

DCP 238 Draft Legal Text (assumes DCP 236 is implemented as proposed)

Notice period for Non DUoS charges

Add a new definition in Clause 1.1 as follows:

Other Charges	has the meaning given to that term in Clause 19.2.
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Amend definitions in Clause 1.1 as follows:

Charges	means, in respect of Section 2A, <u>the Use of System Charges and the Other Charges</u> charges referred to in Clause 19.2 , and, in respect of Section 2B, those charges referred to in Clause 43.2 (and which in each <u>the</u> case <u>of Clause 43.2</u> , for the avoidance of doubt, includes both Use of System Charges and Transactional Charges).
Payee	means, in respect of any Charges payable pursuant to Section 2A, the Party to which those Charges are payable (ordinarily being the Company, but being the User in the case of negative Use of System Charges, as referred to in Clause 19.1C19.2.4).
Payor	means, in respect of any Charges payable pursuant to Section 2A, the Party obliged to pay those Charges (ordinarily being the User, but being the Company in the case of negative Use of System Charges, as referred to in Clause 19.1C19.2.4).
Use of System Charges	has, in respect of Section 2A, the meaning given to that term in Clause 19.1C19.2.4 , and, in respect of Section 2B, the meaning given to that term in Clause 43.2.1.

Amend Clause 19 as follows:

Charges

19.1 The User shall pay to the Company in respect of services provided under this Agreement (and under the agreements referred to in Clause 19.2) the ~~e~~Charges set out in the Relevant Charging Statement (save where the Company is the Payor, in which case the Company shall pay such charges to the User).

Use of System Charges

19.1A The Company may vary ~~thesuch~~ Use of System ~~e~~Charges at any time by giving the requisite period of written notice to the User. The requisite period of notice is (subject to Clause 19.1~~AB~~):

19.1.1 where the Company is a DNO Party acting within that DNO Party's Distribution Services Area:

- (A) in the case of the charges to apply from 1 April 2016 only, 3 months;
or
- (B) in the case of the charges to apply on or after 1 April 2017, 15 months;
or

19.1.2 where the Company is an IDNO Party or a DNO Party acting outside of that DNO Party's Distribution Services Area:

- (A) in the case of the charges to apply from 1 April 2016 only, 2 months;
or
- (B) in the case of the charges to apply on or after 1 April 2017, 14 months.

19.1~~AB~~ The periods of notice described in Clause 19.1~~A~~ shall apply unless the Authority directs the Company that those periods of notice need not apply. Where the Authority directs the Company that those periods of notice need not apply, the notice period shall be 40 days (without prejudice to any longer notice requirements prescribed by the Distribution Licence).

19.1C The "Use of System Charges" shall be the charges contained or referred to in the Company's Relevant Charging Statement for the time being in force pursuant to Condition 14 of its Distribution Licence, which Use of System Charges may either be stated in the Relevant Charging Statement as:

19.1C.1 a positive value, in which case they shall be payable by the User to the Company; or

19.1C.2 a negative value, in which case they shall be payable by the Company to the User.

Other Charges

19.1D The Company may vary the Other Charges at any time by giving the requisite period of written notice to the User (where the requisite period of notice is the period specified in the Company's Relevant Charging Statement or, where no such period is specified, 40 days). Notwithstanding that the Company may vary such charges at any time the Company shall use reasonable endeavours to: (1) vary such charges no more than two times per year; and (2) vary such charges with effect from 1st April or 1st October. Such charges and any variations are and will be calculated in accordance with the provisions of the Relevant Charging Statement.

19.2 The charges referred to in Clause 19.1 (the "**Other Charges**") shall be:

~~19.2.1 the charges contained or referred to in the Company's Relevant Charging Statement for the time being in force pursuant to Condition 14 of its Distribution Licence (Use of System Charges), which Use of System Charges may either be stated in the Relevant Charging Statement as:~~

~~(A) a positive value, in which case they shall be payable by the User to the Company; or~~

~~(B) a negative value, in which case they shall be payable by the Company to the User;~~

19.2.21 the charges for (i) the provision of MPAS, (ii) (where applicable) the provision of Legacy Meter Asset Provision and of Data Services, and (iii) (where applicable) the provision of last resort supply payments (all pursuant to the Company's obligations under, respectively, Condition 18, Condition 36, and Condition 38 of its Distribution Licence);

19.2.32 (to the extent not captured within Clause 19.2.1C) the charges for certain services ancillary to those for which Use of System Charges are levied and which are provided by the Company to the User pursuant to any of:

(A) the BSC and the CUSC; or

(B) the Master Registration Agreement; and

19.2.43 the charges for any other services provided by the Company to the User pursuant to:

(A) a provision of this Section 2A; or

(B) any other agreement between the Company and the User for the provision of such services which provides for payment pursuant to this Agreement.

Adjustment of Charges

19.3 On any occasion upon which the Charges payable by or to the User under Clause 19.1 have not been calculated strictly in accordance with the provisions of the Relevant Charging Statement, an appropriate adjustment shall be made by the Company and submitted to the User.

19.4 Where an adjustment in accordance with Clause 19.3:

19.4.1 discloses an overcharge, the Payee shall repay to the Payor the amount by which the Payor has been overcharged together with interest thereon from the due date of the invoice containing the overcharge until the date of repayment; or

19.4.2 discloses an undercharge, the Payor shall pay to the Payee the amount by which the Payor has been undercharged together with interest thereon from the due date of the invoice which should have included the amount of the undercharge until the date of payment,

and (in either case) such interest shall accrue from day to day at the base lending rate during such period of Barclays Bank plc, compounded annually. Where the User disputes the adjustment, the User and the Company shall attempt to resolve the dispute in good faith. Where the dispute remains unresolved after 20 Working Days, either of them may refer the dispute to arbitration in accordance with Clause 58 and the User or the Company (as applicable) shall pay the amount payable or repayable (if any) as so determined.

Invoicing of Charges

19.5 The Company shall invoice Use of System Charges (but excluding any Transactional Charges) payable by or to the User by reference to Settlement Class using aggregated data obtained from the Supercustomer DUoS Report, except in relation to Metering Points or Metering Systems where:

19.5.1 the electricity imported via an Exit Point or exported via an Entry Point is not reported in the Supercustomer DUoS Report; and/or

19.5.2 the Use of System Charge is not comprised solely of one or more standing charges and/or one or more Unit Rates; and/or

19.5.3 the Use of System Charge is specified in the Relevant Charging Statement as not being billed by Settlement Class; and/or

19.5.4 Use of System Charges are to be determined as a result of an Extra-Settlement Determination.

19.6 All charges payable by or to the User pursuant to this Clause 19 and Clauses 20, 21 or 22:

19.6.1 are exclusive of Value Added Tax and the Company shall include with such Charges (and the Payor shall, subject to a valid invoice having been issued,

pay) Value Added Tax (if any) at the rate applicable thereto from time to time, and any such Value Added Tax shall be payable at the same time and in the same manner as the amounts to which it relates;

19.6.2 shall be without prejudice to any claims or rights which the Payor may have against the Payee and except as expressly permitted by Clause 19.6.3 or Schedule 4 shall be made without any set-off or deduction in respect of any claims or disputes or otherwise; and

19.6.3 shall, only where the Company submits on the same day one or more accounts for which the User is Payor and one or more accounts for which the User is Payee, be set-off against one another so that the User or the Company (as applicable) shall make a payment of the net value of those accounts.

19.7 The Company may calculate the Use of System Charges by reference to electricity discovered or reasonably and properly assessed to have been exported onto, or imported from, the Distribution System at an Entry Point or Exit Point relating to a Metering Point or a Metering System for which the User is Registered but not recorded at the time of such export or import (for whatever reason) by the metering equipment installed pursuant to Clause 29.1. At any time when the Company calculates the Use of System Charges under this Clause 19.7, it shall explain to the User the calculation of those charges and the basis of that calculation.

Revision of Charges

19.8 Without prejudice to Clause 19.1, where the Company is intending to revise any of its Use of System Charges, it shall serve a copy of any notice it sends to the Authority pursuant to ~~paragraph 20~~ **Part F** of Condition 14 of its Distribution Licence on the User as soon as is reasonably practicable after such notice is sent to the Authority.

Other Matters

19.9 Notwithstanding Clause 15.3, the Company may charge the User Use of System Charges calculated by reference to electricity assessed to have been supplied to a Customer while a customer of the User during a period in which the User was supplying electricity to that Customer in accordance with a last resort supply direction issued by the Authority in accordance with Condition 8 of the User's Supply Licence from the time that the direction takes effect. This right subsists from the date on which the last resort supply direction takes effect, and continues regardless of whether the Metering Point applying to the Customer is registered to the User in accordance with the Master Registration Agreement, until such time as the relevant Metering Point is registered to another supplier in accordance with the terms of the Master Registration Agreement.

19.10 For the avoidance of doubt, nothing in this Clause 19 precludes the Company and the User, at the request of either of them, from negotiating Use of System Charges arising from or pursuant to an Extra-Settlement Determination.

- 19.11 Where any dispute arises under Clause 19.10, either of the Company or the User shall be entitled to refer the matter to the Authority as if it were a dispute falling within Condition 7 of the Company's Distribution Licence.

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