TERMS AND CONDITIONS – UTILITIES MANAGEMENT AGREEMENT

(these "Terms and Conditions")

1. Definitions

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"Agreement": these Terms and Conditions together with the UMA and any document referred to in these Terms and Conditions or the UMA;

"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) a day when the clearing banks in the City of London are not physically open for business;

"Commencement Date": has the meaning give to it in Clause 2.1;

"Confidential Information": any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, whether disclosed or obtained before, on or after the Commencement Date, together with any reproductions of such information or any part of it;

"Contract": any contract that you enter into with a Supplier for the provision to you of any Utility;

"Client", "you" or "your": the recipient of Services under this Agreement, as stipulated in the UMA;

"Commission": an amount payable to us by a Supplier, following our provision of Services to you, for your entry into a Contract;

"Extended Term": has the meaning given to it in Clause 3.1;

"Initial Term": has the meaning given to it in the UMA;

"Inspired Group": includes Businesswise Solutions Limited, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time;

"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);

"Party": us or you, and "**Parties**" means both of us and you;

"Potential Supplier": any potential supplier of a Utility, or any other products and/or services, to you;

"Services": the services we are to provide under this Agreement, as may be stipulated in the UMA;

"Supplier": a supplier of products and/or services, including Utilities, with whom you enter into a contract for provision of such services;

"Third Party": any third-party supplier of products and/or services, including Suppliers and Potential Suppliers;

"Utility": the utilities stipulated in the UMA in respect of which we will provide the Services under this Agreement; and

"Utility Management Agreement" or "UMA": the written document we provide to you containing specific information relating to the particular services supplied or to be arranged to be supplied by us to you;

1.2 references to "**Clauses**" are to clauses of these Terms and Conditions;

1.3 the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;

1.4 a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.5 a reference to a Party includes its personal representatives, successors or permitted assigns;

1.6 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, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);

1.7 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.8 any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words "without limitation" unless the context requires otherwise; and

1.9 a reference to "**writing**" or "**written**" includes in electronic form and similar means of communication (except under Clause 10).

2. Agreement

2.1 The UMA must be in the form we require from time to time. Your submission of a signed UMA to us constitutes an offer by you to receive the Services in accordance with the UMA and these Terms and Conditions. The UMA shall only be deemed to be accepted when we issue written acceptance of the UMA, at which point and on which date this Agreement shall come into existence ("**Commencement Date**").

2.2 Any descriptive matter or advertising issued by us, and any descriptions contained in our catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services. They shall not form part of this Agreement or have any contractual force.

2.3 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. This Agreement applies to all Services.

2.4 In the event of a conflict between these Terms and Conditions and the UMA, then the UMA shall prevail over these Terms and Conditions.

3. Appointment

3.1 This Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with this Agreement, shall continue for the Initial Term, and shall automatically extend for 12 months ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term. Either Party may give notice to the other Party, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

3.2 You appoint us, from the Commencement Date, as your exclusive provider of Utility procurement, tracker, advisory and consultancy services, for the term of this Agreement. You shall source the Services, and any products or services identical, similar, or otherwise ancillary or linked, to the Services, only from us for the term of this Agreement.

4. Services

4.1 We warrant that:

4.1.1 we shall use our reasonable skill and care in providing the Services;

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 We shall use our reasonable endeavours to perform our obligations under this Agreement within any timescales set out in this Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services

4.3 If we are delayed or hindered in providing any Services as a result of any breach, delay or failure by you to perform any of your obligations under this Agreement or of any other agreement between us and you, then we may charge you at our time and materials rates from time to time for:

4.3.1 any time reasonably incurred as a result of the hindrance or breach (including any wasted time for which we had anticipated that our personnel would provide Services under this Agreement but become unable to provide the Services at that time as a result of your act or omission); and

4.3.2 any time that we were going to spend in providing the Services, in addition to the time we actually do spend in providing the Services.

4.4 Except as expressly stipulated in this Agreement:

4.4.1 we shall not be responsible for providing or achieving any particular results or outcomes or within a particular time; and

4.4.2 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 Services.

4.5 All analysis, advice and recommendations are provided "as is" and the Client should satisfy themselves of the suitability of any recommendations. Under no circumstances will we be liable for:

4.5.1 the impact of any market movements as a consequence of actions taken or not taken by either Party; and

4.5.2 any acts or omissions of the Client's existing or future energy supplier, whether such acts or omissions were reasonably foreseeable or actually foreseen.

5. Your obligations

5.1 You shall:

5.1.1 ensure that the terms of the UMA, and any specification or instructions you provide to us for the Services, are complete and accurate;

5.1.2 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if we undertake any work at your premises;

5.1.3 inform us in writing a reasonable time before the commencement of any Services of any regulations relevant to us when working at any premises under your control;

5.1.4 promptly comply with all of our reasonable requests, and provide all information, authorisations and resources, in connection with this Agreement, to allow to us comply with our obligations under this Agreement;

5.1.5 copy all correspondence with any Third Party in respect of the Services to us (except for invoices, unless we request otherwise);

5.1.6 have all 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 bye-laws in relation to the exercise of your rights and performance of your obligations under this Agreement.

5.2 In the event that you enter into any contract directly with any Third Party during the term of this Agreement without our involvement:

5.2.1 it is your responsibility to adhere to any notice period in existing contracts you have with Third Parties, in respect of termination, renewal or otherwise, and we shall have no Liability (subject to Clause 8.2) for any failure by you to do so;

5.2.2 you will be in breach of this Agreement, and you will pay to us a fee equivalent to 3% of your estimated total contracted spend for any such contract, which is a genuine pre-estimate of the Commission we would have earnt from the relevant supplier if we had facilitated your entry into such contract in accordance with this Agreement. You will pay the fee to us in full within 30 days of the start date of each such contract in British pounds sterling to such bank account as we may inform you from time to time.

5.3 It is your responsibility to ensure that the Services are sufficient and suitable for your purposes and meet your individual requirements.

5.4 You are responsible for ensuring that you provide us with the information required to enable us to properly provide the Services. We shall not be responsible or, subject to Clause 8.2, have any Liability for any failure to provide the Services to the extent caused by your failure to properly ensure the provision of the relevant information.

5.5 It is your responsibility to ensure that:

5.5.1 any decision or implementation made by you and your employees, agents and other contractors as a result of any advice, recommendation or course of action proposed in the provision of the Services by us is made in your best interests; and

5.5.2 the process of making such decision or implementation by you and your employees, agents and other contractors is made in compliance with your relevant risk strategy;

and you bear absolute responsibility and Liability for the consequences of any such decision or implementation. You acknowledge that we provide the Services and advice in order to get you the "best" deal that we consider appropriate to your business, at our discretion; that does not mean that any Contract you enter into will be the "best" or "cheapest" deal from your perspective for your business.

6. Commission

You acknowledge that, in providing the Services to you and you entering into Contracts, unless specified in the UMA, we will receive Commission from Suppliers.

7. Confidentiality

7.1 Each Party shall keep the other Party's Confidential Information confidential and shall not:

7.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or

7.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 7.

7.2 Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.

7.3 A Party may disclose the other Party's Confidential Information to those of its employees, agents and subcontractors who need to know such Confidential Information provided that:

7.3.1 it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and

7.3.2 it does so subject to obligations equivalent to those set out in this Clause 7.

7.4 A Party may disclose the Confidential Information of the other Party to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, 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 7.4, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

7.5 The obligations of confidentiality in this Clause 7 shall not extend to any matter which either Party can show:

7.5.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

7.5.2 was independently developed by it; or

7.5.3 was independently disclosed to it by a third party entitled to disclose the same; or

7.5.4 was in its written records prior to receipt.

7.6 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.

7.7 We may also disclose general information about our relationship with you and your service requirements with other members of the Inspired Group to enable those entities to identify any of their products and services which may be of interest to you and, where appropriate, to contact you about any potentially relevant opportunities.

7.8 We may identify you as our client and the type of Services we provide to you, provided that, in doing so, we shall not reveal any of your Confidential Information (without your prior written consent).

7.9 On termination of this Agreement, each Party shall:

7.9.1 return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;

7.9.2 erase all the other Party's Confidential Information from its computer systems (to the extent possible); and

7.9.3 certify in writing to the other Party that it has complied with the requirements of this Clause 7.9, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority, or as is reasonably necessary for any records management, or good business practice reasons.

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 goods, services or deliverables in connection with this Agreement; or

8.1.2 otherwise in relation to this Agreement or entering into 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 other Liability which cannot be excluded or limited by applicable law.

8.3 Subject to Clause 8.2, we do not accept and hereby exclude any Liability for Breach of Duty other than any Liability arising pursuant to the terms of this Agreement.

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 £50,000.

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 provide the Services to you on the express condition that we will not be responsible for, nor shall we have any Liability (subject to Clause 8.2) directly or indirectly for any act or omission of you, or your employees, agents or subcontractors, or any third party.

9. Termination

9.1 Without prejudice to its rights and remedies at law or under this Agreement, either Party may terminate this Agreement immediately by notice in writing to the other Party if the other Party:

9.1.1 is in material breach of any of its obligations under this Agreement, and, where such material breach is capable of remedy, the other Party fails to remedy such breach within a period of 10 Business Days of being notified of such breach by the Party;

9.1.2 gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction; and/or

9.1.3 ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

9.2 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.

9.3 Termination of this 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.

9.4 Clauses 1, 5.2, 7, 8, 9.2, 9.3, 9.4, 9.5, 10, 11, 12, 13, 14, 15, 16, 17 and 18 shall survive any termination of this Agreement for any reason.

9.5 On termination of this Agreement for any reason:

9.5.1 we shall cease to provide the Services under this Agreement; and

9.5.2 you will remain responsible under any Contract or other agreement entered by you in respect of the Services or any Third Party.

10. Force majeure

Neither Party shall be in breach of this Agreement nor, subject to Clause 8.2, have any Liability for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 60 days, the Party not affected may terminate this agreement by giving immediate written notice to the affected Party.

11. Notices

11.1 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.

11.2 A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 11.1; 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.

11.3 The provisions of this Clause 10 shall not apply to the service of any proceedings or other documents in any legal action.

12. Assignment

You may 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).

13. Severance

13.1 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.

13.2 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.

14. Waiver

14.1 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.

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

15. Third party rights

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

16. Variation

This Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.

17. No partnership

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

18. Governing law and jurisdiction

18.1 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.

18.2 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement, or its subject matter or formation.