

# TEAM Sigma Cloud - Terms of Service Agreement

**By using the teamsigmacloud.com web site or any element of the TEAM Sigma Cloud "Platform", users agree to be bound by the following terms and conditions (the "Agreement").**

## 1. Definitions

1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Account**" means an account enabling a person to access and use the Hosted Services;

"**Agreement**" means these terms of service agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in England;

"**Business Hours**" means the hours of 09:00 to 17:30 GMT/BST Monday to Thursday and 09:00 to 17:00 GMT/BST Friday on a Business Day;

**“Bureau Services Agreement”** means a separate agreement for the provision of additional services between the Provider and the Customer not covered by this agreement;

"**Charges**" means the following amounts:

1. the amounts specified in of an official Quotation or Service Agreement (Financial Provisions);
2. such amounts as may be agreed in writing by the parties from time to time; and
3. amounts calculated by multiplying the Provider's standard time-based charging rates as notified by the Provider to the Customer before the date of this Agreement by the time spent by the Provider's personnel performing the Support Services and rounded by the Provider to the nearest day;

"**Customer**" means, a company OR a partnership OR a Public Sector organisation that has placed a purchase order against a Quotation for Services or has a current Agreement for provision of the Services to access to the Platform;

"**Customer Confidential Information**" means:

1. any information disclosed by or on behalf of the Customer to the Provider 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:
	1. was marked as "confidential"; or
	2. should have been reasonably understood by the Provider to be confidential;
2. Customer Data;

"**Customer Data**" means all data, supplied by the Customer to the Provider 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;

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer via the Support Help Centre;

"**Effective Date**" means the date of any purchase order placed against a Quotation or the execution date of an Agreement by the Customer for provision of the Services;

"**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;

"**Hosted Services**" means TEAM Sigma Cloud, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"**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. any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
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;
3. a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
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;

 "**Hosted Services Specification**" means the specification for the Platform and Hosted Services set out in Part 1 of Schedule 1 (Hosted Services Particulars) and in the Documentation;

**“Initial Subscription Period”** means the minimum subscription period for which this agreement will be in force and during which it may not be terminated other than provided for under clause 18 - Termination.

"**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);

"**Maintenance Services**" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"**Mobile App**" means the mobile application known as Sigma Mobile Data Entry that is made available by the Provider through the Google Play Store;

"**Permitted Purpose**" means the management, processing, analysis and reporting of utility consumption and cost data, utility bills and other related organisational and financial information;

"**Personal Data**" has the meaning given to it in the Data Protection Act 1998;

"**Platform**" means the TEAM Sigma Cloud application hosted on the IBM Cloud as detailed in the Hosted Services Specification and used by the Provider 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;

"**Provider**" means Energy Auditing Agency Ltd of EDW House, 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 ();

"**Schedule**" means any schedule attached to main body of this Agreement;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"**Subscription Period**" means a period of twelve months during the Term, during which time the Provider will provide the Services;

**“Support Help Centre”** means the password protected secure online customer-only website, detailed in Schedule 3 (Support Services);

"**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;

"**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 the Provider agrees in writing shall be supported;

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"**Update**" means a hotfix, patch or minor version update to any Platform software; and

"**Upgrade**" means a major version upgrade of any Platform software requiring upgrades to be applied to databases.

1. **Credit**

2.1 This document was created using a template from SEQ Legal (http://www.seqlegal.com).

## 3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force indefinitely, with termination in accordance with Clause 18.

3.3 The Start Date of the Subscription Period for Services will be set as the first day of the next month following the Effective Date and completion of TEAM Sigma Cloud Hosted setup in accordance with Clause 4.1.

3.4 The initial Subscription Period is that defined in a Hosted Services Quotation; or a Hosted Services Agreement; or a Bureau Service Agreement, executed by the Customer for provision of the Services.

3.5 The Subscription Period will be automatically extended for an additional twelve months on the anniversary of the Start Date each year, after the Initial Subscription Period, subject to termination in accordance with Clause 18.

## 4. Hosted Services

4.1 The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account on or promptly following the Effective Date.

4.2 The Provider 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 the Provider to the Customer under Clause 4.2 is subject to the following limitations:

1. the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Customer; and
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 the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:

1. the Customer must not sub-license its right to access and use the Hosted Services;
2. the Customer must not permit any unauthorised person to access or use the Hosted Services;
3. the Customer must not use the Hosted Services to provide services to third parties.
	1. The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
	2. The Provider 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.
	3. 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. a Force Majeure Event;
5. a fault or failure of the internet or any public telecommunications network;
6. a fault or failure of the Customer's computer systems or networks;
7. any breach by the Customer of this Agreement; or
8. scheduled maintenance carried out in accordance with this Agreement.
	1. The Customer must comply with Schedule 2 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 2 (Acceptable Use Policy).
	2. 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.
	3. The Customer must not use the Hosted Services:
9. in any way that is unlawful, illegal, fraudulent or harmful; or
10. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
	1. 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.
	2. The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider 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 The Provider shall provide the Maintenance Services to the Customer during the contract Term.

5.2 The Provider shall, via the Customer Support Help Centre as defined in Part 1 of Schedule 3 (Support Services), 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 the Provider's other notice obligations under this main body of this Agreement.

5.3 The Provider 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 The Provider 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 The Provider shall provide the Maintenance Services with reasonable skill and care.

5.6 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider 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 the Provider at their discretion. The Provider reserves the right to release new software at any time as business needs dictate.

## 6. Support Services

6.1 The Provider shall provide the Support Services to the Customer during the Term.

6.2 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this main body of this Agreement and as described in Schedule 3 (Support Services).

6.3 The Provider 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 The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.

6.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider 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. Customer Data

7.1 The Customer hereby grants to the Provider 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 the Provider's obligations and the exercise of the Provider'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 the Provider's obligations and the exercise of the Provider's rights under this Agreement.

7.2 The Customer warrants to the Provider that the Customer Data OR the use of the Customer Data by the Provider in accordance with this Agreement will not:

1. breach the provisions of any law, statute or regulation;
2. infringe the Intellectual Property Rights or other legal rights of any person; or
3. give rise to any cause of action against the Provider, in each case in any jurisdiction and under any applicable law.
	1. The Provider shall create a back-up copy of the Customer Data at least each Business Day, shall ensure that each such copy is sufficient to enable the Provider 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 a minimum period of 5 Business Days and one copy every week for 13 weeks.

* 1. Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 7.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

## 8. Mobile App

8.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly this Agreement shall not govern any such use, rights, obligations or liabilities.

## 9. No assignment of Intellectual Property Rights

9.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

## 10. Charges

10.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

10.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider 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 the Provider 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 the Provider.

10.4 The Provider 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 The Provider shall issue invoices for the Charges to the Customer:

1. annually in advance of the period to which they relate; or
2. following the initial setup of the Customer access to the Hosted Services and the provision of logon details to the Customer.
	1. The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 11.
	2. The Customer must pay the Charges by bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).
	3. If the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may:
3. charge the Customer interest on the overdue amount at the rate of 5% 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
4. claim interest and statutory compensation from the Customer pursuant to the Late

Payment of Commercial Debts (Interest) Act 1998; or

1. suspend all Services until any overdue amount has been paid.

## 12. Provider's confidentiality obligations

12.1 The Provider must:

1. keep the Customer Confidential Information strictly confidential;
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;
3. use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
4. act in good faith at all times in relation to the Customer Confidential Information; and
5. not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.
	1. Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential

Information to the Provider'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.

* 1. This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
1. is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
2. is or becomes publicly known through no act or default of the Provider; or
3. is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
	1. 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 the Provider on any recognised stock exchange.
	2. 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 the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement, and that the processing of that Personal Data by the Provider for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).

13.2 To the extent that the Provider processes Personal Data disclosed by the Customer, the Provider warrants that:

1. it will act only on instructions from the Customer in relation to the processing of that Personal Data;
2. it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data; and
3. it will not transfer or permit the transfer of that Personal Data outside the EEA without the prior written consent of the Customer.

## 14. Warranties

14.1 The Provider warrants to the Customer that:

1. the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
2. the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
3. the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

14.2 The Provider warrants to the Customer that:

1. the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
2. the application of Updates and Upgrades to the Platform by the Provider will undertake best endeavours to not introduce any Hosted Services Defects into the Hosted Services;
3. the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software program; and
4. the Platform will incorporate security features reflecting the requirements of good industry practice.
	1. The Provider 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.
	2. The Provider 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.
	3. If the Provider 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, the Provider may at its own cost and expense:
5. modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
6. procure for the Customer the right to use the Hosted Services in accordance with this Agreement.
	1. The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
	2. 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.

## 15. Acknowledgements and warranty limitations

15.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

15.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

15.3 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 the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

15.4 The Customer acknowledges that the Provider 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, the Provider 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.

15.5 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.

## 16. Limitations and exclusions of liability

16.1 Nothing in this Agreement will:

1. limit or exclude any liability for death or personal injury resulting from negligence;
2. limit or exclude any liability for fraud or fraudulent misrepresentation;
3. limit any liabilities in any way that is not permitted under applicable law; or (d) exclude any liabilities that may not be excluded under applicable law.

16.2 The limitations and exclusions of liability set out in this Clause 16 and elsewhere in this Agreement:

1. are subject to Clause 16.1; and
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.
	1. Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
	2. Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
	3. Neither party shall be liable to the other party in respect of any loss of revenue or income.
	4. Neither party shall be liable to the other party in respect of any loss of use or production.
	5. Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
	6. 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 16.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 7.3 and Clause 7.4.
	7. Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
	8. The 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 greater of:
3. £5,000,000; and
4. the total amount paid and payable by the Customer to the Provider under this Agreement in the 12-month period preceding the commencement of the event or events.

16.11 The aggregate liability of each party to the other party under this Agreement shall not exceed the greater of:

1. £5,000,000; and
2. the total amount paid and payable by the Customer to the Provider under this Agreement.

## 17. Force Majeure Event

17.1 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.

17.2 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:

1. promptly notify the other; and
2. inform the other of the period for which it is estimated that such failure or delay will continue.

17.3 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.

## 18. Termination

18.1 Either party may terminate this Agreement by giving to the other party 30 days' notice written notice of termination before the end of the current Subscription Period, subject to the provisions of a current Agreement.

18.2 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.

18.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

1. the other party:
	1. is dissolved;
	2. ceases to conduct all (or substantially all) of its business;
	3. is or becomes unable to pay its debts as they fall due;
	4. is or becomes insolvent or is declared insolvent; or
	5. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
2. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
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); or

## 19. Effects of termination

19.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.11, 8, 11.2, 11.4, 12, 16, 19, 22 and 23.

19.2 The termination of this Agreement shall not affect the accrued rights of either party.

19.3 Within 30 days following the termination of this Agreement for any reason:

1. the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
2. the Provider must refund to the Customer any Charges paid by the Customer to the Provider 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.

19.4 Within 30 days following the termination of this Agreement, and following receipt of any outstanding Charges in accordance with Clause 19.3(a), the Provider will securely send to the Customer by an agreed method an ASCII file of Customer data held on the TEAM Sigma Cloud database on the Termination date. The Customer data will be provided in the standard TEAM export format (copy of which is available in the Documentation). For the avoidance of doubt the Provider 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.

## 20. Notices

20.1 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 Clause 20.2 and those provided to the Provider as part of any Software as a Service Agreement or Purchase Order:

1. delivered personally or sent by courier, in which case the notice shall be deemed to be received; or
2. sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; or
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.

* 1. The Provider's contact details for notices under this Clause 20 are as follows: TEAM (Energy Auditing Agency Ltd), EDW House, 3 Radian Court, Knowlhill, Milton Keynes, MK5 8PJ United Kingdom or by email to notices@teamenergy.com.
	2. The addressee and contact details set out in Clause 20.2 and those provided to the Provider as part of any Software as a Service Agreement or Purchase Order 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 20.

## 21. Subcontracting

21.1 The Provider may subcontract any of its obligations under this Agreement, providing that the Provider 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.

21.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

21.3 Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that the Provider 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.

## 22. General

22.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

22.2 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).

22.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

22.4 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.

22.5 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.

22.6 Subject to Clause 16.1, 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.

22.7 This Agreement shall be governed by and construed in accordance with English law.

22.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## 23. Interpretation

23.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:

1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
2. any subordinate legislation made under that statute or statutory provision.
	1. The Clause headings do not affect the interpretation of this Agreement.
	2. 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. Publicity

24.1 Following Execution of this Agreement and throughout the Term, the Provider may wish to promote the Customer as being a customer of the Provider 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 the Provider may be authorised to work with

# Schedule 1 (Hosted Services Particulars)

## 1. Specification of Hosted Services

### Software Functionality

The following functionality will be provided as part of the TEAM Sigma Cloud Hosted Service. TEAM Sigma is provided on the understanding that data will be stored in a single database.

#### Data Storage

The TEAM Sigma Cloud M&T System can store historic energy consumption and cost data within the Data Storage limits specified within the Fair Use Policy. Additional storage can be provided at the rates shown.

#### Licencing Levels

Database size is limited by the total number of data points in the database. Data Points are counted as objects that store time-series data and include:

* Accounts
* Periodic Channels
* Non-Periodic Channels

The current software licencing levels for the TEAM Sigma system are for up to 5000 data points.

The User Licences for your organisation will be set out in your agreement arranged with your Key Account Manager.

#### Modules

Software Modules to be provided as part of the system and Optional modules that have be added:

TEAM Sigma Cloud Modules under current licence

* Admin
* Analysis
	+ Basic Browsing
	+ Target Browsing
* Bill Entry
* Bill Viewing
* Dashboard
* Data Management
	+ Channel Export
	+ Data Edit Spreadsheet
	+ Data Input
	+ Importing
* Events Overview
* Performance Overview
* Period Summary Overview
* Query Management
* Reporting
* Sigma Energy Intelligence
* Sigma Energy Viewer
* Site Overview
* Scheduler
* Validator Management

Optional Modules available (contact your Key Account manager for details):

* Accounts Link
	+ Accounts Link Download
	+ Accounts Link Export
* Bulk Bill Checker
	+ Account History
	+ Batch View
	+ Load Batch
	+ USM Setup (Utility Specific Module)
	+ Validator Management
* Tenant Billing

N.B. Details of Module functionality are provided in the Documentation these may be updated and additional Modules may be added in accordance with the Agreement.

### Hosting Provider

TEAM Sigma Cloud employs the power of IBM’s Cloud Hosting Platform, providing industry leading performance and the highest levels of security with ISO27001 compliance.

Hosted in the IBM's London data centre with superfast Gigabit Internet connectivity and ‘unlimited’ space to support the growth in Hosted Services, TEAM Sigma Cloud provides the platform to deliver the next generation of TEAM software solutions.

TEAM Sigma Cloud based in the IBM Cloud enables us to access more servers to help us grow and meet customer demand. We can fully utilise the power of the latest TEAM Sigma software, which uses a scalable Worker and Memory Cache system that enables additional server resources to be added on demand.

TEAM Sigma Cloud uses standard IBM systems and all infrastructure is supported 24-hours a day, seven days per week, giving customer’s peace of mind. This also provides extra monitoring tools that are more advanced and easier to use enabling us to control and optimise application performance.

### How users connect to the system

Access to the TEAM Sigma software is simply via a Supported Web Browser.

No additional software or Firewall permissions are required, simply access to the publicly available URL:

https://www.teamsigmacloud.com for TEAM Sigma Cloud

(and https://www.sigmaenergyviewer.com for the Sigma Energy Viewer)

### Security

#### Access Security

Log on to customer databases is achieved through a three field check with your company, username and password being required via your web browser.

User access details are stored in a dedicated database separate from customer data, which controls all permissions to data, features and functions of TEAM Sigma. Users are managed by customers through the TEAM Sigma Admin activity.

#### Platform Security

**Compliance** – The TEAM Sigma Cloud Data Centre is ISO27001 and ISO27017 compliant, as well as a Cloud Security Alliance - STAR Registrant, PCI Compliant and approved members of the EU-US Privacy Shield Framework.

**Network Security** – IBM Cloud’s innovative network architecture and commitment to using the most advanced hardware technologies dramatically minimise data centre and server exposure to outside threats. The network integrates three distinct and redundant architectures into a multi-tiered network topology.

**Secure Connection Protected** – Your connection to the TEAM Sigma Cloud is TLS protected using an identity verified Security Certificate to encrypt your data at 128bits. SSL Labs tests give TEAM Sigma Cloud a Grade B, see:

<https://www.ssllabs.com/ssltest/analyze.html?d=teamsigmacloud.com>

**24x7 on-site security. Rigorous controls. Peace of mind** – Every IBM Cloud Data Centre is hardened against physical intrusion, and server room access is limited to authorised IBM employees only. All the controls (inside and outside the data centre) are vetted by third-party auditors, and we can provide detailed reports for our customers' own security certifications if required. The most sensitive financial, healthcare, and government workloads require unparalleled protection and many such organisations use IBM Hosting Platforms to achieve this level of security.

For more information on IBM Cloud platform security visit:<https://www.softlayer.com/security>

#### Application Penetration Testing

The TEAM Sigma browser interface application is regularly penetration tested by our Development QA Test Team as well as using external companies.

### Data Transfer

Transferring data to and from the TEAM Sigma Cloud system is simple and easy. Most data transfer happens through the web browser with file uploads and downloads via the https connection.

TEAM Sigma can also import data via direct connections to customer pop3 email and FTP servers, if required. These imports are configured through the TEAM Sigma browser interface and can be executed manually or scheduled to run at pre-set times.

### Data Backup

All customer data is backed up on a daily basis using a combination of file storage snapshots with offsite replication and EVault Backup which provides an enterprise-class backup and recovery solution, with a central management and data repository.

Backup is managed through a web service hosted in an IBM data centre and all backups are completed over IBM Cloud's secure private network. For additional security, customer data is encrypted ‘in flight’ across the network, and in the repository, where it is also compressed.

The backup services are configured to use an off-site repository and replication (currently in Amsterdam). Thanks to IBM Cloud’s high speed private network backbone, the location has no impact on the speed of backups, and the geodiversity provides excellent Business Continuity cover.

Our backup schedule provides three months of cover, with five working days on hand at any given time, and weekly backups going back thirteen weeks.

### Redundancy and Business Continuity

TEAM have in place a full **business continuity** and disaster recovery plan as part of our ISO9001 compliant Quality Management System. This includes details for restoration of the full TEAM Sigma Cloud system under a number of scenarios.

**Availability** – The system is designed to provide availability of greater than 99% during normal working hours (9-5:30 Monday to Friday) measured across each 12-month period. You can check on the status of the TEAM Sigma Cloud any time by visiting: [http://status.teamsigmacloud.com.](http://status.teamsigmacloud.com/)

**Redundant power, cooling, and network carriers** - All IBM Cloud data centres maintain multiple power feeds, fibre links, dedicated generators, and battery backup. They are built from industryleading hardware and equipment, ensuring the highest level of performance, reliability, and interoperability. IBM regularly inspect and test redundant n+1 power and cooling resources to guarantee stability in data centre pods.

**Virtualised Servers** - All application servers on the TEAM Sigma Cloud are virtualised and images are backed-up at different locations at regular intervals so they can be restarted in any location. Customer data is stored independently of application servers and can easily be restored from the Data Backup to new storage locations as required.

**Recovery** - The estimated recovery time in the unlikely event of a long-term total failure at our primary data centre (London), is three working days (depending on suitable response times from IBM Cloud and counted from the decision to switch over). The server farms will be recreated utilising offsite virtual server images and customer data then recovered from Evault.

## 2. Fair Use Policy

As part of our commitment to providing a high-quality, fast and reliable service, the Provider has a Fair Use Policy (also referred to as the FUP) for its Software as a Service (SaaS), Hosted Services and Bureau Services Products, specifically TEAM Sigma Cloud.

**Why do we have a Fair Usage Policy?**

The Provider Software is hosted in a multi-tenant environment. This means that our products are used concurrently by a number of subscribers. If a single customer places very high demands on the service, then it is possible that this will affect the experience for other users.

The vast majority of our customers use their service considerately and their usage levels during peak hours don't disproportionately affect the shared network and service capacity. Even though only a very small number of our customers could use the service inappropriately, their activity has the potential to affect the service for others. Our Fair Use Policy manages inappropriate use and makes sure the service can be used fairly by everyone.

### The Fair Usage Policy

Usage of the Hosted Services is monitored on a continuous basis. Only customers that consistently generate exceptionally high load over a sustained period of time will be affected by the FUP. This is currently defined as per the limits detailed below, although the Provider reserves the right to amend these limits.

The user and data storage limits for your organisation will be set out in your agreement arranged with your Key Account Manager.

If a customer repeatedly or consistently exceeds this FUP the Provider reserves the right to restrict service or levy Charges for excessive usage**.**

Charges for Data Storage in excess of the limits shown above are based upon the cost made within your agreement arranged with your Key Account Manager.

Please contact your Customer Account Manager for costs relating to increased numbers of users.

## 3. Customer Responsibilities

The customer is responsible for the following items to facilitate access to TEAM Sigma Cloud:

* Provision of PCs with appropriate Web Browser software at each location requiring access matching minimum browser version outlined by the Provider (which may be revised from time-to-time as required);
* A minimum 2Mbit broadband Internet connection (this can be checked using the tool given in the Documentation);
* The management of user access to TEAM Sigma Cloud utilising the User Administration tools provided and the security of all user access details provided to employees of the customer or third parties;
* Management of the TEAM Sigma Cloud database, including but not limited to, database set-up, data entry, schedule management and data transfer.

# Schedule 2 (Acceptable Use Policy)

## 1. Introduction

1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:

1. the use of the websites at [https://www.teamsigmacloud.com](https://www.teamsigmacloud.com/) and [https://www.sigmaenergyviewer.com,](https://www.sigmaenergyviewer.com/) any successor website, and the services available on that website or any successor website (the "**Services**"); and
2. the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
	1. References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to Energy Auditing Agency Ltd. (and "we" and "our" should be construed accordingly).
	2. By using the Services, you agree to the rules set out in this Policy.

## 2. General usage rules

2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2 You must not use the Services:

1. in any way that is unlawful, illegal, fraudulent or harmful; or
2. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

2.3 You must ensure that all Content complies with the provisions of this Policy.

## 3. Unlawful Content

3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).

3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

1. be libellous or maliciously false;
2. be obscene or indecent;
3. infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
4. infringe any right of confidence, right of privacy or right under data protection legislation;
5. constitute negligent advice or contain any negligent statement;
6. constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
7. be in contempt of any court, or in breach of any court order;
8. constitute a breach of racial or religious hatred or discrimination legislation;
9. constitute a breach of official secrets legislation; or
10. constitute a breach of any contractual obligation owed to any person.

3.3 You must ensure that Content is not and has never been the subject of any threatened or actual legal proceedings or other similar complaint.

## 4. Graphic material

4.1 Content must be appropriate for all persons who have access to or are likely to access the Content in question.

4.2 Content must not depict violence in an explicit, graphic or gratuitous manner.

4.3 Content must not be pornographic or sexually explicit.

## 5. Factual accuracy

5.1 Content must not be untrue, false, inaccurate or misleading.

5.2 Statements of fact contained in Content and relating to persons (legal or natural) must be true.

## 6. Negligent advice

6.1 Content must not consist of or contain any legal, financial, investment, taxation, accountancy or medical advice, and you must not use the Services to provide any legal, financial, investment, taxation, accountancy or medical advisory services.

6.2 Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

## 7. Etiquette

7.1 Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.

7.2 Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.

7.3 Content must not be liable to cause annoyance, inconvenience or needless anxiety.

7.4 You must not use the Services to send any hostile communication or any communication intended to insult, including such communications directed at a particular person or group of people.

7.5 You must not use the Services for the purpose of deliberately upsetting or offending others.

7.6 You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.

7.7 You must ensure that Content does not duplicate other content available through the Services.

7.8 You must ensure that Content is appropriately categorised.

7.9 You should use appropriate and informative titles for all Content.

7.10 You must at all times be courteous and polite to other users of the Services.

## 8. Marketing and spam

8.1 You must not without our written permission use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering.

8.2 Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.

8.3 You must not send any spam or other marketing communications to any person using any email address or other contact details made available through the Services or that you find using the Services.

8.4 You must not use the Services to promote or operate any chain letters, Ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar letters, schemes or programs.

## 9. Gambling

9.1 You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

1. **Monitoring**

10.1 You acknowledge that we may actively monitor the Content and the use of the Services.

## 11. Data mining

11.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

## 12. Hyperlinks

12.1 You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

## 13. Harmful software

13.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

13.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

# Schedule 3 (Support Services)

## 1. Support Package

### Helpdesk

Our professional Helpdesk provides quality support from specialist staff between 9am and 5.30pm Monday to Thursday and 9am until 5pm on a Friday (excluding Public Holidays).

The helpdesk ensures user’s queries can be resolved quickly and easily. You can contact us online, via email or by phone.

### Support Help Centre

You will be provided with password protected access to a secure online customer-only Support Help Centre ([https://support.teamenergy.com)](https://support.teamenergy.com/). Available 24/7, you can submit requests, track their progress, view all TEAM Sigma Cloud Documentation, participate in the customer discussion community, access the latest TEAM news and much more. Here you can view and subscribe to Hosted Services platform announcements covering Updates and Upgrades to the platform.

### Online Training Academy

The TEAM Online Training Academy provides customers with the opportunity to train or refresh their Sigma knowledge, at their own pace. Our courses provide a structured way of finding out about the different aspects of the software. They are delivered one step at a time and are accessible on mobile, tablet and desktop to provide flexibility of learning. Visit [http://academy.teamenergy.com](http://academy.teamenergy.com/) to register.

### Software Improvements

We continually supply TEAM software improvements at no extra charge to ensure you benefit from regular updates to maintain compatibility with billing and data formats, new features, improved security and much more.

### Webinars

Our Support Engineers regularly run educational webinars focusing on new and updated software. These live webinars are free to all our customers. Recordings of previous webinars are available to view on-demand on the Support Portal.

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