

## ENERGY MARKET INVESTIGATION

### The Energy Market Investigation (Database) Order 2016

#### Background

1. On 26 June 2014, the Gas and Electricity Markets Authority (GEMA) in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) (as provided for by section 36A of the Gas Act 1986 (GA86) and section 43 of the Electricity Act 1989 (EA89)), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the supply and acquisition of energy in Great Britain.<sup>1</sup>
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act and concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Energy market investigation: Final report* published on 24 June 2016 (the Report).
3. Two of the AECs identified by the CMA were the Domestic Weak Customer Response AEC and the Microbusiness Weak Customer Response AEC.
4. The features identified by the CMA as giving rise to the Domestic Weak Customer Response AEC were the following:
  - (a) Customers have limited awareness of, and interest in, their ability to switch energy supplier, which arises in particular from the following fundamental characteristics of the domestic retail gas and electricity supply markets: (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.

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<sup>1</sup> [Energy market investigation terms of reference](#).

- (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular, from the following aspects of the domestic retail gas and electricity markets: (i) the complex information provided in bills and the structure of tariffs; and (ii) a lack of confidence in, and access to, price comparison websites (PCWs) by certain categories of customers, including the less well-educated and the less well off.
- (c) Customers face actual and perceived barriers to switching, such as where they experience erroneous transfers which have the potential to cause material detriment to those who suffer from them.
5. The features identified by the CMA as giving rise to the Microbusiness Weak Customer Response AEC were the following:
- (a) Customers have limited awareness of, and interest in, their ability to switch energy supplier, which arises in particular from the following fundamental characteristics of the markets for the supply of energy to small and medium-sized enterprises (SMEs): (i) the homogeneous nature of gas and electricity; and (ii) the role of traditional meters and bills.
- (b) Customers face actual and perceived barriers to accessing and assessing information arising, in particular, from the following aspects of the markets for retail energy supply to SMEs: (i) a general lack of price transparency concerning the tariffs that are available to microbusinesses; a substantial proportion of microbusiness tariffs being individually negotiated between customer and supplier; and from the nascent state of PCWs for non-domestic customers; and (ii) the role of third party intermediaries (TPIs), in relation to which:
- (i) a number of complaints have been made by non-domestic customers to various official bodies concerning alleged TPI malpractice, which may have reduced the level of trust in all TPIs and discouraged engagement more generally; and
- (ii) the CMA noted a lack of transparency as well as the existence of incentives not to give non-domestic customers the best possible deal. This is exacerbated by the lack of easily available benchmark prices, and the fact that many tariffs are not published.
- (c) Some microbusiness consumers are on auto-rollover contracts, and are given a narrow window in which to switch supplier or tariff, which may limit their ability to engage with the markets.
6. The CMA considered, in accordance with section 134(4) of the Act,
- (a) whether action should be taken by it for the purpose of remedying,

mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

7. In the Report, the CMA decided upon a package of remedies to remedy, mitigate or prevent the AECs and/or associated detriment that it found.
8. The CMA decided to implement the Database Remedy in order to remedy in part the Domestic Weak Customer Response AEC and the Microbusiness Weak Customer Response AEC. Pursuant to the Database Remedy: (a) the CMA will require suppliers (through an Order) to disclose to GEMA certain details of their domestic and microbusiness consumers who have been on one or more default tariffs for three or more years (subject to customers' ability to opt out); and (b) the CMA has recommended that GEMA (i) retain the relevant data, (ii) test the operation of the database, (iii) use and, subject to sufficient safeguards being in place, disclose the relevant data (via a secure database) to rival suppliers for the purposes of prompting such customers to engage in the retail energy markets, and (iv) monitor the impact of the database with a view to maximising its effectiveness.
9. The Explanatory Note accompanying the Order provides an explanation of how the Order and the licence conditions are expected to operate.

## The Order

### Reference and power

The CMA makes this Order in performance of its duty under section 138 of the Act to remedy, mitigate or prevent the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the Report. The CMA makes this Order in exercise of the powers conferred by sections 86(1) to (5) and 87 (each applicable by virtue of section 164), 161(1), (3) and (4) and paragraphs 10, 17 to 19 and 21 and 22 of Schedule 8 to, the Act. In accordance with section 15 of the Electricity Act 1989 and section 27 of the Gas Act 1986, the CMA introduces the Electricity Licence Condition 56 and the Gas Licence Condition 50 for the purpose of giving effect to Articles 3 and 4 of this Order, and having had regard to the Gas and Electricity Markets Authority's relevant statutory functions pursuant to section 168 of the Act.

## **Part 1**

### **General**

#### **1. Title, commencement and scope**

- 1.1. This Order may be cited as ‘The Energy Market Investigation (Database) Order 2016’.
- 1.2. This Order shall come into force on 15 December 2016.
- 1.3. This Order applies to Retail Energy Suppliers in Great Britain.
- 1.4. This Order shall continue in force until such time as it is varied or revoked under the Act. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.
- 1.5. A new Electricity Supply Licence Condition 56 will be introduced in the Electricity Supply Licence as per Schedule 1.
- 1.6. A new Gas Supply Licence Condition 50 will be introduced in the Gas Supply Licence as per Schedule 2.

#### **2. Interpretation**

##### **2.1. In this Order:**

<b>Act</b>	means the Enterprise Act 2002.
<b>Annual Consumption Details</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Annual Consumption Breakdown</b>	means a breakdown of the Annual Consumption Details by each Consumption Window for which data is recorded.
<b>Balancing and Settlement Code</b>	has the meaning given to it in the Electricity Supply Licence.
<b>Charges for the Supply of Electricity</b>	has the meaning given to it in the Electricity Supply Licence.
<b>Charges for the Supply of Gas</b>	has the meaning given to it in the Gas Supply Licence.

<b>CMA</b>	means the Competition and Markets Authority.
<b>CMA Order</b>	means the Energy Market Investigation (Database) Order 2016.
<b>Consumption Window</b>	means each separate period within a total period of 24 hours in which electricity and gas consumption was recorded and charged at a distinct Unit Rate.
<b>Database Remedy Compliance Statement</b>	means a statement in the form prescribed in Schedule 3 to be submitted by a Retail Energy Supplier to the CMA pursuant to Articles 5.1 to 5.3.
<b>Deemed Contract</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Default Tariffs</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) in the case of a Domestic Customer, any type or part of a Domestic Supply Contract (including an Evergreen Supply Contract) or Deemed Contract in circumstances where no part of the Tariff which currently applies to a Domestic Customer is for a fixed term period, or where a Domestic Customer has automatically become subject to one or more Domestic Supply Contracts or Deemed Contracts in the event that they do not make a choice; and</li> <li>(b) in the case of a Micro Business Consumer, any type or part of a Non-Domestic Supply Contract or Deemed Contract in circumstances where: <ul style="list-style-type: none"> <li>(i) none of the terms and conditions (including Charges for the Supply of Electricity or Charges for the Supply of Gas) which currently apply to a Micro Business Consumer are for a fixed term period, including in any circumstances where a Micro Business Consumer automatically becomes subject to such a Non-domestic Supply Contract or Deemed Contract in the event that they do not make a choice; or</li> </ul> </li> </ul>

- (ii) one or more of the terms and conditions (including Charges for the Supply of Electricity or Charges for the Supply of Gas) which currently apply to a Micro Business Consumer for a fixed term period and automatically came in to effect following the expiry or extension of the first fixed term period which applied to that Micro Business Consumer.

**Disengaged Customer**

means for each Retail Energy Supplier, each Domestic Customer and each Micro Business Consumer (on any meter type) who has been supplied at the same electricity or gas supply point (as applicable) by that Retail Energy Supplier on one or more Default Tariffs for three years or more as at the time of complying with Articles 4.1 or 4.2 (as applicable).

**Domestic Customer**

has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).

**Domestic Customer Data**

means a Domestic Customer's (a) full name; billing address; consumption address; current Retail Energy Supplier; Tariff Name (including identification of all Standing Charges (where charged), Unit Rates and method of payment); Annual Consumption Details; MPAN/MPRN; and Standard Settlement Configuration code; (b) where relevant, also includes (i) the consumption volumes to which different Unit Rates applied; (ii) the Annual Consumption Breakdown; (iii) the length of time and the hours within which consumption was recorded for each Consumption Window; and (iv) the Standing Charges and Unit Rates that apply to each Consumption Window; and (c) any additional items of information specified by GEMA that are necessary for the purposes contemplated by the CMA Order.

**Domestic Supply Contract**

has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).

<b>DPA</b>	means the Data Protection Act 1998.
<b>Electricity Meter</b>	has the meaning given to it in the Electricity Supply Licence.
<b>Electricity Supply Licence</b>	means an electricity supply licence granted or treated as granted under section 6(1)(d) of the Electricity Act 1989.
<b>Evergreen Supply Contract</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>First Contact Communication</b>	means a communication, and any accompanying envelope or separate summary or explanatory information provided with such communication that complies with Article 4.4.
<b>Gas Supply Licence</b>	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data).
<b>GEMA</b>	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
<b>Micro Business Consumer</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Micro Business Consumer Data</b>	means (a) a Micro Business Consumer's business name; billing (or registered) address; consumption address; current Retail Energy Supplier; Tariff Name (including identification of all Standing Charges (where charged), Unit Rates and method of payment); Annual Consumption Details; MPAN/MPRN; and the Standard Settlement Configuration Code; (b) where relevant, also includes (i) the consumption volumes to which different Unit Rates applied, (ii) the Annual Consumption Breakdown; (iii) the length of time and the hours

	within which consumption was recorded for each Consumption Window; and (iv) the Standing Charges and Unit Rates that apply to each Consumption Window; and (c) any additional items of information specified by GEMA that are necessary for the purposes contemplated by the CMA Order.
<b>MPAN</b>	means the Meter Point Administration Number, as the reference number used to uniquely identify electricity supply points in Great Britain.
<b>MPRN</b>	means the Meter Point Reference Number, as the reference number used to uniquely identify gas supply points in Great Britain.
<b>Non-Domestic Supply Contract</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Opted-in</b>	means any Disengaged Customer (for whom it would be necessary for the Retail Energy Supplier to supply any Sensitive Personal Data) that, following receipt of the First Contact Communication, has actively and voluntarily signalled, as at the date of their existing Retail Energy Supplier complying with Articles 3.1 or 3.2 (as applicable), orally or in writing, to their existing Retail Energy Supplier that they consent to their Domestic Customer Data being supplied to GEMA in the manner or purpose contemplated by this Order.
<b>Opted-out</b>	means any Disengaged Customer that, following receipt of a First Contact Communication, has actively and voluntarily signalled, as at the date of their existing Retail Energy Supplier complying with Articles 3.1 or 3.2 (as applicable), orally or in writing, to their existing Retail Energy Supplier that they object to their Domestic Customer Data or Micro Business Consumer Data, as applicable, being supplied to GEMA in the manner or for the purpose contemplated by this Order.
<b>Relevant Customer Data</b>	means the Domestic Customer Data and the Micro Business Consumer Data concerning each Disengaged Customer who has not Opted-out or who

	has Opted-in (as applicable) as at the time of complying with Articles 3.1 or 3.2 (as applicable).
<b>Retail Energy Supplier</b>	means any person authorised to supply gas by virtue of a Gas Supply Licence, and any person authorised to supply electricity by virtue of an Electricity Supply Licence.
<b>Secure Database</b>	means a secure database that is controlled and maintained by GEMA for the purposes of storing the Relevant Customer Data supplied pursuant to Articles 3.1 and 3.2.
<b>Sensitive Personal Data</b>	has the meaning given to it in section 2 of the DPA and/or Article 9 of the GDPR.
<b>Standing Charge</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Standard Settlement Configuration</b>	means a standard metering system configuration recognised by the supplier volume allocation agent system, as defined in Annex X-2 of the Balancing and Settlement Code.
<b>Tariff</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Tariff Name</b>	has the meaning given to it the Electricity Supply Licence or the Gas Supply Licence (as applicable).
<b>Unit Rate</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).

2.2. In this Order any reference to:

- (a) ‘month’ means calendar month;
- (b) ‘oral’ or ‘orally’ relates to the transmission of information or the completion of a process made orally including in person or by telephone;
- (c) a ‘person’ includes any individual, firm, partnership, body corporate or association;
- (d) ‘written’ or ‘in writing’ includes the transmission of information or the conclusion of a process made on, by, or through electronic communications or by a postal service; and

- (e) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.
- 2.3. The headings used in this Order are for convenience and have no legal effect.
- 2.4. References to any statute, statutory provisions or licence conditions shall be construed as references to that statute, statutory provision or licence condition as amended, re-enacted or modified, whether by statute or otherwise.
- 2.5. The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined.

## **Part 2**

### **Supply of Relevant Customer Data to GEMA**

- 3. Obligation to supply the Relevant Customer Data to GEMA**
- 3.1. Subject to Article 4.1, Retail Energy Suppliers must supply the Relevant Customer Data to GEMA.
- 3.2. The manner and timeframe for complying with the obligation in Article 3.1 is set out in the rules contained in Schedules 1 and 2.
- 3.3. Following compliance with Article 3.1, and subject to Article 4.3, Retail Energy Suppliers must supply the Relevant Customer Data to GEMA in such a manner as GEMA may direct, on a monthly basis, except where there are good operational reasons for supplying the Relevant Customer Data with greater frequency than monthly, in which case such alternative frequency may be specified in a direction issued by GEMA.

## **Part 3**

### **First Contact Communication**

- 4. Obligation to send a First Contact Communication**
- 4.1. Retail Energy Suppliers must send a First Contact Communication to each Disengaged Customer.
- 4.2. The manner and timeframe for complying with the obligation in Article 4.1 is set out in the rules contained in Schedules 1 and 2.

- 4.3. Retail Energy Suppliers must send a First Contact Communication to any additional Domestic Customer or Micro Business Consumer who has become a Disengaged Customer since the Retail Energy Supplier first complied with Article 4.1 in such a manner as GEMA may specify or otherwise direct, at least one calendar month prior to complying with Article 3.3 or within such other timeframe specified in a direction issued by GEMA.
- 4.4. The First Contact Communication must have such contents, format and structure as may be specified from time to time by GEMA, subject to having the following minimum contents:
  - (a) a clear explanation of the legal requirement established by this Order requiring the relevant Retail Energy Supplier to supply the information falling within the definition of the Relevant Customer Data to GEMA;
  - (b) a clear explanation of how the Relevant Customer Data will be stored and updated on the Secure Database;
  - (c) a clear summary of the safeguards in place to protect Disengaged Customers' interests concerning the Relevant Customer Data; and
  - (d) clear details of the mechanism for the Disengaged Customer to object at any point in time to their Domestic Customer Data or Micro Business Consumer Data, as applicable, being stored on the Secure Database (including by post, email or telephone); or clear details of the opt-in mechanism for any Disengaged Customer falling within a group of Disengaged Customers that has been specified by GEMA, including customers for whom it would be necessary for the Retail Energy Supplier to supply any Sensitive Personal Data.

## **Part 4**

### **Monitoring and Compliance**

#### **5. Monitoring and compliance**

- 5.1. Retail Energy Suppliers must submit, on an annual basis, a Database Remedy Compliance Statement to the CMA.
- 5.2. The first Database Remedy Compliance Statement is to be submitted to the CMA by 31 October 2018.
- 5.3. Each subsequent Database Remedy Compliance Statement is to be submitted to the CMA by 31 October in each year.

- 5.4. A Retail Energy Supplier must ensure that any Database Remedy Compliance Statement is signed by the Chief Executive Officer, the Managing Director or any Director responsible for default tariffs offered by that Retail Energy Supplier, including its standard variable tariff.

**6. Directions by the CMA as to compliance**

- 6.1. The CMA may give directions falling within Article 6.2 to:
- (a) a person specified in the directions; or
  - (b) a holder for the time being of an office so specified in any body of persons whether incorporated or unincorporated.
- 6.2. Directions fall within this Article if they are directions:
- (a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
  - (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- 6.3. In Article 6.2 above, ‘actions’ includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of a Retail Energy Supplier carries out, or secures compliance with, this Order.
- 6.4. The CMA may vary or revoke any directions so given.

**7. Supply of information to the CMA**

- 7.1. Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.
- 7.2. Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.
- 7.3. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

- 7.4. Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

*(signed)* ROGER WITCOMB

Group Chair

14 December 2016

## **Schedule 1 – Amendment to the Electricity Supply Licence**

Condition 56 is inserted into the Electricity Supply Licence as follows.

### **Condition 56 – Database to facilitate customer engagement**

#### **Requirement to supply the Relevant Customer Data**

1. Subject to paragraph 5 below, the licensee must first supply the Relevant Customer Data to the Authority (in such a manner and containing such additional information as the Authority may direct) by 1 October 2017 or at such later date as may be specified in a direction issued by the Authority.
2. Following compliance with paragraph 1, and subject to paragraph 6, the licensee must supply the Relevant Customer Data to the Authority (in such a manner and containing such additional information as the Authority may direct following consultation with Retail Energy Suppliers, where appropriate) on a monthly basis, except where there are good operational reasons for supplying the Relevant Customer Data with greater frequency than monthly, in which case such alternative frequency may be specified in a direction issued by the Authority.
3. The licensee will take all reasonable steps to ensure that at the time of complying with paragraphs 1 and 2 the Relevant Customer Data are accurate and up to date.
4. The licensee must not supply information that is not Relevant Customer Data to the Authority in its response to the Authority's direction issued pursuant to paragraph 1.

#### **Requirement to send the First Contact Communication**

5. Subject to paragraph 7, the licensee must send the First Contact Communication to each Disengaged Customer (in such a manner as the Authority may specify by publishing a notice in Writing or otherwise direct) by 31 July 2017 or at such later date as may be specified in a direction issued by the Authority.
6. Subject to paragraph 7, the licensee must send a First Contact Communication to any additional Domestic Customer or Micro Business Consumer who has become a Disengaged Customer since the licensee first complied with paragraph 1 (in such a manner as the Authority may specify by publishing a notice in Writing or otherwise direct) at least one calendar month

prior to complying with paragraph 2, or within such other timeframe specified in a direction issued by the Authority.

7. The First Contact Communication must only have such contents, format and structure as may be specified from time to time by the Authority (by publishing a notice in Writing or issuing a direction to a particular licensee), subject to having the following minimum contents:
  - (a) a clear explanation of the legal requirement established by the CMA Order requiring the licensee to supply the information falling within the definition of the Relevant Customer Data to the Authority;
  - (b) a clear explanation of how the Relevant Customer Data will be stored and updated on the Secure Database;
  - (c) a clear summary of the safeguards in place to protect Disengaged Customers' interests concerning the Relevant Customer Data, which should include details of (i) who will be allowed access to the Secure Database; (ii) the limited use to which licensed energy suppliers and/or the Authority would be able to put the Relevant Customer Data concerning direct marketing by postal correspondence or by any other means specified by the Authority subject to compliance with data protection legislation, including the total number and frequency of such correspondence; (iii) the amount of time the licensed energy suppliers and/or the Authority may retain the Relevant Customer Data; and (iv) the consequences of misuse or mis-selling as a consequence of having access to the Secure Database;
  - (d) clear details of the mechanism for the Disengaged Customer to object at any point in time to their Domestic Customer Data or Micro Business Consumer Data, as applicable, being stored on the Secure Database (including by post, email or telephone); or clear details of the opt-in mechanism for any Disengaged Customer falling within a group of Disengaged Customers that has been specified by the Authority, including customers for whom it would be necessary for the Retail Energy Supplier to supply any Sensitive Personal Data.
8. Except for sending the First Contact Communication in accordance with the Authority's direction, the licensee must not initiate any communication (whether in Writing or orally) with a Disengaged Customer supplied by the licensee about the Secure Database, including the process for opting out (or, if applicable, for opting in).

## **Access to the Secure Database**

9. The licensee must comply with the terms of access and use specified by the Authority in order to access or maintain access to the Secure Database.

## **Reporting obligation**

10. The licensee must keep a record of any oral and written opt-out and opt-in requests received from the Disengaged Customers.
11. The licensee must give the Authority any Information that it reasonably requests about the licensee's compliance with paragraphs 1 to 8 as soon as reasonably practicable after receiving a request from the Authority.
12. The licensee must give the Authority any Information that it reasonably requests to assess the impact and effectiveness of the Secure Database as soon as reasonably practicable after receiving a request from the Authority.

## **Definitions for condition**

<b>Annual Consumption Breakdown</b>	means a breakdown of the Annual Consumption Details by each Consumption Window for which data is recorded.
<b>CMA</b>	means the Competition and Markets Authority.
<b>CMA Order</b>	means the Energy Market Investigation (Database) Order 2016.
<b>Consumption Window</b>	means each separate period within a total period of 24 hours in which electricity consumption was recorded and charged at a distinct Unit Rate.
<b>Default Tariffs</b>	means: <ol style="list-style-type: none"><li>(a) in the case of a Domestic Customer, any type or part of a Domestic Supply Contract (including an Evergreen Supply Contract) or Deemed Contract in circumstances where no part of the Tariff which currently applies to a Domestic Customer is for a fixed term period, or where a Domestic Customer has automatically become subject to one or more Domestic Supply Contracts or Deemed Contracts in the event that they do not make a choice; and</li></ol>

- (b) in the case of a Micro Business Consumer, any type or part of a Non-Domestic Supply Contract or Deemed Contract in circumstances where:
- (i) none of the terms and conditions (including Charges for the Supply of Electricity) which currently apply to a Micro Business Consumer are for a fixed term period, including in any circumstances where a Micro Business Consumer automatically becomes subject to such a Non-domestic Supply Contract or Deemed Contract in the event that they do not make a choice; or
  - (ii) one or more of the terms and conditions (including Charges for the Supply of Electricity) which currently apply to a Micro Business Consumer for a fixed term period and automatically came in to effect following the expiry or extension of the first fixed term period which applied to that Micro Business Consumer.

**Disengaged Customer**

means for each licensee, each Domestic Customer and each Micro Business Consumer (on any meter type) who has been supplied at the same electricity or gas supply point (as applicable) by that licensee on one or more Default Tariffs for three years or more as at the time of complying with paragraphs 5 and 6 (as applicable).

**Domestic Customer Data**

means a Domestic Customer's (a) full name; billing address; consumption address; current Retail Energy Supplier; Tariff Name (including identification of all Standing Charges (where charged), Unit Rates and method of payment); Annual Consumption Details; MPAN; and Standard Settlement Configuration code; (b) where relevant, also includes (i) the consumption volumes to which different Unit Rates applied, (ii) the Annual Consumption Breakdown; (iii) the length of time and the hours within which consumption was recorded for each Consumption Window; and (iv) the Standing Charges and Unit Rates that apply to each Consumption Window; and (c) any additional items of

	information specified by the Authority that are necessary for the purposes contemplated by the CMA Order.
<b>DPA</b>	means the Data Protection Act 1998.
<b>First Contact Communication</b>	means a communication, and any accompanying envelope or separate summary or explanatory information provided with such communication, that complies with paragraph 7.
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data).
<b>Micro Business Consumer Data</b>	means (a) a Micro Business Consumer's business name; billing (or registered) address; consumption address; current Retail Energy Supplier; Tariff Name (including identification of all Standing Charges (where charged), Unit Rates and method of payment); Annual Consumption Details; MPAN; and Standard Settlement Configuration code; (b) where relevant, also includes (i) the consumption volumes to which different Unit Rates applied, (ii) the Annual Consumption Breakdown; (iii) the length of time and the hours within which consumption was recorded for each Consumption Window; and (iv) the Standing Charges and Unit Rates that apply to each Consumption Window; and (c) any additional items of information specified by the Authority that are necessary for the purposes contemplated by the CMA Order.
<b>MPAN</b>	means the Meter Point Administration Number, as the reference number used to uniquely identify electricity supply points in Great Britain.
<b>Opted-in</b>	means any Disengaged Customer (for whom it would be necessary for the supplier to supply any Sensitive Personal Data) that, following receipt of the First Contact Communication, has actively and voluntarily

	signalled, as at the date of their existing supplier complying with paragraphs 1 and 2 (as applicable), orally or in writing, to their existing supplier that they consent to their Domestic Customer Data being supplied to the Authority in the manner contemplated in this licence condition.
<b>Opted-out</b>	means any Disengaged Customer that, following receipt of a First Contact Communication, has actively and voluntarily signalled, as at the date of their existing supplier complying with paragraphs 1 and 2 (as applicable), orally or in writing, to their existing supplier that they object to their Domestic Customer Data or Micro Business Consumer Data, as applicable, being supplied to the Authority in the manner contemplated in this licence condition.
<b>Relevant Customer Data</b>	means the Domestic Customer Data and the Micro Business Consumer Data concerning each Disengaged Customer who has not Opted-out or who has Opted-in (as applicable) as at the time of complying with paragraphs 1 or 2 (as applicable).
<b>Secure Database</b>	means a secure database that is controlled and maintained by the Authority for the purposes of storing the Relevant Customer Data supplied pursuant to paragraphs 1 and 2.
<b>Sensitive Personal Data</b>	has the meaning given to it in section 2 of the DPA and/or Article 9 of the GDPR.
<b>Standard Settlement Configuration</b>	means a standard metering system configuration recognised by the supplier volume allocation agent system, as defined in Annex X-2 of the Balancing and Settlement Code.
<b>Tariff Name</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).

## **Schedule 2 – Amendment to the Gas Supply Licence**

Condition 50 is inserted into the Gas Supply Licence as follows.

### **Condition 50 – Database to facilitate customer engagement**

#### **Requirement to supply the Relevant Customer Data**

1. Subject to paragraph 5 below, the licensee must first supply the Relevant Customer Data to the Authority (in such a manner and containing such additional information as the Authority may direct) by 1 October 2017 or at such later date as may be specified in a direction issued by the Authority.
2. Following compliance with paragraph 1, and subject to paragraph 6, the licensee must supply the Relevant Customer Data to the Authority (in such a manner and containing such additional information as the Authority may direct following consultation with Retail Energy Suppliers, where appropriate) on a monthly basis, except where there are good operational reasons for supplying the Relevant Customer Data with greater frequency than monthly, in which case such alternative frequency may be specified in a direction issued by the Authority.
3. The licensee will take all reasonable steps to ensure that at the time of complying with paragraphs 1 and 2 the Relevant Customer Data is accurate and up to date.
4. The licensee must not supply information that is not Relevant Customer Data to the Authority in its response to the Authority's direction issued pursuant to paragraph 1.

#### **Requirement to send the First Contact Communication**

5. Subject to paragraph 7, the licensee must send the First Contact Communication to each Disengaged Customer (in such a manner as the Authority may specify by publishing a notice in Writing or otherwise direct) by 31 July 2017 or at such later date as may be specified in a direction issued by the Authority.
6. Subject to paragraph 7, the licensee must send a First Contact Communication to any additional Domestic Customer or Micro Business Consumer who has become a Disengaged Customer since the licensee first complied with paragraph 1 (in such a manner as the Authority may specify by publishing a notice in Writing or otherwise direct) at least one calendar month

prior to complying with paragraph 2, or within such other timeframe specified in a direction issued by the Authority.

7. The First Contact Communication must only have such contents, format and structure as may be specified from time to time by the Authority (by publishing a notice in Writing or issuing a direction to a particular licensee), subject to having the following minimum contents:
  - (a) A clear explanation of the legal requirement established by the CMA Order requiring the licensee to supply the information falling within the definition of the Relevant Customer Data to the Authority.
  - (b) A clear explanation of how the Relevant Customer Data will be stored and updated on the Secure Database.
  - (c) A clear summary of the safeguards in place to protect Disengaged Customers' interests concerning the Relevant Customer Data, which should include details of (i) who will be allowed access to the Secure Database; (ii) the limited use to which licensed energy suppliers and/or the Authority would be able to put the Relevant Customer Data concerning direct marketing by postal correspondence or by any other means specified by the Authority subject to compliance with data protection legislation, including the total number and frequency of such correspondence; (iii) the amount of time licensed energy suppliers and/or the Authority may retain the Relevant Customer Data; and (iv) the consequences of misuse or mis-selling as a consequence of having access to the Secure Database.
  - (d) Clear details of the mechanism for the Disengaged Customer to object at any point in time to their Domestic Customer Data or Micro Business Consumer Data, as applicable, being stored on the Secure Database (including by post, by email or telephone); or clear details of the opt-in mechanism for any Disengaged Customer falling within a group of Disengaged Customers that has been specified by the Authority, including customers for whom it would be necessary for the Retail Energy Supplier to supply any Sensitive Personal Data.
8. Except for sending the First Contact Communication in accordance with the Authority's direction, the licensee must not initiate any communication (whether in Writing or orally) with a Disengaged Customer supplied by the licensee about the Secure Database, including the process for opting-out (or, if applicable, for opting-in).

## **Access to the Secure Database**

9. The licensee must comply with the terms of access and use specified by the Authority in order to access or maintain access to the Secure Database.

## **Reporting obligation**

10. The licensee must keep a record of any oral and written opt-out and opt-in requests received from the Disengaged Customers.
11. The licensee must give the Authority any Information that it reasonably requests about the licensee's compliance with paragraphs 1 to 8 as soon as reasonably practicable after receiving a request from the Authority.
12. The licensee must give the Authority any Information that it reasonably requests to assess the impact and effectiveness of the Secure Database as soon as reasonably practicable after receiving a request from the Authority.

## **Definitions for condition**

<b>Annual Consumption Breakdown</b>	means a breakdown of the Annual Consumption Details by each Consumption Window for which data is recorded.
<b>CMA</b>	means the Competition and Markets Authority.
<b>CMA Order</b>	means the Energy Market Investigation (Database) Order 2016.
<b>Consumption Window</b>	means each separate period within a total period of 24 hours in which gas consumption was recorded and charged at a distinct Unit Rate.
<b>Default Tariffs</b>	means:  (a) in the case of a Domestic Customer, any type or part of a Domestic Supply Contract (including an Evergreen Supply Contract) or Deemed Contract in circumstances where no part of the Tariff which currently applies to a Domestic Customer is for a fixed term period, or where a Domestic Customer has automatically become subject to one or more Domestic Supply Contracts or Deemed Contracts in the event that they do not make a choice; and

- (b) in the case of a Micro Business Consumer, any type or part of a Non-Domestic Supply Contract or Deemed Contract in circumstances where:
- (i) none of the terms and conditions (including Charges for the Supply of Gas) which currently apply to a Micro Business Consumer are for a fixed term period, including in any circumstances where a Micro Business Consumer automatically becomes subject to such a Non-domestic Supply Contract or Deemed Contract in the event that they do not make a choice; or
  - (ii) one or more of the terms and conditions (including Charges for the Supply of Gas) which currently apply to a Micro Business Consumer for a fixed term period and automatically came in to effect following the expiry or extension of the first fixed term period which applied to that Micro Business Consumer.

**Disengaged Customer**

means for each licensee, each Domestic Customer and each Micro Business Consumer (on any meter type) who has been supplied at the same electricity or gas supply point (as applicable) by that licensee on one or more Default Tariffs for three years or more as at the time of complying with paragraphs 5 and 6 (as applicable).

**Domestic Customer Data**

means a Domestic Customer's (a) full name; billing address; consumption address; current Retail Energy Supplier; Tariff Name (including identification of all Standing Charges (where charged), Unit Rates and method of payment); Annual Consumption Details; and MPRN; (b) where relevant, also includes (i) the consumption volumes to which different Unit Rates applied, (ii) the Annual Consumption Breakdown; (iii) the length of time and the hours within which consumption was recorded for each Consumption Window; and (iv) the Standing Charges and Unit Rates that apply to each Consumption Window; and (c) any additional items of information specified by the

	Authority that are necessary for the purposes contemplated by the CMA Order.
<b>DPA</b>	means the Data Protection Act 1998.
<b>First Contact Communication</b>	means a communication, and any accompanying envelope or separate summary or explanatory information provided with such communication, that complies with paragraph 7.
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data).
<b>Micro Business Consumer Data</b>	means (a) a Micro Business Consumer's business name; billing (or registered) address; consumption address; current Retail Energy Supplier; Tariff Name (including identification of all Standing Charges (where charged), Unit Rates and method of payment); Annual Consumption Details; and MPRN; (b) where relevant, also includes (i) the consumption volumes to which different Unit Rates applied, (ii) the Annual Consumption Breakdown; (iii) the length of time and the hours within which consumption was recorded for each Consumption Window; and (iv) the Standing Charges and Unit Rates that apply to each Consumption Window; and (c) any additional items of information specified by the Authority that are necessary for the purposes contemplated by the CMA Order.
<b>MPRN</b>	means the Meter Point Reference Number, as the reference number used to uniquely identify gas supply points in Great Britain.
<b>Opted-in</b>	means any Disengaged Customer (for whom it would be necessary for the supplier to supply any Sensitive Personal Data) that, following receipt of the First Contact Communication, has actively and voluntarily signalled, as at the date of their existing supplier complying with paragraphs 1 and 2 (as applicable),

	orally or in writing, to their existing supplier that they consent to their Domestic Customer Data being supplied to the Authority in the manner contemplated in this licence condition.
<b>Opted-out</b>	means any Disengaged Customer that, following receipt of a First Contact Communication, has actively and voluntarily signalled, as at the date of their existing supplier complying with paragraphs 1 and 2 (as applicable), orally or in writing, to their existing supplier that they object to their Domestic Customer Data or Micro Business Consumer Data, as applicable, being supplied to the Authority in the manner contemplated in this licence condition.
<b>Relevant Customer Data</b>	means the Domestic Customer Data and the Micro Business Consumer Data concerning each Disengaged Customer who has not Opted-out or who has Opted-in (as applicable) as at the time of complying with paragraphs 1 or 2 (as applicable).
<b>Secure Database</b>	means a secure database that is controlled and maintained by the Authority for the purposes of storing the Relevant Customer Data supplied pursuant to paragraphs 1 and 2.
<b>Sensitive Personal Data</b>	has the meaning given to it in section 2 of the DPA and/or Article 9 of the GDPR.
<b>Standard Settlement Configuration</b>	means a standard metering system configuration recognised by the supplier volume allocation agent system, as defined in Annex X-2 of the Balancing and Settlement Code.
<b>Tariff Name</b>	has the meaning given to it in the Electricity Supply Licence or the Gas Supply Licence (as applicable).

## **Schedule 3 – Template Database Remedy Compliance Statement**

### **Database Remedy Compliance Statement for [insert name of Retail Energy Supplier]**

[I/We], [insert name(s)], confirm on behalf of [insert name of Retail Energy Supplier(s)] that during the period commencing on [insert date] and ending on [insert date], [insert name(s) of Retail Energy Supplier(s)] [has][have] complied with The Energy Market Investigation (Database) Order 2016.

FOR AND ON BEHALF OF [NAME OF RETAIL ENERGY SUPPLIER(S)]

Signature: .....

Name: .....

Title: .....

Date: .....