

# Terms of Service

## General Terms and Conditions

Applicable from 1 April 2019



## Definitions

In this Agreement, unless the context otherwise requires, the following expression shall have the following meaning:

|                           |   |
|---------------------------|---|
| Agreement                 | These General Terms and Conditions and an associated Proposal Document or Service Offering including any Special Terms & Conditions, which together form the entire contract entered into by the Company and the Client for the Service(s) detailed in the Service Offering or Proposal Document.   |
| The Client                | The business or organisation which is supplied with the Service(s) by the Company and which has signed to confirm their acceptance of Agreement and which is referenced in the Proposal Document or Service Offering. Unless otherwise stated, the Client as referenced will mean the business named in the Proposal Document or Service Offering, together with any subsidiary businesses. |
| The Company               | Trident Utilities Ltd, Unit 6 Whitehills Drive, Whitehills Business Park, Blackpool. FY4 5LW [Company Registration Number 04138336].  |
| Contract Duration         | The entire period provided for in Clause 2.1 of these Terms and Conditions and which will be detailed in the Proposal Document or Service Offering. The Contract Duration will extend for the Initial Term, any subsequent extension and for the full extent of any period where Trident share in Ongoing Savings.  |
| Existing Ongoing Saving   | An Ongoing Saving, which has already been implemented by the Company as part of a separate Agreement with the Client and for which the period of any associated share in savings is to be extended.   |
| Initial Duration of Share | The initial length or duration for which the Company will continue to share in any Ongoing Saving covered by the Service Offering or Proposal Document.   |
| Initial Term              | The Initial term of the contract provided for in Clause 2.1 of these Terms and Conditions and which will be detailed in the Proposal Document or Service Offering.  |
| Letter of Authority "LOA" | A suitably worded Letter provided by the Client in order to express their authority to a potential third party or Supplier for the Company to act on behalf of the Client and to enable the performance of the Service(s).  |
| Material Breach           | Any serious breach of the Agreement, which has a resulting negative impact on either Party.   |
| Ongoing Saving            | Any cost reduction whereby the Client gains an ongoing and quantifiable financial benefit as a result of the Service(s) provided by the Company. In particular this would relate to the elimination or variation of individual charges, levies or consumption, which the Company may identify from time to time and from which the Client gains an ongoing or fixed term financial benefit. |
| The Parties               | The Company and the Client insofar as defined by these Terms and Conditions and any associated Proposal Document or Service Offering.   |
| Party                     | The Company or the Client insofar as defined by these Terms and Conditions and any Associated Proposal Document or Service Offering.  |

|                                       |   |
|---------------------------------------|---|
| Proposal Document or Service Offering | The document or documents, which are signed by the Client and confirm the Service(s) to be provided by the Company to the Client, the fee(s), remuneration or charging mechanism for provision of the Service(s), the Initial Term and Contract Duration of the Agreement and any other information which may be relevant to clarify the basis of the Agreement between the Client and the Company. |
| Refund                                | Any cash or financial credit for historical charges, which is received by the Client as a result of the Service(s) provided by the Company.   |
| Service(s)                            | The service(s) referred to in the Proposal Document or Service Offering, and to be provided by the Company pursuant to these Terms and Conditions and the Entire Agreement between the Client and the Company.  |
| Service Deliverables                  | Any specific details for each Service supplied by the Company and how they will be carried out.   |
| Site or Sites                         | The location at which Service(s) are provided to a single or multiple meter points. Unless otherwise stated the Agreement between the Parties will cover all the Client sites / locations and all associated meter points.  |
| Special Term & Conditions             | The Special Terms & Conditions as detailed in the Service Offering and/or Proposal Document, which together with the General Terms & Conditions and all content of the Service Offering and/ or Proposal Document will form the entire contract between the Parties.  |
| Start Date                            | The date specified in a Service Offering or Proposal Document as being the date when any Agreement between the Client and the Company will commence.  |
| Supplier (s)                          | The supplier(s) of any electricity, gas, water or any other service or utility (which is referenced in the Proposal Document or Service Offering) to the Client.  |
| Trident                               | Trident Utilities Ltd, Unit 6 Whitehills Drive, Whitehills Business Park, Blackpool. FY4 5LW [Company Registration Number 04138336].  |

## Services

### 1.1

In accordance with the Agreement and these Terms & Conditions for the supply of Services, the Client appoints the Company as its exclusive agent for the provision of the Services set out in the Proposal Document or Service Offering.

### 1.2

The Company will provide to the Client those Services detailed in the Proposal Document or Service Offering and identified as accepted by both the Company and the Client.

### 1.3

The Client agrees not to arrange for the purchase of the Service(s) covered by this Agreement during the Contract Duration from or through any other person, servant, agent or employee.

### 1.4

The Client accepts and acknowledges that Trident is acting as an agent on the Client's behalf when providing any part of the Service(s) (including without limitation) negotiating with previous or current or prospective Suppliers.

### 1.5

Any Utility Supply contract entered into as a result of the provision of the Service(s) by the Company to the Client is always directly between the Client and the Utility Supplier(s).

## 1.6

The Company shall not in itself assume any direct or indirect responsibility or obligation or liability whatsoever between the Supplier(s) or the Client by virtue of the Company performing this Agreement.

## 1.7

The obligation of the Company to provide the Service(s) is conditional upon the full cooperation of the Client in providing all necessary information and authority to carry out such work.

## 1.8

Where a conflict occurs between these Terms and Conditions and the content of the Proposal Document or Service Offering, then the Proposal Document or Service Offering will prevail to the extent of any such conflict.

## Contact Duration and Termination

### 2.1

Unless otherwise specified in the Service Offering or Proposal Document, this Agreement shall commence upon countersignature by the Company of the Agreement and will continue as detailed in the Proposal Document or Service Offering.

### 2.2

This Agreement may be terminated forthwith by either Party if the other

#### 2.2.1

Shall be in Material Breach of the terms of this Agreement which, in the case a breach capable of remedy, shall not be remedied by that Party within 30 days of giving ahead of a notice specifying the breach and requiring its remedy;

#### 2.2.2

Shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors generally; or it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, administrator, receiver, administrative receiver or similar office is appointed in respect of all or any part or the business or assets of the other Party or ahead of it a petition is presented (otherwise than for the purpose of a solvent amalgamation or reconstruction); and/or

#### 2.2.3

In the event an event Force majeure (as defined in Clause 20) which continues for a period of in excess of 28 days.

### 2.3

Save as outlined in Clause 2.2, termination for any other reason whatsoever will not affect the rights of the Company to recover all fees due as described in Clause 3 of these Terms and Conditions and as referenced in the Proposal Document or Service Offering and for the entire Contact Duration.

### 2.4

Save as outlined in Clause 2.2, termination for any other reason whatsoever will not affect any obligation on the Client or the Company that is required in order to ensure the Company is able to receive all fees and due remuneration.

## Fees / Remuneration

### 3.1

All the Company's fees are subject to VAT which will be charged at the prevailing rate at the time the Service (s) were rendered.

### 3.2

All fees are specified in the Proposal Document or Service Offering.

### 3.3

The Client is liable for fees payable to the Company for any and all Service (s) carried out in relation to and in accordance with this Agreement.

#### 3.3.1

It is, however, normal practice for the Company, where practical, to recover the fee(s) directly from the Supplier in the form of a price uplift, unless the Client elects to pay such fees directly prior to commencement of any Service (s).

### 3.4

Where the Client requests Service(s) or Service Deliverables to commence prior to any Supplier contract, or outside any Supplier involvement, the Client will pay the Company's fees directly to the Company within 30 days of receipt of the Company's invoice, unless otherwise specified in the Proposal Document or Service Offering.

### 3.5

Where fees are based on a percentage of Refunds or Ongoing Savings, upon confirmation that the Client is in receipt of any agreed Refund in the form of either a direct payment or alternatively a credit against other energy charges or by any other identifiable means, the Company will issue an invoice for subsequent payment by the Client.

### 3.6

All Ongoing Savings will be subject to a share in the Ongoing Saving(s) and payable to the Company as outlined in the Proposal Document or Service Offering. The share will continue for the Initial Duration of Share from the date when each individual saving commences and thereafter as defined in the Service Offering or Proposal Document. The share in the Ongoing Saving(s) will not be affected by the termination or expiry of this Agreement.

### 3.7

If any Ongoing Saving should stop, for whatever reason, the Company will first seek to remedy the situation. In such circumstances, the Client will cooperate fully to enable the Company to remedy the situation. If the Company is unable to remedy the situation and the Client has cooperated as required, then any share in the Ongoing Saving will cease at the point, where the Ongoing Saving was no longer enjoyed by the Client.

### 3.8

In the absence of the information required to calculate the Ongoing Saving(s), the Company reserves the right to issue estimated invoices based upon historic usage data and the Client agrees to pay such invoices.

### 3.9

For the purpose of any Agreement between the Client and the Company and for the purpose of further clarification, the share in any Refund (s) will not be restricted to the Initial Duration of Share, but instead relate to the full value of any Refund obtained and the duration of share in any Ongoing Saving (s) will be unaffected by any share in Refunds obtained.

### 3.10

The Company reserves the right, specifically for Services where the Client is to pay for the Service directly, to apply the following charges in the event of the failure by the Client to make payment in accordance with the agreed payment terms.

- £10.00 For each phone call made to the Client in order to chase late payment of any outstanding invoice
- £25.00 For each Letter or Email sent to the Client in order to chase late payment of any outstanding invoice.
- Any other additional charges as may be specifically detailed within the Service Offering or Proposal Document.

#### 3.10.1

All outstanding invoices of more than 90 Days will be automatically referred to a Debt Collection Agency for recovery, unless prior agreement regarding a payment plan has been reached between the Company and the Client. Failure to adhere to any agreed payment plan will also result in immediate reference to a Debt Collection Agency. In such circumstances, the Company reserves the right to claim the full cost of debt recovery including any interest, agency fees and/or court costs.

### 3.11

Should the Agreement roll for a period after the Initial Term then the Company reserves the right to increase the fee(s) up to the prevailing rate of RPI. This index may be applied to all further Agreement periods and is applicable on the relevant anniversary date.

### 3.12

Should the Agreement be terminated for any reason whatsoever, the Company will still be entitled to recover, and the Client will still be liable for, all the fees for Services carried out and loss of business to the Company up to the date when the Agreement officially comes to an end in line with the required notice having been served and both the Initial Term and, in the event of a contract rollover, any required notice period having been included within any supplier contract accepted by the Client via the Company, will still be recovered for the relevant energy Supplier (s) until such time as the relevant Supplier contract (s) have terminated/expired and will be unaffected by the termination of this Agreement for whatever reason.

### 3.13

When required data cannot be provided by the Client, the Company will endeavour to obtain such data free of charge from any previous or existing Supplier (s). Should the Supplier(s) charge a fee for the provision of any required data, then the Company reserves the right to pass on this fee to the Client and the Client agrees to pay such charges.

## Prompt Provision of Accurate Data

### 4.1

The Client shall use all reasonable endeavours to provide all information required to enable the Company to perform the Service(s) as set out in the Service Offering or Proposal Document.

### 4.2

The Client shall use all reasonable endeavours to ensure that all such information is provided in a timely manner and is accurate.

### 4.3

The Company shall not be responsible for any delay or failure to perform the Service(s) as a direct result of the Client's failure to provide or delay in providing information or the provision of inaccurate information at any time during the Agreement. The Company warrants, however, that all reasonable endeavours will be employed if accurate information is not provided.

## Availability of Client Contacts

### 5.1

The Client agrees to make available appropriate contacts to enable the Company to undertake and perform the Service(s) detailed within this Agreement.

### 5.2

The Company will not be liable for any delay in performing or failure to perform the Service(s) as a result of the Client's failure to provide appropriate contacts.

## Liability

The following provisions set out the entire liability for both the Company and the Client.

### 6.1

The Company and the Client shall not be liable to the other in contract or tort for loss of profits, goodwill, anticipation of profits or turnover or any type of consequential loss arising from the provision of the Service(s), even if such loss was reasonably foreseeable or that Party had been advised of the possibility of incurring.

### 6.2

The Company and the Client have limited liability for any breach of its contractual obligations arising under this Agreement.

### 6.3

The Company shall not be liable for any misrepresentation, statement or tortious act or omission including negligence arising under in connection with this Agreement.

### 6.4

The liability of The Company to the Client for the death or injury resulting from its negligence shall not be limited.

### 6.5

Notwithstanding anything else in this Agreement, the entire liability of the Company or the Client shall be limited to damages of an amount equal to £1,000,000 in the case of damage to the tangible property resulting from the negligence of the Company or its employees.

### 6.6

In any other case 100% of the annual value of the fees for the provision of the Services to which the claim relates.

### 6.7

Unless otherwise stated, the Company shall maintain public liability insurance of no less than £5,000,000, employer's liability insurance of no less than £10,000,000 and professional indemnity of no less than £1,000,000.

## Health and Safety

### 7.1

In the event that the Company operatives are required to undertake work at the Client's sites, then the Company will take all reasonable steps to ensure that all its employees will comply with such rules, regulation and requirements as may be in force for the time being for the safe conduct and Health and Safety of the Company personnel on those premises. In such circumstances, the Client accepts responsibility for notifying the Company's employees of the Health and Safety requirements, whilst on site.

## Confidentiality

### 8.1

During the term of this Agreement it is inevitable that the Client and the Company will acquire knowledge and information concerning each other's operations which is of a confidential and/or commercially sensitive nature. Both Parties agree that such information shall be maintained as confidential and shall be disclosed only to those employees for whom such knowledge is essential.

### 8.2

In respect of carrying out their responsibilities under this Agreement, that such persons shall be made aware of their responsibilities under this Clause, and that such information shall not be used under any circumstances for any purpose other than the performance of this Agreement.

### 8.3

From time to time the Company may utilise the Client's name and recognised logo within its marketing literature and/or web presence subject to agreement between the Parties.

## Intellectual Property Rights

### 9.1

All Intellectual Property Rights in the content of any creative work produced for the purposes of the provision of the Services, including all materials and all documentation prepared and or produced by the Company in connection with the provision of the Services, shall be owned absolutely by the Company. For the avoidance of doubt all data relating to the Service is the Client's and the Company shall provide the data in an acceptable format whenever asked by the Client.

## Analysis

### 10.1

Where no other conflicting agreement exists between the Company and the Client then during provisions of the service, the Company may become aware of further opportunities to reduce the Client's electricity and/or gas costs and the Client hereby authorise the Company to take such action, with prior approval, as it thinks appropriate ("Analysis Work") to obtain such savings from suppliers where the Company deems such action to be viable. Remuneration for such Analysis Work will be performance related fees which shall be calculated as follows: The Company shall be entitled to 50% of each saving achieved as a result of The Company recommendations and shall continue for a period of 36 months from the date on which the saving recommendation is first implemented. Performance fees in respect of each saving are payable within 30 days of The Company's invoice. For the purpose of this agreement, saving shall mean the difference between (1) our benchmark price (as defined below) and (2) that price which results from the implementation of the Company recommendations. The Benchmark price is intended to be equal to what the Client would have paid had the Client not implemented the relevant Company recommendation(s).

## Service Specification and Variations

### 11.1

The Agreement including any Proposal and /or Service Offering contains the Deliverables to be provided, and no other Agreements have been made, in writing or verbally, express or implied, with respect to the Service(s) by the Company, other than as set out in the Agreement.



## 11.2

Any additional Services or Deliverables or variations to the Service Offering or Proposal Document must be specifically set out in writing and signed by both Parties to be valid and the Company reserves the right to amend the charges for any variations or alterations to the Service specification. Nothing in this Clause is intended to nullify other Agreements that may exist between the Company and the Client and any established arrangements shall continue separately unless specifically agreed otherwise.

## Staff Competency/Change of Staff

### 12.1

The Company will allocate staff, as appropriate, to the work to be undertaken and all staff will have appropriate skills and competence, relevant to each task to be performed for the provision of the Service(s).

### 12.2

The Company reserves the right to change such staff as needed to meet the operational requirements, always providing that the replacement shall be of an equivalent standard in terms of skill and competence.

## Solicitation of Staff

### 13.1

Each Party agrees that throughout the duration of the Agreement, and for a period of six months after the expiry or termination of the Agreement that it will not, either directly or indirectly, seek to employ any staff of the other Party involved in the provision of the Services unless that Party provides prior written consent.

## Dispute Resolution

### 14.1

In the event of a dispute, or disagreement between the Parties, either Party may call a dispute resolution meeting of the Parties by service of not less than 10 days' written notice and each Party agrees to procure that a senior member of its staff shall attend all dispute resolution meetings in accordance with this Clause.

### 14.2

Those attending a dispute resolution meeting shall use their best endeavours to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to the Managing Directors of the Parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice.

### 14.3

No Party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute provided that the right to issue proceedings is not prejudiced by a delay. Further, in the event of a Material Breach of the Agreement the dispute resolution shall not apply and instead Clause 2.2.1 of these Terms and Conditions will take precedence.

## Applicable Law

### 15.1

This Agreement shall be construed and enforced in accordance with the laws of England and Wales. The English Courts shall have exclusive jurisdiction to deal with any dispute that arises out of or in connection with this Agreement and the Services carried out under this Agreement.

#### 15.2

The Parties will comply with all applicable laws and relevant legislation in force at the time of this Agreement, subject to the provisions in Clause 18.

## Assignment

#### 16.1

Neither Party shall transfer or assign its right or obligations under this Agreement without the prior written approval of the other Party, which approval shall not be unreasonable withheld.

## Waiver

#### 17.1

Any delay or forbearance on the part of either Party in enforcing any term or condition right or remedy in respect of this Agreement shall not be deemed to be a waiver or any right or remedy whatsoever by that Party.

## Notice

#### 18.1

Any notice required to be delivered under this Agreement shall be deemed given if left or sent in writing by recorded delivery post to the agreed addresses, or such other addresses as shall subsequently be notified in writing, and in the case of notification by post shall be deemed to have been received two days after posting. For the avoidance of doubt notices may also be sent by electronic means.

## Change in Law/Tax

#### 19.1

In the event that this Agreement becomes unworkable as a result of any change in Law and or tax regime the Client and the Company agree to meet and use all reasonable endeavours to find a practical way forward which is of mutual benefit.

## Data Protection & GDPR

#### 20.1

The Company confirms that it will comply with the requirements of the Data Protection Act 2018 and relevant updates as may be necessary during the performance of the Agreement between the Parties.

#### 20.2

The Company confirms that it will comply with the requirements of the General Data Protection Requirements (GDPR) as may be necessary during the performance of the Agreement between the Parties.

## Force Majeure

### 21.1

Neither the Client nor the Company shall be liable for any expense, loss or damage resulting from delay or prevention of performance of the contract that is caused by fires, flood, Acts of God, riots, thefts, power supply failures, strikes, accidents or any other cause whatsoever beyond their reasonable control.

## Entire Agreement

### 22.1

These Terms and Conditions and any associated Service Offering or Proposal Document contain all the general terms agreed by the Parties relating to the subject matter of the Agreement and supersedes any and all prior unwritten understandings or arrangements or Agreements between them, but does not affect any continuing written Agreement entered into between the Parties, which written Agreements shall unless expressly terminated or varied in writing, continue in accordance with their terms.

### 22.2

Save in the case of fraud, no presentation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the Parties prior to this Agreement except as set out in this Agreement.

### 22.3

Additional contractual arrangements are only applicable where made in writing and incorporated into a legally binding Agreement signed by both Parties.

## General

### 23.1

All headings in this Agreement are for ease of construction and understanding only and shall have no bearing on the Agreement.

### 23.2

Where the context admits or requires references in the Agreement to the singular shall include the plural and vice versa.

### 23.3

If any part of the Agreement is found to be unenforceable in law, then this shall not preclude the enforcement of other parts of the Agreement as required.

### 23.4

Unless expressly stated otherwise then all reference to any Clause shall refer specifically to the Clause within the document concerned.