



Acceptance of terms

Your use of the <https://www.utilinkconsulting.co.uk/> (the “website”) and any business you transact with Utilink Consulting Limited is governed by the following Terms and Conditions of Use (the “Terms. **YOU MUST READ THESE TERMS AS THEY ARE AN IMPORTANT PART OF YOUR AGREEMENT WITH US.** Your acceptance of these Terms will be demonstrated by signing a Letter of Authority/Permission Slip following which you will have entered into a contract with Utilink Consulting Limited to provide you with certain services in accordance with these Terms (“**Contract**”). These Terms apply to the Contract to the exclusion of any other terms that you, the Customer, seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

1 Who are we

The website is provided by Utilink Consulting Limited and is associated group companies that operate in the United Kingdom (referred to as “**Utilink**” “**us**” “**our**” or “**we**” in these terms) to client firms and your employees (referred to as “**the Customer**” “**you**” “**your**” or “**user**” in these terms).

2 Description of services

2.1. We offer you access to the website to make the most of mutual business opportunities, by providing you with a variety of services where we can assist you in reducing your energy costs and/or the carbon footprint of your business (“**Procurement Services**”). Please note Utilink act as Brokers not suppliers and as such, may receive incentives and commissions from such suppliers.

Although we work with many suppliers, we do not have access to every supplier and to every deal that could be available to you, the Customer. There is never any guarantee we will have access to the objectively cheapest deal on the market.

3 Charges and Payment - **YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

3.1. Unless otherwise expressly agreed in writing between us, in consideration for the provision of the Procurement Services we will be paid a fee (“**Commission**”) by the provider of energy services (“**Energy Supplier**”) with whom you enter into a contract for the supply of utilities (“**Energy Contract**”). You agree that in return for us receiving the Commission, we shall supply the Procurement Services to you and you shall receive the Procurement Services in accordance with these Terms, with the payment made by any of the below channels;

3.2. The Procurement Services are not free to you (the Customer). We will earn a Commission for Procurement Services we have provided to you (the Customer) and we only earn a Commission if we are successful in brokering an Energy Contract with an Energy Supplier on your behalf. If we are not successful in brokering an Energy Contract on your behalf with an Energy Supplier, we will not earn any Commission and sustain a loss, the Procurement Services are cost free to you, unless there has been prior alternative commercial arrangements agreed with you. This means that if we are successful in brokering an Energy Contract between you and the Energy Supplier, we will earn a Commission. The Commission will usually be included within our proposals we present for your consideration. Our Commission amount is usually included within the energy unit rate (kWh) in the Energy Contract and our Commissions are paid to us directly by the successful Energy Supplier. Our Commission is dependent on the volume of energy unit (kWh) consumed by each meter or group of meters we have contracted (brokered) on your behalf to an Energy Supplier. This means that if the meter or group of meters consumes less energy, we will receive less Commission and if the meter or group of meters consumes more energy, we will receive more Commission. The maximum Commission we will receive is 4p per kWh of energy unit consumed by the meter or group of meters contracted.

3.3. We will disclose to you on request the Commission it is proposed we will receive in respect of a proposed Energy Contract, if your request is made prior to you entering into that Energy Contract. You will not pay any additional fees for our Procurement Services on top of what we present in our supplier proposals.

3.4. There are other mechanisms for payment of the Procurement Services we are to provide. If we agree any of these are to apply in relation to the Procurement Services, we will confirm this with you in writing. These include, but are not limited to the following types of arrangements:

- 3.4.1. a shared savings model;
- 3.4.2. an uplift applied directly to your unit rate or standing charge by either (a) applying the uplift on top of the unit rate provided by the Utility Provider e.g.: 0.001 pence per kWh or (b) applying the uplift into the base rate provided by the Utility Provider e.g.: 0.001 pence per kWh;
- 3.4.3. a percentage of the overall contract cost;
- 3.4.4. a flat fee for placement of an individual Energy Contract e.g. £100.00; or
- 3.4.5. an uplift to any site works carried out at your premises.

3.5. You agree to provide us with such information as we may reasonably request in order to verify the cost and status of your Energy Contract and shall provide us with a copy of such Utility Provider invoices and Energy Contract on request.

3.6. You agree that you shall not commit any act or omission which has the object or effect of preventing our ability to receive a payment from the Utility Provider under clause 3.2.



3.7 Utilink do not act in the capacity of an “agent” or in an “agency capacity” Any contracts entered into with Energy Suppliers being introduced via Utilink are solely at the Energy Supplier’s discretion in respect of which Utilink have no control. Energy Contracts entered into with Energy Suppliers are legal binding once entered into by you and the Energy Supplier.

3.8 You may request the amount of Commission per kWh that has been included in an Energy Contract once an Energy Contract has been signed by you (the Customer) and the Energy Supplier.

3.9 We agree to use reasonable endeavours to meet any performance dates specified by us but any such dates shall be estimates only and time shall not be of the essence for performance of the Procurements Services or any additional services you ask us to undertake.

3.10 We warrant to you that the Procurement Services, together with any additional services you ask us to undertake and which we agree to provide to you (“Additional Services”) will be provided using reasonable care and skill.

3.11 We take into account a number of factors when assessing which Energy Suppliers and which specific Energy Contracts are best suited to the business needs of the Customer. These include but are not limited to: the length of the contracts available, the price guarantee available, the quality of the services and services available from each Energy Supplier and specific Customer needs (including your energy consumption pattern, budget, green credentials etc.).

Finding the best solution to fit your business is one of our main considerations when putting forward potential Energy Suppliers / specific Energy Contracts. For the avoidance of doubt, these deals may not, at face value, be the cheapest on the market, but are the deals which we believe will give you the greatest overall benefit for your money spent, and we do not warrant to always offer the Customer the ‘cheapest deal’.

4 Limitation of liability - YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

4.1 The information, names, images, pictures, logos and services provided on the website are provided “AS IS” and on an “AS AVAILABLE” basis without any representations or any kind of warranty made (whether express or implied by law) to the extent permitted by law, including the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy.

4.2 References to liability in this clause 4 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

4.3 Nothing in the Contract Limits any liability which cannot be limited, including, but not limited to, liability for (a) death or personal injury caused by negligence (b) fraud or fraudulent misrepresentation and (c) breach of the implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

4.4 Subject to clauses 4.3 and 4.5, our total liability to you shall not exceed the amount of the Commission.

4.5 Under no circumstances will we be liable for any of the following losses or damage (whether such losses were foreseen, foreseeable, known or otherwise): (a) loss of use of or corruption of software, data or information; (b) loss of revenue or profits (whether actual or anticipated); (c) loss of sales or business; (d) loss of agreement, contract or opportunity; (e) loss of or damage to goodwill or injury to reputation; (f) loss of anticipated savings; (g) losses suffered by third parties; or (h) any indirect, consequential, special or exemplary damages arising from the use of the website or our services and or information supplied regardless of the form of action including, without limitation, the Procurement Services and Additional Services.

4.6 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

4.7 This clause 4 shall survive termination of the Contract

4.8 We do not warrant that functions available on the website will be uninterrupted or error free or that any defect will be corrected, or that the website or the server(s) that makes it available are free of viruses or bugs. You acknowledge that it is your responsibility to implement sufficient procedures and virus checks (including anti-virus and other security checks) to satisfy your particular requirements for the accuracy of data input and output.

4.9 Under no circumstances will we be liable for any loss or damage caused by your reliance upon information obtained through the website. Information and data published on our website is for **INFORMATION PURPOSES ONLY** and we do not hold ourselves out as giving advice, and nor should it be construed as such.

4.10 It is the responsibility of each person using the Procurement Services available on the website to evaluate the accuracy, completeness, or usefulness of any information, opinion, advice, or other content made available through it.

5 Your conduct use of the services and obligations

5.1 You agree that all information, data, text, images, graphics and any communication or material, including but not limited to opinions, advice or statements (“Content”) posted on the website is the sole responsibility of the person or persons from whom the Content originated. You are therefore fully responsible for any Content that is uploaded, posted, transmitted, shared, stored or otherwise made available on the website by you and we shall not be made liable for your actions or that of third parties.



5.2 Your use of or reliance on the Content on the website is entirely at your own risk, for which we shall not be liable. It shall be your own responsibility to ensure that the Content available through the website meets your specific requirements. You agree that we do not warrant the content, accuracy or veracity of the Content made available on the website, either created by us or third parties.

5.3 Your permission to access the website is limited to the facility as set out in these Terms. Other than contract documents and marketing material which are printed out during use of the website (together with such copies as are reasonably required for the purposes of the relevant transaction and of your record keeping) and such copying of website screens as is inherent in normal internet browser use, you may not:

- 5.3.1 use or reproduce the website or any part of it;
- 5.3.2 modify translate or adapt the website or its output in any manner;
- 5.3.3 create any derivative works based on the website or its output; or
- 5.3.4 combine the website with any other computer application.

5 General obligations

5.4 You agree

- 5.4.1 to co-operate with us in all matters relating to the Procurement Services and any Additional Services;
- 5.4.2 to comply at all times with these Terms, as well as any applicable terms & conditions of any relevant Energy Supplier, relating to any Energy Contract;
- 5.4.3 within a reasonable period of time and in a timely manner, to provide us with such information, data or documents as we may reasonably require in order to supply the Procurement Services and any Additional Services;
- 5.4.4 to ensure that all information, data and documents provided to us by you are complete, up to date and accurate at all times;
- 5.4.5 to immediately inform us if there is any change in your circumstances and/or business which may affect the provision of the Procurement Services and any Additional Services;
- 5.4.6 to provide such assistance as we may reasonably require from time to time in relation to the Procurement Services and any Additional Services;
- 5.4.7 that we may supply any information, data or documents that we receive from you to such Energy Suppliers as we may determine;
- 5.4.8 to comply with the provisions of the Bribery Act 2010 and any other applicable legislation.
- 5.4.9 not to enter into any other energy supply contract for the intended period of the Energy Contract we broker for you for any reason including due to a change in tenancy or change in occupancy.
- 5.4.10 to provide authority for us to:
 - 5.4.11 obtain information from your current energy supplier(s) in relation to your current rates and energy consumption;
 - 5.4.12 obtain information and/or enter into discussions and/or arrangements with energy providers from our portfolio as we may determine and terminate your existing energy supply contract on your behalf; or
 - 5.4.13 make proposals to extend the Energy Contract when the market indicates it is prudent to do so in order to protect you against potential negative price fluctuations and to execute any proposed extension, Utilink maintain the right at our discretion to extend Energy Contracts with the current Energy Supplier at any time should we hold a level two Letter Of Authority signed by you (the Customer) which in our view would represent a saving in a climbing market.

5.5 If you fail to perform any relevant obligation and/or breach any warranty and/or we are prevented or delayed from performing any of our obligations under the Contract due to any act or omission by you or a failure by you to perform any relevant obligation ("**Customer Default**"):

- 5.5.1 without limiting or affecting any other right or remedy we may have, we have the right to suspend performance of the Procurement Services or any Additional Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays us from performing any of our obligations;
- 5.5.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from your failure or delay to perform any of your obligations as set out in this clause 5; and
- 5.5.3 you agree to reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default ("**Default Fee**"). This includes any Commission which we would have received from the Energy Supplier, but we do not receive from the Energy Supplier due to the Customer Default. The amount of the Commission will vary and will depend on certain factors including the intended term of the Energy Contract, energy usage, tariffs and number of meters.



5.6 The Customer acknowledges that by entering into an Energy Contract with an Energy Supplier, the Customer is contracting directly with the Energy Supplier in this respect, and not with us. As such, the Customer agrees that we are not liable in relation to any transactions, dealings, or arrangements made between the Customer and the relevant Energy Supplier, and that any such transactions, dealings, or arrangements (including any payment obligations) are the Customer's sole responsibility.

6 Remuneration

6.1 Notwithstanding any Default Fee detailed in Clause 5.5.3, there is no direct fee payable by you to us in connection with the Services.

6.2 You agree that we may receive a Commission payment (including a retrospective commission payment) as detailed in clause 3 above. If we agree an alternative method of remuneration (such as those listed at clause 3.4) we will confirm this in writing with you and you agree to pay us as agreed.

6.3 Any Default Fee due to us is payable no later than 30 days from the date of invoice.

6.4 If the parties agree any additional fee for and any Additional Services, it shall be paid by the Customer as agreed between the parties when those Additional Services are agreed.

7 Indemnity

You agree to indemnify us and keep us indemnified (including our successors and assigns, our directors, officers, employees and agents) from and against all liabilities, claims, losses, costs, damages and expenses including reasonable legal fees which are reasonably incurred by us (including our successors and assigns, our directors, officers, employees and agents) arising from your use of the Procurement Services and any Additional Services supplied.

8 Sanctions

We reserve the right to reveal your activity to your employer and/or deny or suspend, at our sole discretion, access to the website or any of the services available via the website without reason or notice, but will only do so if we deem it necessary to stop or prevent an intentional breach of the terms or behaviour we consider to be inappropriate. We also reserve the right to reveal your identity, whether in our opinion, or when requested to do so by a court of competent jurisdiction or a law enforcement agency, if we have good reason to believe that you have breached one or any of the terms.

9 Third party websites

The website may also contain hyperlinks to websites operated by third parties. The responsibility for the operation and content of those websites shall rest solely with the organisation identified as controlling the third party website and will be governed by separate terms and conditions and privacy policy. Hyperlinks are provided for convenience and inclusion of any hyperlink does not imply an endorsement in any way of the site to which it links. We accept no responsibility or liability for the contents of any hyperlinked website and ask that you review the terms and conditions (including the privacy policy) for all third party websites before using the goods or services being offered.

10 Intellectual property rights

The names, images and logos identifying us or third parties and their products and services are subject to copyright, design rights and trademarks of us and/or third parties. Nothing contained in these terms shall be construed as conferring by implication, estoppel or otherwise any licence or right to use any trademark, patent, design right or copyright by us, or any other third party, except those explicitly available as part of the Services.

11 Notices

11.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by 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).

11.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- (b) 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.

11.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

12 Anti-competitive behaviour

12.1 You are obliged to comply with all aspects of UK and EC competition laws. It is therefore your individual responsibility to ensure that you comply at all times with these laws.

12.2 You are not permitted to disclose or exchange confidential business information with our competitors (this includes other brokers) or use the Forums to facilitate any such conduct, and nor should you disclose your intended future business conduct, pricing or term of contract.



13 Term and Termination

13.1 Subject to clause 13.2:

13.1.1 if you do not sign a Letter of Authority, this Contract shall terminate on completion on the Procurement Services as set out in the Business Energy Report; or

13.1.2 if you do sign a Letter of Authority, this Contract shall terminate on the date that the Energy Contract terminates in accordance with its terms.

13.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

13.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen (14) days of that party being notified in writing to do so;

13.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

13.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14 Consequences of Termination

14.1 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14.3 On termination of the Contract you will pay all of our outstanding unpaid invoices and any other sums (if any) due or otherwise payable by you under the Contract. If any Procurement Services and/or Additional Services have been rendered but not invoiced, we shall (where we are entitled to do so) submit an invoice for such services which shall be payable by you immediately on receipt.

15 General

15.1 **Force Majeure.** We shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of our obligations under the Contract if such delay or failure result from events, circumstances or causes beyond our reasonable control.

15.2 **Assignment and other dealings.** We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the Contract.

15.3 You must not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract.

15.4 **Confidentiality.** Each party undertakes that it shall not at any time during the Contract, and for a period of 5 years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.5

15.5 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with clauses 15.4 to 15.6; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.6 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

15.7 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.8 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

15.9 Nothing in this clause shall limit or exclude any liability for fraud.



15.10 **Variation.** Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives). We may change the Terms at any time by posting changes online. Please review the Terms regularly to ensure that you are aware of any changes made by us. Your continued use of the website after changes are posted means you agree to be legally bound by these Terms as updated and/or amended.

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

15.12 **Agency & Partnership.** We are an independent consultant, and nothing in these Terms is intended to, or shall be deemed to establish any partnership between the parties or constitute any party as the agent of the other.

15.13 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.14 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15.15 **Invalidity.** If any of these Terms are determined to be invalid or otherwise unenforceable by reason of the application of any law, such provisions shall be severed and deleted from these Terms and the remainder of these terms shall continue to have full force and effect.

16 Applicable Law and jurisdiction

16.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation

Print Name:

Signature:

Position:

Date: