

# POWERMARKET TERMS AND CONDITIONS

The customer's attention is drawn in particular to the provisions of clause 14 (limitation on liability).

## Agreed terms

### 1. Interpretation

**Agreement:** means the agreement between PowerMarket and the Customer, for the provision of the Services in accordance with these Terms and Conditions.

**Authorised Users:** those employees, agents, and independent contractors of the Customer who are authorised by the Customer to use the Services, as further described in clause 3.2(e).

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Change of Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Confidential Information:** information that is proprietary or confidential and is either labelled as such or identified as Confidential Information in clause 12.5 or clause 12.6.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

**Customer:** means the customer identified in the Proposal.

**Customer Data:** any data inputted onto the Platform, by or on behalf of the Customer, for the purposes of using the Platform. For the avoidance of doubt, Customer Data does not include PowerMarket Data.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Domestic Law:** means the law of the United Kingdom or a part of the United Kingdom.

**Effective Date:** has the meaning given to it in clause 2.2.

**Heightened Cybersecurity Requirements:** any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User relating to security of network and information systems and security breach and incident reporting requirements, which may include the

cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**Initial Subscription Term:** the initial subscription term set out in the Proposal.

**Marks:** means:

- a) any trade marks, trade names, service marks, trade dress, logos, URLs and domain names;
  - b) any identifying slogans and symbols; and
  - c) any abbreviation, contraction or simulation of any of the items in paragraph (a) or paragraph (b),
- of the Customer, whether or not registered.

**Normal Business Hours:** 9.00 am to 5.00 pm local UK time, each Business Day.

**Platform:** the online software application named PowerMarket, provided by PowerMarket as part of the Services.

**PowerMarket:** means Sunreign Limited.

**PowerMarket Data:** any data transferred to PowerMarket by or on behalf of the Customer, for which PowerMarket determines the purposes and means of processing.

**Privacy Policy:** PowerMarket's Privacy Policy, as implemented and amended by PowerMarket from time to time.

**Proposal:** means the written proposal or quote, issued by PowerMarket, and signed by the Customer.

**Renewal Period:** the renewal period set out in the Proposal.

**Services:** the subscription services provided by PowerMarket to the Customer under the Agreement via the Platform.

**Subscription Fees:** the subscription fees payable by the Customer to PowerMarket for the User Subscriptions, as set out in the Proposal.

**Subscription Term:** has the meaning given in clause 15.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Services Policy:** PowerMarket's policy for providing support in relation to the Services, as implemented and/or amended by PowerMarket from time to time.

**Terms and Conditions:** means these terms and conditions, as amended in accordance with clause 18.

**User Subscriptions:** the number user subscriptions set out in the Proposal, which entitle the Authorised Users to access and use the Services in accordance with the Agreement.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 1.1. Clause and paragraph headings shall not affect the interpretation of the Agreement.
- 1.2. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural, and words in the plural shall include the singular.
- 1.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.
- 1.7. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.
- 1.8. A reference to writing or written includes e-mail.
- 1.9. References to clauses are to the clauses of these Terms and Conditions.

## **2. Basis of contract**

- 2.1. The Proposal constitutes an invitation by PowerMarket, for the Customer to purchase the Services in accordance with these Terms and Conditions.
- 2.2. The Proposal shall only be deemed to be accepted upon the earlier of:

- (a) the Customer confirming in writing, its acceptance of such Proposal, within the timeframes set out in clause 2.5; or
  - (b) the Customer making payment of the invoice accompanying the Proposal within the timeframes set out in clause 2.5,
- at which point and on which date the Agreement shall come into existence (**Effective Date**).

- 2.3. Any samples, drawings, descriptive matter or advertising issued by PowerMarket, and any descriptions or illustrations contained in PowerMarket's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement, or have any contractual force.
- 2.4. These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. Any Proposal given by PowerMarket is valid for a period of 14 days from its date of issue, and shall automatically be withdrawn at the expiry of that 14 day period.

### **3. User subscriptions**

- 3.1. Subject to the Customer purchasing the User Subscriptions in accordance with clause 4.3 and clause 10.1, the restrictions set out in this clause 3 and the other terms and conditions of the Agreement, PowerMarket hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services during the Subscription Term solely for the Customer's internal business operations.
- 3.2. In relation to the Authorised Users, the Customer undertakes that:
  - (a) it shall not provide access to the Services, to anyone under the age of 18;
  - (b) the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
  - (c) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
  - (d) each Authorised User shall keep a secure password for his use of the Services, that such password shall be changed no less frequently than once every three months, and that each Authorised User shall keep his password confidential;

- (e) it shall maintain a written, up to date list of current Authorised Users and provide such list to PowerMarket within 5 Business Days of PowerMarket's written request at any time or times;
- (f) it shall notify PowerMarket immediately upon becoming aware of any Viruses, Vulnerabilities, or any other issues relating to the Platform;
- (g) it shall permit PowerMarket or PowerMarket's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with the Agreement. Each such audit may be conducted no more than once per quarter, at PowerMarket's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (h) if any of the audits referred to in clause 3.2(g) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to PowerMarket's other rights, the Customer shall promptly disable such passwords and PowerMarket shall not issue any new passwords to any such individual; and
- (i) if any of the audits referred to in clause 3.2(g) reveal that the Customer has underpaid Subscription Fees to PowerMarket, then without prejudice to PowerMarket's other rights, the Customer shall pay to PowerMarket an amount equal to such underpayment, within 10 Business Days of the date of the relevant audit.

3.3. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and PowerMarket reserves the right, without liability or prejudice to any other rights it has to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4. The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Platform; or
- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) except as provided for in the Agreement, use the Services to provide services to third parties; or
- (d) subject to clause 23.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3; or
- (f) introduce or permit the introduction of, any Virus or Vulnerability into PowerMarket's network and information systems.

3.5. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify PowerMarket.

3.6. The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

#### **4. Additional user subscriptions**

4.1. Subject to clause 4.2 and clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions, and PowerMarket shall grant access to the Services to such additional Authorised Users in accordance with the provisions of the Agreement.

4.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify PowerMarket in writing. PowerMarket shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where PowerMarket approves the request, PowerMarket shall activate the additional User Subscriptions within 7 days of its approval of the Customer's request.

- 4.3. If PowerMarket approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of PowerMarket's invoice, pay to PowerMarket the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by PowerMarket for the remainder of the Initial Subscription Term or the then current Renewal Period (as applicable).

## **5. Services**

- 5.1. PowerMarket shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of the Agreement.
- 5.2. PowerMarket shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
  - (b) unscheduled maintenance performed outside Normal Business Hours, provided that PowerMarket has used reasonable endeavours to give the Customer at least 4 Normal Business Hours' notice in advance.
- 5.3. PowerMarket will, as part of the Services and at no additional cost to the Customer, provide the Customer with PowerMarket's standard customer support services during Normal Business Hours in accordance with PowerMarket's Support Services Policy in effect at the time that the Services are provided. PowerMarket may amend the Support Services Policy in its sole and absolute discretion from time to time.

## **6. Data Protection**

- 6.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 6.2. The parties acknowledge that for the purposes of the Data Protection Legislation:
- (a) the Customer is the Controller and PowerMarket is the Processor of all Customer Data; and
  - (b) PowerMarket is the Controller of all PowerMarket Data, and the Customer should refer to PowerMarket's Privacy Policy for information on how PowerMarket will process PowerMarket Data when acting as a Controller.

- 6.3. In relation to Customer Data, the scope, nature and purpose of processing by PowerMarket, the duration of the processing and the types of Personal Data and categories of Data Subject are as follows:

Types of personal data:	First name, surname, age, date of birth, email address, home address, phone number, employer, and work status.
Categories of Data Subject:	Employees, agents, and contractors of the Customer.
Scope of processing:	To enable the Customer to receive analytics and insights into which buildings (if any) are suitable for solar projects.
Nature of processing:	Storing, deleting.
Purpose of processing:	To enable PowerMarket to deliver the Services.
Duration of processing:	All Personal Data in the Customer Data shall be processed throughout the Subscription Term.

- 6.4. Without prejudice to the generality of clause 6.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of all Personal Data to PowerMarket (including without limitation all Personal Data contained in Customer Data and PowerMarket Data), and/or lawful collection of such Personal Data by PowerMarket on behalf of the Customer, for the duration and purposes of the Agreement.
- 6.5. Without prejudice to the generality of clause 6.1, PowerMarket shall, in relation to any Personal Data contained in the Customer Data:
- (a) process that Personal Data only on the documented written instructions of the Customer (which are set out in clause 6.3) unless PowerMarket is required by Domestic Law to otherwise process that Personal Data. Where PowerMarket is relying on Domestic Law as the basis for processing Personal Data, PowerMarket shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits PowerMarket from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting



Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not (except where approved under clause 6.6) transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or PowerMarket has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) PowerMarket complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) PowerMarket complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 6 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of PowerMarket, an instruction infringes the Data Protection Legislation.

6.6. The Customer consents to PowerMarket appointing the following as third-party processors of Personal Data under the Agreement:

- (a) Amazon Web Services, providing hosting services for our Platform; and
- (b) various third parties who provide IT and development services for our Platform,

and PowerMarket confirms that it has entered or (as the case may be) will enter with the third-party processors into a written agreement incorporating terms which are substantially similar to those set out in this clause 6, and in either case which PowerMarket confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and PowerMarket, PowerMarket shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.6.

- 6.7. Either party may, at any time on not less than 30 days' notice, revise this clause 6 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme.

## **7. Third party providers**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. PowerMarket makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not PowerMarket. PowerMarket recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. PowerMarket does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **8. PowerMarket's obligations**

- 8.1. PowerMarket undertakes that the Services will be performed with reasonable skill and care.
- 8.2. The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to PowerMarket's instructions, or modification or alteration of the Services by any party other than PowerMarket or PowerMarket's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, PowerMarket will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1.
- 8.3. PowerMarket:

- (a) does not warrant that:
  - (i) the Customer's use of the Services will be uninterrupted or error-free;
  - (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
  - (iii) the Platform or the Services will be free from Vulnerabilities or Viruses; or
  - (iv) the Platform or the Services will comply with any Heightened Cybersecurity Requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

8.4. The Agreement shall not prevent PowerMarket from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Agreement.

8.5. PowerMarket warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement.

8.6. PowerMarket shall follow its archiving procedures for Customer Data as set out in its back-up policy (as implemented and/or amended by PowerMarket at its absolute discretion from time to time). In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against PowerMarket shall be for PowerMarket to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data, maintained by PowerMarket, in accordance with the archiving procedure described in its back-up policy. PowerMarket shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by PowerMarket to perform services related to Customer Data maintenance and back-up, for which it shall remain fully liable).

## **9. Customer's obligations**

The Customer shall:

- (a) provide PowerMarket with:
  - (i) all necessary co-operation in relation to the Agreement; and

- (ii) all necessary access to such information as may be required by PowerMarket;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) without affecting its other obligations under the Agreement, comply with all applicable laws and regulations with respect to its activities under the Agreement;
- (c) carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, PowerMarket may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of the Agreement and shall be responsible for any Authorised User's breach of the Agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for PowerMarket, its contractors and agents to perform their obligations under the Agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by PowerMarket from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in the Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to PowerMarket's data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

- 9.2. The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

## **10. Charges and payment**

- 10.1. The Customer shall pay the Subscription Fees to PowerMarket for the User Subscriptions in accordance with this clause 10 and the Proposal.
- 10.2. The Customer shall on the Effective Date provide to PowerMarket valid, up-to-date and complete credit card details or approved purchase order information acceptable to PowerMarket and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to PowerMarket, the Customer hereby authorises PowerMarket to bill such credit card:
  - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clause 15.1, on or around the start of each Renewal Period, for the Subscription Fees payable in respect of that Renewal Period;
- (b) its approved purchase order information to PowerMarket, PowerMarket shall invoice the Customer:
  - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
  - (ii) subject to clause 15.1, at least 30 days prior to each Renewal Period, for the Subscription Fees payable in respect of that Renewal Period,and the Customer shall pay each invoice within 14 days after the date of such invoice.

10.3. If PowerMarket has not received payment within 14 days after the due date, and without prejudice to any other rights and remedies of PowerMarket:

- (a) PowerMarket may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and PowerMarket shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of PowerMarket's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

10.4. All amounts and fees stated or referred to in the Agreement:

- (a) shall be payable in the currency set out in the Proposal;
- (b) are, subject to clause 14.3(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to PowerMarket's invoice(s) at the appropriate rate.

10.5. PowerMarket shall be entitled to increase the Subscription Fees, along with any fees payable in respect of the additional User Subscriptions purchased pursuant to clause 4.3, at the start of each Renewal Period upon 90 days' prior notice to the Customer and the Agreement shall be deemed to have been amended accordingly.

## **11. Intellectual property**

- 11.1. The Customer acknowledges and agrees that PowerMarket and/or its licensors own all intellectual property rights in the Services. Except as expressly stated herein, the Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 11.2. PowerMarket confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement.
- 11.3. The Customer hereby grants to PowerMarket, a worldwide, non-exclusive, irrevocable, royalty free licence to use its Marks for the purposes set out in clause 12.8.

## **12. Confidentiality**

- 12.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
  - (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - (d) is independently developed by the receiving party, and where such independent development can be shown by written evidence.
- 12.2. Subject to clause 12.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 12.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 12.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with

this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

- 12.5. The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute PowerMarket's Confidential Information.
- 12.6. PowerMarket acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7. The Customer shall not make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of PowerMarket (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 12.8. Notwithstanding any other provision of the Agreement, PowerMarket shall be entitled to make, or permit any person to make, public announcements, public communications and public case studies, via social media and otherwise, concerning the Agreement and any transactions contemplated by it, without the prior written consent of the Customer.
- 12.9. The above provisions of this clause 12 shall survive termination of the Agreement, however arising.

### **13. Indemnity**

- 13.1. The Customer shall defend, indemnify and hold harmless PowerMarket against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the use of the Services by the Customer.

### **14. Limitation of liability**

- 14.1. Except as expressly and specifically provided in the Agreement:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. PowerMarket shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to PowerMarket by the Customer in connection with the Services, or any actions taken by PowerMarket at the Customer's direction;
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement; and
  - (c) the Services are provided to the Customer on an "as is" basis.

14.2. Nothing in the Agreement excludes the liability of PowerMarket:

- (a) for death or personal injury caused by PowerMarket's negligence; or
- (b) for fraud or fraudulent misrepresentation.

14.3. Subject to clause 14.1 and clause 14.2:

- (a) PowerMarket shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss or corruption of data or information, pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses, however arising under the Agreement; and
- (b) PowerMarket's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## 15. Term and termination

15.1. The Agreement shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the Agreement shall be automatically renewed for the Renewal Period, unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period (as the case may be), in which case the Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period (as the case may be); or
- (b) otherwise terminated in accordance with the provisions of the Agreement,

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

15.2. Without affecting any other right or remedy available to it, PowerMarket may terminate the Agreement with immediate effect by giving written notice to the Customer, if:

- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;



- (b) the Customer commits a material breach of any other term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the Customer repeatedly breaches any of the terms of the 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 the Agreement;
- (d) the Customer 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (e) the Customer 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 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;
- (f) the Customer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) 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, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies, or the solvent reconstruction of the Customer;
- (h) 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 Customer (being a company, partnership or limited liability partnership);
- (i) the holder of a qualifying floating charge over the assets of the Customer (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (j) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (k) a creditor or encumbrancer of the Customer 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 the Customer's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the Customer, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(d) to clause 15.2(k) (inclusive);

- (m) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (n) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Agreement is in jeopardy; or
- (o) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

15.3. On termination of the Agreement for any reason:

- (a) all licences granted under the Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services;
- (b) each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- (c) PowerMarket may destroy or otherwise dispose of any of the Customer Data and in its possession, unless PowerMarket receives, no later than ten days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. PowerMarket shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by PowerMarket in returning or disposing of any Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**16. Force majeure**

PowerMarket shall have no liability to the Customer under the Agreement if it is prevented from or delayed in performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of PowerMarket or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

**17. Conflict**

If there is an inconsistency between the terms of the Proposal and these Terms and Conditions, the provisions of the Proposal shall prevail.

**18. Variation**

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

**19. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**20. Rights and remedies**

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**21. Severance**

21.1. If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

21.2. If any provision or part-provision of the Agreement is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**22. Entire agreement**

22.1. The Agreement 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.

- 22.2. Each party acknowledges that in entering into the Agreement 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 Agreement.
- 22.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 22.4. Nothing in this clause shall limit or exclude any liability for fraud.

### **23. Assignment**

- 23.1. The Customer shall not, without the prior written consent of PowerMarket, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.
- 23.2. PowerMarket may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

### **24. No partnership or agency**

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name of, or on behalf of, or otherwise to bind, the other, in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability, and the exercise of any right or power).

### **25. Third party rights**

The Agreement does not confer any rights on any person or party (other than the parties to the Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **26. Notices**

- 26.1. Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Agreement, or such other address as may have been notified by that party for such purposes.
- 26.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

**27. Governing law**

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

**28. Jurisdiction**

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