



## TERMS AND CONDITIONS

### FOR FUNDED ENERGY PERFORMANCE CERTIFICATE SERVICE

*LAST UPDATED JANUARY 2025*

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#### 1. SCOPE AND DEFINITIONS

- 1.1. These Terms and Conditions shall apply to all contracts for the supply of Service(s) by the Supplier to the Customer and shall prevail over any other documentation or communication from the Customer.
- 1.2. Any variation to the Terms and Conditions shall not be applicable unless agreed in Writing by the Supplier. The latest version is available from our website [www.tireetrust.org.uk](http://www.tireetrust.org.uk).
- 1.3. Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Service(s) by virtue of any statute, law, or regulation.
- 1.4. Nothing in these Terms and Conditions shall affect the Customer's statutory rights as a Consumer.
- 1.5. In this document the following words shall have the following meanings:
  - "Consumer" shall have the meaning ascribed in Section 12 of the Unfair Contract Terms Act 1977 as amended by the Sale and Supply of Goods to Consumers Regulations 2002;
  - "Customer" means any person or company who uses the Service(s) from the Supplier;
  - "Energy Assessor" means any person or company engaged by the Supplier to perform the specific Service of an Energy Performance Certificate;
  - "Funded EPC" means an EPC that the Supplier is offering to the Customer at no cost. There are 30 Funded EPCs available.



- “Group Company” is defined as the company; Tiree Community Development Trust Ltd (known as Urras Thiriodh);
- “Proposal” means the statement of work, accepted quotation, or other document or electronic communication describing the Service(s) to be provided by the Supplier;
- “Report” means an Energy Performance Certificate and the subsequently generated recommendations;
- “Service” or “Services” means the Service(s) specified in the Proposal;
- “Scheme” means the Accreditation Scheme Elmhurst Energy (or an equivalent Government-approved Accreditation Scheme) that recognises the competence of individuals or companies against a defined standard, e.g. The Energy Performance of Buildings (Scotland) Regulations 2008 (EPBR);
- “Supplier” means Urras Thiriodh of Units 1 & 2, The Island Centre, Crossapol, Isle of Tiree, PA77 6UP and with the email address [admin@tireetrust.org.uk](mailto:admin@tireetrust.org.uk);
- “Terms and Conditions” means the Terms and Conditions of supply set out in this document and any special Terms and Conditions set out in any Proposal or otherwise agreed in Writing by the Supplier;
- “Writing” means any form of written or typed communication, including emails;
- The expression “the Act” means the Companies Act 2006, but so that any reference in these Terms and Conditions to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of the provision for the time being in force.

## 2. THE ORDER

- 2.1. All orders for Service(s) shall be deemed to be acceptance and contractual agreement of the Proposal pursuant to these Terms and Conditions. The contract between the Supplier and the Customer shall come into effect



when the Customer indicates its acceptance of these Terms and Conditions by signing the Proposal by any means, e.g. email, or by clicking the acceptance button online, or by making use of the Service.

- 2.2. The acceptance of these Terms and Conditions does not guarantee that a Customer will be eligible for a Funded EPC. This will be decided by the Supplier upon receiving the Customer's information via the online enquiry form.

### **3. PRICE AND PAYMENT**

- 3.1. There is no price for the Service(s). If the Customer is approved for a Funded EPC, the Supplier will cover all costs inclusive of VAT.
- 3.2. The Funded EPC extends to the Supplier's employees.
- 3.3. The Supplier will offer a limited number of Funded EPCs up to 30. The Supplier will not charge a price for this Service at any time.
- 3.4. Where a follow-up appointment is required, the Supplier will not charge a fee to the Customer.
- 3.5. Where the Supplier is responsible for the need for a follow-up appointment, such as a malfunction of equipment, there shall be no additional fee for the Customer.

### **4. SERVICES**

- 4.1. The Supplier shall provide Service(s) supporting, but not limited to, Energy Performance Certificates.
- 4.2. The Supplier will, as part of the Service(s), provide the Customer with the Supplier's standard Customer support during published office hours.
- 4.3. Time for delivery shall not be of the essence of the contract, and the Supplier shall not be liable for any loss, costs, damages, charges, or expenses caused directly or indirectly by any delay in the performance of Service(s).
- 4.4. Service(s) specified in the Proposal will be provided by the Supplier to the Customer within any terms specified in the Proposal.



- 4.5. The Supplier reserves the right to withdraw/cease any Service(s) where a Customer is in breach of their obligations.

## 5. OTHER PRODUCTS AND SERVICES

- 5.1. The Supplier may market other services offered by the Group Company that it believes may be appropriate to the Customer.

## 6. CUSTOMER'S OBLIGATIONS

- 6.1. To enable the Supplier to perform its obligation the Customer shall:
- Co-operate with the Supplier;
  - Provide the Supplier with any information reasonably required by the Supplier;
  - Obtain all necessary permissions, licences, and consents which may be required before the commencement of the Service(s), the cost of which shall be the sole responsibility of the Customer;
  - Comply with such other requirements as may be set out in the Proposal, or other agreed between the parties and all other legal obligations.
- 6.2. For the provision of Service(s) by the Supplier, the Customer must provide the Supplier with a proper contact address (PO Box is not acceptable) and any contact details as required by the Supplier and agree to inform the Supplier immediately in Writing of any changes.
- 6.3. The Supplier reserves the right to remove/disconnect any Service(s) where a Customer is in breach of any of the above.

## 7. SUPPLIER'S OBLIGATIONS

- 7.1. The Supplier shall provide the Service(s) with reasonable skill and care and to a reasonable standard in accordance with recognised standards and codes of practice.
- 7.2. The Supplier shall provide the Service(s) within a reasonable time period.



- 7.3. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under any agreement made pursuant to these Terms and Conditions.
- 7.4. In the event that the Service(s) do not conform to any warranty given by the Supplier, the Supplier 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 obtaining a desirable performance. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Service(s) will be uninterrupted or error-free or that the Service(s) will meet the Customer's requirements.
- 7.5. The Supplier is not responsible for any delays, delivery failures, or other loss or damage of data, resulting from the transfer failures of that data, caused by but not limited to issues with either public or private networks, hosted and customer hardware failures.

## **8. CANCELLATION AND FAILURE TO PROVIDE SERVICES**

- 8.1. Where Service(s) do not comply with the Proposal, the Customer must notify the Supplier in Writing within seven working days.
- 8.2. Where the Supplier has had reasonable opportunity to remedy the situation but concludes that the Service(s) did not comply with the Proposal, the Proposal may be cancelled by the Customer.
- 8.3. Where the Proposal has been cancelled, the Supplier will consider reasonable action, but given the Service is offered at no cost to the Customer, no refund will be made.

## **9. CONFIDENTIALITY**

- 9.1. All correspondence received and business information acquired by the Supplier will be treated as confidential and will not be disclosed or supplied to any third party outside of the Supplier or partner companies as agreed in the Proposal. The duty of confidentiality by the Supplier to the Customer does not apply when the Supplier is required by law to provide information



to the police, or other organisations empowered by statute,  
or regulations currently in force.

## 10. DATA PROTECTION

- 10.1. All parties shall comply with their respective obligations under prevailing Data Protection legislation and no party shall engage in any act that puts the other party in breach of its obligations set out in this term. Nothing in any agreement made between parties shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with Data Protection legislation.
- 10.2. The Service(s) operated by the Supplier gives a lawful basis for processing personal data. The Supplier may be required to share the personal data with third parties as part of their legal obligation to comply with their respective obligations or for other legitimate interests.
- 10.3. The parties acknowledge that the Customer alone shall determine the purpose and manner for which Personal Data is to be processed in connection with the Service(s), as defined in prevailing Data Protection legislation. The Customer shall be the Data Controller (as defined in data protection legislation) in respect of all Personal Data processed.
- 10.4. In the event that the Supplier processes Personal Data, sufficient technical and organisational measures shall be maintained by the Supplier in order to prevent unauthorised or unlawful processing of Personal Data and to prevent any loss, destruction, or unauthorised disclosure of Personal Data, having regard to the nature of the Personal Data to be processed.
- 10.5. The Customer shall take reasonable security precautions in connection with the use of the Service(s) to ensure data integrity is maintained.
- 10.6. The Customer shall accept that the data collected under the EPBR is for the primary purpose of producing Energy Certificates.
- 10.7. The Customer shall accept that the data collected may be analysed and used for other legitimate purposes by the Supplier. To opt out, the Customer can provide written notice at the time of signing these Terms



and Conditions, clearly informing the Supplier of their intention to opt out from data collection and analysis for activities, including, but not limited to, the following purposes:

- Promoting energy efficiency improvements in relation to buildings;
- Conducting research into, or developing or analysing policy (or policy proposals) in relation to, the energy efficiency of buildings;
- Conducting research into the effectiveness or impact of energy efficiency improvements;
- Identifying geographic areas where the energy efficiency of buildings is low relative to other areas, or conducting research into the extent, causes or consequences of such lower levels of efficiency;
- Promoting and marketing energy efficiency improvements that may be made pursuant to a green deal plan;
- Identifying and analysing the impact of carbon emissions on the environment resulting from buildings with low levels of energy efficiency;
- Determining whether energy efficiency improvements that may be made pursuant to a green deal plan have or have not been made in respect of a particular building or buildings;
- Conducting research, carrying out statistical analysis or providing information in respect of the characteristics of buildings or building units.

## 11. LIMITATION OF LIABILITY

11.1. The Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort or delict (inclusive of negligence), breach of statutory duty, misrepresentation or otherwise, for any loss of profit, loss of data or any indirect or consequential loss arising out of or in connection with the use or provision of the Service(s).

11.2. The Supplier gives no representation or warranty that the Service(s) as used by the Customer or any calculation or assessment will achieve any



particular results or level of accuracy, and the Supplier shall not be liable for any consequence arising out of or in connection with the Customer's use of the Service(s).

11.3. The Supplier's total liability to the Customer in respect of all losses arising out of or in connection with the provision of the Service(s) (whether in contract, tort or delict (inclusive of negligence), breach of statutory duty, misrepresentation or otherwise) that are not excluded by these Terms and Conditions shall be limited (at the Supplier's election) to a re-performance of the Service(s).

11.4. These limitation of liability Terms and Conditions shall survive termination or expiry of any contract for the supply of the Service(s).

11.5. For the avoidance of doubt, time shall not be of the essence and the Supplier shall incur no liability to the Customer in respect of any failure to complete the Service(s) by any agreed completion date.

## 12. INDEMNITY

12.1. The Customer agrees to indemnify each of the Supplier, its officers, directors and employees, agents and subcontractors against:

- The consequences of any use of the Service(s) by the Customer;
- All claims by third parties and any other claim under Scots Law or by statute arising out of any such use of the Service(s) by the Customer;
- All damages, penalties, costs and expenses to which each or any of them may become liable as the result of any use of the Service(s) which involves the infringement by the Customer of any intellectual property right of any third party.

12.2. The Customer accepts that notwithstanding the intended use of the Service(s), the Supplier does not know every purposes for which the Service(s) are used or every circumstance under which results from the use of the Service(s) are expected to be obtained or whether the persons using the Service(s) are competent to do so or appropriately trained and accordingly in the light of these considerations, the Customer accepts





the provisions of the indemnity and limitation of liability terms herein as reasonable ones.

### 13. VARIATION

- 13.1. The Supplier may vary the Proposal at any time giving one calendar month's notice. Customer acceptance may be in Writing, or any action which indicates acceptance e.g. use of Service(s).
- 13.2. The Supplier is not liable for failing to give appropriate notice (in 13.1) where disbursements and charges are applied by a third party, e.g. lodgement fees.

### 14. TERMINATION

- 14.1. The Supplier shall have the right to terminate any agreement with the Customer forthwith on giving notice in Writing to the Customer on the occurrence of any one or more of the following events:
- Breach of the terms of any agreement within these Terms and Conditions by the Customer which the Customer is unable to remedy within 30 days of receipt of notice by the Supplier to do so;
  - If a petition is made for the Customer's insolvency or an insolvency order is made against the Customer or if the Customer makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors;
  - If it is the Supplier's belief that the Service(s) are being used with fraudulent or criminal intent.
- 14.2. The Supplier reserves the right to terminate any agreement where activity related to the Proposal ceases for any time in excess of 6 months.
- 14.3. The Supplier further has the right to withdraw from the agreed Proposal if one or more of the following conditions apply:
- If the property poses a threat to the Energy Assessor's health and safety beyond the normal domestic risks reasonable for a property in current residential occupation;



- If access, for the Energy Assessor's visual inspection, is found to be restricted and if such restriction is likely, in their opinion, to have a material effect upon the completeness and/or accuracy of the Energy Performance Certificate;
- If electricity, gas (if provided) and water services are not fully connected and in working condition during the inspection (which will include having a lamp in every light fitting);
- If any part of the property or the premises is a building site, unless the current building works are being managed by a contractor, who is competent in construction health and safety and who will be present throughout the duration of the inspection, ensuring compliance with the accepted site safety rules;
- If a potential or actual conflicts of interest come to the Energy Assessor's notice at any stage throughout the process.

14.4. The Customer has the right to withdraw from the contract at any point. Formal notice of withdrawal must be made in Writing to the Supplier

14.5. The Customer will not owe the Supplier any fee if the Customer withdraws from the Service.

## 15. WAIVER

15.1. Failure by either party to enforce or exercise any rights granted under any agreement made on these Terms and Conditions shall not affect such a party's rights or constitute a waiver or forfeiture of such rights.

## 16. THIRD PARTY RIGHTS

16.1. Any person who is not a party to any agreement made on these Terms and Conditions shall have no rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of any agreement and to enforce any of these Terms and Conditions. This term does not affect any right or remedy of any third party that exists or is available apart from this Act.

## 17. FORCE MAJEURE



17.1. Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, pandemic, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## **18. SEVERANCE**

18.1. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remained of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **19. ASSIGNMENT AND TRANSFER OF RIGHTS AND OBLIGATIONS**

19.1. The Customer shall not be entitled to assign its rights or obligations under any contract with the Supplier without the prior written consent of the Supplier.

19.2. The Supplier may at any time in the fulfilment of its contract may, for reasons of either resource availability or the need for specialist skills, subcontract all or part of the contract to any other individuals or organisations, as it sees necessary.

19.3. The Supplier may novate, dispose of, sub-licence or otherwise transfer all of its rights and obligations to any third party.

## **20. NOTICES**

20.1. Where a notice is to be given to any party hereto it may be served by leaving it at the registered office or last known address of that party. Otherwise it may be sent by first class letter post to the registered office or the last known address of that party, when it shall be deemed to have been served at the expiration of 48 hours after it has been posted.

## **21. GOVERNING LAW**



21.1. These Terms and Conditions shall be considered as a contract made in Scotland and according to Scots Law and subject to the exclusive jurisdiction of the Scottish Courts to which both parties hereby submit.

## 22. STANDARD CONDITIONS OF ENGAGEMENT

22.1. The Energy Performance Certificate (EPC) is produced by an Energy Assessor, who is licensed by a Government-approved Accreditation Scheme. The Energy Assessor has a duty to provide an EPC in accordance with the Scheme standards and regulations. To get a licence from the scheme, an Energy Assessor has to:

- Pass an assessment of skills, in line with National Occupational Standards; and
- Have insurance that covers negligence.

22.2. Energy Assessors must follow necessary standards and as specified by their Scheme Code of Conduct.

22.3. An Energy Performance Certificate is not valid unless it has been produced by an Energy Assessor who is a member of a Government-approved Accreditation Scheme and it has been entered on the Energy Performance Certificate Registers. The Energy Performance Certificate Registers are operated by the Government via the gov.uk website.

22.4. Where the Customer has a complaint about the Report, a complaint can be made by following the complaints procedure, which is explained in more detail in Section 24 of these Terms and Conditions.

## 23. THE PROPERTY INSPECTION AND REPORT

23.1. The Report provides information on the following to the Customer:

- The property's performance, rated in terms of the energy used per square meter of floor area, energy efficiency based on fuel costs, and environmental impact on carbon dioxide (CO<sub>2</sub>) emissions;
- The Energy Performance Certificate, detailing the energy and environmental performance of the property on the date it was



inspected, and making recommendations for improvements that could be made;

- The energy efficiency rating (a measure of the overall efficiency of a home). The higher the rating, the more efficient the property is and the lower the fuel bills are likely to be;
- The environmental impact, rated as a measure of a property's impact upon the environment in terms of CO<sub>2</sub> emissions. The higher the rating, the less impact the property has on the environment.

23.2. The Report does not provide information on the following to the Customer:

- The value of the property or related specifications, such as the locality of the property or the availability of public transport or facilities;
- The condition of the property or its services; or about any health and safety risks noted by the Energy Assessor except in respect of such risks to the Energy Assessor as may restrict the scope of the inspection;
- Advice on subjects that are not covered by the Energy Performance Certificate.

23.3. The Energy Assessor will inspect the inside and outside of the property's main building and the visible parts of the gas and electricity services (where present).

23.4. No parts of the property requiring access equipment will be inspected except lofts, which can be safely accessed from a three-metre ladder (which the Energy Assessor will provide).

23.5. The inspection is non-invasive. This means that the Energy Assessor does not take up carpets, floor coverings or floorboards, move furniture or remove the contents of cupboards. Also, the Energy Assessor does not remove secured panels or undo electrical fittings. The Energy Assessor will note in the Report where it was not possible to inspect any parts of the property that are normally reported on.



- 23.6. Where the Energy Assessor has reason to be concerned about the excluding parts detailed in 23.5, the Customer will be informed about any further investigations that are needed.
- 23.7. The Energy Assessor does not report on the cost of any remedial work or how these recommendations should be carried out.

## 24. COMPLAINTS HANDLING PROCEDURE

- 24.1. The Supplier aims to provide high quality services to its Customers. Where complaints arise they will be dealt with promptly and professionally. The Supplier will take an approach to understand the root cause of complaints and develop its services using an ethos of continuous improvement. However, the Supplier understands there may be occasions where a Customer feels there is cause for complaint. If so, the Supplier will aim to resolve the problem quickly and to the Customer's satisfaction.
- 24.2. In the first instance, the Customer should contact the Supplier to raise the problem informally. The Customer should ideally contact the Supplier in Writing. Where there is verbal communication, the Supplier will send the Customer a written summary of the discussion.
- 24.3. If the Customer is unhappy with the Supplier's response, the Customer can then take their complaint further through the Supplier's complaints procedure as outlined below.
- 24.4. Subject to 24.2, the Customer should contact the Supplier using the details below. The Supplier will then arrange for the appropriate person to look into and respond to the Customer's concern(s). The Supplier will aim to resolve concerns within seven working days. Where the Supplier anticipates it will take longer than seven working days to look into the matter fully, the Supplier will inform the Customer within five workings who will reply and when.

**Address:** Urras Thiriodh, Units 1 & 2, The Island Centre, Crossapol, PA77 6UP

**Email:** [admin@tireetrust.org.uk](mailto:admin@tireetrust.org.uk)



**Telephone:** 01879 220074

- 24.5. Subject to 24.2 and 24.4, in the unlikely event that the Customer remains unhappy, the Customer can request that the Supplier review the complaint.
- 24.6. Subject to 24.2, 24.4, and 24.5, if the Customer remains unsatisfied, the Customer can, at that stage, ask the Scheme to review the complaint. The Scheme will investigate the Customer's complaint, and if felt necessary, it will pass the complaint on to an Independent Adjudication Service to be nominated by the Scheme. This service, which is an entirely independent mediation and adjudication service will consider the complaint and decide whether to take action against the Energy Assessor as a result. The Energy Assessor can be ordered to undertake various actions, including, if appropriate, paying the Customer compensation.
- 24.7. The Supplier supports fully and is a member of the Scheme. The Scheme details are provided below. The Customer should be aware that the existence of this process does not prevent the Customer from pursuing a complaint through the courts and, as such, does not affect the Customer's existing legal rights.

**Telephone:** 01455 883250

**E-mail:** [enquiries@elmhurstenergy.co.uk](mailto:enquiries@elmhurstenergy.co.uk)

**Website:** [www.elmhurstenergy.co.uk](http://www.elmhurstenergy.co.uk)