

# **General Terms and Conditions**

## for the Backdelivery of Electricity

16 November 2020



**VATTENFALL**

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## Article 1 Definitions

The terms capitalised in the Backdelivery Agreement, these General Terms and Conditions and the Product Terms and Conditions are defined terms and shall be defined in the same way as in the Code of Definitions and the Electricity Act, unless deviated from in these General Terms and Conditions, the Product Terms and Conditions or the Backdelivery Agreement. Terms that are used in the singular form shall also be understood to refer to plural forms, and vice versa. The following terms are used with the following meanings in these General Terms and Conditions:

**Connection and Transmission Agreement:** the agreement the Producer must sign with the Grid Operator for the area in which the Producer's Point of Supply (Leveringspunt) is situated and relating to the Connection to and transmission of Electricity over the Grid. **ACM:** the Netherlands Authority for Consumers and Markets, the independent supervisory body which, among other things, maintains supervision of the energy market in order to create a level playing field with companies that observe the rules and well-informed household customers who defend their rights.

**Producer:** the natural person working in a liberal profession, sole trader, partnership, legal entity, foundation, association, denomination or government body with whom Vattenfall has concluded a Backdelivery Agreement.

**General Terms and Conditions:** the present General Terms and Conditions for the Backdelivery of Electricity to the Business Market.

**Allocation Location (Allocatiepunt):** the virtual location on the site of a Connection's Transfer Location, where the electricity exchange between an installation and the Grid is allocated to a market party from an administrative perspective as if the measurement has taken place at the Connection's Transfer Location.

**Code of Definitions (Begrippencode elektriciteit):** the glossary dated 21 April 2016, as amended from time to time, as described in Articles 27, 31 and 54(1) of the Electricity Act (available for consultation at [www.overheid.nl](http://www.overheid.nl)).

**C-AR:** the Central Connections Register, the central register for collective grid operators, in which each grid operator manages their register for their own grid, which includes the details for each (scheduled) Connection such as the category of the Connection, the way in which the Connection will be measured, the standard annual consumption and the allocation method.

**CER:** the Contract Data Register, in which Producer's contract data are stored.

**Codes:** the Measurement Code, Grid Code, System Code and Information Code, which form part of the technical terms and conditions as established by the ACM in line with the Electricity Act.

**Contract Price:** the Contract Price as defined in the Backdelivery Agreement.

**Contract Volume:** the contracted amount of electricity per contract period.

**EAN Code:** a unique identification number pursuant to European Article Numbering, consisting of 18 digits allocated per Connection.

**Electricity Act:** the law of 2 July 1998, including rules relating to the generation, transmission and supply of electricity, as amended from time to time.

**Recognised Meter Operator (erkende meetverantwoordelijke):** the meter operator recognised and authorised to install the Measurement Device and take the Meter Readings of Large Scale Connections under the Measurement Code.

**Authorised Representative:** the natural person working in a liberal profession, sole trader, partnership, legal entity, foundation, association, denomination or government body who is entitled, using a legally valid power of attorney signed by the Producer, to undertake (legal) actions as further described in this Backdelivery Agreement on behalf of the Producer in question.

**Large Scale Connection:** a Connection with a total maximum permeability value greater than 3x80A or a Connection as set out under Article 1(2) or (3) of the Electricity Act.

**Indirect damage, Consequential loss and/or Loss of income:** damage that is not a direct consequence of action(s) that can be attributed to Vattenfall. This shall include, but is not limited to, the following: loss of profits, loss of interest, crop damage, loss of turnover and loss of third-party orders.

**Information Flow:** information that the Producer should provide to Vattenfall relating to the Backdelivery of electricity and as part of the Programme Responsibility taken over, or to be taken over, by Vattenfall. In each case, this Information Flow includes, but is not limited to, the following: (I) all relevant data relating to all planned and unplanned interruptions to standard company operations and (II) all information relating to outages and (III) EAN Codes from the Producer's Connection(s), production data and any changes in production patterns. The Information Flow contains the data known, or which ought to have been known, to the Producer.

**Small-scale Consumer:** Producers who have a Connection to the Grid with a total maximum permeability value of a maximum of 3x80A as set out under Article 95a(1) of the Electricity Act.

**Small Scale Connection:** a Connection with a total maximum permeability value less than or equal to 3x80A (not being a Connection as set out under Article 1(2) or (3)).  
**Backdelivery:** the amount of electricity made available by the Producer at the Point of Supply as agreed with Vattenfall.

**Backdelivery Agreement:** the agreement for Backdelivery between Vattenfall and the Producer, including the Annexes in which the conditions, including these General Terms and Conditions and the Product Terms and Conditions, and provisions are established under which the Backdelivery set out in the Backdelivery Agreement must be delivered, services must be provided and in which the rights and obligations of the Parties are established.

**Point of Supply (Leveringspunt):** the location on the Grid where electricity is backdelivered by Producer to Vattenfall.

**Measurement Device (Meetinrichting):** the equipment as a whole that is intended to measure the electricity exchanged.

**Transfer Location (Overdrachtspunt):** the physical location where a separation can be made between the Connection of two interconnected grids or between a grid's connection and a connected party's installation.

**Force Majeure:** non-attributable failure to perform as stated in Article 10.

**Party (Parties):** the Producer and Vattenfall are separately a Party; they are jointly referred to as the Parties.

**Peak Hours:** the peak hours determined by the grid operator, running from 07:00 to 23:00 on the days Monday to Friday.

**Off-Peak Hours:** the hours determined by the grid operator, running from 23:00 on Fridays to 07:00 on Mondays, running from 23:00 to 07:00 on the days Monday to Friday, and official public holidays.

**Primary Allocation Location (Primair allocatiepunt):** the first Allocation Location assigned to a Connection.

**Product Terms and Conditions:** the product-specific terms and conditions agreed between the Producer and Vattenfall in the Backdelivery Agreement and those as explicitly stated in and annexed to the Backdelivery Agreement.

**Programme Responsibility:** the responsibility of Producer, not being a Small-scale Consumer, to establish or have established on behalf of the grid operators, programmes relating to the generation, transmission and consumption of electricity, and to act in accordance with such programmes while observing the conditions as stated in Article 31 of the Electricity Act.

**Programme Responsible Party:** a natural person, legal entity or company, not being a grid operator, which is recognised by the system operator of the national high-voltage grid as being the programme responsible party pursuant to the Grid Code (Netcode), also referred to as being responsible for balancing (balanceringsverantwoordelijke).

**Secondary Allocation Location (Secundair allocatiepunt):** an Allocation Location assigned to a Connection by the Grid Operator, and not being the Primary Allocation Location. Vattenfall: the company (belonging to the Vattenfall Group) named in the Backdelivery Agreement which enters into the aforementioned agreement with the Producer.

## Article 2 Scope

- 2.1. Unless explicitly stated otherwise, these General Terms and Conditions apply to all offers (tenders) by and all orders to Vattenfall for the Backdelivery of electricity to Vattenfall as well as any associated services, and to all agreements with Vattenfall related thereto.
- 2.2. The applicability of Producer's (general) terms and conditions is hereby explicitly rejected.
- 2.3. Any objections by the Producer to any terms that vary from these General Terms and Conditions may only be made if and insofar as these are accepted by Vattenfall in writing.
- 2.4. Should any provision of these General Terms and Conditions be invalid or is nullified, for whatever reason, the remaining General Terms and Conditions shall remain in force and the Parties shall agree terms to replace the invalid provision while retaining its scope as far as possible.
- 2.5. In the event of conflict between the provisions of these General Terms and Conditions and those in the Backdelivery Agreement, the provisions of the Backdelivery Agreement shall prevail.
- 2.6. In the event of conflict between the provisions of these General Terms and Conditions and those in the Product Terms and Conditions, the provisions of the Product Terms and Conditions shall prevail.

## Article 3 Offers (tenders) and the Backdelivery Agreement

- 3.1. Unless explicitly agreed otherwise and in writing, all offers (tenders) from Vattenfall are binding for the term stated therein. If the tender states a certain date by which it must be signed, this is also the final date on which the offer (tender) is valid or binding.
- 3.2. Acceptance of any Vattenfall offer(s) (tenders) by the Producer is irrevocable.
- 3.3. Vattenfall shall only be bound by its non-binding/indicative offers (tenders) if it has confirmed these in writing or if it has started the performance described in the relevant tender(s).

- 3.4.** Verbal commitments or agreements by or with their staff shall not bind Vattenfall until and insofar as such commitments or agreements have been confirmed in writing.
- 3.5.** Vattenfall shall only be bound to amendments to the Backdelivery Agreement requested by the Producer (in writing) if Vattenfall has accepted these amendments in writing. By way of derogation from Article 3(3), execution of the performance described in the relevant tender(s) shall under no circumstances imply the acceptance of the amendments requested by the Producer.
- 3.6.** Unless explicitly stated otherwise in writing, these General Terms and Conditions shall apply in full to amendments to offers (tenders) or the Backdelivery Agreement accepted by Vattenfall in writing.

## **Article 4 Backdelivery and purchase**

- 4.1.** During the entire term of the Backdelivery Agreement, Vattenfall undertakes to draw the Contract Volume from Producer, and Producer undertakes to export this Contract Volume to Vattenfall under the conditions as set out in the Backdelivery Agreement.
- 4.2.** The Producer shall sign a Connection and Transmission Agreement as mentioned in Article 5 with the Grid Operator in order to be able to draw the Contract Volume from the Grid as stated in Article 4 (1).
- 4.3.** The Backdelivery of electricity to Vattenfall shall start on the first day of a calendar month, unless the Parties agree on another date in writing.
- 4.4.** If the Backdelivery begins earlier or later than the date indicated in the Backdelivery Agreement for any reason whatsoever, the obligation to Backdelivery as set out in the Backdelivery Agreement shall be considered to start on the date of the actual Backdelivery. The end date as originally agreed in the Backdelivery Agreement shall remain in force and unaffected.

## **Article 5 Connection, transmission and system services**

- 5.1.** The Producer shall sign a Connection and Transmission Agreement on its own behalf and at its own risk for its Connections with the appointed Grid Operator.
- 5.2.** The Producer shall ensure that its Measurement Device meets the legal and other applicable requirements and regulations throughout the term of the Backdelivery Agreement.
- 5.3.** When the Producer has a Small Scale Connection to the Grid, Vattenfall shall communicate to the Grid Operator the necessary data for the Connection and Transmission Agreement in line with the applicable Codes. Vattenfall shall also invoice to the Producer the costs for the connection, transmission and meters, which the Producer shall pay to Vattenfall.
- 5.4.** When the Producer has, or will have in the future, a Connection with a Primary Allocation Location and one or more Secondary Allocation Locations, these shall be irrevocably linked to the Connection. The installation associated with a Secondary Allocation Location may not be used for the benefit of domestic consumption.
- 5.5.** In the absence of a Connection and Transmission Agreement and/or if such agreement become null and void, is cancelled or is terminated either in whole or in part, this shall in no way lead to the Backdelivery Agreement becoming null and void, cancelled or terminated by the Producer either in whole or in part.

## Article 6 Measurement Device/Determining the scope of Backdelivery

- 6.1.** The Producer shall ensure that a Measurement Device is installed and maintained at the Point of Supply as part of its order and at its own expense, taking into account the provisions stated in these General Terms and Conditions.
- 6.2.** The Producer shall ensure that the Measurement Device is fitted and that the meter readings are carried out in accordance with the Measurement Code and other regulations applicable to readings.
- 6.3.** The Producer shall ensure that a Recognised Meter Operator is appointed for its Measurement Device and readings.
- 6.4.** Unless otherwise agreed in writing, the amount of electricity exported by the Producer shall be established based on the data obtained using the Measurement Device. Vattenfall shall receive this data from the Grid Operator as set out in the Electricity Act and associated regulations. The established meter reading of the amount of electricity exported may be adjusted by Vattenfall due to a correction by or additional data from the Grid Operator and/or the Recognised Meter Operator. The Producer shall be bound to pay to Vattenfall any possible amounts invoiced by Vattenfall arising from said adjustment.
- 6.5.** Unless otherwise agreed, the Producer shall be deemed to have given Vattenfall their consent to request the necessary data from the responsible Grid Operator. The Producer shall bear all costs related to supplying the data. If Vattenfall receives the data directly from the aforementioned Grid Operator and if and insofar as the Grid Operator in question invoices Vattenfall with costs, Vattenfall shall refer the Grid Operator in question to the Producer. Vattenfall shall under no circumstances be bound to pay any costs invoiced by the Grid Operator.
- 6.6.** If Vattenfall does not receive the data referred to in the previous paragraphs in good time and/or if an obvious error is made when taking the meter readings or when processing the metering data, Vattenfall shall be entitled to determine the volume of electricity exported by the Producer pursuant to paragraph 10 of this Article. This shall not affect Vattenfall's right to establish later on (or have established) the volume of electricity actually exported using the reading from the Measurement Device and on this basis, to either invoice or retribute to the Producer the amount due.
- 6.7.** Should there be any doubts about the accuracy of the Measurement Device and/or metering data, both the Producer and Vattenfall may ask the Recognised Meter Operator for clarification with regard to the relevant Measurement Device and metering data. If any doubt about the correctness of the Measurement Device's operation and/or the accuracy of the metering data still remain, each Party may request that the Measurement Device be investigated by a different Recognised Meter Operator or expert, to be agreed between the Parties within three weeks. If the Parties cannot reach an agreement within this timeframe, Vattenfall shall be authorised to appoint another Recognised Meter Operator or expert. Vattenfall shall inform the Producer in good time of their engaging the agreed (or appointed by Vattenfall) Recognised Meter Operator or expert as mentioned in the previous sentence, as well as the costs arising therefrom and the day and time on which the investigation is to be carried out. Each Party shall be entitled to be present during the investigation or to be represented during the investigation.
- 6.8.** The costs of the investigation as mentioned in the previous paragraph shall be borne by the Party who has (mainly) acted improperly, without prejudice to the Party's options to recover such costs from a third party.
- 6.9.** If an investigation of the Measurement Device referred to in the previous paragraphs proves that the Measurement Device has not operated correctly

and that the variance is greater than permitted (based on the requirements and regulations stated in paragraph 2 of this Article), the amount of electricity supplied shall be determined based on the outcome of the investigation as referred to in paragraph 7 above.

- 6.10.** If the investigation carried out shows no practical measure for establishing the volume of electricity exported by the Producer, Vattenfall shall be entitled to estimate such consumption for the period in question to the best of its ability using the information available, with the following general principles:
- the volume of consumption in a previously agreed period; or
  - the average amount of consumption in a previous and/or subsequent period, or another fair measure to be determined, after consulting the Producer, by Vattenfall.

## **Article 7 Programme Responsibility**

- 7.1.** Unless otherwise agreed, the Producer shall transfer the Programme Responsibility to Vattenfall pursuant to the conditions and provisions as set out below in this Article. For its part, Vattenfall shall be entitled to outsource the Programme Responsibility to a third party of its choosing, namely a Programme Responsible Party.
- 7.2.** The Producer shall provide Vattenfall with the Information Flow at its own expense.
- 7.3.** In the event that the Information Flow provided by the Producer to Vattenfall is incomplete, incorrect or late, or that the Information Flow is provided by the responsible Grid Operator, and in the event of disruption to the communication links or the equipment or software belonging to the Parties and/or third parties, Vattenfall shall be forced to carry out the Producer's Programme Responsibility, if necessary on the basis of estimates. In such a case, the costs of doing so, including Imbalance costs, shall be borne by the Producer.

If the Producer is in default (see Article 9(5) and Article 12(3) of these General Terms and Conditions), Vattenfall shall be entitled to terminate the Programme Responsibility with the relevant Grid Operator. Vattenfall shall inform the Producer of this immediately.

Vattenfall shall not be held liable for any damages suffered, or to be suffered, by the Producer as a result of terminating the Programme Responsibility.

## **Article 8 Prices (rates)**

- 8.1.** The price and other costs associated with the Backdelivery of electricity to be paid by Vattenfall to the Producer are defined in the Backdelivery Agreement. Said price and other costs shall apply for the duration of the Backdelivery Agreement.
- 8.2.** All amounts due by Vattenfall arising from the Backdelivery Agreement shall be increased by taxes, surcharges and levies that Producer is obliged by the authorities or is authorised to invoice to Vattenfall.
- 8.3.** Vattenfall reserves the right to adjust the prices and other costs as stated in the first paragraph of this Article if the Producer has not cancelled a fixed-term Backdelivery Agreement pursuant to Article 12(2) of these General Terms and Conditions and the Backdelivery Agreement is then tacitly renewed. The adjusted price shall apply to the duration of the period for which the Backdelivery Agreement is tacitly renewed. In the event of further tacit renewal, Vattenfall shall be authorised to make further price adjustments in relation to the Backdelivery Agreement as mentioned in paragraph 3.

- 8.4.** In case of a Backdelivery Agreement for an indefinite period, Vattenfall shall be entitled to adjust periodically the prices and other costs as mentioned in the first paragraph of this Article.

## **Article 9 Invoicing and payment**

- 9.1.** All amounts due by Vattenfall arising from the Backdelivery Agreement shall be billed on an invoice by Vattenfall on behalf of Producer, also called “self billing”. Notwithstanding the fact that Vattenfall draws up the self billing invoice, the Producer will be the responsible and liable party to assure the correctness of such invoice. Also, the Producer will be responsible for the payment of taxes, surcharges and levies that, if applicable are mentioned on the invoice.
- 9.2.** If the Producer has any objections to such invoice, he is obliged to manifest this in writing within 30 days after the date of invoicing. In case the Producer has not submitted any objections within this term, the invoice will be deemed to have been accepted by the Producer. In case the Producer submits an appeal after the 30 day term, Vattenfall is entitled to decline an assessment of Producer’s submitted appeal.
- 9.3.** Vattenfall shall pay an invoice in principle within fourteen days of the date of the invoice and into an account to be indicated by the Producer. Vattenfall is entitled to settle these payments with any amounts due by the Producer. The payment term of 14 days also applies to Producer, in case Producer has any payments due to Vattenfall.
- 9.4.** The Producer shall not be entitled to suspend its payment obligations arising from the Backdelivery Agreement for any reason whatsoever.
- 9.5.** Should the Producer fails to pay, fails to pay in full and/or fails to pay in time, it shall be in default by operation of law and without any further notice of default. In that case, the Producer must pay the legal interest (pursuant to Article 6:119a of the Dutch Civil Code) due on the outstanding amount, charged from the due date up to the date of payment, without prejudice to Vattenfall’s right to compensation for legal and other costs. The amounts stated in this paragraph (including interest and costs) shall be immediately due and payable. The moment of payment is the moment when the full amount owed is irrevocably credited to Vattenfall’s bank account.
- 9.6.** If and insofar as the Producer is in default, Vattenfall shall be entitled to terminate the Programme Responsibility and cease the Backdelivery of electricity by the Producer. Vattenfall shall inform the Producer when ceasing the Backdelivery whether the Backdelivery Agreement is either being suspended or terminated.
- 9.7.** The Producer shall waive any right of set-off.
- 9.8.** The Producer shall ensure that the costs related to commissioning and maintainance of the Connection to the Grid, not being Small-scale Connections, as well as costs relating to metering- and other services carried out (rental of medium-voltage units, etc.) and associated costs incurred by the engaged Grid Operator or Recognised Meter Operator, shall be invoiced by these parties directly to the Producer. The Producer shall ensure that these costs are paid.

## **Article 10 Non-attributable shortcoming (Force Majeure)**

- 10.1.** Each Party shall be entitled to invoke Force Majeure if the performance of the Backdelivery Agreement, in whole or in part and whether temporarily or otherwise, is impeded or made difficult due to circumstances that are not attributable to its fault and will not be for its account pursuant to law, legal act or generally accepted practice. In each case, such circumstances include,

but without limitation, international conflicts, violent and/or armed actions, measures taken by a domestic or foreign government or a supervisory authority, boycott actions, accidents or an event whereby the transmission of electricity could not take place in a free and unencumbered manner, the outage of the transmission grid, the loss of voltage on the Grid or the non-operation of the Grid, or any shortcoming on the part of the national grid operator and/or Grid Operator(s) in fulfilment of their obligations towards the Producer and/or Vattenfall.

- 10.2.** The Party wishing to invoke Force Majeure must immediately inform the other Party in writing of the commencement of the Force Majeure and the cause(s) thereof in writing immediately.
- 10.3.** In the event of Force Majeure the invoking Party's obligations shall be suspended. If the Force Majeure lasts for more than three weeks, both Vattenfall and the Producer shall be entitled to terminate in writing the part of the Backdelivery Agreement that cannot be executed. The Parties shall immediately enter into consultations with a view to possible adjustments to the Backdelivery Agreement, which correspond as much as possible to the original content and meaning of the Backdelivery Agreement. Notwithstanding the provisions of this paragraph, the Producer shall only be entitled to (partially) terminate the Backdelivery Agreement after payment to Vattenfall of any amounts due to Vattenfall at the time of the (partial) termination, irrespective of whether these are due and payable.

## **Article 11 Liability**

- 11.1.** Unless the event of Force Majeure, the Producer will be considered to be in default by operation of law without further notice of default for any shortcomings in meeting the obligations of the Backdelivery Agreement. Producer is bound to pay all damages which Vattenfall suffers as a result of these shortcomings, including all damages inflicted by the Producer, its personnel or any third parties engaged by Producer. Producer indemnifies Vattenfall for all adverse consequences with regard to claims of third parties.
- 11.2.** With regard to shortcomings in fulfilling its obligation to the Backdelivery of electricity, Vattenfall and any third party (parties) engaged by Vattenfall may be held liable only to the extent these shortcomings can be attributed to a fault on the part of Vattenfall. Vattenfall shall not be liable for any Indirect damage, consequential loss and/or loss of income at any time except in case of willful acts or gross negligence. Under no circumstances shall Vattenfall be held liable for any shortcoming in the discharge of its obligations towards the Customer other than relating to this obligation to supply (by way of clarification and not limitative: for example, Vattenfall shall not be held liable for the transmission and/or Connection to the Grid, given the Customer has had to conclude a separate agreement for this with a Grid Operator).
- 11.3.** Any claim for damages by the Producer must be submitted by the Producer to Vattenfall in writing within fifteen working days of the date on which the damages occurred or within fifteen working days of the date on which the damage could reasonably have been detected. If the Producer fails to submit a claim within this period and Vattenfall is therefore not given the opportunity to inspect and/or limit the damage in a timely manner, Vattenfall reserves the right to refuse to deal with the claim further.
- 11.4.** In all cases in which Vattenfall is obliged to pay compensation, the amount per event and per year is limited to the (definitive) total amount, excluding taxes, levies and grid operating costs, that Vattenfall will invoice or invoiced to the Producer for the month in which the loss or damage occurs.

## **Article 12 Duration and termination of the Backdelivery Agreement**

- 12.1.** With the exception of cases as stated in Article 4(5), the Backdelivery Agreement shall enter into force on the start date and shall be valid for the agreed period as stated in the Backdelivery Agreement. With the exception of that stated in Article 10(3), premature cancellation or termination of a fixed-term Backdelivery Agreement shall not be possible, unless otherwise explicitly agreed by the Parties in writing.
- 12.2.** Pursuant to Article 8(3), a fixed-term Backdelivery Agreement shall be tacitly renewed for the duration of the original term, to a maximum of one year, unless one of the Parties has cancelled the Backdelivery Agreement in writing by observing a notice period of at least three calendar months. In case of tactical renewing, the Producer will provide Vattenfall with the information as stated in Article 13(4). A Backdelivery Agreement for an indefinite period should be terminated by observing a notice period of at least three calendar months.
- 12.3.** If the Producer fails to comply with one or more of its obligations set out in these terms and conditions and/or the Backdelivery agreement, fails to do so on time or appropriately, is declared bankrupt, applies for (provisional) suspension of payments, if the Natural Persons Debt Rescheduling Act (Wet Schuldsanering Natuurlijke Personen (WSNP)) is declared applicable to the Producer, if the Producer goes into liquidation or ceases trading, or if the Producer's assets are seized either in whole or in part, Vattenfall reserves the right to suspend execution of the Backdelivery Agreement or to terminate the Backdelivery Agreement either in whole or in part by a written notification without prior notice of default, at its discretion and without prejudice to any future right to payment of all amounts and compensation for all costs due from the Producer to Vattenfall, including (Indirect) damages and interest.
- 12.4.** The exercising by Vattenfall of its powers as described in this Article may not lead to liability on the part of Vattenfall towards the Producer for any losses arising as a result.

## **Article 13 Obligation to provide information and amendments**

- 13.1.** The Producer is obliged to grant Vattenfall the necessary cooperation in execution of the Backdelivery Agreement and verification of its compliance therewith, in particular by:
  - a. informing Vattenfall as quickly as possible of all facts, events and changes in circumstances that may prove relevant to the execution of the Backdelivery Agreement, such as losses, failures or irregularities noted or suspected by the Producer relating to the Producer's part of the Connection, including the Measurement Device and any broken seals;
  - b. informing Vattenfall in writing at least four weeks in advance of intended changes to its bank account number and invoice address;
  - c. informing Vattenfall in writing at least four weeks in advance of an expected change in the amount of electricity to be exported per year, a proposed replacement and/or adjustment to the Producer's Connection. In the event of an actual change to the amount of electricity exported per year, replacement and/or adjustment to the Connection, Vattenfall shall be entitled to adjust the prices and fees agreed with the Producer.
- 13.2.** The Producer is obliged to inform Vattenfall in writing and by registered letter at least four weeks in advance of an intended move, change of address, cessation of business activities, change of (trading) name, acquisition, (legal) merger, demerger or sale of a company division and/or any other significant change to the company structure and/or to the Producer's management.

- 13.3.** In cases as set out in paragraph 2 of this Article, Article 12 shall remain in force and unaffected. In such cases, the Producer may ask Vattenfall to amend the applicable Backdelivery Agreement in line with the changed circumstances. Should Vattenfall accept this request, it shall confirm this in writing. Vattenfall may attach conditions to this consent. Should the Producer accept Vattenfall's conditions, Vattenfall shall amend the Backdelivery Agreement.
- 13.4.** The Producer is responsible for ensuring that Vattenfall has the correct information regarding the correct execution of the Backdelivery Agreement at least four weeks prior to the effective date of the Backdelivery Agreement. If Vattenfall has not received the correct information from the Producer at least four weeks prior to the effective date of the Backdelivery Agreement, Vattenfall may not be held liable for any shortcoming in complying with the Backdelivery Agreement. Costs incurred by Vattenfall as a result shall be borne by the Producer.

## **Article 14 Change of Supplier**

- 14.1.** The Producer confirms to Vattenfall that, on the date on which the Producer starts the export of electricity as agreed by the Parties in the Backdelivery Agreement, the Producer has no current contractual obligations towards one or more other suppliers for the Backdelivery. The Producer is deemed to have ended all other agreements for the backdelivery of electricity with regard to the relevant Points of Supply with any other party timely.
- 14.2.** If the Producer has terminated the Backdelivery Agreement in order to take electricity from a third party and on the date on which the Backdelivery Agreement terminates, no other backdelivery agreement has yet been concluded with said third party, and no information has been received from the Grid Operator that the Producer has actually switched supplier (a „switch report“), Vattenfall shall continue the Backdelivery of electricity from the Producer for a one month period following the date on which the Backdelivery Agreement terminates. The electricity supplied by the Producer after the date on which the Backdelivery Agreement ends shall be reimbursed by Vattenfall, lessened by any additional costs incurred by Vattenfall as a result of the Backdelivery said electricity. If a switch report has still not been received on the last day of the one- month period, the Backdelivery Agreement shall be deemed to have been extended with the Producer's consent as set out in Article 12(2).
- 14.3.** If the Producer switches to a supplier other than Vattenfall without having legally terminated the Backdelivery Agreement and if the Producer, after having been given notice of default in that regard, fails to switch back to Vattenfall within fourteen days thereafter, the Producer shall pay to Vattenfall an immediately payable fine, to be calculated as follows: the number of months remaining under the Backdelivery Agreement to a maximum of three months, divided by twelve, multiplied by the Contract volume in the year in question and the Contract Price per kWh, as set out in the Backdelivery Agreement. In addition to the fine, an amount of one hundred euros per Connection shall be invoiced as administration fees. The fine shall be invoiced to the Producer without prejudice to Vattenfall's authority to demand that the Producer continues to fulfil the Backdelivery Agreement and without prejudice to Vattenfall's authority to claim damages, provided that those damages exceed the aforementioned fine. Vattenfall shall settle the foregoing fine with any amounts due by Vattenfall to Producer on the date which the fine was imposed.
- 14.4.** If the Backdelivery Agreement relates to maximal one Connection and this Connection is a Small Scale Consumption Connection, Vattenfall shall be

entitled, by way of derogation from Article 14(3), to charge a termination fee of 15% of the residual value of the Backdelivery Agreement, based on the Contract Volume.

## **Article 15 Unforeseen circumstances**

- 15.1.** In the event of unforeseen circumstances including, but not limited to, a change in legislation and regulations as well as price developments on the commodities market, whereby the continuation of the Backdelivery Agreement in its current form is no longer permitted or, according to the standards of reasonableness and fairness, it can no longer be expected from one or both Parties, the Parties shall enter into mutual discussions so as to amend the Backdelivery Agreement to bring this in line with the changing circumstances as far as possible.
- 15.2.** When establishing or adapting the Codes and any other applicable legal and other regulations, Vattenfall shall be entitled to amend these General Terms and Conditions in order to bring these in line with the amended regulations. Such amendment shall not entitle the Producer to early terminate the Backdelivery Agreement.

## **Article 16 Privacy**

- 16.1.** On request for a product or service, Vattenfall shall ask the Producer to provide company data to Vattenfall. This data shall be used within the Vattenfall Group for accepting the request, executing the Backdelivery Agreement, the Producer relations management and marketing purposes. Vattenfall may also use this data to inform the Producer about products and services relevant to the Producer. If the Producer does not wish to receive information on products and services, the Producer may communicate this in writing to Vattenfall Sales Nederland N.V., Postbus 41920, 1009 DC, Amsterdam.
- 16.2.** The Producer's company data may also contain personal data. Vattenfall shall handle and protect this personal data with the greatest possible care. More information about when and why Vattenfall asks for your personal data and how Vattenfall processes this personal data can be found at [www.vattenfall.nl/grootzakelijk/privacy/](http://www.vattenfall.nl/grootzakelijk/privacy/). Information about the Producer's rights as a data subject, such as the right to object to processing of personal data for which Vattenfall has a legitimate interest and processing for direct marketing purposes, including profiling relating to direct marketing, can also be found here.
- 16.3.** In order to comply with the rules for communication between market parties (grid operator, meter operators and suppliers) as set out in the Codes and for drawing up and executing the Backdelivery Agreement, Vattenfall shall share company data, including information about Producer's connection and contract details with the central databases used in the energy market, such as the C-AR and CER. Vattenfall reserves the right to record, or have recorded, data relating to the Producer in these central databases during the term of the Backdelivery Agreement.
- 16.4.** For drawing up and executing the Backdelivery Agreement, the Producer has consented Vattenfall to consult the C-AR so as to request from the Grid Operator consumption, technical and grid operation data relating to the Connection(s) as set out in the Backdelivery Agreement.
- 16.5.** In order to consult the central databases in relation to a Small Scale Consumption Connection, the Supplier requires a client key. This client key passes the Supplier on to the grid operator, so that the grid operator can verify whether the Producer have actually given the Supplier consent to request the data in the offer phase.

This client key consists of the last three digits of the IBAN and/or the month and day of Producer's date of birth and shall be stored by the grid operator. The Supplier is obliged to provide the client key(s) to the grid operator during the period of Backdelivery to a Connection, even when this changes.

## **Article 17 Confidentiality**

- 17.1.** The Parties shall make every effort to ensure that information that reaches them in the context of the Backdelivery Agreement and of which they know or should know to be of a confidential nature, is not disclosed to third parties without the prior written consent of the other Party. More especially, the Parties shall not circulate the information referred to in this Article within their organization further than is necessary for proper performance of the Backdelivery Agreement and shall impose the duty of confidentiality described in this Article on any third parties brought in for the performance of the Backdelivery Agreement.
- 17.2.** This provision shall not apply insofar as the Parties or one of the Parties are obliged to disclose said information to a third party based on a rule of law or regulation, or at the request of or on an order from any competent authority, nor does it apply to information that had already been legitimately obtained for another reason at the time of disclosure.

## **Article 18 Waiver of rights**

Should one or both Parties fail to require fulfilment of one or more provisions of this Backdelivery Agreement at any time, or fail to invoke their rights arising from this Agreement, this shall not be considered as waiving the right to do so at a later date, nor shall a failure to act as stated above restrict this Backdelivery Agreement in any way whatsoever or the rights and obligations of the Parties arising from this Backdelivery Agreement in any other way.

## **Article 19 Transferring the Backdelivery Agreement/Change of legal form**

- 19.1.** The Producer shall only be entitled to transfer its rights and obligations arising from the Backdelivery Agreement to a third party after receiving prior written approval to do so from Vattenfall.
- 19.2.** Vattenfall shall be entitled to transfer the Backdelivery Agreement or all rights and obligations arising from this Backdelivery Agreement, either in whole or in part, to a third party, to encumber the Backdelivery Agreement to a third party with restricted rights to the extent possible, or to allow the Agreement to be taken over by a third party by means of contract takeover (pursuant to Article 6:159 of the Dutch Civil Code). The Producer irrevocably and unconditionally agrees to such a transfer, encumbrance or contract takeover and shall grant its full and unconditional cooperation. The Parties hereby agree that the Producer shall not be entitled to terminate the Backdelivery Agreement in the event of a transfer of control of Vattenfall, its parent company, its assets or its parent company's assets.
- 19.3.** The Backdelivery Agreement shall remain in force and unaffected, should the legal form of the Parties or one of the Parties change.

## **Article 20 Applicable law and disputes**

- 20.1.** The Backdelivery Agreement and these General Terms and Conditions shall be governed by the laws of the Netherlands.
- 20.2.** Should any dispute between the Parties arise, the Parties shall make every effort to settle the dispute out of court.

Disputes that cannot be settled out of court, shall be submitted to the competent court in Amsterdam, which shall have exclusive jurisdiction on the matter.

## **Article 21 Final provisions**

- 21.1.** These General Terms and Conditions enter into force on 16 November 2020.
- 21.2.** Vattenfall reserves the right to amend these General Terms and Conditions. The Producer shall be notified of amendments in a timely manner. Amendments shall enter into force thirty days after the date of such notification, unless otherwise specified in said notification. The amended General Terms and Conditions shall apply to all existing Backdelivery Agreements concluded with the Producer.
- 21.3.** These General Terms and Conditions are available for consultation at Vattenfall and can be obtained on request free of charge. These General Terms and Conditions can also be consulted at [www.vattenfall.nl/grootzakelijk/voorwaarden/](http://www.vattenfall.nl/grootzakelijk/voorwaarden/).

