

# ADVANCED METERING SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS For DATA SERVICES

## KEY TERMS SCHEDULE

This Agreement (which includes this Key Terms Schedule and the annexed Site List and Terms and Conditions) ("Agreement") sets out the terms on which BGlobal Metering Limited ("BGM") will provide the customer (the "Customer") with certain goods and services in respect of the sites set out in the Site List.

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## TERMS AND CONDITIONS

### 1 Definitions and interpretation

1.1 In this Agreement the following terms have the following meanings unless inconsistent with the context. Terms not set out in this clause shall have the meaning given to them in the Key Terms Schedule.

**"BSC"**

The Balancing and Settlement Code dated 14 August 2000 as may be amended from time to time;

**"Commencement Date"**

Means the date of this Agreement;

**"Confidential Information"**

Any and all know-how, documentation and information of a confidential or proprietary nature, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party, disclosed to or otherwise obtained or learned by the other party in connection with this Agreement;

**"Customer Client"**

Means a client of the Customer to whom the Customer supplies energy services and requests BGM to provide the Services;

**"Force Majeure Event"**

An event beyond a party's reasonable control including: (1) acts of terrorism, insurrection, riots, civil unrest and military action; (2) the exercise of powers by any local, regional or national governmental authority; (3) fire, flood, earthquake, storm and other natural disasters; (4) industrial action, strikes and lock-outs; (5) blockage or embargo; and (6) in the case of BGM, the failure or delay of supplies of power, fuel, transport, equipment, mobile or fixed telecommunications systems, internet or other goods and/or services (including any third party materials);

**"Intellectual Property Rights"**

All patents, trade marks, copyright, moral rights, database rights, semi-conductor topography rights, rights to prevent passing off, rights in designs, know how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world;

**"Law"**

Any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law in each case as may be amended, enacted, extended, replaced, modified, consolidated or repealed from time to time;

**"Meters"**

The meters referred to in the Site List;



**"Services"**

Means the provision of data services as described in clause 2 for each Site shown on the Site List;

**"Site List"**

The list of Customer Client Sites annexed to this Agreement as updated from time to time when new sites are agreed between the parties;

**"Sites"**

The sites as set out in the Site List;

**"Supplier"**

The Customer Client's relevant energy supplier for each Site from time to time; and

**"Working Day"**

A day other than a Saturday or Sunday or a day which is a public or bank holiday in England and/or Wales.

1.2 In this Agreement:

- 1.2.1 headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.2.2 any reference to a clause or a Schedule shall (unless expressly provided otherwise) be a reference to a clause of or a Schedule to this Agreement. The Schedules shall have the same force and effect as if set out in the body of this Agreement. In the event of conflict between the Key Terms Schedule, these terms and conditions and the Schedules, the Key Terms Schedule shall take precedence followed by these terms and conditions and then the Schedules (if any);
- 1.2.3 the words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context; and
- 1.2.4 any reference to a "party" shall mean either the Customer or BGM as the context requires and references to "parties" shall mean both of them.

2 **Data Services**

- 2.1 In respect of each Meter, BGM shall make available to the Customer via a web interface, reports showing the energy usage profile of each Meter together with tools to analyse energy consumption patterns and costs ("**Reports**"). The Reports will normally be updated each month within one Working Day of data being uploaded from the Meter although subject to an additional charge Reports can be updated daily. BGM shall not be obliged to make available Reports that are older than two (2) years, when applicable.
- 2.2 In order to access the Reports, BGM shall supply the Customer with a User ID and password. If Customer reasonably requires additional User IDs/passwords these will be provided at additional cost, when applicable.
- 2.3 The Customer shall ensure that:
  - 2.3.1 in its use of the web service, it shall not place unreasonable demands on BGM's computer system by, for example, making an unusually large number of requests; and
  - 2.3.2 the User ID and passwords provided to it are kept confidential.

BGM may suspend, either temporarily or permanently, a User ID and/or access to BGM's web service if it reasonably apprehends that Customer use of the web service is not in accordance with this Agreement or would or might jeopardise BGM's computer systems.

3 **Conditions Precedent**

- 3.1 This Agreement is in all respects conditional on:
  - 3.1.1 the appointment of BGM by the Customer Client's Supplier as the Non Half-Hour Data Collector or Non Half-Hour Data Retriever in respect of each Meter; and



3.1.2 the appointment of BGM by the Customer Client's Supplier as the Non Half-Hour Meter Operator in respect of each Meter.

3.2 If at any time during the term of this Agreement any of the conditions in clause 3.1 are not satisfied for a Meter(s), BGM may terminate this Agreement with immediate effect by notice in writing with respect to the relevant Meter(s).

#### 4 Charges

4.1 Payment of the one off Charge for backdated data shall be due in full within thirty (30) days of the Customer's receipt of BGM's invoice in respect thereof.

4.2 Invoices for the Annual Fees will be issued annually by BGM to the Customer for Sites included on the Site List. The first invoice will be issued on the Commencement Date and subsequent invoices will be issued on each anniversary of the Commencement Date. Whenever new Sites are added after the Commencement Date, an invoice will be issued in respect of those new Sites at the end of the month in which they have been added to the Site List. The charges in respect of the initial Annual Fees for these new Sites will be calculated on a monthly pro-rata basis to cover the period ending on the anniversary of the Commencement Date.

4.3 The Charges in respect of the Annual Fees are due annually in advance and shall be paid by the Customer within thirty (30) days of receipt of BGM's invoice by BACS to the account of BGM at a bank to be nominated in writing by BGM.

4.4 Unless stated otherwise, all amounts expressed in this Agreement as being payable by the Customer are expressed exclusive of any Value Added Tax (or any other duties or taxes) which may be chargeable and which shall be paid in addition at the rate for the time being prescribed by law.

4.5 Without prejudice to any other rights it may have under law or otherwise, if full payment is not received by BGM by the due date for payment then in addition to any other rights it may have, it may suspend the provision of the Services.

4.6 BGM shall be entitled to increase the Charges in respect of the Annual Fees each 12 month period from the first anniversary of the Commencement Date (the "Relevant Date") by giving not less than twenty eight (28) days notice. The annual percentage increase shall be no greater than the percentage change in the Retail Prices Index since the last increase (or if no such increase, since the Relevant Date) plus two percent (2%), where "**Retail Prices Index**" means the retail prices index (all items) published by National Statistics or if such index is no longer published, the most nearly equivalent index published by National Statistics or the most nearly equivalent successor body to National Statistics.

4.7 BGM shall be entitled to increase the Annual Fee at any time where a Specific Change in Law occurs. For the purposes of this clause a Specific Change in Law shall mean a change in Law that relates specifically to the Services provided by BGM.

#### 5 Warranties and Customer obligations

5.1 BGM warrants that it:

5.1.1 has full capacity and authority to enter into this Agreement;

5.1.2 has any necessary licences, registrations and authorities that are required to be held by it for the proper performance of its obligations under this Agreement;

5.1.3 shall carry out the Services in compliance with Law and industry regulation applicable to it; and

5.1.4 shall perform the Services with reasonable care and skill.

5.2 Customer warrants that it:

5.2.1 has full capacity and authority to enter into this Agreement; and



- 5.2.2 has any necessary consents and licences perform its obligations under this Agreement and to allow BGM to provide the Services.
- 5.3 The Customer shall:
  - 5.3.1 make available to BGM such information and assistance as may be reasonably required by BGM to enable BGM to perform the Services in accordance with the terms of this Agreement;
  - 5.3.2 procure that the Customer Clients grant BGM and its employees, agents and sub-contractors such access to the Sites as is necessary for BGM to carry out its obligations under this Agreement;
- 5.4 All warranties, conditions, obligations or terms which are implied into this Agreement by statute, custom or at law (including, without limit, any conditions of fitness for purpose or relating to satisfactory quality) are excluded to the fullest extent permitted by law.

## 6 Intellectual Property Rights

- 6.1 BGM is and shall remain the legal and beneficial owner of all Intellectual Property Rights in any equipment, software, databases and database structures used to provide any part of the Services, in each case, from time to time, and in any other forms, manuals, records or other documentation, however recorded, provided by BGM to the Customer in connection with this Agreement.
- 6.2 The Customer shall notify BGM immediately if it becomes aware of any unauthorised access to, use of, copying of, all, or, any part of the BGM's Intellectual Property Rights by any third party.

## 7 Confidential Information

- 7.1 BGM and the Customer agree:
  - 7.1.1 to keep confidential all Confidential Information of the other (whether written or oral) which they have obtained or received as a result of the discussions leading up to or the entering into or which they obtain or receive in performance of, this Agreement;
  - 7.1.2 not to disclose the Confidential Information of the other in whole or in part to any third party without the other's prior written consent, save to those of their agents and sub-contractors involved in the implementation of the Agreement and who have a need to know the same and are bound to keep it confidential; and
  - 7.1.3 to use the Confidential Information of the other solely in connection with the performance of the Agreement and not otherwise or for the benefit of any party.
- 7.2 The provisions of clause 7.1 shall not apply to the whole or any part of the Confidential Information which is:
  - 7.2.1 in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this Agreement or any other obligations of confidentiality; or
  - 7.2.2 or was lawfully received from a third party not under an obligation of confidentiality; or
  - 7.2.3 required to be disclosed under operation of Law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required).
- 7.3 The restrictions contained in this clause 7 shall continue to apply after the termination of this Agreement without limit in time.
- 7.4 During the Term of this Agreement, BGM shall not offer Services directly to any Customer Client Sites included on the Sites List but nothing in this Agreement shall prevent BGM from offering Services to Customer Clients after they have been removed from the Site List because they have ceased to be customers of the Client for any reason.



## 8 Liability

- 8.1 Subject to clauses 8.3 and 8.4, BGM's total aggregate liability to the Customer during the term of this Agreement in respect of damage to tangible property arising from any act, event, omission or circumstance (including negligence) shall not exceed £500,000 in aggregate.
- 8.2 Subject to clauses 8.3 and 8.4, BGM's total aggregate liability (other than for any liability which falls within clause 8.1) to the Customer in any Year in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed the greater of all Charges paid or to be paid under this Agreement in such Year by the Customer to BGM and £100,000 (one hundred thousand pounds). For the purpose of this clause 8.2, "Year" means the period of 12 months starting on the Commencement Date and each subsequent period of 12 months starting on each anniversary of the Commencement Date (including any shorter period ending upon the date of termination or expiry of this Agreement in its entirety).
- 8.3 Subject to clause 8.4, BGM shall not be liable for any loss of profit, goodwill, anticipated savings, business opportunity, data, use of data, injury to reputation, third party losses or for any indirect, consequential or special loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether it knew or had reason to know of the possibility of the loss, damage or injury in question.
- 8.4 Nothing in this Agreement shall exclude either party's liability for:
- 8.4.1 death or personal injury resulting from negligence;
  - 8.4.2 fraud or fraudulent misrepresentation;
  - 8.4.3 damage suffered by the other party as a result of any breach by the other party of the conditions as to title and quiet enjoyment implied by English law;
- or for any other liability the exclusion or limitation of which is not permitted by English law.
- 8.5 The Customer shall indemnify BGM against all fines, penalties and liabilities arising in respect of any non-compliance or contravention of any Law with which the Meters or the Customer is required to comply and for which BGM is not responsible under the terms of this Agreement.

## 9 Term and termination

- 9.1 This Agreement shall commence on the Commencement Date and shall (subject to earlier termination pursuant to this clause 9) continue in relation to each Site for the relevant Initial Term and thereafter until terminated in relation to each Site by either party serving not less than three (3) months' notice, such notice to expire at the end of the Initial Term or any anniversary of the end of the Initial Term. This Agreement shall terminate automatically once there are no Sites in respect of which the Services are being provided.
- 9.2 Each party shall be entitled to terminate this Agreement immediately upon written notice to the other if:
- 9.2.1 the other commits a material breach of this Agreement and, where the breach is capable of remedy, has failed to remedy such breach within thirty (30) days of written notice requiring remediation;
  - 9.2.2 the other makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or otherwise;
  - 9.2.3 the other ceases or threatens to cease to carry on business; or
  - 9.2.4 the other reasonably apprehends that any of the events specified in clauses 9.2.2 to 9.2.3 inclusive is about to occur in relation to the other and notifies the other accordingly.



9.3 Subject to Clause 10.2, the Customer may terminate this Agreement in respect of any Site or Sites during the Initial Term upon not less than 3 months' prior written notice to BGM.

## 10 Consequences of termination

10.1 On termination of this Agreement (or termination of this Agreement in so far as it relates to a Site), for whatever reason:

10.1.1 all rights granted to the Customer under this Agreement in respect of the relevant Sites shall cease;

10.1.2 BGM shall immediately cease to provide the Services at the relevant Sites the Customer shall immediately pay to BGM any sums due to BGM under this Agreement in respect of the relevant Sites (outlined in 10.2);

10.1.3 the Customer shall take all steps necessary to deregister BGM as the provider of the Services in respect of the relevant Sites under the BSC.

10.2 Where this Agreement is terminated in respect of a Site prior to the end of the Initial Term either by the Customer pursuant to clause 9.3 or by BGM pursuant to clause 9.2, the Customer shall pay a termination fee as follows; £28 per MPAN if terminating the agreement between 1 year and 2 years from commencing the delivery of the Services for the relevant MPAN, £21 per MPAN if terminating the agreement between 2 years and 3 years from commencing the delivery of the Services for the relevant MPAN, £14 per MPAN if terminating the agreement between 3 years and 4 years from commencing the delivery of the Services for the relevant MPAN, £7 per MPAN if terminating the agreement between 4 years and 5 years from commencing the delivery of the Services for the relevant MPAN.

10.3 Upon any termination of this Agreement, each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of this Agreement (including, under clauses 6, 7, 8 and 10) shall survive any termination or expiration of this Agreement.

## 11 Force Majeure

11.1 Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to a Force Majeure Event.

11.2 If a party's performance of its obligations under this Agreement is affected by Force Majeure Event:

11.2.1 it shall give written notice to the other party, specifying the nature and extent of the Force Majeure Event, promptly on becoming aware of the Force Majeure Event and will at all times use its reasonable endeavours to mitigate the severity of the Force Majeure Event;

11.2.2 subject to the provisions of clause 11.3 the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event; and

11.2.3 it shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.

11.3 If the Force Majeure Event in question continues for more than three (3) months the party not subject to the Force Majeure Event may give notice in writing to the other to terminate this Agreement. This notice to terminate must specify the termination date, which must not be less than 15 (fifteen) days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.

## 12 General

12.1 The Customer may not assign, transfer, mortgage, charge, sub-contract, sub-license or otherwise dispose of the whole or any part of this Agreement without the prior written consent of BGM.



- 12.2 No variation of or amendment to this Agreement shall be effective unless made in writing and signed by authorised representatives of the parties.
- 12.3 The rights and remedies available to the parties under this Agreement shall not limit or exclude any other right and/or remedies that either party may have against the other.
- 12.4 Except as expressly provided for in this Agreement, neither party shall have any right of set-off against the other.
- 12.5 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.
- 12.6 Any notice or written communication given under or in relation to this Agreement shall be given in writing and shall be delivered by hand or sent by special delivery post in permanent form to the other party at its address set out in the Key Terms Schedule or to such other address as it has previously notified to the sending party in writing. Any such notice or written communication shall be deemed to have been served when actually received or, if sent by special delivery mail and returned marked "gone away" or to the like effect, on return of such special delivery mail.
- 12.7 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 12.8 Nothing in this agreement shall confer any right or benefit upon any person who is not a party to it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 12.9 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter. Each party acknowledges that in entering into this Agreement it has not relied upon, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other party in relation to the subject-matter of this Agreement, except for those rights and remedies available under this Agreement
- 12.10 The relationship of parties shall be that of independent contractor and nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between BGM and the Customer.
- 12.11 This Agreement is governed by English Law. The parties accept the exclusive jurisdiction of the English courts in relation to any dispute (and any non-contractual disputes and claims) arising under or in connection with this Agreement.

