

**CONTRACT FOR THE PROVISION OF ADMINISTRATIVE SERVICES
RELATING TO THE MICROGENERATION CERTIFICATION SCHEME
("MCS")**

Purchase Order Number: Not applicable for this contract as DECC does not pay any funds to Gemserv under this contract. Gemserv receives admissible fees from the MCS Fund.

THIS CONTRACT is made on the 13th day of March 2013.

BETWEEN

1. **The Secretary of State for Energy and Climate Change** (the "Authority") whose principal office is at 3 Whitehall Place, London, SW1A 2AW; and
2. **Gemserv Limited** (the "Contractor") incorporated and registered in England and Wales with company number 4419878 whose registered office is at 10 Fenchurch Street, London, EC3M 3BE.

RECITALS

- (A) On 3 August 2012 the Authority issued an invitation to tender for the provision of administrative services relating to the Microgeneration Certification Scheme (usually called "MCS"), this including the specification a copy of which is set out in Annex [1] (the "Specification"). In response the Contractor submitted a proposal a copy of which is set out in Annex [2] (the "Proposal"). The Specification and the Proposal were supplemented by the correspondence copies of which are set out in Annex [3] (the "Correspondence").
- (B) This contract sets out the services to be provided by the Contractor and the relationship between the Authority, the Contractor and the MCS Company. The contract also covers an interim period until the MCS Company is fully operational. During this interim period the current MCS governance process, where the Contractor works to the MCS Steering Group will apply. The contract also includes requirements to maintain the MCS Database to support the Feed in Tariffs Scheme (usually called "FITs").
- (C) This contract therefore records the terms and conditions which apply to provision of administrative services by the Contractor in relation to the MCS, including the arrangements for payment for the services provided by the Contractor as MCS Licensee.

AGREED AS FOLLOWS

1. Definitions

Applicable Laws	means all national, supranational, foreign or local laws (including case law), legislation, European regulations, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time;
“Certification Body”	means a body approved by the United Kingdom Accreditation Service (UKAS) to provide certification services in regard to the MCS;
“Database Services”	means the services to be performed by the Contractor as described in Part 3 of Annex [4];
“Installation Standards”	means the minimum standards which businesses installing the equipment used in furtherance of the Scheme must adhere to and as are published by the Licensee (at the direction of the MCS Company) on the MCS Website from time to time;
“Interim Period”	means the period described in clause [15.2];
“Licence Agreement”	means the Licence Agreement to be entered into between the Authority and the Contractor in the form set out in Schedule [1] for the use of the MCS marks;
“Licence Services”	means the services to be performed by the Contractor as described in Part 1 of

Annex [4];

“MCS Company”	means the company set up to steer the policy and direction of the Scheme and designated as such by the Authority;
“MCS Database”	means the database to be maintained by the Contractor in relation to the MCS which can be accessed at the Website (www.certificate.microgenerationcertification.org);
“MCS Fees”	means the money collected by the Contractor in the form of the fees charged to Sub-Sub-Licensees;
“MCS Steering Group”	means a panel of industry experts, Government and other stakeholder representatives set up to steer the policy and direction of the Scheme and designated as such by the Authority;
“MCS Support Services”	means the services to be performed by the Contractor as described in Part 2 of Annex [4];
“MCS Website”	means www.microgenerationcertification.org ;
“MID User Group”	means the group of stakeholders involved in or with an interest in the operation of the MCS Database.
“MID Governance and Change Management Process”	means the documents setting out the procedure for making changes to the MCS Database which may be amended by the MID User Group from time to time;
“Party”	means either the Authority or the Contractor as the context requires and “Parties” shall be construed accordingly;
“Product Standards”	means the minimum standards which equipment used in furtherance of the

	Scheme must adhere to and as are published by the Contractor (at the direction of the MCS Company) on the MCS Website from time to time;
“Reporting Services”	means the services to be performed by the Contractor as described in Part 4 of Annex [4];
“Scheme”	means the Authority’s Microgeneration Certification Scheme;
“Service Levels”	means the minimum standards the Contractor will achieve when performing the Services as set out in Annex [4];
“Services”	means the services to be performed by the Contractor as described in Annex [4];
“Special Terms”	means the terms of this Contract other than the Standard Terms;
“Standard Terms”	means the Authority’s Standard Terms and Conditions of Contract for Services a copy of which is at Annex [5];
“Working Day”	means the period between 09.00am to 5.00pm on any day which is not a Saturday or a Sunday or bank or public holiday in England.

2. Contractor’s Obligations

- 2.1. In consideration of payment in accordance with clause [5], the Contractor will provide the Services.
- 2.2. The Contractor will provide the Services at least to the minimum standards set out in the Service Levels and in a timely and diligent manner befitting the requirements and complexities of the Scheme. The Contractor will exercise reasonable skill and care and will provide the Services in a way that does not cause any conflicts with the objectives of meeting government policy with respect to development of the microgeneration industry.

- 2.3 During the term of this Contract, the Contractor must not act as a Certification Body nor provide the services of a consumer code to support MCS without the agreement of the Authority. In such case the Contractor must be able to clearly demonstrate a clear separation between the businesses to the satisfaction of the Authority and the MCS Company.

3. Commencement and Continuation

- 3.1 This Contract commences on 1st February 2013 and, subject to any provisions for earlier termination, shall continue for a period of three years.
- 3.2 The Authority has the option to extend the contract for a further period of up to two years by giving at least 3 months notice in writing before the expiry of the 3 year period in clause [3.1].

4. Standard Terms and Conditions

- 4.1 The Standard Terms shall form part of this Contract.
- 4.2 In the event of a conflict between any of the Standard Terms and the Special Terms the Special Terms shall prevail to the extent of the conflict.
- 4.3 The Contractor's standard terms and conditions of business shall not apply to this Contract.
- 4.4 The Standard Terms shall be amended as follows (these amendments are for the purposes of this Contract only and do not set a precedent for future contracts between the Contractor and the Authority):
- (a) Conditions 3, 11 and 28 shall not apply.
- 4.5 The Contract is formed of these clauses and all schedules and annexes appended hereto. Any attachments are provided for information purposes only and are not intended to be legally binding.

5. Payment

- 5.1 No payment shall be made by the Authority to the Contractor. The Contractor acknowledges that the MCS is a self-financing scheme, and that payments to the Contractor in respect of the Services performed under this contract will be funded from the income streams which come from the MCS Fees.

- 5.2 The following procedure will apply to payment for the Licence Services, the Database Services and the MCS Support Services:
- (a) Within 2 months of entry into this contract, the Contractor will endeavour to agree, with the MCS Company, a budget for year one and annually thereafter, including a mechanism for the recovery of Contractor's fees, with the MCS Company
 - (b) The Contractor's fees must comply with the following requirements:
 - (i) They should be consistent with the Specification, the Proposal and the Correspondence, unless agreed otherwise by the MCS Company;
 - (ii) In particular, the Contractor's fees should be in accordance with the fee structure set out in the Proposal. Changes to that fee structure must be agreed in advance with the Authority and the MCS Company;
 - (iii) They should not place undue financial burdens on the Certification Bodies, on manufacturers, installers, assessment centres or awarding bodies;
 - (iv) They should enable the Contractor to recover charges properly incurred upon submission of an invoice and production of supporting documentation in accordance with this clause;
 - (v) They should provide for payment for the License Services, the Database Services and the MCS Support Services to be made out of the MCS Fees.
 - (vi) They should not enable the Contractor to charge for the provision of any services that are not part of the Services agreed within the Contract, unless they have been agreed by the MCS Company.

5.3 The following procedure will apply to payment for the Reporting Services:

- (a) The annual fee for the Reporting Services is to be agreed with the Authority. The annual fee must be consistent with the Specification, the Proposal (in particular, the fee structure) and the Correspondence, unless agreed otherwise by the Authority.

- (b) Subject to the Contractor providing the Reporting Services in accordance with this Contract, the annual fee shall be payable in instalments at the end of each calendar month (or at such other times or intervals as are agreed by the MCS Company) during the year in question, upon submission of an invoice and production of supporting documentation in accordance with this clause.
- (c) Any one-off charges or ongoing adjustment to the annual fee for any changes to the Reporting Services must be agreed with the Authority in advance.
- (d) Payment for the Reporting Services shall be made out of the MCS Fees.

- 5.4 All invoices should set out the amounts charged, a description of the services provided and the period to which the invoice relates.
- 5.5 Invoices should be submitted to the MCS Company at the end of each calendar month (or at such other times or intervals as are agreed by the MCS Company) and in the manner reasonably required by the MCS Company and accompanied by such supporting documentation as is reasonably required by the MCS Company.
- 5.6 The MCS Company or the Authority may require payment to be reduced in respect of any Services that the Contractor has either failed to provide or has provided inadequately (such as failure to meet the Service Levels), without prejudice to any other rights or remedies of the Authority.
- 5.7 For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the MCS Company received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services (or the part of the Services to which the invoice relates).

6. Ownership of the MCS Database

- 6.1 Without prejudice to the general application of condition 27 of the Standard Terms, in consideration of the payments described in clause [5] the Contractor hereby assigns to the Authority all copyright, including rights in electronic publishing and all database rights which may exist

anywhere in the world in the MCS Database (including for the avoidance of doubt the data it contains).

- 6.2 The Authority agrees that the Contractor shall be entitled, without payment to the Authority to:
- (a) reproduce figures or extracts from the MCS Database necessary for it to carry out the Services; and
 - (b) make and keep copies of the MCS Database necessary to implement the security, disaster recovery and back up arrangements described in this contract.
 - (c) allow the MCS Company access to data relevant for the efficient and effective management of the Scheme and for analytical purposes

7. Data Protection and Confidentiality

- 7.1 As the provision of the Services require the Contractor to be a data processor involved in the processing of personal data (the terms "data processor" and "personal data" being defined in section 1 of the Data Protection Act 1998) the Contractor shall have particular regard to and fully comply with the requirements of clause 30 of the Standard Conditions.
- 7.2 Without prejudice to clause [7.1] the Contractor shall only use the contents of the MCS Database to the extent necessary to perform the Services. In particular the Contractor shall not sell or otherwise disclose the contents of the MCS Database (whether or not comprising personal data) to any third party other than is necessary for the performance of the Services without the prior written consent of the Authority (not to be unreasonably withheld or delayed).

8. Transparency

- 8.1 The Authority will publish the Contract (including the annexes and the Schedules) on a designated government internet site, with the exception of the Contractor's full proposal. The Contractor's redacted proposal will be published on the government internet website.

The Authority has made the decision on those exceptions in the light of the exemptions under the Freedom of Information Act 2000 (FOIA) and Condition 40 of the Standard Terms.

- 8.2 However, subject to those exceptions, the rest of the Contract (including the annexes and the Schedules) will be published in full, in accordance with the government's policy on the publication of contracts, which forms part of the government's transparency agenda, and the Contract has therefore been offered to the Contractor on the basis of such publication taking place.
- 8.3 The Authority emphasises that its decision to redact information on this occasion does not preclude it publishing such information in the future in the context of other contracts. Neither does it preclude the disclosure of such information in the circumstances of a request for disclosure under FOIA or the Environmental Information Regulations 2004 or where such disclosure is required by virtue of any other legal requirement. In such cases, the Authority would need to consider disclosure in the context of the particular circumstances of the request or requirement concerned.

9. Communications

- 9.1 Any notice, consent, confirmation or other information required or authorised by this Contract to be given by one Party to the other may be given by hand or sent by post or email to the other party at the address or email address stated in clauses [9.4] and [9.5].
- 9.2 Where sent by post the notice shall be sent by pre paid first class recorded delivery and shall be deemed to be received three Working Days later (unless returned through the post).
- 9.3 Where sent by email the notice shall be deemed to be received at 9.00 am on the next Working Day after sending.
- 9.4 Notices to the Authority shall be sent to:

The Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW

For the attention of Paul Rochester

Email address : paul.rochester@decc.gsi.gov.uk

- 9.5 Notices to the Contractor shall be sent to:

Gemserv Limited
10 Fenchurch Street

London, EC3M 3BE

Tel: []

For the attention of []

Email address: []

9.6 Either Party may by notice in writing to the other substitute any of the information contained in clauses [9.4] and [9.5]. The Party making the substitution must send a copy of the notice to the MCS Company.

10. Management

10.1 Save as provided for in clause 10.2, the Contractor shall perform the Licence Services and the MCS Support Services in accordance with the directions issued by the MCS Company from time to time.

10.2 The Contractor shall not be obliged to comply with any directions issued by the MCS Company in accordance with clause 10.1, to the extent that compliance with such directions would cause (or would likely cause) the Contractor to breach any Applicable Laws.

10.3 The Contractor may deduct from the MCS Fees, its legal and other professional adviser's fees, disbursements, interest charges, and any damages for which it is held liable, provided that:

(a) the fees, disbursements, interest charges and damages have arisen as a direct consequence of the Contractor complying with a direction issued by the MCS Company in accordance with clause 10.1;

(b) the fees, disbursements and interest incurred by the Contractor are reasonable;

(c) the Contractor does not make any admissions other than to the Authority and the MCS Company, or with their consent; and

(d) the Contractor is not in breach of any of its obligations under this Contract.

10.4 The Contractor shall perform the Database Services under the direction of the MCS Company (except for changes to the MCS Database in relation to functionality which shall be carried out by the Contractor under the direction of the MID User Group).

10.5 The Contractor shall perform the Reporting Services under the direction of the Authority.

- 10.6 Any direction by the Authority may be given by the person stated in clause [9.4] or by such other person or at such other address as is notified by the Authority in writing.
- 10.7 The Contractor appoints [] to be the Contractor's first point of contact for this Contract. All queries to the Contractor from the Authority shall initially be addressed to the Contractor's first point of contact.
- 10.8 The Contractor's first point of contact and the person stated in clause [9.4] shall meet as often as either the Contractor or the Authority may require to review the Contractor's performance of the Contract.

11. Termination and Exit Provisions

- 11.1 On termination of this Contract for any reason if the Authority so directs in writing the Contractor shall:
- (a) provide all reasonable assistance to the Authority to facilitate the orderly transfer of the provision of the Services back to the Authority or to another contractor selected by the Authority;
 - (b) take reasonable steps to notify other interested parties (e.g. regular users of the MCS Database or the Services) the identity of the organisation that has assumed responsibility for providing services similar to the Services;
 - (c) provide full access and deliver to the Authority the MCS Database;
 - (d) provide full access and deliver to the MCS Company the MCS Company's administrative records and files relating to the Scheme;
 - (e) following the transfer referred to clause [11.1(a)] cease to have access to the MCS Database, the MCS Website and the MCS Company's administrative files and delete any copies of them from the Contractor's computer equipment.

12. Resolution of Disputes with the MCS Company

- 12.1 If the Contractor believes that payment for a correctly submitted invoice is overdue, the Contractor should, in the first instance, speak to the MCS Company. In the event that the problem is not resolved to the Contractor's satisfaction, the Contractor may refer the matter to the Authority, after having given the MCS Company at least one months notice in writing of its intention to do so.

- 12.2 The Authority may refuse to accept the reference if the dispute relates to MCS Support Services or if the Authority considers that further discussions between the MCS Company and the Contractor may be able to resolve the issue.
- 12.3 If the Authority accepts the reference, the Authority may agree a sum which the Contractor may deduct from the MCS Fees under clause [9.2] of the Licence Agreement.
- 12.4 Where this Contract provides for the agreement of the MCS Company (under clause [5.2] or Annex [4]), and despite its best endeavours the Contractor is unable to reach such agreement with the MCS Company, the Contractor may refer the matter to the Authority, after having given the MCS Company at least one months notice in writing of its intention to do so.
- 12.5 The Authority may at its absolute discretion refuse to accept the reference.
- 12.6 If the Authority accepts the reference, the agreement of the Authority may be obtained instead of the agreement of the MCS Company.
- 12.7 In the case of a dispute falling within clause [12.1] or [12.4], the Authority, the Contractor and the MCS Company may agree to refer the dispute to mediation pursuant to condition 22(4) of the Standard Terms (and for the purposes of a mediation pursuant to this clause only, references to "parties" in condition 22(4) of the Standard Terms shall include the MCS Company).
- 12.8 The performance of the Services shall not cease or be delayed by the reference of a dispute to the Authority pursuant to this clause or by the reference of a dispute to mediation pursuant to clause [12.7].

13. Licence Agreement and novation

- 13.1 The Parties shall enter into the Licence Agreement.
- 13.2 The Authority may by at least 6 months notice in writing direct the Contractor to enter into a novation agreement in the form set out in Schedule [2] (novation of this Contract from the Authority to the MCS Company for the purpose of conferring the MCS licence on the MCS Company).

14. Transfer of functions to the MCS Steering Group

- 14.1 After the Interim Period, the Authority may by notice in writing require such references in this Contract to the "MCS Company" as are specified in the notice, to be read as references to the MCS Steering Group (and such notice is referred to in this Contract as a "Transfer of Functions Notice").
- 14.2 A Transfer of Functions Notice may be revoked by at least 3 months notice given by the Authority in writing.
- 14.3 A Transfer of Functions Notice may be amended by notice given by the Authority in writing.
- 14.4 Revocation of a Transfer of Functions Notice shall not affect the validity of actions by the Contractor prior to the revocation of the notice, and the MCS Company shall have no rights in respect of obligations arising before the revocation of the notice.
- 14.5 At any time after revocation of a Transfer of Functions Notice, the Authority may give another notice under clause [14.1].

15. Interim Period

- 15.1 During the Interim Period, references to the "MCS Company" in clauses [1] to [12] and Annex [4] are to be read as references to the MCS Steering Group.
- 15.2 The Interim Period commences on the commencement of this Contract and may be brought to an end by notice given by the Authority in writing.
- 15.3 The notice bringing the Interim Period to an end shall not affect the validity of actions by the Contractor prior to the ending of the Interim Period, and the MCS Company shall have no rights in respect of obligations arising during the Interim Period.

16. Third Party Rights

- 16.1 Subject to clauses 12, 14 and 15, the MCS Company shall have rights to enforce the obligations of the Contractor under clauses 2.2, 5.4, 5.5, 5.6, 10.1, 10.4 and 11.1 and Annex 4. No other person who is not a Party to this Contract shall have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 16.2 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 the MCS Company or any other person.

17. Counterparts

17.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this contract, but all the counterparts shall together constitute the same contract. No counterpart shall be effective until each Party has executed at least one counterpart.

Signed by the parties' duly authorised representatives:-

For the Secretary of State for Energy and Climate Change

Signature:

Print Name:

Job Title:

Date:

For Gemserv Limited

Signature:

Print Name:

Job Title:

Date:

Schedule 1 – Form of Licence Agreement

(See Separate document)

Schedule 2 – Form of Novation Agreement

THIS NOVATION AGREEMENT is dated _____

PARTIES

- (1) **GEMSERV LIMITED** incorporated and registered in England and Wales with company number 4419878 whose registered office is at 10 Fenchurch Street, London, EC3M 3BE (“the Contractor”).
- (2) **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** whose principal office is at 3 Whitehall Place, London, SW1A 2AW (“the Authority”).
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“the MCS Company”).

BACKGROUND

- (A) The Contractor and the Authority are party to a contract for the provision of administrative services relating to the Microgeneration Certification Scheme (“MCS”) dated _____ 2013 (“the Contract”).
- (B) The Authority wishes to transfer all its rights, obligations and liabilities under the Contract to the MCS Company.
- (C) The parties have agreed that the Authority’s rights, obligations and liabilities under the Contract shall be novated to the MCS Company on the terms of this Agreement.

AGREED TERMS

1. Effective Date

- 1.1 This Agreement takes effect on _____ .

2. Novation of the Contract

- 2.1 The Authority transfers all its rights and obligations under the Contract to the MCS Company. The MCS Company shall enjoy all the rights and benefits of the Authority under the Contract, and all references to the Authority in the Contract shall be read and construed as references to the MCS Company.
- 2.2 The MCS Company agrees to perform the Contract and be bound by its terms in every way as if it were the original party to it in place of the Authority.
- 2.3 The Contractor agrees to perform the Contract and be bound by its terms in every way as if the MCS Company were the original party to it in place of the Authority.

3. Amendment to the terms of the Contract

3.1 The Special Terms of the Contract shall be amended as follows:

- (a) In clause [1], for the definition of “MCS Fees” there shall be substituted ““MCS Fees” means the money collected by the MCS Company in the form of the fees charged to Sub-Sub-Licensees and per installation fee”.
- (b) In clause [4], for paragraph (a) there shall be substituted “(a) conditions 3, 9, 11, 27(2), 28, 29, 34, 40 and 41 shall not apply.”
- (c) The first sentence of clause [5.1] shall be omitted.
- (d) Clauses [12] to [15] shall be omitted.
- (e) For paragraph [1] of annex [4] to the Contract, there shall be substituted “The Contractor shall provide assistance to the MCS Company in administering the Scheme, including assistance with the issue of Sub-Licences to use the Certification Marks and assistance with the performance the functions under clauses [3, 6, 7, 8 and 9] of the Licence Agreement.”

4. Release of Obligations and Liabilities

4.1 The Contractor and the Authority release each other from all future obligations to the other under the Contract.

4.2 Nothing in this Agreement shall affect or prejudice any claim or demand that the Contractor or the Authority may have against the other under or in connection with the Contract arising before the date of this Agreement.

5. Indemnity

5.1 The MCS Company agrees to indemnify the Authority against any losses, damages or costs the Authority suffers or incurs under or in connection with the Contract after the date of this Agreement.

6. Governing Law and Jurisdiction

6.1 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 English law.

6.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims).

7. Counterparts

7.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Agreement, but all

the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

Signed by the parties' duly authorised representatives:-

For the Secretary of State for Energy and Climate Change

Signature:

Print Name:

Job Title:

Date:.....

For Gemserv Limited

Signature:

Print Name:

Job Title:

Date:

For the MCS Company

Signature:

Print Name:

Job Title:

Date:

Annex 1 – Specification

Department of Energy and Climate Change

Invitation to tender for the appointment of an Administrator for the Microgeneration Certification Scheme (MCS)

1. Introduction

- 1.1 The Department of Energy and Climate Change (DECC) is seeking to appoint the Licensee for the Microgeneration Certification Scheme (MCS).
- 1.2 The Licensee is referred to in this document as the MCS Licensee. The MCS Licensee will be licensed to use the MCS Mark, to sub-license the Mark, and to use the MCS standards.
- 1.3 The MCS Licensee will be required to provide administrative services to the MCS Company and will be required to work with the MCS Company in delivering certification services for the microgeneration sector. The MCS Licensee will also be responsible for maintaining the Microgeneration Installer Database including administrative support to MCS Installation Database (MID) User Group.
- 1.4 Further details of the respective roles and responsibilities of the MCS Licensee, the MCS Company and DECC are set out in this document.
- 1.5 The MCS has an important role to play in the development of the microgeneration sector. It covers the full range of microgeneration technologies up to 50kW electrical and 45kW thermal capacity: solar photovoltaic, solar thermal, biomass, ground source heat pumps, air source heat pumps, water source heat pumps, micro-CHP and micro-hydro.
- 1.6 All material issued by DECC in connection with this specification remains the property of the Crown and is to be used solely for the purpose of tendering. Documents must not be copied or forwarded to unauthorised persons.

2. Background

- 2.1 DECC has put in place financial incentives to support the take up of microgeneration technologies. These include the Feed-In Tariffs (FITs), the [Renewable Heat Premium Payment \(RHPP\) Phase 2](#), the [Non-domestic Renewable Heat Incentive \(RHI\)](#) and the Green Deal. The domestic RHI is currently being developed and should be consulted on later this year.

- 2.2 DECC published a [Microgeneration Strategy](#) in June 2011, which seeks to tackle the non financial barriers to the take up of small scale renewable and low carbon technologies.
- 2.3 DECC also published a [Strategic Framework for Heat](#) in March 2012, which set out how we supply and use heat today and described how this will need to change over time to meet our 2050 carbon emissions targets. DECC's intention is to develop specific policy proposals within the next 12 months. MCS will have a part to play in delivering policy objectives for microgeneration heat.
- 2.4 In order to achieve the Government's goal of supplying 15% of UK energy from renewables by 2020 and to meet 2050 carbon emissions targets, it is important to start building the market and demand for small-scale low carbon and renewable energy now.
- 2.5 DECC has set out a role for microgeneration technologies. However there is still work to do on levels of awareness and barriers to the take-up of microgeneration. The small-scale electricity Feed-in Tariff is driving the take-up of solar PV and we are seeing interesting developments for micro-wind and micro-CHP. The MCS will continue to have a role in delivering consumer protection and building consumer confidence in the technologies. The RHPP Phase 2 and the FIT schemes should help to greatly improve our understanding of domestic renewable energy technologies.
- 2.6 DECC wider priorities are set out in Annex A.

3. Aims and objectives

- 3.1 The MCS Licensee will be required to enter into a license agreement with DECC and a contract. A draft copy of the **License Agreement and Contract is attached at Annex B for illustrative purposes only**. This sets out the key principles of the MCS Licensee's role, however, the full details still need to be finalised. Therefore, please note that the License Agreement and Contract are subject to further development and change.

The Microgeneration Certification Scheme

- 3.2 MCS is a certification scheme for domestic-scale renewable and low carbon electricity and heat generating technologies. It was introduced in 2006 to underpin a number of Government policies which subsidise or otherwise promote microgeneration; installers and suppliers of microgeneration technologies must be a member of the scheme (or equivalent) in order for technologies up to 45kW thermal and 50kW electricity capacity to be eligible for DECC's financial incentives.
- 3.3 The development of MCS is a requirement of the DECC Microgeneration Strategy. The scheme has an important role in driving industry standards and protecting

consumers. The MCS certification mark belongs to the Secretary of State but the scheme, which is very much industry led, is funded by MCS certified installation companies and manufacturers fees and installation fees paid by consumers. Currently, the industry lead is provided through the “MCS Steering Group”, made up of key stakeholders. A full list of Steering Group members is available on the [MCS website](#). The current MCS Licensee is Gemserv Limited, and part of their role is to perform the secretariat functions for the MCS Steering Group. The current MCS License Agreement gives permission and conditions for use of the MCS mark, which is then sub-licensed to MCS Certification Bodies.

- 3.4 There are currently a large number of DECC policies which are reliant on the Scheme’s success including:
- [Permitted planning](#) (for air source heat pumps and wind turbines)
 - [Feed-in Tariffs](#) to support the deployment of small-scale low-carbon electricity (less than 5MW).
 - [Renewable Heat Premium Payment \(RHPP\) Phase 2](#) – to provide short term support for installations of renewable heat technologies in the household sector.
 - [Renewable Heat Incentive \(RHI\)](#) – this will provide long-term financial support to renewable heat installations to encourage the uptake of technologies such as solar-thermal or heat pumps.

4. Current position of the MCS Scheme and Licensee

- 4.1 The MSC scheme works on the basis of the following groups:
- Steering Group
 - Management Panel
 - Standards Management Group
 - Technical Working Groups for each technology
- 4.2 The Steering Group is responsible for the strategic direction of the scheme and meets approximately four times each year. The Management Panel has been appointed by the Steering Group in an executive capacity to manage the Scheme and to take the day to day decisions. The technical working groups are responsible for developing new and existing standards. Their work is ratified by the Standard Management group, which is also responsible for managing the introduction of revised and new standards.
- 4.3 Strengthening the scheme and putting its governance on a firmer footing is a key part of the DECC Microgeneration Strategy published in 2011, since it is recognised that MCS has an important role in driving industry standards and protecting consumers. The strategy committed to establish ‘MCS’ as a private

company limited by guarantee, in order to streamline governance and provide better cover for liabilities.

- 4.4 The current MCS licence and contract expires on 31st October 2012. It may be that we will extend the current contract to allow for the timing of this tender exercise and any transition work. We need to issue a new licence and contract for post 31st October 2012 and to link this work to the action in the Microgeneration Strategy to establish MCS as a limited company. We have concluded that the first step in this action will be to replace the MCS Steering Board with a private company limited by guarantee, referred to in this document as the MCS Company. The MCS Company will take over the role of the MCS Steering group at the same time as the new licence comes into effect.

What is the key role of the Licensee?

- 4.5 The MCS Licensee will have a number of key roles. The first will be responsibility for sub-licensing the MCS Mark, in accordance with the licence agreement and the requirements of the MCS Company. This must take place within the parameters of the licence agreement. This aspect of the role is intended to be light touch, with the majority of the burden for certifying organisations and monitoring accredited Certification Bodies (CB) being carried out under the oversight of UK Accreditation Service (UKAS). The CBs' role include collecting the registration fees for installation companies and product manufacturers, which are then passed on to the MCS Company or otherwise used only as directed by the MCS Company.
- 4.6 The second key role is that it will be responsible for providing administrative services to the MCS Company, in accordance with the requirements of the MCS Company (within the parameters of the contract). The third key role is that it will be responsible for maintaining the Microgeneration Installation Database (MID), in accordance with the requirements of the MID User Group (within the parameters of the contract). The fourth key role is to report to DECC on the MCS.
- 4.7 The full list of requirements for the role of sub-licensing the MCS Mark is still to be settled in detail, but activities are expected to include:
- Issuing sub-licenses to Certification Bodies that meet the required standards and are UKAS accredited.
 - Ensuring compliance to the MCS fee structure, which is set by the MCS Company.
 - Collection of income streams arising from the sub-licences - including the collection of funds from the Certification Bodies, manufacturers and installation companies through the Scheme's database and PayPal system. Passing the funds collected on to the MCS Company or otherwise using those funds only as directed by the MCS Company.

- Working with Certification Bodies to ensure the Scheme's requirements are followed and robustly policed (in accordance with the requirements of the MCS Company).

4.8 The role of providing administrative services to the MCS Company will require the MCS Licensee to carry out the day to day activities of the scheme in accordance with the requirements of the MCS Company as long as such requirements fall within the parameters set by the contract. The full list of requirements is still to be settled in detail but activities are expected to include:

- Organisation and recording of meetings for the MCS Company's Board, the Standard Management Group and all the technical working groups
- Running the MCS office
- Providing a telephone helpline facility for key stakeholders including the general public
- Maintaining and developing the Scheme's website
- Financial reporting to the MCS Company's Board
- Reporting to the MCS Company's Board on the issuing and use of the Scheme's Mark
- Promoting the Scheme
- Marketing the Scheme, PR Events
- Providing co-ordination to the MCS complaint process in order to give consumers a single point of contact

4.9 Rough estimates of the number of activities carried out by the MCS Licensee based on historical data:

Marketing, PR events

Annualised figures:

- MCS stand at twelve exhibitions
- Speak at 30 events
- Publish 30 articles in relevant media outlets
- Handle 40 press enquiries

Complaints handling

Exact figures are not available as complaints usually consumed in Helpdesk enquiries. However, there are usually several enquiries per week most of which are re-directed to the Consumer Code REAL or the Certification Bodies.

Legal cases

Legal case are time consuming and usually require senior resource, however, they are relatively few and far between. 5 such case have been budgeted for this year.

Technical working group meetings

This year we have budgeted for:

- 24 technical working groups
- 4 ad hoc working groups
- 6 SMG meetings
- In total, between the above, combined with Management Panels, Steering Groups etc, the number of meetings this year is scheduled to be 52

Helpdesk

- Email volumes are about 30 on an average day, rising to may be three times that in the days around a major announcement or in the run-up to FIT degressions
- Average daily volume of calls is about 70 to 80 but this can peak at well over 700 at times of major tariff degressions
- Volumes of Installation Companies registration at the start of the scheme was around 12 new installers each week. At the peak, in December 2012, it was 130 new companies per week
- Product volumes are more steady as they are not directly related to tariff degressions.

Maintaining MID

The full list of requirements for the role of maintaining the MID is still to be settled in detail, but activities are expected to include:

- maintaining the database
- developing the database
- making certain information in the database available to DECC, Ofgem and others

Reporting requirements

The full list of requirements for the role of reporting to DECC on the scheme is still to be settled in detail, but activities are expected to include:

- Financial reporting to DECC
- Reporting to the MCS Company
- Reporting to DECC on the issuing and use of the Scheme's Mark.
- Providing DECC with information for Freedom of Information cases and Parliamentary business on request and on a timely basis.

Management of the MCS database

- 4.10 The MID belongs to DECC but will be licensed to the Company through the License Agreement. The MID was originally set up using funds provided by DECC, but DECC will not be providing any further funds for the database. In future, its maintenance and development will form part of the obligations imposed under the contract with the MCS Licensee.

- 4.11 Maintenance and development of the database during the term of the contract must be carried out by the MCS Licensee. Governance and Change Process procedures for the MID are currently being finalised. It is expected that maintenance and development of the Database will be in accordance with the instructions going forward.
- 4.12 DECC will require certain information and there are other users such as Ofgem and the FITs' Licensees who will have a significant interest in the operation and development of the Database

5. Challenges

- 5.1 There are a number of challenges in putting in place the arrangements set out in this ITT. The successful Licensee must consider how it can work, in accordance with the instructions or requirements of the MCS Company, to deliver a certification service that drives industry standards and provide consumer protection. Certification is primarily aimed at consumer protection but must also strike the right balance between that and burdens on business.
- 5.2 The Licensee must be able to work with a wide range of stakeholders operating in the microgeneration sector. The Licensee must report to DECC and the MCS Company on the financial state of the Scheme, along with the operational management reporting it will be required to present to the Company's Board. A key challenge will be to agree working arrangements with the MCS Company that adequately reflects the principles of operation set out in the License Agreement and contract.

6. Outputs

- 6.1 The following outputs would be required from the Licensee:
- 6 monthly financial report in addition to any other requirements by the MCS Company on how the Scheme is performing and the key expenditures and receipts.
 - 6 monthly report in addition to any other requirements by the MCS Company on how the MCS is developing and meeting policy requirements.
 - There will be a requirement to provide certain MID information on a regular basis to DECC.
 - To provide DECC with information for Freedom of Information requests and Parliamentary business.

7. Working Arrangements

7.1 The Licensee will be expected to identify key named points of contact through whom all enquiries by DECC or the MCS Company can be filtered. A DECC project manager will be assigned to the project and will be the central point of contact with DECC.

7.2 Changes to these personnel should be advised in writing to the respective organisations and to the MCS Company. The MCS Licensee would be expected to talk to other teams within DECC where there is an overlap of work with the MCS. For example, the Feed-In Tariff and Renewable Heat Incentive teams.

8. Consortium bid

8.1 In the case of a consortium tender, only one submission covering all of the members is required, but consortia are advised to make clear the proposed role that each team member will play in delivering the Licensee role as per the requirements of the specification. If a consortium is awarded the contract, DECC may require it to form a separate legal entity as a condition of the contract.

8.2 Bidders must provide details as to how they will manage sub-contractors and what percentage of the tendered activity will be sub-contracted

9. Timetable

9.1 Bidders must demonstrate that they can meet the following provisional timetable for this work:

Key milestones	Timetable
Full invitation to tender issued	02.08.2012
Bidders to submit any questions on specification. DECC will aim to respond by 23.08.2012.	Before 16.08.2012
Submit tender	13.09.2012
Interviews held with short-listed bidders	18.09.2012
Appoint successful Licensee	20.09.2012
First meeting with DECC	October 2012
First meeting with MCS Company Board	November

	2012
Licensee to take up post	November 2012

9.2 Bidders should allow for a minimum of three meetings at DECC, including a meeting with the MCS Company Board and kick off meeting with DECC in the first 3 months following this tender exercise

10. *Project team*

10.1 A range of different skills are required for this work. Bidders should clearly set out the skills and expertise provided by the proposed project team to meet the requirements.

10.2 The following skills are considered particularly important for this work:

- a. Technical knowledge of the full range of microgeneration technologies
- b. Administrative skills to manage a disparate industry, run large working group meetings
- c. Working with policy advisers across Government
- d. Undertaking, analysing and reporting on industry research
- e. Working with general public

10.3 Ability to work with, and to act in accordance with the instructions and requirements of the MCS Company (within the parameters set by the contract and license agreement).

10.4 Bidders should propose named members of the project team and the number of full time equivalent support staff intended to be allocated to the licensee role, and include the general tasks and responsibilities of each team member. This should be clearly linked to the work programme set out in this ITT, indicating the grade/seniority of staff and indicative number of days allocated to specific tasks. It is not expected that Bidders will be in position to precisely cost the work over the first year of operation. Bidders should provide indicative costs and a sensible project plan against the activities set out in paragraphs 4.5 to 4.12.

10.5 Contractors should identify the individual(s) who will be responsible for managing the project.

11. *Period of License*

11.1 The contract shall run for three years from the date of the Licence award. DECC will retain an option to extend the contract for a further 2 years beyond the three years.

12. Budget and payment milestones

- 12.1 There is no budget or payment from DECC attached to this License agreement. However, the Licensee will be paid for performing its role, out of the income it collects for use of the MCS Mark. The MCS Licensee will need to agree an annual budget with the MCS Company. It will then seek to perform its various roles within that budget, and will need to reach agreement with the MCS Company on any in period variations to the budget. Every month or such other intervals as agreed with the MCS Company, costs will be paid from the MCS Fund. We will need to put in place a dispute resolution procedure should there be issues where the MCS Company and MCS Licensee cannot reach agreement, with ultimately DECC having the power to intervene.
- 12.2 Bidders should set out costs including the daily rates of the key people that would be involved in the project and the delivery of the roles. Bidders should include all costs including staff costs, attendance at meetings, equipment, access to data, travel and subsistence and overheads. Bidders should highlight and include any liability costs they think is relevant.
- 12.3 In submitting full tenders, bidders confirm in writing that the price offered will be held for a minimum of 60 calendar days from the date of submission. Any payment conditions applicable to the prime contractor must also be replicated with sub-contractors. The payment method and frequency of payment will need to be agreed with the MCS Company.

EVALUATION OF TENDERS

13. Evaluation criteria

- 13.1 Bidders are invited to submit full tenders. Tenders will be evaluated by at least two DECC staff and Gideon Richards who is currently the Chairperson of the MCS Steering Group. Tenders will be scored and weighted as detailed below:
- Response fully meets requirements = 5
 - Response mostly meets requirements = 3
 - Response partly meets requirements = 1
 - Response fails to meet requirements = 0
- 13.2 Bids will be judged on the most economically advantageous tender in terms of the following criteria, as set out in the OJEU Notice (with the weighting of each criterion in brackets):

- **Understanding the brief** – demonstrate an understanding of the requirements and objectives set out in this ITT and how the services can be successfully delivered (5).
- **Cost** – delivering the desired level of service in a highly cost-effective manner (4).
- **Quality** – demonstration of the expertise, experience and knowledge to carry out the full range of roles as set out in this ITT (4)
- **Technical Capability** – demonstration of required technical expertise in renewable and low carbon microgeneration technologies in order to meet the full requirements of the Licensee role (4)
- **Proven track record** - Experience and knowledge of working with a disparate group of stakeholders including consumer bodies and the general public in the delivery of services (3)
- **Experience of working with the microgeneration sector** - at least 5 years experience in related work in this field (3)
- **Awareness of consumer protection issues** – an understanding of energy policy and industry sectors in relation to small-scale low carbon and renewable technologies and the extent to which challenges of certification and consumer protection are identified and addressed (2)
- **Innovation and creativity** - innovative ideas on the services and how they could be delivered, whilst maintaining the principles in respect of the relationship between the Licensee and the MCS Company (2)
- **Ideas for the future** – demonstrate how the scheme could be improved or adapted in future (2)

CONTENT OF TENDER

Bidders are strongly advised to structure their tender submissions in line with the evaluation criteria set out in the paragraph above - 13.2.

Section 1 - Understanding the brief

Bidders should provide evidence to demonstrate their understanding of the Licensee role, and how they will add value in delivering against the requirements. Bidders should also set out how risks will be identified, assessed, managed and monitored throughout the project.

Section 2 - Cost/Pricing

Bidders are required to replicate and complete the applicable tables below as part of their response to this section.

Section 3 - Quality

Bidders should demonstrate competence and experience to carry out the full range of roles as set out in this ITT and how that will be done in terms of the ethos of their business and the quality assurance approach to be used.

A full project plan based on the indicative programme of activities set out in paragraph 4.8 detailing:

- The tasks to be undertaken and milestones to be reached
- The individuals responsible for undertaking tasks (including seniority of staff and number of days allocated for each task)

Section 4 - Technical Capability

Bidders must set out in detail an understanding of microgeneration technologies and the technical challenges of moving to low carbon and renewable technologies. Bidders should clearly set the experience and technical expertise to support the MCS Company in the microgeneration sector. We would expect to see evidence of relevant skills and knowledge of the project team that will be utilised in the performance of the License agreement.

Section 5 - Proven track

Experience and knowledge of working with a disparate group of stakeholders including consumer bodies and the general public in the delivery of services.

Section 6 - Experience of working with the microgeneration sector

Bidders should provide evidence of working in this field for at least 5 years.

Section 7 - Awareness of consumer protection issues

Bidders should provide evidence that they understand the consumer issues and make clear what they would do to ensure MCS plays its part in driving consumer confidence in technologies.

Section 8 - Innovation and creativity

Bidders should provide ideas on how the services could be delivered, whilst maintaining the principles in respect of the relationship between the Licensee and the MCS Company.

Section 9 - Ideas for the future

Bidders should present ideas on how the Scheme can be improved going forward and how it adapts and fits within the changing marketplace for small scale renewable onsite technologies.

PRICE SCHEDULE

Part A – Staff/project team charges (including any sub-contracted work)

<u>*Grade/level of staff</u>	<u>Daily rate (ex VAT)</u>	<u>Tasks to be undertaken</u>	<u>No. days offered over course of contract</u>	<u>Total price offered per staff member</u>
	£			£
	£			£
	£			£
	£			£
	£			£
	Sub-total			£

[*Bidders should also include sub-contractors]

Part B – Non-staff/project team charges

<u>Item</u>	<u>No. of items</u>	<u>Price per item (ex VAT)</u>	<u>Total price per offered</u>
		£	£
		£	£
		£	£
		£	£
		£	£
Sub-total			£

Part C – Full price offered

Sub-total (Part A + Part B)	£
VAT	£
TOTAL (Sub-total + VAT)	£

Annex 2 – Proposal

Gemserv Limited - Tender Application for the Appointment of Licensee for the
Microgeneration Certification Scheme

Annex 3 – Correspondence

Dear Paul,

Thanks very much for the opportunity to present to the panel last Thursday, regarding the MCS Licensee / Administrator role. As agreed, we're now pleased to provide some further information around the resourcing and numbers.

The attached file ('MCS Roles and Allocation – DECC.xls'), when read with page 45 of the bid document, articulates the sub-tasks, resourcing numbers and associated costs. We've broken tasks down further where we could, to try to show how they build up into the work-streams indicated in the ITT.

It's worth clarifying the point I made last week about the favourable rates we offered. [

].

Two other areas for which we were asked for further detail were helpdesk and marketing.

Helpdesk includes two phone lines and an email service, staffed by a mix of first line support who can answer straightforward queries, and second line internal staff at [] grade to answer the more complex queries. The helpdesk also includes third line support budgeted at []. These are technical specialists like [] and [], charged at [] but utilising someone at [] grade. We believe it may actually only require [] to [] days, and the other [] to [] – should MCS want them – could be used to provide independent technical expertise to working groups, as discussed at the interview.

The Marketing activity has been broken down in the attached to reflect the efforts of several individuals across a range of events and tasks. We have also provided a table breaking down the pass-through costs associated to Marketing, which would of course vary depending on the activities we agree with the MCS Board and CEO.

I trust this clarifies things, but please don't hesitate to contact me if I can be of further assistance.

Thanks again and kind regards,

[]

[]

Gemserv Limited, 10 Fenchurch Street

London, EC3M 3BE

Tel: []

www.gemserv.com

Roles and Allocation: This table is based upon the table within the bid document (Page 45) what this table articulates is the number of days for each grade and annual staff cost for each of the tasks

Activity						Cost
1) Sub-licensing mark and managing CBs						
1A) Licensing and compliance						
1B) Collection of finances						
Sub-total						
2) Provision of Admin Services to the Company						
2A) Marketing						
<i>Large 3 or 4-day events e.g. Ecobuild (per event)</i>						
Research, event liaison, publicity and preparation						
Event staffing						
Sub-total per large event						
Sub-total for 4 events						
<i>Medium sized conferences: 2-day events</i>						
Research, event liaison, publicity and preparation						
Event staffing						
Sub-total per medium event						
Sub-total for 8 events						
<i>Speaking Engagements (average per event)</i>						
Research, event liaison, publicity and preparation						
Event staffing						
Sub-total (average staffing per event)						
Sub-total for 30 speaking engagements						
Publication of 30 articles						
Handling of 40 press enquiries						
General Marketing and PR activity						
2B) Secretariat						
<i>Average staff per meeting</i>						
Agree agenda, draft papers, circulate						
Attendance						
Draft minutes, complete actions						
Management supervision						
Sub-total (average per meeting)						

Sub-total for 52 meetings per year						
2C) Helpdesk and Complaints						
First and second line technical support						
Third line technical support						
Complaints handling						
Sub-total						
2D) Data and website management						
2E) Legal cases						
2F) General company admin and reporting						
Sub-total						
3) Management of the MCS Database						
3A) Database						
Data management and general administration						
Internal IT Support						
General support and queries						
Database governance						
Sub-total						
Sub-total						
4) Reporting to DECC						
4A) Reporting to DECC						
Sub-total						
Total Days						

Non-staff costs: This table gives an example of how the costs have been constructed for the Marketing, P and Events tasks

Activity	Costs
Large 3-day events (4 / year) e.g. Ecobuild	
Stand space and furniture	
Courier and misc costs	
Marketing materials	
Staff expenses	
Sub-total	

Conferences - 2-day events (4 / year) e.g. ISWC	
Stand space and furniture	
Courier and misc costs	
Marketing materials	
Staff expenses	
Sub-total	
Speaking Engagements (12 / year)	
Staff expenses	
Sub-total	
General marketing and PR	
Licensing and software	
PR company (reactive)	
Adverts, surveys etc	
Sub-total	
Total Cost	

Annex 4 – Service Levels

Part 1 – Licence Services

1. The Contractor shall administer the Scheme, including the issue of Sub-Licences to use the Certification Marks and perform the Licensee functions under the Licence Agreement. In addition, the Contractor will endeavour to agree improvements to the Service Levels with the MCS Company building on the services set out below.

Part 2 – MCS Support Services

2. The Contractor shall provide administrative services to the MCS Company.

3. The Contractor shall:

- (i) Provide a secretariat service for the MCS Company including but not exclusive to running the MCS office, organisation and recording of meetings for the MCS Company, its board, the Standards Management Group and all the technical working groups.
- (ii) Put in place a work programme in conjunction with the MCS Company on an annual basis which sets out the areas of work and the parameters in which that work is to be carried out. Areas of work shall include promoting the Scheme, marketing the scheme, PR events.
- (iii) Organise and manage on behalf of and in conjunction with the MCS Company the maintenance and development of standards working with the technical working groups and Standards Management Group.
- (iv) Agree with the MCS Company a process to respond to complaints from consumers and other stakeholders including installers in a timely fashion.
- (v) At the direction of the MCS Company, publish the Installation Standards and the Product Standards on the MCS Website.
- (vi) Support the MCS Company when legal matters arise, including in the preparation of statement of claim or defence documents.

4. Report to the MCS Company on a regular basis. The reports shall be provided in a timely manner and cover issues including, but not exclusive to, operational costs and time incurred; activities carried out on behalf of the MCS Company; database activities; the development of the Scheme and the issuing and use of the MCS Mark; legal and technical issues being raised.

Part 3 – Database Services

5. The Contractor shall maintain and develop the MCS Database and shall ensure:
- (i) Certificate processing and database systems are maintained for the duration of this Contract including any transitional arrangements if there are changes to the management of the MCS Database at the end of the Contract.
 - (ii) Installations logged online will be processed quickly, courteously and efficiently: certificates generated and sent as soon as possible or within 2 working days of logging an installation.
6. The Contractor shall provide a helpdesk service. The Contractor shall maintain a national rate, 24-hour, unique telephone helpline that will operate as follows:
- (i) All calls will be logged with helpline worker's name, caller name, address, telephone and postcode data.
 - (ii) All calls received between 9.00am and 5.00pm on a Working Day will be answered in person, or offered the option of leaving a voice message.
 - (iii) 90% of calls during 9.00am and 5.00pm on a Working Day will be answered within 10 seconds.
 - (iv) 95% of voicemail messages will be responded to within one Working Day.
7. The Contractor shall maintain and develop the MCS Website and shall ensure:
- (i) The website will offer online services to installers, suppliers and consumers. These services will be agreed with the Authority and MCS Company with scope to carry out ongoing developments.
 - (ii) Over quarterly periods, achieve 99.9% availability and full functionality of the website, and in cases of 'outages' or downtime, directing any visitors to a temporary holding page.
 - (iii) Provide through the website the following information, updated at least quarterly:
 - a. Information on MCS certified products.
 - b. Information on MCS certified installer companies.
 - c. Links to other relevant information and advice available online and offline, including information and services provided by organisations other than the Contractor.
 - d. The number of installations logged each month.
 - e. Other information as agreed with the Authority and the MCS Company on an ongoing basis.

Part 4 – Reporting Services

8. The Contractor shall:
 - (i) notify the Authority of any likely or ongoing problems that may disrupt the provision of certificate processing.
 - (ii) Record and report any 'outages' or downtime in the MCS Website to the Authority and MCS Company, where possible in advance.
 - (iii) Respond, as a matter of urgency and within 2 working days at the latest to enquiries from the Authority to deal with Ministerial questions and correspondence.
 - (iv) Respond to any other requests for information from the Authority in relation to the Scheme, including in relation to the information held on the MCS Database.

9. The Contractor shall provide quarterly reports to the Authority and MCS Company. The quarterly reports shall include the following:
 - (i) The following data in respect of the helpdesk service collected on a daily basis:
 - a. Number of calls taken
 - b. Number of voicemail messages
 - c. Average time to return voicemail messages
 - d. Average duration of calls
 - e. Average time on hold
 - f. Number of callers hanging up while on hold
 - (ii) Information on complaints received from consumers and product/installation companies.

10. The Contractor shall provide as part of every alternate quarterly report:
 - (i) a financial report on key expenditures and receipts over the preceding 6 months.
 - (ii) an independent report on the performance of the Scheme, developments and how the Scheme has met policy requirements (as set out in the invitation to tender and as advised by the Authority from time to time) over the preceding 6 months.

Annex 5 – DECC STANDARD TERMS AND CONDITIONS

DECC DPF31

DECC STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

(including Hire, Lease and Facilities Management)

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DECC STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

(including Hire, Lease and Facilities Management)

1. Definitions and Interpretation

(1) In these terms and conditions of contract for services (“Conditions”):

“Authority” means the Secretary of State for Energy and Climate Change;

“Authority’s Premises” means land or buildings owned or occupied by the Authority;

“Confidential Information”:

- a) means all information obtained by the Contractor from the Authority or any other department or office of Her Majesty's Government relating to and connected with the Contract and the Services; but
- b) does not include the Contract itself and the provisions of the Contract where, or to the extent that, the Authority publishes them by virtue of Condition 40;

the “Contract” means the agreement concluded between the Authority and the Contractor for the supply of Services, including without limitation these Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

the “Contractor” means the person who agrees to supply the Services and includes any person to whom all or part of the Contractor’s obligations are assigned pursuant to Condition 4;

“the Charges” means the price agreed in respect of the Services, excluding Value Added Tax;

“DECC” means the Department of Energy and Climate Change;

"Government Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Authority, including but not limited to documents, papers, data issued in electronic form and other materials;

“Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

“Purchase Order” means the document so described by the Authority to purchase the Services which makes reference to the Conditions;

the "Services" means the services to be supplied under the Contract.

(2) The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- (b) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (c) references to "person", where the context allows, includes a corporation or an unincorporated association.

2. Acts by the Authority

Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either expressly or impliedly, by the Authority to take or do that decision, act or thing.

3. Service of Notices and Communications

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

4. Assignment and Sub-contracting

(1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Authority.

(2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Authority.

(3) If the Contractor uses a sub-contractor for the purpose of performing the Services or any part of it, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.

(4) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

(5) The Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 2(1) of the Public Services Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

5. Entire Agreement

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

6. Waiver

(1) The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.

(2) No waiver shall be effective unless it is communicated to the other party in writing.

(3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

7. Severability

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

8. Confidentiality

(1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the Authority. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure

that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.

(2) Condition 8(1) shall not apply to information which:

- (a) is or becomes public knowledge (otherwise than by breach of these Conditions or a breach of an obligation of confidentiality);
- (b) is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the Authority or any other department or office of Her Majesty's Government;
- (c) is required by law to be disclosed;
- (d) was independently developed by the Contractor without access to the Confidential Information.

(3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.

(4) The Contractor shall not handle or examine any document or thing bearing a Government security classification of "Confidential", "Secret" or "Top Secret" other than in a Government establishment and the Contractor shall not remove any such document or thing from such Government establishment without the prior written consent of the Authority.

(5) The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Contract, unless previously agreed in writing with the Authority.

(6) Except with the prior consent in writing of the Authority, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

9 Freedom of Information

(1) The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations SI 2004 No. 3391 ("EIR") and shall assist and cooperate with the Authority, at the Contractor's expense, to enable the Authority to comply with these information disclosure requirements.

(2) In this Condition:-

“Information” has the meaning ascribed to it in section 84 of the FOIA;

“Request for Information” has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or EIR.

(3) The Contractor shall (and shall procure that its subcontractors shall):-

(a) Transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two working days;

(b) Provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information;

(c) Provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

(4) The Authority shall be responsible for determining, at its absolute discretion, whether any Information:-

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

(b) is to be disclosed in response to a Request for Information.

In no event shall the Contractor respond directly to a Request of Information unless expressly authorised to do so in writing by the Authority.

(5) The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the FOIA (issued under section 45 of the FOIA in November 2004), be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. The Authority may at its discretion consult the Contractor with regard to whether the FOIA applies to the Information and whether an exemption applies.

(6) The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

(7) The Contractor acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the Authority

may nevertheless be obliged to disclose information which the Contractor considers confidential in accordance with Conditions 9(4) and (5).

10. Amendments and Variations

Subject to Condition 18(7) no amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between the Authority and the Contractor.

11. Invoices and Payment

(1) The Contractor shall submit invoices at times or intervals agreed by the Authority in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Authority's Purchase Order or contract number, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.

(2) In consideration of the provision of the Services by the Contractor, the Authority shall pay the Charges after receiving a correctly submitted invoice as set out in Condition 11(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.

(3) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 10.

(4) The Authority may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

(5) If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the Head of Procurement at the Department of Energy and Climate Change setting out his case. The Head of Procurement shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.

(6) For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last

day of a period of 30 days commencing on the day when the Authority received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services, (or the part of the Services to which the invoice relates).

12. Accounts

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Authority and all payments made by the Authority in respect of the Services.

(2) The Contractor shall permit the Authority acting by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the Authority shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the Authority or its independent auditor with such explanations relating to that expenditure as the Authority may request.

(3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of six years after termination or expiry of the Contract.

13. Recovery of Sums Due

(1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the Authority or with any other department or office of Her Majesty's Government.

(2) Any over-payment by the Authority to the Contractor whether in respect of the Charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 13(1) above or otherwise.

14. Value Added Tax

(1) The Authority shall pay to the Contractor, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

(2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

(3) The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority relating to the amount of Value Added Tax chargeable on the Services.

15. Provision of Services

(1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of the Authority whose decision shall be final and conclusive. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

(2) If the Authority informs the Contractor that the Authority considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at his own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Authority.

(3) The Authority may at any time demand that the Contractor suspend the provision of the Services. If the Authority exercises such right to suspend the provision of the Services or any part of them, or if the Contractor is delayed in proceeding with the provision of the Services by the Authority (otherwise than as a consequence of a breach of the Contract, or a breach of duty or fault or negligence on the part of the Contractor), the Authority shall be responsible for loss incurred by the Contractor as a result of such suspension or delay. Subject to the Contractor taking reasonable steps to mitigate its loss, the Contractor will be able to recover from the Authority under this Condition only for those losses which:

(a) were reasonably foreseeable by the Authority as arising as a direct result of the suspension or delay; and

(b) relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension or delay and in respect of which the Contractor cannot obtain a refund (where the Contractor has already paid in relation to the commitment) or is obliged to pay (where the Contractor has not already paid in relation to the commitment).

The provisions of this Condition shall not apply where the reason for the suspension of the Services arises from circumstances beyond the control of the Authority.

(4) If the performance of the Contract by the Contractor is delayed by reason of any act on the part of the Authority or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisation) or any other cause which the Contractor could not have prevented then the Contractor shall be allowed a reasonable extension of time for completion. For the purposes of this Condition, the Contractor shall be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor's staff, agents and sub-contractors.

(5) Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

(6) The Contractor warrants that it shall provide the Services with all due skill, care and diligence, and in accordance with good industry practice and legal requirements.

(7) Without prejudice to the provision of Condition 13(1), the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice by the Authority.

16. Progress Report

(1) Where formal progress reports are required by the Contract, the Contractor shall render such reports at such time and in such form as may be specified by the Authority, or as otherwise agreed between the Contractor and the Authority.

(2) The submission and acceptance of progress reports shall not prejudice any rights of the Authority under the Contract.

17. Contractor's Personnel

(1) The Authority reserves the right to refuse to admit to the Authority's Premises any person employed by the Contractor or its sub-contractors, whose admission would be undesirable in the opinion of the Authority.

(2) If and when requested by the Authority, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the Authority's Premises, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as the Authority may require.

(3) If and when requested by the Authority, the Contractor shall procure from each person identified by the request, a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract and that he will comply with the provisions of those Acts in so far as they apply to the work he is performing under the Contract.

(4) If and when requested by the Authority the Contractor agrees that it will submit any person employed by the Contractor or its sub contractors to the Authority's security vetting procedure. The Contractor further agrees that any individual who refuses to submit to such vetting procedure or does not attain the clearance it affords will not carry out any work on the Contract which the Authority certifies as suitable only for people who have passed its security vetting procedure.

(5) If the Contractor fails to comply with paragraph (2) (3) or (4) of this Condition and the Authority decides that such failure is prejudicial to its interests, the Authority may immediately terminate the Contract by notice in writing to the Contractor, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the Authority.

18. Indemnities and Insurance

(1) The Contractor shall hold harmless and indemnify the Authority on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the Authority's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors.

(2) The Contractor shall be liable to the Authority for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the Authority's property, which includes data) arising from the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).

(3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in respect of the indemnities provided under the Contract, which in any event shall not be less than £1,000,000, and shall at the request of the Authority produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.

(4) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the Authority or its representatives in their personal capacity.

(5) The Contractor shall indemnify the Authority against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Authority.

(6) The Authority shall indemnify the Contractor against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the Authority by the Contractor in the course of providing the Services, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to by, any act of the Contractor.

(7) Except in relation to death or personal injury as referred to in Condition 18(1), and subject to Conditions 18(5) and 30(6) the amount of liability under this clause shall be limited to a sum of £4,000,000 or twice the contract value, whichever is the greater, or such other sum as may be agreed in writing between the Head of Procurement on behalf of the Authority and the Contractor.

19 Termination for Insolvency or Change of Control

(1) The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:

a) where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 19(1)(a) or (c) occurs in respect of any partner in the firm or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or

c) where the Contractor is a company or limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

d) the Contractor undergoes a change of control, where "control" is interpreted in accordance with Section 1124 of the Corporation Tax Act 2010.

(2) After receipt of the notice under paragraph (1) above or earlier discovery by the Authority of the occurrence of any of the events described in that paragraph, the Authority may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without prejudice to any right or action or remedy which may accrue to the Authority thereafter. The Authority's right to terminate the Contract under Condition 19(1)(d) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 19(1), or such other period as is agreed by the parties.

20. Termination for Breach of Contract

If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

21. Cancellation

The Authority shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 28 days' notice in writing to that effect. Once it has given such notice, the Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

22. Dispute Resolution

(1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

(2) If the parties cannot resolve the dispute pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition.

(4) If the parties agree to refer the dispute to mediation:

(a) in order to determine the person who shall mediate the dispute (the “Mediator”) the parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Government Procurement Service on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;

(b) the parties shall within 14 days of the appointment of the 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 Government Procurement Service to provide guidance on a suitable procedure;

(c) 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;

(d) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Authority and the Contractor;

(e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the 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.

(5) If the parties do not agree to refer the dispute to mediation, or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 22(4)(a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

23. Bribery and corruption

- (1) The Contractor shall not, and shall ensure that its staff, sub-contractors and agents do not:
- a) offer or promise, to any person employed by or on behalf of the Authority any financial or other advantage as an inducement or reward for the improper performance of a function or activity, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;

- b) agree to receive or accept any financial or other advantage as an inducement or reward for any improper performance of a function or activity in relation to this Contract or any other contract with the Authority; or
- c) enter into the Contract or any other contract with the Authority or any other department or office of Her Majesty's Government in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Authority to act as its representative for the purpose of this Condition.

Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.

(2) Any breach of this Condition by the Contractor, or by any person employed or engaged by him or acting on his behalf (whether with or without his knowledge), or any act or omission by the Contractor, or by such other person, in contravention of the Bribery Act 2010 or any other anti-corruption law, in relation to this Contract or any other contract with the Authority, shall entitle the Authority to terminate the Contract with immediate effect by notice in writing and to recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Authority shall think fit.

(3) Where the Contract has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the provision of the Services, enabling the Authority to terminate the Contract with immediate effect and the Authority will not be obliged to pay the Charges.

- (4) In any dispute, difference or question arising in respect of:
- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such determination of the Contract); or
 - b) the right of the Authority to determine the Contract; or
 - c) the amount or value of any gift, consideration or commission,

the decision of the Authority shall be final and conclusive.

24. Official Secrets

The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the expiry or earlier termination of the Contract.

25. Special Provisions

In the case of any conflict or inconsistency between these general Conditions and any specific terms of the Contract, the latter shall prevail.

26. Conflict of Interest

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.

(2) Where the Authority is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- a) if the Contractor fails to comply with the Authority's requirements in this respect; or
- b) if, in the opinion of the Authority, it is not possible to remove the conflict,

the Authority may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

(3) Notwithstanding Condition 26(2), where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

27. Intellectual Property Rights

(1) Subject to any pre-existing rights of third parties and of the Contractor, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Contractor (or any of its sub-contractors or agents) (“the Contractor Materials”) in the performance of the Services shall belong to and be vested automatically in the Authority.

(2) The Contractor hereby assigns any copyright that it owns in the Contractor Materials to the Crown. The Contractor waives all moral rights relating to the Contractor Materials.

(3) The Contractor warrants to the Authority that all of their staff, agents and sub-contractors are and will be engaged in relation to the Contract on terms which do not entitle any of them to any Intellectual Property Rights in the Contractor Materials, and which require them to waive all moral rights.

(4) If the Contractor in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, subcontractor or third party a non-exclusive licence for, or, if the Contractor is itself a licensee of those Intellectual Property Rights, it shall grant a sub-licence to, the Authority to use, reproduce, modify, adapt and enhance the material as the Authority sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the Authority.

(5) The Authority shall have the sole right to use any information (whether or not it is Confidential Information) collected or collated pursuant to the Contract (excluding any information which in the opinion of the Authority is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor), and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the Authority.

(6) Nothing in this Contract or done under the Contract shall be taken to diminish any Crown copyright, patent rights or any other Intellectual Property Rights which would, apart from this Contract, vest in the Crown or Authority.

(7) The Contractor shall ensure that all royalties licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with the Contract have been paid and are included in the Charges.

(8) If the Authority reimburses the Contractor for the cost of any equipment, such equipment shall become the property of the Authority and the Contractor shall on request deliver such equipment to the Authority. The Contractor shall keep a proper inventory of such equipment and shall deliver that inventory to the Authority on request and on completion of the Services.

28. Rights of Third Parties

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

29. Government Property

- (1) All Government Property shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Authority.

- (2) All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Authority to the contrary within 14 days or such other time as is specified in the Contract.

- (3) The Contractor undertakes to return any and all Government Property on completion of the Contract or on any earlier request by the Authority.

- (4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Authority, pay compensation for all loss, destruction or damage occurring to any Government Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the Authority's Premises or any other Government premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the neglect or default of his servants, agents, or sub-contractors.

- (5) Where the Government Property comprises data issued in electronic form to the Contractor (including personal data as defined in Condition 30(1) below) the Contractor shall not store, copy, disclose or use such electronic data except as necessary for the performance by the Contractor of its obligations under the Contract (including its obligation to back up electronic data as provided in Condition 29(6) below) or as otherwise expressly authorised in writing by the Authority.

- (6) The Contractor shall perform secure back ups of all such electronic data in its possession and shall ensure that an up to date back up copy is securely stored at a site other than that where any original copies of such electronic data are being stored.

(7) The Contractor shall, and shall procure that its sub-contractors, agents and personnel, shall observe best practice when handling or in possession of any such electronic data. By way of example if the Contractor removes any such data or information from a Government establishment, or is sent such data or information by the Authority it shall ensure that the data and any equipment on which it is stored or is otherwise being processed is kept secure at all times. The Contractor shall impress on any of its sub-contractors, agents and personnel who are required to handle or have possession of such electronic data that they must safeguard it all times, and shall not place it in jeopardy for example by leaving it unattended in a vehicle or on public transport or by transmitting or posting it by insecure means.

(8) If at any time the Contractor suspects or has reason to believe that such electronic data has or may become corrupted, lost, destroyed, altered (other than to the extent that the Contractor alters it by lawful processing in accordance with its obligations under this contract) or so degraded as a result of the Contractor's default so as to be unusable then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

(9) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith arising from the corruption, loss, destruction, alteration (other than by lawful processing permitted by this Contract) or degradation of electronic data which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or sub-contractors, agents and personnel and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in such corruption, loss or degradation.

30. Data Protection

(1) In this condition references to "personal data", "data subjects" and "data processor" are to be interpreted as defined in the Data Protection Act 1998 ("the Act"). The Contractor shall comply with all relevant provisions of the Act and do nothing which causes, or may cause, the Authority to be in breach of its obligations under the Act. In particular, to the extent that the Contractor acts as a data processor in respect of any personal data pursuant to the Contract, the Contractor shall only process such personal data as is necessary to enable it to fulfil its obligations under this Contract.

(2) The Contractor warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on the Authority's behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this Contract. The Contractor shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.

(3) Upon reasonable notice the Contractor shall allow the Authority access to any relevant premises owned or controlled by it to enable the Authority to inspect its procedures described at Condition 30(2) above and will upon the Authority's request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the Authority's behalf.

(4) The Contractor shall at its own cost, at the Authority's request, assist the Authority to comply with any requests for access to personal data under Section 7 of the Act and in particular shall respond to any such request promptly to enable the Authority to comply with its obligations under the Act. When requested by the Authority the Contractor shall at its own cost promptly provide it with any personal data relating to this Contract.

(5) If the Contractor fails to comply with any provision of this condition, the Authority may terminate the Contract immediately in which event the provisions of Condition 20 shall apply.

(6) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Authority by any person in respect of the Act or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its sub-contractors and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in the Authority being in breach of its obligations under the Act or equivalent applicable legislation in any other country.

(7) The Contractor warrants that it has submitted, pursuant to Section 18(1) of the Act, a notification to the Information Commissioner and shall keep that notification up to date.

(8) The Contractor shall not transfer any personal data outside the European Economic Area unless authorised in writing to do so by the Authority.

(9) Upon the termination of this Contract for whatever reason the Contractor shall, unless notified otherwise by the Authority or required by law, immediately cease any processing of the personal data on the Authority's behalf and as requested by the Authority destroy or provide the Authority with a copy on suitable media.

(10) The Contractor shall promptly carry out any request from the Authority requiring it to amend, transfer or delete the personal data or any part of the personal data.

(11) Where the Contractor is required to collect any personal data on behalf of the Authority, it shall ensure that it provides the data subjects from whom the personal data are collected with a data protection notice in a form to be agreed with the Authority.

31. Payment of taxes

(1) The Contractor shall comply with all requirements of law relating to the payment of taxes.

(2) In particular (but without limitation), where the Contractor, or any of its staff, are liable to be taxed in the UK in respect of consideration received under the Contract, the Contractor shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.

(3) In particular (but without limitation), where the Contractor, or any of its staff, are liable to National Insurance Contributions (NICs) in respect of consideration received under the Contract, the Contractor shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.

(4) The Authority may, at any time during the term of the Contract, require the Contractor to provide information to demonstrate that:

- a) the Contractor has complied with paragraphs (1) to (3) above; or
- b) the Contractor or its staff are not liable to the relevant taxes.

(5) A request under paragraph (4) above may specify the information which the Contractor must provide and a reasonable deadline for response.

(6) The Authority may supply any information which it receives under paragraph (4) to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

(7) The Contractor shall ensure that any sub-contractors (including consultants) and agents engaged by the Contractor for the purpose of the Services are engaged on, and comply with, conditions equivalent to those in paragraphs (1) to (6) above and this paragraph (7), and the Contractor shall, on request, provide the Authority with evidence to satisfy the Authority that the Contractor has done so. Those conditions shall provide both the Contractor and the Authority with the right to require the sub-contractor or agent to provide information to them equivalent to paragraph (4), and the Contractor shall obtain that information where requested by the Authority.

(8) The Authority may terminate the Contract with immediate effect by notice in writing where:

- a) the Contractor does not comply with any requirement of this Condition 31; or
- b) the Contractor's sub-contractors or agents do not comply with the conditions imposed on them under paragraph (7) above.

(9) In particular (but without limitation), the Authority may terminate the Contract under paragraph (8) above:

- a) in the case of a request under paragraph (4):
 - i. the Contractor fails to provide information in response to the request within the deadline specified; or
 - ii. the Contractor provides information which is inadequate to demonstrate how the Contractor or (where relevant) its sub-contractors and agents have complied with the conditions set out or referred to in paragraphs (1) to (7);

or

- b) the Authority receives information which demonstrates, to its reasonable satisfaction, that the Contractor, its sub-contractors or agents, are not complying with those conditions.

32. Equality and non-discrimination

The Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and any other anti-discrimination legislation in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that its staff, sub-contractors and agents do not do so. The Authority may (without prejudice to its other rights under the Contract) terminate the Contract with immediate effect by notice in writing where the Contractor fails (or the Contractor's staff, sub-contractors or agents fail) to comply with this Condition.

33. Equality Scheme

The Contractor shall comply with the Authority's equality scheme as published on the Authority's website, and shall take all reasonable steps to ensure that its staff, sub-contractors and agents do so. The Authority may (without prejudice to its other rights under the Contract) terminate the Contract with immediate effect by notice in writing where the Contractor fails (or the Contractor's staff, sub-contractors or agents fail) to comply with this Condition.

34. Welsh Language Act

The Contractor shall for the term of the Contract comply with the principles of the Authority's Welsh Language Scheme.

35. Sustainable Procurement

- (1) The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.
- (2) The Contractor shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause by the Contractor.
- (3) All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

36. Other Legislation

The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with all other applicable law.

37. Contractor Status

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Authority and the Contractor.

38. Transfer of Services

- (1) Where the Authority intends to continue with services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement contractor, the Contractor shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Authority.
- (2) The contractor shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Authority considers necessary.

39. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

40. Transparency

- (1) In order to comply with the Government's policy on transparency in the areas of procurement and contracts, the Authority will, subject to Conditions 40(2) and (3), publish the Contract and the tender documents issued by the Authority which led to its creation on a designated web site.
- (2) The entire Contract and all the tender documents issued by the Authority will be published on that web site save where the Authority, in its absolute discretion, considers that the relevant documents, or their contents, would be exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000.
- (3) Where the Authority considers that any such exemption applies, the Authority will redact the relevant documents to the extent that the Authority considers the redaction is necessary to remove or obscure the relevant material, and those documents will be published on the designated web site subject to those redactions.
- (4) Where the Parties later agree changes to the contract, the Authority will publish those changes, and will consider any redaction, on the same basis.
- (5) In Condition 40(1) the expression "tender documents" means the advertisement issued by the Authority seeking expressions of interest, the pre qualification questionnaire and the invitation to tender and the contract includes the Contractor's proposal.

41. Monitoring and Management Information

- (1) Where requested by the Authority, the Contractor shall supply to the Authority and to the Government Procurement Service (GPS) such information and advice relating to the management of the Contract as the Authority or GPS may require.
- (2) The information and advice referred to in Condition 41(1) may include, but is not limited to, the following: Line Item Amount, Invoice Line Description, Invoice Line Number, Currency Code, Order Date, VAT Inclusion Flag, VAT Rate, List Price, Number of Items, Unit of Purchase Quantity, Price per Unit, Supplier Service Code, Service description and/or name, UNSPSC Code, Taxonomy Code and/or Name, Geographical, Project Code, Project description, Project Start Date, Project Delivery Date (Estimate and Actual), Total project cost and Project Stage.
- (3) The information referred to in Condition 41(1) shall be supplied in such form and within such timescales as the Authority or GPS may reasonably require.
- (4) The Contractor agrees that the Authority may provide GPS with information relating to the Services procured and any payments made under the Contract.

(5) Upon receipt of the information supplied by the Contractor in response to a request under Condition 41(1) or receipt of information provided by the Authority to GPS under Condition 41(4) the Authority and the Contractor hereby consent to GPS:

(a) storing and analysing the information and producing statistics; and

b) sharing the information or any statistics produced using the information, with any other Contracting Authority.

(6) In the event that GPS shares the information provided under Condition 41(1) or 41(3) in accordance with Condition 41(5) b), any Contracting Authority (as defined in regulation 3 of the Public Contracts Regulations 2006) receiving the information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body which is not a Contracting Authority (unless required by law).

(7) The Authority may make changes to the type of information which the Contractor is required to supply and shall give the Contractor at least one calendar month's written notice of any such changes.