

Framework Agreement for the Provision of Services in connection with the Energy for Londoners Services Framework

OJEU Ref: 2018/S 090-203525

between

London Power Co. Limited

and

Octopus Energy Limited

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THIS FRAMEWORK AGREEMENT is made on 13th August 2019

BETWEEN

- (1) London Power Co. Limited, a company registered in England and Wales (Company Registration 12113294) whose registered office is at 55 Broadway, London, United Kingdom, SW1H 0BD ("**the Contracting Authority**"); and
- (2) Octopus Energy Limited, a company registered in England and Wales (Company Registration Number 09263424) whose registered office is at 6th Floor, 33 Holborn, London EC1N 2HT ("**the Service Provider**").

BACKGROUND

- (A) The Framework Parties wish to enter into a framework agreement which will enable:
 - (i) the Contracting Authority, from time to time to enter into a Call-Off Contract with the Service Provider for the supply of gas and electricity to residential customers under the Contracting Authority's nominated brand (being for the purposes of this Agreement the EfLSCo Services described in **Schedule 2 Part 1**);
 - (ii) any Housing Provider, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Service Provider for some or all of the Void Services of the type described in **Schedule 2 Part 2**.
- (B) The terms and conditions of this Agreement shall apply to the Services to be provided by the Service Provider under this Agreement and any Call-Off Contract.
- (C) This Agreement can be utilised by the Contracting Authority and any Housing Provider.
- (D) The terms and conditions of this Agreement provide that the Contracting Authority or any Housing Provider may contract with the Service Provider on the terms set out in this Agreement.

OPERATIVE PROVISIONS

In consideration of the payment of five pounds sterling (£5.00) by the Contracting Authority to the Service Provider (receipt of which the Service Provider acknowledges), it is agreed that:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In the Agreement (including the Background) unless the context indicates otherwise the following expressions shall have the following meanings:

"Access Agreement" means an agreement between the Contracting Authority and a Housing Provider

	permitting them to call off Void Services from this Agreement;
“Affected Party”	has the meaning given to it in clause 26.4 ;
“Affiliate”	means in respect of a person, any holding company or subsidiary of that person from time to time, or any company which is a subsidiary of a holding company of that person from time to time (and the expressions “holding company” and “subsidiary” shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);
“Agreement”	means this framework agreement, including the Schedules and all other documents referred to in this Agreement;
“Agreement Commencement Date”	means the date for commencement of this Agreement specified in Schedule 1 ;
“Agreement Reference Number”	means the reference number for this Agreement as set out in Schedule 1 ;
“Anticipated Mobilisation Period”	means the period (expressed by reference to a period of time commencing on the date of the proposed EfLSCo Services Call-Off Contract) as specified in paragraph 2.3 of the Specification within which the Contracting Authority anticipates that the Service Provider will have completed in full all of the elements and/or deliverables comprised in the Launch Milestones and will have commenced provision of the EfLSCo Services pursuant to and in accordance with the terms of the relevant EfLSCo Services Call-Off Contract;
“Authority”	means the Contracting Authority and/or any Housing Provider;
“BSC”	means the Balancing and Settlement Code that is provided for in Standard Condition C3 (Balancing and Settlement Code (BSC)) of the Transmission Licence;
“Business Day”	means any day excluding Saturdays, Sundays or public or bank holidays in England;
“Call-Off Contract”	means a call-off contract for (as the case may be) either:

- (a) EflSCo Services, in the form set out in **Part 1 of Schedule 4** (an “**EflSCo Services Call-Off Contract**”); or
- (b) Void Services, in the form set out in **Part 2 of Schedule 4** (a “**Void Services Call-Off Contract**”),

that has been executed by the Service Provider and an Authority, which incorporates this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract;

“Call-Off Contract Number” means the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;

“Call-Off Co-ordinator” means the person named as such in a Call-Off Contract or such other person as notified to the Service Provider by the Relevant Authority;

“Call-Off Term” means the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;

“Certificate” has the meaning given to it in **clause 5.5**;

“Cessation Plan” means a plan agreed between the Relevant Authority and the Service Provider or determined by the Authority pursuant to **clause 28**:

- (a) to give effect to a Declaration of Ineffectiveness; or
- (b) to give effect to a Public Procurement Termination Event;

“Charges” means the charges payable by a Housing Provider for the supply of gas and electricity pursuant to a Void Services Call-Off Contract are as specified in or calculated in accordance with the Void Services Call-Off Contract in question;

“Code Subsidiary Documents” has the meaning set out in the BSC;

“Competent Authority” means GEMA and any national, federal, regional, local or other authority, ministry, inspectorate, department, court, arbitral

tribunal, administrative agency or commission or any other governmental, municipal, administrative or regulatory body, including the Information Commissioner (as defined in the Freedom of Information Act 2000), to the extent each of the foregoing has jurisdiction over the Service Provider, this Agreement, any Call-Off Contract and/or the subject matter of this Agreement and/or a Call-Off Contract;

“Commission”

means a commission equal to:

- (i) in relation to a Primary Tariff:
 - (a) [redacted] per fuel type per End Consumer Supply Contract entered into in relation to a Primary Tariff; and
 - (b) [redacted] per month per fuel type per End Consumer Supply Contract where the Service Provider is the Registrant (as defined in the BSC) for the relevant End Consumer meter and the Tariff is a Primary Tariff;

it being acknowledged that a gas End Consumer Supply Contract and an electricity End Consumer Supply with the same End Consumer and a Dual Fuel End Consumer Supply Contract will be regarded as two End Consumer Supply Contracts; and
- (ii) in relation to any other Tariff, the amount referred to in **paragraph 2.2.5.6** and agreed between the Service Provider and the Contracting Authority at the time that a new Tariff is designed pursuant to **paragraph 2.2.5** of the Specification;

“Confidential Information”

means all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the a Party and/or its Affiliates (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software,

telecommunications, networks, trade secrets, know-how or personnel of the a Party and/or its Affiliates;

“Contract Information”

means:

- (a) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and
- (b) data extracted from the invoices submitted pursuant to any Call-Off Contract which shall consist of the Service Provider’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

“Contracting Authority Group”

means the Contracting Authority, in its own right and all of the Contracting Authority’s Affiliates (where applicable) together;

“Contracting Authority Marks”

means any Marks supplied and/or made available by the Contracting Authority in connection with the Agreement and/or a Call-Off Contract;

“Contract Year”

means each period of twelve (12) months commencing on the Agreement Commencement Date and upon each anniversary thereafter;

“Credit Support Document”

has the meaning given to it in **clause 3.11**;

“CUSC”

means the Connection and Use of System Code that is provided for in Standard Condition C10 (Connection and Use of System Code (CUSC)) of the Transmission Licence;

“Data Protection Legislation”

Protection has the meaning given to it in **clause 22**;

“DCC Licence”

means the licence for the provision of a smart meter communication service granted pursuant to section 7AB(2) of the Gas Act 1986 and section 6(1A) of the Electricity Act

	1989, and “DCC” and “DCC User” shall be construed accordingly;
“DCUSA”	means the Distribution Connection and Use of System Agreement maintained pursuant to the Distribution Licences;
“Declaration of Ineffectiveness”	means a declaration of ineffectiveness in relation to this Agreement and/or a Call-Off Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015;
“Distribution Code”	has the meaning attributed to that term in the Transmission Licence;
“Distribution Connection and Use of System Agreement”	means the agreement that a Licensed Distributor is required to prepare or maintain in force under Standard Condition 22 (Distribution Connection and Use of System Agreement) of a Distribution Licence;
“Distribution Licence(s)”	means a Licence to distribute electricity;
“Domestic Installation Code”	means the smart metering installation code approved by GEMA pursuant to Standard Conditions 35 and 41 of the electricity and gas supply Licences respectively;
“Dual Fuel”	means a customer who takes both electricity and gas at the same property;
“EfLSCo Services”	means: <ul style="list-style-type: none"> (a) all or any part of the services to be provided to, or activities to be undertaken and completed for the Contracting Authority by the Service Provider under a Call-Off Contract as detailed in Schedule 2 Part 1 (and as supplemented in Schedule 13 Part 1 (subject always to clause 1.2.9)) and such Call-Off Contract including any variations to such services and/or activities pursuant to the terms of this Agreement; and (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably

inferred from the Call-Off Contract and **Schedule 2 Part 1** (and as supplemented in **Schedule 13 Part 1** (subject always to **clause 1.2.9**));

“EfLSCo Services Call-Off Contract”	has the meaning given to it in paragraph (a) of the definition of “Call-Off Contract” ;
“End Consumers”	means the customers to whom the Service Provider provides gas and/or electricity under the Contracting Authority Marks;
“End Consumer Supply Contract”	means a contract under which the Service Provider supplies gas and/or electricity to an End Consumer under the Contracting Authority Marks;
“Energy for Londoners”	means the Mayor’s Energy for Londoners programme which aims to make London’s homes warm, healthy and affordable, its workplaces more energy efficient, and to supply the capital with more local clean energy. Further information can be found at https://www.london.gov.uk/what-we-do/environment/energy/energy-londoners
“FA Sub-contract”	means a Sub-contract which is entered into by the Service Provider after the date of this Agreement;
“FA Sub-contractor”	means the sub-contractor to an FA Sub-contract;
“Force Majeure Event”	means any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Affected Party to perform its obligations in accordance with the terms of this Agreement but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

“Framework Parties”	means the Contracting Authority and the Service Provider and “Framework Party” shall mean either of them as the case may be;
“Gas Reference Price”	means the offer price for the front season contract as published by the ICIS Heren European Spot Gas Markets Agreed Publication, or any other publication as agreed between the Parties;
“GEMA”	means the Gas and Electricity Markets Authority (as defined in section 1 of the Utilities Act 2000);
“GLA”	means Greater London Authority as established in 1999;
“GLA Act”	means the Greater London Authority Act 1999;
“Grid Code”	has the meaning given to that term in the Transmission Licence;
“HMRC”	means Her Majesty’s Revenue and Customs;
“holding company”	means, in relation to a person, any company which from time to time directly or indirectly controls that person as set out by section 1159 of the Companies Act 2006;
“Housing Provider(s)”	<p>(a) London Borough Councils: Barking and Dagenham; Barnet; Bexley; Brent; Bromley; Camden; City of London; Croydon; Ealing; Enfield; Greenwich; Hackney; Hammersmith and Fulham; Haringey; Harrow; Havering; Hillingdon; Hounslow; Islington; Kensington and Chelsea; Kingston upon Thames; Lambeth; Lewisham; Merton; Newham; Redbridge; Richmond upon Thames; Southwark; Sutton; Tower Hamlets; Waltham Forest; Wandsworth; Westminster; and</p> <p>(b) London Housing Associations, such as: A2Dominion; Catalyst; Clarion; Hyde; L&Q; Metropolitan; Network Homes; Notting Hill; Genesis; Optivo; Peabody; Southern Housing Group and other housing associations with housing stock in London as identified</p>

in the following weblink:

<https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>

“Indirect Losses”

means:

- (a) loss of profits;
- (b) loss of use;
- (c) loss of business;
- (d) loss of business opportunity; or
- (e) any claim for consequential loss or for indirect loss of any nature;

“Industry Documents”

means all agreements, codes, standards and instruments regulating the generation, transmission, distribution, supply or trading of electricity and gas in Great Britain, including the Grid Code, the SOTO Code, the BSC, the Code Subsidiary Documents, the CUSC, the DCUSA, the Master Registration Agreement, any Distribution Code, any Distribution Connection and Use of System Agreement (including any other connection or use of system agreement with the holder of a Licence), the Supply Point Administration Agreement, the Meter Point Administration Service, the Domestic Installation Code and the Smart Energy Code;

“Insolvency Event”

means any of the following:

- (a) the making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager or administrator being appointed over all or part of the business;
- (c) being a company, having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);

- (d) ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, becoming bankrupt or dying; or
- (f) any similar event to those in **paragraphs (a) to (e)** above occurring under the law of any applicable jurisdiction for those purposes;

“Intellectual Property Rights”

means any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Personnel”

means the Service Provider’s key personnel named as such in **Schedule 1** or any relevant Call-Off Contract;

“Launch Date”

means the date specified in any EfLSCo Services Call-Off Contract (by reference to the Anticipated Mobilisation Period) in respect of the provision of EfLSCo Services by which the Service Provider:

- (a) will have completed in full all of the elements and/or deliverables comprised in the Launch Milestones; and
- (b) is required to commence provision of the EfLSCo Services pursuant to and in accordance with the terms of the relevant Call-Off Contract;

“Launch Milestones”

means the milestones as more particularly described in the Project Plan;

“Law and/or Directive”

means:

- (a) any law (including the common law), statute, statutory instrument, regulation,

instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law);

(b) any condition or other requirement of any Licence or other required authorisation, licence, consent, permit or approval (or of any exemption from the requirement to have the same); and/or

(c) any provision of any Industry Document, and reference to **“Laws and/or Directives”** shall mean all of them;

“Licence”

means any licence granted under section 6 of the Electricity Act 1989 or Part 1 of the Gas Act 1989;

“Licensed Distributor”

means a person who is authorised pursuant to a Distribution Licence to distribute electricity, acting in that capacity;

“London”

means the thirty-two (32) London boroughs and the City of London;

“Losses”

means all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands, proceedings and judgments other than Indirect Losses;

“Margin Cap”

means in respect of any Tariff proposed by the Service Provider in respect of an End Consumer a gross margin (excluding VAT) of no greater than:

- (a) *[redacted]* pence per kWh in respect of the unit rate of electricity supplied;
- (b) *[redacted]* pence per day in respect of the electricity standing charge;
- (c) *[redacted]* pence per kWh in respect of the unit rate of gas supplied; and
- (d) *[redacted]* pence per day in respect of the gas standing charge;

“Marks”

means any trademarks (registered or unregistered), trade names, product and/or

	tariff names, business names, logos and/or other labelling (and in the case of the Contracting Authority, the Contracting Authority Marks);
“Master Registration Agreement” or “MRA”	means the agreement of that title maintained pursuant to the Distribution Licences;
“Material”	means any document, information, data or other material (in whatever form) including software, firmware, documented methodology, process, procedure, and any other output (in whatever form);
“Mayor”	means the Mayor of London;
“Meter Point Administration Service”	means meter point administration service which provides information regarding electricity supply to properties and regulates the registration process between electricity suppliers;
“Milestone”	means an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;
“New Public Material”	means any Materials and/or Marks created by or on behalf of any member of the Service Provider Group exclusively in anticipation of, in connection with and/or in the course of the performance and/or provision of any of the Services for the benefit of any Relevant Authority and used for the purposes of marketing and/or communicating the Services to potential customers (including any Materials visible to End Consumers, tariff structures, URL, brand strapline, website pages, marketing materials, communication protocols and/or scripts but excluding any Solution);
“Official Credit Rating”	means (in respect of long-term, unsecured, unsubordinated debt) a credit rating with: <ul style="list-style-type: none"> (a) Standard & Poor’s; (b) Moody’s; (c) Creditsafe; or (d) any industry recognised alternative or successor rating agency to either of the

	above (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed);
“OJEU Notice”	means the contract notice 2018/S 090-203525 dispatched on 10 May 2018 in the Official Journal of the European Union and published on 12 May 2018;
“Parties”	means in respect of: <ul style="list-style-type: none"> (a) this Agreement, the Framework Parties; and (b) a Call-Off Contract, the relevant Authority that is a party to such contract and the Service Provider, (in each case, including their successors in title and permitted assignees) and “Party” shall mean either of them as the case may be;
“Personal Data”	has the meaning given to in clause 22 ;
“Primary Tariff”	means a Tariff meeting the requirements set out in paragraph 2.2.13 of the Specification;
“Power Reference Price”	means the offer price for the front season baseload contract as published by the ICIS Heren European Daily Electricity Markets, or any other publication as agreed between the Parties;
“Project Plan”	means the plan (if any) set out in Attachment 1 to Schedule 2 Part 1 in relation to the performance and timing of the EfLSCo Services which may include Milestones;
“Procurement Manager”	means the person named as such in Schedule 1 or such other person as notified to the Service Provider by the Contracting Authority;
“Proposal”	means the Service Provider’s offer to provide Void Services in response to a Request Form. A Proposal must include two (2) copies of the Call-Off Contract signed by the Service Provider;
“Public Procurement Termination Event”	has the meaning given to it in clause 28.7 ;

“Public Procurement Termination Grounds”	means any one or more of the grounds described in Regulation 73(1) of the Public Contracts Regulations 2015;
“Relevant Authority”	means: <ul style="list-style-type: none"> (a) for the purposes of this Agreement, the Contracting Authority; and (b) for the purposes of a Call-Off Contract, the relevant Authority that is a party to the relevant Call-Off Contract;
“Relevant Authority Materials and Marks”	means any Materials and/or Marks supplied and/or made available by a Relevant Authority in connection with the Agreement and/or a Call-Off Contract;
“Request Form”	means a document produced by the Authority pursuant to clause 3 , setting out its request for a Proposal, which document shall be in the form set out in Schedule 3 or in such other form as may be notified to the Service Provider by the Authority from time to time;
“Required Date”	means the date or dates on or by which each Milestone is required to be completed as set out in the Project Plan or, in the absence of any Milestones, the date or dates on or by which the preparatory steps for EfLSCo Services are required to be provided as set out in the Project Plan;
“Service Provider Group”	means the Service Provider and each of its Affiliates and the term “member of the Service Provider Group” shall be construed accordingly;
“Service Provider’s Holding Company”	means a holding company of the Service Provider;
“Service Provider Materials”	means any Materials, including the Solution, supplied by and/or made available by the Services Provider to an Authority in connection with the Agreement and/or a Call-Off Contract but excluding any New Public Materials;
“Service Provider’s Manager”	means the person who is identified as the Service Provider’s Manager in the Call-Off Contract for the relevant Services;

“Service Provider’s Personnel”	means all such persons, including employees, officers, suppliers, Sub-contractors and agents of the Service Provider as are engaged in the performance of any of the Services and including the Key Personnel;
“Services”	means all or any part of the EflSCo Services and/or Void Services, as the case may be;
“SOTO Code”	means the System Operator – Transmission Owner Code required to be in place pursuant to Standard Condition B12 (System Operator – Transmission Owner Code) of the Transmission Licence;
“Smart Energy Code”	means the document of that name, as designated by the Secretary of State under Condition 22 of the DCC Licence;
“SMETS1”	means the Smart Metering Equipment Technical Specifications, version 1;
“SMETS2”	means the Smart Metering Equipment Technical Specifications, version 2;
“Solution”	means any IT system including any software, electronic or magnetic media or hardware used, supplied and/or made available by the Service Provider in connection with this Agreement and any Call-Off Contract and any updates, modifications or developments made to it;
“Specification”	means the specification and other requirements set out in Schedule 2 ;
“Sub-contract”	means any contract and/or order with a Sub-contractor for the provision of any part of the Services;
“Sub-contractor”	means any sub-contractor to the Service Provider which is engaged in the provision of the Services or any part of them and includes the sub-contractor of any such sub-contractor;
“Supply Point Administration Agreement”	means the Supply Point Administration Agreement designated by GEMA in accordance with Standard Condition 34A (The Supply Point Administration Agreement) of the licensee’s gas supply Licence granted under section 7A(1) of the Gas Act 1986 in the

	form in which that licence was in force at 31 July 2007;
“Tariff”	means the unit rates of gas and electricity (and standing charges) offered to End Consumers;
“Tender Response”	means the Service Provider’s proposal for the provision of Services to comply with the Specification set out in Schedule 13 ;
“Term”	means the period during which this Agreement continues in force as set out in Schedule 1 ;
“Transmission Licence”	means a Licence to transmit electricity;
“Transparency Commitment”	means an Authority’s commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Authority’s own published transparency commitments;
“Turbulent Market Conditions”	means the event in which either the Gas Reference Price or the Power Reference Price moves in either direction by a degree greater than[redacted] ;
“Unsuitable”	means any entity which, in the reasonable opinion of the Relevant Authority: <ul style="list-style-type: none"> (a) would cause reputational embarrassment to the Authority; (b) has substantial interests in the sale, distribution or manufacture of arms or pornography (for the purposes of this definition, the holding of less than half of the ordinary shares of a company does not amount to a “substantial interest”); (c) is (and/or has a holding company that is) proven by a Competent Authority to be currently involved in: (i) serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, or child labour or other child exploitation; or (ii) serious

violations of individuals' rights in situations of war or conflict;

- (d) has one or more officers (and/or has a holding company with one or more officers) who are serving a prison sentence or have served a prison sentence during the two (2) years preceding the time the test under this definition is applied (other than for a motoring offence or other offence where, the prison sentence does not exceed six (6) months in duration). For the avoidance of doubt, this definition is only concerned with persons who are officers at the time of the test (not former officers). In assessing whether a prison sentence has been served during the preceding two (2) years, or the length of a prison sentence, any period of probation associated with a prison sentence shall be included. For the purposes of this paragraph, "officer" shall have the meaning given to that expression in the Companies Act 2006;
- (e) is not a counterparty with which the Contracting Authority can lawfully contract in accordance with the Public Contracts Regulations 2015, including where that person has not provided any customer due diligence information that the Contracting Authority is obliged to obtain pursuant to such legislation; and/or
- (f) prevents (or would prevent) the Service Provider from carrying out its obligations in compliance with this Agreement and/or the relevant Call-Off Contract;

"VAT"

means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;

"Void Services"

means:

- (a) all or any part of the services to be provided to, or activities to be undertaken and completed for a

Housing Provider by the Service Provider under a Call-Off Contract as detailed in **Schedule 2 Part 2** (and as supplemented in **Schedule 13 Part 2** (subject always to **clause 1.2.9**)) and such Call-Off Contract including any variations to such services and/or activities pursuant to the terms of the Call-Off Contract; and

- (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract and **Schedule 2 Part 2** (and as supplemented in **Schedule 13 Part 2** (subject always to **clause 1.2.9**)); and

“Void Services Call-Off Contract”

has the meaning given to it in **paragraph (b)** of the definition of **“Call-Off Contract”**.

1.2 In the Agreement, unless the context indicates otherwise:

- 1.2.1 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.2.2 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of this Agreement;
- 1.2.3 a reference to any document other than as specified in **clause 1.2.2** and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of this Agreement;
- 1.2.4 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.2.5 references to clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in, part of, or appendix or attachment to any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in, part of, or appendix or attachment to that Schedule, and where a range of clauses or paragraphs is referred to that will be inclusive of the clauses or paragraphs which are specified in setting that range;

- 1.2.6 in the event, and only to the extent, of any conflict between the clauses and the Schedules, the clauses prevail, except where the conflicting part of the Schedule is explicitly expressed to take precedence;
- 1.2.7 in the event, and only to the extent, of any conflict between the provisions of this Agreement and any Call-Off Contract, the provisions of any Call-Off Contract shall prevail;
- 1.2.8 subject to **clauses 1.2.6** and **1.2.7**, if there is any inconsistency between any of these clauses, the Schedules or any other document referred to in or incorporated into this Agreement, the order of priority for the purposes of construction is:
 - 1.2.8.1 these clauses;
 - 1.2.8.2 the Schedules; and
 - 1.2.8.3 any other document referred to in or incorporated by reference into this Agreement, including the terms of gas and/or electricity supply thereunder;
- 1.2.9 in the event, and only to the extent, of any conflict between the provisions of the Specification and the Tender Response, the provisions of the Specification shall prevail;
- 1.2.10 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.2.11 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.2.12 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. **FRAMEWORK AGREEMENT**

- 2.1 The purpose of this Agreement is to provide a mechanism whereby:
 - 2.1.1 the Contracting Authority may enter into Call-Off Contracts with the Service Provider for the provision of EfLSCo Services; and
 - 2.1.2 a Housing Provider may enter into Call-Off Contracts with the Service Provider for the provision of Void Services.
- 2.2 Service Requirements
 - 2.2.1 The EfLSCo Services that are required by the Contracting Authority to be provided by the Service Provider are of the type described in **Schedule 2 Part 1** and as more particularly described in each EfLSCo Services Call-Off Contract. This Agreement does not oblige

the Contracting Authority to enter into any Call-Off Contract with the Service Provider for the provision of any EfLSCo Services.

- 2.2.2 The Void Services that may be requested by a Housing Provider and provided by the Service Provider are of the type described in **Schedule 2 Part 2** and as more particularly described in each Void Services Call-Off Contract. The Housing Providers' requirements may vary and this Agreement shall not place any Housing Provider under any obligation to procure the Void Services or any minimum volume of any of the Void Services from the Service Provider at a particular point in time or at all.

2.3 Exclusivity

- 2.3.1 Except to the extent set out in **clause 2.3.2**, this Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent any Authority from engaging any other organisations or persons to provide services similar to or the same as the Services.
- 2.3.2 Where there is an EfLSCo Services Call-Off Contract in force between the Contracting Authority and the Service Provider, the Contracting Authority undertakes not to contract with any other person in relation to the provision of services substantially similar to the EfLSCo Services **provided that** this undertaking shall not apply in respect of the last six (6) months of the relevant Call-Off Term (during which period the Contracting Authority shall be free to contract with any other person in respect of services substantially similar to the EfLSCo Services).

2.4 Call-Off Procedure

- 2.4.1 If the Contracting Authority wishes to procure any EfLSCo Services under this Agreement, it shall enter into a Call-Off Contract with the Service Provider in accordance with **clause 3**.
- 2.4.2 If any Housing Provider wishes to procure any Void Services under this Agreement, it shall enter into a Call-Off Contract with the Service Provider in accordance with **clause 3**. Any such Housing Provider wishing to procure Void Services must enter into an Access Agreement with the Contracting Authority prior to entering into a Call-Off Contract with the Service Provider pursuant to this Agreement unless the Contracting Authority confirms that an Access Agreement will not be required.
- 2.4.3 Prior to entering into any Call-Off Contract with any Housing Provider, the Service Provider must confirm with the Contracting Authority that such a Housing Provider has entered into an Access Agreement with the Contracting Authority to enable it to enter into Call-Off Contracts with the Service Provider pursuant to the terms of this Agreement, unless the Contracting Authority has confirmed that an Access Agreement will not be required.

- 2.5 Each Call-Off Contract, once executed by the Relevant Authority and the Service Provider, shall be a binding agreement on the relevant parties to it and shall form a separate agreement between those parties. The Contracting Authority is not obliged to approve or sign any Call-Off Contract for Void Services.
- 2.6 The Service Provider shall commence provision of the relevant Services in accordance with the corresponding Call-Off Contract. The Service Provider must not commence any Services without an agreed Call-Off Contract.
- 2.7 The Service Provider shall provide the EfLSCo Services at no cost to the Contracting Authority.
- 2.8 Apart from in respect of the supplies of gas and electricity, the Service Provider shall provide the Void Services at no cost to any Relevant Authority. All Charges in respect of a Void Services Call-Off Contract shall be set out in the relevant Call-Off Contract in respect of the supplies of gas and/or electricity.

3. **CALL-OFF PROCEDURE**

- 3.1 At any time during the duration of this Agreement:
 - 3.1.1 the Contracting Authority may identify EfLSCo Services which at its sole discretion it wishes to let under the terms of this Agreement; and
 - 3.1.2 any Housing Provider may identify Void Services which at its sole discretion it wishes to let under the terms of this Agreement.
- 3.2 The Service Provider acknowledges and agrees that:
 - 3.2.1 each Call-Off Contract is specifically between the Service Provider and the Relevant Authority. The Contracting Authority shall have no liability to the Service Provider arising out of or in connection with any Call-Off Contract with a Housing Provider;
 - 3.2.2 a Call-Off Contract is personal to the parties to it and no Authority that is not a party to the Call-Off Contract shall have any liability to the Service Provider arising out of or in connection with any such Call-Off Contract;
 - 3.2.3 each Authority is independently responsible for the conduct of their awards of Call-Off Contracts pursuant to this Agreement; and
 - 3.2.4 the Contracting Authority is not responsible or accountable for the conduct of any Housing Provider in relation to this Agreement or in relation to any Call-Off Contract.

Nothing in this clause is intended to limit the liability of the Relevant Authority to the Service Provider under the Call-Off Contract.

- 3.3 Where the Contracting Authority wishes the Service Provider to provide EfLSCo Services, the Framework Parties will enter an agreed form of EfLSCo

Services Call-Off Contract based upon the form set out in **Part 1 of Schedule 4** on or shortly after the date of this Agreement.

- 3.4 Where an Authority wishes the Service Provider to provide Void Services, it will issue to the Service Provider a Request Form substantially in the form set out in **Schedule 3**, specifying the Void Services to be provided, in which event:
 - 3.4.1 the Service Provider shall promptly confirm receipt of such Request Form;
 - 3.4.2 the Service Provider shall respond to the Request Form by completing a Proposal as an offer capable of acceptance and sign two (2) copies of the relevant Call-Off Contract. The Service Provider shall so respond to the Authority by the date specified in the Request Form or, if no such date is specified, within ten (10) Business Days of receiving the Request Form, or by such other date as may be agreed with the Call-Off Co-ordinator. A Proposal must remain valid for at least ninety (90) Business Days from the date it is submitted to the Authority (except for any Charges thereunder relating to the supply of electricity and/or gas which shall only remain valid for at least five (5) Business Days where it relates to the supply of less than one thousand (1,000) premises failing which it will be by agreement of the Parties (such agreement not to be unreasonably withheld or delayed));
 - 3.4.3 if the Proposal is acceptable, the relevant Call-Off Co-ordinator will arrange for both copies of the Call-Off Contracts to be signed by the Authority and will send a completed signed Call-Off Contract to the Service Provider.
- 3.5 Each Call-Off Contract shall be a binding agreement on the parties thereto and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the parties.
- 3.6 A Request Form and anything prepared or discussed by the Authority shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider. The Authority shall not be obliged to accept any Proposal submitted by the Service Provider.
- 3.7 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the relevant Authority.
- 3.8 An Authority is not obliged to approve or sign any Call-Off Contract.
- 3.9 Unless otherwise expressly agreed in writing with the Relevant Authority, the Service Provider shall not be entitled to charge under this Agreement for any work involved in any receipt and/or confirmation of any Request Form, and/or any response to any Request Form as contemplated in this **clause 3**.
- 3.10 As a condition precedent to any Call-Off Contract, the Service Provider shall (to the extent that it has not already done so) provide at its expense:

- 3.10.1 a parent company guarantee (from such holding company as the Relevant Authority may require unless otherwise agreed with the Relevant Authority and with the Required Company Rating (specified in the Call-Off Contract)) and, if requested by the Relevant Authority, a legal opinion as to its enforceability, in the form set out in **Schedule 12**;
- 3.10.2 a performance bond from a person with the Required Bank Rating (specified in the Call-Off Contract), together with a legal opinion as to its enforceability if requested by the Relevant Authority in the form set out in **Schedule 12**; or
- 3.10.3 cash on deposit held in escrow by an escrow agent (being a person nominated by the Service Provider and acceptable to the Relevant Authority, each acting reasonably) and the funds being placed with a bank with the Required Bank Rating, subject to an escrow agreement on terms to be agreed by the Relevant Authority, substantially in the form set out in **Schedule 12**,

each as may be set out in the attachments to a Call-Off Contract and (for the avoidance of doubt, if there is no such requirement in the attachment to a Call-Off Contract, no such guarantee, bond, deposit or legal opinion is required).

- 3.11 Where a parent company guarantee, performance bond or cash on deposit held in escrow (each a “**Credit Support Document**”) is required under a Call-Off Contract, the Relevant Authority shall not be obliged to make any payment to the Service Provider under a Call-Off Contract whether for the Charges or otherwise unless and until the Credit Support Documents (and legal opinion if applicable) have been provided in a form satisfactory to the Relevant Authority.
- 3.12 The Service Provider shall be regarded as being in material breach of the Call-Off Contract which is incapable of remedy in the event that any Credit Support Document is or becomes invalid or otherwise unenforceable and is not replaced to the reasonable satisfaction of the Relevant Authority within ten (10) Business Days of the Service Provider becoming aware of such invalidity or unenforceability.
- 3.13 The Service Provider shall give notice to each Relevant Authority within ten (10) Business Days where there is any change in the ownership of the company providing the parent company guarantee where such change relates to fifty per cent (50%) or more of the issued share capital of the guarantor. Each Relevant Authority shall have the right to terminate the Call-Off Contract within sixty (60) calendar days of receipt of the required notice from the Service Provider, or in the event that the Service Provider fails to give the required notice, within sixty (60) calendar days of the Authority becoming aware of such event, unless the Service Provider has within such period provided a parent company guarantee from a replacement guarantor acceptable to the Authority in the form set out in **Schedule 12**.
- 3.14 Where the provider of a Credit Support Document (which for the purposes of this **clause 3.14** excludes cash on deposit held in escrow) ceases to hold at

least one Official Credit Rating equivalent to or higher than the Required Company Rating (as defined in the required Call-Off Contract) (in the case of a parent company guarantee) or the Required Bank Rating (as defined in the required Call-Off Contract) (in the case of a performance bond), and, where the Relevant Authority serves a written notice on the Service Provider requiring it to do so, the Service Provider shall (within twenty (20) Business Days of receiving such notice) procure that a replacement Credit Support Document (compliant with the terms of **clause 3.10**) is provided to the Authority. On the replacement Credit Support Document coming into effect, the Authority shall agree to the cancellation of the earlier Credit Support Document, and shall immediately return it to the Service Provider.

- 3.15 Where any Credit Support Document is required to be provided pursuant to a Call-Off Contract, the Service Provider shall procure that such Credit Support Document (or a replacement therefor) is maintained in place throughout the Call-Off Term until the earlier of (i) six (6) months after the end of the Call-Off Term and (ii) the date on which all amounts owing to the Relevant Authority under or in relation to this Agreement and the relevant Call-Off Contract having been paid in full (the “**Credit Support End Date**”), and shall (where necessary) ensure that a replacement Credit Support Document is in place prior to the expiry of any then current Credit Support Document (to have effect on or before such expiry). On the Credit Support End Date, the Authority shall agree to the cancellation of the relevant Credit Support Document, and shall immediately return it to the Service Provider. In the case of security by way of cash on deposit held in escrow, the Authority will forthwith authorise the release of any remaining funds held in escrow to the Service Provider, in accordance with the terms set out in the escrow agreement.

4. **TERM OF AGREEMENT AND CALL-OFF CONTRACTS**

- 4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 Each Call-Off Term shall be set out in the relevant Call-Off Contract **provided that**, in the case of any Call-Off Contract, the relevant Call-Off Term shall be comprised of:
- 4.2.1 an initial term of up to four (4) years; and
 - 4.2.2 an extension or extensions (exercisable at the sole discretion of the Relevant Authority in accordance with the terms of the relevant Call-Off Contract),

such that the entire Call-Off Term of a Call-Off Contract may not exceed eight (8) years in total.

Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this

Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.

- 4.3 A Call-Off Contract may expire or be terminated in accordance with its terms or **clause 26** but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

5. THE SERVICES

5.1 The Service Provider:

5.1.1 shall provide the Services specified in a Call-Off Contract to the Relevant Authority in accordance with this Agreement and the terms of the relevant Call-Off Contract;

5.1.2 acknowledges that it has sufficient information about each Authority and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with this Agreement and each relevant Call-Off Contract;

5.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement or the terms of the relevant Call-Off Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to this Agreement and each relevant Call-Off Contract; and

5.1.4 shall comply with all lawful and reasonable directions of the Relevant Authority relating to its performance of the Services under this Agreement and any Call-Off Contract, as the case may be.

- 5.2 Notwithstanding anything to the contrary in this Agreement, no Authority's discretion in carrying out its statutory duties shall be fettered or otherwise constrained or affected by any provision of this Agreement or any relevant Call-Off Contract.

- 5.3 The Service Provider shall provide the Services under this Agreement, including any relevant Call-Off Contract:

5.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources (including project management resources);

5.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;

5.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and

5.3.4 so that they are properly managed and monitored and shall immediately inform the Relevant Authority if any aspect of the Services is not being or is unable to be performed.

5.4 Where in the reasonable opinion of the Relevant Authority the Service Provider has failed to provide the Services or any part of them in accordance with this Agreement and/or the relevant Call-Off Contract, the Service Provider shall, without prejudice to any of the Authority's other rights, re-perform the Services or part thereof as requested by the Authority at no additional cost and within such period of time as reasonably specified by the Authority.

5.5 Confirmation of financial robustness

5.5.1 The Service Provider shall:

5.5.1.1 within ten (10) Business Days of the end of each month during the Call-Off Term of any EfLSCo Services Call-Off Contract; and

5.5.1.2 upon reasonable request from the Contracting Authority during periods of Turbulent Market Conditions,

provide to the Contracting Authority a certificate signed by a statutory director of the Service Provider ("**Certificate**") confirming that as at the date of the Certificate the Service Provider:

5.5.1.3 is not subject to an Insolvency Event; and

5.5.1.4 has sufficient working capital reserves within the business of the Service Provider to meet all of the Service Provider's business cash funding requirements if a twenty five per cent (25%) change in the prevailing (unhedged) wholesale electricity and/or gas prices were to occur and continue at such changed level for a period of six (6) consecutive weeks.

6. **WARRANTIES AND OBLIGATIONS**

6.1 Without prejudice to any other warranties expressed elsewhere in this Agreement, in any Call-Off Contract or implied by law, the Service Provider warrants, represents and undertakes that:

6.1.1 the Service Provider:

6.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of the Service Provider's Holding Company) to enter into and to perform the Agreement and each relevant Call-Off Contract;

- 6.1.1.2 is aware of the purposes for which the Services are required and acknowledges that the Authority is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and
 - 6.1.1.3 is entering into this Agreement and each relevant Call-Off Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and any relevant Call-Off Contract;
 - 6.1.2 the Agreement and each Call-Off Contract is executed by a duly authorised representative of the Service Provider;
 - 6.1.3 all materials, equipment and goods under this Agreement and each relevant Call-Off Contract or supplied by the Service Provider shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979, sound in design and in conformance in all respects with the Specification set out in the relevant Call-Off Contract; and
 - 6.1.4 all Materials and Marks used, prepared and/or developed by the Service Provider or supplied to the Authority under this Agreement and each Call-Off Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.
- 6.2 Each warranty and obligation in this **clause 6** shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.
- 7. CONTRACTUAL MANAGEMENT**
- 7.1 The Contracting Authority authorises the Procurement Manager to act as the Contracting Authority's representative for all purposes of this Agreement and the Service Provider shall deal with the Procurement Manager (or his or her nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise. Each Relevant Authority will appoint a Call-Off Co-ordinator in respect of its Call-Off Contract in relation to matters arising under a Call-Off Contract, unless otherwise notified by the Authority.
 - 7.2 The Service Provider's Manager shall act as the Service Provider's representative for all purposes of this Agreement. In respect of each Call-Off Contract, the Service Provider shall provide the Key Personnel. The Service Provider shall procure that the Service Provider's Manager and the Key Personnel shall:
 - 7.2.1 diligently supervise the performance of the Services;
 - 7.2.2 attend all contract meetings with each Relevant Authority (the location, frequency and time of which shall be specified by the Procurement Manager or the relevant Call-Off Co-ordinator from time to time); and

- 7.2.3 be available to each Relevant Authority to resolve any issues arising in connection with this Agreement or any relevant Call-Off Contract.
- 7.3 The Service Provider may only make any changes to the Service Provider's Manager or Key Personnel (except in the event of sickness, incapacity or resignation) with the prior consent of the Contracting Authority (which shall not be unreasonably withheld).
- 7.4 No act of or omission by or approval from any Authority, the Procurement Manager, or any Call-Off Co-ordinator in performing any of their respective duties under or in connection with this Agreement or any relevant Call-Off Contract shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and/or any relevant Call-Off Contract.
- 7.5 Unless advised otherwise by the Contracting Authority, the Service Provider will provide management information reports ("**Management Information Reports**") to each Relevant Authority, at no additional cost, on a monthly basis during the Term of the Agreement and during each Call-Off Term. For the avoidance of doubt this obligation extends beyond and shall survive the termination (whatever the cause) or expiry of this Agreement or a relevant Call-Off Contract for a period of at least twelve (12) months following any such termination or expiry and, to the extent that any Commission is still payable under the EfLSCo Services Call-Off Contract, until such period as such Commission is no longer payable under the EfLSCo Services Call-Off Contract. The Service Provider shall submit the Management Information Reports within eight (8) Business Days of the end of each month. The Management Information Reports will cover the period since the date of the previous report or, in the case of the first Management Information Report, since the Agreement Commencement Date. Each Management Information Report shall, unless otherwise agreed in writing by the Relevant Authority, include at least the information set out in **Schedule 6**.
- 7.6 The submission, receipt and acceptance of the Management Information Reports shall not prejudice the rights or remedies of any party under this Agreement and any Call-Off Contract, and any Relevant Authority may seek to validate any of the information provided pursuant to **clause 7.5**.
- 7.7 If the Service Provider fails to provide the Management Information Report within thirty (30) days of the date that the Management Information Report is due to be submitted to the Relevant Authority as prescribed in **clause 7.5**, the Relevant Authority shall be entitled:
- 7.7.1 upon five (5) Business Days' written notice to inspect the Service Provider's books, records and data containing all information relating to: (i) this Agreement; and (ii) every Call-Off Contract to which the Relevant Authority is a party (including the supplies of gas and/or electricity thereunder);
- 7.7.2 (if the Relevant Authority is the Contracting Authority) to require that the Service Provider shall not enter into further Void Services Call-

Off Contracts with any Housing Provider pursuant to the terms of this Agreement until such time as the relevant Management Information Report is submitted to the Contracting Authority; and/or

7.7.3 to terminate:

7.7.3.1 (where the Relevant Authority is the Contracting Authority) this Agreement and any EflSCo Services Call-Off Contract; and/or

7.7.3.2 (where the Relevant Authority is a Housing Provider) the Void Services Call-Off Contract(s) to which the relevant Housing Provider is a party.

7.8 The Service Provider shall provide to the Contracting Authority a complete signed copy of each Call-Off Contract it enters into under this Agreement. Each such copy shall be provided within twenty (20) Business Days of execution of the relevant Call-Off Contract.

7.9 During the Term the Contracting Authority shall have the right to assess and monitor the overall satisfaction level of each Housing Provider in the performance of the Agreement and any Call-Off Contract entered into pursuant to the Agreement and the Service Provider shall use reasonable endeavours to assist the Contracting Authority in carrying out such monitoring activity, including by providing the Contracting Authority with the relevant information regarding the Agreement, each Call-Off Contract and/or any other documentation referred to therein as and when requested to do so by the Contracting Authority. Such assessments under any Call-Off Contract shall occur no more than once a Contract Year.

8. **SERVICE PROVIDER'S PERSONNEL**

8.1 Each Relevant Authority and the Service Provider agree that:

8.1.1 the Transfer of Undertakings (Protection of Employment) Regulations 2006 do not apply on the Agreement Commencement Date;

8.1.2 the Transfer of Undertakings (Protection of Employment) Regulations 2006 are not expected to apply on the date on which any Void Services Call-Off Contract takes effect, provided that if the Relevant Authority believes that the Transfer of Undertakings (Protection of Employment) Regulations 2006 do apply in such circumstances the provisions of **paragraph 8** of the relevant Void Services Call-Off Contract shall apply; and

8.1.3 the provisions of **Schedule 7** (TUPE) shall apply upon any expiry or termination of a Call-off Contract.

8.2 Nothing in this Agreement or any Call-Off Contract will render the Service Provider's Personnel, an employee, agent or partner of an Authority by virtue of the provision of the Services by the Service Provider under this Agreement

or Call-Off Contract and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.

- 8.3 The Service Provider shall provide such employees, officers and Sub-contractors as reasonably necessary for the proper and timely performance and management of the Services in accordance with this Agreement and any relevant Call-Off Contract. All of the Service Provider's Personnel deployed on work relating to this Agreement and any Call-Off Contract shall have the appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Relevant Authority.
- 8.4 Subject always to the Service Provider's obligations under Data Protection Legislation, the Service Provider shall give each Relevant Authority, if so requested, full particulars of all persons who are or may be at any time employed on this Agreement and any relevant Call-Off Contract and shall take all reasonable steps to avoid changes to any of its staff designated as Key Personnel, save where reasonably appropriate to maintain service standards and/or discipline and/or to comply with **clause 8.3** above. Where reasonably possible, the Service Provider shall give each Relevant Authority reasonable notice of any proposals to change Key Personnel and **clause 8.2** shall apply to the proposed replacement personnel.
- 8.5 Subject always to **clause 18** and the indemnities set out in **Schedule 7** as applicable (which shall take precedence over the indemnity in this **clause 8.5**), the Service Provider shall indemnify and keep indemnified each Relevant Authority from and against all Losses which the Authority incur or suffer in relation to the Service Provider's Personnel (whenever such Losses may arise).
- 8.6 The Service Provider shall pay (or procure payment) to the Service Provider's Personnel not less than the amounts declared to the Contracting Authority as part of the tender process for this Agreement and the relevant Call-Off Contract and not less than the amounts to which the Service Provider's Personnel are contractually entitled (subject to contractually permitted deductions).

9. **SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

- 9.1 The Service Provider shall not transfer or sub-contract all or any part of its rights and/or obligations under this Agreement or any Call-Off Contract without the prior written consent of the Relevant Authority (such consent not to be unreasonably withheld or delayed and which consent may be refused or granted subject to such conditions as the Authority may reasonably require).
- 9.2 Where the Service Provider sub-contracts all or any part of the Services to any person, the Service Provider shall:
- 9.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement and/or the relevant Call-Off Contract insofar as they relate to the

Services or part of them (as the case may be) which that sub-contractor is required to provide;

- 9.2.2 be responsible for payments to that person;
- 9.2.3 remain solely responsible and liable to each Relevant Authority for any breach of this Agreement and/or any relevant Call-Off Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;
- 9.2.4 on or before the Agreement Commencement Date, notify the Authority in writing of the name, contact details and details of the legal representatives of each such sub-contractor (of any tier), to the extent that such information has not already been provided by the Service Provider to the Authority under the Agreement;
- 9.2.5 promptly notify the Authority in writing of any change to the information notified under **clause 9.2.4** and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Agreement Commencement Date;
- 9.2.6 without prejudice to the provisions of **clause 10**, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
- 9.2.7 include a term in each sub-contract (of any tier) which is entered into specifically for the purposes of the provision by it of the Services:
 - 9.2.7.1 requiring payment to be made by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, to the sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
 - 9.2.7.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements;
 - 9.2.7.3 entitling the Service Provider or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract to terminate that sub-contract if the

relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and

- 9.2.7.4 a requirement that the sub-contractor includes a provision having the same effect as **clause 9.2.7.3** above in any sub-contract it awards.

- 9.3 The Service Provider shall give notice to each Authority within ten (10) Business Days where:

- 9.3.1 there is any change in the ownership of the Service Provider where such change relates to fifty per cent (50%) or more of the issued share capital of the Service Provider; or
- 9.3.2 there is any change in the ownership of a Service Provider's Holding Company where such change relates to fifty per cent (50%) or more of the issued share capital of the Service Provider's Holding Company.

Upon the occurrence of any of the events referred to at **clause 9.3.1 or 9.3.2** above, and only until the date falling two (2) months from the notice issued by the Service Provider, the Contracting Authority shall have the right to terminate the Agreement and the Relevant Authority shall have the right to terminate any relevant Call-Off Contract if the entity which acquires fifty per cent (50%) or more of the issued share capital of the Service Provider, or the entity which acquires fifty per cent (50%) or more of the issued share capital of the Service Provider's Holding Company is Unsuitable.

10. COMPLIANCE WITH POLICIES AND LAW

- 10.1 The Service Provider, at no additional cost to any Authority:

- 10.1.1 undertakes to procure that all the Service Provider's Personnel comply with:
- 10.1.1.1 all of the Authority's policies and standards that are relevant to the performance of the Services, including the provisions relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the Authority for personnel working at any of the Authority's premises or accessing the Authority's computer systems. The Authority shall provide the Service Provider with copies of such policies and standards on request; and
- 10.1.1.2 the requirements of the Domestic Installation Code and in any event, when accessing any premises;
- 10.1.2 shall provide the Services in compliance with and shall ensure that the Service Provider's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations,

directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to either or both of the Service Provider's business or the Authority's business, from time to time in force which are or may become applicable to the Services (including the Gas Act 1986 and Electricity Act 1989, electricity and gas supply Licences and any Laws and/or Directives). The Service Provider shall promptly notify the Authority if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this **clause 10.1.2**;

- 10.1.3 without limiting the generality of **clause 10.1.2**, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 10.1.4 acknowledges that each Authority as a public authority is subject to a statutory duty under Section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a "**Relevant Protected Characteristic**") (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with the Relevant Authority where possible in satisfying this duty;
- 10.1.5 where possible, shall provide the Services in such a manner as to:
 - 10.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - 10.1.5.2 eliminate unlawful discrimination; and
 - 10.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
- 10.1.6 where applicable and without limiting the generality of **clause 10.1.2**, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it;
- 10.1.7 shall promptly notify the Service Provider's Personnel and the Authority of any health and safety hazards that exist or may arise in connection with the performance of the Services; and
- 10.1.8 shall inform the Contracting Authority of the existence of any correspondence between the Service Provider and a Competent Authority which relates to:

10.1.8.1 any anticipated or actual breach by the Service Provider of any Law and/or Directive;

10.1.8.2 any potential or confirmed investigation by the relevant Competent Authority into the activities of the Service Provider or its business; or

10.1.8.3 the results of any audit by any Competent Authority,

within two (2) Business Days of the date on which the Service Provider receives the relevant correspondence from the Competent Authority (and in any event before the Service Provider makes any public statement in relation to the subject matter of the relevant correspondence). The Service Provider shall provide (within such timescale as the Contracting Authority may reasonably specify) such supporting and/or additional information as the Contracting Authority may reasonably require in relation to any matter notified to it by the Service Provider pursuant to this **clause 10.1.8**.

In all cases, the costs of compliance with this **clause 10.1** shall be borne by the Service Provider.

10.2 Without prejudice to **clause 10.1**, the Service Provider shall comply with the Authority's workplace harassment policy as updated from time to time (copies of which are available on request from the Authority) and with the Authority's Code of Conduct (which is available on the Authority's website).

10.3 In providing the Services, the Service Provider shall (taking into account available techniques not entailing excessive cost and the practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:

10.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

10.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;

10.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

10.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

11. **CORRUPT GIFTS AND PAYMENT OF COMMISSION**

The Service Provider shall not, and shall ensure that its employees, agents and Sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of any Authority nor favour any employee, officer or agent of any Authority with gifts or entertainment of significant cost

or value nor enter into any business arrangement with employees, officers or agents of any Authority other than as a representative of the Authority, without the Authority's prior written approval.

12. **QUALITY AND BEST VALUE**

The Service Provider acknowledges that each Relevant Authority wishes to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness, and as such, the Service Provider shall, where reasonably requested by any Authority, and on not more than once every Contract Year, participate in any relevant best value review.

13. **ETHICAL SOURCING**

- 13.1 Each Authority is committed to ensuring that workers employed in its supply chains throughout the world are treated fairly, humanely and equitably. In the course of complying with the Call-Off Contract, the Service Provider shall comply with, procure that its FA Sub-contractors and use reasonable endeavours to procure that its Sub-contractors (excluding FA Sub-contractors) (as applicable) comply with those principles of the Ethical Trading Initiative (ETI) Base Code as are detailed in "Ethical Sourcing Appendix" to **Schedule 8**, or an equivalent code of conduct (the "**Ethical Sourcing Principles**") in relation to the provision of the Services.
- 13.2 As soon as practicable following the date on which a relevant Call-Off Contract comes into force the Service Provider shall ensure that it is registered with an ethical supplier database, such as SEDEX (Supplier Ethical Data Exchange). The Service Provider agrees that for the duration of the relevant Call-Off Contract, it shall permit and enable the Relevant Authority to have access to the information relating to the Service Provider that subsists in such ethical supplier database.
- 13.3 During the course of a Call-Off Contract, the Relevant Authority has the right to request the Service Provider to carry out one or more audits using a reputable auditor to verify whether the Service Provider is complying with the Ethical Sourcing Principles. The identity of the auditor is to be approved by the Relevant Authority, such approval not to be unreasonably withheld or delayed. The costs of the audit shall be borne by the Authority.
- 13.4 During the course of a relevant Call-Off Contract, if the Relevant Authority has reasonable cause to believe that the Service Provider is not complying with any of the Ethical Sourcing Principles, then the Relevant Authority shall notify the Service Provider and the Parties shall agree an action plan with appropriate timeframes for compliance by the Service Provider (the "**Action Plan**"), such Action Plan to be agreed by the Parties by no later than thirty (30) days from the date of the Authority notifying the Service Provider that remedial action is required or such other period as the Parties may otherwise agree in writing.

The costs of the creation and implementation of the Action Plan shall be borne by the Service Provider.

- 13.5 Following the agreement of the Action Plan, the Relevant Authority reserves the right to conduct one or more audits (either itself or via a third-party auditor approved by the Authority) in relation to compliance by the Service Provider with the Action Plan.
- 13.6 For the avoidance of doubt, the rights of audit contained in this **clause 13** shall include without limitation the right of a Relevant Authority (or an Authority-approved auditor) acting reasonably to undertake physical inspections of relevant sites, to conduct interviews with relevant personnel and to inspect relevant documents. The Service Provider shall co-operate and shall procure that its sub-contractors (as applicable) co-operate with the Relevant Authority in relation to all aspects of any audit.

14. **SUPPLIER DIVERSITY**

14.1 Compliance

14.1.1 Without limiting the generality of any other provision of a relevant Call-Off Contract, the Service Provider:

- 14.1.1.1 shall not unlawfully discriminate,
- 14.1.1.2 shall procure that its personnel do not unlawfully discriminate, and
- 14.1.1.3 shall use reasonable endeavours to procure that its direct and indirect Sub-contractors do not unlawfully discriminate in relation to the Services,

within the meaning and scope of the Equality Act 2010 and any other relevant enactments in force from time to time relating to discrimination in employment.

14.1.2 The Relevant Authority's Harassment, Bullying and Discrimination Policy ("**Policy**") as up-dated from time to time (copies of which are available on request from the Relevant Authority) requires the Authority's own staff and those of its direct and indirect Sub-contractors to comply fully with the Policy to eradicate harassment in the workplace. The Service Provider shall:

- 14.1.2.1 ensure that its staff, procure that its FA Sub-contractors and use reasonable endeavours to procure that its other Sub-contractors who are engaged in the performance of the relevant Call-Off Contract are fully conversant with the requirements of the Policy;
- 14.1.2.2 fully investigate allegations of workplace harassment in accordance with the Policy; and

- 14.1.2.3 ensure that appropriate, effective action is taken where harassment is found to have occurred.

14.2 Strategic Equality & Diversity Plan

For the duration of any Call-Off Contract, the Service Provider shall comply with the Agreed Strategic Equality & Diversity Plan.

For the purposes of this **clause 14** and any Call-Off Contract, the expression “**Agreed Strategic Equality & Diversity Plan**” means the strategic equality & diversity plan as negotiated and agreed and attached to the relevant Call-Off Contract as a Schedule headed “Agreed Strategic Equality & Diversity Plan”.

14.3 Diversity Training

For the duration of any Call-Off Contract, the Service Provider shall comply with the Agreed Training Plan in relation to all of its employees engaged in the performance of that Call-Off Contract.

For the purposes of this **clause 14** and any Call-Off Contract, the expression “**Agreed Training Plan**” means the diversity training plan set out as agreed and attached to the relevant Call-Off Contract as a Schedule headed “Agreed Training Plan”.

14.4 Supplier Diversity

For the duration of any Call-Off Contract, the Service Provider shall at all times comply with the Agreed Supplier Diversity Plan.

For the purposes of this **clause 14** and any Call-Off Contract, the expression “**Agreed Supplier Diversity Plan**” means the supplier diversity plan set out as agreed and attached to the relevant Call-Off Contract as a Schedule headed “Agreed Supplier Diversity Plan”.

14.5 Monitoring and Reporting

14.5.1 Subject to **clause 14.5.2**, the Service Provider shall use reasonable endeavours to provide the Relevant Authority on the date of the relevant Call-Off Contract and subsequently every twelve (12) months from the date of the relevant Call-Off Contract (or such other frequency as the Authority may reasonably request) with the following information:

An annual report on performance and compliance with the equality and diversity provisions as set out in **clauses 14.2 to 14.4**.

The annual report must set out:

- 14.5.1.1 the performance of the Service Provider over the past twelve (12) months in relation to the Agreed Strategic Equality & Diversity Plan, the Agreed Training Plan, and the Agreed Supplier Diversity Plan and/or the action plan

submitted for the previous twelve (12) months in accordance with **clause 14.5.1.4**;

14.5.1.2 the proportion of its employees engaged in the performance of the relevant Call-Off Contract and, to the extent reasonably possible, the employees of its direct or indirect Sub-contractors engaged pursuant to the terms of the relevant sub-contracts in the performance of the relevant Call-Off Contract who are:

- (a) female;
- (b) of non-white British origin or who classify themselves as being non-white British;
- (c) from the local community; and/or
- (d) disabled;

14.5.1.3 the proportion of its direct or indirect Sub-contractors that are SMEs, BAMEs and/or other suppliers from other under-represented or protected groups; and

14.5.1.4 a plan of action for the forthcoming twelve (12) months showing what the Service Provider plans to do to continue delivery of the equality and diversity objectives.

For the purposes of this clause, the meaning of “**SME**” and “**BAME**” is as set out in the document set out in **Schedule 9** (Supplier Diversity Definitions).

14.5.2 The Service Provider shall ensure at all times that it complies with the requirements of Data Protection Legislation in the collection and reporting of the information to the Relevant Authority pursuant to **clause 14.5.1**.

14.6 Equality and Diversity Infractions

14.6.1 If the Service Provider commits an Equality & Diversity Infraction (as defined below), the Relevant Authority shall be entitled (but not obliged) to serve written notice on the Service Provider identifying in reasonable detail the nature of the Equality & Diversity Infraction, and the Service Provider shall cease committing and remedy, at its own cost, the Equality & Diversity Infraction, within thirty (30) days of receipt of such notice (or such longer period as may be specified in the notice).

14.6.2 It shall be a fundamental term and condition of each Call-Off Contract that the Service Provider complies with its obligations under **clause 14.6.1**. Where, following receipt of a notice given pursuant to **clause 14.6.1** the Service Provider fails to remedy an Equality & Diversity Infraction to the satisfaction of the Relevant Authority or, where a

Sub-contractor caused the breach, and the Service Provider fails to terminate the relevant Sub-contract and procure performance by another person on the terms specified in **clause 14.6.1**, and “**Holding Company**” means the holding company of the Service Provider, the Service Provider will be in breach of the relevant Call-Off Contract and the Relevant Authority shall be entitled (but not obliged) to terminate the Call-Off Contract, without further notice to the Service Provider, in accordance with **clause 26** of this Agreement.

- 14.6.3 For the purposes of this **clause 14.6**, “**Equality & Diversity Infraction**” means any breach by the Service Provider of its obligations specified in **clauses 14.2 to 14.4** and/or any failure by a direct FA Sub-contractor to adopt and implement a strategic equality and diversity plan, a diversity training plan and/or a supplier diversity plan as described in **clauses 14.2 to 14.4** (as incorporated into the relevant Call-Off Contract).

14.7 Equality and Diversity Audit

- 14.7.1 The Relevant Authority or its nominee may from time to time undertake any audit or check of any and all information regarding the Service Provider’s compliance with **clauses 14.2 to 14.4** up to a maximum of once every Contract Year.
- 14.7.2 The Relevant Authority’s rights pursuant to this clause shall include any and all documents and records of the Service Provider and its direct contractors and, where applicable, subject to the provisions of **clauses 14.2 to 14.4** indirect FA Sub-contractors and shall include the Minimum Records (as defined below).
- 14.7.3 The Service Provider shall maintain and retain the Minimum Records for a minimum of six (6) years from the termination or expiry of the relevant Call-Off Contract with respect to all matters in respect of the performance of and compliance with **clauses 14.2 to 14.4**. The Service Provider shall procure that each of its direct and, where applicable subject to the provisions of **clauses 14.2 to 14.4**, indirect FA Sub-contractors shall, maintain and retain the Minimum Records for a minimum of six (6) years from the termination or expiry of the relevant Call-Off Contract with respect to all matters in respect of the performance of and compliance with **clauses 14.2 to 14.4**. The Service Provider shall procure that each FA Sub-contract and use reasonable endeavours to procure any other Sub-contract and, where applicable, subject to the provisions of **clauses 14.2 to 14.4** each sub-contract between its direct FA Sub-contractor and any indirect FA Sub-contractor of the Service Provider shall contain rights of audit in favour of and enforceable by the Relevant Authority substantially equivalent to those granted by the Service Provider pursuant to **clause 14.7**.

- 14.7.4 Each Relevant Authority shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the Service Provider and each direct Sub-contractor is not, without due cause, disrupted or delayed in the performance of its obligations under the relevant Call-Off Contract and/or relevant Sub-contract (as the case may be).
- 14.7.5 The Service Provider shall promptly provide, and procure that its direct and indirect FA Sub-contractors and use reasonable endeavours to procure any other Sub-contractor and, where applicable subject to the provisions of **clauses 14.2 to 14.4** promptly provide all reasonable co-operation in relation to any audit or check including, to the extent reasonably possible in each particular circumstance:
- 14.7.5.1 granting or procuring the grant of access to any premises used in the Service Provider's performance of the relevant Call-Off Contract or in the relevant Sub-contractor's performance of its Sub-contract, whether the Service Provider's own premises or otherwise;
 - 14.7.5.2 granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the Service Provider's or the relevant Sub-contractor's obligations specified in **clauses 14.2 to 14.4** wherever situated and whether the Service Provider's own equipment or otherwise; and
 - 14.7.5.3 complying with the Relevant Authority's reasonable requests for access to senior personnel engaged in the Service Provider's performance of the relevant Call-Off Contract or the relevant Sub-contractor's performance of its sub-contract.
- 14.7.6 For the purposes of this **clause 14.7** the expression "**Minimum Records**" means all information relating to the Service Provider's performance of and compliance with **clauses 14.2 to 14.4** and the adoption and implementation of a strategic equality and diversity plan, an equality & diversity training plan and a supplier diversity plan by each direct and, where applicable, subject to the provisions of **clauses 14.2 to 14.4** indirect Sub-contractor of the Service Provider.

15. WORK RELATED ROAD RISK REQUIREMENTS

15.1 For the purpose of this **clause 15**, the following expressions shall have the following meanings:

“Bronze Accreditation”	means the minimum level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk ;
“Car-derived Vans”	means a vehicle based on a car, but with an interior that has been altered for the purpose of carrying larger amounts of goods and/or equipment;
“Collision Report”	means a report detailing all collisions during the previous twelve (12) months involving injuries to persons or fatalities;
“Delivery and Servicing Vehicle”	means a Lorry, a Van or a Car-derived Van;
“Driver”	means any employee of the Service Provider (including an agency driver), who operates Delivery and Servicing Vehicles on behalf of the Service Provider while delivering the Services;
“DVLA”	means the Driver and Vehicle Licensing Agency;
“FORS”	means the Fleet Operator Recognition Scheme, which is an accreditation scheme for businesses operating van and lorry fleets. It offers impartial, independent advice and guidance to motivate companies to improve their compliance with relevant laws and their environmental, social and economic performance;
“FORS Standard”	means the standard setting out the accreditation requirements for the FORS, a copy of which can be found at www.fors-online.org.uk ;
“Gold Accreditation”	means the highest level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk ;
“Lorry”	means a vehicle with an MAM exceeding three thousand five hundred kilograms (3,500kg);

“MAM”	means the maximum authorised mass of a vehicle or trailer including the maximum load that can be carried safely while used on the road;
“Side Guards”	means guards that are fitted between the front and rear axles of a Lorry and that comply with EC Directive 89/297/EEC and the Road Vehicles (Construction and Use) Regulations 1986;
“Silver Accreditation”	means the intermediate level of accreditation within the FORS Standard, the requirements of which are more particularly described at www.fors-online.org.uk ; and
“Van”	means a vehicle with a MAM not exceeding three thousand five hundred kilograms (3,500kg).

Fleet Operator Recognition Scheme Accreditation

- 15.2 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, it shall within ninety (90) days of the date on which a relevant Call-Off Contract comes into force:
- 15.2.1 (unless already registered) register for FORS or a scheme, which in the reasonable opinion of the Relevant Authority, is an acceptable substitute to FORS (the “**Alternative Scheme**”); and
 - 15.2.2 (unless already accredited) have attained the standard of Bronze Accreditation (or higher) or the equivalent within the Alternative Scheme and shall maintain the standard of Bronze Accreditation (or equivalent standard within the Alternative Scheme) by way of an annual independent assessment in accordance with the FORS Standard or take such steps as may be required to maintain the equivalent standard within the Alternative Scheme. Alternatively, where the Service Provider has attained Silver or Gold Accreditation, the maintenance requirements shall be undertaken in accordance with the periods set out in the FORS Standard.

Safety Equipment on Vehicles

- 15.3 The Service Provider shall ensure that every Lorry which it uses to provide the Services shall:
- 15.3.1 have Side Guards, unless the Service Provider can demonstrate to the reasonable satisfaction of the Relevant Authority that the Lorry will not perform the function for which it was built if Side Guards are fitted;

- 15.3.2 have front, side and rear blind spots completely eliminated or minimised as far as practical and possible, through the use of fully operational direct and indirect vision aids and driver audible alerts;
- 15.3.3 have equipment fitted with an audible means of warning other road users of the Lorry's left manoeuvre; and
- 15.3.4 have prominent signage on the Lorry to warn cyclists and other road users of the dangers of passing the Lorry on the inside and of getting too close to the Lorry.

Driver Licence Checks

15.4 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, the Service Provider shall ensure that:

- 15.4.1 it has a system in place to ensure all its Drivers hold a valid driving licence for the category of vehicle that they are tasked to drive, along with recording any endorsements, or restrictions on the Driver's licence; and
- 15.4.2 each of its Drivers engaged in the provision of the Services has a driving licence check with the DVLA or such equivalent before that Driver commences delivery of the Services and that the driving licence check with the DVLA or equivalent authority is repeated in accordance with either the following risk scale (in the case of the DVLA issued licences only), or the Service Provider's risk scale, provided that the Service Provider's risk scale has been approved in writing by the Relevant Authority within the last twelve (12) months:
 - 15.4.2.1 0 – 3 points on the driving licence – annual checks;
 - 15.4.2.2 4 – 8 points on the driving licence – six monthly checks;
 - 15.4.2.3 9 – 11 points on the driving licence – quarterly checks;
or
 - 15.4.2.4 12 or more points on the driving licence – monthly checks.

Driver Training

15.5 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, the Service Provider shall ensure that each of its Drivers undergo approved progressive training (to include a mix of theoretical, e-learning, practical and on the job training) and continued professional development to include training covering the safety of vulnerable road users and on-cycle hazard awareness, throughout the term of the relevant Call-Off Contract.

Collision Reporting

15.6 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, the Service Provider shall:

15.6.1 ensure that it has a system in place to capture, investigate and analyse road traffic collisions that results in fatalities, injury or damage to vehicles, persons or property and for generating Collision Reports; and

15.6.2 within fifteen (15) days of the commencement date of the relevant Call-Off Contract, provide to the Relevant Authority a Collision Report. The Service Provider shall provide to the Authority an updated Collision Report within five (5) Business Days of a written request from the Authority.

Self Certification of Compliance

15.7 Where the Service Provider operates Delivery and Servicing Vehicles to provide the Services, within ninety (90) days of the date on which a relevant Call-Off Contract comes into force, the Service Provider shall make a written report to the Relevant Authority detailing its compliance with **clauses 15.3, 15.4 and 15.5** (the “**WRRR Self-certification Report**”). The Service Provider shall provide updates of the WRRR Self-certification Report to the Relevant Authority on each three (3) month anniversary of its submission of the initial WRRR Self-certification Report.

Obligations of the Service Provider Regarding Sub-contractors

15.8 The Service Provider shall ensure that those of its Sub-contractors who operate Delivery and Servicing Vehicles to provide the Services shall:

15.8.1 comply with **clause 15.2**; and

15.8.2 where its Sub-contractors operate the following vehicles to provide the Services shall comply with the corresponding provisions of this Agreement (as incorporated into the relevant Call-Off Contract):

15.8.2.1 For Lorries – **clauses 15.3, 15.4, 15.5 and 15.6**; and

15.8.2.2 For Vans – **clauses 15.4, 15.5, and 15.6**,

as if those Sub-contractors were a party to the relevant Call-Off Contract.

Failure to Comply with Work Related Road Risk Obligations

15.9 Without limiting the effect of any other clause of the relevant Call-Off Contract relating to termination, if the Service Provider fails to comply with any one of more of **clauses 15.2, 15.3, 15.4, 15.5, 15.6, 15.7 or 15.8** the Relevant Authority may refuse the Service Provider, its employees, agents and Delivery and Servicing Vehicles entry onto any property that is owned, occupied or managed by the Relevant Authority for any purpose (including deliveries).

16. RECORDS, AUDIT AND INSPECTION

16.1 The Service Provider shall, and shall procure that its FA Sub-contractors and use reasonable endeavours to procure any other Sub-contractor shall:

16.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under this Agreement and any relevant Call-Off Contract and all transactions entered into by the Service Provider for the purposes of this Agreement and any relevant Call-Off Contract ("**Records**"); and

16.1.2 retain all Records during the Term and Call-Off Term and for a period of not less than six (6) years (or such longer period as may be required by law), except Records containing Personal Data which shall only be retained for as long as necessary following termination or expiry of this Agreement or relevant Call-Off Contract ("**Retention Period**").

16.2 Each Relevant Authority and any person nominated by the Authority has the right to audit any and all Records at any time during the Retention Period on giving to the Service Provider not less than five (5) Business Days' notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Service Provider's performance of the Services (including compliance with **clause 10.1**) and the Service Provider shall give all reasonable assistance to the Authority or its nominee in conducting such inspection, including making available documents and staff for interview.

17. SET-OFF

All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by an Authority arising out of or attributable to this Agreement or any other contract between the Authority and the Service Provider may be deducted by the Authority from monies due or which may become due to the Service Provider under this Agreement or under any other contract with that Authority who may recover such amount as a debt.

18. INDEMNITY

18.1 Subject to **clause 18.2** and in addition to any other remedy available to the relevant Authority (including the other indemnities contained in this Agreement), the Service Provider is responsible for and shall indemnify, keep indemnified each Relevant Authority (including their respective employees, sub-contractors and agents) (the "**Indemnified Party**") against all Losses which the Indemnified Party incurs or suffers:

18.1.1 as a consequence of any breach of:

18.1.1.1 any Law and/or Directive;

18.1.1.2 **clause 23** (Confidentiality and Announcements);

- 18.1.1.3 **clause 11** (Corrupt Gifts and Payment of Commission);
by the Service Provider (or any of its employees, agents or Sub-contractors);
- 18.1.2 as result of:
 - 18.1.2.1 death or personal injury; or
 - 18.1.2.2 any damage to any property of the Indemnified Party or any third party property,

in each case caused by the Service Provider (or any of its employees, agents or Sub-contractors) or arising in relation to any Services, whether arising in contract, tort (including negligence or breach of statutory duty) or otherwise.
- 18.2 The Service Provider is not responsible for and shall not indemnify an Authority for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement or Call-Off Contract by the Authority including by any of their respective employees or agents.
- 18.3 Nothing in this Agreement excludes or restricts the liability of any Party to this Agreement or any Call-Off Contract:
 - 18.3.1 for death or personal injury arising from its negligence;
 - 18.3.2 for fraud or fraudulent misrepresentation;
 - 18.3.3 gross negligence or any wilful or deliberate act or omission; or
 - 18.3.4 otherwise to the extent that such limitation is not permitted by law.
- 18.4 Subject to **clause 18.3**, no Party to this Agreement or any Call-Off Contract is liable to the other for any Indirect Losses.
- 18.5 Subject to **clause 18.3**, and other than where **paragraph 12** of the EfLSCo Services Call-Off Contract applies or **paragraph 11** of a Void Services Call-Off Contract applies, in no circumstances shall a Party's aggregate liability to the other pursuant to, or in connection with, this Agreement (whether resulting from breach of this Agreement, breach of statute, negligence or otherwise) exceed:
 - 18.5.1 in relation to Losses arising as a result of personal injury and/or physical damage, [redacted]; or
 - 18.5.2 in relation to Losses other than those set out in **clause 18.5.1**, [redacted].

19. **INSURANCE**

19.1 The Service Provider will at its sole cost maintain employer's liability cover as required by law and insurance cover in the sum of [redacted] per claim (in terms approved by the Authority) in respect of the following to cover the Services (the "**Insurances**"):

19.1.1 public liability to cover injury and loss to third parties;

19.1.2 insurance to cover the loss or damage to any item related to the Services; and

19.1.3 product liability,

and will ensure that any public liability, product liability or employer's liability insurance includes an Indemnity to principal clause.

19.2 The insurance cover will be maintained with a reputable insurer.

19.3 The Service Provider will produce evidence to the Contracting Authority and/or any Relevant Authority on reasonable request of the insurance policies set out in **clause 19.1** and payment of all premiums due on each policy.

19.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in **clause 19.1** being or becoming void, voidable or unenforceable.

19.5 In the event that any of the Insurances are cancelled or not renewed, the Service Provider shall immediately notify the Contracting Authority and/or any Relevant Authority and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the Contracting Authority.

19.6 The Service Provider shall:

19.6.1 if required by any Authority, use all reasonable endeavours to procure that its public liability insurance extends to indemnify the Authority as principal;

19.6.2 where any Insurance is due for renewal during the Term or Call-Off Term, within five (5) Business Days of the date of renewal also provide any Authority with satisfactory evidence that such Insurance has been renewed;

19.6.3 if required by any Authority, procure that prior to cancelling or changing any material term of any Insurances, the insurer or insurers under such Insurances give the Authority not less than thirty (30) days' notice of intention to cancel or make such change;

19.6.4 bear the cost of all or any excesses under the Insurances;

19.6.5 not take and shall not fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it

which would entitle any insurer to refuse to pay any claim under any of the Insurances;

- 19.6.6 notify each Authority as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
 - 19.6.7 notify the Relevant Authority as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the Services in excess of twenty thousand pounds sterling (£20,000) on any Insurance and, if requested by the Authority and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as the Authority may reasonably require) within three (3) Business Days of the Authority's request;
 - 19.6.8 promptly and diligently deal with all claims under the Insurances (or any of them) relating to the Services and in accordance with all insurer requirements and recommendations; and
 - 19.6.9 in relation to any claim settled under the Insurances in respect of the Services, and to the extent that the proceeds of such claim are payable to the Service Provider, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether an Authority or any third party).
- 19.7 In relation to all the Insurances except employer's liability insurance, but subject to the requirements of any insurer under the Insurances, the Parties agree to collaborate jointly in respect of all dealings with the press and any other public media. In cases where the Parties' interests are not fully aligned, the Service Provider agrees that the Authority has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with this Agreement (in which case the Authority will be the Contracting Authority) or any Call-Off Contract (in which case the Authority will be the Relevant Authority).
- 19.8 If the Service Provider is in breach of this **clause 19**, then without prejudice to any of its other rights, powers or remedies, any Authority may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the relevant Authority may recover such premiums from the Service Provider, together with all expenses incurred in procuring such Insurances as a debt.
- 20. THE AUTHORITY'S DATA**
- 20.1 The Service Provider acknowledges each Relevant Authority's ownership of Intellectual Property Rights which may subsist in any Relevant Authority Materials and Marks. The Service Provider shall not delete or remove any copyright notices contained within or relating to any such Materials or Marks.

- 20.2 The Service Provider shall take reasonable precautions (having regard to the nature of its obligations under this Agreement) to preserve the integrity of any Relevant Authority Materials and Marks and New Public Materials and to prevent any corruption or loss of any Relevant Authority Materials and Marks and New Public Materials.
- 20.3 As between any Authority and the Service Provider, Intellectual Property Rights in all Relevant Authority Materials and Marks and New Public Materials supplied and/or made available by an Authority to the Service Provider in connection with this Agreement and/or any Call-Off Contract shall remain the property of the Relevant Authority.
- 20.4 Except as set out in **clause 21** or where expressly permitted under a Call-Off Contract or with the Relevant Authority's prior written consent, the Service Provider shall have no right to use any Marks or other Intellectual Property Rights of an Authority.

21. INTELLECTUAL PROPERTY RIGHTS

Ownership

- 21.1 In this **clause 21**, any reference to the term "**Agreement**" means:
- 21.1.1 for the purposes of this Agreement, this Agreement; and
 - 21.1.2 for the purposes of any Call-Off Contract, the relevant Call-Off Contract.
- 21.2 This Agreement shall not operate to assign any Intellectual Property Rights in any Service Provider Materials or any Relevant Authority Materials and Marks.
- 21.3 All title, interest and Intellectual Property Rights in any New Public Material shall belong to and vest in the Relevant Authority.
- 21.4 In respect of this Agreement, the Service Provider hereby assigns absolutely (and shall procure that each member of the Service Provider Group and/or any third party (as the case may be) assigns absolutely with full title guarantee) to the Relevant Authority (by way of present assignment of existing and all future property, rights, title and interest) all rights, title, interest and Intellectual Property Rights in the New Public Material, all of which shall vest in the Relevant Authority immediately upon creation of the same with full title guarantee. The Service Provider hereby grants to each Relevant Authority (and each Affiliate of the Relevant Authority) a non-exclusive, non-transferable, sub-licensable, perpetual, irrevocable, royalty free, worldwide licence to use, copy, maintain and otherwise utilise any copyright in the Service Provider Material solely in relation to its use and benefit of the New Public Material.

Use of Relevant Authority Materials

- 21.5 Each Relevant Authority hereby grants to the Service Provider (and each member of the Service Provider Group) a limited, non-exclusive, non-

transferable, sub-licensable, worldwide, irrevocable and royalty-free licence to use, copy, maintain and modify the New Public Materials solely to the extent necessary for the proper performance of the Services by the Service Provider for the duration of the relevant Call-Off Contract. The Service Provider shall provide each Relevant Authority with copies of all materials used, relied upon or referred to in the creation of the New Public Materials.

- 21.6 Each Relevant Authority hereby grants to the Service Provider (and each member of the Service Provider Group) a limited, non-exclusive, non-transferable, sub-licensable, worldwide, irrevocable and royalty free licence to use, copy, maintain and otherwise utilise the Relevant Authority Materials and Marks solely to the extent necessary:

21.6.1 for the proper performance of the Services by the Service Provider for the duration of the relevant Call-Off Contract; and/or

21.6.2 in connection with any End Consumer Supply Contract (to the extent such use is approved in advance by the Relevant Authority).

- 21.7 In respect of any Relevant Authority Materials and Marks which are not owned by the Contracting Authority Group, the Service Provider shall use the Relevant Authority Materials and Marks in accordance with such terms of use as are required by the relevant third party licensor and which are communicated to the Service Provider.

- 21.8 The licences and rights to use granted by the Relevant Authority pursuant to **clauses 21.5, 21.6 and 21.7** shall terminate automatically on the later of:

21.8.1 the termination or expiry of this Agreement; and

21.8.2 the end of the term of the last End Consumer Supply Contract.

Use of Service Provider Materials

- 21.9 The Service Provider hereby grants to each Relevant Authority (and each Affiliate of the Relevant Authority) a non-exclusive, non-transferable, sub-licensable, irrevocable, royalty free, worldwide licence to use, copy, maintain and otherwise utilise any copyright in the Service Provider Material to the extent required in connection with the Services and to enable any successor to the Service Provider and/or any member of the Contracting Authority Group to provide services comparable to the Services and/or supplies of gas and/or electricity to End Consumers, including in the case of an EfLSCo Services Call-Off Contract a specification of the Service Provider Materials used to support any Tariffs (namely, a list of relevant software/applications which will be used to support the implementation/operation of the tariff) which the Service Provider will provide to the Contracting Authority both prior to the launch of a new Tariff (as defined in **Schedule 2**) but also in respect of any Tariffs upon termination of the relevant EfLSCo Services Call-Off Contract. For the avoidance of doubt, nothing in this **clause 21.9** shall entitle the Relevant Authority to have copies of or access to the Solution's source code or underlying software.

21.10 The licences and rights of use granted by the Service Provider pursuant to **clause 21.9** shall terminate automatically on the later of:

21.10.1 twelve (12) months after the termination or expiry of this Agreement;
and

21.10.2 the end of the term of the last End Consumer Supply Contract.

21.11 Subject to **clause 18**, the Service Provider shall indemnify and keep indemnified each Relevant Authority from and against all Losses that arise from or are incurred by the Relevant Authority (and/or any Affiliate of the Relevant Authority) by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Relevant Authority of the New Public Materials and/or the Service Provider Materials (or any of them) or anything arising from the provision of the Services and from and against all costs and damages of any kind which the Relevant Authority may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.

21.12 Subject to **clause 18**, the Relevant Authority shall indemnify and keep indemnified the Service Provider from and against all Losses that arise from or are incurred by the Service Provider by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use by the Service Provider Group of the Relevant Authority Materials and Marks in accordance with the terms of this Agreement and from and against all costs and damages of any kind which any member of the Service Provider Group may incur in or in connection with any actual or threatened proceedings before any court or arbitrator.

21.13 The Service Provider shall procure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with this Agreement and/or a Call-Off Contract (other than Relevant Authority Materials and Marks) have been paid and shall continue to be paid for the duration of a Call-Off Contract and for a period of twelve (12) months thereafter.

21.14 The Relevant Authority shall procure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights in any Relevant Authority Materials and Marks provided by the Relevant Authority in connection with this Agreement and/or a Call-Off Contract have been paid and shall continue to be paid for the duration of a Call-Off Contract and for a period of twelve (12) months thereafter.

22. **PRIVACY, DATA PROTECTION AND CYBER SECURITY**

For the purposes of this **clause 22**, unless the context indicates otherwise, the following expressions shall have the following meanings:

“Authority Personal Data” means Personal Data and/or Sensitive Personal Data Processed by the Service Provider or any Sub-contractor on behalf of

	the Relevant Authority, pursuant to or in connection with the relevant Call-Off Contract;
“Data Controller”	has the meaning given to it in Data Protection Legislation noting that under General Data Protection Regulation this would be using the definition of “Controller”;
“Data Processor”	has the meaning given to it in Data Protection Legislation noting that under General Data Protection Regulation this would be using the definition of “Processor”;
“Data Protection Impact Assessment”	means a process used to identify and mitigate the privacy and data protection risks associated with an activity involving the Processing of Personal Data;
“Data Protection Legislation”	means: <ul style="list-style-type: none"> (a) the General Data Protection Regulation, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) any other legislation in force from time to time in the United Kingdom relating to privacy and/or the Processing of Personal Data; and (c) any statutory code of practice issued by the Information Commissioner in relation to such legislation;
“Data Subject”	has the meaning given to it in Data Protection Legislation;
“General Data Protection Regulation”	means the Regulation (EU) 2016/679 on the protection of natural persons with regard to the Processing of personal data and on the free movement of such data;
“Personal Data”	has the meaning given to it in Data Protection Legislation;
“Processing”	has the meaning given to it in Data Protection Legislation and “ Process ” and “ Processed ” will be construed accordingly;

- “Restricted Countries”** means any country outside the European Economic Area as may be constituted from time to time or the United Kingdom;
- “Sensitive Personal Data”** means sensitive or special categories of Personal Data including criminal allegations, offences, and outcomes data (as defined in Data Protection Legislation) which is Processed pursuant to or in connection with the relevant Call-Off Contract; and
- “Subject Access Request”** means a request made by a Data Subject to access his or her own Personal Data in accordance with rights granted in Data Protection Legislation.

22.1 Each Party shall:

- 22.1.1 comply with Data Protection Legislation and shall not by its act or omission cause the other Party to breach Data Protection Legislation; and
- 22.1.2 generally co-operate in good faith and with all appropriate due diligence to resolve any issue or dispute arising in respect of the their respective Personal Data so as to protect the rights of Data Subjects in accordance with Data Protection Legislation.

22.2 In the event that the Service Provider (in the capacity of a Data Processor) Processes any Personal Data for and on behalf of the Authority, the Parties shall set out the position as such in the relevant Call-Off Contract, and **clauses 22.3 to 22.13** in respect of such Processing shall apply. For the avoidance of doubt, the Parties shall be treated as separate Data Controllers for any such Processing not defined within a Call-Off Contract.

22.3 With respect to the Parties’ rights and obligations under the relevant Call-Off Contract, the Parties acknowledge that the Relevant Authority is a Data Controller solely responsible for determining the purposes and manner in which Authority Personal Data is to be Processed, and that the Service Provider is a Data Processor.

22.4 Details of the Authority Personal Data to be Processed by the Service Provider and the purposes of such Processing are as follows:

- 22.4.1 The Authority Personal Data to be Processed by the Service Provider (if any) concerns the following categories of Data Subject:

Those categories of Data Subject listed for the purposes of this clause in the relevant Call-Off Contract

- 22.4.2 The Authority Personal Data to be Processed includes the following types of Personal Data and/or Sensitive Personal Data:

Those types of Personal Data listed for the purposes of this clause in the relevant Call-Off Contract.

- 22.4.3 The Authority Personal Data is to be Processed for the following purpose(s):

The purpose listed for the purposes of this clause in the relevant Call-Off Contract.

- 22.4.4 Subject to **clause 22.9**, the Authority Personal Data is (if applicable) to be Processed in the Restricted Countries listed for the purposes of this **clause 22.4.4** in the Call-Off Contract.

- 22.5 Without prejudice to the generality of **clause 20** (*The Authority's Data*), the Service Provider shall:

- 22.5.1 Process the Authority Personal Data only in accordance with the documented instructions from the Relevant Authority to perform its obligations under the relevant Call-Off Contract;

- 22.5.2 use its reasonable endeavours to assist the Relevant Authority in complying with any obligations under Data Protection Legislation and shall not perform its obligations under the relevant Call-Off Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

- 22.5.3 notify the Relevant Authority immediately if it determines or is notified that an instruction to Process Personal Data issued to it by the Authority is incompatible with any obligations under Data Protection Legislation to the extent the Service Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations;

- 22.5.4 maintain, and make available to the Relevant Authority on its request, documentation which describes the Processing operations for which it is responsible under the relevant Call-Off Contract and/or Article 30 of the General Data Protection Regulations;

- 22.5.5 where requested to do so by the Relevant Authority, or where Processing Authority Personal Data presents a specific risk to privacy, carry out or assist the Relevant Authority to carry out a Data Protection Impact Assessment in accordance with guidance issued from time to time by the Information Commissioner (and any relevant requirements detailed in Data Protection Legislation) and make the results of such an assessment available to the Authority subject to payment of the Service Provider's reasonable costs at pre-agreed rates from time to time;

- 22.5.6 without prejudice to any cyber security and/or payment card industry data security standard obligations in a relevant Call-Off Contract,

implement and assist the Relevant Authority to implement appropriate technical and organisational security measures including pseudonymisation and encryption of Authority Personal Data at a minimum to the standard set out in **Schedule 11** (*Information Security*), the ability to restore the availability and access to Authority Personal Data following a breach of this **clause 22** and a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures, that are satisfactory to the Relevant Authority from time to time (acting reasonably), against unauthorised or unlawful Processing of Authority Personal Data and against accidental loss, destruction of, or damage to such Authority Personal Data;

- 22.5.7 without prejudice to any cyber security and/or payment card industry data security standard obligations in a relevant Call-Off Contract, provide the Relevant Authority with such information as the Authority may from time to time require (acting reasonably) to satisfy itself of compliance by the Service Provider (and/or any authorised Sub-contractor) with **clauses 22.5.6** and **22.5.8**, including, protocols, procedures, guidance, training and manuals. For the avoidance of doubt, this shall include a full report recording the results of any privacy or security audit carried out at the request of the Service Provider itself or the Relevant Authority;
- 22.5.8 notify the Relevant Authority without undue delay by written notice with all relevant details reasonably available of any actual breach by this **clause 22**, including the unauthorised or unlawful Processing of Authority Personal Data, or its accidental loss, destruction or damage;
- 22.5.9 having notified the Relevant Authority of a breach in accordance with **clause 22.5.8**, keep the Authority properly and regularly informed in writing until the breach has been resolved to the reasonable satisfaction of the Authority;
- 22.5.10 cooperate as the Relevant Authority reasonably requires with any investigation or audit in relation to Authority Personal Data and/or its Processing including allowing access to premises, computers and other information systems, records, documents and agreements as may be reasonably necessary (whether in relation to Processing pursuant to the relevant Call-Off Contract, in relation to compliance with Data Protection Legislation or in relation to any actual or suspected breach), whether by the Authority (or any agent acting on its behalf), any relevant regulatory body, including the Information Commissioner, the police and any other statutory law enforcement agency, and shall do so both during the relevant Call-Off Contract and after its termination or expiry (but only for so long as the Party concerned retains and/or Processes Authority Personal Data);
- 22.5.11 notify the Relevant Authority within two (2) Business Days if it, or any Sub-contractor, receives in relation to Authority Personal Data:

- 22.5.11.1 from a Data Subject (or third party on their behalf):
 - (a) a Subject Access Request (or purported Subject Access Request);
 - (b) a request to rectify, block or erase any Authority Personal Data; or
 - (c) any other request, complaint or communication relating to the Authority's obligations under Data Protection Legislation;
- 22.5.11.2 any communication from the Information Commissioner or any other regulatory authority in connection with Authority Personal Data; or
- 22.5.11.3 a request from any third party for disclosure of Authority Personal Data where compliance with such request is required or purported to be required by law;
- 22.5.12 provide the Relevant Authority with full cooperation and assistance (at the Authority's reasonable costs at the pre agreed rate, from time to time) (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in **clause 22.5.11**, including by promptly providing:
 - 22.5.12.1 the Authority with full details and copies of the complaint, communication or request;
 - 22.5.12.2 where applicable, such assistance as is reasonably requested by the Authority to enable it to comply with the Subject Access Request within the relevant timescales set out in Data Protection Legislation; and
 - 22.5.12.3 where applicable, such assistance as is reasonably required by the Authority to enable it to comply with a request from a Data Subject to rectify, block or erase any Authority Personal Data; and
- 22.5.13 if required to do so by Data Protection Legislation, appoint a designated data protection officer..
- 22.6 The Service Provider shall not share Authority Personal Data with any Sub-contractor without prior written consent (such consent not to be unreasonably withheld or delayed) from the Relevant Authority and unless there is a written contract in place between the Service Provider and the Sub-contractor which requires the Sub-contractor to:
 - 22.6.1 only Process Authority Personal Data in accordance with the Authority's instructions to the Service Provider; and

- 22.6.2 comply with the same obligations which the Service Provider is required to comply with under this **clause 22**.

The Service Provider shall remain responsible and liable to the Relevant Authority for all acts and omissions of Sub-contractors as if they were its own.

22.7 The Service Provider shall:

- 22.7.1 only Process Authority Personal Data in accordance with the Relevant Authority's instructions to the Service Provider and as reasonably necessary to perform the relevant Call-Off Contract in accordance with its terms;
- 22.7.2 not Process Authority Personal Data in such a way as to:
- 22.7.2.1 place the Relevant Authority in breach of Data Protection Legislation; or
 - 22.7.2.2 expose the Relevant Authority to reputational damage including adverse publicity;
- 22.7.3 not allow the Service Provider's Personnel to access Authority Personal Data unless such access is necessary in connection with the provision of the relevant Services pursuant to the relevant Call-Off Contract;
- 22.7.4 take all reasonable steps to ensure the reliability and integrity of all of the Service Provider's Personnel who can access Authority Personal Data;
- 22.7.5 ensure that all of the Service Provider's Personnel who can access Authority Personal Data are made subject to an explicit duty of confidence;
- 22.7.6 not disclose or transfer Authority Personal Data to any third party without the Service Provider having obtained the prior written consent of the Relevant Authority (save where such disclosure or transfer is specifically authorised under the relevant Call-Off Contract);
- 22.7.7 without prejudice to **clause 22.5.6**, wherever the Service Provider uses any mobile or portable device for the transmission or storage of Authority Personal Data, ensure that each such device encrypts Authority Personal Data; and
- 22.7.8 comply during the course of the relevant Call-Off Contract with any written retention and/or deletion policy or schedule provided by the Relevant Authority to the Service Provider from time to time.

22.8 The Service Provider shall not Process or otherwise transfer any Authority Personal Data in or to any Restricted Countries without prior written consent from the Relevant Authority (such consent not to be unreasonably withheld or

delayed) (which consent may be subject to additional conditions imposed by the Authority).

22.9 If, after the date of the relevant Call-Off Contract, the Service Provider or any Sub-contractor wishes to Process and/or transfer any Authority Personal Data in or to any Restricted Countries, the following provisions shall apply:

22.9.1 the Service Provider shall submit a written request to the Relevant Authority setting out details of the following:

22.9.1.1 the Authority Personal Data which will be transferred to and/or Processed in any Restricted Countries;

22.9.1.2 the Restricted Countries which the Authority Personal Data will be transferred to and/or Processed in;

22.9.1.3 any Sub-contractors or other third parties who will be Processing and/or receiving Authority Personal Data in Restricted Countries; and

22.9.1.4 how the Service Provider shall ensure an adequate level of protection and adequate safeguards in respect of the Authority Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with Data Protection Legislation;

22.9.2 in preparing and evaluating such a request, the Parties shall refer to and comply with applicable policies, procedures, guidance and codes of practice produced by the Parties and/or the Information Commissioner in connection with the Processing of Personal Data in (and/or transfer of Personal Data to) any Restricted Countries; and

22.9.3 the Service Provider shall comply with any instructions and shall carry out such actions as the Relevant Authority may notify in writing when providing its consent to such Processing or transfers, including:

22.9.3.1 incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) into the relevant Call-Off Contract or a separate data processing agreement between the Parties; and

22.9.3.2 procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Authority Personal Data in any Restricted Countries enters into a data processing agreement with the Service Provider on terms which are equivalent to those agreed between the Authority and the Service Provider in connection with the Processing of Authority Personal Data in (and/or transfer of Authority Personal Data to) any Restricted Countries, and which may include the

incorporation of the clauses referred to in **clause 22.9.3.1**.

22.10 Following termination or expiry of the relevant Call-Off Contract, howsoever arising, the Service Provider:

22.10.1 may Process the Authority Personal Data only for so long and to the extent as is necessary to properly comply with its non-contractual obligations arising under law (and will then comply with **clause 22.10.2**); and

22.10.2 subject to **clause 22.10.1**, shall;

22.10.2.1 on written instructions from the Relevant Authority either securely destroy or securely and promptly return to the Authority or a recipient nominated by the Authority (in such usable format as and to the extent the Authority may reasonably require) the Authority Personal Data; or

22.10.2.2 in the absence of instructions from the Relevant Authority after twelve (12) months from the expiry or termination of the relevant Call-Off Contract securely destroy the Authority Personal Data.

22.11 Authority Personal Data may not be Processed following termination or expiry of the relevant Call-Off Contract save as permitted by **clause 22.10**.

22.12 The indemnity in **clause 18** (*Indemnity*) shall apply to any breach of this **clause 22** and shall survive for a period of six (6) years following termination or expiry of the Agreement and any relevant Call-Off Contract.

22.13 Cyber Security

The Service Provider must follow the 10 Steps to Cyber Security issued by the National Cyber Security Centre.

23. **CONFIDENTIALITY AND ANNOUNCEMENTS**

23.1 Subject to **clause 24**, each Party will keep confidential:

23.1.1 the terms of this Agreement and all Call-Off Contracts; and

23.1.2 any and all Confidential Information that it may acquire from another Party, including their Affiliates.

23.2 Subject to **clause 24**, each Party will not use any Confidential Information disclosed by another Party for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. Each relevant Party will ensure that its officers and employees comply with the provisions of **clause 23.1**.

23.3 The obligations on the Parties set out in **clause 23** will not apply to any Confidential Information which:

23.3.1 is in the public domain (other than as a result of a breach of this **clause 23**);

23.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure;

23.3.3 where the Contracting Authority is the receiving Party, the Contracting Authority is required to disclose to the Mayor; or

23.3.4 to the extent that such disclosure is to any person or body who has statutory responsibilities in relation to the Services.

23.4 Each relevant Party shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.

23.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Agreement or any Call-Off Contract or that it is providing the Services to any Authority or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the relevant Authority. The relevant Authority shall have the right to approve any announcement before it is made.

23.6 The provisions of this **clause 23** will survive any termination of this Agreement or Call-Off Contract for a period of six (6) years from termination.

24. **FREEDOM OF INFORMATION AND TRANSPARENCY**

24.1 For the purposes of this **clause 24**:

“FOI Legislation” means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry for Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

“Information” means information recorded in any form held by the Authority or by the Service Provider on behalf of an Authority; and

“Information Access Request” means a request for any Information under the FOI Legislation.

24.2 The Service Provider acknowledges that each Authority:

- 24.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with each Authority to enable each Authority to comply with its obligations under the FOI Legislation; and
- 24.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 24.3 Without prejudice to the generality of **clause 24.2**, the Service Provider shall and shall procure that its FA Sub-contractors and use reasonable endeavours to procure that any other Sub-contractors (if any) shall:
 - 24.3.1 transfer to the Procurement Manager (or such other person as may be notified by the Relevant Authority to the Service Provider) each Information Access Request relevant to this Agreement or a Call-Off Contract or the Services that it or they (as the case may be) receive as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and
 - 24.3.2 in relation to Information held by the Service Provider on behalf of each Authority, provide each Relevant Authority with details about and/or copies of all such Information that the Relevant Authority requests and such details and/or copies shall be provided within five (5) Business Days of a request from the Relevant Authority (or such other period as the Relevant Authority may reasonably specify), and in such forms as the Relevant Authority may reasonably specify.
- 24.4 Each Relevant Authority shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 24.5 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Relevant Authority.
- 24.6 The Service Provider acknowledges that each Relevant Authority is subject to the Transparency Commitment. Accordingly, notwithstanding **clause 23.1** and **clause 24**, the Service Provider hereby gives its consent for each Relevant Authority to publish the Contract Information to the general public.
- 24.7 Each Relevant Authority may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion each Relevant Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 24.8 Each Relevant Authority may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to **clause 24.6**. Each Relevant Authority shall make the final decision regarding publication and/or redaction of the Contract Information.

25. DISPUTE RESOLUTION

- 25.1 Each Relevant Authority and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract (“**Dispute**”) before resorting to litigation.
- 25.2 If the Dispute is not settled through discussion between a representative of each the Relevant Authority and the Service Provider within a period of seven (7) Business Days of the date on which the Dispute arose, either the Relevant Authority and/or the Service Provider may refer the Dispute in writing to a director or chief executive (or equivalent) (“**Senior Personnel**”) of the Relevant Authority and the Service Provider for resolution.
- 25.3 If the Dispute is not resolved within fourteen (14) Business Days of referral to the Senior Personnel, the Relevant Authority and the Service Provider shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. Either the Relevant Authority or the Service Provider may give notice to the other (“**Notice**”) to commence such process and the Notice shall identify one (1) or more proposed mediators.
- 25.4 If the Relevant Authority and the Service Provider are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within twenty (28) Business Days of the service of the Notice, either the Relevant Authority or the Service Provider may apply to the Centre for Effective Dispute Resolution (“**CEDR**”) in London to appoint a mediator. The costs of that mediator shall be divided equally between the Relevant Authority and the Service Provider or as the Relevant Authority and the Service Provider may otherwise agree in writing.
- 25.5 Where a Dispute is referred to mediation under **clause 25.3**, the Relevant Authority and the Service Provider will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 25.6 If the Relevant Authority and the Service Provider reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the authorised representatives of the Relevant Authority and the Service Provider, shall be final and binding on the Relevant Authority and the Service Provider.
- 25.7 If either the Relevant Authority or the Service Provider refuses at any time to participate in the mediation procedure and in any event if the Relevant Authority and the Service Provider fail to reach agreement on the Dispute within forty (40) Business Days of the service of the Notice either the Relevant Authority or the Service Provider may commence proceedings in accordance with **clause 39**.
- 25.8 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with this Agreement and/or the relevant Call-Off

Contract, as the case may be, and without delay or disruption while any Dispute is being resolved pursuant to this **clause 25** and/or **clause 39**.

- 25.9 Neither the Relevant Authority nor the Service Provider shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this **clause 25**, and this **clause 25** shall not apply in respect of any circumstances where such remedies are sought.

26. **BREACH AND TERMINATION OF AGREEMENT OR CALL-OFF CONTRACT**

- 26.1 Without prejudice to any right to terminate at common law, the Contracting Authority may terminate this Agreement, and any Relevant Authority may terminate any relevant Call-Off Contract to which it is a Party, by giving notice to the Service Provider (specifying that such termination will have immediate effect or otherwise stating the date on which such termination shall take effect) if:

26.1.1 in addition and without prejudice to **clauses 26.1.2** to **26.1.13**, the Service Provider has committed any material or persistent breach of this Agreement or any relevant Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within fifteen (15) Business Days (or such other longer timeframe as specified in writing by the Contracting Authority or the Relevant Authority, as the case may be) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;

26.1.2 the Service Provider and/or the Service Provider's Holding Company is subject to an Insolvency Event;

26.1.3 there is a change of ownership which gives the Relevant Authority the right to terminate in accordance with **clause 9.3**;

26.1.4 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010 in respect of or otherwise in connection with this Agreement or any Call-Off Contract;

26.1.5 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015;

26.1.6 the Service Provider fails to comply, in the performance of the Services, with any Law and/or Directive relating to the fields of environmental, social or labour law;

26.1.7 the Service Provider:

26.1.7.1 fails to provide a Certificate in accordance with the requirements of **clause 5.5** and thereafter fails to provide

such Certificate within five (5) days of a written request from the Contracting Authority; or

- 26.1.7.2 confirms to the Contracting Authority that it is not able to confirm the matters referred to in **clauses 5.5.1.3** or **5.5.1.4**, and accordingly is not able to provide a Certificate in accordance with the requirements of **clause 5.5**;
- 26.1.8 the Service Provider fails to meet the Launch Date specified in the first EfLSCo Services Call-Off Contract, save to the extent that a delay is caused by a failure by the Contracting Authority to perform its obligations pursuant to such EfLSCo Services Call-Off Contract, (except where such failure by the Contracting Authority to perform its obligations is caused by any act or omission of the Service Provider (or its employees, agents or Sub-contractors)), in which case the Launch Date shall be deferred by a period of time equal to the delay caused by the Contracting Authority;
- 26.1.9 the Service Provider commits a breach of any Law and/or Directive;
- 26.1.10 in the case of any EfLSCo Services Call-Off Contract, the circumstances described in **paragraph 4.5** of **Schedule 10** (*Service Levels – EfLSCo Services*) occur;
- 26.1.11 the circumstances described in **clause 7.7.3** occur;
- 26.1.12 the circumstances described in **clause 3.12** occur; or
- 26.1.13 the Service Provider fails to put in place a Credit Support Document in accordance with **clause 3.10 or 3.13**; or, in respect of any Credit Support Document provided pursuant to **clause 3.10 or 3.13**:
 - 26.1.13.1 a payment due under the Credit Support Document is not paid when due, and remains unpaid within five (5) Business Days after a notice to the Service Provider referring to this **clause 26**;
 - 26.1.13.2 the Service Provider fails to procure that the term of the Credit Support Document is extended, or that such Credit Support Document is replaced, at least three (3) months before such Credit Support Document is due to expire (and the Service Provider fails to procure that the term of such Credit Support Document is extended, or that such Credit Support Document is replaced, on or before the tenth (10th) Business Day after the Relevant Authority gives the Service Provider notice of the same, which notice must refer to this **clause 26**); or
 - 26.1.13.3 the Credit Support Document fails or ceases to be in full force and effect (other than in accordance with its terms) or the Service Provider or the provider of the Credit

Support Document disaffirms, disclaims, repudiates or rejects in whole or in part or challenges the validity of that Credit Support Document, in either case prior to the satisfaction of all obligations of the Service Provider under this Agreement and/or the relevant Call-Off Contract and without the prior written consent of the Relevant Authority (and no replacement Credit Support Document has been provided within ten (10) Business Days of the Credit Support Document having ceased to be in full force and effect or of the date on which the Service Provider or the provider of the Credit Support Document challenged the validity of the Credit Support Document).

- 26.2 Without prejudice to any of the Contracting Authority's and/or any other Authority's other rights, powers or remedies (whether under this Agreement, a Call-Off Contract or otherwise) if the Service Provider is in breach of any of its warranties and/or obligations under **clause 6** and/or any of its other obligations in respect of the Services under this Agreement or any relevant Call-Off Contract, the Service Provider shall, if required to do so by the Contracting Authority and/or the Relevant Authority (as regards a Call-Off Contract), promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this **clause 26.2** shall prevent the Relevant Authority from procuring the provision of any Services or any remedial action in respect of any Services from an alternative service provider (where the Service Provider has failed to take remedial action within a reasonable time period specified by the Relevant Authority) and, where the Relevant Authority so procures any Services or any remedial action, the Relevant Authority shall be entitled to recover from the Service Provider all additional costs, losses and expenses incurred by the Relevant Authority and attributable to the Relevant Authority procuring such Services or remedial action from such alternative service provider.
- 26.3 Without prejudice to any right to terminate at common law, the Service Provider may terminate any relevant Call-Off Contract by giving notice to the Relevant Authority (specifying that such termination will have immediate effect or otherwise stating the date on which such termination shall take effect) if:
- 26.3.1 in addition and without prejudice to **clause 26.3.2**, the Relevant Authority has committed any material or persistent breach of the relevant Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within fifteen (15) Business Days (or such other longer timeframe as specified in writing by the Service Provider) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or
- 26.3.2 the Relevant Authority is subject to an Insolvency Event;
- 26.4 The Contracting Authority, the Service Provider or the Relevant Authority (as the case may be) shall not be deemed to be in breach of this Agreement and/or

the relevant Call-Off Contract, as the case may be, or otherwise liable to the other counterparty in any manner whatsoever, for any failure or delay in performing its obligations under this Agreement and/or the relevant Call-Off Contract, as the case may be, to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than eight (8) weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on any Party's (the "**Affected Party**") performance of its obligations under this Agreement and/or any relevant Call-Off Contract, as the case may be, then for as long as such Force Majeure Event continues and has that effect, the counterparty not affected by such Force Majeure Event ("**Innocent Party**") may terminate this Agreement and/or the Call-Off Contract, as the case may be, immediately upon giving notice to the Affected Party. If the Call-Off Contract is terminated in accordance with this **clause 26.4** then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

26.5 Without prejudice to the Contracting Authority's right to terminate this Agreement or any Authority's right to terminate the relevant Call-Off Contract under **clause 26.1** or to terminate at common law, the Contracting Authority may terminate this Agreement or the Relevant Authority may terminate the relevant Call-Off Contract at any time without cause subject to giving the Service Provider not less than ninety (90) days' written notice.

26.6 To the extent that the Contracting Authority has a right to terminate this Agreement or a Relevant Authority has the right to terminate a relevant Call-Off Contract under this **clause 26** then, as an alternative to termination, the Relevant Authority may, by giving notice to the Service Provider, require the Service Provider to provide part only of the Services with effect from the date specified in the Relevant Authority's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "**the Services**" shall be construed accordingly.

27. **CONSEQUENCES OF TERMINATION OR EXPIRY**

27.1 Notwithstanding the provisions of **clause 27**, wherever a Relevant Authority chooses to put out to tender for a replacement service provider for some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the Relevant Authority may reasonably require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require.

27.2 The termination or expiry of this Agreement or any Call-Off Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to any Relevant Authority and/or the Service Provider prior to or after such termination or expiry.

27.3 Upon expiry or termination of this Agreement or relevant Call-Off Contract (howsoever caused) the Service Provider shall, at no further cost to each Relevant Authority (except where terminated under **clauses 26.3, 26.5** or

clause 28, where such costs shall be borne by the relevant Authority, or where terminated under **clause 26.4** where such costs shall be borne equally between the parties):

- 27.3.1 take all such steps as shall be reasonably necessary to agree with each Relevant Authority a plan for the orderly handover of Services to each Relevant Authority (or its nominee), such that the Services can be carried on following expiry or termination with the minimum of interruption and inconvenience to each Relevant Authority and to effect such handover; and
- 27.3.2 on receipt of each Relevant Authority's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks;
- 27.4 On termination of this Agreement and/or any relevant Call-Off Contract or a cessation of any Services, the Relevant Authority may enter into any agreement with any third party or parties as the Relevant Authority thinks fit to provide any or all of the Services and (but only insofar as the termination arises under **clause 26.1** (and for the avoidance of doubt, other than pursuant to **clause 28.1**)) the Service Provider shall be liable for all additional expenditure reasonably incurred by the Relevant Authority in having such services carried out and all other costs and damages reasonably incurred by the Relevant Authority in consequence of such termination. The Relevant Authority may deduct such costs from any relevant Charges or otherwise recover such costs from the Service Provider as a debt.
- 27.5 On termination of this Agreement and/or any relevant Call-Off Contract under **clause 26.3** or **26.5** the Relevant Authority shall compensate the Service Provider for its reasonable and evidenced Losses incurred as a consequence of such termination, subject to such Losses being no greater than the relevant amount set out in **clause 27.5.2** and the provisions of this **clause 27.5**.
 - 27.5.1 Any alleged Losses of the Service Provider in respect of any fair value bid price mark-to-market exposure as at the date of termination shall only be recoverable under **clause 27.5** to the extent:
 - 27.5.1.1 such hedges were specifically entered into by the Service Provider for the purposes of End Consumer Supply Contracts entered into pursuant to an EfLSCo Services Call-Off Contract; and
 - 27.5.1.2 such End Consumer Supply Contracts have been transferred pursuant to **paragraph 8.3** of the EfLSCo Services Call-Off Contract (unless the relevant hedges have also been transferred pursuant to **paragraph 8.3** of the EfLSCo Services Call-Off Contract).
 - 27.5.2 The relevant amounts for the purposes of **clause 27.5** are:

- 27.5.2.1 [redacted] if the termination date falls within the first (1st) Contract Year;
 - 27.5.2.2 [redacted] if the termination date falls within the second (2nd) Contract Year;
 - 27.5.2.3 [redacted] if the termination date falls within the third (3rd) Contract Year;
 - 27.5.2.4 [redacted] if the termination date falls within the fourth (4th) Contract Year; or
 - 27.5.2.5 if the termination date occurs after the fourth (4th) anniversary of the Commencement Date (that is, during a period of extension of a Call-Off Contract), the relevant amount set out in **clause 27.5.3**:
- 27.5.3 The relevant amounts for the purposes of **clause 27.5.2.5** are:
- 27.5.3.1 [redacted] if the termination date falls within the first (1st) year of such extension period;
 - 27.5.3.2 [redacted] if the termination date falls within the second (2nd) year of such extension period;
 - 27.5.3.3 [redacted] if the termination date falls within the third (3rd) year of such extension period;
 - 27.5.3.4 [redacted] if the termination date falls within the fourth (4th) year of such extension period; and
 - 27.5.3.5 (for the avoidance of doubt) [redacted] if the termination date occurs on any date not specified in **clause 27.5.2** or this **clause 27.5.3**.
- 27.6 On termination of this Agreement and/or any relevant Call-Off Contract under **clause 26.1** by a Relevant Authority, the Service Provider shall be liable to compensate only the terminating Relevant Authority for its reasonable and evidenced Losses incurred as a consequence of such termination.
- 27.7 Notwithstanding any provision of this **clause 27**, termination or expiry of this Agreement shall not prejudice or affect the End Consumer Supply Contracts placed under the EfLSCo Services Call-Off Contract which shall continue and the relevant terms of this Agreement in connection with such End Consumer Supply Contracts shall endure until expiry of the last End Consumer Supply Contract.
- 27.8 Notwithstanding any provision of this **clause 27** and any EfLSCo Services Call-Off Contract, termination or expiry of a EfLSCo Services Call-Off Contract shall not prejudice or affect the End Consumer Supply Contracts placed under the EfLSCo Services Call-Off Contract which shall continue and the relevant

terms of this Agreement in connection with such End Consumer Supply Contracts shall endure until expiry of the last End Consumer Supply Contract.

28. DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT

28.1 In the event that a court makes a Declaration of Ineffectiveness in respect of this Agreement and/or any relevant Call-Off Contract, the Relevant Authority shall promptly notify the Service Provider. The Service Provider and the Relevant Authority agree that the provisions of **clause 27** and **clauses 28.1, 28.2, 28.4 to 28.6** and **28.12** shall apply as from the time when the Declaration of Ineffectiveness is made. The provisions of **clause 27.4** shall apply (mutatis mutandis) as if (for this purpose and no other) the notice of Declaration of Ineffectiveness was a notice by the Relevant Authority to terminate this Agreement and/or the Call-Off Contract, as the case may be, under **clause 27.4**.

28.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to the Relevant Authority or the Service Provider prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in **clauses 28.1 to 28.6**.

28.3 During any court proceedings seeking a Declaration of Ineffectiveness in respect of this Agreement and/or any Call-Off Contract, the Relevant Authority may require the Service Provider to prepare a Cessation Plan in accordance with this **clause 28.3** by issuing a notice in writing. As from the date of receipt by the Service Provider of such notification from the Relevant Authority, the Relevant Authority and the Service Provider (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Relevant Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

28.3.1 where the proceedings are seeking a Declaration of Ineffectiveness in relation to this Agreement:

28.3.1.1 an orderly and efficient cessation of the Services or (at the Relevant Authority's request) a transition of the Services to the Relevant Authority or such other entity as the Relevant Authority may specify; and

28.3.1.2 minimal disruption or inconvenience to the Relevant Authority or to customers of the Services; or

28.3.2 where the proceedings are seeking a Declaration of Ineffectiveness in relation to a Call-Off Contract:

28.3.2.1 an orderly and efficient cessation of the Services or (at the Relevant Authority's request) a transition of the Services to the Relevant Authority or such other entity as the Relevant Authority may specify; and

28.3.2.2 minimal disruption or inconvenience to the Relevant Authority or to customers of the Services,

in each case in accordance with the provisions of **clauses 28.2 to 28.6** and which the Relevant Authority and Service Provider agree would have effect in the event that a Declaration of Ineffectiveness is made.

- 28.4 Where there is any conflict or discrepancy between the provisions of **clause 27** and any of **clauses 28.2 to 28.6** or **28.12** or the Cessation Plan, the provisions of these **clauses 28.2 to 28.6** and **28.12** and the Cessation Plan shall prevail.
- 28.5 The Relevant Authority and Service Provider will comply with their respective obligations under the Cessation Plan (as agreed by the Relevant Authority and Service Provider or, where agreement cannot be reached, as reasonably determined by the Relevant Authority) in the event that a Declaration of Ineffectiveness is made.
- 28.6 The Relevant Authority shall pay the Services Provider's reasonable costs in assisting the relevant in preparing, agreeing and complying with the Cessation Plan. Provided that the Relevant Authority shall not be liable to the Service Provider for any Indirect Loss as a result of the early termination of this Agreement and/or any Call-Off Contract pursuant to any Declaration of Ineffectiveness.
- 28.7 Without prejudice to the Relevant Authority's rights of termination implied into this Agreement by Regulation 73(3) of the Public Contracts Regulations 2015, the Contracting Authority has a right to terminate this Agreement and the Relevant Authority has a right to terminate any relevant Call-Off Contract on any of the Public Procurement Termination Grounds. In the event that the Contracting Authority exercises its right to terminate this Agreement or the Relevant Authority exercises its right to terminate a relevant Call-Off Contract pursuant to this **Clause 28.7** (a "**Public Procurement Termination Event**"), the Relevant Authority shall promptly notify the Service Provider and the Relevant Authority and the Service Provider agree that:
- 28.7.1 the provisions of **clause 27** and these **clauses 28.7 to 28.12** shall apply as from the date of receipt by the Service Provider of the notification of the Public Procurement Termination Event; and
- 28.7.2 if there is any conflict or discrepancy between the provisions of **clause 27** and any of these **clauses 28.7 to 28.12** or the Cessation Plan, the provisions of these **clauses 28.7 to 28.12** and the Cessation Plan shall prevail.
- 28.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to the Relevant Authority or the Service Provider prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided for in **clauses 28.7 to 28.11**.

28.9 As from the date of receipt by the Service Provider of the notification of the termination on Public Procurement Termination Grounds, the Relevant Authority and the Service Provider (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Relevant Authority shall reasonably determine an appropriate Cessation Plan with the object of achieving:

28.9.1 where the notification relates to termination of this Agreement:

28.9.1.1 an orderly and efficient cessation or (at the Relevant Authority's election) a transition to the Relevant Authority or such other entity as the Relevant Authority may specify of:

- (a) the Services; or
- (b) (at the Relevant Authority's election) the part of the Services which are affected by the Public Procurement Termination Grounds;

28.9.2 where the notification relates to termination of a Call-Off Contract:

28.9.2.1 an orderly and efficient cessation or (at the Relevant Authority's Election) a transition to the Relevant Authority or such other entity as the Relevant Authority may specify of:

- (a) the Services; or
- (b) (at the Relevant Authority's election), the part of the Services which are affected by the Public Procurement Termination Grounds; and

28.9.3 minimal disruption or inconvenience to the Relevant Authority or to customers of the Services,

in accordance with the provisions of **clauses 28.7 to 28.11** and to take account of the circumstances of the Public Procurement Termination Grounds.

28.10 Upon agreement, or determination by the Relevant Authority, of the Cessation Plan the Relevant Authority and the Service Provider will comply with their respective obligations under the Cessation Plan.

28.11 The Relevant Authority shall pay the Service Provider's reasonable costs in assisting the Relevant Authority in preparing, agreeing and complying with the Cessation Plan, provided that the Relevant Authority shall not be liable to the Service Provider for any Indirect Loss as a result of the early termination of this Agreement as a result of Public Procurement Termination Grounds.

28.12 For the avoidance of doubt, the provisions of this **clause 28** (and applicable definitions) shall survive any termination of the Agreement and/or a Call-Off

Contract following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

29. **SURVIVAL**

The provisions of **clauses 1, 8, 9.2.2, 9.2.3, 16 to 25, 27 to 39** and any other clauses or Schedules that are necessary to give effect to those clauses shall survive termination or expiry of this Agreement (or any relevant Call-Off Contract). In addition, any other provision of this Agreement which by its nature or implication is required to survive the termination or expiry of this Agreement or relevant Call-Off Contract shall do so.

30. **RIGHTS OF THIRD PARTIES**

30.1 Save that any Housing Provider or Affiliate of the Contracting Authority has the right to enforce the terms of this Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**") and subject to **Schedule 7**, any Relevant Authority and the Service Provider do not intend that any of the terms of this Agreement or any relevant Call-Off Contract will be enforceable by virtue of the Third Party Act by any person not a party to it provided always the Service Provider shall not be liable more than once in relation to a claim in respect of the same loss, damage, cost or expense and any amount which is recovered in respect of such loss, damage, cost or expense by the Contracting Authority shall be treated as a payment for the benefit of such entities referred to in this **clause 30.1** entitled to share in it.

30.2 Notwithstanding **clause 30.1**:

30.2.1 the Framework Parties are entitled to vary or rescind this Agreement; and

30.2.2 the Relevant Authority and Service Provider are entitled to vary or rescind any relevant Call-Off Contract,

in either case without the consent of any Affiliate of the Contracting Authority.

31. **CONTRACT VARIATION**

This Agreement may only be varied or amended by written variation signed by the Contracting Authority and the Service Provider specifically referring to this **clause 31** and stating that this Agreement is varied in the manner specified. Any relevant Call-Off Contract may only be varied or amended by written variation signed by the Relevant Authority and the Service Provider specifically referring to this **clause 31** and stating that the relevant Call-Off Contract is varied in the manner specified. The details of any variations or amendments shall be set out in such form as the Contracting Authority or Relevant Authority (as applicable) may dictate and which may be substantially in the form set out in **Schedule 5** (Form for Variation) and shall not be binding unless completed in accordance with such form of variation.

32. NOVATION

32.1 The Contracting Authority may novate or otherwise transfer this Agreement in whole or in part and any Relevant Authority may novate or otherwise transfer any Call-Off Contract to which it is a Party in whole or in part to any public body or any subsidiary of a public body (and the expression “subsidiary” shall have the meaning set out in section 1159 of the Companies Act 2006).

32.2 Within (as the case may be):

32.2.1 ten (10) Business Days (where the novation or transfer in question does not involve any material change to the Contracting Authority Marks); or

32.2.2 ninety (90) days (where the novation or transfer in question involves a material change to the Contracting Authority Marks),

of a written request from the Contracting Authority and/or a Relevant Authority, the Service Provider shall execute such agreement as the Contracting Authority or Relevant Authority may reasonably require to give effect to any such transfer to transfer all or part of its rights and obligations under this Agreement and/or any relevant Call-Off Contract to one or more persons nominated by the Contracting Authority or Relevant Authority.

32.3 Where the novation or transfer in question is of the type described in **clause 32.2.2** above (but not, for the avoidance of doubt, where the novation or transfer in question is of the type described in **clause 32.2.1** above), the Service Provider shall notify to the Contracting Authority or Relevant Authority the costs which it reasonably expects to incur (or has reasonably incurred) in complying with its obligations pursuant to **clause 32.2** (“**Proposed Novation Costs**”). The Contracting Authority or Relevant Authority shall confirm in writing to the Service Provider within ninety (90) days of such notification whether or not it approves the amount of the Proposed Novation Costs. If the Contracting Authority or Relevant Authority confirms in writing to the Service Provider that it approves the amount of the Proposed Novation Costs (“**Approved Novation Costs**”), the Contracting Authority or Relevant Authority shall reimburse to the Service Provider an amount equal to the Approved Novation Costs as soon as reasonably practicable thereafter. If the Contracting Authority or Relevant Authority does not approve the amount of the Proposed Novation Costs, then the provisions of **clause 25** (Dispute Resolution) shall apply.

32.4 Subject to **clause 9**, this Agreement and any Call-Off Contract is personal to the Service Provider who shall not assign the benefit or delegate the burden of this Agreement or otherwise transfer any right or obligation under this Agreement and/or any Call-Off Contract without the prior written consent of the Contracting Authority (in the case of this Agreement) and/or the Relevant Authority (in the case of a Call-Off Contract).

33. **NON-WAIVER OF RIGHTS**

No waiver of any of the provisions of this Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the Relevant Authority in writing in accordance with the provisions of **clause 35**. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

34. **ILLEGALITY AND SEVERABILITY**

If any provision of this Agreement and/or a Call-Off Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement or the Call-Off Contract, as the case may be, and the remaining provisions shall continue in full force and effect as if this Agreement or the Call-Off Contract, as the case may be, had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Relevant Authority's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement or the Call-Off Contract, as the case may be, the Relevant Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

35. **NOTICES**

35.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by email, hand, post or facsimile addressed to the recipient at its registered office, the address stated in **Schedule 1** or any other address (including a facsimile number) notified to the other Party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent. Any notice, demand or communication in connection with any Call-Off Contract will be in writing and may be delivered by email, hand, post or facsimile addressed to the recipient at its registered office, the address stated in the Call-Off Contract or any other address (including a facsimile number or email address) notified to the other Party in writing in accordance with this clause as an address to which notices, invoices and other documents may be sent.

35.2 Subject to **clauses 35.1, 35.3 and 35.4**, the notice, demand or communication will be deemed to have been duly served:

35.2.1 if delivered by email, on delivery to the recipient's server and provided no error message is received by the sender and a copy of the email is sent by post within three (3) Business Days;

35.2.2 if delivered by hand, at the time of delivery;

35.2.3 if delivered by post, two (2) Business Days after being posted or in the case of Airmail fourteen (14) Business Days after being posted;
or

- 35.2.4 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within twenty four (24) hours after transmission.
- 35.3 Any notice deemed to be received on a day that is not a Business Day, or after 17.00 hours on a Business Day, shall be deemed to have been received at 09.00 hours on the next following Business Day.
- 35.4 Where an Authority specifies in its address details in **Schedule 1** or a Call-Off Contract (as such details may be updated from time to time in accordance with **clause 35.1**) that any two (2) or more persons must be sent emails, any notice, demand or communication given by email must be sent to all such persons together in order to be effective for the purposes of the relevant notice, demand or communication.
- 35.5 All notices to an Authority must also be copied by the Service Provider for the attention of the Contracting Authority's company secretary, at the Contracting Authority's registered address. Such copy shall be sent by post on the same date as the relevant notice is sent, and it is acknowledged that such copy is for the company secretary's information only and the timing of despatch or receipt of such copy will not affect the timing (or deemed timing) of despatch or receipt of the relevant notice.
36. **ENTIRE AGREEMENT**
- 36.1 Subject to **clause 36.2**:
- 36.1.1 this Agreement and any relevant Call-Off Contract and all documents referred to in this Agreement and any relevant Call-Off Contract, contain all of the terms which the Relevant Authority and the Service Provider have agreed relating to the subject matter of this Agreement and any relevant Call-Off Contract and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither the Relevant Authority nor the Service Provider has been induced to enter into this Agreement and/or any relevant Call-Off Contract by a statement which it does not contain; and
- 36.1.2 without prejudice to the Service Provider's obligations under this Agreement and/or any relevant Call-Off Contract, the Service Provider is responsible for and shall make no claim against an Authority in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement or any incorrect or incomplete information howsoever obtained.
- 36.2 Nothing in this **clause 36** excludes any liability which either an Authority or the Service Provider would otherwise have in respect of any statement it has made fraudulently to the other.

37. **RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement or any Call-Off Contract constitutes, or shall be deemed to constitute, a partnership between an Authority or the Service Provider. Except as expressly provided in this Agreement and any Call-Off Contract, neither any Relevant Authority or the Service Provider shall be deemed to be the agent of the other, nor shall either any Relevant Authority or the Service Provider hold itself out as the agent of the other.

38. **FURTHER ASSURANCE**

Each Relevant Authority and the Service Provider will do or procure the doing of all acts and things and execute or procure the execution of all such documents as another party reasonably considers necessary to give full effect to the provisions of this Agreement and/or any relevant Call-Off Contract.

39. **GOVERNING LAW**

The Agreement and each Call-Off Contract shall be governed by and construed in accordance with the law of England. Without prejudice to **clause 25** (*Dispute Resolution*), the courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and/or any Call-Off Contract provided that any Relevant Authority has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Relevant Authority and the Service Provider agree irrevocably to submit to that jurisdiction.

SIGNED BY or on behalf of the Framework Parties on the date stated at the beginning of this Agreement.

SCHEDULE 1

Key Agreement Information

1. **Agreement Reference Number:** GLA 81028
2. **Name of Service Provider:** Octopus Energy Limited
3. **Agreement Commencement Date:** 13th August 2019
4. **Term:** Four (4) years
5. **Details of the Procurement Manager**

Name: [redacted]

Address: City Hall, The Queen's Walk, London SE1 2AA

Tel: [redacted]

Fax: [redacted]

Email: [redacted] and [redacted]

6. **Service Provider's Key Personnel:**

Name & Position	Contact Details	Area of Responsibility
[redacted] – [redacted]	[redacted] [redacted]	Director of Service Provider
[redacted] – [redacted]	[redacted] [redacted]	Responsible for the contract delivery on a day to day basis.

7. **Address for service of notices and other documents in accordance with clause 35:**

For the Contracting Authority:

- (a) Address: City Hall, The Queen's Walk, London, SE1 2AA
- (b) Facsimile number: +4402079834137
- (c) For the attention of: London Power team

For the Service Provider:

- (a) Address: Octopus Energy Limited, 6th Floor, 33 Holborn, London EC1N 2HT

- (b) E-mail address: *[redacted]*
- (c) Facsimile number: *None*
- (d) For the attention of: Legal Counsel

SCHEDULE 2

Services

Part 1 EfLSCo Services

1. DEFINITIONS

2. As set out in the **clause 1** of the Agreement. **REQUIREMENT**

2.1 **General requirement**

2.1.1 Introduction

The Mayor is seeking a Service Provider to supply gas and electricity to Londoners at competitive prices, offering excellent customer service, whilst carrying out additional value-added services to benefit all Londoners, especially the fuel poor. These value-added services should allow integration with other energy programmes offered by the Mayor and harness innovation to improve energy efficiency contributing to the Mayor's objective of London being zero carbon by 2050.

The aim is that the Contracting Authority will launch for consumers in London as soon as possible after the date of the EfLSCo Services Call-Off Contract. The expectation is that mobilisation to provide a core offering will take around six to twelve weeks. This will include: one-year fixed tariff (compliant with Service Level 8.1 (as detailed in **Schedule 10** of the Agreement)); a green tariff (if the supplier's main Tariff is not already green); and, an element of integration with other Contracting Authority Group schemes and innovation to provide further support to customers.

The Contracting Authority require the services ready for go-live to include:

- full suite of branded communications
- range of tariff offerings (including a green tariff, if the Service Provider's fuel mix for the Contracting Authority is not already 100% renewable)
- fully branded customer facing portals & websites
- all internal IT changes as appropriate
- dedicated inbound sales team
- dedicated customer service functions
- all staff who do not deal with End Consumers directly in the supply business should be briefed on Energy for Londoners, its aims and information
- billing
- credit control & payments
- industry operations (e.g. registrations, metering, etc.).

2.1.2 Objectives

The Contracting Authority requires a licensed supplier to work with it to deliver its objectives for an energy supply company.

Key Outcomes

The key outcomes sought are organised around eight areas:

OBJ01: competitively priced electricity and gas tariffs

OBJ02: customer service and branding

OBJ03: innovation

OBJ04: integration with other energy programmes

OBJ05: data access

OBJ06: financial

OBJ07: facilitating a possible future transition to a successor upon expiry of the scheme

OBJ08: void services

These key outcomes are detailed around these seven areas as follows (OBJ08 is addressed in **paragraph 2, Part 2** of this **Schedule 2**):

OBJ01. Competitively priced electricity and gas tariffs:

- a) Provision of fairly priced gas and electricity, made available to all London households and especially geared towards those living in fuel poverty. (This should include those on pre-payment meters but also other vulnerable groups, such as those eligible for Warm Homes Discount). The Contracting Authority will require contractual certainty that these tariffs will always be competitively priced.
- b) Provision of a green tariff if the Service Provider's fuel mix is not already 100 per cent renewable.
- c) Facility to create and vary bespoke tariff structures and levels and the possibility of time of use tariffs, demand side management tariffs, low/no standing charge tariffs or tariffs offering London based additionality (for example carbon offsetting or investing in London based environment schemes) that can be tailored in a way that allows the contracting Authorities to tackle key sustainable development aims (as detailed in the Mayor's London environment strategy).

OBJ02. Customer service and branding:

- a) Exemplary customer satisfaction that negates historically poor customer satisfaction with certain mainstream energy companies and embraces technological improvements to enhance the customer experience. The Service Provider will need to innovate to offer an excellent customer experience, especially to the fuel poor (e.g. using

smart metering and using an individual customer's payment history to offer helpful credit terms or alternative approaches).

- b) The Service Provider will need to demonstrate and take a sympathetic approach to customers falling in to debt.
- c) Contracting Authority to set brand and branding guidelines.
- d) The Service Provider will need to set out mechanisms for receiving feedback from Londoners (i.e. not only its customers), engaging with customers to improve their service and providing regular reports to the Contracting Authority.

OBJ03. Innovation:

- a) Innovating to help Londoners and especially those in fuel poverty so that they can better meet their energy needs and budget for them, for example using smart meters.
- b) SMETS2 smart meters offered (and upgrades offered as they come on-stream) and encouraged to all customers along with innovative products and services (e.g. micro-generation, storage, demand side response, electric vehicle integration, peer-to-peer local energy trading). Work to reduce London's carbon emissions and assist the Mayor's aim to make London a zero-carbon city by 2050.

OBJ04. Integration with other energy programmes:

- a) Ability to work with Housing Providers and other relevant organisations (e.g. charities with an interest in alleviating fuel poverty or improving the health and environment of Londoners and organisations such as water companies and the London Fire Brigade) to support the delivery of cheaper energy and other measures (e.g. water efficiency or household safety) to households, especially those in fuel poverty.
- b) Support the Mayor's aim to stimulate more generation of electricity or heat from local low carbon and renewable schemes including those run by the Contracting Authority Group, Housing Providers, private sector, local community energy or individuals with the intention of supporting the establishment of new clean generation and passing on any associated bill savings.
- c) Ability to interface efficiently and effectively with energy efficiency and other energy programmes run by the Contracting Authority Group, Housing Providers, Central Government and others to offer a comprehensive approach to reducing energy consumption, generating local energy, providing demand side flexibility and saving CO₂ emissions in an innovative way, for example by using energy consumption patterns, household composition and other data to target interventions or to develop complementary programmes.

- d) Promote the above at regular intervals to customers and capture customers who could potentially benefit from such programmes.

OBJ05. Data access:

- a) Provide access to all End Consumers' consumption data, for the Contracting Authority, Housing Providers, contractors and research partners (as far is permissible under GDPR), so that trends can be mapped, and potential energy efficiency and other interventions can be assessed, designed, offered and evaluated. The Contracting Authority will also require additional data to support any migration of customers under OBJ07, as well as data to enable a tender process to be run should the Contracting Authority go back out to the market for a new partner at the end of the EfLSCo Services Call-Off Contract.

OBJ06. Financial:

- a) Ability to generate a commission payable to the Contracting Authority – without affecting the competitive viability of the tariff structures – which will be reinvested by the Contracting Authority at its discretion in linked initiatives around city-wide affordable warmth, greenhouse gas reductions and any other innovative energy or environment-related projects.

OBJ07. Possible future transition to a fully licensed supplier or to another Service Provider:

- a) The Contracting Authority may, in future, decide to set up a fully licensed supplier or choose a different partner, and this scheme should facilitate that (e.g. allowing the seamless transition of customers and continuity of branding and customer experience). The process for this will need to take account of any revisions if Ofgem release revised regulation or guidance.

Additional information

The Service Provider will also have to comply with all regulatory conditions (legal, licences and associated Industry Documents) including on Smart Meters/Data and Communications Company (DCC) compliance.

As mentioned above, the Contracting Authority is seeking innovative ideas that will deliver its desired outcomes for Londoners, taking account of the unique circumstances of London, including its high density of accommodation, high levels of rented accommodation and relatively low levels of installed energy efficiency measures. The Contracting Authority wants to encourage and reward innovative proposals and wants to establish a balanced collaboration with a company or consortium to achieve this. The Contracting Authority is seeking more influence and flexibility of response than has been available in previous and current white label schemes.

The Contracting Authority Group is working closely with Housing Providers to ensure that the Contracting Authority Group aligns with their needs and goals and can support their residents, especially those in fuel poverty.

2.2 Specific Requirements

- 2.2.1 There will not be any upfront or on-going charges payable by the Contracting Authority to the Service Provider in respect of any aspect of the standard elements of the scheme. The Contracting Authority may agree with the Service Provider for them to undertake certain activities where the Service Provider can offset a fee against the commission they would be paying the Contracting Authority. These rates would be agreed on a case by case basis depending on the activity.
- 2.2.2 The Contracting Authority is looking for a Service Provider to set up an innovative arrangement for the Contracting Authority, focussed on meeting the Contracting Authority's objectives as detailed in these requirements. The Service Provider will need to provide competitive Tariffs and ensure these Tariffs remain competitive for all Londoners. If the Service Provider does not provide green Tariffs as standard, then a green Tariff option will be provided at all times alongside the standard one-year fixed Tariff. In addition, the Contracting Authority may wish to arrange additional Tariffs with the Service Provider for targeted markets. These may include time of use tariffs, demand side management tariffs, low/no standing charge tariffs or for low users or customers without a gas supply or tariffs offering London based additionality (for example carbon offsetting or investing in London based environment schemes). The Contracting Authority wants to ensure customers do not roll over onto overpriced standard variable tariffs and will require customers to roll on to the cheapest similar tariff at the end of any fixed term periods.
- 2.2.3 The Service Provider will not charge any early termination or exit fees on any Tariff which is fixed for 19 months or less except where there is a bundled product (e.g. boiler, smart thermostat, but NOT a smart meter and/or in-home device (being the smart meter connected device which provides real time information from the smart meter for the End Consumer)). No exit fees will be charged when moving between Tariffs unless moving off a Tariff with a bundled product.
- 2.2.4 Tariffs sold to customers on SMETS2 meters will be priced the same for both prepayment and credit meters. At all times a Tariff for prepayment customers must be offered, and if no SMETS2 meter is installed, this Tariff must be compliant with The Energy Market Investigation (Prepayment Charge Restriction) Order 2016. Prepayment Tariffs offered through the EfLSCo Services for legacy and SMETS1 meters must be the same as or lower than the Service Provider's own prepayment tariffs.
- 2.2.5 During Tariff design, the Contracting Authority must see the full cost stack and values, including:

- 2.2.5.1 wholesale energy costs (this will include both secured/hedged positions and open positions and be as granular as possible);
- 2.2.5.2 distribution and transmission network costs;
- 2.2.5.3 government levies (including environmental costs and programmes, e.g. Contracts for Difference, Renewables Obligation, Feed in Tariffs, Capacity Market, Energy Company Obligation & Warm Home Discount);
- 2.2.5.4 metering rental & maintenance;
- 2.2.5.5 margin (to include customer service function, operations (including industry operations, billing, credit control and settlements), business overheads (including staff not already covered, office space, etc.), marketing and profit margin);
- 2.2.5.6 the Contracting Authority's Commission (note the Contracting Authority will reinvest this Commission in its energy programmes); and
- 2.2.5.7 VAT.

These costs will form the basis of planning non-standard Tariffs and justifying the positioning of prices in the wider market for all Tariffs. Auditable accounts must be available to validate the figures provided. Such non-standard Tariffs will be developed in collaboration between the Contracting Authority and the Service Provider (and may be proposed by either party) and will be subject to final approval by the Contracting Authority.

In proposing any Tariff, the Service Provider must adhere to the Margin Cap.

- 2.2.6 The Service Provider, or a consortium member must hold the required Licences to supply gas and electricity and either to ship gas or have a relationship with a shipper for providing gas shipping services, all in Great Britain, and must maintain the Licences and associated regulatory compliance for the duration of the Agreement and any Call-Off Contracts.
- 2.2.7 The Service Provider will provide all front-line customer support (including by phone, email, post and online), complaints handling, all back-office functions (for example accurate billing, credit control, registrations, industry interaction, and settlements), and maintain adherence to all Industry Documents.
- 2.2.8 The Service Provider must be a signatory to the Energy Switch Guarantee¹. If they are not a signatory, they will need to be by the launch

¹

The Energy Switch Guarantee can found here:

<https://assets.energyswitchguarantee.com/wp-content/uploads/2016/06/06165958/Energy-Switch-Guarantee-June-2016.pdf>

of the EfLSCo Services or commit to similar guaranteed standards. Service Providers must commit to switching customers as quickly as reasonably possible and when “Faster Switching” is released,² must switch customers as quickly as the new processes stipulate.

- 2.2.9 To ensure that customers are as engaged as possible the Service Provider will set up customer engagement mechanisms allowing customers the chance to engage with EfLSCo Services staff (and sometimes other End Consumers) in a community-type environment (expected to be both online and in person). The Mayor will be accountable for the Contracting Authority and the Service Provider will need to facilitate and support this. This will include making the Service Provider’s CEO (or equivalent) available to support the Mayor on request for scrutiny by the London Assembly. The Service Provider will also need to address how it will engage all Londoners, including through partnering with organisations with relevant expertise, especially those supporting Londoners in fuel poverty.

Options Include:

Face to Face: open customer service centres (if London based); customer focus groups; and/or an education and information centre (either static or able to move around London – dependent on either total customer volume or consistent sales volume/partnered with specific sales/engagement activity (e.g. targeted efforts by a borough)).

Online: the Service Provider must set up an online forum to allow customers to raise queries with the Contracting Authority’s staff or other End Consumers (to assist with the service element aiding customer satisfaction as they will be able to answer some customer queries). The Service Provider must provide advice on queries such as how to read bills and/or meters, options around payment methods and energy efficiency improvements.

- 2.2.10 Tariffs must be listed on price comparison websites, but not available for commission unless otherwise agreed between the Service Provider and the Contracting Authority. Where Tariffs are approved for commission, there will be arrangements between the Service Provider and the Contracting Authority to cover the costs of the commission (which may be shared or picked up wholly by the Contracting Authority or the Service Provider).
- 2.2.11 All End Consumer service numbers must be either free to call, or a 01, 02 or 03 number, with no additional premium for calling from a mobile phone. A postal address as well as email contacts should also be provided.
- 2.2.12 The Service Provider will be responsible for the wholesale energy costs and their trading position. Where possible and cost efficient, energy should be sourced from local, preferably renewable, generation within London.

²

See <https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/smarter-markets-programme/switching-programme>.

The Contracting Authority will need to see trading policies and hedging strategies.

- 2.2.13 The primary Tariff to be offered by the Service Provider under the EfLSCo Services will be a one-year fixed Tariff. This Tariff will form the basis of the Tariff and product related questions and requirements. This Tariff must be competitive at all times and will be the primary driver of End Consumer acquisition numbers. There will not be a paperless/online discount applied to the Tariff (although if the standard bill cycle is monthly, paper-based customers can have quarterly bill cycles as default). The Tariff may have a Direct Debit (“**DD**”) discount included in the headline rates (as controlled by the SLA below). Any DD discount needs to be fair and reflective of the costs to the Service Provider and must be the same or lower than any DD discount being offered by the Service Provider.

The Tariff should be the lower of [redacted]. The comparison of this Tariff will use Ofgem’s Typical Domestic Consumption Values (TDCVs). Tariff checks will be made against using price comparison sites signed up to the Ofgem Code of Conduct.

The value of **Z** will be linked to the number of active suppliers in the market at the time of the check, as per the table below.

Number of suppliers	Z
30-39	6
40-49	8
50-59	10
60-69	12
70-79	14

If there are fewer than 30 comparable suppliers active in the market, there will be no value of **Z** and the check will be based on the value of X% alone (that is, based on the test in limb (a) above, and the test in limb (b) will not apply).

The number of suppliers will be based of the total number of suppliers being listed on Citizen Advice’s comparison site (<https://energycompare.citizensadvice.org.uk/>) at the point of the check. No filters are applied, except for a payment method of direct debit (so this may include suppliers who are not offering a comparable tariff). In the example below, this was 59.



Home / Dual Fuel Comparison / Personal projection

Great news, we have found 303 energy plans by 59 suppliers. Of those 247 will reduce your energy bills

Based on the information you provided we calculate that your energy spend for the next 12 months will be £1194 (see details here)

If you wish to filter these results, please select the filter(s) below:

The gross margin under any Tariff shall be no greater than the Margin Cap. Together with the above SLA, this will provide a “triple lock” on the Tariff rate.

Amendments to this Tariff for new and renewing customers will be proposed by the Service Provider and will need to be approved by the Contracting Authority.

A definition of tariffs which are comparable when reviewing the position of the Service Provider’s tariff versus their value of X or Y can be found at the end of Table 1 **Schedule 10**.

2.2.14 The exact process for agreeing new Tariffs will be agreed in good faith by the Service Provider and the Contracting Authority, and will take the form of the following:

2.2.14.1 One-year fixed Tariff - this is the standard offering by way of the EFLSCo Services, covered by the price guarantee Service Levels set out in **Schedule 10**, and will be available at all times. As long as the Tariff fits within the Service Levels set out in **Schedule 10** and the Margin Cap, and all elements of the cost stack can be proven through the auditable accounts, then approval for the Tariff will not be unreasonably withheld by the Contracting Authority.

2.2.14.2 Green Tariff - this must be offered if the fuel mix for the primary Tariff offered for the EFLSCo Services by the Service Provider is not already 100 per cent renewable. All elements within the cost stack of the Tariff should be identical to those that build the price for the one-year fixed Tariff, with the exception of wholesale costs. Where this is the case, approval for the Tariff will not be unreasonably withheld by the Contracting Authority.

2.2.14.3 Other Tariffs - these will be agreed on a case by case basis. The price for these Tariffs will be compared to the cost stack (detailed in **paragraph 2.2.5**) being offered for the one-year fixed Tariff and any changes will need to be justified and supported by auditable accounts. Where the Contracting Authority has confidence that the elements in the cost stack are accurate then the Tariff will be approved. Tariffs may be proposed by the Service Provider (perhaps to test a new concept on a reduced section of their portfolio) or the

Contracting Authority and will be worked through by both parties. Where all cost elements can be shown to be fair, approval for the Tariff will not be unreasonably withheld by the Contracting Authority.

- 2.2.15 The Service Provider will adhere to all Industry Documents (including but not limited to the supply licence conditions, the Master Registration Agreement (MRA), Supply Point Administration Agreement (SPAA), Distribution Connection and Use of System Agreement (DCUSA), Balancing and Settlement Code (BSC), Connection Use and System Code (CUSC), General Data Protection Regulations (GDPR), Smart Metering Installation Code of Practice (SMICOP), Smart Energy Code (SEC), Guaranteed Standards of Service (GSOS), Prepay and wider price caps. The Contracting Authority expects the Service Provider to have detailed regulatory controls. The process for adhering to new regulations and changes to existing regulation must be documented. The Service Provider will be an approved DCC User and will maintain adherence to ISO27001 provisions as a result.
- 2.2.16 It is expected that the service delivered for End Consumers will be exemplary. The Service Provider will be expected to uphold the Service Levels detailed in **Schedule 10**.
- 2.2.17 Complaints handling performance will also be exemplary. Complaints will be covered within the SLAs, specifically around number of complaints, complaints which result in compensation and complaints that end up with the Energy Ombudsman. The number of complaints will be monitored using the Ofgem standards of complaints per 10,000 customers for small suppliers and per 100,000 customers for medium and large suppliers.
- 2.2.18 The Service Provider will only disconnect End Consumers if they are undertaking illegal activity either with the meter (such as bypassing) or with the energy (such as a cannabis farm) and never on the grounds of debt. Customers may self-disconnect if they have a prepayment meter which they do not keep in sufficient credit. Self-disconnections should be monitored and End Consumers who continually self-disconnect should be provided services to help them better manage their energy usage.
- 2.2.19 The Service Provider will need to interface efficiently and effectively with energy efficiency and energy programmes run by the Contracting Authority, Housing Providers, Central Government and others to offer a comprehensive approach to reducing energy consumption, generating local energy, providing demand side flexibility and saving greenhouse gasses in an innovative way, for example by using energy consumption patterns, household composition and other data to target interventions or to develop complementary programmes.
- 2.2.20 All terms and conditions, and standard communication templates for End Consumers would need to be approved by both the Contracting Authority and the Plain English Campaign (or equivalent body accrediting language clarity). To aid understanding for vulnerable Londoners, a summary of key

terms must be included with the terms and conditions for End Consumers. There must be no terms more detrimental to End Consumers than in the Service Provider's standard set of terms and conditions, except where specific terms are requested by the Contracting Authority. There will be specific terms (to be agreed by the Service Provider and the Contracting Authority) covering data provision, ownership clarifications and potential migration of End Consumers at the end of the Call-Off contract between the Contracting Authority and the Service Provider.

- 2.2.21 The Contracting Authority believes that well trained and supported staff make better service agents and so the Contracting Authority requires policies around staff development which encourage growth and increasing skill sets. Staff working on EfLSCo Services should go through appropriate testing before being able to start engaging with customers. Customer interaction should be guided by principles and where possible not scripted (except in heavily regulated environments like sales).
- 2.2.22 The Mayor has made a commitment to making London a zero-carbon city by 2050. To that end, the provision of greener energy will be key. It is expected that the Service Provider will source their electricity from renewable generators where possible and cost efficient. The renewable generation should be supported by obtaining Renewable Energy Guarantees of Origin (REGOs) or equivalent and where possible seeking to increase the amount of renewable energy infrastructure.
- 2.2.23 The Service Provider will be responsible for customer acquisition and will provide End Consumer facing portals for the acquisition of End Consumers as well as an inbound telesales team. The Service Provider will also be responsible for delivering multi-channel End Consumer acquisition marketing activity (such as digital marketing on social media). The Service Provider will be ultimately responsible for delivering End Consumer volumes. The Contracting Authority will support by raising awareness of the EfLSCo Services, as part of the work to raise awareness of the whole Energy for Londoners programme. The Contracting Authority will also have an additional marketing budget which it will use to raise awareness about the EfLSCo Services specifically among potential consumers and will work with Housing Providers and third-party organisations such as Citizen's Advice, to help refer fuel poor End Consumers to schemes being run by the Contracting Authority including the EfLSCo Services.

The sales portal should provide comparative quotes detailing any savings (if applicable) against the rates the End Consumer is already on. It must also highlight, where appropriate, schemes that the Contracting Authority runs which may benefit the End Consumers - capturing if the End Consumers may qualify for assistance for example.

The Contracting Authority should be consulted on and approve marketing plans, portals and materials to ensure they align with Contracting Authority, Mayor of London and Energy for Londoners brands and programmes. Any responses to requests for approval to the Contracting Authority will generally be made in line with agreed governance timelines.

- 2.2.24 The Service Provider will submit annual marketing plans to the Contracting Authority for approval. This should include any marketing activity as well as any relevant strategic and/or Tariff decisions as best can be forecast.
- 2.2.25 The Service Provider will not market any services direct to the End Consumer, except for services branded or co-branded as EfLSCo Services and with the explicit agreement of the Contracting Authority, with the exception of mandated messaging such as cheapest tariff messaging on bills.
- 2.2.26 The Service Provider will need to be a member of the Warm Home Discount Scheme (and any replacement) in time for winter 2019/20.
- 2.2.27 The Service Provider will support a full range of accessible communication options and will support online (through portal and phone apps) as well as email and phone communication.
- 2.2.28 The Service Provider will be required to roll out smart meters and to that end will need a detailed plan for how it will roll out SMETS2 meters once available. This plan must start no later than the contract start date (although will initially be for SMETS1 meters, with SMETS2 following by end Q3 2019) and will detail how prepayment meters will be targeted and replaced. Compliance with SMICOP (as defined in **paragraph 2.2.15**) must be maintained, including End Consumers being offered an in-home display with every smart meter installation. The Service Provider must develop ways of assisting End Consumers (e.g. via a dedicated app) to get the most from their meter and other innovative products and services.
- 2.2.29 If there is not a commitment from the DCC for the adoption of SMETS1 meters coming into force before the end of 2019, the Service Provider must at least support the interoperability of secure style SMETS1 meters.
- 2.2.30 The Service Provider will need to support the Debt Assignment Protocol (issued by the Competition and Markets Authority and as updated and/or replaced) for prepayment meters and take on customers from other suppliers with up to the full amount of debt as supported by the process. The fact this is supported should be clearly stated on the sales portal when the End Consumer selects prepayment as their meter type. If they have outstanding debt on their meter, this should be captured, and a workflow created to support the registration teams in converting the sale to a live End Consumer.
- 2.2.31 The Service Provider will need to work with prepayment End Consumers, where applicable, to aid moving them to (smart) credit metering, especially to avoid being on higher Tariffs than needs be (for legacy and SMETS1 prepayment End Consumers). Customers must be able to request a smart meter installed in credit mode and this installation must be carried out for free. Customers should have the process by which they will be moved back to prepayment mode as a result of non-payment clearly explained to them.

- 2.2.32 Following a change of occupancy, the meter point will remain with EfLSCo Services branding with the new occupant becoming an End Consumer on their standard contract offering.
- 2.2.33 Any costs incurred in marketing or branding will not be recoverable by the Service Provider.
- 2.2.34 Account and contract management will be led by the Service Provider. The Service Provider shall appoint a client relationship (account) manager for the Contracting Authority's contract as soon as is practicable post-contract award (the "**Service Provider's Manager**") and a senior officer to whom complaints may be escalated where required. There will be monthly account management meetings between both Parties and minutes/key details from functions like Change Boards and Risk Committees should be shared with the Contracting Authority. There will also be regular email contact required to stay on top of day-to-day operations. The Service Levels detailed in **Schedule 10** will need to be reported at least monthly, within eight (8) Business Days of month end.

However, as and when required and with reasonable notice given, the Service Provider will be expected to dial into any teleconferences or phone calls that may be required to talk through any issues that might transpire or new areas of business that may need to be explored more urgently than planned meetings or communications.

There will be no charges levied by the Service Provider against the Contracting Authority for the undertaking of any work relating to the contract management responsibilities or any other elements described in this section.

The Contracting Authority may ask for an optional seat on the Service Provider's risk committee, but will at least expect to see the minutes regarding risk discussions directly impacting the EfLSCo Services and its End Consumers, most notably about hedging and cash flow.

- 2.2.35 The Contracting Authority will expect the Service Provider to have robust change management procedures. These will include prioritisation meetings with full business representation, appropriate cost/benefit analyses and impact studies, and scheduled releases to avoid important business processes (e.g. bill run). The Service Provider should operate under the principles outlined in ISO 9001 (or similar ISO or other recognised international standard).
- 2.2.36 The Service Provider must keep the Contracting Authority informed, within two (2) Business Days or before any public statements are made, of any investigations by regulatory bodies (e.g. Ofgem, Elexon, FCA, Information Commissioner) that may impact the ongoing security of the company or its Licences. This should include the results from any audits, such as but not limited to the Elexon BSC Audit. Such communications should be made when the Service Provider is notified of an investigation and should include a timescale as to when a thorough update will be made along with when

regular updates will be made regarding progress through the investigation. Detail should include the risks, mitigations and actions that the investigation may result in.

- 2.2.37 The Contracting Authority will require monthly (and on request during Turbulent Market Conditions) commitments from the Service Provider's board that the company is not only solvent, but has sufficient working capital in place to meet the business's cash funding requirements should there be a 25 per cent change in wholesale electricity/gas prices for any unhedged position over a six-week period. Failure to remain adequately solvent could result in the EflSCo Services Call-Off Contract being terminated.
- 2.2.38 The Contracting Authority is considering its options regarding becoming a fully licensed supplier and may choose to do that before the Call-Off Contract expires. Due to this option, along with the Contracting Authority possibly choosing not to extend the EflSCo Services Call-Off Contract for up to an additional four-year term, but instead to award to a new Service Provider, the Contracting Authority wishes to maintain 'ownership' of customers supplied under EflSCo Services. The Contracting Authority are aware that there are regulatory and contractual challenges to achieve this. Subject to being in accordance with any relevant Law and/or Directive and Licence, the Service Provider will support any migration or other activity at the end of the term, at their own costs. The timescales and exact method of this transfer will be agreed between the Service Provider, the Contracting Authority and any new service provider, but the Contracting Authority may mandate maximum transfer times of 1 month per 100,000 End Consumers. Any change in regulation regarding White Label style relationships from Ofgem or BEIS (or their successors) will need to be taken into account for any End Consumer migrations.
- 2.2.39 After any such termination or expiry of the Agreement and/or Call-Off Contract and migration of End Consumers, the Service Provider is not to use information held on End Consumers to directly market to them or to attempt to gain them as a direct customer. The Service Provider is to cleanse their marketing databases of data held on End Consumers.
- 2.2.40 Should the Service Provider already have a partnership, or become partnered with a company or scheme enabling their customers to obtain discounts at other non-energy retailers, where possible the Contracting Authority would like those benefits extended to End Consumers.
- 2.2.41 Innovation will remain key both at launch and throughout the collaboration. As such the Contracting Authority expect continual improvements in deployed technology (hardware and software), Tariffs, services and processes to ensure services remain effective and current. More generally, innovation can include process innovation (e.g. creating platforms that enhance the customer experience), technical innovation (e.g. physical technologies), and enabling innovation (e.g. apps or data platforms that enable patterns of energy consumption to be better understood).

- 2.2.42 The Contracting Authority and the GLA will have full access to all relevant (in line with the definitions within Law and/or Directive) end user data, within the confines of relevant Law and/or Directive. Specifically, the Contracting Authority and the GLA want to be able to mine all data collected by smart meters, as well as standard credit meters, for the purposes of research, policy and programme development to help the GLA to achieve GLA's social and environmental policies for London and to support the Mayor to provide secure, affordable energy for Londoners, reduce fuel poverty, and improve the warmth and efficiency of homes. The Contracting Authority will also wish to have End Consumer data to facilitate any transfer of End Consumer Supply Contracts pursuant to **paragraph 8** of the EfLSCo Services Call-Off Contract. There will need to be a data sharing agreement set up between the GLA, the Contracting Authority and the Service Provider within three (3) months of the date of the EfLSCo Services Call-Off Contract. The GLA and the Contracting Authority would also expect to review demographical information pertaining to the End Consumer base to enable analysis of trends and to identify potential opportunities to offer additional services. The GLA and the Contracting Authority may also want to share such data (other than as indicated below) with non-commercial third-party partners such as research institutes and care bodies and therefore, would require this provision to be included in End Consumer Supply Contract as well.

Data items that should be provided include:

- name (GLA/Contracting Authority Only)
- full address (GLA/Contracting Authority Only)
- postcode
- MPxN - supply number (GLA/Contracting Authority Only)
- metering type (e.g. Legacy Credit, Legacy PPM, SMETS1 Credit, SMETS1 PPM, SMETS2 Credit, SMETS2 PPM)
- consumption Levels
- debt status
- payment method
- supply start date
- Tariff
- Tariff expiry (GLA/Contracting Authority Only)
- smart meter data
- complaint open
- total closed complaints

The data items marked "GLA/Contracting Authority Only" would not be shared with third parties. The full data set should be shared listing each supply number and associated data. There should also be consolidated data by postcode.

Monthly End Consumer acquisition data should be provided, allowing the Contracting Authority to capture savings obtained by End Consumers as well as to better target new sales initiatives. Data items required will

include postcode, old supplier, old tariff, new Tariff, date, estimated consumption figures, estimated savings and annual cost.

Monthly data relating to lost End Consumers will also need to be provided, and will include the supplier they have moved to, length of time on supply under the EfLSCo Services and most recent Tariff with start date.

Within the End Consumer Supply Contract terms and conditions there will need to be an opt-out for inclusion in any anonymised/aggregated data capturing.

2.2.43 Data required to support any migration of End Consumers at the end of the EfLSCo Services Call-Off Contract will include:

- 2.2.43.1 all the items above in **paragraph 2.2.42**;
- 2.2.43.2 any additional information required to communicate with End Consumers and their smart meters;
- 2.2.43.3 any payment information to support payment collection (e.g. direct debit details); and
- 2.2.43.4 training manuals, call scripts and policies (where developed for EfLSCo Services).

The exact format of such data is to be agreed at the point of transfer, but is likely to take the format of a typical batch file from a price comparison site. A detailed communications plan for informing End Consumers, and keeping them informed, as to the migration plans, timings and impact will need to be agreed by the Service Provider and the Contracting Authority.

2.2.44 Anonymised data containing consumption information, Tariff, metering type and payment type will need to be provided in advance of the end of any EfLSCo Services Call-Off Contract to enable a tender exercise to be run. This data is to be supplied within three weeks of request by the Contracting Authority.

2.2.45 Anonymised aggregated End Consumer data is to be made available on an 'open source' basis (subject to being compliant with Data Protection Legislation) to assist and enable third parties to develop innovative solutions on the back the EfLSCo Services Call-Off Contract.

2.3 Mobilisation

The Anticipated Mobilisation Period is four months from the date of the EfLSCo Services Call-Off Contract.

In the mobilisation period the following will need to be finalised/agreed:

- comprehensive account management plan
- branding
- marketing/acquisition strategy
- forecasting/modelling
- risk management (including hedging policy)

- data sharing agreement (pursuant to **paragraph 2.2.37**)
- End Consumer Supply Contract terms and conditions
- Tariff development

The keys steps prior to launch can be condensed into 3 phases, to be fully agreed at the start of the mobilisation process and may run concurrently:

2.3.1 Phase 1 - Branding, Policy and Process Agreements

Agreements on the brand, voice and layout of End Consumer communications and End Consumer facing sites. Decision on End Consumer service policies, complaints handling and service levels. Marketing strategy and other 'soft' processes to support End Consumer growth.

2.3.2 Phase 2 - Systems Testing

Full end-to-end testing of all systems, services and reports. Enabling of billing and payments processes.

2.3.3 Phase 3 - Marketing and Brand Proliferation

Start of promoting the launch of EfLSCo Services ahead of actual Launch Date, building up anticipation from Londoners. Lining up media partners and promoting the benefits of EfLSCo Services.

Attachments:
Attachment 1 Project Plan

[redacted]

Part 2 Void Services

1. The Service Provider will be required to provide services to Housing Providers and other public bodies in relation to void residential properties, to facilitate such organisation's management of their portfolios and to help drive customer acquisition, thereby helping to reduce fuel poverty.

2. The key outcomes are detailed as follows:

OBJ08. Void Services:

- a) Support the handling of prepayment properties to ensure debt is cleared down, there is working credit for the void period and new occupants get quick access to be able to top up their meter.
 - b) Installation of smart meters during void periods.
 - c) Simple identification of new void properties and regular reporting of progress.
3. The Contracting Authority Group is working closely with Housing Providers to ensure that the Contracting Authority Group aligns with their needs and goals and can support their residents, especially those in fuel poverty. Housing Providers will be welcome to call-off from the Agreement, rather than going through setting up their own arrangements to support void services. Where Housing Providers already have their own set-ups, the Contracting Authority will look to collaborate and share information and learnings as well as collaborating with other partners.
4. The Service Provider, or a consortium member must hold the required Licences to supply gas and electricity and either to ship gas or have a relationship with a shipper for providing gas shipping services, all in Great Britain, and must maintain the Licences and associated regulatory compliance for the duration of the Agreement and any Call-Off Contracts.
5. The Service Provider will adhere to all Industry Documents (including but not limited to the supply licence conditions, the Master Registration Agreement (MRA), Supply Point Administration Agreement (SPAA), Distribution Connection and Use of System Agreement (DCUSA), Balancing and Settlement Code (BSC), Connection Use and System Code (CUSC), General Data Protection Regulations (GDPR), Smart Metering Installation Code of Practice (SMICOP), Smart Energy Code (SEC), Guaranteed Standards of Service (GSOS), Prepay and wider price caps. The Contracting Authority and each Housing Provider expects the Service Provider to have detailed regulatory controls. The process for adhering to new regulations and changes to existing regulation must be documented. The Service Provider will be an approved DCC User and will maintain adherence to ISO27001 provisions as a result.

5.1 Void Services

- 5.1.1 When a Housing Provider enters into the Access Agreement to enable them to call off Void Services from the Agreement, it will be to have their void portfolio processed by the Service Provider, with new tenants within London being placed onto a Tariff. The Service Provider will need to have a simple, effective and efficient process for taking on void properties.
- 5.1.2 Void services may include the following services: arranging for smart meters to be fitted for prepayment properties during the void process within an agreed timescale (to be agreed with the Relevant Authority at the point of call-off), debt clear downs, no standing charges for void periods, minimum working credits for prepayment meters during void periods small charges for the void period cleared from the meter or written off for credit meters and meter maintenance and recalibration. The services, timescales and values of these are to be agreed between the Service Provider and the Relevant Authority ahead of call-off.
- 5.1.3 For Housing Providers which have stock both inside and outside London, there will need to be one process to support their voids. When a new occupant takes over responsibility for the property, if the property is in London then the occupant will be supplied by EfLSCo Services. If the property is outside London, it will be supplied under the Service Provider's preferred brand and arrangements. If there is an active void services contract in place after the supply company relationship has finished, then London based new occupants will also move into a property supplied under the Service Provider's preferred branding.
- 5.1.4 The Service Provider will need to provide a separate account management structure for voids services (which may be provided by the same resource) which should include clear communication, regular meetings and prompt issue resolution. This function will be agreed directly with the Relevant Authority in advance of the Void Services Call-Off contract being agreed.
- 5.1.5 Operational support may include: named points of contact, key collections ahead of fitting smart meters, easy notification of new voids (e.g. via a portal), simple metering requirements (e.g. minor meter relocations), regular updates as new voids move through registration and smart meter install processes. Welcome packs addressed to the new occupant should be sent so there is information on their arrival into the property (this will be generic as the new occupant will not be known). The welcome pack should include clear advice to new occupants to address areas like how to set up an account, payment methods, understanding bills, reading meters, how to get the best from Economy 7 metering (if applicable) and energy efficiency measures.

- 5.1.6 Some Housing Providers may require in-house terminals for topping-up legacy prepayment cards.
- 5.1.7 Voids may sometimes be new build properties where a smart meter will need to be installed.
- 5.1.8 Additional requirements may be included by the Contracting Authority ahead of Call-Off contracts being signed.

6. Void Services SLAs

The SLAs for Voids Services will be agreed between the Relevant Authority and the Service Provider ahead of calling off for Void Services. Example SLAs are provided below as a guide.

Void registrations initiated by end of next working day	>90%
Smart meters installed during void period where pre-payment meter ("PPM") installed	>90%
Smart meters installed during void period where no PPM installed	>50%
Previous tenant debts removed from PPM meters within 3 days	99%
New tenants set up with no debt on PPM meters within 3 days	99%

SCHEDULE 3

Request Form

Framework Number: 81028

Request Form Number:

To:

Address:

From:

Date:

This is a Request Form for the provision of Void Services in accordance with the Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the relevant Authority; however such acceptance will not occur unless and until the relevant Authority posts notice of acceptance to you.

Attachment 1 of this Request Form sets out the Void Services required by the Authority and other relevant information.

In your Proposal, you must respond to the information requested **in Attachment 1** by completing **Attachment 2**.

Attached to this Request Form is a draft Call-Off Contract. The relevant Authority is under no obligation to award any Call-Off Contract as a result of this Request Form.

You must complete and return your Proposal by []. Please email your Proposal, and send a paper copy to:

Name:

Email address:

Postal address:

Telephone:

Fax:

Any queries regarding this Request Form should be directed to the above. Any queries regarding the Call-Off Contract should be directed to the relevant Procurement Manager.

Signed: _____

for and on behalf of the Authority

Attachments:

Attachment 1 – Void Services to be provided and other relevant information

Attachment 2 - Service Provider's Proposal

Draft Call-Off Contract

Attachment 1 – Void Services to be provided and associated information

[To be completed by the Authority]

1. Void Services to be provided and associated information

[Detail here the Void Services required, together with the service levels (if any) and associated provisions pursuant to which the Void Services are to be provided.]

2. Timetable

Commencement Date *[Complete only if different from the date of the Call-Off Contract]:*

Call-Off Term: []

3. The Authority Account Details

Relevant account code and cost centre:

4. The Authority's Call-Off Co-ordinator

Name:

Address:

Phone:

Fax:

Email:

5. Additional insurance (if any) to be held by Service Provider:

[Delete as appropriate]

5.1 Employer's liability insurance to be increased to £[] million per incident;

5.2 Public liability insurance to be increased to £[] million per occurrence with financial loss extension; and

5.3 Product liability insurance to be increased to £[] million in the aggregate per annum with financial loss extension.

6. Cap on liability under paragraph 11.1.2 of the Call-Off Contract:

6.1 £[]

7. Privacy and Data Protection

The following shall apply for the purposes of **clause 22** (Privacy, Data Protection and Cyber Security) of the Agreement:

Clause 22.4.1	Relevant Categories of Data Subject	<i>[Authority to populate]</i>
Clause 22.4.2	Types of Personal Data	<i>[Authority to populate]</i>
Clause 22.4.3	Purpose(s) of Processing	<i>[Authority to populate]</i>
Clause 22.4.4	Restricted Countries	<p>If the Service Provider wishes (or wishes any Sub-contractor) to Process or otherwise transfer any Authority Personal Data in or to any Restricted Countries:-</p> <p>(i) the Service Provider shall submit a written request with its Proposal meeting the requirements of clause 22.9.1; and</p> <p>(ii) without limiting clause 22.8, the Authority shall be entitled, but not obliged, to consider that request in accordance with the provisions of clauses 22.9.2 and 22.9.3.</p>

Attachment 2 - Proposal

[To be completed by the Service Provider]

1. Proposed Solution

[The Service Provider should detail how it proposes to deliver the Void Services set out in Attachment 1.]

2. Charges

[The Service Provider should set out the Charges for supplies of electricity and/or gas to the Authority pursuant to this Call-Off Contract.]

3. Service Team and Personnel

[Insert details of the Service Provider's Manager, and Personnel, including grades and areas of responsibility. Please attach copies of CVs.]

4. Experience

[Insert an outline of relevant past work or projects including references]

5. Proposed sub-contractors (if any)

Name and contact details of proposed sub-contractor(s) and details of any proposed sub-contracted work: []

6. Insurance

[The Service Provider should confirm that additional insurance cover has/will be arranged according to the requirements (if any) set out in Attachment 1.]

7. Other Information

SCHEDULE 4

Call-Off Contract Template

Part 1 EfLSCo Services

Framework Number: 81028

Call-Off Contract Number:

THIS CALL-OFF CONTRACT is made the day of

BETWEEN:

London Power Co. Limited, a company registered in England and Wales (Company Registration 12113294) whose registered office is at 55 Broadway, London, United Kingdom, SW1H 0BD ("**the Contracting Authority**"); and

Octopus Energy Limited, a company registered in England and Wales (Company Registration Number 09263424) whose registered office is at 6th Floor, 33 Holborn, London EC1N 2HT ("**the Service Provider**").

RECITALS:

- (A) The Contracting Authority and the Service Provider entered into an agreement dated [] which sets out the framework for the Service Provider to provide certain Services to the Contracting Authority or the Authority ("**the Agreement**").
- (B) The Contracting Authority wishes the Service Provider to provide the specific EfLSCo Services described in this Call-Off Contract pursuant to the terms of the Agreement and this Call-Off Contract and the Service Provider has agreed to provide such EfLSCo Services on those terms and conditions set out in the Call-Off Contract.

THE PARTIES AGREE THAT:

1. CALL-OFF CONTRACT

- 1.1 The terms and conditions of the Agreement shall be incorporated into this Call-Off Contract.
- 1.2 In this Call-Off Contract the words and expressions defined in the Agreement shall, except where the context requires otherwise, have the meanings given in the Agreement.
- 1.3 In this Call-Off Contract references to Attachments are, unless otherwise provided, references to attachments of this Call-Off Contract.

2. **SERVICES**

- 2.1 The EfLSCo Services to be performed by the Service Provider pursuant to this Call-Off Contract are set out in **Attachment 1**.
- 2.2 The Service Provider acknowledges that it has been supplied with sufficient information about the Agreement and the EfLSCo Services to be provided and that it has made all appropriate and necessary enquiries to enable it to perform the EfLSCo Services under this Call-Off Contract. The Service Provider shall neither be entitled to any additional payment nor excused from any obligation or liability under this Call-Off Contract or the Agreement due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the EfLSCo Services to be provided. The Service Provider shall promptly bring to the attention of the Call-Off Co-ordinator any matter that is not adequately specified or defined in the Call-Off Contract or any other relevant document.
- 2.3 The Service Provider must provide the EfLSCo Services in respect of this Call-Off Contract in accordance with the Project Plan (including as regards the Launch Date).
- 2.4 The Service Provider acknowledges and agrees that as at the commencement date of this Call-Off Contract it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the EfLSCo Services provided to the Authority under this Call-Off Contract.

3. **CALL-OFF TERM**

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in **Attachment 1** and subject to **clause 4.2** of the Agreement, shall continue in force for the Call-Off Term stated in **Attachment 1** unless terminated earlier in whole or in part in accordance with the Agreement and subject to **paragraphs 4.11 and 8.7.4**.

4. **TARIFF AND COMMISSION**

- 4.1 The Service Provider will set the tariffs charged to End Consumers in accordance with the Specification.
- 4.2 The EfLSCo Services will be provided at no charge to the Contracting Authority. The Service Provider is not entitled to reimbursement for expenses unless such expenses are expressly specified in this Call-Off Contract or have been incurred with the prior written consent of the Contracting Authority, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the Contracting Authority.
- 4.3 In consideration for the use of the Contracting Authority Marks and the Contracting Authority providing marketing support, the Service Provider will be liable to pay to the Contracting Authority a Commission.
- 4.4 All amounts payable under this Call-Off Contract exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the

rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

- 4.5 Where the Service Provider receives any rebate, discount or commission in the acquisition of any goods (including gas or electricity) or services in connection with a Call-Off Contract from any of its suppliers, the Service Provider shall ensure that it discloses such benefit of that rebate, discount or commission to the Contracting Authority when it proposes a Tariff (as defined in the Specification).

The Service Provider shall provide to the Contracting Authority within fourteen (14) days any information and/or documents reasonably requested by the Contracting Authority connected with any rebate, discount or commission, for the Contracting Authority to be able to confirm that any rebate, discount or commission has been disclosed to the Contracting Authority as detailed above.

- 4.6 The Service Provider shall provide the Authority with open book pricing and shall, whenever requested by the Contracting Authority, provide to the Contracting Authority details and supporting evidence of all the Service Provider's costs in making supplies of electricity and gas to its End Consumers and meeting its obligations under this Call-Off Contract, including all management, materials, labour and equipment costs.
- 4.7 Whenever requested by the Contracting Authority the Service Provider shall provide the Contracting Authority with details and supporting evidence of all of the Service Provider's costs in meeting its obligations under this Agreement, including all management, materials, labour and equipment costs.
- 4.8 Without prejudice to the general requirements of **paragraph 4.6**, the Service Provider shall maintain, in accordance with good accountancy practice, and provide the Contracting Authority with access to accounting books and records that set out:
- 4.8.1 the actual and forecast operating expenditure of the Service Provider in providing the relevant EfLSCo Services, including supplies of gas and electricity to End Consumers;
 - 4.8.2 the actual and forecast cost of all resources provided, or to be provided, by the Service Provider in meeting its obligations under this Call-Off Contract (which shall include grade, number of days and day rates);
 - 4.8.3 all actual and forecast third party costs incurred by the Service Provider in providing the relevant EfLSCo Services (including all Sub-contractor costs) and any mark-up charged on any such third party costs;
 - 4.8.4 the profit, before interest and tax, that the Service Provider has achieved, and has forecast to achieve, under this Call-Off Contract;
 - 4.8.5 any other information and documentation which relates to the tariff charged to End Consumers, including reasonableness of such tariff

and/or which is necessary to satisfy the Contracting Authority's requirement to demonstrate value for money and objectives set out in the Specification; and

- 4.8.6 any such other cost items as the Contracting Authority may reasonably require in order to audit the costs of the Service Provider for the purpose of verifying the tariff charged to End Consumers, any estimates of the tariff proposed to be charged to End Consumers and/or any charging information being provided by the Service Provider.
- 4.9 The Service Provider shall, following a written request by the Contracting Authority and without prejudice to any other audit and inspection rights that the Authority has under this Call-Off Contract, promptly provide the Authority with copies of any or all accounting books and records referred to in **paragraph 4.8**.
- 4.10 The Service Provider shall not be entitled to reimbursement by the Contracting Authority for any costs or expenses incurred as a result of the Service Provider complying with the requirements of this Agreement (including the requirements of **paragraphs 4.6 to 4.9**).
- 4.11 The Parties acknowledge that the obligations of the Service Provider concerning Monthly Statements and payments for Commission (including associated audit and other rights in this **paragraph 4**) shall continue to apply following the end of the Call-Off Term until expiry of the last End consumer Supply Contract entered into pursuant to this Call-Off Contract (unless to the extent the Contracting Authority has replaced the Service Provider in respect of the relevant End Consumers other than to the extent relevant to auditing any Commission due).

5. **PAYMENT PROCEDURES AND APPROVALS**

- 5.1 The Service Provider shall provide a monthly statement ("**Monthly Statement**") setting out:
 - 5.1.1 all new End Consumers who have entered into an End Consumer Supply Contract with the Service Provider and gone live in that month, including their supply numbers and tariff detail;
 - 5.1.2 all End Consumers who have renewed or extended their End Consumer Supply Contract with the Service Provider (either by decision or roll-over) in that month, including their supply numbers and tariff detail;
 - 5.1.3 all End Consumers live at month end including their supply numbers and tariff detail; and
 - 5.1.4 the Commission due to the Contracting Authority, including a breakdown of the tariff charged and the calculation of the Commission thereunder.

- 5.2 Where a Party disputes in good faith any amount shown in the Monthly Statement or if any amount is omitted from the Monthly Statement, it shall raise the dispute in accordance with **clause 25** of the Agreement, and pending resolution of such dispute the Contracting Authority shall issue an invoice in accordance with **paragraph 5.3** for the undisputed amount.
- 5.3 The Contracting Authority shall submit invoices to the address set out in **Attachment 1** or where an electronic format for submission of invoices is set out in **Attachment 1**, such electronic format shall be used.
- 5.4 For invoices issued in accordance with **paragraph 5.3**, the Service Provider shall pay to the Contracting Authority the amount specified as payable to the Contracting Authority in the relevant invoice by the applicable due date as set out below (the “**Due Date**”):
- 5.4.1 in respect of the commission for any End Consumers who have renewed or extended their End Consumer Supply Contract with the Service Provider (either by decision or roll-over) in the relevant month: on or before thirty (30) days after receipt by the Service Provider of any invoice issued in accordance with a relevant Call-Off Contract; and
- 5.4.2 in respect of the commission for any new End Consumers who have entered into an End Consumer Supply Contract with the Service Provider and gone live in the relevant month: on or before thirty (30) days after receipt by the Service Provider of any invoice issued in accordance with this Call-Off Contract.
- 5.5 Payment shall be made by the Due Date in pounds sterling by direct bank transfer or equivalent transfer of immediately available funds to the Contracting Authority.
- 5.6 Interest shall accrue at the rate of two per cent (2%) above the base rate of the Bank of England from time to time on all sums due and payable under this Call-Off Contract from the Due Date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty five (365) day year and compounded at monthly intervals. The Authority and the Service Provider agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with Section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
6. **CALL-OFF CO-ORDINATOR AND KEY PERSONNEL**
- The Authority’s Call-Off Co-ordinator in respect of this Call-Off Contract is named in **Attachment 1** and the Service Provider’s Key Personnel in respect of this Call-Off Contract are named in **Attachment 2**.
7. **MARKETING MATERIALS**
- 7.1 In connection with the marketing of EflSCo Services, the Contracting Authority will be responsible for the development of:

- 7.1.1 the branding for the EfLSCo Services; and
 - 7.1.2 the planning and raising of customer awareness leading up to the Launch Date of the EfLSCo Services.
- 7.2 Following the Launch Date, the Service Provider will be responsible for the marketing strategy and ongoing customer acquisition and retention in connection to EfLSCo Services.
- 7.3 Following the Agreement Commencement Date, the Service Provider will develop a “marketing plan”, to be approved by the Contracting Authority and which is to be reviewed annually or at key milestones during the Call-Off Term. The marketing plan will detail the annual marketing activity, targets and objectives. The Service Provider will provide to the Contracting Authority a breakdown of the proposed marketing spend by channel and activity prior to the start of each contract year.
- 7.4 The Contracting Authority will use reasonable endeavours to comply with the timeframes set out in **Attachment 4** (on the understanding that it will not be liable for any consequences of it failing to do so). In the event of any inconsistency between **Attachment 4** and the Specification, the Specification shall take priority. ”
- 7.5 Any use of the Relevant Authority Materials and Marks in any medium (including any marketing materials, on any website and the reference to the Contracting Authority (including Affiliates) or the Contracting Authority Marketing Materials verbally) by the Service Provider shall require the prior written approval of the Contracting Authority as regards its exact use. The Service Provider shall comply with any guidelines provided by the Contracting Authority as regards the use of the Relevant Authority Materials and Marks.
- 7.6 The Service Provider shall not expose the Contracting Authority to reputational damage including adverse publicity in providing the EfLSCo Services.
- 7.7 The Service Provider hereby grants the Contracting Authority a non-exclusive, sub-licensable and royalty-free licence to use the Service Provider’s marketing material, name, trade mark and logo in any of its marketing of this Call-Off Contract in accordance with the Contracting Authority’s written guidelines and subject to the prior written approval of the Service Provider (such approval not to be unreasonably withheld or delayed). The Service Provider hereby grants the Contracting Authority a non-exclusive, sub-licensable and royalty-free licence to use (in such manner as the Contracting Authority sees fit) the content contained on the website created and maintained by the Service Provider for the purposes of, and in connection with, the provision by it of the EfLSCo Services and where such content is used for marketing or publicity purposes, such use shall be subject to the approval of the Service Provider (such approval not to be unreasonably withheld or delayed).
- 7.8 The Service Provider shall ensure that any supplies of electricity and/or gas made by the Service Provider to End Consumers using any of the tariffs agreed with the Contracting Authority or otherwise pursuant to the Specification shall

be made under the Contracting Authority Marks. The Service Provider shall ensure that the Contracting Authority Marks shall only be used and/or any other reference to the Contracting Authority, its Affiliates and/or the EFLSCo Services shall only made in relation to supplies of gas and/or electricity provided in accordance with the terms of this Call-Off Contract and the Specification.

8. END CONSUMER TERMS

- 8.1 The Service Provider shall only supply End Consumers gas and electricity in accordance with the Specification and End Consumer Supply Contracts approved by the Contracting Authority (such approval not to be unreasonably withheld or delayed).
- 8.2 At the request of the Contracting Authority and subject to **paragraph 2.2.38** of the Specification, the End Consumer Supply Contracts shall be tripartite in the names of the End Consumer, the Service Provider and the Contracting Authority (or its nominee). The Contracting Authority (or its nominee) shall have no obligations under the End Consumer Supply Contracts and shall solely be a party thereto to facilitate the transfer of the End Consumer Supply Contract upon the termination of the Call-Off Contract to the Contracting Authority (or its nominee).
- 8.3 Upon the termination of the Call-Off Contract, at the request of the Contracting Authority the Service Provider shall facilitate the transfer of the End Consumer Supply Contracts to Contracting Authority, its nominee or a designated successor to the Service Provider, including doing or procuring the doing of all acts and things and executing or procuring the execution of all such documents (including sending communications to the End Consumers) as the Contracting Authority party reasonably considers necessary to give full effect to such a transfer and subject to being compliant with any relevant Law and/or Directive and Licence.
- 8.3.1 Furthermore, at the request of the Contracting Authority, the Service Provider shall enter into a transaction in a form agreed between the Service Provider and a transferee nominated by the Contracting Authority (such agreement not to be unreasonably withheld or delayed) to transfer without any premium and at the same price at which such hedges were purchased any hedges specifically entered into for the purposes of an EFLSCo Services Call-Off Contract (subject to the transferee having a reasonable credit rating or credit support as is customary for such types of transactions and any costs reasonably incurred by the Service Provider in effecting such a transfer being payable by the Contracting Authority). Such a transaction form shall be based substantially on the Grid Trade Master Agreement ("**GTMA**") published by the FIA, the ISDA Master Agreement with a GTMA appendix or the EFET General Agreement with a GTMA appendix (in each case subject to such amendments and elections as are customary).

- 8.3.2 It is acknowledged by the Parties that any transfer of End Consumer Supply Contracts will need to comply with the Debt Assignment Protocol (issued by the Competition and Markets Authority and as updated and/or replaced).
- 8.3.3 Unless otherwise agreed by the Parties, the Contracting Authority may not require the transfer of any End Customer Supply Contract from the Service Provider to a New Provider if (a) the Contracting Authority has terminated this Call-Off Contract pursuant to **clause 26.5** of the Agreement, and (b) the termination date falls within the first two (2) years of the initial term referred to in **clause 4.2.1** of the Agreement. For the avoidance of doubt, **paragraphs 8.2 and 8.4.2** will be subject to this **paragraph 8.3.2(b)**.
- 8.4 The Contracting Authority shall notify the Service Provider no later than three (3) months prior to the end of the Call-Off Term or following a notice to terminate the Call-Off Contract, whether upon expiry or termination of the Call-Off Contract (as the case may be) it wishes to:
- 8.4.1 extend the Call-Off Contract;
- 8.4.2 replace the Service Provider with itself, its nominee or a designated successor of the Service Provider ("**New Provider**"). The Contracting Authority will provide any information reasonably requested by the Service Provider to enable the Service Provider to effect a transfer of End Consumer Supply Contracts to such a New Provider and to enter into a GTMA with such a New Provider; or
- 8.4.3 cease the EFLSCo Services and not provide any replacement comparable services,
- (**paragraphs 8.4.2 and 8.4.3** being referred to individually or collectively as a "**Scheme Change**").
- 8.4A Upon termination of the Call-Off Contract pursuant to **clause 26.5** of the Agreement, the Contracting Authority will pay to the Service Provider the sum of [redacted] for each End Customer Supply Contract which is transferred to the New Provider in accordance with the provisions set out in this **paragraph 8**, excluding any End Customer Supply Contract entered into in breach of **paragraph 8.8**, as consideration for each such transfer. The Parties acknowledge that this payment is in addition to any liability the Contracting Authority may have under **clause 27.5** of the Agreement in respect of such termination.
- 8.5 Within fifteen (15) Business Days of receipt of a notice served by the Contracting Authority pursuant to **paragraph 8.4**, the Service Provider shall provide to the Contracting Authority for its approval in line with any relevant guidance issued by Ofgem:

- 8.5.1 the proposed form of notification to send to existing End Consumers ((where relevant) including the details of the transfer process to the Contracting Authority, its nominee or designated successor);
 - 8.5.2 the proposed script to be used by its call centre to communicate a Scheme Change;
 - 8.5.3 the message to post on its relevant website regarding the Scheme Change; and
 - 8.5.4 any other communications and/or publicity regarding the Scheme Change.
- 8.6 The Service Provider shall notify each relevant End Consumer of the Scheme Change, update its website with a notice of the Scheme Change and issue any other communications and publicity (each in the form approved by the Contracting Authority) in accordance with a timetable proposed by the Contracting Authority. Where it has not been possible to effect a transfer of End Consumers pursuant to **paragraph 8.3**, the Service Provider will liaise, design, implement and agree with the Contracting Authority and the New Provider an End Consumer communications plan (such agreement not to be unreasonably withheld or delayed by any of the parties) to notify End Consumers of the transfer of services comparable to the EflSCo Services to the New Provider. Such a plan shall include three (3) waves of communication that will be co-ordinated and managed by the Service Provider to highlight that the End Consumer Supply Contracts are transferring to the New Provider and to provide End Consumers with clear information on:
- 8.6.1 how to switch to the New Provider;
 - 8.6.2 how to remain with the Service Provider; or
 - 8.6.3 how to switch to an alternative supplier.
- 8.7 Following a notice served by the Contracting Authority pursuant to **paragraph 8.4**, the Service Provider will:
- 8.7.1 provide to the Contracting Authority the relevant data set out in **paragraph 2.2.42** of the Specification and any information reasonably requested by the Contracting Authority;
 - 8.7.2 provide any information and carry out any such acts and execute any documents as required by any Competent Authority to effect any transfer and/or change of the End Consumer Supply Contracts in line with the Scheme Change;
 - 8.7.3 cease using any Relevant Authority Materials and Marks, including in the context of any End Consumer Supply Contracts, with effect from the expiry or termination of the Call-Off Contract; and
 - 8.7.4 provide any services that the Contracting Authority may reasonably require in order to effect a smooth transfer of the End Consumer

Supply Contracts (including any underlying support for such contracts) to itself, its nominee or a designated successor at no cost to the Contracting Authority (except where terminated under **clauses 26.3, 26.5 or 28** of the Agreement, where such costs shall be borne by the Relevant Authority, or where terminated under **clause 26.4** of the Agreement where such costs shall be borne equally between the parties).

- 8.8 The Service Provider will not enter into any new contracts with End Consumers during the Call-Off Term from the date so specified by the Contracting Authority (which shall be no earlier than six (6) months prior to the end of the Call-Off Term).
- 8.9 Subject to **clause 18** of the Agreement and **paragraph 12**, the Service Provider shall indemnify, keep indemnified the Contracting Authority (including its Affiliates and nominee) from and against all Losses which the Contracting Authority (including its Affiliates and nominee) may incur or suffer in relation to any claims made by an End Consumer and/or disputes with an End Consumer in respect of an End Consumer Supply Contract.
- 8.10 Upon any sale of any residential property (freehold or leasehold), change of any tenancy or other change of gas and/or electricity customer where the previous customer was an End Consumer, the Service Provider shall develop and agree with the Contracting Authority a marketing proposal with a view to trying to procure that the gas and electricity supplied to those premises to the new customer shall be in line with the EfLSCo Services and under the Contracting Authority Marks.

9. **SERVICE LEVEL AGREEMENT**

The Service Provider shall perform the EfLSCo Services in accordance with **Schedule 10** (*Service Levels – EfLSCo Services*) of the Agreement.

10. **PRIVACY AND DATA PROTECTION**

The provisions of **Attachment 3** shall apply to this Call-Off Contract.

11. **LONDON LIVING WAGE**

For the purposes of this **paragraph 11**, the expression “**London Living Wage**” means a basic hourly wage as updated from time to time by the GLA Economics Unit or any relevant replacement organisation and as notified to the Service Provider.

- 11.1 The Service Provider acknowledges and agrees that the Mayor pursuant to Section 155 of the GLA Act has directed that members of the GLA group ensure that the London Living Wage is paid to anyone engaged by any member of the GLA group who is required to discharge contractual obligations in London or on the Contracting Authority’s estate.
- 11.2 Without prejudice to any other provision of this Call-Off Contract, the Service Provider shall:

- 11.2.1 ensure that none of its employees engaged in the provision of the EfLSCo Services (in London or on the Contracting Authority's estate but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
 - 11.2.2 ensure that none of its employees engaged in the provision of the EfLSCo Services is paid less than the amount to which they are entitled in their respective contracts of employment;
 - 11.2.3 provide to the Contracting Authority such information concerning the London Living Wage and as the Contracting Authority or its nominees may reasonably require from time to time;
 - 11.2.4 disseminate on behalf of the Contracting Authority to its employees engaged in the provision of the EfLSCo Services such perception questionnaires as the Contracting Authority may reasonably require from time to time and promptly collate and return to the Contracting Authority responses to such questionnaires; and
 - 11.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- 11.3 For the avoidance of doubt the Service Provider shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.
- 11.4 The Contracting Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its FA Sub-contractors.
- 11.5 Any breach by the Service Provider of the provisions of this **paragraph 11** shall be treated as a material breach capable of remedy in accordance with **clause 26.1.1** of the Agreement.

12. **LIABILITY CAP**

- 12.1 Subject to **clause 18.3** of the Agreement, in no circumstances shall a Party's aggregate liability to the other pursuant to, or in connection with, this Call-Off Contract (whether resulting from breach of the Call-Off Contract, breach of statute, negligence or otherwise) exceed:
- 12.1.1 in relation to Losses arising as a result of personal injury and/or physical damage [*redacted*]; or
 - 12.1.2 in relation to Losses other than those set out in **paragraph 12.1.1**, [*redacted*].

This Call-Off Contract has been signed by duly authorised representatives of each of the Authority and the Service Provider.

Signed by _____)
 [NAME OF DIRECTOR/OFFICER] _____)

for and on behalf of)
London Power Co. Limited)

Signature of director/officer

Signed by _____)
[NAME OF DIRECTOR/OFFICER])
for and on behalf of _____)
Octopus Energy Limited _____)

Signature of director/officer

Attachment 1 - Services to be provided

1. Services to be provided

2. [To be completed by the Contracting Authority] **Timetable**

Launch Date: [redacted]

Commencement date [Complete only if different from the date of the Call-Off Contract]:

Call-Off Term:

(a) Initial term: [Up to four (4) years]

(b) Extension period(s): The Contracting Authority has an option, exercisable at its sole discretion, to extend the duration of the Call-Off Contract beyond the initial term referred to in **paragraph (a)** above (the “**Initial Call-Off Term**”) for a further period or periods by providing notice in writing to the Service Provider at least three (3) months prior to the expiry of the Initial Call-Off Term provided that in no circumstances shall the Call-Off Term (being the Initial Call-Off Term plus any extension period(s) pursuant to this **paragraph (b)**) exceed eight (8) years in total.

3. Authority Account Details

Relevant account code and cost centre:

[To be confirmed by the Contracting Authority]

4. Address for Invoices

Address where invoices shall be sent:

4.1.1 [.....]

4.1.2 [.....]

4.1.3 [.....]

4.1.4 [.....]

4.1.5 [.....]

Electronic format required (if any) for submission of invoices/orders by the Contracting Authority and of invoices by the Service Provider:

Date/Period for submission of Invoices: *[Insert time or period for the submission of invoices by the Service Provider in accordance with **paragraph 5.4** of the Call-Off Contract]*

5. Authority Call-Off Co-ordinator

Name:

Address:

Phone:

Fax:

Email:

6. Availability of Key Personnel

The Service Provider's Key Personnel shall be available at the following period of notice:

[.....]

7. Other information or conditions

In accordance with **clause 3.10** of the Agreement, as at the date of this Call-Off Contract, the Service Provider shall provide either: (a) a parent company guarantee from an Affiliate with the Required Company Rating set out below; (b) a performance bond from a person with the Required Credit Rating set out below and for an amount equal to *[redacted]* reducing by *[redacted]* upon each anniversary of the date of this Call-Off Contract; or (c) cash on deposit held in escrow by an escrow agent acceptable to the Contracting Authority and the funds being placed with a bank with the Required Bank Rating for an amount equal to *[redacted]* reducing by *[redacted]* upon each anniversary of the date of this Call-Off Contract.

"Required Bank Rating" means:

- (a) in respect of a rating with Standard & Poor's, an Official Credit Rating of at least *[redacted]* or its successor equivalent;
- (b) in respect of a rating with Moody's, an Official Credit Rating of at least *[redacted]* or its successor equivalent; and/or
- (c) in respect of a rating with any industry recognised alternative or successor rating agency to either of the above, the relevant equivalent (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed).

"Required Company Rating" means:

- (a) in respect of a rating with Creditsafe, an Official Credit Rating of at least *[redacted]* or its successor equivalent; and/or
- (b) in respect of a rating with any industry recognised alternative or successor rating agency to either of the above, the relevant equivalent (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed).

8. **Authority address details (being postal address, facsimile number and email address (as applicable)) for service of notices and other documents in accordance with clause 35 of the Agreement:**

Postal address: [.....]

Fax number: [.....]

Email address: [.....]

Attachment 2 – Key Personnel and proposed Sub-contractors**1. Key Personnel and Service Provider's Manager**

The Service Provider's Key Personnel (include grades and areas of responsibility):

[.....]

The Service Provider's Manager:

[.....]

2. Proposed Sub-contractors (if any)

Name and contact details of proposed Sub-contractor(s) and details of any proposed Sub-contracted work:

Company: [.....]

Name: [.....]

Email: [.....]

Attachment 3 - Privacy and Data Protection

The following shall apply for the purposes of **clause 22** (Privacy, Data Protection and Cyber Security) of the Agreement:

Clause 22.4.1	Relevant Categories of Data Subject	<i>[Contracting Authority to populate]</i>
Clause 22.4.2	Types of Personal Data	<i>[Contracting Authority to populate]</i>
Clause 22.4.3	Purpose(s) of Processing	<i>[Contracting Authority to populate]</i>
Clause 22.4.4	Restricted Countries	<p>Either:-</p> <p><i>[State “None” where the Authority Personal Data will not be Processed in any Restricted Countries]</i></p> <p>OR</p> <p><i>[List the relevant countries outside the European Economic Area (which includes all EU member states plus Norway, Iceland and Liechtenstein) AND insert or cross-refer to the applicable instructions and conditions imposed by the Authority]</i></p>

Attachment 4 – Governance Framework

[*redacted*]

Part 2 Void Services

Framework Number: 81028

Call-Off Contract Number:

THIS CALL-OFF CONTRACT is made the day of

BETWEEN:

[] ("**the Authority**"); and

[], a company registered in England and Wales (Company Registration Number []) whose registered office is at [] ("**the Service Provider**").

RECITALS:

- (A) The Contracting Authority and the Service Provider entered into an agreement dated [] which sets out the framework for the Service Provider to provide certain Services to the Contracting Authority or the Authority ("**the Agreement**").
- (B) The Authority wishes the Service Provider to provide the specific Void Services described in this Call-Off Contract pursuant to the terms of the Agreement and this Call-Off Contract and the Service Provider has agreed to provide such Void Services on those terms and conditions set out in the Call-Off Contract.

THE PARTIES AGREE THAT:

1. **CALL-OFF CONTRACT**

- 1.1 The terms and conditions of the Agreement and the relevant Request Form shall be incorporated into this Call-Off Contract.
- 1.2 In this Call-Off Contract the words and expressions defined in the Agreement shall, except where the context requires otherwise, have the meanings given in the Agreement. In this Call-Off Contract references to Attachments are, unless otherwise provided, references to attachments of this Call-Off Contract.

2. **SERVICES**

- 2.1 The Void Services to be performed by the Service Provider pursuant to this Call-Off Contract are set out in **Attachment 1**.
- 2.2 The Service Provider acknowledges that it has been supplied with sufficient information about the Agreement and the Void Services to be provided and that it has made all appropriate and necessary enquiries to enable it to perform the Void Services under this Call-Off Contract. The Service Provider shall neither be entitled to any additional payment nor excused from any obligation

or liability under this Call-Off Contract or the Agreement due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Void Services to be provided. The Service Provider shall promptly bring to the attention of the Call-Off Co-ordinator any matter that is not adequately specified or defined in the Call-Off Contract or any other relevant document.

- 2.3 The Service Provider acknowledges and agrees that as at the commencement date of this Call-Off Contract it does not have an interest in any matter where there is or is reasonably likely to be a conflict of interest with the Void Services provided to the Authority under this Call-Off Contract.

3. **CALL-OFF TERM**

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in **Attachment 1** and subject to **clause 4.2** of the Agreement, shall continue in force for the Call-Off Term stated in **Attachment 1** unless terminated earlier in whole or in part in accordance with the Agreement.

4. **CALL-OFF CO-ORDINATOR AND KEY PERSONNEL**

The Authority's Call-Off Co-ordinator in respect of this Call-Off Contract is named in **Attachment 1** and the Service Provider's Key Personnel in respect of this Call-Off Contract are named in **Attachment 2**.

5. **[SERVICE LEVEL AGREEMENT**

The Service Provider shall provide the Void Services in accordance with **Attachment 3.** *[See note at Attachment 3 – if not applicable to / used in respect of the Call-Off Contract in question this paragraph 5 should be amended to “Not Used”]*

6. **SUPPLY TERMS AND CONDITIONS**

The Service Provider shall supply any gas and electricity to the Authority in accordance with the terms and conditions set out in **[Attachment x]**³. The Service Provider shall only be entitled to make changes to such terms and conditions to reflect changes in applicable laws and regulations and to the extent that such changes are being made on an industry wide basis. The Service Provider shall provide at least thirty (30) days' prior written notice of any proposed changes.

7. **EfLSCo SERVICES INTERFACE**

The Service Provider shall ensure that the gas and electricity supplied to any residential customers following the end of any void period shall be in line with

³

Note: Proposed terms and conditions to be provided as part of the relevant Proposal.

the EflSCo Services and under the Contracting Authority Marks in accordance with the EflSCo Services Call-Off Contract.

8. **[ADDITIONAL TUPE PROVISIONS]**

The provisions of **Attachment 4** shall apply to this Call-Off Contract.] *[See note at attachment 4 – if not applicable to / used in respect of the Call-Off Contract in question this paragraph 8 should be amended to “Not Used”]*

9. **PRIVACY AND DATA PROTECTION**

The provisions of **Attachment 5** shall apply to this Call-Off Contract.

10. **LONDON LIVING WAGE**

For the purposes of this **paragraph 10**, the expression “**London Living Wage**” means a basic hourly wage as updated from time to time by the GLA Economics Unit or any relevant replacement organisation and as notified to the Service Provider.

10.1 The Service Provider acknowledges and agrees that the Mayor pursuant to Section 155 of the GLA Act has directed that members of the GLA group ensure that the London Living Wage is paid to anyone engaged by any member of the GLA group who is required to discharge contractual obligations in London or on the Contracting Authority’s estate.

10.2 Without prejudice to any other provision of this Call-Off Contract, the Service Provider shall:

10.2.1 ensure that none of its employees engaged in the provision of the Void Services (in London or on the Authority’s estate but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

10.2.2 ensure that none of its employees engaged in the provision of the Void Services is paid less than the amount to which they are entitled in their respective contracts of employment;

10.2.3 provide to the Authority such information concerning the London Living Wage and as the Authority or its nominees may reasonably require from time to time;

10.2.4 disseminate on behalf of the Authority to its employees engaged in the provision of the Void Services such perception questionnaires as the Authority may reasonably require from time to time and promptly collate and return to the Authority responses to such questionnaires; and

10.2.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

- 10.3 For the avoidance of doubt the Service Provider shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.
- 10.4 The Authority reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Service Provider's staff and the staff of its FA Sub-contractors.
- 10.5 Any breach by the Service Provider of the provisions of this **paragraph 10** shall be treated as a material breach capable of remedy in accordance with **clause 26.1.1** of the Agreement.

11. LIABILITY CAP

- 11.1 Subject to **clause 18.3** of the Agreement, in no circumstances shall a Party's aggregate liability to the other pursuant to, or in connection with, this Call-Off Contract (whether resulting from breach of the Call-Off Contract, breach of statute, negligence or otherwise) exceed:
- 11.1.1 in relation to Losses arising as a result of personal injury and/or physical damage, *[redacted] or any higher amount set out in the relevant Request Form*; or
- 11.1.2 in relation to Losses other than those set out in **paragraph 11.1.1**, the amount set out in the Request Form.

This Call-Off Contract has been signed by duly authorised representatives of each of the Authority and the Service Provider.

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

Signature of director/officer

Signed by)
 [NAME OF DIRECTOR/OFFICER])
 for and on behalf of)
 Octopus Energy Limited)

Signature of director/officer

Attachment 1 - Services to be provided

[To be completed by the Authority]

1. Services to be provided

[]

2. Timetable

Commencement date: [Complete only if different from the date of the Call-Off Contract]:

Call-Off Term:

(a) Initial term: [Up to 4 years]

(b) Extension period(s): The Authority has an option, exercisable at its sole discretion, to extend the duration of the Call-Off Contract beyond the initial term referred to in **paragraph (a)** above (the “**Initial Call-Off Term**”) for a further period or periods by providing notice in writing to the Service Provider at least three (3) months prior to the expiry of the Initial Call-Off Term provided that in no circumstances shall the Call-Off Term (being the Initial Call-Off Term plus any extension period(s) pursuant to this **paragraph (b)**) exceed eight (8) years in total.

3. Authority Account Details

Relevant account code and cost centre:

[]

4. Address for Invoices

Address where invoices shall be sent:

4.1.1 [Authority]

4.1.2 Accounts Payable

4.1.3 [PO Box]

4.1.4 London

4.1.5 [Postcode]

Electronic format required (if any) for submission of orders by the Authority and of invoices by the Service Provider:

5. Authority Call-Off Co-ordinator

Name:

Address:

Phone:

Fax:

Email:

6. Availability of Key Personnel

The Service Provider's Key Personnel shall be available at the following period of notice:

[]

7. Other information or conditions

*[Specify any other information (for instance, **whether security in the form of a parent company guarantee or performance bond is required, including level of performance bond required** and/or if any additional insurances are to be held by the Service Provider pursuant to the requirements of the Request Form) or special conditions relevant to provision of Void Services under this Call-Off Contract]*

["Required Bank Rating" means:

- (a) in respect of a rating with Standard & Poor's, an Official Credit Rating of at least "[tbc]" or its successor equivalent;*
- (b) in respect of a rating with Moody's, an Official Credit Rating of at least "[tbc]" or its successor equivalent; and/or*
- (c) in respect of a rating with any industry recognised alternative or successor rating agency to either of the above, the relevant equivalent (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed).*

"Required Company Rating" means:

- (a) in respect of a rating with Credisafe, an Official Credit Rating of at least "[tbc]" or its successor equivalent;*
- (b) in respect of a rating with Standard & Poor's, an Official Credit Rating of at least "[tbc]" or its successor equivalent;*
- (c) in respect of a rating with Moody's, an Official Credit Rating of at least "[tbc]" or its successor equivalent; and/or*
- (d) in respect of a rating with any industry recognised alternative or successor rating agency to either of the above, the relevant equivalent (as agreed by the Parties, such agreement not to be unreasonably withheld or delayed).*

Option to include alternative forms of financial distress triggers]

8. **Authority address details (being postal address, facsimile number and email address (as applicable)) for service of notices and other documents in accordance with clause 35 of the Agreement:**

[]

Attachment 2 - Charges

[To be completed by the Authority based on information provided by the Service Provider in its Proposal]

1. Charges

[Tariff mechanism for Supplies of Gas and/or Electricity to be set out here]

2. Key Personnel and Service Provider's Manager

The Service Provider's Key Personnel (include grades and areas of responsibility):

[]

The Service Provider's Manager:

[]

3. Proposed Sub-contractors (if any)

Name and contact details of proposed Sub-contractor(s) and details of any proposed Sub-contracted work:

[]

Attachment 3 – Service Levels and Associated provisions (Void Services)

[Note: *Service Levels (if any) and associated provisions will be specified by the Relevant Authority as part of the Request Form documentation (including within the draft Call-Off Contract which is appended to the Request Form) at the point of Call-off. If not applicable to the Call-Off Contract in question, this Attachment should be amended to “Not used”]*

Attachment 4 – Additional TUPE provisions (Void Services)

[Note: *Additional TUPE provisions (if any) will be specified by the Relevant Authority as part of the Request Form documentation (including within the draft Call-Off Contract which is appended to the Request Form) at the point of Call-off. If not applicable to the Call-Off Contract in question, this Attachment should be amended to “Not used”]*

Attachment 5 - Privacy and Data Protection (Void Services)

The following shall apply for the purposes of **clause 22** (Privacy, Data Protection and Cyber Security) of the Agreement:

Clause 22.4.1	Relevant Categories of Data Subject	<i>[Authority to populate]</i>
Clause 22.4.2	Types of Personal Data	<i>[Authority to populate]</i>
Clause 22.4.3	Purpose(s) of Processing	<i>[Authority to populate]</i>
Clause 22.4.4	Restricted Countries	<p>Either:-</p> <p><i>[State “None” where the Authority Personal Data will not be Processed in any Restricted Countries]</i></p> <p>OR</p> <p><i>[List the relevant countries outside the European Economic Area (which includes all EU member states plus Norway, Iceland and Liechtenstein) AND insert or cross-refer to the applicable instructions and conditions imposed by the Authority]</i></p>

SCHEDULE 5**Form of Variation****Agreement Parties:** [to be inserted]**Call-Off Contract Number:** [to be inserted][*where applicable*]**Variation Number:** [to be inserted]**Authority Contact Telephone:** [to be inserted]**Fax:** [to be inserted]**Date:** [to be inserted]**Authority for Variation To [Agreement][Call-Off Contract] (AVC)**

Pursuant to **clause 31** of the Agreement, authority is given for the variation to the Services [and the Charges] as detailed below. The duplicate copy of this form must be signed by or on behalf of the Service Provider and returned to the [Procurement Manager [*for variations to the Agreement*]][Call-Off Co-ordinator [*for variations to a Call-Off Contract*]] as an acceptance by the Service Provider of the variation shown below.

Details of Variation**Amount (£)**

Allowance to the authority

Total

.....

For the [Contracting] Authority

ACCEPTANCE by the SERVICE PROVIDER

Signed:

Date:

SCHEDULE 6

Management Information Reports

Management Information Report to be provided to the Contracting Authority on a monthly basis to include:

- 1 details of each Void Services Call-Off Contract entered into in the last month, including the name of the Relevant Authority and the Call-Off Co-ordinator's contact details;
- 2 details of the number and nature of any complaints received from any Authority under a Void Services Call-Off Contract;
- 3 a record of any failures to provide the Services under a Void Services Call-Off Contract;
- 4 any information required to be provided pursuant to each relevant Specification and/or **Schedule 10** (including the Service Level Reports defined therein);
- 5 Monthly Statements (as defined in **paragraph 5** of the EfLSCo Services Call-Off Contract); and
- 6 any other information reasonably requested by the Contracting Authority relating to the Service Provider's performance under this Agreement and/or any Call-Off Contract.

Management Information Report to be provided to each Relevant Authority on a monthly basis to include:

- 1 any information reasonably requested by the Authority relating to the Service Provider's performance under its relevant Void Services Call-Off Contract.

SCHEDULE 7

TUPE

For the purposes of this **Schedule 7**, unless the context indicates otherwise, the following expressions shall have the following meanings:

“Employment Costs”	means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);
“Employment Liabilities”	means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);
“Final Staff List”	has the meaning set out in paragraph 4 ;
“Further Transfer Date”	means the date on which the Services (or any part of them) cease to be provided by the Service Provider and start to be performed by the Relevant Authority or any Replacement Service Provider when (assuming that TUPE applies) the transfer of employment of the Re-Transferring Personnel from the Service Provider to the Relevant Authority or any Replacement Service Provider occurs;
“PAYE”	means pay as you earn tax, by which income tax levied on wage and salary earners is paid by employers directly to HMRC;
“Relevant Period”	<p>means the period starting on the earlier of:</p> <ul style="list-style-type: none"> (a) the date falling six (6) calendar months before the date of expiry of the Call-Off Contract; or (b) if the Call-Off Contract is terminated by either Party, the date of the relevant termination notice; <p>and ending on the Further Transfer Date;</p>
“Replacement Service Provider”	means any replacement supplier or provider to the Relevant Authority of the Services (or any part of the Services) and any Services Sub-Contractor to such replacement supplier or provider;
“Re-Transferring Personnel”	means any Service Provider’s Personnel who are assigned (for the purposes of TUPE) to the relevant Services (or any part of them) immediately before the Further Transfer Date and whose employment contract will transfer to the Relevant

Authority or the Replacement Service Provider pursuant to TUPE with effect from the Further Transfer Date;

“Staff List” has the meaning set out in **paragraph 1.1**;

“Staffing Information” has the meaning set out in **paragraph 1.3**;

“Services Sub-Contractor” means any sub-contractor to the Service Provider or the Replacement Service Provider as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or any part of them) and includes the sub-contractor of any such sub-contractor; and

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, any other legislation enacted to give effect to Council Directive 23/2001 (as such directive is amended, consolidated or replaced from time to time) and/or any equivalent or similar legislation regarding the transfer of employees in respect of jurisdictions outside the European Union.

1. The Service Provider, subject always to its obligations under Data Protection Legislation, will promptly provide (and procure that its Services Sub-Contractors provide): (i) when requested by any Relevant Authority (but not more than twice in any twelve (12) month period); (ii) not less than twelve (12) months prior to the scheduled expiry date of a relevant Call-Off Contract; and (iii) not more than seven (7) days after the date of any notice to terminate the Agreement and/or a Call-Off Contract given by either party thereto, the following information to the Relevant Authority:
 - 1.1 an anonymised list of current Service Provider’s Personnel and employees and workers of its Services Sub-Contractors engaged in the provision of the Services under the Agreement and/or the relevant Call-Off Contract, as the case may be (each identified as such in the list) (the **“Staff List”**);
 - 1.2 in the situation where notice to terminate the Agreement and/or a Call-Off Contract has been given or where expiry of the same is due within twelve (12) months, such available information, appropriately anonymised, specified in **Appendix 1** to this **Schedule 7** as is requested by the Relevant Authority in respect of each individual included on the Staff List; and
 - 1.3 in the situation where notice to terminate the Agreement and/or a Call-Off Contract has been given, an anonymised list of any persons who are materially engaged or have been materially engaged during the preceding six (6) months in the provision of the Services, whom the Service Provider considers will not transfer under TUPE for any reason

whatsoever together with details of their role and the reasons why the Service Provider thinks such persons will not transfer,

such information together being the “**Staffing Information**”.

2. The Service Provider will notify the Relevant Authority as soon as practicable and in any event within fourteen (14) days of the Service Provider becoming aware of any material additional or new Staffing Information and any material changes to any Staffing Information already provided.
3. The Service Provider warrants to the Relevant Authority that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects at the time it is provided and will be kept complete and accurate to the extent required by **paragraphs 1 and 2**.
4. Subject to **paragraph 5**, the Service Provider will provide the Relevant Authority with a final Staff List (the “**Final Staff List**”) and Staffing Information relating to persons on that list not less than twenty eight (28) days before the Further Transfer Date.
5. If the Agreement and/or a Call-Off Contract is terminated by either Party thereto then the Final Staff List will be provided by the Service Provider to the Relevant Authority as soon as practicable and no later than fourteen (14) days after the date of termination of the Agreement and/or Call-Off Contract, as the case may be.
6. The Service Provider warrants that as at the Further Transfer Date:
 - 6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
 - 6.2 the Final Staff List will identify all actual Re-Transferring Personnel; and
 - 6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to the Authority.
7. During the Relevant Period the Service Provider will not and will procure that its Services Sub-Contractors do not without the prior written consent of the Relevant Authority (such consent not to be unreasonably withheld or delayed):
 - 7.1 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct or material breach of contract, provided that the Relevant Authority is informed promptly of such termination);
 - 7.2 deploy or assign any other person to perform the Services who is not included on the most recent Staff List other than temporarily and in the ordinary course of business;

- 7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
 - 7.4 increase to any significant degree the proportion of working time spent on the Services by any of the Service Provider's Personnel other than temporarily and in the ordinary course of business; or
 - 7.5 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
8. The Service Provider will promptly notify the Relevant Authority of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the Relevant Period regardless of when such notice takes effect.
9. The Service Provider agrees that the Relevant Authority will be permitted to disclose any information provided to it under this **Schedule 7** in anonymised form to any person who has been invited to tender for the provision of the Services (or similar services) and to any third party engaged by the Authority to review the delivery of the Services and to any Replacement Service Provider subject to having obtained from such person reasonable confidentiality undertakings in respect of such information.
10. If TUPE applies on the expiry or termination of the Agreement or any Call-Off Contract, on the termination or variation of any Service or any part of such a Service, or on the appointment of a Replacement Service Provider, the following will apply:
- 10.1 The contracts of employment of the Re-Transferring Personnel (other than an employee who opts not to transfer under Regulation 4(7) of TUPE) will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and the Relevant Authority or Replacement Service Provider (or its Services Sub-Contractor) (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).
 - 10.2 During the Relevant Period the Service Provider will, subject always to its obligations under Data Protection Legislation:
 - 10.2.1 provide the Relevant Authority or Replacement Service Provider (as appropriate) with access to such employment and payroll records as the Relevant Authority or Replacement Service Provider (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-

Transferring Personnel to the Relevant Authority or Replacement Service Provider (as appropriate);

- 10.2.2 allow the Relevant Authority or Replacement Service Provider (as appropriate) to have copies of any of those employment and payroll records;
- 10.2.3 provide all original employment records relating to the Re-Transferring Personnel to the Relevant Authority or Replacement Service Provider (as appropriate); and
- 10.2.4 co-operate with the Relevant Authority and any Replacement Service Provider in the orderly management of the transfer of employment of the Re-Transferring Personnel.

If the Re-Transferring Personnel are employed or engaged by Services Sub-Contractors, the Service Provider will procure such Services Sub-Contractors provide the Relevant Authority or Replacement Service Provider (as appropriate) with the same level of access, information and cooperation.

- 10.3 The Service Provider warrants to each Relevant Authority and the Replacement Service Provider that as at the Further Transfer Date no Re-Transferring Personnel (except where the Service Provider has notified the Relevant Authority and/or the Replacement Service Provider (if appointed) in writing to the contrary) to the Service Provider's knowledge:

- 10.3.1 is under notice of termination;
- 10.3.2 is on long-term sick leave;
- 10.3.3 is on maternity, parental or adoption leave;
- 10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;
- 10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to the Relevant Authority or Replacement Service Provider (as appropriate);
- 10.3.6 is or has been within the previous two (2) years the subject of formal disciplinary proceedings;
- 10.3.7 has received a written warning (other than a warning that has lapsed);
- 10.3.8 has taken or been the subject of a grievance procedure within the previous two (2) years; or

- 10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to the Relevant Authority or Replacement Service Provider (as appropriate) under TUPE.
- 10.4 The Service Provider undertakes to each Relevant Authority and any Replacement Service Provider that it will (and will procure that its Services Sub-Contractors will):
 - 10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;
 - 10.4.2 subject to **paragraph 10.7**, pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Service Provider or any Services Sub-Contractor which fall due in the period up to the Further Transfer Date;
 - 10.4.3 pay to the Relevant Authority or the Replacement Service Provider (as appropriate) within seven (7) days of the Further Transfer Date any apportioned sum in respect of Employment Costs as set out in **paragraph 10.5**; and
 - 10.4.4 comply in all respects with its information and consultation obligations under TUPE and provide to the Relevant Authority or Replacement Service Provider (as appropriate) such information as the Relevant Authority or Replacement Service Provider (as appropriate) may request in order to verify such compliance.
- 10.5 Each Relevant Authority undertakes to the Service Provider that it will (and will procure that any Replacement Service Provider and any Services Sub-Contractors will):
 - 10.5.1 perform and observe all of its or their obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel on and after the Further Transfer Date;
 - 10.5.2 subject to **paragraph 10.5**, pay to the Re-Transferring Personnel all Employment Costs to which they are entitled which fall due in the period on and after the Further Transfer Date;
 - 10.5.3 pay to the Service Provider within seven (7) days of the Further Transfer Date any apportioned sum in respect of Employment Costs as set out in **paragraph 10.5**; and

- 10.5.4 comply in all respects with its information and consultation obligations under TUPE and provide to the Service Provider such information as the Service Provider may request in order to verify such compliance (and agrees that the Service Provider may share such information with any relevant Services Sub-Contractor).
- 10.6 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:
 - 10.6.1 the Service Provider will be responsible for any Employment Costs relating to the period up to the Further Transfer Date;
 - 10.6.2 the Authority or (where appointed) any Replacement Service Provider will be responsible for the Employment Costs relating to the period on and after the Further Transfer Date; and
 - 10.6.3 the Employment Costs will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid).
- 10.7 The Service Provider will indemnify and keep indemnified each Relevant Authority and any Replacement Service Provider from and against all Employment Liabilities which the Authority or the Replacement Service Provider incurs or suffers arising directly or indirectly out of or in connection with:
 - 10.7.1 any failure by the Service Provider to comply with its obligations under this **paragraph 10.7**;
 - 10.7.2 save as modified by **paragraph 10.7.3**, any act or omission by or on behalf of the Service Provider (or its Services Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;
 - 10.7.3 any failure by the Service Provider (or its Services Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Relevant Authority or the Replacement Service Provider to comply with Regulation 13 of TUPE);
 - 10.7.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim or demand relates to the period from the Contract Commencement Date to the Further Transfer Date; and
 - 10.7.5 any claim or demand or other action taken against the Relevant Authority or any Replacement Service Provider by any person employed or engaged by the Service Provider (or

its Services Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that the Relevant Authority or Replacement Service Provider has inherited any liability from the Service Provider (or its Services Sub-Contractors) in respect of them by virtue of TUPE save in respect of discrimination by or on behalf of the relevant Authority or any Replacement Service Provider or any Services Sub-Contractor, and provided that the relevant Authority or Replacement Service Provider notified the Service Provider of such person's claim within fourteen (14) days of becoming aware of it and terminated such person's employment within twenty-one (21) days of becoming aware of it.

- 10.8 The Relevant Authority will indemnify and keep indemnified the Service Provider from and against all Employment Liabilities which the Service Provider incurs or suffers arising directly or indirectly out of or in connection with:
- 10.8.1 any failure by the Relevant Authority or any Replacement Service Provider to comply with its obligations under this **paragraph 10.8**;
 - 10.8.2 save as modified by **paragraph 10.8.3**, any act or omission by or on behalf of the Relevant Authority or any Replacement Service Provider (or its or their Services Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;
 - 10.8.3 any failure by the Relevant Authority or any Replacement Service Provider (or its or their Services Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by the Service Provider to comply with Regulation 13 of TUPE); and
 - 10.8.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim or demand relates to the period on or after the Further Transfer Date.
- 10.9 To the extent that TUPE does not apply on the expiry or termination of the Agreement and/or any Call-off Contract, the Service Provider will remain responsible for the relevant Service Provider Personnel and, subject to **paragraph 10.7.5**, will indemnify and keep indemnified the Relevant Authority against all Employment Liabilities which the Relevant Authority incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Service Provider Personnel or former Service Provider Personnel, excluding Employment Liabilities in connection with or as

a result of any act, fault or omission of the Relevant Authority or its Services Sub-Contractors. Any dispute as to whether or not TUPE applies (and/or the extent to which it applies) to the expiry or termination of the Agreement and/or any Call-Off Contract will be dealt with using the dispute resolution procedure set out in **clause 25** of the Agreement.

- 10.10 The Service Provider will procure that whenever the Relevant Authority so requires on reasonable notice at any time during the continuance in force of the Agreement and/or any Call-Off Contract and for two (2) years following the date of expiry or earlier termination of the Agreement and/or any Call-Off Contract the Relevant Authority will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

10.10.1 is still an employee or sub-contractor of the Service Provider or any of the Service Provider's associated companies; and

10.10.2 was at any time employed or engaged by the Service Provider in order to provide the Services to the Relevant Authority under the Agreement and/or the Call-Off Contract,

and such access and consultation will be provided on the first occasion free of charge and thereafter be charged at reasonable rates for the time spent by the Service Provider or its employees or Services Sub-Contractors on such consultation. The Service Provider will use all reasonable endeavours to procure that such persons co-operate with the Authority's requests.

- 10.11 **Clause 30.1** shall be amended so that benefits conferred on the Replacement Service Provider under this **Schedule 7** shall be enforceable by them.

Appendix 1 to Schedule 7
Information to be provided in respect of those on the Staff List

- Approximate amount of time usually spent on the Services (or any part of the Services specified by the Relevant Authority)
- Date of birth
- Role title/designation and role profile
- Annual salary (in £)
- Bonus and commission amount and frequency
- Pay frequency and date
- Overtime - contractual or non-contractual and rates
- Contractual working hours
- Contract type - permanent/temporary
- Geographical area of work/location
- Commencement of employment date
- Continuous service date
- Car allowance
- Pension contributions
 - 1) Employer
 - 2) Employee
 - Including additional information on:
 - who were originally employees of the Authority;
 - who were members of (or eligible to become members of) the TfL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme;
 - whose employment transferred from the Authority to the Service Provider under TUPE; and
 - who were entitled to broadly comparable benefits under the current contractor's scheme
- Details of the relevant employee representative body or bodies and relevant collective agreements
- Date of annual pay award
- Annual leave entitlement
- Contractual notice period
- Public holiday/concessionary days entitlement
- Sickness entitlement (in twelve (12) month rolling period)
- Salary/wage increases pending
- Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation)
- Details of any other benefits provided, whether contractual or non-contractual

- Copy of employment contract or applicable standard terms and employee handbook
- Any loans or educational grants
- For those employees who are foreign nationals: the country of citizenship, immigrant status, and all documentation required by law to demonstrate a right to work in the United Kingdom
- Summary information on any disciplinary or grievance procedure taken against or by an employee in the two (2) years immediately preceding the information being provided
- Summary information about any tribunal claims in the immediately preceding two (2) years or whether there are reasonable grounds to believe a claim may be brought
- Department and place on organisation chart
- Average absence due to sickness
- Training and competency records

SCHEDULE 8

Ethical Sourcing Appendix: The ETI Base Code

1. EMPLOYMENT IS FREELY CHOSEN

- 1.1 There is no forced, bonded or involuntary prison labour.
- 1.2 Workers are not required to lodge “deposits” or their identity papers with their employer and are free to leave their employer after reasonable notice.

3. WORKING CONDITIONS ARE SAFE AND HYGIENIC

- 3.1 A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 3.2 Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.
- 3.3 Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided.
- 3.4 Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.
- 3.5 The company observing the code shall assign responsibility for health and safety to a senior management representative.

4. CHILD LABOUR SHALL NOT BE USED

- 4.1 There shall be no new recruitment of child labour.
- 4.2 Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.
- 4.3 Children and young persons under 18 shall not be employed at night or in hazardous conditions.
- 4.4 These policies and procedures shall conform to the provisions of the relevant International Labour Organisation standards.

5. LIVING WAGES ARE PAID

- 5.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher.

In any event wages should always be enough to meet basic needs and to provide some discretionary income.

- 5.2 All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid.
- 5.3 Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

6. WORKING HOURS ARE NOT EXCESSIVE

- 6.1 Working hours comply with at least UK national laws and benchmark industry standards, whichever affords greater protection.

7. NO DISCRIMINATION IS PRACTISED

- 7.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

8. REGULAR EMPLOYMENT IS PROVIDED

- 8.1 To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.
- 8.2 Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub- contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

9. NO HARSH OR INHUMANE TREATMENT IS ALLOWED

- 9.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

SCHEDULE 9

Supplier Diversity Definitions

1. **Document Outline**

1.1 **Background**

Encouraging a diverse base of supplier forms a part of the Contracting Authority Group responsible procurement policy. This **Schedule 9** ensures consistency across supplier diversity activities and acts as a basis for alignment in the measurement of diverse suppliers.

2. **Diverse Suppliers**

“**Diverse Suppliers**” comprise the following four subsets:

- 2.1 Small and Medium Enterprises (SMEs);
- 2.2 Black, Asian and Minority Ethnic (BAME) businesses;
- 2.3 Suppliers from other under-represented or protected groups; and
- 2.4 Suppliers demonstrating a diverse workforce composition.

The more detailed explanations of the four above subsets are given in the sections below.

3. **Small and Medium Enterprises (SMEs)**

3.1 A **Small Enterprise**⁵ is a business which has both the following:

- i) 0-49 Full Time Equivalent employees¹;

AND EITHER

- ii) Turnover² per annum of no more than £5.6 million net (or £6.72 million gross) in the last financial year;

OR

- iii) Balance Sheet Total⁴ of no more than £2.8 million net (£3.36 million gross).

3.2 A **Medium Enterprise**⁵ is a business which has both the following:

- i) 50-249 Full Time Equivalent employees¹;

AND EITHER

- ii) Turnover² per annum of no more than £22.8 million net (or £27.36 million gross) in the last financial year;
- OR
- iii) Balance Sheet Total⁴ of no more than £11.4 million net (or £13.68 million gross).

3.3 A **Large Enterprise**⁵ is a business which has both the following:

- i) 250 and over Full Time Equivalent employees¹;
- AND EITHER
- ii) Turnover² per annum over £22.8 million net (or £27.36 million gross) in the last financial year;
- OR
- iii) Balance Sheet Total⁴ of over £11.4 million net (or £13.68 gross).

¹ Full Time Equivalent Employees is defined in **paragraph 7.1**

² Turnover is defined in **paragraph 7.3**

⁴ Balance Sheet Total is defined in **paragraph 7.5**

⁵ Further explanation is outlined in **paragraph 7.7 (Definition of Size) & 7.8 (Ownership Categorisation)**

4. **Black, Asian and Minority Ethnic (BAME) owned businesses**

A Black, Asian and Minority Ethnic (BAME) owned business is a business which is 51% or more owned by members of one or more Black, Asian or Minority ethnic groups.

Minority ethnic groups are all people including those who have classified themselves as members of ethnic groups other than 'White'.

The minority ethnic classification groups used by the Authority for monitoring purposes are:

<u>Ethnic group</u>	<u>Racial origin</u>
White	Irish Any other White background
Mixed	White & Black Caribbean White & Black African White & Asian Any other Mixed background
Asian	Indian

	Pakistani Bangladeshi Any other Asian background
Black	Caribbean African Any other Black background
Minority Ethnic	Chinese Any other Ethnic Group

5. *Service providers from other under-represented groups or protected groups*

5.1 A service provider from an under-represented group is one which is 51% or more owned by members of one or more of the following groups (where not covered by previous definitions):

5.1.1 Women (gender);

5.1.2 Disabled people with physical and sensory impairments, learning difficulties and mental health requirements;

5.1.3 Lesbians, gay men, bisexual and transgender people (sexual orientation); and

5.1.4 Older people (aged 60 or over) and young people (aged 24 or under) (age).

5.2 A service provider from a protected group is one which is 51% or more owned by members of a group for which protection is provided by anti-discriminatory legislation and which is not already covered by the above (such as religious, faith or belief groups, or alternatively, ownership by a social enterprise or a voluntary/community organisation).

6. *Suppliers demonstrating a diverse workforce composition*

This relates to Full Time Equivalent Employees in the service provider's workforce who may be from one or more minority ethnic groups, and/or under-represented groups and/or protected groups as listed in **paragraphs 4 and/or 5** above.

7. *Other Definitions & Information*

7.1 Full-Time Equivalent Employees

Where employee numbers are used, these refer to Full-Time Equivalents ("FTEs") expressed in **Annual Work Units** (see below). Staff headcount should include full-time, part-time and seasonal staff and includes the following:

- Employees
- Persons working for the enterprise being subordinated to it and considered to be employees under national law
- Owner managers
- Partners engaged in regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Full-time workers are expressed as hours worked per week. The Authority refers to standard UK hours of work as full time workers – i.e. those who work 35 hours a week and 52 weeks a year (including annual leave).

7.2 Annual Work Units

Refer to anyone who worked, over the past year, full-time within the Service Provider, or on its behalf, during the entire reference year counts as one unit. To treat part-time staff, seasonal workers and those who did not work the full year as fractions of one unit.

7.3 Turnover

Turnover is in line with that defined in the Companies Act 2006:

The amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of:

- i) trade discounts
- ii) value added tax

Please refer to **paragraph 7.8** regarding ownership categorisation to understand how to interpret ownership, where an enterprise is part of a parent organisation.

7.4 Financial Year

Financial Year relates to 1st April – 31st March or any other 12 month period as defined by the company.

All data must be relating to the last approved accounting period and calculated on an annual basis. In the case of newly-established enterprises whose accounts have not yet been approved, the data to apply shall be derived from a reliable estimate made in the course of the financial year.

7.5 Balance Sheet Total

The annual balance sheet total refers to the value of the Service Provider's main assets.

7.6 Ownership

Individuals or those in named control holding capital or voting rights - either through private or shared ownership - of any given business entity.

7.7 Definition of Size

Where headcount and turnover and/or balance sheet conditions apply to different size definitions, headcount acts as the more predominant aspect, in defining size.

An organisation does not need to satisfy both turnover and balance sheet total, only one of the conditions and may exceed one of them without losing its status. This is illustrated by an organisation which has 30 employees, a turnover of £12 million and a balance sheet total of £10 million. The number of employees figure would class the organisation as a small organisation, however the turnover and balance sheet total define the organisation as medium. In this case, the headcount would be used to define the classification of the organisation. This organisation would be classed as a small organisation.

To illustrate this, the following scenarios have been mapped for the different characteristics of supplier diversity definitions (based on information from the Department for Trade & Industry (*now Department for Business Enterprise & Regulatory Reform*)):

		Turnover/Balance Sheet Total		
		£5.6m net(up to)/ £2.8m net (up to)	£22.8m net(up to/incl.)/ £11.4m net (up to/incl.)	£22.8m net(over)/ £11.4m net (over)
Employees	0-49	✓	<i>Employees more predominant</i>	<i>Employees more predominant</i>
	50-249	<i>Employees more predominant</i>	✓	<i>Employees more predominant</i>
	250+	<i>Employees more predominant</i>	<i>Employees more predominant</i>	✓

7.8 Ownership Categorisation

EU Commission Definition on Enterprise Ownership Categorisation

The European Commission's Guidance published in 2005 "The New SME Definition: User Guide and Model Declaration"⁶, outlines parameters for defining an organisation's ownership categorisation and whether an organisation is autonomous, partner or linked.

7.8.1 Autonomous

This is the most common category of ownership.

An organisation is autonomous if:

- It is totally independent, i.e. there is no participation in other enterprises and no enterprise has a participation.
- It has a holding of less than 25% of the capital or voting rights (whichever is the higher) in one or more other enterprises and/or outsiders do not have a stake of 25% or more of the capital or voting rights (whichever is the higher) in your enterprise.

If an organisation is autonomous, it means that it is not a partner or linked to another enterprise

7.8.2 Partner

An enterprise is a partner enterprise if:

- It has a holding equal to or greater than 25%, of the capital or voting rights in another enterprise and/or another enterprise has a holding equal to or greater than 25% in the other.
- It is not linked to another enterprise. This means, among other things, that voting rights in the other enterprise (or vice versa) do not exceed 50%.

7.8.3 Linked

Enterprises formed as a **group** through the direct or indirect control of the majority of voting rights. An enterprise owned by another or through the ability to exercise a **dominant influence** on another enterprise.

Two or more enterprises are linked when they have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another.
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another.
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other.
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

⁶ Refer directly to the EU Commission Definitions for more guidance:
[http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guid
e.pdf](http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/sme_user_guide.pdf)

SCHEDULE 10

Service Levels - EfLSCo Services

1. Definitions

Unless the context indicates otherwise the following expressions shall have the following meanings:

“Acceptable Service Level(s)”	has the meaning given to it in paragraph 3.7(f) ;
“Aggregated Service Level Failure”	has the meaning given to it in paragraph 4.5(b) ;
“Derogation Period”	has the meaning given to it in paragraph 4.4(b)(2) ;
“Due Date”	means for the purposes of Service Levels 1.1 and 1.2, Due Date is five (5) Business Days after the end of each relevant billing period;
“IVR”	means interactive voice response - the menu or filtering system used by call centres to direct calls;
“Ofgem”	means the Office of Gas and Electricity Markets;
“Pricing Checks”	has the meaning given to it in paragraph 3.2A ;
“Rectification Period”	has the meaning given to it in paragraph 4.1(b)(2) ;
“Rectification Plan”	has the meaning given to it in paragraph 4.1(a) ;
“Relevant Service Level Report”	has the meaning given to it in paragraph 4.2(c)(2) ;
“Relevant TPR Period”	has the meaning given to it in paragraph 4.2(f) ;
“Service Default”	means a failure to achieve any Acceptable Service Level in a Service Level Reporting Period;

“Service Level”	has the meaning given to it in paragraph 3.7(a) ;
“Service Level Failure Points”	has the meaning given to it in paragraph 4.5(b) ;
“Service Level Report”	has the meaning given to it in paragraph 3.1 ;
“Service Level Reporting Period”	<p>means each month during the relevant Call-Off Term provided that:</p> <ul style="list-style-type: none">(a) where the relevant Call-Off Term commences on a day other than the first day of a month, such Service Level Reporting Period shall be shortened to the number of days running from and including the first day of the Call-Off Term until and including the last day of such First Service Level Reporting Period; and(b) where the relevant Call-Off Term terminates or expires on a day other than the last day of a month, such Service Level Reporting Period shall be shortened to the number of days running from and including the first day of such Last Service Level Reporting Period until and including the day on which the Call-Off Term expires or is terminated, <p>and further <u>provided that</u> for the purposes of:</p> <ul style="list-style-type: none">(c) Service Level 2.7 (<i>Customer Service</i>), the applicable Service Level Reporting Period shall be each consecutive period of three (3) months during the relevant Call-Off Term in respect of which Ofgem publishes reports on energy company performance in respect of complaints

received (and any Service Default and/or TPR Performance Default shall be assessed by reference to the data published by Ofgem as set out in the Service Level Table);

- (d) Service Level 2.12 (*Customer Service*), the applicable Service Level Reporting Period shall be determined by reference to the time period covered by the annual “Which?” magazine energy company satisfaction survey (and any Service Default and/or TPR Performance Default shall be assessed by reference to the score achieved in such survey as set out in the Service Level Table); and
- (e) Service Level 8.1 (*Pricing*), the applicable Service Level Reporting Period shall be determined in accordance with **paragraph 3.2A**;

“Service Level Table”

means the table set out in **Appendix 1** to this **Schedule 10**;

“Supply Account”

means the account in the name of a relevant End Consumer which relates to the supply of gas and/or electricity to that End Consumer by the Service Provider pursuant to the terms of the EfLSCo Services Call-Off Contract;

“TPR Amount”

has the meaning given to it in **paragraph 4.2(e)**;

“TPR Retention Threshold Amount”

has the meaning given to it in **paragraph 4.2(f)**

“TPR Value”

has the meaning given to it in **paragraph 3.7(h)**;

“TPR Performance Default”

means performance by the Service Provider in a Service Level Reporting

Period which falls below the relevant TPR Performance Level (if applicable) for a particular Service Level; and

“TPR Performance Level

has the meaning given to it in **paragraph 3.7(g)**.

2. Service Level Monitoring

- 2.1 This Schedule sets out the Service Levels and associated Acceptable Service Levels and TPR Performance Levels which are applicable to the EfLSCo Services to be provided under any relevant EfLSCo Services Call-Off Contract.
- 2.2 The Service Provider shall implement systems to monitor the performance of the EfLSCo Services to ensure that such services adhere to the requirements of this Agreement and any relevant EfLSCo Services Call-Off Contract.
- 2.3 The Service Provider’s performance in meeting the Acceptable Service Levels in respect of each Service Level shall be reported, monitored and assessed each Service Level Reporting Period in accordance with the Specification and this **Schedule 10**.

3. Service Level Reporting

[redacted]

4. SERVICE FAILURES

[redacted]

Appendix 1 – Service Level Table

[redacted]

SCHEDULE 11

Information Security

The standards as per <https://www.gov.uk/government/publications/the-minimum-cyber-security-standard> to the extent they apply to third party suppliers, including holding a Cyber Essentials certificate.

SCHEDULE 12

Security

Appendix A - Form of Parent Company Guarantee

(Letterhead of Parent Company)

To: *[insert name and address of the Relevant Authority]*

Date:

Dear Sir/Madam

We, *[insert name of Guarantor]* ("**the Guarantor**"), understand that you have agreed to enter into a Call-Off Contract No *[insert Contract number]* ("**the Contract**") with Octopus Energy Limited ("**the Service Provider**") in respect of *[briefly describe nature of Contract]* on the condition that the obligations of the Service Provider under the Contract be guaranteed by a Guarantor.

We are *[recite the relationship of the Guarantor to the Service Provider]*, and we warrant to you that this description of our relationship with/to the Service Provider is true and accurate in all material respects.

WE HEREBY AGREE AND UNDERTAKE with you as follows:-

- (a) We unconditionally guarantee on demand:
 - (i) the proper, complete and punctual performance by the Service Provider of any and all its obligations, undertakings and responsibilities under the Contract and we shall forthwith make good any default thereunder on the part of the Service Provider; and
 - (ii) the due and punctual payment by the Service Provider of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due and payable to you under or arising out of the Contract in accordance with its terms or otherwise by reason or in consequence of any such default on the part of the Service Provider,when and as the same shall become due for performance or payment (as the case may be).
- (b) As a separate and primary obligation we unconditionally guarantee to you that in the case of default by the Service Provider in making any of the payments or in performing any of the obligations, undertakings and responsibilities set out in **paragraph (a)** above, we shall on demand pay all sums and observe and perform any or all of such obligations, undertakings and responsibilities as if we instead of the Service Provider were the primary obligor. Any payment under this Guarantee shall be made by us in pounds sterling or in any currency which may from time to time replace pounds sterling.

- (c) This Guarantee shall be a continuing security and shall remain in full force and effect until all obligations to be performed or observed by the Service Provider under or arising out of the Contract have been duly and completely performed and observed and the Service Provider shall have ceased to be under any actual or contingent liability to you thereunder.
- (d) Any demand or other notice made by you under this Guarantee shall be duly made if sent by first class recorded delivery post to us.
- (e) You shall be entitled to enforce this Guarantee without first notifying the Service Provider of any default or taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the Service Provider or any other person or taking any action to enforce any other security, bond or guarantee held by you or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Service Provider or any person.
- (f) If any sum due or purportedly due under this Guarantee is not or would not be recoverable under a guarantee for any reason whatsoever, whether or not known to you, such sum shall still be recoverable from us as a sole principal debtor upon the terms of this Guarantee.

PROVIDED THAT:

- 1. We shall be under no greater obligation or greater liability under this Guarantee than we would have been under the Contract if we had been named as the Service Provider in the Contract.
- 2. Our obligations hereunder are those of primary obligor and shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Service Provider (including, without limitation, any increase in the Service Provider's obligations under the Contract or any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract) or any novation of the Contract (in whole or in part); or
 - (b) any time being given to the Service Provider or any other indulgence, waiver, concession, forbearance or forgiveness to the Service Provider (whether express or by conduct) or any other thing done, omitted or neglected to be done under the Contract; or
 - (c) any other bond, security or guarantee now or hereafter held by you for all or any part of the obligations of the Service Provider under the Contract; or
 - (d) the release or waiver of any such bond, security or guarantee referred to in **paragraph 2(c)** above; or
 - (e) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Service Provider; or

- (f) the winding-up, bankruptcy, administration, receivership or insolvency of the Service Provider; or
 - (g) any legal limitation, disability or incapacity relating to the Service Provider or discharge by operation of law or any change in the constitution, name or style of the Service Provider or any other person (whether or not known to you); or
 - (h) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Service Provider under the Contract; or
 - (i) the termination or partial termination of the Contract or the cessation of any Services for any reason or the making of any variation to the Services in accordance with the Contract; or
 - (j) any claim or enforcement of payment from the Service Provider or any other person; or
 - (k) any act or omission which would not have discharged or affected the liability of a sole principal debtor instead of a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish our liability under this Guarantee.
3. So long as we remain under any actual or contingent liability under this Guarantee, we shall not exercise any right of subrogation or any other right or remedy which we may have against the Service Provider in respect of any payment made by or sum recovered from us pursuant to or in connection with this Guarantee or prove in any liquidation of the Service Provider in competition with you for any sums or liabilities owing or incurred to us by the Service Provider in respect of any such payment by or recovery from us or take or hold any security from the Service Provider in respect of any liability of ours hereunder. We shall hold any monies recovered or security taken or held in breach of this provision in trust for you.
 4. Except where prevented from doing so by law, we waive and agree not to enforce or claim the benefit of any and all rights we have or may from time to time have as guarantor under any applicable law which is or may be inconsistent with any of the provision of this Guarantee.
 5. This Guarantee is irrevocable.
 6. This Guarantee, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Guarantee except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.

[For non-UK resident Guarantors only:

7. For the purposes of this Guarantee we hereby appoint of [*to be a London address*] to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us, and we hereby irrevocably agree not to revoke or terminate such appointment.]
8. You will be entitled to assign the benefit of this Guarantee in whole or in part but we may not assign the benefit and/or delegate the burden of this Guarantee in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
9. If any provision (in whole or in part) of this Guarantee is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Guarantee and shall be ineffective, without, so far as is possible, modifying any other provision of this Guarantee and this shall not affect any other provisions of this Guarantee which shall remain in full force and effect.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by) _____
[<i>Parent Company</i>]) Director
acting by a Director and the) _____
Secretary or by two Directors) Director/Secretary

OR

The common seal of) _____
[<i>Parent Company</i>]) Director
was affixed in the presence of:) _____
) Director/Secretary

Appendix B - Form of Legal Opinion for use with Guarantee

To: [insert name and address of the Relevant Authority]

Date:

Dear Sir/Madam

I am counsel to and I am giving this legal opinion in connection with the making by of the Guarantee (as defined below) in your favour.

1. I have examined the Deed of Guarantee (the “**Guarantee**”) dated made between (the “**Guarantor**”) and [insert name of TfL company] (“**the Authority**”). Terms defined in or for the purpose of the Guarantee have the same meanings in this opinion.
2. Having considered the Guarantee and examined any other document, resolution or certificate I deemed necessary to enable me to give the opinion contained herein and having regard to all applicable laws of I am pleased to advise that in my opinion:
 - (a) the Guarantor was incorporated in on as a [company with limited liability] and validly exists under the laws of as a separate legal entity possessing the capacity to sue or be sued in its own name. To the best of my knowledge having carried out [DESCRIBE APPLICABLE SEARCHES] today, no steps have been, or are being, taken to appoint a receiver or liquidator (or similar encumbrancer or officer) over, or to wind up, the Guarantor;
 - (b) the Guarantor has the necessary power and authority, and all necessary corporate and other action (including, without limitation, approvals and consents of members, stockholders, debenture holders or governmental or other regulatory authorities) has been taken to enable the Guarantor to enter into the Guarantee and to perform the obligations of the Guarantor and the transactions contemplated thereby;
 - (c) the entry into and performance of the Guarantee and the transactions contemplated thereby will not cause:
 - (i) any limit on the Guarantor or its directors (whether imposed by the documents constituting the Guarantor, statute, regulation, agreement or otherwise) to be exceeded;
 - (ii) any law or order or constitutional document in respect of the Guarantor to be contravened; or
 - (iii) any default under, or give rise to an obligation to create or impose any security interest of any nature whatsoever pursuant to, any agreement or other instrument or any

judgment or other requirement known to us after due enquiry to which the Guarantor is a party or by which it or any of its assets is bound. Further, no event has occurred that, with the giving of notice, lapse of time, determination of materiality or other conditions might constitute a default under or in respect of such agreement, instrument or judgment;

- (d) the Guarantee has been properly signed and delivered on behalf of the Guarantor and the obligations on the part of the Guarantor contained in the Guarantee, assuming them to be valid and binding according to English law by which they are expressed to be governed, are valid, legally binding on and enforceable against the Guarantor under the laws of and in the courts of
- (e) the signature, delivery and performance of the Guarantee by the Guarantor constitute private and commercial acts by it rather than public or governmental acts;
- (f) all authorisations, approvals, consents, licences, exemptions, filings, registrations, notarisations and other requirements of governmental, judicial and public bodies and authorities of or in [COUNTRY] required or advisable in connection with the entry into, performance, validity and enforceability of the Guarantee and the transactions contemplated thereby have been obtained or effected and are in full force and effect;
- (g) the obligations of the Guarantor under the Guarantee rank at least equally and rateably (pari passu) in point of priority and security with any and all other unsecured obligations of the Guarantor;
- (h) all amounts payable by the Guarantor under the Guarantee may be made free and clear of, and without deduction for, or on account of, any taxes imposed, assessed or levied by [COUNTRY] or any authority of or in [COUNTRY];
- (i) there are no registration, stamp or other taxes or duties of any kind payable in in connection with the Guarantor including its signature, performance or enforcement by legal proceedings;
- (j) the Authority will not violate any law or regulation in nor become liable to tax in by reason of entering into the Guarantee or performing its obligations thereunder. It is not necessary to establish a place of business in in order to enforce any provisions of the Guarantee;
- (k) the choice of English law to govern the Guarantee will be upheld as a valid choice of law in any action in respect of the Guarantee in the courts;

- (l) the consent to the jurisdiction by the Guarantor contained in the Guarantee is valid and binding on the Guarantor and not subject to revocation;
 - (m) any judgment obtained in the courts of England against the Guarantor would be recognised and accepted by the courts without re-trial or re-examination of the merits of the case;
 - (n) neither the Guarantor nor any of its assets enjoys any right or immunity from set-off, suit or execution in respect of its obligations under the Guarantee; and
 - (o) so far as I am aware after due enquiry, no litigation, arbitration or administrative proceedings are at present current, pending or threatened that might, if adversely determined, have a material effect on the business, assets or financial condition of the Guarantor.
3. I do not purport to be expert on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of and accordingly express no legal opinion herein based upon any law other than the laws of

Signed

Appendix C - Form of Performance Bond

(Letterhead of Bank)

To: [insert name and address of the Relevant Authority]

Date:

Dear Sir/Madam

IN CONSIDERATION of you entering into a Call-Off Contract No [] (“**the Contract**”) with Octopus Energy Limited (“**the Service Provider**”) in respect of [insert brief description of scope of contract] we [insert name of Bank] (“**the Bank**”) hereby undertake upon first demand in writing made by you upon us from time to time or at any time to pay on each occasion the sum demanded by you on the terms and conditions set out in this letter (“**this Bond**”).

PROVIDED THAT:

1. This Bond shall come into force on the date of this Bond.
2. Any demand under this Bond shall be substantially in the form of **Annex 1** to this Bond, and as between you and us the facts set out in that demand shall (a) be deemed to be true and (b) shall be accepted by us as conclusive evidence for the purposes of this Bond that the amount claimed in the demand is due to you under this Bond.
3. Any demand in the form of **Annex 1** shall be accompanied by a copy of a letter from you sent to the Service Provider by first class recorded post fourteen (14) or more days before the date of the demand, substantially in the form of **Annex 2** of this Bond.
4. Our liability under this Bond shall be limited so as not to exceed the aggregate sum of [redacted] (£[redacted]) and we shall have no liability under this Bond in respect of any demand dated after the expiry date of the Contract.
5. Our obligations under this Bond shall remain in full force and effect and shall not be terminated, reduced, discharged or otherwise affected by:
 - (a) any alteration or variation to the terms of the Contract made by agreement between you and the Service Provider including, without limitation, any alteration in the extent or nature or sequence or method or timing of the Services to be carried out under the Contract or any novation of the Contract (in whole or in part); or
 - (b) any defence, counterclaim, withholding, set off or other deduction available to the Service Provider under the Contract or otherwise; or
 - (c) any time being given to the Service Provider or any other indulgence, waiver, concession, forbearance or forgiveness to the Service Provider whether express or by conduct or any other thing done, omitted or neglected to be done under the Contract; or

- (d) any other bond, security or guarantee now or subsequently held by you for all or any part of the obligations of the Service Provider under the Contract; or
 - (e) the release or waiver of any such bond, security or guarantee referred to in **paragraph 4(d)** above; or
 - (f) any amalgamation, reconstruction or dissolution including, without limitation, winding-up of the Service Provider; or
 - (g) the termination of the Contract for any reason; or
 - (h) any other event which would or might operate to discharge a guarantor or any act or omission, matter or thing which, but for this provision, might operate to exonerate, discharge, reduce or extinguish your liability under this Bond; or
 - (i) the winding-up, bankruptcy, administration, receivership or insolvency of the Service Provider; or
 - (j) any legal limitation, disability, incapacity, discharge by operation of law, change in the constitution, name or style of the Service Provider or any other person relating to the Service Provider (whether or not known to you); or
 - (k) any total or partial invalidity in, irregularity affecting or unenforceability of any of the obligations of the Service Provider.
6. Any payment under this Bond shall be made by us in pounds sterling.
 7. This Bond is irrevocable.
 8. Terms defined in the Contract and not otherwise defined in this Bond shall have the same meaning in this Bond.
 9. This Bond, executed and delivered as a deed, is governed by and shall be construed in accordance with the law of England and Wales. The courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Bond except that you have the right in your absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which we are incorporated or in which any of our assets may be situated. You and we agree to submit to that jurisdiction.
 10. You will be entitled to assign the benefit of this Bond in whole or in part but we may not assign the benefit and/or delegate the burden of this Bond in whole or in part or enter into any transaction which would result in any of those benefits and/or burdens passing to another person.
 11. If any provision (in whole or in part) of this Bond is found by any court, tribunal, administrative body or authority of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Bond and shall be ineffective, without, so far

as is possible, modifying any other provision of this Bond and this shall not affect any other provisions of this Bond which shall remain in full force and effect.

12. Any demand or other notice made by you under this Bond shall be duly made if sent by first class recorded delivery post to us.

[For non-UK resident banks with only a branch or office in the UK :

10. For the purposes of this Bond we hereby appoint of [to be a London address] to accept service of process on our behalf, and service on the said at the said address shall be deemed to be good service on us; and we hereby irrevocably agree not to revoke or terminate such appointment.

Executed as a Deed and delivered the day and year written above.

Executed as a Deed by)	_____
[Bank])	Director
acting by a Director and the)	
Secretary or by two Directors)	_____
		Director/Secretary

The common seal of [Bank])	_____
was affixed to this Deed in)	Director
the presence of)	
)	_____
		Director/Secretary

Annex 1

Form of Demand from the Relevant Authority to [the bank]

Dear Sirs

Contract No [] in respect of services for []

We refer to the Bond given by you to us dated []. We enclose a copy of a letter from us to Octopus Energy Limited ("**the Service Provider**") which was sent to the Service Provider by first class recorded post on [] which is more than fourteen (14) days before the date of this demand.

The Service Provider has not taken steps which we consider adequate to remedy the breaches.

The expiry date under the Contract has not been reached.

We hereby demand from you the sum of [*redacted*] (£[*redacted*]) under your Bond. Please make payment by your cheque in sterling payable to [*insert name of Authority*].

Yours faithfully

On behalf of [insert name of Relevant Authority]

Annex 2

Form of letter from the Relevant Authority to the Service Provider

To be sent by first class Recorded Delivery post

Dear Sirs

Call-Off Contract No [] in respect of services for []

As explained in [previous letters to you/our letter dated to you] you are in breach of your obligations under Call-Off Contract No. [], and you have neither remedied nor implemented sufficient steps to remedy, those breaches.

This letter therefore notifies you that unless within fourteen (14) days from the date of this letter you take steps which we consider adequate to remedy the breaches we shall be entitled without further notice to you to call for payment under the Bond given on your behalf by [name of bank] dated [DATE].

Yours faithfully

On behalf of [insert name of Relevant Authority]

Appendix D - Form of Escrow Agreement and Terms of Cash on Deposit

From:

[ADDRESS 1]
[ADDRESS 2]
[ADDRESS 3]
[ADDRESS 4]

(the “**Authority**”)

and -

Octopus Energy Limited
[6th Floor, 33 Holburn
London
EC1N 2HT⁴]

(the “**Service Provider**”)

To:

[NAME OF ESCROW AGENT]
[ADDRESS 1]
[ADDRESS 2]
[ADDRESS 3]
[ADDRESS 4]

(“**you**”)

2019

Dear Sirs,

Escrow account arrangements for [description]

We refer to the [description of contract] between the Authority and the Service Provider (together “**we**” or “**us**”) dated _____ (the “**Agreement**”).

Capitalised terms used and not defined in this letter have the same meaning as in the Agreement.

This is the escrow agreement (the “**Escrow Agreement**”) referred to in the Agreement and sets out the terms on which you ([Name of Escrow Agent]) will act as our escrow agent in relation to the Escrow Account (as defined below).

1. ESCROW ACCOUNT

- 1.1 In accordance with the Agreement, we irrevocably, unconditionally and jointly authorise and instruct you to open immediately a segregated interest-bearing

⁴ To be updated with relevant registered office, if subsequently changed.

sterling deposit account with [*Bank*] (the “**Bank**”) in your name to be known as the “client account re. Energy for Londoners” and to operate such account on the terms and conditions of this letter (the “**Escrow Account**”).

- 1.2 The sum of [*redacted*] (£[*redacted*]), being the amount the Service Provider is required to put on deposit as security under the Agreement (the “**Escrow Amount**”), will [today] be credited by the Service Provider to the Escrow Account in accordance with the Agreement.

2. INSTRUCTIONS

- 2.1 We irrevocably, unconditionally and jointly authorise and instruct you to:

2.1.1 pay, from the Escrow Account to the Authority, upon first demand in writing made by the Authority from time to time pursuant to **clause 3**, the sum demanded by the Authority on the terms and conditions set out in this letter; and

2.1.2 pay (if applicable), from the Escrow Account to the Service Provider, on each anniversary of this Escrow Agreement, provided you have first obtained the Authority’s approval (not to be unreasonably withheld or delayed), but without the need for further approval or notice, such amount (if any) as is required to reduce the Escrow Amount to:

- (a) [*redacted*] pounds sterling (£[*redacted*]), in respect of the first (1st) anniversary;
- (b) [*redacted*] pounds sterling (£[*redacted*]), in respect of the second (2nd) anniversary;
- (c) [*redacted*] pounds sterling (£[*redacted*]), in respect of the third (3rd) anniversary; and
- (d) [*redacted*] pounds sterling (£[*redacted*]), in respect of the fourth (4th) anniversary,

provided that if the Authority has made a demand under **clause 2.1.1**, and that demand notice has been received by you prior to the relevant anniversary but not yet paid, such demand and payment will be satisfied before any payment under this **clause 2.1.2** is calculated and (if applicable) paid; and

2.1.3 pay, from the Escrow Account to the Service Provider, the remaining balance of the Escrow Account (with such interest as has accrued on such amounts and net of any deductions to be made pursuant to **clause 2.2**) upon first demand in writing made by the Authority pursuant to **clause 3**.

- 2.2 You must notify each of us of any payments made pursuant to **clause 2.1**, which notice will include details of the balance of the Escrow Account immediately following such payment.

- 2.3 We also irrevocably and jointly authorise and instruct you to:
- 2.3.1 deduct from the monies standing to the credit of the Escrow Account and pay any reasonable charges, fees, costs and expenses levied by the Bank arising out of or in connection with this letter or the opening, operation and/or closing of the Escrow Account (including the costs of any transfer of funds to or from the Escrow Account);
 - 2.3.2 withdraw from the monies standing to the credit of the Escrow Account a sum equal to any tax, together with any penalties and interest related to that tax, or any withholding in respect of tax, on the interest earned on monies standing to the credit of the Escrow Account and pay such sum to the relevant tax authority;
 - 2.3.3 make any other reasonable deduction, payment, withdrawal or withholding (whether on account of tax, other liabilities or otherwise arising out of or in connection with this letter or the opening, operation and/or closing of the Escrow Account) from the monies standing to the credit of the Escrow Account; and
 - 2.3.4 do anything else, reasonably required by any law, regulation or court order in connection with this letter or the opening, operation and/or closing of the Escrow Account (or, if so required by any law, regulation or court order, refrain from making any payment or doing anything else, otherwise required by this letter).
- 2.4 The Service Provider undertakes to the Contracting Authority to, as soon as possible following any deduction or withdrawal referred to in **clause 2.3**, pay an amount into the Escrow Account equal to the amount of such deduction or withdrawal.
- 2.5 For the purposes of this letter, any notice or determination given by the Bank of the amount of interest paid on any sum in the Escrow Account will be conclusive and final and binding on the parties for all purposes.

3. **FORM OF INSTRUCTION**

- 3.1 Any instruction given by the Authority pursuant to **clause 2.1** must be given by letter, fax or email in the form, with such typographic variants as the Authority in its sole discretion considers immaterial, set out in **Annexure 1** (in the case of an instruction pursuant to **clause 2.1.1**) or **Annexure 2** (in the case of an instruction pursuant to **clause 2.1.3**) and be signed by an authorised signatory of the Authority, in each case with a copy of such instruction to be sent by email to [TBC].
- 3.2 You may rely without enquiry on any instruction (including a fax) which appears on its face to be signed on behalf of the Authority by any one of the authorised signatories of the Authority whose names and specimen signatures are set out in **Annexure 2**. You need not enquire as to whether any amount which you are instructed to pay is properly payable under the terms of the Agreement.

- 3.3 The Authority may from time to time make any change to the authorised signatories specified by it in **Annexure 3** by notice to you, signed by each of the current authorised signatories of the Authority, except that in the case of a removal of an authorised signatory, the notice need not be signed by the signatory to be removed. In the case of an addition to the authorised signatories, the notice will contain the name and specimen of the signature of the additional signatory or signatories.

4. **ALTERNATIVE ARRANGEMENTS**

- 4.1 If you no longer wish to hold the Escrow Account, you may give each of us 30 days' written notice. On receipt of that notice we will promptly make alternative arrangements for the account. You will continue to hold and operate the Escrow Account on the terms of this letter until those alternative arrangements have been put in place.

5. **LIMITATION OF LIABILITY**

- 5.1 Your obligations under this letter are limited to those expressly set out in it.
- 5.2 You are not required to make any payment from the Escrow Account if it would result in the account being in debit.
- 5.3 Neither you nor any of your respective members, partners, directors, employees, representatives and agents (as the case may be) will be responsible or liable for any failure to maximise the amount of interest or other amounts earned on all or part of the monies standing to the credit of the Escrow Account or for the payment of (or for checking the amount of) any charges, fees, costs or expenses levied by the Bank or any tax or other liabilities.
- 5.4 Neither you, nor your members, partners, directors, employees, representatives or agents will be responsible or liable for:
- 5.4.1 any loss which either of us may suffer as a result of any default on the part of the Bank;
 - 5.4.2 any loss or damage suffered by any person as a result of the insolvency, bankruptcy, winding up, administration, reorganisation or any other event relating to the Bank or any third party;
 - 5.4.3 any obligation with respect to funds not received into the Escrow Account, whether or not due or payable under the Agreement, or for any funds lost through the default or failure of the Bank;
 - 5.4.4 in respect of the forgery or invalidity of, or the lack of due authority with respect to, or the falsity of any statement contained in, any written notice or instruction given or purporting to be given to you under this letter or the Agreement if you believe in good faith (with or without having made enquiries) that the notice or instruction is genuine and signed by or on behalf of the proper person(s);

5.4.5 for any act done or omitted to be done in reliance by you in good faith; nor

5.4.6 without limiting this **clause 5**, if you incorrectly determine that a matter has occurred or that sufficient evidence of any matter has been furnished to either of you, that a provision of this letter has been complied with or that a particular act or course of conduct is necessary or desirable, provided only that you have not been guilty of fraud in making that determination.

5.5 You may take steps to satisfy yourself that any receipt or payment made or to be made into or out of the Escrow Account complies with all applicable money laundering and other regulations and laws (including being satisfied as to the source of funding of the Escrow Account) and your policies on anti-money laundering. You will not be responsible or liable for any delay or failure in executing any instructions or requirement to act under this letter until you are so satisfied.

5.6 You will for the purposes of your duties under this letter be entitled to assume without enquiry that this letter and the Agreement are valid and binding in accordance with their terms.

6. **INDEMNITY**

In consideration of you operating the Escrow Account in accordance with the provisions of this letter, we jointly and severally agree and undertake to indemnify you and your respective members, partners, directors, employees, representatives and agents (as the case may be) (the “**Indemnified Parties**”) and to hold you and your Indemnified Parties both harmless and indemnified on demand against any and all actions, proceedings, claims, demands, losses, costs, expenses, charges and other liabilities (including, without limitation, the Bank’s charges incurred in opening and/or operating the Escrow Account and any liability to any form of tax) (together the “**Liabilities**”) which you or the Indemnified Parties may suffer or incur either directly or indirectly arising out of or in connection with this letter and/or the opening, operation and/or closing of the Escrow Account, except to the extent that the Liabilities result directly from your own negligence, fraud or misconduct (or those of any of your Indemnified Parties (as the case may be)).

7. **NOTICES**

7.1 Subject to **clause 3**, any notice, consent or other communication given under this letter must be in writing, and in English, and signed by or on behalf of the party giving it, and be sent by hand, or by pre-paid recorded or special delivery post (or pre-paid international recorded airmail if sent internationally) or by fax as follows:

7.1.1 **Authority**

For the attention of: [TBC]

Address: [TBC]

[Fax: [TBC]]

[Email: [TBC]]

with a copy (which will not constitute notice) to the Service Provider as set out below.

7.1.2 **Service Provider**

For the attention of: [TBC]

Address: [TBC]

[Fax: [TBC]]

[Email: [TBC]]

with a copy (which will not constitute notice) to Authority as set out above.

7.1.3 **Escrow Agent**

For the attention of: [TBC]

Address: [TBC]

[Fax: [TBC]]

[Email: [TBC]]

with a copy (which will not constitute notice) to the Service Provider or Authority (as applicable).

- 7.2 Any of the parties to this Escrow Agreement may from time to time notify the others of any other or alternative person, address, fax number or email address for the receipt of notices or copy notices. The change will take effect five (5) Business Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.
- 7.3 Where the Authority specifies in its address details in **clause 7.1** (as such details may be updated from time to time in accordance with **clause 7.2**) that any two (2) or more persons must be sent emails, any notice, demand or communication given by email must be sent to all such persons together in order to be effective for the purposes of the relevant notice, demand or communication.
- 7.4 All notices to the Authority must also be copied by the Service Provider or the Escrow Agent (as applicable) for the attention of the Authority's company secretary, at the Authority's registered address. Such copy shall be sent by post on the same date as the relevant notice is sent, and it is acknowledged

that such copy is for the company secretary's information only and the timing of despatch or receipt of such copy will not affect the timing (or deemed timing) of despatch or receipt of the relevant notice.

8. GENERAL

- 8.1 This Escrow Agreement is binding on and will enure for the benefit of, and be enforceable by, the respective successors and assigns of the parties to it. However, neither of us will assign, transfer or create security over, all or any of our rights or obligations under this Escrow Agreement without the prior written consent of all of the other parties to this Escrow Agreement. Any purported assignment, transfer or security without that consent will be of no effect.
- 8.2 A person who is not a party to this Escrow Agreement will have no right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce or benefit from any term of this Escrow Agreement except for each of you (and in respect of the indemnity in **clause 6** and the provisions in **clauses 5.3 and 5.4** each of your respective members, partners, directors, employees, representatives and agents (as the case may be)) who will each be entitled to enforce the terms of this Escrow Agreement. The consent of any person who is not a party to this Escrow Agreement is not required to amend, rescind or terminate this Escrow Agreement.
- 8.3 We declare that the instructions and authorisations given in this Escrow Agreement are irrevocable.
- 8.4 This Escrow Agreement may be executed in any number of counterparts, each of which will constitute an original, but which will together constitute one agreement.
- 8.5 This Escrow Agreement is and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes and claims) will be governed by, construed and enforced in accordance with English law. Each of the parties irrevocably agrees that the English courts will have exclusive jurisdiction to settle any disputes or claims which may arise out of or in connection with this Escrow Agreement or its subject matter (including non-contractual disputes or claims).

Annexure 1

To: [Name of Escrow Agent]
[Address 1]
[Address 2]
[Address 3]
[Address 4]
("you")

Attention: [TBC] ([Email – TBC])

Dated: [YEAR]

Dear Sirs

Escrow account letter agreement from Authority and Service Provider to you dated [●] (the "Escrow Agreement")

You established an Escrow Account in your name pursuant to the Escrow Agreement in connection with [*description of contract*] between [*Authority name*] and Octopus Energy Limited dated _____ (the "**Agreement**").

Capitalised terms used and not defined in this letter have the meanings given by the Escrow Agreement or the Agreement.

We hereby irrevocably instruct you to authorise the Bank to transfer from the Escrow Account on or as soon as practicable after [DATE] the sum of [*amount in words*] (£[*amount in numbers*]) to the Authority.

Yours faithfully,

.....

Duly authorised for and on behalf of
[*Authority name*]

Annexure 2

To: [Name of Escrow Agent]
[Address 1]
[Address 2]
[Address 3]
[Address 4]
("you")

Attention: [TBC] ([Email – TBC])

Dated: [YEAR]

Dear Sirs

Escrow account letter agreement from Authority and Service Provider to you dated [•] (the "Escrow Agreement")

You established an Escrow Account in your name pursuant to the Escrow Agreement in connection with [*description of contract*] between [*Authority name*] and Octopus Energy Limited dated _____ (the "**Agreement**").

Capitalised terms used and not defined in this letter have the meanings given by the Escrow Agreement or the Agreement.

The requirement for the escrow arrangements under the Agreement has come to an end, so we hereby irrevocably instruct you to authorise the Bank to transfer to the Service Provider from the Escrow Account on or as soon as practicable after [DATE] such sum as is required to close the Escrow Account and bring its balance to zero pounds (£0) (including all interest accrued on such amounts less any bank charges and any other permitted deductions provided for in the Escrow Agreement).

Yours faithfully,

.....
Duly authorised for and on behalf of
[Authority name]

Annexure 3 to the Escrow Agreement

Authority signatories

..... Name Office Signature
---------------	-----------------	--------------------

..... Name Office Signature
---------------	-----------------	--------------------

..... Name Office Signature
---------------	-----------------	--------------------

[Signature page follows]

Signature Page

Please confirm that you agree to accept our instructions to act on the terms of this letter by signing and returning the enclosed copy of this letter.

Yours faithfully,

.....
for and on behalf of **[Authority name]**

.....
for and on behalf of **Octopus Energy Limited**

.....
[Name]

.....
[Name]

We confirm that we accept the instructions set out in this letter:

.....

for and on behalf of **[Escrow Agent]**

SCHEDULE 13

Tender response

Part 1 EfLSCo Services

1. Competitively price electricity and gas tariffs

Question 1b – Tariff Development

Please confirm that the process that the Service Provider and the Contracting Authority would go through to successfully develop new tariffs for targeted markets, or additional 'common' tariffs (e.g. longer-term fixes) will address paragraphs 2.2.5, 2.2.13 and 2.2.14 of Part 1 of the Specification.

Response:

The Service Provider confirms that during any tariff development for the EfLSCo Services Call-Off Contract, the Service Provider will share the full cost stack and values set out in paragraph 2.2.5 in Part 1 of the Specification.

The Service Provider also confirms that it will agree new tariffs in good faith with the Contracting Authority and that the Service Provider will make available the standard offering of a one-year fixed tariff set out in paragraph 2.2.14.1 of Part 1 of the Specification. This standard tariff will be a 100% green electricity tariff negating the need for an alternative green tariff listed in paragraph 2.2.14.2 of Part 1 of the Specification.

The Service Provider would be delighted to discuss with the Contracting Authority opportunities to develop alternative product constructs that are available to the Service Provider, for example the option to add a carbon off-set for gas, tracker and time of use tariffs. The Service Provider would only make these tariffs available under the EfLSCo Services Call-Off Contract with the prior approval of the Contracting Authority. The Service Provider confirms ability to meet requirements in paragraph 2.2.14.3 of Part 1 of the Specification. The Service Provider would also be happy to discuss any alternative products that the Contracting Authority may wish to offer under the EfLSCo Services Call-Off Contract.

Question 1c – Exit Fees

Please confirm no exit fees will be applied to tariffs where the price is fixed for 19 months or less.

Response:

The Service Provider do not have exit fees on any of the Service Provider tariffs, regardless of their length of fix and do not intend on changing the Service Provider approach for the EfLSCo Services Call-Off Contract.

Question 1d – Trading

Please detail the trading and hedging policies the Service Provider use to ensure that the Service Provider cost base is stable, the Service Provider prices are as cheap as possible, and risk is minimised. Please detail the logic behind the Service Provider approach and under what circumstances would the Service Provider change the Service Provider policy.

Response:

[This response has been redacted]

Question 1e – Fuel Mix

Please confirm the percentage of the electricity the Service Provider will be sourcing for the EfLSCo Services Call-Off Contract which will be from renewable sources for the full terms of the EfLSCo Services Call-Off Contract (as demonstrated in a reasonable and fair manner from the Service Provider overall fuel mix report to Ofgem), as per paragraph 2.2.12 of Part 1 of the Specification .

Response:

The Service Provider's fuel mix disclosure pursuant to The Electricity (Fuel Mix Disclosure) Regulations 2005 for the last year, and for this current year will be 100% renewable electricity and would be the same for any tariff offered under the EfLSCo Services Call-Off Contract.

2 Customer Service and Branding

Question 2a – Customer Acquisition

Please describe how the Service Provider will support the successful acquisition of customers, including detailing the Service Provider switching portal (with confirmation that Debt Assignment Protocol (“**DAP**”) will be supported - see 2b), structure of sales teams, marketing support and any criteria prospective customers will need to pass to be able to switch.

The Service Provider have described what the Service Provider consider to be the Service Provider role in customer acquisition in Part 1 of the Specification (most thoroughly in paragraph 2.2.23). Please include in the Service Provider response the Service Provider proposed contribution and role in relation to this aspect of the EfLSCo Services Call-Off Contract.

Response:

The Service Provider has grown prodigiously – with over 500,000 customers acquired in the last two years. The Service Provider's award-winning in-house customer experience and marketing team is led by the Service Provider's marketing director and Customer experience director. The team includes *[this part of the response has been redacted]* personnel which enables the Service Provider to *[this part of the response has been redacted]* delivery high quality campaigns.

The team has tried and tested experience at creating joined up, cross-channel acquisition campaigns that effectively raise awareness across sectors and customer groups.

The Service Provider would work together with any awareness raising activity undertaken by the Contracting Authority in respect of the EfLSCo Services Call-Off Contract but as a digitally native business, have particular expertise online, targeting digital acquisition marketing at key consumer groups, (*[this part of the response has been redacted]* or via another filter).

[this part of the response has been redacted].

The Service Provider's online sign up journey portal (supported uniquely by the Service Provider's innovative and proprietary platform and easily adapted for the Contracting Authority needs) has been built specifically to guide and reassure customers that taking control of their energy supply is simple and fool proof. Customers can switch *[this part of the response has been redacted]* to outline the EfLSCo Services Call-Off Contract rates and show potential savings, then collecting address, contact and bank details, and preferred supply start date. From that point on the Service Provider deals with their old supplier, so they don't have to, sending regular clear information by email to let them know what is going on.

Where a customer selects a pre-payment meter, the Service Provider will support the Debt Assignment Protocol and ensure that this capability is clearly marked within the sales portal.

[this part of the response has been redacted].

During sign-up, the Service Provider offers customers the opportunity to join the Priority Services Register ("PSR"). If the customer selects this option, the Service Provider will email them once the switch is complete with a link to join the register and tell the Service Provider what extra help is required. If customers have selected to join the PSR, but do not follow up on the link, the Service Provider will proactively follow up with the customer to ensure the Service Provider has signed them up it and understood their needs.

Part of the EfLSCo Services Call-Off Contract End Consumer service team would be an inbound telephony function from the Service Provider's highly trained team, whereby if a customer calls up to switch the agent can sign them up using the portal over the phone. The Service Provider will also notify the customer if their circumstances dictate that they may be eligible to benefit from any scheme available

through the Contracting Authority via both the online portal and via the inbound telesales function.

The Service Provider also has a multi-channel approach to acquisition made up of *[this part of the response has been redacted]*. The Service Provider's unique technology ensures compliance by *[this part of the response has been redacted]* – and has been positively assessed by Ofgem. *[this part of the response has been redacted]*.

Question 2b – Debt Assignment Protocol (DAP)

Please confirm that the Service Provider will comply with DAP process, in line with paragraph 2.2.30 of Part 1 of the Specification . Please confirm that access to DAP services will be signposted to potential customers with assistance through the registration process.

Response:

Consistent with the Service Provider's licence obligations and paragraph 2.2.30 of Part 1 of the Specification, the Service Provider's prepayment policy for the End Consumers will support the Debt Assignment Protocol and the Service Provider will ensure that this capability is clearly marked on the sales portal when the customer says that they have a prepayment meter during the sign-up journey. *[this part of the response has been redacted]*.

Question 2c – Complaints

The SLA governing complaint volumes is "Number of complaints will be below 1,500 per 100,000 customers".

Please describe how the Service Provider will achieve this in practice. Please also explain how the Service Provider would ensure that complaints are dealt with directly and what steps will be taken to avoid them escalating (e.g. to political representatives or consumer organisations).

Response:

Customer Experience Focus and Complaints Handling

The Service Provider has recently won most of the significant industry accolades for customer service (the only energy supplier recommended by Which? in both 2018 and 2019, including being the first company to be awarded 5 stars in every category; uSwitch Supplier of the Year 2018; top rated energy supplier by Money Saving Expert) as well as consistently sustaining a Trust Pilot score of 9.6. Nonetheless, energy switching is a complex business and things do sometimes go wrong although the Service Provider actively engineers its systems and processes to address issues

before they become detrimental to customers. The Service Provider has a customer focused approach to complaints resolution and consistently ranks in the top few energy suppliers according to Citizens Advice. In Q4 of 2019, the Service Provider's number of complaints per 100,000 customers was 151, which is well below the 1,500 per 100,000 customers minimum threshold in the tender request. When the Service Provider receives complaints, the Service Provider has clear processes for identifying, recording and handling them to ensure they are dealt with quickly, appropriately and in ways that address genuine customer detriment and deliver satisfactory outcomes to customers. These measures are listed below.

All of the Service Provider's customer communications are designed around simplicity and ease for the customer, from onboarding communications to monthly reminders and statements. Furthermore, all emails come from a reply-to email address meaning that should there be any queries or issues with any communications, customers can simply reply to the email and one of the customer service team will respond.

Organisation of Customer Service to Ensure Focus on Customer Outcomes

All the Service Provider's customer service representatives (the Service Provider calls them Energy Specialists) go through an extensive training course detailed in the response under Question 2i. This means that they are trained to be able to solve any problem from start to finish. High quality training and the Service Provider's genuine customer-centric culture, combined with the Service Provider's highly functional, proprietary customer management system means the Service Provider's customer service representatives should be able to understand and, in most cases, resolve issues straight away without the need for escalation or hand-off. *[this part of the response has been redacted]*.

[this part of the response has been redacted].

Recording of Complaints, Resolution Process and Escalation

[this part of the response has been redacted].

Once a customer has had any interaction with the Service Provider, the Service Provider sends them an email asking them how they rated the service and whether their query had been dealt with satisfactorily. *[this part of the response has been redacted]*.

On Going Account Management

All information relating to a single account is held in one place. *[this part of the response has been redacted]*. If a customer service team member notices any errors on the account, they will fix these errors at that point in time to prevent any issues and complaints that may arise from it. *[this part of the response has been redacted]*.

Subject to approval from the Contracting Authority, the Service Provider would look to implement the same measures for this contract to ensure that exemplary customer service is achieved. The Service Provider would also appoint an account and contract manager for the EfLSCo Services Call-Off Contract as soon as possible after the contract is awarded, as well as a senior officer for complaints to be escalated to as set out in paragraph 2.2.34 of Part 1 of the Specification.

Customer Feedback

Following each service interaction a customer has, they receive a customer happiness survey. They are able to indicate either 'happy', 'ambivalent' or 'sad' and then based on their answer provide additional information. All 'sad' face responses are sent to the leadership team and responded to directly by an operations manager. This ensures potential complaints or process issues are escalated and resolved proactively rather than it turning into an escalated complaint.

'Ambivalent' and 'happy' responses are also used in the Service Provider's continuous process improvement and individual team incentives and rewards.

The Service Provider would be pleased to invite Contracting Authority representatives to the Service Provider's offices in central London to see all aspects of the Service Provider's customer services operation in action.

Question 2d – Branding

Please supply copies of all customer communication templates and portals: supply details of the templates (e.g. welcome packs, Direct Debit confirmations & reviews, bills, renewals, loss letters) and screenshots of the standard pages on the Service Provider self- service portals and apps (if applicable). These do not have to be made up in the Relevant Authority Materials and Marks but must clearly detail where the Relevant Authority Materials and Marks would be shown.

Response:

In an industry known for complicated industry jargon and communications that are difficult to understand, the Service Provider's mission is to make energy simple for all customers.

All of the Service Provider's communications obsessively focus on making the customer's life easier. The Service Provider avoids using industry jargon and explain things simply and in plain English. The Service Provider listens to customers daily on what would make the Service Provider's communications better, make updates weekly, and every member of the Service Provider's team, from customer service reps to CEO has the responsibility of making the Service Provider's processes as user friendly as possible.

The Service Provider has a particular focus on usability - the Service Provider's AAA compliant website is optimised according to Home Office guidelines to support customers who are deaf, blind, have dyslexia, are on the autism spectrum, and those with motor disabilities.

Amongst the Service Provider's highly qualified team the Service Provider speaks over 10 languages, including Hindi, Punjabi and a range of European languages, and are comfortable in attending to the needs of any customer who may need verbal or written correspondence in another form.

The Service Provider has designed an online account function where customers can do almost anything they need on their account without having to speak to a member of the team, including:

- Changing their tariff
- Updating their contact details
- Updating or changing their direct debit
- View and download any bill they have had from the Service Provider since being a Service Provider customer
- Tracking their payments
- Moving out of their property and adding a new one

In Appendix 1 are copies of the Service Provider's generic customer communications. The Service Provider proposes to use these communication structures for the purposes of the EfLSCo Services Call-Off Contract, subject to approval from the Contracting Authority. The Service Provider would propose to have these within the EfLSCo Services Call-Off Contract branding and style guidelines and would replace any wording referencing the Service Provider with the EfLSCo Services Call-Off Contract branding. The Service Provider will also work with the Contracting Authority around any suggested word changes.

Question 2e – Team Location

Please detail (if not standard for your company) what permanent presence the Service Provider have in London. If the Service Provider's customer services team is not based in London please detail if the Service Provider would be prepared to set up a London based service team, and how many End Consumers would be required to support such a team. It is expected that a London based team would also facilitate face to face meetings and forums where appropriate for End Consumers. Please cover off what job creation the Service Provider believes this project will cause and where that is likely to be based.

Response:

The Service Provider's main trading office is based in Soho in London. In addition to the London office, the Service Provider has two other offices based in Leicester and Shoreham-by-Sea as well as a number of digital staff who work remotely from home.

The Service Provider's London office consists of the Service Provider's commercial and finance team, business solutions, sales and marketing, technology as well as two of the Service Provider's customer service teams.

Both the Shoreham-by-Sea and Leicester offices consists of the remainder of the customer service teams. The Service Provider maintains high levels of communications channels connecting all parts of the business across all locations. The Service Provider also has company-wide meeting each week where the Service Provider connects all offices via video link. The Service Provider's senior management team also ensure that they have a regular presence in all office locations and hold

frequent senior management meetings across the different locations, where they also hold a Q&A session with the team members based there.

As well as the permanent office locations, the Service Provider also has a digi-ops team dedicated to answering customer queries out of hours. They are there to respond to out-of-office hours customer enquiries by email and social media, 5pm-10pm weekdays, and 9am-10pm weekends and Bank Holidays. The team work from home on a flexible schedule. This gives the Service Provider the opportunity to dip into an enormous talent pool of highly educated and highly motivated people that value flexibility in their work patterns. In return the Service Provider benefits from an extremely agile team.

A portion of the Service Provider's customer service team is based in London, and the Service Provider would be willing to look to base at least one EfLSCo Services Call-Off Contract team in London in order to be able to facilitate any face to face meetings and forums amongst End Consumers where needed, and would be willing to discuss this requirement with the Contracting Authority about the location of any additional teams required dependent on the number of customers that the EfLSCo Services Call-Off Contract team attracts. The Service Provider's current customer service teams consist of [*this part of the response has been redacted*].

Subject to approval of the Contracting Authority, the Service Provider could explore the opportunity to have a number of digital operations staff that are dedicated to answering customer queries outside of business hours. This would lead to further job creation for those looking for flexibility in working times and the ability to balance their work life around their family commitments.

Question 2f – Customer Feedback

Please confirm how the Service Provider would ensure the Service Provider captures, on a regular basis, consumer feedback and opinion (both End Consumers and more generally from London communities, in addition to supporting the Mayor's accountability to Londoners) and how the Service Provider would work with customers to resolve queries. Please include services the Service Provider would provide such as online fora, workshops, information/drop-in centres, 'battle bus'. See paragraph 2.2.9 of Part 1 of the Specification.

Response:

Customer feedback is extremely important to the Service Provider and the Service Provider has a number of different routes to collecting customer feedback, which the Service Provider then uses to update the Service Provider's processes and communications. Feedback can be given via any channel, including email, social media, telephone, handwritten or in person. Subject to the approval of Contracting Authority, the Service Provider would look to incorporate the below measures into this

contract to ensure that all customers have the option to be as engaged as possible as per paragraph 2.2.9 of Part 1 of the Specification.

[this part of the response has been redacted].

The Service Provider does not send emails from no-reply email addresses meaning that if a customer has any feedback or wants to raise anything, they are able to do so via email, as well as giving any feedback over the phone whilst speaking to a customer service representative.

Customers also have the option to interact with the Service Provider online via the Service Provider's social media channels – primarily Facebook and Twitter. The Service Provider staffs these channels 8am-10pm 7 days a week. The Service Provider's team are trained to interact directly where appropriate and to take offline where queries or discussions include sensitive or personal details, or where service enquiries emerge which the Service Provider can resolve.

[this part of the response has been redacted].

In addition to the current methods of collecting customer feedback, the Service Provider would also be willing to extend these to incorporate some of the initiatives set out in paragraph 2.2.9 of Part 1 of the Specification. For the purpose of the EfLSCo Services Call-Off Contract, the Service Provider would look to set up dedicated EfLSCo Services Call-Off Contract Facebook and Twitter accounts which would act as online forums for customers to engage in relation to the the EfLSCo Services Call-Off Contract as well as post any queries which would be managed by a dedicated team member working in the End Consumer service team.

Whilst online forums are the Service Provider's preferred method for collecting feedback and answering queries, the Service Provider would be delighted to discuss with the Contracting Authority the option to host quarterly focus groups for End Consumers to attend, and an annual forum where Londoners have the opportunity to engage with the CEO and senior management team.

In addition to this, as per paragraph 2.2.9 of Part 1 of the Specification, the Service Provider's CEO would be available to support the Mayor or a Contracting Authority representative in front of the London Assembly, or in any other necessary or appropriate forum.

Question 2g – General

One of the customer Service Levels (in Schedule 10) is "The energy supplier, as either the main partner or a consortium member, must achieve a score of at least 70% in each of the annual Which? Magazine energy companies satisfaction surveys post-contract award".

Please provide an explanation of how the Service Provider will achieve the above in practice.

Response:

The Service Provider was the only Which? Recommended Energy Supplier in 2018 and 2019 and came top in 2019 out of 30 energy companies. In 2019, the Service Provider was the first company to receive 5 stars in all of the Which? measurement categories. The Service Provider is always aiming to develop its award-winning customer service as the Service Provider grows as a business.

One of the ways in which the Service Provider has innovated to better serve the Service Provider's customers is *[this part of the response has been redacted]*.

[this part of the response has been redacted].

[this part of the response has been redacted].

This approach has seen the Service Provider shift customer expectations within the industry. For instance, increasingly the Service Provider finds that customers contact the Service Provider online, which leaves them to get on with their working day, rather than to wait on hold on the phone. This is because the Service Provider's customers know that they can provide the relevant information and submit it to a general customer service email address or via Facebook Messenger. They are confident it will then be dealt with by someone with the authority to solve the problem, without having to be asked for further information or transferred to someone else. In 2018, Which? reported that the Service Provider was the fastest supplier to respond to email queries, and if they do choose to call the Service Provider, it took just 65.5 seconds on average to answer the phone.

[this part of the response has been redacted].

Team development is linked to the company's goals. *[this part of the response has been redacted]*.

The Service Provider's remote digi-ops team supports the Service Provider's management of social media support across Facebook, Twitter and other social platforms. *[this part of the response has been redacted]*.

Question 2h – Complaints Handling

Please confirm the complaints handling procedure the Service Provider will use for the EfLSCo Services Call-Off Contract, including timescales, as well as the Service Provider's call handling processes and associated training regimes. will satisfy the Specification.

Response:

The Service Provider's number of complaints received per 100,000 customers in Q3 was 91 and the total number of Ombudsman complaints was 10. The Service

Provider's number of complaints received per 100,000 customers in Q4 was 151 and the total number of Ombudsman complaints was 28.

When a customer contacts the Service Provider [*this part of the response has been redacted*].

If there is an instance where a complaint cannot be resolved [*this part of the response has been redacted*].

[*this part of the response has been redacted*].

[*this part of the response has been redacted*].

All complaints data is [*this part of the response has been redacted*].

Subject to approval from the Contracting Authority, the Service Provider would aim to replicate the above policies for this contract to ensure that complaints are handled correctly and resolved in a timely manner.

Question 2i – Training

To meet paragraph 2.2.21 of Part 1 of the Specification, please confirm the training that all customer facing staff will go through for the EfLSCo Services Call-Off Contract including any accreditation/testing that they undertake before completing the training. Please detail how this will enable the Service Provider's teams to achieve the service standards set out in the Specification and Service Levels in Schedule 10.

Please also confirm what training is provided to team managers and team leaders, especially those undertaking a management position for the first time.

Response:

Providing award winning customer service is central to everything the Service Provider does at the Service Provider, and so to give the best possible service, all of the Service Provider's customer facing staff go through an extensive training course when they join, and this would be the same for the EfLSCo Services Call-Off Contract, subject to approval from the Contracting Authority.

When a new customer facing team member joins, [*this part of the response has been redacted*]

[*this part of the response has been redacted*]

After the training is completed, [*this part of the response has been redacted*].

[*this part of the response has been redacted*].

The Service Provider does from time to time use external training support *[this part of the response has been redacted]*.

The Service Provider's approach has enabled the Service Provider to train *[this part of the response has been redacted]*. The result was that *[this part of the response has been redacted]*.

3 Innovation

Question 3a – Targeted Fuel Poor Activity

Please detail the work the Service Provider plans to carry out for the EfLSCo Services Call-Off Contract to engage with the fuel poor, as per paragraph 2.1.1 of Part 1 of the Specification and deliver tariffs and/or services to help remove them from fuel poverty and make sure they remain out. Where possible please detail the level of impact the Service Provider believes each activity will have.

Response:

The Service Provider believes that fair, transparent pricing and good communication is crucial to helping customers avoid falling into unnecessary debt and fuel poverty.

Early Identification of Fuel Poverty and Intervention:

Navigating energy markets and managing the Service Provider's energy account can be a daunting experience for any customer and can be particularly difficult for customers in vulnerable circumstances. The Service Provider wants to make it as easy as possible and ensure that the customer feels that they are in safe hands with the Service Provider, but also in control of their own account.

An important principle for the Service Provider is to never become a supplier with a tick box attitude or maximum call time, and to provide sustainable great value tariffs for the long term. The Service Provider makes it as easy as possible for a customer to contact the Service Provider through whichever channel they feel most comfortable (online, by phone or social media) and the Service Provider's Energy Specialists are trained to deal with any issue and to help customers in vulnerable circumstances. The Service Provider's website and communication channels are designed to be as accessible as possible.

The Service Provider is AAA compliant in web accessibility and has focused on ensuring that users receive an easy and enjoyable experience regardless of how they access the Service Provider's website. The Service Provider has designed its interfaces to be suitable for those with deafness, blindness, dyslexia, those on the autism spectrum, and those with motor disabilities. When designing the Service Provider's communications, the Service Provider always looks to give users time to complete actions (no short time outs), clearly explain any next steps, give customers information to review before they submit anything, and communicate things as clearly as possible. Customers also have the option in their online account to alter their

communication preferences including changing the colour of text and backgrounds, the format of the communication and font size.

Not many customers trust their energy supplier, so building a relationship is very important. The Service Provider's customers and Energy Specialists often build trusting relationships, with many customers requesting to speak to the same Energy Specialist each time. This means the Service Provider can better understand how the Service Provider can support these customers and whether the customer needs to be signposted early on for extra support. The team are trained to look out for signs of vulnerability and understand the best approach for these conversations. This allows for early identification and registration to the Priority Services Register ("**PSR**").

The Service Provider has also made it very easy for a customer to sign up for the PSR themselves; the Service Provider offers it during the sign-up process, in their welcome information and also on their online account. The Service Provider's engineers and field sales team are also trained to identify customers and look for indications of fuel poverty or vulnerability. The Service Provider currently has *[this part of the response has been redacted]* of the Service Provider's base on the PSR (compared to 5% average for most other suppliers), demonstrating that vulnerable and fuel poor customers trust the Service Provider.

The Service Provider works hard to minimise the chance of a customer falling into debit in the first place. The Service Provider runs a credit check on every customer before they sign up. This allows the Service Provider to identify if they might be at risk of falling into fuel poverty so that the Service Provider can monitor their account early on. The Service Provider encourages customers to base their quote on their actual annual usage, however the Service Provider also *[this part of the response has been redacted]*.

When it comes to ongoing account management, the Service Provider reminds its customers monthly that their direct debit is due to be taken and ask that they get in touch with the Service Provider if there's going to be a problem. *[this part of the response has been redacted]*. Following concerns that suppliers did not have access to the status of the universal credit roll out, the Service Provider teamed up with Citizens Advice to build a tool which is available to anyone (<https://universalcredit.guide/>). The tool was shared with debt management teams and customer service teams at all suppliers and Citizen Advice advisors, to help customers through the complex and significant change to the benefits system.

It's important that the Service Provider tailors its service to suit customers as best as the Service Provider can. *[this part of the response has been redacted]*.

The Service Provider also encourages customers to supply the Service Provider with monthly readings. This ensures that they can keep an eye on their accurate balance and feel in control. *[this part of the response has been redacted]*. The Service Provider has made it as easy as possible for the customer to submit their meter readings through a variety of methods to encourage readings on a regular basis.

[this part of the response has been redacted]

Pro-Active Installation of Smart Meters:

The Service Provider is fully committed to the installation of smart meters in all fuel-poor customer groups. This is because the Service Provider believes that it offers a highly flexible solution to help the fuel-poor manage their energy consumption and associated payments. Most importantly, the fact that the same physical meter can address all payment options allows customers to move between payment approaches as their requirements change. In addition, the availability of truly up-to-date data on energy consumption for both the customer and the energy supplier means that all conversations with the Service Provider's operations personnel are based on accurate and shared information. The Service Provider's policy is *[this part of the response has been redacted]*.

The Service Provider is now fully embracing the SMETS2 smart meter environment following the SMETS1 end date of 15 March 2019. This ensures that the Service Provider's customers benefit from the inter-operational benefits of this new technology. After testing a variety of SMETS2 meters, the Service Provider currently installs and operates the *[this part of the response has been redacted]* metering solution. The Service Provider now has *[this part of the response has been redacted]* meters in its portfolio, which are operated via *[this part of the response has been redacted]*. The Service Provider's approach to SMETS2 builds on the Service Provider's success with the SMETS1 Secure Meter solution which proved to be a highly reliable and flexible solution to meet both credit and pre-pay requirements.

Use of Smart-Prepay to help the Fuel Poor Including Short Term Financial Support:

The transition to SMETS2 has led to major changes with the pre-pay smart meter environment. In particular, this has created uncertainty for existing pre-pay customers, such as which top-up cards to use. The Service Provider has therefore established new flexible solutions with *[this part of the response has been redacted]* to alleviate these issues.

Most importantly, this flexibility will be available to the EfLSCo Services Call-Off Contract, within a future contract, to determine their own credit management thresholds and processes. Such settings could mirror those of the Service Provider or be completely independent.

For example, the Service Provider operates with *[this part of the response has been redacted]*. Customers can *[this part of the response has been redacted]*. Smart meters also allow credit to be added to a meter remotely. *[this part of the response has been redacted]*.

One further feature of the Service Provider's prepayment solution may also be of interest to the Contracting Authority: *[this part of the response has been redacted]*.

The Service Provider would also commit to providing a prepayment tariff that is at least 2% better than the regulatory cap. Whilst the Service Provider recognises that some customers may prefer prepayment meters to help manage their bills, the Service Provider currently does not prevent customers moving from pre-payment to credit as this allows customers to access the cheapest tariffs, helping to prevent fuel poverty.

The Service Provider avoids knowingly putting a customer who is on the PSR on to a prepayment meter to prevent a vulnerable situation in the case of self-disconnection. Before any prepayment meter installation, the Service Provider would ensure that a visit is done to assess the vulnerability of the property and whether a prepayment meter is suitable. These visits include looking out for signs that the customer may be in, or at risk from, fuel poverty. During the Service Provider's smart rollout and any metering work, the Service Provider's engineers are also trained to look out for vulnerability and feed it back to the Service Provider so that the Service Provider's team can get in touch to see if help is required.

Using Smart Meters to Detect Fuel Poverty:

With smart meters, the Service Provider can monitor and identify customers who are not vending regularly, and self dis-connecting. This enables the Service Provider to be able to get in touch with the customer to see if there's anything the Service Provider can do to help, and the Service Provider can then signpost them to any relevant charities and organisations that may be able to offer additional support.

Currently, if a customer tells the Service Provider they have gone off supply [*this part of the response has been redacted*].

The Service Provider provides [*this part of the response has been redacted*].

The Service Provider understands that not all customers are happy to have a smart meter installed. Where possible the Service Provider tries to ascertain the reasons for this and provides clear messaging and educational material on the benefits and importance of smart meters to help overcome any concerns they may have. The Service Provider signposts customers to charities and Citizens Advice to help showcase the benefits, particularly when customers don't respond to smart meter installation requests.

Further Schemes to Alleviate Fuel Poverty:

The Service Provider runs a number of other schemes designed to help the fuel poor. Subject to approval of the Contracting Authority, the Service Provider would expect to continue its current policies described below:

Indirect Enduring Financial Support Targeted at the Fuel Poor:

Where a customer is worried about their usage and getting into debt, the Service Provider recommends that they get a smart meter installed to help them monitor their usage. The Service Provider also directly engages with customers to understand their circumstances around income and expenditure, and if they are using more energy than they can afford, the Service Provider can send them tailored energy efficiency advice and also redirect them to a number of debt management charities which may be able to help them where necessary. The Service Provider recommends the following debt charities:

- StepChange Debt Charity – 0800 138 1111
 - The Service Provider is in the process of setting up a personal relationship with this charity whereby the Service Provider can directly introduce customers to a member of the charity at the point in which they contact the Service Provider.
- Debt Advice Foundation – 0800 043 40 50

- National Debtline – 0808 808 4000
- Citizens Advice – free web chat at the website or call 03444 111 444
- (Wales: 03444 77 20 20)
- PayPlan – 0800 280 2816
- Christians against Poverty - 01274 760720
- Government Grants

Warm Home Discount (WHD):

To date the Service Provider has not yet participated in the WHD, *[this part of the response has been redacted]*. However, from April 2019, the Service Provider will also be offering the Warm Home Discount scheme. This would be offered under the EFLSCo Services Call-Off Contract and the Service Provider would work with the relevant organisations to proactively identify any EFLSCo End Consumers that are automatically eligible for this.

Direct Enduring Support:

The Service Provider understands that the fuel poor are not always able to cover the cost of their energy usage, which can lead to stress for the customer. The Service Provider has identified that the reason for not being able to afford this can be down to a number, or combination of different factors:

- *[this part of the response has been redacted]*

In order to help alleviate fuel poverty, the Service Provider is committed to designing support targeted at providing access to grants and funds where available, cost-effective insulation and education around ways to help customers reduce their usage where possible, in order to decrease their energy bills.

Since the Service Provider's inception, it has been continuously working to make it as clear as possible what the costs associated with energy usage are and how the cost is calculated. The Service Provider constantly takes on customer feedback on where this can be improved.

The Service Provider also proactively provides customers with information packs containing energy efficiency tips to help them reduce their consumption and alleviate fuel poverty. The Service Provider will be able to *[this part of the response has been redacted]*.

All of the Service Provider's *[this part of the response has been redacted]*.

[this part of the response has been redacted]

Future Schemes for Alleviating Fuel Poverty:

ECO3 & LA-Flex:

As of April 2019, the Service Provider will become an ECO obligated supplier and the Service Provider are finalizing roll-out plans ("**ECO**" being an energy company obligation Government scheme managed by Ofgem). The Service Provider sees this scheme as a key part of the Service Provider's future plans for helping to further

combat fuel poverty and vulnerability, by delivery energy efficiency measures around heating and insulation to those most in need. As part of ECO3, suppliers are able to meet up to 25% of their obligations under the LA-Flex scheme (up from 10% previously) ("**LA-Flex**" being an extension of the ECO scheme), which allows local authorities to certify customer eligibility and put them forward to receive ECO grants without the need for the supplier to check their eligibility against their benefits criteria. With the Contracting Authority having already signed up to the LA-Flex scheme and showing a statement of intent on their website, the Service Provider would welcome the opportunity for the Service Provider's future plans to use the EflSCo Services Call-Off Contract to maximise the impact of the Service Provider's ECO obligations. The Service Provider would work with the Contracting Authority and the associated local housing authorities to help identify the fuel poor and vulnerable customers in the greatest need of lowering heating costs, which in turn will help to reduce their energy bills. In particular, one of the biggest opportunities the Service Provider sees through the ability to work with the Contracting Authority on ECO via the EflSCo Services Call-Off Contract is to identify fuel poor customers who live in the private rental sector, where fuel poverty rates are three times higher in London than for owner-occupier houses. The Service Provider would also look to use its data driven approach to analyse eligibility proactively rather than relying on customers to ask what they are eligible for.

Fuel Direct:

One scheme that the Service Provider would look to develop for the EflSCo Services Call-Off Contract to help alleviate fuel poverty is to set up "Fuel Direct", also known as "Third Party Deductions". This is where weekly instalments of *[this part of the response has been redacted]* are paid towards any energy debt from a customer's benefits at source. This payment method can be helpful for fuel poor customers to allow them to budget and make payments towards a debt on time, with less hassle and at a low weekly rate. This scheme would be available to people who receive:

- Income support
- Pension credit
- Income based Jobseeker's Allowance.

Once the debt is cleared, the Service Provider could also look to allow customers to pay their ongoing consumption through this method too if they find this useful to help manage their payments.

[this part of the response has been redacted]

Transitioning of Schemes to Alleviate Fuel Poverty Post Contract Expiry:

As an open and collaborative partner, the Service Provider will make all reasonable efforts to transition the Service Provider initiatives under the EflSCo Services Call-Off Contract to the newly elected partner.

Question 3b – Move Pay As You Go (“PAYG”) customers to credit-based billing

Although the Service Provider would expect to see smart PAYG on SMETS2 meters on the same tariff as SMETS2 credit meter customers, there is still a top up burden for customers who prepay. Please describe how the Service Provider can assist customers in helping them to move away from PAYG setups onto credit metering arrangements as per paragraph 2.2.31 of Part 1 of the Specification. Please detail how this process may differ for legacy PPM (“**PPM**” being a prepayment meter), SMETS1 and SMETS2 customers (especially if legacy and SMETS1 PPM rates will be different to credit meters).

Response:

The Service Provider is able to take on traditional prepayment meters and then replace them with smart meters, meaning the Service Provider can serve all customers and then help them onto the most efficient solution.

Except in exceptional circumstances, the Service Provider only installs smart meters, so any customer on a traditional prepayment meter would be moved onto a smart meter. This will enable the Service Provider to transition them on to credit arrangements, but with the knowledge the Service Provider can switch to smart prepay if credit isn't working out for the customer.

The Service Provider attempts to make credit work through many practices:

- The Service Provider commits to long-term fair prices, contrasting with suppliers that subsidise introductory rates followed by increases.
- Unlike energy companies whose bills and statements are either behind an online login, or attached to an email as a pdf, the Service Provider ensures customers know where they stand by showing the bill in plain text in the main body of the email, designed to be readable on anything from a basic android phone upwards.
- The Service Provider runs *[this part of the response has been redacted]*.
- Customer accounts are *[this part of the response has been redacted]*.
- Direct debit reminders are sent 5 days before payment, including encouragement to contact the Service Provider with payment difficulties.
- For customers cancelling *[this part of the response has been redacted]*.

When a customer signs up to the Service Provider, *[this part of the response has been redacted]*.

For those customers joining the Service Provider on PAYG or moving to PAYG once with the Service Provider, the Service Provider's preference is a smart meter installation. This provides greater flexibility for managing the complexities of PAYG, customer requirements and debt.

Smart prepay enables remote transition between PAYG and credit. It also provides support for intermediate approaches e.g. auto-top-up, a good step for customers looking to instigate credit arrangements. Such processes may be tailored for the EfLSCo Services Call-Off Contract within any future Service Provider contract and there is no requirement to follow the Service Provider's approaches.

With regards to alternative meter generations, for those on legacy PPM or non-interoperable smart meters, the installation of a readable smart meter creates the most efficient pathway for possible future transition to credit.

With regard to paragraph 2.2.32 of Part 1 of the Specification (i.e. that, following a change of occupancy, the meter point will remain under the EfLSCo Services Call-Off Contract with the new occupant becoming a customer under the EfLSCo Services Call-Off Contract on its standard contract), the Service Provider notes that the subsequent processes are predetermined by industry protocols as follows:

- i. Where an End Consumer vacates, that meter point remains an EfLSCo Services Call-Off Contract supply point for the new occupant on the previous payment basis (i.e. PAYG or credit) unless an authorised party such as the landlord or the new occupant switches to an alternative supplier. Note that some landlords automatically switch to their preferred supplier (for commission reasons) once a property is vacated.
- ii. If a switch is authorised then the Service Provider is obliged to ensure that a secure smart meter is set to credit mode before the switch i.e. cancelling a previous PAYG setting.

For the EfLSCo Services Call-Off Contract, the Service Provider [*this part of the response has been redacted*]. The Service Provider will encourage customers to top up online (which will be possible with the most basic smartphone) or by phone, to reduce additional operating costs, and will share the savings with customers through the tariff. The Service Provider would be delighted to work with appropriate financial institutions to offer prepaid debit card solutions for instore top-up.

Question 3c – General

Please describe the innovations the Service Provider would be able to bring to the partnership, covering the following elements in the Service Provider's answer: integration of low carbon energy, integration of locally generated renewable energy where cost effective (e.g. avoiding network charges), new distributed energy resources and technologies, demand management and flexibility products and services, pricing strategies, mobile/tablet applications, behavioural change advice, novel business models, energy efficiency schemes, promotional activities, employment and skills initiatives, and any initiatives in line with Contracting Authority Responsible Procurement Policy.

Response:

The Service Provider's mission is to [*this part of the response has been redacted*].

[this part of the response has been redacted], allows the Service Provider to launch new products, tariffs and services with ease.

The following are 9 examples of innovation to date, and two future trials, which would be available to the EfLSCo Services Call-Off Contract.

Innovation to date:

[this part of the response has been redacted].

Future innovation for the EfLSCo Services Call-Off Contract:

Two trials the Service Provider envisages running alongside the Contracting Authority include (but are by no means limited to just two):

[this part of the response has been redacted]

Transitioning post expiry:

As an open and collaborative partner, the Service Provider will make all reasonable efforts to transition the Service Provider's initiatives under the EfLSCo Services Call-Off Contract to the newly elected partner.

4 Integration with other energy programmes

Question 4a – Gateway to the Mayor of London's programmes

In line with specification Objective OBJ04 and paragraph 2.2.20 of Part 1 of the Specification, the Contracting Authority is keen to understand what the Service Provider can do to help the EfLSCo Services Call-Off Contract act as a gateway to the Mayor of London's programmes and others, such as the Service Provider's own programmes and those funded by others such as London boroughs and housing associations, so that energy efficiency and other support can be seamlessly delivered to where it is most needed. As such, please describe what the Service Provider will do over the 4-year contractual term (plus potential extensions) to consider and implement such approaches, and any ideas the Service Provider might have on possible avenues to explore under this theme.

Response:

The Service Provider is well versed in establishing partnerships with various organisations and programmes, ranging from partnerships with established retail brands to working with network operators, regulators, community groups and key stakeholders with significant influence in the energy industry and beyond. By way of

illustration, the Service Provider has established [*this part of the response has been redacted*].

The Service Provider's approach to customer engagement is based on a deep understanding of the Service Provider's customers and a commitment to providing outstanding service. These principles are underpinned by two crucial factors; owning the Service Provider's communications channels and a data driven approach to customer service. Ownership of [*this part of the response has been redacted*]. It is the Service Provider's belief that this capability will be important in being able to work closely with other Mayor of London programmes and those funded by others such as London boroughs and housing associations. Ownership of all the Service Provider's channels also allows messages to be tailored to specific customers or customer groups depending on their needs.

Further, the Service Provider's data driven insight allows the Service Provider's teams to hold detailed information its customers at their fingertips. For example, the Service Provider's customer operations agents would be able to view that a customer is part of given housing association on receipt of inbound communication from the customer. Therefore, this would provide the Service Provider with the ability to offer products and services in association with the housing association or other Mayor of London or government programmes seamlessly.

The Service Provider is already engaging customers on energy efficiency and is driving a de-carbonisation agenda through a variety of new business models under an 'Energy 2.0' banner. These include providing efficiency advice to customers directly, launching [*this part of the response has been redacted*].

The Service Provider recently launched a unique new scheme, where the Service Provider uses [*this part of the response has been redacted*]. The Service Provider writes to these customers letting them know that their bills are higher than the Service Provider would expect, and offering targeted advice.

The Service Provider could extend this to the EfLSCo Services Call-Off Contract, [*this part of the response has been redacted*] to zero in on households [*this part of the response has been redacted*]. The Service Provider is, as far as the Service Provider is aware, the only energy company using [*this part of the response has been redacted*] this sort of personalised programme – and would be delighted to collaborate on this type of approach.

Because of the Service Provider's relentless efforts on targeting and crafting engaging communications, the Service Provider enjoys class-leading open rates on emails and excellent response to DM and SMS, which are excellent indicators of the Service Provider's ability to assist in engaging consumers in gateway activities.

Overall the Service Provider is very comfortable in establishing the EfLSCo Services Call-Off Contract project to act as a gateway to other programmes. The company has established ways of working with a multitude of different partners and stakeholders. Further, [*this part of the response has been redacted*]. The Service Provider is already deploying these capabilities to drive a number of programmes based on decarbonisation, energy efficiency and 'energy of the future' projects.

5 Data Access

Question 5a – Data Access

Paragraphs 2.2.42 to 2.2.45 of Part 1 of the Specification describes the Contracting Authority's requirements in relation to data access. Please confirm the Service Provider will share data to meet the Contracting Authority's requirements in relation to data sharing.

Response:

The Service Provider will comply with paragraphs 2.2.42-2.2.45 of Part 1 of the Specification.

The method and the extent to which data is transferred to the Contracting Authority, for example in paragraph 2.2.43, will be dependent on the mechanism selected by the Contracting Authority for the transfer of customers at the end of the contract.

The Service Provider has its own data science team that is highly skilled at analysis of complex data sets, particularly in respect of product design and development.

The data set out in can be reported on in a number of usable formats:

- Data items set out in paragraph 2.2.42 during the contract term can be provided via CSV output files. [*this part of the response has been redacted*].
- Data required to support any migration of customers at the end of agreement, as set out in paragraph 2.2.43 will be dependent upon the mechanism selected by the Contracting Authority for the transfer of customers at the end of the contract but can be provided in a variety of formats.
- Data items set out in paragraph 2.2.44 regarding consumption information, tariff, metering type and payment type can be provided via a generated report.
- Annual reports of any staff who would be subject to TUPE regulations should the EfLSCo Services Call-Off Contract be moved away from the Service Provider at the end of the contract can be provided.
- Anonymised aggregated data can be provided via an API.
- The Service Provider will ensure that any data shared will be compliant with the General Data Protection Regulation, and other relevant legislation.

6 Facilitating a possible future transition to a successor upon expiry of the scheme

Question 7a – Customer Arrangements

Please detail how the Service Provider plans to set up the relationship with the customer so that the relationship is easily transferrable to either a new similar partnership or to the Contracting Authority's own licensed entity, as per paragraph 2.2.37 of the Specification. The Contracting Authority appreciates this process may need to be adjusted based on conversations with Ofgem.

Response:

The Service Provider understands that the Contracting Authority may wish to migrate customers to another supplier at the end of the initial four-year term, whether that supplier is part of the Contracting Authority or 3rd party. An “on-market” transfer of customers from the Service Provider to the Contracting Authority or other entity. End Consumer Supply Contracts would be novated from the Service Provider to the new entity to avoid requirement for positive customer affirmation in relation to the transfer of supply.

The implications for this process is as follows:

[this part of the response has been redacted]

Question 7b – Physical Arrangements

How does the Service Provider envisage simplifying the process to transfer customers to a new partnership or to the Contracting Authority's own licensed entity? Please detail the mechanisms used.

Response:

Information in support of migration of customers at the end of the agreement will depend on the nature of the transfer of customers.

Transfer of Customer Book

Practically, the Service Provider anticipates establishing a right to transfer information at the point of sign-up in the End Consumer Supply Contract and subject to an opt-out if it is required (and this will depend on the transfer mechanism). If the existing End Consumer Supply Contract are honoured by the new entity then the Service Provider would need to communicate to the customer that they will be transferring across to a new entity and the steps the Service Provider will be undertaking to facilitate this. The Service Provider would keep the customer informed as to the where they are in the process and advise them not to switch during this transfer.

If the recipient entity chose to operate using their own CRM platform rather than licencing *[this part of the response has been redacted]* (the Service Provider's proprietary CRM & billing platform), information could then be transferred in one of several ways, depending on the capability of the recipient. the Service Provider would provide the relevant historical data needed to facilitate the switch in either *[this part of the response has been redacted]* or *[this part of the response has been redacted]*. The Service Provider already shares data with several partners through *[this part of the response has been redacted]*.

If required (depending on the nature of the transfer and regulations then in force), any customers that had opt-out of the pre-proposed data transfer mechanism at the start of the contract, would be contacted and asked again whether they would consent to the transfer across to the new supplier.

The Service Provider will generate an aggregate customer balance statement to establish any balancing payment required in respect of customer balances (i.e. credit balances less debt balances).

7 General Requirements

Question 8a – Health and Safety Resource

Provide the name, qualifications and experience of the H&S personnel who will be allocated to this contract.

Specify what percentage of their working week will be allocated to this contract.

Please note that if the relevant contact is within the Service Provider's supply chain, then provide the appropriate details as above, the name of organisation they work for, the Standard Industrial Code ("**SIC**") code (or equivalent) associated with their organisation and their role title within the organisation. It would be advisable also to make reference to the appointment of the organisation concerned and the relationship with this specific role within Question 8c.

Response:

The main health & safety risks occur during the meter installation and this activity is undertaken by third party suppliers. The remainder of the business operates in a controlled office environment, and the Service Provider has an office manager is responsible for health & safety.

Health & safety in the field is managed by *[this part of the response has been redacted]*, the Service Provider works with to deliver meter installs. *[this part of the response has been redacted]* have a clear structure for the management of Safety Health and Environmental ("**SHE**") risk across the business as follows:

[this part of the response has been redacted]

The core SHE team of full time health and safety professionals link in with and support the wider business in the management of Health, Safety and Environmental risk as follows

SHE organisation chart

[this part of the response has been redacted]

Question 8b – Health and Safety competency (skills, knowledge and experience)

Provide details of H&S competencies (skills, knowledge and experience) of the delivery team including the project manager, site supervisors and operatives (as appropriate), and details of the process by which these competencies are managed.

Please note that if the relevant competencies reside within specific personnel within the Service Provider's supply chain, then provide the appropriate details as above, the name of organisation they work for, the SIC code associated with their organisation and their role titles within the organisation. It would be advisable also to make reference to the appointment of the organisation concerned and the relationship with these specific roles within Question 8c.

Response:

The subcontractor business *[this part of the response has been redacted]* employs a team of competent Health, Safety and Environmental specialists holding a range of qualifications and experience including:

[this part of the response has been redacted].

The team of regional SHE advisors have extensive experience across a diverse range of industries and hold various levels of professional membership with the Institute of occupational safety and health. Qualifications ranging from NEBOSH general certificate level to degree level.

[this part of the response has been redacted]

The SHE team are supported by addition internal and external specialists where required.

Question 8c – Health and Safety in supply chain

For this contract, please provide details of how the Service Provider assesses its suppliers' H&S capabilities focusing on H&S organisational capability and the delivery team's H&S competencies. This should cover both initial supplier selection and how the Service Provider will ensure its continued H&S competence for the duration of the contract.

Response:

In line with CDM regulations the Service Provider:

- Employs workers/sub-contractors with the right skills, knowledge, training and experience.
- Provides appropriate supervision, instruction and information for all contractors.
- Complies with Health and Safety Acts & Regulations.

Formal checks are performed before any subcontractor comes onboard. Furthermore, the Large Contractor Questionnaire (PAS91) identifies additional clarifications.

Projects are run by a project manager and the sub-contractor will have supervision.

Site safety inspections are performed by subcontractors, both formally and informally. The site supervisor and engineer performs a minimum of one formal weekly inspection. Operational staff will have an SSI at least once every other month.

HSE, process and technology training is conducted via toolbox talks and signed for. Insight gained from the Service Provider's installations and best practice is simultaneously shared.

Successful risk management requires the comprehensive identification, evaluation, mitigation and monitoring of risks. Bespoke risk management plans are critical to the successful delivery of meter installations detailing how processes are implemented, monitored and controlled.

Risk assessments are prepared and maintained in the site Health and Safety files detailing:

- Hazards identified.
- People at potential risk and what activity they will encounter.
- Risk and level of risk.
- Prevention/mitigation steps to be taken.

Method statements are produced and retained for identified risks. Specific work instructions supplied by equipment providers take precedence over generic instructions.

Identified risks can change, so these are updated as appropriate. Risk owners are responsible for controlling and updating changes.

Accidents, near misses and damage are reported immediately, ensuring HSE notifications under the RIDDOR Regulations are compliant.

The incident is allocated to supervisor or project manager to investigate and prevent re-occurrence.

In addition to the policies and principles described above, the preferred option for any subcontract element is to ensure the Service Provider employs the right subcontractor and all of the relevant checks are satisfied. These subcontractors are already managing contracts in this specific field are familiar with the territory, and meet the requirements in terms of quality, safety, health, environmental and commercial matters.

All staff / contractors are inducted on health, safety and environmental matters before work.

Site and contractor monitoring takes the form of informal and formal site inspections the Service Provider has adopted the HS&E management system already implemented by the Service Provider's investments team, which has a long history of developing commercial solar power sites.

The following structure and process all relate to the current system:

All supplementary documents referenced below are available for review by the Authority on request.

1. All contractors and active suppliers are subjected to a thorough competence review prior to engagement. A centralised Approved Contractor database is maintained which is open access to all employees.

The competence review process is detailed in the "Contractor Selection Guide".

2. The competence process is split between large and small contractors.
 - i. Small contractors with a workforce less than 15 total – or contractors that will be providing very low risk supply like desk top reviews – are issued with the small contractor questionnaire
 - ii. Larger contractors with workforce over 15 – or contractors that will be providing medium or high risk supply – are issued with the large contractor questionnaire. This document is taken directly from PAS 91:2013 and contains the necessary core elements.

There are 4 key stages in the Service Provider's approach to the management of suppliers and subcontractors;

1. The screening of competencies for acceptance onto the Service Provider's database of Approved suppliers and subcontractors

2. The procurement of goods and services according to standard company procedures
3. The management of project performance
4. The completion of subcontractor feedback forms upon completion of each project

The evaluation of subcontractor's competence is an integral part of the Service Provider's quality assurance approach. This is all done through the Service Provider's evaluation questionnaire. Checks include:

1. Annual insurance cover checks – including public liability and employer's liability cover
2. Verification of health & safety policy and statistics
3. Duty of care audits on waste disposal subcontractors
4. Construction tax industry checks on subcontractors for payment purposes
5. Security vetting of subcontract personnel to meet police or school standards
6. Site induction checks on skill levels and competences to operate plant etc

Question 8d – Understanding of key hazards and risks

Please identify what the Service Provider perceives as the top five H&S hazards and associated risks for this work package / product. For each, describe how the Service Provider will:

- Control the risks
- Communicate risk assessment to those affected
- Ensure controls measures are effectively implemented

Response:

Hazards and Risks

The hazards and risks associated with the works originate from: the tasks and activities to be undertaken; the equipment required; the work environments and the interface with other parties including the public.

Examples of potential high consequence risks are outlined below:

- Work at Height and risk of falling people or objects
- Electricity and risk of electrocution, flash or fire
- Asbestos and risk of inhalation of fibres
- Driving / Vehicle Movements risk of collisions or crushing injuries
- Natural Gas and risk of Fire and explosion
- Faulty appliances and risk of Carbon Monoxide exposure

In addition, there are a number of other hazards / risks inherent to the works which include but are not limited to:

- Manual handling and ergonomics risk of musculoskeletal damage
- Access and ground conditions risk of Slips trips and falls
- Noise risk of noise induced hearing loss
- Vibration risk of hand arm vibration syndrome of associated illness
- Needle sticks rats or animals risk of exposure to biological agents
- People interface risk of violence and aggression
- Animal interface risk of aggressive pets and animals
- Loan Working risk of worsening conditions in emergency
- Hazardous Substances risk of exposure.

Control Strategy

Safe Systems of Work

A suite of documented processes and work systems have been developed to ensure hazards and risks are identified eliminated, mitigated and controlled. This includes production of risk assessments, method statements, and The Control of Substances Hazardous to Health Regulations 2002 (“**COSHH**”) assessments for tasks. This is supported by dynamic risk assessments performed by operatives and engineers.

Safe Environments

Multiple methods are used to assess work environments for potential risks, including screening and scoping works during tenders, identifying and assessing potential site risks during the planning and booking process, attending sites during planning to scope bespoke solutions where required, plus dynamic risk assessments to identify any additional hazards or changes in the work environment prior to starting and as works continue.

Safe Vehicles and Equipment

The approaches for controlling the risk from vehicles and equipment include: selection of the most appropriate vehicles and equipment to design-out risk; undertaking pre-planned maintenance and inspection; pre-user checks; defect reporting; and prompt repair of identified issues.

Safe People

Employees are trained, competent and informed in the requirements for their prospective work by: recruiting the right candidates against job descriptions; providing induction and mandatory training; task-specific and developmental training specific to the required role, tasks, equipment and processes. Regular briefings and communications to employees to keep them informed and aware of emergent risks. The organisation also has robust arrangements in place for works supervision and monitoring. This is implemented through internal and external audits and inspections, enabling early identification of potential issues and deployment of corrective actions.

Communication of risks to those affected

A combination of methods ensures that the Service Provider’s employees are equipped to comply with policy and procedure requirements and that **compliance takes place**.

Setting Clear Expectations

For employees to adhere to safety, health environment, and quality policies, procedures, risk assessments and risk controls they must first understand them. Hence the Service Provider's aim is always to set **clear expectations** for performance, effectively **communicate** the requirements and check to ensure understanding.

Induction and Training

All personnel must undergo an induction and training program tailored to the individual's needs. This is delivered through an in-house training academy and **regional** business centres across the **UK**, supported by other communication methods such as toolbox talks and briefings. All training sessions and safety critical communications conclude with an assessment or confirmation of understanding to verify that objectives have been met, understanding achieved and where required, skills are demonstrated to the required standards.

Coaching and Supervision

All engineers undergo a "Buddy Pack" as part of their induction. This is a coaching program where they undertake several jobs under direct supervision. Each engineer is also assigned a **regional** supervisor who provides line management for the engineer including day-to-day performance and **adherence** to policies and procedures.

Inspections and Audits

Process compliance, industry standards and regulatory requirements are essential to the "safety critical" nature of the Service Provider's operations. An established audit committee monitors the health of, and compliance to; the Service Provider's management system, regulatory requirements and industry standards. The Service Provider's internal auditors deliver a programme of **audits** and **inspections** across all **regions** of the **UK** and at several business levels. In addition, the Service Provider's risk profile engineers to deliver increased audit frequencies where engineers have greater audit needs, ensuring proactive identification of areas for improvement.

External Audits and Accreditations

The business receives a programme of external audits in line with the Service Provider's accreditations and licences. This includes, but is not limited to, ISO 9001 2015, ISO 14001 2015, OHSAS 18001 2007, ISO 27001 2013, Achilles UVBD Verify B2, Meter Operation Code of Practice Agreement (MOCOPA), Meter Asset Managers Code of Practice (MAMCOP), Smart Meter Installation Code of Practice (SMICoP) and Approved Meter Installer Code of Practice (AMICoP). Third party auditing ensures that the Service Provider's compliance is tested independently against recognised international and industry standards by accredited bodies.

Measuring Performance Standards/KPIs

The Service Provider uses a range of leading and lagging performance indicators to measure the Service Provider's "Vital Signs" and ensure that safety, health environment, and quality performance is tracked, visible and shared with interested parties.

Incident information and statistical reporting is **shared** with the Service Provider's clients in an **open** and **transparent** manner in line with **Energy UK** reporting format as standard. This ensures consistency with industry recognised reporting requirements whilst enabling **learning and improvement** within the industry.

The Service Provider's key high level leading and lagging indicators are tracked and reported monthly to the board and senior management teams. These include are is not limited to the following metrics:

Leading indicators:

- Near miss and observation reporting
- Audits and inspections completed
- Training completed
- Average driving style and driving speed scores (generated from the Service Provider's driver telematics system).

Lagging indicators:

- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 ("**RIDDOR**") and non RIDDOR injury frequency rate
- Motor incident frequency rate
- Gas incident frequency rate
- Electrical incident frequency rate

Improvements targets are set and reviewed on a quarterly basis and where required improvement plans developed to ensure continual improvement takes place

Question 8e – Project Plan

The Project Plan should be detailed for mobilisation and the first 6 months of operations. Please explain how the approach will deliver a successful mobilisation and service delivery.

Response:

The Service Provider recognises the significance of ensuring that the launch date is met for the Mayor. Upon announcement of the EfLSCo Services Call-Off Contract and contracts being signed, the Service Provider would appoint the Service Provider's Manager to co-ordinate the mobilisation and delivery of the project. They would oversee and manage all of the different the Service Provider's departments that will be required to work together to deliver the project on time – these primarily being technology, marketing, pricing & data, and operations. The Service Provider has split out the different aspects of the mobilisation period below.

As well as the Service Provider's Manager co-ordinating the mobilisation and delivery period, The Service Provider will appoint a relationship manager for the Contracting Authority as the day-to-day point of contact who will attend any meetings associated with the EfLSCo Services Call-Off Contract and keep the Contracting

Authority updated of any developments or issues where they arise. The Service Provider would also expect a project manager to be appointed from the Contracting Authority to co-ordinate across the Contracting Authority's departments required for input to the project.

[this part of the response has been redacted]

Question 8f – Funding

How the Service Provider will fund the establishment and initial operations of the EfLSCo Services Call-Off Contract, making particular reference to cash flow for the activities outlined in the Project Plan. Funding should show details of cash for hedging power and gas purchases as well as recruitment/office space. Should show sufficient cash in plan to support margin call for changing wholesale prices.

Response:

The Service Provider's business plan is to grow *[this part of the response has been redacted]*.

[this part of the response has been redacted].

Question 8g – Board Guarantees

The Contracting Authority will require monthly (and on request during turbulent market conditions) commitments from the Service Provider's board that the company is not only solvent, but has sufficient working capital in place to meet the business's cash funding requirements (for customers supplied under the Service Provider's supply licences) should there be a 25 per cent change in wholesale electricity/gas prices for any unhedged position due for delivery within 3 months, and where the change was sustained for a 6 week period. This is covered as well in paragraph 2.2.37 of the Specification. Failure to remain adequately solvent could result in the agreement being terminated. Please confirm the Service Provider's organisation will be able to meet this commitment.

Response:

The Service Provider will provide requisite board guarantees. *[this part of the response has been redacted]*.

Question 8h – Risk Management

The Service Provider's proposed partnership will operate in a highly regulated, politically sensitive, and competitive environment. Please provide a ranked risk

register, identifying what the Service Provider regards as the major risks to the successful establishment and ongoing operation of the partnership, together with suggested mitigating actions and who would be best placed to own the responsibility for addressing those risks.

Response:

The Service Provider is skilled in navigating sensitive environments. The Service Provider has an outstanding reputation in the regulatory space, with frequent top-level discussions with C-level regulators and several board members at the regulator. The Service Provider's leadership team includes people with experience of local government in London, and the Service Provider has also worked with politicians and civil servants on a national level. The Service Provider understands the complexities of truly sensitive political environments and respect the Service Provider's role in delivering the objectives of elected representatives and understand the needs of officers and representatives.

The Service Provider recognises the importance of risk management in identifying potential problems before they occur. Risk-handling activities are planned and invoked in order to mitigate adverse impacts on projects. Key to successful risk management is the comprehensive identification, evaluation, mitigation and monitoring of risks.

These are captured in a risk register which is a living document that is regularly reviewed, updated and communicated to all appropriate parties.

The Service Provider has a formal risk Management policy in place [*this part of the response has been redacted*]

If the Service Provider were to be awarded the EfLSCo Services Call-Off Contract, the Service Provider would appoint a client relationship manager for the Contracting Authority. This person would be responsible for liaising with the Contracting Authority on a day-to-day basis, as well as keeping them informed of any relevant and material changes to risk that take place. The relationship manager will be responsible for maintaining a risk register for the EfLSCo Services Call-Off Contract project and keeping the Contracting Authority up to date of any changes to this as and when they come up. The Service Provider recognises that political risk is likely to be one of the largest risks that the EfLSCo Services Call-Off Contract project could face. The relationship manager will notify the Contracting Authority within at least two working days, if not before, of anything that the Service Provider becomes aware of anything unplanned or unknown that may pose potential risk to the EfLSCo Services Call-Off Contract project, particularly political risk. This includes but is not limited to, any public announcements or any pending investigation from any regulatory bodies and ensure that all necessary steps are taken to mitigate this. They will liaise with the Contracting Authority on any potential risks and mitigations if any input is required. For any investigations that do take place, the relationship manager will keep the Contracting Authority informed with regular updated during the process and of the eventual outcome.

Question 8i – End Customer Supply Contract

Please provide a copy of the Service Provider's proposed terms and conditions for End Consumers. Please detail the changes the Service Provider would make to ensure that it is clear that the End Customer Supply Contract may transfer the contract to either a new licensed partner, or to their own licensed company. If the Service Provider's T&Cs do not already include provision for rolling customers from fixed to fixed deal, please detail how this change would look to create a clear and fair approach for customers.

Response:

The Service Provider has attached draft T&Cs for End Consumers [*this part of the response has been redacted*].

These T&Cs include a provision for rolling customers from a fixed to fixed deal. As Part 1 of the Specification states that the tariffs required for the EFLSCo Services Call-Off Contract are fixed and that customers need to be rolled from fixed to fixed, [*this part of the response has been redacted*].

The Service Provider has noted in the T&Cs the possible requirement to secure customer agreement to transfer at the end of initial the EFLSCo Services Call-Off Contract, but the nature and extent of drafting will depend on the agreed transfer mechanism.

Question 8j – SLAs – NOT USED

Question 8k – Additional SLAs

Please detail additional Service Levels under Schedule 10 the Service Provider will be able to report on, including timeframes and Service Level value.

In addition to the Service Levels set out in Schedule 10, the Service Provider is invited to set out additional Service Levels the Service Provider's organisation will be able to report on, including timeframes and Service Level value.

Response:

The Service Provider has a highly integrated customer management system that enables the Service Provider to develop a sophisticated level of reporting.

Part 2 Void Services

1 Void Management

Question 1a – General Borough Voids

What would be the Service Provider's approach to ensuring that energy supply switchovers and any associated smart meter replacements undertaken during voids periods meet with the parameters described in Part 2 of the Specification? Please detail the level of support and functions the Service Provider will offer to London boroughs or housing associations and how the Service Provider will deliver those services, including the Service Provider's approach to setting up potential Void Services Call Off Contracts with London boroughs or housing associations. Please detail how the Service Provider expects this to help the fuel poor.

Response:

The Service Provider currently works with landlords and letting agents to provide an efficient and effective service for void properties. *[this part of the response has been redacted]*

The Service Provider would propose to use the same method for the purposes of an the Void Services Call-Off Contract with the added filter that new properties in London would be placed on to an EfLSCo Services Call-Off Contract tariff while properties outside of London will be supplied under an agreed the Service Provider contract.

For the purposes of the Void Services Call-Off Contract, *[this part of the response has been redacted]*

As per paragraph 5.1.2 of Part 2 of the Specification, where required, whilst a property is in a void status the Service Provider would plan to install a smart meter, in particular where there is a legacy smart meter or dumb pre-payment meter installed and offer specific void tariffs with low or no standing charges applicable. The Service Provider would agree a smart meter installation process with any Contracting Authority looking to have a smart meter installed and would liaise with the authority to provide them with accurate reporting around the smart meter installation journey as well as arranging for key collections to ensure that the installation can take place as planned. The Service Provider would also be able to provide smart meter installations for new build properties.

The Service Provider understands that billed amounts during void periods are often small and can lead to large amounts of administration for housing associations and boroughs and under the Void Services Call-Off Contract, the Service Provider would work to make this as simple as possible. Measures to make this as simple as possible could include *[this part of the response has been redacted]*.

For any void accounts processed through the Void Services Call-Off Contract, once the switch is complete the Service Provider would send a welcome pack addresses to the occupant so that they know that the Service Provider is the current energy supplier for that property from the day they move in. Should the Housing Association or

borough prefer to be sent the pack in advance to give to the new tenant, the Service Provider would also be able to do this. The Service Provider's current occupier process is designed around simplicity and ease for any new tenants in the property and the Service Provider tries to take the hassle out of getting set up with an energy supplier when the Service Provider moves in, and subject to the approval of the Contracting Authority the Service Provider would continue this process branded under the Void Services Call-Off Contract in order to satisfy paragraph 5.1.5 of Part 2 of the Specification.

For any vacant or void property, the Service Provider [*this part of the response has been redacted*].

Each [*this part of the response has been redacted*].

In addition to the above [*this part of the response has been redacted*].

Any switches of void properties will be to an excellent value tariff. This is important as it will enable those responsible for void property periods, and any fuel poor households who subsequently move in, to benefit from low energy prices, even without taking any specific action.

Appendix 1: Octopus Energy Customer journey communications

June 2018

[this part of the response has been redacted]

Appendix 2
End Consumer Supply Contract draft T&Cs

[this part of the response has been redacted]

EfLSCo Services– Response to Pricing Rationale

1. Electricity Pricing Methodology

1a – Wholesale Energy

Please confirm that the Service Provider's pricing will reflect the Service Provider's Weighted Average Cost of Electricity ("**WACOE**"), reflecting the Service Provider's total hedge position, with no added surcharge or premia. The Contracting Authority would expect the declared WACOE to include any embedded benefits, benefit vs. buyout price of any ROC purchases, or and similar strategies that impact the cost of energy to be considered. Please confirm that the Service Provider is willing to share with the Contracting Authority the Service Provider's updated WACOE (on an open book basis, showing the trades that sum to the total WACOE), each time the Service Provider wishes to amend the Service Provider's pricing. If this is unacceptable, please propose an alternative method by which the Contracting Authority can gain certainty that the Service Provider's pricing reflects the Service Provider's actual wholesale costs.

Response:

[this response has been redacted]

1b – Wholesale Shaping

Please confirm the Service Provider's wholesale shaping cost assumptions. Please confirm the method by which this is arrived at, and the timing and methodology by which the Service Provider would propose to amend if necessary. Please describe the timing and method by which the Service Provider would propose to review and amend this charge within the cost stack.

Response:

[this response has been redacted].

1c – TNUoS, BSUoS & DUoS

Please confirm the Service Provider's current TNUoS cost for customers in GSP _C. Please describe the timing and method by which the Service Provider would propose to review and amend these charges within the cost stack.

Response:

See spreadsheet. *[this part of the response has been redacted]*.

1d – Imbalance

Please confirm the Service Provider's current Imbalance cost. Please describe the timing and method by which the Service Provider would propose to review and amend these charges within the cost stack. For the purposes of this question please assume no Contracting Authority PPAs have been sleeved into the Service Provider's hedge position.

Response:

See spreadsheet. *[this part of the response has been redacted]*.

1e – Metering

Please confirm the Service Provider's current metering cost (including DC / DA). Please describe the timing and method by which the Service Provider would propose to have the right to review and amend this charge within the cost stack. Please confirm what impact, if any, a move to SMETS2 metering will have on the metering charges.

Response:

See spreadsheet. *[this part of the response has been redacted]*.

1f – Taxes and Levies

Please confirm the total cost of taxes (excluding VAT) and levies that currently apply. Please describe the timing and method by which the Service Provider would propose to have the right to review and amend these charges within the cost stack. Except for VAT, where the Service Provider would anticipate any change being passed through, please also confirm whether the Service Provider would expect to have the right to pass through a variation in any taxes and levies to fixed customers during their contract term.

Response:

See spreadsheet. *[this part of the response has been redacted]*.

1g – Supplier Gross Margin

Please detail the gross margin within the Service Provider's price, which will include all overheads and costs to run the Service Provider's business and our partnership. Please detail the breakdown of the elements making up the Service Provider's gross margin (e.g. staff, profit, systems, office space)

Response:

[this response has been redacted]

1h – Total Costs

Please complete the electricity tab on the tariff calculation sheet, which will confirm the relevant amount for the above price segments and detail the overall rates the Service Provider will charge for the electricity supplied to customers for this tariff.

Response:

See spreadsheet

2. Gas Pricing Methodology

2a – Wholesale Energy

Please confirm that the Service Provider's pricing will reflect the Service Provider's Weighted Average Cost of Gas ("**WACOG**"), reflecting the Service Provider's total hedge position, with no added surcharge or premia. Please confirm that the Service Provider is willing to share with the Contracting Authority the Service Provider's updated WACOG (on an open book basis, showing the trades that sum to the total WACOG), each time the Service Provider wishes to amend the Service Provider's pricing. If this is unacceptable, please propose an alternative method by which the Contracting Authority can gain certainty that the Service Provider's pricing reflects the Service Provider's actual wholesale costs. Please also confirm that the Service Provider would not expect to be able to pass through a variation in wholesale costs to fixed customers during their contract term

Response:

[this response has been redacted].

2b – Swing Cost

Please confirm any swing premia that the Service Provider would expect to add to the Service Provider's wholesale cost. Please describe the timing and method by

which the Service Provider would propose to review and amend this charge within the cost stack.

Response:

[this response has been redacted].

2c – Transportation charges

Please confirm the Service Provider's current Transportation cost for customers in North Thames. Please describe the timing and method by which the Service Provider would propose to review and amend this charge within the cost stack.

Response:

[this response has been redacted].

2d – Metering

Please confirm the Service Provider's current metering costs (including MRA). Please describe the timing and method by which the Service Provider would propose to have the right to review and amend this charge within the cost stack. Please confirm what impact, if any, a move to SMETS2 metering will have on the metering charges.

Response:

See spreadsheet. *[this part of the response has been redacted]*.

2e – Taxes and Levies

Please confirm the total cost of taxes (excluding VAT) and levies that currently apply. Please describe the timing and method by which the Service Provider would propose to have the right to review and amend this charge within the cost stack. Except for VAT, where the Service Provider would anticipate any change being passed through, please also confirm whether the Service Provider would expect to have the right to pass through a variation in any taxes and levies to fixed customers during their contract term.

Response:

See spreadsheet. *[this part of the response has been redacted]*.

2f – Supplier Gross Margin

Please detail the gross margin within the Service Provider's price, which will include all overheads and costs to run the Service Provider's business and our partnership.

Response:

[this response has been redacted]

2g – Total Costs

Please complete the gas tab on the tariff calculation sheet, which will confirm the relevant amount for the above price segments and detail the overall rates the Service Provider will charge for the gas supplied to customers under this tariff.

Response:

See spreadsheet

3. General Pricing Methodology

3a – Unknown future costs

Please describe the Service Provider's approach regarding any as yet unknown future change to the Service Provider's current costs. Please describe the timing and method by which the Service Provider would propose to have the right to introduce such an additional cost for new business (fixed and variable tariff) and on-supply customers (variable tariff only).

Response:

[this response has been redacted].

4. Overall Price Position

4a – Overall Annual Price

Following the completion of question referenced 1h and 2g, this is to score the overall position of the tariff for an average customer for a year.

Response:

Question is for info.

4b – Margin Cap

Please propose a margin cap which would apply to tariffs issued under the EfLSCo brand. This is to provide assurance that the Service Provider's margin levels are always kept to a fair and reasonable level, even in a situation where the market is sufficiently uncompetitive to allow the Service Provider to meet SLA 8.1 requirement, whilst making surplus margin. Please detail the split of margin between gas & electricity. Should the Service Provider be awarded the contract, this will form part of the contractual arrangements.

Please submit the Service Provider's gas and electricity margin as p/kWh (for unit rate costs) and p/day (for standing charge costs) for both fuels. Those will be scaled up using the TDCVs to calculate these into £/year value and then ranked.

Response:

The Service Provider proposes the following margin cap (all figures exclude VAT):

[this part of the response has been redacted]

PRICE CALCULATOR
SPREADSHEET

[this part of the response has been redacted]

Signed by)
[LP Officer Name])
for and on behalf of)
London Power Co. Limited)

Signature of director/officer

Signed by)
[OE Officer Name])
for and on behalf of the)
Octopus Energy Limited)

Signature of director/officer