

Standard Terms & Conditions of Service

These Standard Terms and Conditions of Service form part of the agreement upon which we, **Energy Cost Advisors Ltd** (a company incorporated in England and Wales with company number 02044326, whose registered office is situated at E.C.A. House, 1 Dronfield Court, Civic Centre, Dronfield, Sheffield S18 1NQ) ("**ECA**"), provide our Services to you ("**Customer**"). Please read these Standard Terms and Conditions of Services carefully together with your Services Agreement.

1 INTRODUCTION

1.1 Defined terms used in these Standard Terms and Conditions of Service shall have the meaning given to them in the Services Agreement, and the following terms shall have the following meanings:

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

"**Agreement**" means the provisions contained within the Services Agreement, these Standard Terms and Conditions of Service and the Schedules and documents referred to in the Standard Terms and Conditions of Service, as varied or amended in accordance with the terms of this Agreement from time to time.

"**Applicable Laws**" means all applicable laws, statutes, regulations from time to time in force.

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

"**Change Order**" means has the meaning given in Clause 7.1.

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

"**Customer's Equipment**" means any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

"**Customer Materials**" means all documents, materials, data, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to ECA in connection with the Services, including the items provided pursuant to Clause 5.1(d).

"**Data Protection Legislation**" means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as

and to the extent that the law of the European Union has legal effect in the UK).

"**Deliverables**" means any output of the Services to be provided by ECA to the Customer and any other documents and materials provided by ECA to the Customer in relation to the Services (excluding ECA's Equipment).

"**ECA's Equipment**" means any equipment, including tools, systems, cabling or facilities, provided by ECA to the Customer and used directly or indirectly in the supply of the Services, but excluding any such items which are the subject of a separate agreement between the Parties under which title passes to the Customer.

"**Fees**" means the sums payable for the Services (being the Fixed Fee and/or the Brokerage (Commission Fee)), as set out in the Services Agreement.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

"**Services Agreement**" means the agreement for the provision of the Services entered into between ECA and the Customer on the Agreement Date.

"**Year**" means a period of twelve (12) consecutive months from the Effective Date, and each period of twelve (12) consecutive months thereafter.

2 PROVISION OF SERVICES

- 2.1 ECA shall supply the Services for the Term and in accordance with the terms of this Agreement.
- 2.2 In the event of a conflict, the Services Agreement shall take precedence over these Standard Terms and Conditions of Service and the Schedule and documents referred to in it. For the avoidance of doubt, no other terms and conditions shall apply to this Agreement.

3 APPOINTMENT

The Customer wishes to appoint ECA upon the term of this Agreement as its exclusive supplier of services which are the same as or similar to the Services.

4 ECA'S RESPONSIBILITIES

- 4.1 ECA shall use reasonable endeavours to supply the Services, and deliver the Deliverables to the Customer, in accordance with this Agreement in all material respects.
- 4.2 ECA may make any changes to the Services:
- (a) needed to comply with Applicable Laws or safety requirements; or
 - (b) which do not materially affect the scope or quality of the Services,
- and will notify the Customer in advance of such changes.
- 4.3 ECA shall use reasonable endeavours to meet any performance dates notified to it by the Customer but any such dates shall be estimates only and time for performance by ECA shall not be of the essence of this Agreement.
- 4.4 Notwithstanding Clause 4.3, ECA will not be liable for any delay in or failure of performance of the Services (including any failure to achieve any performance or other date) so far as caused by an Event of Force Majeure or the Customer's failure to perform its obligations under this Agreement.
- 4.5 ECA shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it under Clause 5.1(e), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 4.6 In performing its obligations under this agreement, ECA will:
- (a) comply with the Applicable Laws;
 - (b) perform the Services using reasonable care and skill;
 - (c) use sufficient personnel who have appropriate skills and experience for their duties; and

- (d) not implement any recommendations made without the prior consent of the Customer.

5 CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with ECA in all matters relating to the Services;
- (b) appoint a manager for the Services. That person shall have the authority to contractually bind the Customer on matters relating to the Services (including by signing Change Orders);
- (c) provide, for ECA, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by ECA;
- (d) provide to ECA in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) reasonably required by ECA in connection with the Services and ensure that they are accurate and complete;
- (e) inform ECA of all health and safety and security requirements that apply at any of the Customer's premises;
- (f) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable ECA to provide the Services, including in relation to the installation of ECA's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- (h) keep and maintain ECA's Equipment in good condition and shall not dispose of or use ECA's Equipment other than in accordance with ECA's written instructions or authorisation; and
- (i) notify ECA of any change of control of the Customer by giving at least three (3) months' written notice prior to the change of control taking effect.

- 5.2 If ECA's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, ECA:
- (a) shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer;
 - (b) may suspend performance of the Services until the Customer remedies its default;
 - (c) will not be liable for any costs or losses sustained by the Customer as a result of such suspension or time extension; and
 - (d) may charge the Customer for costs or losses incurred by ECA arising from the Customer's default. Such charges may include the cost of the Supplier obtaining the information required pursuant to Clause 5.1(d) above, directly from the utility provider.

6 NON-SOLICITATION

- 6.1 The Customer shall not, without the prior written consent of ECA, at any time from the date of this Agreement to the expiry of twelve (12) months after the termination or expiry of this Agreement, solicit or entice away from ECA or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ECA in the provision of the Services.
- 6.2 Any consent given by ECA in accordance with Clause 6.1 shall be subject to the Customer paying to ECA a sum equivalent to 20% of the then current annual remuneration of ECA's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

7 CHANGE CONTROL

- 7.1 Either Party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a "Change Order" has been signed by both Parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services;
 - (b) ECA's existing fees;
 - (c) the timetable of the Services; and
 - (d) any of the terms of this Agreement.
- 7.2 If ECA wishes to make a change to the Services it shall provide a draft Change Order to the Customer.
- 7.3 If the Customer wishes to make a change to the Services:

- (a) it shall notify ECA and provide as much detail as ECA reasonably requires of the proposed changes, including the timing of the proposed changes; and
- (b) ECA shall, as soon as reasonably practicable after receiving the information at Clause 7.3(a), provide a draft Change Order to the Customer.

7.4 If the Parties:

- (a) agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or
- (b) are unable to agree a Change Order, either Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 16.

- 7.5 ECA may charge a reasonable amount for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to Clause 7.3 on a time and materials basis.

8 REMUNERATION AND PAYMENT TERMS

- 8.1 In consideration of the provision of the Services under this Agreement by ECA:
- (a) the Customer shall pay the Fixed Fees to ECA. ECA shall invoice the Customer for the Fixed Fees in accordance with the Payment Schedule. If the Payment Schedule is not agreed, ECA shall invoice for the Fixed Fees on an annual basis at the beginning of each Year. The Customer shall pay each invoice submitted to it by ECA in accordance with the Payment Schedule. If the Payment Schedule is not agreed, the Customer shall pay each such invoice by BACS or the Barclays subscription manager service within thirty (30) days of receipt to a bank account nominated in writing by ECA from time to time; and
 - (b) ECA shall collect the Brokerage (Commission Fees) directly from the relevant supplier of utilities to which those Services relate, provided that the Customer shall remain liable at all times for the full amount of Brokerage (Commission Fees) due until payment has been made.

8.2 ECA reserves the right to increase the Fees as follows:

- (a) during the Term, if ECA manages the relationship between the Customer and a supplier of utilities in respect of which ECA has brokered the relationship, ECA reserves the right to increase the Brokerage (Commission Fee) to include a proportionate management fee;
- (b) ECA reserves the right to increase the Fees on an annual basis with effect from each anniversary of the Effective Date in line with the percentage increase in the Retail Price Index (as defined by the Office of National Statistics) in the preceding 12-month period;
- (c) the Parties acknowledge that the Fees are calculated on the basis of certain assumptions made by ECA in relation to the Services and with regard to the information provided to ECA by the Customer. In the event that the assumptions or information on which the Retainer Fees are based are revealed to be materially inaccurate, including but not limited to the portfolio of relevant Customer Sites, ECA reserves the right to review the Fees and vary the Fees from time to time by agreement with the Customer,

in each case by giving thirty (30) days' written notice to the Customer.

8.3 If the Parties agree to vary the Fees in accordance with Clause 8.2(c) and the Customer has paid an annual Fee in advance, within thirty (30) days' of the Parties agreeing to vary the Fees, ECA shall submit an invoice or credit note (as appropriate) to the Customer for the difference.

8.4 The Fees exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by ECA and any individuals whom ECA engages in connection with the Services ("**Expenses**"). ECA shall submit an invoice at the end of each month in respect of any such Expenses incurred during that month, provided that such Expenses have been agreed in advance between the Parties.

8.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay ECA any sum due under this Agreement on the due date:

- (a) the Customer 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 8.5(a) will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%;
- (b) ECA may suspend all or part of the Services until payment has been made in full.

8.6 All sums payable to ECA under this Agreement:

- (a) are exclusive of Value Added Tax and any other equivalent sales tax ("**VAT**"), and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.7 In the event that this Agreement is terminated by the Customer prior to completion of the Services but where the Services have been partially performed, ECA will be entitled to a pro rata payment of the Fee to the date of termination provided that there has been no breach of contract on the part of ECA.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 In relation to the Deliverables:

- (a) ECA and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) ECA grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 9.1(b), save that it shall be permitted to sub-license such rights to its Affiliates provided that it remains liable for any acts or omissions of its Affiliates.

9.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants ECA a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.

- 9.3 ECA:
- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - (b) shall not be in breach of the warranty at Clause 9.3(a) to the extent the infringement arises from:
 - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
 - (ii) any modification of the Deliverables or Services, other than by or on behalf of ECA; and
 - (iii) compliance with the Customer's specifications or instructions.
- 9.4 The Customer:
- (a) warrants that the receipt and use of the Customer Materials in the performance of this Agreement by ECA, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - (b) shall indemnify ECA in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by ECA as a result of or in connection with any claim brought against ECA, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.
- 9.5 If either Party (the "**Indemnifying Party**") is required to indemnify the other Party (the "**Indemnified Party**") under this Clause 9, the Indemnified Party shall:
- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at Clause 9.3(b) or Clause 9.4(b) (as applicable) ("**IPRs Claim**");
 - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying
- Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 10 DATA PROTECTION AND DATA PROCESSING**
- 10.1 The provisions of Schedule 1 relating to data protection shall apply to this Agreement.
- 11 CONFIDENTIALITY**
- 11.1 Each Party undertakes that it shall not at any time during this Agreement, and for a period of five (5) years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by Clause 11.2.
- 11.2 Each Party may disclose the other Party's confidential information:
- (a) to its employees, officers, representatives 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 Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 11; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 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.

12 LIMITATION OF LIABILITY

- 12.1 Nothing in this Agreement shall limit or exclude ECA's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - (d) any other liability which cannot be limited or excluded by Applicable Laws.
- 12.2 Subject to Clause 12.1, ECA shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill;
 - (f) loss of use or corruption of software, data or information; or
 - (g) any indirect or consequential loss.
- 12.3 Subject to Clause 12.1, ECA's total aggregate liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to 100% of the Fees paid or payable by the Customer under this Agreement in the Year in which the liability arises.
- 12.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

13 TERMINATION

- 13.1 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 this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ninety (90) days after being notified in writing to do so;
 - (b) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its

conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

- (c) the other Party takes any step or action in connection with its entering administration, provisional liquidation, bankruptcy, 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
- (d) the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy.

13.2 Without affecting any other right or remedy available to it, ECA may terminate this Agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment; or
- (b) there is a change of control of the Customer.

14 CONSEQUENCES OF TERMINATION

14.1 On termination or expiry of this Agreement:

- (a) the Customer shall, within ten (10) Business Days, pay to ECA all of ECA's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, ECA may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within ten (10) Business Days, return all of ECA's Equipment and materials. If the Customer fails to do so, then ECA may enter the Customer's premises and take possession of ECA's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

- (c) ECA shall on request return any of the Customer Materials not used up in the provision of the Services; and
- (d) any clauses which expressly or by implication are to survive termination will do so.

14.2 The Parties acknowledge that:

- (a) in the event of termination the responsibility for reverting the billing address sits with the Customer.
- (b) where the Customer benefits from preferential supplier rates and service achieved through ECA's involvement, these rates and services may be immediately withdrawn by the relevant supplier on termination of this Agreement.

14.3 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, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.

15 FORCE MAJEURE

15.1 Neither Party will be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including, but not limited to, fires, floods, adverse weather conditions, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, inability to obtain supplies and raw materials requirements or regulations of any civil or military authority (an "Event of Force Majeure").

15.2 Each of the Parties agrees to give notice to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

15.3 If a default due to an Event of Force Majeure shall continue for more than thirty (30) days then the Party not in default will be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

16 DISPUTES

16.1 All disputes arising in relation to this Agreement will be referred in the first instance to the Account Manager of ECA and a Director of the Customer who shall meet together and attempt to settle the dispute between themselves within thirty (30) Business Days of the dispute arising.

16.2 If the dispute is not resolved under Clause 16.1, either Party may refer the dispute to an appropriate court in accordance with Clause 19.8 or may, by mutual agreement, choose mediation as an alternative dispute

resolution procedure and the decision of the mediator shall be final and binding on both Parties.

17 NOTICES

17.1 Any notice given to a Party under or in connection with this Agreement shall be in writing and will be delivered or sent by first class post or email to the postal or email address of the other Party set out on the front sheet to this Agreement (or such other address or numbers as may have been notified).

17.2 Any notice shall be deemed to have been received: (i) if sent by post, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or (ii) if sent by email, at 9.00 am on the next Business Day after transmission.

17.3 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.

18 ASSIGNMENT AND OTHER DEALINGS

18.1 This Agreement is personal to the Customer and the Customer 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 this Agreement.

18.2 ECA may at any time assign, mortgage, subcontract, charge, declare a trust over or deal in any other manner with any or all of its rights under this Agreement. The Customer acknowledges that ECA may subcontract elements of the supply of the Services to third parties in the ordinary course of its business.

19 GENERAL

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 This Agreement 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. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

- 19.3 If any provision or part-provision of this Agreement 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 this Agreement.
- 19.4 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.5 Subject to Clause 7 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 19.6 No one other than a Party to this Agreement shall have any right to enforce any of its terms.
- 19.7 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 19.8 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Data Protection and Data Processing

1 DATA PROTECTION AND DATA PROCESSING

- 1.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Schedule 1 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 1.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and ECA is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The personal data being processed by ECA shall:
- (a) include the personal details of its Customers and clients; and
 - (b) concern ECA's Customers and clients.
- 1.3 Without prejudice to the generality of paragraph 1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to ECA for the duration and purposes of this Agreement.
- 1.4 Without prejudice to the generality of paragraph 1.1, ECA shall, in relation to any Personal Data processed in connection with the performance by ECA of its obligations under this Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless ECA is required by Applicable Laws to otherwise process that Personal Data;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
 - (f) Please tick this box [] if you do not give ECA permission to use your companies name or logo in any future ECA literature.