

TERMS & CONDITIONS

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Affiliate”	<p>the person who has completed registration with PSUK for the purposes of participating in the Power Solutions (UK) Limited Affiliate program;</p> <p>is a person who is genuinely in business for themselves (i.e. s/he takes responsibility for the success or failure of the business) and is neither an employee nor a worker of PSUK;</p>
“Applicable Contract”	<p>means a contract brokered by PSUK between a PSUK supplier and a Prospective Client referred by the Affiliate. For the purposes of this Agreement, Applicable Contract shall be deemed to have been entered into upon the signing of the supplier’s agreement of service by the prospective client. The said contract accepted and agreed by the supplier and the “contract formation” shall be interpreted accordingly;</p>
“Business Day”	<p>means, any day (other than a Saturday, Sunday or Bank Holiday) on which ordinary banks are open for their full range of normal business in London;</p>
“Commencement Date”	<p>means the date on which this Agreement comes into force, as set out in sub-Clause 9.1;</p>
“Commission plan”	<p>the written document including a detailed description of how an Affiliate earns commission, published by PSUK and updated from time to time and available through each Affiliate’s personal portal management system;</p>
“Confidential Information”	<p>means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether verbally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);</p>
“Customer Information”	<p>means the provision to PSUK of the following information in respect of a Prospective Client:</p> <ul style="list-style-type: none">a. First and last name;b. Telephone number;c. When’s the best time to call;d. e-mail address;e. Company name;f. Full address; andg. Postcode
“Customer Information plus Bills”	<p>means the provision to PSUK of Customer Information plus all pages of the bills from the Prospective Customer’s current electric, gas, telecoms or water supplier.</p>
“Policies and procedures”	<p>the document describing the good practices required by the Affiliate in relation to submitting referral of prospective clients and/or other Affiliates, a copy of this document has been provided to the Affiliate on or before the date of this Agreement;</p>
“Prospective Client”	<p>means any person or organisation who is not an existing client or Prospective Client of PSUK with whom PSUK has had no dealings in the past 12 months. Any and all references to a “Prospective Client” shall include references to employees or officers of such Prospective Client with the sufficient authority to authorise the purchase or procurement of services from PSUK;</p>
“PSUK”	<p>means Power Solutions (UK) Limited (Company Registration Number: 02594225);</p>
“Referral”	<p>means the provision of a Prospective Clients Information with the utility bills. This definition applies equally to “Refer” “Referred” and “Referring”;</p>
“Referral Commission”	<p>means the sum(s) payable by PSUK to the Affiliate as set out in the Commission plan;</p>
“Term”	<p>means the term of this Agreement as defined in Clause 9;</p>

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
 - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.
- 1.7 If there is any inconsistency between these terms and conditions and the Policies, these terms and conditions shall apply.
2. **Appointment of the Affiliate**
 - 2.1 PSUK hereby appoints the Affiliate to identify Prospective Clients and Refer them to PSUK as specified in Clause 3 and in accordance with this Agreement.
 - 2.2 The Affiliate hereby warrants, represents and undertakes to PSUK that it shall:
 - 2.2.1 have no authority or capacity whatsoever to bind PSUK in any way or incur any form of liability on PSUK’s behalf (including, but not limited to entering into contractual relationships) and shall not hold itself out as having any authority or capacity to do so;
 - 2.2.2 shall not, without the express written agreement of PSUK, have any authority or capacity to enter into any form of negotiations (pre-contractual or otherwise) on PSUK’s behalf;
 - 2.2.3 shall not produce any promotional or sales literature (or any similar materials) for PSUK’s services otherwise than in strict accordance with the Policies and shall not use any brands, logos or trademarks (whether registered or otherwise) belonging to PSUK without PSUK’s prior written agreement;
 - 2.2.4 shall, in all dealings with Prospective Clients, ensure that such Prospective Clients are aware that the Affiliate is representing PSUK in its capacity as an Affiliate and that it does not have any other form of relationship with PSUK;
 - 2.2.5 comply with all laws, regulations, directives, statutes relevant to the Referral services provided pursuant to this Agreement and exercise the degree of skill and care that would use only suitably qualified and experienced employees or subcontractors or agents to provide such Referral services;
 - 2.2.6 comply at all times with the Policies and Procedures; and
 - 2.2.7 be entirely responsible for all current and future Taxes and will pay all Taxes to the appropriate authorities in accordance with all applicable laws and regulations. If requested to do so, the Affiliate shall provide PSUK with documentary evidence that the Affiliate is complying with this obligation.
 - 2.3 The Affiliate hereby indemnifies and holds PSUK harmless from and against any actions, claims, costs, damages or losses suffered or incurred by the PSUK, whether directly or indirectly as a result of a breach of any of the warranties, representations, and undertakings contained in Clause 2.2.
 - 2.4 The Affiliate, either as: Self-employed contractor person or partnership or Limited Company or LLP or PLC or CIP or Club or Association or Charity is required to understand and adhere to the current General Data Protection Regulation (GDPR) responsibilities.

3. Referrals

- 3.1 The Affiliate shall use all reasonable endeavors to make Referrals.
- 3.2 The Affiliate must ensure all communication with data subjects and/or PSUK is securely transmitted as required by the GDPR.
- 3.3 The Affiliate should correctly acquire data subject engagement consent as required by the GDPR.
- 3.4 The Affiliate should correctly record and manage subject data as required by the GDPR.
- 3.5 The Affiliate shall tell each Prospective Clients to expect contact from PSUK prior to making the Referral.
- 3.6 The Affiliate shall ensure good knowledge of services supplied by PSUK to the extent reasonably necessary to facilitate the Referral of Prospective Clients to PSUK. The Affiliate shall not make any statements, claims, representations or warranties with respect to the services supplied by PSUK that are not made by PSUK in its own promotional and sales literature.
- 3.7 Where the Referral of a particular Prospective Client to PSUK results in the formation of an Applicable Contract, the Affiliate shall not Refer the same Prospective Client to any third party during the Term of the Applicable Contract or of this Agreement.

4. PSUK's Obligations

- 4.1 After a Referral has been made, PSUK shall use reasonable endeavours to come to an agreement with a Prospective Client for the purpose of forming an Applicable Contract. In the event that such an agreement is reached, PSUK shall, in good faith, and using all reasonable endeavours, enter into an Applicable Contract with the Prospective Client. Notwithstanding the foregoing provisions of this sub-Clause 4.1, nothing shall compel PSUK to enter into any agreement with a Prospective Client that is not in the best interests of PSUK.
- 4.2 PSUK shall notify the Affiliate as soon as reasonably possible after entry into an Applicable Contract.
- 4.3 PSUK shall furnish the Affiliate with such information including, but not limited to, electronic versions of promotional and sales literature as may be reasonably required by the Affiliate from time to time in order for the Affiliate to make Referrals under the terms of this Agreement. The Affiliate shall use such promotional materials in accordance with the Policies. PSUK shall be entitled to make a charge for hard copies of any such promotional materials.
- 4.4 If PSUK at any time during the Term of this Agreement changes or plans to change the services with respect to which the Affiliate is to seek Prospective Clients, PSUK shall inform the Affiliate of such changes as soon as is reasonably possible.
- 4.5 After a Referral has been made, PSUK will endeavor to broker and agree with the Prospective client where possible additional contracts for additional products and services within PSUK portfolio.

5. Referral Commission and Payment

- 5.1 The Referral Commission, calculated in accordance with the Commission plan, shall be incurred when an Applicable Contract shall be deemed to have been entered into upon the signing of the supplier's agreement of service by the Prospective Client.
- 5.2 Referral Commission is only payable whilst the Affiliate remains an Affiliate in accordance with the Commission plan.
- 5.3 Referral Commission payments shall become due and payable in accordance with the Commission plan.
- 5.4 PSUK shall pay any and all sums due to the Affiliate by bank transfer to such bank account as the Affiliate may from time to time nominate.
- 5.5 PSUK shall not be required to reimburse the Affiliate for any costs incurred by the Affiliate in its performance of its obligations under this Agreement unless the Parties agree otherwise in writing.

6. Anti-Bribery Provisions

- 6.1 Both Parties shall act in good faith with respect to the provisions of this Agreement and shall conduct themselves in accordance with the spirit and anti-bribery provisions of the Bribery Act 2010. Each Party shall ensure proportionate compliance with this Clause 6, taking into account factors including, but not limited to, the size and nature of its business; the markets and territories in which it operates; and the nature of any other parties with which it transacts including, but not limited to, contractors, agents, suppliers, service providers and clients.
- 6.2 In particular, neither Party shall offer, request, agree to receive or accept anything that may, under the relevant provisions of the Bribery Act 2010, constitute a bribe including, but not limited to, financial incentives and disproportionately lavish hospitality (or promises thereof) designed to induce, reward or constitute improper performance by the Party concerned of its obligations.
- 6.3 Each Party shall ensure that adequate procedures are in place to prevent any associated persons (as defined by Section 8 of the Bribery Act 2010) from bribing another person with the intention of obtaining or retaining business, or obtaining or retaining an advantage in the conduct of business, for that Party insofar as any actions of such associated persons relate to this Agreement.

7. Confidentiality

- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and 5 years after its termination:
- 7.1.1 keep confidential all Confidential Information;
- 7.1.2 not disclose any Confidential Information to any other party;
- 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
- 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.
- 7.2 Either Party may:
- 7.2.1 disclose any Confidential Information to:
- 7.2.1.1 any sub-contractor or supplier of that Party;
- 7.2.1.2 any governmental or other authority or regulatory body; or
- 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
- to such extent only as is necessary for the purposes contemplated by this Agreement or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.
- 7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms indefinitely, notwithstanding the termination of this Agreement for any reason.

8. Force Majeure

- 8.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

9. Term and Termination

- 9.1 This Agreement shall come into force on the Commencement Date and shall continue thereafter from that date, subject to the provisions of this Clause 9.
- 9.2 PSUK may immediately terminate this Agreement by giving written notice to the Affiliate if:
 - 9.2.1 in PSUK's reasonable opinion, the Affiliate has committed repeated and persistent breaches of any duties, obligations or responsibilities required to be performed or observed by the Affiliate under this Agreement; or
 - 9.2.2 a dispute, disagreement or controversy arises between or amongst the directors or shareholders of the Affiliate which, in the reasonable opinion of PSUK, may adversely affect the operation or management of this Agreement; or
 - 9.2.3 the Affiliate indulges in any activity or behavior including fraudulent and criminal activity which may be detrimental to Power Solutions (UK) Ltd; or
 - 9.2.4 the Affiliate indulges in any activity which may be detrimental to the reputation or brand of Power Solutions (UK).
- 9.3 either Party may terminate this Agreement in accordance with the Policies.
- 9.4 either Party may immediately terminate this Agreement by giving written notice to the other Party if:
 - 9.4.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within 20 Business Days of the due date for payment;
 - 9.4.2 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 9.4.3 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 9.4.4 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
 - 9.4.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 9.4.6 that other Party ceases, or threatens to cease, to carry on business; or
 - 9.4.7 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 9.5 The rights to terminate this Agreement given by this Clause 9 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

10. **Effects of Termination**

Upon the termination of this Agreement for any reason:

- 10.1 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of this Agreement shall remain in full force and effect;
- 10.2 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which either Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 10.3 subject as provided in this Clause 10 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 10.4 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

11. **No Waiver**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

12. **Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

13. **Costs**

Subject to any provisions to the contrary each Party to this Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

14. **Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

15. **Assignment and Sub-Contracting**

This Agreement is personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

16. **Relationship of the Parties**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

17. **Third Party Rights**

No part of this Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

18. Notices

- 18.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 18.2 Notices under this Agreement shall only be valid if served by registered (signed-for) post or email to a valid email address for the receiving party.
- 18.3 Notices shall be deemed to have been duly given:
- 18.3.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 18.3.2 when sent, if transmitted e-mail and a successful transmission report or return receipt is generated.
- 18.3 In each case notices shall be addressed to the most recent address, or e-mail address, notified to the other Party.

19. Entire Agreement

- 19.1 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 19.2 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty, assurance or other provision (made innocently or negligently) except as expressly provided in this Agreement.

20. Counterparts

This Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

21. Severance

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

22. Dispute Resolution

- 22.1 The Parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 22.2 [If negotiations under sub-Clause 22.1 do not resolve the matter within 10 Business Days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.
- 22.3 Nothing in this Clause 22 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 22.4 The Parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 22 shall be final and binding on both Parties.

23. Law and Jurisdiction

- 23.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 23.2 Subject to the provisions of Clause 22, any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.