panel:
    - (i) on its progress in taking those steps, at any such intervals or by any such

dates as the Panel may specify;

- (ii) on the completion of those steps in accordance with the timetable; and
- (iii) on any failure to complete any of those steps in accordance with the timetable, specifying the reasons for that failure.

#### The Privacy Self-Assessment Report

I2.26 Following the completion of a Privacy Self-Assessment, the Other User which carried out that self-assessment shall as soon as reasonably practicable produce a written report (a "**Privacy Self-Assessment Report**") which shall set out the findings of the Other User, and describe the nature of any material change, since the last occasion on which a Privacy Assessment was carried out in respect of the Other User by the Independent Privacy Auditor, in respect of:

- (a) the arrangements that the Other User has in place to comply with its obligations under Sections I1.2 to I1.5; or
- (b) the quantity of Consumption Data being obtained by the Other User.

I2.27 A Other User which produced a Privacy Self-Assessment Report shall:

- (a) ensure that the report is accurate, complete and not misleading; and
- (b) submit a copy of the report to the Panel and the Independent Privacy Auditor.

I2.28 Within the period of time specified in the Privacy Controls Framework following the receipt by it of a Privacy Self-Assessment Report, the Independent Privacy Auditor shall either:

- (a) notify the Other User that it accepts that report; or
- (b) inform the Other User that it will be subject to an additional Privacy Assessment of such nature by such date as the Panel may specify.

**Initial Full Privacy Assessment: User Entry Process**

I2.29 Sections I2.31 to I2.36 set out the applicable privacy requirements referred to in Section H1.10(d) (User Entry Process Requirements).

I2.30 For the purposes of Sections I2.31 to I2.36, any reference in Sections I1.2 to I1.5 or the preceding provisions of this Section I2 to a 'User' or 'Other User' (or to any related expression which applies to Users), shall be read as including a reference (or otherwise applying) to any Party seeking to become a User by completing the User Entry Process for the User Role of Other User.

Initial Full Privacy Assessment

I2.31 For the purpose of completing the User Entry Process for the User Role of Other User, a Party wishing to act in that User Role shall be subject to a Full Privacy Assessment.

Panel: Setting the Assurance Status

I2.32 Following the receipt by it of the Privacy Assessment Report and Privacy Assessment Response produced after the initial Full Privacy Assessment, the Panel shall promptly consider both documents and set the assurance status of the Party, in relation to its compliance with each of its obligations under Sections I1.2 to I1.5, in accordance with Section I2.33.

I2.33 The Panel shall set the assurance status of the Party as one of the following:

- (a) approved;
- (b) approved, subject to the Party:
  - (i) taking such steps as it proposes to take in its Privacy Assessment Response in accordance with Section I2.23(b); or
  - (ii) both taking such steps and being subject to a further Privacy Assessment of such nature and by such date as the Panel may specify;
- (c) provisionally approved, subject to:
  - (i) the Party having first taken such steps as it proposes to take in its Privacy Assessment Response in accordance with Section I2.23(b) and been

subject to a further Privacy Assessment; and

- (ii) the Panel having determined that it is satisfied, on the evidence of the further Privacy Assessment, that such steps have been taken; or
- (d) deferred, subject to:
  - (i) the Party amending its Privacy Assessment Response to address any issues identified by the Panel as being, in the opinion of the Panel, not adequately addressed in that response as submitted to Panel; and
  - (ii) the Panel reconsidering the assurance status in accordance with Section I2.32 in the light of such amendments to the Privacy Assessment Response.

#### Approval

I2.34 For the purposes of Sections H1.10(d) and H1.11 (User Entry Process Requirements):

- (a) a Party shall be considered to have successfully demonstrated that it meets the applicable privacy requirements of this Section I2 when:
  - (i) the Panel has set its assurance status to 'approved' in accordance with either Section I2.33(a) or (b); or
  - (ii) the Panel has set its assurance status to 'provisionally approved' in accordance with Section I2.33(c) and the requirements specified in that Section have been met; and
- (b) the Panel shall notify the Code Administrator as soon as reasonably practicable after the completion of either event described in paragraph (a)(i) or (ii).

#### Obligations on an Approved Party

I2.35 Where the Panel has set the assurance status of a Party to 'approved' subject to one of the requirements specified in Section I2.33(b), the Party shall take the steps to which that approval is subject.

Disagreement with Panel Decisions

- I2.36 Where a Party disagrees with any decision made by the Panel in relation to it under Section I2.33, it may appeal that decision to the Authority and the determination of the Authority shall be final and binding for the purposes of the Code.

**Privacy Assessments: Post-User Entry Process**

- I2.37 Following its initial Full Privacy Assessment for the purposes of the User Entry Process, an Other User shall be subject to annual Privacy Assessments as follows:

- (a) in the first year after the year of its initial Full Privacy Assessment, to a Privacy Self-Assessment;
- (b) in the immediately following year, to a Privacy Self-Assessment;
- (c) in the next following year, to a Full Privacy Assessment; and
- (d) in each year thereafter, to a category of Privacy Assessment which repeats the same annual sequence as that of paragraphs (a) to (c),

but these requirements shall be subject to the provisions of Section I2.38.

- I2.38 An Other User:

- (a) may, on the instruction of the Panel, or otherwise in accordance with the provisions of the Privacy Controls Framework, be subject to a Full Privacy Assessment or Random Sample Privacy Assessment at any time; and
- (b) where it is subject to such a Privacy Assessment in a year in which it would otherwise have been required to carry out a Privacy Self-Assessment in accordance with Section I2.37, shall not be required to carry out that self-assessment in that year.

**Privacy Self-Assessment**

- I2.39 Where, in accordance with the requirements of this Section I2, an Other User is subject to a Privacy Self-Assessment in any year, that Other User shall:

- (a) carry out the Privacy Self-Assessment during that year;

- (b) do so in accordance with the Privacy Controls Framework; and
- (c) ensure that the outcome of the Privacy Self-Assessment is documented and is submitted to the Independent Privacy Auditor for review by no later than the date which is 13 months after the date of the commencement of the previous Full Privacy Assessment or (if more recent) Privacy Self-Assessment.

**Other Users: Obligation to Pay Explicit Charges**

I2.40 Each Other User shall pay to the DCC all applicable Charges in respect of:

- (a) all Privacy Assessments (other than Random Sample Privacy Assessments) carried out in relation to it by the Independent Privacy Auditor;
- (b) the production by the Independent Privacy Auditor of any Privacy Assessment Reports following such assessments; and
- (c) all related activities of the Independent Privacy Auditor in respect of that Other User in accordance with this Section I2.

I2.41 Expenditure incurred in relation to Other Users in respect of the matters described in Section I2.40, and in respect of Random Sample Privacy Assessments, shall be treated as Recoverable Costs in accordance with Section C8 (Panel Costs and Budgets).

I2.42 For the purposes of Section I2.40 the Panel shall, at such times and in respect of such periods as it may (following consultation with the DCC) consider appropriate, notify the DCC of:

- (a) the expenditure incurred in respect of the matters described in Section I2.40 that is attributable to individual Other Users, in order to facilitate Explicit Charges designed to pass-through the expenditure to such Other Users pursuant to Section K7 (Determining Explicit Charges); and
- (b) any expenditure incurred in respect of:
  - (i) the matters described in Section I2.40 which cannot reasonably be attributed to an individual Other User; and
  - (ii) Random Sample Privacy Assessments.