

# 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 to, and any documents referred to in, the Standard Terms and Conditions of Service, each 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 8.1.

"**control**" 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 Laws**" 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 any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 as well as the General Data Protection Regulation ((EU) 2016/679) ("**EU GDPR**") as it forms part of the law of the UK by virtue of section 3 of the

European Union (Withdrawal) Act 2018 ("**UK GDPR**") and any other directly applicable regulation or Applicable Laws relating to data protection and privacy (to the extent that law 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.

"**Letter of Authority**" means a letter in the form set out in **Error! Reference source not found.** under which the Customer appoints ECA as its broker.

"**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. This shall include all information set out in the "Services Agreement – Customer Obligations" document;

(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 ECA obtaining the information required pursuant to Clause 5.1(d) above, directly from the utility provider.

## 6 BROKERAGE SERVICES

6.1 Where, as part of the Services detailed on the Front Sheet, ECA is acting as a broker on behalf of the Customer ("**Brokerage Services**"), the terms of this Clause 6 shall apply in addition to the other terms of this Agreement.

6.2 Before ECA provides any Brokerage Services to the Customer, the Customer must provide a signed Letter of Authority to ECA.

6.3 ECA shall provide to the Customer a selection of recommendations for different suppliers with different offers, prices and terms. Upon the Customer's instructions, ECA shall generate a written proposal for the Customer's chosen supplier (a "**Summary Acceptance Report**").

6.4 ECA shall present various options to the Customer for contracts with suppliers. It is the Customer's sole responsibility to reach such contracts fully and to choose the contract that it considers to be most appropriate. The decision rests with the Customer and ECA will have no responsibility for this.

6.5 The Brokerage Services provided by ECA are a paid service, but ECA collects its fees for the Brokerage Services by uplifting the energy price and collecting a commission directly from the Customer's chosen supplier. This is set out in the Summary Acceptance Report and/or the Front Sheet.

## 7 NON-SOLICITATION

7.1 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.

7.2 Any consent given by ECA in accordance with Clause 7.1 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.

## 8 CHANGE CONTROL

8.1 Either Party may propose changes to the scope or execution of the Services but (save as set out in Clause 4.2) 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.

8.2 If ECA wishes to make a change to the Services (save as set out in Clause 4.2) it shall provide a draft Change Order to the Customer.

8.3 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 8.3(a), provide a draft Change Order to the Customer.

8.4 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 first limb of the dispute resolution procedure as set out in Clause 17.1.

8.5 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 8.3 on a time and materials basis.

## 9 REMUNERATION AND PAYMENT TERMS

9.1 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.

9.2 ECA reserves the right to increase the Fees as follows (in each case by giving thirty (30) days' written notice to the Customer):

(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 (including, without limitation, such information as is provided under the "Services Agreement – Customer Obligations" document). 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. If the Parties fail to reach such an agreement on varying the Fees, ECA may terminate this Agreement with immediate effect.

9.3 If the Parties agree to vary the Fees in accordance with Clause 9.2(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.

9.4 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.

9.5 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 9.5(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.

9.6 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).

## 10 INTELLECTUAL PROPERTY RIGHTS

10.1 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 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 10.1(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.

10.2 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 for the purpose of providing the Services to the Customer.

10.3 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 10.3(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.

10.4 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.

10.5 If either Party (the "**Indemnifying Party**") is required to indemnify the other Party (the "**Indemnified Party**") under this Clause 10, 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 10.3(b) or Clause 10.4(b) (as applicable) ("**IPRs Claim**");

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;

(b) 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

(c) 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.

## 11 DATA PROTECTION AND DATA PROCESSING

11.1 The provisions of Schedule 1 relating to data protection shall apply to this Agreement.

## 12 CONFIDENTIALITY

12.1 Each Party undertakes that it shall not at any time during, and for a period of five (5) years after, the Term, 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 12.2.

12.2 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 12; and

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

12.3 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.

## 13 LIMITATION OF LIABILITY

13.1 The Parties acknowledge that the limits and exclusions in this clause reflect: (a) the insurance cover ECA has been able to arrange; (b) the potential loss that the Customer may suffer in connection with this Agreement compared to ECA's profit from it; and (c) the approach that is typically taken in such arrangements in the energy sector, and the Customer is responsible for making its own arrangements for the insurance of any excess liability.

13.2 References to liability in this Clause 13 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort

(including negligence), misrepresentation, restitution or otherwise.

13.3 Nothing in this Clause 13 shall limit the Customer's payment obligations under this Agreement.

13.4 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.

13.5 Subject to Clause 13.4, 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.

13.6 Subject to Clause 13.4, ECA's total aggregate liability to the Customer in respect of all breaches of duty occurring in any Year (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 an amount equal to 100% of the Fees paid or payable by the Customer under this Agreement in the Year in which the liability arises.

13.7 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.

13.8 Unless a Party notifies the other Party that it intends to make a claim in respect of an event within the notice period, the other Party shall have no liability for that event. The notice period for an event shall start on the day on which the Party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## 14 TERMINATION

14.1 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.

14.2 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.

## 15 CONSEQUENCES OF TERMINATION

15.1 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 of Customer, 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.

15.2 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.

15.3 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.

## 16 FORCE MAJEURE

16.1 Neither Party will be liable for any breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations hereunder if such delay or failure results 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, epidemic or pandemic, 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").

16.2 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.

16.3 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.

## 17 DISPUTES

17.1 All disputes arising in relation to this Agreement will be referred in the first instance to the Head of Internal Services 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.

17.2 If the dispute is not resolved under Clause 17.1, either Party may refer the dispute to an appropriate court in accordance with Clause 20.7 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.

## 18 NOTICES

18.1 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).

18.2 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.

18.3 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.

## 19 ASSIGNMENT AND OTHER DEALINGS

19.1 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.

19.2 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.

## 20 GENERAL

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 Subject to Clauses 4.2 and 8 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives). No one other than a Party to this Agreement shall have any right to enforce any of its terms.

20.6 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.

20.7 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 DEFINITIONS**

1.1 In this Schedule 1, unless the context requires otherwise, the following expressions have the following meanings:

The terms “**Controller**”, “**Processor**”, “**Data Subject**”, “**Personal Data**” and “**Processing**” shall have the meanings set out in the Data Protection Laws. The term “**Sub-Processor**” shall mean any third party, including Sub-Contractors, appointed by ECA which may receive and/or have access to Personal Data.

The term “**DP Regulator**” means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws.

**2 PROCESSING OF PERSONAL DATA**

2.1 The Parties acknowledge that for the purposes of the Data Protection Laws, Customer is the Controller and ECA is the Processor in relation to Personal Data and the Parties shall comply with the provisions and obligations imposed on them by the Data Protection Laws. Appendix A sets out the scope, nature and purpose of Processing by the Processor, the duration of the Processing and the types of Personal Data and categories of Data Subject.

2.2 ECA shall maintain records of all Processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to Customer on request.

2.3 Customer shall have sole responsibility for the legality of Personal Data to be processed by ECA and the means by which Customer acquired such Personal Data and shall establish the legal basis for Processing under Data Protection Laws, including providing all notices and obtaining all consents as may be required under the Data Protection Laws in order for ECA to process the Personal Data as otherwise contemplated by this Agreement.

2.4 To the extent ECA receives from, or processes any Personal Data on behalf of Customer, ECA shall:

(a) process such Personal Data:

(i) only in accordance with Customer’s written instructions from time to time (including those set out in this Agreement) unless it is otherwise required by Applicable Laws (in which case, unless such Law prohibits such notification on important grounds of public interest, ECA shall notify Customer of the relevant legal requirement before Processing the Personal Data), and

(ii) only for the duration of this Agreement;

for the avoidance of doubt, this paragraph 2.4.2.4 prevents ECA from Processing Personal Data for any purpose other than as instructed in accordance with paragraph 2.4(a) above.

(b) promptly notify Customer if, in ECA’s reasonable opinion, Customer’s written instructions do not comply with the Data Protection Laws;

(c) take all steps to ensure its Personnel and those personnel of any Sub-Contractor who are authorised to have access to such Personal Data are committed to confidentiality obligations equivalent to those set out in this Agreement when Processing such Personal Data;

(d) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing, implement technical and organisational measures and procedures to ensure a level of security for such Personal Data appropriate to the risk, including the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access; and

(e) not transfer, access or process such Personal Data outside the United Kingdom.

(f) inform Customer immediately, and in any event within twelve (12) hours, upon becoming aware of any such Personal Data (while within ECA’s or its Sub-Contractors’ or affiliates’ possession or control) being subject to a Personal Data breach (as defined in Article 4 of UK GDPR);

(g) not disclose any Personal Data to any Data Subject or to a third party other than at the written request of Customer or as expressly provided for in this Agreement;



(h) except for Personal Data of which the Processor is also a Controller and except as required by Law or in order to defend any actual or possible legal claims, as Customer so directs, take all steps to return or irretrievably delete all Personal Data at any time during the Agreement Term or during any period agreed as part of the Exit Plan, on written request by Customer to ECA or on termination or expiry of this Agreement, and not make any further use of such Personal Data;

(i) provide to Customer and any DP Regulator all information and assistance reasonably necessary to demonstrate or ensure compliance with the obligations in this Schedule 1 and/or the Data Protection Laws;

(j) permit Customer or its representatives to access any relevant premises (including the Facilities), Personnel or records of ECA or any Sub-Contractor on reasonable notice to audit and otherwise verify compliance with this Schedule 1, subject to the following requirements:

(i) Customer may perform such audits no more than once per year or more frequently if (i) required by the Data Protection Laws; or (ii) if ECA is in breach of, or Customer reasonably suspects ECA is in breach of, any of its obligations as set out in this Schedule 1 or under any Data Protection Laws;

(ii) Customer may use a third party to perform the audit on its behalf, provided such third party executes a confidentiality agreement acceptable to ECA before the audit, such acceptance not to be unreasonably withheld;

(iii) subject to conducting audits as required by Law or if ECA is in breach of or reasonably suspects ECA is in breach of its obligations set out in this Schedule 1, audits must be conducted during regular business hours, subject to ECA's policies, and may not unreasonably interfere with ECA's business activities;

(iv) Customer shall provide ECA with any audit reports generated in connection with any audit at no charge unless (i) prohibited by Applicable Laws; or (ii) the audit report reveals a material breach of ECA's obligations under this Agreement. The audit reports shall be confidential;

(v) to request an audit, Customer must first submit an audit plan to ECA at least 1 (one) week in advance of the proposed audit date. The plan must describe the proposed scope, duration and start date of the audit. ECA will review the audit plan and inform Customer of any concerns or questions (for example, any request for information that could compromise ECA's confidentiality obligations or its security, privacy, employment or other relevant policies) as soon as reasonably practicable after receipt and in any event within [10] Business Days of receipt of the plan. ECA will work cooperatively with Customer to agree a final audit plan and, where a final audit plan has not been agreed after expiry of a reasonable period, Customer shall be entitled to instruct an audit in accordance with its most recent draft of the audit plan. This sub-Paragraph (v) and the requirement to give reasonable notice of an audit in subparagraph (j) will not apply if: (i) an audit is required by Law; or (ii) ECA is in breach of or if Customer reasonably suspects ECA is in breach of its obligations set out in this Schedule 1 or under any Data Protection Laws;

(vi) all audits are at Customer's sole cost and expense unless such audit reveals a breach of ECA's obligations under this Agreement, in which case ECA shall cover all costs associated with such audit;

(k) take such steps as are required to assist Customer in ensuring compliance with its obligations under the UK GDPR, including (but not limited to) Articles 30 to 36 (inclusive);

(l) notify Customer as soon as reasonably practicable if it receives (i) a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data; or (ii) any complaint or communication by a Data Subject or a DP Regulator which relates directly or indirectly to the Processing of Personal Data unless that complaint makes ECA aware of a Personal Data breach, in which case the provision of paragraph 2.4(f) above shall apply; and

(m) provide Customer with co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data provided that Customer shall be responsible for ECA's reasonable costs and expenses arising from such co-operation and assistance.

2.5 Other than the Parties set out in the Appendix, ECA shall not appoint any Sub-Processor without the prior written consent of Customer. The current list of agreed Sub-Processors is set out in Appendix A of this Schedule 1. ECA confirms that it has entered into a written agreement which imposes obligations on such agreed Sub-Processor (as set out in the Annex) that are materially equivalent to those obligations to which ECA is subject to under this Agreement.

2.6 If Customer consents to the appointment of any new Sub-Processor under this sub-Paragraph, ECA shall put in place in writing with any Sub-Processor contractual obligations which are at least equivalent to the obligations imposed on ECA pursuant to this Schedule 1 and the confidentiality obligations set out in the Agreement including obligations which provide sufficient guarantees from the Sub-Processor that the Processing meets the requirements of the Data Protection Laws.

**Appendix A to Schedule 1 (Data Protection and Data Processing)**

The Personal Data Processing activities carried out by ECA under this Agreement may be described as follows:

**Subject matter of Processing**

Processing Personal Data pursuant to the provision of the Services.

**Nature and purpose of Processing**

Processing relates to [Insert]

**Categories of Personal Data**

Personal details of its Customers and clients;

**Duration**

For the duration of the Agreement only.

**Approved Sub-Processors**

Name	Type	Location
[N/A] OR [•]	[N/A] OR [e.g. Supplier]	[N/A] OR [Address and Country]

