



**Dated**

**29<sup>th</sup> October 2018**

**LEEDS CITY COUNCIL**

**ENGIE POWER LIMITED**

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**CALL OFF AGREEMENT**

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**This Call Off Agreement** is made on 29<sup>th</sup> October 2018

**Between**

- (1) **Leeds City Council** of Civic Hall, Calverley Street, Leeds, LS1 1UR (**Partner Council**); and
- (2) **ENGIE POWER LIMITED** a company incorporated in England with registered number **04236804** whose registered office is at No 1. Leeds, 26 Whitehall Road, Leeds, LS12 1BE (**Supplier**).

**Whereas**

- (A) West Yorkshire Combined Authority (**Combined Authority**) placed a prior information notice 2018/S 081-180696 on 26 April 2018 in the Official Journal of the European Union seeking to understand if providers in the market would be interested in entering into a competition to appoint a single supplier framework agreement for the provision of electric vehicle charging points and associated services to the Combined Authority and the Partner Councils (the **Project**).
- (B) On 13 July 2018 the Combined Authority sent a concession notice 2018/S 135-309693 to the Official Journal of the European Union (the **OJEU Notice**) to start the competition for the Project.
- (C) On 17 July 2018 the Combined Authority issued an invitation to tender (**Invitation to Tender**) for the Project.
- (D) In response to the Invitation to Tender, the Supplier submitted its Tender to the Combined Authority confirming that the Supplier is capable of providing the services for the Project in accordance with the Combined Authority's requirements as set out in the Invitation to Tender.
- (E) The Combined Authority selected the Tender as the most economically advantageous tender for the Project and the Combined Authority appointed the Supplier to provide the services for the Project under the terms of a framework agreement (**Framework Agreement**).
- (F) Pursuant to the terms of the Framework Agreement, the Partner Council now wishes to engage the Supplier to provide the Services set out herein to it under the terms of this Call Off Agreement.

**It is agreed**

**1 Definitions and interpretation**

- 1.1 In this Call Off Agreement the definitions in Schedule 1 (Definitions) shall apply. Terms defined in the Framework Agreement shall have the same meaning in this Call Off Agreement, unless the context requires otherwise.
- 1.2 The Tender and the Statement of Requirements, as set out in the Framework Agreement, are incorporated into this Call Off Agreement by reference.
- 1.3 In this Call Off Agreement:
  - (a) the recitals, schedules and annexes form part of this Call Off Agreement and references to this Call Off Agreement include the recitals, schedules and annexes;

- (b) references to **recitals, clauses, schedules and annexes** are to recitals and clauses of and schedules and annexes to this Call Off Agreement; references in a schedule or annex to paragraphs are to the paragraphs of that schedule or annex; and a reference to a clause or paragraph number is, unless otherwise specified, a reference to all its sub-clauses or sub-paragraphs;
  - (c) words importing a gender include every gender and references to the singular include the plural and vice versa;
  - (d) words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations, Crown Bodies and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
  - (e) references to this Call Off Agreement or any other document are to this Call Off Agreement or that document as in force for the time being and as amended, supplemented, varied, modified, renewed or replaced or extended from time to time in accordance with the requirements of this Call Off Agreement or that document (as the case may be);
  - (f) a reference to a statute or statutory provision shall unless otherwise stated be construed as including a reference to any subordinate legislation (as defined by section 21(1) Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the Call Off Commencement Date;
  - (g) a reference to a statute, statutory provision or any subordinate legislation shall unless otherwise stated be construed as including a reference to that statute, provision or subordinate legislation as in force at the Call Off Commencement Date and as from time to time Modified or consolidated, superseded, re-enacted or replaced (whether with or without Modification) after the Call Off Commencement Date;
  - (h) references to **the parties** shall unless otherwise expressly stated, be construed as references to the Partner Council and the Supplier, and the term **party** shall be construed accordingly; and
  - (i) references to a party shall, except where the context requires otherwise, include its successors in title and permitted assignees.
- 1.4 In this Call Off Agreement, the words **other, includes, including, for example** and **in particular** do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- 1.5 The headings and contents table in this Call Off Agreement are for convenience only and do not affect its interpretation.
- 1.6 Subject to 1.7, if and to the extent of any inconsistency or conflict between any of the clauses (including the recitals), the schedules, annexes and any document otherwise attached or incorporated into this Call Off Agreement, the order of priority for the purposes of construction, is in descending order:
- (a) the Framework Agreement;

- (b) clauses 1 (Definitions and interpretation) to 43 (Governing law and jurisdiction) of this Call Off Agreement (including the recitals) and Schedule 1 (Definitions);
- (c) the schedules (other than Schedule 1 (Definitions));
- (d) the Statement of Requirements and its annexes;
- (e) the annexes to the schedules;
- (f) the terms of any Site Agreement;
- (g) any other document incorporated by reference into this Call Off Agreement; and
- (h) the Tender and its annexes.

1.7 Where any conflict occurs between the provisions contained in two or more of the provisions listed in clause 1.6 above, the document lower in the order of precedence shall where possible be read in such a way as to resolve such conflict. If the conflict remains incapable of resolution by this means, the conflicting provisions shall be severed from the provisions in the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

1.8 For the purposes of construction, an omission, whether deliberate or inadvertent, is not by itself to be construed as giving rise to a conflict.

## **2 Due diligence**

2.1 The Supplier acknowledges that:

- (a) the Partner Council has delivered or made available to the Supplier, in advance of the Call Off Commencement Date, all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Call Off Agreement (except to the extent that this Call Off Agreement explicitly requires the provision of information and documents by the Partner Council);
- (b) it has made its own enquiries to satisfy itself as to the accuracy of the information supplied by for or on behalf of the Partner Council before the Call Off Commencement Date;
- (c) it has raised all relevant due diligence questions with the Partner Council before the Call Off Commencement Date, has undertaken all necessary due diligence and has entered into this Call Off Agreement in reliance on its own due diligence alone;
- (d) it shall not be excused from the performance of any of its obligations under this Call Off Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:
  - (i) misinterpretation of the requirements of the Supplier in the Invitation to Tender or elsewhere;

- (ii) failure by the Supplier to satisfy itself as to the accuracy and / or adequacy of the information supplied by or on behalf of the Partner Council before the Call Off Commencement Date; and / or
- (iii) failure by the Supplier to undertake its own due diligence.

### **3 Term**

This Call Off Agreement shall commence on the Call Off Commencement Date and, unless terminated earlier, shall continue in full force and effect for ten (10) years (**Term**).

### **4 Supplier's appointment and scope of this Call Off Agreement**

- 4.1 The Partner Council appoints the Supplier as a provider of the Services and this Call Off Agreement governs the relationship between the Partner Council and the Supplier in respect of the provision of the Services by the Supplier to the Partner Council.
- 4.2 The Supplier agrees to provide or procure the provision of the Services in accordance with the terms of this Call Off Agreement.
- 4.3 Notwithstanding clauses 4.1 and 4.2, the Supplier's appointment is not exclusive (nor does the Partner Council guarantee the Supplier any minimum volume or revenue commitments) and nothing in this Call Off Agreement will prevent the Partner Council and / or the Partner Councils from either itself providing services that are the same as or similar to the Services or appointing a third party to do so.

### **5 Site Call Off Process and Site Agreement Minimum Requirements**

- 5.1 The Partner Council and the Supplier may at any time from the Call Off Commencement Date until the expiry of the Framework Agreement (**Site Call Off Period**) call off Sites under this Call Off Agreement by following the requirements for the Site Call Off Process.
- 5.2 The Supplier shall ensure that the Site Agreement for each Site complies with the minimum requirements set out in Schedule 5 (Site Agreement Minimum Requirements).

### **6 Services and standards of performance**

- 6.1 The Statement of Requirements sets out a specification of the works and services which the Partner Council requires to be delivered for the Project and under this Call-Off Agreement. The Tender sets out a detailed description of how the Supplier intends to achieve the Statement of Requirements.
- 6.2 The Supplier shall provide the Services in accordance with the solution set out in its Tender to meet the Partner Council's requirements as set out in the Statement of Requirements.
- 6.3 The Supplier shall perform the Services and shall do so:
  - (a) in a manner which achieves the Statement of Requirements;
  - (b) in accordance with the Project Plans submitted by the Supplier to the Combined Authority in accordance with the Framework Agreement;



- (c) promptly and in accordance with any agreed timescales;
- (d) using sufficient appropriately skilled resources to enable the Supplier to comply with its obligations under this Call Off Agreement;
- (e) in a manner which complies with, and enables the Partner Council to comply with, Relevant Law and applicable Partner Council Policies;
- (f) with a high degree of skill, care and diligence and in accordance with Good Industry Practice; and
- (g) in all respects in accordance with this Call Off Agreement.

6.4 The Supplier is required to provide the Services in a manner that enables the Partner Council to comply with all applicable regulatory requirements in force from time to time in relation to the Services during the whole of the Term.

## 7 Transition

7.1 The Supplier shall perform its obligations as set out in Schedule 3 (Transition).

7.2 The Supplier shall achieve the Key Milestones (including by satisfying all applicable Satisfaction Criteria) in respect of a Site by the applicable Key Milestone Dates.

7.3 After the Services have successfully achieved the Satisfaction Criteria, the Partner Council shall notify the Supplier of the same using the template satisfaction certificate set out in Annex 1 of Schedule 3 (Transition) (**Satisfaction Notice**). The service of a Satisfaction Notice by the Partner Council to the Supplier for any part of the Services in respect of a Site shall be conditional upon all of the Key Milestones and Delivery Criteria being achieved for all of the Services in respect of that Site.

7.4 If all or any part of the Services fails the Satisfaction Criteria then the Partner Council may by written notice to the Supplier and without prejudice to its other rights and remedies elect at its absolute discretion to:

- (a) fix a new date for achieving the Satisfaction Criteria in respect of the Services on the same terms and conditions and at no cost to the Partner Council. If the Services fail to meet the Satisfaction Criteria again on the new date, then the Partner Council shall be entitled to either repeat the process set out in this clause 7.4(a) or proceed under clause 7.4(b); or
- (b) conditionally accept the Services or any part of them in its absolute discretion and subject to such conditions of acceptance as the Partner Council may reasonably determine. Conditional acceptance shall constitute acceptance of the Services (or relevant part of them) provided that all the relevant conditions have been met within the period specified by the Partner Council.

7.5 Failure by the Supplier to achieve the Go Live Key Milestone Date for a Site shall be a material breach and (without prejudice to the Partner Council's rights and remedies) will give the Partner Council right to terminate the provision of the Services at that Site and to decide in its sole and absolute discretion not to fund that Site (and to require repayment of any Milestone Payment paid in respect of that Site).

- 7.6 Where the Partner Council decides not to fund a Site under clause 7.5:
- (a) the Supplier shall repay Milestone Payment 1 in accordance with the provisions set out in paragraph 4 of Schedule 6 (Grant Funding and Payments); and
  - (b) the Supplier may:
    - (i) choose to continue with the delivery of the Site without funding from the Partner Council; or
    - (ii) remove all equipment and restore the Site to its condition before the Supplier carried out any Services or works at the Site at no cost to the Partner Council.

## **8 Service Levels**

8.1 The Supplier shall at all times achieve or exceed the applicable Service Levels for each Site on and from the Go Live Key Milestone Date for that Site.

8.2 If there is a Service Failure, the Supplier shall promptly:

- (a) notify the Partner Council of such Service Failure;
- (b) investigate the underlying causes of the Service Failure and preserve any data indicating the cause thereof;
- (c) take whatever action is necessary to minimise the impact of the Service Failure and / or prevent it from recurring;
- (d) advise the Partner Council of the status of remedial efforts being undertaken with respect to the underlying cause of the Service Failure, and regularly keep the Partner Council so advised; and
- (e) correct the Service Failure and resume performance of the Services in accordance with the relevant Service Level (determined by reference to clause 8.1) and / or other provisions(s) of this Call Off Agreement, as applicable.

8.3 The Supplier shall measure its performance against the Service Levels in accordance with Schedule 4 (Service Levels), and shall provide the Partner Council with a written report as set out in paragraph 4.4 of Schedule 8 (Governance and Reporting).

## **9 Records and audit and Open Book Data**

9.1 The Supplier shall maintain during the Term and for six (6) years thereafter accurate and complete records and supporting documentation relating to:

- (a) the performance of its obligations under this Call Off Agreement;
- (b) all financial and non-financial transactions relating to this Call Off Agreement;
- (c) Confidential Information; and
- (d) Open Book Data,

together the **Records**.

- 9.2 The Partner Council (and any of its appointed audit representatives) shall have the right to perform audits for the purposes of reviewing the Records and perform inspections of the Supplier's systems, and those of its agents and contractors, to verify the Records and the Supplier's compliance with this Call Off Agreement.
- 9.3 The Partner Council may exercise its rights under this clause 9 at any time and from time to time during the Term and for six (6) years thereafter. Where practicable, the Partner Council will give the Supplier twenty four (24) hours' notice in relation to any such audit.
- 9.4 The Supplier shall provide full co-operation to the Partner Council (and any of its appointed audit representatives) in relation to the exercise of any of the Partner Council rights under this clause 9.

## **10 Staff**

- 10.1 The Supplier shall ensure that all Staff:
- (a) are properly trained, fully supervised and possess suitable skills and experience for the performance of the Services; and
  - (b) comply with all Partner Council Policies (including health, safety and site policies).
- 10.2 The Supplier shall provide the Partner Council with the names and CVs for Key Staff. The Supplier shall give the Partner Council at least three (3) months' notice of the replacement of any Key Staff and the Supplier shall give the Partner Council full details for the proposed replacement Key Staff.

### **No transfer of employees**

- 10.3 The parties do not anticipate that there will be any deemed transfers of the contracts of employment of any employees of the Partner Council to the Supplier Group arising out of or in connection with this Call Off Agreement or the Services, under the Transfer Regulations or otherwise.
- 10.4 It is the current belief of the parties that each and any Exit Event does not and will not constitute a transfer for the purposes of the Transfer Regulations.
- 10.5 If the contract of employment or engagement or any liability regarding the employment or engagement of any person transfers (or is alleged to have transferred) from the Supplier, including any of its Staff or Sub-contractors, to the Partner Council (**Exit Employee**) as a result of any Exit Event or any transaction arising from this Call Off Agreement then:
- (a) either party shall, upon becoming aware of such transfer or allegation, notify the other within seven (7) days after becoming aware of such transfer or allegation (**Notification Date**);
  - (b) if the Partner Council does not wish to continue to employ such Exit Employee, the Partner Council shall inform the Supplier on the Notification Date and shall give the Supplier a period of fourteen (14) days from the Notification Date (**Opportunity Period**)

in which to offer employment to such Exit Employee and for such Exit Employee to accept that offer;

- (c) upon the expiry of the Opportunity Period and provided:
- (i) such Exit Employee has not accepted the offer of employment made by the Supplier; or
  - (ii) no such offer of employment has been made by Supplier, and / or
  - (iii) the Partner Council has not agreed to employ the Exit Employee;

the Partner Council may terminate the employment of such Exit Employee by dismissing them with immediate effect;

- (d) subject to the Partner Council having complied with its obligations in this clause 10.5(a) to 10.5(c), the Supplier shall, provided any notice of termination of any and all Exit Employees' employment (if applicable) is served upon such employees within fourteen (14) days immediately following the end of the Opportunity Period, then indemnify,

defend and hold harmless the Partner Council and its directors, officers, agents, employees, successors and assigns from any and all Losses arising out of or in connection with the employment and / or dismissal or other termination of employment of any and all Exit Employees and / or any alleged breach of the Transfer Regulations or any other employment-related claim arising from the termination and any legal costs or expenses relating to any claims for such losses which shall become a liability of the Partner Council at any time thereafter including any contribution or other liability for pensions payments or other contractual benefits payable upon, relating to or contingent upon such dismissal.

- (e) Within seven (7) days of receipt of a written request and settlement agreement from the Supplier, the Partner Council will enter into a tri-party settlement agreement with the Supplier and any of its employees and / or any Exit Employee. The Partner Council agrees to accept the settlement agreement wording as provided by the Supplier without amendment on condition that any monies payable under the settlement agreement will be payable by the Supplier and any settlement agreement will not impose liabilities onto the Partner Council and provided that the terms of the settlement agreement do not breach any statutory obligation including in particular any provision relating to the making of protected disclosures or any disclosure of information that the Partner Council is under a legal duty to make.

## **11 Subcontracting and supply chain protection**

### **Key Sub-contractors**

- 11.1 The Partner Council has consented to the Supplier's use of the Key Sub-contractors.
- 11.2 Where during the Term, the Supplier wishes to enter into a new Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Partner Council and shall at the time of requesting such consent, provide the Partner Council with the information detailed in clause 11.3. The decision of the Partner Council to consent or not will not be unreasonably withheld or delayed.

- 11.3 The Supplier shall ensure that each new or replacement Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Call Off Agreement;
  - (b) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and / or obligations under the Key Sub-contract to the Partner Council;
  - (c) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Call Off Agreement in respect of:
    - (i) the data protection requirements set out in clause 20 (Data protection);
    - (ii) the FOIA requirements set out in clause 19 (Confidentiality and transparency);
    - (iii) the obligation not to embarrass the Partner Council or otherwise bring the Partner Council into disrepute set out in clause 24.2(f); and
    - (iv) a provision restricting the ability of the Key Sub-contractor to Sub-contract all or any part of the provision of the goods and / or services relating to this Call Off Agreement and provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Partner Council.

#### **Sub-contracting**

- 11.4 The Supplier shall not without the prior written consent of the Partner Council sub-contract the whole or any part of this Call Off Agreement, such consent not to be unreasonably withheld or delayed.
- 11.5 The Partner Council may withdraw its consent in relation to:
- (a) a Sub-contract (including a Key Sub-contract) where:
    - (i) the sub-contracting is or may become prohibited under Relevant Law or by any Competent Authority;
    - (ii) in the opinion of the Partner Council, acting reasonably, the Sub-contract has or is likely to have a detrimental effect of the Services;
    - (iii) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Partner Council's right of termination pursuant to any of the termination events in clause 25 (Termination); and / or
    - (iv) the relevant Sub-contractor or its Affiliates embarrassed the Partner Council or otherwise brought the Partner Council into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Partner Council, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the goods and / or services provided under this Call Off Agreement or otherwise; and / or
  - (b) a Key Sub-contract where there is a Change of Control of the relevant Key Subcontractor, unless:

- (i) the Partner Council has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- (ii) the Partner Council has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Partner Council was given notice of the Change of Control.

11.6 Where the Partner Council requires the Supplier to terminate a Sub-contract or a Key Subcontract pursuant to clause 11.5 above, the Supplier shall remain responsible for fulfilling all its obligations under this Call Off Agreement.

11.7 Where the Supplier sub-contracts any of its obligations under this Call Off Agreement, the Supplier shall not be relieved of any of its liabilities or obligations under this Call Off Agreement and the Supplier accepts liability for the acts and omissions of any Sub-contractor as if they were the acts or omissions of the Supplier.

11.8 The Supplier shall ensure that any Sub-contract (whether or not approved by the Partner Council) is consistent with and reflects the terms and conditions of this Call Off Agreement, including clauses 19 (Confidentiality and transparency) and 20 (Data protection).

### **Supply chain protection**

11.9 The Supplier shall ensure that all Sub-contracts contain a provision:

- (a) requiring the Sub-contractor to provide full and accurate invoicing information. Full and accurate should include the line level constituent elements such as the individual goods, labour and delivery charges;
- (b) requiring the Supplier to pay any undisputed sums which are due from the Supplier to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice; and
- (c) a right for the Partner Council to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

11.10 The Supplier shall pay any undisputed sums which are due from the Supplier to a Sub-contractor within thirty (30) days from the receipt of a valid invoice;

11.11 Notwithstanding any provision of clause 19 (Confidentiality and transparency) if the Supplier notifies the Partner Council that the Supplier has failed to pay an undisputed Sub-contractor's invoice within thirty (30) days of receipt, or the Partner Council otherwise discovers the same, the Partner Council shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

## **12 Grant Funding and payments**

12.1 In consideration of the proper performance of the Supplier's duties and obligations under this Call Off Agreement the Partner Council shall pay to the Supplier the Milestone Payments in accordance with this clause 12 and Schedule 6 (Grant Funding and Payments).

12.2 The Milestone Payments shall be paid in UK pounds sterling.

- 12.3 Where the repayment provisions apply, the Supplier shall repay Milestone Payments in accordance with Schedule 6 (Grant Funding and Payments).
- 12.4 The Partner Council shall be entitled to withhold payment or part of a payment in respect of any invoice which the Partner Council disputes in good faith. In the event that the Partner Council disputes any invoice the Partner Council shall advise the Supplier and the Supplier shall provide such additional information and documentation as the Partner Council may reasonably require in order to enable it to evaluate the invoice.
- 12.5 The Partner Council shall have the right to offset against any payment due under a valid invoice any sums owed to the Partner Council by the Supplier under this Call Off Agreement or otherwise.
- 12.6 The payment of Grant Funding through each Milestone Payment is inclusive of value added tax (if any). All other charges and expenses quoted in this Call Off Agreement are exclusive of value added tax. All other taxes and charges are included in the charges set out in this Call Off Agreement.
- 12.7 Any payment made by the Partner Council shall not indicate or imply acceptance by the Partner Council of the Services or any part thereof.
- 12.8 Each party shall be entitled to charge interest on any payment not made when properly due under the terms of this Call Off Agreement calculated from day to day at the rate per annum of 2% above the base rate of Barclays Bank PLC from time to time in force calculated from the date of such notice until the date of actual payment. Interest shall not accrue or be payable on any monies which are the subject of a disputed invoice or where monies are offset pursuant to clause 12.5.

### **13 Governance and reporting**

- 13.1 The parties shall comply with the provisions set out in Schedule 8 (Governance and Reporting).

### **14 Change Control Procedure**

- 14.1 If either the Partner Council or the Supplier wishes to suggest any change to this Call Off Agreement (including the Services) (**Change**) then it shall inform the other in writing (**Proposal**) setting out details of the proposed Change, and:
- (a) where the Supplier submits a Proposal it shall include, as a minimum, details of the effect of the Change on any agreed time frames for the performance of the Services. The Supplier shall respond promptly to any requests from the Partner Council (acting reasonably) for further information about the Proposal; and
  - (b) where the Partner Council submits a Proposal, the Supplier shall respond in writing as soon as reasonably practicable and in any event within five (5) Business Days setting out the effect of the Change on any agreed time frames for the performance of the Services.
- 14.2 The parties agree that no Change shall result in any additional costs, charges or expenses payable by the Partner Council.

- 14.3 Following any Proposal and the receipt by the Partner Council of any information to be provided by the Supplier pursuant to clauses 14.1(a) and 14.1(b), the parties shall promptly forward details of the Proposal for discussion and consideration by the Project Board at its quarterly meeting as set out in Schedule 8 (Governance and Reporting). The Project Board discuss the Proposal to confirm the agreement to proceed or not to proceed with the Change.
- 14.4 Where the Project Board agrees to the Proposal, the party that submitted the Proposal shall draft a variation to this Call Off Agreement accordingly (**Variation**).
- 14.5 Signature by both parties of a Variation shall constitute a formal amendment to this Call Off Agreement. Any changes specified in the Variation shall constitute the maximum cost of the Change.
- 14.6 Any dispute or disagreement between the parties concerning a Change, Proposal or Variation shall be resolved pursuant to clause 42 (Dispute resolution).

## **15 Third Party Consents**

- 15.1 The Supplier shall obtain all Consents which are necessary from time to time to enable the Supplier to provide the Services in accordance with this Call Off Agreement at its own cost including:
- (a) Consents from third parties who have any legal interest in any data, documentation, Materials or equipment used by or on behalf of the Partner Council in relation to the Services; and
  - (b) Consents from any Competent Authority or other third parties in relation to the provision of the Services in accordance with this Call Off Agreement including, as appropriate:
    - (i) traffic regulation orders;
    - (ii) parking orders;
    - (iii) planning permission;
    - (iv) permits to work;
    - (v) consents from highways authorities; and
    - (vi) consents from third party land owners.
- 15.2 The Supplier shall, as part of the Site Call Off Process, advise the Partner Council promptly in writing from time to time of all Consents required to be obtained under clause 15.1 and of the details of the Consents obtained.

## **16 Equipment ownership**

- 16.1 The Partner Council acknowledges and agrees that ownership of the Equipment, together with the Intellectual Property Rights in respect thereof, vests in the relevant member of the Supplier Group (or third party licensor as applicable).



- 16.2 The Supplier acknowledges that the Equipment does not include any equipment or assets owned by a distribution network operator or any other third party.

## **17 Intellectual Property Rights**

### **Ownership**

- 17.1 This Call Off Agreement shall not operate to assign any title, interest or Intellectual Property Rights in any Supplier Material or Partner Council Background Material.
- 17.2 All title, interest and Intellectual Property Rights in any New Material shall belong to and vest in the Partner Council.
- 17.3 The Intellectual Property Rights in any Supplier Material shall belong to and vest in the Supplier (or relevant third party, as applicable).
- 17.4 The Supplier hereby assigns absolutely (and shall procure that all Staff and Sub-contractors assign absolutely) to the Partner Council or (at the Partner Council's option) any Other Partner Council, by way of present assignment of existing and all future property, rights, title and interest, all Intellectual Property Rights in New Material, all of which shall vest in the Partner Council immediately upon creation of the same with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party, together with the right to take action for any past, present and future damages and other remedies in respect of any infringement or alleged infringement of such Intellectual Property Rights.
- 17.5 The Supplier shall (and shall procure that its Staff and Sub-contractors shall) comply with clause 33 (Further assurance) in order to perfect, confirm, formalise or achieve the assignment of all Intellectual Property Rights in New Material to the Partner Council.
- 17.6 The Supplier shall ensure that all Staff and Sub-contractors waive any moral rights in or relating to any New Material and shall on request provide the Partner Council with written evidence of such waiver.

### **Use of Partner Council Material**

- 17.7 Subject to the Supplier having complied with its obligations under clause 17.5, the Partner Council hereby grants to the Supplier a non-exclusive, non-transferable, royalty-free, worldwide, personal license to use, copy, maintain and Modify the New Materials during the Term to the extent necessary and for the sole purpose of the proper performance of the Services.
- 17.8 The Partner Council hereby grants to the Supplier a non-exclusive, non-transferable, royalty free, worldwide, personal licence to use, copy, maintain and Modify the Partner Council Background Materials during the Term to the extent necessary and for the sole purpose of the proper performance of the Services.
- 17.9 Where a Sub-contractor requires access to or use of any Partner Council Material in order to perform its obligations under its subcontract, the Supplier shall not provide the Sub-contractor with access to or copies of such Partner Council Material until the Sub-contractor has entered into a licence with the Partner Council in such form as may be reasonably required by the Partner Council.

- 17.10 The licences granted by the Partner Council pursuant to clause 17.7 and 17.8 shall terminate automatically at the end of the Term or earlier termination, or (if earlier) when such Partner Council Materials cease to be required in connection with the performance of the Services.
- 17.11 The Supplier shall not (and shall procure that its Staff and Sub-contractors shall not) do anything or cause anything to be done which would prejudice the Intellectual Property Rights of the Partner Council in any Partner Council Material.

### **Use of Supplier Materials**

- 17.12 The Supplier hereby grants, (and shall ensure that each of its Sub-contractors grants) to the Partner Council a non-exclusive, worldwide, perpetual, irrevocable, royalty-free licence (with the right to grant sub-licences) to use all Supplier Materials to the extent necessary for the purpose of enabling the Partner Council to receive and obtain the benefit of the Services.

## **18 Publicity and branding**

The Supplier shall not:

- (a) make any press announcements or publicise this Call Off Agreement or its contents in any way; or
- (b) use the Partner Council's name or brand in any promotion or marketing or announcement of orders (except in accordance with the approved Publicity and Marketing Plan);

without the prior written consent of the Partner Council, which shall not be unreasonably withheld or delayed.

## **19 Confidentiality and transparency**

### **Confidentiality**

- 19.1 Subject to clause 19.3 and save as otherwise expressly provided for in this Call Off Agreement, neither party shall during the Term or thereafter disclose to any person or use for any purpose any Confidential Information obtained by it (**Recipient Party**) from the other (**Disclosing Party**) in connection with this Call Off Agreement but the Recipient Party may:
- (a) disclose Confidential Information to such of its employees or professional advisers (including lawyers, accountants and auditors) who require such disclosure where necessary for the proper performance of their duties provided that the Recipient Party has given prior written instructions to such employees and / or professional advisors as to the restrictions on use and disclosure contained in this Call Off Agreement;
  - (b) disclose Confidential Information where the need for disclosure arises out of or in connection with:
    - (i) any legal challenge or potential legal challenge against the other party arising out of or in connection with this Call Off Agreement; or

- (ii) any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Partner Council is making use of any Services provided under this Call Off Agreement;
  - (c) disclose Confidential Information where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office; and
  - (d) use Confidential Information in the proper exercise of its rights and the performance of its obligations under this Call Off Agreement and under the Framework Agreement.
- 19.2 The Recipient Party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use and undertakes to take all reasonable measures to protect the confidentiality of the Disclosing Party's Confidential Information. Without limiting the generality of the foregoing, if so directed by the Partner Council, the Supplier shall require its Staff to execute a written undertaking in favour of the Partner Council in similar terms to the provisions of this clause.
- 19.3 The restrictions on use and disclosure of Confidential Information under this clause 19 shall not apply to any Confidential Information which the Recipient Party can prove:
- (a) was already known to it without any obligation of confidence prior to its receipt thereof from the Disclosing Party;
  - (b) was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the Disclosing Party;
  - (c) was in the public domain at the time of receipt by the Recipient Party or subsequently entered into the public domain other than by reason of the breach of the provisions of this clause or any obligations of confidence owed by the Recipient Party to the Disclosing Party; or
  - (d) it is required to disclose under Relevant Law or by a Competent Authority, provided that clauses 19.12 to 19.15 (inclusive) shall apply to disclosures required under the FOIA or the EIRs.
- 19.4 Where the Recipient Party is required to disclose or becomes aware that it is required to disclose any of the Disclosing Party's Confidential Information pursuant to clause 19.3(d), the Recipient Party shall only disclose the minimum Confidential Information required and shall, where possible, inform the Disclosing Party as soon as reasonably practicable of the nature and extent of the Confidential Information required to be disclosed.
- 19.5 Where the Supplier discloses the Confidential Information of the Partner Council pursuant to clause 19.1(a), it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Call Off Agreement by the persons to whom disclosure has been made.
- 19.6 The Partner Council may disclose the Confidential Information of the Supplier:
- (a) to any Central Government Body, the Combined Authority and / or any Other Partner Council on the basis that the information may only be further disclosed to Central Government Bodies, the Combined Authority and / or any Other Partner Council;

- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Partner Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) to a proposed transferee, assignee or novatee of, or successor in title to, the Partner Council; and / or
- (e) in accordance with paragraphs 19.12 to 19.15,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Partner Council under this clause 19 (Confidentiality and transparency).

### **Transparency**

- 19.7 The parties acknowledge that Transparency Information is not Confidential Information.
- 19.8 The Partner Council shall determine in its absolute discretion whether any information that would otherwise be Transparency Information is exempt from disclosure in accordance with the provisions of the FOIA. The Partner Council may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 19.9 Notwithstanding any other provision of this Call Off Agreement, the Supplier hereby gives its consent for the Partner Council to publish the Transparency Information in its entirety.
- 19.10 The Supplier shall assist and cooperate with the Partner Council to enable the Partner Council to publish the Transparency Information, including the preparation of Transparency Reports.
- 19.11 If the Partner Council believes that publication of any element of the Transparency Information would be contrary to the public interest, the Partner Council shall be entitled to exclude such information from publication. The Partner Council acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Partner Council acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

### **Freedom of information**

- 19.12 The Supplier acknowledges that the Partner Council is subject to legal obligations under the FOIA and the EIRs which may require the disclosure of information to third parties on request and that such information may include matters relating to, or arising out of, or under this Call Off Agreement.
- 19.13 The Supplier accepts that, in order to facilitate openness with and accountability to users of the Partner Council's services, the Partner Council is of the general view that all relevant information concerning its agreements and / or the services it provides and / or acquires may be disclosed unless the information is subject to an exemption from disclosure under the FOIA or the EIRs (as applicable and as the Partner Council may determine in its absolute discretion).

19.14 The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Partner Council to enable the Partner Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Partner Council all Requests for Information relating to this Call Off Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
- (c) provide the Partner Council with a copy of all Material held on behalf of the Partner Council which is requested in a Request for Information and which is in its possession or control in the form that the Partner Council requires within five (5) Business Days (or such other period as the Partner Council may reasonably specify) of the Partner Council's request for such Material; and
- (d) not respond directly to a Request for Information relating to this Call Off Agreement unless authorised in writing to do so by the Partner Council.

19.15 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Material (including Confidential Information) without consulting or obtaining consent from the Supplier. The Partner Council shall take reasonable steps to notify the Supplier 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 (as amended and updated from time to time) under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Call Off Agreement) the Partner Council shall be responsible for determining in its absolute discretion whether any Confidential Information and / or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## **20 Data protection**

### **Supplier Personal Data**

20.1 The Supplier shall ensure that the Transparency Reports provided to the Partner Council do not include any Supplier Personal Data or other Personal Data.

20.2 The Supplier:

- (a) acknowledges that it shall be the Controller of the Supplier Personal Data and (subject to clause 20.3) any other Personal Data it Processes for the purposes of providing the Services; and
- (b) shall ensure that it complies with Data Protection Legislation when providing the Services, including when preparing the Transparency Reports and operating the EVCPs.

### **Protected Data**

20.3 In respect of Protected Data Processed by the Supplier under this Call Off Agreement, the parties acknowledge that for the purposes of the Data Protection Legislation, the Partner Council is the Controller and the Supplier is the Processor.

- 20.4 The only Processing that the Supplier is authorised to do is listed in Schedule 9 (Data Processing Register) by the Partner Council and may not be determined by the Supplier.
- 20.5 The Supplier shall notify the Partner Council immediately if it considers that any of the Partner Council's instructions infringe the Data Protection Legislation.
- 20.6 The Supplier shall provide all reasonable assistance to the Partner Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Partner Council, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the Processing;
  - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Protected Data.
- 20.7 The Supplier shall, in relation to any Protected Data Processed in connection with its obligations under this Call Off Agreement:
- (a) Process that Protected Data only in accordance with Schedule 9 (Data Processing Register), unless the Supplier is required to do otherwise by Relevant Law. If it is so required the Supplier shall promptly notify the Partner Council before processing the Protected Data unless prohibited by Relevant Law;
  - (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Partner Council as appropriate to protect against a Data Loss Event having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) Staff do not Process Protected Data except in accordance with this Call Off Agreement (and in particular Schedule 9 (Data Processing Register));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Protected Data and ensure that they:
    - (iii) are aware of and comply with the Supplier's duties under this clause;
    - (iv) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- (v) are informed of the confidential nature of the Protected Data and do not publish, disclose or divulge any of the Protected Data to any third party unless directed in writing to do so by the Partner Council or as otherwise permitted by this Call Off Agreement; and
  - (vi) have undergone adequate training in the use, care, protection and handling of Protected Data;
- (d) not transfer Protected Data outside of the EU unless the prior written consent of the Partner Council has been obtained and the following conditions are fulfilled:
- (i) the Partner Council or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Partner Council;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Protected Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Partner Council in meeting its obligations); and
  - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Partner Council with respect to the Processing of the Protected Data;
- (e) at the written direction of the Partner Council, delete or return Protected Data (and any copies of it) to the Partner Council on termination of this Call Off Agreement unless the Sub-contractor is required by Relevant Law to retain the Protected Data.

20.8 Subject to clause 20.9, the Supplier shall notify the Partner Council immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Protected Data;
- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Protected Data Processed under this Call Off Agreement;
- (e) receives a request from any third party for disclosure of Protected Data where compliance with such request is required or purported to be required by Relevant Law; or
- (f) becomes aware of a Data Loss Event.

20.9 The Supplier's obligation to notify under clause 20.8 shall include the provision of further information to the Partner Council in phases, as details become available.

20.10 Taking into account the nature of the processing, the Supplier shall provide the Partner Council with full assistance in relation to either party's obligations under Data Protection Legislation and

any complaint, communication or request made under clause 20.8 (and insofar as possible within the timescales reasonably required by the Partner Council) including by promptly providing:

- (a) the Partner Council with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Partner Council to enable the Partner Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Partner Council, at its request, with any Protected Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Partner Council following any Data Loss Event;
- (e) assistance as requested by the Partner Council with respect to any request from the Information Commissioner's Office, or any consultation by the Partner Council with the Information Commissioner's Office.

20.11 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 Staff, unless:

- (a) the Partner Council determines that the Processing is not occasional;
- (b) the Partner Council determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Protected Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Partner Council determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

20.12 The Supplier shall allow for audits of its Data Processing activity by the Partner Council or the Partner Council's designated auditor in accordance with clause 9 (Records and audit and Open Book Data).

20.13 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

20.14 Before allowing any Sub-processor to process any Protected Data related to this Call Off Agreement, the Supplier must:

- (a) notify the Partner Council in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Partner Council;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20 such that they apply to the Sub-processor; and
- (d) provide the Partner Council with such information regarding the Sub-processor as the Partner Council may reasonably require.



- 20.15 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
- 20.16 The Supplier may, at any time on not less than thirty (30) Business Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated in accordance with clause 41 (Variation)).
- 20.17 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Partner Council may on not less than thirty (30) Business Days' notice to the Supplier amend this Call Off Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **21 Limit of liability**

- 21.1 Nothing in this Call Off Agreement excludes or limits the liability of either party in respect of:
- (a) death or personal injury caused by its negligence (including negligence of its employees, agents or contactors);
  - (b) the indemnities given by the Supplier under clauses 10.5(d), 22.1 and 28.20;
  - (c) fraud and / or fraudulent misrepresentation;
  - (d) any repayment of any Milestone Payment by the Supplier required under paragraph 4 of Schedule 6 (Grant Funding and Payments); or
  - (e) any liability which may not otherwise be limited or excluded under Relevant Law.
- 21.2 The Supplier will not be entitled to exclude any categories of liability which may flow from any breach of this Call Off Agreement, and the Partner Council will be entitled to recover, without limitation for consequential Losses, loss of profit and indirect Losses to the extent recoverable under Relevant Law.
- 21.3 The Partner Council shall not be liable to the Supplier or any third party for any Losses arising under and / or in connection with this Call Off Agreement which are for:
- (a) indirect, punitive or consequential Losses;
  - (b) loss of anticipated savings; and / or
  - (c) loss of use or corruption of software, data or information,
- even if such Losses were foreseeable and notwithstanding that the Partner Council had been advised of the possibility that such Losses were in the contemplation of the Supplier or any third party.
- 21.4 Subject to clause 21.1, the total aggregate liability of the Supplier to the Partner Council arising out of or in connection with this Call Off Agreement whether arising from contract, tort, negligence or otherwise shall be limited to five million pounds sterling (£5,000,000).
- 21.5 Subject to clause 21.1, the total aggregate liability of the Partner Council to the Supplier arising out of or in connection with this Call Off Agreement whether arising from contract, tort,

negligence or otherwise shall be limited to direct Losses which shall not exceed two hundred thousand pounds sterling (£200,000).

## 22 Indemnities

22.1 The Supplier shall indemnify, defend and hold harmless the Partner Council and its directors, officers, agents, employees, successors and assigns from any and all Losses arising out of or in connection with:

- (a) any Claim made against the Partner Council by a third party:
  - (i) that any New Materials, Supplier Materials and / or Supplier Confidential Information or the use, adaptation, translation, modification or reproduction of any of the same in accordance with the provisions of this Call Off Agreement or as contemplated by this Call Off Agreement infringes a third party's Intellectual Property Rights or rights in respect of Confidential Information;
  - (ii) that any Partner Council Material infringes a third party's Intellectual Property Rights if the Claim is based on or attributable to the fact that the Supplier has modified (directly or through a third party) any Partner Council Material or has used, reproduced or exploited the Partner Council Material in contravention of any provisions of this Call Off Agreement or any instructions or terms of which the Partner Council has advised the Supplier;
  - (iii) arising out of or in connection with, and to the extent attributable to, the Supplier's negligence or breach of this Call Off Agreement in the performance (or non-performance) of the Services, including any Claim due to:
    - (A) death or personal injury caused by its negligence (including negligence of its employees, agents or contactors);
    - (B) loss of or damage to physical property; or
    - (C) any other cause of action;
- (b) the wilful abandonment by the Supplier of its obligations under this Call Off Agreement;
- (c) any fraudulent or dishonest act or omission by the Supplier or its Staff (including any contractors);
- (d) any breach by the Supplier of its obligations under this Call Off Agreement in relation to the Partner Council Confidential Information, the Partner Council Material, Protected Data or Supplier Personal Data;
- (e) any breach by the Supplier of any Relevant Law;
- (f) any breach of Relevant Law by the Partner Council to the extent attributable to the Supplier's negligence or breach of this Call Off Agreement in the performance (or nonperformance) of the Services; and

- (g) any fines or penalties levied on the Partner Council by a Competent Authority to the extent attributable to the Supplier's negligence or breach of this Call Off Agreement in the performance (or non-performance) of the Services.

22.2 The Supplier shall also indemnify, defend and hold harmless the Partner Council as set out in clauses 10.5(d), 26.3(b) and 28.20.

## **23 Insurance**

23.1 The Supplier shall take out and maintain at all times during the Term and for six (6) years following the termination or expiry of this Call Off Agreement the following types of insurance policies for the specified amounts with a reputable insurance company:

- (a) professional indemnity insurance covering legal liability for an insured amount of not less than ten million pounds sterling (£10,000,000) per occurrence and unlimited in respect of the number of occurrences during any one insurance period;
- (b) public liability insurance including cover for bodily injury and property damage arising in connection with this Call Off Agreement including as a result of the acts or omissions of the Supplier and / or Staff, for an insured amount of not less than ten million pounds sterling (£10,000,000) per occurrence and unlimited in respect of the number of occurrences during any one insurance period; and
- (c) employer's liability insurance as required by Relevant Law including cover for legal liability to make payment in respect of death, injury and / or disability of its employees and with limits of at least ten million pounds sterling (£10,000,000) per occurrence and unlimited in respect of the number of occurrences during any one insurance period.

23.2 The Supplier shall use reasonable endeavours to have, at all times, the Partner Council's interest noted on all insurance policies referred to in clause 23.1.

23.3 The Supplier will do nothing to invalidate the insurance policies set out in clause 23.1 and will promptly notify the Partner Council in writing of any changes to the insurance policies.

23.4 The Supplier shall on request by the Partner Council promptly provide the Partner Council with copies of certificates evidencing all the required policies.

23.5 None of the requirements contained in this clause 23 as to types, and limits of insurance cover to be maintained by the Supplier shall in any manner limit the liabilities and obligations of the Supplier under this Call Off Agreement.

## **24 Representations, warranties and undertakings**

24.1 Each party represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Call Off Agreement;
- (b) this Call Off Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened

against it (or, in the case of the Supplier, any of member of the Supplier Group) that might affect its ability to perform its obligations under this Call Off Agreement; and

- (d) its obligations under this Call Off Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each party) bankruptcy, reorganisation, insolvency, moratorium or similar Relevant Law affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

24.2 The Supplier represents, warrants and undertakes to the Partner Council now and hereafter that:

- (a) it has obtained and will maintain all licences, authorisations, permits, necessary consents and regulatory approvals to enter into and perform its obligations under this Call Off Agreement;
- (b) that all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted to the Partner Council remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Agreement;
- (c) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Call Off Agreement;
- (d) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (e) the Supplier:
  - (i) owns, or has the right to use, to the extent necessary to supply the Services and shall at all times own, or have the right to use, all Supplier Materials;
  - (ii) shall not infringe nor cause the Partner Council to infringe any person's Intellectual Property Rights in receiving the Services; and
  - (iii) has and shall at all relevant times have full authority to grant any licences under this Call Off Agreement to the Partner Council; and
- (f) it will not do nor permit to be done any act or omission in relation to the performance of its obligations under this Call Off Agreement which does or may:
  - (i) damage the business, reputation, goodwill or image of the Partner Council and / or any Other Partner Council and / or the Combined Authority;
  - (ii) embarrass the Partner Council and / or any Other Partner Council and / or the Combined Authority; and / or

- (iii) diminish the public trust in the Partner Council and / or any Other Partner Council and / or the Combined Authority.

24.3 Each of the above representations, warranties and undertakings shall be read and construed as a separate representation, warranty and undertaking on behalf of the Supplier. In the event of any breach of the above provisions, the Supplier shall (without prejudice to the other rights and remedies of any the Partner Council) promptly remedy or procure the remedy of the breach at its own cost.

## 25 Termination

25.1 Without prejudice to any other rights or remedies that the Partner Council may have, the Partner Council may by giving written notice to the Supplier, immediately terminate this Call Off Agreement for cause, in whole or in part, as of a date specified in the notice of termination if any of the following circumstances occur or exist:

- (a) the Supplier commits a material breach of this Call Off Agreement, which breach is not remedied within thirty (30) days after notice of breach from the Partner Council to the Supplier;
- (b) the Supplier commits a material breach of this Call Off Agreement which is not capable of being remedied and for the avoidance of doubt such material breaches include:
  - (i) breach by the Supplier of any of its obligations under clause 19 (Confidentiality and transparency);
  - (ii) breach by the Supplier of clause 24.2(f);
  - (iii) a Service Failure;
  - (iv) failure to provide Compliant Site Data within the specified timescales two (2) or more times in any Year; and / or
  - (v) breaches as set out in clause 28.17;
- (c) the Supplier or a Holding Company of the Supplier is affected by an Insolvency Event or in the Partner Council's reasonable opinion is likely to be affected by an Insolvency Event;
- (d) there is a Change of Control of the Supplier or of any Holding Company of the Supplier;
- (e) any of the circumstances set out in Regulation 73(1) of the Public Contracts Regulations 2015;
- (f) there is a Force Majeure in accordance with clause 27.3(a); and / or
- (g) the total aggregate liability of the Supplier to the Partner Council has met (or, but for clause 21.4, would exceed) the limit on liability set by clause 21.4.

25.2 The Supplier shall have the right to serve on the Partner Council a written notice (**Initial Notice**) referring to this clause 25.2 if the Partner Council has failed to pay undisputed invoiced amounts which in aggregate exceed five thousand pounds sterling (£5,000) in value and which have been

due and payable for a period in excess of thirty (30) days prior to the date of service by the Supplier of the Initial Notice. Any such Initial Notice shall itemise the undisputed invoiced amounts to which it relates. If the sums referenced in the Initial Notice remain unpaid for a period in excess of fifteen (15) days following the receipt by the Partner Council of the Initial Notice then the Supplier may serve a notice in accordance with clause 29 (Notices) stating the Supplier's intention to terminate this Call Off Agreement attaching the Initial Notice and referring to this clause 25.2 (**Final Notice**). If the Partner Council fails to pay such undisputed invoiced amounts within fifteen (15) days of receipt of the Final Notice the Supplier may, unless and until the Partner Council pays such undisputed invoiced amounts detailed in the Initial Notice, serve notice to terminate this Call Off Agreement with immediate effect.

- 25.3 The Supplier can terminate this Call Off Agreement where the Partner Council is in material breach where such breach substantially frustrates or renders it impossible for the Supplier to perform the whole or a material part of its obligations under this Call Off Agreement for a continuous period in excess of three (3) months.
- 25.4 The Supplier can terminate this Call Off Agreement where a Force Majeure prevents the Partner Council from performing the whole or a material part of its obligations under this Call Off Agreement and that substantially frustrates or renders it impossible for the Supplier to perform the whole or a material part of its obligations under this Call Off Agreement, for a continuous period in excess of three (3) months.

## **26 Effect of termination or expiry**

- 26.1 The Supplier shall, on request by the Partner Council and at the Supplier's cost, provide the Partner Council with such assistance as it reasonably requires in order to ensure that the termination or expiry of this Call Off Agreement causes the minimum disruption to the Partner Council and that there is an orderly handover of any activities to the Partner Council and / or any replacement supplier of any services similar or equivalent to the Services, which shall include co-operation:
- (a) in the re-procurement of any successor agreement to all of any part of this Call Off Agreement; and / or
  - (b) to ensure that there is an orderly handover of any activities to the Partner Council and / or any replacement supplier.
- 26.2 On termination or expiry of this Call Off Agreement the Supplier (at the Supplier's cost):
- (a) shall immediately deliver to the Partner Council all New Materials;
  - (b) undertakes, within seven (7) Business Days of receipt of a written request from the Partner Council, to return all the Partner Council Material, the Partner Council Data and other property in its possession or under its control that belongs to or has been provided by the Partner Council and in relation to the Partner Council Confidential Information in its custody or control, at the Partner Council's option, to;
    - (i) return such the Partner Council Confidential Information; or
    - (ii) destroy such Partner Council Confidential Information and / or irretrievably delete the same if stored on electronic or magnetic media and certify to the Partner Council that this has been done;

- (c) shall remove any equipment and make good all Sites in respect of which the Partner Council has exercised its option to terminate the applicable Site Agreement.

26.3 Without prejudice to any other rights or remedies that the Partner Council may have, where the Partner Council terminates this Call Off Agreement due to the Supplier's default, the Supplier shall:

- (a) be liable to repay Milestone Payments advanced by the Partner Council in accordance with the provisions set out in paragraph 4.2(f) of Schedule 6 (Grant Funding and Payments); and
- (b) indemnify, defend and hold harmless the Partner Council and its directors, officers, agents, employees, successors and assigns from any and all Losses arising out of or in connection with the termination of this Call Off Agreement.

## **27 Force Majeure**

27.1 No party shall be liable for any failure to perform, or delay in performing, any of its obligations if and to the extent that the failure or delay is caused by Force Majeure provided that such failure or delay could not have been prevented by reasonable precautions. The time for performance of an obligation which is affected by Force Majeure shall be extended by a period which reflects the impact of the delay caused by the Force Majeure.

27.2 A party shall only be entitled to claim relief under clause 27.1 if (and, in the case of clauses 27.2(b) to 27.2(d) inclusive, for the period during which) it:

- (a) promptly gives notice to the other of its wish to claim relief under clause 27.1 together with details of the Force Majeure, including the party's estimate of its duration and the way in which and extent to which the party considers that the performance of its obligations is likely to be affected;
- (b) updates the information provided under clause 27.2(a) at least once every 48 hours throughout the period during which the performance of its obligations is affected;
- (c) takes all reasonable steps to minimise the effects of the Force Majeure on the performance of its obligations and to resume full performance; and
- (d) permits, and uses all reasonable efforts to facilitate, any efforts that the other party may make to obtain alternative supplies or services.

27.3 If a Force Majeure prevails for a continuous period in excess of thirty (30) days after the date on which the Force Majeure begins, or for a period exceeding thirty (30) days when aggregated then the Partner Council shall be entitled to terminate this Call Off Agreement in accordance with clause 25.1, provided that where the effect of the Force Majeure is to prevent the Supplier from performing the Services at a Site:

- (a) the Partner Council shall only be entitled to terminate this Call Off Agreement where the Force Majeure prevents the Supplier from performing the whole or a material part of the Services at all, or a material part, of the Sites; and

- (b) the Partner Council shall be entitled to terminate the relevant Site Agreement, where the Force Majeure prevents the Supplier from performing the whole or a material part of the Services at the Site.

27.4 The Supplier shall be entitled to terminate this Call Off Agreement in the event of Force Majeure in the circumstances set out in clause 25.4.

## 28 Regulatory compliance

28.1 The Supplier is responsible for obtaining and maintaining during the Term all necessary regulatory consents and approvals relating to the performance of its obligations under this Call Off Agreement.

### CDM Regulations

28.2 The Supplier shall perform the duties of principal designer and principal contractor under the Construction (Design and Management) Regulations 2015 (the **Regulations**) in relation to the Works. Without prejudice to the generality of the foregoing the Supplier shall:

- (a) advise the Partner Council at inception, and thereafter from time to time as reasonably necessary, as to its duties as client under the Regulations;
- (b) assist the Partner Council in performing its client duties under the Regulations:
  - (i) generally;
  - (ii) to make suitable arrangements for managing the Project and to maintain and review those arrangements from time to time;
  - (iii) to gather, compile and disseminate the pre-construction information;
  - (iv) to notify the Project under regulation 6 of the Regulations, and to update the notification periodically, if and as required; and
  - (v) in relation to any design prepared or modified outside Great Britain;
- (c) prepare a health and safety file for the Project which complies with the requirements of the Regulations; review, update and revise the file from time to time as appropriate and keep it available for inspection by any person requiring access to it for the purposes of the Project; and take steps to see that other dutyholders under the Regulations provide the Supplier with any information in their possession needed for inclusion in the file;
- (d) draw up a construction phase plan in conformity with the Regulations and submit this to the Project Board for approval;
- (e) comply with the construction phase plan;
- (f) make adequate arrangements for the provision and maintenance of the welfare facilities prescribed in Schedule 2 of the Regulations;
- (g) ensure that a copy of the notification of the Project under Regulation 6 (and any revised notification) is displayed at the construction site office as the Regulations require; and



- (h) at the completion of the Project or any phase or section of the Project, provide the Partner Council with the original and three complete paper copies, and a copy in digital form, of the health and safety file for the Project or phase or section.

28.3 The Supplier shall:

- (a) comply with all guidance from the Health and Safety Executive, as amended and updated from time to time and which as at the Call Off Commencement Date can be found at <http://www.hse.gov.uk/construction/resources/guidance.htm>;
- (b) comply with any code of practice provided by the Partner Council; and
- (c) comply with Site specific risk and method statements agreed by the Partner Council for each Site.

28.4 The Partner Council shall perform the duties of the client under the Regulations in relation to the Works.

#### **Health and safety**

28.5 The Supplier shall perform its obligations under this Call Off Agreement in accordance with:

- (a) all Relevant Law relating to health and safety; and
- (b) any Partner Council Policies in relation the health and safety whilst at the Partner Council's premises.

28.6 Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Partner Council's premises of which it becomes aware and which relate to or arise in connection with the performance of this Call Off Agreement. The Supplier shall instruct the Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Construction standards**

28.7 The Supplier shall carry out the Works in a good and workmanlike manner and all materials and goods for the Works shall be of the kinds and standards described in the Statement of Requirements or otherwise described in this Call off Agreement (and to the extent not referred to therein, the materials and goods shall be of a new and satisfactory standard).

28.8 Without prejudice to the requirements set out in the Statement of Requirements, the Supplier warrants that there has been exercised and will be exercised in the design of the Works and each and every part of the Works all the skill and care reasonably to be expected of duly qualified and experienced professional designers undertaking the design of works similar in scope and character to the Works or such part of the Works.

#### **Equality and diversity**

28.9 The Supplier shall:

- (a) perform its obligations under this Call Off Agreement in accordance with:

- (i) all Relevant Law relating to equality (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) the Partner Council's equality and diversity policy as provided to the Supplier from time to time; and
  - (iii) any other requirements and instructions which the Partner Council reasonably imposes in connection with any equality obligations imposed on the Partner Council at any time under Relevant Law concerning equality; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### **Change in Relevant Law**

- 28.10 The Partner Council shall notify the Supplier of any material changes in any Relevant Law affecting its business and of which it becomes aware in the ordinary course of its business (provided always that this shall not release the Supplier from its own obligations to keep abreast of all Relevant Law affecting its business and the ongoing provision of the Services).
- 28.11 The Supplier shall make any modifications to the Services as reasonably necessary as a result of any change in Relevant Law (including the passing into law of the Automated and Electric Vehicles Bill) at no extra cost to the Partner Council other than where the relevant modification is required to address a change in Relevant Law that is specific to the Partner Council in which event the effect on cost (if any) shall be assessed by the Change Control Procedure.
- 28.12 The Supplier shall be solely responsible for any fines and penalties imposed on the Supplier arising out of or in connection with any non-compliance by the Supplier, its Staff or Subcontractors with any Relevant Law.

### **Anti-bribery and corruption**

- 28.13 The Supplier warrants to the Partner Council that, to the best of its knowledge, neither it nor any of its directors, employees, agents, representatives, contractors or Sub-contractors has at any time prior to entering into this Call Off Agreement, committed any offence under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, the Bribery Act 2010 or any legislation or common law anywhere in the world creating offences in respect of bribery or fraudulent or corrupt acts.
- 28.14 The Supplier further warrants to the Partner Council that it is not entering into this Call Off Agreement with any knowledge that any money has been, or will be, paid to any person working for or engaged by the Partner Council or that an agreement has been made to that effect, unless details of any such arrangement have been disclosed in writing to the Partner Council before the date of this Call Off Agreement.
- 28.15 The Supplier agrees that, at any time after the entry into of this Call Off Agreement it shall not and it shall procure that its directors, employees, agents, representatives, contractors or Subcontractors shall not commit any offence under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906, the Prevention of Corruption Act 1916, the Bribery

Act 2010 or any legislation or common law anywhere in the world creating offences in respect of bribery or fraudulent or corrupt acts.

- 28.16 The Supplier agrees that it shall at all times comply with the Partner Council's anti-bribery and anti-corruption policies, as updated from time to time.
- 28.17 If the Supplier (including any of its directors, employees, agents, representatives, contractors or Sub-contractors, in all cases whether or not acting with the Partner Council's knowledge) breaches clauses 28.13 to 28.16 (inclusive), the Partner Council may terminate this Call Off Agreement by written notice with immediate effect.
- 28.18 The Supplier shall have in place adequate procedures designed to prevent any person working for or engaged by the Supplier or any other third party in any way connected to this Call Off Agreement, from committing offences of corruption or bribery.
- 28.19 The Supplier shall maintain a record of all entertainment, hospitality and gifts given to or received from any third party in the direct or indirect carrying out of its obligations under this Call Off Agreement (including the provision of the Services) and provide an up-to-date copy of such record to the Partner Council on request.
- 28.20 If at any time the Supplier (or any of its directors, employees, agents, representatives, contractors or Sub-contractors) breaches any of its obligations under clauses 28.13 to 28.16 (inclusive), the Supplier shall indemnify, defend and hold harmless the Partner Council and its directors, officers, agents, employees, successors and assigns from any and all Losses arising out of or in connection with such breach.
- 28.21 Any dispute relating to the interpretation of clauses 28.13 to 28.16 (inclusive) shall be determined by the Partner Council and its decision shall be final and conclusive.

## **29 Notices**

- 29.1 The details for the service of notices in accordance with this clause 29 (Notices) are:

- (a) in the case of the Supplier:

Attention: Kevin Dibble – ENGIE Divisional CEO; Homes and Enterprise

Address: No.1. Leeds, 26 Whitehall Road, Leeds, LS12 1BE

Contract Manager: Robin Heap – ENGIE Head of Electric Vehicles

- (b) in the case of the Partner Council:

Attention: Gwyn Owen – Principal Transport Planner

Address: 8 Floor East, Merrion House, Merrion Way, Leeds, LS2 8BB

Contract Manager: Simon Clothier – Environmental Studies Team Co-ordinator

- 29.2 All notices to be given to a party under this Call Off Agreement shall be: in writing in English; marked for the attention of the person specified in clause 29.1; and delivered by hand or sent by pre-paid registered post (or air mail if sent abroad) to the address detailed for the party in

clause 29.1. A party may change the details recorded for it in clause 29.1 by notice to the other in accordance with this clause 29 (Notices).

29.3 A notice shall be treated as having been received if delivered by hand or by pre-paid registered post at the time of delivery.

29.4 Notices sent by email are not valid for the purposes of this Call Off Agreement but this clause shall not invalidate any other lawful mode of service.

### **30 Relationship of the parties**

Neither the Supplier nor the Partner Council shall by virtue of this Call Off Agreement be, or for any purpose be deemed to be, an employee or agent of the Partner Council or the Supplier Group respectively, and no partnership or joint venture shall arise between the Supplier and the Partner Council as a consequence of this Call Off Agreement.

### **31 Beneficiaries to this Call Off Agreement**

31.1 Except as set out in clause 31.2, a person who is not a party to this Call Off Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Call Off Agreement.

31.2 The Combined Authority shall have the benefit of all rights, benefits and limitations provided for in this Call Off Agreement and accordingly shall be entitled to enforce this Call Off Agreement subject to and in accordance with its terms.

31.3 If a person who is not a party to this Call Off Agreement is stated to have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise, the parties may rescind or vary this Call Off Agreement (and any documents entered into pursuant to or in connection with it) without the consent of that person.

### **32 Entire Agreement**

This Call Off Agreement sets out the entire agreement and understanding between the parties relating to its subject matter, and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter.

### **33 Further assurance**

The Supplier shall do or execute, or arrange for the doing or execution of, any act or document (as appropriate) reasonably requested of it by the Partner Council to implement and give full effect to the terms of this Call Off Agreement.

### **34 Survival of rights**

34.1 Termination or expiry of this Call Off Agreement for any reason shall not affect any rights or liabilities that have accrued prior to such termination or expiry or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after termination or expiry.

34.2 Without prejudice to the generality of clause 34.1 the following clauses shall continue in force on and after the termination or expiry of this Call Off Agreement: clause 8 (Service Levels);

clause 19 (Confidentiality and transparency); clause 22 (Indemnities); clause 23 (Insurance); clause 24 (Representations, warranties and undertakings); clause 26 (Effect of termination or expiry); clause 31 (Beneficiaries to this Call Off Agreement); clause 42 (Dispute resolution); clause 43 (Governing law and jurisdiction); paragraphs 1 to 4 (inclusive) of Schedule 6 (Grant Funding and Payment).

### **35 Waiver**

Delay in exercising, or failure to exercise, any right or remedy in connection with this Call Off Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Call Off Agreement in any instance shall not operate as a waiver of any other exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent or other breach. No waiver in connection with this Call Off Agreement shall, in any event, be effective unless it is in writing, refers expressly to this clause, is duly signed on behalf of the party granting it and is communicated to the other party in accordance with clause 41 (Variation).

### **36 Rights cumulative**

The rights and remedies of the parties in connection with this Call Off Agreement are cumulative and, except as expressly stated in this Call Off Agreement, are not exclusive of any other rights or remedies provided by this Call Off Agreement, law, equity or otherwise. Except as expressly stated in this Call Off Agreement (or in law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised wholly or partially from time to time.

### **37 Costs**

Except as otherwise stated in this Call Off Agreement each party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Call Off Agreement and all ancillary documents and any changes to this Call Off Agreement or such ancillary documents.

### **38 Severability**

The parties intend each provision of this Call Off Agreement to be severable and distinct from the others. If a provision of this Call Off Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Call Off Agreement shall not be affected.

### **39 Counterparts**

This Call Off Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

### **40 Assignment and transfer**

40.1 The Supplier shall not be entitled to assign, transfer or otherwise deal with its rights and obligations arising under or in connection with this Call Off Agreement (and / or any document entered into pursuant to or in connection with it) in whole or in part except with the express

written consent of the Partner Council which the Partner Council may grant or withhold in its absolute discretion.

- 40.2 The Partner Council may assign the benefit or novate its rights and obligations under this Call Off Agreement (and / or any document entered into pursuant to or in connection with it) in whole or in part, at any time and on more than one occasion to any Other Partner Council or any successor of all or part of the Partner Council's business.

#### 41 Variation

Subject to clause 14 (Change), no variation to this Call Off Agreement shall be valid unless it is in writing and signed for and on behalf of each of the parties.

#### 42 Dispute resolution

- 42.1 If a Dispute arises between the Partner Council and the Supplier during the term of this Call Off Agreement in relation to any matter which cannot be resolved by local operational management

either party may refer the matter for determination in accordance with the procedure set out in this clause 42.

- 42.2 The parties shall comply with this clause 42 and shall each use reasonable endeavours to negotiate in good faith and settle Disputes before resorting to referring the Dispute to court in accordance with clause 43 (Governing law and jurisdiction).

- 42.3 A Dispute referred for determination under clause 42.1 shall be resolved as follows:

- (a) by referral in the first instance to the decision of the Contract Managers of the Partner Council and of the Supplier; and
- (b) if a Dispute is not resolved within fourteen (14) days of its referral pursuant to clause 42.3(a), such Dispute shall be referred to senior personnel (as notified by each party to the other for this purpose) who shall have the power to resolve the Dispute.

- 42.4 In the event that the Dispute is not resolved within twenty eight (28) days of its referral under clause 42.3(b), either party may refer the Dispute to mediation (**Mediation**), which shall take place with the assistance of a mediator (**Mediator**) by serving on the other party a notice to mediate (**Notice to Mediate**):

- (a) referring expressly to this clause 42.4;
- (b) identifying the issue(s) in the dispute and providing sufficient information to enable the other party to appreciate the nature of the dispute;
- (c) requiring the other party to agree in the appointment of a Mediator; and
- (d) nominating at least one and not more than three persons as a possible Mediator.

- 42.5 The Mediator shall either be agreed on by the parties or, in the absence of agreement, appointed by the Centre for Effective Dispute Resolution (**CEDR**).

- 42.6 Mediation shall be facilitative and shall be conducted using a sole Mediator in or substantially in accordance with an agreement to be entered into between the parties and the Mediator in the form of the Model Mediation Agreement of CEDR current at the time of issue of the Notice to Mediate (**Model Agreement**). To the extent that the terms of clause 42 conflict with the Model Agreement, the terms of this clause 42 shall prevail.
- 42.7 Unless agreed otherwise by the parties, in any Mediation each party shall bear its own costs and the charges and expenses of CEDR and the Mediator shall be borne equally by the parties.
- 42.8 If the parties fail to reach agreement in the mediation within twenty eight (28) days of the Mediator being appointed or such longer period as the parties may agree, then either party may refer the Dispute to the court in accordance with clause 43 (Governing law and jurisdiction).
- 42.9 Nothing in this clause 42 shall preclude a party from taking legal proceedings in the courts at any time:
- (a) to obtain an injunction (whether interim or final) to restrain the other party from doing any act or compelling the other party to do any act; or
  - (b) to prevent a claim from becoming time-barred under any statute or rule of limitations.
- 42.10 This clause 42 is without prejudice to the parties' statutory right to refer any dispute in relation to the Works to adjudication and for that purpose (and that purpose only) the Scheme shall apply subject to the following:
- (a) the adjudicator-nominating body is the RICS;
  - (b) the adjudicator may determine more than one dispute between the parties at the same time and (if required to do so by the respondent party to any claim or counterclaim) shall determine any matter in the nature of set-off, abatement or counterclaim at the same time as he determines any dispute referred to him; and
  - (c) with their decision, the adjudicator must give written reasons.

### **43 Governing law and jurisdiction**

- 43.1 This Call Off Agreement is governed by and shall be interpreted in accordance with English Law.
- 43.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Call Off Agreement.

### **44 Statutory functions**

- 44.1 The Partner Council and the Supplier agree that nothing contained or implied in this Call Off Agreement shall prejudice or affect the Partner Council's rights, powers, duties and obligations in the exercise of its functions as a local authority and the rights, powers, duties and obligations of the Partner Council under all statutes, statutory instruments, directives, byelaws, orders and regulations may be as fully and effectively exercised in relation to the Sites as if this Call Off Agreement had never been executed and entered into by the Partner Council.

**Signed** by the parties or their duly authorised representatives on the date of this Call Off Agreement.

Signed by duly authorised for and )  
on behalf of )  
**Leeds City Council** )

.....

Signed by duly authorised for and )  
on behalf of )  
**ENGIE Power Limited** )

.....



## Schedule 1

### Definitions

**Affiliate** means in respect of a party, any entity which is the Subsidiary or Holding Company of that party or which is a Subsidiary of any such Holding Company in each case for the time being

**Business Day** means any day (other than a Saturday) on which commercial banks are open for business in the City of London

**Call Off Agreement** means clauses 1 (Definitions and interpretation) to 43 (Governing law and jurisdiction) set out in this document, its schedules (including their annexes), and all other documents attached to or otherwise incorporated into this Call Off Agreement, all as amended from time to time in accordance with the Call Off Agreement

**Call Off Commencement Date** means the date of execution of this Call Off Agreement by the last party to execute it

**Capital Costs** means any costs for which a capital receipt may be used in accordance with section 11 of the Local Government Act 2003

**Category A Site** has the meaning given in paragraph 2.1(a) of Schedule 2 (Site Call Off Process)

**Category B Site** has the meaning given in paragraph 2.1(b) of Schedule 2 (Site Call Off Process)

**Category C Site** has the meaning given in paragraph 2.1(c) of Schedule 2 (Site Call Off Process)

**Central Government Body** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency

**Change** has the meaning given in clause 14.1

**Change Control Procedure** means the process for managing Changes as set out in clause 14 (Change Control Procedure)

**Change of Control** means a change in the control of a person where Control is defined as in section 1124 of the Corporation Tax Act 2010

**Claim** means any actual or threatened claim, action, proceeding, demand or allegation

**Combined Authority** has the meaning given to it in recital (A) of this Call Off Agreement

**Competent Authority** means any government, quasi-governmental, statutory or regulatory, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency, stock exchange, police, customs or airport authority or any other competent authority or entity in any part of the world having responsibility for the regulation of the Services (or any part thereof) and / or any services related to or impacted by the Services, and / or having jurisdiction over the Supplier, the Combined Authority and / or the Partner Council

**Compliant Site Data** means the minimum data reporting requirements set by the Office for Low Emission Vehicles as set out in Appendix A of the Statement of Requirements

**Compliant Site Data Key Milestone** means the Key Milestone relating to the provision of Compliant Site Data

**Confidential Information** means all proprietary and confidential information of a party or Personal Data which by its very nature should be treated as confidential or which is designated as confidential by a party, including:

- (a) information relating directly or indirectly to a party's business, including details of trade secrets, know-how, plans, strategies, ideas, operations, compliance information, processes, methodologies and practices
- (b) information relating directly or indirectly to a party's customers, suppliers or business partners (or potential customers, suppliers or business partners)
- (c) works of authorship, products and materials written and prepared by or on behalf of a party, software, data, diagrams, charts, reports, designs, specifications, inventions and working papers or similar materials of whatever nature and on whatever media

**Consent** means any consent, authorisation, licence or approval (including any of the foregoing from a third party)

**Construction Act** means the Housing Grants, Construction and Regeneration Act 1996

**Contract Manager** means the person appointed by a party to be that party's point of contact in relation to the management of this Call Off Agreement as set out in clause 29 (Notices) or otherwise notified by either party to the other party from time to time

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR

**Crown** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf

**Crown Body** means any department, office or executive agency of the Crown

**Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call Off Agreement, and / or actual or potential loss and / or destruction of Personal Data in breach of this Call Off Agreement, including any Personal Data Breach

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data

**Data Protection Legislation** means all statutes, laws, secondary legislation and regulations pertaining to privacy, confidentiality and / or data protection of Personal Data or corporate data, including the GDPR, the LED and any applicable national implementing Relevant Law, the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426), the Regulation of Investigatory Powers Act 2000 and the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) and any relevant national laws implementing Directives 95/46/EC and 2002/58/EC

**Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data

**Discontinued Site** has the meaning given in paragraph 7.2 of Schedule 2 (Site Call Off Process)

**Dispute** means any dispute, conflict or disagreement arising out of or in connection with this Call Off Agreement

**EIRs** means the Environmental Information Regulations 2004, together with any guidance and / or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

**Equipment** means the equipment provided by the Supplier for use on or at a Site, including the EVCPs

**EVCP** means the electric vehicle charging points as specified in the Statement of Requirements

**EVCP Use** means (in respect of an EVCP on a Site) a single instance of the receipt of a charge by a User (so that, for the avoidance of doubt, a single User receiving a charge from an EVCP on two (2) separate instances shall constitute two (2) Uses), provided that an instance of the receipt of a charge of less than 1kWh shall not constitute an EVCP Use

**Exit Employee** has the meaning given to it in clause 10.5(a)

**Exit Event** means any expiry or termination of this Call Off Agreement for any reason or any transfer of any part of the Services to the Combined Authority and / or any Partner Council following the expiry or termination of this Call Off Agreement for any reason

**FOIA** means the Freedom of Information Act 2000 including any subordinate legislation made thereunder, together with any guidance and / or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation

**Force Majeure** means in relation to a party, circumstances beyond the reasonable control of that party including acts of God, acts of any governmental or supranational authority, war or national emergency, strikes and other industrial disputes (other than strikes or industrial disputes that are specific to the Supplier and affect Staff)

**Framework Agreement** has the meaning given to it in recital (E) of this Call Off Agreement

**GDPR** means the General Data Protection Regulation (Regulation (EU) 2016/679)

**Go Live Key Milestone** means the Key Milestone which signifies when the EVCP is installed and operational at the relevant Site and is ready for use by Users

**Go Live Key Milestone Date** means the Key Milestone Date for achieving the Go Live Key Milestone

**Good Industry Practice** means all relevant practices and professional standards that would be expected of a well managed expert service provider performing services substantially similar to the Services, to customers of the same nature and size as the Partner Council

**Grant Funding** means the Milestone Payments, comprising grant monies from the Office for Low Emission Vehicles advanced to the Combined Authority for the purpose of the Project and passed on to the Supplier (via the Partner Council) for the purposes of delivering the Project and any matched funding advanced by the Combined Authority to the Supplier (via the Partner Council) for the purposes of delivering the Project, as set out in or calculated in accordance with Schedule 6 (Grant Funding and Payments) and payable in accordance with clause 12 (Grant Funding and payment)

**Grant Funding Cap** has the meaning given in paragraph 3.4 of Schedule 6 (Grant Funding and Payment)

**Holding Company** has the meaning set out in section 1159 of the Companies Act 2006 and shall include parent and subsidiary undertakings as defined in section 1162 of the Companies Act 2006

**Insolvency Event** means one or more of the following events affecting the Supplier or a Holding Company of the Supplier (**Affected Party**):

- (a) the Affected Party becomes unable to pay its debts or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (assuming, if necessary, that section 123 aforesaid applies to the Affected Party)
- (b) a winding-up petition is presented in respect of the Affected Party
- (c) the Affected Party enters into liquidation either compulsory or voluntary (save for the purposes of a solvent reconstruction or amalgamation previously approved in writing by the Partner Council) or a provisional liquidator is appointed in respect of the Affected Party
- (d) notice of intention to appoint an administrator is served in respect of the Affected Party or an application for an administration order in respect of the Affected Party is filed at court
- (e) an administrator, administrative receiver, receiver or manager or similar officer is appointed in respect of the whole or any part of the Affected Party's assets
- (f) the Affected Party proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors
- (g) distress execution or other legal process is taken or steps are taken to enforce any encumbrance over all or part of the assets and / or undertaking of the Affected Party or
- (h) the Affected Party is subject to an event analogous to any of (a) to (g) above in any other jurisdiction

**Intellectual Property Rights** means patents (including rights in, and / or to, inventions); trade marks, service marks, trade names and business names (in each case including rights in goodwill attached

thereto); design rights; rights in and / or to internet domain names and website addresses; semiconductor topography rights; copyright (including future copyright); database rights; rights in and to confidential information (including know how and trade secrets); and all other intellectual property rights, in each case subsisting at any time in any part of the world (whether registered or unregistered) and (i) any pending applications or rights to apply for registrations of any of these rights that are capable of registration in any country or jurisdiction and (ii) any similar or analogous rights to any of these rights, whether arising or granted under the laws of England & Wales or in any other jurisdiction **Invitation to Tender** has the meaning given in recital (C) of this Call Off Agreement

**Key Milestone** means a key date or event relating to the performance of the Supplier's obligations under this Call Off Agreement as identified in Schedule 3 (Transition)

**Key Milestone Date** means, in relation to a Key Milestone, the date by which such Key Milestone is to be achieved as identified as such in the table at Schedule 3 (Transition) and, for a given Site, includes any Site Key Milestones

**Key Staff** means the members of Staff fulfilling the roles of Contract Manager and any dutyholder role under the Regulations

**Key Sub-contract** means a Sub-contract with a Key Sub-contractor

**Key Sub-contractor** means any Sub-contractor listed in Schedule 6 of the Framework Agreement that performs (or would perform) a critical role in the provision of all or any part of the goods and / or services under this Call Off Agreement

**LED** means Law Enforcement Directive (Directive (EU) 2016/680)

**Losses** means all losses, liabilities, damages, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties

**Material** means any document, information, data or other material (in whatever form) including any computer program or programming code (including source code and object code), firmware, documented methodology, process and procedure (including without limitation any reports, specifications, business rules and requirements, user manuals, user guides, operations manuals, training materials and instruction), and any other output (in whatever form)

**Milestone Payment** means the Grant Funding payable for a Site, which is split into Milestone Payment 1 and Milestone Payment 2

**Milestone Payment 1** has the meaning given in paragraph 3.5(a) of Schedule 6 (Grant Funding and Payments)

**Milestone Payment 2** has the meaning given in paragraph 3.5(b) of Schedule 6 (Grant Funding and Payments)

**Modify** means to add to, enhance, detract, reduce, change, replace, vary, deprive or improve.

**Modification** and **Modified** shall be construed accordingly

**New Materials** means all materials (including any specifications, designs, software, user guides and works) and any Modifications to such materials, conceived, designed, prepared or created by, for or on

behalf of the Supplier prior to or during the Term (whether directly or through third parties) pursuant to this Call Off Agreement or arising out of the provision of the Services

**Notification Date** has the meaning given to it in clause 10.5(a)

**OJEU Notice** has the meaning given in recital (B) of this Call Off Agreement

**Open Book Data** means complete and accurate financial and non-financial information which is sufficient to enable the Partner Council to verify how the Supplier intends to spend Grant Funding during the Term and term of any Call Off Agreements, including details and all assumptions relating to:

- (a) the Supplier's costs broken down against each good and / or service and / or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and / or services
- (b) operating expenditure relating to the provision of the goods and / or services including an analysis showing:
  - (i) the unit costs and quantity of goods and any other consumables and bought-in goods and services
  - (ii) manpower resources broken down into the number and grade/role of all Staff (free of any contingency) together with a list of agreed rates against each manpower grade
  - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's profit margin
- (c) overheads
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services
- (e) the Supplier's profit achieved over the Term and term of any Call Off Agreement and on an annual basis
- (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the goods and / or services, including the amount of money attributed to each risk and / or contingency

**Opportunity Period** has the meaning given to it in clause 10.5(b)

**Other Partner Council** means each of the City of Bradford Metropolitan District Council, the Borough Council of Calderdale, Kirklees Council and Wakefield Council and **Other Partner Councils** means any two or more of them.

**Partner Council Background Material** means Material other than New Material provided by, for or on behalf of the Partner Council to the Supplier in connection with the performance or receipt of the Services (whether or not it is incorporated in New Material or Supplier Material)

**Partner Council Confidential Information** means Confidential Information of the Partner Council which is disclosed to or otherwise learnt by the Supplier or any Sub-contractor in connection with this Call Off Agreement

**Partner Council Data** means data, in whatever form, owned or controlled by the Partner Council which is made available to the Supplier or is otherwise created, collated or collected by the Supplier in connection with this Call Off Agreement

**Partner Council Material** means New Material and Partner Council Background Material

**Partner Council Policies** means all policies, procedures and standards applicable to the performance of the Supplier's obligations under this Call Off Agreement as set out in Schedule 10 (Partner Council Policies) or otherwise notified to the Supplier by the Partner Council from time to time

**Permanent Suspension** means, in respect of a Site, a Suspension that prevails for a continuous period in excess of twenty eight (28) days

**Processing** has the meaning given under GDPR (and **Process**, **Processed** and **Processes** shall be construed accordingly)

**Project** has the meaning given in recital (A) of this Call Off Agreement

**Project Board** has the meaning given to it in the Template Call Off Agreement (and the Call Off Agreement)

**Project Plan** has the meaning given to it in the Framework Agreement

**Proposal** has the meaning given in clause 14.1

**Proposed Site** means a site that either party proposes for inclusion as part of the Project and, accordingly, submits to the Site Call Off Process

**Protected Data** means Personal Data received from or on behalf of the Partner Council, or otherwise obtained in connection with the performance of the Supplier's obligations under this Call Off Agreement, excluding Supplier Personal Data

**Protective Measures** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Protected Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Protected Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it

**Publicity and Marketing Plan** means the publicity and marketing plan to be submitted by the Supplier to the Combined Authority in accordance with the provisions of the Framework Agreement

**Quarter** means a period of three (3) months commencing on the Call Off Commencement Date and each consecutive period of three (3) months thereafter during the Term and **Quarterly** means once in each Quarter

**Quarterly Highlight Report** has the meaning given to it in paragraph 4.2 of Schedule 8 (Governance and Reporting)

**Records** has the meaning given to it in clause 9.1

**Regulations** has the meaning given to it in clause 28.2

**Relevant Law** means:

- (a) any statute, regulation, by law, ordinance or subordinate legislation which is in force for the time being to which a party is subject
- (b) the common law as applicable to the parties (or any one of them)
- (c) any binding court order, judgment or decree applicable to the parties (or any one of them) and
- (d) any applicable industry code, policy, guidance, standard or accreditation terms (i) enforceable by law which is in force for the time being, and / or (ii) stipulated by any regulatory authority to which the Partner Council is subject

in each case, for the time being

**Request for Information** means a request for information relating to this Call Off Agreement or the provision of the goods and / or services or an apparent request for such information under the FOIA or the EIRs

**Revenue Payment** means the amount calculated in accordance with paragraph 5.2 of Schedule 6 (Grant Funding and Payment)

**Satisfaction Certificate** means the certificate in the form set out in Annex 1 of Schedule 3 (Transition) to be sent by the Partner Council to the Supplier to verify that a Key Milestone has achieved the applicable Satisfaction Criteria

**Satisfaction Criteria** means any criteria set out in Schedule 3 (Transition) that must be satisfied and any deliverables that need to be provided by the Supplier for the achievement of a Key Milestone

**Satisfaction Notice** has the meaning given in clause 7.3

**Scheme** means the Scheme for Construction Contracts for the time being in place under the Construction Act

**Schedule of Rates** means the Supplier's schedule of rates as set out in Schedule 7 (Schedule of Rates)

**Service Failure** means the failure of the Supplier to achieve the Service Level that meets or exceeds the threshold set out in Schedule 4 (Service Levels)

**Service Level** means a level of performance or delivery of the Services (or part thereof) specified in Schedule 4 (Service Levels)

**Services** means all or, as the context requires, any of the services and / or obligations (including the Works) of the Supplier under this Call Off Agreement including the services set out in:

- (a) the Statement of Requirements and
- (b) Schedule 3 (Transition)



**Site** means a site that has obtained Stage 2 Approval from the Project Board and where an EVCP is (or is to be) installed and the Services are (or are to be) provided by the Supplier

**Site Agreement** means the agreement between the Supplier and the Partner Council or a third party in respect of a Site

**Site Agreement Minimum Requirements** means the minimum requirements for a Site Agreement as set out in Schedule 5 (Site Agreement Minimum Requirements)

**Site Call Off Period** has the meaning given in clause 5.1

**Site Call Off Process** means the process for identifying and ensuring the provision of the Services at Sites, which is set out in Schedule 2 (Site Call Off Process)

**Site Information** means the following details in relation to a proposed Site: name; address; post code; grid reference; map; freehold owner; hosting agreement; current capacity; DNO stage; DNO cost; traffic regulation order status; planning permission; red line plan; current parking controls; enforcement arrangements; street furniture; footfall; safety and Site access

**Site Key Milestones** means the specific Key Milestones applicable to each Site, to apply in addition to those Key Milestones set out in paragraph 1 of Schedule 3 (Transition)

**Site Specific Funding Cap** has the meaning given in paragraph 2.2 of Schedule 6 (Grant Funding and Payment)

**Staff** means any person engaged by the Supplier for the performance of or in connection with this Call Off Agreement including the Supplier's relevant employees and any agents and contractors and their respective employees

**Stage 1 Approval** means stage of the Site Call Off Process set out paragraph 3 of Schedule 2 (Site Call Off Process)

**Stage 2 Approval** means stage of the Site Call Off Process set out paragraph 4 of Schedule 2 (Site Call Off Process)

**Standard Funding Cap** means £22,500 ((twenty two thousand five hundred pounds) such amount being inclusive of value added tax, if any)

**Statement of Requirements** means the Combined Authority's requirements for the Project which were issued to the Supplier as part of the Invitation to Tender, a copy of which is set out in Schedule 2 of the Framework Agreement and is incorporated into this Call Off Agreement by reference pursuant to clause 1.2

**Sub-contract** means a contract between the Supplier and a Sub-contractor

**Sub-contractor** means any third party from time to time providing goods and / or services to the Supplier in connection with the performance of the Services

**Sub-processor** means any third party appointed by the Supplier (or a sub-processor of the Supplier) to receive the Protected Data for the purposes of Processing such Protected Data

**Subsidiary** has the meaning set out in section 1159 of the Companies Act 2006

**Supplier Confidential Information** means Confidential Information of the Supplier which is disclosed to or otherwise learnt by the Partner Council in connection with this Call Off Agreement (or its subject matter)

**Supplier Group** means the Supplier and its Affiliates

**Supplier Materials** means all materials created by for or on behalf of the Supplier otherwise than in connection with or in the course of the performance or receipt of the Services and required to be used by the Supplier and / or the Partner Council in connection with the performance or receipt of the Services

**Supplier Personal Data** means Personal Data received by or on behalf of the Supplier, or otherwise obtained in connection with the operation of the EVCPs

**Supplier Premises** means any premises owned or controlled by the Supplier (including premises owned or controlled by the Supplier's agents or contractors) at which or from which the Services are provided

**Suspension** means, in respect of a Site on Partner Council land, a suspension of access to the Site that is required by the Partner Council and that prevents Users from accessing the Site at all or that reduces the hours of access in a day to less than half of the hours for which that Site (pursuant to the terms of the relevant Site Agreement) is ordinarily accessible to Users

**Tariff Cap Amount** means £0.00per kWh

**Tariff Cap Period** means the period of three (3) years from the Commencement Date (of the Framework Agreement)

**Taxi** means a vehicle validly licensed by the relevant authority as a Hackney carriage or private hire vehicle

**Tender** means the Supplier's response to the Invitation to Tender set out in Schedule 9 of the Framework Agreement and which is incorporated into this Call Off Agreement by reference pursuant to clause 1.2

**Term** has the meaning given in clause 3 (Term)

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time, any other legislation enacted to give effect to Council Directive 23/2001 (as such directive is amended, consolidated or replaced from time to time) and / or any equivalent or similar legislation regarding the transfer of employees in respect of jurisdictions outside the European Union

**Transparency Information** means the Transparency Reports and the content of this Call Off Agreement, including any changes to this Call Off Agreement agreed from time to time, except for:

- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIRs, as determined by the Partner Council under clause 19.8; and
- (b) Confidential Information (subject to clause 19.3)

**Transparency Reports** means the information relating to the Services and performance of this Call Off Agreement which the Supplier is required to provide to the Partner Council under this Call Off Agreement, including the reports set out in paragraph 4 of Schedule 8 (Governance and Reporting)

**User** means a person who receives (or, as the context requires, intends to receive) a charge for any vehicle type from an EVCP on a Site

**Vacated Site Relocation Fee** means, where paragraph 8.2 of Schedule 2 (Site Call Off Process) applies in the event of a Site being vacated, an amount equal to one-third ( $\frac{1}{3}$ ) of the Milestone Payments that had been paid by the Partner Council for the vacated Site

**Variation** has the meaning given in clause 14.3

**Works** means the installation and / or construction works forming part of the Services to be carried out under this Call Off Agreement prior to successful completion of the Compliant Site Data Key Milestone

**Year** means a consecutive period of 12 calendar months from the Call Off Commencement Date and each subsequent consecutive period of 12 calendar months during the Term

## Schedule 2

### Site Call Off Process

#### 1 Introduction

- 1.1 This Schedule sets out the process for calling off the Sites at which the Services are to be provided.

#### 2 Site classification and Site due diligence

- 2.1 The Proposed Sites are split into the following categories:
- (a) those sites that were identified and notified to the Supplier at the date of the OJEU Notice, as listed in Part A of Schedule 11 (Category A Sites and Category B Sites) (**Category A Sites**);
  - (b) those sites that were identified and notified to the Supplier after the date of the OJEU Notice up until the Call Off Commencement Date, as listed in Part B of Schedule 11 (Category A Sites and Category B Sites) (**Category B Sites**); and
  - (c) those sites that will be identified during the Site Call Off Period and called off in accordance with this Site Call Off Process (**Category C Sites**).
- 2.2 With the exception of the differences set out in paragraph 2.1 above, Category A Sites, Category B Sites and Category C Sites are the same in all of the respects and, unless specified otherwise, the references to "Proposed Site" and (where applicable) "Site", when used in this Call Off Process shall refer to all Category A Sites, Category B Sites and Category C Sites.
- 2.3 Notwithstanding any other provision in this Schedule, the Supplier shall at all times remain responsible for carrying out its own due diligence for all Proposed Sites and Sites. Neither the Partner Council nor the Combined Authority will be responsible for the Supplier relying on any information given to the Supplier in connection with a Proposed Site or Site.
- 2.4 The Supplier shall not be excused from the performance of any of its obligations under this Call Off Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of, any:
- (a) misunderstanding of the requirements of the Combined Authority or the Partner Council as stated in the Invitation to Tender or elsewhere;
  - (b) failure by the Supplier to satisfy itself as to the accuracy and / or adequacy of the information supplied by for or on behalf of the Partner Council; and / or
  - (c) failure by the Supplier to undertake its own due diligence.

#### 3 Stage 1 Approval – Site identification and strategic fit assessment

- 3.1 This stage is for the identification of viable sites for inclusion as part of the Project, which shall involve an assessment of the Proposed Site's strategic fit to the aims of the Project and approval by the Project Board as set out below.

- 3.2 As at the Call Off Commencement Date, Category A Sites have already been identified as viable sites for inclusion as part of the Project and have received Stage 1 Approval from the Project Board.
- 3.3 For Category B Sites, the Supplier shall provide the Partner Council with any outstanding Site Information (not included in Schedule 11 (Category A Sites and Category B Sites)), following which the Partner Council shall refer the Proposed Site to the Project Board for approval, provided that neither party has exercised their right to reject pursuant to paragraph 3.7 below.
- 3.4 Either party may propose a Category C Site at any time during the Site Call Off Period for inclusion as part of the Project.
- 3.5 Where the Supplier proposes a Category C Site, the Supplier shall provide the Partner Council with the Site Information, following which the Partner Council shall refer the Proposed Site to the Project Board for approval, provided that neither party has exercised their right to reject pursuant to paragraph 3.7 below.
- 3.6 Where the Partner Council identifies a Category C Site:
- (a) the Partner Council shall inform the Supplier of the details of the Proposed Site;
  - (b) the Supplier shall provide the Partner Council , within such period of time as the Partner Council may reasonably specify, with the evidence required for Stage 1 Approval (being the Site Information),

following which the Partner Council may submit the Proposed Site to the Project Board for approval, provided that neither party has exercised their right to reject pursuant to paragraph 3.7 below.

- 3.7 Each party shall have the right to reject a Proposed Site at any time before the Proposed Site is referred to the Project Board for Stage 1 Approval. Where a Proposed Site is rejected by either party (acting reasonably) the Proposed Site shall not continue to progress through the Site Call Off Process, the Proposed Site shall not become a Site and, as such, shall not be funded by the Partner Council and the Supplier shall not be obliged to perform the Services at that Proposed Site.
- 3.8 After a Proposed Site has been referred by the Partner Council to the Project Board pursuant to paragraph 3.3, 3.5 or 3.6 above, the Project Board shall assess the evidence provided in respect of the Proposed Site to determine whether that Proposed Site shall be granted Stage 1 Approval in accordance with the provisions of Schedule 8 (Governance and Reporting).
- 3.9 The Partner Council shall notify the Supplier as soon as reasonably practicable after the determination of the Project Board whether or not Stage 1 Approval is granted.

#### **4 Stage 2 Approval – feasibility and value for money assessments**

- 4.1 The purpose of this stage is to assess whether the delivery of the Proposed Site is feasible given the Project aims and whether it represents good value for money for the Project.
- 4.2 After obtaining Stage 1 Approval from the Project Board, the Supplier shall either:

- (a) provide the Partner Council with the following, in which case the Partner Council shall submit the Proposed Site to the Project Board:
  - (i) all of the documents listed in the Satisfaction Criteria for Stage 2 Approval, specific to that Proposed Site;
  - (ii) details of any proposed Site Key Milestones for the Proposed Site including the Satisfaction Criteria for those Site Key Milestones;
  - (iii) Key Milestone Dates for each Key Milestone for that Proposed Site (including for each proposed Site Key Milestone);
  - (iv) the final form of Site Agreement for the Proposed Site that the Supplier will enter into on the grant of Stage 2 Approval; or
- (b) where circumstances have changed materially since Stage 1 Approval was granted, reject the Proposed Site, in which case the Proposed Site shall not continue to progress through the Site Call Off Process, the Proposed Site shall not become a Site and, as such, shall not be funded by the Partner Council and the Supplier shall not be obliged to perform the Services at that Proposed Site.

4.3 The Project Board shall assess the evidence provided in respect of a Proposed Site under paragraph 4.2(a) to determine whether that Proposed Site shall be granted Stage 2 Approval in accordance with the provisions of Schedule 8 (Governance and Reporting).

4.4 The Partner Council shall notify the Supplier as soon as reasonably practicable after the determination of the Project Board whether or not Stage 2 Approval is granted.

4.5 The parties acknowledge and agree that the Category A Sites have been approved by the Project Board on or before the Call Off Commencement Date and, for the purposes of this Call Off Agreement, shall be deemed to have been granted Stage 2 Approval on the Call Off Commencement Date.

## **5 Site and Site Agreement**

5.1 On the grant of Stage 2 Approval for any Proposed Site, that Proposed Site shall become a Site. The Supplier is obliged to provide the Services for each of the Sites, subject to paragraph 7.

5.2 As soon as reasonably practicable after the Partner Council's notification under paragraph 4.3 (or, in the case of the Category A Sites, after the Call Off Commencement Date), and in any event no later than ten (10) Business Days from such notification (or the Call Off Commencement Date, as applicable), the Supplier shall sign the Site Agreement in the form submitted under paragraph 4.2(a)(iv) and:

- (a) where the Site is on Partner Council land, return the signed Site Agreement for signature by the Partner Council; or
- (b) for any other Site, return a certified copy of the relevant Site Agreement duly signed (and, where necessary, validly executed and delivered) by all of the parties to it (subject to such redaction as the Supplier may reasonably consider to be necessary to protect the commercial sensitivity of any information contained therein) along with confirmation

from the Supplier that such Site Agreement complies with the applicable Site Agreement Minimum Requirements.

## **6 Project Board Proposed Site rejection**

6.1 Where a Proposed Site is rejected by the Project Board at Stage 1 Approval or Stage 2 Approval, the Proposed Site will not become a Site, and as such will not be funded by the Partner Council and there is no requirement for the Supplier to deliver the Services to the Proposed Site. Proposed Sites can be resubmitted to the Project Board for approval where the parties have prepared additional information for the Project Board to consider.

## **7 Discontinued Sites**

7.1 The Supplier shall not be obliged to provide the Services for a Site if, and from the date that, the relevant Site becomes a Discontinued Site, as determined by the Project Board in accordance with paragraph 7.3.

7.2 A **Discontinued Site** is a Site that:

- (a) cannot be delivered by the Supplier before the Framework Agreement expires;
- (b) cannot be delivered at all by the Supplier without excessive additional cost beyond that originally forecast by the Supplier as part of the Stage 2 Approval;
- (c) has or will become undeliverable due to a Force Majeure; and / or
- (d) is no longer a strategic fit for the Project, which shall be assessed in accordance with the criteria set out in the Statement of Requirements.

7.3 The Project Board shall consider the evidence submitted by the Supplier and / or the Partner Council to determine whether a Site meets the requirements set out in paragraph 7.2 above and therefore becomes a Discontinued Site.

7.4 Where the Supplier requests that a Site becomes a Discontinued Site, the Supplier shall provide full supporting evidence to the Partner Council, who shall present the evidence to the Project Board for a determination.

7.5 Where the Partner Council requests that a Site becomes a Discontinued Site, the Partner Council shall provide full supporting evidence to the Project Board and to the Supplier.

7.6 Where the Project Board determines that a Site is a Discontinued Site, the Supplier will bear all costs that have been incurred up to that point and will not be entitled to any Grant Funding in respect of that Site. Where Milestone Payments have already been paid in respect of a Site that becomes a Discontinued Site, the Supplier shall repay the Milestone payments in accordance with paragraph 4 of Schedule 6 (Grant Funding and Payments).

7.7 Where a Site meets the criteria for a Discontinued Site, the Partner Council may as an alternative to it becoming a Discontinued Site, and provided the Supplier agrees, retain the Site and:

- (a) agree a later date for any Key Milestone in respect of that Site; and / or

- (b) where the Site has a Site Specific Funding Cap that is lower than the Standard Funding Cap, agree to a higher funding cap, provided always that the Standard Funding Cap is not exceeded.

## **8 Suspensions**

8.1 In the event of a Permanent Suspension, the Supplier shall be entitled to vacate the relevant Site, by written notice to the Partner Council, either immediately or on such later date as may be stated in the notice.

8.2 Where the Supplier elects to vacate a Site under paragraph 8.1, or where the Partner Council requires the Supplier to vacate a Site on Partner Council land under the terms of the Site Agreement, then:

- (a) the Supplier shall not be obliged to provide the Services for that Site from the date of vacation;
- (b) the Site Agreement shall terminate on the date of vacation;
- (c) the Partner Council shall use reasonable endeavours to locate a Proposed Site that is similar and equivalent to the vacated Site in all material respects and shall identify that Proposed Site to the Supplier under paragraph 3.6; and
- (d) where:
  - (i) the Proposed Site identified under paragraph (c), or (if there is no such Proposed Site) another Proposed Site specifically identified as such by the Supplier under paragraph 3.5 that the parties (acting reasonably) agree to be similar and equivalent to the vacated Site in all material respects, becomes a new Site; and
  - (ii) the EVCP installed by the Supplier on that new Site under the terms of this Call Off Agreement is operational and available for use by the public on or before 31 March 2020,

then the Partner Council shall pay the Vacated Site Relocation Fee to the Supplier in respect of that one (1) new Site only, subject to demonstration by the Supplier that the Capital Costs incurred by the Supplier in respect of that new Site, by reference to the rates specified in the Schedule of Rates (where applicable), are equal to or exceed the amount of the Vacated Site Relocation Fee.

8.3 For the avoidance of doubt, the identification of a Proposed Site under paragraph 8.2(c) or 8.2(d)(i) shall be without prejudice to the operation of the Site Call Off Process.



**Schedule 3****Transition****1 Site Key Milestones**

The following table shall be completed by the Supplier as part of the Stage 2 Approval for each Site.

| <b>Key Milestone</b>  | <b>Satisfaction Criteria</b>   | <b>Partner Council Satisfaction Record</b> | <b>Key Milestone Date</b> |
|---|--|--|---------------------------|
| Stage 1 Approval<br>- Site Strategic Fit                            | Satisfactory evidence of the Site's strategic fit in accordance with the Project's aims as set out in the Statement of Requirements.<br><br>Timescales for completion of the Site Design Key Milestone<br><br>Details of preparatory steps required before Stage 2 Approval and access rights required plus demonstration of how those rights have been or will be secured             | Satisfaction Certificate                   | [insert]                  |
| Stage 2 Approval<br>- Site Design (feasibility and value for money) | Each of the following documents to be provided in accordance with the Statement of Requirements:<br><br>(a) Site Audit<br><br>(b) Site Design<br><br>(c) Site Final Cost Estimate and the Grant Funding Cap for the Site<br><br>(d) Site Consents and Permissions<br><br>(e) Site Delivery Milestones<br><br>(f) Site Risk & Method Statements<br><br>(g) final form of Site Agreement | Satisfaction Certificate                   | [insert]                  |
| Site Build & Operate (including Go Live Key Milestone)              | Signed Site Agreement<br><br>Site Build & Testing in accordance with the Project Testing Strategy  | Satisfaction Certificate                   | [insert]                  |
|   | Go Live Key Milestone<br><br>All previous Key Milestones satisfied   | Satisfaction Certificate                   | [insert]                  |

|   |  |                          |          |
|---|--|--------------------------|----------|
| Site Data (the Compliant Site Data Milestone) | Compliant Site Data provided for four (4) consecutive weeks from the Go Live Key Milestone Date<br><br>All previous Key Milestones satisfied | Satisfaction Certificate | [insert] |
|---|--|--------------------------|----------|

## Annex 1

### Satisfaction Certificate

To: Engie Power Ltd

From: Leeds City Council

[insert date]

Dear Sirs

#### **SATISFACTION CERTIFICATE**

We refer to the call off agreement between the Leeds City Council (**Partner Council**) and Engie Power Ltd (**Supplier**) dated *[insert Call Off Commencement Date dd/mm/yyyy]* relating to the provision of services to install and operate electric vehicle charging points (**Call Off Agreement**).

The definitions for any capitalised terms in this certificate are as set out in the Call Off Agreement.

We confirm that as the *[insert date]* the following [Deliverables/Milestones] relating to Table 1 in Schedule [3] of the Call Off Agreement have been completed:

*[insert details of the Deliverables/Milestones and / or reference numbers(s) from Table 1 in Schedule [3] of the Call Off Agreement]*

Yours faithfully

*[insert name] [insert position]* acting on behalf of

Leeds City Council

## 4

## Service Levels

| No | Service Level Name      | Service Level Description   | Service Level Threshold   | Service Failure Description  |
|----|-------------------------|---|---|--|
| 1  | Annual Inspection       | Inspection of the EVCP, feeder pillar, wiring, weather seal, circuit protection devices and earth continuity, Visual check for sticker and signage issues. Report from inspection to include description of the units checked including serial number, full address, date of installation and last test and pass or fail status with itemized fail list if the unit has failed. | Within 15 days of the anniversary of the Go Live Key Milestone for the relevant Site and each anniversary thereafter.   | Single failure to meet or exceed the Service Level Threshold           |
| 2  | Severity one incident   | Requires emergency isolation of the EVCP: investigate, call the emergency services and make safe. Carry out emergency rectification works.  | Resolution within two hours from notification   | Two failures to meet or exceed the Service Level Threshold             |
| 3  | Severity two incident   | Requires action to make the EVCP operational: Investigate and carry out operational rectification works.  | Resolution within 24 hours from notification  | Three failures to meet or exceed the Service Level Threshold in a year |
| 4  | Severity three incident | Requires cosmetic action in respect of the EVCP: carry out cosmetic rectification works.  | Resolution within 10 days from notification   | Five failures to meet or exceed the Service Level Threshold in a year  |
| 5  | User telephone helpline | First line response for User issues, whilst User is at EVCP: Answer calls and guide them through possible remedies that do not require an engineer at site.   | Seven days per week within working hours 08:00-18:00 with an out of hours (18:00-08:00) message service monitored every day during working hours with call back the next Business Day from the out of hours | Five failures to meet or exceed the Service Level Threshold in a year  |

| No | Service Level Name  | Service Level Description   | Service Level Threshold  | Service Failure Description   |
|----|---|---|--|---|
| 6  | User telephone helpline requiring engineer call out       | Second line response for EVCPs that are out of order that cannot be remedied by the first line response team; First line response team to raise a ticket for the EVCP engineers or call the emergency services, whichever is appropriate. | <p>Resolution immediately after receipt of call for severity one incidents.</p> <p>Resolution within 4 hours of the call for severity two incidents.</p> <p>Resolution within 8 hours of the call for severity three incidents.</p>                      | <p>Severity one – two failures to meet or exceed the Service Level Threshold in a year</p> <p>Severity two – three failures to meet or exceed the Service Level Threshold in a year</p> <p>Severity three – five failures to meet or exceed the Service Level Threshold in a year</p> |
| 7  | Ticketing system for equipment faults and error reporting | Ticketing system for issues to be available from the commissioning date of the first installation and used for all issues reported. Access or report to be provided to the User.  | Ticketing generation times as per helpline. Ticket to be followed up (after action from the engineer) with the User within 8 hours of severity one incidents, 48 hours of severity two incidents and up to 10 Business Days of severity three incidents. | <p>Severity one – two failures to meet or exceed the Service Level Threshold in a year</p> <p>Severity two – three failures to meet or exceed the Service Level Threshold in a year</p> <p>Severity three – five failures to meet or exceed the Service Level Threshold in a year</p> |

|   |                         |  |   |  |
|---|-------------------------|--|---|--|
| 9 | EVCP online reservation | EVCPs enabled to be booked online by Users | <p>EVCPs to be placed as reserved for the timeslot allocated immediately on confirmation from User.</p> <p>User reservation to be cancelled when approximately 15 minutes has elapsed from the start of the reservation period without the User accessing the EVCP.</p> | Three failures to meet or exceed the Service Level Threshold in a year |
|---|-------------------------|--|---|--|

## Site Agreement Minimum Requirements

### 1 Introduction

The Site Agreement for each Site must contain the applicable Site Agreement Minimum Requirements as set out in this Schedule.

### 2 Sites on Partner Council land

2.1 Where the Site is on land owned by the Partner Council, the Partner Council and the Supplier shall ensure that the Site Agreement shall include:

- (a) the right for the Supplier to occupy and / or access the Site to the extent necessary to deliver the Services;
- (b) the right for the Partner Council to require the Supplier to vacate any Partner Council land on reasonable notice;
- (c) the right for the Partner Council to require a Suspension on reasonable notice;
- (d) the ability for the Partner Council to determine in its absolute discretion whether or not to admit any Staff to any land owned by the Partner Council;
- (e) a break clause which allows the Partner Council to terminate the Site Agreement if the Supplier does not achieve the Go Live Key Milestone Date for the Site;
- (f) the option (but not the obligation) for the Partner Council to terminate the Site Agreement where a Force Majeure prevents the Supplier from performing the whole or a material part of the Services at the Site, as provided for in clause 27.3(b);
- (g) the option (but not the obligation) for either party to terminate the Site Agreement where the Site becomes a Discontinued Site;
- (h) termination of the Site Agreement under paragraph 8.2(b) of Schedule 2 (Site Call Off Process) where the Site is vacated;
- (i) the option (but not the obligation) for the Partner Council to terminate the Site Agreement where this Call Off Agreement terminates; and
- (j) provisions that apply on the termination of the Site Agreement and require the Supplier to remove any equipment and make good in respect of the Site.

### 3 Sites on third party land

3.1 Where the Site is on land owned by a third party, the Supplier shall ensure that the Site Agreement includes:

- (a) necessary provisions to allow the Supplier to provide the Services on the Site;

- (b) a licence to the Partner Council permitting access to the Site for the purpose of monitoring and enforcing the terms of this Call Off Agreement;
- (c) details in respect of the rights and responsibilities of the third party site owner in relation to the Site, the EVCPs and other equipment at the Site;
- (d) a term for the Site Agreement that is at least as long as the period for which the Supplier is required to provide Compliant Site Data to the Combined Authority under this Call Off Agreement; and
- (e) conditions on the location of EVCPs on the third party owned site, including suitable 24/7 access for any User and ensuring that the location of the EVCPs are in a well-lit, safe and secure location.



## Grant Funding and Payments

### 1 Grant Funding allocation

- 1.1 The anticipated Grant Funding that the Supplier is eligible to receive from the Partner Council under this Call Off Agreement is £902,532.00.
- 1.2 The allocation set out in paragraph 1.1 is indicative only. The allocation is not binding on the Partner Council and may be subject to change during the Term.
- 1.3 The allocation of the total Grant Funding for the Project across the Partner Councils will be reviewed by the Combined Authority on a quarterly basis and any changes to the indicative allocation (which will remain indicative and not binding on the Combined Authority or the relevant Partner Council) will be notified to the Supplier.

### 2 Grant Funding cap

- 2.1 The total Grant Funding that the Supplier is eligible to receive in respect of a Site is capped at the Standard Funding Cap.
- 2.2 Without prejudice to paragraph 2.1, as part of the Site Call Off Process, the Supplier may propose an alternative to the Standard Funding Cap for a particular Site where the Supplier is able to offer a more attractive capital funding proposal for the relevant Site (**Site Specific Funding Cap**). Where Site Specific Funding Cap is accepted by the Partner Council, the Site Specific Funding Cap shall apply in respect of that Site.

### 3 Milestone Payments of Grant Funding

- 3.1 Grant Funding shall only be paid to reimburse the Supplier's Capital Costs that are incurred by the Supplier in connection with the performance of the Services at a Site.
- 3.2 All Capital Costs claimed by the Supplier under this Call Off Agreement must be at (or below) the rates specified in the Schedule of Rates (where applicable).
- 3.3 The Grant Funding for a Site shall be paid by the Partner Council by way of Milestone Payments and in accordance with paragraph 3.9.
- 3.4 The Milestone Payments per Site shall be capped at the lower of:
  - (a) the Standard Funding Cap; and
  - (b) the Site Specific Funding Cap, (the **Grant Funding Cap**).
- 3.5 The Milestone Payments payable by the Partner Council per Site are as follows:
  - (a) Milestone Payment 1, being 10% of the Grant Funding Cap; and
  - (b) Milestone Payment 2, being the lower of:

- (i) 75% of the Capital Costs incurred by the Supplier in connection with the Services provided at the Site up to and including the date that the Supplier achieves the Compliant Site Data Key Milestone for the Site minus Milestone Payment 1 for the relevant Site; or
- (ii) the amount equal to the Grant Funding Cap minus Milestone Payment 1 for the relevant Site.

3.6 Without prejudice to any requirements under paragraph 3.9, when the Milestone Payments become due the Supplier shall:

- (a) submit a detailed breakdown of the out-turn Capital Costs incurred with full supporting evidence for such costs and a demonstration that such costs are at (or below) the rates specified in the Schedule of Rates; and
- (b) confirm the amount of the Milestone Payment the Supplier considers that it is eligible to receive.

3.7 The Supplier shall only claim Milestone Payments from the Partner Council until 31 March 2020. After 31 March 2020, the Supplier shall remain obliged to deliver the relevant Site but shall not be entitled to any Milestone Payments for that Site.

3.8 With the exception of the Milestone Payments, the Supplier shall be responsible for all costs associated with meeting the requirements of providing the Services at a Site and any other costs under this Call Off Agreement.

3.9 The part of this Call Off Agreement which requires the Supplier to provide the Works is a "construction contract" for the purposes of the Construction Act and for that purpose:

- (a) Milestone Payment 1 shall become due 5 days after the Site has obtained Stage 2 Approval;
- (b) Milestone Payment 2 shall become due 5 days after the successful completion of the Compliant Site Data Key Milestone;
- (c) Sections 8 to 10 of Part II of the Scheme shall apply to each Milestone Payment, subject to the following:
  - (i) the final date for payment of each instalment is 28 days after the relevant due date; and
  - (ii) any notice of intention to pay less than the sum applied for must be served not less than 2 days before the relevant final date for payment.

#### **4 Repayment of Grant Funding**

4.1 On receipt of a demand from OLEV (via the Partner Council) for the repayment of Milestone Payment 1 and / or Milestone Payment 2 for a Site, the Supplier shall repay such amounts in

full within the timescales specified or if no timescales are specified, within fourteen (14) days of receipt of the demand.

4.2 Without prejudice to the generality of paragraph 4.1 above, the Partner Council shall be entitled to require the repayment of Milestone Payment 1 and / or Milestone Payment 2 for each Site from the Supplier where:

- (a) the Partner Council becomes aware that the Grant Funding has been claimed by Supplier in respect of costs that do not meet the requirements set out in clause 12 (Grant Funding and payment) and Schedule 6 (Grant Funding and Payment);
- (b) the Supplier fails to submit Compliant Site Data report in accordance with paragraph 4.5 of Schedule 8 (Governance and Reporting);
- (c) the Site becomes a Discontinued Site;
- (d) the Partner Council decides not to fund a Site pursuant to clause 7.5;
- (e) for land owned by a third party, the EVCP is in the reasonable opinion of the Partner Council moved to an unsuitable location within three (3) years of the Go Live Key Milestone Date for the Site, where an unsuitable location shall be determined by reference to the strategic fit requirements for all Sites as set out in the Statement of Requirements;
- (f) the Partner Council terminates this Call Off Agreement in accordance with clause 25.1, provided that the Partner Council shall not require the repayment of Milestone Payments in respect of a Site where the Partner Council has received three (3) consecutive years' worth of Compliant Site Data reports from the Go Live Key Milestone Date for that Site, unless the Partner Council receives a demand for repayment as set out in paragraph 4.1 above.

4.3 Where Partner Council makes a demand for repayment under paragraph 4.2, the Supplier shall repay the amount stated by the Partner Council in full within the timescales specified or if no timescales are specified, within fourteen (14) days of receipt of the demand.

4.4 The provisions of paragraphs 1 to 4 (inclusive) of this Schedule 6 (Grant Funding and Payment) will survive the termination or expiry of this Call Off Agreement.

4.5 Where the Partner Council exercises its right to require repayment of Milestone Payments under this paragraph 4, the Partner Council shall serve notice on the Supplier with details of the Milestone Payments that are required to be repaid and the reasons for that requirement.

4.6 In this paragraph 4, the term "repay" means payment by the Supplier to the Partner Council of an amount equal to the relevant Milestone Payment (including, for the avoidance of doubt, the amount of any VAT that was included in that Milestone Payment).

## **5 Revenue Payments**

- 5.1 Within fourteen (14) Business Days of the end of each Quarter during the Term, the Supplier shall:
- (a) provide a Quarterly statement to the Partner Council of the total number of EVCP Uses across all Sites, broken down into:
    - (i) Sites that are on land owned by the Partner Council; and
    - (ii) Sites that are on land owned by a third party; and
  - (b) pay the Revenue Payment to the Partner Council.
- 5.2 The Revenue Payment for each Quarter shall be an amount equal to the total number of EVCP Uses across all of the Sites that are on land owned by the Partner Council in that Quarter multiplied by £0.30.
- 5.3 The Revenue Payment is exclusive of value added tax (if any).

## **6 Tariff Cap**

- 6.1 During the Tariff Cap Period:
- (a) the tariff charged to Users that are not Taxis shall not exceed the Tariff Cap Amount; and
  - (b) the tariff charged to Users that are Taxis shall not be more than **100%** of the tariff charged to Users that are not Taxis.

## Schedule 7 Schedule of Rates

**DEV371 ULEV Taxi Scheme  
Capital Funding Models Per Site**

| Capital Models                    | Funding Per Site                   |                                | Maximum Evaluation Score | Actual Evaluation Score |
|-----------------------------------|------------------------------------|--------------------------------|--------------------------|-------------------------|
|                                   | Max Public Sector Contribution (%) | Max Public Sector Cost Cap (£) |                          |                         |
| 1: Maximum public sector cost cap | 75%                                | £30,000                        |                          |                         |
| 2: Minimum public sector cost cap | 75%                                | £22,500                        |                          |                         |
| 3. Actual Supplier Offer          | 75%                                | £22,500                        | 100                      | 100                     |

**Notes**

1. Supplier to complete yellow box
2. Lower public sector contributions and / or costs caps may be agreed per site.
3. The supplier may enter a value less than £22,500 for the public sector cost cap, but will only receive the same maximum evaluation score as for a value of £22,500
4. **Actual evaluation score = Max Score x (30,000 - suppliers cost cap) / 7,500**

**DEV371 ULEV Taxi Scheme**  
**Operational Activities - Revenue Payments**

| <b>Activity</b>                   | <b>Public Sector</b> | <b>Supplier</b> |
|-----------------------------------|----------------------|-----------------|
| Charge point data provision       | £0                   | 100%            |
| User payment system               | £0                   | 100%            |
| User reservation system           | £0                   | 100%            |
| Electricity supply                | £0                   | 100%            |
| Publicity & Marketing             | £0                   | 100%            |
| User helpline                     | £0                   | 100%            |
| Enforcement of the Sites          | £0                   | 100%            |
| Reactive maintenance              | £0                   | 100%            |
| Planned maintenance               | £0                   | 100%            |
| Suspensions                       | £0                   | 100%            |
| All other operational expenditure | £0                   | 100%            |

**Notes**

1. The Supplier is responsible for all revenue payments
2. The Supplier is not required to make any entry on the sheet

**DEV371 ULEV Taxi Scheme**  
**Revenue Funding Model for EVCP Sites on partner council land**

| Revenue Item  | Supplier Value | Minimum Acceptable Value | Maximum Evaluation Score | Lowest Supplier Value | Highest Supplier Value | Actual Evaluation Score |
|---|----------------|--------------------------|--------------------------|-----------------------|------------------------|-------------------------|
| Single User Tariff per charge (cap for first 3 years) (£ per kWh) | £0             | Not Applicable           | 50                       |                       |                        | #DIV/0!                 |
| Taxi Tariff Discount (for first 3 years) (%)                      | £0             | 10.0%                    | 50                       |                       |                        | #DIV/0!                 |
| Payment to Partner Councils / Use (£)                             |                | £0.30                    |                          |                       |                        |                         |

\*

**Notes**

1. Supplier shall complete all yellow boxes
2. The Combined Authority shall complete all green boxes
3. The Supplier will be responsible for all revenue funding and income arrangements for all 3rd owned party sites.
4. The revenue share payment to partner councils (to apply after the third anniversary) is fixed at £0.30 per Use.
5. The minimum tariff discount for Taxis is 10%. (Any bid entered below this level will score 0).
- 6. Single User Tariff: Actual evaluation score = Max Score x (lowest tariff / supplier's tariff)**
- 7. Taxi Tariff Discount: Actual evaluation score = Max Score x (supplier's discount / highest discount)**

**DEV371 ULEV Taxi Scheme**  
**Schedule of Rates - Fixed Cost Items Only**

| Supplier Activities      |   | Sites    | Supplier Fixed Costs (£) | Maximum Evaluation Score | Lowest Supplier Fixed Costs | Actual Evaluation Score |
|--------------------------|---|----------|--------------------------|--------------------------|-----------------------------|-------------------------|
| 0. Preliminaries         |   |          |                          |                          |                             |                         |
| 6b. Site Build & Testing | a. Supply EVCP Equipment                  | Per Site |                          |                          |                             |                         |
|                          | b. Install EVCP Equipment                 |          |                          |                          |                             |                         |
|                          | c. EVCP Bay Markings                      |          |                          |                          |                             |                         |
|                          | d. EVCP Signage                           |          |                          |                          |                             |                         |
|                          | e. EVCP Bay Surfacing (if required)       |          |                          |                          |                             |                         |
|                          | f. Protective Barrier (if required)       |          |                          |                          |                             |                         |
|                          | g. Testing & Handover                     |          |                          |                          |                             |                         |
|                          | h. Electrical infrastructure & connection |          |                          |                          |                             |                         |
|                          | i. Other                                  |          |                          |                          |                             |                         |
| <b>TOTAL</b>             |   |          | <b>£22,500</b>           | <b>100</b>               |                             | <b>#DIV/0!</b>          |

**Notes**

- Supplier shall complete all yellow boxes
- The Combined Authority shall complete all green boxes
- DNO costs will vary by site, and are not included in the table above.
- Actual schedule of rates score = Max Score x (lowest total fixed costs / supplier's total fixed costs)**



## **Governance and Reporting**

### **1 Introduction**

- 1.1 This Schedule 8 sets out the governance structure for this Call Off Agreement, including the roles and responsibilities of the parties required to maintain an effective working relationship and to ensure the delivery of the Project.
- 1.2 The provisions set out in this Schedule 8 shall not prevent the Partner Council from convening additional meetings at any time provided that reasonable notice is given to the Supplier.
- 1.3 In addition to the governance structure, this Schedule 8 sets out the reporting requirements of the Supplier under this Call Off Agreement.

### **2 The Project Board**

- 2.1 The Project Board shall meet at least quarterly or at such other times as requested by the Combined Authority at the Combined Authority's offices (Wellington House, 40-50 Wellington Street, Leeds LS1 2DE) or such other location as the Combined Authority may reasonably request.
- 2.2 The Project Board shall perform the activities specified in the Framework Agreement in the manner specified in the Framework Agreement.
- 2.3 The Project Board shall:
- (a) assess the information presented to it by the Partner Council in respect of a Proposed Site as part of the Site Call Off Process;
  - (b) confirm or a reject a Site for Stage 1 Approval and Stage 2 Approval;
  - (c) review the evidence presented to it by the Partner Council for proposed Discontinued Sites and determine whether the Site meets the criteria for a Discontinued Site;
  - (d) where necessary, authorise any required variations to this Call Off Agreement which have been agreed between the Contract Managers, subject to clause 14 (Change Control Procedure); and
  - (e) assess the progress of the Services and the working relationship of the parties.
- 2.4 In readiness for each Project Board meeting and in accordance with paragraph 4.2 below, the Supplier shall prepare a Quarterly Highlight Report to the Partner Council and the Partner Council shall submit the Quarterly Highlight Report to the Project Board within a reasonable time before each Project Board meeting, unless otherwise agreed by the Project Board.

### **3 Contract Managers**

- 3.1 The Contract Managers or their nominated representatives shall be available, as required during 09:00 to 17:00 on Business Days or at such other times as agreed between the parties.

### **Schedule**

- 3.2 The Contract Managers shall meet at least monthly or at such intervals as required by the Partner Council at such location as determined by the Partner Council or as otherwise agreed between the parties to:
- (a) assess all matters relating to the progress of the Services;
  - (b) review the performance of the Supplier against the Service Levels; and
  - (c) review any Proposals raised under the Change Control Procedure in accordance with the requirements of the Change Control Procedure.

## **4 Transparency Reports**

- 4.1 The Supplier shall provide the reports set out below at no additional cost to the Partner Council.

### **Quarterly Highlight Report**

- 4.2 The Supplier shall provide highlight reports on a quarterly basis (**Quarterly Highlight Report**) showing:
- (a) a record of Services completed to date on the Project;
  - (b) Services which are yet to be completed for the Project;
  - (c) progress as against the Key Milestones, and
  - (d) potential risks or issues for each Site that may impact the Supplier's achievement of the Go Live Key Milestone Date for the Site.
- 4.3 In addition, the Supplier shall provide reports on a quarterly basis setting out:
- (a) details of any Changes for approval from the Project Board; and
  - (b) details of the success or failure of the Supplier in meeting the Service Levels across the Project.

### **Service Level Reports**

- 4.4 The Supplier shall provide Service Level reports at intervals and in a form agreed between the parties no less frequently than monthly and including as a minimum details of:
- (a) the Supplier's performance in relation to the Service Levels; and
  - (b) any material issues which are adversely impacting or are anticipated to adversely impact the performance of the Services.

### **Compliant Site Data Reports**

- 4.5 The Supplier shall provide reports with Compliant Site Data in respect of each Site on a weekly basis during the first four (4) consecutive weeks from the Go Live Key Milestone Date for the relevant Site and thereafter on a monthly basis for three (3) years from the date that the last

EVCP installed by the Supplier on a Site under the terms of this Call Off Agreement is operational at the relevant Site and available for use by the public.

## 9

**Data Processing Register**

- 1 The Supplier shall comply with any further written instructions given by the Combined Authority with respect to Processing of Protected Data by the Supplier under this Call Off Agreement.
- 2 Any such further instructions shall be incorporated into this Schedule 9.

| Description  | Details   |
|--|---|
| Subject matter of the Processing   | <i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>   |
| Duration of the Processing   | <i>[Clearly set out the duration of the processing including dates]</i>   |
| Nature and purposes of the Processing  | <p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p> |
| Type of Protected Data   | <i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>  |
| Categories of Data Subject   | <i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers, clients, suppliers, patients, students, pupils, members of the public, users of a particular website etc]</i>   |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>   |

**Schedule  
10**

**Partner Council Policies**

Relevant documentation can be found at [www.leeds.gov.uk](http://www.leeds.gov.uk)

Leeds City Council Information Governance Policy  
<https://www.leeds.gov.uk/docs/Information%20Governance.pdf>

Leeds City Council Combating Modern Day Slavery in Leeds – A strategy. February 2015  
<https://www.leeds.gov.uk/docs/LCC%20Modern%20Slavery%20Strategy.pdf>

Data Protection Policy Statement (2018) <https://www.leeds.gov.uk/docs/DataProtection.pdf>

Safeguarding policies and procedures. [www.leedslscb.org.uk](http://www.leedslscb.org.uk) and  
[www.leedssafeguardingadults.org.uk](http://www.leedssafeguardingadults.org.uk) .

## Schedule

11

## Category A Sites and Category B Sites

## Part A – Category A Sites

| Site name                    | Address   | Postcode | Grid Reference  | Site owner                          |
|------------------------------|---|----------|-----------------|-------------------------------------|
| Burley Road Car Park         | Burley Rd, Leeds                                | LS3 1JP  | 428751 : 434045 | Leeds City Council Parking Services |
| Leeds Beckett University     | Rose Bowl Surface Car Park<br>Portland Crescent | LS1 3HJ  | 429935 : 434183 | Leeds Beckett University            |
| Annie Street Car Park        | Morley  | LS27 8HQ | 426565 : 427754 | Leeds City Council Parking Services |
| The Cluster of Nuts Car Park | Hallfield Ln,<br>Wetherby, West Yorkshire       | LS22 6JL | 440610 : 448158 | Leeds City Council Parking Services |
| Rothwell, Marsh Street       | Marsh St,<br>Rothwell, Leeds                    | LS26 0AE | 434487 : 428059 | Leeds City Council Parking Services |

**Schedule**

|                            |                                |          |                 |                                     |
|----------------------------|--------------------------------|----------|-----------------|-------------------------------------|
| Pudsey Leisure Centre      | Market Pl, Pudsey              | LS28 7BE | 422333 : 433214 | Leeds City Council Parking Services |
| North Parade Car park      | N Parade, Otley                | LS21 1BA | 420268 : 445704 | Leeds City Council Parking Services |
| Garforth, Barley Hill Road | Main St, Garforth, Leeds       | LS25 1DS | 440346 : 433122 | Leeds City Council Parking Services |
| Boston Spa High street     | High street, Boston Spa, Leeds | LS23 6BW | 443054 : 445637 | Leeds City Council Parking Services |

**Part B – Category B Sites**

| Site name              | Address                   | Postcode | Grid Reference  | Site owner            |
|------------------------|---------------------------|----------|-----------------|-----------------------|
| Northside Retail Park, | Stonegate Rd, Leeds       | LS7 2TT  | 428768 : 437035 | 3 <sup>rd</sup> Party |
| Westside Retail Park,  | Leeds Rd, Guiseley, Leeds | LS20 9NE | 419589 : 441487 | 3 <sup>rd</sup> Party |

**Schedule**

|                               |   |          |                 |                       |
|-------------------------------|---|----------|-----------------|-----------------------|
| Armley Retail Park,           | Unit 2 Junction 1 Retail Park, Ring Road, Beeston, Leeds  | LS11 0BD | 427593 : 430897 | 3 <sup>rd</sup> Party |
| White Rose shopping centre    | Dewsbury Road   | LS11 8LU | 428288 : 429147 | 3 <sup>rd</sup> Party |
| McDonalds or Subway           | 7 Low Road, Hunslet, Leeds                                | LS10 1QR | 431415 : 431675 | 3 <sup>rd</sup> Party |
| McDonalds                     | Ring Rd, Leeds  | LS16 6EB | 425739 : 438095 | 3 <sup>rd</sup> Party |
| McDonalds                     | Cardigan Fields Leisure Park, 1 Cardigan Fields Rd, Leeds | LS4 2DG  | 427622 : 434416 | 3 <sup>rd</sup> Party |
| McDonalds                     | Elland Rd   | LS11 8BY | 428550 : 431387 | 3 <sup>rd</sup> Party |
| McDonalds                     | Easterly Rd, Leeds  | LS8 2RB  | 433234 : 436272 | 3 <sup>rd</sup> Party |
| Starbucks                     | White Rose (Drive Thru, 24hr)                             | LS11 8LU | 428340 : 428757 | 3 <sup>rd</sup> Party |
| Asda Stores Ltd               | Asda Superstore Killingbeck Drive Halton                  | LS14 6UF | 434612 : 434533 | 3 <sup>rd</sup> Party |
| Leeds Beckett University      | Headingley Campus   | LS16 5LF | 426966 : 436982 | 3 <sup>rd</sup> Party |
| John Charles Centre for Sport | Middleton Grove   | LS11 5DJ | 430259 : 429828 | 3 <sup>rd</sup> Party |

**Schedule**

|                                  |                               |          |                 |                                     |
|----------------------------------|-------------------------------|----------|-----------------|-------------------------------------|
| Rothwell Leisure Centre          | Wakefield Road, Oulton        | LS26 8EL | 436255 : 427647 | 3 <sup>rd</sup> Party               |
| Rothwell, Church Street          | Church Street Car Park, Leeds | LS26 0QC | 436545 : 429198 | 3 <sup>rd</sup> Party               |
| King Lane Park & Ride,           | King Lane, Leeds              | LS17 6BY | 429599 : 439293 | 3 <sup>rd</sup> Party               |
| Queensway Car Park               | Morley                        | LS27 9BX | 426172 : 427735 | 3 <sup>rd</sup> Party               |
| Holt Park Car park Leeds         | Holt Farm Rise, Leeds         | LS16 7SB | 425984 : 440137 | 3 <sup>rd</sup> Party               |
| Leeds Train Station              | New Station St                | LS1 4HT  | 429845 : 433318 | 3 <sup>rd</sup> Party               |
| Leeds Bradford Airport Taxi Rank | Whitehouse Ln, Yeadon, Leeds  | LS19 7TU | 422479 : 441556 | 3 <sup>rd</sup> Party               |
| Roundhay Park Clocktower         | 7 Oakwood Ave, Leeds          | LS8 1SD  | 432630 : 436892 | Leeds City Council Parking Services |