

## Schedule 1 : Terms and Conditions

### Phase 2 Public Sector Decarbonisation Scheme 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 6th Floor, 25 Farringdon Street, London, EC4A 4AB (**Salix**) and the Recipient in connection with the provision of the Public Sector Decarbonisation Scheme (PSDS) Grant by Salix to the Recipient.

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**.

### Definitions and interpretation

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

**Accountable Officer:** the person appointed by the Recipient, and whose identity is approved by Salix, who is responsible for ensuring that the Recipient 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 London.

**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:** all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.

**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 Recipient 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.

**GDPR:** General Data Protection Regulation ((EU) 2016/679).

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

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

**Grant Application:** the application for the Grant, submitted by the Recipient to Salix, which incorporates the Grant Application Support Notes, a copy of which is attached at Schedule 7 to the Grant Offer Letter.

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

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

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

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

**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:** the Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Defence Security Public Contracts Regulations 2011 and the Utilities and Contracts Regulations 2016 together with their amendments, updates and replacements from time to time.

**Prohibited Act:**

- (a) 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;
- (b) 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 Recipient to assist in the reduction of energy use or the switch to, or enabling works in preparation for, a cleaner heat source, 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 (*Project Programme*) to the Grant Offer Letter.

**Public Sector Body:** any body within England who undertakes tasks paid for wholly or partly by public funds 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, academy, Multi-Academy Trust, free school, nursery school maintained by a local authority and any NHS Trust or Foundation Trust.

**Recipient:** the person named as such in the Grant Offer Letter.

**Secretary of State: Secretary of State for the Department for Business, Energy and Industrial Strategy** (and his successors, assigns and transferees).

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

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

**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.

- 1.2 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.
- 1.3 Headings do not affect the interpretation of these Terms and Conditions.
- 1.4 Any reference to Salix in these Terms and Conditions includes references to its successors, transferees or assigns.
- 1.5 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.
- 1.6 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 A reference to a Clause is a reference to a clause of these Terms and Conditions.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

## **2 Purpose of Grant**

- 2.1 The Recipient 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.
- 2.2 The Recipient shall not make any significant change to the Project or the Project Programme without Salix's prior written agreement.
- 2.3 The Grant is being provided to the Recipient in consideration for the Recipient agreeing to deliver the Project and agreeing to comply with the Agreement.

## **3 Payment of the Grant**

- 3.1 Subject to Clause 17 of these Terms and Conditions, Salix shall pay an amount not exceeding the Grant to the Recipient in instalments in the amounts and on the Payment Dates set out in the Project Programme, subject to:
  - 3.1.1 the Recipient providing Salix with Evidence of Need;
  - 3.1.2 the necessary funds being made available to Salix by the Secretary of State when payments fall due;
  - 3.1.3 Salix receiving a completed Payment Request signed by the Accountable Officer on behalf of the Recipient no later than 15 Business Days before the proposed Payment Date;
  - 3.1.4 Salix receiving all documents and information which it may, in its absolute discretion, request from the Recipient;
  - 3.1.5 the Recipient complying with any Specific Conditions; and
  - 3.1.6 the further conditions precedent that on each Payment Date:
    - (a) Salix is satisfied, in its absolute discretion, that the confirmations provided by the Accountable Officer on behalf of the Recipient 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.
- 3.2 The Recipient 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 Secretary of State.
- 3.3 No Payment Request shall be submitted before the Grant Start Date.
- 3.4 No Grant shall be paid unless and until Salix is satisfied that such payment will be used for Eligible Expenditure.
- 3.5 In the event of any overspend by the Recipient in its delivery of the Project outside of the sums set out in the Project Programme, the amount of such overspend shall be met by the Recipient from its own funds unless Salix, in its absolute discretion:
  - 3.5.1 agrees to increase the Grant by an amount equal to the overspend; or

- 3.5.2 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.
- 3.6 The Grant shall be paid into a bank account in the name of the Recipient, the details of which shall be notified to Salix prior to the first Payment Request, which must be an ordinary business bank account.
- 3.7 The Recipient 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.
- 3.8 The Recipient 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 Recipient.

#### **4 Use of the Grant**

- 4.1 The Grant shall be used by the Recipient 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 Recipient 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).
- 4.2 The Recipient shall not use the Grant to:
- 4.2.1 make any payment to members of its Governing Body;
  - 4.2.2 purchase buildings or land; or
  - 4.2.3 pay for any expenditure commitments of the Recipient entered into before the Grant Start Date,
- unless this has been approved in writing by Salix.
- 4.3 The Recipient shall not spend any part of the Grant on the delivery of the Project after the Grant Period.
- 4.4 The Grant Period may be extended with the prior written consent of Salix, such consent not to be unreasonably withheld.
- 4.5 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 Recipient shall, unless otherwise agreed in writing by Salix, ensure that any unspent monies are returned to Salix.
- 4.6 Where the Recipient enters into a contract with a third party in connection with the Project, the Recipient will remain responsible for paying that third party. Salix has no responsibility for paying the invoices of third parties.
- 4.7 Onward payment of the Grant and the use of sub-contractors shall not relieve the Recipient of any of its obligations under the Agreement.
- 4.8 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 Recipient to deliver the Project, must be managed and paid for by the Recipient using other resources of the Recipient and not using the Grant. There will be no additional funding available from Salix for this purpose.

#### **5 Eligibility Rules**

- 5.1 Salix will only pay the Grant in respect of Eligible Expenditure incurred by the Recipient to deliver the Project and the Recipient will use the Grant solely for delivery of the Project in accordance with the Project Programme.
- 5.2 The only costs/payments that will be classified as Eligible Expenditure are those specific items of expenditure set out in the Project Programme.
- 5.3 Notwithstanding any items of expenditure set out in the Project Programme, the Recipient may not use the Grant to meet any of the following payments:
- 5.3.1 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;
  - 5.3.2 using the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the Grant;
  - 5.3.3 using the Grant to petition for additional funding;
  - 5.3.4 expenses such as for entertaining, specifically aimed at exerting undue influence to change government policy;
  - 5.3.5 input VAT reclaimable by the Recipient from HMRC; and
  - 5.3.6 payments for activities of a political or exclusively religious nature.
  - 5.3.7 contributions in kind;

- 5.3.8 interest payments or service charge payments for finance leases;
- 5.3.9 gifts;
- 5.3.10 entertaining (meaning anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- 5.3.11 statutory fines, criminal fines or penalties, civil penalties, damages or any associated legal costs;
- 5.3.12 costs incurred in giving evidence to Parliamentary Select Committees;
- 5.3.13 costs incurred in attending meetings with government ministers or civil servants to discuss the progress of the Project;
- 5.3.14 costs incurred in responding to public consultations or costs incurred in lobbying other people to respond to any such consultation;
- 5.3.15 costs incurred in providing independent evidence based advice to local or national government as part of the general policy debate;
- 5.3.16 payments for works or activities which the Recipient has a statutory duty to undertake, or that are fully funded by other sources;
- 5.3.17 bad debts to related parties;
- 5.3.18 payments for unfair dismissal or other compensation;
- 5.3.19 depreciation, amortisation or impairment of assets owned by the Grant Recipient; and/or
- 5.3.20 liabilities incurred before the Grant Start Date unless expressly included in the Project Programme.

## **6 Accountable Officer**

- 6.1 The Recipient must appoint an Accountable Officer who is responsible for ensuring that the Recipient uses the Grant in compliance with the Agreement.
- 6.2 The identity of the Accountable Officer 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.
- 6.3 The Accountable Officer must:
  - 6.3.1 maintain oversight of the Recipient's use of the Grant and safeguard, control and ensure the efficient, economical and effective management of the Grant;
  - 6.3.2 advise the Recipient on the discharge of the Recipient's responsibilities under the Agreement;
  - 6.3.3 ensure that principles of probity, robust governance, transparency and value for money are maintained at all times in relation to the utilisation of the Grant;
  - 6.3.4 be responsible for signing each Payment Request; and
  - 6.3.5 ensure that conflicts of interest are avoided.

## **7 Covenants**

- 7.1 In consideration of the Grant being given, the Recipient undertakes to Salix:
  - 7.1.1 not to use the Grant otherwise than in respect of the Project, not to use the Grant to subsidise any economic activity, and in particular not to use the Grant to generate revenue or capital gain, or to make any of the payments set out in Clause 5.3;
  - 7.1.2 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;
  - 7.1.3 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.
  - 7.1.4 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 CO2 reductions envisaged and agreed with Salix;

- 7.1.5 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 CO2 reductions, and shall provide such information, evidence and assistance as is reasonably required, and in such form as specified, by Salix or the Secretary of State including, but not limited to, any information relating to the amount of CO2 savings and cost effectiveness of such savings expected to be attained during and after Practical Completion of the Project.
- 7.1.6 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;
- 7.1.7 that it shall not create, or permit to subsist any mortgage, charge (whether floating or specific), pledge, lien or other security interest on any of its undertaking, property or assets comprised or utilised in the Project without the prior written consent of Salix
- 7.1.8 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 defrayed, and of any third parties indirectly benefitting from the Grant, in particular contractors, manufacturers and installers of equipment installed as part of the Project;
- 7.1.9 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;
- 7.1.10 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;
- 7.1.11 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 access to such records;
- 7.1.12 that it will provide Salix with any updated information and documentation relating to the cost of delivering the Project, the expected energy savings and CO2 reduction and any expected or anticipated changes required to the Measures or Project Programme, as soon as it becomes aware of the same;
- 7.1.13 that all estimates, forecasts and projections provided by the Recipient, or on its behalf, to Salix 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;
- 7.1.14 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;
- 7.1.15 that it will comply with any Specific Conditions;
- 7.1.16 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; and
- 7.1.17 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 Recipient obtains copies of the relevant certificates.

## **8 Accounts and records**

- 8.1 The Recipient shall keep accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 8.2 The Recipient 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. Salix shall have the right to review, at Salix's request, the Recipient'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.
- 8.3 The Recipient shall ensure that all its sub-contractors 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
- 8.4 The Recipient 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 and Salix.

## **9 Monitoring and reporting**

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

- 9.2 The Recipient acknowledges that Salix may monitor the Project to ensure that the Project fulfils all requirements specified by Salix and the Secretary of State, including providing the energy savings and CO2 reductions envisaged and agreed with Salix at the outset of the Project.
- 9.3 On or before the date falling 5 Business Days after the first day of each calendar month during the Grant Period, the Recipient shall provide Salix with a report, signed by the Accountable Officer, containing the information set out in Schedule 4 of the Grant Offer Letter (*Monitoring Reports*) in respect of the previous calendar month, together with copies of all invoices or other evidence of the total costs and expenses incurred in that calendar month.
- 9.4 Where the Recipient has obtained funding from a third party for its delivery of part of the Project, the Recipient shall include the amount of such funding in the reports provided pursuant to Clause 9.3 together with details of what that funding has been used for.
- 9.5 Along with its first report provided pursuant to Clause 9.3, the Recipient shall provide Salix with a risk register and insurance review in the format requested by Salix. The Recipient shall address the health and safety of its staff in the risk register.
- 9.6 The Recipient shall on request provide Salix with such further information, explanations and documents as Salix may reasonably require in order for it to establish that the Grant has been used properly in accordance with the Agreement.
- 9.7 The Recipient shall permit any person authorised by Salix such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient's fulfilment of the conditions of the Agreement and shall, if so required, provide appropriate oral or written explanations from them.
- 9.8 The Recipient shall, if so requested by Salix, permit any person authorised by Salix for the purpose to visit the Recipient 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.
- 9.9 The Recipient 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.
- 9.10 On each of the first three years' following Practical Completion, the Recipient shall provide Salix with a report outlining the effectiveness of the Project in delivering energy savings and CO2 reductions, and containing such other information and evidence as is reasonably requested by Salix in relation to the Project.
- 9.11 The Recipient represents and undertakes (and shall repeat such representations on delivery of the relevant report or information):
- 9.11.1 that the reports and information it gives pursuant to this Clause 9 are accurate;
  - 9.11.2 that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and
  - 9.11.3 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.

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

- 10.1 The Recipient is prohibited from accepting any other public sector or European funding in relation to the Project without first obtaining the prior written consent of Salix and the Recipient shall not claim or use any part of the Grant for any purpose other than the delivery of the Project.
- 10.2 The Recipient shall comply with the 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 (including, but not limited to, The World Trade Organisation Agreement on Subsidies and Countervailing Measures; The UK- EU Trade and Co-operation Agreement; and the UK's other Free Trade Agreements) and shall ensure that the delivery of the Project shall not put the Secretary of State and/or Salix in breach of such subsidy control rules.
- 10.3 The Recipient acknowledges and represents to the Secretary of State 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 the European Union and shall ensure that the Grant is not used in way that affects any such trade.
- 10.4 The Recipient is required to obtain and retain all declarations and information as may be required to enable the Recipient, Salix and the Secretary of State to comply with the relevant subsidy control rules which apply in domestic UK law from 1 January 2021, and to provide copies of such declarations and information to the Secretary of State and Salix when required to do so.
- 10.5 The Recipient shall maintain appropriate records of compliance with the relevant subsidy control regime and shall take all reasonable steps to assist both the Secretary of State 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.
- 10.6 Salix may, if required to do so by the Secretary of State or any other Governmental body, recover from the Recipient, on demand, any Grant, plus interest, made in contravention of the applicable subsidy control rules.

- 10.7 The Recipient shall, if requested by the Secretary of State or any Governmental body or Salix, repay to the Secretary of State, such Governmental body or Salix, any Grant, plus interest, made in contravention of the applicable subsidy control rules.
- 10.8 The Recipient accepts that the Secretary of State and/or Salix may exercise the options referred to in paragraphs 10.6 and 10.7 where the Secretary of State and/or Salix:
- 10.8.1 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 as a result of the relevant subsidy control rules which apply in domestic UK law from 1 January 2021; or
  - 10.8.2 has reasonable grounds to consider that the payment of the Grant, or the Recipient's use of it, contravenes any requirement of law, in particular (but without limitation) the relevant subsidy control rules which apply in domestic UK law from 1 January 2021.

## **11 Acknowledgment and publicity**

- 11.1 The Recipient shall not publish any material referring to the Project or Salix without the prior written agreement of Salix. The Recipient shall acknowledge the support of Salix 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 name and logo (or any future name or logo adopted by Salix) using the templates provided by Salix from time to time.
- 11.2 In using Salix's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by Salix from time to time.
- 11.3 The Recipient agrees to participate in and co-operate with promotional activities relating to the Project that may be instigated and/or organised by Salix.
- 11.4 Salix may acknowledge the Recipient's involvement in the Project as appropriate without prior notice.
- 11.5 The Recipient 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.

## **12 Intellectual Property Rights**

- 12.1 Salix and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either Salix or the Recipient before the Grant Start Date or developed by either party during the Grant Period, shall remain the property of that party.
- 12.2 Where Salix has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of the Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by Salix.

## **13 Confidentiality**

- 13.1 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 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.
- 13.2 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:
- 13.2.1 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;
  - 13.2.2 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
  - 13.2.3 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.

## **14 Freedom of information**

- 14.1 The Recipient acknowledges that Salix is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
- 14.2 The Recipient shall:
- 14.2.1 provide all necessary assistance and cooperation as reasonably requested by Salix to enable Salix to comply with its obligations under the FOIA and EIRs;
  - 14.2.2 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;

14.2.3 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

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

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

## **15 Data protection**

15.1 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.

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

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

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

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

17.1.1 the Recipient 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;

17.1.2 the delivery of the Project does not start within 6 weeks of the Project Start Date and the Recipient has failed to provide Salix with a reasonable explanation for the delay;

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

17.1.4 the Recipient 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;

17.1.5 the Recipient obtains duplicate funding from a third party for the Project;

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

17.1.7 the Recipient 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;

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

17.1.9 any member of the Governing Body, employee or volunteer of the Recipient has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of 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;

17.1.10 the Recipient ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);

17.1.11 the Recipient becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due;

17.1.12 in the sole opinion of Salix, the Grant has been used for illegal state aid;

17.1.13 in the sole opinion of Her Majesty's Revenue & Customs, the Recipient engages in tax evasion or aggressive tax avoidance;

17.1.14 Salix is unable to pay the Grant to the Recipient because it has not been provided by the Secretary of State with sufficient funding to provide the Grant;

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

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

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

17.1.17 the Recipient fails to comply with the Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure; or

17.1.18 Salix gives at least 2 months' notice in writing to the Recipient.

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

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

17.4 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Project or compliance with 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.

## **18 Anti-discrimination**

18.1 The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

18.2 The Recipient shall take all reasonable steps to secure the observance of Clause 18.1 by all servants, employees or agents of the Recipient and all suppliers and sub-contractors engaged on the Project.

## **19 Human rights**

19.1 The Recipient 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 Recipient were a public body (as defined in the Human Rights Act 1998).

19.2 The Recipient 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.

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

20.1 The Recipient will at all times comply with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.

20.2 The Recipient 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 Recipient's internal/external auditors report on the adequacy or otherwise of those processed.

20.3 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 Recipient 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.

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

20.5 For the purposes of this Clause 20, "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 Recipient may be required to provide statements and evidence to Salix or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## **21 Limitation of liability**

21.1 Salix accepts no liability for any consequences, whether direct or indirect, that may come about from the Recipient running the Project, the use of the Grant or from withdrawal of the Grant. The Recipient shall indemnify and hold harmless Salix, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages

and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Project, the non-fulfilment of obligations of the Recipient under the Agreement or its obligations to third parties.

21.2 Subject to Clause 21.1, Salix's liability under the Agreement is limited to the payment of the Grant.

## **22 Warranties**

22.1 The Recipient warrants, undertakes and agrees that:

22.1.1 it is a Public Sector Body;

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

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

22.1.4 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;

22.1.5 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;

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

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

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

22.1.9 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;

22.1.10 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

22.1.11 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 Recipient's ability to deliver the Project in accordance with the Project Programme, the Grant Application and the Agreement.

## **23 Change of Control**

23.1 The Recipient shall notify Salix immediately in writing and as soon as the Recipient 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.

23.2 The Recipient shall ensure that any notification made pursuant to Clause 23.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

23.3 Where the Grant has been awarded to a consortium and the Recipient has entered into a collaboration agreement, the notification required under Clause 23.1 shall include any changes to the consortium members as well as the Recipient.

23.4 Following notification of a Change of Control, and unless Salix gave prior consent to the Change of Control, Salix shall be entitled to exercise its rights under Clause 17.1.16 by providing the Recipient with notification of its proposed action in writing within three (3) months of:

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

23.4.2 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.

## **24 Duration**

24.1 Except where otherwise specified, the terms of the Agreement shall apply from the Grant Start Date until the anniversary of expiry of the Grant Period or for so long as any Grant monies remain unspent by the Recipient, whichever is longer.

24.2 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.

## **25 Assignment**

25.1 The Recipient may not, without the prior written consent of Salix, assign, transfer, sub-contract, or in any other way make over 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.

## **26 Waiver**

26.1 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.

## **27 Notices**

27.1 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.

## **28 No partnership or agency**

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

## **29 Joint and several liability**

29.1 Where the Recipient 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 Recipient shall be jointly and severally liable for the Recipient's obligations and liabilities arising under the Agreement.

## **30 Contracts (Rights of Third Parties) Act 1999**

30.1 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 Contracts (Rights of Third Parties) Act 1999, save that the Secretary of State may rely upon and enforce any provision of the Agreement against the Recipient.

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

## **31 Governing law**

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

## **32 Entire agreement**

**32.1** 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.