

These terms of service between the Customer and Metpow govern the Customers' access to, and use of, the Metpow Service. Please read these terms and conditions applicable to the use of the Metpow Service before using them. By accessing or using the Metpow Service, the Customer confirms its agreement to be bound by these terms and conditions.

1 INTERPRETATION

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: the Commercial Terms together with these terms and conditions.

Administration Fee: the fee charged by Metpow to an End User for the use of the Metpow Service for each Transaction and which covers Metpow's Transaction costs (including charges levied by the Merchant Service Provider).

Authorised Users: those employees, agents and independent contractors of the Customer, who are authorised by the Customer to use the Metpow Service.

Business Day: any day other than a Saturday, Sunday or public or bank holiday in England.

Commercial Terms: the commercial terms which set out details in relation to the Metpow Service including the selected Metpow Service, the Initial Term and the Charges, as presented to the Customer (whether online or in a quotation) and agreed by the parties during the ordering process.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5 or clause 10.6.

Customer: the operator of a Site at which the Equipment is installed as registered in the Commercial Terms.

Customer Data: the data (including personal data) inputted or generated by, or on behalf of, the Customer and Authorised Users using the Metpow Services.

Data Protection Legislation: all applicable data protection and privacy legislation relating to the processing of personal data in connection with this agreement including the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); UK GDPR (which has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018); the UK's Data Protection Act 2018 ("DPA 2018") (and regulations made thereunder), in each case as amended, and the mandatory guidance and codes of practice issued by the UK's Information Commissioner or other relevant regulatory authority and applicable to a party; and "processor", "controller", "data subject", "personal data", "personal data breach", "processing" and "appropriate technical and organisational measures" shall have the meanings set out in the applicable Data Protection Legislation.

Effective Date: the date on which the Customer registers to use the Metpow Service.

End User: a visitor to Site who uses the Metpow Service to pay for its use of Utilities at the Site.

Equipment: the equipment which includes metering functionality and embedded Metpow software and which is configured to interface with the Metpow Service together

with LoRaWAN gateway hardware and firmware which enables remote connectivity to the internet.

Fees: the fees payable by the Customer to Metpow for the use of the Metpow Service as set out in the Commercial Terms or as notified by Metpow from time to time.

Initial Term: the period of three years from the Effective Date.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

Merchant Services Provider: the third party with which Metpow contracts for the processing of Payment Card payments.

Metpow: Metpow Limited incorporated and registered in England and Wales with company number 15617061 whose registered office is at C/O Bishop Fleming Century House, Nicholson Road, Torquay, Devon, TQ2 7TD.

Metpow Service: the online software platform and applications developed and operated by Metpow which integrates with the Equipment and includes: (a) payment processing functionality to enable End Users to track and pay for their consumption of Utilities during their stay or visit to a Site and for such payments to be paid out to the Customer; and (b) energy management and reporting tools giving Customers visibility and control over consumption of Utilities at their Site(s).

Normal Business Hours: 8.00 am to 6.00 pm local UK time, each Business Day.

Payment Card(s): means debit and credit cards accepted by the Merchant Services Provider, which includes VISA, and MasterCard.

Renewal Period: the period described in clause 15.1.

Site(s): the site at which the Equipment is installed by the Customer and at which Utilities are used by the End User (which may include static sites, touring sites, residential sites, camping sites, marinas and other such leisure sites).

Tariff: the rates and charges for the consumption of Utilities and any restrictions to be associated with such consumption, as communicated to Metpow by the Customer.

Term: has the meaning given in clause 15.1 (being the Initial Term together with any subsequent Renewal Periods).

Transaction: a purchase of an available Utility by an End User using the Metpow Service, in respect of which Payment Card details have been provided by the End User and passed to the Merchant Services Provider and Metpow has received an authorisation code confirming a debit for the relevant Utility Charges.

Utilities: electricity, water and/or other services which can be paid for by End Users using the Metpow Service (as applicable depending on the context) and each being referred to as a "Utility").

Utility Charge: the fees that are paid by End Users via the Metpow Service for the consumption of Utilities based on the Tariffs, excluding the Administration Fees.

1.2 Unless the context otherwise requires:

1.2.1 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and

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

1.3 A reference to writing or written includes e-mail.

1.4 In the case of conflict or ambiguity between any provision contained in these terms and conditions and the Commercial Terms, the Commercial Terms shall take precedence.

2 ACCEPTANCE OF THESE TERMS AND REGISTRATION

2.1 By agreeing to the terms of the Agreement during the ordering and registration process or by using the Metpow Service, the Customer agrees that these terms and conditions govern the provision of the Metpow Service to the Customer and the Customer's use of such Metpow Service.

2.2 The Agreement shall prevail at all times to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply even if such other provisions are submitted in a later document or purport to exclude or override the Agreement and neither the course of conduct between parties nor trade practice shall act to modify the Agreement.

2.3 To access the Metpow Service, the Customer will be required to set up a business user account within the Metpow Service as well as an account with the Merchant Services Provider. When registering for an account, the relevant Authorised User will be asked to choose a username and password (which may be via an external authentication service). The Customer is responsible for all activity that occurs under its account, and the Customer agrees to maintain the security and secrecy of its account username and password at all times. The Customer is responsible for all activity that occurs on its account. The Customer hereby acknowledges and agrees that Metpow will not in any way be liable to the Customer or End Users for any loss caused by unauthorised access to and use of the account. The Customer must notify Metpow immediately if it suspects or becomes aware of any

unauthorised use of the account or any unauthorised access to the password for the account.

3 RIGHTS OF USE

3.1 Subject to the Customer paying the Fees and subject to the restrictions set out in the terms and conditions of this Agreement, Metpow hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Metpow Service during the Term solely for the Customer's business operations at Site(s).

3.2 The Customer shall not (and shall procure that its Affiliates and Authorised Users shall not):

3.2.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

3.2.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Equipment, the Metpow Service or the software used to provide the Metpow Service in any form or media or by any means; or

3.2.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Equipment, the Metpow Service or the software used to provide the Metpow Service; or

3.2.2 access all or any part of the Equipment, Metpow Service or the software used to provide the Metpow Service in order to build a competitive product or service; or

3.2.3 subject to clause 18.5, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Metpow Service available to any third party except the End Users and Authorised Users, or

3.2.4 introduce or permit the introduction of, any virus or malware into Metpow's network and information systems.

3.3 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Metpow Service and, in the event of any such unauthorised access or use, promptly notify Metpow.

4 SERVICES

4.1 The parties acknowledge and agree that Metpow Service can be used by the Customer together with the Equipment to track the consumption of Utilities during End Users' stays or visits to a Site and to receive payment from End Users in connection with each Transaction. In consideration for the payment of the Fees, Metpow shall, during the Term, make the Metpow Service available to the Customer on and subject to the terms of this Agreement.

- 4.2 The Customer's ability to process Transactions using the Metpow Service is conditional on the following:
- 4.2.1 a stable supply of the relevant Utilities to a Site;
 - 4.2.2 the Customer setting a Tariff for Utilities (and Customer shall be solely responsible for ensuring that any such Tariff is reasonable and is sufficient with regard to actual costs of Utilities);
 - 4.2.3 the Customer registering a connected account with the Merchant Services Provider;
 - 4.2.4 the purchase (whether from Metpow or its authorised resellers) and compliant installation of Equipment at the Site;
 - 4.2.5 the Customer providing a hardwired LAN connection to the LoRaWAN gateway hardware; and
 - 4.2.6 End Users registering with Metpow and accepting Metpow's End User terms of use prior to being able to use the Metpow Service to pay for Utilities.
- 4.3 Metpow shall use commercially reasonable endeavours to make the Metpow Service available 24 hours a day, seven days a week, except for:
- 4.3.1 planned maintenance carried out outside of Normal Business Hours; and
 - 4.3.2 unscheduled emergency maintenance, in which case Metpow shall use reasonable endeavours to minimise the impact on the Customer's use of the Metpow Service.
- 4.4 Metpow shall provide the Customer with Metpow's standard support services for the duration of the Term.

5 CUSTOMER DATA

- 5.1 The Customer have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data. The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Data to Metpow for the purposes of this Agreement.
- 5.2 In the event of any loss or damage to Customer Data stored in the Metpow Service, the Customer's sole and exclusive remedy against Metpow shall be for Metpow to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Metpow. Metpow shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties and subprocessors appointed by Metpow to perform services related to Customer Data).
- 5.3 The Customer acknowledges and agrees that Metpow shall be entitled to use information (including Customer Data) relating to the Customer's and End Users' use of the Metpow Service and related analytics and user telemetry data for the purposes of providing and improving the Metpow Service.

6 METPOW'S OBLIGATIONS

- 6.1 Metpow undertakes that the Metpow Service will be performed with reasonable skill and care.

- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Metpow Service and Equipment contrary to Metpow's instructions, or modification or alteration of the Metpow Service or the Equipment by any party other than Metpow or Metpow's duly authorised contractors or agents. If the Metpow Service does not conform with the foregoing undertaking, Metpow will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1.
- 6.3 Metpow does not warrant that:
- 6.3.1 the Customer's use of the Metpow Service will be uninterrupted or error-free; or
 - 6.3.2 that the Metpow Service, and/or the information obtained by the Customer through the Metpow Service will meet the Customer's requirements.
- 6.4 Metpow is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Metpow Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.5 Metpow warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7 CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
- 7.1.1 provide Metpow with all necessary co-operation in relation to this Agreement;
 - 7.1.2 provide all necessary access to such information, facilities, Sites and staff as may be required by Metpow in order to provide the Metpow Service;
 - 7.1.3 ensure that there is a stable and safe supply to the Site of the relevant Utilities in respect of which it wishes to use the Metpow Service and to pay the relevant Utilities provider for such Utilities;
 - 7.1.4 provide Metpow with all necessary Tariff information required by Metpow to provide the Metpow Services, via the dashboard in the Metpow Service,;
 - 7.1.5 be directly responsible in contract for the supply of purchased Utilities and shall ensure that End Users are able to read all relevant terms relating to the supply of Utilities;
 - 7.1.6 administer, pay and bear the expense of any refunds that the Customer considers necessary to make to End Users in respect of Transactions correctly processed by Metpow and, for the avoidance of doubt, the Administration Charge paid to Metpow by the End User shall be non-

refundable;

- 7.1.7 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
- 7.1.8 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Metpow may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.9 notify Metpow by contacting its helpdesk where the Customer becomes aware of any fault or breakdown in the operation of the Metpow Service;
- 7.1.10 ensure that the Authorised Users use the Metpow Service in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
- 7.1.11 obtain and shall maintain all necessary licences, consents, and permissions necessary for Metpow, its contractors and agents to perform their obligations under this Agreement, including without limitation the Metpow Service;
- 7.1.12 ensure that it only uses the Metpow-approved Equipment in connection with the Metpow Service and ensure that such Equipment is correctly installed and maintained in good condition and replaced if damaged or faulty;
- 7.1.13 ensure that its network and systems comply with the relevant specifications provided by Metpow from time to time; and
- 7.1.14 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links at its Site (including LoRaWAN) to connect Equipment to the internet and from its systems to Metpow's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8 PAYMENT

- 8.1 End Users shall be charged the Utility Charges for the purchase of Utilities at the Site. In addition, End Users may be required to pay an Administration Fee to Metpow for the benefit of using the Metpow Services .
- 8.2 Metpow will collect the Utility Charges and Administration Fees and ensure that these are authorised at the time of the Transaction with the Merchant Services Provider. The Utility Charge shall be paid out to the Customer and the Administration Fees are retained by Metpow and are not paid to the Customer. Utility Charges collected from End Users will be remitted by the Merchant Services Provider to the Customer's account.

- 8.3 The Customer is responsible for accounting for all VAT associated with the Utility Charges including for the avoidance of doubt making any associated remittance to the UK's HMRC or other relevant tax authorities.
- 8.4 The Customer shall pay the Fees monthly in advance to Metpow in accordance with this clause 8 and the Commercial Terms.
- 8.5 The Customer shall either pay the Fees by bank transfer as invoiced by Metpow or shall pay the Fees by direct debit or by Payment Card. On the Effective Date, the Customer shall provide to Metpow valid, up-to-date and complete Payment Card and/or account details or approved invoicing and/or purchase order information (as applicable to the payment method) acceptable to Metpow and any other relevant valid, up-to-date and complete contact and billing details.
- 8.6 Where the Customer pays using a Payment Card, the Customer hereby authorises Metpow to bill such payment card for the Fees on the due date for payment.
- 8.7 Where the Customer pays on invoice, Metpow shall invoice the Customer the and Customer shall pay each invoice within 7 days after the date of such invoice.
- 8.8 If Metpow has not received payment of the Fees within 7 days after the due date, and without prejudice to any other rights and remedies of Metpow, Metpow may, without liability to the Customer, disable the Customer's access to all or part of the Metpow Service and Metpow shall be under no obligation to provide any or all of the Metpow Service while the invoice(s) concerned remain unpaid.
- 8.9 If either party fails to pay by the due date any amount payable by it under this Agreement that is not disputed in good faith, the other party shall be entitled but not obliged to charge that party interest on the overdue amount, payable immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% over the then current base lending rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis and be compounded quarterly
- 8.10 All amounts and fees stated or referred to in this Agreement shall be payable in the currency stated in and are non-cancellable and non-refundable.
- 8.11 Utility Charges and Administration Fees are stated for the End User inclusive of value added tax. The Fees are exclusive of value added tax, which shall be added to Metpow's invoice(s) at the appropriate rate.
- 8.12 Metpow shall be entitled to increase its Fees at any time by giving at least 30 (thirty) days' prior written notice to the Customer, provided that such increase shall not exceed the greater of: (a) 3% (three percent); and (b) the percentage increase in the Consumer Price Index (as maintained by the Office of National Statistics or any successor body) during the period since the last such increase in Fees or, if there has been no such increase, during the period since the Effective Date. Any increase in the Fees notified by Metpow that exceeds the foregoing thresholds shall be treated as a Material Change in accordance with clause 17.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer acknowledges and agrees that Metpow and/or its licensors own all Intellectual Property Rights in the Metpow Service. Except as expressly stated herein, this Agreement does not grant the Customer any rights in or to the Software and Metpow Service, other than the right to use it in accordance with the terms of this Agreement.
- 9.2 Metpow confirms that it has all the rights in relation to the Metpow Service that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10 CONFIDENTIALITY

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 10.1.2 was in the other party's lawful possession before the disclosure;
 - 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.5 The Customer acknowledges that details of the Metpow Service, and the results of any performance tests of the Metpow Service, constitute Metpow's Confidential Information.
- 10.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any

relevant securities exchange), any court or other authority of competent jurisdiction.

- 10.7 The above provisions of this clause 10 shall survive termination of this Agreement, however arising.

11 DATA PROTECTION

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 11.2 The parties acknowledge and agree that:
- 11.2.1 where Metpow process: (a) Customer or its Authorised Users' personal data to operate the Customer account on the Metpow Service; and (b) End Users' personal data in connection with Transactions on their account (in connection with the performance of the contracts with the End Users), in each case Metpow does so as controller in accordance with its privacy policy at <https://www.metpow.com/privacy-policy>;
 - 11.2.2 where Metpow processes any personal data comprised in the Customer Data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and Metpow is the processor for the purposes of the Data Protection Legislation.
- 11.3 In relation to the personal data comprised in any Customer Data, the Appendix sets out the scope, nature and purpose of processing by Metpow, the duration of the processing and the types of personal data and categories of data subject.
- 11.4 Where Metpow processes personal data on behalf of the Customer in connection with the performance of the Metpow Services, it shall:
- 11.4.1 process that personal data only on the Customer's documented written instructions including with regards to transfers of personal data to a third country, unless Metpow is required by applicable laws in the UK to process personal data;
 - 11.4.2 ensure that Metpow has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data that are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 11.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
 - 11.4.4 assist Customer, at their cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

11.4.5 notify Customer without undue delay on becoming aware of a personal data breach;

11.4.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by applicable law to store the personal data (and for these purposes the term "delete" shall mean to put such personal data beyond use through anonymisation); and

11.4.7 maintain complete and accurate records and information to demonstrate compliance with this clause 11.4 and allow for audits by Customer (not more than once in any 12 month period, at Customer's cost and on reasonable prior written notice) or and, following an audit, inform Customer if, in Metpow's opinion, an instruction infringes the Data Protection Legislation.

11.5 The Customer hereby provides its prior, general authorisation for Metpow to:

11.5.1 appoint sub-processors to process the personal data, provided that Metpow: (a) shall ensure that the terms on which it appoints such sub-processors comply with Data Protection Legislation, and are consistent with the obligations imposed on the Customer in clause 11.4; (b) shall remain responsible for the acts and omission of any such sub-processor as if they were the Metpow's own acts and omissions; and (c) shall inform Customer of any intended changes concerning the addition or replacement of the sub-processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes, Metpow shall be entitled to terminate the Agreement on written notice to the Customer and it shall cease providing the Metpow Services to the Customer as it may not be able to accommodate the requested change solely for the Customer; and

11.5.2 transfer personal data outside of the UK, provided that Metpow shall ensure that all such transfers are effected in accordance with Data Protection Legislation. For these purposes, the Customer agrees to promptly comply with any reasonable request made by Metpow, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).

12 PAYMENT PROCESSING

12.1 Metpow does not receive or process Payment Card data. Payment Card data is provided to the Merchant Services Provider via an integration between the Metpow Service and the Merchant Services Provider payment gateway platform.

12.2 The Merchant Services Provider with whom Metpow shares Payment Card data complies with and shall continue to comply with the Payment Card Industry (PCI) Data Security Standards published by the PCI Security Standards Council as may be amended,

supplemented or replaced from time to time, insofar as these are applicable to any processing, storage and/or transmission of transaction data or cardholder data, or applicable to any other transactions processed as part of the Metpow Service to the extent that these could impact the security of the customer's cardholder data environment.

13 INDEMNITY

13.1 Metpow is not responsible to either the Customer or End Users for the supply of Utilities at a Site nor is Metpow responsible for paying a Utility provider. The Customer shall defend, indemnify and hold harmless Metpow against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Metpow Service (including claims from End Users or Utility providers), provided that:

13.1.1 the Customer is given prompt notice of any such claim;

13.1.2 Metpow provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and

13.1.3 the Customer is given sole authority to defend or settle the claim.

14 LIMITATION OF LIABILITY

14.1 The Customer accepts responsibility for the selection of the Metpow Service to meet its intended business purposes and acknowledges that the Metpow Service has not been developed to meet the individual requirements of the Customer. Except as expressly and specifically provided in this Agreement:

14.1.1 the Customer assumes sole responsibility for results obtained from the use of the Metpow Service by the Customer. Metpow shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Metpow by the Customer in connection with the Metpow Service, or any actions taken by Metpow at the Customer's direction;

14.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

14.1.3 the Metpow Service is provided to the Customer on an "as is" basis.

14.2 Nothing in this Agreement excludes the liability of Metpow:

14.2.1 for death or personal injury caused by Metpow's negligence; or

14.2.2 for fraud or fraudulent misrepresentation.

14.3 Subject to clause 14.1 and clause 14.2:

14.3.1 Metpow shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of

business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

- 14.3.2 Metpow's total aggregate liability in contract (including in respect of the indemnity at clause 14), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall in no circumstances exceed 105% of the Fees paid during the Initial Term or Renewal Period during which the events giving rise to the claim arose.

15 TERM AND TERMINATION

- 15.1 This Agreement shall, unless otherwise terminated in accordance with the terms of this Agreement, commence on the Effective Date and shall continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- 15.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

- 15.1.2 otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the Term.

- 15.2 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:

- 15.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

- 15.2.2 the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- 15.2.3 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- 15.2.4 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;

- 15.2.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in 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;

- 15.2.6 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;

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

- 15.2.8 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;

- 15.2.9 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 the other party's assets and such attachment or process is not discharged within 14 days;

- 15.2.10 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 clause 15.2.3 to clause 15.2.9 (inclusive); or

- 15.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 15.3 On termination of this Agreement for any reason:

- 15.3.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Metpow Service;

- 15.3.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party; and

- 15.3.3 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

16 FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement, 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, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, pandemics or epidemics, 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 sub-contractors, provided that the other party is notified of such an event and its expected duration.

17 VARIATION

The Customer acknowledges and agrees that Metpow may change the Metpow Service or this Agreement at any time. Metpow shall notify the Customer of any changes. If Metpow reasonably believes that the change is material and/or adversely affects the Customer (a "**Material Change**"), it shall give the Customer at least 30 days' notice before it takes effect and it shall give the Customer the opportunity to accept or reject the Material Change. If Metpow cannot publish the Material Change at least 30 days before it takes effect (for example because the change is necessary for the security of the Metpow Service, because of regulatory change or because one of Metpow's suppliers makes changes to its service at short notice), Metpow shall publish the Material Change as soon as it reasonably can. In the event of any rejection of a Material Change to this Agreement by the Customer, either party shall be entitled to terminate the Agreement with immediate effect by written notice to the other party. No other variation of this Agreement shall be effective unless it is in writing and signed by the parties.

18 GENERAL

- 18.1 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.
- 18.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 18.3 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause 18.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18.4 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 acknowledges that in entering into this Agreement it does not rely on any

statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

- 18.5 The Customer shall not, without the prior written consent of Metpow, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Metpow may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.6 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18.7 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18.8 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes or by email to the other party at the applicable address set out in the Commercial Terms or that has been notified by that party for such purposes. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the time obtained by the sender's email).
- 18.9 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. Each party irrevocably agrees that the courts of England and Wales 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).

APPENDIX:

PARTICULARS OF PROCESSING:

Scope

Personal data comprised in the Customer Data in connection with use of the Metpow Services by the Customer.

Nature and purpose of Processing

Provision of Metpow Services which enable the Customer to use the Metpow Services to process Transactions for the use of Utilities at their Site.

Types of personal data

End User/prospective End User name and email address, duration and nature of stay at a Site, the Utilities consumed, Utilities consumer and payments made in connection with Transaction

Categories of Data Subjects

End Users and prospective End Users.

Duration

The duration of the Agreement.