

TERMS AND CONDITIONS OF BUSINESS (Supply of testing, maintenance and monitoring services)

The Customer's attention is particularly drawn to the provisions of paragraph 10 (limitation of liability).

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

Additional Services: any Services not included in the Quotation or under the Service and Maintenance Plan and/or any Excluded Services performed by the Supplier under the Contract. Additional Services shall also include (but shall not be limited to) the following services (unless included in the Quotation or under the Service and Maintenance Plan) (i) the provision of equipment to access the Location/the Equipment; (ii) cleaning of the Equipment; (iii) bird-proofing the Equipment; (iv) technical support in relation to the Applications; and (v) the provision by the Supplier of additional personnel, if required, to access the Equipment to perform the Services.

Additional Services Charges: the charges payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

Additional Services Rates: the rates set out in the Quotation or the Service and Maintenance Plan (as the case may be), as those rates are amended from time to time in accordance with these Conditions.

Annual Testing: means Testing on an annual basis in accordance with the Service and Maintenance Plan.

Applications: the third party software application(s) installed on the Customer's computer, tablet, smartphone or other electronic device to monitor the performance of the Equipment.

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

Charges: the charges payable by the Customer for the supply of the Services and the Additional Services in accordance with paragraph 3.5 and paragraph 7 and as set out in the Quotation and/or the Service and Maintenance Plan, as those charges are varied from time to time in accordance with these Conditions.

Commencement Date: the date of the commencement of the provision of Services, as specified in the Quotation or the Service and Maintenance Plan.

Conditions: these terms and conditions as amended from time to time in accordance with paragraph 12.8, together with the provisions of the Quotation and/or the Service and Maintenance Plan.



Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions, comprising the Quotation, the Service and Maintenance Plan (where relevant), the Customer Order Form and these Conditions.

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

Customer Order Form: the Customer's written order for the Services (as set out in the Customer's purchase order form or the Customer's written acceptance of the Quotation).

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).

Equipment: the equipment specified in the Quotation and/or the Service and Maintenance Plan which shall include, but not be limited to solar PV panels, batteries, battery storage units, EV chargers, air source heat pumps and associated equipment.

Excluded Causes: means:

- (a) a defect in the manufacturer's design of the Equipment and/or a failure of the Equipment to conform to the manufacturer's warranty;
- (b) faulty materials or workmanship in the manufacture or installation of the Equipment;
- (c) the failure of any parts or components for the Equipment supplied to the Customer by a third party to conform to the manufacturer's warranty;
- (d) the use of the Equipment with materials not supplied or approved in writing by the Supplier;
- (e) any maintenance, repair, alteration, modification or adjustment to the Equipment performed by persons other than the Supplier or its employees or agents;
- (f) the Customer or a third party moving or cleaning the Equipment or moving/removing any mounting blocks/weights from ballasted systems;
- (g) a malfunction or failure of any part of the Equipment as a result of circumstances outside the Supplier's control including, but not limited to, extreme weather conditions, lightning strike, electrical surges, damage to the Equipment caused by birds and/or rodents and/or livestock, damage to the Equipment caused by a third party, dirt on the solar PV panels, shading from trees and/or third party properties and damage to the roof;
- (h) the use of the Equipment in breach of any of the provisions of the agreement under which the Equipment was supplied;
- (i) the failure of the Customer to comply with the terms of any manufacturer's warranty in relation to the Equipment, including the manufacturer's instructions in relation to the Equipment;
- (j) any incompatibility of the Equipment with the Customer's equipment;

- (k) a failure of the Customer to procure, maintain or secure the necessary network connections and telecommunications links from the Equipment;
- (l) any alterations/amendments made to the AC grid supply;
- (m) the installation of any third party equipment that interferes with the running of the Equipment;
- (n) the neglect or misuse of the Equipment; or
- (o) the failure of the Equipment to achieve any estimated payments or payback periods or to qualify for any grants or financial incentives.

Excluded Services: any Services required to restore any malfunctioning or failed Equipment to Good working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

Force Majeure Event: has the meaning given to it in paragraph 12.

Good Working Order: the Equipment operates in accordance with the Operating Manuals.

Initial Period: a period of 12 months commencing on the Commencement Date.

Location: the location of the Equipment at the Customer's premises, or any other location as may be agreed by the parties in writing from time to time.

Maintenance Services: means:

- (a) making any adjustments to the Equipment;
- (b) repairing or replacing any parts or components of the Equipment required to restore the Equipment to Good Working Order; and
- (c) the submission of a report after any visit to the Location relating to Maintenance Services, in accordance with these Conditions and the Quotation or the Service and Maintenance Plan (as the case may be).

Monitoring Services: means:

- (a) the remote measuring and monitoring by the Supplier of the performance of the Equipment;
- (b) the monitoring and response to system alerts in relation to the Equipment in accordance with these Conditions;
- (c) the submission of Feed-in Tariff readings, if applicable;
- (d) access for the Customer to electronically view the system performance of the Equipment; and
- (e) the preparation by the Supplier and submission to the Customer of quarterly reports relating to the performance of the Equipment,

as set out in the Service and Maintenance Plan (or the Quotation).

Normal Business Hours: 8.30 am to 5.00 pm on a Business Day.

Operating Manuals: all operating manuals, specifications and other manufacturer documentation relating to the Equipment.

Order: the Customer's order for the Services as set out in the Customer Order Form.

Quotation: the Supplier's quotation for the provision of Services, referring to these Conditions and, where relevant, the Service and Maintenance Plan.

Renewal Period: each successive 12 month period after the Initial Period for which the Contract relating to a Service and Maintenance Plan is renewed.

Services: the services supplied by the Supplier to the Customer under a Service and Maintenance Plan (which may include any or all of Testing, Annual Testing, Maintenance Services and Monitoring Services) and/or on a one-off basis, as described in the Quotation.

Service and Maintenance Plan: a plan for the provision of Services on an annual basis provided in writing by the Supplier to the Customer with the Quotation.

Supplier: Environmental Energies Limited registered in England and Wales with company number 07578432.

Testing: means:

- (a) visually inspecting the Equipment at the Location;
- (b) carrying out checks and tests of the Equipment at the Location to ensure that the Equipment is functional;
- (c) reviewing data relating to the performance of the Equipment; and
- (d) recommending any remedial works to the Equipment and/or the Location, as may be required,

in accordance with the Quotation or the Service and Maintenance Plan, as the case may be.

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 e-mails (unless indicated otherwise).

2. BASIS OF CONTRACT

2.1 The Order is an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order or the Supplier notifies the Customer in writing that it is able to provide the Services or the Supplier starts to provide the Services (whichever is earlier), at which point and on which date the Contract shall come into existence

2.3 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 law, trade, custom, practice or course of dealing.

2.4 Any Quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 calendar days from its date of issue, unless the Supplier notifies the Customer in writing that it has withdrawn it during this period.

2.5 **If the Customer is a consumer** the Customer may cancel the Contract by sending the Supplier written notice of cancellation no later than 14 days after the date on which the Contract was concluded in accordance with this paragraph 2. If the Customer cancels the Contract after the Supplier has commenced supplying the Services (but within the cancellation period), the Customer shall pay the Supplier for the Services provided up until the time that the Customer informs the Supplier that they wish to cancel the Contract.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer for the Equipment at the Location in accordance with the Quotation and (where relevant) the Service and Maintenance Plan, in all material respects. The Supplier shall provide one member of its personnel to carry out the Services. If the performance of the Services requires the Supplier to provide more than one member of its personnel (in order to satisfy health and safety requirements or otherwise), this shall constitute Additional Services for which Additional Services Charges shall apply.

3.2 **Testing:** where the Supplier has agreed to provided Annual Testing under a Service and Maintenance Plan, the Supplier shall attend the Location during Normal Business Hours once each year at a time agreed between the parties to perform Annual Testing of the Equipment. Where the Supplier has agreed to provide Testing on a one-off basis in accordance with a Quotation, the Supplier shall attend the Location at such time as is agreed between the parties to perform the Testing. If, as a result of any Testing, the Supplier recommends the provision of Additional Services to ensure the Equipment is in good Working Order, any such Additional Services will be provided in accordance with paragraph 3.5 below.



3.3 **Maintenance:** where the Supplier has agreed to provide Maintenance Services under a Service and Maintenance Plan, on the Customer informing the Supplier that the Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall perform the Maintenance Services in accordance with the Service and Maintenance Plan (up to the maximum amount of call-outs allowed under the Service and Maintenance Plan) and shall:

- (a) use reasonable endeavours to attend the Location during Normal Business Hours within the time set out in the Service and Maintenance Plan after the Supplier has received such information; and
- (b) use reasonable endeavours to perform the Maintenance Services within the time set out in the Service and Maintenance Plan.

Where the Supplier has agreed to provide Maintenance Services on a one-off basis in accordance with a Quotation, the Supplier shall attend the Location at such time as is agreed between the parties to perform the Maintenance Services.

If Additional Services are required to ensure the Equipment is in good Working Order, any such Additional Services will be provided in accordance with paragraph 3.5 below.

3.4 In performing the Maintenance Services, the Supplier shall use reasonable endeavours to restore any malfunctioning or failed Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, the Supplier shall either arrange for a further visit to the Location within Normal Business Hours (or as otherwise agreed between the parties) to complete the repair, or remove the Equipment or part of the Equipment for repair off-site.

3.5 The provision of Additional Services shall be charged at the Additional Services Rates for each of the Supplier's personnel reasonably required to attend the Location. The Additional Services Rates shall be calculated from when the personnel depart from the Supplier's premises until they return to the Supplier's premises.

3.6 **Monitoring:** where the Supplier has agreed to provide Monitoring Services, the Supplier shall perform the Monitoring Services in accordance with the Service and Maintenance Plan. Where the Supplier has agreed to provide Monitoring Services on a one-off basis in accordance with a Quotation, the Supplier shall provide the Monitoring Services in accordance with the Quotation.

3.7 The Customer is solely responsible for:

- (a) procuring, maintaining and securing the necessary network connections and telecommunications links from the Equipment and your systems for the purposes of monitoring and/or correct functioning of the Equipment, including via the Applications (including the provision of the Monitoring Services by the Supplier);
- (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 Equipment, including via the Applications (including the provision of the Monitoring Services by the Supplier) and/or securing alternative methods of monitoring the Equipment;



and

- (c) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connection or telecommunications links or caused by the internet.

3.8 The Supplier shall procure that its personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies (provided that these policies have been brought to the attention of the Supplier's personnel), provided that the Supplier shall not be liable if, as a result of such compliance by its personnel, it is in breach of any of its obligations under these Conditions.

3.9 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.

4. REPLACEMENTS AND SPARE PARTS

4.1 In performing the Maintenance Services, the Supplier shall use reasonable endeavours to source spare parts required to restore the Equipment to Good Working Order. The Supplier shall charge the Customer for all spare parts, other than where those parts are supplied by the manufacturer under the manufacturer's warranty.

4.2 The Supplier reserves the right to use spare parts of a similar description to the original spare parts if the original spare parts are not readily available.

4.3 In performing Additional Services, the Supplier shall charge the Customer for all spare parts.

4.4 All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Equipment. All parts and components removed from the Equipment by the Supplier in the course of performing the Maintenance Services shall no longer constitute part of the Equipment.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) ensure that the Equipment is installed and kept on suitable premises and under suitable conditions, as specified in the agreement under which the Equipment was originally supplied and/or the Operating Manuals and follow any operating instructions as the Supplier and/or the manufacturer of the Equipment may give from time to time;
- (b) where the Supplier is supplying Maintenance Services, notify the Supplier promptly if the Equipment is discovered to be operating incorrectly;
- (c) at all reasonable times and at the Customer's cost, provide the Supplier, its employees, agents, consultants and subcontractors with full and free access to the Equipment at the Location and provide them with adequate and safe working space, and any facilities as are reasonably required to enable the Supplier to perform the Maintenance Services and Additional Services;



- (d) where the Supplier is providing Monitoring Services, provide the Supplier with the relevant details/information required to submit the Feed-in Tariff readings and to remotely measure the performance of the Equipment;
- (e) co-operate with the Supplier in all matters relating to the supply of the Services;
- (f) provide the Supplier with any information and materials (including, but not limited to, copies of Operating Manuals and required dates of service for the Equipment) as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (g) not allow any person other than the Supplier to maintain, alter, modify or adjust the Equipment without the prior written approval of the Supplier;
- (h) only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed); and
- (i) provide all personnel of the Supplier providing the Services with a full induction in relation to all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises.

5.2 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 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 paragraph 5.2; 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.

6. EXCLUDED SERVICES

- 6.1 The Supplier is not obliged to perform any Excluded Services as part of a Service and Maintenance Plan.
- 6.2 Where the Supplier is performing or has performed the Services in circumstances where it is established that the Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Additional Services Charges in respect of that work.



7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay to the Supplier the Charges in relation to the performance of the Services.
- 7.2 Additional Services Charges shall be charged on the following time and materials basis:
- (a) the charges shall be calculated in accordance with the Supplier's standard hourly rates;
 - (b) the Supplier's standard hourly rates for each individual person are calculated on the basis of Normal Business Hours worked on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate of a minimum of one and a half times the standard hourly rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in paragraph 7.2(b). A minimum of two times the standard hourly rate will apply on Saturdays, Sundays and bank holidays; and
 - (d) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling time, travelling expenses (including fuel costs), general consumables, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 7.3 The Charges in relation to a Service and Maintenance Plan shall be due and payable in full to the Supplier annually in advance within 30 days of receipt of an invoice from the Supplier. Any Charges in relation to one-off Services provided by the Supplier and any Additional Services Charges shall be due and payable within 14 days of receipt of an invoice from the Supplier. The Supplier shall be entitled to invoice the Customer for one-off Services and Additional Services in advance of providing such Services. Any charges for spare parts recoverable in accordance with paragraph 4.1 shall be due within 30 days of receipt of an invoice from the Supplier. The Supplier shall be entitled to invoice the Customer for spare parts in advance of providing such spare parts. Time for payment shall be of the essence of the Contract.
- 7.4 **If the Customer is a business** and it fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under paragraph 11, the Customer shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.5 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 7.6 The Supplier may, at any time after the first anniversary of the Commencement Date, increase the Charges under a Service and Maintenance Plan by a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to

time) (**RPI Increase**) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this paragraph (in the case of the second or any subsequent increase), without giving notice to the Customer. If the Supplier increases the Charges by more than the RPI increase for the relevant period, it shall give to the Customer not less than 60 days' written notice of such increase. Price increases shall be no more frequent than once in any 12-month period.

- 7.7 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.
- 7.8 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the provision of the Services. The Supplier shall comply with all applicable requirements of the Data Protection Legislation. This paragraph 7.8 is in addition to, and does not relieve, remove or replace any party's obligations or rights under the Data Protection Legislation. Any personal information that is collected and processed in accordance with the terms of the Supplier's Privacy Policy, a copy of which can be found on the Supplier's website or is available on request from the Supplier.

8. SUPPLIER WARRANTIES

- 8.1 The Supplier represents and warrants to the Customer that, unless the Supplier is prevented from doing so by a Force Majeure Event (as set out in paragraph 12 of these Conditions) or a Client Default (as set out in paragraph 5.2 of these Conditions) the Services (and any Additional Services) shall conform in all material respects with their description and shall be performed:
- (a) by an appropriate number of suitably qualified and experienced personnel;
 - (b) using all reasonable skill and care; and
 - (c) in accordance with all applicable laws and regulations in force from time to time.
- 8.2 **If the Customer is a business**, except as expressly stated in these Conditions, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.

9. CONFIDENTIALITY

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. 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. This paragraph 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS PARAGRAPH

10.1 Nothing in these Conditions shall limit or exclude the Customer's or the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other matter that would be illegal for the Supplier to exclude.

10.2 Subject to paragraph 10.1 the Supplier shall not under any circumstances whatsoever be liable to the Customer, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, revenue or goodwill;
- (b) loss or corruption (whether direct or indirect) of data or information; or
- (c) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under or in connection with the Contract.

10.3 Subject to paragraphs 10.1, 10.2 and 10.5, the Supplier's total aggregate liability to the Customer in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall in no circumstances exceed £1,000,000 (or as otherwise agreed in writing between the parties).

10.4 The Supplier excludes any liability whatsoever for the malfunctioning or failure of the Equipment as a result of any of the Excluded Causes and any consequential effects of such failure.

10.5 Where any loss is suffered by the Customer and any other person is jointly and severally liable to the Customer, the loss recoverable by the Customer from the Supplier shall be limited so as to be in proportion, on a just and equitable basis, to the Supplier's relative contribution to the overall fault of the Supplier, the Customer and any the person in respect of the loss in question.

10.6 This paragraph 10 shall survive termination of the Contract.

11. TERMINATION

11.1 A Contract for a Service and Maintenance Plan (**SMP Contract**) shall commence on the Commencement Date. Unless terminated earlier in accordance with this paragraph 11, the SMP



Contract shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 30 days before the end of the Initial Period or the relevant Renewal Period, to terminate the SMP Contract at the end of the Initial Period or the relevant Renewal Period, as the case may be. No refunds shall be payable by the Supplier to the Customer in the event that the Customer terminates the SMP Contract prior to the end of the Initial Period or a relevant Renewal Period.

11.2 Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make that payment;
- (b) the other party commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;
- (c) the other party:
 - (i) suspends, or threatens to suspend, payment of its debts;
 - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (iv) (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
 - (v) (being a partnership) has any partner to whom any of paragraph 11.2(c)(i) to paragraph 11.2(c)(iv) apply.
- (d) 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 (in the case of 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;
- (e) 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;



- (f) 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 that other party (being a company);
 - (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of that other party;
 - (i) a creditor or encumbrancer of that other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of that other party's assets and that attachment or process is not discharged within 14 days;
 - (j) any event occurs or proceeding is taken with respect to that 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 11.2(c) to paragraph 11.2(i) (inclusive);
 - (k) that other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (l) there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 11.4 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of these Conditions which existed at or before the date of termination.
- 11.5 On termination of the Contract for any reason:
- (a) each party shall as soon as reasonably practicable, return or destroy (as directed in writing by the other party) any documents, handbooks or other information provided to it by the other party or data for the purposes of these Conditions, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information; and
 - (b) the Customer shall immediately pay any outstanding amounts owed to the Supplier pursuant to these Conditions.
- 11.6 Regardless of its obligations in this paragraph 11, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under paragraph 11.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Paragraph 9 shall continue to apply to any retained documents and materials, subject to this paragraph 11.

12. GENERAL

12.1 Force majeure:

- (a) For the purposes of these Conditions, **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 party 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 the 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 3 months, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

12.2 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.
- (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.

12.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with the 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.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid 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.

This paragraph 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this paragraph, "writing" shall not include e-mails and for the avoidance of doubt notice given under these Conditions shall not be validly served if sent by e-mail.

12.4 **Waiver and cumulative remedies:**

- (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 to not exclude rights provided by law.

12.5 **Severance:**

- (a) If a court or any other competent authority finds that any provision of these Conditions (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 these Conditions shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of these Conditions 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.

12.6 **No partnership:** Nothing in these Conditions 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.

12.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.8 **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.

12.9 **Entire agreement:**

- (a) **If the Customer is a business**, 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.
- (b) **If the Customer is a business**, each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions.

12.10 **Governing law and jurisdiction:** the 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),



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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.



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