



RECORD SEARCHES SCOPE

- To obtain utility record plans of the existing infrastructure at the proposed search area (C2 under NRSWA, Quality Level D (QL-D) under BSI's PAS 128:2014 Specification for Underground Utility Detection, Verification and Location).
- Collating utility responses in relation to existing plant and issuing as a single package in pdf format via email/file transfer.
- The report will be issued at the timescale selected on the PES website or agreed on our fee proposal (after 24hrs or 5/10/20 working days). Outstanding utility responses will be provided in subsequent issues of the report until all are received.
- Additional CD copy available on request. Hard copy reports attract an additional charge.
- The Standard Contacts Schedule to include, as necessary:
 - ◆ Electric Distribution Network Operator
 - ◆ Local Water Company
 - ◆ Gas Distribution Network Operator
 - ◆ IDNOs/IGTs where necessary
 - ◆ BT Openreach
 - ◆ Virgin Media
 - ◆ Colt (CA Telecom)
 - ◆ BSkyB/Easynet
 - ◆ Global Crossing UK (Instalcom)
 - ◆ Global PEC UK (Instalcom)
 - ◆ TATA Communications (McNicholas)
 - ◆ KPN International (McNicholas)
 - ◆ SOTA (McNicholas)
 - ◆ Interoute inc 51 Degrees (Plancast)
 - ◆ Level 3 (Instalcom)
 - ◆ Zayo Europe (JSM Construction)
 - ◆ Affiniti
 - ◆ Thames Tunnel
 - ◆ Crossrail
 - ◆ Drainage Records
 - ◆ Verizon
 - ◆ Mobile Masts (Ofcom Sitefinder)
 - ◆ Vodafone Ltd (WS Atkins)
 - ◆ Linesearch
 - ◆ BT Deep Level Tunnels
 - ◆ Thames Water Ring Main
 - ◆ Post Office Tunnels
 - ◆ LUL HV Power Assets
 - ◆ Docklands Light Railway
 - ◆ London Underground
 - ◆ Network Rail
 - ◆ Transport for London
 - ◆ Fibrespan (Instalcom)
 - ◆ Vtesse Networks
 - ◆ Trafficmaster
 - ◆ Fibernet (Instalcom)
 - ◆ TeliaSonera (Telent)
 - ◆ euNetworks
 - ◆ SSE Neos Networks
 - ◆ Cityfibre

Supplementary Terms

Information

The provision of utility record plans is based on information provided by the client and information provided by the utility and service organisations about their plant and network. The pack will be based on desk research only.

Existing Plant

The quality and accuracy of information provided by utilities about their existing plant is indicative and no warranty is made as to its accuracy. Therefore, any utility record plan and/or marked up drawings provided by each utility must only be used as a guide and the actual location of plant should be verified by CAT Scan or trial holes before construction works commence.

Liability

Premier Energy Services Ltd will take all reasonable steps to obtain the most robust information from each utility but shall accept no liability for the accuracy of such information or report and in addition to any limitation of liability under its standard terms and conditions, shall not be liable for any action taken in reliance on the information or any report due to any inaccuracy.

Disbursements

Actual disbursements levied by Utility Companies (estimated or optional) will be invoiced by Premier Energy Services Ltd.

The services are provided subject to our Terms and Conditions in SCHEDULE 4.

SCHEDULE 2

PALM SCOPE

Premier Asset Layered Map (PALM)

- To use the data, obtained through the Utility Record Search, of the existing infrastructure (C2 under NRSWA, Quality Level D (QL-D) under BSI's PAS 128:2014 Specification for Underground Utility Detection, Verification and Location).
- To provide a detailed "Layered" A3 pdf map of the affected utility infrastructure surrounding the site.
- For larger sites, bespoke sizing of maps (e.g. A0, A1 etc.) to be agreed. The creation of viewports to cover specific areas is at the discretion of PES.
- Details extracted from the electric, water (clean and waste), gas, Openreach (formerly BT) and Virgin Media plans (where present), will be mapped. Additional utilities will be added, where identified.
- Details will include electric cable lines, ducts, chambers, gas mains, pipe sizes and material (where stated), flow arrows, poles, cabinets etc.
- Standard production time is within 20 working days of instruction, assuming the Utility Record Search is instructed on the same date. Faster turnarounds may be available on a site-by-site basis, please ask PES for details.

Additional Features

- Each utility layer has a unique colour coding for ease of identification and can be isolated as a single layer or overlay in a suitable pdf reader.
- Utility layers can be printed collectively or individually from one file benefiting from a consistent background format not associated with the original utility company asset records.
- Pdfs can be saved and used on hand held devices in the field so records can be viewed in an easy format to help identify utility plant before disconnections, demolition, earthworks or piling works commence.
- A layered .dwg, .dxf, .dgn, .shp or .kml file with an OS Mastermap map base or other suitable format, can also be supplied for use in AutoCAD or Microstation to enable subsequent designers to change line types and move lines following further investigation.
- Provides easy to use information for risk assessment to meet "Designers", "Client", "Contractors" and "Planning Coordinators" Health & Safety responsibilities under the CDM Regulations.

Client Responsibilities

Client to provide licensed OS Mastermap file in .dwg format. If no files are available, extra licensing costs will be incurred and charged as a disbursement.

Supplementary Terms

Charges

The standard fee allows for an area up to 250m x 250m and includes up to five utility records to be added to the PALM. PES reserves the right to charge additional costs should additional utilities be present. Additional fees will be advised if required before proceeding.

Existing Plant

The quality and accuracy of information provided by utilities about their existing plant is indicative and no warranty is made as to its accuracy. Therefore, any mapping records and/or marked up drawings provided by each utility must only be used as a guide and the actual location of plant should be verified by CAT Scan or trial holes before construction works commence.

Liability

Premier Energy Services Ltd will take all reasonable steps to obtain the most robust information from each utility but shall accept no liability for the accuracy of such information or report and in addition to any limitation of liability under its standard terms and conditions, shall not be liable for any action taken in reliance on the information or any report due to any inaccuracy.

Novation and Warranties

We assume that novations are not normally required and this is not included in our standard fee. If novations are required we will review each request on a project by project basis and advise what fee PES will charge for such a novation or reliance letter. It must be noted that any PALM over 3 months old is not to be relied upon due to the issues identified above in **Supplementary Terms – Existing Plant**. Accordingly, PES's stance is that the older the PALM the less likely that PES will be able to accept any request for a novation or reliance letter and if PES can accept the request, then the receiving party must clearly understand and accept any conditions or limitations that PES feels that it ought to impose.

We assume that collateral warranties are not normally required and this is not included in our standard fee. If collateral warranties are required we will accept the Construction Industry Council (CiC) Form of Warranty and an additional cost per warranty will be applied.

Alternative Contracts

In the event that you request alternative or warranty terms, we would require a lump sum fee to cover our legal and administrative time. Our fee for bespoke warranty is £1,000 plus VAT and for bespoke appointments is up to £2,500 plus VAT. We reserve the right to negotiate amendments to the appointment documents to suit our Professional Indemnity Insurers' requirements and legal advisors recommendations.

The services are provided subject to our Terms and Conditions in SCHEDULE 4.

GENERAL TERMS & CONDITIONS

DEFINITIONS

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions ("**Conditions**").
Contract: the Client's purchase order and PES's acceptance of it, or the Client's acceptance of a Fee Proposal for the Services by PES under Condition 2.2.
Client: the person, firm or company who purchases Services from PES or who uses the PES website.
Deliverables: all Documents, products, services and materials developed by PES in any form, including data, reports and specifications.
Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
Fee Proposal: the estimate for the provision of the Services
In-put Material: all Documents, information and materials provided by the Client relating to the Services including computer programs, data, reports and specifications.
Intellectual Property Rights: all patents, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, database rights, moral 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 for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world.
Pre-existing Materials: all Documents, information and materials provided by PES relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.
Project: the provision of the Services, based on and incorporating the Fee Proposal and the relevant Scope of Services agreed in accordance with Condition 4.
Scope of Services: the particular description of the service to be provided by PES and incorporating into that scope the additional requirements and obligations placed on the Client and specifying any further limits of liability of PES in providing the Services and any additional matters or supplementary terms relevant to the Services.
Services: the services to be provided by PES under the Contract together with any other services which PES provides or agrees to provide to the Client.
VAT: value added tax chargeable under English law for the time being and any similar additional tax.
Work Address: any work addresses/developments as specified by the Client in the Project Plan.
- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules and background form part of the Contract and shall have effect as if set out in full in the body of these Conditions and any reference to the Contract includes the schedules and background.
- 1.5 Where the words **include(s)** or **including** are used in these Conditions, they are deemed to have the words **without limitation** following them and where the context permits the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.6 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to conditions and schedules are to the conditions and schedules of the Contract.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of a Fee Proposal or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Client's purchase order, or the Client's acceptance of a Fee Proposal for Services by PES, constitutes an offer by the Client to purchase the Services specified in it on these Conditions. No offer placed by the Client shall be accepted by PES other than:
- by a written acknowledgement issued and executed by PES; or
 - (if earlier) by PES starting to provide the Services,
 - when a contract for the supply and purchase of those Services on these Conditions will be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 2.3 Fee Proposals are given by PES on the basis that no Contract shall come into existence except in accordance with Condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that PES has not previously withdrawn it.
- 2.4 These Conditions and any Contract incorporate the supplementary terms detailed in the Scope of Service relevant to the Project and the Scope of Service shall become a schedule to the Conditions or Contract as appropriate.

3. COMMENCEMENT AND DURATION

- 3.1 The Services supplied under the Contract shall be provided by PES to the Client from the date of acceptance by PES of the Client's offer in accordance with Condition 2.2.
- 3.2 The Services supplied under the Contract shall continue to be supplied until the Project is completed and, after that, shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than 14 days' notice, unless the Contract is terminated in accordance with Condition 12.

4. PROJECT

- 4.1 The Project shall be agreed in the following manner:
- (a) the Client shall provide PES with a request for a Fee Proposal setting out the requirements and specifications of the services which it is requesting from PES, including a description of what work is to be done, dates by which it is requested to be started and finished, Deliverables, In-put Materials, any further information specified under the relevant Scope of Service and such other information as PES may request;
 - (b) PES shall, as soon as reasonably practicable, provide the Client with a Fee Proposal; and
 - (c) PES and the Client shall discuss and agree the Fee Proposal and when it has been agreed they shall both sign a copy of it and it shall become a Schedule to and subject to these Conditions.
- 4.2 Once the Fee Proposal has been agreed and signed in accordance with Condition 4.1(c), no amendment shall be made to it except in accordance with Condition 7 and Condition 15.

5. SUPPLIER'S OBLIGATIONS

- 5.1 PES shall use reasonable endeavours to provide the Services and to deliver the Deliverables to the Client.
- 5.2 PES shall use reasonable endeavours to meet any performance dates specified, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 5.3 PES shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Work Address or the Client's premises and that have been communicated to it under Condition 6.1(d), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

6. CLIENT'S OBLIGATIONS

- 6.1 The Client shall:
- (a) co-operate with PES in all matters relating to the Services;
 - (b) provide for PES, its agents, sub-contractors and employees, in a timely manner, access to the Work Address or where relevant the Client's premises, office accommodation, data and other facilities as requested by PES;
 - (c) provide, in a timely manner, such In-put Material and other information as PES may request and ensure that it is accurate in all material respects;
 - (d) inform PES of all health and safety rules and regulations and any other reasonable security requirements that apply at the Work Address or the Client's premises;
 - (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of In-put Material in all cases before the date on which the Services are to start;
 - (f) comply with any general or special terms specified by PES in the Scope of Service.
- 6.2 If PES's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, PES shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 6.3 The Client shall be liable to pay to PES, on demand, all reasonable costs, charges or losses sustained or incurred by PES (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to PES confirming such costs, charges and losses to the Client in writing.

7. CHANGE CONTROL

- 7.1 If either PES or the Client requests a change to the scope or execution or the Deliverables of the Services, PES shall, within a reasonable time, provide a written estimate to the Client of:
- (a) any variations to PES's charges arising from the change;
 - (b) any other impact of the change on the terms of the Contract.
- 7.2 PES may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 7.3 If the Client wishes PES to proceed with the change, PES has no obligation to do so unless and until the parties have agreed in writing on the new change for those Services.

8. CHARGES AND PAYMENT

8.1 Condition 8.2 shall apply if PES provides the Services on a time and materials basis. Condition 8.3 shall apply if PES provides the Services for a fixed price. The remainder of this Condition 8 shall apply in either case.

8.2 Where the Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with PES's standard hourly fee rates, as amended from time to time;
- (b) PES's standard fee rates for each individual person are calculated on the basis of an seven & half-hour day, worked between 8.45am and 5pm on weekdays (excluding public holidays);
- (c) PES shall be entitled to charge an overtime rate of 150% of the normal daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Condition 8.2(a);
- (d) all charges quoted to the Client shall be exclusive of VAT which PES shall add to its invoices at the appropriate rate;
- (e) PES shall invoice the Client monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Condition 8.2.

8.3 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Fee Proposal. The total price shall be paid to PES (without deduction or set-off). PES shall invoice the Client for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in Condition 8.4.

8.4 Any fixed price and hourly rate excludes:

- (a) except where specified as being included in the Fee Proposal, the cost of any materials or disbursements and the cost of services reasonably and properly provided by third parties and required by PES for the supply of the Services. Such expenses, materials and third party services shall be invoiced by PES and may at PES's discretion include a handling fee on disbursements; and
- (b) disbursements incurred as a result of obtaining OS Mastermap data on behalf of the Client. At PES's discretion this may include a handling fee. The Client agrees to abide by the terms and conditions of the licence as laid out by the data provider. Specifically, the data is licenced for a period of 12 months from date of purchase, after which period the client must destroy or return all copies of the product concerned. Alternatively the client may instruct PES to contact the data provider and extend the licence for an additional disbursement cost; and
- (c) VAT, which PES shall add to its invoices at the appropriate rate.

8.5 The Client shall pay each invoice submitted to it by PES, in full and in cleared funds, within 30 days of receipt.

8.6 Without prejudice to any other right or remedy that it may have, if the Client fails to pay PES on the due date, PES may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- (b) suspend all Services until payment has been made in full.

8.7 All sums payable to PES under the Contract shall become due immediately on its termination, despite any other provision. This Condition 8.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8.8 PES may, without prejudice to any other rights it may have, set off any liability of the Client to PES against any liability of PES to the Client.

9. INTELLECTUAL PROPERTY RIGHTS

As between the Client and PES, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by PES. PES licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If PES terminates the Contract under Condition 13.2 this licence will automatically terminate.

10. CONFIDENTIALITY AND PES PROPERTY

10.1 Subject to Condition 10.2, the parties shall keep in strict confidence all technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and have been disclosed to that party by the other, its employees, agents or sub-contractors and any other confidential information concerning the other party's business or its products.

10.2 The Client shall permit PES for its own marketing and promotional purposes to refer to the existence of this Contract and the fact that the Client is a Client of PES with the prior written consent of the Client.

10.3 This Condition 10 shall survive termination of the Contract, however arising.

11. LIMITATION OF LIABILITY

11.1 This Condition 11 sets out the entire financial liability of PES (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Client of the Services, the Deliverables or any part of them; and

- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 For the avoidance of doubt, within some of our Services and Deliverables PES are entirely dependent on third parties for the delivery of information contained in PES Services or Deliverables and as a result PES cannot be held liable for the failure of those third parties to deliver where the failure is beyond PES control. This exclusion of liability also applies to the content and accuracy of the information supplied by the utilities contained in PES Services or Deliverables.
- 11.4 Nothing in these Conditions limits or excludes the liability of PES:
 - (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by PES.
- 11.5 Subject to Condition 11.2 and Condition 11.4 PES shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of contract; or
 - (vi) loss of use; or
 - (vii) loss or corruption of data or information; or
 - (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

PES's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

12. USE OF OUR WEBSITE

- 12.1 Set out below are the conditions (the "Conditions") the Client is agreeing to when the Client uses (however the Client accesses it including from a mobile device) the Site www.premierenergy.co.uk (the "Site"). These Conditions cover (i) the supply of Services and Deliverables for a Project ordered through the Site and (ii) use of the Site.
- 12.2 The Client should read, and ensure that the Client understands, all of the Conditions prior to using the Site. If the Client does not agree to be bound by these Conditions then the Client should not use the Site.
- 12.3 The Site may require the Client to register and provide certain information about themselves ("Personal Information") and where the Client does this the Client agrees:
 - (a) to provide true, accurate, current and complete Personal Information as prompted by the relevant registration form;
 - (b) to maintain and promptly update the Client Personal Information (by updating it on the site in the Client account section, or by sending an appropriately worded email via the contact page of the website) to keep it true, accurate, current and complete; and
 - (c) that the client will not impersonate any entity or use a false name that the Client is not authorised to use.
- 12.4 Once the Client has registered with the Site, the Client will be allocated a unique username and/or password that gives the Client access to the Client's Site account. The Client is responsible for maintaining the confidentiality of the Client's username and password, and is fully responsible for all activities that occur through the Client's Site account. The Client agrees to:
 - (a) notify PES immediately if the Client become aware of any unauthorised use of the Client's password or Site account or any other breach of security by sending an appropriately worded email via the contact page of the website and
 - (b) ensure that the Client leaves or logs off the Client Site account at the end of each session. PES cannot and will not be liable for any claims, loss or damage of any nature whatsoever, including indirect, consequential or economic losses of profit arising from the Client failure to comply with these requirements.
- 12.5 Any literature published or submitted by PES to the Client which contains any descriptions, specifications, drawings or Fees and disbursements of the Services and Deliverables are published or submitted for guidance only. PES reserve the right to make minor modifications in the design and specification of the Services and Deliverables without notice to the Client, but PES agree to notify the Client of any major or material modifications which the Client shall be deemed to have accepted unless PES receive notification to the contrary in writing within 7 days of delivery of said notification.
- 12.6 The Fees for the Services or Deliverables shall be those listed on the Site on the date of the Client order. The Disbursements are an estimate and are based on PES extensive experience of the provision of the Services and Deliverables and whilst PES reasonable skill and care has been taken in compiling the estimate the total cannot be guaranteed. In the event that the total is different from the estimate provided then Client will be notified immediately and will be offered either a full refund of any Fees and Disbursements paid or the option of continuing with the order. Both the Fees and Disbursements are exclusive of any applicable UK VAT which is payable by the Client. Please see the Site for full details.

- 12.7 All Fees and Disbursements on the Site are in UK pounds sterling and must be paid in full, including VAT in accordance with the procedures set out in the Site.
- 12.8 Due to the nature of the internet, errors, interruptions and delays may occur in the service at any time. Accordingly, this Site is provided on an "AS IS" and "AS AVAILABLE" basis without any warranties of any kind and PES do not accept any liability arising from any inaccuracy or omission in the information or interruption in availability.
- 12.9 Services and Deliverable speeds quoted are working days not calendar days. PES is closed from Christmas Day until the first working day after the New Year bank holiday – this period does not count as working days for any orders that include it. Orders received after 12pm the first working day of the delivery speed will be treated as starting on the day following the order date. Services or Deliverables are dispatched on the final working day. Where data is not available on the date the report is due ("Awaited Responses") then follow on responses will be forwarded with an updated Enclosures List until the Enclosures List is complete.
- 12.10 Once the Client clicks on the "Submit Enquiry" button on the Site having read the Terms and Conditions of Service, Scope and Privacy Policy PES will treat the order as an offer by the Client to purchase the Services or Deliverables subject to these Conditions. The Client is responsible for ensuring the accuracy of the Client order. When the Client places an order PES will send the Client an order acknowledgement email receipt of the Client's order containing the details of the Client order. This is NOT an acceptance by PES of the Client order but is simply a confirmation that PES has received the Client offer to purchase Services or Deliverables. At this point PES will pre-authorise the charging of the Client's credit/debit card (if applicable) with the expected total value of the order. PES acceptance of the Client order will take place when PES despatch the Client order, at which point the Client will be charged the PES fee plus any resulting disbursements and PES will send the Client a despatch confirmation email.
- 12.11 PES reserve the right to refuse an order. Non-acceptance of an order may be as a result of one of the following: PES inability to obtain the authorisation of payment or failing security/credit checks (if paying by Invoice rather than credit or debit card); the identification of an error within the product information, including Fees, disbursements or any other costs whatsoever or any promotion; or any other reason the Client does not meeting any eligibility to order criteria as set out in these Conditions.
- 12.12 The Conditions of the Client order will be made available to the Client on request via email, (please use the contact page to email PES) but PES advise the Client also to print off and retain the confirmation of the order for the Client's records.
- 12.13 In the event that circumstances beyond PES control mean that PES are unable to supply the Services and Deliverables, the Client will be informed as soon as practically possible. Where Deliverables in an order are unavailable, the order relating to any unavailable Deliverable will be cancelled and a full refund will be made including any delivery charges. The Client hereby agrees to accept the repayment in full or in part as final settlement of all and any claims the Client may have against PES for non-delivery. Where some items in an order are unavailable, those that are available will be despatched and a refund will be made for those that are unavailable.
- 12.14 The Client agrees that PES may use their Personal Information in order to conduct appropriate anti-fraud checks. Personal Information that the Client provides may be disclosed to a credit reference or fraud prevention agency, which may keep a record of that information.
- 12.15 PES comply with the Distance Selling regulations.
- 12.16 As Premier Energy Services Ltd is a company registered in the United Kingdom, all Fees and Disbursements on the Site and set out on any order for Services or Deliverables are in UK pounds sterling.
- 12.17 Unless the Client can demonstrate that there has been an error on PES's part then the Client has no right to cancel the Client's order in the case of the 24 (twenty four) hour or 5 (five) working day turnaround Services or Deliverables. Where the Client has ordered a 10 (ten) working day service then the Client has the right to cancel the Client's order within 5 working days of the order date in which case PES will levy a charge of 50% of PES Fee as well as any disbursement charges made to third parties on the Client's behalf. In the event that the Client has ordered a 20 (twenty) working day service then the Client has the right to cancel the Client's order within ten working days in which case PES will levy a charge of 50% of the fee as well as any disbursement charges made to third parties on the Client's behalf.
- 12.18 The Client must notify PES of the Client's intention to return any Services or Deliverables. They must be returned to the following address: **Premier Energy Returns, 4 The Courtyard, Pondtail Farm, HORSHAM, RH13 8LN** explaining any defect and why a refund or partial refund is required.
- 12.19 If the Client wishes to cancel the Client's order the Client must return at the discretion of PES any Services or Deliverables to PES at the Client's own cost. The Client is responsible for the items until they are received at the return address and thus PES will advise the Client to use a special delivery service when returning items and to retain their proof of postage until receipt is confirmed by email.
- 12.20 Where incorrect or damaged items are received PES will cover the cost of the return postage.
- 12.21 PES will confirm any cancellation by email, the Client should expect the Client's refund within 10 working days for UK orders and 20 working days for non UK orders from receipt of the Client's returned items.
- 12.22 By using the Site, the Client warrants that the Client has the right, authority and capacity to enter into and be bound by these Conditions.
- 12.23 PES do not represent that any material on the Site is appropriate for use in locations other than the United Kingdom and will not be liable for any losses incurred as a result of such use. If the Client chooses to

- access the Site from other locations, the Client is responsible for compliance with local laws if, and to the extent, such local laws are applicable.
- 12.24 By submitting information to the Site, the Client agrees that, whilst PES may contact the Client in relation to the information the Client has provided, PES are not obliged to provide the Client with any particular service.
- 12.25 PES make no warranty that the contents of the Site are free from infection by viruses or anything else which has contaminating or destructive properties and shall have no liability in respect thereof.
- 12.26 PES do not represent or guarantee the truthfulness, accuracy or reliability of any material contained on the Site. All such material is intended as information only and does not constitute advice. The Client acknowledges and agrees that any reliance on material contained on the Site is at the Client's own risk.
- 12.27 PES has taken every care in the preparation of the content of the Site, however PES cannot guarantee uninterrupted and totally reliable access to the Site, and therefore cannot guarantee that the information will always be completely up to date and free of mistakes. To the extent permitted by applicable law, PES disclaim all warranties, express or implied, as to the accuracy of the information contained in any of the materials on the Site and will accept no liability for any loss or damage arising as a result of problems with access.
- 12.28 PES shall not be liable to any person for any loss or damage howsoever caused which may arise from the use of any of the information and materials contained on the Site.
- 12.29 Certain (hypertext) links in the Site may lead to other websites, which are not under PES control. When the Client activates any of these the Client will leave the Site and PES has no control over and will accept no responsibility or liability for the material on any website which is not under PES control.
- 12.30 PES may make software owned or operated by third-party companies available to the Client. The Client must only use this software in accordance with the Conditions and conditions imposed by the third-party provider.
- 12.31 The Client's correspondence or participation in promotions, or business dealings with advertisers or PES trade partners found on or through the Site, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between the Client and such advertisers or trade partners. The Client agrees that PES shall not be responsible or liable for any loss or damage of any sort incurred as a result of any such dealings, or as the result of the presence of such advertisers or trade partners on the Site.
- 12.32 PES may suspend the Site at any time and for any reason whatsoever, including but not limited to repairs or upgrades, and shall not be liable to the Client for any such suspension.
- 12.33 PES reserve the right to alter these Conditions from time to time by posting new Conditions on the Site. The Client's continued use of the Site (or any part thereof) following such change will be deemed to be the Client's acceptance of such change. It is the Client's responsibility to check regularly to determine if the Conditions have been changed. If the Client does not agree to any change to the Conditions, the Client must stop using the Site with immediate effect.
- 12.34 Any failure or delay by PES to enforce any of these Conditions shall not be considered a waiver by PES of PES's right to enforce any term or condition of these Conditions.
- 12.35 PES prohibit the use of the Site for any unlawful purpose. In addition to this, the Client agrees not to use, nor allow any person under the Client's control to use, the Site for the following purposes:
- (a) posting any incomplete, false or inaccurate information;
 - (b) posting any information which, in PES reasonable opinion, PES consider to be defamatory, offensive, obscene, threatening, racist, sexist or discriminatory;
 - (c) deleting, amending or in any way altering any material which has not been posted by the Client;
 - (d) posting materials which are not the Client's own work (in whole or in part) without having the consent of the original author; or
 - (e) making use of the Site and/or the materials in a way which infringes the intellectual property rights of any other party.
- 12.36 In the event that PES consider that the Client are making any illegal and/or unauthorised use of the Site and/or the Client's use of the Site is in breach of these Conditions, PES reserve the right to take any action that PES deem fit, including terminating the Client's use of the Site without notice and with immediate effect and, in the case of illegality, instigating criminal proceedings.
- 12.37 Notwithstanding any other provision of these Conditions, we may, at any time and for any reason, terminate these Conditions with the Client and deny the Client access to the Site.
- 12.38 The copyright and all other intellectual property rights in the material contained on the Site, together with the website design, images and source code, belongs to PES and all rights are reserved.
- 12.39 The Client warrants that the Client is the owner, or alternatively that the Client has obtained the necessary consent(s) from the owner(s), of all and any material that the Client posts on the Site.
- 12.40 The Client grants to PES a non-exclusive, perpetual, irrevocable, royalty-free licence to use any material that the Client posts on the Site in accordance with these Conditions.
- 12.41 The Client warrants that the Client will neither (a) resell, transfer or provide to any other person the use of or access to the Site; nor (b) allow any other person access to any password, user ID or account information held by the Client in connection with the Site.
- 12.42 PES grant to the Client a non-transferable, non-exclusive, revocable, royalty-free licence to view and print the content of the Site for the Client's personal and non-commercial use only.

12.43 PES reserve the right to collect, transfer, process and sell information relating to the use of the Site and obtained directly or indirectly from information collected by PES, and by using the Site the Client consents to the collection, transfer, processing and sale of all such information by PES, in accordance with the PES Privacy Policy.

13. TERMINATION

13.1 Subject to Condition 13.3 the Contract shall terminate automatically on completion of the Project.

13.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) the other party becomes bankrupt (if an individual) or goes into liquidation (if a company); or
- (c) the other party becomes insolvent; or
- (d) the other party has an administrator or receiver of its undertaking appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by that party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (e) the other party ceases, or threatens to cease, to trade.

13.3 On termination of the Contract for any reason:

- (a) the Client shall immediately pay to PES all of PES's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, PES may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14. FORCE MAJEURE

PES shall have no liability to the Client under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of PES or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

15. VARIATION

Subject to Condition 4 and Condition 7, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

16. WAIVER

16.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17. SEVERANCE

17.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

18. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these Conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

19. ASSIGNMENT

19.1 The Client shall not, without the prior written consent of PES, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 PES may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20. **NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other.

21. **RIGHTS OF THIRD PARTIES**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

22. **GOVERNING LAW AND JURISDICTION**

22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

PREMIER ENERGY SERVICES LIMITED

Registered office:

4 The Courtyard,

Pondtail Farm,

West Grinstead,

West Sussex,

RH13 8LN.

**Registered in England and Wales
under company number 03023958.**