

Energy Theft Tip-Off Line

Proposed DCUSA Legal Drafting

Amend Clause 1 as follows:

"Energy Theft Tip-Off Service" means a service by which members of the public can report instances (or potential instances) of energy theft (including Theft of Electricity).

"ETTOS Contract" means each of the contracts from time to time between DCUSA Ltd and an ETTOS Service Provider for provision of the Energy Theft Tip-Off Service (which may be a tripartite contract to which SPAA Ltd is also party).

"ETTOS Contract Manager" means one or more persons appointed under contract from time to time by DCUSA Ltd (potentially jointly with SPAA Ltd) to administer and manage some or all of the ETTOS Contract (potentially jointly with the TRAS Contract) on behalf of DCUSA Ltd.

"ETTOS Liabilities" means all costs, charges, expenses, professional fees, fines, damages and other liabilities incurred under or in connection with the Energy Theft Tip-Off Service (including the ETTOS Contract), whether in contract, tort (including negligence), for breach of statutory duty or otherwise.

"ETTOS Service Provider" means the person or persons with which DCUSA Ltd contracts from time to time for provision of the Energy Theft Tip-Off Service (but excluding the Secretariat in its role as Secretariat and excluding the ETTOS Contract Manager).

"ETTOS Recipient" means each Supplier Party and each DNO/IDNO Party.

"ETTOS Service Data" means the materials, information and other data received by Recipients pursuant to the Energy Theft Tip-Off Service.

"Theft Risk Assessment Service Arrangements" means the arrangements for a theft risk assessment service and other related measures that the Supplier Parties are obliged to maintain pursuant to the Supplier Licences (but excluding the Energy Theft Tip-Off Service).

Amend Clause 5.3

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5.3.14 develop and give effect to the Theft Risk Assessment Service Arrangements (and the Panel shall have the power to delegate any or all of such arrangements to one or more third parties);

5.3.15 arrange for a Theft Assessment Calculator to be procured, maintained and made available to those Parties obliged to use it in accordance with Schedule 23, which calculator must provide a means for assessing unrecorded units in compliance with the requirements of Schedule 23, must be procured from and maintained by a person that is reasonably independent of the Parties, and may be procured jointly with those persons making equivalent arrangements for gas; and

5.3.16 contract for, and manage provision of, an Energy Theft Tip-Off Service, as described in Schedule [XX].

Amend Clause 8.9A as follows

8.9A In respect of the Recoverable Costs relating to the Theft Risk Assessment Service Arrangements and/or the Energy Theft Tip-Off Service (including their development), each Party's Cost Contribution (in respect of each Quarter) shall not be calculated in accordance with Clause 8.9 and shall instead:

8.9A.1 in the case of all Parties other than Supplier Parties (in their capacity as Parties other than Supplier Parties), be zero; and

8.9A.2 in the case of each Supplier Party (in its capacity as such), be calculated as follows:

$$SC = (N/TN) \times TRC$$

Where:

SC is the relevant Supplier Party's Cost Contribution in respect of that Quarter and the Recoverable Costs relating to the Theft Risk Assessment Service Arrangements and the Energy Theft Tip-Off Service;

N has the same meaning as in Clause 8.9;

TN has the same meaning as in Clause 8.9; and

TRC is the total amount of the Recoverable Costs relating to the Theft Risk Assessment Service Arrangements and/or the Energy Theft Tip-Off Service incurred, or otherwise accounted for, in that Quarter.

Amend Schedule 25, Appendix 1 as follows

- Amend paragraph 3.1 as follows - The TRAS Service Provider solution will accumulate energy usage and customer information, creating a history of activity for each meter point in Great Britain. The primary sources for such data will be the Consumption Files, input from the Energy Theft Tip-Off Service and investigation results data from Suppliers.
- Delete paragraph 3.8.

Add a new Schedule as follows

Schedule [XX]¹ – Energy Theft Tip-Off Service

1. Governance

- 1.1 The Panel shall establish a Working Group to oversee the Energy Theft Tip-Off Service. This may be the same Working Group as oversees the Theft Risk Assessment Service Arrangements. Such Working Group shall work in collaboration with the equivalent sub-committee constituted under the SPAA.

2. Funding

- 2.1 Subject to Paragraph 2.3, all ETTOS Liabilities incurred by DCUSA Ltd (howsoever arising) shall constitute Recoverable Costs to be paid by Supplier Parties pursuant to Clause 8.9A of the main body of this Agreement.
- 2.2 Where DCUSA Ltd contracts with the ETTOS Service Provider under a common arrangement with SPAA Ltd:
- (a) DCUSA Ltd may agree to be liable to the ETTOS Service Provider for up to 59% of the ETTOS Liabilities that arise in relation to electricity and gas (and to be responsible for 100% of the ETTOS Liabilities that relate exclusively to electricity); and
 - (b) notwithstanding Paragraph 2.2(a), DCUSA Ltd may agree to be jointly and severally liable with SPAA Ltd to the ETTOS Service Provider for the ETTOS Liabilities of SPAA Ltd; provided that SPAA Ltd agrees to reimburse DCUSA Ltd for the ETTOS Liabilities of SPAA Ltd to the extent funded by DCUSA Ltd.
- 2.3 Paragraph 2.1 shall not apply in respect of ETTOS Liabilities to the extent that DCUSA Ltd has a claim against another person in respect of such ETTOS Liabilities. Such other persons may include one or more of the ETTOS Service Provider, SPAA Ltd, the ETTOS Recipients, the Secretariat and/or the ETTOS Contract Manager. In

¹ The schedule will be added as the first available schedule at the time of implementation, and the DCUSA contents page will be updated to include reference to the new schedule.

such circumstances, DCUSA Ltd shall take all reasonable steps and proceedings to pursue and recover any amounts to which it is entitled from such other persons, unless and until the Panel determines (in consultation with Supplier Parties) that there is no reasonable prospect of success.

2.4 Notwithstanding Paragraph 2.3 and the existence of any claim referred to therein, pending the recovery of amounts pursuant to Paragraph 2.3, the ETTOS Liability in question shall constitute a Recoverable Cost (to be paid by Supplier Parties pursuant to Clause 8.9A), subject to subsequent reconciliation once any amount is recovered pursuant to Paragraph 2.3.

2.5 DCUSA Ltd shall take all reasonable steps to mitigate its ETTOS Liabilities.

3. Performance Assurance

3.1 The Panel may procure that the person appointed under paragraph 3 of Schedule 25 (Theft Risk Assessment Service) also produces a performance assurance report in respect of the Energy Theft Tip-Off Service. Such report shall be undertaken in accordance with the relevant requirements stipulated in the Supply Licences. For the avoidance of doubt, the costs incurred by the Panel in so doing will constitute ETTOS Liabilities.

4. Data Protection & Use of Data

4.1 The words and expressions in this Paragraph 4 that are not otherwise defined in this Agreement shall be interpreted in accordance with the Data Protection Act.

4.2 The obligations of the ETTOS Service Provider in respect of the Processing of Personal Data are dealt with in Paragraph 7.4.

4.3 In respect of the ETTOS Service Data, each ETTOS Recipient undertakes to only Process that data:

- (a) in accordance with Good Industry Practice;

- (b) in accordance with the Data Protection Act, the Regulation of Investigatory Powers Act 2000, and the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000; and
 - (b) for the purposes of receiving services pursuant to the Energy Theft Tip-Off Service and/or discharging its obligations pursuant to its Supply Licence or Distribution Licence (as applicable).
- 4.4 Each ETTOS Recipient shall indemnify DCUSA Ltd for any cost, claim or expense arising under the ETTOS Contract as a result of that ETTOS Recipient causing the ETTOS Service Provider to be in breach of any of the Data Protection Act, the Regulation of Investigatory Powers Act 2000, and/or the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.
- 4.5 Without prejudice to the licence referred to in Paragraph 7.3(b), it is agreed that the ETTOS Service Provider retains ownership of the ETTOS Service Data.

5. Co-operation

- 5.1 Each ETTOS Recipient shall provide the ETTOS Service Provider with reasonable co-operation in all matters relating to the Energy Theft Tip-Off Service (provided that no ETTOS Recipient shall be obliged to incur material cost in so doing).
- 5.2 Each ETTOS Recipient shall compensate DCUSA Ltd for all reasonable costs, charges or losses sustained or incurred by DCUSA Ltd to the ETTOS Service Provider (excluding any loss of profit or loss of reputation):
 - (a) that arise from the ETTOS Recipient's fraud; and/or
 - (b) from any claim made against the ETTOS Service Provider (or its parent) by any third party arising from the ETTOS Recipient's failure to act on information provided by the ETTOS Service Provider under the Energy Theft Tip-Off Service.

6. Confidentiality

- 6.1 Subject to Paragraphs 6.2 and 6.3, each ETTOS Recipient undertakes to treat the ETTOS Service Data as confidential and to safeguard it in accordance with Good Industry Practice.
- 6.2 The obligations of confidentiality in this Paragraph 6 shall not apply to the extent that:
- (a) disclosure is required in accordance with the Relevant Instruments or any other law or by a court of competent jurisdiction or any regulatory body;
 - (b) such information was separately created or obtained by the Party² seeking to make a disclosure without an obligation of confidentiality; and/or
 - (c) such information is already in the public domain at the time of disclosure otherwise than by a breach of this Agreement.
- 6.3 Each ETTOS Recipient may disclose the ETTOS Service Data to its agents and contractors insofar as is necessary for the purposes of receiving services pursuant to the ETTOS Contract and/or discharging its obligations pursuant to its Supply Licence or Distribution Licence (as applicable). Each ETTOS Recipient shall contract with its agents and contractors on provisions equivalent to this Paragraph 6, and shall be responsible for any disclosure and use of such data by any such persons otherwise than in accordance with this Agreement.

7. Liabilities and Claims

- 7.1 The limitations of liability set out in Clause 53 of the main body of this Agreement shall not apply in respect of any breach by a Party of this Schedule [XX], but the following shall instead apply in respect of such breaches:
- (a) nothing in this Paragraph 7.1 shall limit a Party's liability for death or personal injury caused by its negligence, or for fraud or fraudulent misrepresentation;

² Consequential change to definition of 'Party' in clause 1 to include DCUSA Ltd for ETRS Schedule.

- (b) the Party in breach shall be liable for the losses that were reasonably foreseeable as likely to arise as a result of the breach (to be assessed at the time of the breach, and not at the time at which the Party became a Party); and
- (c) the Party in breach shall not be liable for the losses that were not reasonably foreseeable as likely to arise as a result of the breach (to be assessed at the time of the breach).

7.2 For the purposes of Paragraph 7.1, it is acknowledged and agreed that a breach of this Schedule [XX] by a ETTOS Recipient may cause DCUSA Ltd to incur an ETTOS Liability to the ETTOS Service Provider.

7.3 DCUSA Ltd shall contract with the ETTOS Service Provider on the basis that each ETTOS Recipient has a directly enforceable contractual right against the ETTOS Service Provider in respect of (as a minimum) the following (subject to and in accordance with the terms and conditions set out in the ETTOS Contract):

- (a) an obligation on the ETTOS Service Provider to only Process Personal Data it obtains in provision of the ETTOS Contract in accordance with the Data Protection Act and the ETTOS Contract;
- (b) a non-exclusive licence for the term of the ETTOS Contract to use the ETTOS Service Data for the purpose of detecting, investigating and preventing energy theft;
- (c) a non-exclusive licence for the term of the ETTOS Contract to use the ETTOS Service Provider's name and logo only for the purposes of promoting the Energy Theft Tip-Off Service to customers of the ETTOS Recipient; and
- (d) an obligation on the ETTOS Service Provider equivalent to the obligation set out in Paragraph 6.

7.4 Each ETTOS Recipient hereby agrees with DCUSA Ltd in respect of any claim that the ETTOS Recipient may have against the ETTOS Service Provider in respect of the ETTOS Contract, to:

- (a) notify DCUSA Ltd of any such claim;

- (b) irrevocably appoint and use DCUSA Ltd as the ETTOS Recipient's exclusive agent (to the exclusion of itself and all other persons) to pursue, negotiate and conduct any such claims (which role DCUSA Ltd may choose to delegate);
- (c) provide DCUSA Ltd with all reasonable assistance requested by DCUSA Ltd in respect of the conduct of such claims;
- (d) take all reasonable steps to mitigate any ETTOS Liabilities; and
- (e) where the ETTOS Recipient's claim relates to a claim by a third party against the ETTOS Recipient, not make any admission, settlement or payment in respect of such claim without first obtaining DCUSA Ltd's consent (such consent not to be unreasonably withheld or delayed).

7.5 The applicable dispute management process set out in Schedule 25, Appendix 3 (TRAS Dispute Arrangements) shall apply to the claims against the ETTOS Service Provider referred to in Paragraph 7.4, by reference to the ETTOS Service Provider, the ETTOS Contract, the ETTOS Recipients and the ETTOS Contract Manager (instead of the TRAS Service Provider, the TRAS Contract, the Supplier Parties and the TRAS Contract Manager).

8. **ETTOS Service Description and Recipient Obligations**

8.1 A full description of the Energy Theft Tip-Off Service is set out in the ETTOS Contract. The Energy Theft Tip-Off Service can be summarised as follows:

- (a) The ETTOS Service Provider makes itself available to receive tip-offs.
- (b) The ETTOS Service Provider seeks to match the tip-off to a Supplier Party and if the ETTOS Service Provider can match the tip-off to a Supplier Party, then the ETTOS Service Provider notifies the Supplier Party of the tip-off.
- (c) If the ETTOS Service Provider cannot match the tip-off to a Supplier Party, then the ETTOS Service Provider notifies the relevant DNO/IDNO Party of the tip-off.

- (d) If the ETTOS Service Provider cannot match the tip-off to a Supplier Party or a DNO/IDNO Party, then the ETTOS Service Provider logs the tip-off as unmatched.
- (e) In addition to the above, where the ETTOS Service Provider identifies that there is a Category A electricity safety concern (as defined in Schedule 23), then the ETTOS Service Provider contacts the DNO/IDNO Party that operates the relevant network.

8.2 Each ETTOS Recipient shall:

- (a) provide a single point of contact for the ETTOS Service Provider to manage the exchange of information between the ETTOS Service Provider and that ETTOS Recipient in respect of the Energy Theft Tip-Off Service;
- (b) (subject to provision of the relevant details by the ETTOS Service Provider) establish and maintain an account by which it can access the online portal made available by the ETTOS Service Provider for the purposes of the Energy Theft Tip-Off Service (and the ETTOS Recipient accepts that the ETTOS Service Provider may validly send information to the ETTOS Recipient via such portal);
- (c) not request or retain more accounts or account logins in respect of the portal referred to in paragraph (b) above than that ETTOS Recipient reasonably needs; and
- (d) provide reasonable support to the ETTOS Service Provider in relation to publicising the Energy Theft Tip-Off Service (provided that no ETTOS Recipient shall be obliged to incur material cost in so doing).

8.3 Where a Supplier Party receives a tip-off for a premises for which it is the electricity supplier, the Supplier Party shall ensure that it is investigated in accordance with the Revenue Protection Code of Practice.

- 8.4 Where a Supplier Party receives a tip-off for a premises for which it is not the electricity supplier, then it shall notify the ETTOS Service Provider (including details of the correct electricity supplier, if known).
- 8.5 Where a DNO/IDNO Party receives a tip-off for a premises for which it is the electricity distributor, the DNO/IDNO Party shall:
- (a) identify the full address and notify this to the ETTOS Service Provider;
 - (b) identify the electricity supplier and notify this to the ETTOS Service Provider;
 - (c) (where applicable) comply with its obligations under the Revenue Protection Code of Practice;
 - (d) if none of the above apply, then feed back to the ETTOS Service Provider that no action can be taken, with the reason the tip-off could not be matched, so that the tip-off can be logged as unmatched.
- 8.6 Where a DNO/IDNO Party receives a tip-off for a premises for which it is not the electricity distributor, then it shall notify the ETTOS Service Provider (including details of the correct distributor if known).
- 8.7 The results of any tip-off investigations initiated by Supplier Parties should be fed into the TRAS Service Provider in accordance with Schedule 25 (Theft Risk Assessment Service).

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