

DATED [ ] OF SEPTEMBER 2011

**BETTER ENERGY HOMES SCHEME**

**AGREEMENT**

between

**SUSTAINABLE ENERGY AUTHORITY OF IRELAND**

and

**NAME OF COUNTERPARTY**

**RELATING TO THE PROMOTION AND PROCESS MANAGEMENT OF APPLICATIONS  
UNDER THE BETTER ENERGY HOMES SCHEME**

**THIS AGREEMENT IS MADE AS OF THIS [ ] DAY OF SEPTEMBER 2011 BY AND BETWEEN**

**SUSTAINABLE ENERGY AUTHORITY OF IRELAND**, a statutory corporation established pursuant to Section 4 of the Sustainable Energy Act 2002, with a place of business at Wilton Park House, Wilton Place, Dublin 2 ("**SEAI**"); and

**COUNTERPARTY** a company incorporated in Ireland with company number [ ] whose registered office is at ("the COUNTERPARTY")

(each, a "**Party**" and collectively, the "**Parties**").

**RECITALS**

Whereas:

- A. SEAI currently operates the Better Energy Homes scheme ("the Scheme") whereby it provides financial support to eligible home owners undertaking energy efficiency upgrades and Building Energy Ratings for their homes.
- B. The COUNTERPARTY intends to promote the Scheme to homeowners and to act as the home owners' agent in their interactions with SEAI in conjunction with the Scheme on the terms and subject to the conditions set out in this Agreement.
- C. The COUNTERPARTY intends to provide a facility whereby the amount paid by the homeowner will equate to the cost of works less the grant amount (the "Payment Facility") where relevant.

Now, therefore, in consideration of the mutual promises and covenants contained herein, SEAI and COUNTERPARTY hereby agree as follows:

**1. DEFINITIONS**

1.1 In this Agreement, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"**Agreement**" means this agreement including its Recitals and Schedules as may be amended from time to time in accordance with its terms;

"**Applicable Laws**" mean all civil and criminal laws applicable to the provision of the Services including all domestic and European laws;

"**Associated Company**" means associated company as defined in Section 432 of the Taxes Consolidation Act 1997;

"**COUNTERPARTY**" means [Counterparty];

"**BER Assessor**" means a qualified energy assessor registered with the SEAI and engaged by the COUNTERPARTY or by a contractor or sub-contractor of the COUNTERPARTY to carry out BER assessments on behalf of the COUNTERPARTY inter alia, for COUNTERPARTY Customers;

**“COUNTERPARTY Customer”** means a home owner that appoints the COUNTERPARTY as his agent for the purposes of applying for Scheme Funding and, receiving such Funding pursuant to the COUNTERPARTY Customer Agreement;

**“COUNTERPARTY Customer Agreement”** means the agreement between the COUNTERPARTY and a COUNTERPARTY Customer in the form set out in Schedule [2] (which the COUNTERPARTY may amend from time to time subject to the COUNTERPARTY notifying SEAI of material changes in advance) whereby the COUNTERPARTY Customer appoints the COUNTERPARTY as its agent for the purposes of applying for Scheme Funding, overseeing the Funding application, pursuing and receiving payment of such Funding and engaging and managing the COUNTERPARTY Personnel to carry out the relevant Scheme Measures and other agreed works.

**Contractor**” means a contractor registered with SEAI to provide the Scheme measures. and engaged by the COUNTERPARTY or by a contractor or sub-contractor of the COUNTERPARTY to carry out Scheme Measures on behalf of COUNTERPARTY inter alia, for COUNTERPARTY Customers

**“COUNTERPARTY Intellectual Property”** means all Intellectual Property belonging to the COUNTERPARTY;

**“COUNTERPARTY Personnel”** means all employees, servants, agents, contractors and sub-contractors of who are involved in providing the Services from time to time for and on behalf of the COUNTERPARTY;

**“Charges”** mean the Charges which the COUNTERPARTY Customer agrees to pay COUNTERPARTY pursuant to the COUNTERPARTY Customer Agreement for carrying out the Scheme Measures;

**“Confidential Information”** means all information designated as such by the disclosing party, in writing, together with (i) the terms of this Agreement and all information which relates to the business, affairs, Services, developments, grantees or customers of the disclosing party or its Associated Companies and (ii) any other information which may reasonably be regarded as the confidential information of the disclosing party;

**“Default”** means any breach of the obligations of any Party set out in this Agreement (including, but not limited to fundamental breach, or breach of a fundamental term) or any negligence of either Party, its employees, agents, contractors or sub-contractors, in relation to, the subject matter of this Agreement, which causes loss or damage to another Party;

**“Dispute Resolution Procedure”** means the procedure set out in Clause [25 and Schedule [3];

**“Effective Date”** means [Date].

**“Force Majeure”** means any cause affecting the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, civil commotion, material damage, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the COUNTERPARTY or the COUNTERPARTY’s Personnel;

**“Funding”** means the funding which SEAI offers a COUNTERPARTY Customer pursuant to a grant offer notification which shall be sent to the COUNTERPARTY on behalf of the relevant COUNTERPARTY Customer and which shall be conditional on and subject to formal requirements in accordance with the Scheme Application Guide and the Scheme Terms and Conditions set out in Schedule [1];

**“Good Industry Practice”** means at any time, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced provider of services similar to the Services seeking in good faith to comply with contractual obligations and complying with Applicable Laws;

**“Scheme”** means the Better Energy Homes scheme described in the Scheme Application Form and Scheme Application Guide set out in Schedule [1];

**“Scheme Application Form”** means the Better Energy Homes Scheme Homeowner Application Form as may be amended, the current (as at the Effective Date) form of which is set out in Schedule 1, which the COUNTERPARTY will complete on behalf of the COUNTERPARTY Customers and submit to SEAI;

**“Scheme Application Guide”** means the Better Energy Homes Scheme Guide as more particularly set out in Schedule 1 which the COUNTERPARTY shall follow in completing the Scheme Application Forms on behalf of the COUNTERPARTY Customers and in relation to the Scheme generally;

**“Scheme Documents”** means the Scheme Application Form, the Scheme Application Guide and the Terms and Conditions, which are set out in the Schedule 1 to this Agreement;

**“Scheme Measures”** shall mean the SEAI funded measures for which a COUNTERPARTY Customer may (using the COUNTERPARTY as its agent) apply for a grant from SEAI, which are described in more detail in the Scheme Application Guide;

**“Terms and Conditions”** means the terms and conditions of the Scheme as may be amended from time to time which govern the application for and the awarding of Funding and which will bind the COUNTERPARTY Customer and SEAI, a copy of which as of the Effective Date is set out in Schedule 1;

**“Intellectual Property”** means any and all discoveries, inventions, concepts, ideas, patents, trade marks, service marks, registered designs, drawings, utility models, design rights, copyright (including the copyright in software in any code), database rights, trade secrets and other confidential information, technical information, technology, know-how, business ideas, methods, techniques, concepts, business or trade names, goodwill and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether registered or not, or capable of registration or not, and including all applications and the right to apply for any of the foregoing rights;

**“Liabilities”** means proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liabilities, awards, losses and demands;

**“Operations Document”** mean the document describing the processes and operations which sets out the respective tasks and obligations of each Party in relation to this Agreement and the performance by the COUNTERPARTY of the Services (and which shall contain an exit management strategy dealing with the consequences of termination of this Agreement) as same may be amended from time to time by agreement between the Parties and the current version (as at the Effective Date) of which is set out in Schedule [2];

**“Payment Facility”** has the meaning given to it in Recital C;

**“Relevant Records”** has the meaning given to it in clause 26.1;

**“Services”** means the COUNTERPARTY’s application for Scheme Funding on behalf of the COUNTERPARTY Customers, overseeing the Funding application in all respects and receiving such Funding in accordance with this Agreement and all of the COUNTERPARTY’s interactions with SEAI on behalf of the COUNTERPARTY Customers in relation to the activities as more particularly described in the Operations Document;

**“Standards”** means the Contractors Code of Practice and Standards and Specifications Guidelines published by SEAI on its website [www.seai.ie](http://www.seai.ie) in relation to the Scheme;

**“SEAI Data”** means documents or data processed by the COUNTERPARTY or the COUNTERPARTY Personnel on behalf of or supplied to SEAI by the COUNTERPARTY or the COUNTERPARTY Personnel in the COUNTERPARTY's capacity as data processor for SEAI and all data, information, documents, text, registers, lists, drawings, diagrams, images or sounds embodied in any electronic or tangible medium, inputted, made available or provided by SEAI to the COUNTERPARTY including the Scheme online services (and any passwords issued in relation to the Scheme online services) or otherwise processed by the COUNTERPARTY on behalf of SEAI in the course of providing the Services and including the Scheme Application Form, the Scheme Application Guide and the Scheme Terms and Conditions.

**“SEAI Intellectual Property”** means SEAI Data and all Intellectual Property belonging to SEAI;

**“SEAI Personnel”** means all employees, servants, agents, contractors and sub-contractors of SEAI (and all employees of any such agents, contractors and sub-contractors);

**“Term”** has the meaning given to it in Clause 3.1; and

- 1.2 Except as otherwise provided, any references in this Agreement to clauses, paragraphs, schedules and/or parties are references to the clauses, paragraphs, schedules and/or parties to this Agreement.
- 1.3 Where applicable references to the singular shall include the plural and vice versa and reference to any gender shall include other genders.
- 1.4 The division of this Agreement into Clauses and sub-Clauses, and the headings used in this Agreement, are for convenience only, and shall not affect the interpretation of this Agreement.

- 1.5 No modification of this Agreement (or any document entered into pursuant to or in connection with this Agreement) shall be valid unless it is in writing, signed by or on behalf of SEAI and the COUNTERPARTY. Unless expressly so agreed, no such modification or variation shall constitute or be construed as a general waiver of any provisions of this Agreement, nor shall it affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver, and the rights and obligations of the Parties under this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.
- 1.6 In this Agreement, unless otherwise specified, any reference to a document is a reference to the document as from time to time supplemented, modified or amended by agreement between SEAI and the COUNTERPARTY or by SEAI and/or the COUNTERPARTY where SEAI and/or the COUNTERPARTY has reserved the right to make modifications itself.
- 1.7 In this Agreement, unless otherwise specified, any reference to writing includes fax transmission and email.
- 1.8 A waiver by any party of any breach by any other party of any other terms, provisions or conditions of this Agreement or the acquiescence of such party and any act (whether by commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term, provision or condition or of any subsequent act contrary thereto.
- 1.9 This Agreement (including its schedules) represent the entire of the understanding of the Parties concerning the subject matter hereof and overrides and supersedes all prior promises, representations, undertakings, understandings, arrangements, agreements, side letters or heads of agreement concerning the same which are hereby revoked by mutual consent of the Parties.
- 1.10 The Agreement shall become effective only upon the same being executed by or on behalf of all Parties hereto.
- 1.11 In this Agreement, any phrase introduced by the words *include*, *including*, *includes* and *such as* are to be construed as illustrative, and shall not limit the sense of the words preceding those words.
- 1.12 In this Agreement, unless otherwise specified, any reference to a statute or statutory provision includes a reference to the statute or statutory provision as modified or re-enacted, or both, from time to time, and to any subordinate legislation made under it.
- 1.13 Any reference to a person shall be construed as a reference to any individual, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
- 1.14 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid. The Parties agree, in the

circumstances referred to in this Clause 1.14 to attempt in good faith to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

- 1.15 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any schedule, the provision in the body of this Agreement shall take precedence.

## **2. Precondition and Appointment as Agent**

- 2.1 The consent which SEAI is granting to the COUNTERPARTY in this clause and the other refinements to the typical operation of the Scheme which SEAI is making to facilitate the COUNTERPARTY carrying out its obligations under this Agreement are conditional on the COUNTERPARTY meeting the eligibility criteria as set out in the Counterpart Eligibility Application Form.
- 2.2 The consent granted in clause 2.3 and the COUNTERPARTY's right to operate the Services is contingent on the relevant home owner submitting its application for Funding in relation to the Scheme through the COUNTERPARTY and further to a visit from a member of the COUNTERPARTY Personnel.
- 2.3 In consideration of the obligations assumed by the COUNTERPARTY pursuant to this Agreement, SEAI hereby consents to the COUNTERPARTY acting as agent on behalf of the COUNTERPARTY Customers in relation to the Scheme generally and agrees to co-operate with the COUNTERPARTY in its provision of the Services. The COUNTERPARTY agrees to comply with this Agreement when performing the Services.
- 2.4 The COUNTERPARTY's entitlement to act as agent of its customers in providing the Services is not exclusive and nothing in this Agreement shall be construed as restricting SEAI from entering into arrangements similar to those described between the COUNTERPARTY and SEAI in this Agreement with other third parties. For the avoidance of doubt, SEAI acknowledges that when agreeing the terms of any such arrangements with third parties SEAI will observe the principle of non-discrimination.
- 2.5 SEAI's consent to the appointment of the COUNTERPARTY as agent for the COUNTERPARTY Customers shall commence on the Effective Date and, subject to the terms of this Agreement, shall continue for the Term.
- 2.6 The COUNTERPARTY warrants and undertakes to SEAI that:
- (a) it has full capacity and authority and all necessary consents to enter into and to perform this Agreement, and this Agreement is executed by a duly authorised representative of the COUNTERPARTY; and
  - (b) it shall discharge its obligations under this Agreement with reasonable skill, care and diligence, and in line with Good Industry Practice, and (without limiting the generality of this clause) in accordance with its own established internal procedures; and
  - (c) in providing the Services it will comply, at its cost and expense, with Applicable Laws.

### 3. **TERM**

- 3.1 This Agreement shall commence on the Effective Date and, unless extended in accordance with the provisions of Clause 3.2 below or otherwise terminated in accordance with law or the provisions of this Agreement, shall continue in force for a period 36 months from the Effective Date (the “**Term**”).
- 3.2 The Parties may agree to renew this Agreement for additional periods prior to the expiry of the Term or any extended term but this Agreement shall automatically expire unless an extension is agreed in writing by the Parties.
- 3.3

### 4. **SCHEME DOCUMENTS**

- 4.1 Each of the Parties recognises that this Agreement needs to be interpreted in light of the Scheme Documents and the Operations Document which form part of the overall agreement between the Parties. In the event of a conflict between one or more of the Scheme Documents and the Operations Document and the clauses of this Agreement, the clauses of this Agreement shall have priority.
- 4.2 For the avoidance of doubt, the COUNTERPARTY shall make the Scheme Application Guide available to the COUNTERPARTY Customers prior to any Funding application being submitted by the COUNTERPARTY on behalf of the COUNTERPARTY Customers to SEAI.
- 4.3 The COUNTERPARTY will be required to promote its particular schemes within the context of the brand developed for Better Energy – the National Upgrade Programme. Guidelines prepared by SEAI will specify the particular requirements and restrictions in respect of the brand. The Counterparty must adhere to brand guidelines and SEAI reserve the right to request advance sight of marketing materials and where guidelines are not adhered to, SEAI may direct withdrawal of the marketing materials.

### 5. **CHARGES AND FUNDING**

- 5.1 The COUNTERPARTY agrees that the COUNTERPARTY Customer Agreement shall be fully transparent in relation to the Charges and Funding so that the COUNTERPARTY Customer can see the amount of expenditure which it will incur under the COUNTERPARTY Customer Agreement, the instalments which it must make to pay the Charges and the amount of Funding which COUNTERPARTY will receive on the COUNTERPARTY Customer’s behalf pursuant to the COUNTERPARTY Customer Agreement. The COUNTERPARTY Customer must see and be made aware that the Funding will be (or to the extent already provided, has been) provided by SEAI under the Scheme.
- 5.2 In the event that Funding is not made available by SEAI after being initially offered and where such non-availability of funding is due to actions or omissions by the COUNTERPARTY (including the COUNTERPARTY Personnel) or, as the case may be, the COUNTERPARTY Customer, the risk in these circumstances shall be apportioned and the party responsible for the shortfall in Funding shall be as set out in the COUNTERPARTY Customer Agreement. The COUNTERPARTY shall be responsible for this non-availability of funding where such is due to the



COUNTERPARTY's Default or breach of the COUNTERPARTY Customer Agreement.

- 5.3 All Charges and Funding shall be denominated in euro. The Charges shall be inclusive of Value Added Tax and the COUNTERPARTY Customer Agreement shall clearly highlight the amount of VAT which will apply.
- 5.4 Except as expressly provided in this Agreement, nothing herein shall entitle the COUNTERPARTY to payment for the Services from SEAI beyond the scope of the Funding which is required to be made available to the COUNTERPARTY Customers in accordance with the Scheme Terms and Conditions.
- 5.5 SEAI shall not be responsible for reimbursement of the COUNTERPARTY expenses incurred in relation to this Agreement.
- 5.6 The COUNTERPARTY shall ensure that its contractors and sub-contractors are paid for the Scheme Measures properly performed by them, in accordance with the agreements in place between it, its contractors and/or sub-contractors. For the avoidance of doubt, nothing in this clause will oblige the COUNTERPARTY to pay its contractors and/or sub-contractors in the event that there is a dispute regarding the proper performance of the Scheme Measures.
- 5.7 SEAI shall give reasonable notice to the COUNTERPARTY in advance of the termination of or significant change in the Scheme or a cessation of funding for the Scheme upon becoming aware of same PROVIDED THAT such notification would not constitute discrimination by SEAI in favour of the COUNTERPARTY or the unlawful conferral of a competitive advantage on the COUNTERPARTY.

## 6. **CONFIDENTIALITY**

- 6.1 Each Party hereby undertakes that:
  - (a) it shall not use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement;
  - (b) it shall keep the other Party's Confidential Information confidential and shall not, subject to Clause 6.2, at any time disclose such Confidential Information to any third party without the prior written consent of the other party; and
  - (c) it shall take all necessary precautions to ensure that the other Party's Confidential Information is treated as confidential and not disclosed (save as aforesaid) other than for the purposes of this Agreement.
- 6.2 Each party may disclose the other party's Confidential Information to its employees, officers, contractors, sub-contractors, Authorised Representatives or advisers (together its Representatives which shall include SEAI Auditors) who need to know such information for the purposes of carrying out the party's obligations or availing of that Party's rights under this Agreement. Each party shall ensure that its Representatives to whom the other Party's Confidential Information is disclosed pursuant to or in connection with this Agreement, comply with this Clause 6.
- 6.3 The provisions of Clauses 6.1, 6.2 and 6.3 shall not apply to any information which:

- (a) is or becomes public knowledge, other than by breach of this Clause 6;
- (b) is in the possession of the receiving party without restriction in relation to disclosure, before the date of receipt from the disclosing party;
- (c) is independently developed, without access to the Confidential Information;
- (d) is received from a third party which has received it without restriction and who is under no obligation restricting its disclosure;
- (e) is required to be disclosed by law;
- (f) is required to be disclosed to the Parties' professional advisors, provided that such disclosure is to the extent necessary for such advisors to carry out their professional duties and upon conditions of confidentiality, no less onerous than set out in this Clause 6;
- (g) is released from the provisions of this Clause 6, by the prior written consent of the party to which it relates.

## **7. SERVICES AND UNDERTAKINGS**

- 7.1 The COUNTERPARTY will perform the Services with all due care, skill, diligence and professionalism and in accordance with the COUNTERPARTY Customer Agreement. The COUNTERPARTY shall ensure that the Services and its obligations under this Agreement will be discharged in compliance and consistent with the Scheme Documents, the COUNTERPARTY Customer Agreement, the Operations Document and this Agreement.
- 7.2 The COUNTERPARTY shall ensure that COUNTERPARTY Customers are treated fairly and in a transparent manner in relation to the COUNTERPARTY Customer Agreement.
- 7.3 In providing the Services and carrying out their respective obligations under this Agreement, the COUNTERPARTY and SEAI shall fully co-operate with each other in relation to any issues which arise pursuant to this Agreement.
- 7.4 The COUNTERPARTY shall use SEAI registered Contractors and BER Assessors to provide the Scheme Measures to the COUNTERPARTY Customers in relation to this Agreement and the COUNTERPARTY Customer Agreement. The COUNTERPARTY shall ensure to have appropriate procedures in place to deal with complaints from COUNTERPARTY Customers in relation to Scheme Measures carried out by the COUNTERPARTY. The COUNTERPARTY shall be responsible to COUNTERPARTY Customers for services rendered or goods supplied for the purposes of any Scheme Measure to the COUNTERPARTY Customers.
- 7.5 The COUNTERPARTY shall not through its actions, communications or omissions cause the COUNTERPARTY Customers or other potentially eligible Scheme grantees to consider or believe that they must use or deal with the COUNTERPARTY in order to secure Funding pursuant to the Scheme.
- 7.6 The COUNTERPARTY shall procure that the COUNTERPARTY Customer Agreement requires COUNTERPARTY Customers to comply at all times with the

Scheme Documents, including granting appropriate access and co-operation to any inspectors which SEAI may send to the COUNTERPARTY Customers' homes in relation to the Scheme.

- 7.7 The COUNTERPARTY shall not, in carrying out the Services or dealing with the public and/or the COUNTERPARTY Customers describe or represent itself as a partner, representative or agent of SEAI.
- 7.8 The COUNTERPARTY agrees that it shall only receive Funding on behalf of a COUNTERPARTY Customer pursuant to this Agreement in respect of the Scheme Measures described in the relevant Scheme grant offer issued to that COUNTERPARTY Customer.
- 7.9 The COUNTERPARTY agrees to set up and oversee a system of inspections and work quality audits (independent to any SEAI systems) which shall ensure that quality is controlled by the COUNTERPARTY Personnel. The COUNTERPARTY shall notify SEAI and keep SEAI notified of the methodology of this regime of audits and shall provide SEAI with copies of the results of these audits to SEAI on request.
- 7.10 The COUNTERPARTY agrees to set up and administer a detailed training programme for all the COUNTERPARTY Personnel which shall ensure that all such personnel are adequately trained to administer and perform the Services and discharge their obligations in relation to this Agreement and the COUNTERPARTY shall modify its training programme from time to time to take account of guidance issued from the SEAI in relation to such programme.
- 7.11 In discharging its obligations pursuant to this Agreement, the COUNTERPARTY shall at all times comply with the Operations Document.
- 7.12 The COUNTERPARTY's data security practices in relation to the processes described in this Agreement including the Operations Document are based on ISO 27001 and shall comply with Good Industry Practice.
- 7.13 In providing the Services, the COUNTERPARTY shall at all times comply with the Standards.
- 7.14 The COUNTERPARTY will ensure to forward all hard copy SEAI documentation relating to the provision of the Services to SEAI agreed archiving locations. The COUNTERPARTY will scan and upload all Declaration of Works ("**DOWs**") and any other relevant documentation onto the relevant application on the System. The COUNTERPARTY will file the hardcopy of the DOWs in Application ID Number sequence into a Box file which will be kept by the COUNTERPARTY for a period of 7 years and made available to SEAI upon request.

## **8. OBLIGATIONS OF SEAI**

- 8.1 In order to facilitate the COUNTERPARTY in providing the Services, SEAI agrees to provide the COUNTERPARTY and the COUNTERPARTY Personnel with personalised access to the Scheme online system for the COUNTERPARTY applicants as well as restricted access to the Scheme backend system to allow for initial DOW processing by the COUNTERPARTY personnel and its agents provided that the COUNTERPARTY and the COUNTERPARTY's Personnel comply with any written guidelines provided by SEAI in good time in relation to the access to and use of such online system.

- 8.2 SEAI does not warrant that access to the Scheme online system and the Scheme backend system will be uninterrupted or error free. Any outages that are planned to the systems will be communicated to the COUNTERPARTY. SEAI will inform the COUNTERPARTY immediately of any unplanned outage to the systems and will use best endeavours to resolve the issue.
- 8.3 In discharging its obligations pursuant to this Agreement, SEAI shall at all times comply with the Operations Document.
- 8.4 SEAI shall, where possible, provide the COUNTERPARTY with reasonable prior notice of any changes to the Scheme Application Guide, the Scheme Terms and Conditions and the Scheme Application Form where such changes will impact on the COUNTERPARTY's provision of the Services PROVIDED THAT such notification would not constitute discrimination by SEAI in favour of the COUNTERPARTY or the unlawful conferral of a competitive advantage on COUNTERPARTY.

## 9. **INTELLECTUAL PROPERTY**

- 9.1 All Intellectual Property in any artwork, designs, computer programs, systems, scheme plans, sketches, drawings, data, or any other work developed by, drawn by or created or adapted by the COUNTERPARTY which is derived from SEAI Intellectual Property, shall be the property of SEAI. The COUNTERPARTY shall immediately communicate the details of the development, creation or adaptation of such works to SEAI. At the request of SEAI and subject to SEAI indemnifying it against all resultant out-of-pocket costs and expenses which it might incur, the COUNTERPARTY shall further execute all documents and do all such other acts which may be reasonably necessary or desirable to register (where relevant) any Intellectual Property in such works in the name of SEAI and to vest the legal and beneficial ownership in any and all such Intellectual Property in SEAI. The COUNTERPARTY irrevocably appoints SEAI to be its attorney and on its behalf to sign execute and do any such act or thing necessary for the purpose of giving to SEAI or its nominee the full benefit of the provisions of this clause.
- 9.2 SEAI warrants that:
- (a) no text, SEAI Data, SEAI Confidential Information, information or technology (including software) which it provides or makes available to the COUNTERPARTY for use in the Services infringes the Intellectual Property of any third party and SEAI agrees to indemnify the COUNTERPARTY for all losses, claims, proceedings, expenses, liabilities and/or cost which the COUNTERPARTY may incur or suffer resulting from a breach of this warranty by SEAI; and
  - (b) SEAI owns, or has a valid licence to use, the data and software supplied or made available to the COUNTERPARTY for use in the Services and SEAI agrees to indemnify the COUNTERPARTY for all losses, claims, proceedings, expenses, liabilities and/or cost which the COUNTERPARTY may incur or suffer resulting from a breach of this warranty by SEAI.
- 9.3 Subject to clause 9.4 and clause 6, SEAI hereby grants to the COUNTERPARTY the limited, non-exclusive right and licence to copy, distribute, transmit, display, perform, create derivative works, and otherwise use SEAI Intellectual Property and Confidential Information solely for the purposes of, and to the extent

necessary for rendering the Services and the performance by the COUNTERPARTY of its obligations under this Agreement and the COUNTERPARTY Customer Agreements and for no other purposes whatsoever.

- 9.4 The COUNTERPARTY shall not use any SEAI trademarks, services marks or logos in any of its publicity or advertising campaigns (including its website) without SEAI approving such proposed use in writing in advance.
- 9.5 SEAI shall not use any COUNTERPARTY trademarks, services marks or logos in any of its publicity or advertising campaigns (including its website) without the COUNTERPARTY approving such proposed use in writing in advance.
- 9.6 The COUNTERPARTY warrants that the COUNTERPARTY owns all worldwide rights, title and interest in, or otherwise has the right to use, the Intellectual Property provided by the COUNTERPARTY and employed by the COUNTERPARTY in the delivery of the Services other than SEAI Intellectual Property (“**COUNTERPARTY Intellectual Property**”). All Intellectual Property in any artwork, designs, computer programs, systems, scheme plans, sketches, drawings, data, or any other work developed by, drawn by or created or adapted by the COUNTERPARTY or by SEAI which is derived from the COUNTERPARTY Intellectual Property whether in the course of performing their respective obligations under this Agreement or otherwise, shall be the property of the COUNTERPARTY. For the avoidance of doubt and subject to Clause 6, the COUNTERPARTY hereby grants a non-exclusive, limited license to SEAI and SEAI Personnel to use such COUNTERPARTY Intellectual Property and Confidential Information solely for the purposes of, and to the extent necessary for the performance by SEAI of its obligations under this Agreement.
- 9.7 No Party shall cause or permit anything which may damage or endanger the Intellectual Property or other property of the other Party, or such other Party’s title to it or assist or allow others to do so.

## 10. **DATA PROTECTION AND PRIVACY**

- 10.1 Any terms defined in the Data Protection Acts 1988 and 2003 (“**DPA**”) which are used in this Clause 10 shall have the meaning set out in Section 1 of the DPA.
- 10.2 To the extent that the COUNTERPARTY has a direct relationship with any customer (such as pursuant to aspects of the COUNTERPARTY Customer Agreement), independently of SEAI, the COUNTERPARTY shall act as a data controller in respect of personal data collected and processed in the context of that relationship. In performing the Services, the COUNTERPARTY shall also be regarded a data processor acting on the instructions of SEAI as a data controller. Accordingly, insofar as the COUNTERPARTY may be a data processor for the SEAI and insofar as the COUNTERPARTY Contractors and BER Assessors may be sub-processors of SEAI, the COUNTERPARTY warrants, represents and undertakes to SEAI as follows:
  - (a) it and the COUNTERPARTY Contractors and BER Assessors shall process any personal data relating to the Services only as instructed by SEAI under this Agreement and for no other purpose;
  - (b) it shall and shall procure that the COUNTERPARTY Contractors and BER Assessors comply with all of the obligations of a data processor

under the DPA, including those under Section 2(1)(d) and Section 2C of the DPA;

- (c) it will treat all personal data processed by it and the COUNTERPARTY Contractors and BER Assessors pursuant to this Agreement and concerning current, past or prospective SEAI grantees as the Confidential Information of SEAI;
- (d) it shall upon written request from SEAI from time to time inform SEAI of the measures it and the COUNTERPARTY Contractors and BER Assessors have taken to comply with the DPA and will at its own cost implement any further steps which SEAI may reasonably require to increase the security of personal data which it processes in accordance with this Agreement.
- (e) it shall store securely personal data processed by it, the COUNTERPARTY Contractors and COUNTERPARTY BER Assessors pursuant to this Agreement on secure systems with back-up copies of such data being made. It shall not transfer any such personal data outside of the European Economic Area unless such transfer is in accordance with the DPA and with the prior written consent of SEAI and shall procure that the COUNTERPARTY Contractors and BER Assessors comply with this requirement;
- (f) it shall not use data it holds on homes to interrogate the Scheme online system or the Scheme backend system in order to target sales to specific homes.

10.3 As a data controller, SEAI will comply with its obligations under the DPA and especially in relation to its obligations arising out of or relating to this Agreement.

10.4 Each of the COUNTERPARTY and SEAI shall indemnify the other against any costs, claims and expenses arising from any claims by a data subject and/or any data protection commissioner or regulator due to a failure by the indemnifying Party or any third party acting on behalf of that indemnifying Party to comply with: (i) the DPA insofar as relevant and applicable to the performance of their respective obligations under this Agreement; or (ii) the provisions of this Agreement to the extent that they relate to an obligation or restriction placed on such an indemnifying Party in respect of personal data or Confidential Information.

## 11. COMPLIANCE WITH RELEVANT SCHEME RULES

11.1 The COUNTERPARTY recognises and agrees that compliance with the rules which are described in the Scheme Documents, the COUNTERPARTY Customer Agreement and the Operations Document is an essential prerequisite to Funding being paid by SEAI.

## 12. INDEMNIFICATION

12.1 Subject always to Clause 14, the COUNTERPARTY shall indemnify and keep fully and effectively indemnified SEAI from and against Liabilities suffered or incurred by SEAI arising from or relating to any Default by the COUNTERPARTY.

12.2 Where a Party is indemnified under a specific provision of this Agreement, the indemnifying Party may elect to participate in the defence of or control the

settlement of any such claim at its own expense and no settlement will be reached without the approval of the indemnifying Party. Such participation will not relieve either Party of any of its obligations pursuant to this Agreement.

- 12.3 Any Party seeking the benefit of an indemnity hereunder or under any other provisions in this Agreement will provide the other Party with prompt written notice of each claim of which such Party is or becomes aware.

### 13. **INSURANCE**

- 13.1 The COUNTERPARTY undertakes and agrees for the benefit of the Authority to take out and maintain at its own expense insurance policies to cover the COUNTERPARTY's liabilities under this Agreement at all times for the duration of this Agreement and for such further time as is reasonable and/or may be required in the circumstances. The minimum levels are as follows:

Employers Liability Insurance - €13M any one event;  
Public/Product Liability Insurance - €6.5M any one accident;  
Professional Indemnity Insurance - €6.5M any one claim.

- 13.2 COUNTERPARTY shall produce for examination to SEAI, its servants or agents, evidence of the existence of such policies and their currency, within 14 days of being required to do so by SEAI.

### 14. **LIMITATION AND EXCLUSION OF LIABILITY**

- 14.1 The COUNTERPARTY shall accept the following liability for Defaults of the COUNTERPARTY and COUNTERPARTY Personnel as the case may be:

- (a) for death, personal injury, or fraud the COUNTERPARTY's liability shall not be subject to any limitation or exclusion;
- (b) for direct loss or damage, the COUNTERPARTY's liability shall not exceed €6,500,000.

- 14.2 The Parties expressly agree that should any limitation or provision contained in this Clause 14 be held to be invalid under any applicable statute or rule of law it shall, to that extent, be deemed omitted, but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded or limited such liability shall be subject to the other valid limitations and provisions set out herein.

- 14.3 Nothing in this Agreement shall prevent or restrict any Party from obtaining such injunctive or equitable relief, or remedy, as may be granted to it by an appropriate court.

- 14.4 Except as expressly provided by this Agreement, nothing in this Agreement creates, is intended to create, or shall be deemed to create, any benefits, rights, claims, obligations, or causes of action, in, to, or on behalf of, any party, or entity, other than the COUNTERPARTY and SEAI.

- 14.5 Nothing in this Clause 14 shall affect either Party's right to terminate this Agreement in accordance with this Agreement.

- 14.6 Despite any other provision of this Agreement, no Party shall be liable to another Party under or in connection with this Agreement whether for breach of contract,

negligence, breach of statutory duty, at equity or common law or for any other reason for any of the following even if advised of the possibility of same:

14.6.1 indirect, consequential, exemplary, special, punitive or incidental loss or damage.

## 15. TERMINATION

15.1 This Agreement shall continue for the Term unless terminated earlier in accordance with its terms.

15.2 Subject to the rights granted in clause 9.3 and 9.6 and the Operations Document, in the event of termination, each Party shall return to the other all data, property and Intellectual Property of the other in its possession or control.

15.3 This Agreement may be terminated in the following circumstances:

- (a) by either SEAI or the COUNTERPARTY with immediate effect if the other Party is in breach of any material obligation under this Agreement and, if the breach is capable of remedy, that Party has failed to remedy such breach within 15 days of receipt of written notice so to do;
- (b) by either SEAI or the COUNTERPARTY with immediate effect if the other Party is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent;
- (c) by either SEAI or the COUNTERPARTY by written notice where the Scheme terminates or significantly changes (including as a result of funding availability from Government);
- (d) by either SEAI or the COUNTERPARTY on one month's written notice to the other Party;
- (e) by SEAI in accordance with clause 2.1.

15.4 Subject to SEAI's reserved rights and funding provisions in the Scheme Terms and Conditions, it is agreed that, if and when this Agreement terminates for whatever reason, any Scheme grant offers extended by SEAI to and accepted by the COUNTERPARTY on behalf of the COUNTERPARTY Customers prior to the date of termination will be honoured by SEAI and payment made to the COUNTERPARTY, notwithstanding that the Agreement has been terminated

15.5 Subject to the rights granted in clauses 9.3 and 9.6 which may apply post termination, on termination of this Agreement, each Party shall procure that:

- (a) all documentation; and
- (b) all data, property and other material belonging to the other Party (and all media of any nature containing information and data belonging to that Party),

shall be delivered and returned in accordance with the exit management plan in the Operations Document.

15.6 If this Agreement is terminated in whole or in part for any reason, the Parties shall co-operate fully with each other to ensure an orderly winding down of the Services



in accordance with the exit management plan contained in the Operations Document.

15.7 Notwithstanding the termination of this Agreement for any reason, this Agreement shall continue in force to the extent necessary to give effect to any accrued rights, obligations or liabilities of the Parties and those of its provisions which expressly (such as those set out in the exit management plan in the Operations Document) or by implication (including clauses 9.3 and 9.6) have effect after termination.

## 16. **COUNTERPARTY PERSONNEL ENGAGED IN THE PROVISION OF THE SERVICES**

16.1 In the provision of the Services and carrying out its obligations pursuant to this Agreement, the COUNTERPARTY Personnel:

- (a) shall possess a degree of skill and experience appropriate to the tasks to which they are allotted; and
- (b) shall perform those tasks to the Standards.

## 17. **FORCE MAJEURE**

17.1 Neither Party will be liable for any failure or delay in its performance under this Agreement caused by any event of Force Majeure.

## 18. **ASSIGNMENT**

Neither Party may assign or transfer this Agreement or any rights under this Agreement without the prior written consent of the other Party.

## 19. **SUB-CONTRACTING**

The COUNTERPARTY shall not sub-contract or outsource the core processing of the Scheme grants to a third party (unless already agreed to by SEAI) without the prior written consent of SEAI which shall not be unreasonably withheld and where consent is granted, the COUNTERPARTY shall remain responsible for the provision of such processing to SEAI.

## 20. **NOTICES**

20.1 Any notice or communication required or permitted to be given hereunder must be in writing and may be delivered personally, by overnight courier, or by confirmed facsimile, in each case to the address of the receiving Party indicated below its signature, or at such other address as either Party may provide to the other by written notice. Written notice shall be deemed received the same day if sent by confirmed facsimile during normal business hours, or, if by overnight courier or personally, the day of actual delivery of such notice.

## 21. **RELATIONSHIP OF PARTIES**

21.1 COUNTERPARTY accepts and acknowledges that in providing the Services it is acting as an independent party vis a vis SEAI, that nothing in this Agreement shall constitute a partnership or joint venture nor establish a relationship of agency or employment between the Parties.

## 22. CHOICE OF LAW

- 22.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland and each of the Parties to this Agreement hereby submits to the exclusive jurisdiction of the Irish courts.

## 23. DISPUTE RESOLUTION PROCEDURE

- 23.1 The Parties shall use reasonable endeavours at all times to resolve any disputes at an operational level before escalating the dispute in accordance with Schedule [3].
- 23.2 Subject to the foregoing, either SEAI or the COUNTERPARTY may refer an issue for resolution as a formal dispute by serving upon the other Party written notification of the dispute setting out, without limitation, full details of the dispute.
- 23.3 Following referral pursuant to this Clause 23, the Parties shall comply with the provisions of Schedule [3] in relation to such dispute.

## 24. ACCESS AND AUDIT RIGHTS

- 24.1 With effect from the Effective Date, the COUNTERPARTY shall, during Office Opening Hours and subject to having received reasonable prior notice of any such audit make such specific parts of the COUNTERPARTY's records and IT systems as relate to the Scheme Measures in respect of which a COUNTERPARTY Customer applies for funding pursuant to the Scheme or any such funding application or the processing thereof (the "**Relevant Records**") available to an SEAI Auditor as are necessarily required to enable the SEAI Auditor to audit COUNTERPARTY's performance of this Agreement.
- 24.2 The COUNTERPARTY agrees to implement any recommendations resulting from such audits within a reasonable period as agreed with SEAI.

## 25. VARIATIONS

- 25.1 All changes to the provisions of this Agreement shall be agreed in writing between the parties and signed by the authorised representatives of each Party.

## 26. COUNTERPARTS

- 26.1 This Agreement may be executed in multiple counterparts, each of which is deemed an original, but all of which together constitute one and the same instrument.

## **SCHEDULE 1**

### **Scheme Documents**

[Insert Scheme Application Guide here]

[Insert Scheme Application Form here]

[Insert Terms and Conditions here]

**SCHEDULE 2**

[Insert COUNTERPARTY Customer Agreements here]

[Insert Operations Document here]

### **SCHEDULE 3**

[Insert Dispute Resolution Procedure here]

IN WITNESS WHEREOF, the Parties have caused their duly authorised representatives to execute and deliver this Agreement.

**COUNTERPARTY**

By: \_\_\_\_\_  
Name:  
Title:  
Address:  
COUNTERPARTY

**SUSTAINABLE ENERGY AUTHORITY OF IRELAND**

By: \_\_\_\_\_  
Name:  
Title:  
Address:  
SEAI  
Wilton Park House,  
Wilton Place,  
Dublin 2