

# ADVANCED METERING SOLUTIONS AND SERVICES AGREEMENT

## STANDARD TERMS AND CONDITIONS

### For NON HALF HOURLY METER OPERATION, DATA COLLECTION AND DATA AGGREGATION

#### KEY TERMS SCHEDULE

This Agreement (which includes this Key Terms Schedule and the annexed Site List and Terms and Conditions) ("Agreement") sets out the terms on which BGlobal Metering Limited ("BGM") will provide the customer (the "Customer") with certain goods and services in respect of the sites set out in the Site List.

#### TERMS AND CONDITIONS

##### 1 Definitions and interpretation

1.1 In this Agreement the following terms have the following meanings unless inconsistent with the context. Terms not set out in this clause shall have the meaning given to them in the Key Terms Schedule.

##### "Additional Fee"

Charges that apply for installations that cannot be installed as a Standard Installation for which BGM has gained Customer acceptance to relevant Quotation;

##### "BSC"

The Balancing and Settlement Code dated 14 August 2000 as may be amended from time to time;

##### "Commencement Date"

In respect of any Site at which BGM is providing the installation services referred to in clause 2, the date upon which BGM installs the first Meter for the Customer at such Site and in respect of any Site at which BGM is not providing the installation services referred to in clause 2, the date of this Agreement;

##### "Confidential Information"

Any and all know-how, documentation and information of a confidential or proprietary nature, whether commercial, financial, technical, operational or otherwise relating to the business, affairs, customers, suppliers or methods of one party, disclosed to or otherwise obtained or learned by the other party in connection with this Agreement;

##### "Disconnection Fee"

The fee payable for disconnecting the Meters which shall be calculated in accordance with BGM's price list in force at the date of disconnection;

##### "Force Majeure Event"

An event beyond a party's reasonable control including: (1) acts of terrorism, insurrection, riots, civil unrest and military action; (2) the exercise of powers by any local, regional or national governmental authority; (3) fire, flood, earthquake, storm and other natural disasters; (4) industrial action, strikes and lock-outs; (5) blockage or embargo; and (6) in the case of BGM, the failure or delay of supplies of power, fuel, transport, equipment, mobile or fixed telecommunications systems, internet or other goods and/or services (including any third party materials);

##### "Installation Fee"

The fee payable for the provision and installation of the Meter(s) as a Standard Installation;



**"Intellectual Property Rights"**

All patents, trademarks, copyright, moral rights, database rights, semi-conductor topography rights, rights to prevent passing off, rights in designs, know-how and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world;

**"Law"**

Any and all applicable rules of law, statutes, statutory instruments, directives, regulations, orders and other instruments having the force of law in each case as may be amended, enacted, extended, replaced, modified, consolidated or repealed from time to time;

**"Meters"**

The meters referred to in the Site List and any associated equipment supplied to the Customer by BGM;

**"Quotation"**

A quotation for additional services or equipment to be provided to the Customer at a specific Site which shall be calculated in accordance with BGM's price list in force at the relevant time;

**"Services"**

The installation services referred to in clause 2, the data services referred to in clause 3, the meter services referred to in clause 4 and the maintenance services referred to in clause 5 as applicable and as set out in the Site List;

**"Site Inspection"**

Any site inspection carried out by BGM at the Sites to assess the condition of the Site and the location and installation of existing meters and any proposed new Meters;

**"Site List"**

The list of sites annexed to this Agreement as updated from time to time when new sites are agreed between the parties;

**"Sites"**

The sites as set out in the Site List;

**"Standard Installation"**

Installation of the Meter(s) during normal working hours (0700hrs – 1900hrs Mon – Fri excluding public or bank holidays) at the Site(s) in mainland England, Wales and Scotland. Including reading and removal of existing Settlement meters and associated equipment (if required), commissioning of the new Meter in accordance with the BSC and installation and commissioning of a GSM/GPRS communications device using the standard aerial supplied with the new Meter;

**"Supplier"**

The Customer's relevant energy supplier for each Site from time to time; and

**"Working Day"**

A day other than a Saturday or Sunday or a day which is a public or bank holiday in England and/or Wales

1.2 In this Agreement:

- 1.2.1 headings are included for convenience only and shall not affect the construction or interpretation of this Agreement;
- 1.2.2 any reference to a clause or a Schedule shall (unless expressly provided otherwise) be a reference to a clause of or a Schedule to this Agreement. The Schedules shall have the same force and effect as if set out in the body of this Agreement. In the event of conflict between the Key Terms Schedule, these terms and conditions and the Schedules, the Key Terms Schedule shall take precedence followed by these terms and conditions and then the Schedules (if any);
- 1.2.3 the words "include", "includes", "including" and "included" will be construed without limitation unless inconsistent with the context; and



1.2.4 any reference to a "party" shall mean either the Customer or BGM as the context requires and references to "parties" shall mean both of them.

## 2 Installation

2.1 BGM will undertake the installation of a Meter on a date agreed by the parties (each acting reasonably). If the installation cannot proceed for reasons outside of BGM's direct control and access to the existing Settlement meter(s) is available BGM will carry out a Site Inspection. Where access to the existing Settlement meter(s) is not available an Abortive Visit Fee will apply.

2.2 If a Site Inspection has been carried out by BGM, BGM shall inform the Customer whether or not it revealed any matters which would involve work additional to that anticipated at the date this Agreement was entered into or would involve a non-standard installation or additional services, equipment or works and, if so, BGM shall provide an appropriate Quotation for any additional Charges that may arise at the relevant Site.

2.3 The Customer shall, as soon as reasonably practicable, accept or reject any Quotation issued pursuant to clause 2.2 and if the Quotation is accepted the relevant Charges shall accrue as Additional Fees.

2.4 Unless the Customer rejects any Quotation issued pursuant to clause 2.2 (in which case BGM shall have no responsibility to install the Meters or otherwise provide the Services at the relevant Site), BGM shall where applicable: (a) read and remove the existing meter; (b) install and commission the Meters; (c) install any additional equipment that may be required pursuant to an accepted Quotation; (d) pass the final meter reading to the relevant data collector. BGM shall use reasonable endeavours to provide these installation services on a date to be agreed by the parties (each acting reasonably).

2.5 The Customer acknowledges that in order to install Meters and remove existing meters it may be necessary to carry out certain works at the relevant Site so as to ensure that, for example, the Meter fits the space available for it and receives an appropriate signal. BGM shall not be responsible for any damage caused in carrying out such works unless they are carried out negligently by BGM. If any such works may involve unusual disruption or alterations, BGM shall discuss the matter with a representative of the Customer at the Site.

2.6 If at any time the Customer requires additional meters (either at the Sites or at additional sites) or replacement meters, it shall notify BGM and BGM shall provide the Customer with a Quotation for the supply, installation and operation of the same. If the Quotation is accepted then the required Services shall be provided in respect of such meters and they shall be deemed to be Meters for the purposes of this Agreement.

2.7 Risk of loss or damage to any Meters supplied to the Customer shall pass to the Customer upon delivery to the relevant Site. Title to the Meters shall not pass to the Customer pursuant to this Agreement and, as between BGM and the Customer, title to the Meters shall always be retained by BGM.

## 3 Data Services

3.1 Following installation of and in respect of each Meter, BGM shall, make available to the Customer via a web interface, reports showing the energy usage profile of each Meter together with tools to analyse energy consumption patterns and costs ("**Reports**"). The Reports will normally be updated each month within one Working Day of data being uploaded from the Meter although subject to an additional charge Reports can be updated daily. BGM shall not be obliged to make available Reports that are older than two (2) years, when applicable.

3.2 In order to access the Reports, BGM shall supply the Customer with a User ID and password. If Customer reasonably requires additional User IDs/passwords these will be provided at additional cost, when applicable.

3.3 The Customer shall ensure that:

3.3.1 in its use of the web service, it shall not place unreasonable demands on BGM's computer system by, for example, making an unusually large number of requests; and

3.3.2 the User ID and passwords provided to it are kept confidential.



BGM may suspend, either temporarily or permanently, a User ID and/or access to BGM's web service if it reasonably apprehends that Customer use of the web service is not in accordance with this Agreement or would or might jeopardise BGM's computer systems.

#### 4 **Meter Services**

4.1 If BGM is to be a meter operator (as defined in the BSC) for a Meter (as set out in the Site List), the Customer shall procure that BGM is appointed as the meter operator and data retriever in respect of all the relevant Meters.

4.2 When notified by the Supplier of its appointment as meter operator in respect of a Meter, BGM shall accept the appointment and undertake the activities of the meter operator and data retriever as defined in the BSC. When notified by the Supplier of its de-appointment as meter operator in respect of a Meter, BGM shall undertake the de-appointment activities described in the BSC.

4.3 If relevant, the Customer shall ensure that BGM is appointed as the data collector and/or data aggregator (both as defined in the BSC) by the Supplier in respect of all Meters for which the BGM is to have this role. When notified by Supplier of its appointment as data collector and/or data aggregator in respect of a Meter, BGM shall accept the appointment and undertake the activities of the data collector and data aggregator (as relevant) defined in the BSC. When notified by Supplier of its de-appointment as data collector and/or data aggregator (as relevant) in respect of a Meter, BGM shall undertake the de-appointment activities described in the BSC.

4.4 Where, if relevant, the Supplier's appointed data collector wishes to appoint BGM to act as data retriever (as defined in the BSC) BGM shall only be obliged to accept such appointment if the data collector is an accredited data collector within the meaning of the BSC and commercial agreements are in place between BGM and the relevant data collector.

4.5 If BGM is de-appointed as meter operator in respect of any Meter, it shall no longer be obliged to provide any services in respect of that Meter, a Disconnection Fee may be charged and any such Meter shall cease to be a Meter for the purposes of this Agreement.

#### 5 **Maintenance services**

5.1 During the Initial Term for each Site and thereafter for as long as the Agreement continues in relation to each specific Site, BGM shall carry out any maintenance and/or repairs to the Meters that BGM deems is reasonably required. If the need for maintenance, repairs and/or replacement arise out of the Customer's act, omission, negligence, improper use or as a result of the Customer's failure to comply with its obligations under this Agreement the Customer shall be responsible for BGM's standard charges for such maintenance and/or repairs.

5.2 Maintenance, repairs and/or replacement shall be carried out during normal working hours (0700hrs – 1900hrs Mon – Fri excluding bank holidays) and at such times agreed with the Customer. If BGM attends site and is not given access to carry out the work at the agreed time by the Customer or the Customer's agent an Abortive Visit Fee will apply.

#### 6 **Charges**

6.1 The Site Inspection Fees and Abortive Visit Fees may be invoiced by BGM on or after the relevant Site Inspection or Abortive Visit has been completed. The Installation Fee (if applicable), Additional Fees (if applicable) and the Annual Fees may be invoiced by BGM on or after the Commencement Date and, in the case of the Annual Fee, subsequently on or after each anniversary of the Commencement Date. Disconnection Fees may be invoiced on or after Services have ceased in respect of the relevant Meter.

6.2 The Charges shall be paid within thirty (30) days of receipt of BGM's invoice by BACS to the account of BGM at a bank to be nominated in writing by BGM. Any payments not received within 15 days of the due date of the invoice will be liable for a late payment fee of 5% of the total invoice.

6.3 Unless stated otherwise, all amounts expressed in this Agreement as being payable by the Customer are expressed exclusive of any Value Added Tax (or any other duties or taxes) which may be chargeable and which shall be paid in addition at the rate for the time being prescribed by law.



- 6.4 Without prejudice to any other rights it may have under law or otherwise, if full payment is not received by BGM by the due date for payment then in addition to any other rights it may have, it may suspend the provision of the Services.
- 6.5 BGM shall be entitled to increase the Annual Fees in respect of each 12 month period from the first anniversary of the date of this Agreement (the "Relevant Date") by giving not less than twenty eight (28) days notice. The annual percentage increase shall be no greater than the percentage change in the Retail Prices Index since the last increase (or if no such increase, since the Relevant Date) plus two percent (2%), where "**Retail Prices Index**" means the retail prices index (all items) published by National Statistics or if such index is no longer published, the most nearly equivalent index published by National Statistics or the most nearly equivalent successor body to National Statistics.
- 6.6 BGM shall be entitled to increase the Annual Fee at any time where a Specific Change in Law occurs. For the purposes of this clause a Specific Change in Law shall mean a change in Law that relates specifically to the Services provided by BGM.

## 7 Warranties and Customer obligations

### 7.1 BGM warrants that it:

- 7.1.1 has full capacity and authority to enter into this Agreement;
- 7.1.2 has any necessary licences, registrations and authorities that are required to be held by it for the proper performance of its obligations under this Agreement;
- 7.1.3 shall carry out the Services in compliance with Law and industry regulation applicable to it; and
- 7.1.4 shall perform the Services with reasonable care and skill.

### 7.2 Customer warrants that it:

- 7.2.1 has full capacity and authority to enter into this Agreement; and
- 7.2.2 has any necessary consents and licences perform its obligations under this Agreement and to allow BGM to provide the Services.

### 7.3 The Customer shall:

- 7.3.1 (and procure that its suppliers shall) make available to BGM such information and assistance as may be reasonably required by BGM to enable BGM to perform the Services in accordance with the terms of this Agreement;
- 7.3.2 hereby grants BGM and its employees, agents and sub-contractors such access to the Sites as is necessary for BGM to carry out its obligations under this Agreement;
- 7.3.3 notify BGM promptly upon becoming aware of any defect with the Meters (or other items of equipment installed by or for BGM in relation to the Services);
- 7.3.4 take all reasonable care of the Meters (or other items of equipment installed by or for BGM in relation to the Services) in relation to the Services and not make or cause to permit to be made any alteration, amendment, modification or addition to the Meters (or such equipment) without BGM's the written consent;
- 7.3.5 not move the Meters (or other items of equipment installed by or for BGM in relation to the Services) or remove the Meters (or such equipment) from the Sites; and
- 7.3.6 ensure that any plates or other identification markings attached to the Meters (or other items of equipment installed by or for BGM in relation to the Services) are at no time removed, obliterated, defaced or covered up.



7.4 All warranties, conditions, obligations or terms which are implied into this Agreement by statute, custom or at law (including, without limit, any conditions of fitness for purpose or relating to satisfactory quality) are excluded to the fullest extent permitted by law.

## 8 Intellectual Property Rights

8.1 BGM is and shall remain the legal and beneficial owner of all Intellectual Property Rights in the Meters and any equipment, software, databases and database structures used to provide any as part of the Services, in each case, from time to time) and in any other forms, manuals, records or other documentation, however recorded, provided by BGM to the Customer in connection with this Agreement.

8.2 The Customer shall notify BGM immediately if it becomes aware of any unauthorised access to, use of, copying of, all, or, any part of the BGM's Intellectual Property Rights by any third party.

## 9 Confidential Information

9.1 BGM and the Customer agree:

9.1.1 to keep confidential all Confidential Information of the other (whether written or oral) which they have obtained or received as a result of the discussions leading up to or the entering into or which they obtain or receive in performance of, this Agreement;

9.1.2 not to disclose the Confidential Information of the other in whole or in part to any third party without the other's prior written consent, save to those of their agents and sub-contractors involved in the implementation of the Agreement and who have a need to know the same and are bound to keep it confidential; and

9.1.3 to use the Confidential Information of the other solely in connection with the performance of the Agreement and not otherwise or for the benefit of any party.

9.2 The provisions of clause 9.1 shall not apply to the whole or any part of the Confidential Information which is:

9.2.1 in the public domain in substantially the same combination as that in which it was disclosed to the receiving party other than as a result of a breach of this Agreement or any other obligations of confidentiality; or

9.2.2 or was lawfully received from a third party not under an obligation of confidentiality; or

9.2.3 required to be disclosed under operation of Law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required).

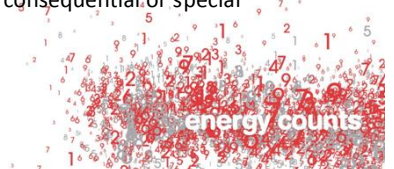
9.3 The restrictions contained in this clause 9 shall continue to apply after the termination of this Agreement without limit in time.

## 10 Liability

10.1 Subject to clauses 10.3 and 10.4, BGM's total aggregate liability to the Customer during the term of this Agreement in respect of damage to tangible property arising from any act, event, omission or circumstance (including negligence) shall not exceed £500,000 in aggregate.

10.2 Subject to clauses 10.3 and 10.4, BGM's total aggregate liability (other than for any liability which falls within clause 10.1) to the Customer in any Year in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise) shall not exceed the greater of all Charges paid or to be paid under this Agreement in such Year by the Customer to BGM and £100,000 (one hundred thousand pounds). For the purpose of this clause 10.2, "Year" means the period of 12 months starting on the date hereof and each subsequent period of 12 months starting on each anniversary of the date hereof (including any shorter period ending upon the date of termination or expiry of this Agreement in its entirety).

10.3 Subject to clause 10.4, BGM shall not be liable for any loss of profit, goodwill, anticipated savings, business opportunity, data, use of data, injury to reputation, third party losses or for any indirect, consequential or special



loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether it knew or had reason to know of the possibility of the loss, damage or injury in question.

10.4 Nothing in this Agreement shall exclude either party's liability for:

10.4.1 death or personal injury resulting from negligence;

10.4.2 fraud or fraudulent misrepresentation;

10.4.3 damage suffered by the other party as a result of any breach by the other party of the conditions as to title and quiet enjoyment implied by English law;

or for any other liability the exclusion or limitation of which is not permitted by English law.

10.5 The Customer shall indemnify BGM against all fines, penalties and liabilities arising in respect of any non-compliance or contravention of any Law with which the Meters or the Customer is required to comply and for which BGM is not responsible under the terms of this Agreement.

## 11 Term and termination

11.1 This Agreement shall commence on the date hereof and, in relation to each Site, shall (subject to earlier termination pursuant to this clause 11) continue in relation to such Site for the relevant Initial Term and thereafter until terminated in relation to such Site by either party serving not less than three (3) months' notice, such notice to expire at the end of the applicable Initial Term or any anniversary of the end of the relevant Initial Term. This Agreement shall terminate automatically once there are no Sites in respect of which the Services are being provided.

11.2 Each party shall be entitled to terminate this Agreement immediately upon written notice to the other if:

11.2.1 the other commits a material breach of this Agreement and, where the breach is capable of remedy, has failed to remedy such breach within thirty (30) days of written notice requiring remediation;

11.2.2 the other makes an arrangement with or enters into a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or otherwise;

11.2.3 the other ceases or threatens to cease to carry on business; or

11.2.4 the other reasonably apprehends that any of the events specified in clauses 13.2.2 to 13.2.3 inclusive is about to occur in relation to the other and notifies the other accordingly.

11.3 Subject to Clause 12.2, the Customer may terminate this Agreement in respect of any Site or Sites during the Initial Term applicable to such Site(s) upon not less than 3 months' prior written notice to BGM.

## 12 Consequences of termination

12.1 On termination of this Agreement (or termination of this Agreement in so far as it relates to a Site), for whatever reason:

12.1.1 all rights granted to the Customer under this Agreement in respect of the relevant Sites shall cease;

12.1.2 BGM shall immediately cease to provide the Services at the relevant Sites except where it is acting as meter operator, data retriever and/or data collector in respect of any Meter in which case this Agreement shall continue in respect of such activities until such time as BGM is deappointed;

12.1.3 the Customer shall allow BGM access to the relevant Sites to disconnect the Meters at any time during normal working hours upon two (2) Working Days' notice to the Customer; and



- 12.1.4 the Customer shall immediately pay to BGM any sums due to BGM under this Agreement in respect of the relevant Sites;
- 12.1.5 the Customer shall pay the Disconnection Fee in accordance with the terms of clause 6 in respect of the relevant Sites;
- 12.1.6 the Customer shall take all steps necessary to deregister BGM as the provider of the Services in respect of the relevant Sites under the BSC.
- 12.2 Where this Agreement is terminated in respect of a Site prior to the end of the relevant Initial Term either by the Customer pursuant to clause 11.3 or by BGM pursuant to clause 11.2, the Customer shall pay all Charges in respect of the Site(s) in respect of which this Agreement has been terminated which would have been payable for the remainder, if any, of the Initial Term but for termination less a discount of 10%.
- 12.3 Upon any termination of this Agreement, each party's accrued rights and liabilities and the rights and obligations of each party that are expressly or by implication intended to come into force upon, or remain in force following, the termination or expiration of this Agreement (including, under clauses 8, 9, 10, 12 and) shall survive any termination or expiration of this Agreement.
- 13 Force Majeure**
- 13.1 Neither party shall be deemed to be in breach of this Agreement or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to a Force Majeure Event.
- 13.2 If a party's performance of its obligations under this Agreement is affected by Force Majeure Event:
- 13.2.1 it shall give written notice to the other party, specifying the nature and extent of the Force Majeure Event, promptly on becoming aware of the Force Majeure Event and will at all times use its reasonable endeavours to mitigate the severity of the Force Majeure Event;
- 13.2.2 subject to the provisions of clause 13.3 the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event; and
- 13.2.3 it shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.
- 13.3 If the Force Majeure Event in question continues for more than three (3) months the party not subject to the Force Majeure Event may give notice in writing to the other to terminate this Agreement. This notice to terminate must specify the termination date, which must not be less than 15 (fifteen) days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.
- 14 General**
- 14.1 The Customer may not assign, transfer, mortgage, charge, sub-contract, sub-license or otherwise dispose of the whole or any part of this Agreement without the prior written consent of BGM.
- 14.2 No variation of or amendment to this Agreement shall be effective unless made in writing and signed by authorised representatives of the parties.
- 14.3 The rights and remedies available to the parties under this Agreement shall not limit or exclude any other right and/or remedies that either party may have against the other.
- 14.4 Except as expressly provided for in this Agreement, neither party shall have any right of set-off against the other.
- 14.5 The failure or delay of either party to enforce or to exercise, at any time or for any period of time, any term of or any right, power or privilege arising pursuant to this Agreement does not constitute and shall not be construed as a waiver of such term or right, power or privilege and shall in no way affect either party's right later to enforce or exercise it, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any further exercise of the same or the exercise of any other remedy, right, power or privilege.



- 14.6 Any notice or written communication given under or in relation to this Agreement shall be given in writing and shall be delivered by hand or sent by special delivery post in permanent form to the other party at its address set out in the Key Terms Schedule or to such other address as it has previously notified to the sending party in writing. Any such notice or written communication shall be deemed to have been served when actually received or, if sent by special delivery mail and returned marked "gone away" or to the like effect, on return of such special delivery mail.
- 14.7 The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this Agreement shall not in any way affect the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 14.8 Nothing in this agreement shall confer any right or benefit upon any person who is not a party to it whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.9 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the parties, whether oral or written, in relation to such subject matter. Each party acknowledges that in entering into this Agreement it has not relied upon, and shall have no rights or remedies (whether in tort, under statute or otherwise) in respect of any statements, collateral or other warranties, assurances, undertakings or representations (whether innocently or negligently made) by the other party in relation to the subject-matter of this Agreement, except for those rights and remedies available under this Agreement
- 14.10 The relationship of parties shall be that of independent contractor and nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between BGM and the Customer.
- 14.11 This Agreement is governed by English Law. The parties accept the exclusive jurisdiction of the English courts in relation to any dispute (and any non-contractual disputes and claims) arising under or in connection with this Agreement.

<b>Charges (ex VAT)</b> Regional Account Manager:	Annual Fees:		
	One off charge		

