

Businesswise Solutions Limited
UTILITYi – Terms and Conditions
(these “Terms and Conditions”)



1. INTERPRETATION

- 1.1 “We”, “us” or “our” means Businesswise Solutions Limited, a company registered in England and Wales with registered number 07202765 and whose registered office is at Lomeshaye Business Village, Turner Road, Nelson, Lancashire, BB9 7DR.
- 1.2 These Terms and Conditions govern your access to our UTILITYi portal (the “Portal”) for access to management information and data monitoring reports to meter, site and estate level, in respect of the utility management services we provide to you. By subscribing for access to the Portal, you agree to be legally bound by these Terms and Conditions.
- 1.3 We reserve the right to amend these Terms and Conditions at any time. All amendments to these Terms and Conditions will be posted on the Portal, and emailed to you. Continued use of the Portal will, however, be deemed to constitute acceptance of the new Terms and Conditions. No other terms or changes to these Terms and Conditions will be binding unless agreed in writing signed by us.
- 1.4 In these Terms and Conditions:

1.4.1 the following terms shall have the following meanings:

“Account”	an account that we allocate to our customers in order that they are able to access, and use, the Portal;
“Agreement”	means the legal and binding agreement that is in place, on the basis of these Terms and Conditions, for us to make the Portal available to you;
“Breach of Duty”	the breach of any: (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract; or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty);
“Business Day”	any day other than: (i) a Saturday, (ii) a Sunday or (iii) any day when the clearing banks in the City of London are not physically open for business;
“Intellectual Property Rights”	copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Liability”	liability in or for breach of contract, Breach of Duty, torts (including negligence and intentional torts), deliberate breach (including deliberate personal repudiatory breach), misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and, for the

purposes of this definition, all references to **“this Agreement”** shall be deemed to include any collateral contract);

“Material”	material that you upload (or permit to be uploaded) onto our servers through the Portal;
“Party”	either us or you, and “Parties” shall mean both of us and you;
“Services”	the utility procurement and management services that we provide to you under a separate agreement, in respect of which the Portal makes available reports and other relevant information;
“UMA”	the utility management agreement that we enter into with you for our provision to you of the Services;
“Users”	those of your employees and independent contractors who you authorise to access the Portal under this Agreement; and
“you” or “your”	our customer user to whom we have agreed to provide access to the Portal;

- 1.4.2 references to **“Clauses”** are to clauses of these Terms and Conditions;
- 1.4.3 the headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;
- 1.4.4 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral, and references to persons shall include an individual, company, corporation, firm or partnership;
- 1.4.5 reference to **“written”** or in **“writing”** includes the electronic form;
- 1.4.6 references to **“includes”** or **“including”** or like words shall mean without limitation; and
- 1.4.7 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. EFFECT

- 2.1 This Agreement shall apply to all use of an Account and the Portal. When you subscribe for the Services, you will be asked to sign a UMA that contains a reference to these Terms and Conditions; when you sign the UMA, and each time any User subsequently accesses your Account, this shall always constitute your unqualified acceptance of these Terms and Conditions (or, in accordance with Clause 1.3, the Terms and Conditions then in force).
- 2.2 This Agreement (and any document referred to in it, including the UMA) constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.3 Save as expressly provided in this Agreement, this Agreement (and any document referred to in it, including the UMA) shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties and in any way relating to the subject matter of this Agreement, to the exclusion of any representations not expressly stated in this Agreement, except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. You acknowledge that you have not accepted these Terms and Conditions based on any representation that is not expressly incorporated into these Terms and Conditions or the UMA.

3. ACCOUNTS

- 3.1 In order for us to allocate to you access to the Portal and an Account, you must provide such information as we may require from time to time.
- 3.2 Once we have allocated access to the Portal to you, we will allocate to you a username and password to access your Account. You must keep the password confidential and immediately inform us if any

unauthorised third party becomes aware of that password or if there is any unauthorised use of the Portal or any breach of security known to you; in such a case, you must request a new password from us. You agree that any person to whom your username or password is disclosed is authorised to act as your agent for the purposes of using the Portal. You are entirely responsible if you do not maintain the confidentiality of your password.

- 3.3 We recommend that you request a new password from us if you remove authorisation for any of your personnel (or ex-personnel) to access the Portal.

4. PORTAL

- 4.1 We shall provide to you access to the Portal as part of the Services, without additional charge. We warrant that:

4.1.1 we shall use our reasonable skill and care in making the Portal available;

4.1.2 we have all necessary consents, rights and permission to enter into, and perform our obligations under, this Agreement; and

4.1.3 we shall comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of our rights and performance of our obligations under this Agreement.

- 4.2 You may access the Portal only with a browser that is compatible with the Portal, including any security features that are part of the Portal.

- 4.3 In relation to the Portal:

4.3.1 we hereby grant to you a non-exclusive, non-transferable licence to allow Users to access the Portal solely for your internal business purposes;

4.3.2 the rights provided under this Agreement are granted to you only, and shall not be considered granted to any subsidiary or holding company of you; and

4.3.3 you shall not:

(a) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Portal except to the extent expressly set out in this Agreement or as may be required by any applicable law;

(b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Portal, except as may be required by any applicable law;

(c) access all or any part of the Portal in order to build a product or service which competes with the Portal; or

(d) use the Portal to provide services to third parties.

- 4.4 We do not warrant that the Portal will meet your individual requirements. We are not responsible for any connections, deliverables or services that we are not expressly stipulated to provide in this Agreement.

- 4.5 We do not warrant that your Account and/or the Portal will be uninterrupted, error-free or secure from unauthorised access, or that they will meet your individual requirements. Whilst we use our reasonable endeavours to make your Account and the Portal available, we shall not have any Liability (subject to Clause 8.2) if for any reason your Account or the Portal are unavailable for any time or for any period. We make no warranty that your access to your Account or the Portal will be uninterrupted, timely or error-free. Due to the nature of the Internet, this cannot be guaranteed.

- 4.6 We may, at our absolute discretion, from time to time either host the Portal on our own servers or use third party suppliers to do so in whole or in part. You acknowledge that we may from time to time without prior notice and without the need for prior agreement provide reasonable additional obligations or requirements on users or reasonably restrict users' rights due to the requirements of the third party suppliers.

- 4.7 We reserve the right, at any time, to carry out repairs, maintenance or introduce new facilities and functions in respect of all or any part of the Portal.

4.8 Except as specifically stipulated in this Agreement, we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time.

4.9 We do not warrant that the Portal will be compatible with all Material.

4.10 Except where expressly stated in this Agreement, we exclude all conditions, warranties, terms and obligations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Portal.

5. YOUR OBLIGATIONS

5.1 You must:

5.1.1 report any faults or suspected faults with or in the Portal to us immediately upon discovery;

5.1.2 report to us any abuse of the Internet (including spam, hacking and phishing) that you consider to have taken place through the use of the Portal by any person, and you must include in such report as much information as you are able to provide to us relating to the type of abuse that you have witnessed;

5.1.3 ensure that you fully co-operate with, and make yourself available at all reasonable times for discussion and meetings with, us, including in order to enable us to carry out fully, accurately and promptly our obligations under this Agreement;

5.1.4 not submit to us anything which in any respect may infringe the Intellectual Property Rights or privacy or other rights of us or any third party;

5.1.5 promptly provide us with such information, data and assistance that will enable us to carry out fully, accurately and promptly our obligations under this Agreement;

5.1.6 have all necessary rights, permissions and consents to enter into, and perform your obligations under, this Agreement; and

5.1.7 comply with all applicable laws, statutes, regulations and by-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.

5.2 You must not in any way use the Portal, or submit to us or the Portal, anything which in any respect:

5.2.1 is in breach of any law, statute, regulation or bylaw of any applicable jurisdiction;

5.2.2 is fraudulent, criminal or unlawful;

5.2.3 is inaccurate or out-of-date;

5.2.4 is obscene, indecent, vulgar, discriminatory, offensive, threatening, defamatory or untrue;

5.2.5 is in contravention of any applicable law, nor allow or assist any third party in doing so;

5.2.6 impersonates any other person or body or misrepresents a relationship with any person or body;

5.2.7 may infringe or breach the copy or Intellectual Property Rights of any third party;

5.2.8 may be contrary to our interests;

5.2.9 is contrary to any specific rule or requirement that we may stipulate for the Services; or

5.2.10 involves your use, delivery or transmission of any viruses, unsolicited communications, Trojan horses, trap doors, cancelbots, back doors, worms, easter eggs, time bombs or computer programming routines that are intended to damage, interfere with, surreptitiously intercept or expropriate any data, personal information or system.

5.3 You must not use any automated means to access the Portal or collect any information from it unless we explicitly agree in writing to allow you to do so.

5.4 It is your responsibility to ensure that the Portal is sufficient and suitable for your purposes and meets your individual requirements. It is your responsibility to ensure that your use of the Portal is in your best interests, and you bear sole responsibility and Liability (subject to Clause 8.2) for the consequences of your use of the Portal.

- 5.5 It is your responsibility to ensure that you provide us with the information required to enable us to properly make the Portal available to you and to perform our obligations under this Agreement. We shall not be responsible or have any Liability (subject to Clause 8.2) for any failure to make the Portal available or to perform our obligations under this Agreement to the extent caused by your failure to properly ensure the provision of the relevant information to us.
- 5.6 Access to an Account and/or the Portal may be suspended or withdrawn to or from you or all Users temporarily or permanently at any time without notice. We may also impose restrictions on the length and manner of usage of any part of the Portal or access for any reason. If we impose restrictions on you, you must not attempt to use your Account or the Portal under any other name or user.
- 5.7 Whilst we endeavour to ensure that information and materials on the Portal are correct, no warranty or representation, express or implied, is given that they are complete, accurate, up-to-date, fit for a particular purpose and, to the extent permitted by law and we shall not have any Liability (subject to Clause 8.2) for any errors or omissions.

6. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that we own all Intellectual Property Rights in the Portal and your Account, and any rights arising out of any works undertaken in connection with them.

7. TERMINATION

- 7.1 This Agreement will continue in force until we close your Account, or until the UMA terminates or expires for any reason.
- 7.2 We may terminate this Agreement with immediate effect at any time by giving notice to you, except where you are in breach of this Agreement, in which instance we may terminate this Agreement at any time without notice.
- 7.3 In the event that this Agreement terminated:
- 7.3.1 you will cease to have access to your Account and the Portal; and
 - 7.3.2 the accrued rights, remedies, obligations and liabilities of us and you as at cancellation or termination shall not be affected, including the right to claim damages for any breach of this Agreement which existed at or before the date of cancellation or termination.
- 7.4 Termination of the Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

8. LIMITATION OF LIABILITY

- 8.1 This Clause 8 prevails over all of this Agreement and sets forth our entire Liability, and your sole and exclusive remedies, in respect of:
- 8.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or any services in connection with this Agreement; or
 - 8.1.2 otherwise in relation to this Agreement or entering into a contract under this Agreement.
- 8.2 Neither Party excludes or limits its Liability for:
- 8.2.1 its fraud; or
 - 8.2.2 death or personal injury caused by its Breach of Duty; or
 - 8.2.3 any breach of the obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
 - 8.2.4 any other Liability which cannot be excluded or limited by applicable law.
- 8.3 Subject to Clause 8.2, and other than any Liability arising pursuant to this Agreement, we do not accept, and we hereby exclude, any Liability for Breach of Duty.
- 8.4 Subject to Clause 8.2, we shall not have any Liability in respect of any:
- 8.4.1 indirect or consequential losses, damages, costs or expenses;
 - 8.4.2 loss of actual or anticipated profits;

- 8.4.3 loss of contracts;
- 8.4.4 loss of use of money;
- 8.4.5 loss of anticipated savings;
- 8.4.6 loss of revenue;
- 8.4.7 loss of goodwill;
- 8.4.8 loss of reputation;
- 8.4.9 loss of business;
- 8.4.10 ex gratia payments;
- 8.4.11 loss of operation time;
- 8.4.12 loss of opportunity;
- 8.4.13 loss caused by the diminution in value of any asset; or
- 8.4.14 loss of, damage to, or corruption of, data;

whether or not such losses were reasonably foreseeable or we or our agents or contractors had been advised of the possibility of such losses being incurred. For the avoidance of doubt, Clauses 8.4.2 to 8.4.14 (inclusive) of this Clause 8.4 apply whether such losses are direct, indirect, consequential or otherwise.

- 8.5 Subject to Clause 8.2, our total aggregate Liability arising out of or in connection with all claims in aggregate (including warranty claims and losses relating to the breach of warranty) shall be limited to £5,000.
- 8.6 The limitation of Liability under Clause 8.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 8.7 You acknowledge and accept that we only make the Portal available on the express condition that we will not be responsible, nor, subject to Clause 8.2, shall we have any Liability, directly or indirectly, for any act or omission of you, your affiliates or your or their employees, agents, contractors or customers, or any third party.

9. NOTICES

- 9.1 Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 9.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 9.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 9.3 The provisions of this Clause 9 shall not apply to the service of any proceedings or other documents in any legal action.

10. ASSIGNMENT

You must not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).

11. SEVERANCE

- 11.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be

deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

- 11.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12. WAIVER

- 12.1 A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 12.2 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

13. THIRD PARTY RIGHTS

A person who is not a Party shall not have any rights under or in connection with this Agreement.

14. NO PARTNERSHIP

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

15. GOVERNING LAW AND JURISDICTION

- 15.1 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 or claims) shall be governed by and construed in accordance with the laws of England.

- 15.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.

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