

## Schedule 1: Terms and Conditions

### Scotland's Public Sector Heat Decarbonisation Fund Terms and Conditions

These terms and conditions will govern the relationship between Salix Finance Limited, a company incorporated in England and Wales with company number 05068355 and whose registered office is at 10 South Colonnade, Canary Wharf, London E14 4PU acting as agent for the Scottish Ministers (Salix) and the Grantee in connection with the provision of Scotland's Public Sector Heat Decarbonisation Fund Grant by Salix to the Grantee.

These terms and conditions shall apply to and be incorporated into the Grant Offer Letter and should be read in conjunction with the Grant Offer Letter. These terms and conditions, the Grant Offer Letter and its schedules shall together constitute the Agreement.

This Agreement shall not be varied except by an instrument in writing signed by both parties.

#### 1 Definitions and interpretation

In these terms and conditions, the following terms shall have the following meanings:

**Authorising Official:** the person appointed by the Grantee, and whose identity is approved by Salix, who is responsible for ensuring that the Grantee uses the Grant in compliance with the Agreement.

**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.

**Building Contract:** the contract to design and/or complete the design of and build the Project.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general business in Edinburgh.

**Change of Control:** means the sale of all or substantially all the assets of a party to the Agreement; any merger, consolidation or acquisition of a party to the Agreement with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party to the Agreement in one or more related transactions.

**Dangerous Substance:** any radioactive emission, noise or natural or artificial substance (whether in the form of a solid, liquid, gas or vapour, including any controlled, special, hazardous, toxic, radioactive or dangerous substance or waste), the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to any living organism or damaging the Environment or public health or welfare.

**Data Protection Legislation:** means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR.

**Deleterious Material:** any material, equipment, product or kit that is generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person;

- (b) posing a threat to the structural stability, performance or physical integrity of the Project, or any part or component of the Project;
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; or
- (d) not being in accordance with any relevant British standard, relevant code of practice or good building practice.

**Eligible Expenditure:** the expenditure incurred, or to be incurred, by the Grantee during the Grant Period for the purposes of delivering the Project in accordance with the Project Programme, Grant Application and the Agreement, and which comply in all respects with the eligibility rules set out in Clause 5 of these Terms and Conditions.

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all applicable laws, statutes, regulations, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, codes of practice and guidance notes insofar as they relate to or apply to the Environment.

**Evidence of Need:** such evidence requested by Salix which Salix considers, in its absolute discretion, provides it with a sufficient level of assurance to demonstrate that the Grant will be used for Eligible Expenditure.

**Forecast:** Details of when payment requests for eligible expenditure will be submitted to Salix based on the Project Programme and in a format as requested by Salix.

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

**Grant:** the sum specified in the Grant Offer Letter, to be paid to the Grantee in accordance with the Agreement.

**Grantee:** the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the “Grantee” are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally.

**Grant Application:** the application for the Grant, submitted by the Grantee to Salix, which incorporates the Grant Application Support Notes, a copy of which is attached at Schedule 8 to the Grant Offer Letter.

**Grant Application Support Notes:** any notes or documentation supporting the Grantee’s application for the Grant.

**Grant Offer Letter:** the letter from Salix to the Grantee, setting out the basis upon which the Grant will be provided to the Grantee.

**Grant End Date:** the date referred to as the ‘Grant End Date’ in the Grant Offer Letter.

**Grant Period:** the period for which the Grant is awarded starting on the Grant Start Date and ending on the Grant End Date.

**Grant Start Date:** the date referred to as the ‘Grant Start Date’ in the Grant Offer Letter.

**Intellectual Property Rights:** all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever

form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) (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.

**Measures:** the individual items of design, construction or other building works which are necessary to achieve Practical Completion, as contained within the Project Programme.

**Necessary Consents:** any planning permission required for the Project, any environmental licences and any other authorisation under any other statute, bye-law or regulation of any competent authority that is reasonably necessary to enable the works on the Project to be lawfully commenced, carried out or completed.

**Payment Date(s):** the date or dates on which a Grant is made or is to be made.

**Payment Request:** a request for payment of a Grant, or part of a Grant, in the form set out at Schedule 5 (*Payment Request*) to the Grant Offer Letter.

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**Practical Completion:** the date on which the certificate of practical completion (or the equivalent evidence of practical completion of works) of the Project is properly issued in accordance with the terms of the Building Contract.

**Procurement Regulations:** each set of procurement regulations applicable in Scotland, including without limitation, the Procurement Act 2023, the Public Contracts (Scotland) Regulations 2015, Concession Contracts (Scotland) Regulations 2016, Defence and Security Public Contracts Regulations 2011 and The Utilities Contracts (Scotland) Regulations 2016 together with their amendments, updates and replacements from time to time.

**Prohibited Act:**

- (e) offering, giving or agreeing to give to any servant of the Crown 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 the Agreement or any other contract with the Crown; or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Agreement or any other contract with the Crown;
- (f) 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 the Agreement or any other contract with the Crown; or
  - (iv) defrauding or attempting to defraud or conspiring to defraud the Crown.

**Project:** the project or projects operated by the Grantee to replace existing fossil fuel heating systems with zero direct emissions heating (ZDEH) systems, and/or energy efficiency measures which are part of a whole building retrofit, as set out in the Grant Application and as described in the Grant Offer Letter.

**Project Start Date:** the date upon which works on the Project are to commence, as specified in the Grant Offer Letter.

**Project Programme:** the detailed timetable for delivery and completion of the Project including a breakdown of the Measures and the cost of such Measures, as set out in schedule 3 (*The Project*) to the Grant Offer Letter.

**Proof of Payment:** a redacted bank statement of the Grantee demonstrating payment of the relevant value has been made or a remittance advice slip addressed to the Grantee in respect of the relevant amount.

**Public Sector Body:** any body within Scotland who undertakes tasks paid for wholly or partly by public funds and that is a 'contracting authority' as defined by the Public Contracts (Scotland) Regulations 2015, including (without limitation) any government department or authority, any non-departmental government body, any local and public authority, emergency service, institution of further and higher education, maintained school within the state education system, nursery school maintained by a local authority and any NHS Scotland Trust, but specifically excluding public corporations, private companies, social housing, and charities that are not non departmental public bodies.

**Real Living Wage:** the hourly rate known as the 'real Living Wage' as calculated by the Resolution Foundation and overseen by the Living Wage Commission, adjusted annually to reflect the cost of living.

**Reservation of Funding Letter:** the letter from Salix to the Grantee, setting out the basis upon which the Grant will be provided to the Grantee following the successful assessment of a concept application. This letter sets out the conditions to be fulfilled by the Grantee in order for them to receive a Grant Offer Letter.

**Specific Conditions:** any specific conditions set out in Schedule 2 (*Specific Conditions*) to the Grant Offer Letter.

**Subsidy Control:** the United Kingdom's subsidy control regime, as set out in, without limitation, the Subsidy Control Act 2022 and any other applicable law, statutory guidance, code of practice, judgment of a relevant court of law and international commitments on subsidy control arising from, amongst others, World Trade Organisation Membership and international treaties and agreements to which the United Kingdom is a party, as amended or modified from time to time.

**Terms and Conditions:** these terms and conditions.

**UK GDPR:** the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).

**VAT:** value added tax payable by virtue of the Value Added Tax Act 1994 and any similar tax from time to time in addition to it, replacing it or performing a similar fiscal function.

In the event of any inconsistency between the Grant Offer Letter and these Terms and Conditions, the provisions of the Grant Offer Letter shall prevail. In the event of any inconsistency between these Terms and Conditions and any Specific Conditions, the provisions of the Specific Conditions shall prevail.

Headings do not affect the interpretation of these Terms and Conditions.

Any reference to Salix in these Terms and Conditions is a reference to Salix acting as agent for the Scottish Ministers and includes references to its successors, transferees or assigns, where the same are acting as agent for the Scottish Ministers.

A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a Clause is a reference to a clause of these Terms and Conditions. Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph, or schedule shall be a reference to a clause, paragraph, subparagraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

### **Purpose of Grant**

The grant is made to enable the Grantee to carry out the Project.

The Grantee shall use the Grant only for the delivery of the Project in accordance with the Project Programme, the Grant Application and the Agreement. The Grant shall not be used for any other purpose without the prior written agreement of Salix.

No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.

The Grantee shall not make any significant change to the Project or the Project Programme without Salix's prior written agreement.

The Grant is being provided to the Grantee in consideration for the Grantee agreeing to deliver the Project and agreeing to comply with the Agreement.

### **3 Payment of the Grant**

#### **3**

Subject to Clause 18 of these Terms and Conditions, Salix shall pay an amount not exceeding the Grant awarded in each financial year to the Grantee in instalments in the amounts and on the Payment Dates set out in the Project Programme, subject to:

the Grantee providing Salix with Evidence of Need and Proof of Payment;

the Evidence of Need demonstrating that the Eligible Expenditure was incurred in the financial year it is being claimed;

the necessary funds being made available to Salix by the Scottish Ministers when payments fall due;

Salix receiving a completed Payment Request signed by the Authorising Official on behalf of the Grantee no later than 23 Business Days before the proposed Payment Date;

Salix receiving all documents and information which it may, in its absolute discretion, request from the Grantee;

the Grantee complying with any Specific Conditions; and

the further conditions precedent that on each Payment Date:

(a) Salix is satisfied, in its absolute discretion, that the confirmations provided by the Authorising Official on behalf of the Grantee in the Payment Request are true and accurate; and

(b) Salix is satisfied, in its absolute discretion and subject to Clause 3.5 below, that the remaining Grant to be provided is sufficient to meet the remaining costs required for delivery of the Project in accordance with the Project Programme.

The Grantee agrees and accepts that payments of the Grant can only be made to the extent that Salix has been provided with available funds by the Scottish Ministers.

No Payment Request shall be submitted before the Grant Start Date.

Salix shall not be bound to pay to the Grantee, and the Grantee shall have no claim against Salix in respect of, any instalment of the Grant which has not been claimed by the Grantee by 31 March of the applicable financial year as set out in the Grant Offer Letter, unless otherwise agreed in writing by Salix.

No Grant shall be paid unless and until Salix is satisfied that such payment will be used for Eligible Expenditure.

In the event of any overspend by the Grantee in its delivery of the Project outside of the sums set out in the Project Programme, or awarded in each financial year, the amount of such overspend shall be met by the Grantee from its own funds unless Salix, in its absolute discretion:

agrees to increase the Grant by an amount equal to the overspend; or

agrees to adjust the Project Programme and/or reduce the Measures so as to ensure that the remaining Grant is sufficient to meet the remaining costs require for delivery of the Project.

The Grant shall be paid into a bank account in the name of the Grantee, the details of which shall be notified to Salix prior to the first Payment Request, which must be an ordinary business bank account.

The Grantee shall not transfer any part of the Grant to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of Salix.

The Grantee shall promptly repay to Salix 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 Grant monies have been paid in error before all conditions attaching to the Grant have been complied with by the Grantee.

There shall be no employment relationship between the Scottish Government and any grant-funded staff.

### **Use of the Grant**

The Grant shall be used by the Grantee for the delivery of the Project in accordance with the Project Programme, the Grant Application and in accordance with the Agreement. For the avoidance of doubt, the

amount of the Grant that the Grantee may spend on any item of Eligible Expenditure listed in the Project Programme shall not exceed the forecasted amounts as listed in the Project Programme (without prior written agreement of Salix).

The Grantee shall not use the Grant to or for:

make any payment to members of its Governing Body;

purchase buildings or land;

pay for any expenditure commitments of the Grantee entered into before the Grant Start Date, and/or unless this has been approved in writing by Salix;

financial instruments, i.e. engaging in a contract, agreement or any obligation giving rise to an asset and liability relationship including (not an exhaustive list) surety bonds and hedges and any relevant instrument as defined in Article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and any other applicable law or guidance; and

any other payment that is not directly and solely made for the purposes of scheme delivery as set out at 4.1 (as determined by Scottish Ministers/Salix).

The Grantee shall not spend any part of the Grant on the delivery of the Project after the Grant Period.

The Grant Period may be extended with the prior written consent of Salix, such consent not to be unreasonably withheld.

Should any part of the Grant remain unspent at the end of the Grant Period, or should any part of the Grant be provided for items of Eligible Expenditure which subsequently cost less than forecasted in the Project Programme, the Grantee shall, unless otherwise agreed in writing by Salix, ensure that any unspent monies are returned to Salix.

Where the Grantee enters into a contract with a third party in connection with the Project, the Grantee will remain responsible for paying that third party. Salix has no responsibility for paying the invoices of third parties.

Onward payment of the Grant and the use of sub-contractors shall not relieve the Grantee of any of its obligations under the Agreement.

Any liabilities arising at the end of the Project and which are not otherwise incorporated within the Project Programme, including but not limited to any redundancy liabilities for staff employed by the Grantee to deliver the Project, must be managed and paid for by the Grantee using other resources of the Grantee and not using the Grant. There will be no additional funding available from Salix for this purpose.

## **5 Eligibility Rules**

Salix will only pay the Grant in respect of Eligible Expenditure incurred by the Grantee to deliver the Project and the Grantee will use the Grant solely for delivery of the Project in accordance with the Project Programme.

The only costs/payments that will be classified as Eligible Expenditure are those specific items of expenditure set out in the Project Programme.

Notwithstanding any items of expenditure set out in the Project Programme, the Grantee may not use the Grant to meet any of the following payments:

paid for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity; or attempting to influence legislative or regulatory action;

using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the Grant;

using the Grant to petition for additional funding;

expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;

input VAT reclaimable by the Grantee from HMRC;

payments for activities of a political or exclusively religious nature;

notional costs and contributions in kind;

interest payments or service charge payments for finance leases;

gifts;

advertising, marketing and entertaining (meaning anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);

statutory fines, criminal fines or penalties, civil penalties, damages or any associated legal costs;

costs incurred in giving evidence to Parliamentary Committees;

costs incurred in attending meetings with government ministers or civil servants to discuss the progress of the Project;

costs incurred in responding to public consultations or costs incurred in lobbying other people to respond to any such consultation;

costs incurred in providing independent evidence-based advice to local or national government as part of the general policy debate;

payments for works or activities which the Grantee has a statutory duty to undertake, or that are fully funded by other sources;

bad debts to related parties;

payments for unfair dismissal or other compensation;

any non-essential subsistence costs;

staff costs for existing staff members;

profit earned by a subsidiary or related enterprise or person(s) in providing materials, sub-contracting, consultancy or trials/testing;

director's/shareholder dividends;

certification fees;

inflation and contingency allowances;

costs of printing operating, service and maintenance manuals;

costs of licensing in background intellectual property when the intellectual property is being licensed from a subsidiary or related enterprise or person(s);

training costs related to sales or distribution of the developed product, process or service;

the purchase of land and buildings;

recruitment and relocation costs;

costs associated with purchase fees for necessary licenses or associated consultancy fees;

statutory activities including Grants In Aid (GIAs), consents and planning activities;

other expenses beyond those outlined in the Eligible Expenditure;

depreciation, amortisation or impairment of assets owned by the Grant Grantee;

liabilities incurred before the Grant Start Date or after the Grant End Date unless expressly included in the Project Programme;

existing employee costs;

resource costs associated with the Project;

costs which have previously been incurred prior to the agreed Grant Start Date;

costs associated with legislative planning requirements;

contingencies accounted for in the cost of the Project;

direct maintenance for whole or components of fossil fuel systems; and/or

5.3.41(for concept applications) development costs incurred in order to reach a full detailed application.

### **Authorising Official**

The Grantee must appoint an Authorising Official who is responsible for ensuring that the Grantee uses the Grant in compliance with the Agreement.

The identity of the Authorising Official must be approved by Salix prior to the commencement of the Project, and the identity of such person shall not change during the Grant Period without the prior written consent of Salix.

The Authorising Official must:

maintain oversight of the Grantee's use of the Grant and safeguard, control and ensure the efficient, economical and effective management of the Grant;

advise the Grantee on the discharge of the Grantee's responsibilities under the Agreement;

ensure that principles of governance, transparency and value for money are maintained at all times in relation to the utilisation of the Grant;

be responsible for signing each Payment Request;

ensure that conflicts of interest are avoided;

be responsible for informing Salix with immediate effect, in the event of long absence or leaving the organisation, by providing the name and contact information for the delegated authority or a replacement Authorising Official respectively.

## **Undertakings**

In consideration of the Grant being given, the Grantee undertakes to Salix and the Scottish Ministers:

not to use the Grant:

- a) otherwise than in respect of the Project,
- b)(to the extent that it may apply) in a way that does not comply with subsidy control rules in the United Kingdom (where relevant – refer Clause 10), and,

in particular, to generate revenue or capital gain, or to make any of the payments set out in Clause 5.3;

that it will contribute funding equivalent to 20% of the total eligible project costs;

that it will respond fully, promptly and truthfully (to the best of its knowledge) to any enquiries that Salix may make about the Project and/or use of the Grant within 10 working days of receipt;

to ensure that the works on the Project are completed, and the design, construction and development of the Project is undertaken, in a proper and workmanlike manner, using materials of good quality which are fit for their respective purposes, and in accordance with:

- (a) the Project Programme and Grant Application;
- (b) the Necessary Consents and all applicable authorisations and laws;
- (c) the Building Contract and any other contracts and agreements relating to the completion of the Project.

that it shall properly and diligently monitor the work on the Project during the Grant Period, and for such period after Practical Completion as Salix shall reasonably specify, to ensure that the Grant is being used appropriately and the Project continues to produce, or will in the future produce, the energy savings and CO<sub>2</sub> reductions envisaged and agreed with Salix;

that it shall keep a full, accurate and proper auditable record of the progress of the Project, including all Eligible Expenditure and other costs incurred in relation to the Project and the present and future effectiveness of the Project in delivering energy savings and CO<sub>2</sub> reductions, and shall provide such information, evidence and assistance as is reasonably required, and in such form as specified, by Salix or the Scottish Ministers including, but not limited to, any information relating to the amount of CO<sub>2</sub> savings and cost effectiveness of such savings expected to be attained during and after Practical Completion of the Project.

where reasonably specified by Salix, it shall ensure that any information or evidence provided under the Agreement is audited by an identified and independent reporting accountant or otherwise confirmed or verified by a person of such other relevant expertise;

that it shall not create, or permit (except where required by the operation of law) to subsist any mortgage, charge (whether floating or specific), pledge, lien or other security interest on any of its

undertakings, property or assets comprised or utilised in the Project without the prior written consent of Salix;

that it will ensure at all times that it has appropriate auditing arrangements in place in relation to the Grant and its use, which shall include, but shall not be limited to, keeping and maintaining full and accurate records and evidence of the use of the Grant, including expenses incurred, and of any third parties indirectly benefitting from the Grant, in particular contractors, manufacturers and installers of equipment installed as part of the Project;

that it will ensure that no Dangerous Substance has been deposited, disposed of, kept, treated, processed, manufactured, used, collected, sorted or produced at any time, or is present in the Environment, in connection with the Project in circumstances that are likely to result in a breach of Environmental Law;

that it will ensure that no professional engaged on the Project has specified or used anything in the work on the Project that, at the time of specification or use, was a Deleterious Material;

that it will retain the records maintained under Clause 7.1.5 for a period of not less than six years from the Grant End Date and shall allow Salix and/or the Scottish Ministers access to such records;

that it will provide Salix with any updated information and documentation relating to the cost of delivering the Project, the expected energy savings and CO<sub>2</sub> reduction and any expected or anticipated changes required to the Measures or Project Programme, as soon as it becomes aware of the same;

that any changes to the project do not exceed ten percent of the original carbon cost ratio as stated on the grant offer letter.

- (a) In the event that changes to the project lead to more than a ten percent increase to the original carbon cost ratio but this is still below the £450/tCO<sub>2</sub>e Salix reserves the right to consider this change request.

that all estimates, Forecasts and projections provided by the Grantee, or on its behalf, to Salix and/or the Scottish Ministers in connection with the Project or the Project Programme have been prepared with due care and skill, are based on information known to it and reasonably expected to be relevant, and are subject only to such assumptions and qualifications as are expressly made;

to cause Practical Completion to occur by no later than the Grant End Date and otherwise in accordance with the Project Programme and Grant Application;

that if during the Grant Period the Practical Completion is expected to occur after the Grant End Date, that the costs incurred after the Grant End Date shall be met by the Grantee from its own funds, with written consent from Salix;

that it will comply with any Specific Conditions; that it will provide Salix the evidence requested to resolve the Specific Conditions in the time specified set out in Schedule 2;

that it will maintain or cause to be maintained in full force and effect adequate insurances in respect of all its assets comprised or utilised in the Project against all risks and contingencies;

that it will ensure that all professional consultants and/or contractors involved in carrying out works on the Project hold and maintain appropriate professional indemnity insurance cover in relation to the services carried out or to be carried out and that the Grantee obtains copies of the relevant certificates.

In the event of the Grantee becoming aware of or suspecting any irregular or fraudulent activity that may have any impact on the Project/Project Programme or on the use of the Grant, or any part of it, the Grantee shall immediately notify the Salix of such activity and provide such other information as Salix may reasonably require in relation to the impact on the Project and the use of the Grant.

The Grantee shall immediately inform Salix of any change in its constitution for example, but not limited to, a change in status from one type of body corporate to another.

The Grantee shall not, without prior written consent of Salix, dispose of any asset funded, in part or in whole, with Grant funds during the lifetime of the asset. During that period Salix shall be entitled to the proceeds of the disposal to repay the Grant – or the relevant proportion of the proceeds based on the percentage of Grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds. Salix shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale. Recovery by Salix shall not be required where the value of the asset is less than £1,000.00.

### **Accounts and records**

The Grantee shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.

The Grantee shall keep all invoices, receipts and accounts and any other relevant documents relating to the Project and the expenditure of the Grant for a period of at least six years following the Grant End Date. The Grantee shall afford Salix, their representatives, the Auditor General for Scotland, their representatives and such other persons as Salix may reasonably specify from time to time, the right to review, the Grantee's accounts and records that relate to the Project and the expenditure of the Grant and shall have the right to take copies of such accounts and records. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.

The Grantee shall ensure that all its sub-contractors and, where relevant, consortium members retain each record, item of data and document relating to the Project for a period of at least six years from the Grant End Date.

The Grantee shall comply and facilitate Salix's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself, Salix and/or the Scottish Ministers.

### **Monitoring and reporting**

The Grantee shall closely monitor the delivery and success of the Project throughout the Grant Period to ensure that the Agreement is being adhered to.

The Grantee acknowledges that Salix may monitor the Project to ensure that the Project fulfils all requirements specified by Salix and the Scottish Ministers, including providing the energy savings and CO<sub>2</sub> reductions envisaged and agreed with Salix at the outset of the Project.

On or before the 15th day of each calendar month during the Grant Period, the Grantee shall provide Salix with a report, containing the information set out in Schedule 4 of the Grant Offer Letter (Monitoring Reports) including an updated Forecast, as of the 10th day of the calendar month, together with copies of all invoices, cost breakdowns or other evidence of the total costs and expenses incurred since the previous report.

Where the Grantee has obtained funding from a third party for its delivery of part of the Project, the Grantee shall include the amount of such funding in the reports provided pursuant to Clause 9.3 together with details of what that funding has been used for.

Along with its first report provided pursuant to Clause 9.3, the Grantee shall provide Salix with a risk register and insurance review in the format requested by Salix. The Grantee shall address the health and safety of its staff in the risk register. The Grantee shall assess and document the risk of fraud, error and irregularity in the risk register, considering the full project life cycle risks, including procurement, contractors and project output.

The Grantee shall on request provide Salix and/or the Scottish Ministers with such further information, explanations and documents as Salix and/or the Scottish Ministers may reasonably require in order for it to establish that the Grant has been used properly in accordance with the Agreement.

The Grantee shall permit any person authorised by Salix and/or the Scottish Ministers such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grantee's fulfilment of the conditions of the Agreement and shall, if so required, provide appropriate oral or written explanations from them.

The Grantee shall, if so requested by Salix, permit any person authorised by Salix for the purpose to visit the Grantee once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, Salix considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.

The Grantee shall provide Salix with a final report on Practical Completion which shall confirm whether the Project has been successfully and properly completed and which shall contain the information set out in Schedule 4 of the Grant Offer Letter (*Monitoring Reports*) in respect of the Grant Period.

The Grantee shall, if so requested by Salix and/or Scottish Ministers, provide an annual report on each of the first three years' following Practical Completion, outlining the effectiveness of the Project in delivering energy savings and CO<sub>2</sub> reductions and containing such other information and evidence as is reasonably requested by Salix, and/or Scottish Ministers in relation to the Project.

The Grantee represents and undertakes (and shall repeat such representations on delivery of the relevant report or information):

that the reports and information it gives pursuant to this Clause 9 are accurate;

that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and

that any data it provided pursuant to the Grant Application may be shared within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.

#### **Receipt of other funding sources**

The Grantee is prohibited from accepting any other public sector funding in relation to the Project without first obtaining the prior written consent of Salix and the Grantee shall not claim or use any part of the Grant for any purpose other than the delivery of the Project.

The Grantee shall comply with all Subsidy Control rules applicable in the United Kingdom in relation to the delivery of the Project at the time this Grant Offer Letter is signed and shall ensure that the delivery of the Project shall not put the Scottish Ministers and/or Salix in breach of such Subsidy Control rules.

The Grantee acknowledges and represents to the Scottish Ministers and Salix that the Grant is being awarded on the basis that the Project, and related work being undertaken using the Grant, do not affect

trade in goods and electricity between Northern Ireland and shall ensure that the Grant is not used in way that affects any such trade.

The Grantee acknowledges and accepts that the Grant is awarded on the basis that the activities being undertaken to deliver the Project are, and will remain, non-economic activities. The Grantee shall ensure that measures are taken (where necessary), and maintained, to ensure that the Grant is not used to cross-subsidise any economic activity.

The Grantee is required to obtain and retain all declarations and information as may be required to enable the Grantee, Salix and the Scottish Ministers to comply with all applicable Subsidy Control rules, and to provide copies of such declarations and information to the Scottish Ministers and Salix when required to do so.

The Grantee shall maintain appropriate records of compliance with the Subsidy Control Act 2022 and shall take all reasonable steps to assist both the Scottish Ministers and Salix to comply with their obligations to maintain such records and respond to any proceedings or investigation(s) into, or in connection with, the Grant and/or Project by any relevant court or tribunal of relevant jurisdiction or regulatory body.

Salix may, if required to do so by the Scottish Ministers or any other Governmental body, recover from the Grantee, on demand, any Grant, plus interest, made in contravention of applicable Subsidy Control rules.

The Grantee shall, if requested by the Scottish Ministers or any Governmental body or Salix, repay to the Scottish Ministers, such Governmental body or Salix, any Grant, plus interest, made in contravention of applicable Subsidy Control rules.

The Grantee accepts that the Scottish Ministers and/or Salix may exercise the options referred to in paragraphs 10.6 and 10.7 where the Scottish Ministers and/or Salix:

is required to cease grant funding or to recover all, or any proportion, of the Grant or any other amount by virtue of a decision of a court or any equivalent body under or pursuant to Subsidy Control rules; or

has reasonable grounds to consider that the payment of the Grant, or the Grantee's use of it, contravenes any requirement of law, in particular (but without limitation) Subsidy Control rules.

### **Acknowledgment and publicity**

The Grantee shall not publish any material referring to the Project or Salix without the prior written consent of Salix. The Grantee shall acknowledge the support of Salix, and the funding provided by the Scottish Ministers, 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 Salix) shall include Salix's, the Scottish Ministers' and Scottish Government's names and their respective logos (or any future name or logo adopted by Salix, the Scottish Ministers or the Scottish Government) using the templates provided by Salix from time to time.

In using Salix's and/or the Scottish Ministers' name and logo, the Grantee shall comply with all reasonable branding guidelines issued by Salix and/or the Scottish Ministers from time to time.

The Grantee agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by Salix.

Salix may acknowledge the Grantee's involvement in the Project as appropriate without prior notice to, or consent by, the Grantee.

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

The Grantee shall respond to any surveys and market research when requested by Salix or the Scottish Government from time to time and at various milestones.

The Grantee shall seek permission prior to including any reference to Salix or the Scottish Government in any external facing branding. The Grantee shall acknowledge the Scottish Government and Salix in this external facing branding, including hoardings, using the templates and logos supplied by Salix. The Grantee shall follow the supplied brand guidelines at all times.

### **Intellectual Property Rights**

All Intellectual Property Rights are hereby assigned to and shall vest in the Crown or its assignees.

The Grantee shall ensure that nothing contained in any materials produced or submitted to Salix and/or the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials, shall constitute an infringement of any third-party copyright or intellectual property right and shall indemnify Salix and/or the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

### **Confidentiality**

Subject to Clause 14 (Freedom of Information), each party shall during the term of the 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 the Agreement and the Project and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of the Agreement or save as expressly authorised in writing by the other party.

The obligation 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:

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 the Agreement by the receiving party;

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

is at any time after the date of the 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.

To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of the Project/Programme.

Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to Salix may need to be disclosed and/or published by Salix and/or the Scottish Ministers. Without prejudice to the foregoing generality, Salix may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, Salix may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of His Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that Salix shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this agreement.

### **Freedom of information**

The Grantee acknowledges that Salix is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (EISR).

The Grantee shall:

provide all necessary assistance and cooperation as reasonably requested by Salix to enable Salix to comply with its obligations under the FOISA and EISR;

transfer to Salix all requests for information relating to the Agreement that it receives as soon as practicable and in any event within 2 working days of receipt;

provide Salix with a copy of all information belonging to Salix requested in the request for information which is in its possession or control in the form that Salix requires within 5 working days (or such other period as Salix may reasonably specify) of Salix's request for such information; and

not respond directly to a request for information unless authorised in writing to do so by Salix.

The Grantee acknowledges that Salix may be required under the FOISA and EISR to disclose information without consulting or obtaining consent from the Grantee. Salix shall take reasonable steps to notify the Grantee of a request for information (in accordance with the code of practice under Part 6 of the FOISA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Agreement) Salix shall be responsible for determining in its absolute discretion whether any information should be withheld from disclosure in accordance with the FOISA and/or the EISR.

### **Fair Work First conditionality**

The Grantee shall pay at least the real Living Wage to:

all staff aged 16 and over, including apprentices, who are directly employed by the Grantee and work in Scotland

all staff aged 16 and over, including apprentices, who are directly employed by the Grantee and directly engaged in delivering the funded activity but based elsewhere in the UK.

The Grantee shall ensure that at least the real Living Wage is paid to all workers aged 16 and over, including apprentices (in a third party) not directly employed by the Grantee who are directly engaged in delivering the funded activity and based anywhere in the UK.

The Grantee shall demonstrate that all workers employed within their organisation have access to effective workers' voice channel(s), including agency workers.

The Grantee shall provide any and all information reasonably required by the Scottish Ministers to satisfy themselves that the Fair Work First obligations herein, namely, to pay at least the real Living Wage and providing access to effective workers' voice channels, are being complied with. Guidance is available to support the Grantee in meeting and evidencing these conditions.

### **Data protection**

Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

### **Procurement of Capital Equipment, Goods and Services**

The procurement of all works, equipment, goods and services required to deliver the Project must be carried out in accordance with the Grantee's internal procurement guidelines and financial regulations, and with all applicable laws including the Procurement Regulations. Salix shall not be liable for the Grantee's failure to comply with its obligations under such guidelines, regulations or laws.

### **Withholding, suspending and repayment of Grant**

Salix's intention is that the Grant will be paid to the Grantee in full. However, without prejudice to Salix's other rights and remedies, Salix may at its discretion reduce, withhold, suspend payment of all or any part of the Grant and/or require repayment of all or part of the Grant if:

the Grantee commits a Default;

the Grantee has used, or intends to use, all or any part of the Grant for purposes other than those for which the Grant has been awarded;

the delivery of the Project does not start within six weeks of the Project Start Date and the Grantee has failed to provide Salix with a reasonable explanation for the delay;

Salix, acting reasonably, considers that the Grantee has not made satisfactory progress with the delivery of the Project;

the Grantee is, in the reasonable opinion of Salix, delivering the Project in a negligent manner and/or not in accordance with the Project Programme or Grant Application;

the Grantee obtains duplicate funding from a third party for the Project;

the Grantee obtains funding from a third party without prior written consent of Salix, such consent not to be unreasonably withheld;

the Grantee provides Salix with any materially misleading or inaccurate information and/or any of the information provided in the Grant Application or in any subsequent correspondence is found to be incorrect or incomplete to an extent that Salix considers to be significant;

the Grantee commits or committed a Prohibited Act or fails to report a Prohibited Act to Salix, whether committed by the Grantee or a third party, as soon as they become aware of it;

any member of the Governing Body, employee, person engaged by or volunteer of the Grantee 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 Salix, bring or are likely to bring Salix's name or reputation into disrepute (and actions include omissions in this context) or (c)

transferred, assigned or novated the Grant to a third party or (d) failed to act in accordance with all applicable laws;

the Grantee 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);

the Grantee 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;

in the sole opinion of Salix, the Grant has been used in contravention of Subsidy Control rules;

in the sole opinion of His Majesty's Revenue & Customs, the Grantee engages in tax evasion or aggressive tax avoidance;

Salix is unable to pay the Grant to the Grantee because it has not been provided by the Scottish Ministers with sufficient funding to provide the Grant;

in the sole opinion of Salix, there is a financial irregularity within the Grantee which is not rectified within the timescale provided by Salix;

the Grantee undergoes a Change of Control which Salix, acting reasonably, considers:

- (a) could be materially detrimental to the completion of the Project and/or;
- (b) causes, or would cause, the Grantee to be in breach of the Agreement; and/or
- (c) would raise national security concerns;

the Grantee fails to comply with the Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure; or Salix gives at least two months' notice in writing to the Grantee;

the Grantee fails to provide Salix the evidence requested to resolve the Specific Conditions in the time specified set out in Schedule 2;

the Grantee fails to provide accurate Forecasts for their payments to Salix, in their monthly monitoring report, or regularly provide a forecast which differs substantially from the payment request submitted therefore hindering Salix from submitting accurate payment Forecasts to the Scottish Ministers;

in the opinion of Salix, the future of the Project/Programme is in jeopardy;

in the Scottish Ministers' opinion, the Grant is likely to bring the reputation of the Scottish Ministers into disrepute; and

the Grant (or any part or condition thereof) does not comply with applicable Subsidy Control obligations.

Salix may retain or set off any sums owed to it by the Grantee which have fallen due and payable against any sums due to the Grantee under the Agreement or any other agreement pursuant to which the Grantee provides goods or services to Salix.

Salix may withhold the payment of the Grant if at any time within the duration of the Agreement:

The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of their estate or a criminal bankruptcy order is made against the Grantee; or the Grantee makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage their affairs; or

A receiver, manager, administrator, or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator, or administrative receiver.

The Grantee shall make any payments due to Salix without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

In the event that the amount of the Grant paid by Salix to the Grantee at any point in time is found to exceed the amount of the expenses reasonably, and properly incurred or required, by the Grantee in connection with the Project/Programme, the Grantee shall repay to Salix the amount of such excess within 14 days of receiving a written demand for it from or on behalf of Salix. In the event that the Grantee fails to pay such amount within the 14-day period, Salix shall be entitled to interest on the sum at the rate of 2 per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest.

Should the Grantee 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 the Agreement it will notify Salix as soon as possible so that, if possible, and without creating any legal obligation, Salix will have an opportunity to provide assistance in resolving the problem or to take action to protect Salix and the Grant monies.

Notwithstanding the provisions of this clause 18, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 10 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.

Any failure, omission or delay by Salix and/or the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 18.1 to 18.3 shall not be construed as a waiver of such right or remedy.

#### **Anti-discrimination**

The Grantee 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.

The Grantee shall take all reasonable steps to secure the observance of Clause 19.1 by all servants, employees or agents of the Grantee and all suppliers and sub-contractors engaged on the Project.

### **Human rights**

The Grantee shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Agreement as if the Grantee were a public body (as defined in the Human Rights Act 1998).

The Grantee shall undertake, or refrain from undertaking, such acts as Salix requests so as to enable Salix to comply with its obligations under the Human Rights Act 1998.

### **Financial Management and Prevention of Bribery, Corruption, Fraud and Other Irregularity**

The Grantee shall ensure that its employees shall not breach the terms of the Bribery Act 2010 in relation to this or any other grant. The Grantee shall ensure that adequate controls are in place to prevent bribery.

The Grantee must have a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. Salix may require that the Grantee's internal/external auditors report on the adequacy or otherwise of processes relating to the administration of the Grant.

All cases of fraud, theft or other financial irregularity (whether proven or suspected) relating to the Project and/or use of the Grant must be notified to Salix as soon as they are identified. The Grantee shall explain to Salix what steps are being taken to investigate the fraud, theft or financial irregularity and shall keep Salix informed about the progress of any such investigation. Salix may however request that the matter is referred to external auditors or other third parties for investigation as required.

Salix will have the right, at its absolute discretion, to insist that the Grantee addresses any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the Grantee. Any grounds for suspecting fraud, theft or financial irregularity includes what the Grantee, acting with due care, should have suspected as well as what is actually proven.

For the purposes of this Clause 21, "financial irregularity" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the Agreement. The Grantee may be required to provide statements and evidence to Salix or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

### **Limitation of liability**

Salix accepts no liability for any consequences, whether direct or indirect, that may arise from the Grantee running the Project, the use of the Grant or from withdrawal of the Grant. The Grantee shall indemnify and hold harmless Salix and/or the Scottish Ministers, 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 Grantee in relation to the Project, the non-fulfilment of obligations of the Grantee under the Agreement or its obligations to third parties.

Subject to Clause 22.1, Salix's liability under the Agreement is limited to the payment of the Grant.

### **Warranties**

The Grantee warrants, undertakes and agrees that:

it is a Public Sector Body;

it has all necessary resources and expertise to deliver the Project (assuming due receipt of the Grant);

it has not committed, nor shall it commit, any Prohibited Act;

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 Salix immediately of any significant departure from such legislation, codes or recommendations;

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;

it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

all financial and other information concerning the Grantee which has been disclosed to Salix is to the best of its knowledge and belief, true and accurate;

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 Grant;

it is not aware of anything in its own affairs, which it has not disclosed to Salix or any of Salix's advisers, which might reasonably have influenced the decision of Salix to make the Grant on the terms contained in the Agreement; and

since the date of its last accounts there has been no material change in its financial position or prospects which would, in the reasonable opinion of Salix, adversely affect the Grantee's ability to deliver the Project in accordance with the Project Programme, the Grant Application and the Agreement.

### **Change of Control**

The Grantee shall notify Salix immediately in writing and as soon as the Grantee is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control, provided such notification does not contravene any law.

The Grantee shall ensure that any notification made pursuant to Clause 24.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

Where the Grant has been awarded to a consortium and the Grantee has entered into a collaboration agreement, the notification required under Clause 24.1 shall include any changes to the consortium members as well as the Grantee.

Following notification of a Change of Control, and unless Salix has given prior consent to the Change of Control, Salix shall be entitled to exercise its rights under Clause 18.1.16 by providing the Grantee with notification of its proposed action in writing within three (3) months of:

being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or

where no notification has been made, the date that Salix becomes aware that a Change of Control is anticipated or is in contemplation or has occurred.

### **Duration**

Except where otherwise specified, the terms of the Agreement shall apply from the Grant Start Date until the fifth anniversary of expiry of the Grant Period.

Except for clause 7.1.24, which shall continue to apply until the end of the period referred to in that Condition.

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

### **Assignment**

The Grantee may not, without the prior written consent of Salix, assign, transfer, sub-contract, or in any other way transfer its rights or obligations to any third party the benefit and/or the burden of the Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Grant.

### **Termination**

The Agreement may be terminated by the Scottish Ministers giving not less than 3 months' notice in writing from the date of the notice being sent.

### **Waiver**

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

### **Notices**

All notices and other communications in relation to the 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.

### **No partnership or agency**

The Agreement shall not create any partnership or joint venture between Salix and the Grantee, 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.

### **Joint and several liability**

Where the Grantee is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign the Agreement on behalf of the Grantee shall be jointly and severally liable for the Grantee's obligations and liabilities arising under the Agreement.

#### **Contract (Third Party Rights) (Scotland) Act 2017**

Except as expressly provided in Clause 30.2, the Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contract (Third Party Rights) (Scotland) Act 2017, save that the Scottish Ministers may rely upon and enforce any provision of the Agreement against the Grantee.

The Agreement is also made for the benefit of the Scottish Ministers from time to time and all provisions of the Agreement shall be enforceable by the Scottish Ministers to the fullest extent permitted by law as if they were a party to the Agreement in place of Salix.

#### **Compliance with the Law**

32.1 The Grantee shall ensure that in relation to the Project/Project Programme, they and anyone acting on their behalf shall comply with the relevant law, for the time being in force in Scotland.

#### **Governing law**

The Agreement is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts.

#### **Entire agreement**

The Agreement (together with all documents attached to or referred to within it) constitutes the entire agreement and understanding between the parties in relation to the Grant and supersedes any previous agreement or understanding between them in relation to such subject matter.