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SERVICE AGREEMENT**

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**TERMS AND CONDITIONS OF SERVICE
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CONTRACT DETAILS

This Agreement is made on the Commencement Date, between:

* **First Choice Utilities Ltd**, a private limited company, incorporated and registered in England and Wales with company number 11408351, whose registered office is at Office 9, Dalton House, 60 Windsor Avenue, London, United Kingdom, SW19 2RR, trading as **First Choice Utilities** (“**we**”, “**us**”, “**our**”);

and

* The Parties listed under “Customer” in Schedule 1 (“**Customer**”,“**Client**”,“**you**”,“**your**”).

BACKGROUND

First Choice Utilities is an energy brokerage and consultancy business, which sources and advises on energy contracts for businesses in the UK. The Customer wishes to engage First Choice Utilities for the provision of their Services. First Choice Utilities is willing to provide Services to the Customer in accordance with the terms of this Agreement, and as set out in Schedule 1 (“**Services**”).

There terms and conditions were amended, updated, and incorporated on 09th August 2021.

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**BY USING OUR SERVICE, OR BY SIGNING THIS AGREEMENT, OR ANY OF IT’S SCHEDULES, OR A LETTER OF AUTHORITY THE CUSTOMER AGREES TO THESE TERMS AND CONDITIONS**

CONTENTS

1. *Interpretation*
2. *Energy Brokerage and Consultancy Services*
3. *Commencement and Duration*
4. *First Choice Utilities’ Responsibilities*
5. *Customer’s Obligations*
6. *Change Control*
7. *Charges and Payment*
8. *Quality of Services*
9. *Intellectual Property Rights*
10. *Confidentiality*
11. *Limitation of Liability*
12. *Indemnity*
13. *Termination*
14. *Consequences of Termination*
15. *Remedies*
16. *Force Majeure*
17. *Variation*
18. *Waiver*
19. *Rights and Remedies*
20. *Severance*
21. *Agreement in Full*
22. *Third Party Rights*
23. *Notices*
24. *Governing Law and Jurisdiction*

***SCHEDULE 1*** is attached to this Agreement.

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AGREED TERMS

1. **INTERPRETATION**
	1. The following definitions and rules of interpretation apply in this Agreement:
		1. “**Agreement**” or “**Contract**” means this Agreement between the Customer and First Choice Utilities that is made up of:
			1. The Contract Details.
			2. The Agreed Terms.
			3. Schedule 1.
			4. Any applicable Letter of Authority.
		2. “**Business Day**” means 9:00am to 5:00pm, Monday to Friday (excluding public holidays in England).
		3. “**Change Control**” means where there is a change in ownership or management of a company or entity. In respect of a company, a change of ownership will be triggered by the transfer of more than 50% of the shares of a company, a change of management will be triggered by any of the directors leaving who are party to this Agreement by executing this Agreement, the Schedules, or a Letter of Authority. In respect of all other entities, a Change Control shall be any situation that is analogous to the above, determined at First Choice Utilities discretion.
		4. “**Commencement Date**”means the date that this Services Agreement was made, which can be found in Schedule 1.
		5. “**Commission”** means the remuneration paid by the Supplier to First Choice Utilities for securing the Supplier Contract.
		6. “**Confidential Information**”means any information of a confidential nature as described in clause 10.
		7. “**Customer’s Equipment**”means any equipment, systems, or facilities provided by the Customer and used directly or indirectly in the supply of Services. This is extended to apply to any equipment, systems, or facilities which are accessed remotely.
		8. “**Deliverables**”means all Documents, products, and materials developed by First Choice Utilities or its agents, subcontractors, consultants, or employees in relation to the Services provided in any form.
		9. “**Document**” includes (in additional to any document in writing) any drawing, plan, diagram, design, image, tape, disk, or any other device or record embodying information in any form.
		10. “**Failed Contract**” means when a Supplier Contract has been entered into and the Customer then goes on to enter into another Contract with another supplier, and the Supplier Contract facilitated by First Choice Utilities does not proceed to live status. First Choice Utilities will receive no Commission for its services, or will have prepaid Commissions clawed back from the Supplier resulting in loss of time and money.
		11. “**First Choice Utilities’ Equipment**”means any equipment including tools, systems, or facilities provided by First Choice Utilities or its agents, subcontractors, consultants, or employees and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties, under which, title passes to the Customer.
		12. “**First Choice Utilities’ Team**” means all directors, managers, employees, consultants, engineers and specialists, agents, and subcontractors engaged in relation to the Services.
		13. “**Force Majeure Event**”has its definition in clause 16.
		14. “**Group Company**” means a holding company or subsidiary of First Choice Utilities.
		15. “**In-put Material**”means all Documents, information, and materials provided by the Customer, relating to the Services.
		16. “**Intellectual Property Rights**” or “**IPR**“ means patents; utility models; rights to inventions; copyright, neighbouring, and related rights; trademarks and service marks; business names and domain names; rights in get-up and trade dress, goodwill, and the right to sue for passing off or for unfair competition; rights in designs; database rights; rights to use, and to protective confidentiality of, confidential information (including know-how and trade secrets); and all other intellectual property rights, in each case whether registered or unregistered, and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection, which subsist or will subsist, now or in future, in any part of the world.
		17. “**Letter of Authority**” means any letter of authority which is provided to the Customer by First Choice Utilities under this Agreement, which is duly signed by the Customer.
		18. “**Pre-existing Materials**”means all Documents, information, and materials provided by First Choice Utilities or its agents, subcontractors, consultants, or employees, relating to the Services, which existed prior to the Commencement Date.
		19. “**Schedule 1**”means the schedule attached to this Agreement.
		20. “**Supplier**” means a third-party supplier of utilities who will contract with the Customer separately under their own terms and conditions.
		21. “**Supplier Contract**” means the contract which the Customer will enter into with the Supplier direct, for the provision of utility services. This contract shall be separate from this Agreement, and First Choice Utilities are in no way a party to, or connected with, the Supplier Contract.
		22. “**Supplier Services**” means the services to be provided by the Supplier under their contract with the Customer (which is a separate from this Agreement).
		23. “**VAT**”means value added tax, chargeable under the *Value Added Tax Act 1994.*
		24. References to **clauses** and **schedules** are to the clauses and schedules of this Agreement, and references to **paragraphs** are to the paragraphs of the relevant schedule or appendix.
		25. Schedule 1 (and any subsequent or additional Schedules) forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes Schedule 1 (and any subsequent or additional Schedules).
		26. Schedules, clauses, and paragraph headings shall not affect the interpretation of this Agreement.
		27. Unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.
		28. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
		29. Any words following the terms “**including**”, “**include**”, “**in particular**”, “**for example**”, or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term, preceding or following those terms.
		30. A reference to “**writing**”or “**written**” includes e-mail, but not fax.
		31. A reference to a **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).
		32. A reference to a **party** shall include that party’s personal representatives, successors, and permitted assigns.
		33. A reference to a **company** shall include any company, corporation, or other corporate body, wherever and however incorporated or established.
		34. A reference to a **holding company** or a **subsidiary** means a holding company or subsidiary as defined in *section 1159* of the *Companies Act 2006*, and a company shall be treated for the purposes only of the membership requirement contained in *section 1159(1)(b)* and *(c)*, as a member of another company even if its shares in that other company are registered in the name of (a) another person, by way of security or in connection with the taking of security, or (b) its nominee.
		35. A reference to a **statute** or **statutory provision** shall include all subordinate legislation made from time to time under that statute or statutory provision.
		36. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
2. **ENERGY BROKERAGE AND CONSULTANCY SERVICES**
	1. First Choice Utilities provide an energy brokerage and consultancy Service. The exact nature of the Services provided will vary depending on the requirements of the Customer.
	2. The Customer acknowledges and agrees that First Choice Utilities acts as a broker only and does not provide any energy services to the Customer direct. Likewise, First Choice Utilities is not an agent of the Supplier. The Customer further acknowledges and agrees that they will enter a contract with a Supplier. The Supplier will be the provider of the utilities and all matters concerning the use or supply of the contracted Utilities must be directed to the Supplier and not to First Choice Utilities. First Choice Utilities may at their discretion provide reasonable account management services. Any market prices are given for illustrative purposes and no advice is given which shall be taken as advice to be relied upon. The Customer further acknowledges and agrees that market prices are subject to fluctuation and as a result are completely out of First Choice Utilities control.
	3. The Customer agrees that First Choice Utilities is not responsible or liable in any way for any dealings, contracts, or transactions between the Customer and the Supplier, or any provision of the Supplier Services and that any such transactions, contracts, dealings, or payment obligations are the sole responsibility and risk of the Customer.
	4. The Customer agrees that they will use First Choice Utilities on an exclusive basis for the duration of this Agreement, unless otherwise Agreed in writing in advance by First Choice Utilities. Any such waiver of exclusivity under this clause shall apply only to future energy supply contracts, and not during the term of this Agreement, or any Supplier Contract entered into under or in accordance with this Agreement.
3. **COMMENCEMENT AND DURATION**
	1. This Agreement shall commence on the Commencement Date and continue until the Supplier Contract is complete, terminated, or expires, unless this Agreement is otherwise terminated in accordance with clause 13.
	2. First Choice Utilities shall provide the Services from the Commencement Date and shall continue to provide the Services throughout the term.
4. **FIRST CHOICE UTILITIES RESPONSIBILITES**
	1. First Choice Utilities shall:
		1. Use reasonable endeavors to perform the Services and deliver any Deliverables to the Customer in accordance with Schedule 1 and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
		2. Ensure that all goods, materials, standards, and techniques used in providing the Services are of good quality and are free from defects in workmanship, installation, and design.
		3. Ensure First Choice Utilities’ Team use reasonable skill and care in the performance of the Services.
		4. Comply with all applicable laws and regulations relating to the provision of the Services; and provided that First Choice Utilities shall not be liable under the Agreement if, as a result of such compliance, they are in breach of any of their obligations under this Agreement.
		5. Take Reasonable care of any of the Customer’s Equipment and In-Put Material in First Choice Utilities’ possession and make them available for collection by the Customer on reasonable notice and request. First Choice Utilities may dispose of the Customer’s Equipment or In-Put Material if the Customer fails to collect them within a reasonable period after termination of this Agreement.
		6. Observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Client’s premises and have been communicated to First Choice Utilities, provided that First Choice Utilities shall not be liable under this Agreement if, as a result of such observation, First Choice Utilities are in breach of any of their obligations under this Agreement.
5. **CUSTOMER’S OBLIGATIONS**
	1. The Customer Shall:
		1. Co-operate with First Choice Utilities in all matters relating to the Services and appoint as it thinks fit a Customer’s manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services.
		2. Provide such information as First Choice Utilities may reasonably request, and the Customer considers reasonably necessary in order to carry out the Services in a timely manner and to ensure that it is true and accurate in all material respects.
			1. Examples of information that may be required include (without limitation): estimated or actual usage of energy, contract end dates, and other information that may influence prices and quotations.
		3. Provide First Choice Utilities’ Team with access to the Customer’s premises, office accommodation, data, and other facilities as reasonably required by First Choice Utilities’ Team to supply the Services.
		4. If First Choice Utilities’ performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, First Choice Utilities shall:
			1. Not be liable for any costs, charges, or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
			2. Be entitled to payment of the charges despite any such prevention or delay.
			3. Be entitled to recover any additional costs, charges, or losses that First Choice Utilities sustains or incurs that arise directly or indirectly from such prevention or delay.
6. **CHANGE CONTROL**
	1. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
	2. If either party has made any request to make a change to the scope or execution of the Services, First Choice Utilities shall, within a reasonable time, provide a written estimate to the Customer of:
		1. The likely time required to implement the change.
		2. Any necessary variations to First Choice Utilities’ charges arising from the change.
		3. Any other impact of the change on this Agreement.
	3. Unless both parties’ consent to a proposed change, there shall be no change to this Agreement.
	4. If both parties consent to a proposed change, the change shall be made only after the agreement of the necessary variations to First Choice Utilities’ charges, the Services, and any other relevant terms of this Agreement has been varied in accordance with clause 15.
	5. If First Choice Utilities requests a change to the scope or execution of the Services in order to comply with any applicable safety or statutory requirements, and such changes do not materially affect the nature or scope of, or the charges for the Services, the Customer shall not unreasonably withhold or delay consent to it. Unless First Choice Utilities’ request was attributable to the Customer’s non-compliance with the Customer’s obligations, neither the First Choice Utilities’ charges nor any other terms of this Agreement shall vary as a result of such change.
	6. If there is a Change Control of the Customer, the Customer must inform First Choice Utilities immediately, and in any case within 30 days of the Change Control event. If there is a Change Control of the Customer, First Choice Utilities may, at their discretion, terminate this Agreement, either with immediate effect, or at some other date to be determined by First Choice Utilities. If First Choice Utilities choose not to terminate this Agreement due to a Change Control, First Choice Utilities may require the new directors, managers, or owners (as applicable) to sign this Agreement, a Schedule, or new Letter of Authority, any such request for signatures shall not be withheld.
7. **CHARGES AND PAYMENT**
	1. In consideration of the provision of the Services by First Choice Utilities, First Choice Utilities is remunerated directly by the Supplier and receives a Commission for securing the contract between the Customer and the Supplier. This is usually by way of a Supplier uplift. The cost of First Choice Utilities Service is therefore included within the cost of the Supplier Contract.
	2. First Choice Utilities hereby disclose that they receive a Commission for the facilitation of a Supplier Contract. Any such commission shall be calculated based on energy spend based on a pence/kWh rate. The sum for calculating your energy spend is: p(rate) x energy consumed (kWh) ÷ 100.
8. **QUALITY OF SERVICES**
	1. First Choice Utilities warrants to the Customer that:
		1. First Choice Utilities will perform the Services with reasonable care and skill, and in accordance with generally recognised commercial practices and standards in the industry for similar services.
		2. The Services will materially conform with all descriptions provided to the Customer by First Choice Utilities found in Schedule 1.
		3. The Services will be provided in accordance with all applicable legislation from time to time in force, and First Choice Utilities will inform the Customer as soon as it becomes aware of any changes in that legislation.
		4. The Customer’s rights under this Agreement are in addition to the statutory terms implied in favour of the Customer by the *Supply of Goods and Services Act 1982* and any other statute.
		5. The provision of this clause shall survive any performance, acceptance, or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by First Choice Utilities.
9. **INTELLECTUAL PROPERTY RIGHTS**
	1. First Choice Utilities shall own all Intellectual Property Rights in existence as at the Commencement Date and which are created in the provision of the Services. Nothing in this Agreement is intended to transfer any title, right, or interest in such Intellectual Property Rights to the Customer.
10. **CONFIDENTIALITY**
	1. Both parties undertake that each shall not, at any time during this Agreement, and for a period of 5 years after termination of this Agreement, disclose to any person any In-put Material (in the case of First Choice Utilities), Pre-existing Material (in the case of the Customer), technical or commercial know-how, specifications, inventions, processes, or initiatives which are of a confidential nature, or any other confidential information concerning the disclosing party’s business or its products which the receiving party may obtain in connection with entering into this Agreement, except as permitted by clause 10.2.
	2. Both parties may disclose Confidential Information:
		1. To its employees, agents, consultants, or subcontractors (and in the case of First Choice Utilities, First Choice Utilities’ Team) as is needed for the purpose of discharging its obligations under this Agreement. The party in receipt of such information shall ensure that its employees, agents, consultants, or subcontractors to whom it discloses the Confidential Information, comply with this clause 10.
		2. As may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
		3. To its legal and professional advisors for the purposes of advising on the terms of this Agreement.
	3. Neither party shall use the other party’s Confidential Information for any purpose other than to perform its obligations under this Agreement.
	4. All materials, equipment and tools, drawings, specifications, and data supplied by one party to the other, shall at all times be (and remain) the exclusive property of the party supplying such materials, equipment and tools, drawings, specifications, and data, but shall be held by the receiving party in safe custody at its own risk, and maintained and kept in good condition by that party until returned to the supplying party, and shall not be disposed of or used, other than in accordance with any written instruction or authorisation.

1. **LIMITATION OF LIABILITY**
	1. First Choice Utilities’ total liability under or in connection with this Agreement shall be limited to £1,000,000.
	2. This limit shall apply howsoever that liability arises, including, and without limitation, a liability arising by breach of contract, arising by tort (including, and without limitation, the tort of negligence), or arising by breach of statutory duty.
	3. Nothing within this clause shall exclude or limit liability for:
		1. Death or personal injury caused by negligence.
		2. Fraud or fraudulent misrepresentation.
	4. First Choice Utilities will not be liable to the Customer, whether in contract, tort, or restitution, or breach of statutory duty, or otherwise, for any:
		1. Loss of profit.
		2. Loss of goodwill.
		3. Loss of business.
		4. Loss of business opportunity.
		5. Loss of anticipated saving.
		6. Loss of corruption of data or information.
		7. Loss of contracts.
		8. Loss of use of money.
		9. Loss of actual savings.
		10. Loss of revenue.
		11. Loss of reputation.
		12. Ex gratia payments.
		13. Loss of operation time.
		14. Loss of opportunity.
		15. Loss of interest.
		16. Special, indirect, or consequential damage or loss suffered by the Customer, arising under or in connection with this Agreement.
	5. Nothing in this Agreement shall be deemed to relieve the Customer of any common law duty to mitigate any loss or damage incurred by it.
2. **INDEMNITY**
	1. For the purposes of this clause, a reference to First Choice Utilities shall include First Choice Utilities Group Companies and shall be enforceable by each such Group Company in addition to First Choice Utilities.
	2. The Customer shall indemnify First Choice Utilities against all liabilities, costs, expenses, damages, and losses, including but not limited to any:
		1. Direct, indirect, or consequential losses.
		2. Loss of goodwill.
		3. Loss of business.
		4. Loss of business opportunity.
		5. Loss of anticipated saving.
		6. Loss of corruption of data or information.
		7. Loss of contracts.
		8. Loss of use of money.
		9. Loss of actual savings.
		10. Loss of revenue.
		11. Loss of reputation.
		12. Ex gratia payments.
		13. Loss of operation time.
		14. Loss of opportunity.
		15. Loss of interest.

Which is suffered or incurred by First Choice Utilities arising out of or in connection with:

* + 1. The Customer’s breach or negligent performance or non-performance of this Agreement.
		2. The enforcement of this Agreement.
		3. Any claim made against First Choice Utilities by a third party arising out of or in connection with the provision of the Services, to the extend that such claim arises out of the breach, negligent performance, or failure or delay in performance of this Agreement by the Customer, it’s employees, agents, directors, consultants, or subcontractors, including but not limited to:
			1. Situations where false or misleading information has been provided by the Customer;
			2. Any claim against First Choice Utilities or a Group Company for a claw back of Commission due to any fault of the Customer whatsoever, including but not limited to:
				1. Early or wrongful termination;
				2. Disconnection of supply;
				3. Change of ownership or Change Control of the Customer;
				4. Non-payment in respect of a Supplier Contract;
				5. Any fraud or dishonesty;
				6. Entering a change of tenancy (by moving to a new premises mid contract);
				7. Any Failed Contract;
				8. Any insolvency, administration, or bankruptcy event, appointment of receiver, or any other event which is analogous to the above, determined at First Choice Utilities absolute discretion.
	1. For the avoidance of doubt, the indemnities listed at clause 11.2.18.2 shall also apply to indemnifying First Choice Utilities for losses suffered as a result of any non-payment of Commissions, as well as for any claims for repayment (claw backs) of Commissions from the Supplier.
	2. For the purposes of this Clause, a Guarantor means all directors of the Customer who are made party to this Agreement by executing this Agreement, any of the Schedules, or Letters of Authority. All such Guarantors shall be listed under “Customer” in Schedule 1 below the company (or other entity) that they are acting as a Guarantor for. The Guarantors shall be the persons listed in Schedule 1 as “Director 1, Director 2, Director 3, etc” for the purposes of a limited company, and any other listed persons (for example “Partner 1, Partner 2, Partner 3” etc in respect of a partnership business (including LPs and LLPs).
	3. In consideration of the Services provided by First Choice Utilities, all Guarantors shall be jointly and severally liable for all payments, monies, debts, losses, damages, and indemnities of any nature from time to time under this Agreement as the Customer. All Guarantors agrees to indemnify First Choice Utilities in full and on demand against all losses, costs, claims, liabilities, damages, demands, and expenses suffered or incurred by First Choice Utilities arising out of, or in connection with this Agreement.
	4. If any payment due from the Customer under this clause 11 is subject to tax (including VAT) whether by way of direct assessment or withholding at its source, First Choice Utilities shall be entitled to receive from the Customer such amounts as shall ensure that the net receipt, after tax, to First Choice Utilities, after tax, is the same as it would have been were the Payment not subject to tax.
	5. Liability under this indemnity is unlimited.
	6. Any liability under this clause 11 shall not be reduced, discharges, or otherwise adversely affected by:
		1. Any intermediate payment, settlement of account or discharge in whole or in part of the obligations under this Agreement;
		2. Any extension, variation, discharge, or compromise, dealing with, exchange, or renewal of any right or remedy which First Choice Utilities may now or after the date of this Agreement have from or against the Customer or Guarantors;
		3. Any act or omission by First Choice Utilities or their agents or representatives in taking up, perfecting, or enforcing any indemnity or guarantee from the Customer or any other person;
		4. Any termination, amendments, variation, novation, replacement, or supplement of or to any of the obligations under this Agreement, including, without limitation, any change in the purpose of, any increase in or extension of the obligations or rights under this Agreement;
		5. Any grant of time, indulgence, waiver, or concession to the Customer or any other person;
		6. The death or incapacity (whether physically or mentally) of the Customer or any Guarantor;
		7. Any invalidity, illegality, unenforceability, irregularity, or frustration of any actual or purported obligation of the Customer or any other person in connection with any of the obligations under this Agreement;
		8. Any other act or omission except an express written release of the Customer or Guarantor from their indemnity which is duly signed by Mr Anthony Anderson, Managing Director of First Choice Utilities.
	7. If the Customer fails to make any payment due to First Choice Utilities under this Agreement within 14 days of request, then, without limiting the First Choice Utilities’ remedies under this Agreement, the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England’s base rate. Such interest shall accrue on a daily basis, from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount.
1. **TERMINATION**
	1. First Choice Utilities may terminate this Agreement with immediate effect by giving written notice to the Customer if:
		1. The Customer fails to pay any amount due under a Supplier Contract on the due date for payment and remains in default for more than 14 days (unless some other time period is specified in the Supplier Contract, in which case the time limit provided in the Supplier Contract shall apply to this clause) after being notified in writing to make such payment.
		2. The Customer commits a material breach of any term of this Agreement where the breach is irremediable, or if such a breach is remediable, fails to remedy that breach within a period of 14 days.
		3. The Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
		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 the Customer’s business activities.
		5. An application is made to court (or an order is made) for the appointment of an administrator, or if notice of intention to appoint an administrator is given over the other party.
		6. Where the Customer is an individual, sole-trader, or partnership business, where the Customer becomes subject to bankruptcy proceedings.
		7. Any other situation arising which is similar or analogous (at First Choice Utilities absolute discretion) to the situations listed at clauses 11.1.4, 11.1.5, and 11.1.6.
2. **CONSEQUENCES OF TERMINATION**
	1. On termination of this Agreement for any reason, the Customer shall immediately pay to First Choice Utilities, all sums due and owing to it in connection with this Agreement.
	2. The Customer shall return, destroy, or otherwise deal with, any Confidential Information as the disclosing party shall wish for it to be dealt with.
	3. On termination or expiry of this Agreement, the following clauses shall continue in force: clause 9, clause 10, clause 11, clause 12, clause 14, clause 15, clause 17, clause 18, clause 19, clause 20, clause 21, clause 22, clause 23, clause 24.
	4. Termination or expiry of this Agreement shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to date of termination or expiry, 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.
3. **REMEDIES**
	1. If any Services are not supplied in accordance with Schedule 1 or First Choice Utilities fails to comply with any terms of this Agreement, the Customer shall be entitled to request that First Choice Utilities to carry out such additional work as is necessary to correct its failure.
4. **FORCE MAJEURE**
	1. A Force Majeure Event is any circumstance not within a party’s reasonable control. This includes, without limitation:
		1. Acts of God such as flood, drought, earthquake, tsunami, or other natural disaster, epidemic, or pandemic.
		2. War, or threat of or preparation for war (including terrorist attack, armed conflict, civil war, civil commotion, or riots).
		3. Imposition of sanctions.
		4. Nuclear, chemical, or biological contamination.
		5. Sonic boom.
		6. Fire, explosion, or accident (including collapse of building).
		7. Interruption or failure of utility services.
	2. Provided it has complied with this clause 16, if First Choice Utilities is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, First Choice Utilities shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
	3. The corresponding obligations of the Customer will be suspended and its time for performance of such obligations extended to the same extent as those of First Choice Utilities.
	4. First Choice Utilities shall:
		1. As soon as practicable after the start of the Force Majeure Event, but no later than 7 Business Days from its start, notify the Customer in writing of the event, the date on which it started, its likely or potential duration, and the effect of the event on its ability to perform any obligations under this Agreement.
		2. Use commercially reasonable endeavors to mitigate the effect of the event on the performance of its obligations.
5. **VARIATION**
	1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties or their authorised representatives.
6. **WAIVER**
	1. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach.
	2. A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy.
7. **RIGHTS AND REMEDIES**
	1. The rights and remedies provided under this Agreement are in addition to and not exclusive of any rights or remedies provided by law.
8. **SEVERANCE**
	1. If any provision or part provision of this Agreement becomes invalid, illegal, or unenforceable, this shall not affect the validity and enforceability of the rest of this Agreement.
	2. If it comes to the attention of either party that any provision or part provision of this Agreement is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid, and enforceable.
9. **AGREEMENT IN FULL**
	1. This Agreement, including any schedules and appendixes, constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and assurances between them, whether written or oral.
	2. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties or constitute any party the agent of another party.
10. **THIRD PARTY RIGHTS**
	1. Except as otherwise expressly stated under this Agreement, no one, other than a party to this Agreement, shall have any right to enforce any of its terms. This Agreement does not give rise to any rights under the *Contracts (Rights of Third Parties) Act 1999.*
11. **NOTICES**
	1. Any notice or other communication given to a party in connection with this Agreement shall be in writing, and shall be:
		1. Delivered either by hand, by pre-paid first-class post, or by other next working day delivery service, at the receiving party’s postal address provided in this Agreement unless otherwise stated; or
		2. Sent by email to the email address specified in writing by First Choice Utilities as being a suitable address for service.
	2. Any notice or communication shall be deemed to have been received:
		1. If delivered by hand, at the time the notice is left at the proper address.
		2. If sent by pre-paid first-class post, or by other next working day delivery service, at 9am on the second Business Day after posting.
		3. If sent by email, at the time of the transmission, or if this time falls outside business hours in the place of receipt, when business hours resume.
	3. This clause 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.
12. **GOVERNING LAW AND JURISDICTION**
	1. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes), shall be governed and construed in accordance with the law of England. We both agree that the courts of England and Wales will have exclusive jurisdiction.

 **BY USING OUR SERVICE, OR BY SIGNING THIS AGREEMENT, OR ANY OF IT’S SCHEDULES, OR A LETTER OF AUTHORITY THE CUSTOMER AGREES TO THESE TERMS AND CONDITIONS**

**THIS CONTRACT HAS BEEN ENTERED INTO ON THE COMMENCEMENT DATE**

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