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ENVIRONMENTAL ENERGIES LIMITED

TERMS AND CONDITIONS OF BUSINESS

Your attention is in particular drawn to the limitation of liability provisions in paragraph 11 of these Terms and the adjudication provisions in paragraph 18 of these Terms.

1. DEFINITIONS

1.1 The following definitions apply to these Terms:

Applications: the third party software application(s) installed on the Customer's computer(s), tablet(s), smartphone(s) or other electronic device(s) to monitor the performance of the Products and/or an electronic device that records information relating to the Customer's systems and communicates that information to a third party.

Contract: the contract between the Customer and the Supplier for the supply of the Services and the Products, comprising the Quotation, the Commercial Contract and these Terms (as varied by written agreement between the parties or in accordance with these Terms).

Commercial Contract: the Customer's order for the Services and the Products (as set out in the written agreement between the Customer and the Supplier).

Customer: the person named as the Customer in the Quotation and/or the Commercial Contract ("you") who purchases the Services and/or the Products from the Supplier.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK and any other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Force Majeure Event: shall have the meaning given in paragraph 12 of these Terms.

Order: the Customer's order for the Services and the Products as set out in the signed Commercial Contract.

Price: the price payable by the Customer to the Supplier for the Services and the Products, as shown in the Commercial Contract (or as varied in accordance with these Terms).

Products: the products and materials referred to in the Commercial Contract which shall include, but not be limited to, Solar PV equipment, batteries, battery storage units, EV chargers, air source heat pumps and related products.

Proposed Commencement Date: the date on which work is due to start at the Site, as set out in the Commercial Contract (or as varied in accordance with these Terms).

Proposed Completion Date: the date on which the Services are due to be completed, as set out in the Commercial Contract (or as varied in accordance with these Terms).

Proposed Delivery Date: the date on which the Products are due to be delivered to the Site, as set out in the Commercial Contract (or as varied in accordance with these Terms).

Quotation: the Supplier's quotation for the provision of the Services and the supply of the Products, referring to the Commercial Contract and these Terms.

Representatives: a party's officers, employees, consultants, agents, suppliers and/or contractors.



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- Services:** the planning, installation and commissioning services as described in the Quotation.
- Site:** the place where the Products are to be installed (also referred to as the “**Project Address**”) and the Services carried out, as described in the Commercial Contract.
- Supplier:** Environmental Energies Limited (“**we/us**”).
- Terms:** the terms and conditions of business set out in this document (as varied from time to time in accordance with paragraph 22 of these Terms).

Writing or written: includes e-mail (unless indicated otherwise).

1.2 Headings do not affect the interpretation of these Terms.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. BASIS OF SALE

2.1 The Contract constitutes the entire agreement between you and us for the supply of the Services and the Products. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf which is not set out in the Contract.

2.2 Any samples, drawings, descriptive matter or advertising we issue, and any descriptions or illustrations contained in our catalogues or brochures, are issued or published solely to provide you with an approximate idea of the Services or Products they describe. They do not form part of the Contract between you and us or any other contract between you and us for the supply of the Services and the Products and shall not have any contractual force.

2.3 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.

2.4 By signing the Commercial Contract you enter into a binding contract with us.

2.5 The Quotation given by us shall not constitute an offer. The Quotation shall be valid for a period of 30 calendar days from its date of issue, unless we notify you in writing that we have withdrawn it during this period.

2.6 All of these Terms shall apply to the supply of both Products and Services except where application to one or the other is specified.

2.7 We shall have the right to change a Product or the Services to make minor technical adjustments and improvements or to comply with any applicable law, regulation or safety requirement, or which do not materially affect your use of the Product or the nature or quality of the Services.

2.8 We shall not order any Products or allocate time for the performance of the Services until the Commercial Contract has been signed by you and the deposit paid (pursuant to paragraph 5 of these Terms). We shall not be liable for any delay in the performance of the Services caused by your failure to sign the Commercial Contract or to make the deposit payment in sufficient time.

3. OUR OBLIGATIONS TO YOU:

3.1 Unless we are prevented from doing so by a Force Majeure Event (as set out in paragraph 12 of these Terms), we will provide:



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3.1.1 Services which on performance:

- (i) conform in all material respects with their description; and
 - (ii) are carried out with reasonable care and skill;
- and

3.1.2 Products which will on delivery:

- (i) conform in all material respects with their description;
- (ii) be of satisfactory quality;
- (ii) be fit for any purpose we say the Products are fit for; and
- (iii) be free from material defects in design, material and workmanship.

3.2 Subject to payment in full of the Price, we will provide you with a warranty that covers the Services (the "**Warranty**"). You must notify us in writing within 14 days of discovering any defect that you wish to make a claim under the Warranty. We shall take steps to procure that you have the benefit of any manufacturer's warranty in relation to the Products, in accordance with the terms of the Warranty.

3.3 We shall use all reasonable endeavours to supply the Products and carry out the Services in accordance with the timetable set out in the Commercial Contract (or as adjusted in accordance with these Terms) but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. We shall not be liable for delays caused by a Force Majeure Event (as set out in paragraph 12 of these Terms).

3.4 Subject to payment in full of the Price, within 6 weeks of the Services having been completed, we will give you any guarantees, test certificates and other relevant paperwork related to the Products and the Services.

3.5 We shall not be liable for any losses arising from or relating to (i) the inability (or delay/failure) of your electricity supplier to fit a smart meter that is compatible with SEG (Smart Export Guarantee); (ii) the failure of any metering or monitoring equipment provided in relation to the Services; or (iii) the failure (or under-performance) of any recharging/storage equipment or batteries provided in relation to the Services.

3.6 Products that we install may interface with equipment or systems (e.g. any Building Management System) owned/used by you or installed by third parties. We are not responsible for compatibility between such equipment/systems and the Products installed.

3.7 We shall not enter into any collateral warranty unless (i) you have advised us prior to the commencement of the performance of the Services that a collateral warranty will be required; and (ii) we have received payment in full of the Price. Sufficient time must be allowed for negotiating any collateral warranty.

4. YOUR OBLIGATIONS TO US:

4.1 You shall:

- 4.1.1 ensure that the terms of the Order and any information that you provide to us in relation to the Services are complete and accurate;
- 4.1.2 ensure that any applications made for grants/financial incentives in relation to the Services are complete and accurate;
- 4.1.3 co-operate with us in all matters relating to the Services;

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4.1.4 provide us with any information and instructions relating to the Services that is or are necessary to enable us to provide the Services in accordance with the Contract, including accurate details of underground services, and ensure that such information is accurate in all material respects; and

4.1.5 pay the Price of the Contract in accordance with paragraph 5 of these Terms.

4.2 Unless otherwise expressly stated in the Contract, you must obtain all relevant permissions and reports (such as planning permission, building regulations consents, Energy Performance Certificates and connection requirements (including, but not limited to, notifications to the relevant Distributor Network Operator and expert sign off/certification in relation to load calculations)) that are necessary before we commence the Services and/or deliver the Products. In addition, you are responsible for making any necessary changes to your electricity metering arrangements (including, but not limited to, the installation of a SEG compatible smart meter by your electricity supplier) and for ensuring that any ground works or pipe cable routes set out in the Quotation or relevant survey document will not have any detrimental effect on any foundations, structures or underground services. If we ask to see those consents and permissions (and related drawings and/or specifications) you must make those available to us before we commence the Services. It is your responsibility to get the necessary permissions, consents and approvals for the work to take place and to inform us of any conditions attached to any such permission or approval. We accept no liability for unauthorised use of a grid connected electricity generating system or any delays to the Services caused by changes to your electricity metering.

4.3 We are not responsible for the accuracy of the system layout of the Products created using drawings and information provided by you or by your Representatives. If the drawings or plans are not an accurate representation and the proposed layout cannot be accommodated you shall be responsible for any reasonable costs associated with changing the layout or any amendments to the Quotation/Commercial Contract. We shall be entitled to rely on drawings and/or information prepared by other professionals and/or your Representatives.

4.4 If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by you or your Representatives (including a delay in the receipt of the relevant consents and approvals required to carry out the Services (including Distributor Network Operator permissions, expert sign off/certification (e.g. in relation to load calculations or the receipt of any grant/financial incentive relating to the Services) or failure by you or your Representatives to perform any relevant obligation ("**Customer Default**")):

4.4.1 we shall, without limiting our other rights or remedies, have the right to suspend performance of the Services until you remedy the Customer Default and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent that the Customer Default prevents or delays our performance of any of our obligations;

4.4.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this paragraph 4.3; and

4.4.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

4.5 You agree to provide the following for our use free of any charge whilst the Services are being supplied or the Products are being delivered:

- (i) water, washing facilities and toilets;
- (ii) electricity supply;
- (iii) adequate storage space;



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- (iv) safe and easy access to the Site from the public highway; and
- (v) easy access to the location within the Site where the Services are to be provided.

4.6 You, or your contractor, may need to carry out preparatory work before we can start to provide the Services and/or deliver the Products. This work must be finished before the Proposed Commencement Date. This work must be undertaken by competent persons and must be of the necessary quality for the Services to be carried out. If this preparatory work is not finished before the Proposed Commencement Date, then the provisions set out in paragraph 4.4 of this Contract will apply.

4.7 In the event that the Site is found to be unsafe at any point before or during the provision of the Services, we shall suspend the provision of the Services. You shall be responsible for making the Site safe and shall notify us within 7 days of the date of suspension that adequate steps are being taken to make the Site safe. These steps must be complete within 2 months of the date of suspension. Subject to paragraph 8 of these Terms, we shall continue to provide the Services as soon as we deem that the necessary corrective measures have been taken to make the Site safe.

4.8 Where the Site is a roof space, you shall be responsible for obtaining a structural report from a qualified structural engineer certifying that the Site is suitable (structurally or otherwise) for the performance of the Services and/or the installation of the Products, including (but not limited to) the ability for the Site to handle the loads (both static and wind loads) that will be imposed on the Site by the Products. Any technical survey carried out by EEL on a Site that is a roof space shall be subject to such structural report. If the results of the structural report require changes to the Services and/or the Products we will notify you of the changes required, the estimated cost of any such changes and the likely effect on any timetable for the Services. Unless you notify us within 3 working days of receiving our notice of the required changes, the Price of the Contract will be adjusted in accordance with our estimate and an appropriate extension of time for completion of the Services will be agreed.

We shall not be liable for any loss resulting from your failure to comply with this paragraph and/or any damage that arises as a result of the provision of the Services/installation of the Products at an unsuitable Site or a Site that has not been certified as suitable by a qualified structural engineer.

4.9 Unless you otherwise notify us in writing, you grant us the right to use photographs of the Site and the installation work completed by us for marketing and information purposes. This could include digital copies on our website and other social media outlets including, but not limited to, Facebook, LinkedIn, Twitter and Instagram. Any posts made by us will be made in accordance with our obligations under Data Protection Legislation.

5. PRICE AND PAYMENT

5.1 Unless otherwise agreed between us in writing, you shall pay a deposit of 25% of the Price when you sign the Commercial Contract. Subject to the terms of the Order, the Supplier shall not commence the Services until it has received the deposit from the Customer.

5.2 Unless otherwise agreed between us in writing, you shall make a further advance payment of 35% of the Price which will be payable twenty one days prior to the Proposed Commencement Date (as set out in the Quotation or Commercial Contract). Where the payment of an advance payment is required:

- 5.2.1 we will not be obliged to commence the Services until the further advance payment have been paid; and
- 5.2.2 the Proposed Commencement Date shall be delayed for a period equal to the period of delay of the further advance payment.

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5.3 We shall submit our payment applications (**Claim**) to you by email on the last working day of each month (or at such other intervals as are agreed in writing between us), or if earlier, on commissioning/completion of the Services (unless otherwise agreed in writing between the parties). The Claim shall specify the sum that we consider will become due on the Due Date (as defined in paragraph 5.4) and the basis on which that sum is calculated.

5.4 Payment of our Claim shall be due on the date you receive our Claim (**Due Date**).

5.5 No later than 5 days from the Due Date, you shall issue a payment notice (**Payment Notice**), which shall comply with Section 110 A)(1) of the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (**Construction Act**). In the event of failure to issue a Payment Notice, our Claim shall become the Payment Notice pursuant to section 1108 of the Construction Act.

5.6 Unless otherwise agreed in writing between you and us, the final date for payment of the sum notified as being due in the Payment Notice (the **Notified Sum**) shall be 14 days after the Due Date (**Final Payment Date**).

5.7 On or before the Final Payment Date, you shall pay us (in cleared funds to a bank account nominated in writing by us) either (i) the **Notified Sum**; or (ii) the sum that you consider to be due as specified in any Pay Less Notice (as defined in paragraph 5.8 below).

5.8 Not less than 7 days before the Final Payment Date, you may give us notice that you intend to pay less (**Pay Less Notice**) than the Notified Sum. Any Pay Less Notice shall specify:

- (a) the sum that you consider to be due on the date the notice is served; and
- (b) the basis on which that sum is calculated.

5.9 If you fail to pay in full the Notified Sum to us under the Contract by the Final Payment Date under this paragraph 5 and you have not given a Pay Less Notice complying with this paragraph 5, we may suspend the performance of any or all of the Services and any other obligations under the Contract by giving not less than 7 days' notice to you of our intentions to do so and stating the ground or grounds on which we intend to suspend performance.

5.10 In the event of a suspension in accordance with these Terms, you shall pay us a reasonable amount in respect of costs and expenses reasonably incurred by us as a result of any exercise of your right to suspend performance.

5.11 Our prices set out in the Commercial Contract show the amount of VAT that is payable by you in relation to the Order (please note that, where no VAT is payable, the prices will be as set out in the Commercial Contract). However, if the rate of VAT changes between the date of the Order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Services and Products in full before the change in the rate of VAT takes effect.

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

5.13 Without limiting any other right or remedy of ours, if you fail to make any payment due to us under the Contract by the due date for payment (and fail to give a Pay Less Notice), we have the right to claim interest, compensation and reasonable costs under the Late Payment of Commercial Debts (Interest) Act 1998 in relation to such unpaid amounts, from the Final Payment Date until the full amount is paid. If for any reason the Late Payment of Commercial Debts (Interest) Act 1998 does not apply, interest shall be payable on overdue amounts at 8% over the base rate set by the Bank of England from time to time.

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5.14 Subject to the remaining provisions of this paragraph, you shall pay all amounts due under the Contract in full without any deduction or withholding and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

5.15 No discounts on the Price or retentions of payment shall be made unless agreed in writing between the parties before a contract is formed between the parties.

6. DELIVERY, TITLE AND RISK

6.1 We shall use all reasonable endeavours to deliver the Products to the Site (or such other location as may be agreed in writing between us) ("**Delivery Location**") on the Proposed Delivery Date. Time of delivery shall not be of the essence unless otherwise agreed in writing between the parties.

6.2 Delivery of the Products shall be completed on the arrival of the Products at the Delivery Location. We shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

6.3 If we fail to deliver the Products, our liability shall be limited to the costs and expenses incurred by you in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. We shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.

6.4 If you fail to take delivery of the Products on the Proposed Delivery Date then, except where this failure is caused by a Force Majeure Event or our failure to comply with these Terms:

- (i) we will store the Products until delivery takes place and may charge you for all related costs and expenses (including insurance);
- (ii) we shall have no liability to you for late delivery.

6.5 If you have not accepted or taken delivery of the Goods within 5 days of the Proposed Delivery Date, we may resell or otherwise dispose of part or all of the Products.

6.6 We may deliver the Products in instalments. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

6.7 The risk in the Products shall pass to you on completion of delivery.

6.8 Title to the Products shall not pass to you until we have received payment in full for the Products and the Services.

6.9 Until ownership of the Products passes to you, you must:

- 6.9.1 hold the Products on a fiduciary basis as our bailee;
- 6.9.2 store the Products separately in such a way that they remain readily identifiable as our property;
- 6.9.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
- 6.9.4 maintain the Products in a satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery; and
- 6.9.5 notify us immediately if you become subject to any of the events listed in paragraph 8.1(a) to paragraph 8.1(i).

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6.10 If before title to the Products passes to you, you become subject to any of the events listed in paragraphs 8.1(a) to 8.1(i), or we reasonably believe that any such event is about to happen and notify you accordingly, then, without limiting any other right or remedy we may have, we may at any time require you to deliver up the Products at your own cost, and, if you fail to do so promptly, enter any of your premises or those of a third party where the Products are stored in order to recover them.

7. UNEXPECTED WORK

Where unexpected work arises during the course of the Services which we could not have reasonably foreseen when submitting the Quotation (including, but not limited to, any difficulty resulting from the presence of materials containing asbestos at the Site which were not identified prior to the commencement of the Services, or any difficulties arising as a result of unsafe wiring which must be made safe as soon as it is discovered), we shall inform you and shall make a fair and reasonable adjustment to the price of the Contract and the Proposed Completion Date.

8. TERMINATION

8.1 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:

- (a) the other party commits a material breach of its obligations under this Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) 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 liability 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 reasonably 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 our winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the 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 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 the 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;

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- (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 paragraph 8.1(a) to 8.1(i) (inclusive);
- (k) the other party suspends or threatens to suspend, or ceases or threatens to 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.

8.2 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.

8.3 Without limiting our other rights or remedies, we shall have the right to suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between you and us if:

- 8.3.1 you fail to make payment of any amount due under this Contract on the due date for payment; or
- 8.3.2 you become subject to any of the events listed in paragraphs 8.1(a) to 8.1(i) or we reasonably believe that you are about to become subject to any of them.

8.4 We may give notice to cancel the Contract if the supply of Services is suspended under paragraph 4.7 and (i) you do not notify us within 7 days of the date of suspension that adequate steps are being taken to make the Site safe; or (ii) you have failed to take adequate steps to make the Site safe within 2 months of the date of suspension. In this case, we shall submit a final invoice to you for all work done prior to the date of suspension. Payment of this invoice shall be due in accordance with paragraph 5.

9. CONSEQUENCES OF TERMINATION

9.1 On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you in accordance with paragraph 5;
- (b) you shall return any Products which have not been fully paid for at your own cost. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at 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; and
- (d) provisions which expressly or by implication have effect after termination shall continue in full force and effect.

10. INTELLECTUAL PROPERTY RIGHTS

All copyright and other intellectual property rights in designs and documents prepared by us shall remain our sole property. You shall have a licence to use them, but only for the purposes for which they were prepared. We shall have a similar licence in respect of drawings and documents issued to us by you.

11. LIMITATIONS OF LIABILITY: your attention is particularly drawn to this paragraph

11.1 Subject to paragraph 11.2:



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- 11.1.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 11.1.2 you are responsible for any applications made for available grants/financial incentives in relation to the Services (including, but not limited to, the accuracy of all details contained in such applications) and we shall not be liable under any circumstances for any losses that arise in connection with your application for grants/financial incentives in relation to the Services including, but not limited to, losses that result from (i) your failure to provide accurate details in relation to any applications for grants/financial incentives, (ii) your failure to obtain any available grants/financial incentives, or (iii) any reduction in the amounts payable under any available grants/financial incentives (including, but not limited to, as a result of the application criteria for such grants/financial incentives being amended or such grants/financial incentives ceasing to be available). We take no responsibility for the availability (or otherwise) of any grants or financial incentives in relation to the Services nor for the accuracy of estimated payments or payback periods associated with any such grants or incentives; and
- 11.1.3 our total liability to you 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 not exceed (i) £2,000,000 in respect of losses that arise as a consequence of our professional negligence in connection with this agreement; and (ii) £10,000 in respect of losses that arise as a consequence of damage to property caused by the negligence of our employees and agents in connection with this agreement.
- 11.2 Nothing in these Terms shall limit or exclude our liability for:
- (i) death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; or
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (iv) defective products under the Consumer Protection Act 1987.
- 11.3 You are responsible for complying with the terms of any manufacturer's warranty in relation to the Products which shall include (but not be limited to) any requirements to comply with the manufacturer's instructions and/or to ensure that the relevant Product is subject to regular inspection and maintenance by properly qualified and experienced persons. We shall not be liable under any circumstances for any losses that arise in connection with your failure to comply with the terms of any manufacturer's warranty, including (but not limited to) any losses that result from your failure to ensure that you comply with the manufacturer's instructions in relation to the relevant Product or that the relevant Product is regularly inspected and maintained.
- 11.4 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 This paragraph 11 shall survive termination of the Contract.
- 11.6 Where any loss is suffered by you and any other person is jointly and severally liable to you, the loss recoverable by you from us shall be limited so as to be in proportion, on a just and equitable basis, to our relative contribution to the overall fault of us, you and any other person in respect of the loss in question.

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12. FORCE MAJEURE EVENTS

12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control ("**Force Majeure Event**").

12.2 A Force Majeure Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:

- (i) strikes, lock-outs or other industrial disputes (whether involving the workforce of the other party or any other party), malicious damage, act of God, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war; or
- (ii) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster; or
- (iii) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public transport; or
- (iv) impossibility of the use of public or private telecommunications networks; or
- (v) compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, default of suppliers or subcontractors.

12.3 If the Force Majeure Event prevents us from providing any of the Services and/or Products for more than six weeks, we shall, without limiting our other rights or remedies, have the right to terminate the Contract immediately by giving written notice to you.

13. CONNECTIVITY

13.1 You are solely responsible for:

- (a) procuring, maintaining and securing the necessary network connections and telecommunications links from your systems for the purposes of monitoring and/or correct functioning of the Products (including via the Applications);
- (b) all costs associated with improving the availability of network connections and/or telecommunications links required for the purposes of monitoring and/or correct functioning of the Products (including via the Applications);
- (c) making any necessary changes to your electricity metering arrangements (including, but not limited to, the installation of a SEG compatible smart meter by your electricity supplier) and maintaining the necessary connection from your systems to any electricity meters; and
- (d) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connection or telecommunications links or caused by the internet.

13.2 We reserve the right to charge (on a time and materials basis) for the provision of technical support in relation to the Application(s), including, but not limited to, (i) in the event of your failure to procure, maintain or secure the necessary network connections and/or telecommunications links to ensure the functioning of the Applications; and (ii) where a malfunction or failure of the Application(s) to function results from or is caused by circumstances outside our control.

14. BATTERIES

Battery performance is impossible to predict with certainty and all estimates of energy savings as a result of using a battery are based upon the best available information at the time and may change depending on a

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number of factors, including (but not limited to) the location of the battery, Customer usage, the supply of power and weather conditions.

The Customer acknowledges that batteries will not function during a power cut unless expressly stated in the Contract and may not function as normal in extreme weather conditions (both cold and hot). In addition, there may be times/conditions in which batteries may require/take charge from the National Grid. All estimates of savings are given as guidance only and should not be considered as guarantees. In particular, information available via the Application(s) in relation to usage and storage of energy (including in relation to battery discharge and charging) should be used as guidance only and is not guaranteed.

15. ASSIGNMENT

15.1 You may not assign, transfer, charge or subcontract or deal in any other manner with all or any of your rights or obligations under these Terms without our prior written consent.

15.2 We may at any time transfer, assign, charge, subcontract or deal in any other manner with all or any of our rights and obligations under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party.

16. NOTICES

All notices sent by you to us must be sent to Environmental Energies Limited at Harborough Enterprise Centre, Compass Point Business Park, Northampton Road, Market Harborough, LE16 9HW. We may give notice to you at either the e-mail or postal address you provide to us in the Commercial Contract. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to provide, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

17. DATA PROTECTION

Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. Any personal information that is collected and processed by us in connection with the Contract will be collected and processed in accordance with the terms of our Privacy Policy, a copy of which can be found on our website or is available on request from the Company.

18. DISPUTES

18.1 Subject to either party's right to adjudicate at any time, the parties agree to use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation and, within 14 days of a written request from one party to the other, shall meet in a good faith effort to resolve any dispute or difference.

18.2 Subject to the right of either of the parties to adjudication at any time, if the dispute is not resolved at that meeting, the parties agree to attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, one party must give notice in writing ("**ADR notice**") to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

18.3 Notwithstanding any other provision of these Conditions, either party may refer a dispute arising under these Conditions in relation to the provision of the Services to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this paragraph.



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18.4 The adjudicator shall be appointed by The Royal Institution of Chartered Surveyors.

18.5 Nothing in this paragraph 18 shall prejudice the right of either party to apply to Court for interim relief to prevent the violation by the other party of any proprietary interest, or any breach of the other's obligations which could cause irreparable harm to the first party.

19. SEVERANCE

19.1 If any court or competent authority decides that any of the provisions of the Contract is invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

19.2 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.

20. WAIVER

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.

21. THIRD PARTY RIGHTS

A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

22. VARIATION

Except as set out in these Terms, 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 us.

23. GOVERNING LAW

These Terms shall be governed by English law and you and we both agree to the exclusive jurisdiction of the English courts.