

GENERAL CONDITIONS OF CONTRACT FOR NON HALF-HOURLY METER ASSET PROVISION

TABLE OF CONTENTS

Clause	Headings
1.	Definitions and Interpretation
2.	Conditions Precedent
3.	Commencement and Duration
4.	Provision of the Services
5.	Obligation on the Company for Any Given Metering Point
6.	Obligations of the User
7.	Charging
8.	Termination
9.	Notices
10.	Liability
11.	Ownership of Data
12.	Approvals and Permissions
13.	Data Transfers
14.	Entire Agreement and Jurisdiction
15.	Disputes
16.	Variations
17.	Confidentiality
18.	Assignment
19.	Waivers
20.	Exclusion of Third Party Rights
Schedule1.	Data Transfer Transmission Means

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions

Accreditation means accreditation of any relevant person and certification of that person's business processes by the Accreditation Authority, and **Accredited** and **Accrediting** shall be construed accordingly;

Accreditation Authority means the Performance Assurance Board (as defined in the Balancing and Settlement Code, when Accrediting persons pursuant to Section J of the Balancing and Settlement Code);

Act means the Electricity Act 1989 (as amended by the provisions of the Utilities Act 2000 and the Energy Act 2004);

Authority means the Gas and Electricity Markets Authority as established under Section 1 of the Utilities Act 2000;

Balancing and Settlement Code or BSC means the Balancing and Settlement Code, including all Party Service Lines and BSC Procedures (as therein defined) made under it, established pursuant to the GB System Operator Licence;

Connectee has the meaning given to that term in the DCUSA;

Contract Manager means a person appointed by each party to manage all matters arising under or in connection with these Terms and Conditions and to monitor the general operation of these Terms and Conditions;

Data Transfer Network means the electronic network provided as part of the Data Transfer Service;

Data Transfer Service means the service to be provided by the Data Transfer Service Controller (as defined in the Master Registration Agreement) and described in Condition 37 of the Distribution Licence;

Data Transfer Service Agreement means the agreement for the provision of the Data Transfer Service dated 30 July 1997;

Distribution Connection and Use of System Agreement or DCUSA means the agreement established pursuant to condition 22 of the Distribution Licence;

Distribution Licence means a distribution licence granted to the Company pursuant to Section 6 (1) (c) of the Act;

Distribution Services Area means the area specified pursuant to the Company's Distribution Licence;

Distribution System means, in respect of the Company, that Company's distribution system (such system having the same meaning as is given to that term in that Company's Distribution Licence);

Electricity Arbitration Association

has the meaning given to that term in the Master Registration Agreement;

Gateway has the meaning given to that term in the Data Transfer Service Agreement;

GB System Operator Licence means a transmission licence granted, or treated as granted, pursuant to Section 6(1)(b) of the Act and in which section C of the standard transmission licence conditions applies;

Half-Hourly Metering System means a Metering System which is configured to record the relevant flow of electricity in each half hour period;

Market Domain I.D. has the meaning given to that term in the Data Transfer Service Agreement;

Master Registration Agreement or MRA means the Master Registration Agreement established pursuant to the Distribution Licence;

Meter has the meaning given to that term in the Balancing and Settlement Code;

Meter Operator means an Accredited person appointed by the User (or, where applicable, the Connectee) to provide all fieldwork activities including the installation, commissioning, testing, repair, maintenance, removal and replacement of metering equipment in relation to a relevant Metering Point;

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

(a) is or is intended to be measured; or

(b) where metering equipment has been removed, was or was intended to be measured,

where in each such case measurement is for the purposes of ascertaining the User's liabilities under the Balancing and Settlement Code;

Metering System means the Meters and ancillary equipment measuring the flow of electricity in relation to a Metering Point;

Non Half-Hourly Metering System means a Metering System which is not a Half-Hourly Metering System;

Relevant Charging Statement means the statement prepared by the Company in relation to charges for use of system for the time being in force pursuant to Condition 14 of its Distribution Licence;

Supplier has the meaning given to that term in the Master Registration Agreement

- 1.2 In these Terms and Conditions, unless the context requires otherwise, any reference to:
- 1.2.1 a "person" includes a reference to a body corporate, association or partnership;
- 1.2.2 the singular shall include the plural and vice versa;
- 1.2.3 a Clause is a reference to a clause of these Terms and Conditions; and
- 1.2.4 writing includes all methods of reproducing words in a legible and non-transitory form.
- 1.3 The headings in these Terms and Conditions are for ease of reference only and shall not affect its interpretation.
- 1.4 In these Terms and Conditions, references to "include" or "including" are to be construed without limitation to the generality of the preceding words.
- 2. CONDITIONS PRECEDENT**
- 2.1 The provisions of Clauses 4, 5 and 6 are conditional upon the User and the Company being and remaining a party to the Distribution Connection and Use of System Agreement.
- 3. COMMENCEMENT AND DURATION**
- 3.1 These Terms and Conditions shall take effect on the 1 April 2007, and shall remain in force until terminated in accordance with the provisions of Clause 8.
- 4. PROVISION OF THE SERVICES**
- 4.1 The Company shall provide meter asset provision services with effect from 1 April 2007.
- 5. OBLIGATIONS ON THE COMPANY FOR ANY GIVEN METERING POINT**
- 5.1 The Company's obligation is to provide meter asset provision for any given Metering Point within the Company's Distribution Services Area where the Meter or Meters are owned by the Company and were installed on or before 30 June 2007 and the User is the registered Supplier under the Master Registration Agreement to that Metering Point.
- 5.2 Such obligation shall cease in relation to each individual Metering Point when one of the following events occur:
- 5.2.1 The User states that they no longer require meter asset provision service from the Company for a particular Metering Point, and all the Company's Meters are removed from that Metering Point.
- 5.2.2 All the Company's Meters have been removed for any reason whatsoever or howsoever from a particular Metering Point.
- 5.2.3 The User ceases to be the registered Supplier under the Master Registration Agreement for the relevant Metering Point.
- 5.3 The parties agree that, in performing the Services, the Company shall be required to comply with relevant statutes, statutory instruments and the general law and shall not be liable for any failure to perform the Services in accordance with these Terms and Conditions where to do so would put it in breach of any such statutes, statutory instruments or general provision of law.
- 5.4 The Company has no liability for metering systems provided under these Terms and Conditions. However, where any Metering System is found to be faulty within a manufacturer's warranty period and is returned by the Supplier to the Company, at the address specified in Clause 6.1.2, the Company will pass any benefit it receives under the specific manufacturer's warranty on to the User.
- 6. OBLIGATIONS OF THE USER**
- 6.1 Following the removal of a Company Meter, which for the avoidance of doubt the responsibility for such removal is the User's, the User or his Meter Operator shall, at its own expense, take all reasonable steps to ensure that:
- 6.1.1 where the Company's appointed is terminated as the provider of meter asset provision services for the relevant Metering Point by submission of the necessary dataflows identified, but not limited to, those shown in Schedule 1, within agreed industry timescales; and
- 6.1.2 such Meters are returned to the Company at the address reasonably specified by the Company for the return of Meters, within 30 days of the removal of the Meter from the Metering Point. The specified address for this purpose is:
Electricity North West
Whitebirk Depot (metal skips)
Whitebirk Drive
Whitebirk
Blackburn
BB1 3HT
- 7. CHARGING**
- 7.1 The User shall pay to the Company in respect of services provided under these Terms and Conditions the charges as set out in the Company's Relevant Charging Statement, Condition 14 of its Distribution Licence (as amended and in force from time to time).
- 7.2 Charges, billing and payment shall be in accordance with the Distribution Connection and Use of System Agreement.
- 8. TERMINATION**
- 8.1 The User may request termination of these Terms and Conditions in the event that it is no longer the registered Supplier in respect of any Relevant Metering System, by giving the Company 6 months' notice in writing (or such lesser period as may be agreed between the parties), such agreement to terminate not to be unreasonably withheld.
- 8.2 The Company may terminate these Terms and Conditions in accordance with the following provisions of this Clause 8.2:
- 8.2.1 the Company may terminate these Terms and Conditions by giving the User 6 months' notice in writing (or such lesser period as may be agreed between the parties) (a "**Meter Asset Provider Termination Notice**");
- 8.2.2 unless the Company receives notice from the User to the effect that it does not require the Company to enter into, upon expiry of the Meter Asset Provider Termination Notice, a new agreement with the User in respect of the matters described in Condition 34 of the Electricity Distribution Licence (a "**Replacement Agreement**"), the Company shall, subject to Clause 8.2.5, within 5 Working Days of giving the Meter Asset Provider Termination Notice notify the User of the terms upon which it would be prepared to enter into a Replacement Agreement.

- 8.2.3 if the User does not accept the proposed terms, the parties shall negotiate in good faith the terms of a Replacement Agreement, but if no terms have been agreed 28 days before the Meter Asset Provider Termination Notice is due to expire, either party may refer the matter to the Authority pursuant to Condition 34 of the Electricity Distribution Licence.
- 8.2.4 these Terms and Conditions shall terminate on expiry of the Meter Asset Provider Termination Notice only if:
- (a) the terms of a Replacement Agreement having been agreed or determined by the Authority prior to such expiry, a Replacement Agreement comes into effect upon such expiry; or
- (b) the User has given notice prior to such expiry that it does not require a Replacement Agreement; or
- (c) pursuant to Clause 8.2.5, the Company has been relieved of its obligation to provide the Services under Condition 34; and shall otherwise continue in effect until a Replacement Agreement comes into effect.
- 8.2.5 where the Authority has issued a direction relieving the Company of its obligations under Condition 34, the Company may terminate these Terms and Conditions by giving the User 6 months' notice in writing (or such lesser period as may be agreed between the parties). For the avoidance of doubt, Clauses 8.2.2 and 8.2.3 shall not apply to notice to terminate the Agreement in these circumstances.
- 8.3 A party (the **"Initiating Party"**) may terminate these Terms and Conditions with immediate effect by notice to the other party (the **"Breaching Party"**) on or at any time after the occurrence of any of the following events:
- 8.3.1 the Breaching Party being in material breach of any of the material terms or conditions of these Terms and Conditions and, if the breach is or was capable of remedy, having failed to remedy the breach within 30 days of receipt of a notice from the Initiating Party giving full details of the breach, requiring the Breaching Party to remedy the breach and stating that a failure to remedy the breach may give rise to termination under this Clause 8.3.1;
- 8.3.2 the Breaching Party passing a resolution for its winding-up, or a court of competent jurisdiction making an order for the winding-up or dissolution of the Breaching Party;
- 8.3.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver or an administrative receiver over, or an encumbrancer taking possession of or selling, any substantial part or parts of the Breaching Party's assets, rights, or revenues;
- 8.3.4 the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court for protection from its creditors generally;
- 8.3.5 the Breaching Party being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, but as if in that
- Section the sum of £10,000 was substituted for the sum of £750;
- 8.3.6 a circumstance of Force Majeure which affects the performance by the Breaching Party of substantially all of its obligations under these Terms and Conditions continuing for more than 180 days;
- 8.3.7 the Breaching Party ceasing to carry on its business comprising (in the case of the User) the supply of electricity or (in the case of the Company) the provision of meter asset provision as defined in Condition 34 of the Distribution Licence, or (in each case) a substantial part thereof, unless:
- (a) such cessation is intended to be and is temporary and is caused by a circumstance of Force Majeure; or
- (b) (for the avoidance of doubt) such cessation involves solely the assignment of rights and/or the sub-contracting or delegation of obligations in accordance with the provisions of Clause 15; or
- 8.3.8 any of the conditions precedent set out in Clause 2 ceasing to be satisfied in relation to the Breaching Party and, if the situation is or was capable of remedy, the Breaching Party having failed to remedy the situation within 30 days of receipt of a notice from the Initiating Party giving full details of the condition(s) precedent set out in Clause 2 that has ceased to be fulfilled, requiring the Breaching Party to remedy the situation and stating that a failure to remedy the situation may give rise to termination under this Clause 8.3.8.
- 8.4 Except where expressly stated to the contrary, the rights and obligations of the parties under these Terms and Conditions shall cease immediately upon termination of these Terms and Conditions. However, termination shall not affect any rights and obligations, which have accrued on or before the date of termination.
- 8.5 Clauses 8, 12, 14, 15, 16 and 17 shall survive the termination, for whatever reason, of these Terms and Conditions.
- 9. NOTICES**
- 9.1 Any notice, request or other communication to be made under or in connection with these Terms and Conditions shall be in writing to the:
- Contract Manager (DCUSA)
Electricity North West Limited
Linley House
Dickinson Street
Manchester
M1 4LF
E-mail: electricitycommercialpolicy@enwl.co.uk
- 10. LIABILITY**
- 10.1 Subject to Clause 10.5 and save as provided in this Clause 10.1 and Clause 10.2 neither party (the **"Party Liable"**) nor any of its officers, employees or agents shall be liable to the other party for loss arising from any breach of these Terms and Conditions other than for loss directly resulting from such breach and which at the date hereof was reasonably foreseeable as not unlikely to occur in the ordinary course of events from such breach in respect of:

- 10.1.1 physical damage to the property of the other party, its officers, employees or agents; and/or
- 10.1.2 the liability of such other party to any other person for loss in respect of physical damage to the property of any person.
- Provided that the liability of either party in respect of all claims for such loss arising from any incident or series of related incidents shall in no circumstances exceed £1,000,000.
- And provided further that either party shall be entitled:
- (a) to deduct from any sums payable in respect of its liability for loss or damage under these Terms and Conditions any sums which it is liable to pay to a person who has a connection to the Distribution System or any other person in respect of the same loss or damage;
- (b) where it has already made payment in respect of its liability for loss or damage under these Terms and Conditions at the time at which it becomes liable to pay to any other person in respect of the same loss or damage, to reclaim from the other party the amount of its liability to that other person but not exceeding the amount already paid to the other party in respect of such loss or damage. Provided that where either party becomes aware of any claims, difference, dispute or proceedings (actual or threatened) which it reasonably expects may lead to a liability to a person other than the other party in respect of an event which may give rise to a liability to the other party under these Terms and Conditions and which may fall within the provisos (a) and (b) to this Clause 10.1 that party shall consult with the other party as to the conduct of that or those claims difference, dispute or proceedings (actual or threatened).
- 10.2 Nothing in these Terms and Conditions shall exclude or limit the liability of the party liable for death or personal injury resulting from the negligence of the party liable or any of its officers, employees or agents and the party liable shall indemnify and keep indemnified the other party, its officers, employees or agents, from and against all such liability and any loss or liability which such other party may suffer or incur by reason of any claim on account of death or personal injury resulting from the negligence of the party liable or any of its officers, employees or agents.
- 10.3 Subject to Clauses 10.4 and 10.5 and save where any provision of these Terms and Conditions provides an indemnity, neither party, nor any of its officers, employees or agents, shall in any circumstances whatsoever be liable to the other party for:
- 10.3.1 any loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or
- 10.3.2 any indirect or consequential loss; or
- 10.3.3 loss resulting from the liability of such other party to any other person howsoever and whenever arising save as provided in Clause 10.1.
- 10.4 The rights and remedies provided by these Terms and Conditions to the parties are exclusive and not cumulative and exclude and are in place of all substantive (but not procedural) rights or remedies express or implied and provided by common law or statute in respect of the subject matter of these Terms and Conditions, including any rights either party may possess in tort which shall include actions brought in negligence and/or nuisance. Accordingly, each of the parties hereby waives to the fullest extent possible all such rights and remedies provided by common law or statute, and releases the party liable, its officers, employees and agents to the same extent from all duties, liabilities, responsibilities or obligations provided by common law or statute in respect of the matters dealt with in these Terms and Conditions and undertakes not to enforce any of the same except as expressly provided herein.
- 10.5 Save as otherwise expressly provided in these Terms and Conditions, this Clause 10 insofar as it excludes or limits liability shall override any other provision in these Terms and Conditions provided that nothing in this Clause 10 shall exclude or restrict or otherwise prejudice or affect any of:
- 10.5.1 the rights, powers, duties and obligations of either party which are conferred or created by the Act, any licence granted pursuant to the Act or any subordinate legislation made under the Act; or
- 10.5.2 the rights, powers, duties and obligations of the Authority or the Secretary of State under the Act, any such licence or otherwise howsoever.
- 10.6 Each of the sub-Clauses of this Clause 10 shall:
- 10.6.1 be construed as a separate and severable contract term, and if one or more of such sub-Clauses is held to be invalid, unlawful or otherwise unenforceable the other or others of such sub-Clauses shall remain in full force and effect and shall continue to bind the parties; and
- 10.6.2 survive termination of these Terms and Conditions.
- 10.7 Each party hereby acknowledges and agrees that the other party holds the benefit of Clauses 10.1, 10.2 and 10.3 above for itself and as trustee and agent for its officers, employees and agents.
- 10.8 For the avoidance of doubt, nothing in this Clause 10 shall prevent or restrict either party enforcing any obligation (including suing for a debt) owed to it under or pursuant to these Terms and Conditions.
- 11. OWNERSHIP OF DATA**
- 11.1 The Parties acknowledge that the User shall own any data acquired in respect of any Relevant Metering System by the Company pursuant to these Terms and Conditions.
- 12. APPROVALS AND PERMISSION**
- 12.1 The User shall be entitled to procure the performance of work on the Company's Metering System by the User's appointed Meter Operator.
- 13. DATA TRANSFERS**
- 13.1 Where Schedule 1 specifies a Data Transfer Catalogue reference number in relation to any notice, request or other communication, such notice, request or communication shall be sent in the format and with the content described under such reference in the Data Transfer Catalogue as amended from time to time, and shall be transmitted by the means specified in Schedule 1. In each case where these Terms and Conditions envisages any notice, request or other communication to be sent by the Data Transfer Network, the parties shall agree an alternative means

of transmission, which shall be specified in Schedule 1.

13.2 Where these Terms and Conditions requires any notice, request or other communication to be sent via the Data Transfer Network, the relevant message shall be addressed to the appropriate Market Domain I.D. as specified as belonging to either the User or the Company within the Distribution Connection and Use of System Agreement.

13.3 Where these Terms and Conditions requires any notice, request or other communication to be sent via the Data Transfer Network, the party sending the relevant message shall be responsible for ensuring that it reaches the relevant Gateway within any time period laid down in these Terms and Conditions for the provision of such notice, request or communication (and any such message shall be deemed received by the recipient at the point in time it is delivered to such Gateway). Provided that the party sending a message shall have no obligation to ensure receipt where the intended recipient has failed, contrary to the Data Transfer Service Agreement, to remove or process all messages delivered to its Gateway and to ensure that such messages are made available to its internal systems as expeditiously as possible so that the Gateway is able to continue to process incoming and outgoing messages.

13.4 Where either party, in breach of its obligations under Clause 13.3, fails to deliver any notice, request or other communication to the recipient's Gateway and such failure occurs for reasons outside that party's direct control, the breaching party shall have no liability to the other under these Terms and Conditions and the parties shall rely instead upon the provisions of the Data Transfer Service Agreement.

14. ENTIRE AGREEMENT AND JURISDICTION

14.1 These Terms and Conditions shall be interpreted in accordance with English law, and references to any statute, statutory provision, statutory instrument, regulation or code include any amendments, extensions or re-enactments.

15. DISPUTES

15.1 Each Party shall use reasonable endeavours to resolve a dispute, and if unresolved within one (1) calendar month it may be referred to arbitration according to the rules of the Electricity Arbitration Association. If the Parties are not able to agree a resolution or there is a failure to implement the resolution correctly either Party may pursue any remedies that it may have under these Terms and Conditions or at law. The Agreement shall apply during the dispute resolution process.

16. VARIATIONS

16.1 Either Party shall at any time be entitled to propose amendments to these Terms and Conditions by notice in writing to the other Party. The Parties shall negotiate in good faith the terms of any such variation, but if a variation to the Agreement has not been agreed and put into effect within 28 days after it has been proposed, either Party shall be entitled to refer the matter to the Authority, pursuant to Condition 34 of the Distribution Licence.

16.2 The Parties shall give effect to any determination made by the Authority, pursuant to Condition 34 of the Distribution Licence, in relation to these Terms and Conditions. If the Authority determines that amendments to the Agreement are required, the

Company shall make such amendments as have been specified by him.

16.3 Except where these Terms and Conditions provides to the contrary, no amendment to these Terms and Conditions shall be effective unless in writing signed by both Parties.

17. CONFIDENTIALITY

17.1 Each Party agrees that it will not disclose or use confidential information (all information including the terms of these Terms and Conditions, documents, data, and other tangibles) exchanged between the Parties, other than such Party's own proprietary information, i.e. all unpublished information, designs, technology, trade secrets, know-how, special skills or other data developed or acquired by the owner independently of these Terms and Conditions) at any time to or for the benefit of any third party without the other Party's express prior written consent. The disclosure and use restrictions herein shall remain in effect notwithstanding the termination of these Terms and Conditions

18. ASSIGNMENT

18.1 The User may not assign these Terms and Conditions without the Company's written consent, such consent not to be unreasonably withheld.

18.2 The Company may not assign these Terms and Conditions without the User's written consent, such consent not to be unreasonably withheld.

19. WAIVERS

19.1 The failure by either party to exercise, or the delay by any party in exercising, any right, power, privilege or remedy provided by these Terms and Conditions or by law shall not constitute a waiver thereof nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other, right, power, privilege or remedy.

20. EXCLUSION OF THIRD PARTY RIGHTS

20.1 Any person who is not a Party to these Terms and Conditions shall not acquire or have any rights under these Terms and Conditions by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

SCHEDULE 1 DATA TRANSFER TRANSMISSION MEANS

The descriptions of the Data Flows contained in this Schedule are for ease of reference only and shall not affect the obligations of either party under the relevant provisions of these Terms and Conditions.

It is expected that all Data Flows shall be transmitted via the Data Transfer Network. In an emergency, and with prior agreement between the two parties, a fax will be accepted. The supported transmission means for Data Flows transmitted by the Meter Operator are:

Flow		Means
D0303	Notification of Meter Operator, Supplier and Metering Assets installed / removed by the MOP to the MAP.	DTN