

DATED [x] 2012

THE SUPPLIERS
and
THE GREEN DEAL PROVIDERS

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GREEN DEAL ARRANGEMENTS AGREEMENT

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THIS AGREEMENT is made on the [] day of [] 2012

BETWEEN:

- (1) **THE PERSONS** whose names, registered numbers and registered or principal offices are set out in Part 1 of Schedule 1 (each, a **Supplier**); and
- (2) **THE PERSONS** whose names, registered numbers and registered or principal offices are set out in Part 2 of Schedule 1 (each, a **Green Deal Provider**).

WHEREAS:

- (A) The Framework Regulations, made pursuant to section 3(1) of the Energy Act 2011, establish a scheme to make provision for certain matters relating to the Green Deal.
- (B) Regulation [/] of the Framework Regulations requires each Green Deal Provider to enter into and comply with an agreement with certain Electricity Suppliers as a condition of its authorisation.
- (C) Standard Condition 38 of the Electricity Supply Licence provides that there shall be an agreement between certain Electricity Suppliers and all Green Deal Providers, and which shall, *inter alia*, provide provisions:
 - [(a) for the collection and remittance of Green Deal Payments;
 - (b) for the provision of information relating to Green Deal Payments;
 - (d) to allow Green Deal Licensees to charge Green Deal Providers an administration fee;
 - (e) to compensate a party where it suffers a loss caused by another party;
 - (f) for resolving any objections made by Green Deal Bill Payers relating to the collection of Green Deal Payments;
 - (g) for the resolution of disputes arising under this agreement;
 - (h) that shall be capable of, and not capable of, being amended without the Authority's and the Secretary of State's prior approval; and
 - (i) such other matters as may be appropriate.]
- (D) Standard Condition 11.10 of the Electricity Supply Licence provides that each Green Deal Licensee is required to be a party to and comply with this Agreement.
- (E) This Agreement is the agreement for the purposes of Regulation [/] of the Framework Regulations and Standard Condition 38 of the Electricity Supply Licence.
- (F) On [date], this Agreement was approved by the Secretary of State for the purposes of Regulation [/] of the Framework Regulations.
- (G) Each Green Deal Provider and each Supplier has accordingly agreed to enter into this Agreement on the basis of the terms and conditions set out below.

Part 1: Preliminary

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1 Definitions and Interpretation

1.1 Definitions

In this Agreement, the following definitions apply [unless otherwise stated].

Accession Agreement	means an agreement substantially in the form set out in Schedule 2.
Administration Fee	Three pounds (£3), as amended by the Secretary of State from time to time and relevant Administration Fee means, in relation to a Green Deal Plan, the prevailing Administration Fee in force at the time a Supplier's obligation under Section 1(6) of the Energy Act commenced.
Affiliate	in relation to any party, means any holding company of that party or any subsidiary of that party or any subsidiary of a holding company of that party, in each case within the meaning of [**].
Annual Charge	means the annual payment required to be made by a Customer under the terms of its Green Deal Plan.
Authorisation	means an authorisation granted by the Secretary of State pursuant to regulation [/] of the Regulations.
Authority	means the Gas and Electricity Markets Authority established by Section 1(1) of the Utilities Act 2000.
Authority Priority Provisions	has the meaning given in Clause 7.2.2.
CCD Procedures	means the procedures issued under clause [55.13] of the Master Registration Agreement, as amended from time to time.
Central Charge Database	means the database established and maintained in accordance with Standard Condition 35 of the Electricity Supply Licence and the Master Registration Agreement.
Change Proposal	means a Notice from any party or parties in accordance with the Change Procedures suggesting an amendment to this Agreement.
Charges for the Supply of Electricity	has the meaning given in the Electricity Supply Licence.
Competent Authority	means the Secretary of State, the Authority and any local or national agency, authority, department, inspectorate, minister, ministry, official, or public or statutory person (whether autonomous or not) of the government of the United Kingdom

	or the European Union.
Cooling-off Period	means a period of fourteen (14) days starting on the day that a person enters into a Green Deal Plan with a Green Deal Provider.
Confidential Information	means all information a party obtains as a result of entering or performing this Agreement which relates to any another party's business, customers, financial or other affairs.
Contract Manager	has the meaning given in Clause 22.1.1.
Customer	means any person supplied or entitled to be supplied with electricity by a Supplier.
Customer Data	means the data set out in Schedule 3, as applicable to a Customer.
Customer Dispute	has the meaning given in Clause 10.2.5.
Customer Electricity Data	means [the following data, as applicable to a Customer: <ul style="list-style-type: none"> (a) the relevant electricity meter serial number; (b) the Meter Point Administration Number; (c) the address of the relevant premises; (d) **];
Data Protection Act	means the Data Protection Act 1984.
Debt Threshold	[means: <ul style="list-style-type: none"> (a) in the case of a Domestic Customer, two hundred pounds (£200); or (b) in the case of a Non-Domestic Customer, four hundred pounds (£400)].
Due Date	has the meaning given in Clause 14.1.2.
Electricity Act	means the Electricity Act 1989 as amended by the Utilities Act 2000 and the Energy Act 2004.
Electricity Distribution Licence	means a licence to distribute electricity granted by the Authority pursuant to Section 6(1)(c) of the Electricity Act.
Electricity Supply Licence	means a licence to supply electricity granted by the Authority pursuant to Section 6(1)(d) of the Electricity Act.
Energy Act	means the Energy Act 2011.

Event of Default Decision	means any decision of the Panel under Clause 19.
Final Green Deal Statement	means a statement provided to a previous Green Deal Bill Payer setting out the Green Deal Payments, if any, that are owed by it.
Force Majeure	has the meaning given in Clause 21.1.
Green Deal Bill Payer	means a "bill payer" within the meaning of section 2(3) of the Energy Act [for the avoidance of doubt including, with respect to historic unpaid liabilities, a person who remains liable to pay one or more historic energy bills for the relevant property even if they are not liable to pay other energy bills for the property accruing from time to time.]
Green Deal Confirmation Period	means a period of fourteen (14) days starting on the day on which a Customer receives a notification under Clause 10.2.3.
Green Deal ID	means a unique alphanumeric ID for a Green Deal Plan, allocated [by Suppliers] via the Central Charge Database.
Green Deal Payment	means a payment required to be made under a Green Deal Plan by a Green Deal Bill Payer, as referred to in section 1(6) of the Energy Act.
Green Deal Plan	has the meaning given to "green deal plan" in section 1(3) of the Energy Act.
Green Deal Premises	means a premises at which Green Deal Payments are owed to a Green Deal Provider.
Green Deal Provider Members	has the meaning given in Clause 5.3.1.
Installation	means the installation [to the satisfaction of the Customer] of the energy efficiency measures agreed in the Customer's Green Deal Plan.
Interested Persons	means: (a) each Party; (b) the Secretary of State; and (c) the Authority.
Master Registration Agreement or MRA	means the agreement of that name established pursuant to Standard Condition 23 of the Electricity Distribution Licence.
Metering Point	has the meaning given in the Master Registration Agreement.
Nominated Finance Provider	means a third party nominated by a Green Deal Provider to receive the remittance of Green Deal Payments in place of the

	Green Deal Provider.
Notice	has the meaning given in Clause 27.1.1, and notify shall be construed accordingly.
Opening Green Deal Statement	means a statement provided to a new Green Deal Bill Payer setting out the Green Deal Payments remaining under the relevant Green Deal Plan.
Operational Issues	means any issue or problem perceived by one or more parties arising out of the operation of the arrangements under this Agreement designed to facilitate the performance of the obligations in Clause[s] 8 [and 12].
Operational Issues Procedures	means those procedures agreed and issued by the Panel under Clause 8.2.1.
Oversight Body	means [the body established pursuant to [**]].
Oversight Body Member	has the meaning given in Clause 5.3.1.
Panel	means the body constituted under Clause 5.
Panel Chairman	means the person appointed from time to time under Clause 5.5.1(a).
Panel Member	has the meaning given in Clause 5.3.1.
Panel Secretary	means the person appointed from time to time under Clause 5.6.1.
Payment End Date	means the date on which the final Green Deal Payment is scheduled to be paid under the terms of the Green Deal Plan.
Payment Start Date	means the date on which the first Green Deal Payment is scheduled to be paid under the terms of the Green Deal Plan.
Priority Provisions	means Authority Priority Provisions and SoS Priority Provisions.
Proposed New Party	has the meaning given in Clause 4.1.1.
Proposer	has the meaning given to it in Clause 7.5.1.
Quarter	means a period of three calendar months commencing on the first day of January, March, July and October.
Quarterly Invoice	means an invoice under Clause 14.1.1.
Reasonable and Prudent Operator	means, in respect of any person, its acting in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and internationally

experienced operator engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions.

Regulations	means the Green Deal Framework (etc.) Regulations 2012.
Rejection Notice	<p>means a Notice (in electronic format or otherwise):</p> <p>(a) that an attempted entry onto the Central Charge Database of Customer Data relating to a Green Deal Plan or a proposed Green Deal Plan has not been successful; and</p> <p>(b) setting out reasons why it was not successful.</p>
Related Consents	means Electricity Supply Licences and Authorisations.
Related Undertaking	in relation to any party means any undertaking in which that party has a participating interest as defined by section 260 of the Companies Act 1985.
Relevant Instrument	<p>means:</p> <p>(a) the Electricity Act and all subordinate legislation made under the Electricity Act;</p> <p>(b) the Energy Act and all subordinate legislation made under the Energy Act;</p> <p>(c) the Data Protection Act and all subordinate legislation made under the Data Protection Act;</p> <p>(d) any Electricity Supply Licence and any determination or notice made or issued by the Authority pursuant to the terms thereof;</p> <p>any Authorisation and any determination or notice made or issued by the Authority pursuant to the terms thereof.</p>
Remittance Data	means the data contained in Schedule 4 that is relevant to the remittance of a Green Deal Payment by a Supplier to a Green Deal Provider or a Nominated Finance Provider.
Reporting Party	has the meaning given in Clause 19.1.2.
Required Authorisations	<p>means:</p> <p>(a) in the case of a Supplier, an Electricity Supply Licence; and</p> <p>(b) in the case of a Green Deal Provider, an Authorisation.</p>

Secretary of State	means the Secretary of State for Energy and Climate Change.
SoS Priority Provisions	has the meaning given in Clause 7.2.1.
Suspected Party	has the meaning given in Clause 19.1.1.
Supplier Data Sources	means the <i>[list data sources that the Supplier has access to in order to verify the Customer Electricity Data]</i> .
Supplier Members	has the meaning give in Clause 5.3.1.
Third Party Claim	has the meaning give in Clause 23.4.4.
Trust Property	means: <ul style="list-style-type: none"> (a) all debts recoverable by the relevant Supplier pursuant to section 1(6)(c) of the Energy Act; and (b) all Green Deal Payments recovered and held by the relevant Supplier pursuant to section 1(6)(d) of the Energy Act, <p>in each case whether now or in the future and save where the relevant Supplier is also the relevant Green Deal Provider.</p>

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1.2 Interpretation

1.2.1 In this Agreement the following interpretations apply unless otherwise stated.

- (a) the word **company** includes any body corporate, wherever established.
- (b) the word **group** has the meaning given in section 53 Companies Act 1989 and **group companies** are members of the same group at the relevant time.
- (c) the word **party** means a party to this Agreement.
- (d) the word **person** includes each of the following, even if they have no separate legal personality: an individual, firm, partnership, trust, joint venture, body corporate, unincorporated body, association, organisation or any government, state or local body or authority and references to any person, including a party, includes that person's successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Agreement).
- (e) references to **this Agreement** or any other document are references to this Agreement or such other document, as varied, novated, supplemented or replaced from time to time;
- (f) references to any **Clause, paragraph, Schedule or recital** are to those contained in this Agreement, and all the Schedules are an integral part of this Agreement;

- (g) references to any statute or any other subordinate legislation, any other agreement or instrument shall be construed as a reference to that statute, subordinate legislation, other agreement or instrument as amended or re-enacted from time to time; and
- (h) references to any gender includes the others;
- (i) the term **in writing** means any communication made on paper;
- (j) the term **Working Day** means a day (other than a Saturday or a Sunday) on which banks are open in London for the transaction of general business;
- (k) the expression **this Clause**, unless followed by the number of a specific part of the Clause, refers to the whole clause in which it occurs;
- (l) **headings** are for ease of reference only and to be ignored when interpreting this Agreement;
- (m) the Eiusdem Generis rule does not apply to the interpretation of this Agreement. The words **include**, **including** and **in particular** indicate examples only. They do not limit the general nature of any preceding words. A phrase starting with the words **or other** or **otherwise** is not limited by any preceding words where a wider interpretation is possible; and
- (n) where this Agreement defines a word or expression, related words and expressions have a consistent meaning.

2 Representations, warranties and undertakings

2.1 Representations and warranties

2.1.1 Each Supplier represents and warrants to each Green Deal Provider that:

- (a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- (b) the execution, delivery and performance of the Agreement by it have been duly authorised by all necessary corporate action of the Supplier;
- (c) the execution, delivery and performance referred to in Clause 2.1.1(b), do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgement of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable the party to fulfil any of its obligations under this Agreement have been obtained and are in full force and effect and all conditions of any such authorisations have been complied with;
- (e) no Event of Default, or event which with notice and/or lapse of time would constitute an Event of Default, has occurred with respect to it and no such even would occur as a result of its entering into or performing its obligations under this Agreement to which it is a party;

- (f) no litigation, arbitration or administrative proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement.
- (g) *[further representations and/or warranties]*.

2.1.2 Each Green Deal Provider represents and warrants to each Supplier that:

- (a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- (b) the execution, delivery and performance of the Agreement by it have been duly authorised by all necessary corporate action of the Supplier;
- (c) the execution, delivery and performance referred to in Clause 2.1.1(b), do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgement of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable the party to fulfil any of its obligations under this Agreement have been obtained and are in full force and effect and all conditions of any such authorisations have been complied with;
- (e) no Event of Default, or event which with notice and/or lapse of time would constitute an Event of Default, has occurred with respect to it and no such even would occur as a result of its entering into or performing its obligations under this Agreement to which it is a party;
- (f) no litigation, arbitration or administrative proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement.
- (g) *[further representations and/or warranties]*.

2.2 Undertakings

2.2.1 Each party shall maintain in full force and effect all Required Authorisations at all times.

2.2.2 Where:

- (a) a Green Deal Provider receives notice pursuant to regulation [/] of the Framework Regulations that the Secretary of State is minded to withdraw or suspend the Green Deal Provider's Authorisation; or
- (b) a Green Deal Provider's Authorisation is:
 - (i) suspended by the Secretary of State under a regulation [/] of the Framework Regulations[; or]

- (ii) [withdrawn by the Secretary of State pursuant to regulation [/] or [/] of the Framework Regulations,]

the Green Deal Provider shall immediately notify the Panel Secretary.

- 2.2.3 [Where a Supplier receives notice from the Authority setting out an intention (including any conditional intention) to revoke the Supplier's Electricity Supply Licence, the Supplier shall immediately notify the Panel Secretary.]

3 Commencement and Duration

- 3.1 This Agreement shall take effect on the date hereof and, subject to Clauses 17 and 20, this Agreement shall remain in effect in respect of a party until that party ceases to be a party in accordance with Clause 19 .
- 3.2 This Agreement shall remain in effect until each party ceases to be a party in accordance with Clause 19 or there ceases to be at least one Supplier and one Green Deal Provider (who is not the same person as that Supplier) remaining as party to this Agreement.

4 Additional Parties

4.1 Applications for admission

- 4.1.1 Subject to the provisions of this Clause 4, the parties shall admit as an additional party any person who is not at that time already a party and who applies to be admitted in the capacity requested by the proposed new party (a **Proposed New Party**).
- 4.1.2 Applications for admission as a new party shall be made on a form of application issued by the Panel from time to time, accompanied with any documents required to be submitted with the form.
- 4.1.3 Where the Panel receives an application in compliance with clause 4.1.2, it shall consider the application and notify all parties and the Oversight Body of such application.
- 4.1.4 Within [ten (10)] Working Days of receipt of an application, the Panel shall notify the Proposed New Party and the Oversight Body that:
- (a) the Proposed New Party shall be admitted as a party;
 - (b) the Proposed New Party shall not be admitted as a party; or
 - (c) the Panel requires further information from the Proposed New Party in relation to its application and that such information must be provided within [five (5)] Working Days of receipt of the Panel's Notice.
- 4.1.5 Where the Panel determines not to admit a Proposed New Party as a party, it shall provide that Proposed New Party with the reasons for its decision.
- 4.1.6 Where Clause 4.1.4(c) applies and a Proposed New Party fails to provide information in accordance with Clause 4.1.4(c) the Proposed New Party's application shall lapse and the Panel may refuse to admit the Proposed New Party on the basis of such application (but without prejudice to any new application for admission it may make thereafter).

4.2 Admission criteria

The Panel shall not admit a Proposed New Party unless, as at that date of application:

- (a) in the case of admission as a Supplier, that Proposed New Party holds an Electricity Supply Licence; or
- (b) in the case of admission as a Green Deal Provider, that New Party holds an Authorisation.

4.3 Referrals to the Oversight Body

Where the Panel:

- (a) determines not to admit a Proposed New Party as a party;
- (b) fails to notify the Proposed New Party within [ten (10)] Working Days of receipt of the Proposed New Party's application; or
- (c) requests additional information from the Proposed New Party and the Proposed New Party objects to the request for additional information,

the Proposed New Party shall notify the Panel and may refer the matter to the Authority (in the case of admission as a Supplier) or the Oversight Body (in the case of admission as a Green Deal Provider) for a determination, and such determination shall be final and binding.

4.4 Accession process

4.4.1 Where:

- (a) the Panel notifies the Proposed New Party and the Oversight Body under Clause 4.1.4(a) that the Proposed New Party is to be admitted as a party;
- (b) the Proposed New Party provides the additional information requested by the Panel under Clause 4.1.4(c) in a form satisfactory to the Panel; or
- (c) the Oversight Body determines that the Proposed New Party shall become a party under Clause 4.3,

the Panel shall prepare an Accession Agreement, which shall be executed by the Proposed New Party and a delegate authorised by the Panel on behalf of all parties to this Agreement.

4.4.2 Each party authorises and instructs any delegate authorised by the Panel to sign any such Accession Agreement on its behalf and undertakes not to withdraw, qualify or revoke any such authority or instruction at any time.

4.4.3 Upon execution of the Accession Agreement by the Proposed New Party and the delegate, the Proposed New Party shall become a party for all purposes of this Agreement from the date specified in such Accession Agreement.

4.4.4 The Panel shall promptly notify all parties, the Oversight Body, the Authority and the Secretary of State of the execution and delivery of each Accession Agreement.

Part 2: Governance and Change Control

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5 The GDAA Panel

5.1 Delegation to the Panel

The parties delegate to the Panel all powers necessary to fulfil its objects in Clause 5.2.

5.2 Objects

5.2.1 The Panel shall, subject to and in accordance with the other provisions of this Agreement, have the powers to:

- (a) consider any applications from a Proposed New Party to become a party;
- (b) consider Operational Issues and make recommendations in relation thereto;
- (c) consider, approve, co-ordinate the implementation of or, in relation to those provisions set out in Clause [*clause that lists the provisions the require Ofgem/the Secretary of State consent to change*] where the prior written consent of the Authority and the Secretary of State is required to any change, recommend to the Oversight Body on behalf of parties to this Agreement, any proposals to change this Agreement and, as appropriate, amend this Agreement;
- (d) monitor the parties for the occurrence of Events of Default;
- (e) notify parties that they are Defaulting Parties under Clause 18; and
- (f) consider and resolve disputes between any parties arising under this Agreement in accordance with Clause 23.

5.3 Panel Membership

5.3.1 The Panel shall consist of the following representatives (the **Panel Members**) from the following categories:

- (a) two Panel Members appointed by the Suppliers (the **Supplier Members**);
- (b) two Panel Members appointed by the Green Deal Providers (the **Green Deal Provider Members**); and
- (c) one Panel Member from the Oversight Body appointed by the Oversight Body (the **Oversight Body Member**).

5.3.2 Subject to Clauses 5.3.3 and 5.3.6, a Supplier Member appointed under Clause 5.3.1(a) shall be an employee of either one of the Suppliers, or an Affiliate of one of the Suppliers.

5.3.3 At least one Supplier Member shall be an employee of either one of the Suppliers that supplies electricity to non-domestic customers, or an Affiliate of that Supplier.

5.3.4 Subject to Clauses 5.3.5 and 5.3.6, a Green Deal Provider Member appointed under Clause 5.3.1(b) shall be an employee of either one of the Green Deal Providers, or an Affiliate of one of the Green Deal Providers.

- 5.3.5 No more than one Green Deal Provider Member may be an employee of one of the Suppliers, or an Affiliate of one of the Suppliers.
- 5.3.6 A person shall not be appointed as a Panel Member where it would result in the Panel having more than one Panel Member being employed by any one of a Party's group companies.
- 5.3.7 No individual may simultaneously be appointed as the Panel Member or alternate for more than one of the categories under Clause 5.3.1.
- 5.3.8 All the Panel Members except the Oversight Body Member shall be appointed under the election procedures set out in Clause 5.3.10.
- 5.3.9 Subject to giving [ten (10)] Working Day's prior Notice to the Panel Secretary, the Panel Member appointed by the Oversight Body under Clause 5.3.1(c) shall be the Oversight Body Member.
- 5.3.10 No later than [forty (40)] Working Days before 1st October in each year:
- (a) each Supplier may propose to the Panel Secretary one candidate for election as a Supplier Member; and
 - (b) each Green Deal Provider may propose to the Panel Secretary one candidate for election as a Green Deal Provider Member,
- and the Panel Secretary shall no later than [thirty (30)] Working Days before the relevant 1st October notify the list of candidates to each party.
- 5.3.11 Where there are more than two candidates for election as representatives under Clauses 5.3.1(a) or 5.3.1(b), the parties in the relevant category of party shall be invited by the Panel Secretary to cast votes for their favoured candidate by Notice to the Panel Secretary within ten (10) Working Days of being notified of the list of candidates.
- 5.3.12 Where clause 5.3.11 applies, each party shall have the number of votes calculated in accordance with Clause 5.3.13.
- 5.3.13 *[Provisions on weighted voting of the parties to be developed.]*
- 5.3.14 The:
- (a) two Supplier candidates that receive the most votes or, where only two candidates are proposed, those candidates shall be appointed as the Supplier Members from 1st October in that year; and
 - (b) two Green Deal Provider candidates that receive the most votes or, where only two candidates are proposed, those candidates shall be appointed as the Green Deal Provider Members from 1st October in that year.
- 5.3.15 The Supplier Members and the Green Deal Provider Members shall retire on 1st October following their appointment as the Panel Members, but each retiree may be a candidate for reappointment in respect of the following year.
- 5.3.16 Subject to:
- (a) Clauses 5.3.17, 5.3.18 and 5.3.19; and

(b) the agreement of the majority of parties in that category of party,

each category of party entitled to appoint a Panel Member under Clause 5.3.10 may, at any time remove the Panel Member from office and elect or appoint another person to be a Panel Member in his place.

- 5.3.17 A category of parties will only have the right to remove from office a Panel Member under Clause 5.3.16 which it has elected or appointed, and will have no right to remove from office any Panel Member elected or appointed by another category of party
- 5.3.18 Any appointment to replace a Panel Member removed from office under Clause 5.3.16 shall be made in accordance with the procedure set out in Clause 5.3.10 (and subject to Clauses 5.3.3, 5.3.5, 5.3.6 and 5.3.7) but on such timescale as the Panel Secretary shall reasonably direct.
- 5.3.19 Only parties who are parties at the point in time when the existing the Panel Member is removed under Clause 5.3.16 shall be entitled to nominate candidates and to vote.
- 5.3.20 If at any time a vacancy arises in any category of a Panel Member (other than the Oversight Body Member) otherwise than as a result of retirement in accordance with Clause 5.3.15 or removal in accordance with Clause 5.3.16, those parties in the category who are parties at the point in time when the vacancy arises and entitled to appoint such the Panel Member may elect a replacement.
- 5.3.21 Any election to replace a Panel Member under Clause 5.3.20 shall be conducted in accordance with the procedure set out in Clause 5.3.10, but on such timescale, as the Panel Secretary shall reasonably direct.
- 5.3.22 If at any time any category of party fails to provide a Panel Member, the Panel Secretary shall, with regard to Clause 5.3.3, 5.3.5, 5.3.6 and 5.3.7,:
- (a) in the case of a Supplier Member, request [the Authority] to make the appointment; and
 - (b) in the case of a Green Deal Provider Member, request the Oversight Body to make the appointment,
- and the Oversight Body or [the Authority] (as applicable) shall have the power, until the category of party has decided upon an appointment and notified the Oversight Body or [the Authority] (as applicable) to appoint a Panel Member on behalf of that category of party or to remove any such person so appointed by the Oversight Body or [the Authority] (as applicable).
- 5.3.23 The Oversight Body shall have the right at any time and from time to time to remove from office the Oversight Body Member and shall be entitled to appoint another person to be the Panel Member in his place or to fill any vacancy which arises, provided it gives the Panel Secretary Notice of such appointment in writing within [five (5)] Working Days of such change taking effect.

5.4 Alternates

- 5.4.1 Each Panel Member other than the Oversight Body Member shall have the power to appoint any individual who is either an employee of one of the parties, or an Affiliate of one of the

parties, from the category of party that has appointed him (but who is not employed by his employer [or an Affiliate of his employer]), to be his alternate.

- 5.4.2 The Oversight Body Member shall have the power to appoint any individual who is an employee of the Oversight Body to be his alternate and may at his discretion remove an alternate so appointed, provided such appointment or removal is:
- (a) made by Notice;
 - (b) executed by the appointor; and
 - (c) delivered to the Panel Secretary or tendered at a meeting of the Panel.
- 5.4.3 Each Panel Member may at his discretion remove an alternate so appointed by him and shall remove such an alternate as soon as that individual ceases to be, in the case of:
- (a) a Supplier Member, an employee of one of the Suppliers, or an Affiliate of one of the Suppliers;
 - (b) a Green Deal Provider Member, an employee of one of the Green Deal Providers, or an Affiliate of one of the Green Deal Providers; or
 - (c) an Oversight Body Member, an employee of the Oversight Body.
- 5.4.4 If, in the case of a Supplier Member, any alternate's employer has its Electricity Supply Licence revoked by the Authority, his appointor shall remove the alternate and appoint a replacement alternate forthwith.
- 5.4.5 If his appointor so requests, an alternate shall be entitled to:
- (a) receive Notice of all meetings of the Panel which take place while his appointor is a Panel Member;
 - (b) attend as the Panel Member at any such meeting at which the Panel Member appointing him is not personally present and such meeting:
 - (i) vote; and
 - (ii) exercise and discharge all the functions, powers and duties of his appointor, as if a Panel Member, and for the purpose of the proceedings at the meeting the provisions of this Clause 5 shall apply as if he were a Panel Member.
- 5.4.6 Every person acting as an alternate shall exercise the voting rights of his appointor and execution by an alternate of any resolution in writing of the Panel shall, unless the Notice of his appointment provides to the contrary, be as effective as execution by his appointor.
- 5.4.7 When a Panel Member ceases to be a Panel Member for any reason then, provided that the alternate's employer is still a party (and in the case of a Supplier Member, his employer has not had its Electricity Supply Licence revoked), the alternate shall discharge all the functions, powers and duties of his appointor until a replacement the Panel Member is appointed under Clause 5.3.20.

5.4.8 References in this Clause 5 to a Panel Member shall, unless the context otherwise requires, include his duly appointed alternate.

5.5 The Panel Chairman

5.5.1 The chairman of the Panel:

(a) shall be a Supplier Member or a Green Deal Provider Member and shall be appointed; and

(b) may at any time be removed from office,

by a simple majority of the Panel Members.

5.5.2 The Panel Chairman shall preside at every meeting of the Panel at which he is present.

5.5.3 If the Panel Chairman is unable to be present at a meeting, he may nominate another Panel Member (or any alternate appointed under Clause 5.4.1 to act as the Panel Chairman.

5.5.4 If neither the Panel Chairman nor his alternate is present within half an hour after the time appointed for holding the meeting, the Panel Members present may appoint any of their number to be the Panel Chairman of that meeting.

5.5.5 The Panel Chairman, or the person appointed to act as the Panel Chairman in accordance with Clause 5.5.4, shall be entitled to vote in his capacity as a Panel Member.

5.5.6 The Panel Chairman shall in no circumstances be entitled to an extra or casting vote.

5.6 The Panel Secretary

5.6.1 The secretary to the Panel shall be appointed to or removed from office by a resolution of the Panel Members.

5.6.2 The Panel Secretary:

(a) shall not be a Panel Member;

(b) may speak but not vote on any issue at a Panel meeting.

5.6.3 The Panel Secretary's duties shall be to facilitate the Panel's objects in Clause 5.2 and in particular to:

(a) attend to the requisition of meetings and to serve requisite notices;

(b) maintain a register of names and addresses of the Panel Members and alternates as appointed from time to time;

(c) keep minutes of all meetings; and

(d) circulate all relevant papers.

5.7 Meetings

- 5.7.1 The Panel shall hold meetings at such times as it may decide but in any event shall meet at least once every three months. The venue for meetings shall be determined by the Panel Members from time to time.
- 5.7.2 Any Panel Member may, by giving Notice in writing to the Panel Secretary, request the Panel Secretary to requisition further meetings.
- 5.7.3 The Notice given to the Panel Secretary under Clause 5.7.2 shall contain a list of matters to be included in the agenda of the meeting to be convened under this paragraph.
- 5.7.4 Subject to Clause 5.7.5, the Panel Secretary shall proceed to convene a meeting of the Panel within:
- (a) [ten (10)] Working Days of such a Notice, or
 - (b) where the Panel Member specifies that the matter is urgent, as soon reasonably practicable after receipt of such a Notice (and in any event within [five (5)] Working Days of such a Notice),

and the Panel Secretary shall include in the meeting agenda the matters specified by the Panel Member.

- 5.7.5 Event of Default Meetings under Clause 19 may not be convened under Clause 5.7.4.

- 5.7.6 A quorum is all of the Panel Members.

5.8 Notice of Meetings

- 5.8.1 All meetings of the Panel shall be convened by the Panel Secretary.
- 5.8.2 Save for Event of Default Meetings under Clause 19:
- (a) and for meetings that are subject to Clause 5.7.4(b) the Panel Secretary shall convene meetings on at least [ten (10)] Working Days' prior Notice; and
 - (b) the Notice of each meeting shall contain the time, venue and confirmation of date of the meetings and an agenda and any available supporting papers which shall be given to each the Panel Member and to all parties.
- 5.8.3 By Notice to the Panel Secretary, any Panel Member may request matters to be considered at a meeting and provided that:
- (a) such Notice is given at least [five (5)] Working Days before the date of the meeting; and
 - (b) such matters should not properly be considered at an Event of Default Meeting,
- those matters will be included in the agenda for the meeting and, where necessary, the Panel Secretary shall circulate a revised agenda to each the Panel Member and all parties as soon as practicable.

5.8.4 The accidental omission to give Notice of a meeting to, or the non-receipt of Notice of a meeting by, a person entitled to receive Notice shall not invalidate the proceedings of that meeting.

5.9 Proceedings of Meetings

5.9.1 The Panel may meet for the transaction of business, and adjourn and otherwise regulate its meetings as it thinks fit, but shall at all times act reasonably and in compliance with the other provisions of this Clause 5.

5.10 Representation and Voting

5.10.1 Each Panel Member shall be entitled to attend, speak and, where entitled, vote, at every meeting of the Panel.

5.10.2 The Authority and the Secretary of State shall each be entitled to send a representative to any meeting who shall be entitled to speak but not to vote on any issue.

5.10.3 Any Panel Member may from time to time invite other persons who have relevant technical expertise to any meeting of the Panel, provided that:

- (a) such person shall be entitled to speak but not vote on any issue; and
- (b) the Panel Member shall, prior to the commencement of the meeting, obtain from that person an appropriate written undertaking to treat the proceedings of the Panel meeting as confidential.

5.10.4 All decisions of the Panel shall be by resolution.

5.10.5 Subject to Clause 5.10.7, for a resolution put to the vote of any meeting of the Panel to be passed, it shall require the unanimous support of all the Panel Members present at the meeting and entitled in accordance with Clause 5.10.6 to vote in relation to that resolution.

5.10.6 Supplier Members and Green Deal Provider Members may vote in all cases.

5.10.7 The Oversight Body Member may vote only in relation to resolutions which the Oversight Body Member reasonably considers relate to or affect [Green Deal Bill Payers], provided that he first states the reasons why he considers the resolution relates to or affects [Green Deal Bill Payers].

5.10.8 A resolution in writing signed by or on behalf of all the Panel Members entitled to vote in relation to that resolution shall be as valid and effective as if the same had been passed at a meeting of the Panel duly convened and held, and may consist of several instruments in like form executed by or on behalf of one or more the Panel Members.

5.10.9 Any resolution passed by the Panel shall have no effect until the expiry of any period in which a party is entitled to appeal that decision or until such later date as the terms of such resolution may provide and, if the decision is appealed, (as provided in Clause 5.12 or 19.6), pending determination of such appeal.

5.11 Minutes

5.11.1 Save in respect of Event of Default Meetings under Clause 19, the Panel Secretary shall circulate copies of the minutes of each meeting of the Panel or any sub-committees of the

Panel to all Interested Persons as soon as practicable (and in any event within [five (5)] Working Days) after the relevant meeting has been held.

- 5.11.2 If any Panel Member disagrees with any item of the minutes, he shall, within [five (5)] Working Days of receipt of the minutes, notify the Panel Secretary of those items with which he disagrees, and the Panel Secretary shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of the Panel, as the first item for resolution.
- 5.11.3 Save in respect of Event of Default Meetings under Clause 19), the Panel Secretary shall maintain a record of all resolutions voted on by the Panel, indicating how each the Panel Member voted on each resolution and shall make such record available on request to any party.

5.12 Appeals

- 5.12.1 Where any resolution put to the vote at any meeting of the Panel is not passed, the Panel shall, if requested by any Panel Member who voted in favour of such resolution within [ten (10)] Working Days after receipt of the minutes of the Panel meeting setting out such resolution under Clause 5.11.1 appeal the Panel decision to [the Oversight Body] for its determination.
- 5.12.2 Where a party reasonably believes that a resolution passed by the Panel, or the Panel's failure to pass any resolution put to the vote at any meeting of the Panel, will or is likely to unfairly prejudice the interests of that party or will cause that party to be in breach of this Agreement (or in the case of a Supplier, a breach of its Electricity Supply Licence or the Electricity Act), that party may within [ten (10)] Working Days, or such longer period as the Panel may decide in relation to that resolution, of receiving the minutes of the relevant Panel meeting under Clause 5.11.1 appeal the Panel decision to [the Oversight Body] for its determination.
- 5.12.3 Where the Oversight Body Member reasonably believes or is advised that such decision will or is likely to unfairly prejudice the interests of [Green Deal Bill Payers], that party or the Oversight Body Member, as appropriate, may within [ten (10)] Working Days, or such longer period as the Panel may decide in relation to that resolution, of receiving the minutes of the relevant Panel meeting under Clause 5.11.1 appeal the Panel decision to the Secretary of State for its determination.
- 5.12.4 Pending the outcome of any appeal under Clause 5.12.2, the relevant decision shall have no effect.

5.13 Vacation of Office

- 5.13.1 The office of a Panel Member shall be vacated forthwith if:
- (a) he resigns his office by Notice delivered to the Panel Secretary;
 - (b) he fails, in person or by alternate, to attend [three (3)] consecutive meetings of the Panel that have been duly convened but have not been held as a result of a lack of quorum due to his (or his alternate's) non-attendance;
 - (c) he is a Supplier Member and:

- (i) a Supplier ceases to be a party and he is employed by either that party or an Affiliate of that party;
 - (ii) he ceases to be in the employment of either a Supplier, or an Affiliate of a Supplier; or
 - (iii) his employer has had its Electricity Supply Licence revoked; or
- (d) he is a Green Deal Provider Member and:
- (i) a Green Deal Provider ceases to be a party and he is employed by either that party or an Affiliate of that party; or
 - (ii) he ceases to be in the employment of either a Green Deal Provider or an Affiliate of a Green Deal Provider.

5.14 The Panel Member Responsibilities and Protections

- 5.14.1 Save in relation to Event of Default Decisions under Clause 19, in the exercise of his powers and the performance of his duties and responsibilities as a Panel Member, each Supplier Member and each Green Deal Provider Member shall represent the interests of the category of party by whom they are for the time being appointed.
- 5.14.2 Each Panel Member shall exercise reasonable skill and care to the standard reasonably expected of a director of a public limited company in the performance of his duties and responsibilities as a Panel Member, save that the Oversight Body Member shall (save in relation to Event of Default Decisions under Clause 19), be entitled to rely on the instructions of the Oversight Body in the performance of his duties and responsibilities.
- 5.14.3 Save in relation to Event of Default Decisions under Clause 19, each Supplier Member and each Green Deal Provider Member shall use their reasonable endeavours to consult as many of the parties that they represent as possible before voting on a matter and shall have a written note available at each meeting to demonstrate the level of such consultation.
- 5.14.4 All parties other than the Oversight Body Member shall jointly and severally indemnify and keep indemnified:
- (a) each Panel Member and his alternate;
 - (b) the Panel Secretary;
 - (c) each person who serves on a sub-committee established by the Panel; and
 - (d) each party, or Affiliate of that party, which is the employer of any person referred to in paragraphs (a) to (c) above,

as between each such party rateably in accordance with the proportions set out in Clause [6 (Costs)] from and against all and any costs (including legal costs), charges, expenses, damages or other liabilities properly incurred or suffered by the person or party in relation to such function or the due exercise of the person's powers, duties or responsibilities under this Agreement including in relation to negligence and all claims, demands or proceedings arising out of or in connection with the same and any such costs, charges, expenses, damages or other liabilities which are recovered under any policy of insurance in favour of any or all of the

persons and parties referred to in paragraphs (a) to (d) above or suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person.

5.15 Sub-Committees

- 5.15.1 The Panel may establish such sub-committees from time to time and consisting of such persons as it considers desirable.
- 5.15.2 Each sub-committee shall be subject to such written terms of reference and such procedures as the Panel may determine.
- 5.15.3 A sub-committee's resolution which relates to or affects [Green Deal Bill Payers] shall not be effective unless the Oversight Body Member has voted in favour of the resolution.
- 5.15.4 Each of the Authority and the Secretary of State may send a representative to any meeting of any subcommittee, who shall be entitled to speak but not to vote on any issue.
- 5.15.5 Resolutions of sub-committees shall not have binding effect unless the Panel has formally delegated the decision-making powers to the sub-committee under Clause 5.15.1 or has ratified the resolution in question.
- 5.15.6 The Panel shall be considered as having formally delegated to the Disputes Committee the decision-making powers set out in Clause 23.

6 Costs

[To be developed.]

7 Modification

7.1 Inconsistencies with the Related Consents

- 7.1.1 Each of the parties acknowledges and agrees the desirability of achieving and maintaining consistency with, and the absence of conflict between, this Agreement and the Related Consents but recognises that it will not in all circumstances be possible to avoid inconsistency or conflict.
- 7.1.2 If at any time there is any conflict between [the Priority Provisions] [this Agreement] (as interpreted in the context of this Agreement) and any equivalent terms, conditions or other provisions contained in the Related Consents (as interpreted in the context of the relevant Related Consent) the parties agree that:
- (a) if and for so long as a party complies with its Related Consent, it will not be in breach of its obligations under [the Priority Provisions] [this Agreement] in respect of those provisions which are in conflict with the Related Consent; and
 - (b) until such time as such conflict is resolved through the procedures set out in this Clause 7 and the equivalent procedures in the Related Consent (if any), the Related Consent shall prevail over the equivalent [Priority Provisions] [provision(s) of this Agreement] with which they are in conflict,

provided that nothing in this Clause 7.1.2 shall prejudice the form or content of any proposed change to resolve the conflict.

7.2 Change co-ordination and consideration of requests made by the Secretary of State and the Authority

7.2.1 The parties acknowledge and agree that notwithstanding any other provision of this Agreement, no amendment to or variation of any of the matters dealt with in any of the following provisions of this Agreement shall take effect without the prior written consent of the Secretary of State:

- (a) [*Secretary of State Priority Provisions to be confirmed*]; or
- (b) any provision of this Agreement which requires or permits any matter to be referred to the Secretary of State or the Authority for approval, consent, direction or decision or confers any rights or benefits upon the Secretary of State or the Authority,

(the **SoS Priority Provisions**).

7.2.2 The parties acknowledge and agree that notwithstanding any other provision of this Agreement, no amendment to or variation of any of the matters dealt with in any of the following provisions of this Agreement shall take effect without the prior written consent of the Authority:

- (a) [*Authority Priority Provisions to be confirmed*]; or
- (b) any provision of this Agreement which requires or permits any matter to be referred to the Authority for approval, consent, direction or decision or confers any rights or benefits upon the Authority,

(the **Authority Priority Provisions**).

7.2.3 The Panel shall be responsible for liaising with the appropriate forum under the Related Consents to ensure the co-ordination of the implementation of changes to the Priority Provisions within the agreed timescales (and to this end shall establish appropriate joint working arrangements with such a forum).

7.2.4 The Panel shall:

- (a) give due and prompt consideration to any matter referred to it in writing by the Secretary of State or the Authority;
- (b) advise the Secretary of State and the Authority in writing of any decision or action of the Panel in relation to any matter;
- (c) if requested by the Secretary of State or the Authority, give both the Secretary of State and the Authority written reasons for such decision or action; and
- (d) if requested by the Secretary of State or the Authority (having regard, in particular, to the resources available to the Panel), in relation to any proposal by either of them for a change to any provision of this Agreement, provide or procure the provision of advice and assistance to them as soon as reasonably practicable as to the implications of the change and the actions necessary to implement it (including any relevant impact assessment).

7.3 Changes to Priority Provisions

- 7.3.1 Any party that wishes to change the Priority Provisions may submit a Change Proposal to the Panel requesting that such change be made.
- 7.3.2 Subject to Clause 7.5.1, where the Panel receives a Change Proposal under Clause 7.3.1, it shall send a copy of such request to all Interested Persons for consideration and indicate the timescale for submitting comments.
- 7.3.3 The Panel shall collate all comments received within the proposed timescale indicated under Clause 7.3.2 and send a copy of:
- (a) such comments; and
 - (b) the results of any impact assessment received,
- to the Secretary of State and the Authority.

7.4 Changes to other provisions

- 7.4.1 Any party may submit to the Panel a Change Proposal that is not a change to the Priority Provisions.
- 7.4.2 Subject to Clause 7.5.1, where the Panel receives a Change Proposal under Clause 7.4.1, it shall send a copy such request to all Interested Persons for consideration and indicate the timescale for submitting comments.
- 7.4.3 If any Interested Person notifies the Panel that it considers that the Change Proposal relates to the Priority Provisions, then Clauses 7.3.2 and 7.3.3 shall apply to such change and Clause 7.4.4 shall not apply.
- 7.4.4 The Panel shall collate all comments received within the proposed timescale indicated under Clause 7.4.3 and send, within [ten (10)] Working Days of receipt, a copy of:
- (a) such comments; and
 - (b) the results of any impact assessment received,
- to each Party.

7.5 Panel decision-making process

- 7.5.1 Where the Panel receives a Change Proposal, it may, before sending a copy to anyone under this Clause 7, return the Change Proposal to the party who raised it (the **Proposer**) recommending that the party retract the Change Proposal and refer it to the Panel Secretary as an Operational Issue to be considered in accordance with the Operational Issues Procedures.
- 7.5.2 The Proposer shall notify the Panel Secretary whether it accepts or rejects Panel's recommendation and:
- (a) if the Proposer accepts the Panel's recommendation, the Change Proposal shall be deemed to have been retracted; or

- (b) if the Proposer does not accept Panel's recommendation, the Panel shall send a copy the Change Proposal under Clause 7.3.3 or 7.4.4 (as the case may be) and the remainder of this Clause 7 shall continue to apply to that Change Proposal.

7.5.3 Once the procedures under Clauses 7.3 or 7.4 (as the case may be) have been completed, the Panel shall consider such Change Proposal and decide whether to accept or reject it in accordance with Clause 5.

7.5.4 Where the Panel accepts a Change Proposal, it shall also decide the appropriate process for agreeing and implementing the change, which shall be in accordance with procedures for implementation agreed by the Panel under Clause 7.6, but in any event shall include the parameters for:

- (a) timing of the process and, subject to clause 7.2.3, the timing of the implementation;
- (b) the need for any sub-committees and the terms of reference for any such subcommittee; and
- (c) the process for agreeing the final form of the change and the manner in which the change should be made,

and such process shall to be subject to Clause 5.

7.5.5 Once the final form of the change has been agreed or determined, this Agreement shall be amended in accordance with the resolution of the Panel or, where such decision is appealed, as determined by Secretary of State.

7.6 Procedures

The Panel shall agree and issue appropriate procedures in relation to Change Proposals submitted under this Clause 7 (which procedures shall be subordinate to and shall not be inconsistent with the procedures in Clauses 5 and 7), and the parties agree to comply with those procedures as issued from time to time.

7.7 Urgent Modifications

Where any change is proposed to this Agreement under this Clause 7, which the Panel decides is of an urgent nature and is a change that should be accepted, the Panel may decide to reduce the timescales set out in this Clause 7 accordingly.

8 Operational Issues

8.1 Requirement to give notice

Any party may raise an Operational Issue by written Notice to the Panel Secretary.

8.2 Operational Issues Procedures

8.2.1 Subject to Clause 8.2.2, the Panel shall agree and issue appropriate procedures to allow the consideration of Operational Issues which may be raised under Clause 8.1 (**Operational Issues Procedures**).

8.2.2 Operational Issues Procedures shall be subordinate to and shall not be inconsistent with the procedures set out in Clauses 5 and 7.

- 8.2.3 The parties shall comply with Operational Issues Procedures, as amended from time to time.
- 8.2.4 Nothing in Clause 7 or this Clause 8 shall prevent any party from raising a Change Proposal at any time.

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Part 3: Commercial Arrangements

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9 Central Charge Database

9.1 Administration of the Database

9.1.1 Green Deal Providers acknowledge and agree that:

- (a) the Central Charge Database is administered under arrangements set out under the Master Registration Agreement;
- (b) nothing in this Agreement gives Green Deal Providers enforceable rights under the Master Registration Agreement; and
- (c) the Central Charge Database is subject to future development and variation.

9.2 Access to and use of the Database

9.2.1 Suppliers shall procure that Green Deal Providers have access to the Central Charge Database, for the purposes of this Agreement and that the Central Charge Database is capable of facilitating the obligations set out in Clause 10.

9.2.2 Green Deal Providers acknowledge and agree that, notwithstanding any other provision of this Agreement, their access to the Central Charge Database for the purpose of this Agreement shall be on the terms of, and subject to, the CCD Procedures.

9.2.3 *[Green Deal Provider indemnity to Suppliers for losses caused by (1) breach of CCD Procedures; (2) incorrect data being entered into the CCD (other than Customer Electricity Data)].*

9.3 Customer request

9.3.1 Each party undertakes, that where a Green Deal Bill Payer makes a request to view the data stored on the Central Charge Database relevant to that Green Deal Bill Payer, it shall provide such information to the Green Deal Bill Payer within [twenty (20)] Working Days of such request.

9.3.2 Clause 9.3.1 shall not be read as a requirement to grant a Green Deal Bill Payer the right to have direct access to the Central Charge Database.

9.4 Unavailability of the Database

9.4.1 Where the availability of the Central Charge Database is suspended or will be suspended:

- (a) the Suppliers shall procure that the Panel Secretary is notified as soon reasonably practicable upon becoming aware of such suspension or future suspension; and
- (b) the Panel Secretary shall notify all Green Deal Providers' Contract Managers as soon as is reasonably practicable upon receiving such notification.

9.4.2 Where any unplanned suspension in the availability of the Central Charge Database has not been reinstated within [one (1)] Working Day:

- (a) the Suppliers shall procure that the Panel Secretary is notified of the scheduled date for reinstatement as soon as is reasonably practicable; and

- (b) the Panel Secretary shall notify all Green Deal Providers' Contract Managers as soon as is reasonably practicable upon receiving such notification.

10 Green Deal Plan Registration Process

10.1 Assessment and validation

- 10.1.1 A Green Deal Provider may, in respect of any Customer that is considering entering into a Green Deal Plan, enter the Customer Data for that person onto the Central Charge Database.
- 10.1.2 Where a Green Deal Provider enters Customer Electricity Data onto the Central Charge Database it shall use reasonable endeavours to ensure that such data is correct.
- 10.1.3 Where a Green Deal Provider enters Customer Electricity Data onto the Central Charge Database and such data does not correspond with the Supplier Data Sources, the relevant Supplier shall ensure that:
 - (a) such data is rejected by the Central Charge Database; and
 - (b) that Green Deal Provider receives a Rejection Notice.
- 10.1.4 Where a Green Deal Provider has successfully entered Customer Data onto the Central Charge Database, the relevant Supplier shall ensure that:
 - (a) the Green Deal Provider is notified if (and only if) the Customer has Charges for the Supply of Electricity arrears that are equal to or greater than the applicable Debt Threshold for that Customer; and
 - (b) the [Green Deal Plan Indicator] for the Customer's [Metering Point] [is set to 'yes'] [evidences that a Green Deal Plan is in place in respect of it].
- 10.1.5 If, following receipt of a notification under Clause 10.1.4(a), the Green Deal Provider still intends to enter into a Green Deal Plan with the relevant person, the Green Deal Provider shall, via the Central Charge Database, confirm its intention to proceed.
- 10.1.6 Subject to Clause 10.1.4(a), Suppliers are under no obligation to notify Green Deal Providers of the amount of Charges for the Supply of Electricity arrears for any Customer.
- 10.1.7 Where a Green Deal Provider has successfully entered Customer Data onto the Central Charge Database and:
 - (a) no Notice is required to be issued under Clause 10.1.4(a); or
 - (b) the relevant Green Deal Provider makes a confirmation under Clause 10.1.5,the relevant Supplier shall ensure that a Green Deal ID is allocated to the proposed Green Deal Plan and that the relevant Green Deal Provider is notified of Green Deal ID.
- 10.1.8 Where a Green Deal ID is allocated under Clause 10.1.7, the relevant Green Deal Provider:
 - (a) may (without prejudice to the requirements of its Authorisation) enter into the Green Deal Plan with the relevant Customer; and

- (b) where it enters into a Green Deal Plan, shall [as soon as reasonably practicable] enter the date of entry into the Green Deal Plan onto the Central Charge Database.

10.1.9 Within [three (3)] Working Days of the relevant date being entered onto the Central Charge Database under Clause 10.1.8(b), the Supplier shall notify the relevant Customer that:

- (a) the Green Deal Plan has been successfully registered;
- (b) the Customer is entitled to cancel the Green Deal Plan within the Cooling-off Period; and
- (c) subject to the Customer cancelling the Green Deal Plan within the Cooling-off Period, a Green Deal Payment may be added to the Customer's electricity bill.

10.1.10 If a Customer cancels a Green Deal Plan within the Cooling-off Period:

- (a) the relevant Green Deal Provider shall immediately [notify the relevant Supplier] [update the Central Charge Database accordingly]; and
- (b) the relevant Supplier shall ensure that following [receipt of such notification] [such update], that the relevant Green Deal Provider receives a Rejection Notice.

10.1.11 In this Clause 10.1, the term "**Green Deal Plan Indicator**" shall have the meaning given in the Master Registration Agreement.

10.2 Confirmation of Green Deal Plan

10.2.1 Where:

- (a) a Green Deal ID is allocated to a Green Deal Plan;
 - (b) the relevant Supplier has complied with the requirements under Clause 10.1.9; and
 - (c) the Customer has not cancelled the Green Deal Plan within the Cooling-off Period,
- the Green Deal Provider may (without prejudice to the requirements of its Authorisation) commence the Installation.

10.2.2 Where the Green Deal Provider has completed the Installation in accordance with the Green Deal Plan and the Customer approves the Installation, the Green Deal Provider shall [as soon as reasonably practicable] enter onto the Central Charge Database:

- (a) the date of Installation;
- (b) any applicable amendments to the [relevant Green Deal Plan (as are capable of being updated onto the Central Charge Database) / [Customer Data]; and
- (c) the [proposed] Payment Start Date.

10.2.3 Where the Central Charge Database has been updated in accordance with Clause 10.2.2, the Supplier shall:

- (a) determine and enter on to the Central Charge Database:

- (i) the Customer's daily Green Deal Payment by dividing the Annual Charge by three hundred and sixty five (365); and
 - (ii) the Payment End Date.
- (b) notify the Customer of the following information relating to its Green Deal Plan:
- (i) the Payment Start Date;
 - (ii) the Payment End Date;
 - (iii) the amount of each Green Deal Payment;
- (c) notify the Customer that it has the right to dispute (with the relevant Green Deal Provider) the information provided under Clause 10.2.3(a), provided the Customer does so within the Green Deal Confirmation Period; and
- (d) notify the Customer of the process for raising a dispute with a Green Deal Provider during the Green Deal Confirmation Period.

10.2.4 During a Green Deal Confirmation Period, a Supplier shall not collect any Green Deal Payments under the relevant Green Deal Plan.

10.2.5 If the Customer disputes any of the details in Clause 10.2.3(a) within the Green Deal Confirmation Period (a **Customer Dispute**), the relevant Green Deal Provider shall immediately:

- (a) shall amend the [details] / [relevant Customer Data] on the Central Charge Database to show that the Green Deal Plan is suspended pending the resolution of the Customer Dispute; and
- (b) notify the relevant Supplier.

10.2.6 Upon resolution of a Customer Dispute [under the [*procedures for Customer Dispute resolution*]], the relevant Green Deal Provider shall:

- (a) enter onto the Central Charge Database any applicable amendments for the relevant Green Deal Plan including, where relevant, amendments to the information provided under Clause 10.2.3(a);
- (b) update the Central Charge Database to show that the relevant Green Deal Plan is no longer suspended; and
- (c) notify the relevant Supplier that the Customer Dispute has been resolved.

10.3 Amendment of Green Deal Payments

10.3.1 Where a Green Deal Provider amends the Annual Charge for a Green Deal Plan, the Supplier shall [as soon as reasonably practicable]:

- (a) recalculate the relevant Green Deal Bill Payer's daily Green Deal Payments by reference to the amended Annual Charge; and

- (b) notify that Green Deal Bill Payer of the revised amount of each Green Deal Payment.¹

10.4 Updating the Central Charge Database

- 10.4.1 Where there is a change to the Customer Electricity Data for a Green Deal Plan, the relevant Supplier shall, as soon as reasonably practicable (and in any event no later than [five (5)] Working Days after becoming aware of the change), update the Central Charge Database.
- 10.4.2 Where there is a change to the Customer Data for a Green Deal Plan (other than Customer Electricity Data), the relevant Green Deal Provider shall, as soon as reasonably practicable (and in any event no later than [five (5)] Working Days after becoming aware of the change), update the Central Charge Database.

11 Collection of Green Deal Payments

11.1 Obligation to collect Green Deal Payments

- 11.1.1 Section 1(6) of the Energy Act makes provision for the payment and collection of Green Deal Payments and states, among other things, that Green Deal Payments are to be:

- (a) recoverable as debts by the relevant Supplier from the relevant Green Deal Bill Payer; and
- (b) recovered and held by the relevant Supplier as agent and trustee for the relevant Green Deal Provider (unless the relevant Supplier is also that person).

- 11.1.2 Clauses 11 and 12:

- (a) set out the terms on which the Suppliers shall recover and hold Green Deal Payments pursuant to section 1(6) of the Energy Act; and
- (b) are also made pursuant to Standard Condition 38.4 of the Electricity Supply Licence which, amongst other things, requires the Suppliers to ensure that this Agreement comprises provisions to facilitate and procedures and practices to be followed by a Supplier, and provisions to facilitate the operation of the agency and trustee relationship between Suppliers and Green Deal Providers, in relation to the collection of Green Deal Payments from Green Deal Bill Payers and the remittance of such payments to Green Deal Providers (or their nominees).

11.2 Suppliers to be agents and trustees

- 11.2.1 Subject to Clauses 10.2.4 and 11.2.2, in respect of each Green Deal Plan not subject to a Customer Dispute, the relevant Green Deal Provider and the relevant Supplier acknowledge and agree that the Supplier shall act as the Green Deal Provider's agent and trustee for the collection of Green Deal Payments for that Green Deal Plan, on the terms of this Clause 11.
- 11.2.2 Clause 11.2.1 shall not apply where the relevant Green Deal Provider is the same person as the relevant Supplier.
- 11.2.3 Any action that a Supplier takes, or purports to take, on behalf of a Green Deal Provider at a time when the Supplier is not authorised to do so, shall, if subsequently ratified by the Green

¹ If indexation of Green Deal Payments is permitted, this provision may need to change.

Deal Provider, be as valid as if the Green Deal Provider had expressly authorised that action in advance.

11.2.4 Each Supplier shall, while acting as agent and trustee for a Green Deal Provider, act towards the relevant Green Deal Provider conscientiously and in good faith.

11.2.5 While a Supplier is acting as agent and trustee for a Green Deal Provider, the relevant Green Deal Provider shall:

- (a) act conscientiously and in good faith at all times toward that Supplier;
- (b) not collect or attempt to collect Green Deal Payments directly from the relevant Green Deal Bill Payer; and
- (c) not appoint anyone else as agent for the collection of Green Deal Payments under the relevant Green Deal Plan.

11.3 Trust Property

11.3.1 Each Supplier shall hold each item of Trust Property on trust for the benefit of the relevant Green Deal Provider.

11.3.2 For the avoidance of doubt, this means that the Suppliers shall have:

- (a) no beneficial interest in any Trust Property; and
- (b) no right to use Green Deal Payments for their own business purposes in the period between recovering them from Green Deal Bill Payers and remitting them to Green Deal Providers.

11.3.3 Each Green Deal Provider acknowledges that, when Green Deal Payments are recovered and held by a Supplier, they may be commingled with the Supplier's own funds.

11.3.4 Each Supplier has the power to invest Green Deal Payments recovered and held by it by placing them on deposit with a bank and:

- (a) the deposits may be made in the name of the Supplier or in the name of an Affiliate of the Supplier; and
- (b) the funds so deposited may remain commingled with the Supplier's own funds and those of its Affiliate(s),

provided that the Supplier must notify the relevant bank and account holding Affiliate (where applicable) that the Green Deal Payments in the bank account are held on trust for the benefit of Green Deal Providers pursuant to section 1(6) of the Energy Act and this Agreement.

11.3.5 Each Supplier must keep a balance in the bank account into which Green Deal Payments are received or invested under Clause 11.3.4 at least equal to the value of Green Deal Payments that it reasonably estimates that it is holding at any given time.

11.3.6 If a Supplier holds insufficient funds to remit Green Deal Payments already received by it to the relevant Green Deal Providers, the trust claims of the relevant Green Deal Providers in respect of those Green Deal Payments shall abate rateably with each other.

11.3.7 [In addition to its rights under or by virtue of this Agreement, a Supplier acting in its capacity as trustee shall have all of the rights conferred on a trustee by the Trustee Act 1925 and by the Trustee Delegation Act 1999.]

11.4 Recovery of Green Deal Payments

11.4.1 Subject to Clauses 11.4.2 and 11.5, each Supplier may seek to recover Green Deal Payments from the relevant Green Deal Bill Payer in such manner as the Supplier determines to be appropriate.

11.4.2 Clause 11.4.1 does not permit a Supplier to act in breach of its Electricity Supply Licence.

11.4.3 Notwithstanding any other clause in this Agreement, a Supplier shall not be required to recover Green Deal Payments that:

(a) [have been billed] by another Supplier (pursuant to its Electricity Supply Licence and this Agreement);

(b) [*specify any other circumstances*],

prior to the time that it became the Green Deal Provider's agent and trustee for the collection of Green Deal Payments for that Green Deal Plan.

11.4.4 For the avoidance of doubt, the obligation to recover Green Deal Payments from the relevant Green Deal Bill Payer does not end by virtue of a Green Deal Premises (as defined in the Electricity Supply Licence) becoming vacant or de-energised.

11.5 Debt collection

11.5.1 Subject to Clause 11.5.2, each Supplier shall use the same processes for collecting Green Deal Payment arrears that it uses to collect arrears of Charges for the Supply of Electricity.

11.5.2 In its dealings with Green Deal Bill Payers, Suppliers shall have regard to any guidance on debt collection issued by the Office of Fair Trading prevailing from time to time, which latest version, as at the date of this Agreement, was published on [19 October 2011].

11.5.3 Subject to Clause 11.5.4 and without prejudice to paragraph 12(2) of Schedule 6 to the Electricity Act, Suppliers shall not cancel or amend, or in any dealing with a Green Deal Bill Payer purport to cancel or amend (either in part or whole) an obligation to make a Green Deal Payment or any debts recoverable by the relevant Supplier pursuant to section 1(6)(c) of the Energy Act.

11.5.4 A Supplier may, in compliance with Clause 11.5.1, agree a repayment plan with a Green Deal Bill Payer that changes the timing of the obligation to pay Green Deal Payment arrears or Green Deal Payments but which does not change the [total amount payable under the Green Deal Plan].

11.5.5 Subject to Clause 11.5.6, where a Green Deal Bill Payer owes historic Green Deal Payments the Supplier shall use its best endeavours to recover such historic Green Deal Payments from that Green Deal Bill Payer on behalf of the relevant Green Deal Provider.

11.5.6 Clause 11.5.5 shall not apply where:

- (a) the Green Deal Bill Payer also owes historic Charges for the Supply of Electricity and the Supplier decides not to collect some or all of such historic charges;
- (b) the Supplier decides not to collect the historic Green Deal Payments from the Green Deal Bill Payer; and
- (c) the Supplier notifies the relevant Green Deal Provider of such decision and, where the Green Deal Bill Payer has ceased to be liable to pay the energy bills for the property accruing from time to time, provides the Green Deal Provider with the last known address of the Green Deal Bill Payer.

11.5.7 Where the Green Deal Provider receives a Notice under Clause 11.5.6(c), it:

- (a) may seek to recover the unpaid Green Deal Payments directly from the Green Deal Bill Payer; and
- (b) shall within [five (5)] Working Days, notify the Green Deal Bill Payer whether it intends to cancel the unpaid Green Deal Payments.

11.5.8 Nothing in this Clause 11.5 shall prevent a Supplier from cancelling Charges for the Supply of Electricity arrears or any amount other than a Green Deal Payment owed by a Green Deal Bill Payer.

11.6 Suspension of Green Deal Payments

11.6.1 If the liability of a Green Deal Bill Payer to make Green Deal Payments is cancelled pursuant to regulation [/] of the Framework Regulations or suspended pursuant to regulation [/] of the Framework Regulations, the relevant Green Deal Provider shall immediately:

- (a) update the Central Charge Database to reflect such suspension; and
- (b) notify the relevant Supplier.

11.6.2 If and when the suspension referred to in Clause 11.6.1 ends, the Green Deal Provider shall immediately:

- (a) update the Central Charge Database to reflect the end of the suspension; and
- (b) notify the relevant Supplier.

12 Remittance of Green Deal Payments

12.1 Remittance to bank account

12.1.1 Subject to Clause 12.1.3, each Supplier shall, within [xx hours] / [seventy-two (72)] hours of receipt of a Green Deal Payment collected by it under Clause 11.2.1, remit that Green Deal Payment to the bank account specified in the Central Charge Database by the relevant Green Deal Provider.

12.1.2 A Supplier shall only be required to comply with Clause 12.1.1 within the relevant time limit if the Green Deal Provider has entered valid bank account details onto the Central Charge Database.

12.1.3 Each Green Deal Provider acknowledges that the only method of remittance for the purposes of Clause 12.1.1 shall be a transfer of funds by [BACS] [CHAPS] to the relevant bank account specified in the Central Charge Database.

12.2 Amount to be remitted

12.2.1 Where a Green Deal Bill Payer pays Charges by cheque, cash or monthly variable direct debit, the Charges for the Supply of Electricity and Green Deal Payments shall rank pari passu without any preference between them, irrespective of how the Green Deal Bill Payer intends or purports to instruct how the Charges should be dealt with.

12.2.2 [*remittance of Green Deal Payments collected by monthly fixed direct debit*]

12.2.3 [*remittance of Green Deal Payments collected by pre-payment meters*]

12.2.4 [*remittance of Green Deal Payments collected under Fuel Direct*]

12.2.5 Where a Green Deal Bill Payer pays Charges using a payment method not referred to in this Clause 12.2 or in Operational Issues Procedures, the relevant Supplier shall raise an Operational Issue under Clause 8.1 for the purposes of the Panel agreeing and issuing an appropriate procedure for the remittance of Green Deal Payments paid using that payment method.

12.2.6 In this Clause 12.2, the term **Charges** has the meaning given in the Electricity Supply Licence.

13 Supplier Administration Fee

13.1 In consideration of a Supplier:

- (a) collecting Green Deal Payments under Clause 11.1; and
- (b) remitting Green Deal Payments under Clause 12,

the relevant Green Deal Provider shall, under Clause 14, pay that Supplier the relevant Administration Fee for each Green Deal Plan.

14 Billing and Payment

14.1 Quarterly Invoice for Supplier's Administration Fee

14.1.1 On or before the [tenth (10th)] Working Day in each Quarter, a Supplier may invoice the relevant Green Deal Provider an amount equal to, for the previous Quarter:

$$\text{Quarterly Administration Fee} \times \text{Aggregate Green Deal Plans}$$

where:

Quarterly Administration Fee means the relevant Administration Fee divided by four (4).

Aggregate Green Deal Plans means the number of Green Deal Plans entered into between the relevant Green Deal Provider and the Supplier's Customers.

- 14.1.2 On the [tenth (10th)] Working Day of the month in which the Quarterly Invoice is received by the Green Deal Provider or the [fifteenth (15th)] Working Day after receipt, whichever is the later (**Due Date**), the Green Deal Provider shall pay to the Supplier the amount payable in accordance with the Quarterly Invoice.
- 14.1.3 The parties acknowledge that there may be more than one relevant Green Deal Provider that a Supplier is entitled to invoice for the purposes of Clause 14.1.1.

14.2 VAT

- 14.2.1 All amounts in this Agreement to be payable by one party (the **Payer**) to the other (the **Payee**) exclude VAT.
- 14.2.2 If the Payee has to account for VAT on the supply for which the payment is the consideration
- (a) when making the payment, the Payer must pay to the Payee, in addition to the amount stated, an amount equal to the VAT; and
 - (b) the Payee must provide a VAT invoice for the payment and VAT to the Payer.

14.3 Disputed Payments

- 14.3.1 If a Green Deal Provider disputes in good faith any sum:
- (a) invoiced under Clause 14.1.1, it shall make payment of any undisputed amount on or before the Due Date and shall give Notice of the amount in dispute and the reasons for the dispute to the relevant Supplier; or
 - (b) remitted under Clause 12, it shall give Notice of the amount in dispute and the reasons for the dispute to the relevant Supplier.
- 14.3.2 The relevant parties shall seek to settle the dispute as soon as reasonably possible.
- 14.3.3 Any adjustment payment required to be made in accordance with the resolution of a dispute shall be made within [three (3)] Working Days of that resolution.
- 14.3.4 A Party shall not under any circumstances be entitled to initiate any dispute concerning any sum shown in, or which should have been shown in, an invoice [six (6)] months or more after it was received, or should have been received.

14.4 Interest

- 14.4.1 If a Party fails to pay to the other Party any amount due by the Due Date as set out in this Agreement (or otherwise determined by any dispute resolution process), interest shall be payable on that amount at an annual rate equal to the base lending rate for sterling of the Bank of England applicable from time to time plus two percent (2%) compounded monthly from and including the Due Date to but excluding the date payment is made.
- 14.4.2 If, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, one Party is required to pay an amount to the other Party, interest shall be payable on that amount at an annual rate equal to the base lending rate for sterling of the Bank of England applicable from time to time plus two percent (2%) compounded monthly from the date when the amount would have been paid or not paid (as

applicable) if the dispute, overpayment or underpayment had not occurred to but excluding the date payment is made.

- 14.4.3 If the rate in Clause 14.4.1 or 14.4.2 ceases temporarily or permanently to be published then the Party owed money may substitute a rate which it considers in good faith to be equivalent to that rate published by a London clearing bank.

15 Change of Supplier or Green Deal Bill Payer

15.1 Change of Supplier

15.1.1 Where;

- (a) a Supplier (the **new Supplier**) receives notice under clause 15.9 of the MRA that it has been registered for a Metering Point at Green Deal Premises; and
- (b) the previous Supplier (the **previous Supplier**) is no longer able to object to the registration,

the new Supplier shall, as soon as reasonably practicable, ensure that the Central Charge Database is amended to show that it is the new Supplier.

15.2 Change of Green Deal Bill Payer

15.2.1 Where the Green Deal Provider is made aware that there is, or will be, a change in Green Deal Bill Payer at Green Deal Premises, it shall as soon as reasonably practicable notify the relevant Supplier.

15.2.2 Where a Supplier is made aware that there is a change in Green Deal Bill Payer at Green Deal Premises, it shall as soon as reasonably practicable upon receipt of the relevant Customer Data for that new Green Deal Bill Payer:

- (a) update the Central Charge Database; and
- (b) notify the relevant Green Deal Provider.

15.2.3 Within [ten (10)] Working Days of the Supplier updating the Central Charge Database under Clause 15.2.2(a) the Supplier shall notify the new Green Deal Bill Payer of:

- (i) the Green Deal ID;
- (ii) the amount of each Green Deal Payment;
- (iii) the Payment End Date;
- (iv) *[further information requirements that may be necessary]*.

15.2.4 Where:

- (a) Green Deal Payments are made using a pre-payment meter; and
- (b) there is a change in Green Deal Bill Payer at the Green Deal Premises,

the relevant Supplier shall ensure that [Green Deal Payment arrears recorded on the pre-payment meter on the day the previous Green Deal Bill Payer ceased to become the Green Deal Bill Payer for those Green Deal Premises are erased from the pre-payment meter]/[the pre-payment meter is reset].

16 Liability

[To be developed.]

17 Records and Audit

17.1 Green Deal Plans

Suppliers shall ensure, in respect of each Green Deal Plan, that a historical record of all data that has been held on the Central Charge Database relating to the relevant Green Deal Bill Payer and that Green Deal Plan is securely maintained and that such records are fully auditable, so that a full historical record is maintained for a period of no less than [forty (40)] months following the cancellation, early repayment, expiry or ending of a Green Deal Plan.

17.2 Green Deal Payments

17.2.1 Each Supplier shall ensure, in respect of each Green Deal Plan, that it securely maintains a historical record of all Green Deal Payments recovered, held and remitted under this Agreement and that such records are fully auditable, so that a full historical record is maintained for a period of no less than [forty (40)] months following the date the last Green Deal Payment was remitted by it.

17.2.2 Each Green Deal Provider shall ensure, in respect of each Green Deal Plan, that it securely maintains a historical record of all Green Deal Payments remitted to it under this Agreement and that such records are fully auditable, so that a full historical record is maintained for a period of no less than [forty (40)] months following the date the last Green Deal Payment was remitted to it.

17.3 Access

Each Supplier and Green Deal Provider shall ensure that the [Oversight Body/Secretary of State/Authority] has access at reasonable times and on reasonable notice to those records maintained by it under this Clause 17.

Part 4: General Legal Provisions

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18 Events of Default

- 18.1 An event of default (**Event of Default**) shall occur in respect of a party (the **Defaulting Party**) if:
- (a) the Defaulting Party is in material breach of any of the terms or conditions of this Agreement and such breach is incapable of remedy;
 - (b) the Defaulting Party is in material breach of any of the terms or conditions of this Agreement, the breach is capable of remedy, the Panel has given Notice to the Defaulting Party under Clause 27, and the Defaulting Party has neither:
 - (i) remedied the breach within [thirty (30)] Working Days after receipt of such Notice; nor
 - (ii) where the breach is not reasonably capable of remedy within [thirty (30)] Working Days, provided to the Panel, within [fifteen (15)] Working Days after receipt of such Notice, a rectification plan detailing the steps to be taken (and the timetable for such steps to be taken) in order to remedy the breach as soon as reasonably practicable after receipt of such Notice, and obtained, within [twenty (20)] Working Days after receipt of such Notice, the Panel's approval of such plan;
 - (c) a rectification plan is submitted by the Defaulting Party and approved under Clause 18.1(b)(ii), but the breach to which the plan relates is not rectified in accordance with the plan;
 - (d) the Defaulting Party proposes or enters any composition or other arrangement for the benefit of its creditors or a class of creditors;
 - (e) anyone takes any step towards winding up or dissolving the Defaulting Party except:
 - (i) on a genuine solvent reorganisation or reconstruction; or
 - (ii) on a winding-up petition discharged within seven days of presentation and before it is advertised;
 - (f) anyone takes any step towards the Defaulting Party obtaining a moratorium or other protection from its creditors;
 - (g) anyone takes any other step towards appointing a trustee, supervisor, receiver, liquidator, administrator or similar officer or other encumbrancer of the Defaulting Party or any of its assets;
 - (h) an event occurs which would result in a floating charge crystallising over any of the Defaulting Party's assets;
 - (i) any person takes any step to take possession of or levy a distress or execution against any of the Defaulting Party's assets;
 - (j) the Defaulting Party stops carrying on business;
 - (k) any event analogous to any of paragraphs (d) to (j) above happens in any jurisdiction;

- (l) the Defaulting Party is unable to pay its debts, or admits it is unable to do so within the meaning of Section 123 of the Insolvency Act 1986, but as if in that Section the sum of [ten thousand (10,000) pounds Sterling was substituted for the sum of seven hundred and fifty (750) pounds Sterling].
- (m) [the value of the Defaulting Party's assets are at any time less than the amount of its liabilities, taking into account its contingent and prospective liabilities];
- (n) [without prejudice to Clause 21, a circumstance of Force Majeure which affects the performance of the Defaulting Party of substantially all of its obligations under this Agreement continues for more that [one hundred and eighty (180)] days; or]
- (o) [any of the representations, warranties or undertakings in Clause 2 cease to be satisfied in relation to the Defaulting Party and, if the situation is capable of remedy the situation within [twenty (20)] Working Days of receipt of Notice from [the Panel] under Clause 27.]
- (p) in the case of a Supplier, its Electricity Supply Licence has been revoked;
- (q) in the case of a Green Deal Provider, its Authorisation has been withdrawn by the Secretary of State pursuant to regulation [/] or [/] of the Framework Regulations.

19 Consequences of Default

19.1 Panel Determination

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- 19.1.1 Where any of the persons listed in Clause 19.1.3 believes that an Event of Default (or, in the case of Clauses 18.1(b) or [18.1(o)], an event that would become an Event of Default if the relevant party failed to comply with a Notice served by the Panel in relation thereto) has occurred in respect of a party (the **Suspected Party**), such person may report the matter to the Panel.
- 19.1.2 Within [two (2)] Working Days of receiving such a report, the Panel shall provide the Suspected Party with a copy of the report, and invite the Suspected Party to respond within [ten (10)] Working Days.
- 19.1.3 The persons referred to in Clause 19.1.1 are:
 - (a) any party (the **Reporting Party**);
 - (b) any Panel Member or person who serves on any sub-committee of the Panel;
 - (c) the Oversight Body;
 - (d) the Authority; or
 - (e) the Secretary of State.
- 19.1.4 On receipt of a report under Clause 19.1.1, the Panel shall determine:
 - (a) in the case of the alleged occurrence of an event that would become an Event of Default under Clauses 18.1(b) [or 18.1(o)], if the relevant party failed to comply with a Notice served by the Panel in relation thereto, whether to serve such a Notice; or

- (b) in the case of an alleged occurrence of an Event of Default, whether an Event of Default has occurred.

19.1.5 Where the Panel determines to serve a Notice under Clause 19.1.4(a) in relation to:

- (a) Clause 18.1(b), such Notice shall specify (in reasonable detail) the breach in question, and state that failure to remedy the breach may give rise to the consequences set out in this Clause 19;
- (b) [Clause 18.1(o), such Notice shall specify (in reasonable detail) the representations, warranties or undertakings that have ceased to be satisfied, and state that failure to remedy the situation may give rise to the consequences set out in this Clause 19.]

19.2 Consequences of Default

19.2.1 Where the Panel determines that an Event of Default has occurred in respect of a Defaulting Party, the Panel may (only where it considers it appropriate to do so in the circumstances) resolve (in respect of the period for which it considers the Event of Default to be continuing) to suspend the rights of the Defaulting Party to exercise any voting rights under Clauses 5 and 7.

19.2.2 Where the Panel determines that an Event of Default has occurred in respect of the Defaulting Party, the Panel shall notify the Secretary of State, the Authority and all of the parties of that determination and of whether or not the Panel has resolved to suspend the any of rights of the Defaulting Party under Clause 19.2.1.

19.2.3 Where the Panel has resolved to suspend the rights of a Defaulting Party under Clause 19.2.1, the Panel;

- (a) may resolve to lift such suspension; and
- (b) shall resolve to lift such suspension where the Panel determines that no Event of Default is continuing in respect of the Defaulting Party.

19.2.4 Where the Panel resolves, under Clause 19.2.3 to lift a suspension it shall notify the Secretary of State, the Authority and all of the other parties of the resolution.

19.3 Voting by Panel Members on Event of Default Decisions

19.3.1 A Panel Member shall be disqualified from acting, and shall not act in his capacity as a Panel Member, in relation to an Event of Default Decision where:

- (a) his employer is the Suspected Party, the Defaulting Party or the Reporting Party in relation to that Event of Default Decision; or
- (b) his employer is an Affiliate of any Suspected Party, the Defaulting Party or the Reporting Party in relation to that Event of Default Decision,

in which case the Panel Member's alternate shall act in the Panel Member's place in relation to that Event of Default Decision, and the alternate (rather than the Panel Member) shall be entitled to receive the relevant notices, minutes and other papers and to attend and vote at the relevant meetings.

19.3.2 If both a Panel Member and his alternate are disqualified from acting in relation to an Event of Default Decision as a result of Clause 19.3.1, that Panel Member shall appoint a further person (in accordance with Clause 5.4) who is not disqualified under Clause 19.3.1, to act as the Panel Member's alternate in relation to that Event of Default Decision.

19.3.3 In relation to any Event of Default Decision, the Panel Members shall:

- (a) act independently and impartially, and shall not act as representatives of, or with undue regard to the particular interests of, any particular person or class of person; and
- (b) seek to ensure that the decision is consistent with, and will (so far as applicable to the manner in which this Agreement is given effect) facilitate the achievement of, the requirements set out in [Chapter 1 of the Energy Act, the Framework Regulations, and the Electricity Supply Licence].

19.3.4 For the avoidance of doubt, the Panel need not:

- (a) determine that an event referred to in Clause 19.1.4 has either occurred, or not occurred; or
- (b) resolve that the rights referred to in Clause 19.2.1 should, or should not, be suspended,

at the first Event of Default Meeting relating to the alleged Event of Default, and may decide that it requires more information and/or further meetings to reach a conclusion on those matters.

19.4 Procedures of the Panel in relation to Event of Default Meetings

19.4.1 The Panel shall consider any alleged Event of Default reported to it under Clause 19.1.1 within [twenty (20)] Working Days after receiving a report, provided that the Panel shall not consider the alleged Event of Default until:

- (a) it has received the Suspected Party's response to that report; or
- (b) the period which the Suspected Party has to respond has expired.

19.4.2 If there is no scheduled meeting of the Panel within the period referred to in Clause 19.4.1, the Panel Secretary shall promptly convene an Event of Default Meeting relating to that Event of Default on not more than [five (5)] Working Days Notice.

19.4.3 The Notice of any Event of Default Meeting shall contain:

- (a) the time, venue and date of the meeting;
- (b) the report given under Clause 19.1.1;
- (c) where applicable, the response by the Suspected Party to the report given under Clause 19.1.1; and
- (d) any other supporting papers.

19.4.4 The Notice of an Event of Default Meeting shall only be given to:

- (a) each Panel Member;
- (b) the relevant Suspected Party or Defaulting Party (as applicable);
- (c) where applicable, the Reporting Party;
- (d) [the Secretary of State]; and
- (e) [the Authority].

19.4.5 Notwithstanding Clause 19.4.4, the Panel may notify any party of any or all of the following matters in respect of an Event of Default Meeting:

- (a) a summary of the alleged Event of Default of Event of Default in question;
- (b) the identity of the Suspected Party or Defaulting Party (as applicable); and
- (c) the identity of any Reporting Party.

19.4.6 The Panel Secretary shall circulate copies of the minutes of each Event of Default Meeting to each of the persons specified in Clause 19.4.4 as soon as reasonably practicable (and in any event within [five (5)] Working Days) after the meeting.

19.4.7 If, and to the extent that, the Panel determines that it is appropriate to do so (and not otherwise), the Panel Secretary shall circulate to all parties (or to a class of parties) copies of the minutes of each Event of Default Meeting (or a summary of the minutes), provided that any copy or summary of the minutes does not disclose how each Panel Member voted.

19.5 Representations by parties

19.5.1 All papers and submissions received by the Panel, in relation to an Event of Default Meeting, from:

- (a) the Suspected Party or the Defaulting Party shall not be disclosed to any person (including any Reporting Party) other than the Panel or the Panel Secretary or reproduced in any Panel papers, without the permission of the Suspected Party or the Defaulting Party (as appropriate); or
- (b) any Reporting Party in relation to that meeting, shall not be disclosed to any person (including the Suspected Party or Defaulting Party) other than the Panel or the Panel Secretary or reproduced in any Panel papers, without the permission of the Reporting Party.

19.5.2 The following people shall be entitled (but not obliged) to attend and speak at Event of Default Meetings (with or without legal or other representatives) provided that the Panel Chairman will be entitled to exclude such persons from any part of the Event of Default Meeting that the Panel Chairman considers appropriate:

- (a) the Suspected Party or Defaulting Party (as applicable); and
- (b) where applicable, the Reporting Party.

19.6 Appeal of Event of Default Decisions

19.6.1 Subject to Clause 19.6.4, an Event of Default Decision shall be conclusive.

19.6.2 Any Dispute regarding whether or not an Event of Default has occurred in respect of a party shall not be subject to Clause 23.

19.6.3 It is acknowledged that alleged breaches of this Agreement that may constitute Events of Default may also be the subject of disputes under Clause 23, and:

- (a) the Panel shall have regard to any relevant decision of the Disputes Committee, or of an arbitrator appointed under Clause 23; but
- (b) the Panel shall be in no way bound by any decision of the Disputes Committee or of any such arbitrator in making any Event of Default Decision.

19.6.4 The sole and exclusive remedy of a party (the **Dissatisfied Party**) who is dissatisfied with any Event of Default Decision shall be to appeal the matter to the Authority (where the Dissatisfied Party is a Supplier) or to the Oversight Body (where the Dissatisfied Party is a Green Deal Provider) for determination.

19.6.5 In order to appeal an Event of Default Decision, the Dissatisfied Party must:

- (a) give Notice of such appeal to, as applicable, the Authority or Oversight Body (copied to the Panel) within [ten (10)] Working Days after the Dissatisfied Party is notified of the Event of Default Decision;
- (b) include in such Notice (in reasonable detail) the grounds upon which the Dissatisfied Party is appealing the Event of Default Decision, which shall be limited to one or more of the following:
 - (i) that the Panel (or its delegates) did not comply with the procedural requirements of this Agreement (including the procedures referred to in Clause 19.7) in respect of the decision;
 - (ii) that the Panel gave undue, or insufficient, weight to particular evidence (or the lack of particular evidence) relevant to the decision;
 - (iii) that the Panel has misinterpreted this Agreement, any applicable law, or some or all of the evidence relevant to the decision; and
 - (iv) that, in reaching the decision, the Panel Members did not comply with Clause 19.3.3.

19.6.6 Any determination made by the Authority or Oversight Body on an appeal under Clause 19.6.5 shall be final and binding on the Panel and all parties.

19.6.7 The Panel shall promptly notify all the parties of any such determination communicated to the Panel by the Authority or the Oversight Body (as applicable), and the Panel and the parties shall promptly give effect to such determination.

19.6.8 Where the Panel determines that an Event of Default has not occurred in relation to a party, nothing in this Clause 19 shall prevent a party alleging that an Event of Default has subsequently occurred in relation to that party.

19.7 Procedures

The Panel shall agree and issue appropriate procedures in relation to Events of Default and the other matters governed by this Clause 19 (which procedures shall be subordinate to and shall not be inconsistent with this Clause 19), and the parties agree to comply with those procedures as issued from time to time.

19.8 Withdrawal of a party from this Agreement

19.8.1 Where a Green Deal Provider:

- (a) has its Authorisation withdrawn pursuant to regulation [/] or [/] of the Framework Regulations; and
- (b) gives [fifteen (15)] Working Days' Notice of such withdrawal to the Panel,

that Green Deal Provider shall cease to be a party (in that capacity) to this Agreement.

19.8.2 For the period between a Green Deal Provider having its Authorisation withdrawn pursuant to regulation [/] of the Framework Regulations and the date it cease to be a party to this Agreement under Clause 19.8.1, that Green Deal Provider shall have no right to exercise any voting rights (in its capacity as a Green Deal Provider) under Clauses 5 and 7.

19.8.3 Where a Supplier:

- (a) has its Electricity Supply Licence revoked by the Authority; and
- (b) gives [fifteen (15)] Working Days' Notice of such revocation to the Panel,

that Supplier shall cease to be a party (in that capacity) to this Agreement.

19.8.4 For the period between a Supplier having its Electricity Supply Licence revoked by the Authority and the date it cease to be a party to this Agreement under Clause 19.8.3, that Supplier shall have no right to exercise any voting rights (in its capacity as a Supplier) under Clauses 5 and 7.

19.9 Survival of terms

19.9.1 Where a party ceases to be a party under Clause 19.8.1 or Clause 19.8.3, then Clauses [/] shall remain in full force and effect as regards that party.

19.9.2 A party ceasing to be a party to this Agreement shall be without prejudice to the accrued rights and liabilities of that party prior to the date of it ceasing to be a party and shall not affect any continuing obligations of that party under this Agreement.

20 Confidentiality

20.1 General

Each party undertakes with each other party that it shall preserve the confidentiality of and shall not directly or indirectly disclose or use Confidential Information for any purpose other than as required or expressly permitted under Clause 20.2.

20.2 Exceptions to Confidentiality Obligation

20.2.1 A party shall be entitled to disclose Confidential Information to the extent that one or more of the following apply:

- (a) the party believes, on reasonable grounds, that arrangements set out or contemplated by this Agreement require or permit it to disclose Confidential Information to another person or to use Confidential Information to the extent of such requirement or permission; or
- (b) the person to whose affairs the Confidential Information relates gives its prior written consent to the disclosure or use, to the extent of such consent; or
- (c) the Confidential Information, before it is furnished to the relevant party is in the public domain; or
- (d) the Confidential Information, after it is furnished to the party:
 - (i) is acquired by a party in circumstances in which this Clause does not apply and is not subject to any other confidentiality restrictions;
 - (ii) is acquired by a party in circumstances in which this Clause does apply and thereafter ceases to be subject to the restrictions imposed by this Clause; or
 - (iii) enters the public domain,

and in any such case otherwise than as a result of (i) a breach by the party of its obligations in this Clause or (ii) a breach by the person who disclosed that Confidential Information of that person's confidentiality obligation and the party is aware of such breach; or

- (e) the party is required or permitted to disclose Confidential Information to any person:
 - (i) in compliance with any provisions of any Relevant Instrument;
 - (ii) in compliance with any other requirement of law of a Competent Authority; or
 - (iii) in response to a requirement of any stock exchange or regulatory authority or the Panel on Takeovers and Mergers; or
 - (iv) under Clause 23.4; or
- (f) the party discloses Confidential Information to its Affiliates or Related Undertakings, its or its Affiliates or Related Undertakings' employees, directors, agents, consultants and professional advisers in each case on the basis set out in Clause 20.3.2; or
- (g) the party discloses Confidential Information to a Competent Authority.

20.2.2 Confidential Information which a party is permitted to disclose or use under this Clause 20.2 shall not cease to be regarded as Confidential Information in all circumstances by virtue of such disclosure or use.

20.3 Internal Procedures

With effect from the date of this Agreement each party shall adopt procedures within its organisation for ensuring the confidentiality of all Confidential Information which it is obliged to preserve as confidential under Clause 20.1. These procedures are:

- (a) the Confidential Information will be disseminated within the party's organisation only on a "need to know" basis;
- (b) employees, directors, agents, consultants and professional advisers of the party in receipt of Confidential Information will be made fully aware of the party's obligations of confidentiality in relation thereto; and
- (c) any copies of the Confidential Information, whether in hard copy or digitised form, are clearly identified as "confidential".

20.3.2 Each party shall take all reasonable steps to ensure that any person referred to in Clause 20.2.1 to whom that party discloses Confidential Information does not use that Confidential Information for any purpose other than that for which it is provided and does not disclose that Confidential Information otherwise than in accordance with this Clause 20.

20.4 Affiliate or Related Undertaking

Each party shall procure that each of its Affiliates and Related Undertakings complies with the restrictions in Clauses 20.1 to 20.5 as if in each Clause there was substituted for the name of the party the name of the Affiliate or Related Undertaking.

20.5 Data Protection Act

20.5.1 Each party warrants that it has effected, and undertakes that it will during the term of this Agreement effect and maintain, all such registrations as it is required to effect and maintain under the Data Protection Act to enable it lawfully to perform the obligations imposed on it by this Agreement.

20.5.2 Each party undertakes to comply with the Data Protection Act in the performance of this Agreement.

20.5.3 Each party undertakes that, in any case where information to be disclosed under this Agreement may lawfully be disclosed only with the prior consent of the person to whom the information relates, it will use its reasonable endeavours to obtain such prior consent so as to enable it to perform its obligations under this Agreement.

21 Force Majeure

21.1 Meaning of Force Majeure

The expression **Force Majeure** means any event or circumstance which is beyond the control of the party that is claiming relief in relation to it (acting and having acted as a Reasonable and Prudent Operator) resulting in or causing the failure of that party to perform any obligation under this Agreement, which failure could not have been prevented or overcome by the exercise by that party of the standard of a Reasonable and Prudent Operator.

21.2 Force Majeure events

21.2.1 Events or circumstances that may constitute Force Majeure include:

- (a) a strike or other industrial action (except for strikes or industrial action in which only that party's employees are involved);
- (b) an act of a public or foreign enemy, terrorist, war (whether declared or undeclared), blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) an act of sabotage, vandalism, terrorism, criminal damage or the threat of these acts;
- (d) lightning, earthquake, hurricane, storm, fire, subsidence, flood, drought, accumulation of snow or ice, frost and other extreme weather or environmental conditions, meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, nuclear explosions, radioactive, chemical or other hazardous contamination or ionising radiation; or
- (e) an act of God or any other unforeseen event or circumstance.

21.3 Reporting requirements

21.3.1 The party affected by Force Majeure shall:

- (a) give Notice to the other party of the Force Majeure as soon as reasonably practicable. Any Notice shall include full particulars of the Force Majeure, of its effects on the party claiming relief and the remedial measures proposed (if any).
- (b) shall give the other parties regular reports on the progress of any remedial measures and such other information as the other party may reasonably request; and
- (c) give Notice to the other party of:
 - (i) the cessation of the Force Majeure; and
 - (ii) the cessation of the effects of such Force Majeure on the performance of its obligations under this Agreement,

as soon as practicable after becoming aware of the same.

21.4 Mitigation

The party affected by Force Majeure shall use its reasonable efforts to mitigate the effects thereof as soon as reasonably practicable.

21.5 Extension of time

If a party is prevented, hindered or delayed in the performance of an obligation under this Agreement by:

- (a) Force Majeure; or
- (b) by any failure (whether or not occasioned by Force Majeure) of the other party to perform an obligation under this agreement,

then the time limited for the performance of that obligation (or any date by which performance of that obligation is to be achieved) shall be extended by a period equal to the period by which its performance is so prevented, hindered or delayed.

22 Contract Management

- 22.1.1 Each party shall appoint an appropriate person (each a **Contract Manager**, and together the **Contract Managers**) to manage all matters arising under or in connection with this Agreement and to monitor the general operation of this Agreement.
- 22.1.2 Each Contract Manager appointed by a party shall ensure that procedures are in place in respect of that party to ensure that there is adequate support for operations provided under this Agreement and timely resolution of problems that may occur including a point of contact to process and resolve such problems.
- 22.1.3 Each party shall notify the others in accordance with the provisions of Clause 27 of the name and contact details of the Contract Manager appointed by it for the purposes of this Agreement from time to time.

23 Dispute Resolution

23.1 Disputes

Save where expressly stated in this Agreement to the contrary, and subject to any contrary provision of the Energy Act, the Framework Regulations, the Electricity Act and any Electricity Supply Licence or the rights, powers, duties and obligations of the Authority or the Secretary of State under the Electricity Act, the Oversight Body under [the Framework Regulations], any Green Deal Authorisation, any dispute or difference of whatever and howsoever arising under, out of or in connection with this Agreement (a **Dispute**) shall be resolved according to the provisions of this Clause 23.

23.2 Contract Management

- 23.2.1 Any party shall refer a Dispute to the Contract Managers, by Notice in writing to all the other parties to the Agreement who are party to the Dispute (each being a **Disputing Party**).
- 23.2.2 The Contract Managers of the Disputing Parties shall endeavour to resolve the Dispute between them.
- 23.2.3 The Contract Managers of the Disputing Parties shall have authority to negotiate and to resolve the Dispute and shall have authority to bind the party nominating them.
- 23.2.4 Subject to the foregoing proviso, the joint and unanimous decision of the Contract Managers of the Disputing Parties shall be binding upon the parties to the Dispute.

23.3 Dispute Committee

- 23.3.1 The Panel shall constitute a sub-committee (the **Disputes Committee**) whose rules and procedures:
- (a) shall be issued by the Panel from time to time;
 - (b) shall be subject to and in accordance with the principles set out in Clause 23.3.4;

- (c) shall be binding on the parties so that the parties shall comply with their obligations under such rules and procedures and, subject to any subsequent award in any [*name of arbitration body*] arbitration in relation to a Dispute or judgement in the event of Third Party Claim, shall comply with any decision made by the Disputes Committee under Clause 24 and/or such rules and procedures.

23.3.2 The costs of:

- (a) constituting and maintaining the Disputes Committee shall be [recovered by the Panel as costs and expenses of the Panel in accordance with Clause 6]; and
- (b) the Disputes Committee in relation to any particular Dispute shall be [recoverable from the Disputing Parties].

23.3.3 If the Contract Managers are unable to resolve a Dispute within [fifteen (15)] Working Days of the reference of a Dispute to them any Disputing Party may refer the Dispute to the Dispute Committee.

23.3.4 The rules of the Disputes Committee shall be subject to and in accordance with the following principles:

- (a) the Disputes Committee shall not act as expert or arbitrator;
- (b) decisions of the Disputes Committee shall be binding upon the Disputing Parties unless and until one of the Disputing Parties refers the Dispute to arbitration under Clause 23.4.1;
- (c) the Disputing Parties shall be able to make written and oral submissions to the Disputes Committee in relation to all matters of fact and law in relation to that Dispute, including the interpretation and application of this Agreement;
- (d) the Disputing Parties shall not be entitled to have legal or other representation before the Disputes Committee provided that nothing in this Clause 23.3.4(d) or otherwise shall prevent a Disputing Party from adducing any evidence, including expert evidence, before the Disputes Committee, whether that evidence or expert evidence is from the Disputing Party's employee, contractor, sub-contractor, agent or otherwise;
- (e) the parties shall be entitled, but not obliged, to take legal or other advice when preparing submissions or evidence for the Disputes Committee;
- (f) the Disputes Committee shall be entitled to make such enquiries into matters of fact and law and take such advice in relation to such matters as it sees fit;
- (g) subject to rules and procedures made or amended from time to time by the Panel, the Disputes Committee shall be entitled to regulate its own procedure and, in particular, subject to Clause 23.3.4(h) and taking into account all of the conditions of the Dispute including its value and the nature, complexity and importance to the Disputing Parties of the issues raised in the Dispute, to act by considering documentary submissions only or by hearing submissions from the Disputing Parties in relation to the Dispute;
- (h) the Panel shall, if it sees fit, specify from time to time classes of Dispute and/or values of Dispute which are only to be considered by the Disputes Committee on a

documents only basis or which are to be considered by the Disputes Committee only after hearing submissions from the parties to the Dispute;

- (i) where the Disputes Committee hears submissions from the parties to a Dispute, it shall be entitled to regulate the time taken by the parties in making such submissions;
- (j) all parties to this Agreement, whether Disputing Parties in relation to a particular Dispute or not, shall co-operate fully with any enquiry from the Disputes Committee, which co-operation shall include attending any hearing of the Disputes Committee that the Disputes Committee may ask a party to attend and providing such evidence of information in relation to a Dispute as a party may hold pursuant to this Agreement or to its obligations under this Agreement;
- (k) if a Disputing Party fails or refuses to attend a hearing of the Disputes Committee in relation to the relevant Dispute or fails or refuses to provide information as described in Clause 23.3.4(j) in relation to the relevant Dispute the Disputes Committee shall be entitled to proceed with its consideration of the Dispute and to make its decision in relation to the Dispute notwithstanding such failure or refusal and to make such adverse inferences from such failure or refusal and to make such adverse inferences from such failure or refusal against that Disputing Party as it sees fit;
- (l) [all parties shall bear their own costs of and occasioned by the reference of the Dispute to the Disputes Committee and for the avoidance of doubt no charge shall be made by any party for the attendance of any of its employees at the Disputes Committee to give evidence or information to the Disputes Committee;]
- (m) any Disputing Party may terminate the proceedings of the Disputes Committee in relation to a particular Dispute by Notice in writing to all other Disputing Parties if a Third Party Claim arises before or during the Disputes Committee's proceedings, in which case the Dispute shall be subject to determination by the court and any Disputing Party may commence proceedings before the court under Clause 23.4.3;
- (n) the Disputing Parties may agree, at any time, to withdraw a Dispute from the Disputes Committee on such terms as the Disputing Parties may agree including the referral of the Dispute to [*Arbitration body*] arbitration;
- (o) the Disputes Committee shall have a membership of suitably qualified individuals including a chairman and vice-chairman who shall be available to convene the Disputes Committee;
- (p) the members of the Disputes Committee need not be independent of the parties to this Agreement but the members of the Disputes Committee for any given Dispute shall be independent of the Disputing Parties to that Dispute and shall act impartially in relation to the Dispute;
- (q) the Disputes Committee shall notify the Disputing Parties and the Panel in writing of its decision in relation to a Dispute, along with its full reasons for that decision (the decision and the reasons for it together being a **Decision**), within [twenty (25)] Working Days of the reference of a Dispute to it, following which the Panel shall prepare and circulate to all parties to this Agreement a summary of the Decision, provided that such summary shall be prepared so that, so far as is possible, no Disputing Party may be identified from it and so that it does not include any commercially sensitive information;

- (r) subject to the additional provisions of Clause 23.3.4(s), and subject to the Panel's obligation to circulate summaries of Decisions under Clause 23.3.4(q), all information relating to the proceedings of the Disputes Committee shall be Confidential Information and the members of the Disputes Committee shall be required to undertake to keep the proceedings of the Disputes Committee confidential subject to the exceptions and restrictions set out in Clause 20; and
- (s) the proceedings of the Disputes Committee and, if the Dispute is referred to the arbitration pursuant to Clause 23.4.1 or to the court pursuant to Clause 23.4.3, the Decision shall be without prejudice and the parties shall not call any member of the Disputes Committee to give evidence at any arbitration or in any litigation before any court of competent jurisdiction save to enforce a Decision.

23.4 Arbitration

- 23.4.1 Following notification of the Disputes Committee's Decision on a Dispute under Clause 23.3.4(q), or upon the failure of the Disputes Committee to notify the Disputing Parties of its Decision pursuant to Clause 23.3.4(q) within [twenty-five (25)] Working Days of the reference of the Dispute to it, any Disputing Party may refer the Dispute to arbitration pursuant to the arbitration rules of [*Name of arbitration body*] within [fifteen (15)] Working Days after the date of the notification of the Decision or within [fifteen (15)] Working Days after the date by which the Disputes Committee ought to have but failed to notify the Disputing Parties of its Decision.
- 23.4.2 Whatever the nationality, residence or domicile of any Disputing Party and wherever the Dispute or any part thereof arose, English law shall be the proper law of any reference to arbitration hereunder and in particular (but no so as to derogate from the generality of the foregoing) the seat of any such arbitration shall be England and Wales and the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever the same or any part of it shall be conducted.
- 23.4.3 Subject always to Clause 23.4.5, if any Customer brings any legal proceedings in any court against any party (the **Defendant Party**) and the Defendant Party wishes to make a Third Party Claim against another party which would, but for this Clause 23.4.3, have been a Dispute referred to arbitration by virtue of Clause 23.4.1 then, notwithstanding the provisions of Clause 23.4.1 which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the Third Party Claim not only between the Customer and the Defendant Party but also between either or both of them and the other party whether by way of third party proceedings or otherwise as may be ordered by the court.
- 23.4.4 For the purposes of this Clause 23, **Third Party Claim** means:
 - (a) any claim by a Defendant Party against another party (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
 - (b) any claim by a Defendant Party against another party for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the Customer; or
 - (c) any requirement by a Defendant Party that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the Customer and the Defendant Party but also as between either or

both of them and the other party (whether or not already a party to the legal proceedings).

- 23.4.5 Clause 23.4.3 shall apply notwithstanding the reference of the Dispute to the Disputes Committee but, subject thereto, only if at the time the legal proceedings are commenced no arbitration has been commenced between the Defendant Party and the other party raising or involving the same or substantially the same issues as would be raised by or involved in the Third Party Claim.
- 23.4.6 The tribunal in any arbitration that has been commenced prior to the commencement of legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.
- 23.4.7 Notwithstanding the provisions of the rest of this Clause 23, any party may apply at any time to any court of competent jurisdiction for any emergency interim interlocutory relief as may be necessary.

24 Entire Agreement

24.1 Entire agreement

- 24.1.1 This Agreement sets out the entire agreement between the parties.
- 24.1.2 No other term, express or implied, forms part of this Agreement and no usage, custom or course of dealing forms part of or affects this Agreement.

24.2 Representations and reliance

- 24.2.1 The only claim, right or remedy available to a party for a representation expressly set out in this Agreement shall be damages for breach of contract.
- 24.2.2 Each party waives all claims, rights and remedies for all representations:
- (a) made to it by any person before entering into this Agreement; and
 - (b) not set out in this Agreement.
- 24.2.3 Each party acknowledges that, in deciding to enter into this Agreement, it has not relied on any such representation.
- 24.2.4 This Clause 24 does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

25 Severability

- 25.1 If any provision of this Agreement shall be held to be invalid or unenforceable by a judgement or decision of any court of competent jurisdiction or any authority (including the Authority and the Secretary of State) whose decisions shall be binding on the parties, the provision shall be deemed to be severable and the remainder of this Agreement shall remain valid and enforceable to the fullest extent permitted by law.
- 25.2 In the circumstances set out in Clause 25.1, the parties shall use the procedures in Clause 7 to agree one or more provisions which may be substituted for the invalid or unenforceable provision.

26 Waivers

26.1 Waiver must be in writing

- 26.1.1 If a party breaches a term of this Agreement, the rights of each other party arising from that breach cannot be waived except:
- (a) with the express written consent of the other party; and
 - (b) to the extent set out in that consent.

26.1.2 Waiver of one breach does not waive or imply waiver of any further or other breach.

26.2 Limited exercise is not a waiver

- 26.2.1 This Clause applies if a party becomes entitled to exercise any right or remedy under this Agreement or by law or regulation.
- 26.2.2 No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:
- (a) adversely affect that right or remedy;
 - (b) waive it; or
 - (c) prevent any further exercise of it or of any other right or remedy,
- except to the extent the parties have expressly agreed otherwise in writing.

26.3 Rights and remedies are cumulative

The rights and remedies arising from this Agreement are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise.

27 Notices

- 27.1.1 This Clause applies to all notices and other communications (except formal notices in legal proceedings) between the parties under this Agreement (**Notices**).
- 27.1.2 Unless otherwise expressly stated, Notices must be in writing and must be delivered by one of these methods:

- (a) by hand;
- (b) prepaid first class post; or
- (c) prepaid International Signed For post for an address outside the United Kingdom.

27.1.3 Subject to Clause 27.1.5, Notices must be addressed to the party to be served at one of the following:

- (a) if addressed to a company, at its registered office at that time;
- (b) if addressed to an individual, at the address given at the beginning of this Agreement or, if the party to be served has notified the other parties of any replacement address in the United Kingdom for service of Notice, at the replacement address.

27.1.4 A Notice:

- (a) delivered by hand is effective at delivery
- (b) sent by fax is effective on the next Working Day after the fax was sent.
- (c) sent by post is effective:
 - (i) (for national mail) on the second Working Day after posting; and
 - (ii) (for international mail) on the fifth Working Day after posting.

27.1.5 Where a Notice is permitted under this Agreement to be given by electronic means, it may be given by [email or] via the Central Charge Database.

28 Assignment and Subcontracting

28.1 Restrictions

28.1.1 This Clause applies to all rights, interests and duties under this Agreement or arising from it. In this Clause, **transfer** means any form of transfer, including an assignment.

28.1.2 No party may deal with such a right or interest except as allowed by this Clause, whether by:

- (a) transfer;
- (b) charge or other encumbrance;
- (c) trust; or
- (d) in any other way.

28.1.3 No party may subcontract a duty except as allowed by this Clause.

28.2 Exceptions

28.2.1 Any exception in this Clause which allows a party to transfer a right or sub-contract a duty does not imply any right to novate a duty.

28.2.2 [*Provisions to allow for the transfer of certain rights to a Nominated Finance Provider to be developed.*]

28.2.3 A party may deal with a right or interest or subcontract a duty by issuing a Notice of Transfer in the form set out in Schedule 5 to all parties.

28.2.4 If a party deals in a right or interest under an exception in this Clause, the liability of each other party to this Agreement is limited to the amount it would have been if no dealing had taken place.

29 Counterparts

29.1.1 The parties may execute this Agreement in any number of counterparts, each of which is an original.

29.1.2 A set of counterparts, executed by all the parties, together forms one and the same instrument.

30 Governing Law

English law governs this Agreement and its interpretation.

31 Third Party Rights

A person who is not party to this Agreement may not enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

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Schedule 1 – Parties

[The latest version of this Agreement and this Schedule will be made publicly available by [the Secretary of State / the Oversight Body]]

Suppliers

[This part will list all GD Suppliers. No distinction is proposed to be made (in the GDAA) between mandatory GD Suppliers and voluntary GD Suppliers]

[Where a Supplier is also a GD Provider, this part will clarify that it is a party in its capacity as a Supplier]

Green Deal Providers

[This part will list all GD Providers. Where a GD Provider is also a Supplier, this part will clarify that it is a party in its capacity as a GD Provider]

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Schedule 2 – Form of Accession Agreement

THIS AGREEMENT is made on [**] between:

- (1) [**], a company incorporated under the laws of [**] [(with company number **)] and having its [registered] [principal] office at [**] (the **New Party**); and
- (2) [**], acting on behalf of all the parties to the Green Deal Arrangements Agreement (the **Nominee**).

WHEREAS:

- (A) The (1) Suppliers named therein, and (2) the Green Deal Providers named therein have entered into an agreement (the **Green Deal Arrangements Agreement**) dated [**]; and
- (B) The New Party has requested that it be admitted as a party in the capacity of [Supplier][Green Deal Provider] pursuant to Clause 4 of the Green Deal Arrangements Agreement and each of the parties thereto hereby agrees to such admission.

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NOW HEREBY IT IS AGREED as follows:

1. Unless otherwise stated herein, all capitalised terms shall have the meanings ascribed to them in the Green Deal Arrangements Agreement.
2. The Nominee hereby admits the New Party as an additional party under the Green Deal Arrangements Agreement on the terms and conditions hereof and with effect from [*insert effective date of admission*].
3. The New Party hereby accepts its admission as a party to the Green Deal Arrangements Agreement and undertakes with the Nominee to perform and to be bound by the terms and conditions thereof as a party thereto as from the [*insert effective date of admission*].
4. For all purposes in connection with the Green Deal Arrangements Agreement the New Party shall as of the [*insert effective date of admission*] be treated as a [Supplier][Green Deal Provider] as if this Agreement were part of the Green Deal Arrangements Agreement, and the rights and obligations of the parties shall be construed accordingly.
5. This Agreement and the Green Deal Arrangements Agreement shall be read and construed as one document and references in the Green Deal Arrangements Agreement to the Green Deal Arrangements Agreement, howsoever expressed, shall be read and construed as references to the Green Deal Arrangements Agreement and this Agreement.
6. This Agreement shall be governed by and construed in all respects in accordance with English law and Clause 30 (*Governing Law*) of the Green Deal Arrangements Agreement shall apply hereto *mutatis mutandis*.

- 7. A person who is not party to this Agreement may not enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999. The parties may rescind or change any term of this Agreement without the consent of a person who is not party to this Agreement.

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

[The New Party]

SIGNED by)
**)
for and on behalf of)
** [Limited])

The Nominee

SIGNED by)
**)
for and on behalf of each of the parties to)
the Green Deal Arrangements Agreement)
**)

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Schedule 3 – Customer Data

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Schedule 4 – Remittance Data

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Schedule 5 – Notice of Transfer

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