

# **DRAFT Local Authority Delivery Green Homes Grant Delivery Organisation Contract in respect of [Area]**

- (1) **THE WEST OF ENGLAND COMBINED  
AUTHORITY**
- (2) **[DELIVERY ORGANISATION]**

Dated 2021

Draft: 09 March 2021

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This agreement is made the      day of                      2021

**Between:**

- (1) **THE WEST OF ENGLAND COMBINED AUTHORITY** of 3 Rivergate, Temple Quay, BRISTOL BS1 6EW (**Authority**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Delivery Organisation**).

**Background:**

- (A) The Authority published a contract notice [REFERENCE] on [DATE] on the UK e-notification service seeking expressions of interest from potential providers for the provision of a delivery organisation to administer and deliver the Green Homes Grant : Local Authority Delivery on behalf of the Authority in [INSERT REGION].
- (B) The Authority has, through a competitive process, selected the Delivery Organisation to provide these services and the Delivery Organisation is willing and able to provide the services in accordance with the terms and conditions of this agreement.

**It is agreed** as follows:

**1 Definitions and Interpretation**

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement.

<b>Achieved KPIs</b>	in respect of any Service in any measurement period, the standard of performance actually achieved by the Delivery Organisation in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2 (Performance Regime)).
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<b>Ancillary Measure</b>	means:- <ul style="list-style-type: none"><li>(a) any Eligible Measure listed at paragraph 3.1 (Ancillary Measures) of the Technical Specification; and</li><li>(b) any other Measure which is (by reference to the definition of "Eligible Measure" set out in this clause 1) an Eligible Measure but is treated for the purposes of the Scheme as a "non-capital" item and therefore to be distinguished from the "capital" items listed in paragraphs 3.2 to 3.5 of the Technical Specification.</li></ul>
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<b>Associated Company</b>	any holding company from time to time of the Delivery Organisation and any subsidiary from time to time of
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	the Delivery Organisation, or any subsidiary of any such holding company.
<b>Authorised Representatives</b>	the persons respectively designated as such by the Authority and the Delivery Organisation, the first such persons being set out in Schedule 5 (Contract Management).
<b>Best Industry Practice</b>	the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.
<b>Bribery Act</b>	the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
<b>Catastrophic Failure</b>	<p>(a) a failure by the Delivery Organisation for whatever reason to implement the Disaster Recovery Plan successfully and in accordance with its terms on the occurrence of a Disaster;</p> <p>(b) any action by the Delivery Organisation, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.</p>
<b>Certification Scheme Requirements</b>	has the meaning given to this expression in clause 8.7.
<b>Change</b>	any change to this agreement including to any of the Services.
<b>Change Control Note</b>	the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
<b>Change Control Procedure</b>	the procedure for changing this agreement, as set out in Schedule 7 (Change Control).
<b>Charges</b>	the charges which shall become due and payable by the Authority to the Delivery Organisation in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 4 (Charges and Payment) and comprising the Measure Prices, the Management Fees and (for particular locations in the Lot Area only) the Offshore Delivery Prices.

<b>Commencement Date</b>	the date of this agreement.
<b>Commercially Sensitive Information</b>	the information listed in Schedule 11 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Delivery Organisation, its intellectual property rights or its business or which the Delivery Organisation has indicated to the Authority that, if disclosed by the Authority, would cause the Delivery Organisation significant commercial disadvantage or material financial loss.
<b>Complaint</b>	means a complaint in relation to the Services and/or the Delivery Organisation as described in Part D (Management Arrangements) of Schedule 1 (Specification).
<b>Completed</b>	means, as regards any particular Eligible Measure, that the installation of that Eligible Measure at a particular Dwelling has been completed: (i) in accordance with all relevant requirements set out in this agreement (including those set out in the Technical Specification) and the Customer Offer; and (ii) otherwise to the reasonable satisfaction of the relevant Customer, and the term ' <b>Completion</b> ' shall be construed accordingly.
<b>Confidential Information</b>	<p>means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;</li> <li>(b) any information developed by the parties in the course of carrying out this agreement;</li> <li>(c) Personal Data;</li> <li>(d) any Commercially Sensitive Information.</li> </ul>
<b>Consistent Failure</b>	shall have the meaning set out in Part 2 of Schedule 2 (Performance Regime).
<b>Contracts Finder</b>	means the government's publishing portal for public sector procurement opportunities.

<b>Contract Year</b>	any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.
<b>Controller</b>	means as defined in the Data Protection Legislation.
<b>Customer</b>	means, in respect of any particular Dwelling, the owner and/or occupier of a Dwelling who is considering or (as the context requires) proceeds with the installation of one or more Eligible Measures as part of the Scheme.
<b>Customer Contribution</b>	means the contribution that certain categories of Customer (including those who are a private or social landlord) are required as a matter of the Scheme and this agreement to make towards the cost of any one or more Eligible Measures (to be) installed at that Customer's Dwelling under this agreement, such contribution to be not less than one third of the relevant cost (as referable to the relevant Measure Price for each such Eligible Measure) or such higher level of contribution as the Customer may have agreed to make as part of the relevant Customer Offer.
<b>Customer Offer</b>	means, as regards a particular Dwelling and a particular Customer, the offer made by or on behalf of the Delivery Organisation to the Customer in accordance with the Specification, and accepted by the Customer, in relation to the installation of one or more specified Eligible Measures at the Dwelling on the basis that the cost of the relevant Eligible Measure(s) will be covered by a Grant (either in whole or in part, depending on the status of the Customer by reference to relevant Eligibility Criteria);
<b>Customer Journey</b>	means the customer journey of a Customer as set out in Part B (Customer Journey) of Schedule 1 (Specification).
<b>Customer Journey Service Levels</b>	means those service levels set out in the Customer Journey.
<b>Data Loss Event</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Delivery Organisation under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or

	other relevant regulatory authority and applicable to a party.
<b>Data Subject</b>	as defined in the Data Protection Legislation.
<b>Default</b>	<p>any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:</p> <ul style="list-style-type: none"> <li>(a) in the case of the Authority, of its employees, servants, agents;</li> <li>(b) in the case of the Delivery Organisation, of its Sub-contractors or any Delivery Organisation Personnel,</li> </ul> <p>in connection with or in relation to this agreement and in respect of which such party is liable to the other.</p>
<b>Default Notice</b>	is defined in clause 5.2.
<b>Delivery Organisation Party</b>	the Delivery Organisation's agents and contractors, including each Sub-Contractor.
<b>Delivery Organisation Personnel</b>	all employees, staff, other workers, agents and consultants of the Delivery Organisation and of any Sub-Contractors who are engaged in the provision of the Services from time to time.
<b>Delivery Organisation's Tender</b>	the tender submitted by the Delivery Organisation and other associated documentation set out in Schedule 3 (Delivery Organisation's Tender).
<b>Disaster</b>	an event defined as a disaster in the Disaster Recovery Plan or any other event which prevents the Delivery Organisation from providing some or all of the services.
<b>Disaster Recovery Plan</b>	a plan which sets out the procedures to be adopted by the Delivery Organisation in the event that it cannot provide some or all of the Services by reason of a Disaster (including the procedures to be taken by the Delivery Organisation in planning and providing for any such event) as required by clause 10.
<b>Dispute Resolution Procedure</b>	the procedure set out in clause 21.
<b>Domestic Law</b>	means the law of the United Kingdom or a part of the United Kingdom.



<b>Dwelling</b>	means a domestic property located in the Lot Area that is assessed for Measures and/or where Measures are (to be) installed.
<b>EIRs</b>	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>Eligible Measure</b>	<p>means a Measure that is both:</p> <ul style="list-style-type: none"> <li>(a) listed as a permitted Measure within the Technical Specification or specifically identified in any other part of the Specification as being a Measure which the Delivery Organisation is permitted to install with the benefit of Grant support; and</li> <li>(b) an eligible Measure for the purposes of the Scheme, as determined by reference to relevant guidance issued by the Funder from time to time.</li> </ul>
<b>Eligibility Criteria</b>	<p>means the eligibility criteria and requirements set out in the Specification, including any criteria or requirements in respect of the following:-</p> <ul style="list-style-type: none"> <li>(a) the types of Dwelling in respect of which a Grant can be offered under the Scheme;</li> <li>(b) the types of Customer to whom a Grant can be offered under the Scheme;</li> <li>(c) the types of Measures that can in principle (and subject to (d) below) be installed with the benefit of Grant support under the Scheme (such measures being the Eligible Measures);</li> <li>(d) requirements as to the combinations or packages of Eligible Measures that can be installed with the benefit of Grant support under the Scheme, including any requirements as to it only being permissible to install certain Eligible Measures where one or more other Eligible Measures are also to be installed at the same Dwelling;</li> <li>(e) requirements as to the maximum amount of Grant support that can be offered in respect of any Customer, Dwelling and/or package of Eligible Measures;</li> <li>(f) requirements as to the cost of any Eligible Measure not being supported by any other source of funding (whether other grant</li> </ul>

	funding, a contribution from the relevant Customer or otherwise);
	(g) requirements as to relevant installation work being carried out by an installer who is a member of/certified under one or more particular certification schemes and as to the relevant work being carried out in accordance with all applicable requirements of the relevant certification scheme(s);
	(h) requirements as to the installation, without any Grant support, of other Measures at a particular Dwelling in combination with one or more Eligible Measures which are (to be) installed with the benefit of Grant support
<b>Exit Plan</b>	the plan referred to in Schedule 9 (Exit Management Plan).
<b>Extension Period</b>	shall have the meaning given to it in Clause 2.2.
<b>FOIA</b>	the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>Force Majeure Event</b>	any circumstance not within a party's reasonable control including, without limitation: <ul style="list-style-type: none"> <li>(a) acts of God, flood, drought, earthquake or other natural disaster;</li> <li>(b) epidemic or pandemic;</li> <li>(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;</li> <li>(d) nuclear, chemical or biological contamination or sonic boom;</li> <li>(e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;</li> <li>(f) collapse of buildings, fire, explosion or accident; and</li> <li>(g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Delivery Organisation's</li> </ul>

workforce or the workforce of any  
Subcontractor of the Delivery Organisation),

and provided that (for the avoidance of doubt) any such circumstance and/or its impact on the relevant party's ability to perform its obligations under this agreement is not caused by or attributable to any Default by the party in question and/or any failure by the party in question to take reasonable precautions to prevent or mitigate the impact of the relevant circumstance.

**Funder**

means the Department for Business, Energy and Industrial Strategy in its capacity of providing funding for the Scheme.

**Grant**

refers to the financial support that is (to be) provided via the Scheme to a particular Customer by way of the Delivery Organisation arranging to have one or more Eligible Measures installed at the Customer's Dwelling on the basis that (depending on the status of the Customer by reference to relevant Eligibility Criteria):-

- (a) the relevant Eligible Measure(s) will be installed on a fully subsidised basis i.e. at no cost to the Customer; or
- (b) the relevant Eligible Measure(s) will be installed on a partially subsidised basis such that at least one third of the relevant cost (as referable to the applicable Measure Price) will be payable by the Customer.

**Health and Safety Policy**

the health and safety policy of the Authority as provided to the Delivery Organisation on or before the Commencement Date and as subsequently provided to the Delivery Organisation from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

**Information**

has the meaning given under section 84 of FOIA.

**Initial Term**

the period commencing on the Commencement Date and ending on the first anniversary of the Commencement Date.

**Insolvency Event**

where:

- (a) the Delivery Organisation suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act

1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];

- (b) the Delivery Organisation commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Delivery Organisation with one or more other companies or the solvent reconstruction of that other party];
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Delivery Organisation (being a company, limited liability partnership or partnership) [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Delivery Organisation (being a company, partnership or limited liability partnership);
- (e) the holder of a qualifying floating charge over the assets of the Delivery Organisation (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Delivery Organisation or a receiver is appointed over the assets of the Delivery Organisation;
- (g) a creditor or encumbrancer of the Delivery Organisation attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Delivery Organisation in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or

- (i) the Delivery Organisation suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**[Note: definition to be tailored to Delivery Organisation structure.]**

<b>Installation</b>	means the installation of Eligible Measure(s) under this agreement and the Scheme at a Customer's Dwelling.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>KPIs</b>	the key performance indicators set out in Schedule 2 (Performance Regime).
<b>Key Personnel</b>	those personnel identified Schedule 5 (Contract Management) for the roles attributed to such personnel, as modified pursuant to clause 14.
<b>Landlord Grant Limit</b>	means the maximum amount of Grant that can be offered in respect of a particular Dwelling to a particular Customer who is, by reference to relevant Eligibility Criteria, eligible to be offered Grant support under this agreement and who is (as further described elsewhere in this agreement) a landlord of that Dwelling (private or social), not an occupier of it. The relevant maximum amount of Grant for these purposes shall be that set out in paragraph 1.7 of Schedule 4 (Charges and Payment).
<b>Law</b>	the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Delivery Organisation must comply.
<b>Lot Area</b>	means in relation to this agreement [ <b>INSERT</b> ] but this term is also used to refer to other Lot Areas whether the Authority has or intends to appoint a delivery organisation to deliver a scheme the same or similar to that being delivered pursuant to this agreement.

<b>Lot Area Financial Limit</b>	<p>the maximum amount of funding available to the Authority to pay Charges to the Delivery Organisation for provision of the Services and accordingly the maximum, aggregate amount of Charges that can be claimed by the Delivery Organisation under this agreement, such maximum amount being:-</p> <p>(a) such amount as is described in Schedule 4 (Charges and Payment) as being the Lot Area Financial Limit as at the date of this agreement; or</p> <p>(b) such revised amount as be expressly notified by the Authority (acting reasonably) to the Delivery Organisation from time to time to reflect changes in the amount of funding available to the Authority from the Funder from time to time and/or the exercise of the Authority's rights under clause 3.</p>
<b>Management Fee</b>	means the fee as set out in Schedule 4 (Charges and Payment) payable by the Authority to the Delivery Organisation (subject to the Payment Criteria and other relevant provisions in this agreement) in respect of each Dwelling at which the installation of all required Eligible Measures has been Completed.
<b>Management Reports</b>	the reports to be prepared and presented by the Delivery Organisation in accordance with clause 18 and Schedule 5 (Contract Management) to include a comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.
<b>Measure</b>	means any action (including any works or services) or thing or combination of any one or more actions or things, that is intended, when carried out or installed at or in respect of a particular property, to deliver one or more energy efficiency improvement and/or carbon emission reduction outcomes. For convenience, where this agreement refers to a particular Measure being "installed", this shall be treated as including circumstances in which a relevant action which constitutes a Measure has been carried out, and references to "install", "installs", "installer" or "installation" shall be construed accordingly.
<b>Measure Price</b>	means the price payable (subject to Payment Criteria and other relevant provisions in this agreement) by the Authority to the Delivery Organisation in respect of the installation of a particular Eligible Measure at a Dwelling as calculated in accordance with Schedule 4 (Charges and Payment).
<b>Mobilisation Period</b>	means the period as described in Part D (Management Arrangements) of Schedule 1 (Specification).

<b>Mobilisation Plan</b>	means the plan as described in Part D (Management Arrangements) of Schedule 1 (Specification).
<b>Necessary Consents</b>	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services including, without limitation, the Trustmark registration requirements set out at clause 8.6.
<b>Non-Capital Measures Percentage</b>	means, as regards the aggregate Charges claimable under this agreement from time to time, the maximum percentage of these Charges that can comprise either Measure Prices for Ancillary Measures or Management Fees (as opposed to Measure Prices for those Eligible Measures which are treated for the purposes of the Scheme as items of “capital” expenditure). The relevant percentage for these purposes shall be that set out in paragraph 1 of Schedule 4 (Charges and Payment).
<b>Non-Landlord Grant Limit</b>	means the maximum amount of Grant that can be offered in respect of a particular Dwelling to a particular Customer who is, by reference to relevant Eligibility Criteria, eligible to be offered Grant support under this agreement and who is (as further described elsewhere in this agreement) an occupier of the relevant Dwelling, not a landlord of it. The relevant maximum amount of Grant for these purposes shall be that set out in paragraph 1 of Schedule 4 (Charges and Payment).
<b>Offshore Delivery Prices</b>	means the costs referred to in paragraph 4 of Schedule 4 (Charges and Payment).
<b>Payment Criteria</b>	means the criteria as set out in Schedule 4 (Charges and Payment) for any of the Charges to become claimable in respect of a Dwelling.
<b>Personal Data</b>	as defined in the Data Protection Legislation.
<b>Personal Data Breach</b>	as defined in the Data Protection Legislation.
<b>Processor</b>	as defined in the Data Protection Legislation
<b>Prohibited Act</b>	the following constitute Prohibited Acts: <ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;</li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for</li> </ul>

improper performance of a relevant function or activity in connection with this agreement;

- (c) committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

<b>Protective Measures</b>	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures.
<b>Quality Assurance and Audit Agent</b>	means any quality assurance and audit agent appointed by the Authority as detailed at paragraph [18] of Part A (Introduction) of Schedule 1 (Specification).
<b>Regulated Activity Provider</b>	shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.
<b>Relevant Requirements</b>	all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
<b>Relevant Transfer</b>	a relevant transfer for the purposes of TUPE.
<b>Remediation Notice</b>	a notice served by the Authority in accordance with clause 31.1.1.
<b>Replacement Services</b>	any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.
<b>Replacement Supplier</b>	any third party supplier of Replacement Services appointed by the Authority from time to time.
<b>Representatives</b>	means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.



<b>Request for Information</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
<b>Retention Fee</b>	means the 5% portion of each Measure Price (or balance of the Measure Price after deduction of any relevant Customer Contribution, as applicable) or Management Fee that is the subject of the retention arrangements set out in paragraph 5 of Schedule 4 (Charges and Payment).
<b>Scheme</b>	means the Department for Business, Energy and Industrial Strategy's Green Homes Grant Local Authority Delivery Phase 2 scheme or such replacement or amended scheme.
<b>Scheme Affiliate</b>	any third party to which the Delivery Organisation is obliged by the Authority to report in relation to the Scheme.
<b>Scheme Funds</b>	means funds made available to the Authority from the Department for Business, Energy and Industrial Strategy for the purposes of the Scheme.
<b>Services</b>	the services to be delivered by or on behalf of the Delivery Organisation under this agreement, as more particularly described in Schedule 1 (Specification) and including the delivery of the Scheme in respect of the Lot Area;
<b>Specification</b>	means the relevant specification applicable to this agreement, as set out in Schedule 1 (Specification);
<b>Sub-Contract</b>	any contract or agreement, or proposed contract or agreement, between the Delivery Organisation and a third party pursuant to which that third party agrees to provide to the Delivery Organisation the Services or any part of the Services.
<b>Sub-Contractor</b>	the third parties that enter into a Sub-Contract with the Delivery Organisation.
<b>Sub-Processor</b>	any third party appointed to process Personal Data on behalf of the Delivery Organisation related to this agreement.
<b>Subsidy Control</b>	means the subsidies rules included in the Article 3 of Chapter 3 of Title XI of Heading One of Part Two of the Trade and Co-operation Agreement between the United Kingdom of Great Britain and Northern Ireland and the European Union of 24 December 2020 and any update or replacement of such rules.
<b>Target KPI</b>	the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in Schedule 2 (Performance Regime)

	For these purposes the Target KPI shall be those in the column headed 'Target KPI' in Schedule 2 ((Performance Regime)).
<b>Technical Specification</b>	means the technical specification included as Part C (Technical Specification) to Schedule 1 (Specification).
<b>Term</b>	the period of the Initial Term as may be varied by: <ul style="list-style-type: none"> <li>(a) any Extension Period; or</li> <li>(b) the earlier termination of this agreement in accordance with its terms.</li> </ul>
<b>Termination Date</b>	the date of expiry or termination of this agreement.
<b>Termination Payment Default</b>	is defined in Schedule 4 (Charges and Payment).
<b>TrustMark</b>	means the quality endorsement scheme of this name operated under licence from the Funder by TrustMark (2005) Limited.
<b>TrustMark Approved Scheme</b>	means a particular scheme, operated by a TrustMark "Scheme Provider", under which businesses are able to obtain certification services and become a "Registered Business" for TrustMark purposes.
<b>Total Installation Price</b>	means, in respect of any particular Dwelling at which one or more Eligible Measures are installed as part of the Scheme, the sum of the individual Measure Prices payable under this agreement for the relevant Eligible Measure(s), such sum being (for the avoidance of doubt):- <ul style="list-style-type: none"> <li>(a) the sum of the full Measure Prices for the relevant Eligible Measures where (by reference to relevant Eligibility Criteria) the relevant Customer is entitled to 100% Grant support and no Customer Contribution is payable; or (as applicable)</li> <li>(b) the sum of the full Measure Prices for the relevant Eligible Measures LESS the relevant Customer Contribution, where (by reference to relevant Eligibility Criteria) the Customer is entitled to a maximum of two thirds Grant support and a Customer Contribution is therefore payable.</li> </ul>
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 ( <i>SI 2006/246</i> ).

<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
<b>Working Day</b>	Monday to Friday, excluding any public holidays in England and Wales.
<b>Working Hours</b>	the period from 9.00 am to 5.00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** includes fax and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
  - 1.14.1 the clauses of the agreement;
  - 1.14.2 Schedule 4 (Charges and Payment) to this agreement;

- 1.14.3 Schedule 1 (Specification) to this agreement;
- 1.14.4 the remaining schedules to this agreement other than Schedule 3 (Delivery Organisation's Tender);
- 1.14.5 Schedule 3 (Delivery Organisation's Tender) to this agreement.

## **Commencement and duration**

### **2 Term and Extending the initial term**

- 2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to three years (each such extension together with any such extensions, being the "**Extension Period**"). If the Authority wishes to extend this agreement, it shall give the Delivery Organisation at least two months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 2.3 If the Authority gives such notice then the Delivery Organisation shall confirm within 5 Working Days in writing to the Authority whether it would accept that the Term shall be extended by the period set out in the notice.
- 2.4 If the Authority and/or the Delivery Organisation does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 35 shall apply. If any updates to this agreement are required as a result of any extension such updates shall be determined in accordance with the Change Control Procedure.

### **3 Local Authority Delivery Terms**

- 3.1 The Delivery Organisation acknowledges that the Lot Area Financial Limit represents the maximum amount of funding available to the Authority under the Scheme in order to fund the payment of Charges applicable to the Lot Area and that the Authority shall be under no obligation to recompense the Delivery Organisation for Services provided under this agreement where the Charges, in aggregate, exceed the Lot Area Financial Limit. The Delivery Organisation shall be responsible for monitoring its delivery of the Services as against the Lot Area Financial Limit.
- 3.2 The Delivery Organisation acknowledges that the Lot Area Financial Limit may reduce during the term of this agreement and that no guarantee of volume of income or work is provided to the Delivery Organisation by this agreement.
- 3.3 The Delivery Organisation shall comply with any reasonable instruction given by the Authority in relation to the Services for the purposes of ensuring that the Lot Area Financial Limit is not exceeded, including (as reasonably determined by the Authority) an instruction to reduce the speed of delivery of installations to Dwellings or to cease the delivery of installations to Dwellings (including a request to stop signing up new Customers or not to commence any new installations or similar). Such instructions may also include a requirement to stop offering and installing one or more particular types of Eligible Measure.
- 3.4 The Delivery Organisation shall comply with any reasonable instructions of the Authority in relation to the Scheme arising from any changes made to the Scheme by

the Funder. Such instructions could include, but not be limited to, closure of the Scheme or a reduction in the Lot Area Financial Limit.

- 3.5 Unless specifically agreed otherwise in writing by the Authority, the Delivery Organisation acknowledges and agrees that the installation of all Eligible Measures to be installed at Dwellings under this agreement shall be Completed by 31 December 2021.
- 3.6 The Authority reserves the right, in circumstances where it reasonably believes that the Delivery Organisation will be unable to utilise the funds allocated to the Lot Area which is the subject matter of this agreement in the time available, to reallocate funds to a different Lot Area and different delivery organisation with a view to maximising the use of the Scheme funds and impact of the Scheme. In such circumstances, the Lot Area Financial Limit shall (for the avoidance of doubt) be reduced accordingly.
- 3.7 The Delivery Organisation recognises that it may be called upon by the Authority to assist in delivering elements of the Scheme in other Lot Areas. In such circumstances the Delivery Organisation shall work collaboratively with the Authority in good faith to agree the detail of additional requirements, including any reasonable adjustments to the pricing set out in this agreement by virtue of the location of any such additional work, in support of the Scheme.

#### **4 Due diligence and Delivery Organisation's warranty**

- 4.1 The Delivery Organisation acknowledges and confirms that:
  - 4.1.1 the Authority has delivered or made available to the Delivery Organisation all of the information and documents that the Delivery Organisation considers necessary or relevant for the performance of its obligations under this agreement;
  - 4.1.2 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 4.1.1;
  - 4.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
  - 4.1.4 it has entered into this agreement in reliance on its own due diligence.
- 4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Delivery Organisation by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 The Delivery Organisation:
  - 4.3.1 warrants and represents that all information and statements made by the Delivery Organisation as a part of the procurement process, including without limitation the Delivery Organisation's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and

not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and

- 4.3.2 shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.
- 4.4 The Delivery Organisation shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Delivery Organisation in accordance with clause 4.3.2, save where such additional costs or adverse effect on performance have been caused by the Delivery Organisation having been provided with fundamentally misleading information by or on behalf of the Authority and the Delivery Organisation could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Delivery Organisation shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **The services**

### **5 Supply of services**

- 5.1 The Delivery Organisation shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1 (Specification) and Schedule 2 (Performance Regime).
- 5.2 In the event that the Delivery Organisation does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Delivery Organisation with a notice in writing setting out the details of the Delivery Organisation's default (a **Default Notice**).

### **6 KPIs and Customer Journey Service Levels**

- 6.1 Where any Service is stated in Schedule 2 (Performance Regime) to be subject to a specific KPI, the Delivery Organisation shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 6.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within Schedule 2 (Performance Regime).
- 6.3 The Delivery Organisation shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 18.
- 6.4 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Authority may have, the provisions of clause 13 shall apply.

- 6.5 Where any Service is stated in the Customer Journey to be subject to the Customer Journey Service Levels, the Delivery Organisation shall provide that Service in such a manner as will ensure that the Delivery Organisation delivers that Service to an equal or higher level than the corresponding timeframe for such Customer Journey Service Levels.
- 6.6 If the existing Services are varied or new Services are added, Customer Journey Service Levels for the same will be determined and included within the Customer Journey.
- 6.7 The Delivery Organisation shall provide records of and Management Reports summarising its performance as against the Customer Journey Service Levels as provided for in clause 18 and Part D (Management Arrangements) of Schedule 1 (Specification).

## **7 Service standards and Materials and workmanship**

### **Service Standards**

- 7.1 Without prejudice to clause 6, the Delivery Organisation shall provide the Services, or procure that they are provided in accordance with this agreement and:
- 7.1.1 with all the reasonable skill, care and diligence to be expected of a properly qualified and competent person of the relevant professional discipline(s) experienced in the provision of services similar to the Services for a projects of a similar size, scope, nature and complexity as that set out in this agreement
- 7.1.2 in accordance with Best Industry Practice;
- 7.1.3 in all respects in accordance with the requirements set out in Schedule 1 (Specification); and
- 7.1.4 in accordance with all applicable Law.
- 7.2 Notwithstanding clause 1.14, where the Delivery Organisations' Tender contains positions which offer an enhanced level of service to that set out in Schedule 1 (Specification) then the Delivery Organisation shall deliver the Services to that enhanced level at no additional cost to the Authority.

### **Materials and workmanship**

- 7.3 The Delivery Organisation shall and shall procure that:
- 7.3.1 the quality of any workmanship in the carrying out and the completion of Services shall be of a good industry standard; and
- 7.3.2 all materials and goods used in the Services shall be of the kinds and standards specified in Schedule 1 (Specification) or, where quality and standards are not specified, such materials and/or goods shall be new and of a satisfactory quality taking into account the purposes for which they are intended and shall comply with the latest applicable British Standards or Codes of Practice where appropriate.

7.4 The Delivery Organisation warrants and undertakes to the Authority that it has not and shall not use or specify for use or authorise or permit to be used in the provision of the Services or in any Dwelling or any part or parts thereof nor shall it cause to be used or suffer to use of any substances or materials:

7.4.1 known or suspected to be in themselves or as a result of the manner of their use a hazard to health;

7.4.2 which at the time the Services are being carried out are within the building industry generally known or reasonably suspected:

(a) of being deleterious in themselves;

(b) of becoming deleterious when used in a particular situation or in combination with other substances or materials and with passage of time or through poor workmanship during construction or without a higher level of maintenance than that which would normally be expected in a building or works of the type under construction; or

(c) of being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed;

for the purposes of clause 7.4.2 **deleterious** materials or substances are those whose durability is less than specified or less than might reasonably be expected of a substance or material specified or used for the purpose in which it is used or specified in the provision of the Services or in the Dwelling, or one which reduces or might reduce the durability of substances or materials to which they are applied or fixed, or reduce the durability of the structures into which they are incorporated or which reduce or might reduce the durability of the Dwelling or part of the Dwelling.

## 8 Compliance

8.1 The Delivery Organisation shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

8.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Delivery Organisation has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Delivery Organisation has notified the Authority in writing.

8.3 The Delivery Organisation shall (and shall procure that the Delivery Organisation Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:

8.3.1 all applicable Law regarding health and safety;

8.3.2 any policies relating to work at a Dwelling; and

8.3.3 the health and safety policy of the Authority whilst at any premises operated by the Authority.

8.4 The Delivery Organisation shall notify the Authority as soon as practicable of any health and safety incidents at any Dwelling which relates to or arise in connection with the



performance of this agreement. In addition, where in relation the Services the Delivery Organisation or any sub-contractor is required to report any reportable incident pursuant to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 the Delivery Organisation shall promptly report the same to the Authority. The Delivery Organisation shall instruct the Delivery Organisation Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

- 8.5 Without limiting the general obligation set out in clause 7, the Delivery Organisation shall (and shall procure that the Delivery Organisation Personnel shall):
- 8.5.1 perform its obligations under this agreement (including those in relation to the Services) in accordance with:
    - (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
    - (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law;
  - 8.5.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
  - 8.5.3 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Delivery Organisation shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 8.6 The Delivery Organisation shall ensure that at all times during the Term:-
- 8.6.1 the Delivery Organisation itself is and remains registered by TrustMark (meaning amongst other matters that the Delivery Organisation has followed the relevant TrustMark registration process and been given a registration number by TrustMark) and complies with all rules and requirements applicable to such Trustmark registration; and
  - 8.6.2 any person engaged in the installation of an Eligible Measure under this agreement (whether the Delivery Organisation itself or a Delivery Organisation Party):-
    - (a) (unless otherwise specified by the Authority, having regard to relevant guidance from the Funder) is and remains registered by TrustMark for that type of Eligible Measure, complies with all rules and requirements applicable to such registration and (without prejudice to the generality of the foregoing) holds any certification which it is required to hold for these purposes under one or more particular TrustMark Approved Scheme(s);
    - (b) holds any other certification which the Specification requires an installer of that type of Eligible Measure to hold;

- (c) in the case of any Eligible Measures of the kind referred to in section 3.5 of the Technical Specification, and without prejudice to the generality of (a) or (b) above, is a member of the Microgeneration Certification Scheme; and
- (d) complies with all rules and other requirements applicable to its membership of the relevant TrustMark Approved Scheme(s) and (if applicable) any other relevant certification scheme of which it is required, for the purposes of complying with (a), (b) and (if applicable) (c) above, to be a member.

8.7 Without prejudice to the generality of clause 8.6, the Delivery Organisation shall ensure that, in connection with each Eligible Measure installed under this agreement:-

8.7.1 any contract entered into with the relevant Customer (whether by the Delivery Organisation or any Delivery Organisation Party) shall comply, as to both its form and content, with any applicable Trustmark or other certification scheme rules and requirements (as referred to in clauses 8.6.2 (a) and (d) above and collectively being “**Certification Scheme Requirements**”), with any other requirements set out in the Specification and with all applicable Laws; and

8.7.2 the relevant Customer is provided with any warranty or guarantee with which a customer of that type of Eligible Measure is required to be provided as a matter of any relevant Certification Scheme Requirements or other requirements set out in the Specification.

8.8 In circumstances where, as a result of any Eligible Measure installed under this agreement being defective (including where any relevant installation work was defective):-

8.8.1 the relevant Customer or any successor owner or occupier of the relevant Dwelling is entitled in respect of the relevant defect(s) to make a claim under any relevant warranty or guarantee (as referred to in clause 8.7.2) and/or for breach of any relevant contract (as referred to in clause 8.7.1); or (as the case may be)

8.8.2 the relevant Customer or any successor owner or occupier of the relevant Dwelling would be so entitled, but for any breach of clauses 8.7.2 or 8.7.1 respectively, to make such a claim,

then the Delivery Organisation shall, on becoming aware of the relevant defect(s), ensure that the relevant Customer (or any relevant successor owner or occupier of the relevant Dwelling, as applicable) is promptly provided with such remedy or other redress (whether by way of a rectification of the relevant defect(s), the payment of compensation or otherwise):-

8.8.3 as the Customer is entitled to be provided with as a matter of the relevant warranty or guarantee and/or (as applicable) any applicable Laws; or

8.8.4 as the Customer would be entitled to be provided with, as a matter of any relevant warranty or guarantee and/or any applicable Laws, but for any breach of clauses 8.7.2 or 8.7.1 respectively.

## 9 CDM Regulations

9.1 The Delivery Organisation shall be the Principal Contractor and the Principal Designer for the purposes of the CDM Regulations. The Delivery Organisation shall comply with all the obligations imposed on it as Principal Contractor, Principal Designer and designer under the CDM Regulations in relation to the Services.

9.2 The Delivery Organisation shall provide all reasonable assistance to the Authority to ensure compliance by them with the CDM Regulations.

## 10 **Disaster recovery**

10.1 The Delivery Organisation shall maintain at all times a Disaster Recovery Plan in relation to its provision of the Services under this agreement. The Delivery Organisation shall provide a copy of the same to the Authority for its review upon request by the Authority. The Delivery Organisation shall have regard to any comments made by the Authority about the Delivery Organisation's Disaster Recovery Plan and make any reasonable updates as requested by the Authority.

10.2 Following the declaration of a Disaster in respect of any of the Services, the Delivery Organisation shall:

10.2.1 implement the Disaster Recovery Plan;

10.2.2 continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and

10.2.3 restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

To the extent that the Delivery Organisation complies fully with the provisions of this clause 10 (and the reason for the declaration of a Disaster was not breach of any of the other terms of this agreement on the part of the Delivery Organisation), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in clause 6 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

## 11 **Payment of Charges**

11.1 In consideration of the provision of the Services by the Delivery Organisation in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Delivery Organisation subject to and in accordance with the provisions set out in Schedule 4 (Charges and Payment).

## 12 **Interest**

12.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:

12.1.1 Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

12.1.2 Period. From when the overdue sum became due, until it is paid.

## 13 **Performance Regime**

- 13.1 Where the Delivery Organisation fails to meet the Target KPIs, the Management Fee shall be adjusted in accordance with Schedule 2 (Performance Regime).

## **Staff**

### **14 Key personnel**

- 14.1 Each party shall appoint the persons named as such in Schedule 5 (Contract Management) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

- 14.2 The Delivery Organisation shall not remove or replace any of the Key Personnel unless:

- 14.2.1 requested to do so by the Authority;
- 14.2.2 the person is on long-term sick leave;
- 14.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- 14.2.4 the person resigns from their employment with the Delivery Organisation;  
or
- 14.2.5 the Delivery Organisation obtains the prior written consent of the Authority.

- 14.3 The Delivery Organisation shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.

- 14.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Delivery Organisation or the Authority becoming aware of the role becoming vacant.

- 14.5 The Authority may require the Delivery Organisation to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

- 14.6 If the Delivery Organisation replaces the Key Personnel as a consequence of this clause 14, the cost of effecting such replacement shall be borne by the Delivery Organisation.

### **15 Other personnel used to provide the services**

- 15.1 At all times, the Delivery Organisation shall ensure that:

- 15.1.1 each of the Delivery Organisation Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- 15.1.2 there is an adequate number of Delivery Organisation Personnel to provide the Services properly;
- 15.1.3 only those people who are authorised by the Delivery Organisation (under the authorisation procedure to be agreed between the parties) are involved in providing the Services.
- 15.2 The Delivery Organisation shall replace any of the Delivery Organisation Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Delivery Organisation Personnel for any reason, the Delivery Organisation shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 15.3 The Delivery Organisation shall maintain up-to-date personnel records on the Delivery Organisation Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Delivery Organisation Personnel. The Delivery Organisation shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 15.4 The Delivery Organisation shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 16 **Safeguarding**
  - 16.1 The Delivery Organisation shall ensure that all Delivery Organisation Personnel involved in the delivery of the agreement are appropriately security checked, including, but not limited to, ensuring that all personnel have a satisfactory standard disclosure clearance from Disclosure and Barring Service (DBS). The Delivery Organisation shall comply with any guidance from Disclosure and Barring Service on best practice for disclosure checking personnel and to consider the security of their own personnel particularly those working at Dwellings.
  - 16.2 The provisions of clause 16.1 apply in particular to any Delivery Organisation Personnel who will meet with Customers or attend Dwellings including, but not limited to; [Retrofit Assessors], [Retrofit Coordinators] and [Installer] representatives.
  - 16.3 The Delivery Organisation shall:
    - 16.3.1 monitor the level and validity of the checks under clause 16.1 for each member of Delivery Organisation Personnel; and
    - 16.3.2 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Services or who may otherwise present a risk to Customers and/or occupiers.
  - 16.4 The Delivery Organisation shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 16 have been met.

**17 TUPE**

- 17.1 The parties agree that the provisions of Schedule 10 (TUPE) shall apply to any Relevant Transfer of staff under this agreement.

**Contract management**

**18 Reporting and meetings**

- 18.1 The Delivery Organisation shall provide the Management Reports in the form and at the intervals set out in Part D (Management Arrangements) of Schedule 5 1 (Specification).
- 18.2 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in Part D (Management Arrangements) of Schedule 5 1 (Specification) and the Delivery Organisation shall, at each meeting, present its previously circulated Management Reports in the format set out in that Schedule.

**19 Monitoring**

- 19.1 The Authority may monitor the performance of the Services by the Delivery Organisation.
- 19.2 The Delivery Organisation shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 19.1 at no additional charge to the Authority.

**20 Change control, benchmarking and continuous improvement**

- 20.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 20.2 The parties shall comply with the provisions of Schedule 8 (Benchmarking).
- 20.3 The Delivery Organisation shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services as set out at paragraph [11] of Part D (Management Arrangements) of Schedule 1 (Specification). As part of this obligation the Delivery Organisation shall identify and report to the Authority's Authorised Representative quarterly during the term of the agreement.
- 20.4 Any potential Changes highlighted as a result of the Delivery Organisation's reporting in accordance with clause 20.3 shall be addressed, at the Authority's discretion, by the parties using the Change Control Procedure.

**21 Dispute resolution**

- 21.1 Either party shall have the right to refer any dispute arising under this agreement to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 or any re-enactment of the same.
- 21.2 Any dispute referred to adjudication shall be referred to an adjudicator appointed by the President or Vice President for the time being of the Royal Institution of Chartered Surveyors.
- 21.3 Subject to the parties' right to refer any dispute to adjudication, if a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it

(**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- 21.3.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
  - 21.3.2 if the Authorised Representatives are for any reason unable to resolve the Dispute within 20 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Authority's [SENIOR OFFICER TITLE] and the Delivery Organisation's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
  - 21.3.3 if the Authority's [SENIOR OFFICER TITLE] and the Delivery Organisation's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the dispute may at either party's request be referred to mediation in which case, the provisions of Schedule 6 (Mediation) shall apply.
- 21.4 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 46 which clause shall apply at all times.
- 21.5 The obligations of the Parties under this agreement shall not be suspended, cease, or be delayed by the reference of a Dispute to mediation and the Delivery Organisation shall comply fully with the requirements of this agreement at all times.

## **22 Sub-Contracting and assignment**

- 22.1 The Delivery Organisation shall not assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the Authority, neither may the Delivery Organisation sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.
- 22.2 In the event that the Delivery Organisation enters into any Sub-Contract in connection with this agreement it shall:
- 22.2.1 remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
  - 22.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
  - 22.2.3 provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.
- 22.3 The Authority shall be entitled to novate (and the Delivery Organisation shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

## Liability

### 23 Indemnities

23.1 Subject to clause 23.2, the Delivery Organisation shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

23.1.1 the Delivery Organisation's breach or negligent performance or non-performance of this agreement;

23.1.2 any claim against the Authority which is made or threatened by any third party (including any Customer) and arises out of:-

(a) the carrying out by the Delivery Organisation, any Delivery Organisation Party and/or any Delivery Organisation Personnel of any activities under or in connection with this agreement and/or the Scheme, including marketing and promotional activities (with a view to finding Customers willing to participate in the Scheme), the carrying out of any initial survey work or other assessments at any Dwelling and the installation of any Measures at any Dwelling;

(b) the use by any person of any Measure installed at any Dwelling under or in connection with this agreement and/or the Scheme;

(c) any breach of this agreement by the Delivery Organisation; and/or

(d) any wilful misconduct (including any fraud, bribery or other corrupt or criminal behaviour or malpractice) or negligence on the part of the Delivery Organisation, any Delivery Organisation Party and/or any Delivery Organisation Personnel; and/or

23.1.3 the enforcement of this agreement.

23.2 The indemnity under clause 23.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.

23.3 If the Authority becomes aware of any third party claim for which it appears that the Authority is, or may become, entitled to indemnification under clause 23.1.2 (a "**Claim**"), the Authority shall give notice in writing to the Delivery Organisation as soon as reasonably practicable.

23.4 On the giving of a notice by the Authority under clause 23.3, where it appears that the Authority is or may be entitled to indemnification from the Delivery Organisation in respect of all (but not part only) of the liability arising out of the Claim, the Delivery Organisation shall be entitled to dispute the Claim in the name of the Authority at the Delivery Organisation's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Delivery Organisation does elect to take conduct of the Claim, the Authority shall give the Delivery Organisation such information and co-operation as the Delivery Organisation may reasonably request for these purposes and the Authority shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Delivery Organisation, such consent not to be unreasonably withheld or delayed.



- 23.5 In respect of any Claim of which the Delivery Organisation has taken conduct under clause 23.4 the Delivery Organisation shall:
- 23.5.1 keep the Authority fully informed and consult with it about material elements of the conduct of the Claim;
  - 23.5.2 not bring the name of the Authority into disrepute;
  - 23.5.3 not pay or settle such Claim without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed; and
  - 23.5.4 conduct the Claim with all due diligence.
- 23.6 The Authority shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this agreement if:
- 23.6.1 the Delivery Organisation is not entitled to take conduct of the Claim in accordance with clause 23.4;
  - 23.6.2 the Delivery Organisation fails to notify the Authority in writing of its intention to take conduct of the relevant Claim within 14 days of the relevant notice from the Authority under clause 23.3 or if the Delivery Organisation notifies the Authority in writing that it does not intend to take conduct of the Claim; or
  - 23.6.3 the Delivery Organisation fails to comply in any material respect with the provisions of clause 23.5.

## 24 **Limitation of liability**

- 24.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss suffered by the other party and arising under or in connection with this agreement. For the avoidance of doubt, this clause shall not operate to exclude any liability on the part of the Delivery Organisation under the indemnity set out in clause 23.1.2 in respect of any of the types of loss described in this clause where and to the extent that they have been suffered by a third party (not the Authority itself) and form part of the relevant Claim against the Authority.
- 24.2 Notwithstanding the provisions of clause 24.1, but subject to clause 24.4, the Delivery Organisation assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:
- 24.2.1 sums paid by the Authority to the Delivery Organisation pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
  - 24.2.2 wasted expenditure;
  - 24.2.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;

- 24.2.4 losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Delivery Organisation Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Delivery Organisation;
  - 24.2.5 any anticipated savings; and
  - 24.2.6 any Scheme funding that the Authority is required to repay to the Funder.
- 24.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.
- 24.4 Subject to clause 24.1 and clause 24.6, the Delivery Organisation's aggregate liability:
- 24.4.1 is unlimited in respect of:
    - (a) the indemnities in Schedule 10 (TUPE);
    - (b) the indemnity in clause 23.1.2 relating to third party claims against the Authority;
    - (c) any breach of clause 34 (Prevention of bribery);
    - (d) any breach of Schedule 14 (Data); and/or
    - (e) the Delivery Organisation's wilful default.
  - 24.4.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement, shall be limited in each Contract Year to **[INSERT FIGURE 150% of Lot Value Financial Limit]**.
- 24.5 Subject to clause 24.1 and clause 24.6, the Authority's aggregate liability to the Delivery Organisation for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall be limited during the term of this agreement to £**[INSERT FIGURE Lot Value Financial Limit]**.
- 24.6 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- 24.6.1 fraud or fraudulent misrepresentation;
  - 24.6.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
  - 24.6.3 breach of any obligation as to title implied by statute; or
  - 24.6.4 any other liability for which may not be limited under any applicable law.

## 25 Insurance

- 25.1 The Delivery Organisation shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- 25.1.1 public liability insurance with a limit of indemnity of not less than £25m relation to any one claim or series of claims;
  - 25.1.2 employer's liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
  - 25.1.3 professional indemnity insurance with a limit of indemnity of not less than £5m in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover,
- (the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Delivery Organisation, arising out of the Delivery Organisation's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Delivery Organisation.
- 25.2 The Required Insurances shall be subject to such conditions and excesses as may be usual from time to time in the United Kingdom market and in particular (but without limitation) shall not include any condition which may adversely affect the right of the Authority to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 2010.
- 25.3 The Delivery Organisation shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 25.4 If, for whatever reason, the Delivery Organisation fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Delivery Organisation.
- 25.5 The terms of any insurance or the amount of cover shall not relieve the Delivery Organisation of any liabilities under the agreement.
- 25.6 The Delivery Organisation shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.
- 25.7 The Delivery Organisation is responsible for insuring its own plant and equipment in respect of the Services including any plant and equipment not yet installed at any Dwelling and for notifying the home insurance policyholder or other appropriate party of the need for insurance in respect of any works carried out at the Dwelling.

## **Information**

### **26 Freedom of information**

- 26.1 The Delivery Organisation acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Delivery Organisation shall:

- 26.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - 26.1.2 transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 26.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 26.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
- 26.2 The Delivery Organisation acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Delivery Organisation. The Authority shall take reasonable steps to notify the Delivery Organisation of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 26.3 Notwithstanding any other term of this agreement, the Delivery Organisation consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 26.4 The Authority shall, prior to publication, consult with the Delivery Organisation on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Delivery Organisation shall assist and co-operate with the Authority to enable the Authority to publish this agreement.
- 27 Data protection**
- 27.1 The parties acknowledge that Personal Data will be processed under this agreement. Such processing of Personal Data shall be undertaken in compliance with the Data Protection Legislation and in accordance with Schedule 14 (Data Processing Appendix).
- 28 Confidentiality**
- 28.1 Subject to clause 28.2, each party shall keep the other party's Confidential Information confidential and shall not:
- 28.1.1 use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
  - 28.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 28.

- 28.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:
- 28.2.1 which the other party confirms in writing is not required to be treated as Confidential Information;
  - 28.2.2 which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - 28.2.3 which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law, including the FOIA or the EIRs;
  - 28.2.4 which is in or enters the public domain other than through any disclosure prohibited by this agreement;
  - 28.2.5 which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
  - 28.2.6 which is disclosed by the Authority on a confidential basis to any central government or regulatory body.
- 28.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:
- 28.3.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 28.3.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
  - 28.3.3 and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 28.3.
- 28.4 The provisions of this clause 28 shall survive for a period of six years from the Termination Date.

## 29 **Audit**

- 29.1 During the Term and for a period of seven years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Delivery Organisation, including for the following purposes:
- 29.1.1 to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all Delivery Organisations (including Sub-Contractors) of the Services at the level of detail agreed in Schedule 4 (Charges and Payment);
  - 29.1.2 to review the integrity, confidentiality and security of any data relating to the Authority or any service users;

- 29.1.3 to review the Delivery Organisation's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 27 (Data Protection) and clause 26 (Freedom of Information) and any other legislation applicable to the Services;
- 29.1.4 to review any records created during the provision of the Services;
- 29.1.5 to review any books of account kept by the Delivery Organisation in connection with the provision of the Services;
- 29.1.6 to carry out the audit and certification of the Authority's accounts;
- 29.1.7 to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 29.1.8 to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 29.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Delivery Organisation has not complied with its obligations under this agreement, the Authority may not conduct an audit under this clause 29 more than twice in any calendar year.
- 29.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Delivery Organisation or delay the provision of the Services.
- 29.4 Subject to the Authority's obligations of confidentiality, the Delivery Organisation shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - 29.4.1 all information requested by the above persons within the permitted scope of the audit;
  - 29.4.2 reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - 29.4.3 access to the Delivery Organisation Personnel.
- 29.5 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
- 29.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the Delivery Organisation in which case the Delivery Organisation shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 29.7 If an audit identifies that:
  - 29.7.1 the Delivery Organisation has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a

remedial plan. If the Delivery Organisation's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Delivery Organisation's costs, then the remedial plan shall include a requirement for the provision of all such information;

- 29.7.2 the Authority has overpaid any Charges, the Delivery Organisation shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Delivery Organisation fails to make this payment; and
- 29.7.3 the Authority has underpaid any Charges, the Authority shall pay to the Delivery Organisation the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Delivery Organisation in relation to invoicing within 20 days.

### **Dwelling Audit**

- 29.8 If an inspections by the Quality Assurance and Audit Agent identify Dwellings where the Installation has not been completed, or otherwise does not comply with this agreement, then the Delivery Organisation will arrange to have the Installation Completed to meet the Specification within a timescale acceptable to the Authority and the relevant Customer. Alternatively, where the Customer requests, the Delivery Organisation shall reinstate the Dwelling to its original condition.

## **30 Intellectual property**

- 30.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Delivery Organisation or Delivery Organisation Personnel:
  - 30.1.1 in the course of performing the Services; or
  - 30.1.2 exclusively for the purpose of performing the Services,shall vest in the Authority on creation.
- 30.2 The Delivery Organisation shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **Termination**

### **31 Termination for breach**

- 31.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Delivery Organisation in the following circumstances:
  - 31.1.1 if the Delivery Organisation is in material breach of any provision in this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 31.1 if the Delivery

- Organisation has failed to remedy such breach within 28 days of receipt of notice from the Authority (a Remediation Notice) to do so;
- 31.1.2 if a Consistent Failure has occurred;
  - 31.1.3 if a Catastrophic Failure has occurred;
  - 31.1.4 if there is an Insolvency Event;
  - 31.1.5 if there is a change of control of the Delivery Organisation within the meaning of section 1124 of the Corporation Tax Act 2010;
  - 31.1.6 if the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply; and/or
  - 31.1.7 if the Delivery Organisation ceases to be a Trustmark 'Registered Business'.
- 31.2 The Authority may terminate this agreement in accordance with the provisions of clause 33 and clause 34.
- 31.3 If this agreement is terminated by the Authority pursuant to clauses 31.1, 33 or 34, then:-
- 31.3.1 in the case of any termination pursuant to clauses 31.1 or 34, and without prejudice to any other right or remedy which the Authority may have, such termination shall be at no loss or cost to the Authority and the Delivery Organisation hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination;
  - 31.3.2 in all such cases, the Delivery Organisation shall (without prejudice to any separate obligations arising under clause 35) comply with such instructions as the Authority may reasonably give to the Delivery Organisation as regards the suspension and/or completion by the Delivery Organisation or any relevant Delivery Organisation Partner of the installation at any Dwelling of any Eligible Measure(s) as part of the Scheme, insofar as any commitment was made to the relevant Customer prior to the date of termination of this agreement to install any such Eligible Measure(s) as part of the Scheme.
- 31.4 The Delivery Organisation may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Delivery Organisation's notice to terminate this agreement shall be deemed to have been withdrawn.
- 32 Termination on notice**
- 32.1 The Authority may terminate this agreement at any time by giving one months' written notice to the Delivery Organisation. In these circumstances, and without prejudice to any separate obligations arising under clause 35:-
- 32.1.1 the Delivery Organisation shall, unless otherwise instructed by the Authority at the time, promptly take such steps as the Delivery Organisation is reasonably able to take (including by way of the cancellation of any Customer Offer) in respect of any Dwelling at which relevant installation



work under this agreement has yet to commence in order to limit the extent of any commitment which the Delivery Organisation may have to any Customer to proceed with the installation of any further Eligible Measures at any Dwelling under this agreement;

- 32.1.2 subject to the Delivery Organisation complying with clause 32.1.1, the Authority shall remain liable for paying those Charges which subsequently become claimable under this agreement in respect of any Dwelling at which a commitment had been made by the Delivery Organisation to a Customer, prior to the date on which the Delivery Organisation received the relevant termination notice under this clause, to install one or more Eligible Measures under this agreement and as part of the Scheme.

### 33 Force majeure

- 33.1 Provided it has complied with the remaining provisions of this Clause 33, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 33.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.
- 33.3 The Affected Party shall:
- 33.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but not later than 5 Working Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 33.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
- 33.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Delivery Organisation cannot claim relief if the Force Majeure Event is one which, in accordance with Best Industry Practice, the Delivery Organisation should have foreseen and provided for the cause in question. The parties have agreed that for the purposes of limb (b) of the definition of Force Event Majeure such limb shall not include COVID-19 or any similar strain or variant of the same such that the effects are in the reasonable contemplation of the parties as at the Commencement Date. Further, the parties have agreed that any impact of the UK's withdrawal from the European Union shall not qualify as a Force Majeure Event.
- 33.5 The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 33.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' notice to the Affected Party.

- 34      **Prevention of bribery**
- 34.1    The Delivery Organisation represents and warrants that neither it, nor any Delivery Organisation Personnel:
- 34.1.1      has committed a Prohibited Act;
- 34.1.2      to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- 34.1.3      has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 34.2    The Delivery Organisation shall promptly notify the Authority if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 34.1 at the relevant time.
- 34.3    The Delivery Organisation shall (and shall procure that its Delivery Organisation Personnel shall) during the Term:
- 34.3.1      not commit a Prohibited Act; and/or
- 34.3.2      not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 34.3.3      have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
- 34.3.4      notify the Authority (in writing) if it becomes aware of any breach of clause 34.3.1 or clause 34.3.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement or otherwise.
- 34.4    The Delivery Organisation shall maintain appropriate and up to date records showing all payments made by the Delivery Organisation in connection with this agreement and the steps taken to comply with its obligations under clause 34.3.
- 34.5    The Delivery Organisation shall allow the Authority and its third party representatives to audit any of the Delivery Organisation's records and any other relevant documentation in accordance with clause 29.
- 34.6    If the Delivery Organisation is in Default under this clause 34 the Authority may by notice:
- 34.6.1      require the Delivery Organisation to remove from performance of this agreement any Delivery Organisation Personnel whose acts or omissions have caused the Default; or
- 34.6.2      immediately terminate this agreement.

- 34.7 Any notice served by the Authority under clause 34.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).
- 34.8 In delivering the Services the Delivery Organisation shall put in place suitable measures (including by way of a risk assessment and counter fraud plan) to monitor and identify any incidents or suspected incidents of fraudulent activity on the part of Customers, Delivery Organisation Personnel or any other persons in connection with this agreement and/or the Scheme. The Delivery Organisation shall promptly report any suspicion of fraudulent activity to the Authority and act on the reasonable instructions of the Authority in relation to such activity. Where requested to do so by the Authority, the Delivery Organisation shall provide a copy of its risk assessment and counter fraud plan to the Authority.
- 34.9 The Delivery Organisation acknowledges that the Authority is under an obligation to evidence to the Funder how it is managing the fraud risks and the due diligence processes in place to achieve this. The Delivery Organisation shall co-operate with the Authority and provide such assistance as is necessary to provide such updates to the Funder. This The Authority will inform the Project Team at the earliest opportunity of any reports it has received or identified relating to any suspected fraudulent activity relating to the delivery of Phase 2 and include a summary of investigative and/or corrective action.
- 34.10 In delivering the Services the Delivery Organisation shall consider and be aware of the following fraud risks and provide assurance through the measures at clause 34.8 about how the Delivery Organisation is monitoring and managing the following fraud risks:
- 34.10.1 fraud arising through claims to multiple schemes;
  - 34.10.2 installations not meeting quality standards;
  - 34.10.3 claims made for installations that haven't happened, haven't been completed, or that took place prior to the commencement of this agreement; and
  - 34.10.4 identity theft or falsely claiming low-income status.

## 35 **Consequences of termination or expiry**

- 35.1 In the event of the termination in whole or in part or expiry of this agreement for any reason (including where notified in a written request from the Authority pursuant to clause 3.4) the Exit Plan shall come into effect and the Delivery Organisation shall, acting reasonably and in good faith, co-operate fully with the Authority to ensure:-
- 35.1.1 that any work needing to be done for any Customer in respect of any Dwelling in connection with the Scheme (whether the completion of any initial installation work, the rectification of any defects or otherwise) can be carried out and completed to the reasonable satisfaction of the Customer and in compliance with any relevant contractual or other obligations owed to that Customer; and
  - 35.1.2 that, where and to the extent required by the Authority, there will be an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Delivery Organisation.

- 35.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Plan (or where reasonably so required by the Authority before such completion) the Delivery Organisation shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority), shall be delivered to the Authority forthwith and the Delivery Organisation Chief Executive Officer or similar shall certify full compliance with this clause.
- 35.3 On termination or expiry of this agreement or where reasonably so required by the Authority the Delivery Organisation shall provide to the Authority such information relating to the delivery of the Services as the Authority may reasonably request for the purposes envisaged by clause 35.1, including:
- 35.3.1 details of all Measures installed at Dwellings, including relevant Dwelling and Customer details;
  - 35.3.2 details of Measures currently being installed at Dwellings, including relevant Dwelling and Customer details;
  - 35.3.3 details of all Measures yet to be installed at Dwellings, including relevant Dwelling and Customer details;
  - 35.3.4 the results of all EPC assessments undertaken, including relevant Dwelling and Customer details;
  - 35.3.5 details of all recommendations made for Measures to be installed at Dwellings, including relevant Dwelling and Customer details;
  - 35.3.6 details of householder and Customer eligibility checks undertaken including any Customer details for new enquiries that have not progressed to eligibility criteria checking;
  - 35.3.7 details of any completed or in progress retrofit assessor reports or assessments; and
  - 35.3.8 details of the Delivery Organisation's supply chain including names and contact details of Sub-Contractors and details of which Sub-Contractors are linked to which Dwellings and installations.
- 35.4 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 6.3 (provision of records), clause 23 (Indemnities), clause 24 (Limitation of Liability), clause 25 (Insurance), clause 26 (Freedom of Information), clause 27 (Data Processing), clause 28 (Confidentiality), clause 29 (Audit), clause 31 (Termination for Breach) and this clause 35 (Consequences of termination), shall remain in full force and effect.
- 35.5 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.
- 35.6 The Delivery Organisation shall, within two months after the Commencement Date Effective Date, produce an Exit Plan based on the principles set out in Schedule 9 (Exit Plan) for the orderly transition of the Services from the Delivery Organisation to the Customer and/or any Replacement Delivery Organisation in the event of any termination or expiry of this agreement. Within 20 Working Days after the submission of that Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of that Exit Plan, based on the principles set out in Schedule 9 (Exit Plan). If

the parties are unable to agree the contents of the Exit Plan within that 20 Working Day period, either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

- 35.7 The Delivery Organisation shall update the Exit Plan no less than once during each Contract Year to reflect changes in the Services and shall keep the Exit Plan under continuous review. Following each update, the Delivery Organisation shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days after the submission of the revised Exit Plan, the parties shall meet and use all reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in Schedule 9 (Exit Plan) and the changes that have occurred in the Services since the Exit Plan was last agreed. If the parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, the previous version shall continue to apply and either party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.

## **General provisions**

### **36 Non-solicitation**

- 36.1 In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this agreement, and for a period of one year thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

### **37 Waiver**

- 37.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### **38 Rights and remedies**

- 38.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **39 Severability**

- 39.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 39.2 If any provision or part-provision of this agreement is deemed deleted under clause 39.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **40 Partnership or agency**

40.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

40.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

#### **41 Third party rights**

41.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

41.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

#### **42 Publicity**

42.1 The Delivery Organisation shall not:

42.1.1 make any press announcements or publicise this agreement or its contents in any way; or

42.1.2 use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

#### **43 Notices**

43.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

43.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

43.2 Any notice shall be deemed to have been received:

43.2.1 if delivered by hand, at the time the notice is left at the proper address; or

43.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting.

43.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

43.4 A notice given under this agreement is not valid if sent by email.

#### **44 Entire agreement**

- 44.1 This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 44.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 45 **Counterparts**
- 45.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.
- 46 **Governing law**
- 46.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 47 **Jurisdiction**
- 47.1 Subject to the parties' right to refer any dispute to adjudication, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME  
OF DIRECTOR] for  
and on behalf of  
[NAME OF  
AUTHORITY]

.....

Director

Signed by [NAME  
OF DIRECTOR] for  
and on behalf of  
[NAME OF  
DELIVERY  
ORGANISATION]

.....

Director

## **Schedule 1**

### **Specification**

This Specification is made up of and includes the following items:

Section A – Introduction

Section B – Customer Journey

Section C – Technical Specification

Section D – Management Arrangements Specification and the annex to this Section

Section E – Funding, Payment and Performance

***[NOTE: The Specification from the ITT will be inserted here with appropriate amends to align with the agreement.]***



## Schedule 2

### Performance regime

**[Note: there will prior to contract award need to be some refinement of the wording here to tie-in with the concepts/schedule of delivery programme.]**

#### Part 1

#### KPIs

#### 1 The KPIs

- 1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Delivery Organisation are contained in the below table. The Delivery Organisation's performance against these KPIs will be used to calculate how much of the performance related portion of the Management Fee (the PRDOF within the meaning of Schedule 4) shall be payable to the Delivery Organisation.

#### 2 Performance Fees: KPI Weightings

KPIs	KPI weighting	Service levels for levels of performance-related payments		
		Target KPI 100% payment	50% payment	No payment
<b>KPI 1 Delivery KPI</b> Progress against Programme	20%	≥95%	<95% but ≥85%	<85%
<b>KPI 2 Quality KPI</b> Right first time Installation, no rectification required	30%	≥98%	<98% but ≥90%	<90%
<b>KPI 3 Customer Satisfaction KPI</b> Customer satisfied or very satisfied	20%	≥95%	<95% but ≥90%	<90%
<b>KPI 4 MI and Data KPI</b> complete and received on time	30%	≥95%	<95% but >85%	<85%
<b>100%</b>				

### 3 KPI Descriptors

#### KPI 1 - Performance against Programme KPI

***[Note: During the tender process, the Delivery Organisation will provide a project programme, including estimated installations, as part of the answer to Question 1.1 - 2.0 LADs2 Document 2: Supplier Questionnaire - Quality Questions - Declarations. This programme will be used evaluate the Delivery Organisation's Performance as against the completed installations for each month/timetable. This will provide a percentage which will impact the payment for this KPI.]***

***[Note: wording to be added linked to the projected timetable at contract award. Note: This could be expected to be linked to a month by month target such that a poor performance in month 1 does not guarantee a failure to meet the target in every subsequent month.]***

#### KPI 2 - Right First Time KPI

The Delivery Organisation must complete each Installation without the need for remedial work. The Right First Time KPI is calculated by dividing the number of completed Installations without remedial work by the total number of completed Installations. This will provide a percentage which will impact the payment for this KPI.

No installation is to be signed off as completed with outstanding snagging. If works are completed with outstanding snagging, for the purposes of this agreement, this will be considered remedial work for the KPI.

***[Note: this is considered a monthly basis but two months in arrears.]***

#### KPI3 - Customer Satisfaction KPI

The Delivery Organisation must request feedback from all Customers on their level of Customer satisfaction at the end of their Customer Journey (whether an Installation was Completed or Cancelled) and calculate the level of Customer satisfaction, as set out in [Document 8 Management Arrangements]. The Performance Fee in respect of the Customer Satisfaction KPI is to be calculated as in the worked example, subject to the provision in the rest of this paragraph.

In respect of the Customer satisfaction element of Performance Fees, no performance fee is payable if the number of Justified Complaints received in the month exceeds 10% of the number of Completed Installations in the same month.

A Justified Complaint is a Complaint as defined in Document 8 Management Arrangements, but excluding the following:

- Complaints about policy matters, where the Delivery Organisation has applied the policy correctly.
- Complaints about failing to meet the Eligibility Criteria where the Delivery Organisation has applied the policy correctly.

- Complaints about service delivery under the Contract where the Delivery Organisation can demonstrate that they have followed the Contract, the correct process and procedures, and provided the appropriate level of service and adhered to any agreement entered into with the Customer but the Customer is not content with the service, process or outcome.

#### KPI 4 - Invoicing and Management Information KPI

The Delivery Organisation must provide the invoices for Completed Installations by the agreed date of the month<sup>1</sup> following the installation completion month for payment.

Incorrect invoices will not be paid in that month and will need to be submitted the following month (second month after installation Completed). They will be counted towards failure to achieve the KPI.

**All Management information** as laid out in Table 4.1 in Document 4 - Specification Section A, the information listed in Document 5 - Specification Section B – Customer Journey Annex 1A, and everything listed under paragraph 11.5 and 11.6 in this Document 7, Specification Section 7, are required to be submitted in a format agreed with the Authority by the date agreed with the Authority each month for installations Completed the month prior. [**Note: alignment required to relevant Specification items prior to contract award.**]

## 4 Performance Fees

***[Note: please also see KPI worked example and monthly invoice payment process for the performance related Performance Fees in the Annex to this Schedule. This Schedule wording will need to be updated further to reflect those positions and the winning tenderer's programme.]***

- 4.1 Each of the KPIs will be measured separately each month.
- 4.2 The Delivery Organisation shall monitor its performance against each Target KPI for the prior calendar month and shall send the Authority a report detailing the Achieved KPIs in accordance with Schedule 5 (Contract Management).
- 4.3 The Delivery Organisation shall calculate the amount of the accumulative Management Fees that have become claimable for the prior month in accordance with the following methodology:
  - 4.3.1 For each calendar month, the variable element of the Management Fee for that calendar month is calculated by identifying 30% of the total Management Fees capable of being invoiced in respect of the calendar month in question (the **Performance Maximum Amount**).
  - 4.3.2 The Performance Maximum Amount is then multiplied by the KPI weighting for each element and the 100%, 50% or 0% service level multiplier is applied.

<sup>1</sup> This will be agreed with the winning tenderer during the mobilisation period.

- 4.3.3 This will derive the amount Management Fee for that calendar month that represents the performance related element for that calendar month (the **Performance Related Management Fee**).

A worked example of this calculation is set out in Annex 1 (Worked Example) to this Schedule 2 (Performance Regime).

- 4.4 The impact of the Delivery Organisation's performance as against the Target KPIs will be discussed between the Delivery Organisation and the Authority at the Contract Management meetings and the Authority will approve or request further changes or information in relation to the **Performance Related Management Fee**.
- 4.5 From 1 August 2021 and then every month following 1 August 2021 the Delivery Organisation shall be entitled to invoice the unbilled Performance Related Management Fee for calendar months where the Authority has approved the Performance Related Management Fee on the basis that the Performance Related Management Fee is invoiced in the month following the month that the corresponding installation is invoiced.

#### **Audit of Performance Fees**

- 4.6 The Authority may carry out audits of the Delivery Organisation to confirm that the Performance Fees claimed are based on accurate measurement of performance. The Delivery Organisation must provide all information and assistance required for the purposes of the audit.
- 4.7 If the audit reveals that the actual performance is less than the performance claimed then, for that particular performance measure or measures, the Delivery Organisation will only be entitled to payment of the Performance Fees at the rate determined by the audit. If this situation arises, the Delivery Organisation will immediately issue a credit note to the value of any over-claimed Performance Fees.
- 4.8 If, in the opinion of the Authority, the Delivery Organisation fails to provide within a reasonable time, the information required to allow the audit to proceed, then the Delivery Organisation will not be entitled to payment of the Performance Fees for the performance measure(s) where the information is not provided. When this situation arises, the Delivery Organisation will immediately issue a credit note to the value of any over-claimed Performance Fees.

## **Part 2**

### **Consistent failure**

#### **1 Consistent failure**

- 1.1 In this agreement, Consistent Failure shall mean:
- (a) a failure to meet one (1) or more of the Target KPIs in a rolling 3 (three) month period; or
  - (b) a failure to earn more than 50% of the Performance Maximum Amount in a rolling two (2) month period; or
- 1.1.2 the Authority serving two (2) Remediation Notices in a rolling three (3) month period or two (2) Default Notices in a rolling two (2) month period; and/or

- 1.1.3 the Delivery Organisation repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

## Schedule 2

### Performance Regime

#### Annex 1 – Worked Example

In a calendar month the Delivery Organisation has installed Measures at 100 Dwellings and the example Management Fee per Dwelling is £100.

The basic Management Fee is  $100 \times £100 = £10,000$

The retention of 5% is deducted from this amount leaving £9,500

The remainder of the Management Fee is split as follows:

70% non-performance element may be invoiced - £6,650

30% performance related element - £2,850

KPI	KPI weighting	Service levels for levels of performance-related payments			Example performance	Example Applied payment level
		100% payment	50% payment	No payment		
1. Performance against programme	20%	≥85%	<85% but ≥70%	<70%	90%	100%
2. Right first time Installation, no rectification required	30%	≥98%	<98% but ≥90%	<90%	93%	50%
3. Customer Satisfaction	20%	≥95%	<95% but ≥90%	<90%	82%	0%
4. Timely provision of Management Data	30%	≥95%	<95% but ≥90%	<90%	97%	100%

Applied to the £2,850:

	KPI Weighting	Portion of £2,850	Example performance	Example Applied payment level	Actual Payment
KPI 1 - Available Payment	20%	£570	90%	100%	£570
KPI 2 - Available Payment	30%	£855	93%	50%	£256.50
KPI 3 - Available Payment	20%	£570	82%	0%	£0.00
KPI 4 - Available Payment	30%	£855	97%	100%	£855
					<b>£1,681.50</b>

**[Note: Regarding the monthly invoice payment process for the Performance Fees – not part of agreement – agreement wording to be updated to reflect these principles]**

**[In relation to July installations completed]**

First 10 days of August Delivery Organisation submits: 1. Measures invoices; Non Performance documentation for approval and Performance element based on what the Delivery Organisation can report on (the Delivery Organisation may not have any customer satisfaction surveys at this point).

The measures invoices that can be processed, and any returned that do not meet the requirements. This review of invoices will help the Authority understand whether the Delivery Organisation has met KPI 1 and KPI 4. The Authority will confirm how much the Delivery Organisation can invoice for the non-performance element based on the number of installations completed and appropriate management fees.

The number of invoices not eligible for payment will be based on whether the information is complete – this will give the Delivery Organisation an indication of whether the Delivery Organisation has met KPI 2.

The Authority would then pay the eligible measures invoices and the non-performance invoice in August.

**In relation to August installations completed**

This would be the same as above for July and would also include any deferred (or requested for resubmission) invoices from July.

By this time the Authority will have had the opportunity to review all the information provided, and the Delivery Organisation will be able to report on any customer satisfaction surveys, in order to provide the Authority with the calculation of what amount of performance is applicable and which the Delivery Organisation has have achieved for July.

So for clarity the payments would work as follows:

<b>Work completed month</b>	<b>Measures &amp; Non-performance invoices processed</b>	<b>Performance invoices processed</b>
July	August	September
August	September	October
September	October	November
October	November	December
November	December	January
December	January	February

]

### **Schedule 3**

#### **Delivery Organisation's Tender**



## Schedule 4

### Charges and payment

#### 1 Overall Limits on Grants & Charges

##### *Lot Area Financial Limit*

- 1.1 The Lot Area Financial Limit for this agreement shall be £**[INSERT]**, subject to such changes to such amount as may arise through operation of clauses 2 or 3 or as may otherwise be expressly agreed in writing between the Authority and the Delivery Organisation from time to time.
- 1.2 The Delivery Organisation shall not be entitled to claim, and the Authority shall not have any obligation to pay, an aggregate amount of Charges which is in excess of the Lot Area Financial Limit.

##### *Non-Capital Measures Percentage*

- 1.3 The Non-Capital Measures Percentage for this agreement shall be 10.5% (ten point five percent).
- 1.4 The Delivery Organisation shall not be entitled to claim, and the Authority shall not have any obligation to pay, an aggregate amount of Charges in respect of “non-capital” expenditure under the Scheme (such non-capital expenditure being Measure Prices for Ancillary Measures and Management Fees) which, as a percentage of the overall, aggregate amount of Charges payable under this agreement from time to time, exceeds the Non-Capital Measures Percentage.
- 1.5 Without prejudice to any other obligations on the part of the Delivery Organisation under the Specification (including obligations relating to the selection of an appropriate choice of Eligible Measure(s) for any given Dwelling in light of relevant retrofit assessments), the Delivery Organisation shall ensure that it does not install at any particular Dwelling (and accordingly does not make any particular offer of Grant to the relevant Customer in respect of) an Eligible Measure or package of Eligible Measures on a basis that would be materially inconsistent with the overall requirement set out in paragraph 1.4. For these purposes, an inconsistency of this kind would arise where the nature of the Eligible Measure or package of Eligible Measures in question installed at a particular Dwelling is such that the amount of any Management Fee claimed in respect of the relevant Dwelling PLUS the amount of any Measure Price(s) claimed in respect of one or more Ancillary Measures installed at the Dwelling would, in aggregate and expressed as a percentage of the amount of the overall Charges claimed in respect of the relevant Dwelling (taking into account the amount of the Measure Price(s) applicable to any “capital” type Eligible Measures also installed at the Dwelling), materially exceed the Non-Capital Measures Percentage.
- 1.6 Notwithstanding paragraph 1.5, if at any time the Authority reasonably considers, on the basis of information it receives from time to time as to the types of Eligible Measures being installed at Dwellings under this agreement, that the overall requirement set out in paragraph 1.4 is at risk of not being met, the Authority shall be entitled to require the Delivery Organisation to comply with such additional rules and procedures as the Authority may reasonably specify at the time, potentially including a requirement for the Delivery Organisation to seek prior written approval from the Authority, on a Dwelling by Dwelling basis, as to any Eligible Measure or package of Eligible Measures which the Delivery Organisation wishes to install for the relevant Customer under the Scheme.

### *Grant Limits*

- 1.7 The Delivery Organisation shall not be entitled to claim any Measure Price(s) in respect of a Dwelling insofar as the Total Installation Price (being the aggregate amount of the Measure Price(s) applicable to the relevant Eligible Measure(s) installed at that Dwelling) exceeds the total amount of Grant which the Delivery Organisation is permitted to offer to the relevant Customer, having regard to the Eligibility Criteria and the Landlord Grant Limit or Non-Landlord Grant Limit, as applicable. For these purposes, the relevant “standard” Grant limits (as such “standard” limits may then be adjusted on an exceptional basis in accordance with paragraph 2.6 of this Schedule) shall be as follows:-

1.7.1 the Landlord Grant Limit shall be whichever is the LOWER of: (i) £5,000 (five thousand points); and (ii) two thirds of the Total Installation Price, and

1.7.2 the Non-Landlord Grant Limit shall be whichever is the LOWER of: (i) £10,000 (ten thousand pounds); and (ii) the Total Installation Price,

subject always to relevant rules relating to Subsidy Control such that:-

1.7.3 no Customer shall be entitled to receive any amount of Grant that would cause relevant Subsidy Control rules to be breached as regards that Customer; and

1.7.4 the Delivery Organisation shall accordingly ensure that in its delivery of the Services, including as to the manner in which it provides offers of Grant to Customers, all necessary steps are taken to:-

(a) verify that any person in receipt of any particular amount of Grant is permitted, as a matter of relevant Subsidy Control rules, to receive such amount of Grant, including by way of obtaining from any such person (where applicable) any relevant declarations and/or information required for these purposes; and

(b) (notwithstanding the taking of such verification steps) to enable any amount of Grant received in breach of such rules to be clawed-back by the Delivery Organisation from the relevant person.

## **2 Calculation of the Charges**

- 2.1 Subject always to the provisions of paragraph 1 of this Schedule, the Charges shall be calculated on the basis of the prices and fees described in this Schedule. In particular:-

2.1.1 the only Charges payable under this agreement and accordingly the only amounts payable by the Authority in relation to the provision of the Services shall be as follows:-

(a) the Measures Prices (as applicable to individual Eligible Measures but only payable where all Payment Criteria for a particular Dwelling have been met);

(b) the Management Fees (payable on a per Dwelling basis where all Payment Criteria for a particular Dwelling have been met); and

(c) for certain locations in the Lot Area only, the Offshore Delivery Prices;

2.1.2 for each of the Eligible Measures in respect of which a particular price is specified in Annex 1 of this Schedule, the relevant Measure Price shall (for the avoidance of doubt) be the price specified in Annex 1, subject to any applicable adjustment in accordance with paragraph 2.4 below and the relevant mechanism set out in Annex 2 of this Schedule;

2.1.3 for any Eligible Measures in respect of which a particular price is not specified in Annex 1 of this Schedule, the relevant Measure Price shall be such price (if any) as has been specifically agreed by the Authority, in advance of the relevant Eligible Measure being installed at one or more particular Dwellings, in accordance with paragraph 2.5 below,

and, for the avoidance of doubt, the Charges referred to above:-

2.1.4 shall remain fixed during the Term; and

2.1.5 shall constitute the entire amount payable by the Authority to the Delivery Organisation in respect of the Services and shall be inclusive of, without limitation, any royalties, licence fees, supplies and all consumables used by the Delivery Organisation, travel costs, accommodation expenses and the cost of Delivery Organisation Personnel.

2.2 The Charges shall be calculated by reference to, and shall only become claimable in respect of, those Dwellings where one or more Eligible Measures have been installed as part of the Scheme and all Payment Criteria have been met and provided always that, as further described in other provisions in this Schedule, even when Charges have become claimable in respect of a particular Dwelling (because all Payment Criteria have been met):-

2.2.1 the Charges shall be subject to an initial deduction and/or retention; and

2.2.2 accordingly, the Delivery Organisation shall only be entitled, when raising its initial invoice for any such Charges, to invoice for the relevant proportion of the Charges in question and shall only become entitled to invoice for the balance of the Charges when permitted to do so by the provisions in this agreement which govern the relevant deduction or retention arrangements.

2.3 The Payment Criteria, as applicable to any particular Dwelling, are as follows:

2.3.1 each Measure installed at the relevant Dwelling and in respect of which the Delivery Organisation is seeking payment from the Authority is (for the avoidance of doubt) an Eligible Measure;

2.3.2 unless otherwise specifically agreed by the Authority in writing, the installation of all Eligible Measures which are to be installed at the relevant Dwelling by reference to the relevant Customer Offer has been Completed;

2.3.3 where by reference to relevant Eligibility Criteria a Customer Contribution is required:-

(a) the amount of such Customer Contribution, together (where applicable) with any additional contribution payable by the Customer in respect of other Measures being installed at the relevant Dwelling outside the scope of the Scheme, has been calculated and charged to the Customer in accordance with all applicable requirements under this agreement;

- (b) such Customer Contribution has been paid to the Delivery Organisation by the Customer; and
  - (c) the amount being claimed by the Delivery Organisation from the Authority by way of the balance of the cost of installing of each relevant Eligible Measure shall not, when added to the relevant Customer Contribution, exceed the total Measure Price(s) applicable to the Eligible Measure(s) in question;
- 2.3.4 with the exception of any Customer Contribution paid in accordance with paragraph 2.3.3, the Delivery Organisation has not received, and will not be receiving, any payment in respect of the installation of the Eligible Measures (whether by way of grant support or payment under the ECO scheme otherwise) other than the Measure Price or (where applicable) the balance of the Measure Price after taking into account the relevant Customer Contribution;
- 2.3.5 all relevant requirements as to the package of different Eligible Measure types that can installed at a particular Dwelling (including those requirements envisaged by paragraphs 1.5 and 1.6 of this Schedule) have been complied with;
- 2.3.6 all other Eligibility Criteria have been complied with (including, for the avoidance of doubt, as to the eligibility of the Customer to receive Grant support under the Scheme) and the Total Installation Price does not exceed the total amount of Grant which (by reference to the relevant Eligibility Criteria and paragraph 1.7 of this Schedule) the Customer is permitted to receive; and
- 2.3.7 any and all documents which are required as a matter of the Specification and/or any relevant Certification Scheme Requirements to have been produced and/or provided to the Customer on or before Completion of the installation of the relevant Eligible Measure(s) have been produced and/or provided to the Customer (as required).

#### *Exceptional Charges*

- 2.4 For any particular Eligible Measure, the Measure Price specified in Annex 1 (being the “standard” Measure Price for purposes of this paragraph) shall be subject to a percentage increase or decrease where (and only where) the circumstances applicable to a particular Dwelling at which the relevant Eligible Measure is to be installed are as described in, and within the parameters of, the Measure Price : Non Standard Dwelling adjustment mechanism set out in Annex 2 (Measure Price : Non Standard Properties) to this Schedule 4 (Charges and Payment). Alternatively, where the circumstances applicable to a particular Dwelling at which the Delivery Organisation wishes to see a particular Eligible Measure installed are outside the parameters of such adjustment mechanism, then:-
- 2.4.1 prior to making any offer to the relevant Customer under the Scheme and in any event prior to proceeding with the installation of the relevant Eligible Measure at the relevant Dwelling, the Delivery Organisation shall:-
    - (a) notify the Authority of the relevant circumstances;
    - (b) propose to the Authority for its approval such bespoke adjustment to the standard Measure Price as the Delivery Organisation determines, acting reasonably and in good faith, to be appropriate in order to achieve for the

- Delivery Organisation in the relevant circumstances a level of cost reimbursement and margin that is consistent with the basis on which the standard Measure Price (as applied to the relevant “standard” Dwelling type) was calculated; and
- (c) provide such supporting information as the Authority may reasonably request to assess the reasonableness of the Delivery Organisation’s proposal;
- 2.4.2 the Authority shall not unreasonably withhold or delay its approval of the Delivery Organisation’s proposal;
  - 2.4.3 if so approved in accordance with paragraph 2.4.2, the relevant adjusted Measure Price shall (for the avoidance of doubt) be the Measure Price which (subject to the Payment Criteria and all other relevant provisions in this agreement) the Delivery Organisation is entitled to claim from the Authority once installation of the relevant Eligible Measure has been Completed;
  - 2.4.4 if not so approved in accordance with paragraph 2.4.2, the Authority shall not have any obligation to pay any amount to the Delivery Organisation in respect of the installation of the relevant Eligible Measure at the relevant Dwelling and the Delivery Organisation shall accordingly not make any offer of Grant to the relevant Customer in respect such Eligible Measure.
- 2.5 For any Eligible Measure in respect of which a particular price is not specified in Annex 1 of this Schedule:-
- 2.5.1 prior to making any offer to any Customer under the Scheme in respect of the installation of any such Eligible Measure and in any event prior to proceeding with the installation of any such Eligible Measure at any Dwelling, the Delivery Organisation shall:-
    - (a) propose to the Authority for its approval, either as regards any particular Dwelling or (where appropriate) a particular group of Dwellings, such Measure Price as the Delivery Organisation determines, acting reasonably and in good faith, to be appropriate in order to achieve for the Delivery Organisation a level of cost reimbursement and margin that is consistent with the basis on which those Measure Prices specified in Annex 1 of this Schedule (as applied to the relevant “standard” Dwelling type) were calculated; and
    - (b) provide such supporting information as the Authority may reasonably request to assess the reasonableness of the Delivery Organisation’s proposal;
  - 2.5.2 the Authority shall not unreasonably withhold or delay its approval of the Delivery Organisation’s proposal;
  - 2.5.3 if so approved in accordance with paragraph 2.5.2, the relevant adjusted Measure Price shall (for the avoidance of doubt) be the Measure Price which (subject to the Payment Criteria and all other relevant provisions in this agreement) the Delivery Organisation is entitled to claim from the Authority once the installation of the relevant Eligible Measure has been Completed;

2.5.4 if not so approved in accordance with paragraph 2.5.2, the Authority shall not have any obligation to pay any amount to the Delivery Organisation in respect of the installation of the relevant Eligible Measure at the relevant Dwelling and the Delivery Organisation shall accordingly not make any offer of Grant to the relevant Customer in respect such Eligible Measure.

2.6 The Delivery Organisation may, with the express prior written approval of the Authority under this paragraph, structure its Scheme delivery arrangements in respect of a particular group of Dwellings/Customers such that the amount of Grant that is offered (and accordingly the Total Installation Price payable) in respect of certain Dwellings/Customers is less than the applicable standard Grant limit (as referred to in paragraph 1.7 of this Schedule) and the resulting notional amount of “underspend” of Grant is then applied by way of offering in respect of one of more other Dwellings/Customers an amount of Grant that is in excess of the applicable standard Grant limit. For these purposes:-

2.6.1 prior to making any offer to any Customer under the Scheme in respect of any amount of Grant that is in excess of the applicable standard Grant limit, the Delivery Organisation shall:-

(a) provide details to the Authority for its approval of the relevant proposed arrangements and demonstrate how the relevant increased Grant offers will be “funded” by the relevant “underspend” of Grant in relation to one or more other Customer offers; and

(b) provide such supporting information as the Authority may reasonably request to assess the reasonableness of the Delivery Organisation’s proposal;

2.6.2 the Authority shall not unreasonably withhold or delay its approval of the Delivery Organisation’s proposal;

2.6.3 if so approved in accordance with paragraph 2.6.2, the Total Installation Price applicable to the Dwelling(s) in respect of which the relevant increased Grant offer was/were made shall not become claimable until the Total Installation Price has become claimable in respect of all Dwellings to which the relevant “underspend” arrangements apply, such that the Authority is able to verify that such increased Grant offer (and correspondingly increased Total Installation Price) will be fully “funded” by the relevant “underspend” arrangements;

2.6.4 if not so approved in accordance with paragraph 2.6.2, the Authority shall not have any obligation to pay any amount to the Delivery Organisation by way of a Total Installation Price that exceeds the applicable “standard” Grant limits and the Delivery Organisation shall accordingly not make any offer of Grant to the relevant Customer that is in excess of such applicable “standard” Grant limits.

### 3 Management Fee

3.1 The Management Fee payable under this agreement, on a per Dwelling basis, shall be as follows:-

Service	Management Fee (£) excluding VAT

Management Fee per Dwelling where the Payment Criteria has been met	£[ <b>INSERT FIGURE TO BE CHARGED TO AUTHORITY</b> ]
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3.2 The Management Fee, where payable in respect of a particular Dwelling, shall be split as follows:

3.2.1 70% shall be non-performance related (**NPRDOF**) ; and

3.2.2 30% shall be performance related (**PRDOF**).

3.3 The Delivery Organisation shall be entitled to invoice the NPRDOF element of each Management Fee (less the relevant 5% retention applicable under paragraph 5 of this Schedule) in accordance with the monthly invoicing arrangements described in paragraph 6 of this Schedule.

3.4 The invoicing and payment of the PRDOF element shall be subject to the performance regime and timing for payment set out in Schedule 2 (Performance Regime).

#### **4 [Offshore Delivery Prices [Note: included in Lot 6 and 7 only – otherwise ‘Not Used’]**

4.1 [Where there is a requirement in relation to installations taking place on either the Isle of Wight or the Isles of Scilly the Delivery Organisation shall be permitted to claim and add to the relevant invoice raised in accordance with paragraph 6 in respect of a particular Dwelling any Offshore Delivery Prices which are applicable in respect of the cost of transporting both materials and installers to these locations. The Delivery Organisation acknowledges and agrees that such Offshore Delivery Prices shall not be borne across installations on the mainland by way of a cross subsidy and shall only be applicable when Installations are invoiced for works completed on these islands.

4.2 Where Offshore Delivery Prices are claimable these shall be chargeable in accordance with the Offshore Delivery Price pricing set out in Annex 3 (Delivery Prices) to this Schedule 4 (Charges and Payment).]

#### **5 Retention**

5.1 A retention of 5% will be deducted from all invoices submitted by the Delivery Organisation in respect of Charges. The deduction will take place at point of invoicing and the Delivery Organisation shall report to the Authority at the start of each month the running total of the Retention Fee during the agreement.

5.2 The Retention Fee, subject to paragraph 5.3 and any withholding of amounts pursuant to paragraph 5.4, shall be invoiced by the Delivery Organisation no sooner than 1 March 2022 and following agreement between the Delivery Organisation and the Authority over what amount shall be invoiced. Any disagreement in respect of the amount of Retention Fee to be invoiced shall be dealt with in accordance with the Dispute Resolution Procedure.

5.3 The Delivery Organisation shall not, unless agreed in writing by the Authority, submit any invoice for the Retention Fee until all Installations have been Completed, inspections carried out and any outstanding Complaints resolved.

5.4 The Authority reserves the right to deduct from the Retention Fee the cost, including the Authority's administrative costs, of arranging for a third party to undertake any obligations of the Delivery Organisation which the Delivery Organisation fails to perform satisfactorily or in a reasonable time upon written notice of request from the Authority.

## 6 Invoicing

- 6.1 Within 14 days after the end of each month in which any Charges have become claimable under this agreement (as determined by reference to paragraph 2 of this Schedule), the Delivery Organisation shall submit to the Authority:-
- 6.1.1 a fully completed report, in such form and containing such information as may reasonably be specified by the Authority (including such of the information referred to in paragraph 6.18 of this Schedule as the Authority may specify for these purposes), providing details of all relevant Dwellings in respect of which the Delivery Organisation reasonably considers that Charges became claimable in the month in question, including (for each such Dwelling) relevant Customer details and details of the relevant installed Eligible Measure(s) (such report being a “**Monthly Report**” for the purposes of this paragraph 6);
  - 6.1.2 a valid VAT invoice, in the form and containing the information referred to in paragraph 6.17 below, for each such Dwelling itemised in the Monthly Report (such that a separate invoice shall be submitted for each such Dwelling) showing the Eligible Measure(s) installed at that Dwelling and the total Measure Price(s) applicable to such Eligible Measure(s) LESS any applicable Customer Contribution and the relevant retention referred to in paragraph 5 of this Schedule (each such invoice being a “**Measures Invoice**” for the purposes of this paragraph 6); and
  - 6.1.3 such additional supporting documentation in respect of each Dwelling itemised in the Monthly Report as the Authority may reasonably require for the purposes of verifying that all relevant Payment Criteria have been met, such supporting documentation to include, on a Dwelling by Dwelling basis, the documentation set out in table 4.1 of Part A (Introduction) of Schedule 1 (Specification).
- 6.2 Within the later of: (i) 21 days after the end of each month in respect of which any Monthly Report has been submitted to the Authority; and (ii) 7 days after the date on which the relevant Monthly Report has been received by the Authority, the Authority shall notify the Delivery Organisation of the Authority’s determination of the following:-
- 6.2.1 each Dwelling (if any) referred to in such Monthly Report in respect of which the Authority, acting reasonably, is satisfied as to all of the following matters:-
    - (a) all necessary information which needs to be included in the Monthly Report has been included;
    - (b) a correctly prepared Measures Invoice has been submitted for the applicable Measure Price(s), less any applicable Customer Contribution and retention amount;
    - (c) all necessary supporting documentation (as referred to in paragraph 6.1.3) has been provided to the Authority; and
    - (d) all applicable Payment Criteria have been met,and in respect of which the Delivery Organisation’s claim for relevant Charges has accordingly been approved by the Authority;



- 6.2.2 each Dwelling (if any) referred to in such Monthly Report in respect of which the Authority, acting reasonably, is not satisfied as to one or more of the matters described in paragraph 6.2.1 and in respect of which the Delivery Organisation's claim for relevant Charges has accordingly been rejected by the Authority,

provided that if the Authority does not notify the Delivery Organisation within the relevant 21 day or 7 day period (as applicable) referred to above, the Authority shall be deemed to have given notification in respect of each Dwelling under paragraph 6.2.1.

- 6.3 In respect of all Dwellings for which the Delivery Organisation's claim for relevant Charges has been approved or deemed approved by the Authority in accordance with paragraph 6.2.1, the Delivery Organisation shall, within 7 days of receiving notification of such approval, submit to the Authority a single, valid VAT invoice, in such form and containing such information reasonably specified by the Authority, covering the NPRDOF element of the Management Fee applicable to all such Dwellings, as calculated after applying the applicable 5% retention referred to in paragraph 5 of this Schedule (each such invoice being a "**Management Fee Invoice**").
- 6.4 In respect of any Dwelling for which the Delivery Organisation's claim for relevant Charges has been rejected by the Authority in accordance with paragraph 6.2.2, the Delivery Organisation shall be entitled to submit a further claim by including such Dwelling in its Monthly Report for any following month and the provisions set out in paragraphs 6.1 and 6.2 shall apply in determining whether the relevant claim is then approved for payment in the relevant following month.
- 6.5 In respect of each Dwelling for which the Delivery Organisation's claim for relevant Charges has been approved by the Authority in accordance with paragraph 6.2.1 (such relevant Charges being those set out in the relevant Measures Invoice, plus the applicable Management Fee set out in the Management Fee Invoice):-
- 6.5.1 payment of such Charges shall be due five (5) days after receipt by the Authority of the relevant Management Fee Invoice for the month in question (**Payment Due Date**); and
- 6.5.2 the relevant total sum that the Delivery Organisation considers due at the Payment Due Date (the **Delivery Organisation's Notified Sum**) shall be the total of the amount set out in the relevant Measures Invoice, plus the applicable Management Fee set out in the relevant Management Fee Invoice.
- 6.6 Not later than five (5) days after the Payment Due Date, the Authority shall notify the Delivery Organisation of the sum (the **Authority's Notified Sum**) that the Authority considers to have been due at the Payment Due Date and the basis on which that sum is calculated (the **Payment Notice**).
- 6.7 If the Authority:
- 6.7.1 has failed to serve the Payment Notice in accordance with paragraph 6.6, the Authority shall pay the Delivery Organisation, subject to any Pay Less Notice served by the Authority under paragraph 6.9, the Delivery Organisation's Notified Sum;
- 6.7.2 serves the Payment Notice in accordance with paragraph 6.6:

- (a) the Authority shall, subject to any Pay Less Notice served by the Authority under paragraph 6.9, pay the Delivery Organisation the Authority's Notified Sum; or
  - (b) if the Authority's Notified Sum shows a balance due to the Authority, the Delivery Organisation shall, subject to any Pay Less Notice served by the Delivery Organisation under paragraph 6.9, pay to the Authority the Authority's Notified Sum.
- 6.8 The final date for payment of the relevant approved Charges (as referred to in paragraph 6.5) shall be 25 (twenty five) days after the Payment Due Date.
- 6.9 If the paying party wishes to pay less than the Authority's Notified Sum (or if paragraph 6.7 applies the Delivery Organisation's Notified Sum) it shall, not later than seven (7) days before the final date for payment (the **Prescribed Period**), serve notice on the other party specifying the amount which the payer considers to be due on the date the notice is served and the basis on which that sum is calculated (the **Pay Less Notice**).
- 6.10 Where the Delivery Organisation enters into a Sub-Contract, the Delivery Organisation shall include in that Sub-Contract:
  - 6.10.1 provisions having the same effect as paragraphs 6.5 to 6.10 of this Schedule; and
  - 6.10.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as paragraphs 6.5 to 6.10 of this Schedule,

and in this paragraph 6.10, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.
- 6.11 Where any party disputes any sum to be paid by it then, provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 7 days after resolution of the dispute between the parties.
- 6.12 Subject to paragraph 6.11, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause 12.
- 6.13 The Charges are stated exclusive of VAT and, in relation to each payment to the Delivery Organisation for any supply made under this agreement:
  - 6.13.1 the Delivery Organisation shall, when issuing any invoice under this agreement (including any Measures Invoice or Management Fee Invoice) indicate whether or not the reverse charge (as referred to below) applies to the relevant supply; and
  - 6.13.2 subject to the Delivery Organisation complying with paragraph 6.13.1 and unless the reverse charge (as referred to below) applies, the Authority shall in addition pay to the Delivery Organisation the amount of any VAT properly chargeable in respect of such supply,

and for these purposes:-

- 6.13.3 the Authority confirms to the Delivery Organisation that it is an end user for the purposes of the Value Added Tax Act 1994, the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 and the reverse charge for building and construction services in respect of all supplies to be made by the Delivery Organisation pursuant to this agreement and therefore the parties expect that the reverse charge will not apply to supplies under this agreement; and
- 6.13.4 If VAT is charged by the Delivery Organisation where it properly ought not to have been (including where it turns out that the reverse charge did in fact apply), the Delivery Organisation shall within 14 days of receipt of a written demand repay to the Authority an amount equal to the overpaid VAT and issue to the Authority an appropriate credit note.
- 6.14 The Delivery Organisation shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for six years from the end of the Contract Year to which the records relate.
- 6.15 The Authority may at any time, set off any liability of the Delivery Organisation to the Authority against any liability of the Authority to the Delivery Organisation, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 6.16 All amounts due under this agreement from the Delivery Organisation to the Authority shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).
- 6.17 Invoices shall be submitted electronically in a format standard template agreed by the Authority. Data to be included in each Measures Invoice shall include (but is not limited to):
- 6.17.1 the Customer's Unique Reference Number;
  - 6.17.2 the Customer's name;
  - 6.17.3 the address (including post code) of the Dwelling;
  - 6.17.4 all Eligible Measures installed that are being invoiced;
  - 6.17.5 the applicable Measure Price and Offshore Delivery Price (if appropriate) charged for each Eligible Measure;
  - 6.17.6 the gross amount due from the Authority;
  - 6.17.7 the net amount due from the Authority;
  - 6.17.8 VAT chargeable against measures installed. Where installations incur a 5% VAT rate this should be clearly identified.
- 6.18 Information which the Delivery Organisation may be required to include in each Monthly Report (subject to confirmation by the Authority in accordance with paragraph 6.1 above) includes the following:-
- 6.18.1 the Dwelling Type to which the Customer's Dwelling belongs;
  - 6.18.2 relevant Eligibility Criteria applicable to the Customer and evidence of their eligibility for these purpose;
  - 6.18.3 the energy rating of the Dwelling before and after the Installation.

- 6.18.4 the RRN of the post-Installation EPC;
- 6.18.5 whether the Installation was completed in accordance with KPI 1 – Percentage conversion to completion;
- 6.18.6 whether the Installation was Completed in accordance with KPI 2 - Right First Time.
- 6.18.7 each Eligible Measure installed and the date it was installed (completion date if more than a single day installation).
- 6.18.8 the amount of any Customer Contribution payable.
- 6.19 The Delivery Organisation shall maintain records of all invoices submitted by any sub-contractors to the Delivery Organisation and make these available on request to the Authority, or their representatives, for audit purposes.
- 6.20 Notwithstanding the Delivery Organisation's obligations under paragraphs 6.1 and 6.3, and without prejudice to any other right or remedy, the Authority reserves the right to refuse payment of invoices submitted more than two months after the termination or expiry of this agreement. The Delivery Organisation shall make such arrangements with any subcontractors as are necessary so that the Delivery Organisation can invoice the Authority within this timeframe.
- 6.21 The Delivery Organisation shall put in place arrangements for secure electronic transfer of invoices to the Authority in compliance with the reasonable requirements of the Authority.
- 6.22 The Delivery Organisation shall ensure that invoices are validated prior to submission to the Authority, meaning that the data fields on the invoices are compliant with the reasonable requirements of the Authority (including, by way of illustration, that dates are expressed in a particular format).
- 6.23 The Delivery Organisation shall put in place arrangements for ensuring that invoices are compliant with this agreement and any regulations prior to submission and that any deductions or other rules are applied to any relevant Installations.

## **7 Termination Payment Default**

- 7.1 In the event that at any time undisputed Charges of £[**15% of the Lot Area Financial Limit**] have been overdue for payment for a period of 60 days or more, the Authority will have committed a Termination Payment Default.

## **8 Clawback**

- 8.1 Without prejudice to any other right or remedy which the Authority may have, where the Authority pays any Charges to the Delivery Organisation in the belief that all Payment Criteria and other applicable requirements have been met and that the Charges have been correctly calculated, but the Authority subsequently determines either that any relevant Payment Criteria or other applicable requirements had not been met and/or that any relevant calculation was incorrect (resulting in an overpayment by the Authority) then the Authority shall be entitled to clawback the relevant amount paid to the Delivery Organisation (whether the full amount of the relevant Charges where particular Payment Criteria or other applicable requirements had not been met or such lesser amount as may be applicable in the circumstances). For these purposes:-
  - 8.1.1 the Authority may, at its option, elect to apply its rights of set-off and deduct the relevant amount to be clawed-back from the Delivery Organisation from any other sum due to be payable by the Authority to the Delivery Organisation; or

- 8.1.2 the Authority may require the Delivery Organisation to pay the relevant amount to the Authority within 14 days of the Delivery Organisation receiving a written notice to this effect.

#### **Schedule 4**

#### **Charges and Payment**

#### **Annex 1 - Measure Prices**

***[INSERT TABLE OF PRICING]***

**Schedule 4**  
**Charges and Payment**

**Annex 2 - Measure Price : Non Standard Properties**

***[INSERT Non-Standard property pricing system. This will require a description of the mechanism and exactly how it will be applied.]***

**Schedule 4**  
**Charges and Payment**

**Annex 3 – Offshore Delivery Prices**

***[Note: applicable to Lot 6 and 7 only to relate to delivery prices to the Isle of Wight and the Isles of Scilly. Figures to be added in from pricing submission.]***



## Schedule 5

### Contract management

#### **1 Authorised representatives**

- 1.1 The Authority's initial Authorised Representative: [INSERT DETAILS]
- 1.2 The Delivery Organisation's initial Authorised Representative: [INSERT DETAILS]

#### **2 Key personnel**

- 2.1 For the Authority - [**contract manager**] – [**name**]
- 2.2 For the Authority – [**senior person to contract manager**] – [**name**]
- 2.3 For the Delivery Organisation - [**contract manager**] – [**name**]
- 2.4 For the Delivery Organisation – [**senior responsible manager** - [**name**]
- 2.5 For the Delivery Organisation – [**Supply Chain Manager**] – [**name**]
- 2.6 For the Delivery Organisation – [**Marketing/Comms**] – [**name**]

#### **3 Reports and Meetings**

- 3.1 The Delivery Organisation shall provide such reports and meet with Authority as set out in Schedule 1 (Specification).

## Schedule 6

### Mediation

- 1.1. The procedure for mediation is as set out in this Schedule 6.
- 1.2. For the purposes of this Schedule 6, the following terms are defined as follows:

“**CEDR**” means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU ([www.cedr.com](http://www.cedr.com))

“**Contract Mediator**” means a neutral adviser or mediator chosen by agreement between the Parties.
- 1.3. A Contract Mediator shall be appointed or, if the Parties are unable to agree upon a Contract Mediator within 10 Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Contract Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator.
- 1.4. The Parties shall within 10 Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 1.5. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 1.6. If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 1.7. Failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

## **Schedule 7**

### **Change control**

- 1 General principles
  - 1.1 Where the Authority or the Delivery Organisation sees a need to change this agreement, the Authority may at any time request, and the Delivery Organisation may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 7 (Change Control).
  - 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Authority and the Delivery Organisation shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
  - 1.3 Any discussions which may take place between the Authority and the Delivery Organisation in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
  - 1.4 Any work undertaken by the Delivery Organisation and the Delivery Organisation Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 7 (Change Control), shall be undertaken entirely at the expense and liability of the Delivery Organisation.
- 2 Procedure
  - 2.1 Discussion between the Authority and the Delivery Organisation concerning a Change shall result in any one of the following:
    - 2.1.1 no further action being taken; or
    - 2.1.2 a request to change this agreement by the Authority; or
    - 2.1.3 a recommendation to change this agreement by the Delivery Organisation.
  - 2.2 Where a written request for a Change is received from the Authority, the Delivery Organisation shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Delivery Organisation to the Authority within three weeks of the date of the request.
  - 2.3 A recommendation to amend this agreement by the Delivery Organisation shall be submitted directly to the Authority in the form of two copies of a Change Control Note signed by the Delivery Organisation at the time of such recommendation. The Authority shall give its response to the Change Control Note within three weeks.
  - 2.4 Each Change Control Note shall contain:
    - 2.4.1 the title of the Change;
    - 2.4.2 the originator and date of the request or recommendation for the Change;
    - 2.4.3 the reason for the Change;

- 2.4.4 full details of the Change, including any specifications;
  - 2.4.5 the price, if any, of the Change;
  - 2.4.6 a timetable for implementation, together with any proposals for acceptance of the Change;
  - 2.4.7 a schedule of payments if appropriate;
  - 2.4.8 details of the likely impact, if any, of the Change on other aspects of this agreement including:
    - (a) the timetable for the provision of the Change;
    - (b) the personnel to be provided;
    - (c) the Charges;
    - (d) the Documentation to be provided;
    - (e) the training to be provided;
    - (f) working arrangements;
    - (g) other contractual issues;
  - 2.4.9 the date of expiry of validity of the Change Control Note;
  - 2.4.10 provision for signature by the Authority and the Delivery Organisation; and
  - 2.4.11 if applicable, details of how costs incurred by the parties if the Change subsequently results in the termination of this agreement under clause 31.1.6 will be apportioned.
- 2.5 For each Change Control Note submitted by the Delivery Organisation the Authority shall, within the period of the validity of the Change Control Note:
- 2.5.1 allocate a sequential number to the Change Control Note; and
  - 2.5.2 evaluate the Change Control Note and, as appropriate:
    - (a) request further information;
    - (b) accept the Change Control Note by arranging for two copies of the Change Control Note to be signed by or on behalf of the Authority and return one of the copies to the Delivery Organisation; or
    - (c) notify the Delivery Organisation of the rejection of the Change Control Note.
- 2.6 A Change Control Note signed by the Authority and by the Delivery Organisation shall constitute an amendment to this agreement.

## **Schedule 8**

### **Benchmarking**

#### **1 Interpretation**

- 1.1 The definitions in this paragraph apply in this schedule.
- 1.2 Benchmark Review: shall have the meaning in paragraph 2.
- 1.3 Benchmarked Services: the Services taken as a whole.
- 1.4 Benchmarker: the independent third party appointed by the Authority following discussions with the Delivery Organisation under of this Schedule 8 (Benchmarking).
- 1.5 Benchmarking Report: the report produced by the Benchmarker following a Benchmark Review.
- 1.6 Comparison Sample: a sample of organisations providing Equivalent Services identified in accordance with paragraph 5.1.4 of this Schedule 8 (Benchmarking).
- 1.7 Equivalent Services: services that are identical, or similar in all material respects, to the Services (including in terms of scope, specification, volume and quality of performance) that are generally available within the UK and are supplied to a customer similar in size and nature to the Authority over a similar period.
- 1.8 Good Value: as defined in paragraph 3.2
- 1.9 Median Price: in relation to the Equivalent Services provided by a Comparison Sample, the median price of the relevant services over the previous 12-month period. In the event that there are an even number of organisations in the Comparison Sample then the Median Price will be the arithmetic mean of the middle two prices.

#### **2 Benchmark Review**

- 2.1 The Authority may, by written notice, require a Benchmark Review of the Services in accordance with the provisions of this Schedule 8 (Benchmarking). The first Benchmark Review may not take place until at least 18 months after the Commencement Date and each subsequent Benchmark Review must be at least 12 months after the previous one.
- 2.2 Subject to paragraph 2.4, if any Benchmark Review determines that the Charges do not represent Good Value, then the Delivery Organisation shall, in accordance with Schedule 7 (Change Control) and within three months of completion of the Benchmark Review, make a proposal for a changes to the Services, with Charges representing Good Value in accordance with the recommendations of the Benchmarker under paragraph 6.1.3, under which there will be a new Initial Term, and modifications may be made to the Services and the KPIs.
- 2.3 On receipt of the proposal from the Delivery Organisation under paragraph 2.2 the Authority shall have the option to:
  - 2.3.1 accept the new proposal in which case the Parties shall record the change in accordance with Schedule 7 (Change Control);

- 2.3.2 reject the proposal and elect to continue to receive the Services on the existing basis; or
  - 2.3.3 reject the proposal and terminate this agreement on three months' notice in writing to the Delivery Organisation without cost other than the Charges up to the date of such termination.
- 2.4 If the Delivery Organisation reasonably believes the Benchmarker has not complied with the provisions of this Schedule 8 (Benchmarking) in any material respects, or that the Benchmarker has made a manifest error in determining the results of the Benchmark Review, the Delivery Organisation may dispute the Benchmark Report and the matter shall be dealt with in accordance with the Dispute Resolution Procedure.

### **3 Purpose and scope of benchmark review**

- 3.1 The purpose of the Benchmark Review shall be to establish whether the Services as a whole are Good Value.
- 3.2 The Benchmarked Services as a whole shall be Good Value if the Fees attributable to the Services are, having regard to the KPIs, less than or equal to 10% more than the Median Price for Equivalent Services provided by a Comparison Sample.

### **4 Appointment of Benchmarker**

- 4.1 Each Benchmark Review shall be performed by an independent third party appointed by agreement between the parties. If the parties cannot agree on the independent third party within 10 Working Days of receipt by the Delivery Organisation of the Authority's written request, then the selection of an appropriate Benchmarker shall be referred to RICS.
- 4.2 The Authority has the right at any time to require the Benchmarker to enter into an appropriate and reasonable confidentiality undertaking directly with it.
- 4.3 Each party shall bear its own costs relating to a Benchmark Review, save that the costs and expenses of the Benchmarker shall be shared equally by the parties.
- 4.4 The Benchmarker shall conduct the Benchmark Review by applying the following general principles and criteria:
  - 4.4.1 benchmarking shall be carried out in an independent and objective manner;
  - 4.4.2 the Benchmarker shall be jointly instructed by the parties;
  - 4.4.3 benchmarking shall be truly comparative in respect of the technology, services and KPIs;
  - 4.4.4 benchmarking shall be structured and undertaken in a way that causes the minimum disruption possible; and
  - 4.4.5 immediately following selection of the Benchmarker, the parties and the Benchmarker shall agree the general principles and method of benchmarking.
- 4.5 The Delivery Organisation shall not be deemed to be in breach for any failure to perform any obligation under this agreement where such failure results from any

disruption to the Delivery Organisation's performance as a result of disruption caused by the Benchmarker.

## **5 Benchmarking process**

- 5.1 The Authority's instructions to the Benchmarker shall require the Benchmarker to produce, and to send to each party for approval, a draft plan for the Benchmark Review within 5 Working Days after the date of appointment of the Benchmarker. The plan shall include:
- 5.1.1 a proposed timetable for the Benchmark Review (including for delivery of the Benchmarking Report);
  - 5.1.2 a description of the information that the Benchmarker requires each party to provide;
  - 5.1.3 a description of the benchmarking methodology to be used; and
  - 5.1.4 details of any organisations providing Equivalent Services which the Authority proposes, having consulted with the Delivery Organisation (and including any organisations providing Equivalent Services reasonably proposed by the Delivery Organisation), are included within the Comparison Sample.]
- 5.2 In carrying out the benchmarking analysis, the Benchmarker shall have regard to the following matters when performing a comparative assessment of the Benchmarked Services:
- 5.2.1 the contractual and business environment under which the Equivalent Services are being provided;
  - 5.2.2 any front-end investment and development costs; and
  - 5.2.3 the Delivery Organisation's risk profile, including the financial, performance or liability risk (including any limitation or exclusion or limitation of the Delivery Organisation's liability under this agreement) associated with the provision of the Equivalent Services as a whole.
- 5.3 Each party shall give notice in writing to the Benchmarker and to the other party within 5 Working Days after receiving the draft plan, advising whether it approves the draft plan or, if it does not approve the draft plan, suggesting amendments to that plan. Neither party may unreasonably withhold its approval of the draft plan and any suggested amendments shall be reasonable.
- 5.4 Where a party suggests amendments to the draft plan under paragraph 5.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. paragraph 5.2 shall apply to any amended draft plan. If the Benchmarker believes that the suggested amendments are not reasonable then the Benchmarker shall discuss the amendments with the parties to reach a resolution. If the parties are unable to agree a resolution within 10 Working Days of the matter first being referred to each of them by the Benchmarker for discussion, then such matter shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.5 Failure by a party to give notice under paragraph 5.3 shall be treated as approval of the draft plan by that party.

- 5.6 Once the plan is approved by both parties, the Benchmarker shall carry out the Benchmark Review in accordance with it. Each party shall, to the extent it is not precluded from doing so by confidentiality obligations owed to third parties, provide the information described in the plan, together with any additional information reasonably required by the Benchmarker.
- 5.7 The Benchmarker shall share with the parties, in an even-handed manner, all data relating to the Benchmarking and the Benchmarking Report to the extent that it is lawfully able to do so.
- 5.8 In conducting the Benchmark Review, the Benchmarker shall apply correction factors to the information to take account of reasons for difference in accordance with his professional judgement. Such normalisation information shall be available for approval by the parties before the production of the Benchmarking Report.
- 5.9 The Benchmarker shall perform the Benchmark Review in a fully transparent and open manner, and shall promptly provide the Authority and the Delivery Organisation with full details of all data and methodologies employed at all stages of the Benchmark Review.

## **6 Benchmark report**

- 6.1 The Benchmarker shall prepare a Benchmark Report setting out its findings. Those findings shall:
- 6.1.1 include a finding as to whether or not the Benchmarked Services as a whole are Good Value;
  - 6.1.2 include other findings regarding the quality and competitiveness or otherwise of the Services; and
  - 6.1.3 if the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Services, and in particular to the Charges, that would be required to make the Benchmarked Services Good Value.
- 6.2 If the Benchmark Report states that the Services, Charges or KPIs (or any part of them) that are benchmarked are not Good Value then paragraph 2.2 shall apply.



## **Schedule 9**

### **Exit Plan**

#### **1. Purpose of Schedule**

- 1.1 The Delivery Organisation is required to ensure the orderly transition of the Services from the Supplier to the Authority or any Delivery Organisation in the event of any termination (including partial termination) or expiry of this agreement. This Schedule sets out the principles of the exit and service transition arrangements which are intended to achieve this and upon which the Exit Plan shall be based.
- 1.2 For the avoidance of doubt, the Delivery Organisation is responsible for the overall management of the exit and Service transfer arrangements.

#### **2. Exit Plan**

The Exit Plan shall:

- (a) address each of the issues set out in this Schedule 9 (Exit Plan) to facilitate the transition of the Services from the Delivery Organisation to the Replacement Delivery Organisation and/or the Authority and shall ensure that there is no disruption in the supply of the Services and no deterioration in the quality of delivery of the Services;
- (b) detail what data, information and material relevant to the progress and delivery of the Scheme will be transferred;
- (c) detail how the Services will transfer to the Replacement Delivery Organisation and/or the Authority including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components run by the Delivery Organisation or any of its Subcontractors (where applicable);
- (d) provide a timetable and identify critical issues for carrying out the transition; and
- (e) set out the management structure to be put in place and employed during the transition.

#### **3. Obligations during the Term**

- 3.1 The Delivery Organisation shall be responsible for ensuring that the Delivery Organisation and its employees, agents and Subcontractors comply with this Schedule. The Delivery Organisation shall ensure that its exit manager has the requisite authority to arrange and procure any resources of the Delivery Organisation as are reasonably necessary to enable the Delivery Organisation to comply with this Schedule 9 (Exit Plan). The Delivery Organisation shall liaise with the Authority in relation to all issues relevant to termination or expiry and all matters connected with this Schedule 9 and each party's compliance with it.
- 3.2 During the Term, the Delivery Organisation shall:
- (a) create and maintain a register of all Subcontracts and other agreements required to perform the Services;

- (b) create and maintain a database setting out the Delivery Organisation's technical infrastructure through which the Services are delivered. Such database shall be capable of allowing staff of the Replacement Delivery Organisation and/or the Authority to acquire sufficient technical understanding of how the Delivery Organisation provides the Services to ensure the smooth transition of the Services with the minimum of disruption; and
- (c) at all times keep the registers and database up to date and shall maintain copies of any agreements referred to in any register.

3.3 The Supplier shall comply with all of its obligations contained in the Exit Plan.

## Schedule 10

### TUPE

#### 1. Definitions

In this Schedule, the following definitions shall apply:

Employee Liabilities	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> <li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>(b) unfair, wrongful or constructive dismissal compensation;</li> <li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</li> <li>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</li> <li>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</li> <li>(f) employment claims whether in tort, contract or statute or otherwise;</li> <li>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</li> </ul>
Employment Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive;
Former Supplier	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
Relevant Transfer	a transfer of employment to which the Employment Regulations applies;
Relevant Transfer Date	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Replacement Services	any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
Replacement Supplier	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
Replacement Sub-contractor	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such Sub-contractor);
Service Transfer	any transfer of the Services (or any part of the Services), for whatever reason, from the Delivery Organisation or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
Service Transfer Date:	the date of a Service Transfer;
Staffing Information	<p>in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA 1998), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement and gender;</li> <li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting Party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;</li> <li>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant</li> </ul>

	standard contracts if applied generally in respect of such employees); and  (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;
Supplier Personnel	all directors, officers, employees, agents, consultants and contractors of the Delivery Organisation and/or any Sub-contractor engaged in the performance of the Delivery Organisation's obligations under this Agreement;
Supplier's Final Personnel List	a list provided by the Delivery Organisation of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;
Supplier's Provisional Personnel List	a list prepared and updated by the Delivery Organisation of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Delivery Organisation;
Transferring Supplier Employees	those employees of the Delivery Organisation and/or the Delivery Organisation's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## 2. Interpretation

Where a provision in this Schedule imposes an obligation on the Delivery Organisation to provide an indemnity, undertaking or warranty, the Delivery Organisation shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

### NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

3. The Authority and the Delivery Organisation agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

### EMPLOYMENT EXIT PROVISIONS

#### 4. Pre-service transfer obligations

- 4.1 The Delivery Organisation agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and

- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the DPA 1998, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Authority.

4.2 At least 28 Working Days prior to the Service Transfer Date, the Delivery Organisation shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).

4.3 The Authority shall be permitted to use and disclose information provided by the Delivery Organisation under clause 4.1 and clause 4.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

4.4 The Delivery Organisation warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to clause 4.1 and clause 4.2 shall be true and accurate in all material respects at the time of providing the information.

4.5 From the date of the earliest event referred to in clause 4.1(a), clause 4.1(b) and clause 4.1(c), the Delivery Organisation agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Delivery Organisation or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.

- 4.6 During the Term, the Delivery Organisation shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

- 4.7 The Delivery Organisation shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Delivery Organisation shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and

- (f) bank/building society account details for payroll purposes.

**5. Employment regulations exit provisions**

- 5.1 The Authority and the Delivery Organisation acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Delivery Organisation further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Delivery Organisation and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 5.2 The Delivery Organisation shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Delivery Organisation and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 5.3 Subject to clause 5.4, the Delivery Organisation shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
  - (a) any act or omission of the Delivery Organisation or any Sub-contractor whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Delivery Organisation or any Sub-contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or



- (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Delivery Organisation or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Delivery Organisation or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Delivery Organisation to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Delivery Organisation or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Delivery Organisation or any Sub-contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Delivery Organisation or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- 5.4 The indemnities in clause 5.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
  - (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 5.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Delivery Organisation or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Delivery Organisation; and
  - (b) the Delivery Organisation may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 5.6 If such offer is accepted, or if the situation has otherwise been resolved by the Delivery Organisation or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 5.7 If after the 15 Working Day period specified in clause 5.5(b) has elapsed:
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 5.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of clause 5.5 to clause 5.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Delivery

Organisation shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of clause 5.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

5.9 The indemnity in clause 5.8:

- (a) shall not apply to:
  - (i) in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
  - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in clause 5.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Delivery Organisation within six months of the Service Transfer Date.

5.10 If any such person as is described in clause 5.5 is neither re-employed by the Delivery Organisation or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in clause 5.5 to clause 5.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-contractor shall comply with such obligations as may be imposed upon it under applicable Law.

5.11 The Delivery Organisation shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (a) the Delivery Organisation and/or any Sub-contractor; and
- (b) the Replacement Supplier and/or the Replacement Sub-contractor.

5.12 The Delivery Organisation shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement

Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Delivery Organisation and each Sub-contractor in writing such information as is necessary to enable the Delivery Organisation and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5.13 Subject to clause 5.14, the Authority shall procure that the Replacement Supplier indemnifies the Delivery Organisation on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor;
- (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Delivery Organisation in writing;

- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Delivery Organisation or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

5.14 The indemnities in clause 5.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Delivery Organisation and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Delivery Organisation and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **Schedule 11**

### **Commercially sensitive information**

**[DETAILS OF ANY DELIVERY ORGANISATION INFORMATION TO BE CLASSIFIED AS  
COMMERCIALLY SENSITIVE]**

**Schedule 12**

**Not Used**

**Schedule 13**

**Not used**



## Schedule 14

### Data Protection Appendix

- 1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority will act as the Controller and the Delivery Organisation may act as Processor, or as a joint Controller, depending on the purposes for processing agreed between the parties. The processing that the Delivery Organisation is authorised by the Authority to do as Processor is listed in Annex 1 to this Schedule (Processing Personal Data as Processor) and may not be determined by the Delivery Organisation. The processing that the Delivery Organisation is authorised by the Authority to do as Controller is listed in Annex 2 to this Schedule (Processing Personal Data as Controller) and may be determined by the Authority jointly with the Delivery Organisation.
- 2 The Delivery Organisation shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 3 The Delivery Organisation shall provide all reasonable assistance to the Authority in the preparation of any data protection impact assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
  - 3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 4 The Delivery Organisation shall implement all appropriate technical and organisational measures to ensure a level of security appropriate to protect the Personal Data it processes under this agreement in compliance with the Data Protection Legislation.
- 5 The Delivery Organisation shall, in relation to any Personal Data processed in connection with its obligations under this agreement:
  - 5.1 process that Personal Data only in accordance with Annex 1 (Processing Personal Data as Processor) or Annex 2 (Processing Personal Data as Controller), as applicable in the circumstances, unless the Delivery Organisation is required to do otherwise by Law. If it is so required the Delivery Organisation shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - 5.2 ensure that it has in place Protective Measures which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    - 5.2.1 nature of the data to be protected;
    - 5.2.2 harm that might result from a Data Loss Event;
    - 5.2.3 state of technological development; and

- 5.2.4 cost of implementing any measures;
- 5.3 ensure that :
  - 5.3.1 the Delivery Organisation Personnel do not process Personal Data except in accordance with this Data Protection Appendix (and in particular Annex 1 (Processing Personal Data as Processor) or Annex 2 (Processing Personal Data as Controller) (as applicable);
  - 5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Delivery Organisation Personnel who have access to the Personal Data and ensure that they:
    - (a) are aware of and comply with the Delivery Organisation's duties under this Data Protection Appendix;
    - (b) are subject to appropriate confidentiality undertakings with the Delivery Organisation or any Sub-Processor;
    - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this agreement; and
    - (d) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 5.4 not transfer Personal Data outside of the UK or the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - 5.4.1 the Authority or the Delivery Organisation has provided appropriate safeguards in relation to the transfer as determined by the Authority;
  - 5.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 5.4.3 the Delivery Organisation complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
  - 5.4.4 the Delivery Organisation complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 5.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of this agreement unless the Delivery Organisation is required by Law to retain the Personal Data.
- 6 The Delivery Organisation shall notify the Authority within 48 hours if it:
  - 6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 6.2 receives a request to rectify, block or erase any Personal Data;

- 6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 6.4 receives any communication from the ICO or any other regulatory authority in connection with Personal Data processed under this agreement;
- 6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 6.6 becomes aware of a Data Loss Event.
- 7 The Delivery Organisation's obligation to notify under paragraph 6 above shall include the provision of further information to the Authority in phases, as details become available.
- 8 Taking into account the nature of the processing, the Delivery Organisation shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made to either the Delivery Organisation or the Authority by any Data Subject in relation to Personal Data processed under this agreement (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - 8.1 the Authority with full details and copies of the complaint, communication or request;
  - 8.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with the request within the relevant timescales set out in the Data Protection Legislation;
  - 8.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 8.4 assistance as requested by the Authority following any Data Loss Event;
  - 8.5 assistance as requested by the Authority with respect to any request from the ICO, or any consultation by the Authority with the ICO;
  - 8.6 non-automated verification of any automated decision making where the Data Subject of the decision requests for that automated decision to be verified.
- 9 The Delivery Organisation shall maintain complete and accurate records and information to demonstrate its compliance with this Data Protection Appendix. This requirement does not apply where the Delivery Organisation employs fewer than 250 staff, unless:
  - 9.1 the Authority determines that the processing is not occasional;
  - 9.2 the Authority determines the processing includes special category personal data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 9.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10 The Delivery Organisation shall allow for audits of its Personal Data Processing activity by the Authority or the Authority's designated auditor.

- 11 The Delivery Organisation shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 12 Before allowing any Sub-Processor to process any Personal Data related to this agreement, the Delivery Organisation must:
  - 12.1 notify the Authority in writing of the intended Sub-Processor and processing;
  - 12.2 obtain the written consent of the Authority;
  - 12.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Data Protection Appendix such that they apply to the Sub-Processor; and
  - 12.4 provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require.
- 13 The Delivery Organisation shall remain fully liable for all acts or omissions of any Sub-Processor.
- 14 The Delivery Organisation undertakes to enter into a data processing agreement with any Scheme Affiliate who, acting in its capacity as a Controller, will be Processing and/or receiving or accessing Personal Data from the Delivery Organisation on terms which are substantially the same as those agreed between the Authority and the Delivery Organisation relating to the processing of Personal Data. Without limitation, it is envisaged that data processing agreements will be required to be entered by the Delivery Organisation with the following Scheme Affiliates:
  - 14.1 Trustmark;
  - 14.2 OFGEM;
- 15 The Delivery Organisation may, at any time on not less than 30 Working Days' notice, revise this Data Protection Appendix by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).
- 16 The Parties agree to take account of any guidance issued by the ICO. The Authority may on not less than 30 Working Days' notice to the Delivery Organisation amend this agreement to ensure that it complies with any guidance issued by the ICO.

**Annex 1 - Processing Personal Data as Processor [Note: to be completed / updated at contract award]**

1. The contact details of the Authority Data Protection Officer are:

Name:

Email:

Telephone:

2. The contract details of the Delivery Organisation Data Protection Officer are:

Name:

Email:

Telephone:

3. The Processor shall comply with any further written instructions with respect to processing by the Controller.

4. Any such further instructions shall be incorporated into this Annex.

Description Of Authorised Processing	Details
Identity of the Controller and Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Delivery Organisation is the Processor in accordance with paragraph 1 of the Data Protection Appendix.
Subject matter of the processing	<p>Of the activities being conducted under this agreement, the Delivery Organisation shall act as Processor for the following:</p> <ul style="list-style-type: none"><li>When processing any information where the applicant has been in receipt of assistance via other government grant schemes (e.g. ECO, RHI, GHG LAD, Green Deal etc.).</li></ul> <p>The subject matter of the processing is to enable the Delivery Organisation to provide the Services described in this agreement.</p> <p>In relation to applicants, the purpose is for the assessment of access to, the Scheme.</p>
Duration of the processing	The data will be kept for the duration of the Scheme, plus as long as is necessary for monitoring and evaluation, and thereafter following final closure of the Scheme in accordance with the applicable data retention policies from time to time in force.

Nature and purposes of the processing	<p>The nature of the processing includes the collection, recording, organisation, structuring, storage, adaptation or alteration (where necessary), retrieval, consultation, use, sharing, erasure and destruction of data.</p> <p>The purpose of the processing is the delivery of the Scheme.</p>
Type of Personal Data	<p>The processing may comprise the following types of personal data:</p> <p><b>Personal Data</b></p> <ul style="list-style-type: none"> <li>• Name of data subject</li> <li>• Contact details including address, telephone number and email address</li> <li>• Summary of eligibility criteria including benefit information</li> <li>• Home-ownership/tenure status and related information</li> <li>• Information where the applicant has been in receipt of assistance via other government grant schemes (e.g. ECO, RHI, GHG LAD, Green Deal etc.)</li> <li>• Authority account data</li> </ul> <p><b>Special category personal data</b></p> <ul style="list-style-type: none"> <li>• The nine protected characteristics set out under the public sector equality duty: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation</li> <li>• Health conditions</li> <li>• Ethnicity</li> <li>• Gender</li> </ul> <p><b>Other information which does not constitute personal data but may be processed</b></p> <ul style="list-style-type: none"> <li>• Size and composition of household</li> <li>• Number of children or older household members (if any)</li> <li>• Annual income</li> <li>• Receipt of benefits</li> <li>• Education level</li> </ul>

	<ul style="list-style-type: none"> <li>• Whether long-standing limiting illness in household</li> <li>• Authority referral source</li> <li>• Authority source for initial awareness</li> </ul>
Categories of Data Subject	<ul style="list-style-type: none"> <li>• Staff (including volunteers, agents, and temporary workers)</li> <li>• Applicants and other household members</li> <li>• Installers</li> </ul>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data to be returned or destroyed in accordance with the instructions of the Authority

## Annex 2 - Processing Personal Data as Controller

1. The contact details of the Authority Data Protection Officer are:

Name:

Email:

Telephone:

2. The contact details of the Delivery Organisation Data Protection Officer are:

Name:

Email:

Telephone:

3. Under the circumstances described in the table below, the Authority and the Delivery Organisation shall jointly act as Controllers of the Personal Data and further written instructions with respect to processing undertaken by the Delivery Organisation when acting as a Controller will be provided by the Authority.

4. Any such further instructions shall be incorporated into this Annex 2.

Description Of Authorised Processing	Details
Identity of the Controller and Processor	The Parties acknowledge that they are joint Controllers for the purposes of the Data Protection Legislation in respect of the Personal Data which the purposes and means of the processing is determined by the both Parties as detailed in this Annex 2.
Subject matter of the processing	<p>Of the activities being conducted under this agreement, the Authority and the Delivery Organisation shall act as joint Controllers for the following:</p> <ul style="list-style-type: none"><li>• Scheme delivery</li><li>• Monitoring</li><li>• Post-payment audits</li></ul> <p>The subject matter of the processing is to enable the Delivery Organisation to provide the Services described in this agreement.</p> <p>In relation to applicants, the purpose is for the assessment of access to, and redemption of, the Scheme.</p>
Duration of the processing	The data will be kept for the duration of the Scheme, plus as long as is necessary for monitoring and evaluation, and thereafter following final closure of the Scheme in accordance with the applicable data retention policies from time to time in force.



Nature and purposes of the processing	<p>The nature of the processing includes the collection, recording, organisation, structuring, storage, adaptation or alteration (where necessary), retrieval, consultation, use, sharing, erasure and destruction of data.</p> <p>The purpose of the processing is the delivery of the Scheme.</p>
Type of Personal Data	<p>The personal data processed may comprise the following types of personal data:</p> <p><b>Personal Data</b></p> <ul style="list-style-type: none"> <li>• Name of data subject</li> <li>• Contact details including address, telephone number and email address</li> <li>• Summary of eligibility criteria including benefit information</li> <li>• Home-ownership/tenure status and related information</li> <li>• Information where the applicant has been in receipt of assistance via other government grant schemes (e.g. ECO, RHI, GHG LAD, Green Deal etc.)</li> <li>• Authority account data</li> </ul> <p><b>Special category personal data</b></p> <ul style="list-style-type: none"> <li>• The nine protected characteristics set out under the public sector equality duty: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation</li> <li>• Health conditions</li> <li>• Ethnicity</li> <li>• Gender</li> </ul> <p><b>Other information which does not constitute personal data but may be processed</b></p> <ul style="list-style-type: none"> <li>• Size and composition of household</li> <li>• Number of children or older household members (if any)</li> <li>• Annual income</li> <li>• Receipt of benefits</li> <li>• Education level</li> </ul>

	<ul style="list-style-type: none"> <li>• Whether long-standing limiting illness in household</li> <li>• Authority referral source</li> <li>• Authority source for initial awareness</li> </ul>
Categories of Data Subject	<ul style="list-style-type: none"> <li>• Staff (including volunteers, agents, and temporary workers)</li> <li>• Applicants and other household members</li> <li>• Installers</li> </ul>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Data to be returned or destroyed in accordance with the instructions of the Authority