

Utilita group standard purchase Terms and conditions

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND/OR SERVICES

1. Interpretation

1.1 The following definitions and rules of interpretation apply in these terms and conditions:

Applicable Laws: means all laws, legislation applicable to the Contract including, without limitation, the Gas Act 1986, the Electricity Act 1989, the Competition Act 1998, the Enterprise Act 2002, the Utilities Act 2000, the Energy Act 2004, the Energy Act 2008, the Energy Act 2010 and the Energy Act 2011, the Data Protection Legislation, all regulatory requirements, all relevant licences, registrations or approvals, applicable industry codes or standards issued by any Regulatory Authority, any applicable direction, policy, rule, decree or order that is binding on a Party and that is made or given by any Regulatory Authority that may apply to the activities being supplied to Utilita or that apply to Utilita from time to time.

Background Intellectual Property Rights: means any and all Intellectual Property Rights that are owned or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Commencement Date or otherwise).

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: means these terms and conditions as amended from time to time in accordance with clause 21.7.

Confidential Information: means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any

other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential.

Contract: means the contract and/or Purchase Order between Utilita and the Supplier for the supply of Goods and/or Services, these Conditions and any applicable Goods Specification and/or Services Specification.

Control: shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Data Protection Legislation: means all applicable laws and regulations relating to the processing of personal data including, where applicable the Data Protection Act 2018, the General Data Protection Regulation EU 2016/679 and all applicable codes of practice and guidance issued by the supervisory authority under the Data Protection Legislation.

Deliverables: means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Force Majeure Event: means any circumstance beyond the reasonable control of any party including, but limited to, any act of God, war, riot, actual or threatened acts of terrorism, explosion, epidemic, pandemic, strike, lock out, industrial dispute and any governmental or regulatory authority action.

Foreground Intellectual Property Rights: means any and all Intellectual Property Rights that are or have been developed under or in connection with the Contract, including any Deliverables (whether prior to the Commencement Date or otherwise).

Goods: means the goods (or any part of them) set out in the Purchase Order.

Goods Specification: means any specification for the Goods, including any related plans and drawings, that is agreed in writing by Utilita and the Supplier.

Intellectual Property Rights: means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses: means any and all liabilities, damages, claims, demands, taxes, levies, fines, penalties, actions, judgments, settlements, costs, losses, fees (including legal and expert fees), expenses or any other liabilities.

Mandatory Policies: means Utilita's business policies and codes listed in Schedule 1.

OFGEM: means the Office of Gas and Electricity Markets.

Purchase Order: means Utilita's purchase order for the Goods and/or Services.

Regulatory Authority: means any applicable regulatory agency, department, commission, council or other government entity having regulatory, legal or supervisory control over or responsibility for Utilita, the Supplier and/or the activities carried out under the Contract including, without limitation, OFGEM.

Service Specification: means the description or specification for Services agreed in writing by Utilita and the Supplier.

Services: means the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Supplier: means the person or firm from whom Utilita purchases the Goods and/or Services.

Utilita: means the Utilita Group company requiring the supply of Goods and/or Services as identified in the Purchase Order or, if no such company is identified, Utilita Energy Limited registered in England and Wales with company number 04849181.

Utilita Group: means Utilita Energy Limited (company number 04849181), any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. A **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

Utilita Materials: means all materials, equipment and tools, drawings, specifications and data supplied by Utilita to the Supplier.

1.2 The schedule(s) form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedule(s).

1.3 A reference to the Contract or to any other agreement or document referred to in the Contract is a reference to the Contract or such other agreement as varied or novated (in each case, other than in breach of the provisions of the Contract) from time to time.

1.4 References to clauses and schedules are to the clauses and schedules of the Contract and references to paragraphs are to paragraphs of the relevant schedule. Clause, schedule and paragraph headings shall not affect the interpretation of the Contract.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established. A reference to holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

- (a) another person (or its nominee), whether by way of security or in connection with the taking of security;
- (b) or its nominee.

1.7 Unless the context requires otherwise, words in the singular include the plural and vice versa, a reference to one gender shall include a reference to the other genders and a reference to a **party** shall include its personal representatives, successors and its permitted assigns.

1.8 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended or re-enacted on or after exit day from time to time.

1.9 Unless otherwise stated, a reference to **writing** or **written** includes e-mail.

1.10 Any words following the terms **including, include, in particular, for example** or **any other similar expression** shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms.

2. Basis of contract

2.1 The Purchase Order constitutes an offer by Utilita to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing written acceptance of the Purchase Order; or
- (b) any act by the Supplier consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, any terms and conditions printed on the front or reverse of any document submitted by the Supplier in relation to any Purchase Order or otherwise in relation to the Contract, including any terms and conditions printed on the Supplier's invoice, shall not be incorporated into these Conditions. These Conditions shall prevail over any other terms.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified in the relevant Purchase Order.

2.5 Utilita shall have the right, at any time while the Contract remains in force and for a period of 5 years after its termination (for whatever reason), carry out any audit which Utilita may, at its absolute discretion, undertake from time to time. This may include Utilita undertaking a site visit to the Supplier's premises or meeting with employees and/or suppliers, upon giving reasonable prior notice, in order to verify certain information in relation to the Services and the Contract.

2.6 Unless expressly agreed between Utilita and the Supplier, nothing in the Contract shall imply any exclusivity of whatever nature between Utilita and the Supplier, save that if the Goods and/or Services are customised for Utilita using Utilita's Intellectual Property Rights or if the Goods Specification or Service Specification is materially different from the Supplier's standard products or services, the Supplier shall not supply to any third party those customised or non-standard Goods and/or Services, unless expressly agreed in writing by Utilita prior to such supply.

2.7 Utilita shall not be required to issue any Purchase Order to the Supplier nor to purchase any minimum or particular volume of Goods and/or Services from the Supplier.

2.8 The Supplier accepts and acknowledges that time is of the essence under the Contract.

3. Supply of Goods

3.1 The Supplier warrants, represents and undertakes that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Utilita, expressly or by implication, and in this respect Utilita relies on the Supplier's skill and judgement; and
- (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- (e) be produced by skilled, qualified and experienced personnel in a timely, workmanlike, safe and diligent manner and in accordance with the customary and best industry standards; and
- (f) not be the subject of any lien, retention of title or similar encumbrance in favour of any third party.

3.2 The Supplier warrants that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 Utilita may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract. The Supplier shall provide all necessary support to Utilita as and when required by Utilita during any such inspection or testing.

3.4 If following such inspection or testing Utilita considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, Utilita shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance at the cost of the Supplier.

3.5 Utilita may conduct further inspections and tests after the Supplier has carried out its remedial actions. The Supplier shall provide all necessary support to Utilita as and when required by Utilita during any such inspection or testing.

4. Delivery of Goods

4.1 The Supplier warrants, represents and undertakes that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the

Purchase Order, the Purchase Order number the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(c) it states clearly on the delivery note any requirement for Utilita to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier warrants, represents and undertakes to deliver the Goods:

(a) on the date specified in the Purchase Order or, if no such date is specified, the date should be confirmed in writing to the stated Utilita contact on the Purchase Order within 1 working day of the date of the Purchase Order and the Supplier shall deliver on such date; and

(b) to such location as is set out in the Purchase Order or as instructed by Utilita before delivery (**Delivery Location**); and

(c) during Utilita's normal hours of business on a Business Day, or as instructed by Utilita.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 If the Supplier delivers more or less than the quantity of Goods ordered, Utilita may, at its sole discretion, reject the Goods or the excess Goods, and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Utilita accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without Utilita's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Utilita to the remedies set out in clause 7.1.

4.6 Title and risk in the Goods shall pass to Utilita on completion of delivery subject to any inspection or testing conducted by Utilita in accordance with clauses 3.3, 3.4 and 3.5, and the completion (and Utilita's acceptance) of any necessary remedial action required to be undertaken by the Supplier (**Acceptance of Goods**).

5. Import licences

5.1 The Supplier is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by Utilita, the Supplier shall make those licences and consents available to Utilita prior to the relevant shipment.

6. Supply of Services

6.1 The Supplier shall from the date set out in the Purchase Order (or, if no such date is specified, from the Commencement Date) and for the duration of the Contract supply the Services to Utilita in accordance with the terms of the Contract.

6.2 The Supplier warrants that it shall meet any performance dates for the Services specified in the Purchase Order or that Utilita notifies to the Supplier in writing.

6.3 In providing the Services, the Supplier warrants, represents and undertakes:

(a) to co-operate with Utilita in all matters relating to the Services, and comply with all reasonable instructions of Utilita; and

(b) to perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade (and, where applicable, in accordance with best practice in Utilita's industry, profession or trade); and

(c) to use personnel who are suitably and necessarily skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract; and

(d) that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that Utilita expressly or impliedly makes known to the Supplier; and

(e) to source and provide all equipment, tools and vehicles and such other items as are required to provide the Services; and

(f) to use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Utilita, will be free from defects in workmanship, installation and design; and

(g) to obtain and at all times maintain all licences and consents which may be required for the provision of the Services; and

(h) to comply with all Applicable Laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services; and

(i) to have in place policies which are the same or substantially similar to the Mandatory Policies; and

(j) to observe all health and safety rules and regulations and any other security requirements that apply at any of Utilita's premises; and

(k) to hold all Utilita Materials in safe custody at its own risk, maintain Utilita Materials in good condition until returned to Utilita, and not dispose or use Utilita Materials other than in accordance with Utilita's written instructions or authorisation; and

- (l) to not do or omit to do anything which may cause Utilita to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Utilita may rely or act on the Services; and
- (m) to comply with any additional obligations as set out in the Service Specification.

7. Utilita remedies

7.1 If the Supplier fails to deliver the Goods and/or perform the Services in accordance with the terms of this Contract, Utilita shall, without limiting or affecting other rights or remedies available to it, either by statute, common law or otherwise under these Conditions, have one or more of the following rights:

- (a) to terminate the Contract without liability and with immediate effect by giving written notice to the Supplier; and/or
- (b) to refuse to accept, or pay for, any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make; and/or
- (c) to recover from the Supplier any costs and expenditure reasonably incurred by Utilita in obtaining substitute goods and/or services from a third party; and/or
- (d) in relation to any sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered, either:
 - (i) require a refund from the Supplier payable within 7 days of Utilita's request; or
 - (ii) set-off the sums against any sums owed by Utilita to the Supplier for Services provided and/or Goods delivered up to the date of termination in accordance with clause 9.8; and/or
- (e) to claim any Losses incurred by Utilita which are in any way attributable to the Supplier's failure to meet or otherwise breach its obligations under the Contract.

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, Utilita shall, without limiting or affecting other rights or remedies available to it, either by statute, common law or under these Conditions, have one or more of the following rights, whether or not it has accepted the Goods:

- (a) to terminate the Contract without liability with immediate effect by giving written notice to the Supplier; and/or
- (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense; and/or
- (c) to require the Supplier to repair or replace the rejected Goods, or to immediately provide a full refund of the price of the rejected Goods; and/or

- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make; and/or
- (e) to recover from the Supplier any costs and expenditure reasonably incurred by Utilita in obtaining substitute goods from a third party; and/or
- (f) to claim any Losses incurred by Utilita arising from the Supplier's failure to supply Goods in accordance with clause 3.1 or otherwise breach its obligations under the Contract.

7.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

7.4 Utilita's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

8. Utilita's obligations

8.1 Utilita shall:

- (a) provide the Supplier with reasonable access at reasonable times to Utilita's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

9. Charges and payment

9.1 The price for the Goods:

- (a) shall be the price set out in the Purchase Order; and
- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by an authorised representative of Utilita.

9.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by an authorised representative of Utilita, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

9.3 Unless otherwise agreed in the Purchase Order, the Supplier shall invoice Utilita as follows:

- (a) in respect of Goods, on or at any time after the Acceptance of Goods; and
- (b) in respect of Services, on completion of the Services.

Each invoice shall include such supporting information required by Utilita to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.

9.4 In consideration of the supply of Goods and/or Services by the Supplier, Utilita shall pay the invoiced amounts within 30 days of the receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

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

9.6 If Utilita fails to make a payment due to the Supplier under the Contract by the due date, and following the expiry of a 15 working day period (to commence from the due date of payment) to rectify any non-payment of a valid invoice then Utilita shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Utilita to inspect such records at all reasonable times on request.

9.8 Utilita may at any time, without notice to the Supplier, set off any liability of the Supplier to Utilita against any liability of Utilita or any Utilita Group Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Utilita may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Utilita of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

10. Intellectual property rights

10.1 Neither Party shall acquire any right, title or interest in or to the Background Intellectual Property Rights belonging to the other Party. For the avoidance of doubt, Utilita Materials are the exclusive property of Utilita.

10.2 Each of the Parties shall use its reasonable endeavours to ensure that the respective rights and title to the other's Background Intellectual Property Rights are maintained and that such rights and title are not damaged or endangered in any way.

10.3 All Foreground Intellectual Property Rights in or arising out of or in connection with the Services and any Deliverables (other than any Supplier Background Intellectual Property Rights) shall be owned by Utilita.

10.4 If any right, title or interest in or to the Foreground Intellectual Property Rights and/or Deliverables or any goodwill arising out of use thereof, become vested in the Supplier (by operation of law or otherwise), it shall hold the same on trust for and shall, at the request of Utilita, forthwith

unconditionally assign (with full title guarantee) any such right, title, interest or goodwill to Utilita (and/or the Utilita Group) free of charge including, where necessary, executing any documents and doing all acts required by Utilita for the purpose of confirming such assignment.

10.5 The Supplier grants Utilita a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use materials provided by the Supplier to Utilita for the term of the Contract for the sole purpose of the Contract.

10.6 Utilita grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable, limited and revocable licence to use materials provided by Utilita to the Supplier for the term of the Contract for the sole purpose of providing the Services to Utilita. The licence granted under this clause shall automatically terminate on expiry or termination of the Contract.

10.7 Breach of this clause 10 shall be deemed a material breach and shall entitle the affected Party to terminate the Contract under clause 16.2(a).

11. Limitation of liability

11.1 Nothing in this Contract shall limit or exclude either Party's liability for:

- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any indemnities set out in the Contract; or
- (d) Any other liability which cannot be limited or excluded by law.

11.2 Subject to clause 11.1, the total liability of either Party to the other Party, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with a Contract shall be limited to the total Charges paid under the relevant Contract.

12. Indemnity

12.1 The Supplier shall indemnify each Utilita Group company against any and all Losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by that Utilita Group company arising out of or in connection with:

- (a) the Supplier's breach of clause 5 (Import licences), clause 10 (Intellectual property rights), clause 14 (Confidentiality), clause 15 (Data protection) and clause 20 (Business conduct); and
- (b) any claim made against a Utilita Group company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Utilita Materials); and

(c) any claim made against a Utilita Group company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

(d) any claim made against a Utilita Group company by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

12.2 The indemnities set out in clause 12.1 shall not apply to any Losses which arise solely due to the negligent acts and omissions of Utilita.

12.3 This clause 11 shall survive termination of the Contract.

13. Insurance

13.1 During the term of the Contract the Supplier shall maintain in force, with a reputable insurance company, the following levels of insurance to cover the liabilities that may arise under or in connection with the Contract:

(a) professional indemnity insurance with a limit of not less than £5,000,000 per claim; and

(b) public and product liability insurance with a limit of not less than £5,000,000 per claim; and

(c) employers' liability insurance with a limit of not less than £5,000,000 per claim; and

(d) cyber security and data insurance with a limit of not less than £5,000,000 per claim.

13.2 The Supplier shall, on Utilita's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. Confidentiality

14.1 Each Party undertakes that it shall not at any time during the Contract and for a period of ten years after termination of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 14.2.

14.2 Each Party may disclose the other Party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's Confidential Information must comply with this clause 14; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under the Contract.

14.4 Breach of this clause 14 shall be deemed a material breach and shall entitle either Party to terminate the Contract under clause 16.2(a).

15. Data protection

15.1 Each Party shall comply with its respective obligations under the Data Protection Legislation and shall not do anything to cause the other Party to be in breach of its respective obligations.

15.2 Utilita and the Supplier acknowledge that for the purposes of the Data Protection Legislation, each Party may act as a Data Controller and a Data Processor in respect of any personal data a Party transfers to the other Party or authorises the other Party to collect and process on its behalf. Each party warrants and undertakes that it shall comply, and shall procure compliance by its subcontractors or agents, with all applicable Data Protection Legislation.

15.3 To the extent that performance of the Supplier's obligations under the Contract involves processing of personal data on behalf of Utilita, the Supplier shall, and shall procure that its agents and subcontractors shall:

(a) only carry out processing of personal data strictly in accordance with the written instructions of Utilita; and

(b) only disclose or allow access to such personal data, to those employees, agents or subcontractors to the extent necessary to enable the Supplier to carry out its obligations under the Contract, and only where they are subject to appropriate duties to keep such personal data secure and confidential; and

(c) ensure that all such employees who have access to personal data are reliable, and have undertaken appropriate training in compliant data handling processes; and

(d) promptly notify Utilita of any request from an individual data subject to exercise his rights under the Data Protection Legislation for access to, rectification, correction, or erasure of personal data or any request to restrict or object to any processing of his personal data; and

(e) promptly carry out any request from Utilita requiring the Supplier to amend, transfer, copy or delete any personal data or any subsets of personal data, or provide a complete copy of personal data processed by the Supplier on behalf of Utilita; and

(f) provide all information or assurance reasonably necessary to demonstrate compliance with its obligations under this clause and the Data Protection Legislation, including access to relevant records of the processing maintained by the Supplier in accordance with the Data Protection Legislation and the Contract. Where Utilita is accessing such records, it shall be treated as confidential information of Supplier.

15.4 The Supplier warrants and undertakes that it has and shall maintain, and shall procure that its agents and subcontractors shall implement and maintain taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, without limitation, as appropriate: (i) the pseudonymisation and encryption of personal data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

15.5 The Supplier shall, and shall procure that its agents and subcontractors shall, make available to Utilita all information necessary and allow for and contribute to audits of such data processing facilities, procedures, records and documentation which relate to the processing of personal data, including without limitation inspections (on reasonable written notice) by Utilita, its auditors or agents or any Regulatory Authority or government body, including any supervisory authority under the Data Protection Legislation, in order to ascertain compliance with the terms of the Contract or the Data Protection Legislation.

15.6 The Customer may, on giving reasonable notice at a reasonable time, exercise a right to audit the systems, records, policies or procedures of the Supplier to ensure compliance with the terms of this clause and the Data Protection Legislation.

15.7 The Supplier acknowledges that it shall not acquire any rights in or to any personal data, and shall only use it in connection with the delivery of its obligations under the Contract. On termination or expiry of the Contract, or on written request by Utilita, the Supplier shall promptly cease to use any such personal data and shall arrange for its safe return or destruction.

15.8 The Supplier shall:

- (a) not transfer any personal data outside the European Economic Area without the prior written consent of Utilita; and
- (b) maintain written records or all processing activities carried out on behalf of Utilita in accordance with the Data Protection Legislation, and make such record available to Utilita or the supervisory authority under the Data Protection Legislation on request; and
- (c) provide all assistance reasonably required to support Utilita in complying with its obligations under the Data Protection Legislation in relation to breach notification, consultant or engagement with the supervisory authority under the Data Protection Legislation or conducting any required

impact assessment; and

(d) only engage a subcontractor or sub-processor with the prior authorisation of Utilita and where there is a written agreement in place with that subcontractor or sub processor that places the same terms and conditions on the subcontractor or sub processor as are set out in this clause.

15.9 The Supplier shall indemnify Utilita against any Losses suffered or incurred as a result of any breach by the Supplier, and/or any of its agents and/or subcontractors of any of the provisions of this clause.

15.10 The Supplier shall inform Utilita without undue delay and in any event within 24 hours of becoming aware of any personal data breach, including any actual, suspected or threatened loss, leak or unauthorised processing or disclosure of any personal data. The Supplier shall provide the following minimum details about the data breach as soon as possible:

- (a) a description of the nature of the personal data breach including where possible, the categories and approximate number of data subjects affected, and the categories and approximate number of personal data records concerned; and
- (b) where possible, likely consequences of the personal data breach; and
- (c) a description of the measures taken or proposed to be taken by the Supplier to address the personal data breach, including measures to mitigate its adverse effects.

15.11 The terms "process" "personal data" "data processor" "data controller" "data subject" shall have the meaning set out in the Data Protection Legislation.

15.12 Breach of this clause 15 shall be deemed a material breach and shall entitle Utilita to terminate the Contract under clause 16.2(a).

16. Termination

16.1 Without affecting any other right or remedy available to it, Utilita may terminate the Contract:

- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of Control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in Utilita's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of clause 6.3(h),
- (b) for convenience by giving the Supplier 30 days' written notice.

16.2 Without affecting any other right or remedy available to it, either 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 any term of the Contract which breach is

irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so; or

(b) any step or action is taken in relation to the other Party in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

(c) 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.

17. Consequences of termination

17.1 On termination of the Contract:

(a) the Supplier shall cease to provide the Services and/or deliver any Goods to Utilita unless it is agreed otherwise between the Parties in writing; and

(b) the Supplier shall immediately deliver to Utilita all Deliverables whether or not then complete, and return all Utilita Materials. If the Supplier fails to do so, then Utilita may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

17.2 Termination or expiry of the Contract shall not affect the parties' rights, obligations, liabilities or remedies of the Parties that have accrued as at termination or expiry, including without limitation, the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

18. Inadequacy of damages

Without prejudice to any other rights or remedies that Utilita may have, the Supplier acknowledges and agrees that damages alone may not be an adequate remedy for a breach of the Contract. Accordingly, Utilita shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the Contract.

19. Force majeure

19.1 Subject to clause 19.3, neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations

under it if such delay or failure results from a Force Majeure Event. In such circumstances, each Party shall be relieved of its obligations under the Contract during the duration of the Force Majeure Event. If the period of delay or non-performance continues uninterrupted for a period of 90 days, the Party not affected may terminate the Contract by giving 14 days' written notice to the affected Party.

19.2 If either Party is affected by a Force Majeure Event, which prevents that Party from performing its obligations under this Contract, the affected Party shall promptly notify the other Party in writing of the nature and extent of the Force Majeure Event before invoking force majeure under this Contract.

19.3 If either Party is affected by a Force Majeure Event, it shall use all reasonable endeavours to:

(a) mitigate and/or eliminate the consequences of such Force Majeure Event and inform the other Party of the steps which it is taking and proposed to take to do so; and

(b) promptly implement, in consultation with the other Party, plans and arrangements to mitigate and/or eliminate the impacts of such Force Majeure Event.

19.4 For the purposes of this clause, "written" and "writing" shall exclude e-mail.

20. Business conduct

20.1 The Supplier warrants, represents and undertakes to:

(a) comply with all Applicable Laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**); and

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and

(c) comply with any ethics, anti-bribery and anti-corruption policies of Utilita (whether or not referred to in the Mandatory Policies), as Utilita may update from time to time (**Relevant Anti-Bribery Policies**); and

(d) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Anti-Bribery Requirements, the Relevant Anti-Bribery Policies and clause 20.1(b), and will enforce them where appropriate; and

(e) promptly report to Utilita any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and

(f) immediately notify Utilita (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect

owners, officers or employees at the date of commencement of the Contract).

20.2 For the purpose of this clause 20, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 20 a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

20.3 The Supplier warrants, represents and undertakes to:

- (a) comply with all Applicable Laws, statutes, regulations, and codes relating to anti-slavery and human trafficking including but not limited to the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in the UK; and
- (c) comply with any ethics and anti-slavery policies of Utilita (whether or not referred to in the Mandatory Policies), as Utilita may update from time to time; and
- (d) have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with the Modern Slavery Act 2015; and
- (e) take reasonable steps to ensure that there is no modern slavery or human trafficking in the Supplier's supply chain or in any part of its business; and
- (f) promptly notify Utilita as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

20.4 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 20 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Utilita for any breach by such persons of any of the Relevant Terms.

20.5 Breach of this clause 20 shall be deemed a material breach and shall entitle Utilita to terminate the Contract under clause 16.2(a).

21. General

21.1 Assignment and other dealings.

- (a) Utilita may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer,

mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without Utilita's prior written consent (at its sole discretion).

(c) For the purposes of this clause, "written" and "writing" shall exclude e-mail.

21.2 Notices.

(a) Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service, or if the sender and recipient are in different countries, by reputable international courier, at its registered office (if a company) or its principal place of business (in any other case); to the address specified in the Purchase Order (in the case of Utilita) or the Supplier's acknowledgment of the Purchase Order (in the case of the Supplier).

(b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if the sender and recipient are in different countries and if sent by reputable international courier, at 9.00 am on the fifth Business Day after sending; if sent by e-mail, at 9.00 am on the next Business Day after transmission. All times in this clause refer to the local time in the place of receipt.

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

21.3 Severance.

(a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21.4 Waiver.

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

(b) A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any

other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

(c) A Party that waives a right or remedy under the Contract or by law in relation to one Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other party.

(d) For the purposes of this clause, "written" and "writing" shall exclude e-mail.

21.5 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

21.6 Third party rights.

(a) Subject to clause 21.6(b), the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. No one other than a Party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

(b) Any Utilita Group company may enforce clauses 10 and 11 or any other benefit entitled to it under the Contract as if it was a Party to the Contract;

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

21.7 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Parties or their authorised representatives. For the purposes of this clause, "written" and "writing" shall exclude e-mail.

21.8 Entire agreement.

(a) 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) 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 this Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

21.9 Governing law. 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.

21.10 Jurisdiction. 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.

SCHEDULE 1 - MANDATORY POLICIES

The Mandatory Policies are:

- [Anti-Slavery and Human Trafficking Policy](#)
- [Whistleblowing Policy](#)
- [Anti-Bribery Policy](#)
- [Health & Safety Policy](#)
- [Data Protection Policy](#)