DATED

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Trade mark licence agreement

between

Nuneaton and Bedworth Borough Council: Licensor

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: Licensee

This agreement is dated 20\_\_\_\_

**Parties**

1. **NUNEATON AND BEDWORTH BOROUGH COUNCIL** of Town Hall, Coton Road, Nuneaton, Warwickshire CV11 5AA (Licensor)
2. [FULL COMPANY NAME] incorporated and registered in [COUNTRY OF INCORPORATION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Licensee)

Background

1. The Licensor is the owner of the Mark (as defined below).
2. The Licensee wishes to use the Mark in the Territory (as defined below) in relation to the EC04 Scheme (as defined below) and the Licensor is willing to grant to the Licensee a licence to use the Mark on the terms and conditions set out in this agreement.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

* 1. Definitions:
1. Business Day: means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
2. Commencement Date: means [DATE]. until 31st March 2026.
3. Data Protection:means as per Schedule 3 of this Agreement

 ECO4 Scheme: measures/energy efficient projects in low-income households to be carried out by the Licensee, under the Electricity and Gas (Energy Company Obligation) Order 2022 (EC04 Scheme).

1. Group: means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
2. Mark: means the badge/trademark/logos set out in Schedule 1, and any registrations of any marks that may be notified in writing by the Licensor to the Licensee from time to time.

 **Breach** means a breach of this agreement in that there is a failure to hold up the provisions of this Agreement.

( Material Breach (including anticipatory breach) means a breach that is serious in a widest sense of having a serious affect on a benefit which the termination party would otherwise derive from a substantial portion of this agreement.

1. Use of Mark/Standards - Terms and Conditions: the Licensor's guidelines prescribing the standards of service required, the permitted form and manner in which the Mark may be used, a copy of which is attached at Schedule 2 to this agreement and initialed by the parties for the purposes of identification, including any amendments or additions notified in writing by the Licensor to the Licensee from time to time.
2. Territory: means within Nuneaton and Bedworth Borough Council area.
	1. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
	2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	3. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
	4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
	5. References to clauses and Schedules are to the clauses and Schedules of this agreement.
	6. A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

* 1. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
	2. This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
	3. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
	4. A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
	5. A reference to **writing** or **written** excludes fax but not email.
	6. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
	7. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
1. Grant

2.1 The Licensor hereby grants to the Licensee a non-exclusive licence to use the Mark in the Territory, including in connection with promotional literature which the Licensee produces for the purpose of promoting the ECO4 scheme, seeking to identify eligible properties and/or seeking to enter into agreements with the occupiers of eligible properties for the installation of ECO4 measures.

* 1. The Licensor shall not grant to any third party any licence of the Mark in any part of the Territory on terms which are in any respect more favourable to such third party than the terms of this agreement are to the Licensee, unless it has first given the Licensee written notice of such proposed licence (though not the identity of the third party) and the option, exercisable within 14 days of such notice, to vary the terms of this agreement from the date of the grant of such third party licence insofar as, and to the extent only that, such terms are inconsistent with the terms of such third party licence.
	2. The Licensee shall not:
		1. undertake advertising of the Mark in, or specifically aimed at, any country outside the Territory;
		2. actively seek orders using the Mark from outside the Territory; or
		3. establish any branch dealing in, or maintain any distribution depot for, use of the Mark outside the Territory.
1. Application of the Mark
	1. The Licensee shall comply strictly with the directions of the Licensor regarding the form and manner of the application of the Mark, including the directions contained in the Use of Mark/Standards - Terms and Conditions at Schedule 2.
	2. Apart from the Mark, no other trademark or logo may be affixed or used in relation to the ECO4 Scheme obligations.
	3. The Licensee may use only its own trade name on packaging, advertising and promotional materials, using the Mark in relation to the EC04 Scheme obligations.
	4. The Licensee shall not use in its business any other trademark confusingly similar to the Mark and shall not use the Mark or any word confusingly similar to the Mark as, or as part of, its corporate or trading name or as, or as part of, any domain name without the prior written consent of the Licensor.
2. Title, Goodwill, and Registrations
	1. The Licensee acknowledges that the Licensor is the proprietor of the Mark.
	2. The Licensee shall ensure all related quotations, specifications and descriptive literature, and all other materials carrying the Mark, be marked with any statement as notified in writing from the Licensor to the Licensee (where applicable).
	3. Any goodwill derived from the use by the Licensee of the Mark shall accrue to the Licensor. The Licensor may, at any time, call for a document confirming the assignment of that goodwill and the Licensee shall immediately execute it.
	4. The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Mark or the reputation or goodwill associated with the Mark or the Licensor, or that may invalidate or jeopardise any registration of the Mark.
	5. The Licensee shall not apply for, or obtain, registration of the Mark for any goods or services in any country **OR** in the Territory.
	6. The Licensee shall not apply for, or obtain, registration of any trade or service mark in any country **OR** in the Territory which consists of, or comprises, or is confusingly similar to, the Mark.
	7. The Licensor warrants that it is the owner of the Mark.
	8. The Licensor shall at its own expense take all reasonable steps to maintain any existing registrations comprising the Mark and prosecute to registration any pending applications and the Licensee shall provide, at the request and expense of the Licensor and at the Licensor's expense, all necessary assistance in such maintenance and prosecution.
3. Quality control
	1. The Licensee shall promptly provide the Licensor with copies of all communications with any regulatory, industry or other authority relating to the Mark on request from the Licensor.
	2. The Licensee shall, at its own expense, at least every month and at any time at the Licensor's request, supply paperwork of business undertaken under the EC04 Scheme using the Mark.
	3. The Licensee shall, on the Licensor's request, provide the Licensor with details of any complaints it has received relating to any business undertaken using the Mark together with reports on the manner in which such complaints are being, or have been, dealt with and shall comply with any reasonable directions given by the Licensor about them.
	4. The Licensee shall maintain and continue to comply with the declarations and standards set out in Schedule 4 and inform the Licensor within a reasonable time period if anything changes from the original submission.
4. Marketing, advertising and promotion
	1. The Licensee shall, at their own cost, provide such advertising and publicity as may reasonably be expected to bring the EC04 Scheme to the attention of properties and potential properties.
	2. The Licensee undertakes to ensure that its advertising, marketing and promotion of the ECO4 Scheme shall in no way reduce or diminish the reputation, image and prestige of the Mark.
	3. The Licensee shall send to the Licensor for its prior written approval, the text and layout of all proposed advertisements and marketing and promotional material relating to the EC04 Scheme. If the Licensor disapproves of such material, it shall give written notice of such disapproval to the Licensee within 20 days of receipt by the Licensor of the material. The Licensee shall not use any material in the advertising, marketing or promotion of products that has not been approved by the Licensor.
	4. The Licensee shall bear the costs of all advertising, marketing and promotion in the Territory.
5. Confidentiality
	1. Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, nor any of the terms of this agreement, except as permitted by clause 7b.
	2. Each party may disclose the other party's confidential information:
		1. to its employees, officers, representatives, Licensees, or advisers who need to know such information for the purposes of exercising the party’s rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, Licensees, or advisers to whom it discloses the other party's confidential information comply with this clause; and
		2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, including guidance, Freedom of Information Requests and or best practice.
	3. No party shall use any other party's confidential information for any purpose other than to exercise its rights or perform its obligations under or in connection with this agreement.
	4. In support of 7b, the Licensee will support the Licensor in responding to any Freedom of Information requests the Licensor receives pursuant to the Freedom of Information Act.
6. Recordal of licence
	1. The Licensee shall, at its own cost and as soon as reasonably practicable, record the licence granted as per rules, regulations under the law of England and Wales.
	2. The Licensor shall provide reasonable assistance, at the Licensee's cost, to enable the Licensee to comply with clause 8a.
7. Protection of the Mark
	1. The Licensee shall immediately notify the Licensor in writing giving full particulars, if any of the following matters come to its attention:
		1. any actual, suspected or threatened infringement of the Mark;
		2. any actual or threatened claim that the Mark is invalid;
		3. any actual or threatened opposition to the Mark;
		4. any claim made or threatened that use of the Mark infringes the rights of any third party;
		5. any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under this agreement; or
		6. any other form of attack, charge or claim to which the Mark may be subject;

and shall not make any admissions relating to these matters, other than to the Licensor, and shall provide the Licensor with all assistance that it may reasonably require in the conduct of any claims or proceedings.

* 1. In respect of any of the matters listed in clause 9:, the Licensor shall (subject to the Licensee's right under section 30(3) of the Trade Marks Act 1994):
		1. decide what action if any to take;
		2. have exclusive control over, and conduct of, all claims and proceedings.
	2. the Licensor shall bear the cost of any proceedings relating to any of the matters listed in clause 9 and shall be entitled to retain all sums that it recovers in any action for its own account.
	3. If any third party infringement of the Mark in the Territory interferes materially in the Licensee's business, subject to receiving advice from experienced trade mark counsel that infringement proceedings stand a reasonable chance of success, the Licensee may commence proceedings and may require the Licensor to lend its name to such proceedings and provide reasonable assistance, subject to the Licensee giving the Licensor an indemnity in respect of all costs, damages and expenses that it may incur, including an award of costs against it, directly resulting from the Licensor's involvement in such proceedings. Any waiver of royalties by the Licensor shall only apply for as long as the Licensee actively pursues and properly conducts the proceedings. Any damages recovered by the Licensee in the proceedings shall first be applied to compensating the Licensor.
	4. Nothing in this agreement shall constitute any representation or warranty that:
		1. any registration comprised in the Mark is valid;
		2. any application comprised in the Mark shall proceed to grant or, if granted, shall be valid; or
		3. the exercise by the Licensee of rights granted under this agreement will not infringe the rights of any person.
1. Liability, indemnity and insurance
	1. To the fullest extent permitted by law, the Licensor shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this agreement.
	2. The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with:
		1. the Licensee's exercise of its rights granted under this agreement, including any claim made against the Licensor for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with this agreement;
		2. the Licensee's breach or negligent performance or non-performance of this agreement;
		3. the enforcement of this agreement.
	3. This indemnity shall apply whether or not the Licensor has been negligent or at fault.
	4. Liability under this indemnity is conditional on the Licensor discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Licensor which may reasonably be considered likely to give rise to a liability under this indemnity (Claim**),** the Licensor shall:
		1. as soon as reasonably practicable, give written notice of the Claim to the Licensee, specifying the nature of the Claim in reasonable detail;
		2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Licensee (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Licensor may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Licensee, but without obtaining the Licensee's consent) if the Licensor reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
		3. give the Licensee and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Licensor, so as to enable the Licensee and its professional advisers to examine them and to take copies (at the Licensee's expense) for the purpose of assessing the Claim; and
		4. subject to the Licensee providing security to the Licensor to the Licensor's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses that may be incurred, take such action as the Licensee may reasonably request to avoid, dispute, compromise or defend the Claim.
	5. If a payment due from the Licensee under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Licensor shall be entitled to receive from the Licensee such amounts as shall ensure that the net receipt, after tax, to the Licensor in respect of the payment is the same as it would have been were the payment not subject to tax.
	6. The Licensee shall, at its expense, carry professional indemnity insurance, public and product liability insurance. Licensors liability and comprehensive general liability insurance coverage. The Licensee shall ensure that such insurance policy names the Licensor as co-insured with the Licensee and remains in effect throughout the duration of this agreement and for a period of 7 years after termination or expiry of the agreement, and shall supply the Licensor with a copy of such policy on request.
	7. Nothing in this clause shall restrict or limit the Licensor’s general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
	8. Nothing in this agreement shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence.
2. Additional Licensee obligations
	1. The Licensee shall:
		1. ensure that the Mark is used for which it is intended;
		2. perform its obligations in connection with the use of the Mark with all due skill, care and diligence including good industry practice;
		3. only make use of the Mark for the purposes authorised in this agreement;
		4. comply with all regulations and practices in force or use in the Territory to safeguard the Licensor's rights in the Mark; and
		5. obtain any relevant (if any) government approval required for this agreement in the Territory, before the Commencement Date and shall provide the Licensor with a certified copy of such approval.
	2. The Licensee shall not, nor directly or indirectly assist any other person to:
		1. use the Mark except as permitted under this agreement; or
		2. do or omit to do anything to diminish the rights of the Licensor in the Mark or impair any registration of the Mark.
	3. The Licensee acknowledges and agrees that the exercise of the licence granted to the Licensee under this agreement is subject to all applicable laws, enactments, regulations and other similar instruments in the Territory, and the Licensee understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance.
3. Sub-licensing

The Licensee shall not grant sub-licences under this agreement.

1. Assignment and other dealings
	1. The Licensee shall not assign, transfer, mortgage, charge, subcontract, sub-license, declare a trust over, or deal in any other manner with any or all of its rights under this agreement.
	2. The Licensor may, after having given prior written notice to the Licensee, assign its rights under this agreement to any person to which it transfers its business **OR** that part of its business to which this agreement relates, provided that the assignee undertakes in writing to the Licensee to be bound by the Licensor's obligations under this agreement.
	3. The Licensor may subcontract or delegate in any manner any or all of its obligations under this agreement to any third party, provided that it gives prior written notice of such subcontract or delegation to the Licensee.
2. Duration and termination
	1. This agreement shall commence on the Commencement Date and shall continue until 31st March 2026, unless terminated earlier, in accordance with the following:
	2. The Licensor shall have the right to terminate this agreement on giving the Licensee not less than one month written notice of termination.
	3. The Licensee shall have the right to terminate this agreement on giving the Licensee not less than one month written notice of termination.
	4. Without affecting any other right or remedy available to it, the Licensor may terminate this agreement and the right to use the Mark with immediate effect by giving written notice to the Licensee if:
		1. the Licensee commits a breach (material or otherwise) of the standards required by the Licensor or breaches any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
		2. the Licensee repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
		3. the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **(**IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
		4. the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
		5. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
		6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
		7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Licensee (being a company, partnership or limited liability partnership);
		8. the holder of a qualifying floating charge over the assets of the Licensee (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
		9. a person becomes entitled to appoint a receiver over all or any of the assets of the Licensee or a receiver is appointed over all or any of the assets of the Licensee;
		10. a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
		11. any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.3(d) to clause 16.3(k) (inclusive);
		12. the Licensee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
		13. the Licensee's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy;
		14. there is a change of control of the Licensee[ (within the meaning of section 1124 of the Corporation Tax Act 2010); or
		15. the Licensee challenges the validity of the Mark.
	5. The Licensor will retain the right to terminate this agreement and licence as per clause 14., to use the Mark following formal complaints from householders of breach of the quality and customer care standards by the Licensee (without the Licensor being required to prove breach of the standards in order to justify termination)

14.1 The Licensor shall retain the right to terminate this License and all the same/similar licenses at the same time with all Licensee’s, in respect of the use of the Mark upon the provision of one week notice, in the event of the Licensor no longer undertaking the ECO4.

1. Consequences of termination
	1. On expiry or termination of this agreement for any reason and subject to any express provisions set out elsewhere in this agreement:
		1. all rights and licences granted pursuant to this agreement shall cease;
		2. the Licensee shall cease all use of the Mark save as set out in this clause;
		3. the Licensor will decline to issue ECO4 declarations;
		4. the Licensee shall co-operate with the Licensor in the cancellation of any licences registered pursuant to this agreement and shall execute such documents and do all acts and things as may be necessary to effect such cancellation;
		5. within 120 days after the date of termination the Licensee shall promptly destroy or, if the Licensor shall so elect, deliver to the Licensor or any other person designated by the Licensor, at the Licensee's expense, all materials with the Licensor’s Mark that it has not disposed of within 90 days after the date of termination.
	2. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
	3. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
2. Further assurance

At its own expense each party shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

1. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. Entire agreement
	1. This agreement constitutes the entire agreement between the parties.
	2. Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
2. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

1. Severance
	1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
	2. If any provision or part-provision of this agreement is deemed deleted the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. Counterparts
	1. This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
	2. Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) OR the executed signature page of a counterpart of this agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other[s] with the "wet-ink" hard copy original[s] of their counterpart.
	3. No counterpart shall be effective until each party has provided OR delivered to the other(s) at least one executed counterpart agreement.
3. Third party rights

No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

1. No partnership or agency
	1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
	2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
2. Force majeure

Neither party shall be in breach of this agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three months, the Licensor may terminate this agreement by giving one week written notice to the affected party.

1. Notices
	1. Any notice given by the Licensor under or in connection with this agreement shall be in writing and shall be:
		1. delivered by hand or by pre-paid first-class post or other next working day delivery service at/to the principal registered address of the Licensee.
	2. Any notice given by the Licensee under or in connection with this agreement shall be in writing and shall be:
		1. delivered by hand or by pre-paid first-class post or other next working day delivery service at/to the Town Hall, Coton Road, Nuneaton, Warwickshire CV11 5AA , for the attention of the Private Sector Housing Manager and Head of Home Environment
		2. by sending an email to the following addresses (or an address substituted in writing by the party to be served) green.homes@nuneatonandbedworth.gov.uk
	3. Any notice shall be deemed to have been received:
		1. if delivered by hand, at the time the notice is left at the proper address; and
		2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
		3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm on a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
	4. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
2. Inadequacy of damages

Without prejudice to any other rights or remedies that the Licensor may have, the Licensee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Licensee. Accordingly, the Licensor shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

1. Multi-tiered dispute resolution procedure
	1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then, except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
		1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Private Sector Housing Manager of the Licensor and [EMPLOYEE TITLE] of the Licensee shall attempt in good faith to resolve the Dispute;
		2. if the Private Sector Housing Manager of the Licensor and [EMPLOYEE TITLE] of the Licensee are for any reason unable to resolve the Dispute within 15 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Home Environment of the Licensor and [SENIOR OFFICER TITLE] of the Licensee who shall attempt in good faith to resolve it; and
		3. if the Head of Home Environment of the Licensor and [SENIOR OFFICER TITLE] of the Licensee are for any reason unable to resolve the Dispute within 15 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 35 days after the date of the ADR notice.
		4. No party may commence any court proceedings under clause 28 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
	2. If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 28 of this agreement.
2. Special Conditions : Data Protection
	1. Both parties will comply with all applicable requirements of the Data Protection Legislation (as amended) in accordance with the law of England and Wales.
	2. Both parties acknowledge and will comply with Schedule 3 throughout the term of the Agreement and thereafter.
3. Equalities and Human Rights

29.1 The Licensee and the Licensee’s Representative shall comply with:

* + - 1. The Human Rights Act 1998 (s amended) as if the Licensee were a public body as defined in the Human Rights Act 1998 (as amended);
			2. All legislation, official guidance and codes of practice relating to equal opportunities, including but without limitation relating to disability discrimination, sex discrimination and race relations;
			3. The Licensee shall inform the Licensor as soon as the Licensee becomes aware of any legal proceedings or complaint brought or likely to be brought against the Licensee under the legislation in sub clauses 31.1 (a) and/or 31.1 (b) above.
	1. Where any investigation is conducted or proceedings are brought arising directly or indirectly out of this Agreement or any other action by the Licensee or its employees, agents or sub-Licensees, the Licensor shall be entitled to recover from the Licensee the full cost it may have incurred in such investigation or proceedings and such other financial redress to cover, or recover any payment the Licensor may have been ordered or required to pay to a third party. The Licensee shall provide such information as the Licensor may reasonably request for the purpose of assessing the Licensee’s compliance with this clause.
1. Children Act 2004/Care Act 2004 (As amended)
	1. The Licensee may have direct contact with children during any delivery or attendance at the premises. It is the responsibility of any Licensee to ensure that those engaged in undertaking the duties, employees, agents (and others) are of suitable standing and good character.
2. Bribery, Corruption and Collusion
	1. The Licensee warrants and undertakes to the Licensor that:
	2. It will comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010 (As amended);
	3. It will comply with all of the Licensor’s anti-bribery and anti-corruption policies as may be amended from time to time, a copy of which may be provided upon written request;
	4. It will ensure that any person associated with the Licensee who performs or has performed services on its behalf in connection with this agreement complies with the whole of this Clause (33.1);
	5. It shall have and maintain in place throughout the Agreement duration ts own policies and procedures, including adequate procedures under the Bribery Act 2010 (As amended);
	6. It shall, at the reasonable request of the Licensor, certify in writing that it has complied with its undertakings under this Clause (33.1), and shall provide such supporting evidence of compliance as the Licensor may reasonably request;
	7. Breach of this Clause shall be deemed a material breach under the Agreement.
3. Governing law and jurisdiction

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of this agreement or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

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

**Schedule 1 – Mark**



**Schedule 2 – Use of Mark/Standards – Terms and Conditions**

The use of the Licensor’s Mark as a co-badging agreement with the Licensee, is to provide assurance to residents, and to secure compliance by energy suppliers with quality standards, in circumstances where suppliers engage with residents in relation to the installation of ECO4 measures in their homes. The Mark may only be used for marketing material in connection with residents only and must only be used within the administrative boundary of Nuneaton and Bedworth under ECO4 provisions.

The Standards that will be required of the Licensee are enclosed below:

* Compliance with declarations made within Document 2 – Return Document – ECO 4 Minimum Standards (and Document 1 – Guidance);
* Compliance with OFGEM ECO4 Scheme; and
* The Licensee’s own policies and standards.

In addition to the Standards

1. The use of the Licensor’s Mark will be open on a non-exclusive basis to any Relevant Potential Licensee, prepared to enter into an agreement with the Licensor to comply with specified quality and customer care standards, when engaging with (and installing ECO4 measures for) householders in the Territory
2. The Licensee is to use the Licensor’s Mark in promotional literature which the Licensee produces, for the purpose of promoting the ECO4 scheme only, seeking to identify eligible properties and/or seeking to enter into agreements with the occupiers of eligible properties for the installation of ECO4 measures, within the Territory;
3. In the event that the Licensor terminates the badging agreement with the Licensee due to breach by the Licensee of the standards, the Licensor will decline to issue ECO4 declarations.

**Schedule 3.1 – Data Protection**

* 1. Definitions
	2. The following words shall have the meanings given:

Data Protection Legislation:

DPA 2018: Data Protection Act 2018;

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679);

LED: Law Enforcement Directive (Directive (EU) 2016/680);

* + - 1. the GDPR, the LED and any applicable national implementing Laws as amended from time to time
			2. (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; and
			3. (iii) all applicable Law about the Processing of Personal Data and privacy;
	1. For the purposes of this Agreement the terms Data Controller, Processor, Data Subject, Personal Data, Processing, Personal Data Breach, Subject Access Request and “appropriate technical and organisational measures” shall have the meanings prescribed under the Data Protection Legislation.
	2. All other terms in this Schedule shall have the meanings assigned to them in the Agreement to which this is appended.
	3. Data Protection – Joint Controllers
	4. For the purposes of this Schedule the terms Data Controller, Processor, Data Subject, Personal Data, Processing, Personal Data Breach, Subject Access Request and “appropriate technical and organisational measures” shall have the meanings prescribed under the Data Protection Legislation
	5. It is agreed and acknowledged by the Parties that where there is Personal Data to be Processed in performance of this Agreement, the Parties are the Joint Controllers of that Personal Data.
	6. The Parties agree that the Processing of Personal Data is required for the purpose of [insert detail] (“the Agreed Purpose”) and the Parties shall not Process Personal Data other than for the Agreed Purpose.
	7. The Parties will each comply with all the requirements of the Data Protection Legislation in accordance with the law of England and Wales and shall assist each other in so complying.
	8. In particular, but without limiting its general effect, under clause 2.3 each Party shall:
	9. consult with the other Party about any notices given to Data Subjects in relation to the Personal Data;
	10. promptly inform the other Party about the receipt of any Data Subject Access Request;
	11. provide the other Party with reasonable assistance in complying with any Data Subject Access Request;
	12. not disclose or release any Personal Data in response to a Data Subject Access Request without first consulting the other Party wherever possible;
	13. assist the other Party, at the cost of the other Party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
	14. use compatible technology for the processing of Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
	15. maintain complete and accurate records and information to demonstrate its compliance with this Schedule and allow for audits by the other Party or the other Party’s designated auditor; and
	16. provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties’ compliance with the Data Protection Legislation.
	17. Each Party will notify the other of any Personal Data Breach without undue delay and in any event not later than 24 hours after becoming aware of such Personal Data Breach.
	18. Whenever a Party notifies the other of a Personal Data Breach as aforesaid, that Party will provide such information as the may be reasonably required including the nature of such Data Protection Breach, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned, and provide the details of the likely consequences of the Data Protection Breach, and the measures taken or proposed to be taken to address such Data Protection Breach including, where appropriate, measures to mitigate its possible adverse effects.
	19. It is agreed and acknowledged by the Parties that any transfer of the Personal Data by the one Party to the other upon the expiry or other termination of this Agreement that is necessary for the exercise of statutory functions, shall be considered lawful under the Data Protection Legislation, and therefore the relevant Party will transfer such Personal Data as aforesaid using an appropriately secure means of transfer. The Party will delete any copy of such Personal Data unless required by law to continue to store such Personal Data.
	20. Each Party shall indemnify and keep indemnified the other Party in full from and against all claims, proceedings, actions, damages, costs, fines, expenses and any other liabilities which may arise out of, or in consequence of a breach or purported breach of the Data Protection Legislation or the performance or non-performance by that Party of its obligations under this Agreement in relation to the Data Protection Legislation, including loss of or damage to property, financial loss arising from any breach of the Data Protection Legislation, or any other loss which is caused directly or indirectly by any act or omission of the Provider arising from any breach of the Data Protection Legislation.
	21. The provisions of this Schedule shall apply during the Term of this Agreement and indefinitely after its expiry.

**Schedule 3.2 - Schedule of Processing, Personal Data and Data Subjects**

The Parties shall Process all Personal Data in accordance with this Agreement and the details set out within this Schedule.

|  |  |
| --- | --- |
| Description  | Details |
| Subject matter of the processing | The processing of resident applications for ECO4 within Nuneaton and Bedworth and North Warwickshire Borough Council. |
| Duration of the processing | Where a customer is eligible further processing is required by both the supplier and Nuneaton and Bedworth Borough Council to provide for the installation of such measures and any associated warranty period. Personal data of customers all applications will be held for 7 years following the close of the ECO4 Order obligation to allow for Ofgem’s auditing requirements. |
| Describe how long the data will be retained for, how it be returned or destroyed]  | Personal data of customers for all applications will be held for 7 years following the close of the ECO4 Order obligation to allow for Ofgem’s auditing requirements. Data will be permanently deleted from all information management systems after this timeframe. |
| Type of Personal Data being processed | Name, Address. Date of Birth. NI Number. Telephone Number. Financial information. Pay slips, Proof of benefits. Bank statements. Employment status. Residential status. EPC data |
| Categories of Data Subject | Information passed between E.ON and the Council will relate to customers and potential customers as potential recipients or recipients of ECO4 Eligible Measures and will include details relating to name, address and evidence of how that individual qualifies under the requirements of the ECO4 Order (details of evidence that will be collected is listed above). |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data [Describe how long the data will be retained for, how it be returned or destroyed | Personal data of customers for all applications will be held for 7 years following the close of the ECO4 Order obligation to allow for Ofgem’s auditing requirements. Data will be permanently deleted from all information management systems after this timeframe. |

**Schedule 4 – Licensee Return Document**

The Common Seal of

**NUNEATON AND BEDWORTH)**

**BOROUGH COUNCIL**

was affixed to this Deed in the

presence of:

Designated Officer

|  |
| --- |
|  |
| Executed as a Deed by [NAME OF LICENSEE] Witness Signature:Witness Name:Witness Address:[NAME OF DIRECTOR]  |  | ....................Director |
| Witness Signature:Witness Name:Witness Address: |

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