

npower **Business Solutions**

Half Hourly DA,
DC, MOP and
MAP agreement



**Business
Solutions**

AGREEMENT for ONLINE SERVICE and HALF-HOURLY DATA AGGREGATION and DATA COLLECTION and METER OPERATION PROVISION and METER ASSET PROVISION

TERMS AND CONDITIONS PART 1

“We”/ “Us”/ “Our” means the Supplier (as set out in Your Supply Agreement)

“You”/ “Your” means the Customer (as set out in Your Supply Agreement)

When does this Agreement Apply

This Agreement applies where We are Your Energy Supplier and We have Appointed ourselves as Your Metering Agent for one of the following reasons (as allowed in Your Supply Agreement):

- You do not have an agreement in place with any suitable person for the provision of some or all of the Metering Services at the start of Your Supply Agreement (or you did not tell Us that you did)
- We had to de-appoint the person providing Metering Service to You because they were not performing their duties correctly; or
- The agreement You had in place for the provision of some or all of the Metering Services ended before Your Supply Contract ended.

This Contract does not apply:

- To any Meter for which You have entered into a separate agreement with Us or one of our Affiliates for the provision of Metering Services.
- To any Meter for which another person is still appointed to provide Metering Services
- To any NHH Sites under Your Supply Contract.

What makes up this Agreement

This Agreement consists of this Part 1, together with Part 2 below (the Terms and Conditions *version 3 May 2018* and Part 3.

Part 3 shall be those Meters at the HH Sites set out in Your Supply Agreement for which We have been appointed to provide Metering Services through your Supply Agreement and for which no separate agreement is in place.

Metering Services

The Metering Services which We will provide to You in accordance with this Agreement will be those for which We are appointed through your Supply Agreement and for which no separate agreement is in place.

Start and End Date

This Agreement will start on the date We are appointed to provide the Metering Service and shall end on the date Your Supply Agreement ends.

Your charges and payment

The Charges You shall pay for each Metering Service We provide to You shall be (with effect from 1 October 2016):

Metering Service	MOP/MAP Services	DA Services & DC Services
	£900 per annum per MPAN where MPAN is Code of Practice (COP) 3	£345 per annum per MPAN
	£600 per annum per MPAN where MPAN is Code of Practice (COP) 5	
	£300 per annum per MPAN where Meter is Code of Practice (COP) 10	

We may invoice You for these Charges annually in advance or on such other frequency as We tell You. Where You are invoiced for these Charges under Your Supply Agreement, You shall pay in accordance with Your Supply Agreement.

We may increase these Charges from time to time. The Charges will apply to You will be those in effect at the relevant time.

You may be able to reduce your Charges if you enter into a written agreement with us for the provision of Metering Services.

TERMS AND CONDITIONS PART 2

1 1. DEFINITIONS AND INTERPRETATION

1.1. The definitions and rules of interpretation set out in Schedule 4 (*Definitions and Interpretation*) shall apply in this Agreement.

2 AGREEMENT FORMATION

2.1 This Agreement consists of:

- (a) Part 1: a form containing Your details (including the Site and Meter Identifier), the Service Start Date and Minimum Service Term and the Charges payable for each of the Services You wish to take or are deemed to take in accordance with Your Supply Agreement with Us (Part 1). Where no Charge is listed for a Service, You are not taking that Service; and
- (b) Part 2: these terms and conditions (**Part 2** or **Conditions**); and
- (c) the schedules to these Conditions (**Schedules**); and
- (d) where you have more than one Meter or if You are taking more than one Service and there are different Service Start Dates or different Minimum Service Terms, Part 3: a list of Sites, Meters, Metering Points, Meter Identifiers, Services, and Charges (**Part 3**); and

2.2. This Agreement sets out the terms and conditions on which We shall provide You with any of the Services of the type and in the frequency as are identified in Part 1 and Part 3. Where there is conflict or inconsistency between Part 3 and Part 1, Part 3 shall apply. Part 3 allows You to vary the Services to be supplied for each Site or Metering Points.

3 COMMENCEMENT AND TERM

- 3.1. Except where Condition 3.6 applies, the term of this Agreement shall begin on the Contract Date and shall continue unless or until this Agreement is terminated in accordance with these Conditions (**Term**). Except where Condition 3.6 applies, this Agreement shall not take effect until We have signed it.
- 3.2. By entering into this Agreement, You agree to take each Service at each Metering Point for at least its Minimum Service Term.
- 3.3. We shall provide each Service at each Metering Point for its relevant Service Period.
- 3.4. Each Service Period starts on the Service Start Date(s) and ends on the earliest date on which You either Cancel that Service or terminate this Agreement, in each case in accordance with these Conditions.
- 3.5. Without affecting clause 3.2, on or before the expiry of the Minimum Service Term, We may seek to enter into a further contract with You (which replaces this Agreement) or We may seek to agree to amend this Agreement so as to apply a new Minimum Service Term.
- 3.6. If We are Your Energy Supplier and either (i) You have not signed an agreement with Us or entered into an agreement with a third party for the provision of each of the services envisaged by Schedule 1 and Schedule 2 or (ii) We have De-appointed a third party providing one or more of those services envisaged in Schedules 1 and Schedule 2 in accordance with Your Supply Agreement; then under the terms of Your Supply Agreement, this Agreement shall start in relation to those services (which become Services under this Agreement) on the date determined by the relevant provision of Your Supply Agreement (which then becomes the Contract Date and Service Start Date under this Agreement) and shall continue until Your Supply Agreement ends unless or until this Agreement is terminated in accordance with these Conditions.

4 BEFORE WE CAN SUPPLY THE SERVICE

- 4.1. Before We are obliged to provide You with any Services under this Agreement, You must:-
 - (a) own or be a tenant of each Site and have necessary authority and capacity to grant Us Access to all Meters or Equipment or Metering Systems so that We can supply the Services; and
 - (b) make sure that where You are not the owner of the Third Party Meter or Equipment or Metering Systems, You procure consent for Us to provide Services in relation to them (including but not limited to repairing or replacing them) and You will indemnify Us for any claims made against Us by the owner of them; and
 - (c) make sure that You have entered into all Industry Agreements and procured that Your Energy Supplier has made all Appointments that are relevant to each Site, Metering Point and Meter Identifier and make sure that that they are all in full force and effect and that You are complying with them in all respects; and
 - (d) make sure the Site(s) is/are Connected; and
 - (e) make sure or procure that all Third Party Meters and any parts of Your Metering System and Equipment that are not installed or maintained by Us are certified (if required), installed and maintained by Accredited Personnel and fully compliant with all relevant Industry Agreements and Law to the extent Your Energy consumption and Site require and that each meter has a Meter Identifier; and
 - (f) provide suitable credit references if We ask You to; and

- (g) provide Us with complete and accurate information (including technical details) and complete any actions that We request in advance in each case for: Your Site, Metering System, Meters (including all Meter Identifiers), Third Party Meters, Telecommunications, Energy supply, Energy Supplier (where We are not Your Energy Supplier), Appointed Agents for Agent Services (where We are not the Appointed Agent), consumption at Your Site and Your Connection; and
- (h) provide Us with details of any dispute relating to Your Metering System or Your Energy supply; and
- (i) make sure that You and Your Equipment comply with Minimum IT Requirements, together or severally, Your pre-conditions of Service supply (**Your Pre-Condition(s)**).

4.2. Before We are obliged to provide You with any Services under this Agreement, We must be able to support each part of the Metering System and the Services through Our existing telecommunications and billing systems and not be obliged to make any changes to them (**Our Pre-Condition(s)**).

4.3. You must continue to comply with Your Pre-Conditions during the Term as if they were set out in Condition 7 (*Your Obligations*) below.

If at any time either You do not or You suspend or You cease to carry out or comply with any of Your Pre-Conditions or We cannot satisfy Our Pre-Condition then in each case:-

- (a) Condition 8 (*Failure to Comply*) shall apply; and/or
- (b) We may invoice You for and You shall pay to us a sum equivalent to the Charges for the Services that We are unable to commence; and/or
- (c) We may consider that You are in material breach of this Agreement and Condition 15 (*Termination for Fault*) shall apply.

4.4. We may but We shall not be obliged to start the supply of the Services before satisfaction of any of Your Pre-Conditions or Our Pre-Conditions. Where We do this:-

- (a) You shall still be obliged to comply with all of Your Pre-Conditions; and
- (b) We shall still expect Our Pre-Conditions to be capable of satisfaction; and
- (c) We shall retain all Our rights and/or remedies in respect of Your Pre-Conditions or Our Pre-Conditions,

in each case unless We give to You a waiver in writing and We may invoice You for and You shall pay the Charges for the Services that We commence.

5 THIRD PARTY METERS

5.1. Where You require Agent Services to be provided to Third Party Meters You shall:-

- (a) procure Our Appointment as the Appointed Agent for each Agent Service for each Third Party Meter; and/or
- (b) procure that We have all relevant details that We need so that We can perform the Agent Services, including re-programming the Meter and the retrieval of Data.

5.2. Where a Third Party Meter does not have a current or valid commissioning certificate, We may visit the Site to commission the Third Party Meter as Additional Services for an Additional Charge.

5.3. We shall not be obliged to supply Services for Third Party Meters where Our Telecommunications or billing or other systems cannot accommodate the Third Party Meter, its Telecommunications or Metering System.

5.4. We are not required to acquire title to any Third Party Meter or to be liable in any way including for payment

of any charges from Your previous Appointed Agent.

5.5. We shall not be liable for any loss, damage, cost or expense howsoever incurred by You or any third party as a result of:-

- (a) the installation, set-up, programming, commissioning or use of the Third Party Meter; or
- (b) any act or omission of any prior Appointed Agent or of any third party who has had access to the Third Party Meter at any time.

5.6. You shall indemnify Us for costs, loss or any claims relating to either:-

- (a) any time prior to Our Appointment as Appointed Agent for the Third Party Meter; and/or
- (b) any claim against Us from the owner of the meter (where a Party is not the owner) in relation to any Services We supply.
- (e) of any reserve or demand side management arrangements that it has in place (whether with the Supplier or any third party); and
- (f) of any proposed or actual energy efficiency measures.

6 OUR OBLIGATIONS

6.1. We are Accredited and hold any necessary qualifications, authorisations or consents that We require to perform the Service(s).

6.2. We shall provide the Services in accordance with Good Industry Practice and with the relevant requirements of the Industry Agreements, to the extent permitted by Law, in place of all implied terms, conditions, warranties and guarantees.

6.3. All Services shall be carried out during Working Hours on Business Days.

6.4. We shall deliver the Services from the relevant Service Start Date.

6.5. We shall use reasonable endeavours to keep to any times and dates that are set out in this Agreement including Service Start Dates but these times and dates are approximate estimates only and We shall not be liable for failure to comply with them.

7 OUR OBLIGATIONS

7.1 In addition to Your Pre-Conditions, You shall at all times during the Term at Your cost:-

- (a) continue to comply with Your Pre-Conditions as though in each case they were set out in full in this Condition 7.1 as continuing obligations;
- (b) comply with the terms of Your Supply Agreement for any Connection Conditions;
- (c) provide (or procure that all third parties provide) all reasonable assistance to enable Us to perform the Services;
- (d) provide details of any change in tenant or ownership of the Site or any change in Your authority to allow Us Access to Your Site in writing as soon as is practicable;
- (e) ensure that no part of the Site to which the Services relate are domestic premises (as defined in Industry Agreements) and You shall also indemnify Us and pay to us as a debt any fines, losses or penalties We suffer if We are found to be in breach of Our Supply Licence or any Industry Agreement because You act in breach of this obligation;
- (f) be responsible (at Your own cost) for preparing and maintaining each of Your Sites and Metering Points so that We are able to provide the Services throughout the Term;
- (g) provide Us with (or procure that a third party provides Us with) Access to Your Site, Metering System, the Meters, the Metering Points, Equipment and Telecommunications in each

case on such notice as is reasonable in all the circumstances and to the extent relevant and required for each Service and/or as required by Law or under any Industry Agreement;

- (h) obtain and maintain all necessary property rights and all other third party consents required by Law and/or by Industry Agreements in each case to procure Us Access and/or to enable Us to provide the Services at each Site;
- (i) tell Us in writing as soon as You can of any change in Your Metering System or in change in any information that You have given Us or if there is any error or omission;
- (j) not interfere with any part of the Meter in any way;
- (k) give Us or procure that We are given consent and/or authorisation and access to Your Data and the ability to retrieve Data collected and aggregated from Your Metering System; and
- (l) secure Data flow to the Online Service (including where We are not Your Appointed Agent for an Agent Service).

7.2. With effect from the Contract Date You shall Appoint and/or procure that We are and remain the Appointed Agent for all Agent Services selected in Part 1 and Part 3 for all Metering Points at all Sites.

7.3. If for any reason either We are not the Appointed Agent with effect from each Service Start Date or We are De-appointed at any time during a Service Period then in each case:-

- (a) Your Service Period for those Agent Services does not start or where it has already started, We may suspend it; and
- (b) Condition 8 (*Failure to Comply*) shall apply.

8 FAILURE TO COMPLY

8.1 Where We believe (acting reasonably):-

- (a) You fail or cease to comply with any of Your obligations under or any requirement of this Agreement including without limitation Your Pre-Conditions; or
- (b) Your (or Your Personnel's) act or omission or the act or omission of any third party prevents or impedes Our ability to provide a Service; and/or
- (c) a sum due and payable to Us under this Agreement is in arrears for more than fourteen (14) days after the Payment Due Date; and/or
- (d) You fail to secure Data flow to the Online Service (including where We are not Your Appointed Agent for an Agent Service),

it shall in each case be a failure to comply (**Failure to Comply**).

8.2. Where there has been a Failure to Comply, We:

- (a) have no obligation to provide You with the affected Services or to perform identified Additional Services; and/or
- (b) may suspend or cease to carry out the Services impacted by Your failure (and any other Services dependent on them) until such time as You have remedied the circumstances giving rise to the suspension and complied with Your obligation(s) and any other requirements We may reasonable require; and/or
- (c) may request that You procure Us the relevant Access, consent, appointment and authorisation where relevant; and/or

- (d) may request that You supply, repair and/or replace all or part of the Metering System; and/or if You fail to do so, where We can and/or if You request Us to do so, We may carry out the supply, repair or replacement required in each case as additional services (Additional Services), at an Additional Charge to Our reasonable satisfaction; and/or
- (e) may continue to charge for the Services that We suspend or cease; and/or
- (f) may recover as a debt (and charge as Additional Charges) the costs, losses and expenses (including any costs and expenses We incur for our Personnel and any other person) We incur.
- 8.3. You will indemnify Us for all losses, claims and expenses We incur because of a breach by You of this Agreement or any Failure to Comply or by reason of any wrongful act or omission by You, Your Personnel and/or Your Group Companies.
- 8.4. Where there has been a Failure to Comply and:-
- (a) You fail to remedy a failure or a delay and/or fail to comply with the requirements We ask for in relation to them within a reasonable period of time; and/or
- (b) You fail to agree or to pay the Additional Charges; and/or
- (c) You prevent Us from carrying out the Additional Services We tell You are required or that You request; and/or
- (d) We have cause to be delayed or to cease or suspend Our supply of Services to You on multiple occasions and/or to the extent that We are substantially unable to perform any Service or any other obligation under this Agreement,
- then in each case, in addition to any other rights and remedies We have that are specified elsewhere in this Agreement, We may invoice You for and You shall be obliged to pay the Charges for any Services that We are unable to commence

or continue; and We may consider that You are in material breach of this Agreement and Condition 15 (*Termination for Fault*) shall apply.

9 CHANGES AND/OR ADDITIONAL SERVICES (INCLUDING ADDING METERS)

- 9.1 Subject to Condition 10 (*Cancellation (including removing Meters)*), if You wish Us to provide the Services to additional Meters or Metering Points or to change any Services and/or purchase additional meters or additional or upgraded Services for Your Metering System, in each case additional services (**Additional Services**), then You and We shall either agree a written amendment to this Agreement or enter into an additional contract for such Additional Services.
- 9.2. Where You request Additional Services, We may send to You an amended Part 3 to include such Additional Services, whereupon this Agreement shall be considered as having been amended in writing with Your and Our agreement for the purpose of satisfying Condition 27.8.
- 9.3. Where any such change is made part way through any month We may invoice You for and You shall pay Charges for a whole month.

10 CANCELLATION (INCLUDING REMOVING METERS)

- 10.1 If You wish to Cancel any Service (including if You wish to Cancel a Service to some but not all of the Meters or Metering Points or Sites) either before its Service Start Date; or on or before the expiry of its Minimum Service Term; or at any time after the expiry of the Minimum Service Term then in each case You shall give Us at least three (3) months written notice of the Services that You wish to Cancel and at which Sites and Metering Points and in each case, Clause 17 (*Consequences of Cancellation and/or Termination*) shall apply.

11 CHARGES AND INVOICING

- 11.1.1. We may issue an invoice for the Charges in the sums and at the frequency as set out in Part 1 or Part 3 and where otherwise You are liable to pay them under this Agreement.
- 11.2. We shall invoice You on a Site aggregated basis (unless otherwise agreed in writing).
- 11.3. If We are Your Energy Supplier, We may agree with You to include the Charges and/or Additional Charges in Your Energy supply invoice and if so invoiced, You shall pay such Charges according to the payment terms relevant to your Energy supply invoice (**Payment Due Date**).
- 11.4. If We are not your Energy Supplier and/or We have issued a separate invoice, You will pay those sums invoiced within fourteen (14) days of the date of the invoice (**Payment Due Date**).
- 11.5. All amounts payable are exclusive of VAT. If We deem VAT is payable, You shall pay it.
- 11.6. If there is a genuine dispute over any part of an invoice, You may withhold payment of that part of the invoice which is disputed (except if You are paying by direct debit). When the dispute is resolved, You must pay any outstanding balance within five days together with simple interest calculated at the prevailing base rate of the Bank of England, which will accrue from the Payment Due Date for the invoice which was disputed. You may not withhold payment of any part of an invoice that is not disputed or if the invoice is payable by direct debit.
- 11.7. We shall charge interest on Your overdue invoices at the rate of 6% above the base rate from time to time of the Bank of England. Interest shall accrue daily from the relevant Payment Due Date to the date of payment (as well after as before judgement) and shall be compounded on a monthly basis. We will not pay any interest on any sums incorrectly transferred or amounts returned following the resolution of a dispute.

11.8. We may recover from You Our costs (including reasonable legal and other professional fees) that We incur in any debt recovery process that We instigate.

11.9. You may not set-off any sums against any Charges that We invoice You.

12 VARIATIONS

12.1 We may increase the Charges (or charge Additional Charges):

- (a) by the annual percentage change in the Retail Price Index to 31 March in each year of the Term, with such change taking effect from 1 April of each year of the Term.
- (b) if any changes occur in the costs or charges payable by Us to third parties in connection with the provision of the Services;
- (c) where there is a Change in Practice;
- (d) if You require or cause any variation to the Services;
- (e) to reflect the application of Condition 5 (Third Party Meters) as and when relevant; and/or
- (f) to reflect the increased costs to Us if You fail to perform Your obligations or satisfy Your Pre-Conditions under this Agreement; or
- (g) where We state in this Agreement that We are entitled to charge Additional Charges for Additional Services.

12.2. We may make amendments to this Agreement from time to time to the extent that We need to, to take account of changes to any Industry Agreements or Law.

12.3. In the event We make any change to this Agreement under this Condition 12, We do not have to get Your consent before making it and the changes will come into effect on the date notified by Us to You.

13 CONTRACTING CAPACITY

13.1 Subject to the following provisions of this Condition 13, You confirm, represent and warrant that You are taking a supply of the Services only for Yourself.

13.2. If any of the Sites are owned, occupied or operated by one of Your Group Companies, You agree and confirm that You have the necessary authority to enter into this Agreement as agent for and on behalf of those Group Companies.

13.3. If any of Your Group Companies from time to time take a supply of Services under this Agreement, then:-

- (a) that Group Company shall be deemed to have entered into this Agreement directly with Us for that Service; and
- (b) You shall make sure of and procure the performance of the obligations set out in this Agreement by those Group Companies; and
- (c) all references (except in this Condition 13) in this Agreement to "You" shall be deemed to be a reference to You and each such Group Company.

13.4. We can only accept declarations relating to VAT or to any other tax if the invoice is addressed to the correct Group Company and You will make sure that You provide all the necessary information to Us relating to declarations for tax purposes.

13.5. You will pay to Us the Charges and/or reimburse Us for any losses, costs or expenses suffered by Us (including any fines, penalties or interest) if either:-

- (a) the correct amounts of tax are not paid in respect of You and/or Your Group Companies who are supplied with Services under this Agreement; or
- (b) Your Group Companies fail to pay to Us the Charges or any other sums payable by any of them to Us under this Agreement.

14 TERMINATION AT WILL

14.1 In addition to Your right in Condition 10 (*Cancellation (Including Removing Meters)*) to Cancel a Service:-

- (a) either Party may terminate this Agreement; and
- (b) We may Cancel a Service,

in each case by giving at least three (3) months written notice (or any shorter period of notice that We agree with You or that We notify You of and/or which is imposed by circumstances outside of Our control) and Condition 18 (Termination Fees) shall apply.

15 TERMINATION FOR FAULT

15.1. In addition to Our rights set out at Condition 8 (Failure to Comply), We may suspend or Cancel a Service or suspend or terminate this Agreement at any time during the Term by giving notice in writing to You if:

- (a) You fail to pay any amount due and payable under this Agreement on or before the Payment Due Date and You remain in default not less than fourteen (14) days after We notify You of the default and request You to make payment of the sums due; and/or
- (b) You are subject to an Insolvency Event (to the extent We are permitted to do so by the Insolvency Act 1986); and/or
- (c) You are in material breach of this Agreement (and the breach is not capable of remedy); and/or
- (d) You are in material breach of this Agreement or in breach of a material obligation of this Agreement and fail to remedy that breach (if breach is capable of remedy) within ten (10) Business Days of a notice specifying the breach and requesting it to be remedied;

(e) You fail to comply with or act in breach of Your obligations under this Agreement on multiple occasions (whether or not the same failure or breach) and whether or not You have previously rectified the breaches or the cause of them within a reasonable time of being requested to do so by Us; and/or

(f) You fail to comply with or act in breach of Your obligations under this Agreement to the extent that We are substantially unable to perform any Service or substantially all of the Services at a Site; or any other obligation under this Agreement; and/or

(g) Control is acquired by any person who did not Control You as at the Contract Date and following that change of Control Your creditworthiness or Your credit rating or scoring is lower than it was either immediately prior to that change of Control or as of the Contract Date; and/or

(h) in Our reasonable opinion You are unlikely to be able to meet Your obligations under this Agreement, whether due to a change in financial standing, creditworthiness or otherwise; and/or

(i) in Our reasonable opinion Your creditworthiness or Your credit rating or scoring is lower (including where it has been withdrawn) than it was at the Contract Date.

15.2. You may suspend or Cancel a Service or suspend or terminate this Agreement at any time during the Term by giving notice in writing if We are:

(a) subject to an Insolvency Event; and/or

(b) in material breach of this Agreement (and the breach is not capable of remedy); and/or

(c) in material breach of this Agreement and fail to remedy that breach (if breach is capable of remedy) within ten (10) Business Days of a notice specifying the breach and requesting it to be remedied.

15.3. For the avoidance of doubt, any breach of the Bribery Act 2010 (or associated regulations in each case as amended from time to time) may be deemed to be a material breach that is not capable of remedy.

16 TERMINATION NO FAULT

16.1. We may either suspend or Cancel a Service or terminate this Agreement, in each case without fault:

(a) on giving such written notice as is reasonable in the circumstances, if there is a Change in Practice where the adverse effect on Us is such that in Our reasonable opinion it cannot be remedied or rectified by reasonable changes to either the Services or the Charges; or

(b) on the giving of not less than one month's written notice if an event of Force Majeure continues for a period in excess of one (1) month from the date of the FM Notice and is continuing at the expiry of the notice to terminate; or

(c) where this Agreement specifies that this Condition 16 applies.

16.2. Where We Cancel a Service or terminate this Agreement under this Condition 16, Your sole right or remedy under this Agreement is that You may receive a refund, calculated on a pro-rata basis from the date of Cancellation or termination, of Charges paid in advance.

17 GENERAL CONSEQUENCES OF CANCELLATION OF A SERVICE OR TERMINATION

17.1. On any Cancellation of a Service or any termination of this Agreement, You must pay to Us, within 30 Business Days of the termination or Cancellation all unpaid Charges in respect of the period before that termination or Cancellation (whether or not those Charges have been invoiced) in addition to any Termination Fee.

17.2. On termination of this Agreement for any reason, except as set out in Condition 17.3, all

Services will cease and, where relevant, Your access to Our on-line Service will be revoked and disabled without further notice to You.

17.3. On any Cancellation of a Service or any termination of this Agreement, if We continue to provide any Services (**Continuing Services**) to You because either We cannot stop providing the Continuing Services or We would be in breach of Industry Agreements if We stopped providing Continuing Service, You shall continue to comply with all Your obligations under this Agreement necessary or desirable to allow Us to provide the Continuing Services and You shall pay Us for the provision of Continuing Services (**Continuing Services Charges**). We may (in our absolute discretion) choose to recover the Continuing Services Charges:

(a) from You directly by providing you with a valid invoice (and Condition 11 (Charges and Invoicing) will apply); or

(b) from You through Your Energy supply invoice (if We are Your Energy Supplier); or

(c) from Your Energy Supplier (who may recover them from You in another way); or

(d) through the Termination Fee,

or through any combination of these actions (but We shall not recover the same amount twice).

17.4. Termination of this Agreement or Cancellation of a Service is without prejudice to any rights and/or obligations that have accrued prior to such termination or Cancellation.

17.5. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after its termination (or Cancellation of a Service) shall remain in full force and effect.

17.6. You shall permit Us at Your cost to enter a Site for the purpose of disconnecting the Telecommunications. Where Telecommunications are on premises not

owned, occupied or otherwise under Your control, You undertake to procure permission for Us to enter the premises for such purposes. In each case, You shall pay Us as Additional Costs any costs incurred by Us in discontinuing and/or terminating the Telecommunications.

- 17.7. Where You hire the Meter from Us during the Service Period, on termination You must allow and/or procure Us Access to the Meter to take possession of it.

18 TERMINATION FEES

18.1. In the event that either Party Cancels a Service or terminates this Agreement and the Agreement or Service (as applicable) ends before the end of the relevant Minimum Service Term, or where You Cancel a Service or otherwise terminate this Agreement and the Agreement or Service (as applicable) ends on or after the relevant Minimum Service Term but You do not give at least three months written notice for the termination or Cancellation then, except where Conditions 18.3 applies, We shall invoice You for and You shall pay to Us a sum equivalent the relevant Termination Fees for each Cancelled Service or, where the Agreement is terminated, calculated for all Services in accordance with Condition 18.2. In addition to the Termination Fees, where We incur any costs or expenses following such Cancellation or Termination (for example paying any Personnel compensation for early termination of any contract relating to the Cancelled Services) then We shall recover these from You as Additional Charges.

18.2. The Termination Fee shall be a sum equal to 100% of the aggregate Charges attributable to the Cancelled Services or terminated Agreement that would have been payable for:

- (a) the whole of the Minimum Service Term had it commenced if the termination or Cancellation is before the start of the Minimum Service Term; or

- (b) the balance of the Minimum Service Term if the termination or Cancellation is after the start of the Minimum Service Term; or
- (c) the balance of time between the date of the written notice of termination or Cancellation and the expiry of three calendar months if the notice of termination or Cancellation is given after the expiry of the Minimum Service Term.

18.3. In the event that We Cancel a Service or terminate this Agreement pursuant to Condition 16.1 (*Termination No Fault*), then:

- (a) where We are providing MAP Services under this Agreement, We shall invoice You for and You shall pay to us a sum equivalent to the lower of (i) the cost to Us of recovering the Meters; and (ii) the cost of the Meters that We have not recovered through the Charges paid under this Agreement prior to its termination or the Cancellation of the MAP Services;
- (b) where we are not providing MAP Services under this Agreement, no Termination Fees shall be payable (but, for the avoidance of doubt, Condition 17.1 shall apply).

18.4. Unless otherwise set out in this Condition, no other payment shall either be payable by You to Us or be payable by Us to You on Cancellation of a Service or termination of this Agreement.

19. DATA

19.1. In the event of any loss or damage to Your Data, Your sole and exclusive remedy shall be for Us to use reasonable endeavours to restore Your lost or damaged Data from the latest back-up of such Data that We may have performed where and to the extent We are obliged to do so for Your Online Services.

19.2. You shall provide or procure for Us from Your Appointed Agent (where We are not Your Appointed Agents either immediately prior to the Contract Date or at any time during the Term) any Data or Data flow required by Us to supply any of the Services.

19.3. You agree that We may use the Data We obtain under this Agreement and that We may disclose the Data to any person including any of Our Personnel or any of Our Group Companies so that We may:-

- (a) provide and/or procure the Services; and/or
- (b) identify, develop, tender to sell and/or market new Energy solutions and services (with anonymity); and/or
- (c) identify, develop, tender to sell and/or market any new or existing service (without anonymity) that We may from time to time develop and wish to offer to You.

19.4. If We receive any Personal Data (as defined in the EU General Data Protection Regulation ("GDPR")) in relation to this Agreement, the npower Business Solutions Privacy Notice will set out the way in which We use such Personal Data. The npower Business Solutions Privacy Notice is subject to change and the current version is published at npower.com/Privacy-Policy-nBS. You confirm that in respect of any Personal Data You transfer to Npower, You are entitled to transfer it and have provided a copy of the npower Business Solutions Privacy Notice to the subject of the Personal Data. You shall indemnify Us in full for any fines, damages, costs, losses or penalties that We suffer as a result of any breach by You of this Clause 19.4 including where any such loss results from a claim against Us by or enforcement action relating to a third party.

20. CONFIDENTIALITY

20.1. This Condition is subject to Our rights in Condition 19 (Data).

20.2. Neither You nor We shall use the other's Confidential Information for any reason other than for the purpose of exercising Our or Your respective rights and/or obligations under this Agreement (the **Permitted Purpose**). Neither Party shall disclose the other's Confidential Information to any person unless a Party has given the other prior written consent or is permitted to do so under Condition 20.3.

- 20.3. Either Party may disclose Confidential Information to the extent necessary:-
- (a) for the Permitted Purpose; or
 - (b) as is required to be disclosed by the Authority, any Law, any Competent Authority or by the rules of any stock exchange to which either Party is subject.
- 20.4. Confidential Information shall not include any information that is or becomes publically known other than by a breach of our respective obligations under this Condition 20.
- 20.5. We may disclose and publish for marketing, promotion and competitive tendering purposes (for example as a case study) the fact that We have a contract with You for the Services and We may use Your trade name and logo for these purposes.
- 20.6. This Condition 20 shall survive termination of this Agreement for (2) two years.

21. INTELLECTUAL PROPERTY

- 21.1. You acknowledge and agree that We own all Intellectual Property Rights (including in any software) that We use in the provision of the Services and, except as set out expressly in this Agreement, You do not have any right or licence to use such Intellectual Property Rights or such software. All new Intellectual Property Rights arising in or created pursuant to Our supply to You of the Services shall remain or vest in Us. To the extent that You need any right to use Our Intellectual Property Rights (including any created during the term of Agreement) to receive the benefit of the Services, We grant you a licence to do so for the purpose of receiving the Service until the end of the relevant Service Period. You may not transfer those rights to anyone else and You shall not infringe any Intellectual Property Rights of Ours. You shall indemnify Us in respect of all claims, losses or liability if You do.

- 21.2. If We need to use any Intellectual Property Rights held by You to provide the Services, then You agree that You are giving to Us, without charge, such licences to use those rights as We require to perform or procure performance of Our obligations. You agree that this licence cannot be revoked by You and that We can transfer this licence to our Personnel to the extent We think that such transfer is required. You warrant that Our use of any such Intellectual Property Rights will not infringe the rights of any third party. You shall indemnify Us in respect of all claims, losses or liability if they do.

22. CHANGE IN PRACTICE

- 22.1. Where:
- (a) there is any Change in Practice; or
 - (b) there is a manifest error in the Charges that We have quoted to You or charged You; or
 - (c) We are given any inaccurate information (whether by You or by a third party) about the Charges, Your Site, Your Metering System, Telecommunications, the Metering Points the Meters, the Third Party Meters, Meter Identifiers or any other information which has an impact on the delivery by Us of the Services or the calculation of the Charges or the ability to charge, invoice or take payment from You of the Charges; or
 - (d) there is a change to Your Meter (or Third Party Meter) (including to the way We or Your Energy Supplier is required to read or settle Data); or
 - (e) any Metering Point is located or becomes located on a Private Network; or
 - (f) any new charge, cost, expense and/ or obligation, whether temporary or permanent, is introduced to Us in respect of or associated with the Services howsoever arising or any such charge, cost, expense

or obligation is varied or replaced, or

- (g) you are required by Your Energy Supplier (including where We are Your Energy Supplier) or otherwise to have new meters (and associated Telecommunications) or modifications to existing Meters in order to remain compliant with Industry Agreements.

- 22.2. We may on giving reasonable notice to You in each case vary Our Services and/or Charges and/or We may perform Additional Services (including the supply of any new meters or replacement Meters) and/or charge Additional Charges, in each case whether or not such charge, cost, expense and/or obligation (or change) was foreseeable as at the Contract Date.

23. FORCE MAJEURE

- 23.1. If either Party is adversely affected by Force Majeure it shall notify the other Party as soon as reasonably practical and in writing of the nature, extent and effect of such event (**FM Notice**).
- 23.2. Where a Party issues an FM Notice, neither Party shall be deemed to be in breach of this Agreement nor liable for any obligation it is unable to fulfil because (but only to the extent) of the Force Majeure.

24. EXCLUSIONS AND LIMITS OF LIABILITY

- 24.1. Nothing in this Agreement shall exclude or limit liability for Us or You for: death or personal injury through our respective negligence; or fraudulent misrepresentation; or fraud.
- 24.2. If We fail to provide the Services, Your sole remedy will be to require Us to re-perform the relevant part of the Services at Our cost.
- 24.3. We shall not be liable to You if We are in breach of or delay any of Our obligations under this Agreement because We are complying with Your rules and regulations or security measures; or because We encounter any hazard which You

have not told Us about; or if any failure or delay in performance is due to any act or omission of You, Your Personnel or any other person.

- 24.4. You shall not be liable to Us to the extent that You are in breach of or delay any of Your obligations due to any act of omission by Us or Our Personnel.
- 24.5. We are only responsible for any failure of Our own network or telecommunications.
- 24.6. Except where Condition 24.1 applies, if We have been negligent or have failed to comply with this Agreement and that negligence or failure directly results in physical damage to the Your Site, the maximum amount that We will have to pay for such damage is £250,000 over the Term of the Agreement.
- 24.7. Except where Condition 24.1 or Condition 24.6 applies, Our entire liability to You for damages (including if We have been negligent) under this Agreement or in connection with the Services shall not exceed in the aggregate the lower of :-
- (a) the total Charges (excluding MAP Charges) received by Us during the preceding twelve month period of the relevant Services Periods prior to the date liability accrues; or
 - (b) £50,000.
- 24.8. Save to the extent included in a Termination Fee or otherwise expressly stated in this Agreement, neither Party shall not be liable to the other in any circumstances (including if that Party has have been negligent) for any: loss of direct or indirect profits; loss of business; loss of operation time, loss of anticipated savings, loss of good will; loss, theft, corruption, destruction, alteration to or disclosure of data or Data; additional expenditure; indirect or consequential loss in each case arising out of or in connection with the Agreement.
- 24.9. Where any of Our Group Companies suffer a loss because of any: breach of this Agreement; or act

or omission by You, Your Personnel and/or Your Group Companies, then We may recover such loss from You as an agent of Our Group Companies and/or Personnel and You may not contend that such loss is indirect or consequential by virtue only of it being suffered by a Group Company or by Personnel in its respective capacity as one of Our Group Companies or as Our Personnel.

25. DISPUTE RESOLUTION

- 25.1. You and We shall attempt to resolve any disputes relating to this Agreement (Dispute) by negotiations between our respective representatives who have authority to so negotiate and settle the Dispute. If a Dispute cannot be settled through negotiations by such appropriate representatives then either Party may issue a notice in writing setting out full details of the nature of the Dispute (a Dispute Notice) and it shall (within a reasonable time period) be referred to suitable senior executive managers who shall seek to resolve it. If You and We do not resolve the Dispute within twenty (20) Business Days of the date of issue of the Dispute Notice (unless an alternative time scale is agreed in writing between us), then the remaining provisions of this Condition 25 shall apply.
- 25.2. If:
- (a) You are a Microbusiness; or
 - (b) the Dispute is a Small Claim; or
 - (c) the Dispute arises in connection with an amount that is due under this Agreement but has not been paid,
- then any Dispute that we cannot resolve together as set out above in Condition 25.1 shall be dealt with by the English courts. Condition 26 (Expert Determination and Arbitration) will not apply to that Dispute (or, if you are a Microbusiness, to any Dispute arising between Us and You).

26. EXPERT DETERMINATION AND ARBITRATION

- 26.1. If we cannot resolve the Dispute together as set out above in Condition 25.1 and if Condition 25.2 does not apply, the Dispute will be resolved in accordance with this Condition 26:
- 26.2. Expert Determination: If the Dispute is of a technical nature relating to the functions or capabilities of any part of the Services then either Party may refer the Dispute for final determination to an expert nominated jointly by us or, failing such joint nomination, by an appropriate expert in the field within which the Dispute arises (**Expert**) and:
- (a) the Expert shall be deemed to act as an expert and not as an arbitrator;
 - (b) the Expert's decision shall (in the absence of obvious error) be final and binding on You and Us;
 - (c) the Expert's costs shall be borne between You and Us in equal shares unless the Expert determines that the conduct of one Party is such that that Party should bear all of such costs.
- 26.3. Arbitration: If the Dispute is not one that is covered by Conditions 26.2, then subject to any contrary provisions of any Industry Agreement the Dispute shall be and is by this Agreement referred to arbitration pursuant to the arbitration rules of the Electricity Arbitration Association in force from time to time (regardless of the type of Energy provided for under this Agreement). The provisions of the Arbitration Act 1996 shall apply to any such arbitration subject to any permitted exceptions to them agreed by the You and Us. The seat for arbitration shall be England and Wales and the law of England shall be the proper law of reference to arbitration.

27. GENERAL PROVISIONS

- 27.1. You shall not assign Your rights or transfer any of Your obligations under this Agreement without Our prior, written consent. We may at any time assign Our rights or transfer Our obligations and/or sub-contract Our obligations under this Agreement to any other person provided that We remain responsible to You for any obligations that We so sub-contract.
- 27.2. Any notice under this Agreement should be sent: to the appropriate address as set out in Part 1 or to any address notified by You or Us or by Us to You from time to time by hand or by post and not by email alone and shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or otherwise on the second Business Day after posting. This does not apply to the service of any proceedings or other documents in any legal action.
- 27.3. On entering into this Agreement We expect You to comply with the relevant Law and to support and enact the principles established in the “Global Compact Initiative” of the United Nations in each case in the areas of human rights, labour standards, the environment and anti-corruption (www.unglobalcompact.com). We shall comply with all codes of conduct applicable within our Group of companies and We shall inform You of any that You (or Your Personnel) need to comply with.
- 27.4. This Agreement constitutes the entire and only agreement between You and Us for its subject matter and, with effect from Contract Date, supersedes other arrangements or contracts We have with You limited to the subject matter of this Agreement. You agree, in entering into this Agreement, that You have not entered into this Agreement on the reliance of any statement or representation or other provision except those set out in this Agreement.
- 27.5. No failure or delay of either You or Us to exercise any right, power or remedy in connection with this Agreement will operate as a waiver of the same. Either Party may expressly waive any breach, right, power or remedy in connection with this Agreement by writing such waiver down, expressing it to be such a waiver and serving it as a notice in accordance with Condition 27.2. Any express waiver of any right, power, remedy or breach of this Agreement shall not be deemed to be a waiver of any subsequent or former right, power, remedy or breach.
- 27.6. If any Condition of this Agreement becomes invalid, illegal or unenforceable, the remaining Conditions shall continue in full force and effect.
- 27.7. Nothing in this Agreement is intended to create a partnership between You and Us.
- 27.8. Except where Conditions 9.2 or 12.1 applies, any variation to this Agreement needs to be in writing, referred to as a variation of this Agreement and signed by authorised representatives of each of You and Us.
- 27.9. No person who is not a party to this Agreement may enforce this Agreement or any part of it or have any rights under the Contracts (Rights of Third Parties) Act 1999 except where and to the extent as is expressly stated in this Agreement.
- 27.10. You and We submit to the exclusive jurisdiction of the Courts of England and Wales and this Agreement is governed by the laws of England and Wales.
- 28. FOIA AND EIA**
- 28.1. If You receive a request under the Freedom of Information Act (FoIA) or the Environmental Information Regulations 2004 (EIR) that relates to documents or information held by Us on Your behalf, You shall inform Us as soon as practicable after receipt and in any event within five Business Days of receiving such a request. We may charge and You shall pay for Our time and any disbursements incurred in relation to providing information for the purposes of FoIA or EIR in accordance with the rate that You obtain from Us from time to time.
- 28.2. Certain information that We provide to You under this Agreement will not be appropriate for disclosure either under a publication scheme or in response to an information request under FoIA or EIR due to its confidential or commercially sensitive nature. Such information is together referred to in this Condition as Restricted Information. Condition 28.6 contains a list of Restricted Information as at the date of this Agreement. Condition 28.6 shall be amended throughout the term of this Agreement by adding further Restricted Information or removing certain Restricted Information (if that information has lost its confidential or commercially sensitive nature) by agreement of the Parties. You shall inform Us of any information request received by You under FoIA or EIR which relates to Restricted Information as soon as practicable after receipt of the request and in any event within two Business Days of receiving such a request, or of forming the intention to consider disclosing any part of the Restricted Information under a publication scheme, in each case clearly identifying the Restricted Information in question.
- 28.3. You shall allow Us reasonable opportunity and time to make representations to You about whether any Restricted Information or any information referred to in Sub-Condition 28.4 below should be disclosed in response to a request for information, or should be included in a publication scheme.
- 28.4. Notwithstanding Sub-Condition 28.2 above, this Agreement, any invoices and any details relating to charges made under this Agreement should not be disclosed under a publication scheme or in response to an information request. We believe that information to be exempt:
- 28.5. as having been given in confidence under s.41 FoIA or reg. 12(5)(d) EIR; or

- 28.6. as being a trade secret or information that, if disclosed, would prejudice Our commercial interests under s.43 FOIA or reg.12 (5)(f) EIR
- 28.7. If We notify You that We intend to seek injunctive relief to prevent disclosure by You of any part of the Restricted Information or any other information provided by Us to You, You hereby agree to provide Us with such assistance and information as We may reasonably require in order to make application for such relief. You further agree not to disclose any information which is the subject of that application until such time (if applicable) as the court has ordered that no injunction should be granted.
- 28.8. Restricted Information shall include the following information []”

SCHEDULE 1 METERING SERVICES**PART A METER ASSET PROVISION (MAP)****1. METERS**

1.1 Where requested in Part 1, We shall supply the Meters identified by Meter Identifiers and of the type specified in Part 3.

1.2 We reserve the right:-

- (a) prior to delivery of a Meter; and
- (b) with appropriate consultation with You at any subsequent time from time to time during a Service Period,

to substitute an alternative item for any Meter or part of a Meter provided that such substitution shall not materially adversely affect the performance of such Meter or result in any increase in the Charges.

2. SERVICES START DATE

2.1 We shall provide the MAP Services for a Metering Point from either (a) where We are also providing MOP Services to You, the relevant Service Start Date or (b) where We are not providing MOP Services to You, the date We deliver the Meter.

2.2 Where We also supply MOP Services under this Agreement and there are existing meters which We are replacing as part of the MAP Services then We may continue to use the existing meters until We are able to replace them, (and We are not required to replace them on the same date).

2.3 Where We do so, We shall supply the MOP Services (and any other Services associated with that Metering Point) as if such meter was a Third Party Meter until We have replaced it.

3. METER OWNERSHIP

3.1 Where Part 1 or Part 3 indicates that You are hiring the Meters from Us, then title in the Meters shall remain with Us during and after the Term unless You and We agree as Additional Services that You shall purchase the Meters from Us.

3.2 Where Part 1 or Part 3 indicates that You are purchasing the Meters from Us, then We shall sell each Meter free from encumbrances. On receipt in cleared funds of the relevant MAP Charges, title to the Meter shall pass to You.

3.3 Where no reference is made in Part 1 as to whether You are purchasing or hiring the Meters from Us, the default position shall be that You are hiring the Meters from Us.

4. HH OR NHH P

4.1 In this paragraph 4 of this Schedule "COP 10 Supply" means where You are supplied with Energy that is metered using a Meter that was previously being settled pursuant to Industry Agreements on a non-half hourly basis but which is now being settled on a half hourly basis as a consequence of a change to Industry Agreements.

4.2 We may only supply MAP Services under this Agreement for a COP 10 Supply if We (or any of Our Group Companies) are Your Energy Supplier. If this Agreement includes any COP 10 Supply, if You change Your Energy Supplier such that We (or Our Group Companies) are no longer Your Energy Supplier then, without fault, We shall automatically cease to supply MAP Services in relation to the Meters required for that COP 10 Supply. Your new Energy Supplier shall supply services the same or similar to MAP Services for such meters and sub-paragraphs 4.3 and 4.4 of Part A of this Schedule shall apply.

4.3 We may change Your Charges to reflect the change in the actual costs to Us where these costs change as a result of Us ceasing to supply MAP Services to You for the COP 10 Supply. All other provisions of this Agreement for all Services other than MAP Services that We supply You under this Agreement shall remain in full force and effect.

4.4 Where paragraph 4.2 applies but Your new Energy Supplier fails to supply a meter and/or the meter supplied does not comply with Industry Agreements and where such failure and/or non-compliance adversely impacts Our ability to supply Services to You under this Agreement in accordance with the paragraphs and/or in accordance with Industry Agreements then You will be in breach of this Agreement and Condition 8(Failure to Comply) will apply.

PART B METER OPERATOR (MOP) SERVICES**1. MOP**

1.1 Where requested in Part 1, We shall supply MOP Services for the Meters identified by Meter Identifiers including where relevant installing new Meters (whether or not supplied by us as MAP Services under this Agreement) in the quantities, of the type, at the Site and/or at a relevant Metering Point on a Site as specified in Part 1 or Part 3.

2. SERVICES START DATE

2.1 We shall provide the MOP Services to You from the relevant Service Start Date.

3. YOUR OBLIGATIONS

3.1 Whether or not We own the Meter, You agree that for each Meter during each Service Period, You shall not (and You shall not allow any person to) sell, loan, hire out, transfer, assign, charge or create a lien over the Meter.

4. MAINTENANCE

4.1 In consideration for the MOP Charge, We shall supply the installation, operation and maintenance services of the type and at the frequency as are set out in the relevant Industry Agreements.

4.2 We shall, at Our discretion either repair or replace where necessary any defect in a Meter which You report to Us or which We identify and which is not an Excluded Service in each case which prevents Us from being able to comply with Our obligations as Your MOP including where:-

- (a) We are not able to support a Meter or its Telecommunications; or
- (b) a Meter is over ten (10) years old; or
- (c) We do not receive all necessary information to re-program a Meter; or

(d) We are unable to retrieve any or only incomplete Data at any time.

4.3 If You become aware or suspect that a Meter is or may be operating inaccurately, You will let us know as soon as You can. If You tell Us or We otherwise become aware or suspect that a Meter is or may be operating inaccurately We shall investigate and/or inspect the Meter and take such steps as are reasonable to test, monitor and/or verify whether the Meter is operating within the tolerances prescribed in the Industry Agreements.

4.4 Where We perform our obligations as set out in paragraphs 4.2 or 4.3 and either :-

- (a) investigate and/or attend Your Site and no fault is found; or
- (b) We perform MOP Services outside of Working Hours; or
- (c) on investigation or inspection determines that the services required are Excluded Services,
- (d) We determine that any defect in the Meter or Metering System is of a cosmetic nature which does not affect the functionality of the Meter or Metering System,

then in each case We may invoice You for and You shall pay in addition to the MOP Charges the costs of attending the Site and of any installation of new or replacement Meters (in each case as Additional Costs for Additional Services).

4.5 We are entitled to continue to Charge You for any Service under this Agreement pending the completion of any inspection investigation, replacement or repair carried out under this paragraph.

5. EXCLUSIONS AND LIMITS

5.1 This paragraph applies in addition to any exclusions and limits set out in the Industry Agreements.

5.2 We are not obliged to supply MOP Services where in Our reasonable opinion:

- (a) the Meter or Your Metering System has been subjected to interference, vandalism or wilful or accidental damage;
- (b) the Meter or Your Metering System has been subjected to abnormal operating conditions or misuse or You have failed to follow instructions or implement any advice or remedial action recommended by Us;
- (c) the Meter or Metering System has been subjected to repair, alteration or addition by You or any third party without Our prior written consent;
- (d) any defect in the Meter or Metering System results from any power cut, change in voltage or Your Energy Supplier (whether or not We are Your Energy Supplier) cutting off Your power supply;
- (e) any defect in the Meter or Metering System results from either:-
 - (i) any act or omission of You or any of Your Personnel or any third party including other Appointed Agents; or
 - (ii) power to the Metering System being interrupted; or
- (f) the Meter is operating inaccurately and such inaccuracy is not related to either:
 - (i) something We have done; or
 - (ii) something We have failed to do that We should have done; and/or
- (g) Force Majeure applies,

together or severally excluded services (**Excluded Services**).

6. ADDITIONAL SERVICES

- 6.1 You may request that We provide the Services in respect of any or all of the Excluded Services and where We agree to do so this will be an Additional Service and We may invoice You and You shall pay Additional Charges.

SCHEDULE 2 DATA SERVICES

PART A DATA COLLECTION (DC)

1. APPOINTMENT

- 1.1 Where We are the Appointed DC for a Metering Point, We shall remotely retrieve Your Data on Your half-hourly Metering Systems from Your Meter, collect it and send it to Your Data Aggregator. This includes where Your Meter has been de-energised.

2. SERVICES START DATE

- 2.1 We shall provide the DC Services to You from the relevant Service Start Date.

3. NON-REMOTE METER READS FROM HAND HELD EQUIPMENT

- 3.1 If :-
- no Telecommunications can be installed for a Metering Point; and/or
 - You fail to install and/or maintain the Telecommunications to the extent that We are not able to obtain remote Meter readings from it; or
 - any Telecommunication related equipment installed (and not by Us) does not work to Our satisfaction; or
 - any Telecommunications is not and/or is not maintained to our minimum requirements notified from time to time to You; or

- We cannot obtain remote Meter reads via the Telecommunications for any reason other than for Our fault,

then in each case We reserve the right to charge as Additional Charges any costs We incur for the non-remote retrieval of Data reads from Your Meter.

PART B DATA AGGREGATION (DA)

1. APPOINTMENT

- 1.1 Where We are the Appointed DA for a Metering Point, We shall aggregate and validate Your Data received from Your Data Collector and send it to Your Energy Supplier. This includes where Your Meter has been de-energised.

2. SERVICES START DATE

- 2.1 We shall provide the DA Services to You from the relevant Service Start Date.

SCHEDULE 3 ONLINE SERVICES

1. DEFINITIONS

- 1.1 In this Schedule the following words have the following meanings:

Maximum Number of Users
five (5);

Online Go Live
has the meaning given in paragraph 3.2 of this Schedule;

Online Services Upgrade
has the meaning given in paragraph 9.1 of this Schedule;

Online Testing
has the meaning given in paragraph 3.1 of this Schedule;

2. ON-LINE SERVICES

- 2.1 Online Services that will be made available include:-

- For Intelligent Analytics (IA) (Monitor):
 - Energy consumption Data collected from multiple sources for remote analysis;
 - the visualisation of Energy consumption profiles;
- For Intelligent Analytics (IA) (Manager):
 - the services that are available for IA (Monitor); and
 - the construction of user defined reports and targets using advanced analysis and alarming; and

The Online Services will also provide Us with the necessary information to provide Energy management services as Additional Services if requested or be used by You to undertake Your own Energy analysis and reporting.

- 2.2 Your chosen configuration is either:

- set out in Part 1; or
- (if You have a Part 3) set out in Part 3; or
- IA Monitor, if you have only non-half-hourly Meters.

- 2.3 We shall provide You with access to the Online Services via a web portal and We shall use reasonable endeavours to facilitate Your access to the Online Services on a 24 hours a day, 7 days a week basis subject always to You complying with Condition 4.1(i).

2.4 We shall, as part of the Online Services and at no additional cost to You, provide or procure for You access to Our standard customer support services during Working Hours on Business Days in accordance with any of Our Online Services support policies in effect from time to time. We may amend Our Online Services support policy in Our sole and absolute discretion from time to time.

3. SET-UP AND TESTING

3.1 You will provide us with the information, collaboration and if relevant Equipment or Telecommunications links and interfaces We need within the reasonable time scales We request in order to set up the Online Services and test its operation for Your Sites, Metering Points, Telecommunications, Data (and where relevant, Your Other Data) (Online Testing).

3.2 Our obligation to supply the Online Service to You does not commence until the information, collaboration and if relevant Equipment or Telecommunications We request (and meeting all relevant Minimum IT Requirements) have all been given to Us and the Online Testing is complete to Our reasonable satisfaction (Online Go Live).

4. SERVICES START DATE

4.1 The date on which We confirm to You that You are Online Go Live is the Service Start Date.

5. DATA AVAILABILITY

5.1 We shall use reasonable endeavours to make available the Data and where relevant Your Other Data for each Metering Point from the relevant Service Start Date for a period of up to three (3) years from the day to which such Data relates during each Service Period.

6. EXCLUSIONS AND LIMITS

6.1 We do not warrant that Your use of the Online Services will be uninterrupted or error-free and You acknowledge and agree that the Online Services may not be available for planned or unplanned maintenance and testing and for failures beyond Our reasonable control (which include failures or delays to communications and the system hosting the website). We shall use reasonable endeavours to notify You in advance of any reason why the Online Services may be interrupted or otherwise not working.

6.2 We shall have no liability and shall not be deemed to be in breach of this Agreement if You cannot use the Online Services if there is Failure to Comply by You.

6.3 We accept no liability and shall not be in breach of this Agreement for any delay or non-performance if there is a fault with the Meter or any part of the Metering System not caused by Us, if the Data received is inaccurate or if the delay or non-performance is caused by Our inability to communicate with a Metering System or receive Data for any Metering Point or Site through no fault of Our own.

6.4 Save to the extent of any obligations We may have in respect of the Data in Our capacity as the Appointed Agent for any Agent Services:-

- (a) the Data and, where applicable, Your Other Data will be raw, non-validated data; and
- (b) We do not warrant that it will be accurate, complete or up-to-date; and
- (c) We shall have no responsibility for:-
 - (i) interpretation of the Data;
 - (ii) analysis or commentary on the content of the reports generated by the Online Services;
 - (iii) Your or any other person's reliance on it; and

(iv) the Data or the Online Services not meeting Your expectations.

7. MAXIMUM NUMBERS OF USERS

7.1 We shall provide You with sufficient passwords to enable the Maximum Number of Users of Your Personnel to access the Online Services. You shall not allow the Online Services to be accessed by more than the Maximum Number of Users of Your Personnel at any one time and You will not give Your password(s) to anyone other than Your Personnel. You shall all reasonable steps so as to prevent any unauthorised access to or use of the Online Services.

8. RESTRICTIONS ON USE

8.1 Except to the extent that may be permitted by this Agreement or by any applicable Law which is incapable of exclusion by this Agreement You shall not (and you shall not allow or assist any other person):-

- (a) reproduce, redistribute, use, store or download all or any part of the Online Services or any associated software or applications ; or
- (b) reverse compile, disassemble or reverse engineer or otherwise all or any part of the Online Services or the software or hardware that relates to it; or
- (c) transfer all or any part of the Online Services or the data obtained from them to any third party except to the extent permitted under paragraph 7.1; or
- (d) use or make available the On-line Services to provide services to third parties whether for commercial gain or otherwise, or to build a product or service which competes with the On-line Services; or
- (e) use the On-line Service in any manner that could interfere with Our or any other person's use and enjoyment of any services We provide to others.

8.2 You may transfer data obtained through

the Your use of the Online Services to Your professional advisors and Your Group Companies provided always that that transfer is:

- (a) for the purposes of obtaining advice or assistance from that person in relation to Your use of Energy; and
 - (b) only of that part of the data that is necessary to obtain that advice.
- 8.3 In addition to our rights and remedies under this Agreement, in the event of any breach by You or any other person of paragraphs 7 or 8 of this Schedule (**Unauthorised Use**) that You:
- (a) become aware of, You shall promptly notify Us and ask for Our consent for that Unauthorised Use. We may at Our absolute discretion permit the Unauthorised Use and if We do permit it, to the extent that We do, We may do so as Additional Services for Additional Charges: or
 - (b) either do not become aware of when You (acting as a reasonable economic operator) should have become aware of or that You become aware of but do not notify Us or ask for Our consent for such Unauthorised Use and We discover it, We assume each Unauthorised Use is an Additional Service and We shall charge You Additional Charges.

9. CHANGES

- 9.1 We may upgrade, modify, replace or reconfigure or change the way We provide the Online Services (including for example changing software, platforms or other systems which We or Our Personnel use to supply the Online Services) or We may need to change the Minimum IT Requirements (in each case an **Online Services Upgrade**) at any time provided always that We shall use reasonable endeavours to mitigate the impact on You or Your use of the Online Services. .
- 9.2 In the event any such Online Services Upgrade may impact the way that You or Your authorised Personnel use or interface with the Online Services then We shall notify You in a timely manner of the expected nature and extent of such impact.
- 9.3 If the Online Services Upgrade:
- (a) is or includes a change to the Minimum IT Requirements and following the Online Services Upgrade You will not be able to comply with the revised Minimum IT Requirements You may Cancel the Online Services and Condition 18.1 shall apply to such Cancellation; or
 - (b) has a material adverse impact on Your use of the Online Services but paragraph 9.3 (a) of this Schedule does not apply then either Party may Cancel the Online Services and the provisions of 16 (Termination No Fault) shall apply.
- For the avoidance of doubt an Online Services Upgrade shall not be a breach of the Agreement by Us and neither Party may terminate the Agreement except where the Online Services are the only Services provided under this Agreement. We shall have no liability to You for such Cancellation (or, where relevant, such termination).
- 9.4 In the event that You wish to change the functionality of the Online Services, You shall notify Us of the nature, type and extent of change that You seek to make. In the event that We consider that We are able to accommodate such a change, for example via an Online Services Upgrade, then You and We shall seek to agree appropriate amendments to this Agreement and/or Condition 9.2 shall apply. In the event no written agreement can be reached or We do not send to You an amended Part 3, no change to the Online Services shall be made and this Agreement shall continue to apply.

SCHEDULE 4 DEFINITIONS AND INTERPRETATION**1. DEFINITIONS AND RULES OF INTERPRETATION**

1.1 The following definitions apply in this Agreement:

Access

safe and unrestricted physical access to a place or item, including of adequate working space and such other welfare or other facilities as may be necessary for the person requiring Access. In this context, “safe” shall include, without limitation, the Party giving or procuring Access providing the proper environmental and operational conditions including identifying, monitoring, removing and disposing of any hazardous materials (including asbestos) and notifying the persons requiring Access of the same and providing notice of all health and safety rules and regulations and any reasonable security requirements that apply;

Accredited

formal industry licence and/or accreditation and/or certification of qualifications, systems and business processes in each case of a person including those required by Industry Agreements;

Additional Charges

either a) any charges relating to the Services under this Agreement other than the Charges; or b) charges for Additional Services, in each case the charges shall be the amount that either are agreed in advance or that We reasonably determine are current and applicable for the work and materials performed;

Additional Services

has the meaning set out at Condition 9 (Changes and/or Additional Services);

Agent Service

together or severally services as described in Industry Agreements provided by an Appointed DC, DA, MOP or MAP;

Appointed

an Accredited person appointed to a role by following a formal industry process including those roles and processes set out or referred to in Industry Agreements (**Appoint** and **Appointment** are interpreted accordingly);

Appointed Agent

a person Accredited and Appointed to provide an Agent Service;

Authority

the authority established by section 1 of the Utilities Act 2000;

BSC

the Balancing and Settlement Code designated by the Secretary of State with the approval of the Authority and which term shall include the Codes of Practice;

Business Day

any week-day other than public or bank holidays in England;

Cancel, Cancellation

to cancel or terminate a Service (but not terminate the Agreement);

Change in Practice

means: a) an amendment of any existing; or b) the introduction of any new in each case: Law, Industry Agreement, requirement of the Authority or of any Competent Authority and which affects or has potential to affect any of: the Charges (or the method or frequency of accrual or calculation), the Services, Your Site, Your Connection, Equipment, the Metering Systems, any Appointment, Your business or Our business;

Charges

the charges payable by You to Us as stated in Part 1 and Part 3 for each Service and where the context so requires, the expression “Charges” shall include together or severally Additional Charges and Termination Fees;

Continuing Services

any Services that We provide to You after the termination of this the meaning given in Condition 17.3;

Continuing Services Charges

the charges that You must pay for the Continuing Services which will be the same as the relevant Charges stated in Part 1 and 3 until the end of the Minimum Service Term and for any period thereafter, will be the amount that we determine from time to time (but which will be more than the Charges stated in Parts 1 and 3);

Competent Authority

includes any regional, national, federal, municipal, state or local government; any court of competent jurisdiction; any local, national or supra national agency, inspectorate, minister, official or public or statutory person (whether autonomous or not); or any statutory undertaker of or of the government of in each case the United Kingdom (or any part of it) or the European Union;

Conditions

has the meaning set out at Condition 2.1 (b):

Confidential Information

means:- a) for this Agreement, its provisions, the Charges, the fact that this Agreement exists and any other information relating to it; and b) the confidential affairs of You and Us in any form and which is made known to be confidential or would reasonably be considered to be confidential;

Connection or Connected

the physical requirements that are required as described in Industry Agreements being present so that Your Energy Supplier can supply You with Energy at a Metering Point

Connection Conditions

the terms and conditions that are described either in Your Supply Agreement or in Industry Agreements that You must meet in order for Your Energy Supplier to be able to supply Energy to any of Your Metering Points;

Continuing Services

has the meaning given in Condition 17.3;

Continuing Services Charges

the charges that You must pay for the Continuing Services which will be the same as the relevant Charges stated in Part 1 and 3 until the end of the Minimum Service Term and for any period after that, will be the amount that we determine from time to time (but which will be more than the Charges stated in Parts 1 and 3);

Contract Date means,

- (i) where Condition 3.6 does not apply, the date We specify as the Contract Date in Part 1 of this Agreement provided that if two dates are specified, the latter shall prevail, and if no

date is specified, the Contract Date shall be the date We signed this Agreement; or

- (ii) where Condition 3.6 applies, the date determined by that Condition.

Control

has the meaning given in s.1124 of the Corporation Tax Act 2010.

Data

any data recorded by a Meter at a Metering Point;

Data Aggregation Services (DA Services)

the services to be supplied by the Appointed Data Aggregator for Your Metering Points as more particularly described in: a) Industry Agreements; and b) where We are so Appointed PART B (DA Services) of Schedule 2 (Data Services);

Data Aggregator (DA)

a data aggregator is required under Industry Agreements and is Appointed to aggregate Data that it receives from Data Collector(s) for Energy consumption recorded at half-hourly meters at a metering point and which it then validates and sends to Your Energy Supplier for billing;

Data Collector (DC)

a data collector is required under Industry Agreements and is Appointed to collect, retrieve and process Data from Your half-hourly Meters at each Metering Point and sends it to the Appointed DA;

Data Collection Services(DC Services) the services to be supplied by the Appointed Data Collector for Your Metering Points as more particularly described in: a) Industry Agreements; and b) where You appoint Us as Your DC, PART A (DC Services) of Schedule 2 (Data Services) ;

Data Services

together or severally DC Services and/or DA Services;

De-appointed

in relation to an Appointed Agent, the cessation or expiry for any reason of the Appointment;

Energy

electricity or gas as applicable. The energy type is set out in Part 1 of this Agreement. HH and NHH refers to electricity;

Energy Supplier

a supplier of Energy licensed as an electricity supplier under the Electricity Act 1989 or as a gas supplier under the Gas Act 1986 and contracted to You to supply You with Energy to metering points at Your Site;

Equipment Your equipment which either You use in relation to the Services or which Our Services are dependent upon for You to Access them or to receive the benefit of them in each case which comply with Our minimum requirements (including compatibility with the Minimum IT Requirements) and which shall include modem, cabling or other equipment or Telecommunications or links in each case used or required for the purpose of permitting Data flows and/or remote communication with a Meter (or Third Party Meter);

Excluded Services

has the meaning set out at paragraph 12.2 of PART B (MOP Services) of Schedule 1 (Meter Services);

Force Majeure

any event or circumstance which is beyond either Our or Your reasonable control and which causes either Us or You respectively to fail to perform any of Our or Your respective obligations under this Agreement. Examples of force majeure include failure of plant or apparatus which could not have been prevented by Good Industry Practice; suspension, interruption or termination of transmission of Energy through any transmission or distribution network; any exercise of demand control pursuant to a Grid Code; any Act of Parliament or governmental restraint including a direction of the Secretary of State under sections 34(4) or 96 of the Electricity Act 1989 (or any similar direction given under an Act of Parliament); civil unrest, flood, lightning, wind or other extreme weather conditions, fire. Your inability to pay any Charges or other sums due and payable under this Agreement for any reason shall not be force majeure.

FM Notice

has the meaning set out in Condition 23.1;

Good Industry Practice the exercise of that degree of skill, diligence, prudence and foresight which could reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances as the context of this Agreement so requires;

Group Company

any party that directly or indirectly Controls, is Controlled by, or is under common Control with another entity.

Industry Agreements

a Supply Licence, the Gas Act 1986 or the Electricity Act 1989, the BSC, any use of system agreement, the Distribution, Connection and Use of System Agreement, the Electricity Safety, Quality and Continuity Regulations 2002, EU regulations relating to electricity including Energy market integrity and transparency (REMIT), the Electricity (Unmetered Supply) Regulations 2001, BSC Procedure 520, the Grid Code, the Distribution Code, a Transmission Licence, the Statement of the Use of System Methodology, MRASCO Working Practice 147, the MOCPA, the Smart Meter Installation Code of Practice, any Agent Services Appointment, any Connection Agreement, any legislation that impacts on the operation of the Energy market in the UK and any other standard electricity supply or gas supply (as applicable) industry documents or agreements, including in each case any replacements to them or changes that are made to those documents and/or that legislation after the Contract Date;

Intellectual Property Rights

any and all patents, trademarks, trade names, service marks, copyright, moral rights, rights in design, rights in databases, know-how, inventions or computer codes or all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to it;

Insolvency Event

means if either Party: a) takes any step or action in connection with: entering administration, liquidation (provisional or otherwise); or any composition or arrangement with creditors (other than for a solvent restructuring); or being wound up (whether voluntarily or by order of the court in each case unless for the purpose of a solvent restructure); or having a receiver appointed to any of that Party's assets; and/or if such the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; suspend or threaten to suspend or ceases or threatens to cease to carry on in each case all or a substantial part of that Party's business; or that Party's financial position deteriorates to such an extent that that Party's capability to adequately fulfil its obligations under this Agreement is (in the reasonable opinion of the other Party) placed in jeopardy

Law

means:- a) any statute, licence, regulation, law, treaty, rule, code, ordinance, regulation, Authorisation, interpretation, certificate or order of any Competent Authority, Industry Agreement; or b) any judgement, decision, decree, injunction, order or like action of any court, arbitrator or other Competent Authority, in each case any of which directly applies to or impacts the Meters, Metering Points, Energy consumed at the Site or measured via the Meters, the provision of the Services or to the operation by the You of Your business or the operation by Us of Our business;

Metering Point

the particular location on the Site where the Meter(s) is/are to be installed if set out in Part 1 or Part 3 or otherwise notified to Us in writing in a timely manner prior to the relevant Service Start Date;

MAP Services (Meter Asset Provision Services)

together or severally, the supply (by purchase or hire as set out in part 1) and delivery of the Meters at the Metering Points at the Sites as further described in PART A (MAP Services) of Schedule 1 (Metering Services);

Master Registration Agreement (MRA)

the multi-party agreement between all licensed Energy distribution businesses and Energy Suppliers that sets out terms for the provision of metering point

administration services and procedures for the change of Energy Supplier to any premise or metering point as amended and published from time to time;

meter

a device associated with a Metering Point for measuring Energy consumption together with such ancillary equipment and /or apparatus required so as to connect such device to Your Metering System(s) and excluding the Telecommunications.

Meter

meters of the nature, type, number and Meter Identifier as are identified in Part 1 and/or Part 3 which: a) where We are Your MAP, We are to supply to You as MAP Services; and/or b) meters that are to be Third Party Meters; and/or c) for Online Services (where We are not providing Meter Services or Data Services) the meters for which We are supplying those Online Services.;

Meter Asset Provider (MAP)

the Accredited person who supplies You (either by purchase or hire) with a new meter;

Meter Identifier

for a Metering Point, the unique reference number associated with the Meter at it and which will be either: a) Meter Point Administration Number (or MPAN, as defined in the Master Registration Agreement) if the Metering Point is connected to a distribution system; or b) Metering System Identifier (as defined in the BSC) if the Metering Point is connected to a transmission system;

Meter Operator (MOP)

a meter operator is required under Industry Agreements and is Appointed to install, commission, operate and maintain half-hourly Meters at each Metering Point;

Metering Services

together or severally: a) MAP Services; and/or b) MOP Services as indicated in Part 1 and Part 3 as being the subject of this Agreement and described further in Schedule 1 (Metering Services);

Metering System

Your meters, the Meters, the Third Party Meters, the Metering Points, the Connections, the Telecommunications and any ancillary equipment including all pipe work,

apparatus or other related equipment in Your possession and control and in each case which You use in relation to Your Energy supply including measuring and recording the flow of Energy and retrieving, collecting and/or aggregating Data for a Metering Point but which expression does not include: a) the Meters where We are supplying these as MAP Services until after they are installed by Us; or b) the Telecommunications where We are supplying this as MOP Services in each case under this Agreement;

Meter Operation Code of Practice Agreement (MOCPA)

the multi-party agreement between electricity meter operators and electricity distribution businesses which authorises meter operators to install and connect meters to the electricity network by clarifying that the equipment being provided, installed and maintained meets the appropriate technical requirements and that work is carried out to adequate safety standards as amended and published from time to time and which can be found at: <https://www.mocopa.org.uk/>;

Microbusiness

has the meaning given to "relevant consumer" (in respect of premises other than domestic premises) in article 2(1) of The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008 (S.I. 2008/2268).

Minimum IT Requirements

internet browsers: Internet Explorer versions 10 and above; Chrome 39 and above and Firefox 34 and above;

Minimum Service Term

for a Service, the minimum fixed period of time as set out in Part 1 of this Agreement or, where You have a Part 3, in Part 3 of this Agreement, and in each case which commences on the Service Start Date for that Service;

MOP Services (Meter Operator Services)

together or severally as the context so requires, the installation and maintenance of the Meters as further described in PART B (MOP Services) of Schedule 1 (Metering Services);

Online Service

means the provision of access to the configuration of the on-line services that You have selected and as shown in Part 1 or Part 3 and as We

may amend and vary from time to time;

Our Pre-Conditions

has the meaning set out at Condition 4.2;

Party

either You or Us;

Payment Due Date

has the meaning set out at either Condition 11.3 or 11.4 as the case may be;

Personnel

in relation You or Us, Our or Your respective personnel, directors, agents, sub-contractors and/or employees;

Private Network

any distribution network in whole or in part owned or operated by a distributor of electricity or gas (as applicable) who does not hold the relevant licence for the distribution of Energy under the Electricity Act 1989 or the Gas Act 1986;

Retail Price Index

the retail price index excluding mortgage interest payments and indirect taxes published in respect of each month by the Office for National Statistics;

Schedules

has the meaning set out at Condition 2.1 (c) and "Schedule" shall be construed accordingly;

Services

together and/or severally the supply of a) Data Services; b) Metering Services ; and/or c) Online Services;

Service End Date

in respect of a) MAP Services, the date of delivery of the Meter to the Metering Point; b) any other Service, the earliest date to occur on which either: (i) that Service is Cancelled or terminated under Condition 10 (Cancellation) or Condition 15 (Termination); or (ii) this Agreement is terminated under Condition 15 (Termination);

Service Period

in respect of each Service the period from and including the Service Start Date up to and including the Service End Date;

Service

Start Date for each Service, the date described as such in Part 1 of this Agreement or, where You have a Part 3, in Part 3 of this Agreement.

Sites

Your sites as identified in Part 1 and/or Part 3;

Small Claim

a dispute which would be allocated to the "Small Claims Track" under Part 27 of the Civil Procedure Rules as apply from time to time.

Supply Agreement

the contract You enter into with an Energy Supplier for a supply of the relevant form of Energy to Your Metering Points;

Supply Licence

a licence for the supply of electricity or gas granted to an Energy Supplier under the Electricity Act 1989 or the Gas Act 1986;

Telecommunications

the technology, data communication lines, network connections and telecommunications links and access from Your Metering System to Our data centres and that enables the remote retrieval of Data from a Meter in each case pursuant to minimum requirements and specification(s) prescribed by Us and/or by Industry Agreements and notified to You by Us from time to time;

Term

has the meaning set out at Condition 3.1;

Termination Fee

the charge We may make and You shall pay to Us where either Party Cancels a Service or terminate this Agreement and such charge shall be calculated for each Service as set out at and described as such in Condition 18 (Termination Fees).

Third Party Meter

means meters listed in Part 3 that are not supplied to You by Us as MAP Services under this Agreement and in relation to which You request Us to provide Services (other than MAP Services) under this Agreement. For the avoidance of doubt, this may include meters that are owned by You;

VAT

has the meaning set out in the Value Added Tax Act 1994;

Working Hours

the hours between 08:00-17:00 on a Business Day; and

Your Pre-Conditions

has the meaning set out at Condition 4.1.

1.2 The following rules of interpretation shall apply in this Agreement unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa, and the expression 'including' means without limitation;
- (b) in this Agreement a reference to any Industry Agreement or Law (or to any provision of any of them) is a reference to the version currently in force, taking account of any replacement, amendment, modification, extension or re-enactment that may happen from time to time. If any of the source documents or indices referred to in this Agreement are unavailable or cease publication it shall be substituted by alternative source documents or indices which as nearly as practicable achieves the same result.
- (c) references to either Party includes that Party's respective successors in title and/or respective permitted assigns;
- (d) if there is an inconsistency between any of the Conditions and the Schedules then the provisions in the Schedules shall prevail.
- (e) reference to writing or written includes e-mail save for the serving of notices referred to in this Agreement.

- (f) the amounts described in this Agreement as Termination Fees or any sum described as liquidated damages are agreed as representing a genuine pre-estimate of the likely losses which that Party would sustain in the events giving rise to the contractual payment of Termination Fees or such liquidated damages.
- (g) regardless of any other express provision in this Agreement, in circumstances where the level of any Termination Fee or liquidated damages payable pursuant to this Agreement is successfully challenged (or otherwise deemed in any judicial proceedings) as constituting a penalty or otherwise cannot be enforced against either You or Us as the case may be, You and We agree that Your or Our respective liability solely for the reasons which would otherwise have given rise to a payment of Termination Fees or liquidated damages will instead be for general damages at law and subject to the contractual exclusions and/or limitations of liability expressly set out in this Agreement.
- (h) subject to paragraph 1.2 (g) of this Schedule, the payment or deduction of Termination Fees or liquidated damages (or other damage pursuant to paragraph 1.2 (g) of this Schedule as the case may be) by You to Us pursuant to this Agreement is Our sole remedy and made in full satisfaction of Your liability to Us giving rise to the payment of such Termination Fee or liquidated damages but does not relieve You of Your other obligations in this Agreement nor prejudice Our rights to any relief or remedy to which We are or may become entitled under this Agreement and/or in consequence of any other breach of this Agreement by You.