

NATIONAL GRID GAS PLC

**NTS CHARGING MODEL SOFTWARE
LICENCE AGREEMENT**

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transferable, object code licence to use the NTS Charging Model Software in Great Britain in accordance with the terms of this Agreement (“**Licence**”).

3 Duration of the Licence and Updates

3.1 This Licence is granted to the Licensee for an unlimited period until terminated by the Licensor in accordance with Clause 9. No other support services are provided by the Licensor after delivery of the NTS Charging Model Software.

4 Restrictions on Use

4.1 The following restrictions shall apply to the Licensee’s use of the NTS Charging Model Software:

- (a) the Licensee is restricted to using the NTS Charging Model Software for calculating NTS Entry and Exit Charges in Great Britain only;
- (b) the Licensee will not reproduce the NTS Charging Model Software for sale or otherwise without the prior written agreement of the Licensor;
- (c) the Licensee agrees not to copy, modify, adapt, translate, disassemble, decompile reverse engineer or otherwise recreate the enabling macros embedded in the NTS Charging Model Software.

5 Security and Control

5.1 The Licensee shall during the continuance of the Licence:

- (a) effect and maintain adequate security measures to safeguard the NTS Charging Model Software from access or use by any unauthorised person;

- (b) retain the NTS Charging Model Software and all copies thereof under the Licensee's effective control;
- (c) maintain a full and accurate record of the Licensee's copying and disclosure of the NTS Charging Model Software and shall produce such record to the Licensor on request from time to time.
- (d) ensure that appropriate environmental conditions and IS infrastructure are maintained for the NTS Charging Model Software and shall take all reasonable steps to ensure that the NTS Charging Model Software is operated in a proper manner by the Licensee's employees.

6 Liability

6.1 The Licensee agrees that the NTS Charging Model Software is being provided by the Licensor "as is" as the basis of a nominal licence fee being paid by the Licensee. The Licensor accepts no liability in tort, contract, common law or otherwise howsoever arising for the NTS Charging Model Software and the use to which it is put by the Licensee. In accepting a licence to use the NTS Charging Model Software the Licensee is agreeing to indemnify the Licensor against all claims, costs, expenses and liability including consequential loss, loss of profit and loss of business suffered or incurred by the Licensor as a result of the Licensee's use or misuse.

6.2 The Licensor shall have no liability for any losses or damages which may be suffered by the Licensee (or any person claiming

under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:

- (i) special damage, even though the Licensor was aware of the circumstances in which such special damage could arise; or
- (ii) loss of profits, anticipated savings, business opportunity or goodwill; or
- (iii) loss of, or damage to, data.

6.3 All conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Licence or any collateral contract, 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.

6.4 The exclusions in this clause 6 and within this Licence shall apply to the fullest extent permissible at law but the Licensor does not exclude liability for:

- (a) death or personal injury caused by the negligence of the Licensor, its officers, employees, contractors or agents; or
- (b) fraud; or
- (c) breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
- (d) any other liability which cannot be reasonably excluded by law.

7 Copyright and Intellectual Property

7.1 The Licensee acknowledges the Licensor's exclusive ownership of the NTS Charging Model Software including the copyright and all other intellectual property rights

subsisting throughout the world in the NTS Charging Model Software and that the structure, organisation and code are the valuable trade secrets of the Licensor. This Agreement does not grant the Licensee any intellectual property ownership rights relating to the NTS Charging Model Software.

8 Licence Enforcement

8.1 The Licensee shall allow the Licensor, at any reasonable time, to check that the NTS Charging Model Software is not being used outside the terms of this Licence. This checking shall be at the expense of the Licensor. If the Licensee fails to comply with the terms and conditions of this Licence, the Licensor may terminate the Licensee's right to use immediately by giving notice in writing to the Licensee, in which case the Licensee must destroy its copies of the NTS Charging Model Software.

9 Termination

9.1 The Licensor may terminate the Licence and Agreement forthwith on giving notice in writing to the Licensee if:

- (a) the Licensee commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 30 days after the receipt of such a request in writing from the Licensor;
- (b) the Licensee permanently discontinues the use of the NTS Charging Model Software;

- (c) the Licensee shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Licensee shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order or shall cease to carry on business; or
- (d) the Licensee suffers or undergoes any procedure analogous to any of those specified in sub-clause 9.1(c) above or any other procedure available in the country in which the other party is constituted established or domiciled against or to an insolvent debtor or available to the creditors of such a debtor.
- (e) the Licensor so determines in its sole discretion upon 30 days written notice to the Licensee.

9.2 Forthwith upon the termination of the Licence the Licensee shall return to the Licensor the NTS Charging Model Software and all copies of the whole or any part thereof or, if requested by the Licensor, shall destroy the same and certify in writing to the Licensor that they have been destroyed.

9.3 Any termination of the Licence or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

10 Assignment

The Licensee shall not be entitled to assign, sub-license or otherwise transfer this Agreement nor the Licence whether in whole or in part.

11 Notices

11.1 All notices which are required to be given hereunder shall be in writing and shall be sent to the Company Registered Office address of the recipient. Any such notice may be delivered personally or by first class pre-paid mail or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class mail 48 hours after posting, if by facsimile transmission, immediately provided that the sender receives a correct answer back transmission report.

12 Risk and title

Risk in, and title to, any media bearing any software or documentation or other information that may from time to time be supplied by the Licensor to the Licensee shall pass to the Licensee on acceptance by the Licensee.

13 Force majeure

13.1 Subject to due compliance with clause 13.2, neither party shall be liable to the other for any delay or non-performance of its obligations under this Licence arising from any cause beyond its reasonable control including, without limitation, act of God, governmental act, war, fire, flood, explosion or civil commotion.

13.2 In the event of either party being so delayed or prevented from performing its obligations, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Licence; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

13.3 In the event that such delay or prevention continues for more than eight weeks, the party whose performance is not delayed or prevented may terminate this agreement on 30 days' written notice to the other party, in which case the provisions of clause 9 shall apply.

14 Confidentiality and publicity

14.1 Each party shall, during the term of this agreement and thereafter, keep confidential, and shall not use for its own purposes, nor without the prior written consent of the other disclose to any third party, any and all information of a confidential nature (including trade secrets and information of commercial value) that may become known to such party from the other party, and which relates to the other party or any of its affiliates ("**Confidential Information**"), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this agreement, or subsequently comes lawfully into the possession of such party from a third party.

14.2 The terms of this License may not be disclosed by the Licensee (other than to its

legal advisers) without the prior written consent of the Licensor.

14.3 The provisions of clause 14 shall remain in full force and effect notwithstanding any termination of this Licence.

15 Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

16 Severability

If any provision of this Licence is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

17 Amendments

Any amendment, waiver or variation of this Licence shall not be binding on the parties unless set out in writing, expressed to amend this agreement and signed by or on behalf of each of the parties.

18 Third party rights

No term of this Licence is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Licence.

19 Entire Agreement

This Licence, the schedules and the documents annexed to it or referred to in it contain the whole agreement between the parties relating to the subject matter hereof, and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

20 Law

20.1 This License Agreement shall be subject to the construed and interpreted in accordance

with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales. Nothing in this Clause shall prevent the Licensor from enforcing any of its intellectual property rights subsisting in the NTS Charging Model Software in any court of competent jurisdiction.

SIGNED FOR AND ON BEHALF OF)

NATIONAL GRID GAS PLC)

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