

DATED _____ **2018/19**

**ENERGY COMPANY OBLIGATION (“ECO”) SCHEME
REFERRAL AND DATA SHARING AGREEMENT**

between

LEICESTER CITY COUNCIL

and

[]

THIS AGREEMENT is made on the day of 2018

between

(1) **LEICESTER CITY COUNCIL** of City Hall, 115 Charles Street, Leicester, LE1 1FZ (the “**Council**”)

and

(2) [] (Company Number), whose registered office is at []; (“the **ECO3 Scheme Delivery Contractor**”)

(each a **Party**, together the **Parties**)

RECITALS

- (A) Pursuant to the 2012 Order and the ECO Order (as defined below), energy companies are required to promote the implementation of energy efficiency measures in domestic premises to achieve certain targets in accordance with the ECO Order (“the **Scheme**”) (i) a carbon emissions reduction target, (ii) a carbon saving community target and (iii) a home heating cost reduction target (collectively the “**ECO Targets**”) and in seeking to fulfil the obligations under the ECO Order the Energy Companies wish to work with the Council who are an established route for the public to make enquiries about the Scheme.
- (B) The Council and the Energy Company are entering into this Agreement to record how the personal data of the public will be processed when providing their referrals for the scheme and to record the terms upon which the Council will record the completed works.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 The definitions and rules of interpretation set out in this clause 1 apply in this Agreement:

2012 Order: the Electricity and Gas (Energy Companies Obligation) Order 2012 (as amended).

Affiliate: means a company which is a subsidiary or holding company of the ECO3 Scheme Delivery Contractor or any company which is a subsidiary or holding company of such holding company or any other company within the group of companies (where “subsidiary” and “holding company” have the meanings given to them in section 1159 of the Companies Act 2006).

Confidential Information: means information of a confidential nature, including trade secrets and information of commercial value, disclosed by either Party, its employees, officers or representatives to the other Party.

Commencement Date: the date of this Agreement.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the ECO3 Scheme Delivery Contractor 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.

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Subject Access Request: a request made by, or on behalf of a data subject in accordance with the rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Domestic Premises: has the meaning given to it in the ECO Order.

DPA 2018: Data Protection Act 2018.

ECO3 Scheme Delivery Contractor: means the company listed above as a Party to this Agreement together with any Affiliate and any installer companies acting on behalf of the company.

ECO Order: the Electricity and Gas (Energy Company Obligation) Order 2014 (as amended or replaced from time to time, including as amended by the Electricity and Gas (Energy Company Obligation) (Amendment) Order 2017).

EIR: 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.

Expiry Date: 31st March 2022.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made it from time to time, and all guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement, arising from acts, events, omissions on non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Service Provider, the Service Provider's Personnel or any other failure in the Service Provider's supply chain

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*).

HHCRO: means home heating cost reduction obligation as defined by the ECO Order or such other name that may be given to it by Ofgem or such other authority.

HHCRO Measure: means a heating qualifying action which (a) is installed at a Relevant Home, (b) is completed on or after 1 April 2017 and (c) satisfies the other requirements of the ECO Order applicable thereto (including the relevant requirements set out in articles 16(3), 16(4), 16(5) and 16A of the ECO Order).

LED: Law Enforcement Directive (*Directive (EU) 2016/680*).

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Prospective Client: means a person who potentially satisfies the criteria for the Scheme.

Protective Measures: 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 the such measures adopted by it.

Scheme: means the implementation of energy efficiency measures in domestic premises to achieve certain targets in accordance with the ECO Order.

Services: means the services of the ECO3 Scheme Delivery Contractor described or referred to in Schedule 1 (*The Services*).

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

Term: means the period from the Commencement Date until the earlier of (a) the date of termination of this Agreement in accordance with its terms and (b) the Expiry Date.

Working Day: means any day other than Saturdays, Sundays and any public or bank holiday in England.

- 1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2 The Schedules annexed hereto forms 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.
- 1.3 Words in the singular shall include the plural and *vice versa*.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to **writing** or **written** includes e-mail provided that the email is sent to the email address set out in clause 12.3, subject always to clause 12.4.
- 1.6 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.
- 1.7 References to recitals, clauses sub-clauses and Schedules are to the recitals, clauses, sub-clauses and Schedules of this Agreement.
- 1.8 Any reference to a month shall be a calendar month commencing on the 1st of the applicable month.

2. COMMENCEMENT AND DURATION

This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with these terms, until the Expiry Date whereupon this Agreement shall automatically expire.

3. INTRODUCTIONS AND RECORD KEEPING

The Parties agree;

- 3.1 The Council shall hold itself out as an access route to the Scheme and shall make introductions to the ECO3 Scheme Delivery Contractor in accordance with the terms of this Agreement;
- 3.2 The ECO3 Scheme Delivery Contractor shall inform the Council of the outcome of each referral made.
- 3.3 The Council shall charge an administration fee for each implementation of the Services and HHCRO Measures carried out under the Scheme of a fixed fee of £25.00 (“the **Fee**”) payable by the ECO3 Scheme Delivery Contractor delivering the Services.
- 3.4 Payment of the Fee shall be within 30 days of receipt of an invoice.
- 3.5 Neither Party shall have authority, nor shall hold itself out, nor permit any person to hold itself out, as being authorised to bind the other Party in any way, and shall not do any act which might reasonably create the impression that the other Party is so authorised. Neither Party shall enter into any contracts or commitments or incur any liability for or on behalf of the other Party. Neither Party may sub-contract or assign or otherwise transfer their duties under this contract without the prior written consent of the other Party.
- 3.6 The Council shall when communicating with any Prospective Client, disclose to such Prospective Client that it is acting as an introduction agent of the ECO3 Scheme Delivery Contractor and that it has no authority or ability to negotiate or enter into any contract on behalf of the ECO3 Scheme Delivery Contractor and that the provision of any Qualifying Actions will always be subject to eligibility. The Council may also disclose that it is acting on a non-exclusive basis and is not making any specific recommendation to appoint the Energy Provider, the appointment of which will be the Prospective Client’s own choice.
- 3.7 Save where data is collected by the ECO3 Scheme Delivery Contractor directly from Prospective Clients, the Council shall procure and provide to the ECO3 Scheme Delivery Contractor data on Prospective Clients and properties, based on the information that each Prospective Client provides to the Council (including in relation to their property and benefit status) which at all times shall be subject to obtaining the consent of the Prospective Client to do so and in compliance with all Data Protection Legislation.
- 3.8 Any savings achieved from the Services and from any installation of recommended measures identified as a result of the introductions are wholly exclusive to the ECO3 Scheme Delivery Contractor for the purposes of recording the ECO3 Scheme Delivery Contractor’s obligation under the ECO Order.

4. DATA PROTECTION

- 4.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, they are both Data Controllers and these terms set out the arrangement between the Parties to jointly determine the purposes and means of processing data (“**Shared Personal Data**”) as Joint Data Controllers under the GDPR. They define the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other.
- 4.2 The Parties consider this data sharing initiative necessary to fulfil the purpose of promoting the implementation of energy efficiency

measures in domestic premises as required by the terms of this Agreement.

- 4.3 The Parties shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause (“the **Agreed Purpose**”).
- 4.4 The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purpose.
- 4.5 The Parties will keep a record of any processing of Shared Personal Data carried out.
- 4.6 Each Party shall ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data.
- 4.7 The Parties shall also provide assurance that they are taking steps to comply with the requirements of the Data Protection Legislation with regard to their future processing of Shared Personal Data.
- 4.8 The Data Discloser shall in respect of Shared Personal Data, ensure that they provide clear and sufficient information to the data subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Article 13 of the GDPR including:
 - 4.8.1 if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the data subject to understand the purpose and risks of such transfer; and
 - 4.8.2 if Shared Personal Data will be transferred outside the EEA, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the controller to enable the data subject to understand the purpose and risks of such transfer.
- 4.9 The Data Receiver undertakes to inform the Data Subjects, in accordance with the Data Protection Legislation, of the purposes for which it will process their personal data, the legal basis for such purposes and such other information as is required by Article 14 of the GDPR including:
 - 4.9.1 if Shared Personal Data will be transferred to a third party, that fact and sufficient information about such transfer and the purpose of such transfer to enable the data subject to understand the purpose and risks of such transfer; and
 - 4.9.2 if Shared Personal Data will be transferred outside the EEA, that fact and sufficient information about such transfer, the purpose of such transfer and the safeguards put in place by the controller to enable the data subject to understand the purpose and risks of such transfer.
- 4.10 The provision of the information required to be given under Article 13 and 14 of the GDPR shall also include such information as is required

by Article 26(2) and provide the essence of the arrangement between the Joint Controllers to the Data Subjects.

- 4.11 Each Party agrees that it shall consider any request from the other Party/Parties to amend, transfer, provide a copy of or delete the Shared Personal Data at its own expense if the request accords with their obligations.
- 4.12 Each Party hereby agrees that it will only process adequate, relevant and limited Shared Personal Data as is necessary for the purposes specified in these Terms and undertakes to keep Shared Personal Data accurate and up to date during the Term.
- 4.13 The Parties will supply on request to other Parties a copy of their retention and disposal schedules/policies and process Shared Personal Data solely for the purposes specified in these Terms in line with their retention and disposal schedules/ policies.
- 4.14 If a Party receives (receiving party) any complaint, notice or communication which relates directly or indirectly to the processing of the Shared Personal Data or to either party's compliance with the DPA/GDPR and the data protection principles set out therein, it shall promptly and in any event within two working days of becoming aware, notify the other Party/Parties and it shall provide the other Party/Parties with full co-operation and assistance in relation to any such complaint, notice or communication.
- 4.15 No Party shall transfer the Shared Personal Data outside the European Union without the prior written consent of the other Parties, such consent not to be unreasonably withheld.
- 4.16 In the event that one Party requests ("**Requesting Party**") and the other Party/Parties agrees ("**Agreeing Party/Parties**") in accordance with clause 14.6 that Shared Personal Data can be transferred outside the European Union, the Requesting Party will enter in to an agreement in relation to such transfer of Shared Personal Data prior to any Shared Personal Data being so transferred on terms to be provided by the Agreeing Party.
- 4.17 The Parties shall without undue delay inform other Party/Parties if any Shared Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable.
- 4.18 The Parties shall comply with the Privacy and Electronic Communications Regulations 2003 and all relevant statutory and non-statutory guidance where acting as Data Controller of all Shared Personal Data as dealt with under these Terms.
- 4.19 The Parties shall:
 - 4.19.1 only make copies of the Shared Personal Data to the extent reasonably necessary for the Agreed Purpose (which, for clarity, includes back-up, mirroring and similar availability enhancement techniques), security, disaster recovery and testing of the Shared Personal Data);

- 4.19.2 not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Shared Personal Data other than for the Agreed Purpose; and
- 4.19.3 not do anything that may materially damage the reputation of the Council.

4.20 The Parties shall ensure that access to the Shared Personal Data is limited to:

- 4.20.1 those employees, contractors, agents, consultants and volunteers who need access to the Shared Personal Data to meet the Parties' obligations under these Terms; and
- 4.20.2 in the case of any access by any employee, contractors, agents, consultants and volunteers such part or parts of the Shared Personal Data as is strictly necessary for performance of that employee's contractor's, agent's, consultant's and volunteer's duties.

4.21 The Parties shall ensure that all employees:

- 4.21.1 are informed of the confidential nature of the Shared Personal Data;
- 4.21.2 have undertaken, as a minimum, bi-annual training in the laws relating to handling Shared Personal Data; and
- 4.21.3 are aware both of their employing parties' duties and their personal duties and obligations under such laws and these Terms.

The Parties shall provide each party with full co-operation and assistance without undue delay in relation to any request made by a Data Subject under clause 3.1.

4.22 Each Party shall notify the other Party/Parties within three working days if it receives a request from a Data Subject for access to, portability of, objection to processing, rectification of, restriction of, or erasure of that Data Subject's Shared Personal Data held by the other parties.

4.23 The Parties acknowledge that some Parties may be subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**"). The Parties agree that where FOIA and EIR (either singularly or together) apply they shall each:

- 4.23.1 Provide all necessary assistance and cooperation, at their own expense, as may reasonably be requested in order to comply with their obligations under the FOIA and EIR;
- 4.23.2 Notify the other Parties of any request for information which is being held on behalf of the other Parties and/or which relates to these Terms, as soon as practicable, but in any event within 2 working days of such a request;

- 4.23.3 Provide to the other parties any information which is in their possession or control and which may reasonably be required for the purpose of responding to the request.
- 4.24 For the avoidance of doubt, the Parties shall be individually responsible for responding to any request and shall be responsible for determining any exemptions that may be applicable in relation to the provision of that information.
- 4.25 The Parties are entitled, on giving at least three days' notice to each Party to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Shared Personal Data under these Terms.
- 4.26 The requirement under clause 4.25 to give notice will not apply if a Party reasonably believes that the Party it wishes to inspect under clause 4.25 is in breach of any of its obligations under these Terms.
- 4.27 Each Party warrants that:
- 4.27.1 it will process the Shared Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
 - 4.27.2 it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Shared Personal Data and against the accidental loss or destruction of, or damage to, Shared Personal Data to ensure the Council's compliance with the seventh data protection principle.
 - 4.27.3 Each Party shall notify the other Party/Parties promptly and in any event within two working days of becoming aware if it becomes aware of:
 - 4.27.3.1 any unauthorised or unlawful processing, loss of, damage to or destruction of the Shared Personal Data;
 - 4.27.3.2 any advance in technology and methods of working which mean that the Party/Parties should revise the security measures set out in 4.27.3.1.
- 4.28 The Parties undertake to investigate and manage breaches of the DPA/GDPR and any Shared Personal Data Breaches.
- 4.29 The Parties shall notify the other party/Parties without undue delay (and in any event, within two working days) after becoming aware of a security incident or Shared Personal Data Breach involving Shared Personal Data processed under these Terms.
- 4.30 Designated officers for The Parties are to liaise directly to investigate and resolve any security incidents or Shared Personal Data Breaches involving Shared Personal Data processed under these Terms, details of the appropriate posts are contained at Schedule 2.

- 4.31 In the event a Party assesses the incident or Shared Personal Data Breach in question to be serious and requiring self-reporting to a Supervisory Authority, they shall do so, while advising the other Party/Parties of its intention to do so before making such a report.
- 4.32 Full co-operation and assistance without undue delay will be given by the Parties to each other throughout any investigation under this clause 4.
- 4.33 Any information required by the investigating Party to investigate any incident or Shared Personal Data Breach will be supplied unless legally prohibited without undue delay by the other Party/Parties.
- 4.34 Where one Party is judged and agreed to be responsible for the incident or breach, full accountability will be taken by that Party.

5 FREEDOM OF INFORMATION

- 5.19 The ECO3 Scheme Delivery Contractor acknowledges that the Council are obliged under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 to disclose information to third parties subject to certain exemptions. This includes the information contained in this Agreement.
- 5.20 The ECO3 Scheme Delivery Contractor therefore accepts and acknowledges that any decision on whether to disclose information and/or the application of any exemptions to disclosure will be at the Council's discretion and where applicable the ECO3 Scheme Delivery Contractor will aid the Council in any requests for information. The Council will act reasonably and proportionately in exercising its obligations under the FOIA and/or the EIR as to whether any exemptions under of the FOIA and/or EIR may be applied to protect the ECO3 Scheme Delivery Contractor's legitimate commercial and trade secrets.

6 CONFIDENTIALITY

- 6.19 Each Party ("**Receiving Party**") agrees that it shall at all times (both during the Term of this Agreement and after its termination or expiry) keep confidential, and shall not without the prior written consent of the other Party ("**Disclosing Party**") use (other than as permitted in this Agreement) or disclose to any third party (other than as permitted in clauses 5.2 and 5.3), any Confidential Information of the Disclosing Party, unless such information:
 - 6.19.1 was public knowledge or already known to the Receiving Party at the time of disclosure;
 - 6.19.2 subsequently becomes public knowledge other than by breach of this Agreement;
 - 6.19.3 subsequently comes lawfully into the possession of the Receiving Party from a third Party;
 - 6.19.4 is agreed by the Parties not to be confidential or to be disclosable; or
 - 6.19.5 is developed by or for the Receiving Party independently of the Confidential Information.

- 6.20 The Receiving Party may use the Disclosing Party's Confidential Information in the performance of its obligations and the exercise of its rights under this Agreement.
- 6.21 The Receiving Party may, to the extent necessary to implement the provisions of this Agreement (but for no other reason), disclose the Disclosing Party's Confidential Information:
- 6.21.1 to any Prospective Client;
 - 6.21.2 where necessary to comply with any law, regulation, order or legitimate request, to any relevant governmental or other authority or regulatory body; or,
 - 6.21.3 to any employees, officers or representatives of the Receiving Party or any Affiliate or any member of an Affiliate provided that, before any such disclosure, the Receiving Party shall make those persons aware of its obligations or confidentiality under this Agreement.
- 6.22 All documents and other records (in whatever form) containing Confidential Information supplied to or acquired by one Party shall be returned promptly to the other Party upon termination or expiry of this Agreement.

7 TERMINATION

- 7.1 Either Party may terminate the Agreement for convenience at any time by giving the other Party not less than one (1) month's prior notice thereof.
- 7.2 Either Party may terminate the Agreement by serving written notice on the other with effect from the date specified in such notice:
- 7.2.1 Where a Party commits a material breach and:
 - 7.2.1.1 the Party has not remedied the material breach to the satisfaction of the other Party within 28 days, after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - 7.2.1.2 the material breach is not, in the reasonable opinion of the other Party, capable of remedy;

Termination on insolvency and Change of Control

- 7.3 Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 7.1.1 the Party 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;
 - 7.1.2 the Party 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 with one or more other companies or the solvent reconstruction of the Party;

7.1.3 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 Party (being a company);

7.1.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Party (being a company);

7.1.5 the holder of a qualifying floating charge over the assets of the Party (being a company) has become entitled to appoint or has appointed an administrative receiver;

7.1.6 a person becomes entitled to appoint a receiver over the assets of the Party or a receiver is appointed over the assets of the Party;

7.1.7 a creditor or encumbrancer of the Party 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 Party's assets and such attachment or process is not discharged within 14 days;

7.1.8 any event occurs, or proceeding is taken, with respect to the Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6.3; or

7.1.9 the Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

7.2 Either Party shall notify the other immediately if they undergo a Change of Control. The other Party may terminate the Agreement by giving notice in writing to the Party with immediate effect within six months of:

7.2.1 being notified that a Change of Control has occurred; or

7.2.2 where no notification has been made, the date that the Party becomes aware of the Change of Control;

7.3 Termination or expiry of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at the date of termination or expiry.

8 LIABILITY AND INDEMNITIES

8.1 Nothing in this Agreement shall limit or exclude either Party's liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or

8.1.2 fraud or fraudulent misrepresentation.

8.2 Subject to clause 8.1, neither Party shall be liable to the other whatsoever in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:-

8.2.1.1 loss of profit;

8.2.1.2 loss of contract;

8.2.1.3 loss of goodwill;

8.2.1.4 or any indirect or consequential loss

arising under or in connection with this Agreement.

8.3 The Parties shall indemnify and keep each other indemnified against all losses, liabilities, damages, fines, demands, penalties, claims, costs and expenses (including all legal and other professional fees and expenses on a full indemnity basis) incurred or suffered howsoever arising as a result of or in connection with:-

8.3.1 any action, claim, proceedings or allegation by a regulatory, governmental, statutory authority or other similar body arising from, out of or otherwise related to a breach by a Party of any term of this Agreement and/or any tort (including negligence) or breach of statutory duty by a Party.

9 PERSONNEL

9.1 The ECO3 Scheme Delivery Contractor will ensure that its Personnel are sufficiently skilled to provide the Services in a competent and compliant manner and have been adequately trained in data protection to provide the Services.

10 GENERAL

10.1 The ECO3 Scheme Delivery Contractor is an independent contractor and nothing in this Agreement shall constitute the creation, establishment or relationship of partnership, joint venture or employer and employee between the Parties.

10.2 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

10.3 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement. Nothing in clauses 10.2 and 10.3 shall limit or exclude any liability for fraud.

10.4 No variation of this Agreement shall be effective unless it is in writing and executed by both Parties (or their respective authorised signatories).

10.5 This Agreement is personal to the Parties and neither Party shall assign any of its rights, benefits and/or obligations under this Agreement without the prior written consent of the other Party.

10.6 The ECO3 Scheme Delivery Contractor will not sub-contract any of its obligations under these terms without addressing the data protection requirements with the Subcontractor on a like for like basis with the terms of this Agreement. Any

appointment of a sub-contractor shall not affect the ECO3 Scheme Delivery Contractor's obligations and liabilities.

- 10.7 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.8 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 10.9 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 10.10 The Parties agree that a person who is not a Party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 10.11 In order to verify that the ECO3 Scheme Delivery Contractor has carried out its obligations in accordance with the terms of this Agreement, the Council shall have the right of access to the ECO3 Scheme Delivery Contractor's books and records for audit purposes to the extent necessary to satisfy itself that the ECO3 Scheme Delivery Contractor has complied with the said requirements.

11 NOTICES

- 11.1 Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and sent by hand, post or e-mail.
- 11.2 Any notice or other communication shall be addressed as provided in clause 10.3 and, if so addressed, shall be deemed to have been duly given or made as follows:
 - 11.1.1 if sent by hand, upon delivery at the address of the relevant Party;
 - 11.1.2 if sent by post, within 48 hours from the date of posting;
 - 11.1.3 if sent by e-mail, on the date that the e-mail is delivered to the recipient;unless the date of the delivery (or attempted delivery) or receipt, as applicable, is not a Working Day or the relevant notice or communication is delivered (or attempted to be delivered) or received, as applicable, after 5pm on a Working Day, in which case that notice, or communication shall be deemed to be served on the next following Working Day.
- 11.3 The relevant addressee, postal address and e-mail address of each Party for the purposes of this Agreement, subject to clause 10.4, are:

Leicester City Council

Address: City Hall, 115 Charles Street, Leicester, LE1 1FZ

Attention:

E-mail address:

[]

Address:

Attention:

E-mail address:

- 11.4 Either Party may notify the other of a change to its name, relevant addressee, postal address or e-mail address for the purposes of clause 10.3. In proving service by post it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and was posted in accordance with this Agreement
- 11.5 The provisions of this clause 10 shall not apply to the service of any proceedings or other documents in any legal action.

12 ANTI-BRIBERY COMPLIANCE

12.1 Both Parties shall:

- 12.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in anywhere in the United Kingdom;
- 12.1.3 have and shall maintain in place throughout the Term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- 12.1.4 promptly give notice to the other Party of any request or demand for any undue financial or other advantage of any kind received by the Party in connection with its performance of this Agreement.

12.2 Any breach by the either Party of its obligations under this clause 12, shall be deemed to constitute a material breach of this Agreement.

13 CORRUPTION

13.1 If any of the following events occurs in connection with this or any other Contract between the Council and the ECO3 Scheme Delivery Contractor, the Council may terminate this Contract and recover any consequential loss from the ECO3 Scheme Delivery Contractor:-

- 13.1.1 The ECO3 Scheme Delivery Contractor offers gives or agrees to give anything to any person as an inducement or reward for doing or having done (or not doing or not having done) anything connected with the obtaining of the award execution or completion of the Agreement, or showing or not showing favour or disfavour to any person in connection with the obtaining of the award execution or completion of the Agreement;
- 13.1.2 The ECO3 Scheme Delivery Contractor commits an offence under the Prevention of Corruption Acts 1889 to 1916;
- 13.1.3 The ECO3 Scheme Delivery Contractor gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
- 13.1.4 any employee or agent of the ECO3 Scheme Delivery Contractor does anything described in sub-clauses 13.1.(a) to 13.1.(c) above whether or not the ECO3 Scheme Delivery Contractor has knowledge of it.

14 INSURANCE

14.1 The ECO3 Scheme Delivery Contractor shall hold all appropriate insurances reasonably required of it for its operation of the Services.

14.2 The ECO3 Scheme Delivery Contractor shall insure against its full liability under this Agreement and shall maintain all statutory required insurance policies including Public liability insurance, Employers liability insurance and Professional Indemnity.

14.3 In complying with its obligations under Clauses 14.1 and 14.2 above, the ECO3 Scheme Delivery Contractor shall hold Public liability and Employers Liability insurance cover of at least £10,000,000.00 (for each) in respect of any one incident and the number of incidents covered shall be unlimited and Professional Indemnity cover of at least £5,000,000.00 in respect of any one incident and the number of incidents covered shall be unlimited.

14.4 The ECO3 Scheme Delivery Contractor shall upon request by the Council produce to the Council's satisfactory documentary evidence that the insurance required under this clause is in place and is properly maintained.

15 RESOLUTION OF DISPUTES

15.1 If any dispute or difference shall arise between the Parties, then senior representatives of each Party shall meet within fourteen days of such dispute or difference arising in a good faith effort to resolve the dispute or difference. If the dispute or difference cannot be resolved within a further fourteen days then the dispute or difference may be referred to the decision of a single arbitrator to be agreed upon between the Parties or in default of agreement to be appointed at the request of either Party by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Acts 1950 to 1996 (as amended from time to time).

16 EQUAL OPPORTUNITIES

16.1 The ECO3 Scheme Delivery Contractor shall ensure that it complies at all times with all relevant Equal Opportunities Legislation. In particular the ECO3 Scheme Delivery Contractor shall comply in full with the requirements of the Equality Act 2010 and all amending or succeeding legislation or regulation.

17 FORCE MAJURE

17.1 Neither Party shall be liable for any default in performance under the Agreement due to any act of God war fire flood drought tempest or other like event beyond the reasonable control of either Party.

18 GOVERNING LAW AND JURISDICTION

18.1 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 laws of England and Wales and it is irrevocably agreed by the Parties that the English courts shall have exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

18.2 The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – THE SERVICES

ECO3 Measure	CERO	CERO Rural	Social EFG	Flexible Eligibility	AW
Cavity Wall Insulation					
External Solid Wall Insulation (PSWMR Measure)					
Room in Roof Insulation					
Loft Insulation >100mm Existing					
Loft Insulation <100mm					
Boiler Qualifying Oil					
Boiler Qualifying LPG					
First Time Central Heating					

SCHEDULE 2
DATA PROTECTION

Processing Personal Data and Data Subjects Designated Officers Details

The Council

Name

Contact Address

The Contractor

Name

Contact Address

IN WITNESS whereof this Agreement has been signed for and on behalf of the Parties hereto by duly authorised signatories on the date first appearing above.

SIGNED/EXECUTED AS A DEED by

for and on behalf of LEICESTER CITY COUNCIL

.....
Authorised Officer

SIGNED/EXECUTED AS A DEED for and on behalf of

..... Director

Witness name & Signature:
Witness occupation:
Witness address:

..... Name

..... Position

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