

The Utility Group Limited

SUBSCRIPTION AGREEMENT

RELATING TO

UTILITY GROUP PLATFORM

1 PARTIES

1.1 This Agreement is a legally binding contract between:

- (A) **The Utility Group Limited** (a private limited company incorporated under the laws of England and Wales with company number 09726256 and having its registered place of business at Granta Lodge, 71 Graham Road, Malvern, Worcestershire, WR14 2JS (the “**Supplier**”); and
- (B) the trading entity that has, through its authorised representative, subscribed to use the Platform (the “**Customer**”).

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement, the following words have the following meaning:

- 2.1.1 “**Aggregated Data**” has the meaning given in clause 10.1;
- 2.1.2 “**Authorised User**” means the employees, representatives and agents of the Customer;
- 2.1.3 “**Customer Data**” means the data inputted by the Customer or its Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Platform or facilitating the Customer's use of the Platform, excluding Personal Data;
- 2.1.4 “**Confidential Information**” means any and all information that is proprietary and/or confidential in nature and is either clearly labelled as such or would, by its nature, be considered by a reasonable business person to be confidential;
- 2.1.5 “**Contract Year**” means any 12 Months period on any anniversary of the Effective Date. If the Agreement ends by expiry, termination or otherwise part way through a Contract Year, the last Contract Year shall run from the last anniversary of the Effective Date to the date of termination or expiry;
- 2.1.6 “**Customer Indemnity**” has the meaning given in clause 15.1;
- 2.1.7 “**Customer Materials**” has the meaning given in clause 14.1;
- 2.1.8 “**Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK

GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

- 2.1.9 “**Effective Date**” means the date that the Electronic Signature is created;
- 2.1.10 “**Energy**” means gas and/or electricity;
- 2.1.11 “**Energy User**” means any person (consumer or business) supplied (or seeking a supply) of Energy;
- 2.1.12 “**Fees**” means the fees and/or other charges payable by the Customer to the Supplier in connection with this Agreement, as set out in Schedule 2 – FEES AND CHARGES;
- 2.1.13 “**Initial Term**” means one (1) Month from the Effective Date;
- 2.1.14 “**Intellectual Property Rights**” or (“**IPR**”) means:
- (a) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, plant variety rights, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions;
 - (b) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights;
 - (c) trade marks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs;
 - (d) rights in know-how, trade secrets and confidential information, data exclusivity rights; and
 - (e) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world;
- 2.1.15 “**Letter of Authority**” means the Energy User’s authority that grants the Customer right to obtain System data through the Platform and to act on their behalf for the purposes of assisting the Energy User in making a decision whether or not to change Energy supplier;

- 2.1.16 “**Losses**” means all losses, liabilities, damages, costs, charges, and reasonably incurred expenses (including management time, legal fees, other professional advisers’ fees, and costs and disbursements of investigation, litigation, settlement, judgment, interest, fines, penalties and remedial actions) howsoever arising in connection with a party’s breach of this Agreement;
- 2.1.17 “**Material**” in the context of classifying the seriousness of a breach means that such breach is: (i) more than trivial but need not be repudiatory; and (ii) if not remedied (or if not capable of remedy), may or is likely to have, a serious impact on the benefit which the innocent party would otherwise derive from performance of this Agreement in accordance with its terms;
- 2.1.18 “**Month**” means a calendar month, and “**Monthly**” shall be interpreted accordingly;
- 2.1.19 “**Out of Plan Charges**” means charges for searches that are not included in the Customer’s subscription package, as set out in Schedule 2 – FEES AND CHARGES;
- 2.1.20 “**Personal Data**” shall have the meanings given in the Data Protection Legislation;
- 2.1.21 “**Personal Data Processing Agreement**” has the meaning given in clause 9 (DATA PROTECTION);
- 2.1.22 “**Platform**” means the Supplier’s software application and cloud computing platform, as described in Schedule 1 - PLATFORM;
- 2.1.23 “**Rate Card**” means the Supplier’s charges for the subscription services including any Out of Plan Charges, as set out in Schedule 2 – FEES AND CHARGES;
- 2.1.24 “**Records**” means the records of the Letters of Authority obtained by the Customer from the Energy User;
- 2.1.25 “**Renewal Period**” means a period of one (1) Month; and
- 2.1.26 “**Subscription Period**” means the Initial Term and each Renewal Period;
- 2.1.27 “**Supplier Indemnity**” has the meaning given in clause 15.4;
- 2.1.28 “**Supplier IPR**” has the meaning given in clause 14.3;
- 2.1.29 “**System**” means the Retail Energy Code Company database; and

2.1.30 “**User Subscription**” means the individual user subscription purchased by the Customer pursuant to the terms of this Agreement from time to time for use by an Authorised User.

2.2 Interpretations

2.2.1 In this Agreement:

2.2.1.1 the headings are for convenience only and shall not affect its interpretation;

2.2.1.2 any obligation on a party not to do something, includes an obligation not to agree, allow, permit or acquiesce to that thing being done;

2.2.1.3 any reference in this Agreement to any enactment or statutory provision or subordinate legislation will be construed as a reference to it as from time to time replaced, amended, consolidated or re-enacted (with or without modification) and includes all orders, rules or regulations made under such enactment;

2.2.1.4 references to a **party** shall be construed as the Customer or the Supplier and **parties** shall be construed as the Customer and the Supplier taken together;

2.2.1.5 a reference to the performance of an obligation from a given date shall include that date;

2.2.1.6 unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular;

2.2.1.7 a reference to **writing** or **written** includes email;

2.2.1.8 any list, word or phrase following the words “**include**”, “**includes**”, “**including**”, “**in particular**” or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words; and

2.2.1.9 references to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

3 AGREEMENT

- 3.1 This Agreement apply to all use of the Platform.
- 3.2 This Agreement has been designed for electronic execution by the Customer acting through its authorised representative.
- 3.3 By scrolling through this Agreement and clicking the "Accept" statement (and completing such other affirming acts required by the registration process) (the "**Electronic Signature**"), the Customer unconditionally confirms to the Supplier that such authorised representative has all necessary authority to accept the terms of this Agreement for and on behalf of the Customer.
- 3.4 The parties agree that the Electronic Signature shall have equivalent standing in applicable law to a physical signature.

4 COMMENCEMENT AND DURATION

- 4.1 **Subscription Period:** This Agreement is effective from the Effective Date and shall continue, subject to clauses 4.2 (COMMENCEMENT AND DURATION) and 16 (TERMINATION), for the Subscription Period.
- 4.2 **Automatic Renewal:** This Agreement shall be automatically extended beyond the Initial Term for a Renewal Period unless and until one party gives written notice to the other of its intention not to renew this Agreement before the expiry of the Initial Term or then current Renewal Period (as the case may be)..

5 SUBSCRIPTION TO USE THE PLATFORM

- 5.1 **Licence:** The Supplier grants the Customer a non-exclusive and non-transferable right to permit the Authorised Users to access and use the Platform through the Portal <https://lookup.energy> during the Subscription Period solely for the permitted purposes described in clause 5.2.
- 5.2 **Permitted Use:** The Customer shall use the Platform in accordance with the conditions of use described in clause 5.3.
- 5.3 **Conditions of Use:** The Customer shall:
- 5.3.1 ensure that only Authorised Users access and use the Platform; and
- 5.3.2 and shall procure that Authorised Users comply at all times with this Agreement ;

5.4 The Customer shall not:

5.4.1 permit any User Subscription to be used by more than one individual Authorised User unless such User Subscription has been reassigned in its entirety to another individual Authorised User, in which case the Customer shall procure that the previous Authorised User shall cease accessing the Platform;

5.4.2 permit anyone to access the Platform who is not an Authorised User;

5.4.3 access and use the Platform in order to obtain System data: (i) without a valid Letter of Authority; and/or (ii) in their own right (unless they are a personal Energy User);

5.4.4 access, store, distribute or transmit any software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of the Platform (including without limitation worms, Trojan horses, viruses and other similar things or devices) or submit any material to the Platform that:

5.4.4.1 is harmful, discriminatory, threatening, defamatory, obscene, infringing, harassing, or offensive;

5.4.4.2 is submitted unlawfully (including in breach of the Data Protection Legislation) or facilitates illegal activity;

5.4.4.3 is incomplete, inaccurate, or intended to deceive; or

5.4.4.4 could cause damage or injury to any person or property.

5.5 The Customer shall not:

5.5.1 have any right to copy, adapt, reverse engineer, de-compile, disassemble, modify, adapt or make error corrections to the Platform except, with respect to de-compilation of the Platform, to the extent such de-compilation is necessary for the exclusive purpose of obtaining the information necessary to create an independent program which can be operated with the Platform or with another program and the Customer's right to de-compile the Platform shall not apply if:

5.5.1.1 the Customer is in breach of the de-compilation conditions described in section 50B of the Copyright, Designs and Patents Act 1988; or

5.5.1.2 the Supplier: (i) is prepared to carry out, and/or procure the carrying out of, such de-compilation in return for a reasonable fee; or (ii) has provided the information necessary to achieve such inter-operation without such de-compilation within a reasonable period, and the Customer shall request that the Supplier carries out such action or provides such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such de-compilation; and

5.5.2 access the Platform in order to build a product or service which competes with the Platform or the business of the Supplier.

5.6 If the Customer and/or its Authorised User(s) are not authorised to access, procure and/or use System data on behalf of an Energy User, the Customer must stop accessing and using the Platform in connection to that Energy User immediately, and the Customer must delete and not make any further use of any System data related to the Energy User obtained through the Platform.

5.7 The Customer shall prevent any unauthorised access to, or use of, the Platform and/or System data and, in the event of any such unauthorised access or use, promptly notify the Supplier.

6 THE PLATFORM

6.1 The Platform is provided on an "AS IS" and "AS AVAILABLE" basis without warranties of any kind either express or implied. The Supplier has sole discretion and control over and may modify at any time (with or without notice to the Customer), the functionality, performance, configuration, appearance and content of the Platform.

7 DISCLAIMERS

7.1 Subject to clause 17.1 (LIABILITY) and except to the extent expressly set out in this Agreement, the Supplier gives no warranties, representations or other commitments to the Customer as to the functionality, performance, availability, transmission speeds, content, latency and/or accuracy of the Platform.

7.2 The Customer assumes sole responsibility for results obtained from the use of the Platform by the Customer, and for conclusions drawn from such use.

- 7.3 The Supplier does not warrant or represent that use of the Platform will be uninterrupted or error-free, or that information obtained by the Customer through the Platform will meet the Customer's requirements, or that such information is up to date.
- 7.4 The Supplier shall not be liable for the completeness, accuracy or quality of System data obtained through the Platform.
- 7.5 Subject to clause 7.1 (DISCLAIMERS), all warranties, conditions, representations, and terms (whether written or oral, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, including as to satisfactory quality, fitness for a particular purpose or use, accuracy, adequacy, completeness or timeliness) are hereby excluded to the fullest extent permitted by applicable law.
- 7.6 The Supplier shall have no liability for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that use of the Platform may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8 CONFIDENTIALITY

- 8.1 The obligations contained in this clause 8 (CONFIDENTIALITY) shall not apply to Confidential Information that:
- 8.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 8.1.2 was in the other party's lawful possession before the disclosure;
 - 8.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 8.1.4 is independently developed by the receiving party without use or reference to the other party's Confidential Information.
- 8.2 Each party shall:

- 8.2.1 use commercially reasonable endeavours to hold the other party's Confidential Information in confidence (including by using the same care and discretion to avoid disclosure, publication or dissemination as it uses to protect its own similar information); and
- 8.2.2 subject to clause 8.4, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than in connection with the provision or receipt of the Platform (as the case may be).
- 8.3 The Supplier shall be entitled to disclose the Customer's Confidential Information:
 - 8.3.1 to any employee, consultant, contractor, auditor, professional advisor or other person engaged by the Supplier who have a need to know the Customer's Confidential Information in connection with this Agreement and/or the services; or
 - 8.3.2 for the purpose of the examination and certification of the Supplier's accounts.
- 8.4 The Supplier shall use commercially reasonable efforts to ensure that the person to whom the Customer's Confidential Information is disclosed under this Agreement is bound by written confidentiality obligations substantially similar to those set out in this Agreement.
- 8.5 Either party may disclose the other party's Confidential Information if and to the extent required by applicable law or by any regulatory body or securities exchange, provided that the disclosing party shall as soon as reasonably practicable and to the extent permitted by applicable law notify the other party in writing of the circumstances of such disclosure and the Confidential Information to which such disclosure applies.
- 8.6 The Customer warrants and represents to the Supplier that it has the right to disclose the Confidential Information and to authorise the Supplier to use such Confidential Information in connection with the Platform.

9 DATA PROTECTION

- 9.1 Each party shall comply with their respective obligations set out in Schedule 3 - PERSONAL DATA PROCESSING AGREEMENT.

10 USE OF AGGREGATED DATA

- 10.1 The Supplier may collect, group, anonymise and aggregate data and information submitted to the Platform (the “**Aggregated Data**”) and the Customer hereby gives its consent to the same.
- 10.2 The Supplier shall ensure that Aggregated Data is not attributable to any particular Customer and/or its Authorised User.

11 CUSTOMER’S WARRANTIES AND OBLIGATIONS

- 11.1 By accessing and using the Platform to procure System data on behalf of an Energy User, the Customer warrants, represents and undertakes that they are authorised by the Energy User(s) to access, procure and use System data on their behalf.
- 11.2 The Customer shall:
- 11.2.1 comply with all applicable laws, regulations and binding codes of practice with respect to its activities under and in connection with this Agreement;
 - 11.2.2 in each case, be solely responsible for procuring and maintaining a valid, dated (within the last 12 months) and Letter of Authority.
 - 11.2.3 obtain and maintain all necessary licences, consents, and permissions necessary for it to: (i) procure System data on behalf of the Energy User; (ii) provide and/or make available Energy User Data, Customer Materials and Personal Data under this Agreement; and (iii) connect its computing environment to the Platform; and
 - 11.2.4 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier’s data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 11.3 The Customer is responsible for all acts and omissions of Authorised Users as if such acts or omissions were its own.
- 11.4 An obligation of the Customer contained in this Agreement (unless the context reasonably requires otherwise) includes an obligation on the Customer to ensure that an Authorised User does not act, or omit to act, in breach of that obligation.

12 COMPLIANCE

- 12.1 At the written request of the Supplier, the Customer shall at its own cost and expense, promptly, and in any event within two (2) calendar days, provide to the Supplier or its external advisers access to, or copies of, the relevant Records.
- 12.2 The Customer warrants that it shall at all times keep and maintain full and accurate Records.
- 12.3 Failure of the Customer to provide such Records may result in the immediate termination of this Agreement.

13 FEES AND PAYMENT

- 13.1 The Customer shall pay the “**Fees**” to the Supplier in accordance with this Agreement.
- 13.2 The Fees shall be confirmed to the Customer in a confirmation of registration e-mail.
- 13.3 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details. The Customer hereby authorises the Supplier to bill such credit card:
 - 13.3.1 on the Effective Date for the Fees payable in respect of the Initial Term; and
 - 13.3.2 subject to clause 16 (TERMINATION), Monthly in advance for the Fees payable in respect of the next Renewal Period.(each, the “**Billing Period**”);
- 13.4 Out of Plan Charges will be charged by the Supplier in arrears (and in accordance with then applicable Rate Card for such charges) either with the next Billing Period or when the relevant subscription package is cancelled.
- 13.5 The Customer hereby authorises the Supply to bill the Customer’s credit card for the Out of Plan Charges in accordance with clause 13.4.
- 13.6 If the Supplier has not received payment in full of the Fees by the due date, then without prejudice to any other rights and remedies of the Supplier:

- 13.6.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Platform and the Supplier shall be under no obligation to provide any or all of the services while the invoice(s) concerned remain unpaid; and
- 13.6.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to four percent (4%) over the then current base lending rate of the Bank of England, commencing on the Due Date and continuing until fully paid, whether before or after judgment.
- 13.7 If the Customer is required by applicable law to make any deduction or withholding from any payment to the Supplier then the sum due in respect of such payment shall be increased so that, after the making of such deduction or withholding, the Supplier receives a net sum equal to the sum it would have received had no such deduction or withholding been made.
- 13.8 Value added tax shall be added to the Fees at the appropriate rate (if applicable).
- 13.9 Fees stated in this Agreement are non-cancellable and non-refundable.
- 13.10 The Supplier shall be entitled to adjust the Fees at any time by providing notice to the Customer (which notice may be given through the functionality of the Platform or via email), provided that any such adjustment to the Fee shall not take effect until the commencement of the first or subsequent Renewal Period.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 In this clause 14 (INTELLECTUAL PROPERTY RIGHTS) and where used elsewhere in the Agreement, "**Customer Materials**" means the Customer Data together with all other content, information, materials, logos, and/or other creative, graphic and/or design assets provided and/or made available to the Supplier by the Customer under this Agreement.
- 14.2 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in:
 - 14.2.1 the Platform (excluding the Customer Materials);
 - 14.2.2 all materials provided and/or made available as part of providing the Platform;
and

- 14.2.3 any/all adaptations, add-ons, modifications, updates, and/or enhancements to the Platform and such materials (including at the request and/or suggestion of the Customer or an Authorised User),
- (the “**Supplier’s IPR**”).
- 14.3 The Supplier may freely incorporate into the Supplier’s IPR any feedback and/or suggested improvements to the Supplier’s IPR given by the Customer or an Authorised User.
- 14.4 Except as expressly stated in this Agreement, the Customer shall have no right or interest in the Supplier’s IPR.
- 14.5 The Customer and/or its licensors own all Intellectual Property Rights in and to all of the Customer Materials and Customer Data and shall have sole responsibility for the legality, non-infringement, reliability, integrity, accuracy and quality of the Customer Materials and/or Customer Data.
- 14.6 The Customer hereby grants to the Supplier (and its representatives and sub-contractors) a non-exclusive, non-transferrable right to use the Customer Materials and Customer Data strictly to the extent necessary for the Supplier (or the Supplier’s representative or sub-contractor as the case may be) to provide and make available the Platform.

15 INDEMNITIES

- 15.1 The Customer shall indemnify and hold harmless the Supplier, its affiliates, its and their officers, directors, sub-contractors, and employees against any Losses arising out of or in connection with:
- 15.1.1 any allegation or claim that the Customer Materials and/or Customer Data infringe any Intellectual Property Rights belonging to a third party; and/or
- 15.1.2 breach of clauses: (i) 5.3.4 and 5.5 (SUBSCRIPTION TO USE THE PLATFORM); (ii) 11.1 (CUSTOMER’S WARRANTIES AND OBLIGATIONS); and (iii) clause 12 (COMPLIANCE)
- (the “**Customer Indemnity**”).
- 15.2 The Supplier shall ensure that:

- 15.2.1 the Customer is given prompt notice of any allegation or claim to which the Customer Indemnity applies;
 - 15.2.2 it provides reasonable co-operation to the Customer in the defence and settlement of such claim; and
 - 15.2.3 the Customer is given sole authority to defend or settle the claim.
- 15.3 Subject to clauses 15.4, 15.5 and 15.6, the Supplier shall indemnify and hold harmless the Customer against any claim made against it by a third party to the extent that such claim alleges that the Customer's use of the Platform in accordance with this Agreement infringes any Intellectual Property Rights belonging to that third party (the "**Supplier Indemnity**"), provided that the Supplier indemnity shall only apply if:
- 15.3.1 the Supplier is given prompt notice of any such claim (and in any event is given notice within five (5) days of the Customer becoming aware of, or being notified of, the claim);
 - 15.3.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim; and
 - 15.3.3 the Supplier is given sole authority to defend or settle the claim.
- 15.4 In the defence or settlement of any claim to which the Supplier Indemnity applies, the Supplier may procure the right for the Customer: (i) to continue using the Platform; or (ii) replace or modify the Platform so that it becomes non-infringing or, if such remedies are not reasonably available, (iii) terminate or suspend this Agreement (and the Customer's access to the Platform) on notice to the Customer without any additional liability to the Customer
- 15.5 The Supplier shall pay all damages and reimburse the Customer for the incurred costs, including reasonable legal fees arising out of and in connection with any such claim provided that such indemnified losses under the Supplier Indemnity are limited to such losses: (a) awarded against the Customer by a court or other body having competent jurisdiction or agreed to be paid (with the consent of the indemnifying Party) to the third-party claimant in settlement of a claim; and (b) reasonably and properly incurred legal fees and disbursements, fees levied by any court of competent jurisdiction, arbitrator or mediator, and/or fees and disbursements charged by expert witnesses.

- 15.6 In no event shall the Supplier, its employees, agents or sub-contractors be liable to the Customer to the extent that the claim to which the Supplier Indemnity applies is based on:
- 15.6.1 a modification of the Platform by anyone other than the Supplier or its representatives; and
 - 15.6.2 an infringing Customer Material; or
 - 15.6.3 the Customer's use of the Platform in a manner contrary to the instructions given to the Customer by the Supplier.
- 15.7 The Customer shall have no rights and remedies in respect of infringement of any third party Intellectual Property Rights except as expressly set out in clause 15.3.

16 TERMINATION

- 16.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a Material breach of any term of this Agreement that:
- 16.1.1 is irremediable; or
 - 16.1.2 if such breach is remediable, is not so remedied within thirty (30) calendar days from written notice requiring remedy of the Material breach.
- 16.2 Without limiting the Supplier's rights to terminate under clause 16.1, the Supplier may terminate this Agreement if:
- 16.2.1 the Customer (or an Authorised User) commits any breach of any one or more of the following clauses: 5 (SUBSCRIPTION TO USE THE PLATFORM); 8 (CONFIDENTIALITY); 11.1 (CUSTOMER'S WARRANTIES AND OBLIGATIONS); and/or clause 12 (COMPLIANCE); and/or
 - 16.2.2 the Customer fails to pay the Fees in accordance with this Agreement.
- 16.3 On termination or expiry of this Agreement for any reason:
- 16.3.1 all rights and licences granted under this Agreement shall immediately terminate and the Customer must cease using the Platform;

- 16.3.2 all outstanding Fees and Out of Plan Charges (if any) shall become immediately due and payable;
 - 16.3.3 each party shall return, and make no further use of, any equipment, property, and other items (and all copies of them) belonging to the other party; and
 - 16.3.4 the Supplier may destroy or otherwise dispose of any of the Customer Materials and/or Customer Data in its possession unless the Supplier receives, no later than ten (10) calendar days from the effective date of the termination or expiry of this Agreement, a written request for the delivery to the Customer of such Customer Materials and/or Customer Data.
- 16.4 Termination or expiry of this Agreement (howsoever occurring) shall be without prejudice to any rights or liabilities which may have accrued up to the date of such termination or expiry and it shall not affect the coming into force or the continuance in force of any of its provisions which are expressly or by implication intended to come into or continue in force on or after such termination or expiry.
- 16.4.1 The Supplier may terminate this Agreement at any time for convenience (including in order to discontinue the Platform) provided that where the Supplier wishes to exercise its right to terminate for convenience it shall:
 - 16.4.2 give the Customer as much advance notice of the termination as is reasonably practicable in the circumstances; and
 - 16.4.3 to the extent that any Fees have been paid in advance for access to the Platform that will not be supplied, promptly provide the Customer with a pro-rated refund of such Fees,in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period.

17 LIABILITY

- 17.1 Nothing in this Agreement shall limit or exclude either party's liability to the other to a greater extent than is permitted under applicable law for Losses resulting from:
- 17.1.1 death or personal injury caused by negligence;
 - 17.1.2 fraud or fraudulent misrepresentation; or

- 17.1.3 any matter in respect of which Losses may not be limited or excluded under applicable laws.
- 17.2 Subject to clause 17.1, neither party shall be liable to the other (or any third party claiming under or through the other) under any and all causes of action (whether such causes of action arise in contract (including under any indemnity or warranty), in tort (including negligence or for breach of statutory duty) or otherwise) for Losses that comprise:
- 17.2.1 loss of profit or revenue (except for the Fees);
 - 17.2.2 loss of anticipated savings;
 - 17.2.3 loss of contract or business opportunity;
 - 17.2.4 depletion of goodwill;
 - 17.2.5 loss or corruption of data or information or
 - 17.2.6 any special, indirect or consequential loss,
- in each case, whether arising directly or indirectly under or in connection with this Agreement and whether or not reasonably foreseeable, reasonably contemplatable, actually foreseen or actually contemplated by a party at the Effective Date.
- 17.3 Subject to clauses 17.1 and 17.2, the Supplier's total aggregate liability to the Customer (and to any third party claiming under or through the Customer) in each Contract Year and in respect of all causes of action (whether such causes of action arise in contract (including under any indemnity or warranty), in tort (including negligence or for breach of statutory duty) or otherwise) arising in that Contract Year (as determined at the date when the liability giving rise to the cause of action arose) shall not exceed the total Fees paid by the Customer to the Supplier in respect of the Contract Year in question.
- 17.4 The parties agree that the provisions of this clause 17 (LIABILITY) are considered by them to be reasonable in all the circumstances, having taken into account section 11 and the guidelines in schedule 2 of the Unfair Contract Terms Act 1977 and the nature of the services described in this Agreement and the Fees.

18 GENERAL

- 18.1 **Force Majeure:** Other than in respect of the Customer's obligation to pay the Fees, neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, epidemic or pandemic, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.
- 18.2 **Survival:** The rights and obligations under provisions of this Agreement which expressly or by their nature survive termination shall remain in full force and effect.
- 18.3 **Sub-contracting:** The Supplier may sub-contract the performance of its obligations (or any part thereof) to any third party service-provider provided that the Supplier shall remain responsible for all acts and omissions of such third party service-providers that result in a breach of the Agreement.
- 18.4 **Variations:** No variation of this Agreement shall be effective unless it is in writing (which may be by e-mail) and agreed by the parties.
- 18.5 **No Waiver:** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by applicable law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 18.6 **Severability:** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 18.7 **Notices:**
- 18.7.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be delivered by: (a) hand or pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (b) except

with respect to the service of legal proceedings, e-mail to the addresses referred to in sub-clause (b) (below).

18.7.2 Any notice or communication shall be deemed to have been received:

18.7.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

18.7.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

18.7.2.3 if sent by e-mail to:

(i) the Supplier at Steve.fletcher@theutilitygroup.co.uk ; or

(ii) the Customer at the email address the Customer provided to the Supplier as part of the sign-up process.

from an authorised representative of sufficient authority to give the notice, upon the generation of a receipt notice by the recipient's server or, if such notice is not generated, upon delivery to the recipient's server.

18.8 **Entire Agreement:** This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

18.9 **Assignment:** Except in respect of invoice financing or the recovery of a debt owed, neither party shall assign any of its rights under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

- 18.10 **Third Party Rights:** This Agreement does not confer any rights on any person or party (other than the parties to this Agreement) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 18.11 **No Partnership:** Nothing in this Agreement or through use of the Platform is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of the other party, nor authorise a party to make or enter into any commitments for or on behalf of the other party.
- 18.12 **Governing Law & Jurisdiction:** This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement (including non-contractual disputes or claims).

Last Updated: The terms of the Agreement were last updated [November 2022]

SCHEDULE 1 - PLATFORM

- (i) The functionality of the system is as follows:
- a) Lookup supply details from Xoserve and Ecoes databases based on the following search criteria:
 - MPAN
 - MPRN
 - MSN (Elec Only)
 - Post Code
 - b) Manage search subscription level
 - c) Manage users of the system and their search limits pcm
- (ii) *Training and User Guide <https://lookup.energy/Help>*

SCHEDULE 2 – FEES AND CHARGES

User subscriptions are managed from <https://lookup.energy/Identity/Account/Manage>

Currently the following Subscription Packages are available:

Name	£ PCM	Included Searches PCM	OOB Rate
kWh	£200.00	1000	£0.25
mWh	£300.00	1500	£0.20
gWh	£400.00	2000	£0.18
tWh	£500.00	2500	£0.16
pWh	£1,000.00	5000	£0.14

SCHEDULE 3 - PERSONAL DATA PROCESSING AGREEMENT

Dated

2022

The Utility Group Limited (1)

and

BROKER (2)

PERSONAL DATA PROCESSING AGREEMENT

providing for Broker access to personal data on lookup.energy

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This Agreement is made on the day of signing by the Broker

PARTIES

- (1) The Utility Group Limited incorporated and registered in England and Wales with company number 09726256 whose registered office is at Granta Lodge, 71 Graham Road, Malvern, Worcestershire, United Kingdom, WR14 2JS (“**TUG**”).
- (2) The Broker who has entered into and signed the Subscription Agreement with TUG (“**Broker**”).

BACKGROUND

- (1) It is agreed that TUG will provide the Broker with access to energy and gas user’s personal data as set out in the Agreement and the Subscription Agreement (defined below).
- (2) This Personal Data Processing Agreement (**Agreement**) sets out the terms, requirements and conditions on which the Broker will Process Personal Data under the Subscription Agreement. This agreement contains the mandatory clauses required by Article 28(3) of the UK GDPR for contracts between controllers and processors.

THE PARTIES AGREE:

1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

“**Business Purposes**” the access and processing described in the Subscription Agreement

“**Commissioner**” the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).

“**Processor**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**” and “**Processing**” have the meanings given to them in the Data Protection Legislation.

“Data Protection Legislation” all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

“EEA” the European Economic Area.

“Records” has the meaning given to it in clause 12.

“Subscription Agreement” the licence from TUG to the Broker granting access to the System via a software application.

“System” the database of energy and gas end customers compiled and accessed under the Subscription Agreement.

“Term” this agreement’s term as defined in clause 10.

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

- 1.2 This agreement is subject to the terms of the Subscription Agreement.
- 1.3 The Appendices form part of this agreement and will have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Appendices.
- 1.4 A reference to writing or written includes faxes and email.
- 1.5 In the case of conflict or ambiguity between:
 - 1.5.1 any provision contained in the body of this agreement and any provision contained in the Appendices, the provision in the body of this agreement will prevail; and
 - 1.5.2 any of the provisions of this agreement and the provisions of the Subscription Agreement, the provisions of this agreement will prevail.

2 PERSONAL DATA TYPES AND PROCESSING PURPOSES

- 2.1 TUG and the Broker agree and acknowledge that for the purpose of the Data Protection Legislation:

- 2.1.1 TUG is a controller of the personal data and the Broker is the Processor.
- 2.1.2 Appendix 1 describes the subject matter, duration, nature and purpose of the Processing and the Personal Data categories and Data Subject types in respect of which the Broker may process the Personal Data to fulfil the Business Purposes.

3 BROKER'S OBLIGATIONS

- 3.1 The Broker will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with TUG's written instructions. The Broker will not process the Personal Data for any other purpose or in a way that does not comply with this agreement or the Data Protection Legislation. The Broker must promptly notify TUG if, in its opinion, TUG's instructions do not comply with the Data Protection Legislation.
- 3.2 The Broker must comply promptly with any written instruction from TUG requiring the Broker to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Broker will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third-parties unless TUG or this agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires the Broker to process or disclose the Personal Data to a third-party, the Broker must first inform TUG of such legal or regulatory requirement and give TUG an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.
- 3.4 The Broker will obtain consent from the data subject directly in order to be able to access the personal data stored on the System and will reasonably assist TUG with meeting TUG's compliance obligations under the Data Protection Legislation, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with the Commissioner under the Data Protection Legislation.

4 BROKER'S EMPLOYEES

- 4.1 To the extent that the Broker has employees, the Broker will ensure that all of its employees:
 - 4.1.1 are informed of the confidential nature of the Personal Data and are bound by written confidentiality obligations and use restrictions in respect of the Personal Data;
 - 4.1.2 have undertaken training on the Data Protection Legislation and how it relates to their handling of the Personal Data and how it applies to their particular duties; and
 - 4.1.3 are aware both of the Broker's duties and their personal duties and obligations under the Data Protection Legislation and this agreement.

5 SECURITY

- 5.1 The Broker must at all times adhere to and implement appropriate technical and organisational measures against accidental, unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including, but not limited to, the security measures set out in the Appendix.

6 PERSONAL DATA BREACH

- 6.1 The Broker will, without undue delay, notify TUG in writing if it becomes aware of:
 - 6.1.1 the loss, unintended destruction or damage, corruption, or unusability of part or all of the Personal Data. The Broker will restore such Personal Data at its own expense as soon as possible;
 - 6.1.2 any accidental, unauthorised or unlawful processing of the Personal Data; or
 - 6.1.3 any Personal Data Breach.
- 6.2 Where the Broker becomes aware of 6.1.1, 6.1.2, 6.1.3 above, it will, without undue delay, also provide TUG with the following written information:

- 6.2.1 description of the nature of 6.1.1, 6.1.2, 6.1.3 above, including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
- 6.2.2 the likely consequences; and
- 6.2.3 a description of the measures taken or proposed to be taken to address 6.1.1, 6.1.2, 6.1.3 above, including measures to mitigate its possible adverse effects.
- 6.3 Immediately following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, the Broker will reasonably co-operate with TUG in the handling of the matter, including but not limited to:
 - 6.3.1 assisting with any investigation;
 - 6.3.2 providing TUG with physical access to any facilities and operations affected;
 - 6.3.3 making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by TUG; and
 - 6.3.4 taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data processing.
- 6.4 The Broker will not inform any third-party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining TUG's written consent, except when required to do so by domestic law.
- 6.5 The Broker agrees that TUG has the sole right to determine:
 - 6.5.1 whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation, including the contents and delivery method of the notice; and
 - 6.5.2 whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

7 CROSS-BORDER TRANSFERS OF PERSONAL DATA

- 7.1 The Broker must not transfer or otherwise process the Personal Data outside the UK without obtaining TUG's prior written consent.

8 SUBCONTRACTORS

- 8.1 The Broker may not authorise any third party or subcontractor to process the Personal Data.

9 COMPLAINTS, DATA SUBJECT REQUESTS AND THIRD-PARTY RIGHTS

- 9.1 The Broker must adhere to and take such technical and organisational measures as may be appropriate, and promptly provide such information to TUG as TUG may reasonably require, to enable TUG to comply with:

9.1.1 the rights of Data Subjects under the Data Protection Legislation, including, but not limited to, subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and

9.1.2 information or assessment notices served on TUG by the Commissioner under the Data Protection Legislation.

9.2 The Broker must notify TUG without undue delay, in writing, if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.

9.3 The Broker must notify TUG within five days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.

9.4 The Broker will give TUG its co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.

9.5 The Broker must not disclose the Personal Data to any Data Subject or to a third-party other than in accordance with TUG's written instructions, or as required by domestic law.

10 TERM AND TERMINATION

- 10.1 This agreement will remain in full force and effect so long as:
- 10.1.1 the Subscription Agreement remains in effect; or
 - 10.1.2 the Broker retains any of the Personal Data related to the Subscription Agreement in its possession or control ("**Term**").
- 10.2 Any provision of this agreement that expressly or by implication should come into or continue in force on or after termination of the Subscription Agreement to protect the Personal Data will remain in full force and effect.
- 10.3 The Broker's failure to comply with the terms of this agreement is a material breach of the Subscription Agreement. In such event, TUG may terminate the Subscription Agreement effective immediately on written notice to the Broker without further liability or obligation of TUG.
- 10.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Subscription Agreement obligations, the parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into compliance with the Data Protection Legislation, either party may terminate the Subscription Agreement with immediate effect on written notice to the other party.

11 DATA RETURN AND DESTRUCTION

- 11.1 At TUG's request, the Broker will give TUG, or a third-party nominated in writing by TUG, a copy of or access to all or part of the Personal Data in its possession or control in the format and on the media reasonably specified by TUG.
- 11.2 On termination of the Subscription Agreement for any reason or expiry of its term, the Broker will securely delete or destroy all or any of the Personal Data related to this agreement in its possession or control.
- 11.3 If any law, regulation, or government or regulatory body requires the Broker to retain any documents, materials or Personal Data that the Broker would otherwise be required to return or destroy, it will notify TUG in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must

retain, the legal basis for such retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.

12 RECORDS

- 12.1 The Broker will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data ("**Records**") which shall be provided to TUG on request.
- 12.2 The Broker will ensure that the Records are sufficient to enable TUG to verify the the Broker's compliance with its obligations under this agreement and the Data Protection Legislation.

13 AUDIT

- 13.1 Once year, the Broker will audit of its Personal Data processing practices and the information technology and information security controls on the Brokers systems.
- 13.2 On TUG's written request, the Broker will make available a report of its audit to TUG for review. TUG will treat such audit reports as the Broker's confidential information under the Subscription Agreement.
- 13.3 The Broker will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan.

14 WARRANTIES

- 14.1 The Broker warrants and represents that:
 - 14.1.1 it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Subscription Agreement's contracted services; and
 - 14.1.2 considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the accidental, unauthorised or unlawful processing of Personal Data and the loss or damage to, the Personal Data, and ensure a level of security appropriate to:

- 14.1.2.1 the harm that might result from such accidental, unauthorised or unlawful processing and loss or damage;
- 14.1.2.2 the nature of the Personal Data protected; and
- 14.1.2.3 comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in Clause 5.1.

15 NOTICE

- 15.1 Any notice given to a party under or in connection with this agreement must be in writing and delivered to:

For TUG: steve.fletcher@theutilitygroup.co.uk

For the Broker: the email previously notified in communications with TUG

- 15.2 Clause 15.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

This agreement has been entered into electronically by the parties on the day of its acceptance by the Broker.

APPENDIX 1

Personal Data processing purposes and details

Subject matter of processing: processing of customer numbers and personal data relating to energy and gas usage

Duration of Processing: for duration of Broker's subscription term under Subscription Agreement

Nature of Processing: accessing database of energy and gas customers

Business Purposes: as provided for in Subscription Agreement

Personal Data Categories: Supply Address, Supply MSN, Supply Number, AQ, Last Energisation Date, Energisation Status, Metering Info, Business Name (if stored in industry data)

Data Subject Types: energy and gas customers (households and business users)

Security measures

TUG security documents include:

- Physical access controls.
- System access controls.
- Data access controls.
- Transmission controls.
- Input controls.
- Data backups.
- Data segregation.