



**European Union**  
European Regional  
Development Fund



DATED \_\_\_\_\_ 2020

## SMART ENERGY VOUCHER AGREEMENT

between

NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

and

[INSERT NAME]

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THIS DEED is dated \_\_\_\_\_ 2020

## PARTIES

- (1) NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL, whose principal address is at Municipal Offices Town Hall Square Grimsby North East Lincolnshire DN31 1HU (**Funder**).
- (2) [Company Name] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Recipient**).
- (3) (Name)..... of (Home address).....and (Name).....of (Home address).....(**Director(s) of the Recipient**)

## BACKGROUND

- (A) The Funder has received a Grant from the Secretary of State for the purpose of [set out purpose] (the "Project").
- (B) The Funder has agreed to pay a Smart Energy Voucher to the Recipient to assist it in carrying out the Project.
- (C) This Agreement sets out the terms and conditions on which the Smart Energy Voucher is made by the Funder to the Recipient.
- (D) Receipt of the Grant by the Funder is subject to specific terms and conditions. Some of the terms have been incorporated into this Agreement and are thereby imposed on the Recipient.
- (E) These terms and conditions are intended to ensure that the Smart Energy Voucher is used for the purpose for which it is awarded.
- (F) The Director(s) of the Recipient have joined in this agreement to give the Directors Guarantee and Undertaking at clause 11.7

## AGREED TERMS

### 1. DEFINITIONS

In this Agreement the following terms shall have the following meanings:

**Asset:** the fixed asset more particularly described as [set out what is being installed into the premises] to be purchased and installed at the Property using the Smart Energy Voucher by the Recipient.

**Application:** the application for a Smart Energy Voucher completed by the Recipient.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Competent Authority:** any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Eligible Expenditure:** defrayed expenditure incurred in relation to the Project excluding the expenditure listed in Schedule 2.

**Governing Body:** the governing body of the Recipient including its directors or trustees.

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Match Funding:** the funding for the Project provided by the Recipient other than the Smart Energy Voucher.

**Material Change:** a change in the Project which materially impacts on the Project Outputs, Milestones or Project Costs.

**Milestones:** the stages of the Project that the Recipient must achieve which are set out in the Quotation and Schedule 1 or such other stages as agreed between the parties from time to time.

**Necessary Consents:** all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

**Prohibited Act:** means:

- (a) offering, giving or agreeing to give to any servant of the Funder any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Funder; or

- (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Funder;
- (b) entering into this Agreement or any other contract with the Funder where a commission has been paid or has been agreed to be paid by the Recipient or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Funder;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Funder; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Funder.

**Project Costs:** the total cost of the Project as set out in the Quotation

**Voucher Start Date:** [insert start date of voucher]

**Voucher Expiry Date:** [insert end date]

**Project Manager:** the individual who has been nominated to represent the Funder for the purposes of this Agreement.

**Project Outputs:** the agreed outputs for the project as set out in Schedule 1.

**Property:** [insert full address of property which works are to be completed on]

**Quotation:** the fixed quote for the completion of the works for which the Recipient entered into a contract with a supplier following a procurement exercise, as set out at Schedule 3.

**Smart Energy Voucher:** the sum of [£x] to be paid to the Recipient in accordance with this Agreement.

**State Aid:** any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU).

**State Aid Law:** means all legally enforceable requirements in relation to State Aid as defined in Articles 107, 108 and 109 of the Treaty for the Functioning of the European Union (TFEU) or any other applicable law relating to State Aid in force from time to time.

**Useful Economic Life of the Asset:** 25th June 2026 (5 years after final payment date MHCLG)

**Voucher Claim:** a claim for payment of the Smart Energy Voucher by the Recipient at the end of the Voucher Period.

**Voucher Period:** the period for Voucher Start Date and ending on the Voucher Expiry Date.

## **2. THE PROJECT**

2.1 In consideration of the parties respective obligations contained within this Agreement, the Funder offers the Smart Energy Voucher and the Recipient accepts the Smart Energy Voucher on the terms and conditions of this Agreement.

2.2 The Recipient shall complete the Project in line with the Quotation, the Project Outputs and all other terms of this Agreement.

2.3 The Project works shall be completed and the Recipient shall submit the Voucher Claim, invoice and all supporting evidence to the Funder for the Smart Energy Voucher by no later than the Voucher Expiry Date.

2.4 Should the Recipient seek to make any changes to the Project that would lead to a material variation in the approved specification, costs or benefits these must be agreed in advance with the Funder.

2.5 No change in the amount of Smart Energy Voucher will be implied from the approval of any material change in the Project.

2.6 The Funder may at its sole discretion increase the amount of the Smart Energy Voucher upon revaluation of the Project.

## **3. STATE AID**

3.1 The Recipient's State Aid position has been assessed based on the information provided in the Application and the Recipient shall ensure that State Aid law is adhered to in relation to the Project and/or if any other public funding is received by the Recipient in the future. The Recipient acknowledges that failure to comply with State Aid Law could result in recovery of some or all of any public sector funding paid to the Recipient.

3.2 The Recipient agrees to maintain appropriate records of compliance with the State Aid Law and agrees to take all reasonable steps to assist the Funder and the Secretary of State to comply with State Aid Law requirements and respond to any investigation(s) instigated by the European Commission into the Project or by the European Court of Auditors.

#### **4. CONSENTS**

- 4.1 The Recipient has applied for and received all Necessary Consents to undertake the works comprising the Project and it shall at all times throughout the Project comply with all Necessary Consents .
- 4.2 The Recipient shall permit the Funder or the Secretary of State and its authorised representatives to visit the Property upon reasonable notice to view the works throughout the lifetime of the Project;
- 4.3 The Recipient shall use all reasonable endeavours to ensure that the construction and operation of the Project works reflect the overall principles of sustainable development

#### **5. THE VOUCHER**

- 5.1 The Recipient shall use the Smart Energy Voucher only for Eligible Expenditure directly related to the delivery of the Project and in accordance with the terms and conditions set out in this Agreement. The Smart Energy Voucher will only be paid in respect of Eligible Expenditure. Schedule 2 defines those activities which are not deemed Eligible Expenditure and therefore not able to be claimed as part of the Voucher Claim.
- 5.2 The Smart Energy Voucher cannot be used to cover the VAT element of the cost of the Project. The Recipient agrees that it will pay any VAT charged by their supplier.
- 5.3 Where the Recipient intends to apply to a third party for funding for the Project, it will notify the Funder in advance of its intention to do so and, where such funding is obtained, it will provide the Funder with details of the amount and purpose of that funding. This may impact on the amount of Voucher that is payable to the Recipient by the Funder.

#### **6. VOUCHER CLAIMS**

- 6.1 Subject to clauses 6.2, 6.3, 6.4 and 16, the Funder shall pay the Smart Energy Voucher to the Recipient once the Funder is satisfied that the conditions under the above clauses have been met and 30 days after a Voucher Claim has been submitted by the Recipient, but no later than the Voucher Expiry Date, subject to the necessary funds being available when payment falls due. The Recipient agrees and accepts that payment of the Smart Energy Voucher can only be made to the extent that the Funder has available funds.

- 6.2 The Funder will not make the payment of the Smart Energy Voucher unless all of the following conditions have been complied with:
- (a) the Recipient has been invoiced for the Project and evidence of this has been provided to the Funder;
  - (b) the Funder has completed a site visit and audit with the Recipient to ensure the Project has been completed to a satisfactory standard, in line with the Quotation and the Project Outputs;
  - (c) the Recipient has provided evidence to the Funder and the Funder is satisfied that the Voucher Claim solely relates to Eligible Expenditure;
  - (d) Eligible Expenditure has been defrayed (that is that Eligible Expenditure has been incurred and that payment has been made by the Recipient);
  - (e) the Recipient has provided evidence to the Funder that the Recipient has provided the Match Funding to complete the Project and the Recipient has satisfied the Funder that it has paid all expenditure in relation to the Project which is not Eligible Expenditure;
  - (f) the conditions of this Agreement have been complied with and/or implemented and/or achieved.
- 6.3 The Funder will not make payment of the Smart Energy Voucher if the Recipient has failed without reasonable cause to modify the work as specified in a notice served by the Funder or any other government department or statutory authority.
- 6.4 The Recipient shall comply with following procedures when making a Voucher Claim:
- (a) the Recipient shall make a Voucher Claim on completion of the Project and by no later than the Voucher Expiry Date, or other such date as agreed between the parties from time to time.
  - (b) expenditure incurred before the Voucher Start Date and after the Voucher Expiry Date is not Eligible Expenditure and therefore cannot be included in a Voucher Claim.
  - (c) the Voucher Claim shall include invoices and evidence of payment (for example bank statements) in such format and detail as may be requested by the Funder relating to the amount of such Voucher Claim. This should be provided in certified copy format with original copies held by the Recipient. This evidence may be verified by the Funder requesting to see the original copies as held by the Recipient.
  - (d) where the Voucher Claim includes items on a proportional basis the Recipient will also provide itemised records to demonstrate how the



Eligible Expenditure relates to each of the original invoices and/or salary records.

- 6.5 The Recipient shall promptly repay to the Funder any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Smart Energy Voucher monies have been paid in error before all conditions attaching to the Smart Energy Voucher have been complied with by the Recipient.
- 6.6 Any liabilities arising at the end of the Project including any redundancy liabilities for staff employed by the Recipient to deliver the Project must be managed and paid for by the Recipient. There will be no additional funding available from the Funder for this purpose.
- 6.7 The time for payment of the Smart Energy Voucher shall not be of the essence. The Funder shall have no liability to the Recipient for any losses caused by a delay in the payment of a Smart Energy Voucher howsoever arising.

## **7. FINANCIAL IRREGULARITIES**

- 7.1 If the Recipient has any grounds for suspecting any financial irregularity in the use of any Smart Energy Voucher, it must notify the Funder immediately, explain what steps are being taken to investigate the suspicion, and keep the Funder informed about the progress of the investigation. For these purposes “financial irregularity” includes fraud or other impropriety; mismanagement; use of the Smart Energy Voucher for unapproved purposes; and failure to comply with the requirements set out in this Agreement.

## **8. ACCOUNTS AND RECORDS**

- 8.1 The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Smart Energy Voucher monies received by it.
- 8.2 The Recipient shall keep all documentation relating to the Project, including but not limited to:
- (a) an explanation of the procurement procedure with justification, all quotes received and related communications;
  - (b) all contracts relating to the Project;
  - (c) Eligible Expenditure records;
  - (d) Match Funding records;

- (e) Invoices and receipts;
- (f) Accounts; and
- (g) any other relevant documents relating to the project and the expenditure of the Smart Energy Voucher

until 31<sup>st</sup> March 2033.

- 8.3 The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's accounts and records that relate to the expenditure of the Smart Energy Voucher and shall have the right to take copies of such accounts and records. If requested, these documents will need to be made available to HM Government, the European Commission auditors and European Court of Auditors.
- 8.4 The Recipient shall comply and facilitate the Funder's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Funder.
- 8.5 The Recipient shall, without charge, permit any officer or officers from the Funder or external auditing bodies including but not limited to the Secretary of State, National Audit Office, Audit Commission, HM Government, the European Commission and European Court of Auditors or their nominees, to visit its premises and/or inspect any of its activities and/or to examine and take copies of the Recipient's books of account and such other documents or records as in such officers' view may relate to the use of Grant. In addition, examinations may be carried out into the economy, efficiency and effectiveness with which the Smart Energy Voucher has been used.
- 8.6 The Funder shall endeavour, but are not obliged, to provide due notice of its intent to conduct an audit.

## **9. MONITORING AND REPORTING**

- 9.1 The Recipient shall closely monitor the delivery and success of the Project throughout the Voucher Period to ensure that the aims and objectives of the Project are being met, that the Project Outputs and Milestones are being achieved and that this Agreement is being adhered to.
- 9.2 The Recipient shall inform the Funder when work starts on the Project and when the work on the Project has been completed.

9.3 The Funder will undertake various progress monitoring/site inspection visits on an ad hoc basis throughout the lifetime of the Project. Reasonable notice will be given to the Recipient of these visits.

9.4 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in its financial reports together with details of what that funding has been used for.

## **10. PROCUREMENT AND TENDERING REQUIREMENTS**

10.1 The Recipient must ensure when procuring goods, works and services that it procures those which are most likely to offer value for money. The Recipient should procure all goods, works and services in relation to the Project through an open, transparent and non-discriminatory competition process, in full compliance with paragraph 23 (National Rules) in the European Structural Investment Funds (ESIF) guidance<sup>1</sup>.

10.2 The Funder shall be entitled to request information to verify that there has been compliance with the requirements set out in this clause 10.

10.3 The Recipient must, if required by the Funder, provide an account in writing or relevant documents to evidence the procurement practices adopted for the Project, and how tenders have been assessed and tenderers have been selected.

10.4 The Funder shall be entitled to request information to verify that the Recipient has complied with the requirement set out in clause 10.1. The Recipient must, if required by the Funder, provide documentary evidence of the procurement practices adopted for the project including how contracts have been advertised; tenders assessed; and contractors selected/appointed.

## **11. DISPOSAL AND MAINTENANCE OF THE ASSET**

11.1 The Recipient covenants with the Funder that it will not use any Asset for any purpose other than the anticipated use for the Useful Economic Life of the Asset.

11.2 During the Useful Economic Life of the Asset, the Recipient shall not cease to use the Asset, or any part of the Asset for the anticipated use or dispose of any interest in the Asset without the prior written consent of the Funder for the period of the period of 5

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/825719/ESIF-GN-1-001\\_ESIF\\_National\\_Procurement\\_Requirements\\_v6.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/825719/ESIF-GN-1-001_ESIF_National_Procurement_Requirements_v6.pdf)

years from 25th June 2021 ( the date of final payment from MHCLG. If consent is given, it may be subject to any conditions which the Funder may wish to impose. Such conditions may include repayment by the Recipient to the Funder of all or part of the Smart Energy Voucher paid to the Recipient under this Agreement

- 11.3 All disposals of Assets must be for a consideration which is the best that can reasonably be obtained in the open market, on an arm's length basis, on normal market terms, at the time of such disposal.
- 11.4 [The Recipient shall not dispose of the Property without the consent of the Funder for a period of 5 years from the from 25th June 2021 ( the date of final payment from MHCLG), without first ensuring that the purchaser of the Property enters into a covenant with the Funder to comply with the obligations of this Agreement].
- 11.5 In relation to Clause 11.4, the parties agree that the Funder may register on to the Recipient's title the following restriction:
- (a) *No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by North East Lincolnshire Borough Council of Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire DN31 1HU or their conveyancer or the Chief Legal Officer that the provisions of clause 11.2 of a contract dated [ ] between (1) North East Lincolnshire Borough Council and (2) XX have been complied with or that they do not apply to the disposition.]*
- 11.6 Where the Recipient disposes any interest in the Asset, including disposal of the Property, without the prior written consent of the Funder, the Funder may require the Recipient to repay the Smart Energy Voucher and this may be recovered as a contractual debt if such repayment is not made within 20 days of request by the Funder.

#### 11.7 Directors Guarantee and Undertaking

- (a) In consideration of the Funder providing a Smart Energy Voucher and any other benefit to the Recipient we as Director(s) of the Recipient hereby (jointly and severally) personally undertake and guarantee that in the event of the Recipient failing to discharge the full amount of any indebtedness (howsoever arising under this Agreement) owing by the Recipient within 28 days of demand I/we will personally be responsible for payment of the indebtedness.
- (b) The Director(s) of the Recipient acknowledge and agree that this undertaking and guarantee is irrevocable.

- 11.8 The Recipient must properly maintain the Asset in full working order and undertake all necessary repairs adequately and promptly.

## **12. ACKNOWLEDGMENT AND PUBLICITY**

- 12.1 The Recipient shall acknowledge the Smart Energy Voucher in its annual report and accounts.

- 12.2 The Recipient shall not publish any material referring to the Project or the Funder without the prior written agreement of the Funder and for the avoidance of doubt the Recipient shall not make or permit any of its employees, agents or advisors to make any press or other public announcement or divulge or communicate to any person, any of the terms of this agreement without the prior written approval of the Funder.

- 12.3 The Recipient shall acknowledge the support of the Funder and the Secretary of State in any materials that refer to the Project and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Funder) shall include the Funder's and the Secretary of State's name and logo (or any future name or logo adopted by the Funder and/or the Secretary of State) using the templates provided from time to time.

- 12.4 In using the Funder's and the Secretary of State name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Funder or Secretary of State from time to time.

- 12.5 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by the Funder or the Secretary of State.

- 12.6 The Funder may acknowledge the Recipient's involvement in the Project as appropriate without prior notice to the Recipient.

- 12.7 The Recipient shall comply with all reasonable requests from the Funder to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Funder in its monitoring, promotional and fundraising activities relating to the Project.

## **13. CONFIDENTIALITY**

- 13.1 Subject to clause 14 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual

Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

- 13.2 The obligations of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
  - (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

#### **14. FREEDOM OF INFORMATION**

- 14.1 The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**).
- 14.2 The Recipient shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Funder to enable the Funder to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Funder all requests for information relating to this Agreement that it receives as soon as reasonably practicable and in any event within 2 working days of receipt;
  - (c) provide the Funder with a copy of all information belonging to the Funder requested in the request for information which is in its possession or control in the form that the Funder requires within 5 working days (or such other period as the Funder may reasonably specify) of the Funder's request for such information; and
  - (d) not respond directly to a request for information unless authorised in writing to do so by the Funder.

- 14.3 The Recipient acknowledges that the Funder may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Recipient. The Funder shall take reasonable steps to notify the Recipient of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Funder shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **15. DATA PROTECTION**

The Recipient shall (and shall procure that any of its staff involved in connection with the activities under this Agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

## **16. WITHHOLDING, SUSPENDING AND REPAYMENT OF THE VOUCHER**

- 16.1 The Funder's intention is that the Smart Energy Voucher will be paid to the Recipient in full. However, without prejudice to the Funder's other rights and remedies, the Funder may at its discretion reduce, withhold or suspend payment of the Smart Energy Voucher or require the Smart Energy Voucher to be repaid if:
- (a) the Recipient uses the Smart Energy Voucher for purposes other than those for which they have been awarded;
  - (b) the delivery of the Project has not been completed by the Voucher Expiry Date;
  - (c) the Funder, acting reasonably, considers that the Recipient has not made satisfactory progress with the delivery of the Project;
  - (d) the Commission or the European Court of Justice or the European Court of First Instance requires any Smart Energy Voucher paid to be recovered by reason of a breach of State Aid Law;
  - (e) there are financial irregularities with the Project or fraud or other illegal activity on the part of the Recipient;
  - (f) the Recipient is in the reasonable opinion of the Funder, taking into consideration any representations made by the Recipient, delivering the Project in a negligent manner;
  - (g) the Recipient obtains duplicate funding from a third party for the Project;

- (h) the Recipient obtains funding from a third party which, in the reasonable opinion of the Funder, undertakes activities that are likely to bring the reputation of the Project or the Funder into disrepute;
  - (i) the Recipient provides the Funder with any materially misleading or inaccurate information;
  - (j) the Recipient commits or committed a Prohibited Act;
  - (k) any member of the governing body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Funder, bring or are likely to bring the Funder's name or reputation into disrepute;
  - (l) the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
  - (m) the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
  - (n) the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
- 16.2 The Funder may retain or set off any sums owed to it by the Recipient which have fallen due and payable against any sums due to the Recipient under this Agreement or any other agreement pursuant to which the Recipient provides goods or services to the Funder.
- 16.3 The Recipient shall make any payments due to the Funder without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 16.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with this Agreement it will notify the Funder as soon as possible so that, if possible, and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the problem or to take action to protect the Funder and the Smart Energy Voucher monies.
- 16.5 In the event that it becomes necessary to take steps to enforce the terms and conditions of this Agreement, the Funder, will write to the Recipient, giving



particulars of its concern or of any breach of a term or condition of the Agreement.

- 16.6 The Recipient must act within 30 days (or earlier, depending on the severity of the problem) to address the concern or rectify the breach, and may consult with the Funder an action plan for resolving the problem. If the Funder is not satisfied with steps taken by the recipient then to address its concern or rectify the breach, it may take steps to withhold or suspend the further payment of the Smart Energy Voucher, or to recover funds already paid.
- 16.7 On termination of this Agreement for any reason, the Recipient, will as soon as reasonably practicable return to the Funder any assets or property or any unused funds (unless the Funder gives its written consent to their retention) then in its possession in connection with this Agreement.
- 16.8 The Funder may require interest to be paid on any amount repayable by the Recipient in accordance with the rates published in the Official Journal of the European Union from time to time.

## **17. ANTI-DISCRIMINATION**

- 17.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
- 17.2 The Recipient shall take reasonable steps to secure the observance of clause 17.1 by all servants, employees or agents of the Recipient all suppliers and sub-contractors engaged on the Project.

## **18. LIMITATION OF LIABILITY**

- 18.1 The Funder accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient delivering the Project, the use of the Smart Energy Voucher or from withdrawal of the Smart Energy Voucher. Subject to Clause 17.2, the Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.

## 19. WARRANTIES

The Recipient warrants, undertakes and agrees that:

- (a) it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Smart Energy Voucher) or will source such necessary resources and expertise to deliver the Project;
- (b) so far as it is aware, it has not committed any Prohibited Act;
- (c) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Funder immediately of any significant departure from such legislation, codes or recommendations;
- (d) it has all Necessary Consents and licences in place to undertake the Project;
- (e) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;
- (f) it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (g) it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (h) all financial and other information concerning the Recipient which has been disclosed to the Funder is to the best of its knowledge and belief, true and accurate;
- (i) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Smart Energy Voucher;
- (j) it is not aware of anything in its own affairs, which it has not disclosed to the Funder or any of the Funder's advisers, which might reasonably have influenced the decision of the Funder to make the Smart Energy Voucher on the terms contained in this Agreement; and
- (k) since the date of its last accounts there has been no material change in its financial position or prospects.

## 20. INSURANCE

- 20.1 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipient's performance of the Agreement, including death or

personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

- 20.2 The Recipient shall (on request) supply to the Funder evidence to confirm that the premiums on the Required Insurances have been paid and that the Required Insurances are in force.

## **21. DURATION**

- 21.1 Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until payment of the Smart Energy Voucher has been made by the Funder to the Recipient.

- 21.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of this Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

## **22. TERMINATION**

- 22.1 The Funder may terminate this Agreement immediately by serving a written notice on the Recipient if:

- (a) The Smart Energy Voucher or any part of it is being used for any purpose other than the purpose set out in this Agreement;
- (b) The recipient has made any false, incorrect or misleading statement in order to obtain the Smart Energy Voucher or has been involved in any illegal activity or improper act in its administration; or
- (c) The recipient has failed to remedy any breach of this Agreement within 30 days (or such other period that the Funder may agree in writing) of being served with a notice pointing out the breach requiring its rectification.

- 22.2 Notwithstanding the Clauses above, this Agreement may be terminated by the Funder by giving at least 1 month notice (or other agreed time period) months' notice in writing.

- 22.3 Any termination of this Agreement will be without prejudice to any other rights or remedies of the parties under this Agreement or at law and will not affect any accrued rights or liabilities of the parties at the date of termination.

**23. ASSIGNMENT**

The Recipient may not, without the prior written consent of the Funder, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Smart Energy Voucher.

**24. WAIVER**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

**25. AMENDMENTS TO THE GRANT AGREEMENT**

25.1 This Agreement sets out the entire agreement between the parties. It replaces all previous negotiations, agreements, understandings and representations between the parties, whether oral or in writing.

25.2 Any amendments to this Agreement shall only be valid if they are in writing and signed by an authorised representative of both parties.

**26. NOTICES**

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

**27. DISPUTE RESOLUTION**

27.1 In the event of any complaint or dispute (which does not relate to the Funder's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the matter should first be referred for resolution to the Project Manager or any other individual nominated by the Funder from time to time.

27.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to the Project Manager or other nominated individual, as the

case may be, either party may refer the matter to the Chief Executive of the Funder and the Chief Executive of the Recipient with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Funder and the Recipient.

- 27.3 In the absence of agreement under clause 27.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.
- 27.4 Nothing in clause 27.3 shall preclude legal proceedings being issued by a party in the courts of England and Wales in relation to matters arising pursuant to this Agreement, including (but not limited to) proceedings:
- (a) for an order (whether interim or final) to restrain the other party from doing any act or compelling the other party to do any act; or
  - (b) the purpose of which is to prevent a claim from becoming time-barred under any statute of limitations.

## **28. NO PARTNERSHIP OR AGENCY**

This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

## **29. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## **30. BRIBERY, CORRUPTION AND MODERN SLAVERY**

- 30.1 The parties shall not, and shall procure that their directors, employees, agents, representatives, contractors or subcontractors shall not, engage in any activity, practice or conduct which would constitute an offence under any applicable:
- (a) anti-bribery and/or anti-corruption laws, regulations and codes, including the Bribery Act 2010;
  - (b) anti-slavery and human trafficking laws, regulations and codes, including the Modern Slavery Act 2015.

- 30.2 The parties shall:

- (a) each have in place adequate procedures designed to prevent any person working for or engaged by them or any third party in any way connected to this Agreement, from engaging in any activity, practice or conduct which would infringe any anti-bribery and/or anti-corruption laws, regulations and codes;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;

30.3 Breach of this Clause 29 by a party shall entitle the other party to terminate this Agreement with written notice with immediate effect.

### **31. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

## Schedule 1 The Project

### The Project Outputs

[set out what should be delivered include IFAS solution here if appropriate. ]

### Key Milestones of the Project

Milestone	Date
Voucher Start Date	
Voucher Claim received by (voucher expiry date) Funder	
Voucher payment made to Recipient	
Document Retention Date	31 <sup>st</sup> March 2033

## **Schedule 2 : Eligible Expenditure**

Eligible Expenditure shall constitute any expenditure that is not referred to in the following excluded items:

- In-kind contributions which comprise the provision of land, real estate, equipment
- Purchase of furniture, vehicles and equipment (other than small items of equipment under £1,000 or items agreed by the Smart Energy Greater Lincolnshire Board )
- Purchase of second hand equipment
- Bank debit charges
- Legal fees
- Fines, financial penalties and expenses arising from litigation
- Purchase of land
- Purchase of real estate (i.e. buildings after construction and the land on which they are built)
- Expenditure relating to venture capital loan and guarantee funds
- Redundancy costs if people leave the employment of the organisation at the end of or during the life of the project.
- payments that are the subject of a Prohibited Act



## Schedule 3 Quotation

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

<p>The COMMON SEAL of NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL was affixed in the</p> <p>in the presence of:</p>	<p>.....</p> <p>Authorised Signatory</p>
<p>EXECUTED as a DEED</p>	
<p>by [ company name]</p>	
<p>[director]</p>	<p>.....</p>
<p>[director/secretary]</p>	<p>.....</p>

In connection with the Directors Undertaking and Guarantee at clause 11.7

**THIS AGREEMENT CONTAINS A PERSONAL GUARANTEE AND UNDERTAKING. YOU ARE ADVISED TO TAKE INDEPENDENT LEGAL ADVICE.**

<p>SIGNED as a Deed by</p> <p>(Name).....</p> <p>Signature.....</p> <p>In the presence of:</p>
<p>Witness:</p> <p>Name:</p> <p>Address:</p> <p>Occupation:</p>
<p>SIGNED as a Deed by</p> <p>(Name).....</p> <p>Signature.....</p> <p>In the presence of:</p>
<p>Witness:</p> <p>Name:</p> <p>Address:</p> <p>Occupation:</p>