

MBC or Non-MBC Customer:
TPI Company Name: Energy Made Simple Limited
TPI Company Registration Number: 10465738
ADR Membership Number: C35ENER37

Energy Made Simple Limited

Broker Services - Conditions of Supply

These Terms and Conditions ('Terms') are the standard terms and conditions for the provision of energy brokering services and such other additional services agreed by Energy Made Simple Limited a limited company registered in England and Wales under company number 10465738 whose registered address is Unit 2 - 4 Protection House, Albion Road, North Shields, Tyne & Wear, England, NE30 2RH ('Us', 'We' and 'Our(s)') These Terms govern Your use of Our Broker Services and/or CCL/VAT Services (defined below). Please read these Terms carefully as You will be bound by them. We will ask You to agree to and sign these Terms. The Terms will be legally binding.

1 Definitions and interpretation

'Broker Services'

means the provision by Us of identifying, brokering, negotiating, switching, and securing competitive commercial energy prices for You obtained from Energy Suppliers which is intended to result in an Energy Contract. We may also provide general account management services for You upon request, please contact us for more details;

'CCL'

means the Climate Control Levy which is an environmental tax charged on the energy that businesses use;

'CCL/VAT Service'

means the review and assessment by Us of the different levels of VAT & CCL for You to ensure You are paying the correct level of VAT and CCL appropriate to Your business. We will complete the relevant paperwork to ensure You are on the correct rate as part of the CCL/VAT Service;

'CCL/VAT Service Fee'

means the fee payable by You and notified by Us to You in writing for the CCL/VAT Service which will be a percentage of the rebate or discount applied to your Contract Rate identified and obtained by Us in providing the CCL/VAT Service in relation to either/or CCL or VAT or a fixed fee whichever is greater;

'COO'

means a Change of Occupancy and includes but is not limited to circumstances where:

- an outgoing owner sells freehold or leasehold in premises to another entity;



- a business is sold to a different person/legal entity but the new management retains company name and premises;
- where a business is dissolved and one or more directors set up a new business which is engaged in the same or similar business at the premises.

'COT'

means a Change of Tenancy and includes but is not limited to circumstances where:

- an outgoing tenant surrenders and landlord accepts surrender of a lease;
- an outgoing tenant assigns a lease to another entity;
- an outgoing tenant surrenders lease but the landlord refuses to accept the surrender;
- there is a change of company name, including where company moves from sole trader to limited company or vice versa;
- an incorrect name has been recorded in an Energy Supplier's systems;
- a business changes its name but continues to do a similar type of business and some or all directors remain unchanged.

'Chosen Energy Contract Term'

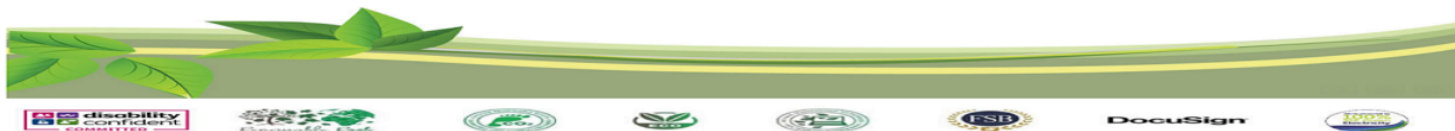
means the fixed period of time during which You will be contractually obliged to purchase Your energy requirements from the Chosen Energy Supplier at the Chosen Energy Supplier Rate as described in Your Energy Contract;

'Chosen Energy Supplier'

means the specific energy supplier who wishes to provide the energy services to You at the rates set out in either the applicable Energy Contract or the Comparison Spreadsheet;

'Commission'

means any sums due to Us from the Energy Supplier as a result of the provision of Our Broker Services to You, where such commission is paid directly to us by the Energy Supplier as described in clause 7;



'Commission Acknowledgement'

means the document provided to You by Us which provides details of Our Commission;

'Comparison Spreadsheet'

means the spreadsheet We may provide to You which outlines details of the Energy Supplier's Energy Contracts along with details of the Contract Rate.

'Commencement Date'

means the date as defined in clause 2.1;

'Contract Rate'

means the rate the Energy Supplier will charge You under the Energy Contract for the supply of energy, consisting of a unit charge and a standing charge which may also include a day unit charge and a night unit charge and such other charges that will be payable by You as set out in the Energy Contract;

'Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures'

means as defined in the Data Protection Legislation;

'Data Protection Legislation'

means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements from time to time which apply to a party relating to the use of the Personal Data;

'Energy Contract'

means the contract between You and the Chosen Energy Supplier for the supply of energy at the Chosen Energy Supplier Rate which shall be governed by the terms and conditions made between You and the Chosen Energy Supplier);

'Energy Supplier'

means a supplier of MOP water, gas, and electricity energy services in the energy supplier market;

'Estimated Annual Consumption'

means the amount of energy that you are estimated to consume per annum;

'Export Contract'

means an Energy Contract which provides for the exportation of electricity to the Network;



'Exported Electricity'

means the amount of energy that is not used by You and is exported to the Network;

'Law'

means any and all applicable statute, rule, regulation, directive or similar;

'Letter of Authority One'

means the letter in which You give Us authority to contact the Energy Suppliers on Your behalf to request and negotiate prices and, if described in the letter, to negotiate an Energy Contract on Your behalf;

'Letter of Authority Two'

means the letter in which You give Us authority to conclude Your Chosen Energy Contract on Your behalf;

'MOP'

means the meter operator service.

'Network'

means the electricity distribution network.

'Our Contract'

means the contract We enter into with You for provision of Our Broker Services and/or the CCL/VAT Service which shall consist of these Terms and any Commission Acknowledgement We provide to You;

“Pass Through Contract”

means the contract between You and the Chosen Energy Supplier and which includes the charges You are liable to pay that are separate from the Contract Rate. The Pass Through Contract is billed separately and the rates can fluctuate through the Chosen Energy Contract Term. These charges are referred to as non-energy costs and may include but are not limited to: Feed in Tariff (FiT), Renewable Obligation (RO), Transmission Network Use of Systems (TNUoS), Distribution Use of Systems (DuoS), Balancing Services Use of Systems (BSUoS), Assistance for Areas with High Electricity Distribution Costs (AAHEDC), Climate Change Levy (CCL), Fossil Fuel Levy (FFL), Elexon, Data Collector/Data Aggregator (DC/DA), Reactive Power, Meter Operator (MOP) or any other pass-through charges notified to You by the Energy Supplier;

Terms

means as defined at the head of this document;

UK GDPR

means as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

'VAT'



means value added tax or any equivalent tax chargeable in the UK;

'You' and 'Your'

means you, the person, company or other body using Our Broker Services;

'Your Default'

means as defined in clause 10.3;

2 Formation of Our Contract

2.1 Our Contract will come into existence on the earlier of You signing the Letter of Authority One or You signing these Terms (“**Commencement Date**”)

2.2 Our Contract will commence on the Commencement Date and shall subject to earlier termination of Our Contract under clause 11 continue for either (i) 12 months or (ii) until the expiry or termination of the Energy Contract, whichever is longer (if applicable).

2.3 The Broker Services and the CCL/VAT Service are supplied subject to these Terms and these Terms shall be the sole terms and conditions applicable to Our Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by Law, trade custom, practice or course of dealing.

2.4 We may refuse the right to provide the Broker Services or the CCL/VAT Service to You at Our absolute discretion.

3 Performance of the Broker Services

3.1 We shall use reasonable endeavours to provide the Broker Services using reasonable skill and care. Quotes and energy prices that We provide to You are obtained by Us searching the Energy Supplier market using information, data and pricing provided by Energy Suppliers and/or information provided by You however, You accept and agree that:

3.1.1 We may only provide you with details of one Energy Supplier if that Energy Supplier meets your requirements;

3.1.2 We accept no responsibility or liability for any change in energy prices between Us providing any quote, energy price or Comparison Spreadsheet to You and commencement of Our Contract or the Energy Contract;

3.1.3 We may not be able to secure the best available rates and, in some instances You may be able to secure a more favourable deal directly from the Energy Supplier yourself; and

3.1.4 We shall have no responsibility or liability for any decision You may make, or choose not to make in connection with any quotes or energy prices nor on advising You as to the correct or most appropriate or opportune timing to negotiate any energy prices with an Energy Supplier.

3.2 Notwithstanding clause 3.1, You acknowledge and agree that You are required to check and agree the terms of any Energy Contracts provided by Us. You acknowledge and agree that you shall be solely responsible and liable for checking Your Energy Contract and agreeing the terms of it with Your Chosen Energy Supplier. Ultimately the responsibility for which Energy Contract You choose rests with You. You acknowledge and accept that the best Energy Contract for You may not be the cheapest deal.



4 Independent Energy Consultant

4.1 We are an independent energy consultant, and nothing in these Terms is intended to, or shall be deemed to, establish any partnership between You and Us or Us and any Energy Supplier.

4.2 By signing up to the Broker Services in accordance with these Terms, You give us limited authority in accordance with Letter of Authority One, which allows Us:

4.2.1 to review Your energy requirements and current energy contract and obtain quotations from one or more Energy Suppliers which may be of benefit to You; and

4.2.2 contact Your Chosen Energy Supplier and to provide Your details to Your Chosen Energy Supplier (which may be your existing supplier in case of switching between different contracts of the same supplier).

4.3 Once you have Chosen Your Energy Supplier and You have signed Letter of Authority Two (and provided Us with a signed copy) we will have authority to complete the application or registration forms or application questionnaires in relation to the Energy Contract with Your Chosen Energy Supplier, in order to arrange the switching of contracts or suppliers on Your behalf.

5 Comparison Spreadsheet

5.1 The Comparison Spreadsheet and the prices contained within it are an indication of the offers/prices available at the time We send it to You. Due to the nature of the energy markets, prices can often be subject to increases and decreases on an hourly basis. Your Chosen Energy Contract may have rates which may differ slightly from that on the Comparison Spreadsheet as a result.

5.2 The provision of the Comparison Spreadsheet does not constitute an offer to You by Us or by any Energy Supplier to provide energy services to You and each Energy Supplier will have their own terms and conditions which they will require You to agree to as part of Your Energy Contract with them and prior to providing any energy services to You.

5.3 Energy prices upon which We base Our Comparison Spreadsheet and provide Broker Services fluctuate on an hourly or daily basis and whilst We endeavour to secure the most competitive rates, We cannot guarantee the deals set out in the Comparison Spreadsheet are the cheapest or the best available on the market. You acknowledge and agree that whilst we have access to a wide range of Energy Suppliers we do not have access to each and every Energy Supplier, nor all prices being offered from time to time by every Energy Supplier. The prices presented may or may not be more or less expensive than prices that can be negotiated from other energy brokers and/or consultants.

5.4 Your Chosen Energy Supplier shall be entitled at any time to refuse to enter into an Energy Contract with You. You acknowledge and agree that whilst this may be unlikely it is not Our responsibility and is outside of Our control and we shall have no liability for any loss, damage, costs or expenses You suffer as a result of any decision taken by Your Chosen Energy Supplier to refuse to enter into an Energy Contract with You.

5.5 Pass Through Charges may be excluded from the charges seen on your Energy Contract and may be charged separately to your Contract Rate. You are responsible for the Pass Through Contract charges in addition to the Contract Rate. It is Your responsibility to read what is and is not included within the Energy Contract; this will not be Our responsibility and we shall have no liability for any Pass Through Charges which You are liable to pay. Please take the time to carefully understand the Energy Contract and if You do have any questions, please let Us know.



5.6 There are Energy Suppliers that We do not work with or have access to prices from, so these will not be included in any prices We negotiate. There is no set number of Energy Suppliers that We tender to and We may, at Our sole discretion, tender to as little as one supplier as part of Our pricing process.

5.7 Our Comparison Spreadsheet is based on the information available to Us at the time it is produced. The sole responsibility is on You in choosing the duration of Energy Contract that is most suitable for you. We are not responsible for, and shall have no liability for, the decisions you make in connection with the information provided in the Comparison Spreadsheet or an Energy Contract.

5.8 Upon receiving confirmation from you that you accept one of the Energy Contracts, we will provide you with the Letter of Authority Two. You acknowledge and agree that We cannot take any further action on Your behalf (including concluding an Energy Contract on Your behalf) until we receive a signed Letter Authority Two from You.

6 Energy Contract

6.1 When you chose an Energy Contract on the based on the information, we have sent to you which will either be set out in Our Comparison Spreadsheet or the provision by Us of a draft Energy Contract You will be required to execute a contract with Your Chosen Energy Supplier.

6.2 Once the Energy Contract has been signed by You this will be legally binding agreement between You and Your Chosen Energy Supplier. You will not be able to cancel, terminate or revoke the Energy Contract unless the Energy Contract provides for this and You will be bound by its terms and conditions of the Chosen Energy Contract at the Chosen Energy Contract Rate. Unless permitted by the terms of Your Chosen Energy Contract You will not be able to change to a different Energy Supplier during the period in which Your Energy Contract is in force.

6.3 You acknowledge and understand that:

6.3.1 You are not entering into an Energy Contract with Us;

6.3.2 We do not make any guarantees as to the quality of the energy service You receive from Your Chosen Energy Supplier; and

6.3.3 We are not responsible for any delays or failures caused by You or Your Chosen Energy Supplier effecting either a transfer of supply or renewal of supply.

7 Our Commission

7.1 You acknowledge that in most circumstances We will receive a Commission which is payable by Your Chosen Energy Supplier for providing the Broker Services.

7.2 We will only earn a commission if We are successful in brokering an Energy Contract with an Energy Supplier on Your behalf. If We are not successful in brokering an Energy Contract on Your behalf with an Energy Supplier, We will earn no commission. We shall be deemed to be successful in brokering an Energy Contract with an Energy Supplier on Your behalf if upon receipt from You of a signed Letter of Authority Two, Commission Acknowledgement and these Terms.

7.3 Our commission:



7.3.1 the rate of Commission payable to Us is set out in our Commission Acknowledgement that We present to You; and

7.3.2 shall be calculated as set out in clause 7.5.

7.4 The timing and amount of the Commission will vary for each Energy Supplier. We will disclose the Commission due to Us and payable by the Energy Supplier to you in Our Commission Acknowledgement.

7.5 How the Commission is calculated will vary for each Energy Supplier and will either be based on either of the following or a combination of the following (as set out in the Commission Acknowledgement provided to You):-

7.5.1 Commission built into the Unit Rates

(a) Our Commission will be an amount charged to the Energy Supplier for every kWh of energy that You consume over the Chosen Energy Contract Term.

(b) You consent to us receiving Commission from the Energy Supplier at a rate of up to [£0.04] per kWh.

(c) The total Commission received by us from the Energy Supplier will be the amount of the Commission multiplied by your total energy usage over the Chosen Energy Contract Term.

(d) The Energy Supplier will include the amount of the Commission in the unit rate that it charges to You.

(e) By way of illustration only, if we secure an initial unit rate from the Energy Supplier for energy at £0.15 per kwh and charge a Commission of £0.02 per kwh. The total unit rates charged by the Energy Supplier would be £0.17 per kWh. Our total Commission would be calculated as £0.02 multiplied by Your total energy consumption over the Chosen Energy Contract Term.

7.5.2 Commission built into the Standing Charge

(a) Our Commission may be a fixed sum payable for each day of the Chosen Energy Contract Term.

(b) Alternatively, We will apply an uplift in p/kwh to the Estimate Annual Consumption, we then divide the expected annual commission value by 365 days and then it is multiplied by the number of days in the Chosen Energy Contract Term to give us the overall Commission we will receive throughout the Energy Contract Term.

(c) The Energy Supplier will include the amount of the Commission in its standing charge which will be payable by You.

(d) By way of illustration only, if we apply a Commission rate of £0.02 per kWh to an Estimate Annual Consumption of 100,000 kwh per year of the Energy Contract, our Commission will be £5.47 per day and our total Commission in each year of the Energy Contract will be £2000. In this illustration, where the Energy Supplier has proposed an initial standing charge of £0.10 per day, this will be increased to a total standing charge of £5.57 per day.

(e) By way of illustration only, if the Energy Contract has a Chosen Energy Contract Term of 3 years and we apply a Commission rate of £0.02 per kWh to an Estimate Annual Consumption of 100,000 kwh for the Chosen Energy Contract Term, our Commission will be £5.47 per day and our total Commission over the Chosen Energy Contract Term will be £6000. In this illustration, where the Energy Supplier has proposed an initial standing charge of £0.10 per day, this will be increased to a total standing charge of £5.57 per day.



(f) You consent to us receiving a Commission built into the standing charge and calculated on the above basis by reference to the higher of a rate of up to £0.04 per kWh or the rate stated in our Commission Acknowledgement.

7.5.3 Fixed Fee

In some circumstances We will charge a fixed fee for the Broker Services. The amount payable will be in accordance with our standard rates and will be set out in the Commission Acknowledgement or where applicable the Energy Contract.

7.5.3.1 In instances where the expected annual consumption for either your electricity or gas is below 10,000 kwh, we may charge up to £400 per year per meter in the way of commission, which will be incorporated in to the standing charge.

(d) By way of illustration only, an Estimate Annual Consumption of 10,000 kwh per year of the Energy Contract, our Commission will be £0.65 per day and our total Commission in each year of the Energy Contract will be £237.25. In this illustration, where the Energy Supplier has proposed an initial standing charge of £0.10 per day, this will be increased to a total standing charge of £0.75 per day.

(e) By way of illustration only, if the Energy Contract has a Chosen Energy Contract Term of 3 years and an Estimate Annual Consumption of 10,000 kwh per year of the Energy Contract, our Commission will be £0.65 per day and our total Commission in each year of the Energy Contract will be £237.25. In this illustration, where the Energy Supplier has proposed an initial standing charge of £0.10 per day, this will be increased to a total standing charge of £0.75 per day. Our total Commission over the Chosen Energy Contract Term will be £711.75.

7.5.4 Export Contracts

(a) If Your Energy Contract is an Export Contract Our Commission will be an amount charged for every kWh of Exported Electricity over the Chosen Energy Contract Term. The Commission will be payable on any Exported Electricity for the duration of the Energy Contract.

(b) You consent to us receiving Commission from the Energy Supplier at a rate per kWh of Exported Electricity.

(c) By way of illustration only, if we apply a Commission rate of £0.02 per kWh for the Exported Electricity and under the Export Contract You export 10,000 kwh back to the Network We will receive a Commission of £200.

7.5.5 Water Contract

If Your Energy Contract is a with a water Energy Supplier We will charge You a fixed fee which will be charged for the duration of Your Chosen Energy Supply Contract. The amount payable will be in accordance with our standard rates and will be set out in the Commission Acknowledgement or, where applicable, the Energy Contract.

7.5.6 Meter Operator Contract

If You Your Energy Contract is a (MOP) contract We will charge You a fixed fee which will be charged for the duration of Your Chosen Energy Supply Contract. The amount payable will be in accordance with our standard rates and will be set out in the Commission Acknowledgement or where applicable the Energy Contract.

7.6 You will not pay any additional fees for the Broker Services other than the Commission for the Chosen Energy Supplier as set out in this clause 7 and the Commission Acknowledgement.



7.7 If you cancel, terminate, assign, transfer or do not proceed with the Energy Contract for any reason, including but not limited to the agreeing of an alternative energy contract or submitting a COT or COO to the Chosen Energy Supplier, We may receive no fee for Our Broker Services and will have incurred time and loss. In these circumstances, We reserve the right to charge You at Our absolute discretion the Commission or other fees that We have lost as a result, calculated on the basis set out in clause 7.5 and which You acknowledge and agree is a clear reflection and pre-estimate of Our loss. This is in addition to any charges the Chosen Energy Supplier may also attempt to recover for the failed Energy Contract.

8 Estimate Annual Consumption

8.1 The Estimated Annual Consumption you see on the Energy Contract may differ to the Estimate Annual Consumption provided to Us.

8.2 We use various sources to determine Your Estimated Annual Consumption including :-

8.2.1 details from Your current energy supplier;

8.2.2 Transco (gas) - this is an industry tool used by the suppliers to obtain the latest gas usage and is typically used for pricing.

8.2.3 D 19 Flow (gas) or Electra Link (electric) - these are two separate tools used by some suppliers to gather electricity and/or gas consumption; and

8.2.4 information from You including invoices from Your current energy supplier.

8.3 In some circumstances, such as if you are moving to a new property, we will ask you to sign a nomination form which will set out Your Estimated Annual Consumption based on various assumptions. We will not have information available about your usage from Your previous Energy Supplier for that property so certain assumptions will need to be made and We want you to confirm You are happy with Our calculation.

8.4 If you are unhappy with the Estimate Annual Consumption, please either contact Us and We will either request from Your Chosen Energy Supplier that the Estimate Annual Consumption be amended, or do not sign the Energy Contract.

8.5 Where our Commission is based on the unit charge it will be reconciled according to your confirmed annual consumption both during and/or at end of the Energy Contract.

9 CCL/VAT Service

9.1 We shall use reasonable endeavours to provide the CCL/VAT Service using reasonable skill and care.

9.2 We will be entitled to a receive the CCL/VAT Service Fee for the CCL/VAT Service.

9.3 We will submit an invoice for the amount of the CCL/VAT Service Fee following the receipt of the calculation of the rebate or discount applied to your Contract Rate from You or the Energy Supplier.

9.4 The amounts payable pursuant to clause 8.3 shall be due to Us within 28 days of the date of the invoice and You acknowledge and agree that You are responsible for making such payment to Us within this timeframe

9.5 All sums payable for the CCL/VAT Service:



9.5.1 are exclusive of VAT, which shall be added to the sum in question;

9.5.2 shall be paid in full without any set off, counterclaim, withholding or deductions (including deductions in respect of items such as income, corporation, or other taxes, Commission and/or duties) except You are required by law to deduct withholding tax from sums payable to Us. If You are required by law to deduct withholding tax, then You shall take all steps necessary to:

- lawfully avoid making any such deductions; or
- enable You to obtain a tax credit in respect of the amount withheld.

9.6 If You fail to make any payment due to Us for the CCL/VAT Service by the due date for payment, You shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

9.7 Termination of this Contract, howsoever arising, shall not affect the continuation in force of this clause 8 and Your obligation to pay the CCL/VAT Service Fee to EMS in accordance with it.

10 Your obligations

10.1 You warrant, represent and undertake:

10.1.1 to co-operate with Us in all matters relating to the Broker Services and/or the CCL/VAT Service including providing all information requested by Us in a timely manner. This will include Your current and Estimate Annual Consumption of energy, contract end dates for Your current energy supplier(s) and any other information We may request from You;

10.1.2 to comply at all times with these Terms, as well as any applicable terms of any Energy Supplier, relating to any Energy Contract;

10.1.3 to comply with the Law;

10.1.4 that You shall not (nor shall You authorise any third parties (including any employee, worker, independent contract or person within your wider group of companies) to) make any amendments to the Energy Contracts without Our prior written consent;

10.1.5 that Your Chosen Energy Contract will commence (i.e., the supply of energy to You will start (“Go Live”)), run its full course and will not be cancelled, terminated, assigned to a third party, or otherwise transferred away from You or Your Chosen Energy Supplier without Our prior written consent; and

10.1.6 to immediately inform Us of any change in Your circumstances, or business (including, without limitation, any COO or COT); which may affect the provision of the Broker Services, or the fulfilment of any Energy Supply Contract.

10.2 You acknowledge that We do not independently verify the information that You provide to Us and We will rely on the information provided by You. It is Your responsibility to ensure that the information provided to Us is accurate and up-to-date.



10.3 If Our performance of any of Our obligations under Our Contract is impacted, prevented or delayed by any act or omission by You or failure by You to perform any relevant obligation (“Your Default”):

10.3.1 without limiting or affecting any other right or remedy available to it, We shall have the right to suspend performance of the Broker Services and/or the CCL/VAT Service until You remedy Your Default, and to rely on Your Default to relieve Us from the performance of any of Our obligations in each case to the extent Your Default prevents or delays Us, or Your Chosen Energy Supplier's performance of any of its obligations;

10.3.2 We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Our, or the Energy Supplier's failure or delay in performing any of Our or their obligations as a result of Your Default; and

10.3.3 You shall indemnify Us on written demand for any costs, losses, liabilities, expenses or damages sustained or incurred by Us arising directly or indirectly, including loss of profit, loss or reputation or contract and all interest, penalties or legal costs (calculated on a full indemnity basis) from Your Default.

10.4 You acknowledge that by entering into Your Chosen Energy Contract with Your Chosen Energy Supplier, You are contracting directly with the Energy Supplier in this respect, and not with Us. As such, You agree that We are not liable in relation to any transactions, dealings, or arrangements made between You and the Energy Supplier, and that any such transactions, dealings, or arrangements (including any payment obligations) are Your sole responsibility.

10.5 When You have entered into an Energy Contract You will not be able to enter into another contract with another Energy Supplier or terminate Your Energy Contract other than in accordance with the terms of the Energy Contract. If You do this, irrespective as to whether the Energy Contract has “Gone Live”, as defined above you will be responsible for the payment of the Commission which would have been payable if the Energy Contract had Gone Live and continued for the Chosen Energy Contract Term as set out in the Commission Acknowledgement.

10.6 You acknowledge and agree that Your Chosen Energy Supplier may terminate Your Energy Contract and at its sole discretion and charge You termination fees in accordance with the terms and conditions of Your Energy Contract and as a result of such termination:

10.6.1 You agree that We may retain any Commission We have received from the Chosen Energy Supplier as this relates to the work already carried out by Us as part of Our Broker Services. You will not be entitled to recover this Commission from the Energy Supplier or Us; and

10.6.2 We may charge You the Commission, as set out in the Commission Acknowledgement, which would have been payable if the Energy Contract had continued for the Chosen Energy Contract Term, if this has not been received by Us. You shall pay to Us such amount within 30 days of the date of Our invoice.

11 Our Liability

11.1 This clause 11 sets out Our entire liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of any use made by You or any of Your employees or agents of Our Broker Services and/or the CCL/VAT Service; in respect of any Energy Contract agreed by You with Your Chosen Energy Supplier; and any representation, misrepresentation, statement or tortious act or omission (including negligence) arising under or in connection with Our Contract or Your Energy Contract.

11.2 Nothing in these Terms limits or excludes Our liability for death or personal injury resulting from Our negligence; or for any damage or liability incurred by You as a result of Our fraud or fraudulent



misrepresentation; or for any liability which cannot be excluded as a matter of law.

11.3 Except as set out in these Terms all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from Our Contract.

11.4 Subject to clause 11.2:

11.4.1 We shall not be liable for loss of profits; or loss of sales or business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

11.4.2 We shall not be liable for and have no liability to You whatsoever in respect of the Energy Contract in place with Your Chosen Energy Supplier; and

11.4.3 Our total liability in contract, tort (including negligence or breach of statutory duty), equity, misrepresentation or otherwise shall be limited in relation to the Broker Services to the Commission We actually receive or are due to receive from Your Chosen Energy Supplier, whichever is the lesser.

11.4.4 Our total liability in contract, tort (including negligence or breach of statutory duty), equity, misrepresentation or otherwise shall be limited in relation to the CCL/VAT Service to the CCL/VAT Service Fee; and

11.4.5 To the maximum extent permitted by law, the terms implied by sections 3,4 and 5 of the Supply of Goods and Services Act are, excluded from Our Contract.

12 Your Liability

12.1 You agree to indemnify, keep indemnified, defend, and hold Us and each of Our respective officers, directors, employees, owners, agents, suppliers, contractors, partners, information providers, and licensors harmless from and against any and all claims, damages, liability, demands, losses, costs, and expenses (including legal fees) (whether or not foreseeable or avoidable) incurred or suffered by any of such parties and any claims or legal proceedings which are brought or threatened arising out of or in connection with Your use or conduct in relation to the Broker Services and/or the CCL/VAT Service, any transactions, dealings, or arrangements made with any third party including any Energy Supplier as a result of using the Broker Services and/or the CCL/VAT Service or any breach of any of the provisions of these Terms or of any law or the rights of any third party.

13 Termination

13.1 Without affecting any other right or remedy available to Us, we may terminate Our Contract with immediate effect by giving written notice to You if:

13.1.1 You commit a material breach of any term of Our Contract and (if such breach is remediable) fail to remedy the breach within 14 days of being notified in writing to do so;

13.1.2 You take or have taken against You (other than in relation to a solvent restructuring) any step or action towards Your entering bankruptcy, administration, provisional liquidation or any composition or arrangement with Your creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of Your assets, or Your entering a procedure in any jurisdiction with a similar effect to a procedure listed in this clause 13.1.2;



13.1.3 You suspend or cease, or threaten to suspend or cease, carrying on business; or

13.1.4 You undergo a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

13.2 On termination of Our Contract You shall immediately pay to Us any sums which are payable in accordance with these Terms and outstanding at the date of termination.

13.3 Any provision of these Terms that expressly or by implication is intended to come into, or continue in, force on or after termination or expiry of Our Contract shall remain in full force and effect.

14 Data Protection

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, You are the Controller and We are the Processor.

14.3 You acknowledge that any additional data relating to the Energy Contract may be accessed and processed until three months after the Energy Contract has ended.

14.4 You acknowledge that We, once authorised to do so by You by signing the Letter of Authority One, may:

14.4.1 gather Your Personal Data (both commercial and incidental Personal Data as the case may be) from You and from third party suppliers, including but not limited to organisations such as D19 Flow for gas usage or the Electra Link for electricity consumption, subject to strict permissions and guidelines;

14.4.2 share the Your Personal Data (both commercial and incidental personal data) with the Energy Suppliers and, more specifically, with Your Chosen Energy Supplier, which may require Us to subcontract the right to process Your Personal Data. You consent to such sharing and processing of that Personal Data, as the case may be; and

14.4.3 process Your data for Our internal research and development purposes.

14.5 We will store Your Personal Data and ensure that it is anonymised as necessary for the purposes set out in clause 14.4.

15 General provisions

15.1 You shall not at any time during the term of Our Contract or for a period of two years following termination or expiry, disclose to any person any confidential information concerning Our business, affairs, customers, clients or suppliers except as permitted by clause 15.1.1 and 15.1.2:

15.1.1 You may disclose Our confidential information to your employees, officers and professional representatives who need to know such information for the purpose of exercising Your rights or carrying out Your obligations under or in connection with Our Contract. You shall ensure that any employees, officers and professional representatives to whom You disclose Our confidential information comply with this clause 15.1; and



15.1.2 as may be required by law, a court or competent jurisdiction or any governmental or regulatory body.

15.1.3 You shall not use Our confidential information for any purpose other than to exercise Your rights and perform Your obligations under or in connection with Our Contract.

15.2 We shall have no liability to You under Our Contract if We are prevented from or delayed in performing any of Our obligations under Our Contract or from carrying on Our business by acts, events, omissions or accidents beyond Our reasonable control, including without limitation failure of a utility service or transport network, act of terrorism, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, fire, flood, storm, extreme adverse weather conditions or any other act of God.

15.3 A waiver of any right or remedy under these Terms or by law is only effective if given in writing. Failure or delay of a party to exercise or enforce any right under Our Contract shall not be deemed to be a waiver of that right or any other right, nor operate to bar exercise or enforcement of it or any other right at any time or times thereafter. No single or partial exercise of any right or remedy provided under these Terms or by Law shall prevent or restrict the further exercise of that right or remedy.

15.4 Each party warrants to the other that Our Contract constitutes the entire agreement and understanding between the parties and supersedes any previous agreement between them relating to the matters contained in Our Contract. Further, in entering into Our Contract, it does not rely on any statement, representation, assurance, promise or warranty of any person other than as expressly set out in these Terms. Neither party excludes its liability for fraudulent misrepresentation.

15.5 Unless it expressly states otherwise, Our Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of Our Contract.

15.6 No variation of Our Contract shall be effective unless it is in writing and signed by the parties (or their representatives).

15.7 We may at any time assign, mortgage, charge, declare a trust over or deal in any other matter with any or all of Our rights under Our Contract. You may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any manner with any or Your rights or obligations under Our Contract without our prior written approval.

15.8 Any notice given by a party under or in connection with Our Contract shall be in writing and shall be:

15.8.1 delivered by hand or by prepaid first class post or other next business day delivery service to its registered office (if a company) or its principle place of business (in any other case) or sent by email to the email addresses notified by one party to the other; and

15.8.2 any notice shall be deemed to have been received:

- if sent by pre-paid first class post or other next business day delivery service at 09:00am on the second working day after posting; or
- if sent by email, at the time of transmission, or, if this time falls outside of business hours in the place of receipt, when business hours resume.

15.8.3 For the purposes of this clause 15.8, a business day shall be a day other than a Saturday, Sunday or public



holiday when the banks in London are open for business, and business hours shall mean 09:00am to 17:00pm on a business day.

15.9 Our Contract shall be governed by English law and the courts of England shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with these Terms.

15.10 If any court or competent authority finds that any provision of these Terms (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Terms shall not be affected. If any invalid, unenforceable or illegal provision of these Terms would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

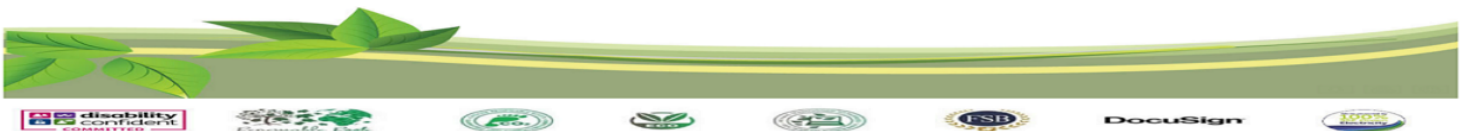
15.11 If you are unhappy with any of the terms within these Terms, please do not sign.

15.12 If you are unhappy with the Energy Contract being presented, please do not sign the Energy Contract.

15.13 If you are unhappy with any Letter of Authorisation, please do not sign the Letter of Authorisation.

Questions

If You have any further questions or queries about these Terms please contact Lee Doyle, admin@energymadesimple.co.uk, 0191 389 7312.



End of Terms and Conditions

