



**BROMSGROVE DISTRICT COUNCIL**

**MEETING OF THE CABINET**

**WEDNESDAY 16TH FEBRUARY 2022, AT 6.00 P.M.**

**PARKSIDE SUITE - PARKSIDE**

**BACKGROUND PAPERS DOCUMENTATION**

The attached papers were specified as "to follow" on the Agenda previously distributed relating to the above mentioned meeting.

5. **Sustainable Warmth Funding** (Pages 1 - 16)

This report is due to be pre-scrutinised at the meeting of the Overview and Scrutiny Board scheduled to take place on Tuesday 15<sup>th</sup> February 2022. Any recommendations on this subject arising from this meeting will be reported for Cabinet's consideration in a supplementary pack.

K. DICKS  
Chief Executive

Parkside  
Market Street  
BROMSGROVE  
Worcestershire  
B61 8DA

7th February 2022

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GRANT LETTER

Bromsgrove District Council  
 Parkside Market Street  
 Bromsgrove  
 B61 8DA

**Sustainable warmth competition (the “Fund”)**  
**Grant recipient: Bromsgrove District Council (the “Council”)**

This grant is given to the Council by Midlands Energy Hub (“MEH”) administered by Nottingham City Council. The grant is part of Sustainable Warmth Competition originating from the Secretary of State for Business, Energy and Industrial Strategy (“BEIS”).

This letter is intended to ensure that the Grant is used for the purpose for which it is awarded and that the arrangement complies with the terms of the Fund.

The Grant

The Council shall be eligible to receive the following grant monies (the “Grant”) for the purposes set out in, and to be used strictly in accordance with the terms of this grant letter.

	Capital	Administrative Allocation (Admin and Ancillary)
<b>Home Upgrade Grant (HUG) Phase 1</b>	£190,000	£19,000
<b>Local Authority Delivery (LAD)Phase 3</b>	£200,000	£20,000

The period of this Grant is from the date of allocation until 31<sup>st</sup> March 2023 (the “Grant Period”) unless extended by MEH with permission from BEIS and HM Treasury as required.

The Grant is part of a capital funding scheme distribution by way of Section 31 of the Local Government Act 2003. The Grant must therefore be used in line with Section 11 of the Local Government 2003 and any regulations or subsidiary legislation made under that Section.

The Sustainable Warmth Competition will support energy efficiency measures and low carbon heating for off gas grid homes under HUG 1 and on gas grid homes through LAD 3, with an aim of upgrading homes to a target energy efficiency rating of EPC C, or EPC D where this is not possible.

The schemes is mix tenure but social housing is capped at 10% of total number for HUG 1 homes and 10% of the total number of homes for LAD 3.

Park homes are capped at 10% for HUG 1 of total number for HUG 1 homes and 10% of the total number of homes for LAD 3.

The proportion of D rated properties will be kept to 30% for HUG 1 total number of homes and 30% of the total number of homes for LAD 3.

Where the Grant includes capital funding, accounting standards permit, in certain circumstances, the capitalisation of costs incurred when delivering the capital assets for the fund (for example, administrative and ancillary). The Council will keep such costs incurred in delivery to below 10% of the HUG 1 total Grant and 10% of the LAD 3 total Grant independently provided by the Secretary of State. In all other cases capital funding must not be spent on revenue.

## Grant Conditions

### 1 BEIS Conditions

- 1.1 MEH has entered into a memorandum of understanding with BEIS in respect of the allocation and administration of the Fund. The key terms of this memorandum of understanding are included at Annex 1 (the “MOU”).
- 1.2 The Council undertakes that it shall not do, or allow to be done by its employees, personnel, contractors or representatives, anything which would put MEH in breach of the terms of the MOU.
- 1.3 If there are any conflicts between the terms of this letter and the terms of the MOU, the MOU shall take precedence.

### 2 Development Plan

- 2.1 The Council must submit a Development Plan for their project to MEH in form set out in Annex 2 (the “Development Plan”).
- 2.2 The Development Plan must be submitted to MEH by 28<sup>th</sup> February 2022.
- 2.3 The Development Plan must be submitted in accordance with the Midlands Energy Hub’s Guidance for Local Authorities and BEIS schemes guidance: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/993972/sustainable-warmth-competition-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/993972/sustainable-warmth-competition-guidance.pdf)
- 2.4 The Council when submitting their Development Plans must consider the following requirements:
  - a. Take a ‘worst-first’ approach when considering which homes are identified for upgrade. This means treating homes with the lowest EPC ratings as a priority (EPC Bands E,F,G rather than Band D homes).
  - b. That the LA follows a fabric-first approach when considering installation of measures, and any installations proposed should follow the recommendations of the Retrofit Co-ordinator. This means maximising the proportion of insulation and clean heat measures installed (measures including SWI, CWI and LI, and heat pumps) and limiting the proportion of other measures (measures such as Solar PV/thermal, windows and doors).
- 2.5 As part of the Development Plan, the Council will be responsible for carrying out or arranging for the reasonable ongoing due diligence, controlling, monitoring, reporting, as well as managing any specific cases of suspected or identified fraud.

## 3 Use of Grant

- 3.1 The Grant must be used in accordance with the terms of this letter and MEH reasonable instructions at all times.
- 3.2 The Grant Amount must only be used for the installation of 'Eligible Measures', in 'Eligible Households', by 'Eligible Contractors' each as defined in the MOU in Annex 1 and in accordance with the Midlands Energy Hub Guidance for Local Authorities.
- 3.3 The Grant Amount must be used to pay for the Eligible Measure in full, except where the property is owned by a landlord, where a 1/3 contribution should be secured from the landlord.
- 3.4 Eligible Expenditure is net of VAT recoverable by the Council from HM Revenue & Customs, and gross of irrecoverable VAT. This means that all grants are outside the scope of VAT.
- 3.5 Without prejudice to any other provisions, the Council will not use the Grant for the following purposes:
  - a. To fund the provision of any lending to third parties.
  - b. To replace funding for an existing project, including any staff costs for an existing project and any projects to deliver statutory obligations, although the Grant may be used to extend the geographical coverage, scope or scale of an existing project (and for additional staff costs attributable to the extension of the project).
  - c. Use for activities of a political or religious nature.
  - d. Use in respect of costs reimbursed or to be reimbursed by funding from public authorities or from the private sector.
  - e. Use in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money).
  - f. Use to cover interest payments (including service charge payments for finance leases).
  - g. Use for entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations).
  - h. Use to pay statutory fines, criminal fines or penalties.
  - i. Use to pay for eligible costs incurred before the date of this Grant letter:  
or
  - j. Use in respect of Value Added Tax (VAT) that the Authority is able to reclaim from HM Revenue and Customs.

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- 3.6 The Administrative Allocation may be used for administration and ancillary work including, but not limited to:
- 3.6.1 Project management, reporting and governance costs;
  - 3.6.2 Pre-installation EPCs to target households, verify eligibility and evidence improvements to the property;
  - 3.6.3 Building works to prepare for installation;
  - 3.6.4 Retrofit co-ordinator training costs; and
  - 3.6.5 Resident targeting, low-income verification and sign-up including lead generation and communication activities.
- 3.7 The Grant must be used within the Grant Period. The Council shall not spend any part of the Grant after the end of the Grant Period.
- 3.8 The Council shall not use the Grant to:
- 3.8.1 make any payment to members of its Members;
  - 3.8.2 purchase buildings or land;
  - 3.8.3 pay for any expenditure commitments of the Council entered into before the date of this letter; or
  - 3.8.4 to generate revenue or make a capital gain,
- unless this has been approved in writing by MEH.
- 3.9 The Council agrees to comply with all applicable Laws, statutes and regulations including but not limited to the Human Rights Act 1998, Modern Slavery Act and anti-bribery and corruption legislation.
- 3.10 The Council acknowledges throughout the Grant period of delivery that it should maintain its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Suppliers and Subcontractors anti-slavery and human trafficking provisions. If the Council becomes aware of any concerns that any part of the supply chain may have breached the Modern Slavery Act 2015 then this must be reported within the Risk Management procedure and the MEH Project team be informed instantly.
- 3.11 The Council acknowledges that when managing its supply chain it should expect its suppliers and subcontractors to meet the standards set out in the Government Supplier Code of Conduct published by the HM Government on best practise expectations referenced below:
- [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)
- 3.12 The Council acknowledges it should implement controls, considering the following options listed when doing so and MEH should retain the right to

inspect the robustness of controls to reduce the risk of fraud where possible, considering the following options when doing so:

- a. Implementing strategies regarding Counter Fraud, Bribery and Corruption.
- b. Staff awareness through training and educating all employees on fraud risk and appropriate action to take if fraud is suspected.
- c. Aiming to design fraud out of the Council's stages of the grant process.
- d. Through regular risk assessments throughout the Projects time frame.
- e. The use of the Council's Audit officer to proactively look for the potential fraud.
- f. Appropriate whistleblowing arrangements to support the reporting of fraud.
- g. Regular site visits regarding oversight of the delivery implementation.

## 4 Payment of Grant

4.1 The Grant shall be paid in the following way:

4.1.1 10% of the total Grant Amount shall be paid to the Council within 30 days following the receipt by MEH of the signed copy of this letter. This is intended to be used to support any required survey works and can be used as capitalisation;

4.1.2 10% shall be released within 30 days of approval by MEH of the Council's Development Plan and any pre-conditions have been met to MEH's satisfaction;

4.1.3 Additional 20% quarterly payments will be released within 30 days of the 1<sup>st</sup> April, 1<sup>st</sup> July, 1<sup>st</sup> Oct and 1<sup>st</sup> Jan following receipt by MEH of ongoing timeline monthly reporting and maintaining 80% of their delivery profile provided in the Development Plan.

4.2 No Grant shall be paid unless and until MEH has received the funding from BEIS and is satisfied that such payment will be used for proper purses in accordance with this letter.

4.3 The amount of the Grant shall not be increased in the event of any overspend by the Council.

4.4 Any unspent Grant monies shall be returned to MEH within 25 calendar days of the end of the Grant Period unless otherwise agreed between the parties. Delays in return of Grant monies shall be subject to interest in accordance with Clause 8.3-8.5 below.

- 4.5 Any liabilities arising at the end of the Grant Period including any redundancy liabilities for staff employed by the Council to deliver the Grant must be managed and paid for by the Council using the Administrative Allocation or other resources of the Council. There will be no additional funding available from MEH for this purpose.
- 4.6 The Council shall promptly repay to MEH any money incorrectly paid to it either as a result of administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Grant monies have been paid in error in under this letter.
- 4.7 The Council will ensure that where it uses third-party delivery partners the funding provided is paid within 30 days of receiving a valid undisputed invoice from that contractor, or from receiving an acceptable proposal from a public body. The Council will ensure that these payment timelines are included within any sub-contractors of the third parties.

## 5 Adjustment of Grant

- 5.1 If the Council does not achieve the profiled delivery as set out in the Development Plan, MEH may request a recovery plan detailing the interventions required to recover the project(s).
- 5.2 If delivery does not subsequently improve over the next quarter, MEH may reduce the total Grant available to the Council commensurate with the percentage of profiled delivery achieved or projected to be achievable by the Council.
- 5.3 If the Council delivers in excess of the profiled delivery, MEH may increase the Grant, entirely at their own discretion. MEH shall not be obliged to increase the Grant in any circumstances.

## 6 Liability

- 6.1 MEH accepts no liability for any consequences, whether direct or indirect, that may come about from the use of the Grant or from withdrawal of the Grant. The Council shall indemnify and hold harmless MEH, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Council in relation to the Grant, the non-fulfilment of obligations of the Council under this letter or its obligations to third parties.
- 6.2 Subject to clause 6.1, MEH's liability under this letter is limited to the payment of the Grant.
- 6.3 The Council shall effect and maintain adequate insurance policies at all times with a reputable insurance company in respect of all risks which may be incurred by the Council.
- 6.4 The Required Insurances referred to above include (but are not limited to):
  - (a) Officials Indemnity : £1m
  - (b) Fidelity Guarantee : £1m



## 7 Other Funding

- 7.1 The Grant must not be used to part fund a single measure with any other government schemes. However different measures can be fully funded from different government schemes in the same property. For example, a Council may use Sustainable Warmth funding (either HUG 1 or LAD3 as appropriate) to cover the costs of installing External Wall Insulation and Energy Company Obligation (ECO) funding to pay for loft insulation.
- 7.2 The Grant may be blended with third party funding or the Council's other budgets to deliver additional support.
- 7.3 The Grant may only be combined with Domestic Renewable Heating Incentive payments. The Sustainable Warmth Competition is grant funding from public funds, therefore, for the purposes of the Renewable Heat Incentive (RHI) any funding from Sustainable Warmth Competition for low carbon heating measures would be deducted from RHI's payments as per the RHI rules on grant funding. Local authorities should be aware of RHI rules, including that to be eligible for RHI the applicant must have made some financial contribution toward the cost of purchasing or installing their heating system.

## 8 Clawback

- 8.1 MEH's intention is that the Grant will be paid to the Council in full. However, without prejudice to MEH's other rights and remedies, MEH may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant, together with interest (in accordance with Clause 8.4 below)if:
  - 8.1.1 The Grant it used other than in accordance with the terms of this letter;
  - 8.1.2 The Council has not submitted a Development Plan and has not spent the Grant monies already paid to it;
  - 8.1.3 The Council fails to comply with the reporting requirements;
  - 8.1.4 BEIS withhold or suspend payment under the MOU, or terminate the MOU for any reason;
  - 8.1.5 BEIS exercise clawback provisions within the MOU;
  - 8.1.6 MEH considers that the Council has not made satisfactory progress with the delivery of the Grant;
  - 8.1.7 The Council is, in the opinion of MEH, delivering the Grant in a negligent manner;
  - 8.1.8 The Council provider MEH with any materially misleading or inaccurate information;
  - 8.1.9 Any member, employee or volunteer of the Council has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Fund or (b) taken any actions which, in the

reasonable opinion of MEH, bring or are likely to bring the MEH's name or reputation into disrepute;

- 8.1.10 The Council fails to comply with any of the terms and conditions set out in this letter and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
- 8.2 Should the Council be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Grant or compliance with this letter it will notify MEH as soon as possible so that, if possible, and without creating any legal obligation, MEH will have an opportunity to provide assistance in resolving the problem or to take action to protect MEH and the Grant monies.
- 8.3 A decision by MEH ask the Council to repay the Grant will be communicated by letter, and the Council will make that repayment within 25 days of the date of that letter or within any later reasonable timeframe agreed by MEH in writing.
- 8.4 Where MEH requests repayment, interest will be calculated from the date of the Grant payment, in accordance with:
  - a. the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
  - b. any other rate required by law in the circumstances if it is higher.
- 8.5 Where the Council does not make the relevant payment within the timeframe specified in paragraph 4.4 or 8.3 above, further interest on the outstanding sum (inclusive of interest already charged under paragraph 8.4 will accrue, after that deadline, at the statutory rate of interest under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if it is higher).

## 9 Warranties

- 9.1 The Council warrants, undertakes and agrees that:
  - 9.1.1 it has all necessary resources, approvals, powers and expertise to deliver the Grant;
  - 9.1.2 it has not committed, nor shall it commit, any Prohibited Act;
  - 9.1.3 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify MEH immediately of any significant departure from such legislation, codes or recommendations;
  - 9.1.4 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Project;

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- 9.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
  - 9.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
  - 9.1.7 all financial and other information concerning the Council which has been disclosed to MEH is to the best of its knowledge and belief, true and accurate;
  - 9.1.8 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;
  - 9.1.9 it is not aware of anything in its own affairs, which it has not disclosed to MEH or any of MEH's advisers, which might reasonably have influenced the decision of MEH to make the Grant on the terms contained in this letter; and
  - 9.1.10 since the date of its last accounts there has been no material change in its financial position or prospects.
- 9.2 For the purposes of this letter a 'Prohibited Act' is:
- 9.2.1 offering, giving or agreeing to give to any servant of MEH any gift or consideration of any kind as an inducement or reward for:
    - (a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this letter or any other contract with MEH; or
    - (b) showing or not showing favour or disfavour to any person in relation to this letter or any other contract with MEH;
  - 9.2.2 entering into this letter or any other contract with MEH where a commission has been paid or has been agreed to be paid by the Council or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to MEH;
    - (a) committing any offence:
    - (b) under the Bribery Act;
    - (c) under legislation creating offences in respect of fraudulent acts; or
    - (d) at common law in respect of fraudulent acts in relation to this letter or any other contract with MEH; or
    - (e) defrauding or attempting to defraud or conspiring to defraud MEH.

## 10 Reporting/Monitoring

- 10.1 The Council shall closely monitor the delivery and success of the Grant throughout the Grant Period to ensure that the aims and objectives of this letter are being adhered to.
- 10.2 The Council and relevant area customer journey support will have a regular monthly meeting to discuss the progress of delivery of the Development Plan and any issues arising from the Monthly Report. Attendance will be required to release the staged quarterly payments.
- 10.3 On a monthly basis, the Authority will provide a completed report for LAD 3 and HUG 1 to the MEH Project Team covering the period from the first to last day of the month and provided on or before the 5th working day of the subsequent month (the “Monthly Report”). For example, the report covering the delivery period of 1 - 31 January 2022 will be required to be submitted by the 5th working day of February 2022. The Councils first report is required the 5th working day of subsequent month the award letter is signed.
- 10.4 The Council shall use the [PERCI +] to log all uses of the Grant and shall provide all information as required through that system to enable MEH to report under the MOU.
- 10.5 The Council shall receive licences to use [PERCI +] free of charge as part of the Grant arrangement.
- 10.6 Notwithstanding paragraphs 10.4 and 10.5, the Council shall provide any support requested by MEH to allow MEH to comply with the reporting requirements under the MOU, in such format and at such frequency as requested by MEH.
- 10.7 Where the Council has obtained funding from a third party or combined the Grant with its own funds in accordance with this letter, the Council shall include the amount of such funding in its financial reports together with details of what that funding has been used for. For the avoidance of doubt, where the Authority provides any funding to third parties for activities undertaken during the Funding Period, it will ensure that the provisions within this Grant Letter are included in any arrangement with these third parties.
- 10.8 Within 1 month of receiving the Grant, the Council shall provide MEH with a risk register and insurance review in the format provided by MEH. The Council shall, amongst others, address the health and safety of its staff in the risk register.
- 10.9 The Council shall on request provide MEH with such further information, explanations and documents as MEH may reasonably require in order for it to establish that the Grant has been used properly in accordance with this letter.
- 10.10 The Council and MEH will have a quarterly meeting to discuss the progress of the Development plan and any issues arising from the Monthly Report. Attendance will be required to release to the staged quarterly payments.

- 10.11 The Council shall permit any person authorised by MEH such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Council's fulfilment of the conditions of this letter and shall, if so required, provide appropriate oral or written explanations from them.
- 10.12 The Council shall provide MEH with a final report on completion of the Grant Period which shall confirm each installation of Eligible Measures and that the Grant has been successfully and properly applied in accordance with this letter.

## 11 Appointment of Eligible Contractors

- 11.1 MEH has set up a dynamic purchasing system compliant with the Public Contract Regulations 2015 which shall admit only Eligible Contractors.
- 11.2 The Council is encouraged to use this dynamic purchasing system to appoint Eligible Contractors to deliver the Eligible Measures.
- 11.3 The Council shall retain all responsibility for ensuring the Eligible Contractors are properly appointed in accordance with all relevant laws, including the Public Contract Regulations 2015.
- 11.4 The Council shall ensure that all contractors they appoint are appropriately skilled and experienced to undertake the relevant Eligible Measures.
- 11.5 The Council shall obtain adequate insurance and professional details from the proposed contractor to ensure the proposed contractor is an Eligible Contractor.

## 12 Audit and records

- 12.1 The Grant shall be shown in the Council's accounts as a restricted fund and shall not be included under general funds.
- 12.2 The Council shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant monies received by it.
- 12.3 The Council will keep financial records such as that on expenditure of the Grant readily identifiable, and if or when MEH, BEIS or other government department requests access to financial or other records for the purposes of an audit of the accounts, the Council will co-operate fully
- 12.4 The Council shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Grant for a period of at least six years following receipt of any Grant monies to which they relate. MEH shall have the right to review, at the MEH's reasonable request, the Council's accounts and records that relate to the expenditure of the Grant and shall have the right to take copies of such accounts and records.
- 12.5 The Council shall provide MEH with a copy of its annual accounts within six months (or such lesser period as MEH may reasonably require) of the end of the relevant financial year in respect of each year in which the Grant is paid.

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- 12.6 The Council shall comply and facilitate MEH's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and MEH.
- 12.7 The Council will keep for ten years records relating to any spending funded (or defrayed) by the Grant. Such records should indicate:
  - a) The identity of any third party concerned and their business.
  - b) The amounts any third party has been given.
  - c) The purpose for which the money was spent.
  - d) Evidence that contracts have been awarded in accordance with public procurement law where they are required to be; and
  - e) Details of and information relating to any significant sub-contracting by the Authority.
- 13 Acknowledgment and publicity
  - 13.1 The Council shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of MEH as the source of the Grant.
  - 13.2 The Council shall not publish any material referring to the Grant, BEIS or MEH without the prior written agreement of MEH. The Council shall acknowledge the support of MEH in any materials that refer to the Grant and in any written or spoken public presentations about the Grant. Such acknowledgements (where appropriate or as requested by MEH) shall include MEH and BEIS name and logo (or any future name or logo adopted by MEH) using the templates provided by MEH from time to time.
  - 13.3 In using MEH or BEIS name and logo, the Council shall comply with all reasonable branding guidelines issued by MEH or BEIS respectively from time to time.
  - 13.4 The Council agrees to participate in and co-operate with promotional activities relating to the Grant that may be instigated and/or organised by MEH.
  - 13.5 MEH may acknowledge the Council's involvement in the Grant as appropriate without prior notice.
  - 13.6 The Council shall comply with all reasonable requests from MEH to facilitate visits, provide reports, statistics, photographs and case studies that will assist MEH in its promotional and fundraising activities relating to the Grant.
- 14 Data Protection
  - 14.1 Both Parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
  - 14.2 The Council agrees to assist MEH in securing a compliant data transfer and processing arrangement, including signing data sharing agreements as

applicable, as set out in Annex 3 by MEH. No Grant shall be paid until MEH has received the Council's signed agreement.

- 14.3 MEH shall enter into a data processing agreement directly with Act On Energy for the use of [PERCI +] for the purposes of reporting under this letter.
- 14.4 For the purpose of this clause "Data Protection Legislation" means all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the UK GDPR, Data Protection Act 2018, the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

## 15 Freedom of Information

- 15.1 Nothing in this letter shall prevent the MEH or the Council from disclosing any information relating to the Grant or the Fund which MEH or the Council considers in its absolute discretion that it is required to disclose in order to comply with the Freedom of Information Act 2000, as amended, and/or the Environmental Information Regulations 2004 and any other statutory requirements.

## 16 Intellectual Property

- 16.1 MEH and the Council agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights whatsoever owned by either MEH or the Council before the date of this letter or developed by either party during the Grant Period, shall remain the property of that party.
- 16.2 Where MEH has provided the Council with any of its intellectual property rights for use in connection with the Grant (including without limitation its name and logo), the Council shall, on termination of this letter, cease to use such intellectual property rights immediately and shall either return or destroy such intellectual property rights as requested by MEH.

## 17 Confidentiality

- 17.1 Each party shall, during the term of this Grant and thereafter keep secret and confidential all intellectual property rights or know-how or other business, technical or commercial information disclosed to it as a result of the Grant and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this letter or save as expressly authorised in writing by the other party.

17.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any intellectual property rights, know-how or other business, technical or commercial information which:

17.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this letter by the receiving party;

17.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

17.2.3 is at any time after the date of this letter acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

## 18 Anti-discrimination

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

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

## 19 Subsidy Control

19.1 The Grant shall constitute a State Subsidy, being a financial contribution granted by a public authority or through State resources in any form whatsoever which confers a benefit on the recipient, which shall include, but not be limited to, the definition of a subsidy contained in the UK-EU TCA and must be used in accordance with the Subsidy Control Rules set out in paragraph 19.3.

19.2 The Council shall obtain and provide such information and comply with any instructions from MEH to ensure that the Grant remains compliant with the Subsidy Control Rules.

19.3 The Subsidy Control Rules are all Laws of the United Kingdom limiting State Subsidy including the European Union (Future Relationship) Act 2020, any relevant secondary legislation and any other Law which replaces, or supersedes or implements, or retains the law embodied in Articles 107- 109 of the Treaty for the Functioning of the European Union (“TFEU”) or any relevant primary or secondary legislation in relation to the United Kingdom (whether in whole or part) as a result of the United Kingdom ceasing to be a member state of the European Union, together with any guidance from time to time issued by a central Government body relating to the provision of State Subsidies, including the interaction of State Subsidies with the United Kingdom’s commitments as a member of the World Trade Organisation and under its trade agreements with other countries.



# Agenda Item 5

20 Governing law

20.1 This letter shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

21 Entire agreement

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

22 Acceptance of Terms

22.1 MEH ask that the Council sign and return the copy letter attached to signify agreement to the terms of this letter by 28<sup>th</sup> February 2022.

Signature of MEH

Printed name: Wayne Bexton

Position: **Director of Carbon Reduction, Energy and Sustainability**

Date: 07/01/2021

Authorised Signatory

Signature of Council

Printed name:

Position:

Date:

Authorised Signatory

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