

ADVANCED METERING SOLUTIONS AND SERVICES AGREEMENT
STANDARD TERMS AND CONDITIONS
for HALF HOURLY DATA COLLECTION AND DATA AGGREGATION
KEY TERMS SCHEDULE

KEY TERMS OF 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 Services in respect of the CoP 2, CoP 3, CoP 5 and CoP 10 sites set out in the Site List where BGM is appointed as the Data Collector and/or Data Aggregator (as the case may be) but is not the appointed Meter Operator.

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.

"Active Energy"

means the electrical energy produced, flowing or supplied by an electric circuit during a time interval, being the integral with respect to time of instantaneous Active Power, measured in units of watt-hours or standard multiples thereof;

"Active Power"

means the product of voltage and the in-phase component of alternating current measured in units of watts and standard multiples thereof, that is:

1000 Watts = 1 kW

1000 kW = 1 MW

"Agent Appointment Data"

means in respect of any relevant Meter, the identity and date of appointment of the Data Collector and the Data Aggregator;

"BSC"

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

"BSC Year"

each successive period of 12 months beginning on 1st April in each year;

"Code of Practice"

means a code of practice relating to Metering Equipment or any part or class thereof;

"Commencement Date",

means the date of this Agreement;



"Communications Equipment"

means in respect of any Metering Equipment the terminating equipment (which may include a modem) necessary to convert data from such Metering Equipment into a state for transmission to the Data Collector;

"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;

"Daily Data"

means the provision of half hourly energy data on a working day + 1 basis.

"Data"

means all records and statistics and other data generated by BGM and then provided to Customer's supplier as a result of the Services, including all data received by BGM from other parties;

"Data Aggregator"

means the qualified person appointed by the Supplier to act as a Data Aggregator as that role is described in the BSC;

"Data Collector"

means the qualified person appointed by the Supplier to act as a Data Collector as that role is described in the BSC;

"Data Flow"

means one of the data flows defined in the Data Transfer Catalogue;

"Data Transfer Catalogue"

means the catalogue of data flows, data definitions and data formats as annexed to the Master Registration Agreement;

"Distribution Business"

means companies licensed by OFGEM to run the wires business that deliver electricity to homes and businesses in Great Britain;

"Elexon"

means the organisation of that name described by the BSC;

"Exemptible Generating Plant"

means generating plant which is exemptible in accordance with the BSC;

"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);

"Half Hourly"

has the meaning given to that term in the BSC procedures;



“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;

"MAR"

means meter advance reconciliation, the process of reconciling half hourly energy values with meter advances as described in BSCP502;

“Market Domain Data”

has the meaning given to that term in the BSC;

“Master Registration Agreement”

means the agreement of that name dated 1st June 1999, as amended at the date of this Agreement;

"Meter"

means a device for measuring Active Energy or Reactive Energy referenced in the Site List;

“Meter Operator”

means the qualified person appointed by the Supplier or, where applicable, the Customer, to provide Meter Operator Services as defined in the BSC procedures;

"Meter Technical Details"

means all technical details (including Outstation channel mapping) of commissioned Metering Equipment required to enable metered data to be collected and correctly interpreted from that Metering Equipment as referred to in BSCP502;

"Metering Equipment"

means Meters, measurement transformers (voltage, current or combination units), metering protection equipment including alarms, circuitry, associated Communications Equipment and Outstations and wiring;

"Metering Point"

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

“Metering System Record”

the database of Meters and the Services to be performed in respect thereof, which is prepared and maintained by BGM

"Outstation"

means equipment which receives and stores data from a Meter(s) for the purpose, inter alia, of transfer of that metering data to the Data Collector and which may perform some processing before such transfer and may be one or more separate units or may be integral with the Meter;

"Reactive Energy"

means the integral with respect to time of Reactive Power;



"Reactive Power"

means the product of voltage and current and the sine of the phase angle between them, measured in units of voltamperes reactive and standard multiples thereof;

"Reconciliation Run"

has the meaning given to that term in the BSC;

"Relevant Data"

means, in relation to any Service, the data to be passed between the Relevant Persons as set out in the BSC procedures and the Data Transfer Catalogue;

"Relevant Persons"

means, in relation to any Service, the persons to whom and by whom Relevant Data will be passed as set out in the BSC procedures and the Data Transfer Catalogue;

"SAA"

means the BSC Agent for Settlement Administration in accordance with Section E of the BSC;

"Services"

the Data Services referred to in **clause 2**, the Settlement Services referred to in **clause 3** as applicable and as set out in the Site List;

"Settlement Calendar"

means, in relation to a BSC Year, the calendar prepared and issued by the SAA in accordance with the BSC;

"Settlement Day"

means the period from 00:00 hours to 24:00 hours on each day;

"Settlement Run"

has the meaning given to that term in the BSC;

"Site List"

the list of 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;

"SMRS"

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

"SMRS Standing Data"

means the metering information held from time to time in SMRS;

"Standing Data"

means all data received and retained by BGM in respect of any Meters from time to time and shall include: (a) Market Domain Data, (b) SMRS Standing Data, (c) Agent Appointment Data, and (d) Metering Point configuration and status data;

"Supplier"

the Customer's relevant energy supplier for each Site from time to time;

"Supplier Volume Allocation Agent"

has the meaning given to that term in the BSC procedures;



"Web Service"

the provision by BGM of the BGM website to enable the Customer to access Data;

"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 For Energy Management Purposes

2.1 Following the successful appointment as HHDC by the Customer's Supplier, BGM shall make available to the Customer the Web Service. BGM shall provide via the Web Service 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 on a Working Day + 1 basis from the relevant Meter in respect of Daily Data provision and in respect of Monthly Data, within three Working Days of the last day of the relevant Month. BGM shall not be obliged to make available Reports that are older than two (2) years.

2.2 In order to access the Reports, BGM shall supply the Customer with a User ID and password. If the Customer reasonably requires additional User IDs/passwords these will be provided at additional cost.

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 the Customer's use of the Web Service is not in accordance with this Agreement or would or might jeopardise BGM's computer systems.



3 Settlement Services

3.1 Data Collection:

- 3.1.1 When notified by the Customer's Supplier of its appointment as Data Collector in respect of a Meter, BGM shall amend the Metering System Record accordingly and pass all Relevant Data to all relevant persons in accordance with the BSC procedures, using the relevant data flows. *(Note: In order to control and manage appointments on behalf of the Customer, BGM will liaise with the Customer's Supplier and agree valid Contract References, Service Reference and Service Level References, as defined in the Data Transfer Catalogue, and BGM will only accept appointments made using such valid agreed references)*
- 3.1.2 BGM as Data Collector shall pass either: Data Flow D0011 to the Customer's Supplier; or notify the Customer's Supplier that it rejects the Customer's Supplier's appointment, within 2 Working Days after receiving Data Flow D0155 from the Customer's Supplier. BGM as Data Collector shall pass all other Relevant Data to all Relevant Persons as soon as reasonably practicable.
- 3.1.3 When notified by the Customer's Supplier of its de-appointment as Data Collector in respect of a Meter, BGM shall pass all Relevant Data to all Relevant Persons in accordance with the BSC procedures using the relevant Data Flows, and, having done so, amend the Metering System Record accordingly. BGM as Data Collector shall pass all Relevant Data to all Relevant Persons within 10 Working Days after receiving Data Flow D0170 from the Customer's Supplier.
- 3.1.4 BGM as Data Collector will attempt to retrieve data from all relevant Meters on a daily basis in accordance with the reading cycle specified in **Table 1** below. *(Note: for this purpose, "attempt to read" means that BGM as Data Collector has either successfully retrieved data or made a minimum of 2 unsuccessful attempts, including at least one during the immediately following working day, to dial up the Meter and retrieve the data using the contact details provided by the Meter Operator.)*
- 3.1.5 BGM as Data Collector will validate the data retrieved in accordance with BSCP502 and send to reach the Customer's Supplier in accordance with the provisions of this **clause 3.1**
- 3.1.6 If unable to retrieve data, or if the data is incomplete or fails initial validation or alarms are present, and the problem cannot be immediately rectified, BGM as Data Collector will notify the Meter Operator by creating and transmitting a D0001 within 2 Working Days.
- 3.1.7 Where BGM as Data Collector has reasonable grounds for believing that a remote communications problem which is preventing the retrieval of Data will not be rectified in time for the Relevant Data to be retrieved remotely, processed, aggregated and submitted to the Supplier Volume Allocation Agent in time for inclusion in the relevant Settlement Runs, BGM as Data Collector will, in consultation with the Customer's Supplier, initiate local collection of the data in time for it to be retrieved, processed, aggregated and submitted to the Supplier Volume Allocation Agent within the appropriate timescales. A charge will be payable by the Customer for this Service in accordance with the Charges shown in the Key Terms Schedule.
- 3.1.8 Whenever a Meter is flagged as de-energised, BGM as Data Collector will read the Meter at intervals in accordance with PSL 100 (or any replacement standard) and, if any consumption is detected, will notify the Customer's Supplier within 2 Working Days of data retrieval. BGM as Data Collector will also validate and pass the data to the Data Aggregator within 2 Working Days of data retrieval.



- 3.1.9 Whenever Data is received from other parties, such as the previous Data Collector or from a Meter Operator, BGM as Data Collector will, except for data received from another Qualified Data Collector, validate this data on receipt in accordance with BSCP502 and notify the sender of any inconsistencies.
- 3.1.10 In accordance with BSCP502, following the initial validation BGM as Data Collector will send validated Data (Data Flow D0275 or D0036) to reach the Customer's Supplier in accordance with this Agreement.
- 3.1.11 BGM as Data Collector will generate and send outstanding validated Data (Data Flow D0275 or D0036) (including estimates for missing data) to reach the Customer's Supplier in accordance with this Agreement.
- 3.1.12 BGM as Data Collector will generate and send validated Data (Data Flow D0275 or D0036) for updates to reach the Customer's Supplier in accordance this Agreement.
- 3.1.13 BGM as Data Collector will send cumulative register Meter readings (Data Flow D0010) (as required) to the Customer's Supplier on the same timescale as the validated Data.
- 3.1.14 BGM as Data Collector will send estimated Half Hourly Data Reports (Data Flow D0022) to the Customer's Supplier in accordance with the timescale specified in **Table 1** below.
- 3.1.15 BGM as Data Collector will report the status of all problems considered to be material or potentially material to the Customer's Supplier on a weekly basis, including details of new problems notified to the Meter Operator and problems reasonably considered to be resolved within the relevant period, together with the relevant dates and times (if available).
- 3.1.16 BGM as Data Collector will send validated data together with estimated data for all missing periods (estimated in accordance with BSCP502) to reach the Data Aggregator in accordance with the timescale specified in **Table 1** below.
- 3.1.17 BGM as Data Collector will send the data required for DUOS billing purposes to the relevant Distribution Business in accordance with the timings specified for the relevant Meter in accordance with the standards of service set out in this **clause 3.1**.
- 3.1.18 When reasonably requested to do so by another party, BGM as Data Collector will re-send any Data as soon as reasonably practicable following such request, having first corrected any errors therein. A Charge may be payable for this Service in accordance with the Key Terms Schedule where the requirement for the Data to be re-sent is not due to a failure or error by BGM acting as Data Collector.
- 3.1.19 BGM as Data Collector will undertake a site visit with the purpose of obtaining the readings from the prime registers where required in accordance with the BSC.
- 3.1.20 Having obtained the readings of the prime registers, BGM as Data Collector will perform the checks specified by the BSC procedures and, having done so, will communicate to all relevant parties any discrepancies identified and initiate appropriate processes for investigation to be undertaken with the aim of achieving resolution.
- 3.1.21 BGM as Data Collector will produce MAR confirmation, failure and overdue reports on a monthly basis for the Customer's Supplier and the relevant Distribution Business, in respect of the relevant Meters, in accordance with the requirements of the BSC procedures.
- 3.1.22 Whenever actual or estimated data is subsequently found to be inaccurate, BGM as Data Collector will substitute accurate data or another estimate deemed to be more appropriate



and submit this to the Data Aggregator in time to be included in the initial Settlement Run if practicable or otherwise the next reconciliation Settlement Run.

- 3.1.23 When BGM is notified by the Customer's Supplier of its appointment as Data Collector for a Meter where the measurement class is being changed from NHH to HH, BGM as Data Collector will receive Metering Technical Details and start readings and send all Relevant Data to all Relevant Persons. *(Note: that for the day of the change, consumption for the half hour periods up to the time of the change are set to zero)*
- 3.1.24 When BGM is notified by the Customer's Supplier of its de-appointment as Data Collector for a Meter for which the measurement class is being changed from HH to NHH, BGM as Data Collector will arrange with the NHH Meter Operator for BGM to extract the final data. *(Note that for the day of the change consumption for the half hour periods after the time of the change are set to zero)*
- 3.1.25 Whenever requested by the Meter Operator (or the Customer's Supplier), BGM as Data Collector will, within 3 Working Days of the request in respect of those Meters with remote collection, confirm that the communication system allows the collection of data from the Meter and communicate the results to the Meter Operator; and within 8 Working Days of the request in respect of those Meters with local collection visit the Site and confirm that Data can be collected with a hand-held unit, then communicate the results to the Meter Operator; and identify any discrepancies and initiate appropriate processes for an investigation to be undertaken with the aim of achieving resolution.
- 3.1.26 BGM as Data Collector will, on an annual basis in respect of poly-phase metering and on a two-yearly basis in respect of single phase Meters, undertake a Site visit to perform the checks required by the BSC in respect of revenue protection and safety related matters. These visits may be undertaken at the same time as other Site visits.
- 3.1.27 Whenever visiting a Site, BGM as Data Collector will check items detailed in BSC Procedure BSCP502 and provide a report to the relevant Distribution Business, Meter Operator or the Customer's Supplier as appropriate.
- 3.1.28 BGM as Data Collector will provide Data to Elexon within 20 days of the end of the relevant month for Performance Assurance Reporting and routine Performance Monitoring Reports (both terms having the meaning ascribed to them in the BSC).
- 3.1.29 When requested by the Customer's Supplier to provide information to meet a request from Elexon for supporting information in relation to Performance Monitoring Reports (i.e. data from which the Reports are derived), BGM as Data Collector will advise the Customer's Supplier within 5 Working Days of the feasibility and timescale for providing the information requested and provide the information as soon as reasonably practicable.



Table 1: Provision of data

Category Measurement Class C (Standard 100KW+ HH) & Measurement Class E (Elective HH)	Retrieval frequency and Customers Supplier data flow timing	Retrieval frequency and Distribution data flow timing	Data Aggregator data timing
Daily remote collection of half hourly sites (inc. Paknet) and sending of active data (D0036*, D0275*)	Daily retrieval, flow timing per Customers Supplier requirements as agreed between parties	Daily retrieval, flow timing per Distribution Business requirements	By 09.00 on Settlement Day +12
Daily remote collection of half hourly sites (inc. Paknet) and sending of reactive data (D0036*, D0275*)	Daily retrieval, flow timing per Customers Supplier requirements as agreed between parties	Daily retrieval, flow timing per Distribution Business requirements	By 09.00 on Settlement Day +12
Daily remote collection half hourly sites (inc. Paknet) and sending of estimated data (D0036*, D0275*, D0022)	Flow timing per Customers Supplier requirements as agreed between parties	Flow timing per Distribution Business requirements (by 9a.m on settlement day +5)	By 09.00 on Settlement Day +12
* Customer's Supplier to confirm whether D0036 or D0275 is required			

3.2 Data Aggregation:

- 3.2.1 When notified by the Customer's Supplier of its appointment as Data Aggregator in respect of a Meter, BGM as Data Collector shall, if it accepts the appointment, amend the Metering System Record accordingly and pass all Relevant Data to all Relevant Persons in accordance with the BSC procedures, using the relevant Data Flows. *(Note: In order to control and manage appointments on behalf of the Customer, BGM will liaise with the Customer's Supplier and agree valid Contract References, Service Reference and Service Level References, as defined in the Data Transfer Catalogue, and BGM will only accept appointments made using such valid agreed references)*
- 3.2.2 BGM as Data Aggregator shall pass either: Data Flow D0011 to the Customer's Supplier or notify the Customer's Supplier that it rejects the Customer's Supplier's appointment, within 2 Working Days after receiving Data Flow D0155 from the Customer's Supplier. BGM as Data Aggregator shall pass all other Relevant Data to all Relevant Persons as soon as reasonably practicable.
- 3.2.3 When notified by the Customer's Supplier of its de-appointment as Data Aggregator in respect of a Meter, BGM shall pass all Relevant Data to all Relevant Persons in accordance with the BSC procedures using the relevant Data Flows, and, having done so, amend the Metering System Record accordingly.
- 3.2.4 On receipt of Standing Data, BGM as Data Aggregator shall pass all Relevant Data to all Relevant Persons in accordance with the BSC procedures using the relevant Data Flows and shall: (a) review the Standing Data to assess its internal consistency and its consistency with Standing Data already held; (b) store the reviewed and correct Standing Data for use in subsequent processing; and (c) advise all Relevant Persons of inconsistencies or errors which it suspects are contained in the Standing Data.



- 3.2.5 BGM as Data Aggregator shall act as a Qualified Half Hourly Data Aggregator (as that role is described in the BSC) and fulfil all the obligations of an Half Hourly Data Aggregator in accordance with the BSC and the BSC procedures.
- 3.2.6 BGM as Data Aggregator will provide files of aggregated half hour Data for all relevant Meters for each initial Settlement Run and each Reconciliation Run in such a manner that the files are received by the Customer's Supplier Volume Allocation Agent and the Customer's Supplier before the deadline set out in the Settlement Calendar.
- 3.2.7 BGM as Data Aggregator will send a copy of the aggregated Half Hourly Data files submitted to the Supplier Volume Allocation Agent for each initial Settlement and Reconciliation Run and the related D0235 (Half Hourly Aggregation Exception Report) to reach the Customer's Supplier by 09.00 on the 2nd Working Day following completion of the relevant aggregation run and despatch of the Data to the Supplier Volume Allocation Agent.
- 3.2.8 Where required, BGM as Data Aggregator will process the Data from nominated export Meters associated with the Exemptible Generating Plant and carry out all other relevant functions associated with such Meters.

4 Charges

- 4.1 The Charges shall be paid 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.
- 4.2 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.
- 4.3 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.
- 4.4 BGM shall have the right to apply revised charges on the 1st of April each year by serving three months written notice to the Customer. The revised charges shall be calculated in accordance with the following formula:

$RC = C + (C \times I)$ where:

"RC" shall be taken to mean the revised charges per annum

"C" shall be taken to mean existing charges per annum

"I" shall be taken to mean the value of the Relevant Index expressed as a percentage for the Relevant Period; and where: the Relevant Index shall be taken to mean the "All Items Retail Prices Index (RPI) Percentage Change over 12 Months (Inflation) Table (RP04)" as published by the Office of National Statistics (reference www.statistics.gov.uk); and where: the Relevant Period shall be taken to mean the annual period prior to which the notice of the revised charges is prepared.

- 4.5 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 4.5** 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 (and procure that its Suppliers shall) 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 hereby grants 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** 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.

8 Liability

- 8.1 Subject to **clauses 8.3 and 8.4**, BGM's total 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 date hereof and each subsequent period of 12 months starting on each anniversary of the date hereof (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 date hereof and, in relation to each Site, shall (subject to earlier termination pursuant to this **clause 9**) continue in relation to such Site for the relevant Initial Term and thereafter until terminated in relation to such Site by either party serving not less than three (3) months' notice, such notice to expire at the end of the applicable Initial Term or any anniversary of the end of the relevant 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 and 9.2.3** 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 applicable to such Site(s) upon not less than three (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 except where it is acting as Data Collector in respect of any MPAN in which case this Agreement shall continue in respect of such activities until such time as BGM is de-appointed;

10.1.3 the Customer shall immediately pay to BGM any sums due to BGM under this Agreement in respect of the relevant Sites;

10.1.4 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 relevant Initial Term either by the Customer pursuant to **clause 9.3** or by BGM pursuant to **clause 9.2**, the Customer shall pay all Charges in respect of the Site(s) in respect of which this Agreement has been terminated which



would have been payable for the remainder, if any, of the Initial Term but for termination less a discount of 10%.

- 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 a 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.

