

interpretation

In these Conditions:

Contract: the contract for the provision of the Services in accordance with these Conditions.

Contract Start Date: the day on which the provision of the Services by the Supplier commenced.

Customer: the person, firm or company named on the Specification Sheet for whom the Supplier has agreed to provide the Services in accordance with these Conditions.

Customer Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Deliverables: all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including AMR hardware, computer software, data, reports and specifications.

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image or digital information in any form.

In-put Material: all Documents, information and materials provided by the Customer relating to the Services including (without limitation), computer software, data, reports and specifications.

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

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

Services: the internet based utilities consumption monitoring services to be provided by the Supplier for the Customer to enable the Customer to monitor and manage the utilities consumption of their premises as referred to in the Specification Sheet.

Software: means the software programmes in object code form identified as Utilities Manager, including any new release made or issued.

Supplier: Utilities Manager Limited (registered number 07410991) whose registered office is at 29 High Street, Bishop Middleham, Ferryhill, DL17 9AR.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Writing: and any similar expression includes faxes and email.

A reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as it is in force for the time being taking into account any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

Headings in these Conditions are for convenience only and shall not affect their interpretation.

Any obligation in the Contract on a party not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

application of conditions

These Conditions shall:

apply to and be incorporated into the Contract; and

prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

The Customer's purchase order constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:

by a written acknowledgement issued and executed by the Supplier; or

by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

commencement and duration

The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer in accordance with condition 2.2.

Subject to condition 11, the Services supplied under the Contract shall continue to be supplied for successive periods of whole one calendar years each, unless and until the Contract is terminated by one of the parties giving to the other not less than 3 months' prior written notice ending on an anniversary of the Contract Start Date.

supplier's obligations

The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer in accordance in all material respects with the Specification Sheet.

The Supplier shall use reasonable endeavours to meet any performance dates specified in the Specification Sheet, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

customer's obligations

The Customer shall:

Co-operate with the Supplier in all matters relating to the Services;

Provide the Supplier, in a timely manner, such In-Put Material and other information as the Supplier may reasonably require and ensure that it is accurate in all material respects;

Obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services before the date on which the Services are to start;

Ensure that all Customer Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services.

If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

charges and payment

In consideration for the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Specification Sheet.

The Supplier's charges are exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.

The parties agree that the Supplier may review and increase the charges set out in the Specification Sheet by the Retail Prices Index (RPI), provided that such charges cannot be increased more than once in any 12 month period. The review will apply the prevailing RPI two months before the anniversary of the provision of Services by the Supplier.

The Customer shall pay each invoice submitted to it by the Supplier, to be paid to the Supplier by way of BACS transfer, or by prior agreement, a standing order set up on the Customer's bank account.

Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

charge interest on such sum from the due date for payment at the annual rate of 4% above the Base Rate from time to time of the Bank of England accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

suspend all Services until payment has been made in full.

Time for payment shall be of the essence of the Contract.

All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

intellectual property rights

As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.

Confidentiality and the supplier's property

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

The Customer may disclose such information as may be required by law, court order or any governmental or regulatory authority.

The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition.

The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

limitation of liability

This condition sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

any breach of the Contract;

any use made by the Customer of the Services, the Deliverables or any part of them; and

any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.

All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

Nothing in these Conditions limits or excludes the liability of the Supplier:

for death or personal injury resulting from negligence; or

for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or

for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

Subject to condition

the Supplier shall not be liable for:

loss of profits; or

depletion of goodwill and/or similar losses; or

loss of anticipated savings; or

loss of goods; or

loss of contract; or

loss of use; or

loss of corruption of data or information; or

any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or any loss or damage suffered as a result of any interruptions or errors in the use or operation of the Software.

the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

data protection

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

termination

Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other on giving the other not less than 1 month's written notice or immediately on giving notice to the other if:

the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

the other party repeatedly breaches any of the terms of the Contract 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 the Contract; or

the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or

a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or

a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition to condition (inclusive); or

the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

The parties acknowledge and agree that any breach of conditions 5, 6, 7 and 8 shall constitute a material breach for the purposes of this condition.

On termination of the Contract for any reason:

the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and

the Customer shall, within a reasonable time, return any of the Supplier's Equipment; and

the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

force majeure

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

variation

The Supplier may, from time to time change the Services, provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer at least 1 month's notice of any change.

Subject to condition, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

waiver

A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

severance

If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

entire agreement

The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract.

Nothing in this condition shall limit or exclude any liability for fraud.

assignment

The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the Contract.

The Supplier may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

no partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

rights of third parties

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

notices

Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in Schedule 2, or as otherwise specified by the relevant party by notice in writing to the other party.

Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in Schedule 2 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

This condition shall not apply to the service of any in any proceedings or other documents in any legal action.

governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).

Important Notice:

The terms and conditions together with all AMR Project Specification Sheets are considered by us to set out the whole agreement between you and us for the provision of the Services described above. The Supplier is not responsible for taking any action to reduce utilities consumption.

Signatures

For the Supplier - Utilities Manager Limited

signature _____

name _____ position _____ date _____

For the Customer _____ (company / organisation)

signature _____

name _____ position _____ date _____