



# TEAM Terms and Conditions

## 1. Definitions

- 1.1. Except to the extent expressly provided otherwise, in this Agreement:
- 1.1.1. **"Affiliated Company"** means in relation to either party any holding company from time to time of that party together with any subsidiary from time to time of any such holding company of that party and the expressions "holding company" and "subsidiary" shall have the meanings given to them by Section 1159 of the Companies Act 2006.
- 1.1.2. **"Agreement"** means these General Terms and Conditions and any fully executed Order Forms.
- 1.1.3. **"Business Day"** means a day other than Saturday, Sunday or bank or public holiday in England.
- 1.1.4. **"Business Hours"** means the hours of 09:00 to 17:30 GMT/BST Monday to Friday on a Business Day.
- 1.1.5. **"Change Order"** means the mechanism by which any Services may be changed at any point during the Term. Details of such changes shall be set out within the Change Order Proforma (see Appendix 1) and signed by both parties before acceptance as a formal change to the Agreement.
- 1.1.6. **"Charges"** means the following amounts:
- 1.1.6.1. the amounts specified in an Order Form;
- 1.1.6.2. such amounts as may be agreed in writing by the parties from time to time; and
- 1.1.6.3. amounts calculated by multiplying TEAM's standard time-based charging rates as notified by TEAM to the Customer before the date of this Agreement by the time spent by TEAM's personnel performing the Support Services.
- 1.1.7. **"Consultancy Services"** means consultancy and professional services provided by TEAM to the Customer as set out on an Order Form.
- 1.1.8. **"Customer"** means, a company or a partnership or a public sector body identified on an Order Form.
- 1.1.9. **"Customer Confidential Information"** means any information disclosed by or on behalf of the Customer to TEAM during the Term or at any time before the termination of this Agreement whether disclosed in writing, orally or otherwise that at the time of disclosure was marked as "confidential" or should have been reasonably understood by TEAM to be confidential.
- 1.1.10. **"Customer Data"** means all data, supplied by the Customer to TEAM for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer.
- 1.1.11. **"Documentation"** means the documentation for the Hosted Services produced by TEAM and delivered or made available by TEAM to the Customer via the Support Help Centre.
- 1.1.12. **"Effective Date"** means the date of this Agreement set out in the Order Form.
- 1.1.13. **"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars.
- 1.1.14. **"Hosted Services"** means Sigma, as specified in the Hosted Services Specification, which will be made available by TEAM to the Customer as a service via the internet in accordance with this Agreement.
- 1.1.15. **"Hosted Services Defect"** means a major defect, error or bug in the Platform having a material adverse effect on the operation or functionality of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:
- 1.1.15.1. any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- 1.1.15.2. any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- 1.1.15.3. a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or

- 1.1.15.4. an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification.
- 1.1.16. "**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs).
- 1.1.17. "**Maintenance Services**" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades.
- 1.1.18. "**Order Form**" means an order form executed by Customer and TEAM which specifies the services to be provided to Customer. Except as otherwise provided on the Order Form, each Order Form shall be subject to the terms and conditions of this Agreement and incorporated by reference into this Agreement.
- 1.1.19. "**Permitted Purpose**" means the management, processing, analysis and reporting of utility consumption and cost data, utility bills and other related organisational and financial information.
- 1.1.20. "**Platform**" means the Sigma application as detailed in the Hosted Services Specification and used by TEAM to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed.
- 1.1.21. "**TEAM**" means Energy Auditing Agency Ltd of 3 Radian Court, Knowlhill, Milton Keynes MK5 8PJ a company incorporated in England and Wales, registration number 01916768, having its registered office at the above address.
- 1.1.22. "**Services**" means any services that TEAM provides to the Customer, or has an obligation to provide to the Customer, under this Agreement, such as Bureau Services, Hosted Services, Maintenance Services, Software Services, Consultancy Services and Support Services.
- 1.1.23. "**Software Services**" means any software related services that TEAM provides to the Customer under this Agreement, as set out in the Order Form.
- 1.1.24. "**Specification**" means the description of the Services, Hosted Services, Software Services and Support Services purchased by the Customer attached to the Order Form.
- 1.1.25. "**Support Help Centre**" means the password protected secure online customer-only website detailed in the Specification.
- 1.1.26. "**Support Services**" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services.
- 1.1.27. "**Supported Web Browser**" means the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox or Google Chrome, or any other web browser that TEAM agrees in writing shall be supported.
- 1.1.28. "**Term**" means the term of this Agreement, commencing in accordance with clause 2.1 and ending in accordance with clause 2.3.
- 1.1.29. "**Update**" means a hotfix, patch or minor version update to any Platform software.
- 1.1.30. "**Upgrade**" means a major version upgrade of any Platform software requiring upgrades to be applied to databases.

## 2. Term and agreement

- 2.1. This Agreement shall come into force upon the Effective Date and shall continue in force for the Term which may be extended or renewed as set out in the Order Form.
- 2.2. The Start Date for Services will be set as defined as the "Start Date" in the Order Form.
- 2.3. The Agreement shall end at the end of the Term or when terminated as set out in clause 19.
- 2.4. The Customer acknowledges and agrees that any reference to a purchase order in this Agreement or any associated invoice is solely for Customer's convenience in record keeping, and no such reference or any delivery of Services to Customer following receipt of any purchase

order shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such purchase order or in any way be deemed to modify, alter, supersede or supplement the Agreement. The terms and conditions of this Agreement are the exclusive agreement of the parties with respect to the subject matter hereof and no other terms or conditions shall be binding upon TEAM or otherwise have any force or effect.

### **3. Bureau Services**

- 3.1. In the event the Order Form specifies that TEAM will provide Bureau Services, TEAM will carry out the Bureau Services described in the applicable Bureau Service Specification.
- 3.2. TEAM's obligations under this Agreement are conditional upon the fulfilment by the Customer of its responsibilities as set out in Bureau Service Specification.
- 3.3. Each deliverable in the Bureau Services Specification shall be considered accepted upon delivery to the Customer. Any changes to these deliverables will be managed using Change Orders.

### **4. Hosted Services**

- 4.1. TEAM shall provide to the Customer login details for each of its Advanced Users and Express Users on or promptly following the Effective Date.
- 4.2. TEAM hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer in accordance with the Documentation during the Term.
- 4.3. The licence granted by TEAM to the Customer under Clause 4.2 is subject to the following limitations:
  - 4.3.1. the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Customer; and
  - 4.3.2. the Hosted Services may be used by any other officers, employees, agents and subcontractors of a public body as authorised by the Customer.
- 4.4. Except to the extent expressly permitted in this Agreement or required by law on a nonexcludable basis, the licence granted by TEAM to the Customer under Clause 4.2 is subject to the following prohibitions:
  - 4.4.1. the Customer must not sub-license its right to access and use the Hosted Services;
  - 4.4.2. the Customer must not permit any unauthorised person to access or use the Hosted Services;
  - 4.4.3. the Customer must not use the Hosted Services to provide services to third parties.
- 4.5. TEAM shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Service, but does not guarantee 100% availability.
- 4.6. For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
  - 4.6.1. a Force Majeure Event;
  - 4.6.2. a fault or failure of the internet or any public telecommunications network;
  - 4.6.3. a fault or failure of the Customer's computer systems or networks;
  - 4.6.4. any breach by the Customer of this Agreement; or
  - 4.6.5. scheduled maintenance carried out in accordance with this Agreement.
- 4.7. The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services. The Customer must comply and procure that all users comply with the End User Licence Agreement contained in the Specification.
- 4.8. The Customer must not use the Hosted Services:
  - 4.8.1. in any way that is unlawful, illegal, fraudulent or harmful; or
  - 4.8.2. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.9. For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.10. TEAM may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to TEAM under this Agreement is overdue, and TEAM has given to the Customer at

least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

## **5. Maintenance Services**

- 5.1. TEAM shall provide the Maintenance Services to the Customer during the Term.
- 5.2. TEAM shall, via the Customer Support Help Centre where practicable give to the Customer at least 1 Business Days' prior warning of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to TEAM's other notice obligations under this main body of this Agreement.
- 5.3. TEAM shall, via the Customer Support Help Centre, give to the Customer at least 5 Business Days' prior warning of the application of an Upgrade to the Platform.
- 5.4. TEAM shall, via the Customer Support Help Centre, give to the Customer information regarding the application of any significant security Update to the Platform and at least 1 Business Days' prior warning of the application of any non-security Update to the Platform likely to have a material impact upon the Hosted Services.
- 5.5. TEAM shall provide the Maintenance Services with reasonable skill and care.
- 5.6. TEAM may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to TEAM under this Agreement is overdue, and TEAM has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.
- 5.7. The Customer agrees to accept all Updates and Upgrades of software provided as part of the Maintenance Services and released by TEAM at their discretion. TEAM reserves the right to release new software at any time as business needs dictate.

## **6. Support Services**

- 6.1. TEAM shall provide the Support Services to the Customer during the Term.
- 6.2. TEAM shall make available to the Customer a helpdesk in accordance with the provisions of this main body of this Agreement and as described in the Specification.
- 6.3. TEAM shall provide the Support Services with reasonable skill and care.
- 6.4. The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services and the Customer must not use the helpdesk for any other purpose.
- 6.5. TEAM shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.
- 6.6. TEAM may suspend the provision of the Support Services if any amount due to be paid by the Customer to TEAM under this Agreement is overdue, and TEAM has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

## **7. Consultancy Services**

- 7.1. In the event an Order Form identifies that the Customer has purchased Consultancy Services, then in consideration of the payment of the applicable Charges TEAM shall provide such Consultancy Services to the Customer as set out in the Order Form.
- 7.2. TEAM warrants to the Customer that it will perform all Consultancy Services with reasonable care and skill. However, TEAM does not warrant that the Customer will achieve any specific results or performance as a result of the provision of the Consultancy Services by TEAM. If TEAM is in breach of the aforesaid warranty in relation to any particular Consultancy Services, then TEAM shall at its option as soon as reasonably practicable and as the sole and exclusive remedy of the Customer either take such steps as may be necessary to render the results of such Consultancy Services as they would have been had TEAM supplied such Consultancy Services in accordance with such warranty or refund to the Customer such sums as the Customer paid to TEAM in respect of such particular Consultancy Services.

- 7.3. Cancellation and re-arrangement of confirmed Site Survey bookings will only be accepted if notified in writing or email. The following conditions will apply:
  - 7.3.1. 7+ working days prior to agreed Site Survey date, the visit can be re-arranged at no extra cost; or
  - 7.3.2. less than 7 working days prior to agreed Site Survey date, the visit will be charged for in full, and any re-arrangement will be subject to additional fees; or
  - 7.3.3. where a Site Survey cannot take place when the consultant has arrived on Site for reasons that are out of the control of the TEAM consultant, then no refund will be provided and an additional fee may be chargeable to re-arrange the survey visit for another time.

## **8. Customer Data**

- 8.1. The Customer hereby grants to TEAM a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of TEAM's obligations and the exercise of TEAM's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of TEAM's obligations and the exercise of TEAM's rights under this Agreement.
- 8.2. The Customer warrants to TEAM that the Customer Data OR the use of the Customer Data by TEAM in accordance with this Agreement will not:
  - 8.2.1. breach the provisions of any law, statute or regulation;
  - 8.2.2. infringe the Intellectual Property Rights or other legal rights of any person; or
  - 8.2.3. give rise to any cause of action against TEAM, in each case in any jurisdiction and under any applicable law.
- 8.3. TEAM shall create back-up copies of the Customer Data daily, shall ensure that each such copy is sufficient to enable TEAM to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for 7 days, with weekly back-ups stored for 4 weeks and monthly back-ups for 12 months.

## **9. Assignment**

- 9.1. Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from TEAM to the Customer, or from the Customer to TEAM.
- 9.2. Assignment or other transfer by either party of all or part of its obligations under the Agreement will only be valid with prior written consent of the other party, except as may be required by law or government regulation, save that either party may assign all or part of its obligations hereunder to an Affiliated Company on giving prior written notice to the other.

## **10. Charges**

- 10.1. The Customer shall pay the Charges to TEAM in accordance with this Agreement.
- 10.2. If the Charges are based in whole or part upon the time spent by TEAM performing the Services, TEAM must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to TEAM any Charges in respect of Services performed in breach of this clause 10.2.
- 10.3. All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to TEAM.
- 10.4. TEAM may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on the annual anniversary of the date of execution of this Agreement, providing that no such variation shall result in an aggregate percentage increase in the relevant element of the Charges during the Term that exceeds the percentage increase, during the same period, in the Retail Prices Index (all items) published by the UK Office for National Statistics.

## **11. Payments**

- 11.1. TEAM shall issue invoices for the Charges to the Customer:
  - 11.1.1. periodically in advance of the period to which they relate or as set out in the Order Form; or

- 11.1.2. following delivery of each Service as set out in the Order Form.
- 11.2. The Customer must pay the Charges to TEAM within the period of 30 days following the issue of an invoice in accordance with this clause 11.
- 11.3. The Customer must pay the Charges by bank transfer or cheque (using such payment details as are notified by TEAM to the Customer from time to time).
- 11.4. If the Customer does not pay any amount properly due to TEAM under this Agreement, TEAM may:
  - 11.4.1. charge the Customer interest on the overdue amount at the rate of 2% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
  - 11.4.2. claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; or
  - 11.4.3. suspend all Services until any overdue amount has been paid.

## **12. TEAM's confidentiality obligations**

- 12.1. TEAM must:
  - 12.1.1. keep the Customer Confidential Information strictly confidential;
  - 12.1.2. not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer or no less onerous than those contained in this Agreement;
  - 12.1.3. use the same degree of care to protect the confidentiality of the Customer Confidential Information as TEAM uses to protect TEAM's own confidential information of a similar nature, being at least a reasonable degree of care;
  - 12.1.4. act in good faith at all times in relation to the Customer Confidential Information; and
  - 12.1.5. not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.
- 12.2. Notwithstanding clause 12.1, TEAM may disclose the Customer Confidential Information to TEAM's officers, employees, agents and subcontractors of a public sector organisation as authorised by the Customer who have a need to access the Customer Confidential Information for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 12.3. This Clause 12 imposes no obligations upon TEAM with respect to Customer Confidential Information that:
  - 12.3.1. is known to TEAM before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
  - 12.3.2. is or becomes publicly known through no act or default of TEAM; or
  - 12.3.3. is obtained by TEAM from a third party in circumstances where TEAM has no reason to believe that there has been a breach of an obligation of confidentiality.
- 12.4. The restrictions in this clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of TEAM on any recognised stock exchange.
- 12.5. The provisions of this Clause 12 shall continue in force indefinitely following the termination of this Agreement.

## **13. Data protection**

- 13.1. The Customer warrants to TEAM that it has the legal right to disclose all personal data that it does in fact disclose to TEAM under or in connection with this Agreement, and that the processing of that Personal Data by TEAM for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679)) and the Data Protection Act 2018.

- 13.2. To the extent that TEAM processes personal data disclosed by the Customer as a data processor TEAM will comply with the provisions of Appendix 2 (Data Protection).

## **14. Insurance**

- 14.1. TEAM will take out and maintain adequate insurance and shall furnish the Customer with evidence of such insurance as and when reasonably required to do so.

## **15. Warranties**

- 15.1. TEAM warrants to the Customer that:
- 15.1.1. TEAM has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
  - 15.1.2. TEAM will comply with all applicable legal and regulatory requirements applying to the exercise of TEAM's rights and the fulfilment of TEAM's obligations under this Agreement; and
  - 15.1.3. TEAM has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 15.2. TEAM warrants to the Customer that:
- 15.2.1. the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
  - 15.2.2. the application of Updates and Upgrades to the Platform by TEAM will undertake reasonable endeavours to not introduce any Hosted Services Defects into the Hosted Services;
  - 15.2.3. the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software program; and
  - 15.2.4. the Platform will incorporate security features reflecting the requirements of good industry practice.
- 15.3. TEAM warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under English law.
- 15.4. TEAM warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 15.5. If TEAM reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, TEAM may at its own cost and expense:
- 15.5.1. modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
  - 15.5.2. procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
- 15.6. The Customer warrants to TEAM that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 15.7. All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **16. Acknowledgements and warranty limitations**

- 16.1. The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, TEAM gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 16.2. The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, TEAM gives no warranty or representation that the Hosted Services will be entirely secure.
- 16.3. The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and TEAM does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

- 16.4. The Customer acknowledges that TEAM will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, TEAM does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.
- 16.5. The Customer acknowledges that all software operation is to be carried out by the Customer. Should database setup, configuration, ongoing data entry or other database management services be required then this can be provided at an additional cost.

## **17. Limitations and exclusions of liability**

- 17.1. Nothing in this Agreement will:
- 17.1.1. limit or exclude any liability for death or personal injury resulting from negligence;
  - 17.1.2. limit or exclude any liability for fraud or fraudulent misrepresentation;
  - 17.1.3. limit any liabilities in any way that is not permitted under applicable law;
  - 17.1.4. limit any payment obligation of the Customer; or
  - 17.1.5. exclude any liabilities that may not be excluded under applicable law.
- 17.2. The limitations and exclusions of liability set out in this clause 17 and elsewhere in this Agreement:
- 17.2.1. are subject to clause 17.1; and
  - 17.2.2. govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 17.3. Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 17.4. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 17.5. Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 17.6. Neither party shall be liable to the other party in respect of any loss of use or production.
- 17.7. Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 17.8. Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software; providing that this clause 17.8 shall not protect TEAM unless TEAM has fully complied with its obligations under clause 8.3.
- 17.9. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 17.10. Save in respect of TEAM's liability under clause 15.4, the total aggregate liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to TEAM under this Agreement in the 12-month period preceding the commencement of the event or events. Notwithstanding the foregoing, TEAM's total aggregate liability under clause 15.4 shall not exceed £5,000,000.

## **18. Force Majeure Event**

- 18.1. If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement other than any obligation to make a payment, that obligation will be suspended for the duration of the Force Majeure Event.
- 18.2. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- 18.2.1. promptly notify the other; and
  - 18.2.2. inform the other of the period for which it is estimated that such failure or delay will continue.
- 18.3. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

## **19. Termination**

- 19.1. Either party may terminate this Agreement by giving to the other party 90 days' written notice of termination before the end of the Term, and subject to the provisions of a current Agreement.



- 19.2. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.
- 19.2.1. Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party:
  - 19.2.1.1. is dissolved;
  - 19.2.1.2. ceases to conduct all (or substantially all) of its business;
  - 19.2.1.3. is or becomes unable to pay its debts as they fall due;
  - 19.2.1.4. is or becomes insolvent or is declared insolvent;
  - 19.2.1.5. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- 19.2.2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- 19.2.3. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

## **20. Effects of termination**

- 20.1. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 20.2. The termination of this Agreement shall not affect the accrued rights of either party.
- 20.3. Within 30 days following the termination of this Agreement for any reason:
  - 20.3.1. the Customer must pay to TEAM any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
  - 20.3.2. TEAM must refund to the Customer any Charges paid by the Customer to TEAM in respect of Services that were to be provided to the Customer after the termination of this Agreement, without prejudice to the parties' other legal rights.
- 20.4. Within 30 days following the termination of this Agreement, and following receipt of any outstanding Charges in accordance with Clause 20.3.1, TEAM will securely send to the Customer by an agreed method a file of Customer data held on the Sigma database on the termination date. The Customer Data will be provided in the standard TEAM export format. For the avoidance of doubt TEAM will not be obliged to adhere to bespoke extract formats or the population of additional 3rd party spreadsheets without prior agreement and additional Charges will apply.

## **21. Notices**

- 21.1. Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in this clause or an Order Form):
  - 21.1.1. delivered personally or sent by courier, in which case the notice shall be deemed to be received; or
  - 21.1.2. sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or
  - 21.1.3. sent by email, in which case the notice shall be deemed to be received, providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.
- 21.2. TEAM's contact details for notices under this clause 21 are as follows: TEAM (Energy Auditing Agency Ltd), 3 Radian Court, Knowlhill, Milton Keynes, MK5 8PJ United Kingdom or by email to notices@teamenergy.com.
- 21.3. The addressee and contact details set out in clause 21 or an Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 21.

## **22. Subcontracting**

- 22.1. TEAM may subcontract any of its obligations under this Agreement, providing that TEAM must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

- 22.2. TEAM shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 22.3. Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that TEAM may subcontract to any reputable third-party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

## **23. General**

- 23.1. No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 23.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 23.3. This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 23.4. Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 23.5. This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 23.6. This Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 23.7. This Agreement shall be governed by and construed in accordance with English law.
- 23.8. The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **24. Interpretation**

- 24.1. In this Agreement, a reference to a statute or statutory provision includes a reference to:
  - 24.1.1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - 24.1.2. any subordinate legislation made under that statute or statutory provision.
- 24.2. The clause headings do not affect the interpretation of this Agreement.
- 24.3. In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.
- 24.4. Terms not otherwise defined in these General Terms and Conditions shall have the meaning given in the applicable Specification or Order Form.

## **25. Publicity**

- 25.1. Following Execution of this Agreement and throughout the Term, TEAM may wish to promote the Customer as being a customer of TEAM and may contact the Customer for relevant comments, images or other material. Should the Customer not wish to be contacted, please notify in writing to clarify what information TEAM may be authorised to work with.

## Appendix 1 – Change Order Proforma

A Change Order must include the following information as a minimum:

Change order to contract ref [.....]

1. Change Order Number
2. Description of Proposal
3. Origin and reason for Proposal
4. Cost of Change Order
5. Details of Changes
6. Effective Date of Change

## Appendix 2 – Data Protection

For the purposes of this Appendix 2, the following additional definitions shall apply.

**“Applicable Laws”** means:

- i. To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
- ii. To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which TEAM is subject.

**“Applicable Data Protection Laws”** means:

- i. To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- ii. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the TEAM is subject, which relates to the protection of personal data.

**“Personal Data”** any personal data which is processed by TEAM in connection with this Agreement, in its capacity as a processor.

**“EU GDPR”** the General Data Protection Regulation ((EU) 2016/679).

**“Purpose”** provision of the Services.

**“UK GDPR”** has the meaning given to it in the Data Protection Act 2018.

### 1. Data Protection

- 1.1 For the purposes of this paragraph clause 1, the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 1.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This paragraph 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 1.1 Without prejudice to the generality of paragraph 1.2, in relation to Personal Data, where the Customer provides Personal Data to TEAM, then TEAM as a processor, shall:
  - (a) process that Personal Data only on the documented instructions of the Customer, which shall be to process the Personal Data for the purposes set out in herein, unless TEAM is required by Applicable Laws to otherwise process that Personal Data. Where TEAM is relying on Applicable Laws as the basis for processing Processor Data, it shall notify the Customer of this before the processing required by the Applicable Laws is performed unless those Applicable Laws prohibit TEAM from so notifying the Customer on important grounds of public interest. TEAM shall inform the Customer if, in the opinion of TEAM, the instructions of the Customer infringe Applicable Data Protection Legislation;
  - (b) implement the technical and organisational measures set out in to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, which 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;
  - (c) ensure that any personnel engaged and authorised by TEAM to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
  - (d) assist the Customer insofar as this is possible, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Personal Data;
  - (f) at the written direction of the Partner, delete or return Personal Data and copies thereof to the Partner on termination of the Agreement unless TEAM is required by Applicable

Law to continue to process that Personal Data. For the purposes of this paragraph, Personal Data shall be considered deleted where it is put beyond further use by TEAM; and

- (g) maintain records to demonstrate its compliance with this Appendix 2 ("Records"); and
- (h) permit the Customer and third-party representatives, on reasonable notice during normal business hours, to gain access to, and take copies of, the Records and any other information held at TEAM 's premises, facilities and equipment for the purpose of auditing TEAM's compliance with its obligations under this Appendix, provided that under no circumstances shall Partner be granted access to TEAM's offices, facilities, storage devices or infrastructure except to the extent required by applicable law. TEAM shall (acting reasonably and in good faith) be entitled to withhold information and limit access to information on grounds of commercial sensitivity and/or confidentiality and shall not be obligated to provide such information that Customer can obtain for itself via the Services.

- 1.2 TEAM may transfer Personal Data outside of the UK as required for the Purpose of providing services under this Agreement, provided that TEAM shall only transfer such Personal Data when necessary, the Personal Data will be deleted within thirty (30) days after the termination or expiration of this Agreement and TEAM shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. Where Personal Data is transferred outside of the UK or EEA to a country without an adequacy decision, TEAM shall ensure appropriate safeguards are in place in accordance with the Applicable Data Protection Legislation. TEAM shall otherwise host and store all Personal Data in data centres located in the EU and/or the UK.
- 1.3 Customer hereby provides TEAM with its general authorisation to engage third party sub-processors to process the Personal Data. Customer shall have the right to request from time to time that TEAM provide Partner a then-current list of subprocessors specific to the Services, which TEAM shall provide to Customer within a reasonable amount of time. If, within thirty (30) days following TEAM's notification of a new Sub-Processor, Customer provides a written notice of objection to TEAM and TEAM chooses to retain the objected-to sub-processor, then Customer may terminate the affected Services.
- 1.4 For each sub-processor that TEAM engages pursuant to paragraph 1.5 above, TEAM shall: (a) put in place a written agreement with the subprocessor which contains terms that provide materially equivalent protection for the Personal Data as the provisions applicable to TEAM under this Appendix and (b) remain responsible for a breach of TEAM's obligations under this Schedule if caused by the sub-processor.
- 1.5 Notwithstanding the foregoing paragraph 1.5, in the event that TEAM proposed to change: (i) the geographical location of a data centre; or (ii) the provider of the data centre; in which Customer data is hosted, TEAM shall provide advance written notice to Customer ("Data Centre Advance Notice") and such change shall not be implemented without Customer's consent. Customer acknowledges that TEAM is the provider of hosted software solutions to multiple clients and it cannot accommodate all individual client's hosting requirements, accordingly if Customer's consent is unreasonably withheld, delayed or conditioned TEAM may terminate this Agreement without penalty by providing not less than thirty (30) days' notice to Customer (such notice to be served no earlier than thirty (30) days following the date of issue of the Data Centre Advance Notice). Customer may also terminate this Agreement without penalty immediately by servicing notice on TEAM within thirty (30) days of receipt of a Data Centre Advance Notice.