

SUPPLY OF SERVICES AGREEMENT

CONTRACT PARTICULARS

Date:	<u>18/07/2022</u>
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Parties

WKHA:	WEST KENT HOUSING ASSOCIATION a registered society under the Co-operative and Community Benefit Societies Act 2014 (registration number: 26278R) whose registered office is at 101 London Road, Sevenoaks, Kent, TN13 1AX
Supplier:	Gas Advisory Services Limited Trading as Phoenix Compliancy Management incorporated and registered in England and Wales with company number 3362259 whose registered office is at 4 Waterside Court Galleon Boulevard, Crossways Business Park, Dartford, Kent, DA2 6NX

Services

Services:	Gas and Electrical Auditing, as further detailed in Schedule 1.
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Charges

Charges:	As further detailed in Schedule 2.
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Term

Commencement Date:	01/07/2022
Expiry Date:	30/06/2026
WKHA Termination Notice Period:	Three months

Review

Review Dates:	Monthly Meetings
Review Information:	Key Performance Indicators

	Programme of Audits for approval.
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Notices:

Email Address	For WKHA: laura.day@wkha.org.uk For the Supplier: gsparrowhawk@pcm.co.com
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Required Insurances:

Required Insurance:	Public Liability insurance with a limit of indemnity not less than five million pounds £3,000,000 in relation to any one claim or series of claims; Employer's Liability insurance with a limit of indemnity not less than five million pounds £3,000,000; Professional Indemnity insurance with a limit of indemnity not less than five million pounds £3,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover.
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Commented [BG1]: PCM currently hold £3,000,000. we have never been required to provided £5,000,000 in the past. Can you confirm you are satisfied with £3,000,000?

Schedules:

Schedules:	Schedule 1 - Services. Schedule 2 - Charges. Schedule 3 – KPIs. Error! Reference source not found. Data Protection. Schedule 5 – Social Value Model Schedule 6 – TUPE Schedule 7 – Your Tender Submission
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1. This Agreement is made up of the following:

- (a) The Contract Particulars.
- (b) The Contract Terms.
- (c) The Schedules listed in the Contract Particulars.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, the terms in the documents shall take priority in the order listed in paragraph 1.

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

Signed by Neil Diddams for and on behalf of WKHA	 Director
Signed by Vince Queen for and on behalf of Gas Advisory Services Limited Trading as Phoenix Compliancy Management	 Director

CONTRACT TERMS

1. Interpretation

1.1 Definitions:

"Charges" the charges payable by WKHA for the supply of the Services by the Supplier, as set out in the Contract Particulars and Schedule 2.

"Contract Terms" these terms and conditions.

"Contract Year" any 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

"Control" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **"change of control"** shall be construed accordingly.

"Information Disclosure Obligations" any regulatory and legal obligations applicable to WKHA under which it is required to disclose information to a third party (including a customer of WKHA) whether or not in force at the Commencement Date.

"Intellectual Property Rights" patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"KPIs" the key performance indicators specified in Schedule 3.

"Service Credits" a sum which WKHA is entitled to deduct or invoice for a Service Failure as specified in Schedule 3.

"Service Failure" a shortfall or failure by the Supplier to provide the Services in accordance with the KPIs, as specified in Schedule 3.

"Services" the services to be provided by the Supplier pursuant to the Agreement, as described in the Contract Particulars and Schedule 1.

"Working Day" Monday to Friday excluding any public holidays in England and Wales.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.2 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to writing or written includes email.

2. Commencement and duration

- 2.1 The Agreement shall commence on the Commencement Date, and shall continue until the Expiry Date, unless terminated in accordance with its terms, or extended in accordance with Clause 2.2.
- 2.2 WKHA may extend the Agreement beyond the Expiry Date by giving the Supplier not less than 14 days' written notice.
- 2.3 If WKHA does not wish to extend this agreement, this Agreement shall expire on the Expiry Date.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to WKHA from the Commencement Date in accordance with:
 - 3.1.1 the service description and any timescales set out in the Contract Particulars and Schedule 1;
 - 3.1.2 all WKHA policies referred to in Schedule 1;
 - 3.1.3 all due skill and care, in a good and workmanlike manner and otherwise in line with best practice within its industry;
 - 3.1.4 all legal and regulatory requirements and reasonable instructions of WKHA from time to time; and
 - 3.1.5 the social value model as set out in Schedule 5.
- 3.2 The Supplier shall:

- 3.2.1 only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
- 3.2.2 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Agreement;
- 3.2.3 not do or omit to do anything which may cause WKHA to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business
- 3.2.4 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of WKHA's premises from time to time and are notified to the Supplier;
- 3.2.5 notify WKHA in writing immediately upon the occurrence of a change of control of the Supplier.

4. KPIs & Review

- 4.1 The Supplier shall supply the Services in accordance with and in a manner as will ensure achievement of the KPIs as set out in Schedule 3.
- 4.2 If the Supplier commits a Service Failure, WKHA shall be entitled to either invoice the Supplier or make deductions from the Charges corresponding to Service Credits set out in Part 2, Schedule 3.
- 4.3 The Supplier shall:
 - 4.3.1 attend meetings with WKHA on the Review Dates stated in the Contract Particulars to discuss the performance of the Services, achievement of the KPIs and any other business reasonably required by WKHA;
 - 4.3.2 provide the Review Information in accordance with the Contract Particulars and such other information as WKHA shall reasonably require in relation to its performance against the KPIs.

5. Charges and payment

- 5.1 In consideration for the provision of the Services, WKHA shall pay the Supplier the Charges (plus

VAT, if any) in accordance with this clause 5.

- 5.2 The Supplier shall submit invoices for the Charges plus VAT (if applicable) to WKHA in accordance with Schedule 2. Each invoice shall include all reasonable supporting information required by WKHA.
- 5.3 WKHA shall pay each invoice which is properly due and submitted to it by the Supplier in accordance with Schedule 2, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 5.4 If WKHA fails to make any payment due to the Supplier under the Agreement by the due date for payment, WKHA shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time (but at 4% a year for any period when that base rate is below 0%).
- 5.5 WKHA may at any time without notice to the Supplier, set off any liability of the Supplier to WKHA against any liability of WKHA to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Agreement. Any exercise by WKHA of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Agreement or otherwise.

6. Limitation of liability

- 6.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.
- 6.2 Subject to Clause 6.1 and 6.4, the Supplier's aggregate liability:
 - 6.2.1 is unlimited in respect of:
 - (a) the indemnities in Schedule 4 (Data Protection), Schedule 6 (TUPE, and Clause 13.1;
 - (b) the Supplier's wilful default;
 - 6.2.2 in respect of Service Credits, is limited, in each Contract Year, to 50% of the Charges that are paid and payable by WKHA in the

- applicable Contract Year; and
- 6.2.3 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement, shall be limited in each Contract Year, to the greater of fifty thousand pounds (£50,000) and 150% of the total Charges payable in such Contract Year.
- 6.3 Subject to Clause 6.1 and 6.4, WKHA's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which WKHA shall remain fully liable), shall be limited in any Contract Year to twenty-five thousand pounds (£25,000).
- 6.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- 6.4.1 fraud or fraudulent misrepresentation;
- 6.4.2 death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- 6.4.3 breach of any obligation as to title implied by statute; or
- 6.4.4 any other liability for which may not be limited under any applicable law
- and amounts that are recovered from insurances required to be maintained by the Supplier are excluded from any limit on liability in this clause.

7. Insurance

- 7.1 During the term of the Agreement and for a period of six years thereafter, the Supplier shall maintain in force, with a reputable insurance company the Required Insurances as referred to in the Contract Particulars.
- 7.2 The Supplier shall produce to WKHA on request the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

8. Termination

- 8.1 Without affecting any other right or remedy

available to it, WKHA may terminate the Agreement with immediate effect by giving written notice to the Supplier if:

- 8.1.1 the Supplier is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy, WKHA may only terminate this Agreement under this clause if the Supplier has failed to remedy such breach within 30 days of receipt of notice from WKHA to do so;
- 8.1.2 the Supplier commits a Consistent Failure as defined in Part 3 of Schedule 3;
- 8.1.3 the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 8.1.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.1.5 the Supplier's financial position deteriorates to such an extent that in WKHA's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;
- 8.1.6 there is a change of control of the Supplier.
- 8.2 Without affecting any other right or remedy available to it, WKHA may terminate this agreement at any time by giving notice to the Supplier in writing (the period of such notice to be not less than the WKHA Termination Notice Period) specifying the date of termination.
- 8.3 The Supplier shall have no claim against WKHA for any loss, damages, costs, expenses suffered or incurred or to be suffered or incurred by the Supplier as a result of WKHA exercising its right of termination under clause 8.2.
- 8.4 The Supplier may terminate this Agreement by giving 14 days' written notice to WKHA in the event that WKHA fails to pay any undisputed sum

due to the Supplier under this agreement within 90 days of the due date. The Supplier may only terminate this Agreement under this clause if it has first given written notice to WKHA (such notice to specify the sums due, include copies of the invoices relating to such sums and stating that the payment is over 90 days late and that failure to make payment may result in termination under this clause) and WKHA has failed to make the payment within 14 days of such notice.

8.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

8.6 Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

9. Exit arrangements

9.1 On termination of the Agreement for whatever reason, the Supplier shall, if so requested by WKHA provide all assistance reasonably required by WKHA to facilitate the smooth transition of the Services to WKHA or any replacement supplier appointed by it, including any assistance set out in Schedule 1.

10. Information Disclosure Requirements

10.1 The Supplier shall provide all necessary assistance and cooperation reasonably requested by WKHA to enable WKHA to comply with Information Disclosure Obligations.

10.2 The Supplier shall provide WKHA with a copy of all information in its possession or control that WKHA requires in order to comply with the Information Disclosure Obligations within five Working Days of WKHA's request for such information.

10.3 The Supplier acknowledges that WKHA may be required under the Information Disclosure Obligations to disclose information without consulting or obtaining consent from the Supplier. WKHA shall take reasonable steps to notify the Supplier of any such request to the extent that it is permissible and reasonably practical for it to do

so.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of six years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

11.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority (including in the case of WKHA the Information Disclosure Obligations).

11.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.

12. Data protection

The parties shall comply with their data protection obligations as set out in Schedule 4 (Data Protection).

13. Intellectual property

13.1 In the absence of prior written agreement by WKHA to the contrary, all Intellectual Property Rights created by the Supplier (or on its behalf) in the course of performing the Services or exclusively for the purpose of performing the Services shall vest in WKHA on creation.

13.2 The Supplier shall indemnify WKHA against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any

Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by WKHA's acts or omissions. This clause shall survive termination of the Agreement.

14. TUPE

The parties agree that the provisions of Schedule 6 shall apply to this Agreement.

15. Compliance with Anti-Slavery Laws and Policies

15.1 In performing its obligations under the Agreement, the Supplier shall;

- 14.4.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- 14.4.2 comply with any of WKHA's anti-slavery policies from time to time;
- 14.4.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- 14.4.4 include in its agreements with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 15 and ensure that each of its subcontractors and suppliers shall comply with the Anti-slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

16. Dispute Resolution

- 16.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it then either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, authorised representatives shall attempt in good faith to resolve the Dispute.
- 16.2 If the authorised representatives are for any reason unable to resolve the Dispute within 14

days of service of the Dispute Notice, the Dispute shall be referred to WKHA's and the Supplier's Chief Executive (or equivalent, or any other employee notified in writing to the Supplier) and the Supplier's Chief Executive (or equivalent) who shall attempt in good faith to resolve it; and

- 16.3 If WKHA's and the Supplier's Chief Executive (or equivalent) is unable to resolve the dispute within 14 days of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure, and the mediator nominated by CEDR. A party must serve notice on the other in writing (**ADR Notice**) requesting mediation. Mediation will start within 28 days of the ADR Notice.

17. Notices

- 17.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be:
 - 17.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 17.1.2 sent by email to the Email Address specified in the Contract Particulars.
- 17.2 Any notice or communication shall be deemed to have been received:
 - 17.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - 17.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 17.3 This clause 17 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 18. Force majeure:** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for eight weeks, the party not affected may terminate the Agreement by giving four week's written notice to the affected party.
- 19. Subcontracting:** The Supplier may not subcontract any or all of its rights or obligations under the Agreement without the prior written consent of WKHA. If WKHA consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 20. Assignment.** The Supplier shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement Form without the prior written consent of WKHA.
- 21. Entire agreement:** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22. Variation:** No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 23. Waiver:** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 24. Severance:** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not

possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

- 25. Third party rights:** The Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 26. Assignment.** The Supplier shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement Form without the prior written consent of WKHA.
- 27. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement.
- 28. Governing law and Jurisdiction.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) shall be governed by English Law.