



# Water Plus Limited

## Standard terms and conditions for value added services

Measure  
Save  
Protect  
Connect



## It is agreed

### 1. Definitions and Interpretation

#### 1.1 In this Agreement:

**Affiliate** means in respect of either Party, a company which is a subsidiary or which is a holding company (as such terms are defined in the Companies Act 2006) of that Party, or a subsidiary of such holding company, in each case for the time being

**Agreement** means this agreement comprising these Conditions and any associated Customer Quote

**Assigned Rights** shall have the meaning given to that term in clause 6.3

**Business Day** means any day other than a Saturday, Sunday or a public or bank holiday in England

**Business Hours** shall have the meaning given to that term in clause 11.3

**Charges** means the charges for the Services as stated in the Customer Quote, or as subsequently amended by the agreement of both Parties

**Commencement Date** means the date that the Customer signs the Customer Quote

**Company** means Water Plus Limited, a company registered in England (company number 04141390) whose registered office is at Prospect House, Gordon Banks Drive, Trentham Lakes North, Stoke-On-Trent, ST4 4TW.

**Company Background Material** means Material provided by, for or on behalf of the Company or any Affiliate of the Company to the Customer in connection with the performance or receipt of the Services (whether or not it is incorporated in New Material), and which existed prior to the commencement of this Agreement

**Company New Material** means any Material, other than Customer New Material, which is generated, created or discovered by, for or on behalf of the Company or any Affiliate of the Company in connection with and/or in the course of the performance of the Company's obligations hereunder or the receipt of the Services, including any modifications to Company Background Material

**Company Personnel** means any employees, officers, sub-contractors and individuals contracted to the Company and involved to any extent in the performance of the Services and/or this Agreement

**Conditions** means these Water Plus Limited terms and conditions for advanced services

**Confidential Information** means all documents, databases, diagrams, calculations, data, processes, business methodologies, contracts (including this Agreement), financial information, plans, ideas, strategies, projections, products, designs and other information whether in physical form, electronic form or otherwise, whether expressed to be confidential or not, and in whatever media or format provided or orally disclosed by either Party (the Disclosing Party) to the other Party (the Receiving Party) in the course of, or in connection with the performance of each Party's obligations under this Agreement and information obtained by the Receiving Party from the Disclosing Party as a result of being present at any premises of the Disclosing Party (whether by observing any plant or equipment or otherwise)

**Customer** means the person, firm or company for whom the services within the scope of this agreement are undertaken, as specified in the Customer Quote

**Customer Background Material** means Material (including Material owned by or licensed from a third party), provided by, for or on behalf of the Customer and/or used in connection with the performance and/or receipt of the Services, and which existed prior to the commencement of this Agreement

**Customer New Material** means any Material which is generated, created or discovered by for or on behalf of the Customer during the Term (and, where relevant, in advance of the Term, to the extent created in contemplation of this Agreement) in connection with this Agreement

**Customer Personnel** means any employees, officers, sub-contractors and individuals contracted to the Customer and involved to any extent in the receipt of the Services and/or this Agreement

**Customer Quote** means the document of this name in which the Company offers to carry out the Services for the Customer

**Dispute** means any dispute under this Agreement.

**Dispute Notice** shall have the meaning given to that term in clause 14.1

**Event of Insolvency** means if the Customer is unable to pay its debts (within the meaning

of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), ceases or threatens to cease to carry on its business or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction

**Force Majeure** means any cause preventing or delaying the Company from performing any or all of its obligations under this Agreement which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Company including but not limited to: (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster; (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions; (c) terrorist attack, civil war, civil commotion or riots; (d) nuclear, chemical or biological contamination or sonic boom; (e) fire, explosion or accidental damage; (f) loss at sea; (g) adverse weather conditions; (h) collapse of building structures, failure of plant machinery, machinery, computers or vehicles; (i) any labour dispute, including but not limited to strikes, industrial action or lockouts; (j) non-performance by suppliers or subcontractors; and/or (k) interruption or failure of utility service, including but not limited to electric power, gas or water

**Intellectual Property Rights** means patents (including rights in, and/or to, inventions), trademarks, service marks, rights in goodwill, design rights and registered designs, rights in and/or to internet domain names and website addresses, copyright (including future copyright), database rights, rights in and to confidential information (including know how and trade secrets) and all other intellectual property rights (including any applications and any rights capable of registration) of any nature subsisting worldwide at any time

**Losses** means all losses, claims, proceedings, demands, actions, liabilities, fines, charges,

damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (in each case whether internal or external costs)

**Material** means any inventions, discoveries, documents, information, items, data, designs, prototypes, drawings, formulations, know-how or other material (in whatever form) including software, firmware, computer programs, documented methodologies, processes and procedures

**New Material** means the Company New Material and the Customer New Material

**Party and Parties** means a party to, or the parties to, this Agreement

**Security Deposit** means a sum of money which the Company may ask the Customer for as security for the Customer's payment obligations under this Agreement

**Services** means the services to be provided by the Company to the Customer as set out in the Customer Quote and any additional services provided by the Company to the Customer in accordance with this Agreement

**Site** means the place or places at which the Customer requires the Services to be provided from time to time

**Term** means the period from the Commencement Date until the later of: (i) the date that the Services are completed; and (ii) the date that the Customer has made all payments under this Agreement.

**VAT** means Value Added Tax as defined under the Value Added Tax Act 1994.

1.2 In this Agreement unless the context otherwise requires:

- a) references to gender shall include all other genders, the singular shall include the plural (and vice versa), the words "other", "includes", "including", "for example" and "in particular" do not limit the generality of any preceding words, and the expression "person" shall mean any individual, company, incorporated association, partnership, government, State, agency of State or joint venture;
- b) references to clauses and schedules are references to clauses of and schedules to this Agreement, references in a schedule to a part or paragraph are to parts or paragraphs of that schedule,

and references in this Agreement to a "party" or "Party" shall include its successors in title and permitted assigns;

- c) headings and indexes are for reference purposes only and shall not be used to construe or interpret the meaning of this Agreement; and
- d) in the event of any inconsistency between the clauses of these Conditions and the Customer Quote, the Customer Quote shall prevail.

## **2. Commencement and Duration**

- 2.1 This Agreement shall commence on the Commencement Date and shall, unless and until terminated in accordance with the provisions of these Conditions, continue for the Term.
- 2.2 For the avoidance of doubt, the Services need not commence on the Commencement Date.

## **3. The Company's Obligations**

- 3.1 The Company shall provide the Services to the Customer: (a) in accordance with this Agreement; and (b) with reasonable skill and care.
- 3.2 All warranties, conditions and other terms implied by statute or common law in relation to the Services are, to the fullest extent permitted by law, excluded from this Agreement.
- 3.3 Nothing in this Agreement shall preclude the Company from providing services of the same or a similar nature to the Services to any person other than the Customer.

## **4. The Customer's Obligations**

- 4.1 The Customer shall:
  - a) obtain and maintain at its own expense all licences, permissions, permits, powers and consents (other than those specified in this Agreement to be the responsibility of the Company) necessary to receive the Services under this Agreement;
  - b) provide the Company with access to appropriate members of the Customer's staff, as such access is reasonably requested by the Company in order for the Company to discharge its obligations under this Agreement;
  - c) respond to and provide such documentation, data and other information as the Company reasonably requests in order for the Company to perform its obligations under this Agreement. The Customer shall be responsible for any fair and reasonable

extra costs (if any) incurred as a result of inadequate or inaccurate information provided by the Customer.

- d) provide all such rights and access for any of the Company's Personnel to the relevant Site(s) during the Customer's normal working hours in each Business Day as may be reasonably required by the Company Personnel in connection with the provision of the Services including, without limitation, for bringing equipment onto the Site and at such other hours as may be arranged in advance; and
  - e) notify the Company and provide reasonable details of any health and safety requirements or hazards relating to the Site(s).
- 4.2 The Customer warrants, undertakes and represents that it has the full right, capacity, authority and power to enter into this Agreement and this Agreement constitutes obligations binding on the Customer in accordance with its terms.
  - 4.3 If the Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- ## **5. Payment**
- 5.1 In consideration of the provision of the Services by the Company, the Customer shall pay the Company the Charges in accordance with the provisions of this clause 5 (Payment).
  - 5.2 The Company shall be entitled to submit invoices for Services and costs incurred in connection with the delivery of the Services (or any part of them) completed for such period as the Company deems appropriate.
  - 5.3 The Customer will pay each invoice from the Company within 30 days of the date of issue of the invoice.
  - 5.4 Unless otherwise agreed in writing by the Company, the Customer shall not be entitled to make any withholding or set-off against the Company unless the Customer is required by law to make such withholding or set-off or such withholding or set-off is admitted or agreed in writing by the Company or awarded by any court.
  - 5.5 Without affecting any other rights and remedies of the Company, if the Customer

fails to pay the Company in full (including any VAT properly chargeable in respect of such payment) by the due date for payment and such failure continues for five Business Days after the Company has given to the Customer written notice of his intention to suspend the performance of his obligations for doing so, then the Company may suspend such performance until payment in full occurs.

- 5.6 Each Party shall be entitled to receive interest on any payment not paid when properly due pursuant to the terms of this Agreement, calculated from day to day at a rate per annum equal to 4% above the Bank of England base rate from time to time and payable from the day after the date on which payment was due up to and including the date of payment (whether before or after judgment).
- 5.7 All sums payable under this Agreement are, unless otherwise stated, exclusive of VAT.
- 5.8 The Company may ask the Customer to provide a Security Deposit, or another form of acceptable payment security (for example a parent company guarantee or letter of credit) either before the Commencement Date or during the Term. If this is required, the Customer must provide the Security Deposit or other form of payment security within 14 days of the request. If the Customer does not provide the Security Deposit or other acceptable payment security within 14 days, this will be a material breach and the Company shall be entitled to terminate this Agreement in accordance with clause 10.3.
- 5.9 The Company may use the Security Deposit or other acceptable payment security, including any outstanding interest generated on such deposit, to pay any outstanding Charges owed by the Customer.

## 6. Intellectual Property

- 6.1 This Agreement shall not operate to assign any right, title, interest or Intellectual Property Rights in any of the Company Background Material or the Customer Background Material.
- 6.2 All rights, title and interest and Intellectual Property Rights in and to any New Material shall belong to and vest in the Company. The New Material shall be deemed to be the Confidential Information of the Company rather than the Customer and clauses 7.4(a) and 7.4(b) shall not apply to such Confidential Information so as to excuse the

Customer from its obligations under clause 7.1. The Company shall be free to disclose and use (and authorise others to disclose and use) such Confidential Information as it thinks fit.

- 6.3 The Customer hereby assigns with full title guarantee and free from all liens, charges, encumbrances and other rights of whatever nature exercisable by any third party absolutely (and shall procure that all Customer Personnel assign absolutely) to the Company (or, at the Company's option, any Affiliate of the Company), by way of present assignment of existing and all future rights, all property, rights, title and interest in and to the New Material and all Intellectual Property Rights in the New Material (together with all rights to take action for any past, present and future damages and other remedies in respect of any infringement or alleged infringement of such Intellectual Property Rights) (the **Assigned Rights**), with the intent that the same shall vest in the Company immediately upon creation of the same.
- 6.4 The Customer shall (and shall procure that the Customer Personnel shall) do all things and execute all documents as the Company may require in order to perfect, formalise or achieve the vesting of the Assigned Rights as provided for in clause 6.3, and to enable the Company to take the full benefit of such Assigned Rights. The Customer shall also provide the Company with all assistance requested by the Company for the purposes of applying for and/or registering any Assigned Rights and/or with respect to any infringement action or any actions in respect of misuse or ownership of the Assigned Rights and/or the validity of the Assigned Rights that the Company may bring, or which is brought against it.
- 6.5 The Customer hereby grants (and shall procure that the Customer Personnel shall grant) to the Company a non-exclusive, non-transferable, royalty-free, worldwide, personal licence during the Term to use, copy, maintain and modify the Customer Background Material (and any Intellectual Property Rights of the Customer subsisting in the same) to the extent necessary and for the sole purpose of the provision of the Services and its other obligations under this Agreement.
- 6.6 The Company hereby grants to the Customer a non-exclusive, perpetual, worldwide, revocable, royalty-free licence



(with the right to grant sub-licences) to use, during the Term such of the Company Background Material and New Material as is necessary for the sole purpose of receiving the Services.

## **7. Confidentiality**

- 7.1 Subject to clauses 7.2, 7.3 and 7.4, each Party shall, and shall procure that its officers, employees, agents and sub-contractors shall, keep confidential all Confidential Information relating to the other Party that it obtains from the other Party in connection with this Agreement or the negotiations leading up to it. Each Party shall only use such information in the proper performance of its obligations and the exercise of its rights under this Agreement and shall not divulge any such information to any other person without the prior written consent of the other.
- 7.2 A Receiving Party may disclose the Confidential Information of the other Party if and to the extent that:
- a) the Receiving Party can show that the information was already, or has subsequently become, published or publicly available for use other than through a breach of this Agreement or of any confidentiality obligation owed by that Party; and/or
  - b) the Receiving Party is required to disclose the information by law or any competent regulatory body or recognised investment exchange.
- 7.3 The Company may disclose the Confidential Information of the Customer on a confidential basis to a bona fide prospective assignee to the extent necessary for the purpose of the proposed assignment.
- 7.4 Clause 7.1 shall not apply to a Party in relation to information to the extent that the Receiving Party can show:
- a) that the information was already lawfully in its possession (without restriction on disclosure or use) before it obtained the information in connection with this Agreement or the negotiations leading up to it;
  - b) that the information has subsequently lawfully been disclosed to it (without restriction on disclosure or use) by a person who is not a party to this Agreement and who itself lawfully obtained the information and is not under any obligation restricting its disclosure or use; or

- c) from its records that it has derived the same information independently of that obtained by it in connection with this Agreement or the negotiations leading up to it.

- 7.5 The obligations in this clause 7 shall survive the expiry or termination of this Agreement.
- 7.6 On the termination or expiry of this Agreement, each Party shall, on request, promptly return to the Disclosing Party all records and documents containing that Party's Confidential Information (including copies) or if requested by the Disclosing Party destroy the Confidential Information (including copies) in the manner specified by the Disclosing Party and promptly certify to the Disclosing Party in writing that it has done so provided always that the Company shall have no obligation to return or destroy any Confidential Information which is contained within any Material provided by the Company to the Customer in accordance with this Agreement. For the avoidance of doubt, where the Disclosing Party is the Company, references in this clause to Disclosing Party shall include each Affiliate of the Company and in each case their customers, sub-contractors and employees.
- 7.7 For marketing or publicity purposes the Company is permitted to make general references to its relationship with the Customer and to work performed for or Services provided to the Customer.

## **8. Liability**

- 8.1 Subject to clause 8.2 below, the Company shall not be liable for any of the following Losses, whether arising in contract, tort (including negligence), breach of statutory duty, restitution, under any indemnity or otherwise:
- a) any loss of profits, interest, goodwill, business opportunity, business revenue or anticipated savings; or
  - b) any indirect, special, punitive or consequential losses,

whether of the Customer or any third party and howsoever arising out of or in connection with this Agreement, even if such Losses were foreseeable and notwithstanding that it had been advised of the possibility that such Losses were in the contemplation of the Company or any third party. The heads of loss set out at in this clause 8.1 shall include direct, indirect and consequential losses.

- 8.2 Nothing in this Agreement excludes or limits the liability of either Party for:
- death or personal injury caused by its own negligence (or the negligence of its directors, employees, agents or sub-contractors);
  - fraud or fraudulent misrepresentation by it; or
  - any liability which cannot be excluded or limited by law.
- 8.3 Subject to clauses 8.1 and 8.2, the total aggregate liability of the Company (including all of its employees, servants, agents or sub-contractors) howsoever arising under or in connection with this Agreement and whether in contract, tort (including negligence) breach of statutory duty, restitution, under any indemnity or otherwise, shall be limited to the amount paid by the Customer under this Agreement.
- 8.4 Subject to clause 8.5 below, the Customer shall waive any right of contribution by and will indemnify from liability the Company, its officers, employees, successors and assignees in respect of any Losses where such Losses are caused in whole or in part by any negligent act or omission of, or incomplete or inaccurate information provided to the Company by, the Customer, its Customer Personnel or agent or anyone directly or indirectly employed by any of the foregoing parties or anyone for whose acts any of them may be liable.
- 8.5 The waiver of rights and indemnity provided by the Customer under clause 8.4 above shall not extend to the liability of the Company, its officers, employees, sub-contractors or agents arising out of their negligence.
- 8.6 The Services are for the exclusive benefit of the Customer and the Services, or any related advice provided by the Company to the Customer shall not to be relied on by or disclosed or made available to any other party without the Company's prior written consent. To the fullest extent permitted by law, the Company shall not assume responsibility to anyone other than the Customer in respect of the provision of the Services.
- 8.7 The Parties acknowledge that the above provisions of this clause 8 (Liability) are reasonable and are reflected in the Charges.

## 9. Assignment and Sub-Contracting

- 9.1 The Customer shall not assign nor otherwise transfer, nor sub-contract, any of its rights or obligations under this Agreement (in whole or in part) without the prior written consent of the Company, which shall not be unreasonably withheld.
- 9.2 The Company shall have the right to assign the benefit or novate the benefit and the burden, or sub-contract the obligations of this Agreement in whole or in part to any third party, without requiring the consent of the Customer.

## 10. Termination

- 10.1 The Company may (without prejudice to any of its other rights, powers, or remedies) terminate this Agreement immediately by notice to the Customer upon the occurrence of the Customer suffering any Event of Insolvency.
- 10.2 The Company may (without prejudice to any of its other rights, powers or remedies) terminate this Agreement immediately by notice to the Customer if any invoices remain unpaid by the Customer 60 days after the date of invoice.
- 10.3 Either Party shall have the right to terminate this Agreement immediately by notice to the other Party if the other Party is in material breach of this Agreement and either such breach is incapable of remedy or, where such breach is capable of remedy, the other Party fails to remedy such breach within 15 Business Days of the date of service of a notice specifying the breach and requiring it to be remedied.
- 10.4 Termination or expiry of this Agreement shall not prejudice any rights, powers or remedies of either Party which had arisen on or before the date of termination or expiry and shall not affect the coming into force or the continuation in force of any term that is expressly or by implication intended to come into or continue in force.
- 10.5 Upon termination of this Agreement the Company shall be entitled to payment for all Services performed and all costs incurred or committed to (including any third party or sub-contractor costs) up to the date of termination.
- 10.6 On termination or expiry of this Agreement, both Parties shall return any property held by them but owned by the other Party, to that other Party.
- 10.7 On termination or expiry of this Agreement, clauses in the Conditions which by

implication or otherwise have effect after termination shall continue in full force and effect, including the following clauses: 5, 7, 8, 10.4, 10.5, 11, 14, 15.8 and 15.10.

## 11. Notices

- 11.1 All notices to be given to a Party under this Agreement shall be in writing in English and shall be marked for the attention of the person, and delivered by hand or sent by first class pre-paid post to the address detailed at the head of this Agreement. All notices sent to the Company must be copied to the Company Secretary and Head of Legal. A Party may change the details recorded for it in this clause by notice to the other in accordance with this clause 11.1.
- 11.2 A notice shall be treated as having been received: if delivered by hand between 9.00 am and 5.00 pm on a Business Day (Business Hours), when so delivered; and if delivered by hand outside Business Hours, at the next start of Business Hours; and if sent by first class post, at 9.00am on the Business Day after posting if posted on a Business Day, and at 9.00am on the third Business Day after posting if not posted on a Business Day.

## 12. Contracts (Rights of Third Parties) Act 1999

This Agreement is only enforceable by the original Parties to it and by their successors in title and permitted assignees and any rights of any other person to enforce or rely upon any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

## 13. Force Majeure

- 13.1 The Company shall not be deemed to be in breach of this Agreement or otherwise liable to the Customer in any manner whatsoever for any failure or delay in performing its obligations under this Agreement to the extent that the same is caused by reason of Force Majeure.

## 14. Dispute Resolution

- 14.1 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- a) if the Dispute cannot be resolved by the Parties within 14 days, either Party may give notice to the other party in writing (that a Dispute has arisen (**Dispute Notice**)); and
  - b) within seven days of the date of the Dispute Notice, each Party shall refer the

Dispute to a Director of the Parties for resolution.

- 14.2 If the Parties' Directors are unable, or fail, to resolve the Dispute within 21 days of the date of the Dispute Notice, or within 14 days of the reference to the Parties Directors pursuant to clause 14.1(b), the Parties may attempt to resolve the Dispute by mediation in accordance with clause 14.3.
- 14.3 If the Parties have failed to agree on a resolution within 30 days of the Dispute Notice, either Party may refer any Dispute for mediation in accordance with the Model Mediation Procedure of the Centre of Dispute Resolution (CEDR) for the time being in force.
- 14.4 If and to the extent that the Parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

## 15. General

- 15.1 Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of this Agreement.
- 15.2 No failure to exercise, nor any delay in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy hereunder.
- 15.3 Nothing in this Agreement is to be construed as establishing or implying any partnership or joint venture between the Parties, or as appointing any party as the agent or employee of any other party.
- 15.4 If any provision of this Agreement is declared by a judicial or other competent authority to be wholly or partly void, voidable, illegal, or otherwise unenforceable that provision shall be deemed to be severed from this Agreement and will not affect any other provisions of this Agreement, which will remain in full force and effect, and enforceable to fullest extent permitted by law.
- 15.5 The Customer shall not at any time publish or permit to be published either alone or in conjunction with any other person any information, article, photograph, illustration or any other material of whatever kind, relating to this Agreement or the business of the Company generally, without the prior written consent of the Company. Such consent shall only relate and apply to each specific request for consent.



- 15.6 This Agreement (together with all other documents to be entered into pursuant to it) sets out the entire agreement and understanding between the Parties, and supersedes all proposals and prior agreements, arrangements, course of dealings and understandings between the Parties, whether written or oral, relating to its subject matter.
- 15.7 Each Party acknowledges that in entering into this Agreement (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Agreement or not) that is not set out in this Agreement, or the documents referred to in it. Each Party waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral Agreement or other assurance.
- 15.8 Save as expressly indicated otherwise, all rights, powers and remedies granted to either of the Parties shall be cumulative and without prejudice to any other right, power, or remedy of the Parties.
- 15.9 Save as expressly provided in this Agreement, no variation of the provisions of this Agreement shall be valid unless in writing signed by duly authorised representatives of the Parties.
- 15.10 Where:
- a) Services are provided to Sites in England and Wales, the Agreement shall be governed in accordance with the laws of England and Wales and both Parties submit to the exclusive jurisdiction of the English and Welsh courts;
  - b) Services are provided to Sites in Scotland, the Agreement shall be governed by Scots law and both Parties submit to the exclusive jurisdiction of the Scottish courts.