

## Ongen Limited

### Terms and Conditions

#### 1. TERMS AND CONDITIONS

- 1.1. These are the Terms and Conditions for Ongen Limited, a company incorporated in Scotland (registered number SC489525) with registered office at 5th Floor, 125 Princes Street, Edinburgh EH2 4AD ("**Ongen**") in relation to its OnGen Expert service ("**Service**").
- 1.2. These Terms and Conditions together with the Proposal acceptance form the agreement between Ongen and the Customer for the Services ("**Agreement**").
- 1.3. The Service is solely for use by business Customers and not for use by consumers.

#### 2. DEFINITIONS

- 2.1. Definitions used in the Services Confirmation will have the same meaning when used in these Terms and Conditions.
- 2.2. The following definitions apply to these Terms and Conditions.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or which ought reasonably to be treated as confidential.

**Customer:** means the business customer who subscribes to the Services.

**Customer Data:** the data inputted by the Customer for the purpose of using the Services.

**Documentation:** the documents made available to the Customer by Ongen (including by online means) which sets out a description of the Services and the user instructions for the Services.

**DPA:** means the Data Protection Act 1998, and related subordinate legislation, as may be amended, updated or re-enacted from time to time

**Effective Date:** the date on which the Customer accepts these Terms and Conditions online.

**Normal Business Hours:** 9.00 to 17.00 local UK time, each Business Day.

**Results:** means the results and data produced from the Customer's use of the Services.

**Services:** the OnGen Expert services provided by Ongen to the Customer under this Agreement via <http://ongen.co.uk/expert/> or any other website notified to the Customer by Ongen from time to time, or by email or direct data feed.

**Services Confirmation:** the transaction page of <http://ongen.co.uk/> containing details of Subscription Fees and where these Terms and Conditions are accepted.

**Software:** the online software applications provided by Ongen as part of the Services.

**Subscription Fees:** the monthly subscription fees payable by the Customer to Ongen under this Agreement.

**Subscription Term:** has the meaning given in clause 14.1.

**Support Services Policy:** Ongen's policy for providing support in relation to the Services as notified to the Customer from time to time.

#### 3. RIGHT OF USE

- 3.1. Ongen grants to the Customer from the Effective Date a non-exclusive, non-transferable right to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 3.2. The Customer shall not access, store, distribute or transmit any computer viruses, or any material during the course of its use of the Services that:
  - 3.2.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 3.2.2. facilitates illegal activity; or
  - 3.2.3. in a manner that is otherwise illegal or causes damage or injury to any person or property;and Ongen reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.3. The Customer shall not (except to the extent expressly permitted under this Agreement), attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
  - 3.3.1. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
  - 3.3.2. access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 3.3.3. use the Services and/or Documentation to provide services to third parties; or
  - 3.3.4. subject to clause 16.4, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party, or
  - 3.3.5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 3.4. The Customer shall keep all password and log-in details used in the relation to the Services secure, and shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Ongen.
- 3.5. The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

#### 4. SERVICES

- 4.1. Ongen shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2. Ongen shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
  - 4.2.1. planned maintenance carried out during the agreed maintenance windows; and
  - 4.2.2. unscheduled maintenance performed outside Normal Business Hours, provided that Ongen has used reasonable endeavours to give the Customer at least 7 Normal Business Hours' notice in advance.

5. Ongen will, as part of the Services and at no additional cost to the Customer, provide the Customer with Ongen' standard customer support services during Normal Business Hours in accordance with Ongen' Support Services Policy in effect at the time that the Services are provided. Ongen may amend its Support Services Policy in its sole and absolute discretion from time to time.
6. **CUSTOMER DATA AND RESULTS**
  - 6.1. The Customer shall own all right, title and interest in and to all of the Customer Data and all Results. The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data. Subject to clause 6.2, Ongen do not monitor any Customer Data posted or provided by the Customer as part of the Services.
  - 6.2. Notwithstanding clause 6.1 above, Ongen shall have the right to perform statistical analysis of the Customer Data and Results for the creation of anonymised statistical data. Such anonymised data shall belong to Ongen and may be licensed to third parties.
  - 6.3. The Customer warrants that the Customer Data will not include any personal data (as that term is defined in the DPA) and shall indemnify Ongen against any loss, claim or damage suffered or likely to be suffered by Ongen as a consequence of a breach of this warranty.
  - 6.4. Ongen shall, in providing the Services, comply with its privacy policy relating to the privacy and security of the Customer Data.
  - 6.5. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Ongen to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up under Ongen' archiving procedure. Ongen shall not be responsible for any loss, damage or disclosure of Customer Data caused by any third party.
7. **CUSTOMER OBLIGATIONS**
  - 7.1. The Customer shall provide Ongen with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by Ongen in order to provide the Services, including but not limited to Customer Data, security access information and configuration services.
  - 7.2. The Customer shall comply with all applicable laws and regulations with respect to its activities under this Agreement and shall carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner.
  - 7.3. The Customer shall obtain and shall maintain all necessary licences, consents, and permissions necessary to enable it to receive the Services from Ongen.
  - 7.4. The Customer shall ensure that its network and systems comply with any relevant specifications provided by Ongen from time to time and be solely responsible for procuring and maintaining its network and internet connections.
8. **ONGEN OBLIGATIONS**
  - 8.1. Ongen undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
  - 8.2. The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Ongen' instructions, or modification or alteration of the Services by any party other than Ongen or Ongen's duly authorised contractors or agents. If the Services do not conform with this undertaking, Ongen will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding this, Ongen:
    - 8.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
    - 8.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
  - 8.3. This Agreement shall not prevent Ongen from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
  - 8.4. Ongen warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
9. **RIGHTS IN THE SERVICES**
  - 9.1. All intellectual property rights in the Services are owned by or validly licensed to Ongen.
  - 9.2. Software and Documentation provided in relation to the Services are provided solely in relation to the Customer's use of the Services in accordance with this Agreement and are not provided, or to be used, for any other purpose.
10. **PAYMENT**
  - 10.1. The Customer shall pay the Subscription Fees to Ongen in accordance with this clause 10.
  - 10.2. The Customer shall provide to Ongen valid, up-to-date and complete credit card details or approved purchase order information acceptable to Ongen and any other relevant valid, up-to-date and complete contact and billing details.
  - 10.3. The Customer shall pay each invoice issued by Ongen within 14 days after the date of such invoice. If Ongen has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Ongen:
    - 10.3.1. Ongen may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Ongen shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
    - 10.3.2. interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of Royal Bank of Scotland at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
  - 10.4. All amounts and fees stated or referred to in this Agreement shall be payable in pounds sterling, are non-cancellable and non-refundable, and are exclusive of value added tax, which shall be added to Ongen' invoice(s) at the appropriate rate.
  - 10.5. Ongen shall be entitled to increase the Subscription Fees upon 90 days' prior notice to the Customer, but not more than once during any 12 month period during the Agreement.
11. **CONFIDENTIALITY**

- 11.1. Each party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.
- 11.2. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause "Confidentiality" shall survive termination of the Agreement.
- 11.3. Notwithstanding the terms of clause 11.1 and 11.2 above, Ongen shall be entitled to reference the Customer as being a customer of Ongen in relation to its marketing activities.
- 12. INDEMNITY**
- 12.1. The Customer shall defend, indemnify and hold harmless Ongen against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- 12.1.1. the Customer is given prompt notice of any such claim;
- 12.1.2. Ongen provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- 12.1.3. the Customer is given sole authority to defend or settle the claim.
- 12.2. Ongen shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 12.2.1. Ongen is given prompt notice of any such claim;
- 12.2.2. the Customer provides reasonable co-operation to Ongen in the defence and settlement of such claim, at Ongen' expense; and
- 12.2.3. Ongen is given sole authority to defend or settle the claim.
- 12.3. In the defence or settlement of any claim, Ongen may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4. In no event shall Ongen, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 12.4.1. a modification of the Services or Documentation by anyone other than Ongen; or
- 12.4.2. the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Ongen; or
- 12.4.3. the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Ongen or any appropriate authority.
- 12.5. The foregoing and clause 13 state the Customer's sole and exclusive rights and remedies, and Ongen' entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 13. LIABILITY**
- 13.1. This clause 13 sets out the entire financial liability of Ongen (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- 13.1.1. any breach of the Agreement however arising;
- 13.1.2. any use made by the Customer of the Services; and
- 13.1.3. any representation, statement or delictual act or omission (including negligence) arising under or in connection with the Agreement.
- 13.2. Except as expressly and specifically provided in this Agreement:
- 13.2.1. the Customer assumes sole responsibility for all Results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Use of the Services does not guarantee the Customer any savings on energy costs, any particular return on investment or generation output;
- 13.2.2. Ongen shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Ongen by the Customer in connection with the Services, or any actions taken by Ongen at the Customer's direction;
- 13.2.3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- 13.2.4. the Services and the Documentation are provided to the Customer on an "as is" basis.
- 13.3. The Services are not intended to replace direct consultative advice as provided by a specialist in the energy sector, and all Results are for the Customer's information and guidance only. The Customer acknowledges that any Results are reliant on the Customer Data and any third party data used to provide the Services. While Ongen takes care to use reputable sources for its third party data it is not responsible or liable for any errors that may be contained in such data. Nor shall Ongen shall be liable for any loss, claim or damage arising out of any reliance placed on any Results.
- 13.4. Where Ongen provide information on potential funding providers as part of the Results or in relation to the Services generally, this is for information purposes only. Ongen do not warrant that the Customer will necessarily be able to obtain funding from any such funding provider.
- 13.5. Where Ongen provide information on potential suppliers of renewable technologies as part of the Results or the Services generally, this is for information purposes only. Ongen does not warrant the performance of any services provided by such a supplier to a Customer and Ongen shall not be liable for any loss, claim or damage suffered by a Customer in relation to any such services.

- 13.6. Nothing in these Terms seeks to exclude Ongen's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation. However beyond that Ongen excludes all other liability to the extent permitted at law.
- 13.7. Subject to clause 13.4, in no event shall Ongen be liable for any loss of business, loss of profit, loss or corruption of data or for any indirect or consequential loss and Ongen's total aggregate liability arising under the Agreement or otherwise relating to the Services shall be limited to the total Subscription Fees paid during any 12 period of this Agreement.
- 14. TERM AND TERMINATION**
- 14.1. The Agreement will be for an initial period of 12 months and continue thereafter (the "**Subscription Term**") until either party gives 30 days written notice to the other party to terminate or unless the Agreement is otherwise terminated under the remaining provisions of this clause 14.
- 14.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
- 14.2.1. the other party commits a material breach of any of the terms of this Agreement 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
- 14.2.2. the other party is insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 14.2.3. the other party ceases, or threatens to cease, to trade.
- 14.3. On termination of this Agreement for any reason:
- 14.3.1. all licences granted under this Agreement shall immediately terminate;
- 14.3.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party; and
- 14.3.3. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 15. DISPUTE RESOLUTION**
- 15.1. In the event the parties are unable to resolve a dispute between them arising out of or relating to the Agreement, and except for claims for interdict or other similar relief, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by the Centre for Effective Dispute Resolution and the mediation will take place in Scotland. The mediation agreement referred to in the Model Procedure shall be governed by Scots law.
- 15.2. If the dispute is not settled by mediation within 10 days of commencement of the mediation or within such further period as the parties may agree in writing, the parties shall be free to seek to resolve the dispute by such other means subject always to clause 17.
- 16. GENERAL**
- 16.1. If Ongen choose to waive any particular right it has under the Agreement on any particular occasion this does not prevent it from exercising that right on another occasion.
- 16.2. If any part of the Agreement is held by a court of law (or similar forum) to be invalid or unenforceable, this shall not affect the validity or enforceability of the rest of the Agreement.
- 16.3. Ongen shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.
- 16.4. The Customer is not entitled to transfer or assign its rights and obligations under the Agreement to anyone else without Ongen's prior written permission.
- 16.5. Nothing in the Agreement 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, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.6. All notices required or permitted under the Agreement will be in writing which shall include email. Any notice shall be deemed to have been duly received:
- 17. LAW AND JURISDICTION**
- 17.1. The Agreement, including the Services Confirmation referencing these Terms and Conditions, constitutes the complete and exclusive understanding and agreement between Customer and Ongen regarding its subject matter and supersedes all prior or other agreements or understandings, written or oral, relating to its subject matter (including any proposal Ongen may have issued to the Customer). Each party acknowledges that, in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) other than as expressly set out in the Agreement.
- 17.2. If there are any disputes arising out of use of the Service or relating to the Agreement then these will be governed by the laws of Scotland. If either party requires to raise court proceedings in relation to any such dispute then the courts of Scotland shall have jurisdiction under this Agreement in relation to those proceedings.