

## Appendix A – Terms and Conditions for full access to the service

**Dated:** \_\_\_\_\_ **dd mmmm 20yy**

# Access Agreement for the Secure Data Exchange Portal

**Between**

**MRA Service Company Limited**

**And**

**[company name]**

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This Agreement is made on [date]

## BETWEEN

MRA Service Company Limited (registered number 3490321), whose registered office is at 8 Fenchurch Place, London, EC3M 4AJ (“MRASCo”)

## AND

[Company name] (registered number [number]), whose registered office is at [full address] (“the SDEP User”).

## WHEREAS

- (A) The Secure Data Exchange Portal (“SDEP”) is a service established in accordance with the Master Registration Agreement (“MRA”).
- (B) MRA Agreed Procedure **XX** *The MRA Agreed Procedure for the Secure Data Exchange Portal* (“MAP **XX**”) allows that access to SDEP may be granted to MRA Parties, SPAA Parties, and such persons as the MRA Executive Committee (the “MEC”) agree in accordance with the procedures set out in that document.
- (C) The Parties acknowledge and agree that MRASCo holds the benefit of this Agreement on its own behalf and also as trustee and agent for each and every MRA Party and SPAA Party.
- (D) MRASCo and the SDEP User accordingly enter into this Agreement on the terms and conditions set out below.

## IT IS AGREED

### 1 Definitions and interpretation

1.1 In this Agreement, the following words and expressions shall have the following meanings:

<b>Commencement Date</b>	has the meaning given to that term in Clause 2.
<b>Confidential Information</b>	has the meaning given to that term in Clause 16.
<b>Data Protection Legislation</b>	<u>means:</u> <u>(i) the Data Protection Act (1998) (the DPA), and any subordinate regulations and secondary legislation as amended or updated from time to time;</u> <u>(ii) EU Regulation 2016/679, which is known as the General Data Protection Regulation (the GDPR), and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time; and</u> <u>(iii) any successor legislation to the DPA or GDPR;</u> <del>means the General Data Protection Regulation (EU) 2016/679, the Data Protection Act 2018 and further laws and statutory instruments relating to such regulations and to data protection from time to time.</del>
<b>Due Date</b>	has the meaning given to that term in Clause 9.2.

## **Insolvency Event**

means the occurrence of any one or more of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales), in relation to the SDEP User:

- (a) the SDEP User passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the filing of a notice of intention to appoint an administrator of, the filing of a notice of appointment of an administrator of, or the making of an administration order in relation to the SDEP User or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or levying distress over, or selling, the whole or any part of the SDEP User's undertaking, assets, rights or revenue;
- (c) the SDEP User proposing to enter into, or entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) the SDEP User: (i) is unable to pay its debts within the meaning of section 123(1) or (2) of the Insolvency Act 1986; or (ii) being an individual, is sequestrated by either a court of appropriate jurisdiction or by the Accountant in Bankruptcy under the Bankruptcy (Scotland) Act 1985; or
- (e) the SDEP User proposing to enter into, or entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

## **Intellectual Property Rights**

means all current and future legal and equitable interests in any and all patents, trademarks, trade names, service marks, drawings, designs, design rights, copyright (including copyright in computer software), domain names, rights relating to passing off, database rights, inventions and know-how and all other intellectual property and rights of a similar or corresponding nature and all applications for the same in any part of the world and in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world.

## **Master Registration Agreement or MRA**

has the meaning given to that term in Condition 23 of the Electricity Distribution Licence.

## **MRA Agreed Procedure **XX** (The MRA Agreed Procedure for the Secure Data Exchange Portal) or MAP **XX****

means the document of that name maintained in accordance with the provisions of the MRA.

## **MRA Party**

means each party from time to time to the MRA.

<b>Notice of Variation</b>	means a notice issued by MRASCo in accordance with Clause 11.8.
<b>Party</b>	means MRASCo or the SDEP User (and " <b>Parties</b> " means both of them).
<b>Relevant Interest Rate</b>	means the base-lending rate for pounds sterling of the Bank of England applicable from time to time plus five percentage points (5%).
<b>Restriction Event</b>	has the meaning given to that term in Clause 10.1.
<b>SDEP Data</b>	means any transient, stored or other data on the SDEP, including any and all data provided by, sent to or entered onto the SDEP by any user of the SDEP in accordance with the MRA.
<b>SDEP Licence</b>	is defined in Clause 3.1.
<b>SDEP User Credentials</b>	means any user identification, code, password, or other piece of information provided to the SDEP User or any of its SDEP User Personnel for the purposes of obtaining authorised access to the SDEP or SDEP Data in accordance with this Agreement.
<b>SDEP User Data</b>	means the data that is held, stored, or processed by MRASCo, its agents or sub-contractors in relation to or on behalf of the SDEP User and its SDEP User Personnel.
<b>SDEP User Personnel</b>	means those individuals granted access to the SDEP or SDEP Data by or on behalf of the SDEP User.
<b>Secure Data Exchange Portal or SDEP</b>	means the service of that name operated and maintained by Suppliers in accordance with clause 58 of the MRA.
<b>Supply Point Administration Agreement or SPAA</b>	means the agreement of that name maintained under the gas supply licences granted under the Gas Act 1986.
<b>SPAA Party</b>	means each party from time to time to the SPAA.
<b>Suspension Event</b>	has the meaning given to that term in Clause 10.5.
<b>Term</b>	has the meaning given to that term in Clause 2.
<b>Working Day</b>	means any day, other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day that is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

1.2 In this Agreement, unless the context requires otherwise, any reference to:

- 1.2.1 a "person" includes a reference to an individual, body corporate, association, partnership or other legal entity;
- 1.2.2 the singular shall include the plural and vice versa;
- 1.2.3 "Agreement" shall mean this agreement and the Schedules thereto;
- 1.2.4 a reference to "this Agreement" (or any other agreement) is a reference to it as amended, supplemented or novated from time to time, and includes a reference to any document which amends, is supplemental to, novates, or is entered into, made or given pursuant to or in accordance with any terms of it;

- 1.2.5 a Clause or Schedule is a reference to a clause of or schedule to or part of this Agreement;
  - 1.2.6 writing includes all methods of reproducing words in a legible and non-transitory form; and
  - 1.2.7 any statute or any other subordinate legislation, any other agreement or instrument shall be construed as a reference to that statute, subordinate legislation, other agreement or instrument as amended or re-enacted from time to time.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.4 In this Agreement, references to "include" or "including" or "other" are to be construed without limitation to the generality of the preceding words.
- 1.5 Words not otherwise defined in this Agreement shall be interpreted in accordance with the MRA.
- 1.6 The expressions "**Controller**", "**Joint Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", "**Special Categories of Data**", "**Personal Data Breach**" and "**Processing**" shall have the meanings given in the Data Protection Legislation.

## 2 Commencement and Term

- 2.1 This Agreement shall have effect from [DATE] (the "**Commencement Date**"), and shall continue until terminated in accordance with Clause 14 *Termination* (the "**Term**").

## 3 Grant of SDEP Licence

- 3.1 Subject to the terms of this Agreement, MRASCo hereby grants to the SDEP User a non-exclusive, non-transferable, revocable, non-assignable, non-sub-licensable licence for the SDEP User Personnel to access and use the SDEP on the terms and for the purposes set out in this Agreement (the "**SDEP Licence**").

## 4 MRASCo obligations and exclusion of liability

### MRASCo Obligations

- 4.1 MRASCo shall, in accordance with this Agreement:
- 4.1.1 provide the SDEP User with access to the SDEP, in accordance with the provisions of Schedule 1 of this Agreement;
  - 4.1.2 provide SDEP User Credentials for the SDEP User Personnel such that those SDEP User Personnel are able to access the SDEP;
  - 4.1.3 only process SDEP User Data to the extent necessary to perform its obligations under this Agreement or other agreements with MRA Parties, SPAA Parties or other users of the SDEP;
  - 4.1.4 use reasonable endeavours to keep all SDEP User Data in its possession secure, and only permit its use by its employees, agents, or sub-contractors for purposes related to fulfilling its obligations under this Agreement or other agreements with MRA Parties, SPAA Parties or other users of the SDEP;
- 4.1.5 undertake such modifications to SDEP hardware, or software as may be required under this Agreement:-;

4.1.54.1.6 where Personal Data is contained within SDEP Data, MRASCo shall at all times comply with all obligations of a Processor with respect to such Personal Data as set out in the Data Protection Legislation.

## **Exclusion of Liability**

- 4.2 MRASCo shall not be liable to the SDEP User for any loss or damage whatsoever resulting from any omissions or inaccuracies in SDEP Data ~~howsoever where~~ caused by a SDEP User (including as a result of MRASCo's negligence).
- 4.3 SDEP Data is taken from or based on data provided by MRA Parties, SPAA Parties and other users of the SDEP. SDEP Data is provided by SDEP Users on an 'as-is' ad hoc basis. MRASCo does not give any warranty (express or implied) or make any representation that SDEP Data will be:
- 4.3.1 suitable for any particular requirement of the SDEP User or for any particular use or purpose (notwithstanding that such requirement or use or purpose may be known to MRASCo);
  - 4.3.2 compatible with the SDEP User's hardware equipment or software environment; or
  - 4.3.3 complete, accurate or up to date.

## **5 SDEP User obligations and warranties**

### **SDEP User Obligations**

- 5.1 The SDEP User shall:
- 5.1.1 only use and only permit use of the SDEP by its SDEP User Personnel in accordance with this Agreement;
  - 5.1.2 supervise and control use of the SDEP in accordance with the terms of this Agreement (including via the security and use of SDEP User Credentials);
  - 5.1.3 not allow access to the SDEP by any person, nor to make any SDEP Data available to any person, other than as expressly permitted by this Agreement;
  - 5.1.4 not display any part of the SDEP or any SDEP Data on a public bulletin board, ftp (File Transfer Protocol Site), world wide web site, chat room or by any other unauthorised means;
  - 5.1.5 receive and hold SDEP User Credentials in the strictest confidence and take all reasonable security precautions in the safekeeping of SDEP User Credentials and in preventing unauthorised disclosure;
  - 5.1.6 ensure that its SDEP User Personnel are informed of and are contractually bound to safeguard the confidential nature of the SDEP and SDEP Data;
  - 5.1.7 take reasonable steps to ensure the security of the SDEP and to prevent viruses or other malicious code entering the SDEP;
  - 5.1.8 not alter, reverse engineer, disassemble, decompile, decode, copy or create derivative works from the SDEP software (and the SDEP User shall obtain no rights in the SDEP software source code); and



- 5.1.9 provide such information as may be reasonably required by MRASCo in order to satisfy the pre-requisites for access to the SDEP or SDEP Data and confirm the SDEP User's continuing compliance with the requirements of this Agreement.

### **SDEP User Warranties**

- 5.2 The SDEP User represents and undertakes that:

- 5.2.1 it shall not use or permit or condone the use by SDEP User Personnel of the SDEP or SDEP Data or parts thereof for sale, resale, loan, transfer, hire or other form of exploitation for monetary reward unless they otherwise had a legal basis for obtaining and processing this data for this purpose notwithstanding this agreement;
- 5.2.2 only its SDEP User Personnel shall be provided with SDEP User Credentials and that any such SDEP User Personnel shall be deemed to be acting on behalf of the SDEP User; and
- 5.2.3 where Personal Data is contained within SDEP Data, the SDEP User shall at all times comply with all obligations of a Controller with respect to such Personal Data as set out in the Data Protection Legislation.

### **Prerequisites for SDEP User Access**

- 5.3 Access to the SDEP shall be dependent on completion of any and all prerequisites under MAP **XX**.

## **6 Use of SDEP AND SDEP Data**

- 6.1 The SDEP User is only permitted access to the SDEP and SDEP Data in accordance with Schedule 1.
- 6.2 The SDEP User agrees that the SDEP and SDEP Data shall only be used for business within the United Kingdom and the purpose described in Schedule 1.
- 6.3 The SDEP User agrees that continued use of the SDEP and SDEP Data is subject to continued compliance with this Agreement and the provisions of MAP **XX** in so far as they relate to access to the SDEP or SDEP Data by persons who are not MRA Parties.

### **Misuse**

- 6.4 Where any suspected misuse comes to the attention of MRASCo, including via a third party or via an audit or security investigation, the SDEP User shall co-operate with such investigation, including by making records available and, subject to receiving reasonable prior written notice, permitting access to its business sites where necessary.
- 6.5 The SDEP User agrees to pay all reasonable costs associated with any investigation (where misuse has been found) and pay any reasonable costs associated with any subsequent corrective actions that must be undertaken by MRASCo to correct and/or mitigate the consequences of that misuse, including but not limited to data corrective actions, and system and software changes required to correct such misuse.

### **Audit**

- 6.6 MRASCo reserves the right to audit the SDEP User's use of the SDEP to ensure that it is being used solely by SDEP User Personnel and solely for the purpose(s) set out in Schedule 1, where there is a reasonable suspicion of misuse.

- 6.7 MRASCo shall have the right during normal working hours and upon five (5) Working Days' written notice to the SDEP User to audit the SDEP User. If such audit reveals a non-conformance with the terms and conditions of this Agreement, the SDEP User shall reimburse MRASCo for the reasonable cost of carrying out such audit.
- 6.8 All payments in relation to audits shall be made in accordance with Clause 9 (*Billing and Payment*).

## 7 Data Protection

### 7.1 The SDEP User:

- 7.1.1 acknowledges and agrees that it is a Controller in relation to the Personal Data Processed by that SDEP User via the SDEP as set out in Schedule 3;
- 7.1.2 warrants that it has effected and undertakes that it shall effect and maintain, all such notifications and registrations as it is required to effect and maintain under the Data Protection Legislation to enable it lawfully to perform the obligations imposed on it and exercise the rights granted to it under this Agreement;
- 7.1.3 undertakes to comply with the Data Protection Legislation in performing its obligations and exercising its rights in connection with the use of the SDEP, including that:
- (a) it has a lawful basis for sharing Personal Data with other users of the SDEP and that it complies with the Data Protection Legislation in relation to such sharing of Personal Data; and
  - (b) it implements internal policies and processes to ensure that only those with a legitimate requirement to access Personal Data shared with other users of the SDEP can do so.

- 7.2 The SDEP User shall comply with the Data Protection Legislation as regards the exercise of rights by Data Subjects for which the SDEP User is the Controller. Unless agreed otherwise in writing at the relevant time, and to the extent any parties are Joint Controllers the SDEP User shall independently comply with the Data Protection Legislation.:

~~7.2.1 the SDEP User shall independently comply with the Data Protection Legislation; and~~

~~7.2.2 the SDEP User shall independently inform Data Subjects about its processing activities by issuing a privacy notice and shall refer to other Joint Controllers in such privacy notice.~~

- 7.3 The SDEP User undertakes that it shall not Process any Personal Data obtained via the SDEP for any purposes other than performing its obligations and exercising its rights under this Agreement, the MRA and/or the SPAA.

### Privacy Notices

- 7.4 Each SDEP User undertakes to provide or make available (as appropriate), at such time as is required by the Data Protection Legislation, a privacy notice on its own behalf in connection with the MRA and/or the SPAA. Where SDEP Users are acting as joint controllers such relevant SDEP Users shall jointly undertake to provide or make available any privacy notices as required by Data Protection Legislation and on behalf of any other Controllers Processing Personal Data (jointly or in common) in connection with the MRA and/or the SPAA.

## Processors

- 7.5 Where the SDEP User acts as a Controller regarding the Personal Data Processed via the SDEP and MRASCo acts as the relevant SDEP User's Processor, MRASCo shall, in accordance with the Data Protection Legislation:
- 7.5.1 implement appropriate technical and organisational measures to ensure a level of security appropriate to protect the Personal Data from unauthorised or unlawful destruction, loss, alteration or damage, unauthorised disclosure of, or unauthorised access;
  - 7.5.2 unless required to do so otherwise by any law, regulation, or order applicable to the jurisdiction where such processing is undertaken ("Applicable Processing Law") only Process the Personal Data in the performance of its obligations under this Agreement and act on the SDEP User's instructions (such instructions must be in compliance with the Agreement, the MRA and the SPAA as relevant and the Data Protection Legislation);
  - 7.5.3 promptly notify the SDEP User of any Processing to be undertaken under Applicable Processing Law before performing such Processing, unless this is prohibited by such Applicable Processing Law;
  - 7.5.4 take reasonable steps to ensure that its employees who are authorised to Process the relevant Personal Data are obliged by contract or statute to keep the relevant Personal Data confidential;
  - 7.5.5 provide, ~~at the cost of the SDEP User,~~ reasonable assistance through the use of appropriate technical and organisational measures to the SDEP User to enable the SDEP User to comply with the obligations imposed on the SDEP User under the Data Protection Legislation, including responding to requests made by a Data Subject in the exercise of the Data Subject's rights under the Data Protection Legislation;
  - 7.5.6 taking into account the nature of processing and the information available to MRASCo, assist the SDEP User in ensuring compliance with the SDEP User's obligations in the Data Protection Legislation relating to data security, data breach notification, data protection impact assessments and related prior consultation procedures;
  - 7.5.7 not transfer the relevant Personal Data to any country or territory outside the UK and the European Economic Area (or any country deemed adequate by the European Commission pursuant to the Data Protection Legislation) without the SDEP User's prior written consent and without putting in place adequate protection for the Personal Data to enable compliance by the SDEP User and MRASCo with the obligations under the Data Protection Legislation;
  - 7.5.8 notify the SDEP User as soon as reasonably practicable (and in any event within twenty-four (24) hours) after becoming aware of a Personal Data Breach.
  - 7.5.9 return or copy to the SDEP User or (at the request of that SDEP User) destroy all relevant Personal Data unless required to retain such Personal Data under Applicable Processing Law;

- 7.5.10 make available to the SDEP User all information necessary to demonstrate MRASCo's compliance with this Clause 7.5 and allow the SDEP User or its authorised auditors to audit and inspect MRASCo's compliance with this clause 7.5;
- 7.5.11 promptly provide assistance to the SDEP User with responding to any enquiry made, or investigation or assessment of Processing under this Agreement initiated by the Information Commissioner's Office or other regulatory authority in respect of the Personal Data;
- 7.5.12 immediately inform the SDEP User if, in MRASCO's opinion, a documented instruction from the SDEP User infringes the Data Protection Legislation; and
- 7.5.13 not authorise a third party ("subcontractor") to Process the relevant Personal Data without the prior written permission of the SDEP User. By virtue of signing this Agreement, the SDEP User consents to MRASCo's appointment of MEC as its subcontractor. If such permission is granted, MRASCo shall put in place a written agreement with the relevant subcontractor which:
  - (a) contains contractual obligations equivalent to the obligations imposed on MRASCo set out in this Clause 7.5; and
  - (b) terminates automatically in respect of the Processing of the relevant Personal Data on termination of this Agreement.

## Notification of Personal Data Breaches

- 7.6 Where the SDEP User becomes aware that there has been any Personal Data Breach in relation to Personal Data Processed via the SDEP, it shall as soon as reasonably practicable (and in any event within twenty-four (24) hours) notify MRASCo and any and all other users of the SDEP which the SDEP User knows to be affected by that Personal Data Breach.
- 7.7 In the event of a Personal Data Breach by the SDEP User, the SDEP User shall provide the affected users of the SDEP (and their advisers) with all reasonable assistance in connection with the Personal Data Breach, including:
  - 7.7.1 co-operating with the affected users of the SDEP, and the relevant regulatory authority, providing information on the Personal Data Breach, investigating the incident and its cause and containing and recovering the compromised data; and
  - 7.7.2 co-ordinating with the affected users of the SDEP, MRASCo and MEC on the management of public relations and public statements relating to the Personal Data Breach. SDEP User agrees that it shall not make any public statement in relation to the relevant Personal Data Breach without the written agreement of the affected Authorised SDEP Users, MRASCo, MEC, and the SPAA EC.

## 8 Charges

- 8.1 All charges due under this Agreement, unless otherwise stated or agreed, shall be recovered in accordance with clause 58 of the MRA.

### Other Charges

- 8.2 Where MRASCo activities undertaken in accordance with Clause 6.7 result in costs to MRASCo, its agents, or sub-contractors, MRASCo shall be entitled to recover such costs from the SDEP User, which the SDEP User shall pay in accordance with Clause 9.

## 9 Billing and payment

- 9.1 All payments under this Clause 9 shall be in pounds sterling to a single UK bank account as nominated by MRASCo from time to time.
- 9.2 The SDEP User shall settle invoices issued to it under Agreement within ~~twenty-three~~ (2030) Working Days of receipt (the "Due Date").

### Value Added Tax

- 9.3 All amounts payable under this Agreement shall be subject to Value Added Tax at the prevailing rate.

### Disputes

- 9.4 If the SDEP User disputes in good faith any sum invoiced to it in accordance with this Agreement, it shall make payment of any undisputed amount on or before the Due Date and shall give notice in writing of the amount in dispute and the reasons for the dispute to MRASCo, provided that the SDEP User may not raise a dispute or give a notice under this Clause 9.4 where a period of more than twelve (12) months has lapsed since the sum was invoiced to it.
- 9.5 Where notice of a dispute is given under Clause 9.4, the Parties shall seek to settle the dispute as soon as reasonably possible.
- 9.6 Any adjustment payment required to be made in accordance with the resolution of a dispute shall be made within ~~twenty-three~~ (2030) Working Days of that resolution, such date to be deemed a Due Date.

### Interest

- 9.7 If the SDEP User fails to pay to MRASCo any amount due by the Due Date, MRASCo shall be entitled to interest on that amount.
- 9.8 Where MRASCo exercises its rights under Clause 9.7, interest shall be payable on that amount at an annual rate equal to the Relevant Interest Rate compounded daily from and including the Due Date until, but excluding, the date payment is made.
- 9.9 If, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, the SDEP User is required to pay an amount to MRASCo, MRASCo shall be entitled to interest on that amount at an annual rate equal to the Relevant Interest Rate compounded daily from the date when the amount would have been paid or not paid (as applicable) if the dispute, overpayment or underpayment had not occurred until, but excluding, the date payment is made.

## 10 Licence restriction and suspension

### SDEP Licence Restriction

- 10.1 In the event of any scheduled or emergency maintenance of the SDEP being undertaken, MRASCo may restrict the SDEP User's access to the SDEP (a "Restriction Event").

- 10.2 In the case of scheduled maintenance, MRASCo shall provide the SDEP User with no less than ten (10) Working Days' notice.
- 10.3 In the case of emergency maintenance, MRASCo shall inform the SDEP User as soon as reasonably practicable after it becomes aware of the need for such maintenance.
- 10.4 Where the SDEP Licence has been restricted under Clause 10.2 or Clause 10.3 and the relevant restriction(s) ceases (or cease) to occur the restriction shall automatically be lifted.

### **SDEP Licence Suspension**

- 10.5 Subject to Clause 10.6, MRASCo may suspend the SDEP Licence in any of the following circumstances (each a "**Suspension Event**"):
- 10.5.1 investigation by MRASCo, or its agents reveals that the SDEP User, or any of its employees, agents, directors, consultants or contractors, has used the SDEP or SDEP Data otherwise than in accordance with this Agreement;
- 10.5.2 the SDEP User is in material breach of any of its obligations under this Agreement and such breach is not capable of remedy or, if capable of remedy, such breach is not remedied by the SDEP User within five (5) Working Days of receipt of written notice from MRASCo;
- 10.5.3 any of the SDEP User's representations or warranties under this Agreement cease to be satisfied and, if the situation is capable of remedy, the situation is not remedied by the SDEP User within twenty (20) Working Days of receipt of notice from MRASCo; or
- 10.5.4 an Insolvency Event occurs in respect of the SDEP User,  
provided that MRASCo gives the SDEP User no less than twenty-four (24) hours' notice.
- 10.6 Where the SDEP Licence has been suspended under Clause 10.5, and the relevant Suspension Event(s) has (have) been remedied:
- 10.6.1 the suspension shall immediately be lifted; and
- 10.6.2 MRASCo shall notify the SDEP User within twenty-four (24) hours.

## **11 Variation to this Agreement**

### **Variation by MRASCo**

- 11.1 Subject to Clause 11.2 MRASCo reserves the right to vary the terms of this Agreement at any time.
- 11.2 MRASCo shall provide the SDEP User with a minimum of ~~twenty-three~~ (2030) Working Days' notice of any variation to this Agreement in writing, which shall include a period of at least ten (10) Working Days in which the SDEP User may respond to the notice of variation.
- 11.3 Where the SDEP User agrees a variation notified under Clause 11.2, it shall notify MRASCo of the fact within ten (10) Working Days of receipt.
- 11.4 Where the SDEP User does not agree any variation notified under Clause 11.2, it shall notify MRASCo of the fact within ten (10) Working Days of receipt, and the Agreement may be terminated by either Party on 20 Working Days' notice and the provisions of Clause 14 shall apply.

## **Proposed variation by the SDEP User**

11.5 The SDEP User may propose a variation to this Agreement by notifying MRASCo in writing. Such notification shall include:

11.5.1 details of the proposed variation; and

11.5.2 the date from which the proposed variation would have effect, such date to be at least sixty (60) Working Days from the date of the notification.

11.6 Where the SDEP User proposes a variation to the Agreement, MRASCo shall give such proposal due consideration and provide a response to the SDEP User within twenty-five (25) Working Days. Such response will either:

11.6.1 accept the proposed variation;

11.6.2 propose an alternative variation; or

11.6.3 disallow the requested variation,

and shall include any information on costs to be paid by the SDEP User or MRASCo (to be recovered in accordance with Clause 8.1) in association with the Variation.

11.7 On receipt of a notification under Clause 11.6 that includes any costs to be met by the SDEP User, that SDEP User shall notify MRASCo of its acceptance or otherwise of such costs in writing within five-ten (510) Working Days.

11.8 Where the SDEP User provides:

11.8.1 a notification under Clause 11.8; or

11.8.2 a notification under Clause 11.7 accepting any costs to be met,

MRASCo shall issue a Notice of Variation substantively in the form set out in Schedule 2.

11.9 The Parties agree that any Notice of Variation issued in accordance with Clause 11.8 shall become a part of this Agreement with effect from the agreed date of variation set out therein.

## **12 Liability**

12.1 Notwithstanding anything else contained in this Agreement MRASCo shall not be liable to the SDEP User for any of the following types of loss (whether arising from negligence, breach of contract, breach of statutory duty or otherwise):

12.1.1 loss of goodwill, reputation, profits, business or business opportunities, or anticipated savings (whether direct or indirect); or

12.1.2 any indirect loss or damage whatsoever; or

12.1.3 loss or corruption of data or loss of programs, even if advised of the possibility thereof

12.2 Subject to Clause 12.6, MRASCo's total liability in respect of all other loss or damage arising under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £[1,000,000].

12.3 The SDEP User acknowledges and accepts that it shall not have any claim or entitlement whatsoever or howsoever arising against MRASCo or any other person in relation to or as a result of each or any of the following:

- 12.3.1 any delay or failure to provide, supply or obtain access to the SDEP;
  - 12.3.2 the provision, supply, receipt, obtaining and/or any delay or failure to provide, supply, receive or obtain (in each case in whole or in part) any SDEP Data; and
  - 12.3.3 any corruption, omission, error, inaccuracy, incompleteness, unreliability, lack of currency or lack of updating of or in any SDEP Data provided, supplied, received or obtained pursuant to this Agreement.
- 12.4 The SDEP User acknowledges and accepts that MRASCo has not and shall not be deemed to have made any warranty or guarantee as to:
- 12.4.1 the availability or continued availability of the SDEP or SDEP Data; or
  - 12.4.2 the SDEP User's uninterrupted access to the SDEP or SDEP Data.
- 12.5 Nothing in this Agreement shall limit or exclude either Party's liability for death or personal injury resulting from their own negligence or that of its employees, agents or subcontractors or fraud, fraudulent misrepresentation or any other liability not capable of exclusion or limitation by reason of statute.
- 12.6 All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

## 13 Intellectual property

- 13.1 The SDEP User hereby acknowledges and agrees that no Intellectual Property Rights connected with the SDEP as a whole (and in the components of the SDEP) are transferred to the SDEP User by virtue of this Agreement, and that the SDEP User shall not acquire any interest in these Intellectual Property Rights (other than the SDEP Licence).

## 14 Termination

### Termination by MRASCo

- 14.1 MRASCo may terminate this Agreement:
- (a) Forthwith at any time in the event of:
    - (i) a material breach of this Agreement by the SDEP User which breach is irremediable or (if such breach is remediable) the SDEP User fails to remedy that breach within a period of ~~7-20 Working days~~ Days after being notified to do so; or
    - (ii) an Insolvency Event; or
  - (b) By giving twenty (20) Working Days' notice in writing to the SDEP User to that effect, specifying the reasons for such termination.

### Termination by the SDEP User

- 14.2 The SDEP User may terminate this Agreement on giving twenty (20) Working Days' written notice to MRASCo.

### Consequences of Termination



- 14.3 This Agreement shall terminate immediately upon the expiration of any notice issued in accordance with Clause 14.1 or 14.2.
- 14.4 On the termination of this Agreement for any reason all rights and obligations of the Parties under this Agreement shall automatically terminate except for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such termination.
- 14.5 Upon termination of this Agreement for any reason, the SDEP Licence granted under Clause 3 (*Grant of SDEP Licence*) shall automatically terminate and the SDEP User and any SDEP User Personnel shall cease to have the right to access the SDEP.
- 14.6 The SDEP User shall not be entitled to reimbursement of any charges made pursuant to Clause 7.1 (*Charges*) upon termination of this Agreement.
- 14.7 The provisions of Clauses 4.2 (Exclusion of Liability), 5 (SDEP User obligations and warranties), 9 (Billing and Payment), 12 (Liability), 13 (Intellectual Property), 13 (Consequences of Termination), 16 (Confidentiality), and 23 (Governing Law) and any provision which expressly or by implication is intended to come into or remain in force on or after expiry or termination shall survive the expiry or termination of this Agreement.

14.7.14.8 Where the SDEP User is also an MRA Party or SPAA Party, MRASCo will provide notice to the MRA Executive Committee (MEC) and/or SPAA Executive Committee (SPAA EC) that the Party's SDEP Licence shall be terminated and the SDEP User shall cease to have the right to access the SDEP.

## 15 Authority

- 15.1 Each Party warrants to the other that it has full power and authority to enter into this Agreement.

## 16 Confidentiality

- 16.1 During the term of this Agreement and thereafter both Parties agree to keep all information that they obtain about the other or other SDEP Users, including but not limited to the SDEP User Data and information concerning the business, finances, technology and affairs of the other, regardless of its nature ("**Confidential Information**"), strictly confidential.
- 16.2 The provisions of this Clause 16 shall not apply to Confidential Information:
- (a) that has come into the public domain other than by breach of this Clause or any other duty of confidence;
  - (b) already in the possession of the receiving Party before it was made known by the other Party;
  - (c) obtained from a third party without breach of this Clause 15 or any other duty of confidence;
  - (d) disclosed to the Party's employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the Confidential Information comply with this Clause 16; and
  - (e) required to be disclosed by law or the MRA or SPAA.

16.3 Each Party undertakes to use its reasonable efforts to keep the Confidential Information in safe custody and not part with possession or control thereof to any person other than any authorised directors, employees and agents of each Party.

## 17 Publicity

17.1 For the purposes of publicising details of recipients of SDEP Data, the SDEP User hereby agrees that MRASCo may publicise that the SDEP User's business name and company name and address as detailed within this Agreement and as deemed appropriate by MRASCo on the MRA website (www.mrasco.com).

## 18 Notices

18.1 All notices which are required to be given under this Agreement shall be in writing and shall be:

18.1.1 delivered by hand or sent to the address of the Party set out in this Agreement or such other address as the relevant Party may designate by pre-paid first-class post or other next working day delivery service; or

18.1.2 sent by email to [REDACTED] in the case of MRASCo and to [REDACTED] in the case of the SDEP User or such other email address as either Party may advise the other of in writing, from time to time.

18.2 Any notice given under clause 17.1 shall be deemed to have been received:

18.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

18.2.2 if sent by pre-paid first-class post or other next working day delivery service, at the time recorded by the delivery service; or

18.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2.3, business hours mean 9:00am to 5:00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 19 Rights of Third Parties

19.1 Subject to Clause 19.2, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

19.2 Each and every MRA Party and SPAA Party shall have the right to enforce the SDEP User's obligations under this Agreement by virtue of the Contract (Rights of Third Parties) Act 1999. The Parties may nevertheless amend or terminate this Agreement in accordance with its provisions without reference to any third parties.

## 20 Assignment

20.1 The SDEP User shall not assign, transfer, charge or otherwise dispose of all or any of its rights under this Agreement.

20.2 MRASCo may transfer this Agreement (and the outstanding rights and obligations under this Agreement) to the Retail Energy Code Company Limited (company number 10989875) on notice to (but without the consent of) the SDEP User. The SDEP User shall enter into any reasonable agreement required by MRASCo to document such transfer.

## 21 Counterparts

21.1 This Agreement may be entered into in any number of counterparts and by the parties on different counterparts but shall not be effective until each Party has executed at least one counterpart.

21.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement.

## 22 General

22.1 This Agreement (as amended from time to time) contains the entire agreement and understanding between the Parties relating to the SDEP and SDEP Data and supersedes any previous agreements, arrangements, representations, undertakings or proposals, written or oral, between them.

22.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

22.3 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

22.4 The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

22.5 The invalidity, illegality or unenforceability of any provision (or part of a provision) of this Agreement shall not affect or impact the continuation in force of the remainder of this Agreement.

22.6 Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties or as constituting either Party as the agent of the other Party for any purpose whatsoever; and neither Party shall have the authority or power to bind the other Party or to contract in the name of or create a liability against the other Party in any way or for any purpose.

## 23 Governing Law

23.1 This Agreement and any disputes or claims arising out of or in connection with it (whether contractual or non-contractual) shall be governed by and construed in all respects and in accordance with English law.

23.2 The Parties hereby agree to submit to the exclusive jurisdiction of the English courts in respect of any dispute or matter arising out of or connected with this Agreement (whether contractual or non-contractual).

**IN WITNESS** the duly authorised representatives of the Parties have executed this Agreement on the date written at the head of this Agreement.

Signed on behalf of **MRA Service Company Limited**

By: [an officer of the Company]

Signature:

Date: .....

Signed on behalf of [the SDEP User]

By: [an officer of the Company]

Signature: .....

Date: .....

## Schedule 1 – Permitted Uses of the SDEP and SDEP Data

### 1 Permitted uses of SDEP

- 1.1 The SDEP User shall be permitted to access the SDEP for the following purposes only:
  - (a) [enter each purpose]
- 1.2 The SDEP User shall be permitted to allow access to SDEP for [number] SDEP User Personnel, such access to be solely for the purposes set out in this Schedule 1.

### 2 Permitted Market Participant Identifiers

- 2.1 When accessing SDEP, the SDEP User's SDEP User Personnel shall only be permitted to use the following Market Participant Id's and Market Roles:

Market Participant Id	Market Role	Gas/Electricity
[MPID]	[Role Code]	[Gas/Electricity]

## Schedule 2 – Notice of Variation Form

Where a variation to the Agreement is agreed in accordance with Clause 11, MRASCo shall issue a Notice of Variation as set out below

NOTICE OF VARIATION	
<b>Variation Reference</b>	
<b>Date of Variation Request</b>	
<b>Originating Party</b>	
<b>Title of Variation</b>	
<b>Description of Variation</b>	
<b>Reasons for Requesting Variation</b>	
<b>Agreed revisions to the Access Agreement drafting</b>	
<b>Approved by MRASCo Ltd:</b>	
<b>Signature</b>	
<b>Name</b>	
<b>Date</b>	
<b>Agreed by the SDEP User:</b>	
<b>Signature</b>	
<b>Name</b>	
<b>Date</b>	

## Schedule 3 – Schedule of Processing

### 1 Management of Information

This Schedule of Processing is maintained to ensure that the content reflects the Processing of Personal Data undertaken in relation to the SDEP.

This Schedule of Processing will be updated as required where a change to Processing activity occurs, because of a modification or otherwise.

### 2 Controllers

Each Authorised SDEP User is a Controller in relation to the SDEP. The name and contact details of these Authorised SDEP Users can be at [www.mrasco.com](http://www.mrasco.com)

### 3 Purposes of Processing

Personal Data is Processed via the SDEP to fulfil the obligations on Authorised SDEP Users in relation to the secure Processing of Personal Data relating to a Customer as set out in the MRA and the SPAA.

### 4 Nature of Processing

The nature of the Processing in relation to the SDEP encompasses:

- the collection and digital storage of Personal Data by CAS that is received from Qualifying SDEP Users and Authorised SDEP Users in relation to the management of the SDEP;
- the collection, digital storage, and transmission of Personal Data via the SDEP in accordance with the terms of the MRA and the SPAA;
- the collection, digital storage and transmission of information about customers by Authorised SDEP Users for the purposes of the MRA and SPAA.

### 5 Categories of Data Subjects

Categories of Data Subjects whose Personal Data are Processed in relation to the operation of the SDEP are:

Individuals who are directors, employees, agents, or sub-contractors of Qualifying SDEP Users, Authorised SDEP Users, and Authorised SDEP Users in relation to Processing undertaken by the CAS;

Individuals who are (or have formally been) customers of Authorised SDEP Users;

## 6 Categories of Personal Data

The following types of Personal Data are Processed in relation to the operation of the SDEP:

- For those individuals who are interacting with the CAS on behalf of a Qualifying SEP User or Authorised SDEP User:
  - Work email address;
  - Work telephone number
  - Mobile phone number
- In relation to the generation of reports by the CAS:
  - Details of individuals who are directors, employees, agents, or sub-contractors of Qualifying SDEP Users, Authorised SDEP Users, and Authorised SDEP Users.
- In relation to the Processing undertaken via the SDEP:
  - Details of individuals who are directors, employees, agents, or sub-contractors of Qualifying SDEP Users, Authorised SDEP Users, and Authorised SDEP Users;
  - Details of individuals who are (or have formally been) customers of Authorised SDEP Users.

## 7 Sources of Personal Data

The Sources of Personal Data Processed comprise:

- Qualifying SDEP User in relation to Personal Data relating to their employees, agents, and officers;
- Authorised SDEP Users in relation to Personal Data relating to their employees, agents and also current and former customers of those Authorised SDEP Users:

## 8 Recipients of Personal Data

The Recipients of Personal Data Processed comprise:

- Authorised SDEP Users
- The CAS

## 9 Retention of Personal Data

- The rules for archiving and deleting SDEP data are set out in the SDEP User Requirements Specification.