

CBI :energy – Customer Services Agreement

1. DEFINITIONS

Unless inconsistent with the context, the following (and any other) capitalised words and expressions shall bear the following (or wherever else so herein defined) meanings and cognate expressions shall bear corresponding meanings:

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| 1.1. | “Agreement” | means this CBI :energy Customer Services Agreement contained in the Service Schedule (clause 1 of the Customer Services Agreement), the terms and conditions contained in clauses 2 to 15, and those contained on the Website in clauses Error! Reference source not found. to 25, as well as the other document/s contained on the Website. |
| 1.2. | “Business Day” | means any day other than a Saturday, Sunday or official public holiday in the RSA. |
| 1.3. | “Business Hours” | means the time between 08:30 and 16:30 on Business Days. |
| 1.4. | “CBI :energy” | means the division of Circuit Breaker Industries Pty Ltd that develops, takes to market and supports the energy monitoring, metering and management solution, which includes the Equipment and Platform. |
| 1.5. | “Charges” | means the fees, disbursements and other charges levied by CBI for the Services, which includes Equipment, as agreed to in the Service Schedule. |
| 1.6. | “Commencement Date” | means, notwithstanding Signature Date, the date on which Services commence. |
| 1.7. | “Commissioning” | means the acceptance by the Customer or its authorised representative that the Equipment and Services have been correctly installed, configured and activated, and |
| 1.8. | “Customer” | means any person or entity who procures access to and/or use of the CBI :energy solution and receives Services from CBI in the Territory, as listed on the Service Schedule. |
| 1.9. | “Devices” | means the hardware devices brought to market by CBI for use in the energy management and monitoring systems that are installed into the low voltage electrical network and provide monitoring and/or control of electrical loads. |
| 1.10. | “Email” | means electronic mail. |
| 1.11. | “Equipment” | means any hardware Devices or other tangible item of equipment that may be supplied directly by CBI or by its appointed Solution Provider, or forming part of the CBI :energy solution. |
| 1.12. | “Intellectual Property or IP” | means all intellectual property rights, whether registered or unregistered in any jurisdiction, including without limitation know-how, copyright, registered trademarks and applications therefor, registered designs and applications therefor, patents and applications therefor, and goodwill. |
| 1.13. | “Party” | means either CBI or the Customer and “Parties” means both. |
| 1.14. | “Personal Information” | means information relating to an identifiable, natural or juristic person, including but not limited to, information relating to race, gender, sex, marital status, nationality, ethnic or social origin, colour, sexual orientation, age, physical or mental health, religion, belief, disability, language, birth, education, identity number, telephone number, email, postal or street address, biometric |

information and financial, criminal or employment history as well as correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence.

- 1.15. "Platform" means the software systems implemented by CBI and provided for the use of the Customer through user interfaces exposed to the Customer via the Internet ("Cloud Platform") or via a local area data network ("Edge Platform"), using the authentication and authorisation credentials provided by CBI
- 1.16. "POPIA" means the Protection of Personal Information Act, 4 of 2013.
- 1.17. "Process" means under POPIA, any operation or activity, whether automated or not, concerning Personal Information, including: collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, use, dissemination by means of transmission, distribution or making available in any other form, merging, linking, as well as restriction, degradation, erasure or destruction of information and "Processing" shall be construed accordingly.
- 1.18. "RSA" means the Republic of South Africa.
- 1.19. "Sales Order" means a binding order issued by the Customer to procure from CBI the Equipment and Services specified in the Service Schedule on the terms provided for in this Agreement
- 1.20. "Services" means the processing of telemetry data generated by the Devices in such a way as to generate analytics dashboards, reports, notification events, logged data and other visualisation elements related to the delivery of energy management capabilities for the Customer, and the generation of action instruction data that is created by the Platform to cause the removal or application of electrical power to loads connected to Devices in the low voltage electrical network, along with the management capabilities intended to monitor, assure and maintain these functions. This definition shall also include the supply of Equipment, whether by CBI or its appointed Solution Provider.
- 1.21. "Service Schedule" means the table contained in clause 1 of the Customer Services Agreement hereof, listing *inter alia*, the Customer's details, the Charges, the Territory, and Equipment.
- 1.22. "Signature Date" means subject to the provisions of clause 15, the date upon which this Agreement is signed by the Customer.
- 1.23. "Site" means the Customer's site or sites where the Equipment will be installed and the Services rendered to.
- 1.24. "Solution Provider" means a Third Party that has been suitably trained and certified by CBI and selected to provide any portion or component of the Services.
- 1.25. "Term" means the period that the Services will be provided, as stated in the Service Schedule.
- 1.26. "Territory" means the geographical area stipulated in the Service Schedule.
- 1.27. "Third Party" means a natural or juristic person other than the Parties.
- 1.28. VAT means value added tax levied under the Value Added Tax Act, 89 of 1991.

- 1.29. the “Website” the content, including the further terms and conditions of this Agreement (clauses **Error! Reference source not found.** to 25) as well as the Solutions Definition document, available at www.cbi.energy/customer-legal, forming part of this Agreement.

2. TERM AND TERMINATION

- 2.1. This Agreement shall come into force on the Signature Date and shall continue for the Term or any mutually agreed extension (“Renewal Period”) of the Term.
- 2.2. The Customer shall not be entitled to terminate the Agreement prior to expiry of the Term or any Renewal Period.

3. CHARGES AND PAYMENT

- 3.1. CBI shall electronically send tax invoices and statements to the Customer for the Charges and any other amounts due under this Agreement for renewal of the subscription to the Service.
- 3.2. CBI shall be entitled to adjust the Charges after the Term, on an annual basis. The adjustment shall be in line with any change in the Consumer Price Index (“CPI for services”) as published by Statistics South Africa in publication P0141 or its replacement from time to time, using as base month the month 3 (three) months before the month in which the Commencement Date falls.

4. PROVISION OF THE SERVICES

- 4.1. CBI undertakes to:
- 4.1.1. provide the Services in accordance with the Agreement, timeously and in a manner consistent with best industry practice;
 - 4.1.2. maintain the professional ability, trained personnel and infrastructure to provide the Services;
 - 4.1.3. render the Services subject to all legal and statutory requirements and further subject to the terms and conditions of any licenses issued to CBI; and
 - 4.1.4. conduct its employment relationships in accordance with the principles of fair practice and to comply with all applicable labour legislation.
- 4.2. The Solutions Definition document describes the capabilities and description of the Services, will also form part of this Agreement and may be accessed on www.cbi.energy/customer-legal.
- 4.3. The Services are to be provided on the basis that the Customer shall:
- 4.3.1. not utilise the Services, for any unlawful purpose;
 - 4.3.2. comply with all relevant legislation and regulations and all instructions issued by any governmental authority or by CBI or its licensors regarding the use of the Equipment; and
 - 4.3.3. not act or omit to act, or allow any person to do so, in any way likely to damage, disrupt or interfere with the Equipment or Services or to injure or damage any person or property or to cause the quality of the Services or the Equipment to be impaired or interrupted in any manner whatsoever.

5. EQUIPMENT

- 5.1. CBI shall provide the Equipment to the Customer via its authorised resellers, and ownership in the Equipment shall only pass to the Customer on payment in full thereof.
- 5.2. All risk in and to the Equipment shall however pass to the Customer upon delivery thereof.
- 5.3. All Intellectual Property rights in and to the Equipment, including any software incorporated into it, will not become the property of the Customer, but will remain vested in CBI and/or its licensors.
- 5.4. CBI and/or its Solution Provider may at their sole discretion stop or delay the installation of Equipment if doing so would cause potential safety and other risks to any person, property or if the Site is or would become non-compliant with any relevant codes or regulations.

6. PLATFORM

- 6.1. The Customer shall for the duration of the Term and any Renewal Period have a non-exclusive, non-transferrable and non-sublicensable right to use the Customer Portal (at portal.cbi.energy), subject to the terms and conditions hereof.
- 6.2. After expiration of the Term or any Renewal Period, or earlier cancellation/termination of this Agreement for whatever reason, the Customer shall cease to use or attempt to use the Customer Portal.

7. EXCLUSIONS TO THE SERVICE

- 7.1. The Services provided for the Charges in clause 3 shall exclude any service or supply:
 - 7.1.1. related to equipment not supplied by CBI;
 - 7.1.2. resulting from the Equipment being connected to or supported by or run with any software or equipment not supplied or approved by CBI;
 - 7.1.3. resulting from the relocation, modification or alteration of the Equipment or the addition or removal of accessories, attachments or other devices, effected without CBI's prior written consent;
 - 7.1.4. resulting from failure to adhere to instructions and warnings in the user manual, malicious damage, neglect, accident, transportation, misuse or use other than that for which the Equipment is designed;
 - 7.1.5. resulting from *Force Majeure* (defined on Website), hardware failures resulting from water ingress, surges in or failure of the electricity supply, air conditioning or humidity control or mechanical damage;
 - 7.1.6. relating to cables external to the Equipment;
 - 7.1.7. required to protect the Equipment against interference caused by radio waves, induction or any other source;
 - 7.1.8. due to any requirement of a Third Party;
 - 7.1.9. relating to the Service if the incident is due to the failure of anything not listed in Service Schedule at Signature Date or added to the Service Schedule thereafter;
 - 7.1.10. of Equipment installed in an unsuitable place as instructed by the Customer;
 - 7.1.11. relating to attempts to service or refurbish the Equipment.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. CBI and its licensors retains all right, title and interest in and to the Intellectual Property rights in the Services, Equipment, Platforms and all related parts, drawings, specifications, manuals, documents and data. CBI hereby grants to the Customer a temporary, non-transferable license to use the Services and Equipment solely for the purposes of this Agreement.
- 8.2. Except as expressly provided in clause 8.1, the Customer shall not have any right directly or indirectly to copy, reverse engineer or manufacture the Equipment, or to license, lease, dispose of, distribute, disclose or otherwise exploit any IPR whatsoever of CBI and its licensors, or any part thereof, or allow others to do so.
- 8.3. Should the Customer become aware of any threatened or actual infringement of any IP of CBI and its licensors, then the Customer shall forthwith inform CBI accordingly and shall provide such cooperation and assistance as CBI may reasonably require in the enforcement of its rights against any person.

9. DATA PROTECTION / PERSONAL INFORMATION

- 9.1. In performing its obligations under this Agreement, CBI shall:
 - 9.1.1. comply with the provisions of POPIA, other prevailing privacy and data protection legislation and the Processing of Personal Information;
 - 9.1.2. not Process Personal Information for any purpose other than to perform its obligations under this Agreement;
 - 9.1.3. only act on the instructions of the Customer in Processing the Personal Information (and for avoidance of doubt, this Agreement shall constitute such instructions);
 - 9.1.4. not disclose or otherwise make available the Personal Information to any Third Party other than Solution Providers, authorised staff or sub-contractors who require access to such Personal Information strictly on a need to know basis, in order for CBI to carry out its obligations pursuant to this Agreement and ensure that such staff and any other persons that have access to the Personal Information are bound by appropriate and legally binding confidentiality and non-use obligations in relation to the Personal Information;
 - 9.1.5. take appropriate, reasonable technical and organisational measures to ensure that the integrity and confidentiality of the Personal Information in its possession or under its control remains secure and that such Personal Information is protected against accidental loss, destruction, damage, unlawful access or Processing;
 - 9.1.6. immediately notify the Customer in case of possible infringement of POPIA, the terms of this clause or other irregularities by CBI, its staff or any Third Party acting on behalf of CBI in relation to the Customer's Personal Information; and
 - 9.1.7. At the Customer's option, return or destroy the Personal Information once it is no longer required for the purposes of performing obligations under this Agreement or any directly related purpose.

10. CANCELLATION AND BREACH

- 10.1. CBI may cancel this Agreement with immediate effect and without liability in the event that the Customer without written permission markets, sells, resells or distributes any of the Equipment or Services.

- 10.2. The right to cancel the Agreement is without prejudice, and in addition to any other remedy available to CBI under law or under this Agreement, including the right to cease the supply of Services to the Customer, to claim specific performance, or to obtain an interdict, or to claim damages.

11. EFFECT OF BREACH

- 11.1. Always subject to the provisions of clause **Error! Reference source not found.**, CBI may on breach by the Customer of any of its obligations under this Agreement, including the non-payment of Charges due by the Customer, and without giving notice thereof or cancelling this Agreement, immediately cease to supply the Services to the Customer, where the Services will be curtailed in a staggered manner as described in the Solutions Definition document.
- 11.2. In that event, CBI (in its sole and unfettered discretion) may allow the Customer to use the Equipment, on the specific provision that the Equipment shall no longer generate telemetry data or respond to action instructions delivered via the data network, and will no longer connect to any data network unless reset to factory conditions and be re-commissioned by CBI or its Solution Provider.
- 11.3. If the Customer does not remedy its breach and request CBI or its Solution Provider to reset and re-commission the Equipment as foreseen above within a period of 5 (five) Business Days after CBI has stopped the Services, CBI shall be entitled, but not obliged to either cancel this Agreement, or enforce specific performance hereof.
- 11.4. On cancellation of this Agreement, CBI shall cease to render the Services.

12. LIMITATION OF LIABILITY & INDEMNITY

- 12.1. Neither Party shall be liable to the other Party for any loss of profit, loss of use, interruption or reduction of operation, loss of data (including the recovery thereof), loss of production, loss of contracts or for any indirect or consequential damage that may be suffered by the other Party even if advised of the possibility of such damages and regardless of the form in which any action is brought.
- 12.2. CBI's aggregate liability to the Customer for any claim or claims for damages, out of or in connection with any cause arising from this Agreement, whether in contract or delict or any other cause of action, will in no event exceed the full contract price (Charges) for the Services as per the Service Schedule, unless this amount is more than R 500 000.00 (five hundred thousand rand) at date of claim/s, in which event CBI's total liability will be limited to R 500 000.00 (five hundred thousand rand).
- 12.3. Nothing contained in clause 12.1 above shall limit either Party's liability to the other in respect of:
 - 12.3.1. death or injury of any person, or damage to property;
 - 12.3.2. infringement of Intellectual Property rights;
 - 12.3.3. breach of confidentiality or data protection under POPIA; or
 - 12.3.4. intentional, fraudulent or criminal acts.
- 12.4. Subject to clauses 12.1, 12.2 and 12.3 above, each Party (the "Indemnifying Party") agrees to defend, indemnify and hold the other Party, its directors, employees, agents and other members of its group of companies, as that term is defined in the Companies Act 71 of 2008, (each an "Indemnified Party") harmless from any and all claims, damage, cost, liability and expense including reasonable attorney's fees caused by, relating to or arising from:
 - 12.4.1. the acts or omissions of the Indemnifying Party, its directors, employees or agents;
 - 12.4.2. any alleged delict, or breach of any contractual right of a Third Party, or infringement of any Intellectual Property Right of a Third Party, or confidentiality obligations, or rights of privacy and

publicity resulting from, relating to or arising out of the acts or omissions of the Indemnifying Party, except where any such claim relates to or arises out of any material furnished by the Indemnified Party.

- 12.5. The Parties will co-operate in the defence of any matter arising from an indemnity under clause 12.4. A Party has the right to participate in the conduct of the defence with legal counsel chosen by it.

13. EXCLUSION OF WARRANTY AND REPRESENTATIONS

- 13.1. Save for those warranties expressly set out herein, the Parties make no representations or warranties whatsoever, whether express or implied.
- 13.2. The Services are provided without any warranty whatsoever. In particular, CBI does not warrant, represent or undertake that the Customer's use of the Services will be uninterrupted or error-free.
- 13.3. CBI disclaims all warranties, express, implied, or statutory, to the Customer as to any matter whatsoever, including all implied warranties of merchantability, fitness for a particular purpose and non-infringement of Third Party rights of the Services and /or the Equipment.
- 13.4. No oral or written information or advice given by CBI or its employees or representatives shall create a warranty or in any way increase the scope of CBI's obligations.

14. NOTICES AND *DOMICILIUM*

- 14.1. For the purposes of giving of legal notices and the serving of legal process, the Parties choose their respective physical addresses (*domicilia citandi et executandi*) as set out in any signed Sales Order or clause 1 of the Customer Service Agreement clause hereof.
- 14.2. Any notice addressed to a Party shall be in writing and delivered by hand during Business Hours to its physical address or sent by Email.
- 14.3. Any notice shall be deemed to be received (unless the contrary is proved):
 - 14.3.1. if hand delivered, on the Business Day of delivery; or
 - 14.3.2. if sent by Email during Business Hours, on the date of successful transmission of the Email. Any Email sent after Business Hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- 14.4. A Party may by written notice to the other Party change its *domicilium* address to another address which is not exclusively a post office box or poste restante. The change will become effective on the 5th (fifth) Business Day following deemed receipt of the notice.
- 14.5. Any notice actually received by a Party will be deemed to have been given validly, even though the notice had not been delivered to an address or as otherwise stated in this clause 14.

15. SIGNATURE

- 15.1. This Agreement is deemed to have been signed by the Customer on acceptance of the terms provided to them through the notification of these terms and conditions on initial login to the Portal, and selecting acceptance of the terms in that notification window, with the Signature Date captured at that time as an electronic record by CBI.

16. **FORCE MAJEURE**

- 16.1. Failure to comply with any of the terms and conditions of this Agreement if occasioned by or resulting from an act of nature or public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any government or other authority, compliance with government orders, demands or regulations (including without limitation in respect of any permit, licence or authorisation), as well as shortages, interruptions, fluctuations or the unavailability of electrical power, water supply or means of communication or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("*Force Majeure*"), will not be deemed to be a breach of this Agreement, nor will it subject either Party to any liability to the other.
- 16.2. Notwithstanding the provisions of clause 16.1, the inability to make payment of any amount due and payable under this Agreement shall not constitute *Force Majeure*.
- 16.3. Should a Party's performance of an obligation become temporarily impossible owing to *Force Majeure*, that Party shall:
 - 16.3.1. as soon as reasonably possible after the *Force Majeure* sets in notify the other Party in writing of the incidence of *Force Majeure*;
 - 16.3.2. be released from performance of the affected obligation for so long as the *Force Majeure* prevails;
 - 16.3.3. use its best endeavours to recommence performance of the affected obligation, to whatever extent reasonably possible, without delay; and
 - 16.3.4. co-operate with the other Party in implementing such contingency measures as the other Party may reasonably require.
- 16.4. Should the circumstances of *Force Majeure* continue for longer than 10 (ten) Business Days, either Party shall be entitled to terminate this Agreement, with immediate effect by written notice

17. **DISPUTE RESOLUTION, GOVERNING LAW**

- 17.1. Subject to CBI's right in each instance to elect to institute action for payment of the Charges and any other amounts due under this Agreement in any court of competent jurisdiction, in the event of any disagreement or claim ("*Dispute*") arising out of or relating to this Agreement (including without limitation, as to its existence or validity), the senior executives of the Parties or their delegates designated in writing shall endeavour to settle the *Dispute* through *bona fide* negotiations within 10 (ten) Business Days of the *Dispute* being referred to them by written notice from either Party.
- 17.2. Should the Parties be unable to settle the *Dispute* by the means and within the timeframe stated above, either Party may refer the *Dispute* for final decision by arbitration in accordance with the latest rules for the conduct of arbitrations ("*Rules*") of the Association of Arbitrators (Southern Africa) NPC (<https://www.arbitrators.co.za>), by one or more arbitrator/s appointed in accordance with the *Rules*.
- 17.3. Unless otherwise agreed in writing the arbitration shall be held in Pretoria in the RSA and conducted in the English language. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings.
- 17.4. The decision of the arbitrator/s may be made an order of court. For these purposes and those of clause 18 the Parties irrevocably submit to the non-exclusive jurisdiction of the Gauteng Divisions of the High Court of South Africa, in Johannesburg and Pretoria.

- 17.5. This Agreement shall in all respects be governed by the law of the RSA, without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall be excluded.
- 17.6. This clause 17 is severable from the rest of this Agreement and shall survive the expiry or termination thereof for whatsoever reason.

18. URGENT RELIEF

The provisions of clause 17 shall not preclude any Party from access to a competent court of law for relief in the form of an interdict, including a mandatory interdict or an order for specific performance.

19. VALIDITY, SEVERABILITY

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the Parties agree to meet and review the matter and if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of this Agreement.

20. CONTRA PROFERENTEM

The rule of construction that in the event of any uncertainty in any provision in any agreement, such agreement shall, in construing/interpreting the uncertainty, be construed or interpreted against the drafter of such agreement, shall not be applicable to this Agreement.

21. WHOLE AGREEMENT

The terms contained in this Agreement in clauses 1 to 25 as well as the other documents contained on the Website constitute the entire agreement between the Parties with respect to the subject matter thereof, superseding all contemporaneous oral agreements and prior oral communications, agreements, and understanding of the Parties.

22. VARIATIONS

- 22.1. No variation of or addition to clauses 2 to 15 of this Agreement will be of any force or effect unless reduced to writing and signed by the Parties.
- 22.2. The terms and conditions (contained in clauses **Error! Reference source not found.** to 25) on the Website, as well as the Solutions Definition document may however unilaterally be amended by CBI, subject to the provisions of clauses **Error! Reference source not found.** and **Error! Reference source not found.**

23. WAIVER AND INDULGENCE

No waiver on the part of a Party of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

24. CESSION AND DELEGATION

- 24.1. A Party cannot validly cede any right or delegate any obligation arising under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 24.2. Notwithstanding the above, CBI may by written notice to the Customer cede and delegate this Agreement to any other company controlled by Reunert Limited 1913/004355/06.

25. COSTS

Any legal costs incurred by a Party arising out of or in connection with a breach by the other Party, shall be borne by the Party in breach on a scale as between attorney and client.