

## YORKSHIRE GAS & POWER

### TERMS AND CONDITIONS FOR THE SUPPLY OF GAS AND ELECTRICITY PURSUANT TO A DEEMED CONTRACT

#### 1. INTERPRETATION

##### 1.1. The definitions and rules of interpretation in this Condition apply in the Agreement.

“**Act**” means the Electricity Act 1989 and the Gas Act 1986 as applicable (and “Acts” shall be construed accordingly);

“**Agent**” means a Meter Operator, Data Collector, Data Aggregator, the operator or agent of the operator of the local gas and/or electricity distribution network and the relevant gas shipper and gas transporter or any of them;

“**Agreement**” means these terms and conditions which apply in relation to the contract which is deemed to be made by us with you in terms of the Acts in relation to the supply of gas and/or electricity by us to you;

“**Authority**” means the Gas and Electricity Markets Authority (GEMA) or the Office of Gas and Electricity Markets (Ofgem);

“**Base Rate**” means the base lending rate of Lloyds Bank plc from time to time (or such other equivalent rate as we may reasonably specify);

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

“**Charges**” means the charges and provisions payable by you to us in connection with the Supply as published by us from time to time at [www.ygp.co.uk](http://www.ygp.co.uk) (Out of Contract Rates) and all other charges, costs and expenses set out or referred to in the Agreement and including value added tax on such charges, provisions, costs and expenses and any other tax, levy, charge or duty related to, or on, the supply of gas and/or electricity or imposed on us as a supplier as we may reasonably attribute to you, as such charges and provisions may be varied from time to time;

“**Conditions**” means these terms and conditions as may be amended by us from time to time;

“**Data Aggregator**” has the meaning given to such term in the Industry Agreements;

“**Data Collector**” has the meaning given to such term in the Industry Agreements;

“**Due Date**” has the meaning given to such term in Condition 3.1.7;

“**Force Majeure**” means any event or circumstances beyond the reasonable control of either us or you, provided that lack of funds shall not constitute Force Majeure;

“**Industry Agreements**” means all agreements, licences, authorisations, codes and procedures relating to the supply of gas and/or electricity to the Premises;

“**Meter Operator**” has the meaning given to such term in the Industry Agreements;

“**Premises**” means a property to which we supply gas and/or electricity to you under the Agreement;

“**Registered**” means we are registered as the supplier in respect of a Supply Point in accordance with all Industry Agreements, industry processes and regulations;

“**Supply**” means the supply of gas and/or electricity by us to you at the Supply Point(s) in accordance with the terms of the Agreement;

“**Supply Point(s)**” means in respect of each of the Premises, the point(s) at which electricity or gas is metered prior to supply to such Premises;

“**we**”, “**us**”, “**our**” or “**Supplier**” means Eco Green Management Limited, currently trading as Yorkshire Gas & Power, registered in England and Wales with company number 06957198 and having its registered office at 4305 Park Approach, Leeds, LS15 8GB;

“**you**”, “**your**” or “**Customer**” means the person identified as the customer in the Confirmation Letter.

##### 1.2. In the Agreement:

1.2.1. references to persons shall be deemed to include references to natural persons, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality);

1.2.2. references to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.3. a reference to a person includes a reference to his executors, administrators, personal representatives, successors and assigns;

1.2.4. words in the singular shall include the plural and vice versa;

1.2.5. a reference to one gender shall include a reference to the other genders;

1.2.6. headings are included for convenience only and shall not affect the construction of the Agreement; and

1.2.7. any reference to a Condition is a reference to the corresponding paragraph in these Conditions.

1.3. References in the Agreement to statutory provisions shall (where the context so admits and unless otherwise expressly provided) be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted (whether before or after the date of the Agreement) and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.

1.4. Any agreement, covenant, representation, warranty, undertaking or liability arising under the Agreement on the part of two or more persons shall be deemed to be made, given or assumed by such persons jointly and severally.

1.5. A reference to writing or written includes faxes and e-mail.

## 2. BASIS OF CONTRACT

2.1. The Supply is subject to the terms of the Agreement. By taking the Supply, you are deemed to have agreed to accept the Supply subject to the terms of the Agreement.

2.2. Subject to the other provisions of the Agreement, the Agreement shall continue until we or another supplier have entered into a new agreement with you for the supply of gas and/or electricity to each of the Supply Point(s).

2.3. The Supply under this Agreement is wholly or mainly for non-domestic purposes.

## 3. SUPPLY

3.1. The Supply to any Supply Point may be temporarily or permanently discontinued, de-energised, disconnected or altered:

3.1.1. to avoid danger;

3.1.2. in accordance with the Act or any other law or industry agreements relating to the supply of gas and/or electricity;

3.1.3. to avoid failure or interference in our supply of gas and/or electricity to any other person caused by your failure to comply with the terms of the Act or any other law or industry agreements relating to the supply of gas and/or electricity;

3.1.4. in the case of an accident or emergency;

3.1.5. to enable maintenance works to be undertaken;

3.1.6. in accordance with the terms of your electricity connection agreement with the operator of the relevant electricity distribution network;

3.1.7. in the event of any breach of the Agreement by you (including, without prejudice to the foregoing generality, if you fail to make any payment due to us under the Agreement by the due date for payment and/or in accordance with any payment plan agreed by us (the "Due Date")).

Where the Supply is temporarily or permanently disconnected or altered due to an act or omission by you, we shall be entitled to charge you a restoration charge before restoring the Supply.

3.2. Title and risk to gas and/or electricity which forms the Supply shall pass to you at the Supply Point(s).

## 4. YOUR OBLIGATIONS

4.1. If another supplier attempts to transfer the Supply, we shall be entitled to object to such transfer where:

4.1.1. you have not paid any Charges that are due to be paid to us; and/or

4.1.2. the transfer of the Supply to another supplier would otherwise be in breach of the terms of the Agreement.

4.2. Where you cease to own or occupy any Premises, you will give us as much notice as reasonably practicable of such fact (which shall, in any event, be no less than 28 days' notice), together with your new address and the details of the new owner or occupier of the Premises. You will continue to be liable for the Charges in respect of such Premises until (i) you have provided us with the information required under this Condition 4.2, the 28 day notice period has expired and you have ceased to own and/or occupy such Premises, or (ii) such time as another supplier has commenced a supply of gas and/or electricity to such Premises (as the case may be) or we commence a supply of gas and/or electricity to such Premises under another agreement.

4.3. If you give us notice under Condition 4.2, we shall be entitled, in our sole discretion, to either:

4.3.1. accept such notice and agree to terminate the Agreement in relation to those Premises; or

4.3.2. refuse to accept such notice in which case the Agreement shall not terminate in relation to those Premises; or

4.3.3. ask you to provide such evidence as we may require in respect of you ceasing to own or occupy such Premises.

If we ask you to provide evidence in terms of Condition 4.3.3, we shall be entitled in our sole discretion to either accept or reject such evidence and exercise our rights under Conditions 4.3.1 or 4.3.2 accordingly.

4.4. Subject to Condition 4.1, you shall be entitled to transfer the Supply to another supplier on giving us not less than 28 days' written notice.

## 5. CHARGES AND PAYMENTS

5.1. You will pay to us the Charges calculated in accordance with the terms of the Agreement.

5.2. The quantity of gas and/or electricity supplied to you under the Agreement shall be measured by the meter(s) at each Supply Point. We shall be entitled to submit to you an invoice based on our reasonable estimate of the gas and/or electricity consumed where a reading of any such meter is not available to

us, and you agree to pay any such invoice. Where we issue an invoice based on an estimate of consumption, we shall make such adjustment as is appropriate (if any) on the basis of the next actual reading of the relevant meter(s).

- 5.3. You shall pay any invoice in full by variable Direct Debit (or as otherwise may be agreed in the Confirmation Letter) within 10 days of the date of the invoice. If we agree to accept payment from you other than by Direct Debit, then you shall pay any invoice within 10 days of the date of the invoice. Where the due date for payment of any sum by you under the Agreement is not a Business Day, the due date shall be the next Business Day. If we agree a monthly or other periodic budget plan with you from time to time, you agree that we shall be entitled to apply such sums as are held by us in settlement of any outstanding Charges.
- 5.4. Without limiting any or our other rights or remedies, if you fail to make any payment due to us under the Agreement by the Due Date, we shall be entitled to:
- 5.4.1. charge you interest on the overdue amount at the rate of 8 per cent per annum above the then current Base Rate, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount in full, whether before or after judgment, and compounding quarterly; and/or
  - 5.4.2. charge you an amount of up to £100 per Premises on each occasion where we are required to contact you in respect of a failure by you to pay an amount due by you by the Due Date; and/or
  - 5.4.3. charge you fixed sum charges in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and/or
  - 5.4.4. recover from you all costs, charges and expenses incurred by us and/or any third party appointed by us in attempting to recover any sums due by you to us or for any breach by you of the Agreement; and/or
  - 5.4.5. discontinue, alter, de-energise and/or disconnect the Supply and recover all costs associated with the discontinuance, alteration, disconnection and/or de-energisation of the Supply and replacement or removal of any meters.
- 5.5. You shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 5.6. Without prejudice to our other rights under the Agreement, we may vary the Charges or pass through any higher or additional costs in our sole discretion, including (without limitation):
- 5.6.1. in order to comply with any law, regulation, direction, order, licence or other legal requirement;
  - 5.6.2. the pass-through of third party charges;
  - 5.6.3. where there is a change in relation to third party charges as a result of a change in law, industry agreements or the Authority imposes such a change or there is a change in the structure or method of calculating such charges;
  - 5.6.4. you do not have or cease to have your own Agents; and/or
  - 5.6.5. where any obligation or cost that is imposed on us in connection with distribution, transportation or supply of gas and/or electricity is increased, or the method of calculating such costs is changed, or a new obligation or cost is introduced, and that increase, change in method or new cost or obligation affects our costs of providing the Supply or of otherwise complying with our obligations under this Agreement.
- 5.7. In addition to the Charges, you will also pay to us on demand:
- 5.7.1. the reasonable costs, charges and expenses incurred by us in attempting to recover any sums due by you to us or for any breach by you of the Agreement, including, without limitation, third party costs, charges and expenses;
  - 5.7.2. any costs, charges and expenses incurred by us in connection with the disconnection or reconnection a supply of gas and/or electricity to you under the Agreement or a de-energisation or energisation of electricity Supply Point(s) and/or the replacement or removal of any meters;
  - 5.7.3. our costs in relation to the distribution and transportation of gas and/or electricity to the Premises;
  - 5.7.4. any costs, charges or liabilities incurred by us relating to an obligation imposed on us a supplier of gas and/or electricity under any Industry Agreement, law, regulation, direction or order;
  - 5.7.5. such reasonable charges as may be levied by us or upon us by an Agent or others arising from or in relation to the Agreement;
  - 5.7.6. any costs, charges and expenses incurred by us in connection with you exceeding the total amount of gas and/or electricity that you are permitted to consume at a Supply Point in any given period as agreed with the operator of the local gas or electricity distribution network (as the case may be);
  - 5.7.7. any costs and expenses incurred by us in connection with you making any payments due to us under the Agreement by way of credit, debit or charge card;
  - 5.7.8. in respect of any invoice which is not settled by direct debit, an amount equal to the greater of (i) 6% of the amount of such invoice, and (ii) £75 in respect of each Supply Point to which such invoice relates;
  - 5.7.9. the sum of £50 on each occasion that you or your bank cancel a direct debit instruction (unless you give us written notice of alternative, valid, direct debit instructions prior to the date on which you or your bank cancel such direct debit instruction);
  - 5.7.10. the sum of £50 on each occasion we are unable to recover a payment, or we only recover part of a payment, from you pursuant to a direct debit instruction; and

5.7.11. an amount calculated in accordance with the following on each occasion that you fail to pay in full when due any instalment we may agree with you from time to time in relation to a monthly or other periodic budget plan:

<b>Amount of unpaid instalment</b>	<b>Late payment charge</b>
Less than £1,000	£40
£1,000 or more but less than £10,000	£70
£10,000 or more	£100

5.8. We shall be entitled at any time to undertake a review of your credit status. If we are not satisfied (in our sole discretion) with your credit status at any time, or if you have failed to pay any sum due to us by the date due in terms of the Agreement, we may:

5.8.1. require that you provide us with a security deposit (or increase any security deposit held by us), bank guarantee, parent or personal guarantee or such other form of security or guarantee that we may request, all on such terms and from such party as may be acceptable to us; and/or

5.8.2. vary the Charges immediately upon notice to you.

5.9. We shall be under no obligation to hold any security deposit on trust for you or in a separate bank account specified for that purpose.

5.10. If we require provision of a deposit, security or guarantee and you fail to provide a deposit, security or guarantee within 14 days of our request, such failure shall be deemed to constitute a material breach of the Agreement and we shall be entitled to either:-

5.10.1. terminate the Agreement forthwith by writing notice to you; or

5.10.2. vary the Charges immediately upon notice to you.

## 6. METERING

6.1. Upon request by us at any time and from time to time, you will provide us with true, complete and accurate details of the metering equipment and meter reading arrangements in place in respect of each of the Premises. You will give us notice as soon as possible where any changes are made to a Supply Point or the metering equipment or meter reading arrangements relating to such Supply Point or where there has been any damage to or interference with any metering equipment.

6.2. If for any reason whatsoever it is necessary to change the metering equipment or the meter reading arrangements during the term of the Agreement for all or any of the Premises (including, without limitation, where the metering equipment or meter reading arrangements do not comply with the requirements of the Act or Industry Agreements or we are unable to calculate the Charges payable by you under the Agreement), we will be entitled to arrange for the installation, maintenance replacement of the metering equipment and/or change the meter reading arrangements for such Premises.

6.3. If we incur any costs, charges or expenses in connection with the installation, maintenance or replacement of metering equipment or change to meter reading arrangements in terms of Condition 6.2, you will pay to us within 14 days of demand the whole amount of such costs, charges and expenses.

6.4. We are not responsible for any faults in metering equipment that we do not own or provide to you.

6.5. If you or we believe that metering equipment is not accurately measuring the amount of gas or electricity supplied to any Premises and as a result, you or we are bound or entitled in terms of the Act and the Industry Agreements for the accuracy of the metering equipment to be tested, then where we are bound to undertake such test or either or us requests such test to be undertaken, the metering equipment shall be tested in accordance with the Act and the Industry Agreements as soon as practicable. If the metering equipment is found to be working within the limits of accuracy required by the Act or the Industry Agreements, the cost of such inspection and testing will be borne by whoever disputed the accuracy of the metering equipment. If the metering equipment is not working within the limits of accuracy required by the Act or the Industry Agreements, you shall be responsible for all costs incurred except where the Meter Operator has been appointed by us.

6.6. If you wilfully damage or interfere with metering equipment, such damage or interference will be deemed to be a material breach of the Agreement and we shall be entitled to terminate the Agreement.

6.7. You will give us and the Agents full, free and safe rights of access to the Supply Points and the Premises at all times and on such notice as may be reasonable or required under the Act (if any). If we are unable to gain full, free and safe rights of access to any Supply Point or Premises, we will give you written notice of that fact and if you do not remedy the situation within one month thereafter, we shall pass through to you any additional costs, charges and expenses incurred by us as a result.

6.8. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us, our agents and contractors in connection with (i) your interference with gas or electricity metering equipment and (ii) the theft of gas or electricity at any Premises.

## 7. ACCESS RIGHTS

7.1. You will allow us, our agents and contractors, the operators of the local gas and electricity distribution networks and any of their agents and contractors and the Agents full, free and safe rights of access to the Premises at all times:

7.1.1. if we believe it is necessary in order to disconnect or de-energise the supply of gas and/or electricity to the Premises to avoid danger to life and/or property or in any other case of emergency; and/or

7.1.2. for any purpose authorised or required in terms of the Act, the Industry Agreements or the Agreement.

7.2. You shall indemnify us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us, our agents and contractors, the operator of the local gas and electricity distribution networks and any of their agents and contractors and the Agents arising out of or in connection with your failure to comply with the terms of Conditions 6.7 and 7.1.

#### 8. ELECTRICITY – NATIONAL TERMS OF CONNECTION

We are acting on behalf of your electricity network operator to make an agreement with you. The agreement is that you and your network operator both accept the National Terms of Connection (NTC) and agree to keep to its conditions. This will happen from the time that you enter into the Agreement and it affects your legal rights. The NTC is a legal agreement. It sets out rights and duties in relation to the connection at which your network operator delivers electricity to, or accepts electricity from, your home or business. If you want a copy of the NTC or have any questions about it, please write to: Energy Networks Association, 6th Floor, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF, phone 0207 706 5137, or visit the website at [www.connectionterms.co.uk](http://www.connectionterms.co.uk).

#### 9. PERSONAL INFORMATION

9.1. In this Condition 9, 'you', 'your' and 'customer' is extended to include all or any of your directors, employees or partners.

9.2. Any information which you provide to us or our agents or contractors or we otherwise hold (whether or not under the Agreement) may be used by us and/or given to and used by our agents and/or our contractors as follows:

- 9.2.1. to identify you when you contact us;
  - 9.2.2. to contact you through mail, telephone or other electronic means;
  - 9.2.3. to administer any accounts, services and products provided by us now or in the future;
  - 9.2.4. for market research and analysis;
  - 9.2.5. for testing computer systems;
  - 9.2.6. to help us, our agents and/or our contractors to detect debt, fraud or loss;
  - 9.2.7. to inform you about services and products which may be of interest to you; and
  - 9.2.8. for training purposes,
- and for any other purposes reasonably ancillary to any of the above.

9.3. We may transfer personal data to countries outside the European Economic Area for the purposes referred to in Condition 9.2.

9.4. We may monitor and/or record communications with you (including telephone conversations and e-mails) to confirm your identity, ensure security, maintain service quality and for training purposes.

9.5. When you apply to us for a supply of gas and/or electricity we and/or our suppliers may check the following records relating to you for the purpose of assessing applications or verifying identity:

- 9.5.1. our own;
- 9.5.2. publicly available records; and
- 9.5.3. personal and business records at credit reference agencies (CRAs).

When CRAs receive a search from us and/or our suppliers, they will place a search footprint on your business and, where applicable, personal credit file that may be seen by others.

9.6. We and/or our suppliers may periodically review the records referred to in Condition 9.5 to help us manage the arrangements under the Agreement on an ongoing basis. Those checks will be used to assess the ongoing suitability of the payment arrangements you have with us.

9.7. If you give us false or inaccurate information and we suspect or identify fraud, we will record this and may also pass this information to other organisations involved in crime and fraud prevention.

9.8. If you have received products and/or services from us and do not make payments that you owe us, we will trace your whereabouts and recover debts.

9.9. Your data may also be used for other purposes for which you give your specific permission or, in very limited circumstances, when required by law or where permitted under the terms of the Data Protection Act 1998.

9.10. You are entitled to a copy of the data held about you on our systems on payment of a fee. You may also request more information about how we and CRAs use your data by writing to:

Yorkshire Gas and Power  
4305 Park Approach  
Leeds  
LS15 8GB

9.11. You can contact the CRAs currently operating in the UK. The information each CRA holds may not be the same. They will charge you a small fee.

Creditsafe UK, Bryn House, Caerphilly Business Park, Van Road, Caerphilly CF83 3GG

Telephone 029 2088 6500

[www.creditsafeuk.com](http://www.creditsafeuk.com)

Call Credit, Consumer Services Team, PO Box 491, Leeds LS3 1WZ

Telephone 0870 0601414

[www.callcredit.co.uk](http://www.callcredit.co.uk)

Equifax PLC, Credit File Advice Centre, PO Box 3001, Bradford BD1 5US

Telephone 0870 010 0583

[www.myequifax.co.uk](http://www.myequifax.co.uk)

Experian, Consumer Help Service, PO Box 8000, Nottingham NG80 7WF

Telephone 0870 241 6212

[www.experian.co.uk](http://www.experian.co.uk)

Dunn and Bradstreet UK, Marlow International Parkway, Marlow SL7 1AJ

Telephone 0870 243 2344

[www.dnb.co.uk](http://www.dnb.co.uk)

## 10. LIMITATION OF LIABILITY

- 10.1. Nothing in these Conditions shall be deemed to restrict or exclude our liability for death or personal injury caused by our negligence.
- 10.2. Subject to Condition 10.1:
- 10.2.1. we shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of actual or anticipated profit, revenue, contract, production or goodwill or any indirect or consequential loss arising under or in connection with the Agreement; and
- 10.2.2. our total liability to you in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £100,000.
- 10.3. We shall be entitled to recover from you any loss of actual or anticipated profit, revenue, contract, production or goodwill or any indirect or consequential loss arising under or in connection with any breach by you of these Conditions or the Agreement or the termination of the Agreement (for any reason whatsoever).
- 10.4. This Condition 10 shall survive termination of the Agreement.

## 11. TERMINATION

- 11.1. Without limiting any of their other rights or remedies, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 11.1.1. the other party commits a material breach of the Agreement and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing of the breach;
- 11.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 11.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 11.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 11.1.5. the other party (being an individual) is the subject of a bankruptcy petition or order;
- 11.1.6. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 Business Days;
- 11.1.7. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
- 11.1.8. a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- 11.1.10. any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Conditions 11.1.2 to 11.1.9 (inclusive);
  - 11.1.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - 11.1.12. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 11.2. Without limiting its other rights or remedies, we may terminate the Agreement with immediate effect by giving written notice to you if you fail to pay any amount due under the Agreement on the due date for payment.
- 11.3. The Agreement will terminate automatically in respect of any Supply Point if the Authority issues a notice to another supplier to take over the Supply in relation to that Supply Point.

## 12. CONSEQUENCES OF TERMINATION

- 12.1. On termination of the Agreement for any reason:
- 12.1.1. you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of any Supply for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
  - 12.1.2. you shall immediately pay to us all other Charges payable by you under this Agreement, which shall be payable by you immediately on receipt of an invoice from us;
  - 12.1.3. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
  - 12.1.4. any provisions of the Agreement which expressly or by implication have effect after termination shall continue in full force and effect.
- 12.2. If the Agreement is terminated in accordance with Condition 4.3.1, then without prejudice to any other rights we may have, you shall indemnify and keep us indemnified in respect of any costs, charges, expenses, liabilities and any other losses (including, without limitation, all such losses as are referred to in Condition 10.3) suffered by us in connection with such termination.

## 13. GENERAL

- 13.1. Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Agreement as a result of Force Majeure (excluding any failure to make payment of sums due under the Agreement).
- 13.2. We may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of our rights and obligations under the Agreement and may subcontract or delegate in any manner any or all of our obligations under the Agreement to any third party or agent. In the event that we assign or transfer any or all of our rights and obligations under the Agreement, the party that acquires such rights and assumes such obligations will do so as if it had been the original party to the Agreement with you and we will be unconditionally and irrevocably released from all of our obligations under the Agreement assigned and transferred.
- 13.3. You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Agreement.
- 13.4. No failure or delay by us in enforcing any of our rights under the Agreement shall be construed as a waiver of those rights, unless a waiver is made in writing. Such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 13.5. If any provision of the Agreement or any part thereof is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Agreement and the remainder of the provision in question shall not be affected thereby.
- 13.6. Except as set out in the Agreement, any variation, including the introduction of any additional terms and conditions, to the Agreement, shall only be binding when agreed in writing and signed by us.
- 13.7. We shall be entitled to make any amendments required to the Agreement in order to comply with any Industry Agreements, any change in law, any order made in terms of the Act or as result of any order or direction of the Secretary of State, court of competent authority or the Authority. We shall be entitled to make any amendments to the Agreement at any time after the expiry of the Fixed Term.
- 13.8. The Agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.
- 13.9. Each party acknowledges that, in entering into the Agreement, it does not rely on any statement, representation, assurance or warranty of any person (whether a party to this agreement or not) other than as expressly set out in the Agreement.
- 13.10. Except as expressly provided elsewhere in the Agreement, a person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

## 14. NOTICES

- 14.1. Any notice or other communication required to be given by us to you under or in connection with the Agreement shall be in writing and shall be delivered to you personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at your registered office or such other correspondence address as you may give us notice of from time to time (if a company) or (in any other case) your principal place of business or such other correspondence address as you may give us notice of from time to time, or sent by fax to your main fax number.

- 14.2. Any notice or other communication required to be given by you (or any third party acting on your behalf) to us under or in connection with the Agreement shall be in writing and shall be delivered to us by recorded delivery or commercial courier at our registered office. Where any such notice or communication is given to us by a third party acting on your behalf, such notice or communication must include a valid letter of authority signed by you on your headed paper specifically authorising that third party to give such notice or communication to us.
- 14.3. Subject to Conditions 16.1 and 16.2, any notice or other communication issued by us to you shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

15. GOVERNING LAW AND JURISDICTION

The Agreement shall be governed and construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales unless all of the Premises are located in Scotland, in which case the Agreement shall be governed by and construed in accordance with the laws of Scotland and the parties hereby submit to the non-exclusive jurisdiction of the courts of Scotland.