



## 1. Interpretation

1.1. Definitions. In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.8.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from the Supplier.

**Deliverables:** any reports, content or other material produced by the Supplier for the Customer pursuant to the Services.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Letter of Authority:** the letter from the Customer providing the Supplier with authorisation to deal directly with the Customer's energy and/or water suppliers (which may be executed electronically via AdobeSign).

**Letter of Instruction:** the letter from the Supplier to the Customer setting out the description or specification of the Services to be provided (which may be executed electronically via AdobeSign).

**Services:** the services (which may include any of the following: EnergiPlan+; WaterPlan+; and/or BusinessEnergi+), including the Deliverables, supplied by the Supplier to the Customer as set out in the Letter of Instruction.

**Supplier:** Cost Centre Services Limited registered in England and Wales with company number 04237333 and with its registered address at 1 & 2 Merchants Court, St Georges Street, Norwich, NR3 1AB.

1.2. Construction. In these Conditions, the following rules apply:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its successors or permitted assigns;
- c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- e) a reference to writing or written includes faxes and e-mails.

## 2. Basis of contract

2.1. The Letter of Instruction constitutes an offer by the Supplier to provide Services in accordance with these Conditions.

2.2. The offer shall only be deemed to be accepted when the Letter of Instruction is signed by or on behalf of the Customer and returned to the Supplier at which point and on which date the Contract shall come into existence ("**Commencement Date**").

2.3. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

2.4. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6. Any Letter of Instruction issued by the Supplier shall remain valid for acceptance for a period of 20 Business Days from its date of issue unless otherwise notified by the Supplier in writing.

## 3. Supply of Services

3.1. The Supplier shall supply the Services to the Customer in accordance with the Letter of Instruction in all material respects.

3.2. The Supplier shall use all reasonable endeavors to meet any performance dates specified in the Letter of Instruction, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable

law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

#### 4. Customer's obligations

4.1. The Customer shall:

- a) ensure that the terms of the Letter of Instruction and the Letter of Authority are complete and accurate;
- b) co-operate with the Supplier in all matters relating to the Services;
- c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities including all electricity and gas meters as reasonably required by the Supplier;
- d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- e) prepare the Customer's premises for the supply of the Services including ensuring free access to all gas and electricity meters;
- f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- g) provide such Letter of Authority and take such other action as may reasonably be required by the Supplier to enable the Supplier to deal directly with third parties on the Customer's behalf; and
- h) provide the Supplier with timely instructions in relation to any matter on which the Supplier may reasonably require the Customer's decision.

4.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):

- a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- b) the Supplier shall not be liable for any costs or losses which, for the avoidance of any doubt, shall include any lost opportunity to receive funds or to make financial savings, sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

#### 5. Charges and payment

5.1. The Charges for the Services shall be calculated in accordance with the Letter of Instruction and/or Letter of Authority, or as otherwise agreed by the parties in writing.

5.2. The Supplier reserves the right to vary the charging basis and rates as quoted in the Letter of Instruction, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 4 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer.

5.3. The Supplier shall invoice the Customer and the Customer shall pay each invoice in accordance with the Letter of Instruction or as otherwise agreed in writing between the Supplier and the Customer.

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

5.5. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6. Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("**Due Date**"), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

5.7. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

#### 6. Intellectual property rights

6.1. All Intellectual Property Rights in or arising out of or in connection with the Services and the Deliverables shall be owned by the Supplier.

6.2. The Supplier hereby licences the Deliverables to the Customer on a non-exclusive, non-transferable, revocable, worldwide

basis for the duration of the Contract for the Customer's reasonable use in relation to the Services. Upon the termination of the Contract, this licence shall automatically terminate.

## 7. Confidentiality

- 7.1. A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain ("**Confidential Information**"). The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 7.2. Nothing in this Contract will prevent the Receiving Party from using or disclosing any Confidential Information which:
- is in or comes into the public domain in any way without breach of this Contract by the Receiving Party or any person or entity to whom it makes disclosure;
  - the Receiving Party can show: (i) was in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
  - the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
  - is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
  - is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
- 7.3. This clause 7 shall survive termination of the Contract.

## 8. Limitation of liability

- 8.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- death or personal injury caused by (i) its negligence; or (ii) the negligence of its employees, agents or subcontractors;
  - fraud or fraudulent misrepresentation.
- 8.2. Subject to clause 8.1:
- the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract or any indirect or consequential loss or pure economic loss, costs, damages, charges or expenses arising under or in connection with the Contract; and
  - the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount of Charges paid or payable to the Supplier by the Customer during the six months prior to the event giving rise to such claim for damages.
- 8.3. The Customer acknowledges that the Supplier offers no guarantee that it will be able to identify any potential costs savings or refund claims in the course of providing the Services or, where such potential costs savings or refund claims are identified, will be able to successfully negotiate with the relevant third party for the payment of any refund or adoption of any cost saving measure. No failure to successfully identify and negotiate payment or application of any refund claim or costs saving measure shall be deemed to imply any negligence or failure to provide the Services using reasonable care and skill on the part of the Supplier.
- 8.4. The Customer acknowledges that any queries raised with third parties regarding billing may result in a claim being brought against the Customer for historical underpayments and the Customer acknowledges and agrees that the Supplier shall bear no liability whatsoever in respect of any such claim. The Customer will indemnify and keep the Supplier indemnified against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by the Supplier arising out of or in connection with any such third party claims arising under this clause 8.4.
- 8.5. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.6. This clause 8 shall survive termination of the Contract.

## 9. Termination

- 9.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 Business Days of that party being notified in writing of the breach;
  - the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no

- reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - e) the other party (being an individual) is the subject of a bankruptcy petition or order;
  - f) a creditor or encumbrancer of the other party 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 its assets and such attachment or process is not discharged within 14 days;
  - g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
  - h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
  - k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 9.2. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3. Without limiting its other rights or remedies, each party shall have the right to terminate the Contract by giving the other party one months' written notice following the expiry of any minimum term stated in the Letter of Instruction. Where no minimum term is stated either party may terminate the Contract upon the service of one month's notice at any time.
- 9.4. Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(l), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 10. Consequences of termination

10.1. On termination of the Contract for any reason:

- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. General

11.1. Force majeure:

- a) For the purposes of this Contract, a "**Force Majeure Event**" means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2. Assignment and subcontracting:

- a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

- b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.3. Notices:
- a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
  - b) Any notice or other communication shall be deemed to have been duly received if delivered) personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
  - c) This clause 11.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.
- 11.4. Waiver:
- a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
  - b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 11.5. Severance:
- a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
  - b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.6. No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 11.7. Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8. Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Supplier.
- 11.9. Counterparts: a Letter of Instructions and/or a Letter of Authority may each be signed in counterparts, and collectively will form one agreement.
- 11.10. Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.