

Grant Confirmation Document

Project Name: East Midlands Domestic Retrofit

Project Sponsor:

Between:

- 1. Nottingham City Council**
- 2. South Derbyshire District Council**

Dated this *****

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THIS CONFIRMATION OF GRANT is made on the date appearing on the front page of this document and is made between:

- (1) **NOTTINGHAM CITY COUNCIL** as Funder (managing the funding distribution), whose principle place of business is at Loxley House, Station Street, Nottingham, NG2 3NG (**“the Funder”**); and
- (2) **SOUTH DERBYSHIRE DISTRICT COUNCIL**– Civic Offices, Civic Way, Swadlincote, DE11 0AH, (**the “Recipient”**)

BACKGROUND:

- A The Funder, in exercising its statutory powers, has received confirmation of in principle grant funding from th-e Lead Funder in respect of the Project.
- B The Funder has agreed to make the Grant available to the Recipient for the purposes of financially assisting the Project subject to the terms of this agreement.
- C This agreement sets out the terms and conditions on which the Grant is made by the Funder to the Recipient in respect of the Project.
- D These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

1. DEFINITIONS

1.1. In this Confirmation Document the following words shall have the following meanings:

“Applicable Legislation”	any Law relating to the Project including the Environmental Information Regulations 2004 the Freedom of Information Act 2000 and the Equality Act 2010.
“Application”	The Recipient’s application for Grant.
“Approval” and “Approved”	the written approval of the Funder.
“Confirmation Document”	this document including the schedules and appendices attached to it.
“Condition Period”	the period of ten years from the date of this Confirmation Document.
“Condition”	a condition of this Confirmation Document.
“Confidential Information”	any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 2018 and commercially sensitive information in accordance with the Freedom of Information Act 2000.
Constituent Councils	Derbyshire County Council, Derby City Council, Nottinghamshire County Council, Nottingham City Council
“ Data Protection Legislation”	(i)The General Data Protection Regulation as enacted into English law by the Data Protection Act 2018, as revised and superseded from time to time (GDPR); (ii) Directive 2002/58/UK as updated by Directive 2009/136/UK; and (iii) any other laws and regulations relating to the processing of personal data and privacy which apply to a party and, if applicable, the guidance and codes of practice issued by the relevant data protection or supervisory authority.
“Delivery Partner”	any third party or parties appointed or funded by the Recipient to deliver the Project using the Grant.
EMCCA	East Midlands County Combined Authority
“Environmental Information Regulations” or “EIR”	the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Encumbrance”	any mortgage, charge, pledge, lien or other encumbrance.
“Event of Default”	as described in clause 6.
“FOIA”	as described in Clause 12.2.

“Grant”	the grant in the maximum amount payable to the Recipient under this Confirmation Document, in the proportions and on the dates as set out in the Schedules.
“Grant Conditions”	the MoU and any related documents issued to the Funder by the Lead Funder, including from time to time, agreed changes to the Grant Conditions and any subsequent grant determination letters and other related documents issued by the Lead Funder to the Funder.
“Insolvent”	if the Recipient is unable to pay debts as they fall due, or is deemed under Applicable Law to be so, or that it has an excess of liabilities over assets (taking into account contingent and prospective liabilities) and/or the “winding up” of a person include, where such person is or comprises a person other than a company (as defined in the Companies Act 1985), any corresponding process applicable to that person.
“Intellectual Property Rights”	Means any patent, copyright, design right, registered design, database right, trade mark, service mark, know-how, utility model, unregistered design or, where relevant, any application for such right, know-how, trade or business name, domain name or other similar right or obligation whether registerable or not or other industrial or intellectual property right subsisting in any territory or jurisdiction in the world and “Intellectual Property” shall be construed accordingly.
“Lead Funder”	Derbyshire County Council on behalf of the four Constituent Council, who will form the East Midlands Mayoral Combined County Authority, if approved.
“MOU”	the Mobilisation Grant Offer Letter dated XXXXXXXX 2023 and issued by the Lead Funder to the Funder in connection with the mobilisation payment for the Scheme.
“Output”	as described in the Schedules to this Confirmation Document.
“Party”	a party to this Confirmation Document and “Parties” shall be construed accordingly.
“Project”	the project described in Schedule 1 and anything necessary to carry out the Project.

2. INTERPRETATION

- 2.1. References to Parties and other persons include their successors and permitted assigns, except where the context requires otherwise.
- 2.2. References to a “Clause” or “Schedule” are references to a clause of, or a schedule to this Confirmation Document unless otherwise provided. Clause headings are for ease of reference only.
- 2.3. References to this or any other document or statute are references to them in force for the time being and as amended, varied, supplemented, consolidated or re-enacted from time to time and include any schedules or annexes to such document and, in the case of statutes, any delegated legislation. Where there are two or more persons comprised in the “Recipient” then those persons are jointly and severally responsible and liable for all obligations expressed to be assumed by the Recipient

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in this Confirmation Document, including for any repayment of Grant or other payment obligation.

- 2.4. "including" shall be construed so as not to limit the generality of any words or expressions in connection with which it is used.

3. OVERVIEW OF THE SCHEME

In preparation for the Combined Authority the Department for Levelling Up, Housing and Communities (DLUHC), has allocated a total of £18m of capital funding to Derbyshire County Council as the Lead Funder on behalf of the four Constituent Councils who will form part of the EMCAA, if approved.

4. THE RECIPIENT'S OBLIGATIONS

- 4.1. The Recipient will carry out the Project in the manner set out in Schedule 1.
- 4.2. The Recipient will be reimbursed as agreed and set out in Schedule 2.
- 4.3. The Recipient will deliver the Targets and Outputs as set out in Schedule 3.
- 4.4. The Recipient will co-operate with the Monitoring and Evaluation requirements more particularly described in Schedule 5.
- 4.5. The Recipient shall:
- 4.5.1. not, other than as agreed by the parties and described in Schedule 1, during the Condition Period without the Funder's consent, create or permit to subsist any Encumbrance on any of its interest in any of its assets or revenues relating to the Project except for liens arising by operation of Law;
 - 4.5.2. not, other than as agreed by the parties and described in Schedule 1, during the Condition Period without the Funder's consent (not to be unreasonably withheld) enter into any sale, transfer, lease or other disposal of any or all of its interest in any of the Project assets;
 - 4.5.3. ensure that it has adequate insurance against any actions, claims or demands which may be made against it in respect of the death or injury of any person, or loss of any kind arising to any person who implements, participates in or directly benefits from the Project;
 - 4.5.4. comply with all relevant Applicable Legislation; and
 - 4.5.5. not, at any time during or after the term of the Condition Period, divulge any Confidential Information relating to the performance of this Confirmation Document or the business affairs of the Funder of which the Recipient is, or may become, aware of.
- 4.6. The Recipient acknowledges that the Funder is subject to the Grant Conditions. The Recipient agrees that it shall, and that it shall ensure that the Delivery Partners shall:
- 4.6.1. provide such assistance as the Funder reasonably requires to enable it to comply with the Grant Conditions;
 - 4.6.2. not take any action, or fail to take any action that would put the Funder in breach of the requirements of the Grant Conditions (regardless of the enforceability of the Grant Conditions as between the Funder and the Lead Funder);
 - 4.6.3. not take any action or make any omission that causes or may be likely to cause (whether on its own or as part of a series of acts or omissions

committed by the Recipient and/or other parties) or contribute to the Funder to fail to meet the key performance indicators which it is subject to under the MoU;

- 4.6.4. not take any action or make any omission that causes or would be likely to have a negative impact on the Lead Funder's delivery confidence assessment undertaken in accordance with the MoU;
- 4.6.5. comply with any processes, procedures and/or ways of working established by the Funder in relation to the Grant or the Project including in relation to information sharing and any other relevant matters in connection with the Grant or Project;
- 4.6.6. undertake its delivery of the Project, and ensure that any Delivery Partners undertake their duties in a manner consistent with the Code of Conduct and report any breaches or suspected breaches of the Code of Conduct to the Funder immediately on becoming aware of such breach or suspected breach;
- 4.6.7. comply with all rules, requirements and limitations relating to the use of the Grant set out within the MoU as if they applied directly to the Recipient.
- 4.6.8. The Recipient accepts and agrees that it shall be responsible for the acts and/or omissions of its Delivery Partners, its subcontractors and the subcontractors of its Delivery Partners as if they were the acts and/or omissions of the Recipient.
- 4.6.9. The Recipient shall include terms in its agreements with Delivery Partners and subcontractors which give the Recipient sufficient rights to enable the Recipient to comply with its obligations under this agreement.

5. THE FUNDER'S OBLIGATIONS

Subject to this Confirmation Document, and provided always that the Funder has received sufficient funds from the Lead Funder within the life of the Project, the Funder will pay the Recipient in the manner and the amounts set out in Schedule 2.

6. EVENTS OF DEFAULT

- 6.1. Without prejudice to the other provisions of this Confirmation Document, the following events shall be Events of Default:
 - 6.1.1. **Insolvency** – the Recipient becomes Insolvent;
 - 6.1.2. **Misuse of Grant** – The Recipient applies the Grant otherwise than for the purpose of the Project;
 - 6.1.3. **Poor progress** - successful completion of the Project in accordance with the Project time plan becomes, in either the Funder's reasonable opinion, unlikely to occur;
 - 6.1.4. **Breach of obligation** – at any time, the Recipient fails to perform and observe any obligation owed to the Funder under this Confirmation Document, or under any deed or document supplemental to this Confirmation Document, or creating security pursuant to it;
 - 6.1.5. **Change of the Project's purpose in accordance with this Confirmation Document** – if at any time, the proposed or actual use or operation of the Project ceases to materially comply with the Project particulars as stated in Schedule 1;

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- 6.1.6. **Fraud** – if at any time, the Recipient has acted fraudulently in relation to this Confirmation Document or the Project or any of the beneficiaries or sub-contractors of the Recipient have acted fraudulently in respect of the Project; or
- 6.1.7. **Material misrepresentation** – if at any time any representation or statement made by or on behalf of the Recipient in this Confirmation Document, the Recipients Application, or in any document referred to in or delivered under this Confirmation Document is not true and accurate in any material respect when made or deemed repeated, whether deliberately or not.

7. WITHHOLDING PAYMENT AND REPAYMENT

- 7.1. The Lead funder and / or Funder may withhold any or all of the payments of funding, and/or require part of, or the entire amount of funding to be repaid, if:
 - 7.1.1. an Event of Default has occurred;
 - 7.1.2. in the Funder's reasonable opinion, insufficient measures are being taken to investigate and resolve any reported irregularity;
 - 7.1.3. the funding exceeds European Union Subsidy Control limits to the extent that any funding paid should not have been paid, or if a decision of the European Commission or of the European Court of Justice requires payment to be withheld or recovered; or
 - 7.1.4. there is an unsatisfactory report from Funder's auditors indicating fundamental uncertainty, a disagreement or a limitation in Funder's auditors reasonable opinion, an inability to form an opinion, or a report that the statement of funding usage does not give a true and fair view; or
 - 7.1.5. The Recipient, being an unincorporated body, is dissolved or being an incorporated body passes a resolution that it should be wound up, is ordered by the High Court to be wound up, has an administrator appointed by order of the Court, has a receiver or administrative receiver appointed over the whole or any part of its assets, or being a company is struck from the register at Companies House;
 - 7.1.6. in the Funder's reasonable opinion, the Recipient fails to comply with any requirement of this Confirmation Document;
 - 7.1.7. any necessary consents, (including without limitation planning permission) have not been obtained in relation to the Project;
 - 7.1.8. a charge is taken on an asset financed wholly or partly from Grant monies, without the agreement in advance of Funder;
 - 7.1.9. there is a change in ownership or control of the Recipient other than as set out in this Confirmation Document under the heading 'Background';
 - 7.1.10. in the Funder's reasonable opinion, there is significant change in the nature or scale of the Project; or

8. TERMINATION AND BREACH

- 8.1. If either Funder or the Recipient materially breaches the provisions of this Confirmation Document (which shall include an Event of Default) then:
 - 8.1.1. if the breach is capable of remedy the party not in breach may serve notice on the other, specifying a period of not more than 28 working days in which

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the breach is to be remedied and may not then terminate this Confirmation Document during that period in respect of that breach. If the breach is not remedied within that period, the matter will be referred to mediation in accordance with the dispute resolution procedure set out below;

8.1.2. if the breach is not capable of remedy, then the party not in breach may terminate this Confirmation Document by giving immediate written notice;

8.1.3. if the Recipient breaches the provisions of this Confirmation Document, the Funder may withhold any sum due, or at any time thereafter due, to the Recipient pending remedy of the breach, but this shall not prejudice the Funder's other rights under this Confirmation Document, or otherwise existing at law; or

8.2 if the output's set out in this Confirmation Document have not been met, or, are unlikely to be met, or, are unlikely to be met (and such breach shall be considered as an Event of Default).

9. RECOVERY OF SUMS DUE

9.1. The Funder may, by notice in writing to the Recipient, set-off against any liability of the Recipient to repay monies to it under this Confirmation Document (whether liquidated or un-liquidated and whether actual or contingent) the amount of any payment owed or payable by the Funder to the Recipient.

9.2. Any overpayment by the Funder to the Recipient shall be a sum of money recoverable by the Funder from the Recipient.

9.3. The Recipient shall make any payments due to the Funder without any deduction.

9.4. The payment of the Grant by the Funder under this Confirmation Document is believed to be outside the scope of Value Added Tax, but if any Value Added Tax shall become chargeable, then all payments of funding shall be deemed to be inclusive of all Value Added Tax, and the Funder shall not be obliged to pay any Value Added Tax over and above the agreed funding.

10. ASSIGNMENT AND SUB-CONTRACTING

10.1. The Recipient may not assign the whole or any part of their rights nor delegate the whole or any part of their obligations under this Confirmation Document without the prior written consent of the Funder.

10.2. This Confirmation Document shall benefit and be binding on the Parties, their respective successors and assigns or other body which may become the successor of DLUHC or such similar Government Department.

11. QUALITY

Where operation in accordance with a quality standard has been confirmed by the Recipient Application, the Recipient shall at all times comply with that quality standard and shall maintain accreditation with any relevant quality standard authorisation body relevant to the Project. To the extent that a standard of work has not been specified in relation to the Project, the Recipient shall use the best applicable techniques and

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standards and carry out the Project with all reasonable care, skill and diligence and in accordance with good practice.

12. CONFIDENTIALITY

- 12.1. All documents and information received by the Recipient during or in connection with the performance of the Project from the Funder, or any person employed by them, shall be held in confidence.
- 12.2. Such documents and information shall not be disclosed by the Recipient or their staff or agents, to any other person without the permission of the Funder unless a duty to disclose to that person is imposed under statute or by court order or under the Freedom of Information Act 2000 (“FOIA”).
- 12.3. The Recipient shall each take all reasonable steps to ensure that its staff are aware of and comply with this obligation of confidence.
- 12.4. The Funder may disclose such information concerning the Project and the Recipient to third parties as it thinks fit, except for Confidential Information.

13. WAIVER

The failure of any Party to insist upon strict performance of any provision of this Confirmation Document or the failure of any Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Confirmation Document. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Parties in writing.

14. VARIATION

- 14.1 In the event that the Parties agree that changes to the Project are required (for example, to add or remove an activity or Output, to increase or decrease the quantity of an activity or Output, or to change the order in which the activities are to be performed or the locations where the activities are to be provided) then such changes (including any change in the amount or timing of funding) will be negotiated between the Parties. Any changes to the Project will be recorded in writing by the Parties and appended to this Confirmation Document.

15. SEVERABILITY

- 15.1. If any provision of this Confirmation Document is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Confirmation Document shall continue in full force and effect as if the Confirmation Document had been executed with the invalid, illegal or unenforceable provision eliminated.
- 15.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Confirmation Document the Funder and the Recipient will immediately commence negotiations in good faith to remedy the invalidity.

16. FORCE MAJEURE

Neither Party shall be liable for failure to perform its obligations under this Confirmation Document if such failure results from national war, emergency

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regulation or any other circumstances beyond that Party's reasonable control and during such event, no further payments shall be made to the Recipient.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1. The Parties 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 the Parties before the Commencement Date or developed by any Party during the Condition Period, shall remain the property of that Party.
- 17.2. Where the Funder has provided the Recipient with any of its Intellectual Property Rights for use in connection with the Project (including without limitation its name and logo), the Recipient shall, on termination of this Confirmation Document, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Funder within 14 days of such a request.

18. PUBLICITY

- 18.1. The Recipient and the Funder may promote their association with the Project as they think fit.
- 18.2. The Recipient can install and maintain at each location where the project is based or operates, such signs, commemorative material and other promotional material indicating the involvement of the EMCAA with the project.

19. SUBSIDY CONTROL

- 19.1. All grant funding is subject to Subsidy Control rules which are part of the Trade and Cooperation Agreement and the Recipient will need to confirm that their project is compliant with these Subsidy Control rules as the Funder accepts no liability with regard to this.
- 19.2. The Recipient shall comply with and shall ensure that all Delivery Partners shall comply with, all Subsidy Control Rules, and shall ensure that all requirements of the Subsidy Control Rules are met in relation to the Project.
- 19.3. The Recipient shall not take any action or fail to take any action, or (insofar as it is reasonably within its power) permit anything to occur that will cause the Funder to be in breach of its obligations under the Subsidy Control Rules.
- 19.4. The Recipient shall provide such reasonable assistance as is requested by the Funder to enable the Funder to comply with its obligations under the Subsidy Control Rules and shall provide information to demonstrate the compliance of the Project when requested by the Funder. No payments shall be made to the Recipient if a decision of a court or any body with responsibility for enforcing the Subsidy Control Rules imposes a requirement for the Funder to withhold and/or recover any funding from the Recipient, or for the Recipient to repay any funding to the Funder.
- 19.5. The Funder may vary or withhold any or all of the payments and/or require repayment of any Grants already paid or a proportion thereof, together with interest from the date of payment, if:
 - 19.5.1. the representations and warranties made by the Recipient under this agreement do not remain materially true and correct;
 - 19.5.2. variation, repayment, or recovery is, in the reasonable opinion of the Funder, required under or by virtue of the Subsidy Control Rules; or

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19.5.3. the Funder or the Recipient is otherwise required to vary, repay, or recover such funding in whole or in part by a court or any body with responsibility for enforcing the Subsidy Control Rules,

and the interest rate payable by the Recipient will be set by the Funder at a level sufficient for the Funder to comply with any such recovery, requirement or obligation.

19.6. The Recipient shall ensure that its Delivery Partners are subject to terms equivalent to those set out in Clauses 19.2 to 19.5.

20. PUBLIC PROCUREMENT

20.1. The Funder as a public body is subject to the Public Contracts Regulations 2015 in respect of the way in which it purchases goods, services and works. As a non-departmental public body it is also keen to promote good practice in purchasing, and follows its own fair purchasing procedures where the amounts expended are below the thresholds for the Public Contracts Regulations 2015 to apply. The Funder is also keen for the organisations it funds to act fairly when spending grant funding.

20.2. Accordingly, when spending money on the Project, the Recipient shall comply (as required) with the Public Contracts Regulations 2015 (or such equivalent legislation as applicable from time to time) and in addition, follow their own financial regulations as well as advertising requirements on the East Midlands Procurement Portal www.eastmidstenders.org and Contracts Finder www.gov.uk/contracts-finder

20.3. For organisations which do not have their own Procurement policies, at the beginning of their respective processes, it is recommended that the Recipient adopts the following procedures according to the estimated value (inc. VAT) of the contract:

Estimated Value for Goods and Services	Tender Action Required	Advertising Requirements
Below £50,000	Seek three quotations	None
£50,000-£177,897 ,	Formal tender	Advertise tender and award notice through East Midlands Procurement Portal or equivalent
Above £177,897	Formal tender	Advertise tender and award notice on Contracts Finder and Find a Tender (FTS) (Works Contracts advertise on FTD for requirements above £4,447,447 ex VAT))

20.4. The Recipient must then make a decision to purchase on the basis of best value (the optimum combination of whole life costs and the quality to meet that Party's

requirements). The Recipient will also keep records of its decisions and make these available to the Funder upon request.

21. NON-DISCRIMINATION

- 21.1. The Recipient shall not unlawfully discriminate within the meaning and scope of any law, enactment order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment purchasing or the provision of services.
- 21.2. The Recipient will provide its Equal Opportunities Policy to the Funder on request.

22. FREEDOM OF INFORMATION ACT (FOIA) AND DATA PROTECTION

- 22.1. The Recipient acknowledges that the Funder are subject to the requirements of FOIA and EIR, and the Recipient (and any sub-contractors or agents) shall assist and cooperate with the Funder to enable the Funder to comply with any information disclosure requirements including providing a copy of all information in its possession or power in the form that the Funder requires within five working days (or such other longer period as may be specified) of the Funder requesting that information.
- 22.2. The Recipient will use their best endeavours to ensure that requests under the FOIA made direct to the Recipient are transferred to the Funder as soon as practicable after receipt.
- 22.3. The Funder shall at its sole discretion and without liability determine whether information considered to be by the Recipient as commercially sensitive information and/or any other information:
 - 22.3.1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
 - 22.3.2. is to be disclosed in response to a request for information, and the Recipient shall not respond directly to a request for information unless expressly authorised to do so by the Funder.
- 22.4. The Recipient acknowledges that the Funder may, under section 45 of FOIA, (and in accordance with the document titled 'Freedom of Information Code of Practice' and published under Gov.uk and updated as at July 2018), be obliged under FOIA or the EIR to disclose information without consulting with the Recipient, or following consultation with the Recipient, and having taken their views into account.
- 22.5. The Recipient shall ensure that all information produced in the course of the Project, or relating to the Project, is retained for disclosure and shall permit the Funder to inspect such records as requested from time to time.
- 22.6. The Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information, are of indicative value only, and that the Funder may nevertheless be obliged to disclose Confidential Information.
- 22.7. Where the Recipient is also subject to FOIA and EIR, the Funder shall provide reasonable assistance to it to ensure the Recipient's compliance with its obligations under such legislation.
- 22.8. Both parties shall comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
- 22.9. The Recipient must comply with all applicable requirements of the Data Protection Legislation which arise in connection with this Agreement.
- 22.10. The Recipient agrees to assist the Funder in securing a compliant data transfer and processing arrangement, including signing such Information Sharing Agreement as

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may be set out by the Funder and in addition, where appropriate, anonymising any personal data that it provides to the Funder prior to transfer. No Grant shall be paid until the Funder has received the Recipient's signed Information Sharing Agreement and the Funder is satisfied in its absolute discretion with such other data protection measures as have been taken by the Recipient (without the Funder accepting liability for the adequacy of such measures).

- 22.11. The Recipient shall comply at all times with the terms of the Information Sharing Agreement.
- 22.12. The Recipient will indemnify the Funder in full and on demand in respect of any losses that the Funder may suffer as a result of any breaches of Clauses 22.9 – 22.11 by the Recipient.

23. HEALTH AND SAFETY

- 23.1. If legally required to do so, the Recipient will ensure that they comply with all Health and Safety legislation and will provide their up to date Health and Safety Policy Statements to the Funder on request.
- 23.2. In circumstances where the Recipient or its respective staff are present on the Funder premises, the Recipient will promptly notify the Funder of any health and safety hazards which may arise during that time, including any incident causing any personal injury or damage to property which could give rise to personal injury.

24. DISPUTE RESOLUTION

- 24.1. If any dispute arises between the parties out of or in connection with this Confirmation Document or the performance, validity or enforceability of it ("**Dispute**") then the parties shall follow the procedure set out in this clause:
- 24.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, each party's authorised representative shall attempt in good faith to resolve the Dispute; and
- 24.1.2. if the authorised representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the respective parties' Director of Finance and ICT (for the Funder) or Chief Executive Officer (or equivalent) (for the Recipient) who shall attempt in good faith to resolve it.
- 24.2. If the Dispute is unable to be resolved in accordance with clause 24.1 above, then the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 20 Business Days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 20 Business Days after the date of the ADR notice.
- 24.3. No party may commence any court proceedings under clause 31.2 in relation to the whole or part of the Dispute until 20 Business Days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 24.4. If the Dispute is not resolved within 20 Business Days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the

expiry of that 20 Business Days day period, the Dispute shall be finally resolved in accordance with clause 31.2.

25. ENTIRE AGREEMENT

This Confirmation Document constitutes the entire agreement between the Parties relating to the subject matter of the Confirmation Document. This Confirmation Document supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

26. RIGHTS OF THIRD PARTIES

Save as expressly set out in this Confirmation Document, a party that is not a Party to this Confirmation Document shall have no rights under it.

27. EXCLUSION

Nothing in this Confirmation Document nor in any other document shall impose any obligation or liability upon the Funder with respect to any actions or obligations or liability assumed or incurred by the Recipient whether under this Confirmation Document, statute or otherwise insofar as permitted by Law.

28. CONFLICT OF INTEREST

28.1. The Recipient shall take appropriate steps to ensure that neither the Recipient, nor any employee, servant, agent or supplier, is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Recipient, or such persons under the provisions of the Confirmation Document.

28.2. The Recipient will disclose to the Funder full particulars of any such conflict of interest which may arise. The provisions of this clause shall apply during the continuance of the Project and any period of Monitoring and Evaluation.

29. ANTI-CORRUPTION/BRIBERY

The Funder shall be entitled to terminate the Project and recover from the Recipient, the amount of any funding given if, at any time, it shall become known to the Funder that the Recipient has offered or given or agreed to give any inducement or reward to any person or company in relation to the obtaining of the funding or the execution of this Confirmation Document.

30. NOTICES

30.1. Any notice or other communication which is to be given by any Party to another Party shall be given by letter (sent by hand, post, Recorded Delivery or Special Delivery service), or electronic mail (confirmed in either case by letter).

30.2. Such letters shall be addressed to the other Parties at the addresses set out in this Confirmation Document. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

31. LAW

31.1. This Confirmation Document and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual

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disputes or claims) are governed by, and construed in accordance with, the law of England.

- 31.2. The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Confirmation Document or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 - THE PROJECT

This project is to deliver domestic energy efficiency and low carbon retrofit activities within East Midlands Mayoral Combined Authority area. The Midlands Net Zero Hub (MNZH) is funded by the Department for Energy Security and Net Zero as part of the governments clean growth strategy and is hosted by Nottingham City Council. The project will be delivered by the Local Authorities in the region and reported through the MNZH.

The Local Authorities and Housing Associations with support from the MNZH are in the process of delivering three major retrofit programmes, Local Authority Delivery 2 (now concluded), Sustainable Warmth and Social Housing Decarbonisation Fund. The work supports the government's national commitment to reach Net Zero 2050 commitment.

Intervention is needed to help bridge the funding gap that currently exists where households who need support but are not receiving support due to the stringent criteria of the national funding schemes. The intervention will also better allow a place based approach enabling Local Authorities in the region to identify key areas of need, or fill in the gaps of existing programmes. Funds could also be utilised for additional measures in properties that further increases EPC rating and prevents repeat visits under future schemes minimising disruption and maximising benefits for the occupiers.

The funding is to be split equally amongst the 15 District and Borough Councils of the region and the 2 City Councils.

The objectives of the scheme are:

- 85 Whole House Retrofit approach scaled with all compliant required SAP measures installed (Target of 5 homes per LA)
- 600 PAS2035 compliant measures installed (Target of 36 per LA)
- Improved health and wellbeing for home occupier's through a pre and post survey
- Reduced consumption and lower carbon footprint
- Reduced number of households below an EPC C
- Average Standard Assessment Procedure (SAP) improvement

The scheme will also provide the following:

- To make further improvements on properties undergoing work through different schemes, reducing the need for repeat visits over a longer period of time. This is more cost and time efficient, and reduces interruptions to the households.
- To fill in the gaps where place based schemes are being rolled out at street and estate level, making sure properties within defined areas are not "left behind".
- To alleviate match funding pressures faced by other schemes.
- To enable properties to proceed that could not be supported through previous schemes due to rising material costs that exceed scheme cost cap.
- To enable a target, placed based approach.
- To demonstrate their ability to deliver successfully when provided with greater flexibility and control on the funding criteria.

Local Authorities are already in delivery mode, so this support will be an extension to work already ongoing and will offer Local Authorities the opportunity to return to households that have not aligned with current grant conditions, enabling a better service for citizens and giving the Local Authorities a greater chance to reduce fuel poverty in their areas.

A delivery plan for each LA demonstrating how they will reach their target within their allowance for each Local Authority will need to be provided by each LA prior to commencement of the work.

Appendix 1 to this Schedule comprises of the file entitled [Grant Conditions] which is embedded in the word version of this document and included in this document BELOW

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APPENDIX 1 – GRANT CONDITIONS

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SCHEDULE 2 - PAYMENT

1. TOTAL GRANT FUNDING

- 1.1. The total sum payable to the Recipient under this Confirmation Document is £583,500. This cannot be varied without the written consent of the Funder.
- 1.2. A funding schedule will be agreed for each Project and such evidence of eligible expenditure will be required on a monthly basis.
- 1.3. The eligible expenditure to date will need to be submitted by the Chief Financial Officer and verified as correct.
- 1.4. Only costs considered in line with the attached "Project costs", identified in Schedule 1, should be included.
- 1.5. The Recipient will report immediately to the Funder any suspicions that funding has been overpaid, or that any financial mismanagement of the funding, or fraud, may have taken place.
- 1.6. For the purposes of this Confirmation Document, "financial year" shall mean the twelve month period, commencing on the 1st of April and ending on the 31st of March.

2. ELIGIBLE EXPENDITURE

- 2.1 The following items are **not** classed as eligible expenditure:
 - 2.1.1 overheads allocated or apportioned at rates materially in excess of those used for any similar work carried out by the Parties;
 - 2.1.2 notional expenditure;
 - 2.1.3 payments for activity of a political nature;
 - 2.1.4 depreciation, amortisation and impairment of assets purchased with the help of the Grant;
 - 2.1.5 provisions;
 - 2.1.6 contingent liabilities;
 - 2.1.7 contingencies;
 - 2.1.8 profit made by the Recipient;
 - 2.1.9 dividends;
 - 2.1.10 interest charges unless under an approved State Aid scheme;
 - 2.1.11 service charges arising on finance leases, hire purchase and credit arrangements;
 - 2.1.12 costs resulting from the deferral of payments to creditors;
 - 2.1.13 costs involved in winding up a company;
 - 2.1.14 payments for unfair dismissal;
 - 2.1.15 payments into private pension schemes;
 - 2.1.16 payments for un-funded pensions;
 - 2.1.17 compensation for loss of office;

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- 2.1.18 bad debts arising from loans to employees, proprietors, partners, directors, guarantors, shareholders or a person connected with any of these;
- 2.1.19 payments for gifts and donations;
- 2.1.20 entertainments;
- 2.1.21 reclaimable VAT;
- 2.1.22 statutory fines and penalties;
- 2.1.23 criminal fines and damages;
- 2.1.24 legal expenses in respect of litigation;
- 2.1.25 expenditure on activities of a political or exclusively religious nature;
- 2.1.26 expenditure supported from other government sources, local authority Grants, charges paid by leaseholders, or EU funding, to the extent that the combined Grants and other support total more than 100% of the Project or scheme costs;
- 2.1.27 expenditure on works or activities which any person has a statutory duty to undertake, except where there is strong justification in terms of the regeneration outputs or impacts that will result, e.g. in the case of beneficial activity brought forward, or carried out in a way which best promotes sustainable regeneration as a result of Grant support;
- 2.1.28 any liability arising out of negligence; or
- 2.1.29 payments made in advance of need.

3. OUTPUT PROFILE

- 3.1 Allocation of Grant is also subject to the Recipient having delivered the Outputs specified (if any) in accordance with the Targets and Output set out in Schedule 3.
- 3.2 The Recipient will need to complete, on a monthly basis, a return of Outputs delivered to date to enable the Funder to fulfil the Lead Funder's monitoring requirements to Department of Levelling Up, Housing and Communities (DLUHC) (or such equivalent government department from time to time).
- 3.3 In the event that the Recipient are unable to achieve the Output targets, then such Parties will notify the Funder as soon as possible and will use their best endeavours to reschedule delivery with the Funder's agreement, but the Lead Funder reserves the right to consider such an occurrence to be an Event of Default.
- 3.4 Notwithstanding anything else set out in this Confirmation Document, the Funder may propose alternative monitoring requirements in the event that the Lead Funder is required to monitor grant funding in a different way by DLUHC or such equivalent government department from time to time). In such circumstances the Lead Funder shall vary this Confirmation Document in accordance with its terms.

4. GRANT PAYMENTS

- 4.1 The Recipient will receive its Grant allocation based on its monthly claim. The Recipient shall be required to complete the monitoring forms on a monthly basis

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and provide an up to date monitoring report when required in accordance with Clause 3 above.

- 4.2 The Recipient will need to provide the Funder with bank details for the account in which it wishes the Grant to be paid into. This shall be provided to the Funder in letter format using the Recipients letter headed paper. They will also need to set themselves up on the Funders payment system.
- 4.3 Payment will be made within 30 working days of evidence of the payment date agreed
- 4.4 The grant profile below is based on the projects estimated expenditure profile as given in their business case. This will be updated in-line with the approved delivery plan.

	June	Sept	Dec	March 2024	Total
2023-24		£116,700	£203,300	£160,000	£583,500
2024-25	£103,500				

SCHEDULE 3 – KPI'S AND OUTPUTS

1. KEY PERFORMANCE INDICATORS – TARGETS AND OUTPUTS

1.1 The Recipient will deliver the Outputs as shown in the following Output Profile:

	Eligible homes signed up to receive measures- 685		Whole Retrofits completed- 85		Other measures installed*- 600		Number of homes that improve to a EPC band C or above- 411		Number of homes that have been improved by at least 1 EPC band from a starting SAP 1-54 rating (EPC-EFG)-170	
	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual
2023/24										
Q1										
Q2			0		0		6			
Q3	5		0		6		15			
Q4	36		0		15		15			
2024/25										
Q1			5		15		15			
Q2									36	
Q3										
Q4										

1.2 The Recipient must provide relevant evidence to support the output achievement.

SCHEDULE 4 – PROJECT TIME PLAN

1.1 The Recipient will complete the project as set out in schedule 1 of this document

2023/24	Key milestones from the Business Case e.g. Planning Permission granted, work commences on site etc.
Quarter 1	
Quarter 2	
Quarter 3	All homes signed up to receive measures. Whole Retrofit work begins Other measures work begins
Quarter 4	Whole Retrofit work complete
2024/25	
Quarter 1	Whole Retrofit work complete
Quarter 2	Other measures work complete
Quarter 3	
Quarter 4	

SCHEDULE 5 MONITORING AND EVALUATION REQUIREMENTS

1. Monitoring

- 1.1 The Project will be monitored until all outputs are achieved.
- 1.2 The Recipient is required to provide to the Funder a monthly report; the reports are to be provided by completing the Monitoring Form.
- 1.3 The Recipient may be subject to monitoring visits by the Funder on a routine basis and in the event of any queries arising
- 1.4 The Recipient will keep a record of all capital assets purchased using the Project funding and will retain the record for a period of seven years after the final payment or closure of the Project.
- 1.5 The Recipient shall permit officers (who have been duly authorised by the Funder in writing) such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Recipient’s (and any consultant or sub-contractors’) performance of their obligations under this Confirmation Document and shall, if so required, provide appropriate oral or written explanations of them.
- 1.6 The Recipient will promptly provide all reasonable assistance required by the, Lead Funder, DLUHC (or such other equivalent government department from time to time), the National Audit Office, to monitor, review and verify compliance

by the Recipient with its obligations in this Confirmation Document, including reasonable access to its premises, documents and records for this purpose.

2. Evaluation

- 2.1 Projects will be evaluated at the end of the DLUHC spend period or the end of the project . A proforma report will be provided at the time. For this reason the Recipient will:
 - 2.1.1 retain all original documents relating to the implementation of the Project and its costs for seven years after payment of the final amount of funding;
 - 2.1.2 co-operate in respect of evaluation visits by, the Funder, or any other such party that the Funder have appointed, during the time in which Outputs are required;.
 - 2.1.3 make staff available for interview if requested.

SCHEDULE 6 – INFORMATION SHARING AGREEMENT

Error! Reference source not found.6 to this agreement comprises of the file entitled (Information Sharing Agreement - XXXXXXXXX) containing the Information Sharing Agreement which is (i) embedded in the word version of this document BELOW.*

**At this stage an ISA is not anticipated to be a requirement as the reporting does not require personal data to be included. This schedule will remain dormant unless there is a change in reporting requirements from the Funder at which point a variation will be completed and this schedule will be updated accordingly.*

<p>Signed for and on behalf of Nottingham City Council</p> <p>as the Funder</p>	<hr/> <p>Colin Parr , Director</p> <p>Date:</p>
<p>Signed for and on behalf of The Recipient by its duly authorised representative</p>	<hr/> <p>Print Name: _____</p> <p>Position: _____</p> <p>Date: _____</p>

APPENDIX 1: MONITORING FORMS

Project Name	
Sponsor Name	
Monitoring Period	
Contact Name for queries	Name: Tel: Email:

Monitoring Forms
To be completed within 10 working days of the end of the month

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	Eligible homes signed up to receive measures- 685		Whole Retrofits completed- 85		Other measures installed*- 600		Number of homes that improve to a EPC band C or above- 411		Number of homes that have been improved by at least 1 EPC band from a starting SAP 1-54 rating (EPC-EFG)-170	
	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual	Forecast	Actual
2023/24										
Q1										
Q2			0		0		0			
Q3	36		0		6		6			
Q4			0		15		15			
2024/25										
Q1			5		15		20			
Q2									36	
Q3										
Q4										

Project Progress against Delivery Plan

Project milestones and outputs have been agreed at the project outset in your project delivery plan (as set out in Schedules 5).

Progress against these milestones will need to be reviewed regularly with the monitoring officer. Progress updates are required quarterly in the following format for milestones, outputs and expenditure.

If a milestone or output slips into a future quarter or year, it needs to be recorded as delayed and highlighted in the new quarter/year in which it has slipped to. This delay, the reasons behind it and mitigating actions need to be discussed with the monitoring officer and should be reflected in the project risk summary report if the delay will result in greater risk to the project. There should be a more detailed set of milestones and deliverables set out for the current financial year in question.

2023/24	Key milestones/deliverables from delivery plan scheduled to be achieved	Status (achieved or delayed)
Q1		
Q2		
Q3	All homes signed up to receive measures. Whole Retrofit work begins Other measures work begins	
Q4		
2024/25		
Q1	Whole Retrofit work complete	
Q2	Other measures work complete	
Q3		
Q4		

Narrative – Milestones and/or Outputs Achieved

- I. Please provide an explanation for delays in the delivery of milestones/outputs that were due to this period
- II. Is there any slippage anticipated for future milestones/outputs?
- III. How will any slippage be corrected so that the agreed project timeline and expenditure profiles are not affected?

Please set out your responses to the questions above.

Issues

Please record any live critical issues with the project that require resolution. You should ensure that these are discussed with the monitoring officer for your project. These should include specific issues that affect expenditure and the delivery of the outputs as detailed in the other part of the monitoring report.

Summary report of significant issues

Description of Issue (include date raised)	Severity of issue.	Actions being taken and progress being made.

Add extra columns if applicable.

Future Changes to the Project

Have there been, or is there likely to be, any significant changes from the details given in your original application?

Yes

No

Please give details of these changes

Please give details of these changes

Notes

The provisions in the Grant Offer Letter relating to the Freedom of Information Act 2000 and the Data Protection Act 2018 apply to the contents of this return when completed.

You are reminded that:

- | | |
|-----|--|
| (i) | you must notify us immediately if the circumstances of the Project change. (This refers particularly to any of the events listed in the Grant Offer Letter Schedule which deals with "Withholding and Repayment of Grant") |
|-----|--|

I certify that to the best of my knowledge and belief:

- | | |
|----|---|
| 1) | The information in this form is true and correct. |
| 2) | At the time of this return I reasonably believe that the Outputs set out in the agreed and signed grant offer letter will be met. |

Section 151 Officer/Finance Director's Signature

Name (block capitals):

--	--

Date

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