

**ENERGINET**

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HBK/HLJ

## TERMS OF ACCESS TO AND USE OF THE DATAHUB – GRID COMPANY

**Energinet**  
Tonne Kjærvej 65  
DK-7000 Fredericia

– hereinafter 'Energinet' –

the transmission system operator in Denmark which owns and operates the DataHub

and

**[Company name]**  
**[Address]**  
**[Postcode and town/city]**  
**CVR no. [xx xx xx xx]**  
**GLN no. [xxxxxxxxxxxx]**

– hereinafter the 'Grid Company' –

which carries on a business licensed to operate an electricity grid in Denmark.

## Revision view

Chapter no.	Text	Version	Date
	Updated in connection with the implementation of the wholesale model at 1 April 2016	2.0	Nov. 2015
4.4	Reference to section 2.7 changed to section 2.5, as the previous reference was incorrect. Revision view inserted at the beginning of the agreement.	2.1	April 2016

## 1. Background and objective

- 1.1 Under Section 28(2), item 7, of the Danish Consolidated Electricity Supply Act (*Bekendtgørelse af lov om elforsyning*)<sup>1</sup> (hereinafter the 'Danish Electricity Supply Act'), Energinet is responsible for the establishment and operation of a data hub for handling metered data etc. and for handling required functions and communication for use in electricity suppliers' invoicing, including communication of information on electricity taxes.
- 1.2 As the entity responsible for operating the DataHub, Energinet must lay down non-discriminatory and objective terms and conditions for its use. The provisions set out in these Terms have thus been laid down pursuant to Section 28(2), items 12 and 13, and Section 31(2) of the Danish Electricity Supply Act.
- 1.3 The provisions set out in these Terms have been laid down with a view to:
  - creating the best possible conditions for competition in markets for generation and trade in electricity,
  - ensuring requirements for reporting and provision of data and other information of relevance to the DataHub and thereby ensuring players in the Danish electricity market a smoothly functioning electricity market.

## 2. General terms and conditions

- 2.1 By signing these Terms, Energinet allows the Grid Company to be registered as user of the DataHub and for ongoing use of the DataHub as stated in Energinet's market regulations and terms and conditions in force at any time.
- 2.2 The Grid Company is obliged to comply with the market regulations and the terms and conditions in force at any time. The market regulations are available at <http://energinet/EN/EI/Forskrifter/Markedsforskrifter>.
- 2.3 Once the Grid Company is registered as user in the DataHub, the Grid Company can access the DataHub market portal through a number of user profiles secured by means of NemID. The Grid Company is obliged to take the necessary steps to ensure that access information is available to the Grid Company only and not to unauthorised parties.
- 2.4 If the Grid Company executes a transaction in the DataHub, the Grid Company is bound by the transaction.
- 2.5 Energinet is responsible for operating the DataHub in accordance with applicable legislation, including, in particular, the Danish Act on Processing of Personal Data (*Lov om behandling af personoplysninger*)<sup>2</sup> and good IT practice. Energinet is obliged to take the necessary and sufficient technical (including IT) and organisational security measures to prevent unauthorised use of DataHub data.

<sup>1</sup> Consolidated Act no. 1329 of 25 November 2013 as amended.

<sup>2</sup> Act no. 429 of 31 May 2000 as amended.

### 3. Player master data and EDI communication

- 3.1 In connection with the Grid Company's registration as user of the DataHub, the Grid Company must create and validate the master data registered about the Grid Company. The requirements for such master data are specified in Energinet's Regulation I: 'Master data'.
- 3.2 The Grid Company is always obliged to continuously maintain its master data in the DataHub's register of player master data; see Regulation I: 'Master data'.
- 3.3 If the Grid Company wants to use EDI communication to exchange messages with the DataHub, the Grid Company's system must be tested and approved for such purpose as stated in Energinet's Regulation F1: 'EDI communication with the DataHub in the electricity market'. This regulation also describes requirements for renewed testing and approval in the event of subsequent significant changes in the Grid Company's system.
- 3.4 If the Grid Company wants to use EDI communication to exchange messages with the DataHub as stated in section 3.3, but has only completed a limited part of the player test, the Grid Company is obliged to only use the functionality that has been tested and approved by Energinet's player test system.
- 3.5 If the Grid Company wants to start business processes, retrieve metered data etc. in the DataHub without the use of EDI, the Grid Company may do so by using the DataHub market portal. The requirements relating to the Grid Company's handling of business processes in the DataHub, among other things regarding time limits, are the same regardless of the communication method used by the Grid Company.

### 4. Requirements for processing of information

- 4.1 The Grid Company warrants that the Grid Company's collection and processing of information and communication with the DataHub will comply with applicable legislation, including, in particular, the Danish Act on Processing of Personal Data. The Grid Company is obliged to obtain the necessary consent<sup>3</sup> if the Grid Company wants to process information which can be attributed to a physical person.
- 4.2 The Grid Company warrants that it has taken the necessary and sufficient technical (including IT) and organisational security measures to prevent accidental or unlawful loss, deterioration or unauthorised access to data.
- 4.3 Unless otherwise specified in regulations issued by Energinet, Energinet is the controller as defined in the Danish Act on Processing of Personal Data in respect of the processing of data which according to the regulations and market requirements must be sent to the DataHub. Energinet is the processor as defined in the Danish Act on Processing of Personal Data where it is possible – but not a market requirement – to send information in the DataHub which is distributed to another player, for example web forms or certain messages in the end-of-supply process. Where Energinet is the processor in relation to communication through the DataHub, these Terms constitute the parties' processor agreement as defined in the Danish Act on Processing of Personal Data, including, in particular, sections 4.4 to 4.8 below.
- 4.4 Where Energinet is the processor, Energinet warrants that data will only be distributed to selected recipients and in accordance with the descriptions laid down and published by Energinet, eg market regulations or BRS guide etc. In this context, Energinet must safeguard the security measures mentioned in section 2.5.

<sup>3</sup> See Section 3, item 8, of Danish Act no. 429 of 31 May 2000 on the Processing of Personal Data as amended for information on the requirements for a freely given, specific and informed consent from the customer.

- 4.5 Where Energinet is the processor, Energinet is required under the Danish Electricity Supply Act to determine the type of communication which must take place via the DataHub.
- 4.6 Where Energinet is the processor, the Grid Company – as the controller – warrants in connection with the submission of information to the DataHub that such submission and distribution to another player will take place pursuant to the provisions set out in the Danish Act on Processing of Personal Data; see also sections 4.7 and 4.8 below.
- 4.7 Where Energinet is the processor, Energinet cannot as a general rule warrant correct and statutory processing of sensitive personal data in the DataHub, including in web forms etc. The Grid Company must therefore be aware that transfer of sensitive personal data can only take place via the DataHub where Energinet has expressly described the possibility of such transfer in the descriptions laid down and published by Energinet, eg market regulations or BRS guide etc., which means that this is possible for certain messages in the end-of-supply process.
- 4.8 Where Energinet is the processor, the Grid Company warrants that it will identify the need and, if necessary, ensure notification of and acceptance from the Danish Data Protection Agency for the required processing of sensitive personal data. Upon Energinet's request, the Grid Company must submit documentation for the lawfulness of the required processing pursuant to the Danish Act on Processing of Personal Data.

## 5. Duty to inform

- 5.1 Both parties must contribute to the compliance with these Terms. Both parties must therefore make the necessary information for the operation of the DataHub available to each other without undue delay. If the Grid Company's situation changes, the Grid Company must promptly inform Energinet of the changes.

## 6. Energinet's access to and use of information

- 6.1 For operational purposes and in order to fulfil Energinet's duties pursuant to the Danish Electricity Supply Act and other legislation, Energinet may at all times access the Grid Company's information in the DataHub as necessary, including information about the Grid Company's customers, transactions, player master data etc.
- 6.2 Energinet may use the information in the DataHub to perform the duties imposed on Energinet by law at any time. These include, among other things:
- calculations for settlement purposes in the electricity market, eg net settlement, reconciliation etc.
  - statistics and analysis of the market players' actions and movements/development within the electricity market as a whole
  - fault repair in the event of incorrect transactions in the DataHub
  - disclosure of information from the DataHub under applicable law, public orders etc.

- 6.3 Energinet logs all transactions in the DataHub for technical and security reasons and for purposes of operation, security, restoration and documentation as well as checking the players' compliance with the market regulations and terms and conditions. In order to safeguard the purposes described, Energinet carries out checks of the log and other individual checks in the event of breakdowns or suspicions of gross or repeated violations of the market regulations.

## 7. Liability for damages

- 7.1 Both parties are liable under the general law of liability for damages in Denmark. However, no damages can be claimed for indirect losses, including operating losses, loss of profits, loss of data and/or consequential damage, unless such damage or loss is the result of gross negligence or intentional action by the party responsible.
- 7.2 Energinet is not liable to the player for the correctness of the data reported to the DataHub by the players. Energinet thus cannot be held liable for incomplete or incorrect data sent by the players and any failure on their part to correct such data within the time limits in force at any time. Additionally, Energinet cannot be held liable for other players' use of such data reported by another player.

## 8. Amendments of these Terms

- 8.1 Energinet may amend these Terms at six months' notice, unless the amendments concern those mentioned in sections 8.2-8.3 below. Before any amendments are made, Energinet must give the Grid Company the opportunity to comment on the proposed amendments.
- 8.2 Energinet may change the IT requirements for use of the DataHub, eg changes to functionality, configuration etc., at a reasonable notice. If the changes significantly impact the Grid Company's system set-up or business procedures, Energinet must take all reasonable steps to inform the Grid Company of the changes at the longest possible notice, the minimum being six months. However, if the changes are made to ensure the continued technical or secure operation of the DataHub, the notice may be shorter.
- 8.3 Energinet may, at a reasonable notice, make changes resulting from amendments to applicable legislation which impact Energinet's operation of the DataHub. In case of such changes, Energinet will consult the Grid Company and endeavour to give notice of the changes in question in so far as is possible; however, such that the changes in any case can take effect from the date of commencement of the law amendments.

## 9. Termination

- 9.1 These Terms may be terminated by the Grid Company at a notice corresponding to the duration of the longest of the Grid Company's valid agreements on grid use in Denmark plus 30 days, and such that the Terms will always terminate effective from the first day of a month.
- 9.2 Energinet may terminate these Terms concluded with the Grid Company if the Grid Company grossly or repeatedly violates rules set out in Energinet's market regulations and terms and conditions which may be subject to sanctions by Energinet in the form of full or partial exclusion from the DataHub under Section 31(3) of the Danish Electricity Supply Act.
- 9.3 Any termination of these Terms by Energinet under section 9.2 requires that the Grid Company's breach be clarified in terms of licensing, which falls under the responsibility of the Danish Energy Agency; see Section 31(3) of the Danish Electricity Supply Act. Energinet's termination of these Terms thus requires consent from the Danish Energy Agency.
- 9.4 In the event of material breach, Energinet will notify the Grid Company in writing that Energinet will report the breach to the Danish Energy Agency for further investigation, including an assess-

ment of the potential consequences for the Grid Company's licence under Section 54 of the Danish Electricity Supply Act.

- 9.5 If, following such evaluation, the Danish Energy Agency consents to Energinet's termination of these Terms, Energinet notifies the Grid Company in writing that the Grid Company will be fully or partially excluded from using the DataHub. The order must be accompanied by a complaints guide pursuant to Section 31(4) and (5) of the Danish Electricity Supply Act.
- 9.6 If Energinet terminates these Terms, the Grid Company's customer relationships for the metering points for which the Grid Company is responsible must be terminated.
- 9.7 If these Terms are terminated, the Grid Company's right to access and use the DataHub will end as well.

## 10. Assignment

- 10.1 The Grid Company may not assign all or any rights or obligations under these Terms without Energinet's prior written consent.

## 11. Force majeure

Under these Terms, neither party will be considered to be liable to the other party as regards circumstances that are beyond the party's control and which the party should not have taken into account or should not have avoided or overcome. Force majeure arising out of a delay can be asserted for no more than the number of working days which the force majeure situation lasts.

- 11.1 The parties must inform each other of the occurrence and end of the force majeure event without undue delay.

## 12. Governing law and venue

- 12.1 The Grid Company may bring the sanctions imposed by Energinet before the Danish Energy Regulatory Authority (Energitilsynet), Carl Jacobsens Vej 35, DK-2500 Valby. In addition, Energinet's decision to deregister the Grid Company as user of the DataHub can be demanded to be brought before the courts within four weeks of the Grid Company having been notified of the decision as per Section 31(5) of the Danish Electricity Supply Act.
- 12.2 The Grid Company may bring the sanctions imposed by Energinet before the Danish Energy Regulatory Authority (*Energitilsynet*), Carl Jacobsens Vej 35, DK-2500 Valby. In addition, Energinet's decision to deregister the Grid Company as user of the DataHub can be demanded to be brought before the courts within four weeks of the Grid Company having been notified of the decision as per Section 31(5) of the Danish Electricity Supply Act.
- 12.3 Any disputes arising out of these Terms which cannot be settled between the parties through negotiation must first be attempted to be settled through mediation. The mediation must take place according to the applicable rules for mediation under the Danish Institute of Arbitration (*Det Danske Voldgiftsinstitut*).
- 12.4 If the dispute cannot be settled through mediation, and it is not within the competence of either the Danish Energy Regulatory Authority or the Danish Energy Agency to settle the dispute, it must be resolved according to the Danish Institute of Arbitration's 'Rules of Arbitration Procedure'. Each party must appoint one arbitrator, whereas the Institute will appoint the chairman of the arbitration tribunal. If one of the parties fails to appoint an arbitrator within 30 days of having submitted or been notified of the request for arbitration, the Institute will also appoint such arbitrator according to the aforementioned rules.

- 12.5 In connection with disputes concerning amounts of less than DKK 500,000, the arbitration tribunal will consist of one member only to be appointed by the Council of the Danish Board of Arbitration (*Voldgiftsnævnet*).
- 12.6 The arbitration tribunal must make a decision on the allocation of legal costs, including lawyers' fees, in its award.
- 12.7 The award of the arbitration tribunal is final and binding on the parties.

### 13. Signatures

These Terms are made in two original copies, one for the Grid Company and one for Energinet.

Please signify your agreement by signing and returning the Danish version of the Terms.