

The Energy Supermarket Limited

Terms and Conditions of Business

These terms govern the use by the Customer of any of the Services that The Energy Supermarket Limited (TES) (“we/us/our”) agrees to provide to the Customer (“you/your”) from time to time, whether via the Site, the Call Centre or otherwise. Please read these Terms carefully before accepting these Terms and using the Services. By using the Services, you signify that you have read, understand and agree to be bound by these Terms. If you do not agree to these Terms, do not use the Services.

1. Basis and Term of Contract

1.1. These Terms apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

1.2. The Order constitutes an offer by you to purchase the Products and/or Services from us in accordance with these Conditions. You are responsible for ensuring that the terms of the Order are complete and accurate.

1.3. The Order shall be deemed to be accepted by us upon the earlier of the following:

- a. our issuing to you a written acceptance of the Order, or
- b. commencement of provision of the supply of Products or Services to you at which point the Contract shall come into existence (the **Start Date**).

1.4. You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any of your documents that is inconsistent with these Terms.

1.5. Each unsigned Quote shall only be valid for a period of [1] Business Day from its date of issue.

1.6 The Contract shall commence on the Start Date and shall continue, unless terminated earlier in accordance with its terms, until we have completed the provision of the Services and/or supply of the Products under the Contract.

2. Definitions and Interpretation

The following terms and conditions apply to the supply of all goods and/or services by TES.

2.1. In these Terms, the following words and expressions have the following meanings unless the context otherwise expressly requires:

Affiliate means, in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time;

Applicable Law means any: (a) statute, statutory instrument, bye-law, order, regulation, directive, treaty, decision of the European Council, decree or law (including any common law or civil law judgment, demand, order or decision of any court, regulator or tribunal); (b) legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or (c) legally binding industry code of conduct or guideline which relates to the Contract, the Products, and/or the Services;

Business Day means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;

Call Centre means the call centre we operate for the purposes of providing the Services.

Cancellation Fee means a fee calculated in accordance with clause 6.4.;

A **Change in Control** will occur in respect of a person (the **relevant entity**) where: (a) Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person who did not at the Start Date hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or (b) a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity;

Charges means such charges for the provision of Products and/or Services, including the fees set out in the Quote as may be updated and notified to you by us from time to time;

Consumption Data means all information either: (a) in your possession, custody and control and/or (b) held by any current or past Utility Provider and which relates to your consumption of Utilities from time to time, including any prices charged in relation to such consumption;

Control means in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise and **Controlled** will be construed accordingly;

Contract means the contract between us and you for the sale and purchase of the Products and/or Services in accordance with these Terms;

Consultancy Services means the services other than the Procurement Services set out in the Quote which may include any or all the following:

- (a) Utilities budget analysis and support;
- (b) our provision of market intelligence in relation to the Utilities supply market;
- (c) energy management support, including quarterly analysis of Consumption Data for your sites;
- (d) retrospective bill validation, including analysis of invoices received by you from your historic Utility Suppliers;
- (e) our electricity capacity analysis; and/or
- (f) such other consultancy services as may be set out in the Quote to which the Contract relates.

Consultancy Services Charges means:

- (a) the Consultancy Services Fee; plus
- (b) the Share of Savings Element (if any).

Consultancy Services Fee means the fees payable by you in respect of the provision of Consultancy Services by us as set out in the Quote or such other document or contract agreed between us;

Cost Savings means the relative reduction to you in the cost of the relevant item over the period set out in the Quote or such other document or contract agreed between us;

COT means, in respect of premises to which Utilities Services are supplied under a Utility Contract made between the Customer and a Utility Provider following our provision of Procurement Services, any change in the occupancy of those premises such that the new occupier is entitled to change Utility Provider.

Customer means the person or firm who is to receive Services or Products from us under the Contract, as set out in the Order and/or Quote as the case may be;

Customer Data means

- (a) the Consumption Data; and
- (b) all data in any medium which you permit or request (whether expressly or by implication) us to access, store, transmit, distribute or otherwise process in the delivery of the Products and/or performance of the Services;

Customer Default has the meaning given to it in clause 5.3.;

Data Controller has the meaning given to it in the DPA;

Data Processor has the meaning given to it in the DPA;

Deliverables means any hosting services, written reports, utility consumption data generated by us or any of our utility monitoring products and any other written materials which we have specifically agreed in writing to provide to you as part of our Products or Services;

DPA means the Data Protection Act 1998;

Data Protection Legislation means the DPA and any legislation implemented from time to time by the UK Government to adopt the GDPR;

Event means an act, event, omission or circumstance;

Force Majeure Event means: (a) act of God; (b) war, insurrection, riot, civil commotion, act or threat of terrorism; (c) lightning, earthquake, fire, flood, storm, or extreme weather condition; (d) theft, malicious damage; (e) strike, lockout, industrial dispute (whether affecting the workforce of a Party and/or any other person); (f) breakdown or failure of plant or machinery; (g) inability to obtain essential supplies or materials; (h) any failure or default of a supplier or sub-contractor of the relevant Party; or (i) any event or circumstance to the extent it is beyond the reasonable control of the relevant Party;

GDPR means the General Data Protection Regulation ((EU) 2016/679);

Indemnified Costs means all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement;

Insolvent you are Insolvent where:

- (a) you suspend, or threatens to suspend, payment of your debts or are unable to pay your debts as they fall due or admit your inability to pay your debts or are deemed unable to pay your debts (being a company or limited liability partnership) within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) have any partner to whom any of the foregoing apply; or

- (b) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up;
- (c) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or makes a proposal for or enters into any compromise or arrangement with any of your creditors;
- (d) you apply to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over you;
- (f) the holder of a qualifying floating charge over your assets has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of your assets or a receiver is appointed over all or any of your assets;
- (h) a creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within [14] days;
- (i) any event occurs, or proceeding is taken, with respect to you in any jurisdiction to which you are subject that has an effect equivalent or similar to any of the events mentioned in the foregoing.

Installation means the installation of Products at the Premises as part of the performance of the Services and **Install** and **Installed** shall be construed accordingly;

Intellectual Property Rights means all intellectual and industrial property rights of any kind whatsoever including but not limited to, patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

Letter of Authority means the letter of authority signed by you granting us the right to share and obtain Consumption Data from your Utility Provider and to otherwise engage with such Utility Provider on your behalf in connection with the Services;

Liability means liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in, and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of our obligations under, the Contract and/or any defect in any of the Products or Services, in each case howsoever caused including if caused by negligence;

Losses means all losses including all direct, indirect and consequential losses;

Order means your request for the supply by us of Products and/or Services, whether as set out in your purchase order form, your Letter of Authority or your written acceptance of our Quote as the case may be;

Personal Data has the meaning given to it in the DPA

Premises means any premises (whether belonging to or under the control of Customer or otherwise) in respect of which we have agreed to deliver or Install Products and/or perform Services;

Product Fee means such sums as are payable by you in respect of our supply to you of the Products, as described in our Quote;

Products means the products to be supplied by us to you as described in our Quote;

Procurement Fee means the sum payable to us by the Utility Provider as a result of you entering into the Utility Contract;

Procurement Services means the procurement services set out in the Quote which may include any or all the following:

- (a) obtaining Consumption Data on your behalf;
- (b) our review of your Consumption Data;
- (c) our identification of potential suppliers of Utilities based on your consumption portfolio;
- (d) our engagement with Utility Suppliers and conduct of tendering procedures, provision of information and management reporting to your internal procurement function regarding the proposed Utility Suppliers;
- (e) our supporting your procurement team in the negotiation of Utility Contracts;
- (f) our provision of price trackers showing historic trends in Utility prices;
- (g) our review of MOP and DC arrangements; and/or
- (h) our review of your security requirements.

Quote means the document issued by us to you setting out the nature of the services and products to be supplied by us to you;

Recoverable Liabilities means all Losses, liabilities, Indemnified Costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all Losses, liabilities, Indemnified Costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding;

Services means the Consultancy Services and/or the Procurement Services as the context requires;

Share of Savings Element means the proportion of any Cost Savings to be paid to us, calculated as set out in the Quote;

Site means the website hosted at www.theenergysupermarket.co.uk

Standing Charge means the cost of having a gas and electricity supply from the Utility Provider.

Terms means these terms and conditions.

Unit Rate means the rate charged by the "Utility Provider" for each unit of energy consumed;

Uplift means a fee applied to the base Unit Rate;

Utility Contract means the agreement to be entered into by you with the Utility Provider you select as a result of our Procurement Services for the supply to you of the Utility Services set out in such Utility Contract, and on such terms as are agreed between you and such Utility Provider;

Utility Provider means any supplier to you from time to time of Utility Services, either introduced to you by us, or otherwise involved in the supply of Utility Services to you and which are relevant to the Services supplied by us to you; and

Utility Services means the supply of utilities for consumption;

2.2. All headings are for ease of reference only and will not affect the construction or interpretation of the Contract.

2.3. Unless the context otherwise requires:

(a) references to the singular include the plural and vice versa and references to any gender include every gender;

(b) references to a **person** include any individual, body corporate, association, partnership, firm, trust, organization, joint venture, government, local or municipal authority, governmental or supra- governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality); and

(c). references to a **Party** or to the **Parties** will mean we and/or you as the context requires and will include a reference to its or their successors and (to the extent applicable) permitted assigns and references to a third party will mean any person other than the Parties.

2.4. References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

2.5. Any words following the words **include, includes, including, in particular** or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.

2.6. An obligation on a Party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that Party.

2.7. Any obligation on a Party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

3. Procurement Services

3.1. You are purchasing from us the Procurement Services on an exclusive basis and accordingly you will not, at any time during the Term, obtain services in the nature of the Procurement Services from any person other than us.

3.2. To facilitate the provision of the Procurement Services by us you shall provide us with a signed Letter of Authority granting us the exclusive right to enter into discussions with Utility Providers regarding the provision of Utility Services to you (as further detailed in the Letter of Authority).

3.3. In respect of our provision of the procurement Services, you acknowledge and agree that:

(a) we are not acting as your agent in respect of the purchase of Utilities from any Utility Supplier;

(b) the relationship created by the Contract does not constitute a fiduciary relationship;

(c) you understand that we receive a commission from the supplier based on an uplift applied directly to your unit rate or standing charge;

Therefore, any commission you are charged by TES will be included in the final rate you pay but collected by TES from your chosen supplier.

The cost of TES's service is therefore included within the cost of the Supply Contract that you agree with the Supplier.

By way of example, we may secure a price for electricity at 16 pence per kwh and apply a £0.01 per kwh uplift. The contracted price we would offer would therefore be 17p per kwh. Our commission would be calculated as £0.01 per kwh, multiplied by your annual energy consumption, and multiplied by the contract term.

(d) we are not responsible for, and shall have no Liability to you in respect of, or in connection with, the provision of any Utility Services to you;

(e) it is your responsibility to review and to satisfy yourself as to the terms of any Utility Contract;

(f) a Utility Provider, at any point through the procurement stage, may consult a credit vetting agency and conduct a credit check on you or your business and the terms and conditions of any proposed contract will be subject to successfully passing a credit check;

(g) we make no representation nor give any advice on the terms of any Utility Contract. and we accept no Liability to you in respect to such Utility Contract;

(h) any pricing or other information provided by us to you in connection with the provision of Utility Services: (i) is indicative only; (ii) does not constitute an offer by us or any Utility Provider to supply Utility Services to you; and, (iii) is subject to you entering into a valid and binding Utility Contract, to which we shall not be a party;

(i) we may supply to any Utility Provider any information, data or document which we receive from you; and

(j) any information you provide to us in respect of your historic consumption of Utilities shall be accurate and complete in all respects, and you shall indemnify us in respect of any failure by you to provide such information.

4. Our Obligations to You

4.1. We agree that:

(a) in consideration of your payment of the Consultancy Services Charges, the Product Fee and the Procurement Fee (as applicable) we will supply the Services to you with reasonable

care and skill and in accordance with good industry practice as at the time of performing the Services;

(b) we will use reasonable endeavours to supply the Services and deliver the Deliverables to you in accordance with any timescales:

- (i) set out in the Order and/or Quote to which such Services relate; or
- (ii) as otherwise agreed between the Parties in writing; and
- (iii) in accordance with any agreed risk management policy.

(c) Provided always that time for performance of the Services or delivery of the Deliverables will not be of the essence of the Contract.

4.2. Title in the Deliverables will remain with us at all times.

4.3. Risk in each Deliverable will pass to you upon delivery of that Deliverable to you.

4.4. We reserve the right, as determined in our sole discretion, to make any improvement, substitution or modification in the specification of any element or part of the Services at any time to the extent that such improvement, substitution or modification:

- (a) will not have a material detrimental impact on the Services; or
- (b) is necessary to comply with any Applicable Law or health and safety requirements.

5. Your Obligations to Us

5.1. You agree and undertake that you shall:

- (a) perform all of your obligations under the Contract;
- (b) promptly provide us, on request, with all co-operation, information, assistance, materials and resources that we may reasonably require from time to time in connection with the supply of the Products and/or Services and the performance of our obligations under the Contract including but not limited to: (i) information to verify the cost and status of your Utility Contract; and, (ii) your Consumption Data, your historic and future business activities, and your arrangements with Utility Suppliers;
- (c) provide all necessary access to Consumption Data, any Utility Contract, any Utility Provider invoices and the Premises and relevant facilities and personnel to enable us to comply with its obligations under the Contract;
- (d) take all necessary precautions to protect the health and safety and security of our personnel whilst they are at the Premises;
- (e) provide us with such access to data as is we consider necessary to enable us to perform our obligations under the Contract;
- (f) obtain and maintain in force all licenses, permissions, authorizations, consents and permits needed by you in order for you to receive the Services and/or to enable us to perform the Services and our other obligations under the Contract;
- (g) ensure that all information which you provide to us is accurate, adequate and complete and we shall be entitled to rely on the accuracy of the information provided;
- (h) immediately inform us if there is any change in the Premises, circumstances and/or business, which may affect the provision of the Services and we should be entitled to rely on the accuracy of the information provided; and
- (i) comply with all Applicable Law, including but not limited to the provisions of the Bribery Act 2010 and the Modern Slavery Act 2015.

5.2. You acknowledge and undertake that you are solely responsible for:

- (a) understanding the regulatory requirements applicable to your business and for using the Products and Services in a manner that complies with those requirements; and
- (b) ensuring that you possess and maintain appropriate software and hardware to use the Services.

5.3 If the performance of any of our obligations under the Contract is prevented or delayed by any of your acts or omissions, including any breach of the terms and conditions of the Contract

Customer Default:

- (a) we shall, without limiting our other rights or remedies, have the right to suspend delivery of Products and/or the performance of Services until you remedy such Customer Default;
- (b) we shall not be liable to you for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay in performing any of our obligations under the Contract; and
- (c) you shall reimburse us on demand for any costs or losses sustained or incurred by us arising directly or indirectly from such Customer Default.

5.4. Without limiting the generality of clause 5.3., if we fail to perform any of our obligations to the standards required by, or by the relevant date for performance:

- (a) set out in the Contract; or
 - (b) as otherwise agreed between the Parties in writing,
- due to Customer Default, the date for performance by us of any obligations which relate to and/or are dependent on any performance by you will be extended by the period which we reasonably require in order to manage the impact of the Customer Default.

5.5. You shall give us not less than 14 days' notice in writing of any proposed COT, which notice shall summarise the nature and details of the proposed COT and in particular, full details of any proposed occupant of the relevant premises.

6. Charges and Payment

Procurement Services

6.1. Unless otherwise expressly agreed in writing between us, in consideration for the provision of the Procurement Services we will be paid the Procurement Fee by the Utility Provider with whom you enter into a Utility Contract through an uplift applied directly to your unit rate and/or standing charge (as applicable).

6.2. You agree that you shall not commit any act or omission which has the object or effect of preventing our ability to receive a payment from the Utility Provider under clause 6.1.

6.3. you will indemnify us in respect of any costs, claims, damages or losses incurred by us, if following your execution of the utility contract, at any time during the duration of the utility contract, including after termination or expiry of the contract, you commit any act or omission which results in the utility provider seeking recovery of all or part of the procurement fee from us and in particular any claim(s) made by yourself relating to the fee received by us, from the utility provider.

6.4. you will not bring a claim against us at any time during the duration of the utility contract including after the termination or expiry of the contract in relation to payment received following the execution of the utility contract made by the utility provider.

6.5. At any time during the term of the Contract, in the event that:

- (a) A utility Contract has been made between you and a Utility Provider following our provision of the Procurement Service; and
- (b) that Utility Contract is cancelled or terminated (howsoever such cancellation or termination arises) at any time before the end of the supply period set out in it, you shall, subject to clause 6.5., immediately become liable to pay us a Cancellation Fee.

6.6. The Cancellation Fee shall be calculated per meter as follows:

Meter estimated annual consumption	Cancellation Fee
Up to 49,999 kwh	Up to £500 per meter
50,000 kwh to 99,999 kwh	Up to £1,000 Per Meter
100,000 kwh to 499,999 kwh	Up to £5,000 Per Meter
500,000 kwh or more	£10,000 Per Meter

6.7. If the Utility Contract is terminated at any time after the supply of Utility Services under it has commenced the Cancellation Fee shall be pro-rated for the period after such termination until the end date of the relevant Utility Contract.

6.8. For the avoidance of doubt, no Cancellation Fee will be due and payable if a Utility Contract is terminated in consequence of or in connection with a COT unless:

- (a) the Utility Contract is terminated in consequence of or in connection with a COT that has not been notified to us in accordance with clause 5.5; or

- (b) the proposed new occupier is connected to the Customer in which case a Cancellation Fee shall be due and payable in accordance with clause 6.1. For these purposes **connected**, in relation to a person, has the meaning given to it in section 1122 of the Corporation Tax Act 2010.

6.9. You agree and acknowledge that the Cancellation Fee is reasonable and proportionate to protect our legitimate interest in the Utility Contract reaching full term.

7. Consultancy Services

7.1. The Consultancy Services Charges shall comprise the following elements:

- (a) the Consultancy Services Fee; and
- (b) the Share of Savings Element (if any)

7.2. Where the Consultancy Services Charges include a Share of Savings Element, you agree that we shall be entitled to invoice you in respect of the Share of Savings Element at a fixed point in time as set out in our Quote or as otherwise agreed between us.

7.3. You agree that you shall not commit any act or omission which has the object or effect of preventing or reducing our ability to provide you with any savings in the cost of Utilities that we may need to provide in order to receive the Share of Savings Element.

7.4. We may, at our sole discretion, agree to delay or waive charges that would otherwise be payable in respect of Consultancy Services subject to your entering into a Utility Contract promptly following our supply of the Procurement Services and in respect of which we are paid a Procurement Fee by the Utility Provider with whom you enter into a Utility Contract.

7.5. If you fail to enter into a Utility Contract with a Utility Provider in accordance with clause 3.0.

7.6. the relevant delayed or waived charges shall become payable.

8. General

8.1. Any sum payable under the Contract is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by Applicable Law from time to time.

8.2. We will be entitled to vary the Charges at any time by giving written notice to you to reflect any variation in: (i) the cost of supplying the Products and/or Services which arise as a consequence of any change in Applicable Law; (ii) any variation in your requirements for the Products and/or Services; and/or (iii) any information provided by you being inaccurate or incomplete.

8.3. We will be entitled to invoice you for the:

- (a) Product Fee, on delivery of the Products;
- (b) Consultancy Services Fee on the Start Date save where performance of the Consultancy Services extends over more than one month, in which case we shall issue invoices at the end of each month for Services performed during that month;
- (c) Share of Savings Element (if any) at the end of each month for the Share of Savings Element applicable to that month; and
- (d) Cancellation Fees at any time after we become aware that it is due.

8.4. Unless otherwise expressly agreed with you in writing or as set out in the Quote, each invoice will be payable by you within 30 days following the date on which the invoice is issued. All payments will be made in pounds sterling in cleared funds by cheque or electronic bank transfer to such bank account as we may nominate from time to time, and cash is not acceptable as a method of payment.

8.5. Time for payment shall be of the essence of the Contract.

8.6. If any sum payable under the Contract is not paid on or before the due date for payment we will be entitled to charge you interest on that sum at 8% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. In the alternative, we may, at our sole discretion and as an alternative claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8.7. If you fail to make timely payment under the Contract, we will be entitled to withhold further deliveries of Products and to suspend provision of any Services until payment of all overdue sums has been made.

8.8. Save as otherwise expressly provided in the Contract or required by Applicable Law, all payments to be made by you to us under the Contract will be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.

9. Customer Data and Data Protection

9.1. In relation to Customer Data you warrant and undertake that:

- (a) you will either own the Customer Data or have sufficient rights to use such Customer Data for the purposes of the Contract, and shall be responsible for the accuracy and content of such data; and
- (b) the Customer Data is accurate and complete.

9.2. You hereby grant us a perpetual royalty-free licence to use such Customer Data for the following purposes:

- (a) the provision of the Products and Services under the Contract;
- (b) analysis and review of Consumption Data as part of our normal business practices; and,
- (c) for such other purposes as are necessary in relation to our business objects.

9.3. The Parties agree that, in respect of any Personal Data comprised in the Customer Data, you are the Data Controller and we are the Data Processor.

9.4. You will comply with your obligations under Data Protection Legislation in respect of Personal Data.

9.5. We will:

- (a) take appropriate technical and organisational measures against unauthorised or unlawful processing of, and accidental loss or destruction of, or damage to, Personal Data, having regard to the state of technological development and the cost of implementing any measures, to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing, accidental loss, destruction or damage and the nature of the Personal Data;
- (b) only process Personal Data for the purpose of performing our obligations under the Contract and in accordance with your lawful instructions (provided such instructions are in accordance with the DPA); and
- (c) take reasonable steps to ensure the reliability of our employees who have access to the Personal Data.

9.6. You will indemnify us against all Recoverable Liabilities arising out of or in connection with any breach by you of this clause 9.

9.7. We reserve the right to carry out such credit and identity checks on all our customers, as we, or a third party in our absolute discretion deem necessary. Consequently, you agree that we may check your details on any database (public or private), that we may use for the purpose of assisting other companies with such checks and may keep records of all such searches.

10. Intellectual Property Rights

10.1. With effect from the date on which the relevant Deliverable is supplied to you, we grant to you a non-exclusive and royalty-free licence to use the Intellectual Property Rights in that Deliverable solely to the extent necessary to use that Deliverable for the purpose it was delivered to you. This licence is not assignable nor sub-licensable.

10.2. You grant to us a non-exclusive, perpetual, world-wide and royalty-free licence to use your Intellectual Property Rights to the extent required for the purpose of the supply of the Services and the performance of our other obligations under the Contract. We may grant a sub-licence of this licence to any sub-contractor appointed by us in connection with the Contract.

10.3. Save as otherwise expressly provided in this clause 10, you acknowledge and agree that all Intellectual Property Rights in the Deliverables shall belong to us and nothing in the Contract will operate to transfer to you, or to grant to you any licence or other right to use, any of our Intellectual Property Rights.

10.4. You warrant to that you have all necessary rights, consents and/or licences necessary to grant us the rights set out in clause 10.2.

11. Confidentiality

11.1. Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any Affiliate, except as permitted by clause 10.2.

11.2. Each Party may disclose the other Party's confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Contract provided that it ensures that the employees, officers, representatives or advisers to whom it discloses the other Party's confidential information are bound by obligations of confidence at least as strict as those in this clause 9;
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- (c) as it is required to be disclosed in compliance with the UK Corporate Governance Code (if listed on any UK stock exchange), by the regulations of any stock exchange on which the securities are listed or by any clearing house in connection with any issue of such securities.

11.3. No Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.4. Nothing in the Contract shall require us to return or destroy confidential information or copies that we are required to retain by applicable law, professional record keeping obligations, or to satisfy the rules or regulations of a regulatory body or stock exchange to which we are subject, or which has been created using automatic IT back-up or internal disaster recovery procedures, or which is contained in our board minutes or investment committee papers.

12. Termination of the Contract

12.1. Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving you written notice if you:

- (a) commit a material breach of the Contract which cannot be remedied; or which can be remedied but is not remedied within 14 days of receipt of written notice from us setting out the breach and requiring you to remedy the breach; or
- (b) become Insolvent; or
- (c) undergo a Change in Control

12.2. On expiry or termination of the Contract for any reason you shall immediately pay to us all our outstanding unpaid invoices and interest and, where no invoice has been submitted for Services supplied, we may submit an invoice which will be payable in accordance with clause 6.6.

12.3. Expiry or termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

12.4. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after expiry or termination shall remain in full force and effect.

12.5. If the Contract is terminated in accordance with clause 12 all Services which have not been fully performed and Products which have not been fully supplied as at the date of termination will be deemed to be cancelled without us incurring any Liability to you. You will reimburse to us all costs and expenses incurred by us in furtherance of its obligations under the Contract prior to the date of deemed cancellation.

12.6. Our rights under this clause (12) are in addition to and separate from our rights of suspension under clause 5.3.(a) and clause 8.3.

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13. Limitation of liability

13.1. Except as specifically set out in the Contract, all warranties, conditions and other terms implied by Applicable Law (whether by statute, common law or otherwise) are excluded from the Contract.

13.2. Notwithstanding any other term of the Contract, we will not be in breach of the Contract and will have no Liability to you, to the extent our failure to perform or delay or defect in performance of our obligations under the Contract arises as a result of:

- (a) any failure by you to comply with the terms and conditions of the Contract including but not limited to a Customer Default;
- (b) our reliance on any incomplete or inaccurate data provided by you or a third party at your request;
- (c) our compliance with any instruction or request made by you or one of your officers and employees;

(d) any circumstances beyond our reasonable control including but not limited to: (i) any delay or failure attributable to third parties; (ii) any failure of hardware or software belonging to you or any third party; or (iii) any damage caused to hardware or software as a result of your negligence or misuse.

13.3. Where we do have to investigate any defect reported by you, if such defect is as a result of any of the circumstances listed above at clause 10.0., we reserve the right to charge you our reasonable costs of such investigation.

13.4. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

13.5. Subject to clause 13.4., we will have no Liability to you, for any:

- (a) loss of profit;
- (b) loss of goodwill, reputation or opportunity;
- (c) loss of revenue, loss of production or loss of business;
- (d) loss of anticipated savings or loss of margin;
- (e) loss of use or value of any data or software;
- (f) loss or damage arising out of any failure by you to keep full and up to date security copies of any computer program and data held or used on behalf of you;
- (g) wasted management, operational or other time;
- (h) liability of you to third parties; and
- (i) special, indirect or consequential loss or damage.

13.6. Subject to clauses 13.4. and 13.5. our total Liability to you arising out of or in connection with the Contract or otherwise between the parties from Events which occur in any one calendar year will be limited:

- (a) in connection with the Procurement Services, the Procurement Fee received by us from the Utility Provider in respect of any Utility Contract entered by you;
- (b) in connection with the Consultancy Services will be limited to the Consultancy Services Fee; and
- (c) in all other cases, to the total Charges paid by you to us for Products and Services supplied to you in that calendar year.

13.7. Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the other Party. Accordingly, each Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Contract.

14. Force Majeure

14.1. Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for six months, the Party not affected may terminate the Contract by giving 12 weeks written notice to the affected Party.

14.2. If we are affected by the Force Majeure Event you will continue to pay our invoices in accordance in respect of any Products and Services which we continue to supply notwithstanding the occurrence of the Force Majeure Event.

15. Assignment and Sub-Contracting

15.1. We will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of our rights under the Contract.

15.2. You will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of your rights under the Contract.

15.3. We will be entitled to sub-contract any of our obligations under the Contract.

15.4. You will not be entitled to sub-contract any of your obligations under the Contract.

16. Entire Agreement

16.1. The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

16.2. You acknowledge that in entering into the Contract you do not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract .

16.3. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16.4. Nothing in this clause shall limit or exclude any liability for fraud.

17. Notices

17.1. Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to an address provided for this purpose in writing by the Party to be served).

17.2. Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

17.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18. General

18.1. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18.2. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.3. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.4. Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

18.5. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

18.6. If any provision or part-provision of the Contract is deemed deleted under clause 18.5., the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18.7. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

18.8. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

18.9. At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Contract.

18.10. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

18.11. The rights of the Parties to rescind or vary the Contract are not subject to the consent of any other person.

19. Governing law and jurisdiction

19.1. The Contract and any non-contractual obligations arising out of or in connection with them will be governed by the law of England and Wales.

19.2. Subject to clause 19.3., the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).

19.3. Either Party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.