



## Terms and Conditions (the Terms)

These terms form part of the Contract for the Services and are to be read in conjunction with the details as set out in the PSA. In the event of any ambiguity between these Terms and the details as set out in the PSA, the latter shall take precedence.

### Agreed Terms

#### 1. Interpretation

The following definitions and rules of interpretation apply in the Contract.

##### 1.1 Definitions

**Applicable Laws:** all applicable laws, statutes, regulations and regulatory codes from time to time in force.

**Applicable Data Protection Laws:** means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (b) To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which UAL is subject, which relates to the protection of personal data.

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

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Charges:** the sums payable for the Services by the Client to the Supplier (which shall include a commission or referral/ introducers fee paid by the Supplier to UAL as set out in the Utilities Agreement).

**Contract:** the legally binding agreement for the supply of services by UAL to the Client comprising the PSA and the Terms.

**Client's Equipment:** any equipment, including tools, systems, cabling or facilities, required by the Client to permit the supply of the Utilities.

**Client Information:** all documents, information, items, data and materials in any form, whether owned by or in the possession of the Client or a third party, which are provided by the Client to UAL for the purpose of UAL providing the Services.

**Client Personal Data:** any personal data which UAL processes in connection with this agreement, in the capacity of a processor on behalf of the Client.

**Client's Site:** the site(s) to which the Utilities will be supplied by the Supplier.

**Energy Services Term:** as set in the PSA;

**PSA:** the Professional Services Agreement to which the Terms are attached.

**EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Fees:** additional charges (in addition to the Fees) payable by the Client to UAL (if any) for certain Services provided by UAL.

**Letter of Authority:** letter in the form attached to the PSA.

**Intellectual Property:** copyright, trademarks and service marks, business names and domain names, rights in get-up and trade dress and such other intellectual property (if any) which is used by either party for the purpose of fulfilling its obligations under this Contract.



**Services:** the services as set out in the PSA, including services which are incidental or ancillary to such services.

**Supplier:** the supplier of the Utilities to the Clients Site.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Utilities:** shall mean gas and/or electricity and/or water and /or any other utilities available to the Client.

**Utilities Agreement:** the contract between the Supplier and the Client for the provisions of the Utilities.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2 A reference to **writing** or **written** includes email.
- 1.3 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.4 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time.

## 2. Commencement and Duration

- 2.1 The Contract shall commence on the date asset out in the PSA and shall continue for the duration of the Energy Services Term or until either party gives 12 months' notice (or such notice as set out in the PSA) in accordance with the terms of the PSA or either party terminates the Contract under clause 11 of the Terms.

## 3. UALs Responsibilities

- 3.1 UAL shall use reasonable endeavours to manage and complete the Services to the Client, in accordance with this Contract in all material respects.
- 3.2 UAL shall use reasonable endeavours to meet any performance dates agreed specified in the PSA (if any) but any such dates shall be estimates only and time for performance by PSA shall not be of the essence of this Contract unless otherwise stated.
- 3.3 UAL shall act in an advisory capacity only in but shall use all reasonable commercial endeavours to identify a suitable Supplier and for the provision of the Utilities save that the decision to contract with any Supplier for the supply of any Utilities shall be the final decision of the Client and not UAL. In the event the Client elects not to proceed on the recommendations given by UAL concerning the Supplier of the Utilities and/or the type of contract to enter into, UAL shall have no responsibility for the services provided or the Utilities Agreement entered into by the Client with such Supplier.

## 4. Clients Obligations

- 4.1 The Client shall:
  - a) co-operate with UAL in all matters relating to the Services;
  - b) to provide a Letter of Authority in advance of the provision of the Services by UAL;
  - c) appoint a point of contact for UAL for the purpose of delivering the Services. Such person shall have the authority to contractually bind the Client on matters relating to the Services (including by agreeing any Scope Change);
  - d) provide to UAL in a timely manner all Client Information required to perform the Services



- and ensure that it is accurate and complete in all material respects;
- e) inform UAL of any special requirements in respect to the Utilities required at the Client's Site;
  - f) ensure that all the Client's Equipment is in good working order and suitable for the purpose of the supply of the Utilities.
- 4.2 If UAL's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, UAL shall be allowed such time required to perform its obligations equal to no less time than the delay caused by the Client.
- 4.3 The Client shall as in accordance with clause above, be responsible for satisfying itself subject to such advice provided by UAL that the terms under which the Supplier is providing the Utilities (including but not limited to the price and term of the Utilities Agreement) are suitable and appropriate for the Client's needs/requirements.
- 4.4 The Client acknowledges that in the event that the Client Information provided pursuant to clause 4.1(d) is incomplete or inaccurate UAL shall have no liability to the Client for any claim or losses which may arise therefrom.

## 5. Charges and Payments

- 5.1 UAL will provide the Services to the Client in consideration of remuneration as set out in this Clause 5. UAL reserves the right to amend the basis on which it charges for any of the Services at any time in its sole discretion, subject to providing reasonable notice to the Client. Where such changes are not acceptable, the Client shall be entitled to opt out of the relevant Service without penalty.
- 5.2 UAL shall receive commission from the appointed Supplier in respect of the Services provided. This commission forms part of and is included within the overall charges payable by the Client under the energy contract and is incorporated within the unit rates and/or standing charges agreed with the Supplier.

The commission payable to UAL is typically calculated using the following methodologies:

### **Within the unit rate:**

Commission = p/kWh × estimated kWh per year × contract duration (years)

### **Within the standing charge:**

Daily standing charge: Commission = p/day × 365 × contract duration (years)

Monthly standing charge: Commission = £/month × 12 × contract duration (years)

Quarterly standing charge: Commission = £/quarter × 4 × contract duration (years)

The total commission payable may vary depending on factors including, but not limited to, the Client's energy consumption, contract duration, pricing structure, and the Supplier selected.

UAL receives commission from Suppliers in one of the following ways:

- i. the supplier pays us commission monthly in arrears over the life of the contract based on the actual consumption of energy paid for by the customer and the number of days in the month;
- ii. the supplier pays us commission annually - 80% of the years' estimated commission with the remaining 20% paid on month 13, subject to any adjustments or reconciliations required depending on the customer's consumption over the previous 12 months; or
- iii. the supplier pays us up to 80% in advance of the contract start date for the entire duration of the contract, with the remaining 20% paid at the end of the contract, subject to any adjustments or reconciliations required depending on the customer's consumption over the duration of the contract.



- 5.3 Entering into an energy contract arranged by UAL, the Client acknowledges and agrees that:
- a) UAL acts as an intermediary and may receive commission from the Supplier as described in this Clause 5;
  - b) such commission is incorporated within the pricing offered by the Supplier and therefore indirectly borne by the Client;
  - c) UAL may receive differing levels of commission depending on the Supplier, product, and contract structure. However, UAL will present options based on the Client's requirements and preferences, and the Client's chosen contract will be progressed accordingly.
- 5.4 Any fees or other sums payable directly by the Client to UAL (if applicable) are exclusive of VAT. The Client shall pay any applicable VAT in addition to such sums upon receipt of a valid VAT invoice.

## 6. Compliance with Laws and Policies

- 6.1 In performing its obligations under this agreement, UAL shall at all times comply with all the Applicable Laws.

## 7. Intellectual Property

- 7.1 All intellectual property used by UAL for the purpose of providing the Services shall at all times remain in the ownership of UAL and may only be used by the Client with the prior written authority of UAL.
- 7.2 Any Intellectual Property owned by the Client which UAL may require for the purpose of providing the Services to the Client (which shall be specifically identified and approved by the Client) shall be used under a royalty free revocable license granted by the Client to UAL for the sole purpose of providing the Services.
- 7.3 Each party shall indemnify the other in the event of any third-party claim arising out of the use of either party of the other party's Intellectual Property.

## 8. Data Protection

- 8.1 For the purposes of this clause 7, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 8.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under applicable Data Protection Laws.
- 8.3 The parties have determined that for the purposes of Applicable Data Protection Laws UAL shall process the personal data as set out in the Schedule as processor on behalf of the Client.
- 8.4 The Client consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by UAL in connection with the processing of Client Personal Data, provided these are in compliance with the then-current version of the Client's privacy policy.
- 8.5 Without prejudice to clause 8.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data and to UAL for the duration and purposes of this Contract.
- 8.6 In relation to the Client Personal Data, the scope, nature and purpose of processing by UAL, the duration of the processing and the types of personal data and categories of data subject shall be limited and restricted to such data as required for the purpose of UAL providing the Services to the Client for the duration of this Contract for which UAL shall ensure it has taken such appropriate organisational and technical measures to protect the processing of such data.
- 8.7 UAL's Privacy Policy can be found on our website.



## 9. Confidentiality

- 9.1 Each party undertakes that it shall disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:
- a) To its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this [clause 9](#); and
  - b) As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 10. Limitation of Liability

- 10.1 UAL has obtained insurance cover in respect of its legal liability for any claims under this Contract.
- 10.2 References to liability in this clause 10 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:
- a) Death or personal injury caused by negligence;
  - b) Fraud or fraudulent misrepresentation; and
  - c) Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.4 Subject to [clause 10.3](#), UAL's total liability to the Client shall be limited to such insurance payment (if any) made by Insurers in settlement of any claim brought by the Client against UAL for the of the provision Services under the PSA.
- 10.5 Subject to [clause 10.3](#) in the event any claim made by the Client against UAL is uninsured UAL's liability shall in respect to each claim (or series of connected claims) be limited in the aggregate to £10,000 or the total Fees for the Services whichever is the lower.
- 10.6 Subject to [clause 10.3](#), this [clause 10.6](#) specifies the types of losses that are specifically excluded:
- a) Loss of profits;
  - b) Loss of sales or business;
  - c) Loss of agreements or contracts;
  - d) Loss of anticipated savings;
  - e) Loss of use or corruption of software, data or information;
  - f) Loss of damage to goodwill; and
  - g) Indirect or consequential loss.
- 10.7 Unless the Client notifies UAL that it intends to make a claim in respect of an event within the notice period, UAL shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 10.8 In the event UAL is required to take any action to recover any Fees due from the Client under this Contract or is required to take any action as a consequence of any breach by the Client of the terms of this Contract the Client acknowledges and accepts that it shall be responsible for meeting all reasonable administrative and professional costs (including all reasonable legal



costs) incurred by UAL in connection with such action up to a maximum in the aggregate of £10,000.

## 11. Termination

- 11.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- a) The other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - b) The party commits any act of insolvency which would prevent the party meeting its obligations under the Contract.
- 11.2 Without affecting any other right or remedy available to it, UAL may terminate this Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

## 12. Obligations on Termination, Expiry or Survival

- 12.1 On termination or expiry of this agreement;
- a) UAL shall cease to provide the Services to the Client.
  - b) UAL shall either return or destroy all Client Information at the Clients direction.
  - c) Each party shall immediately cease using any Intellectual Property of the other party.
  - d) The client shall pay any outstanding Fees due to UAL within 7 days of termination of this Contract.
- 12.2 Survival
- a) On termination or expiry of this agreement, such clauses as set out in the Terms which are still applicable and relevant shall continue in force.
  - b) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry.

## 13. Force Majeure

- 13.1 **Force Majeure Event** means any circumstance whatsoever or howsoever arising that are not within a party's reasonable control.
- 13.2 If a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 13.3 In the event the Force Majeure Event continues for more than three months the Contract can be terminated on one months' notice.

## 14. Assignment and Other Dealings

- 14.1 This agreement is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract without the prior written consent of the other party.

## 15. Variation

- 15.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).



## 16. Waiver

- 16.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 16.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 17. Right and Remedies

- 17.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## 18. Entire Agreement

- 18.1 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.
- 18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

## 19. No Partnership or Agency

- 19.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 20. Third Party Rights

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

## 21. Notices

- 21.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:
- a) Delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - b) Sent by email to the address specified in the PSA.
- 21.2 Any notice or communication shall be deemed to have been received:
- a) If delivered by hand, at the time the notice is left at the proper address;
  - b) If sent by pre-paid first-class post next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - c) If sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.
- 21.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 22. Dispute Resolution

- 22.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall use all reasonable commercial endeavours to



resolve such dispute and shall mediate or adopt an alternative dispute resolution process prior to the issue of legal proceedings which shall be dependent upon whether the Client is or is not a microbusiness. In the event the Client is a microbusiness the appropriate dispute resolution procedure will be followed.

**23. Jurisdiction and Governing Law**

- 23.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 23.2 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.