

## **SCHEDULE 26 – 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. Such a claim may include a claim for payment by a Supplier Party under Paragraph 9. In the case of any such claim against any such person, 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 Legislation.
- 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 Legislation, the Regulation of Investigatory Powers Act 2000, and the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000; and

- (c) 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 Legislation, 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 Party<sup>40</sup> 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 26, 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;
  - (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).

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<sup>40</sup> Consequential change to definition of 'Party' in clause 1 to include DCUSA Ltd for ETRS Schedule.

- 7.2 For the purposes of Paragraph 7.1, it is acknowledged and agreed that a breach of this Schedule 26 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 Legislation 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 the number that: (i) the ETTOS Recipient reasonably needs and (ii) it is entitled to in accordance with the allocation rules set out in Appendix A to this Schedule 26; 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 read the tip-off within 10 Working Days and 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) within 10 Working Days.

- 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, within 10 Working Days:
- (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 or identify that there is no currently traded MPAN 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, within 10 Working Days, 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).
- 8.8 Where a Supplier Party or DNO/IDNO Party fails to comply with its obligations under this Paragraph 8, then the escalation process set out in Appendix B shall apply.

## **9. ADDITIONAL SERVICES**

- 9.1 A Supplier Party may, from time to time, request the provision of additional services or functionality pursuant to the ETTOS Contract; provided that the Supplier Party pays the additional charges applicable to the additional services or functionality.
- 9.2 The additional services or functionality that can be requested, and the charges applicable to such additional services or functionality, are described in Appendix A to this Schedule 26.



- 9.3 A Supplier Party that wishes to obtain any of the additional services or functionality provided for in Appendix A of this Schedule 26 shall submit its request to the ETTOS Contract Manager. As soon as reasonably practicable following receipt of each such request, DCUSA Ltd shall procure that the ETTOS Service Provider provides the Supplier Party with such additional services or functionality; subject to and in accordance with the provisions of the ETTOS Contract, and subject to payment by the Supplier Party of the applicable charges.
- 9.4 DCUSA Ltd shall invoice each Supplier Party for the charges (if any) incurred by that Supplier Party pursuant to this Paragraph 9 on or around the same date as it submits invoices under Clause 8 of the main body of this Agreement. Each Supplier Party to which such an invoice is addressed shall pay that invoice within the same time period as applies under Clause 8 (and interest as provided for under Clause 8.14 shall apply to late payments).
- 9.5 The DCUSA Panel reserves the right to conduct an audit of any investigation undertaken by a Supplier and/or DNO/IDNO following a tip-off under the Energy Theft Tip-Off Service.

## Appendix A

### 1. ETTOS Secure Email User allocation

1.1 Each ETTOS Recipient shall be granted access to the ETTOS Service Provider's online portal described in Paragraph 8.2 of this Schedule 26. Each user of the online portal requires an individual account and log on details. The ETTOS Contract provides that each ETTOS Recipient is entitled (as standard) to a maximum number of user accounts as follows:

- (a) a Supplier Party that is (in aggregate with its Affiliates) Registered for 1,000,000 (one million) or more Metering Points and/or Supply Points shall (in aggregate with its Affiliates) be entitled to a maximum of 5 user accounts;
- (b) once a Supplier Party is (in aggregate with its Affiliates) eligible for 5 user accounts in accordance with paragraph (a) above, that Supplier Party shall (in aggregate with its Affiliates) remain so entitled for so long as the Supplier Party is (in aggregate with its Affiliates) Registered for at least one Metering Point and/or Supply Point;
- (c) DNO Parties shall be entitled to a maximum of 5 user accounts; and
- (d) all other ETTOS Recipients shall be entitled to a maximum of 2 user accounts.

1.2 In Paragraph 1.1 above, references to "Supply Points" are to gas Supply Points (as defined in the SPAA); and "Registered" means, in respect of Supply Points, Registered (as defined in the SPAA).

1.3 The Secretariat shall monitor the number of Metering Points and Supply Points for which each Supplier Party is Registered based on the data received pursuant to Clause 27.6 of the MRA, and the data received pursuant to the provision of the SPAA equivalent to this Paragraph 1.3. The Secretariat shall share the data received pursuant to Clause 27.3 of the MRA with the SPAA Secretariat to the extent necessary to establish whether a Supplier Party has reached or exceeded the threshold set out in Paragraph 1.1(a) above. Where a Supplier Party reaches or exceeds the threshold set out in Paragraph 1.1(a), the Secretariat shall notify the Supplier Party and the ETTOS Service Provider of such event.

## 2. **Additional ETTOS Secure Email User Accounts**

- 2.1 An ETTOS Recipient may request provision of additional user accounts in excess of the allocation set out in Paragraph 1.1 of this Appendix A.
- 2.2 Additional User Accounts are charged to DCUSA Ltd under the ETTOS Contract, and shall be re-charged by DCUSA Ltd to ETTOS Recipients, at the following rates:
- (a) a one-off licensing charge of £125 for each additional user account; and
  - (b) an annual maintenance charge of £62 for each additional user account.
- 2.3 These charges will be invoiced quarterly in arrears. There is no refund for cancelling additional user accounts part way through a year, or in the event that the standard number of user accounts to which an ETTOS Recipient is entitled increases part way through a year.
- 2.4 Each quarter, the ETTOS Service Provider will recalculate the number of additional user accounts held by each ETTOS Recipient (i.e. number of user accounts held by an ETTOS Recipient less the standard allocation set out in Paragraph 1.1 above) and invoice accordingly (including with the invoice a schedule of the additional users per ETTOS Recipient).

## Appendix B – ETTOS Escalation Process

