

MAY 2012

This confidentiality agreement is made on 2012 between

- (1) **National Grid plc**, a company incorporated in England and Wales under registered number 4031152 having its registered office at 1-3 Strand, London WC2N 5EH ("**National Grid**"); and
- (2) **The Secretary of State for Energy and Climate Change**, 3 Whitehall Place, London, SW1A 2AW (the "**Secretary of State**").

WHEREAS:

- (A) The Secretary of State has requested National Grid to provide expert independent advice to the Department of Energy and Climate Change ("**DECC**") for the purposes of implementing electricity market reform ("**EMR**") (the "**Project**"). National Grid will advise on the key rules and parameters for EMR and in due course is expected to administer Feed in Tariffs (FITs) with Contracts for Difference (CfDs) and the Capacity Market (CM).
- (B) National Grid has experience of delivering large-scale projects. It owns and operates the electricity and gas transmission systems in the UK and the majority of the gas distribution system all of which are regulated under either the Electricity Act 1989 or the Gas Act 1985. It or its Affiliates also own certain unregulated businesses which operate in competitive markets, such as the LNG importation terminal at the Isle of Grain, and the majority of gas meters. It owns part of Interconnector (UK) Limited which owns and operates the electricity interconnector between France and the UK.
- (C) Terms in its transmission and distribution licences require National Grid to maintain separation between those licensed undertakings and between their Affiliates. Thus National Grid is experienced in managing its businesses in a way that ensures that sensitive information is safeguarded and not transferred inappropriately to other businesses or Affiliates within National Grid. It also routinely manages enquiries from multiple parties who wish to connect to its systems and is experienced in maintaining the confidentiality of their commercial information.
- (D) National Grid has agreed to agree to keep Confidential Information in relation to the Project confidential and set out the safeguards for information protection that National Grid shall establish as part of its role as advisor to DECC and, if necessary, its future role administering the FIT, CfD and CM. These controls are in addition to National Grid's "Standards of Ethical Business Conduct", which sets out the values that employees are required to uphold, including supporting free and fair competition, respecting intellectual property rights and dealing with all parties fairly and equitably.
- (E) The safeguards are designed to facilitate open discussions with DECC and The Office of the Gas and Electricity Markets ("**Ofgem**") for the purpose of jointly successfully delivering the Project within timescales set by the government whilst
  - (i) protecting the Confidential Information of participants in the energy industry (including Confidential Information provided to them by DECC);

(ii) ensuring that all participants in the energy industry are dealt with fairly, on a non-discriminatory basis;

(iii) maintaining the right level of separation between National Grid's Project team and its Electricity Transmission business whilst recognising that the expertise of that business will be critical to successful delivery of the Project; and

(iv) maintaining the right level of separation between National Grid's Project team and other businesses within National Grid which may have an interest in the outcome of the Project.

## 1 Definitions

In this agreement:

"Affiliate" means in relation to a body corporate any other body corporate directly or indirectly controlling or controlled by or under common Control with that body corporate;

"Confidential Information" means any and all non-public or proprietary information or material of whatever nature about or in relation to the Project (including in relation to participants in the energy industry) which is now or at any time before or after the date of this agreement disclosed to or otherwise obtained or learned by National Grid or any of its Affiliates in whatever form, but does not include information which belongs to National Grid or its Affiliates which is not specific to the Project or which is, by reason of general publication or the like, part of the public domain or readily available in the public domain otherwise than as a result of a breach of this agreement by National Grid; and

"Control" in relation to a body corporate means the ability of a person to ensure that the activities and business of that body corporate are conducted in accordance with the wishes of that person, and a person shall be deemed to have Control of a body corporate if that person possesses or is entitled to acquire the majority of the issued share capital or the voting rights in that body corporate or the right to receive the majority of the income of that body corporate on any distribution by it of all of its income or the majority of its assets on a winding up, and, for the purposes of this agreement, the words "controlling" and "controlled" shall be construed accordingly.

## 2 Confidentiality undertaking

National Grid shall:

- (a) keep all Confidential Information strictly in confidence; and
- (b) use the Confidential Information solely for the purpose of carrying out the Project

unless: (i) disclosure is required by law or the rules of a relevant regulatory body, in which case National Grid will, to the extent permitted, notify DECC of the requirement to disclose as soon as possible and (where possible) prior to the disclosure being made so that the parties may jointly agree both the manner of making and the content of any disclosure or announcement before its release;

(ii) disclosure is authorised in advance in writing by DECC or the owner of the Confidential Information; or

(iii) disclosure is to directors, employees, agents, contractors and advisers of National Grid or its Affiliates who have a clear need to know such information for the purposes of the Project and are bound by confidentiality.

## 3 Safeguards

National Grid shall put in place the safeguards set out in this agreement, which are intended to apply to the transfer of Confidential Information between: (i) the National Grid Project team and participants in the energy industry; (ii) the National Grid Project team and DECC; and (iii)

between the National Grid Project team and other businesses within, and Affiliates of, National Grid.

#### **4 Nature of Safeguards**

##### **4.1 Confidentiality Agreements**

National Grid will enter into confidentiality agreements (substantially in the form of the confidentiality agreement attached at Appendix 1) with each director, employee, agent, contractor and advisor of or to National Grid (or any of its subsidiary entities) who has access to Confidential Information at any time in relation to the Project.

National Grid will also enter into individually agreed confidentiality agreements (substantially in the form of the confidentiality agreement attached at Appendix 2) with those individual participants in the energy industry with whom it needs to deal to deliver the Project in order to restrict the transfer of Confidential Information to third parties.

National Grid undertakes that any breach of confidentiality by any of its employees shall be treated as a serious disciplinary matter and that any such employees shall be subject to disciplinary action in accordance with National Grid's disciplinary and dismissal procedure.

##### **4.2 Ring-fencing**

National Grid's Project team members will be dedicated to the Project so as to prevent the risk of deliberate or inadvertent transfer of Confidential Information. National Grid shall promptly provide DECC, at its request, with a list of the Project team members from time to time. For the purposes of this agreement, "Project team members" shall include director, employees, agents, contractors and advisers (as the case may be).

In the event that a Project team member is (i) redeployed or moves to another area of the National Grid business; or (ii) terminates his/her employment or engagement with National Grid, in each case such that he or she is no longer involved with the Project, National Grid shall ensure the return of all Confidential Information by that person in accordance with the confidentiality agreement entered into with that person pursuant to paragraph 4.1 above. In the event that a Project team member is redeployed or moves to another area of the National Grid business, National Grid shall ensure that that person does not use any Confidential Information in his or her new role.

Save where prior written approval has been provided by DECC, National Grid shall procure that contractors, agents and advisers who are engaged to work on the Project are not, directly or indirectly, engaged or concerned with any other EMR business or any business related to FiTs or CfDs in any capacity whatsoever at any time while engaged in relation to the Project and for a period of three months thereafter.

Other National Grid staff, who provide information or advice to the Project (including technical and legal team members), will provide confidentiality undertakings in accordance with paragraph 4.1 above and will also be required to provide personal undertakings in accordance with paragraph 4.3 below.

##### **4.3 Personal undertakings**

In addition to the requirement to enter into confidentiality agreements pursuant to paragraph 4.1 above, Project team members (including commercial and technical team members and members of the Project Steering Group) will be required to undertake to the Project Steering Group that they will not disclose any Confidential Information obtained in relation to, or for the purposes of, the Project except to DECC, Ofgem, other members of the Project team or other National Grid staff who are subject to the same undertakings, except as permitted pursuant to the confidentiality agreements entered into pursuant to paragraph 4.1.

#### 4.4 Security Policies

National Grid shall take appropriate technical and organisational measures to ensure that Confidential Information is not disclosed other than as permitted pursuant to this agreement, which shall include:

- (a) ensuring that only members of the Project team and suitably accredited IT support staff can access the personal electronic accounts of members of the Project team and Project specific electronic storage systems and that those employees or directors who have ceased to be members of the Project team have no access to the personal accounts and electronic storage systems which they previously used as Project team members or the emails or documents which they created or were sent in relation to the Project;
- (b) ensuring that Project team members are located in an area of National Grid's office separate from non-Project team members and that Project materials are kept secure and inaccessible to non-Project team members
- (c) ensuring that internal files, records and other information prepared by Project team members are not shared with, or capable of being accessed by, non-Project members;
- (d) protecting Confidential Information with a level of security appropriate to the harm that may result from its unauthorised disclosure;
- (e) having appropriate document security procedures in place (which shall include those procedures set out in paragraph 4.5 below), which National Grid shall communicate to Project team members not less than once in each financial year; and
- (f) ensuring that the document security procedures set out in paragraph 4.5 below are incorporated into the terms of engagement of contractors, agents and advisers to ensure their compliance with those procedures.

#### 4.5 Document security policies

Project team members shall:

##### 4.5.1 Paper documents

- Ensure that Confidential Information is stored securely so that it cannot be accessed by non-Project team members.
- Ensure Confidential Information is not left where it can be seen by anyone not authorised to do so, for example in meeting rooms, on fax machines or by printers or photocopiers or in any public place.
- Where documents require to be copied, ensure that these are delivered personally to any copy room / print room and collected personally.
- Adhere to the clear desk and clear screen policies to reduce the risk of unauthorised access or damage to papers, media and information processing facilities.
- When disposing of Confidential Information or personal information, ensure hard copies are placed in the appropriate secure disposal waste bin or shredded.
- Ensure that no Confidential Information is disposed of offsite.

##### 4.5.2 Electronic documents

- Ensure that access to information systems is controlled, at a minimum, by an individual user id and password – REDACTED
- Password-protect electronic files or folders (including files on team shared areas) containing Confidential Information – REDACTED

- Ensure unattended equipment, such as laptops or other mobile computing devices, has appropriate security - REDACTED
- Store Confidential information on removable storage devices (including CDs, flash memory drives and external hard drives) only if there is a justifiable business reason for doing so - REDACTED
- Ensure that disks containing Confidential Information or personal information are cleaned electronically before disposal in accordance with HMG Information Assurance Standard 5, or an equivalent process as provided to National Grid by DECC from time to time.
- Tell their respective managers and Information Services if they no longer need specific access rights - REDACTED

#### 4.5.3 Transportation of information

Project team members shall ensure that Confidential Information is transported in a manner which ensures that it is not accidentally disclosed to unauthorised individuals.

If Confidential Information is transferred between the National Grid Project team and participants in the energy industry, DECC, or other businesses within or affiliates of National Grid, Project team members shall in addition:

- Send all internal paper correspondence in relation to the Project in sealed envelopes marked "Private and Confidential".
- Ensure that all Confidential Information or internal correspondence held or created in electronic format is encrypted before transportation.
- Ensure that all Confidential Information is transported externally by secure courier with a tracking service to trace any items lost in transit.

## 5 Compliance

### 5.1 General

National Grid - REDACTED

National Grid's internal audit department shall carry out an annual audit of its compliance with this agreement and shall provide DECC with a compliance certificate, signed by an appropriately authorised representative, confirming its compliance with this agreement. DECC also has the right, in the event that DECC has reasonable concerns about the audit process and upon giving National Grid reasonable notice, to require National Grid to provide access to independent external auditors to such books, records and personnel as required to audit National Grid's compliance with this agreement.

National Grid shall promptly notify DECC in writing if it becomes aware of any unauthorised disclosure of Confidential Information in contravention of this agreement.

### 5.2 Project Board

A Project Steering Group, currently comprising 6 Directors or senior managers, shall provide oversight of National Grid's EMR activities. The remit of the Project Steering Group shall include responsibility for ensuring National Grid's compliance with this agreement and that Confidential Information is not transferred except in accordance with this agreement. The Project Steering Group will periodically review the safeguards to ensure that they remain appropriate.

If the Project Steering Group identifies any issues with the safeguards or instances of non-compliance with this agreement, National Grid shall promptly notify DECC and the parties shall agree changes to the safeguards and / or agree remedial plans to ensure compliance with this agreement.

National Grid may transfer or delegate the Project Steering Group's oversight responsibilities to another body or individual(s), if necessary, provided that equivalent information sharing safeguards are established.

Project Steering Group members will therefore have access to confidential information from multiple parties, but:

- The nature of the information made available to the Project Steering Group will be restricted to that which is necessary for the discharge of its responsibilities;
- Project Steering Group membership will be restricted;
- Project Steering Group members will not disclose confidential information to energy industry participants in relation to the Project; and
- Project Steering Group members will sign confidentiality undertakings in accordance with paragraph 4.1.

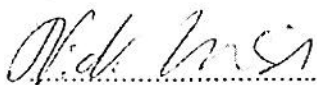
Project team members and other National Grid staff who are providing technical expertise may be required to attend Project Steering Group meetings to provide information and advice to the Project Steering Group in order that the Project Steering Group may properly carry out its functions. Where any such individual is subject to the ring-fencing requirement in paragraph 4.2, such individual shall only attend the Project Steering Group meeting for those agenda items that relate specifically to matters on which that individual is working. Where the individual attending the Project Steering Group meeting is a person who is not subject to the ring-fencing requirement in paragraph 4.2, such individual shall first be required to provide personal undertakings in accordance with paragraph 3.4


## 6 Return of Confidential Information

National Grid will promptly, whenever requested by DECC and in any event upon the cessation of National Grid's involvement with the Project destroy or deliver to DECC all hard copy documents and all other materials which are in a form reasonably capable of delivery containing or reflecting any Confidential Information to the extent that any materials are the property of DECC and of all copies thereof which have been made by or on behalf of National Grid or have come into National Grid's possession as a result of its involvement with the Project. National Grid will ensure that, where Confidential Information has not been returned, no step will be taken to access or recover such Confidential Information from any computer or other device containing such information or which is otherwise stored or held in electronic, digital or other machine readable form. National Grid will continue to hold such Confidential Information subject to the terms of this undertaking. In addition, National Grid will, within fourteen days of such demand or cessation of involvement, provide to DECC a certificate addressed to DECC confirming compliance with this paragraph.

## 7 Governing law

This agreement and any obligations in connection with this agreement, contractual or non-contractual, shall be governed by and subject to the laws of England.

  
.....  
Nick Winsor, Executive Director,  
for and on behalf of National Grid plc

  
.....  
SIMON VALLET, DC, DECC  
for and on behalf of  
Secretary of State for Energy & Climate Change

## Appendix 1

THIS UNDERTAKING is given on

2012.

BY: \_\_\_\_\_ of \_\_\_\_\_  
(Full name) (Full residential address)  
\_\_\_\_\_ (the "Representative")

TO: National Grid plc a company incorporated in England and Wales under registered number 4031152 having its registered office at 1-3 Strand, London WC2N 5EH (the "Company")

### 8 RECITALS

- A. The Representative is an employee, agent, contractor or advisor of or to the Company or one of the Company's other subsidiary companies (together the "Group") and will have access to certain confidential information concerning the Group's role as advisor to DECC in relation to the implementation of Electricity Market Reform (the "Project").
- B. The Representative undertakes and agrees to keep the information confidential on the following terms.

### OPERATIVE PROVISIONS

1. In this undertaking "Confidential Information" means any and all non-public or proprietary information or material of whatever nature about or in relation to the Project which is now or at any time before or after the date of this undertaking disclosed to or otherwise obtained or learned by the Representative in writing or in pictorial or machine readable form or orally or otherwise, but does not include information which:
- (a) is by reason of general publication or the like, part of the public domain or readily available in the public domain otherwise than as a result of a breach of this undertaking by the Representative;
  - (b) is made available to the Representative by a third person who is not under an obligation of confidence to the Group and who obtained that information other than as a result of a breach of an obligation of confidence owed to the Group by any person; or
  - (c) is the property of National Grid or any member of its Group and is not specific to the Project.

2 The Representative will:

(a) keep all Confidential Information strictly in confidence; and

(b) use the Confidential Information solely for the purpose of carrying out the Project

unless disclosure is required by law or the rules of a relevant regulatory body or is authorised in advance in writing by DECC or the owner of the Confidential Information.

3 The undertakings and acknowledgements contained herein are for the benefit of the Company and of DECC. Save as expressly set out in this paragraph, a person who is not a party to this undertaking shall have no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

4 This undertaking is governed by and subject to the laws of England. The Representative agrees that any claim or dispute arising out of or in connection with this undertaking will be subject to the jurisdiction of the English courts.

**Executed and delivered as a DEED**  
by the Representative in the presence  
of:

Signature of Representative

Signature of Witness

Name of Representative

Name of Witness



Appendix 2

THIS UNDERTAKING is given on \_\_\_\_\_ 2012.

BY: \_\_\_\_\_ of \_\_\_\_\_  
(Full name) (Full residential address)  
\_\_\_\_\_ (the "Representative")

TO: National Grid plc a company incorporated in England and Wales under registered number 4031152 having its registered office at 1-3 Strand, London WC2N 5EH (the "Company")

9 RECITALS

- A. The Representative is an individual who has an interest in the Energy industry and with whom National Grid needs to discuss Electricity Market Reform and will have access to certain confidential information concerning the Group's role as advisor to DECC in relation to the implementation of Electricity Market Reform (the "Project").
- B. The Representative undertakes and agrees to keep the information confidential on the following terms.

OPERATIVE PROVISIONS

1. In this undertaking "Confidential Information" means any and all non-public or proprietary information or material of whatever nature about or in relation to the Project which is now or at any time before or after the date of this undertaking disclosed to or otherwise obtained or learned by the Representative in writing or in pictorial or machine readable form or orally or otherwise, but does not include information which:
- (a) is by reason of general publication or the like, part of the public domain or readily available in the public domain otherwise than as a result of a breach of this undertaking by the Representative;
  - (b) is made available to the Representative by a third person who is not under an obligation of confidence to the Group and who obtained that information other than as a result of a breach of an obligation of confidence owed to the Group by any person; or
  - (c) is the property of National Grid or any member of its Group and is not specific to the Project

(d) is the property of the Representative or their employer.

2 The Representative will:

(a) keep all Confidential Information strictly in confidence; and

(b) use the Confidential Information solely for the purpose of carrying out the Project

unless disclosure is required by law or the rules of a relevant regulatory body or is authorised in advance in writing by DECC or the owner of the Confidential Information.

3 The undertakings and acknowledgements contained herein are for the benefit of the Company and of DECC. Save as expressly set out in this paragraph, a person who is not a party to this undertaking shall have no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

4 This undertaking is governed by and subject to the laws of England. The Representative agrees that any claim or dispute arising out of or in connection with this undertaking will be subject to the jurisdiction of the English courts.

**Executed and delivered as a DEED**  
by the Representative in the presence  
of:

Signature of Representative

Signature of Witness

Name of Representative

Name of Witness