

ENERGINET

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Forfatter:
USS/ACH

TERMS OF ACCESS TO AND USE OF THE DATAHUB – THIRD PARTY

These terms apply to third parties who want to obtain master data and metered data via the customer-controlled access to data in the DataHub.

1. Background and purpose

- 1.1 Under section 28(2), item 7, of the Danish Consolidated Electricity Supply Act¹ (hereinafter the Danish Electricity Supply Act (Elforsyningsloven)), Energinet is responsible for the establishment and operation of a DataHub for handling metered data etc.
- 1.2 As the entity responsible for operating the DataHub, Energinet must lay down non-discriminatory and objective terms for its use. The provisions of these terms are thus laid down pursuant to section 28(2), item 13, section 31(2) and section 72a of the Danish Electricity Supply Act.
- 1.3 The terms apply to the inclusion and ongoing obtaining of data from the DataHub by third parties.
- 1.4 The provisions of 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 the communication of data of relevance to third parties in the market and thereby supporting a flexible electricity market.

2. General terms

- 2.1 It is a condition for admission as a third party at Energinet that the company meets the following requirements:
 - The company is registered for VAT in Denmark.
 - The company submits documentation (for example Articles of Association or similar) detailing the object of the company, including the purpose of obtaining customer data from the DataHub.
 - The company's activities are within one of the following areas:
 - Broker, ie a company that acts on behalf of an electricity supplier and markets the electricity supplier's products to customers or examines the customer's options of concluding agreements with electricity suppliers on behalf of the customer.
 - Energy consultant, ie a company that examines the customer's options for better energy efficiency or energy savings.

¹ Consolidated Act no. 1329 of 25 November 2013 as amended.

- Service provider that handles functions in the Danish electricity market with a view to providing information and guidance on or regulating the ongoing energy consumption and/or generation for a customer.
 - Other companies, institutions or authorities authorised to obtain data under the legislation in force from time to time.
 - The company authenticates itself using a valid NemID company signature from Nets.
 - The company has its own website.
- 2.2 By signing these terms using NemID, Energinet grants the third party access to obtain data from the DataHub on an ongoing basis where the customer has registered a valid power of attorney in the DataHub.
- 2.3 A power of attorney from a customer is obtained electronically via the customer-controlled access to data and is only valid from the moment the customer uses his NemID to grant electronic acceptance.
- 2.4 Once a customer has granted power of attorney, the third party may obtain data via an Energinet website. The third party may choose to implement a system integration with its own IT systems in order to obtain data directly from the DataHub (web services).
- 2.5 For the purposes of obtaining data from the DataHub, Energinet makes a test system available which a third party may use to ensure the integration with own IT systems and that data can be obtained.
- 2.6 Data returned from the DataHub will always be based on current values. Master data and metered data may subsequently be modified, and metered data may be incomplete in the DataHub at the time of the request.
- 2.7 Energinet is responsible for operating the DataHub in accordance with applicable legislation, including, in particular, the Danish Act on Processing of Personal Data² (Lov om behandling af personoplysninger) and good IT practice. Energinet is obliged to take necessary and sufficient technical (including IT) and organisational security measures to prevent unauthorised access to DataHub data.

3. Requirements for processing of information

- 3.1 The third party guarantees Energinet that the obtaining and use of information as well as communication with the DataHub by the third party comply with applicable legislation, including, in particular, the Danish Act on Processing of Personal Data. When Energinet has passed on information to a third party via the DataHub, it is the third party's responsibility to comply with the Danish Act on Processing of Personal Data, including the data security regulations.
- 3.2 The third party warrants that he has taken necessary and sufficient technical (including IT) and organisational security measures to prevent accidental or unlawful loss, deterioration or unauthorised access to data information.

² Act no. 429 of 31 May 2000 as amended.

4. Energinet's access to and use of information

- 4.1 For operational purposes and in order to fulfil Energinet's duties under the Danish Electricity Supply Act and other legislation, Energinet may at all times access information about the third party's activities as necessary, including use of data etc.
- 4.2 Energinet logs all the third party's activities in the DataHub for the purpose of verifying compliance with these terms by the third party. Energinet thus performs checks of the log and individual checks in the event of, for example, breakdowns or suspected breach of these terms.

5. Liability for damages

- 5.1 Both parties are liable under the general law of 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 a deliberate act by the party responsible.
- 5.2 Energinet is not liable to the third party for the correctness of the information reported to the DataHub by the market participants. Energinet thus cannot be held liable for incomplete or incorrect information submitted by the market participants and any failure on their part to correct such information within the time limits in force at any time, including the third party's use of such information submitted by a market participant.

6. Amendments to the terms

- 6.1 Energinet may amend these terms at six months' notice, unless the amendments concern those mentioned in clause 7.2 below. Before any amendments are made, Energinet must give the third party the opportunity to comment on the proposed amendments.
- 6.2 Furthermore, Energinet is entitled to change the IT requirements for obtaining of master and metered data via the customer-controlled access to data in the DataHub as required, eg changes to functionality, configuration etc., at a reasonable notice. If the changes significantly impact the third party's system set-up or business procedures, Energinet must take all reasonable steps to inform the third party of the changes at the longest possible notice, the minimum being six months. If the changes are made to ensure the continued technical or secure operation of the DataHub, the notice may be shorter.
- 6.3 Energinet may also, 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 must consult the third party 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.

7. Termination

- 7.1 These terms may be terminated by a third party without notice.
- 7.2 Energinet may terminate these terms by giving six months' notice to a third party.
- 7.3 In the event of material breach of the terms, Energinet may exclude the third party from obtaining data from the DataHub with immediate effect until it has been demonstrated that the breach has been remedied.
- 7.4 If the third party is unable to demonstrate that he has taken adequate measures to prevent breach of these terms, Energinet is entitled to terminate these terms to expire with immediate effect.

8. Assignment of rights and obligations

- 8.1 The third party may not assign, whether directly or indirectly, its rights or obligations under these terms without Energinet's prior written consent.

9. 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.

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

10. Governing law and venue

- 10.1 Settlement of any disputes arising out of these terms which cannot be settled amicably by the parties must first be attempted through mediation. The mediation must take place according to the applicable mediation rules under the Danish Institute of Arbitration (Det Danske Voldgiftsinstitut).
- 10.2 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 'Rules of Arbitration Procedure' by the Danish Institute of Arbitration. 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 appoint such arbitrator according to the above-mentioned rules.
- 10.3 In connection with disputes concerning amounts of less than DKK 500,000, the arbitration tribunal, however, will consist of one member only to be appointed by the Council of the Danish Board of Arbitration (Voldgiftsnævnet).
- 10.4 The arbitration tribunal must consider the allocation of legal costs, including lawyers' fees.
- 10.5 The award of the arbitration tribunal is final and binding on the parties.

11. Acceptance of the terms

- 11.1 These terms are accepted by a third party when signed using NemID.