

DATED

SUBJECT TO CONTRACT

---

(1) NPOWER LIMITED

- and -

(2) [ ]

---

0

---

SAMPLE

## SUBJECT TO CONTRACT

AGREEMENT Dated:

2011

### BETWEEN

**NPOWER LIMITED** (registered in England and Wales under company no. 03653277) whose registered office is at Windmill Hill Business Park, Whitehall Way, Swindon, SN5 6BP ("Npower"); and

[ ] (registered in England and Wales under company no. [ ]) whose registered office is at [ ] (the "Referrer")

each a "party", together the "parties".

### Provision of Funding / Scheme no.

### Project Ref:

### BACKGROUND:

- (A) Npower is required to achieve carbon dioxide savings pursuant to the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (the "Order") in order to meet its target set by the Order and Ofgem (the "Carbon Emission Reduction Target" or "CERT").
- (B) The Referrer has agreed to promote the installation of cavity wall insulation and/or loft insulation (where existing depth is less than 60mm) measures in properties that are privately owned or privately rented and where one of the residents are in the Super Priority or Priority Group. The Referrer has agreed to refer any leads for the installation of such measures to Npower.
- (C) Subject to approval by Ofgem and the terms of this Agreement, Npower has agreed to pay the Referrer a fee for the referral of such leads upon completion of the installation of the said measures.

### OPERATIVE PROVISIONS:

#### 1 INTERPRETATION

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

**"Carbon Dioxide Savings"** means the savings in terms of lifetime carbon dioxide savings achieved or to be achieved from the installation of the Measures;

**"CERT"** means the carbon dioxide emission reduction targets scheme imposed on Npower (and other energy suppliers) pursuant to the Order which is due to expire on 31 December 2012;

**"Commencement Date"** means {};

**"Customer"** means a customer who has agreed to the installation of or a quote for the installation of Measures in their home by Npower;

**"Customer Premises"** means residential properties that are either privately owned or privately rented;

**"Expiry Date"** means 31 October 2012;

**"Installer"** means an employee or sub-contractor of Npower employed or appointed by Npower to install Measures;

**"Intellectual Property Rights"** means all patents, copyright, design rights, trade marks service marks, trade secrets, know how, database rights, moral rights, and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world, and **"Intellectual Property"** shall be interpreted accordingly;

**“Leads”** means the generation of leads for the installation of Measures by Npower (or an Installer) into Customer Premises for Customers who are within the Priority Group or the Super Priority Group in order to achieve the Carbon Dioxide Savings resulting from the installation of such Measures;

**“Measures”** means the insulation measures set out in Schedule 1;

**“Month”** means calendar month;

**“Non-Priority Group”** means any Customers who are not included within the Priority Group or Super Priority Group;

**“Order”** means the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (as amended);

**“Priority Group”** means Customers:

- (a) in receipt of at least one of the benefits described in paragraph 2 of Schedule 2 to the Order; or
- (b) in receipt of at least one of the credits described in paragraph 3 of Schedule 2 of the Order and having relevant income of £16,190 or less; or
- (c) where at least one member of the Customer’s Premises is aged 70 or over.

but excluding those Customers within the Super Priority Group;

**“Qualifying Component”** is defined in The Electricity and Gas (Carbon Emission Reduction) (Amendment) Order 2010 (as may be amended from time to time) as meaning:

- (a) child tax credit which includes a disability or severe disability element;
- (b) a disabled child premium;
- (c) a disability premium, enhanced disability premium or severe disability premium;
- (d) a pensioner premium, higher pensioner premium or enhanced pensioner premium;

**“Referral Cap”** means the maximum amount of Leads set out in Schedule 2 to be obtained and provided by the Referrer to Npower pursuant to this Agreement (as may be amended as agreed by the parties in writing);

**“Referral Fee”** means the fees set out in Schedule 2 payable by Npower to the Referrer for each Measure installed in a Customer Premises by or on behalf of Npower as a result of a Lead;

**“Super Priority Group”** means Customers in receipt of:

- (a) child tax credit and has a relevant income below £16,190 (where “relevant income” has the same meaning as in Part 1 of the Tax Credits Act 2002);
- (b) income-related employment and support allowance, which must include a work-related activity or support component, and
  - (i) has parental responsibility for a child under the age of five who ordinarily resides with that member; or
  - (ii) is in receipt of a Qualifying Component;
- (c) income-based job seeker's allowance and -
  - (i) has parental responsibility for a child under the age of five who ordinarily resides with that member; or
  - (ii) is in receipt of a Qualifying Component;
- (d) income support and -
  - (i) has parental responsibility for a child under the age of five who ordinarily resides with that member; or
  - (ii) is in receipt of a Qualifying Component;

Or

- (e) state pension credit;

(as may be amended from time to time by statute or any other regulatory body);

“**System**” has the meaning set out at clause 4.2;

“**Term**” has the meaning set out at clause 2.1;

“**VAT**” means value added tax as provided for in the Value Added Tax Act 1994 and legislation (whether delegated or otherwise) supplemental thereto payable at the appropriate rate.

- 1.2 Words importing any gender include any other gender and words in the singular include the plural and vice versa.
- 1.3 The headings in this Agreement are for ease of reference only and shall not affect its construction or interpretation.
- 1.4 Reference to a clause, sub-clause, paragraph, annex, appendix or schedule is to a clause, sub-clause, paragraph, annex, appendix or schedule of or to this Agreement unless the context otherwise requires.
- 1.5 Reference to a statutory provision includes a reference to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it.
- 1.6 References to persons shall include individuals, bodies corporate, incorporated associations and partnerships.
- 1.7 References to “including” or “include” are to particular examples only and are not intended to be exhaustive or to limit in any way whatsoever the interpretation of any preceding language.

## **2. COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall be deemed to have commenced on the Commencement Date and subject to earlier termination in accordance with clause 10, shall remain in full force and effect until the Expiry Date (the “Term”).

## **3. EXCLUSIVITY**

- 3.1 The Referrer shall not provide the Leads or any information relating to the Leads to any third party without the prior written consent of Npower.
- 3.2 The Referrer acknowledges Npower’s obligations under the Order and acknowledges that:
  - 3.2.1 Npower may enter into any relationship with and provide funding and other services to any third party whatsoever for the purposes of meeting obligations arising under the Order;
  - 3.2.2 the carbon dioxide savings achieved from the work resulting from the Leads are wholly exclusive to Npower for the purposes of the Order and recording to CERT.

## **4. THE LEADS**

- 4.1 During the Term, the Referrer shall generate Leads for Npower on the terms of this Agreement up to the Referral Cap.
- 4.2 The Referrer shall provide to Npower details of all the Leads (as set out in Schedule 4 including all the mandatory fields in pink) electronically using the database management system known as ‘Fulgent’ or such other system as the parties shall agree (hereinafter referred to as “the System”). The Leads shall then be allocated by the System to the Installers.
- 4.3 The Referrer shall ensure that the System is regularly updated with details of Leads and in any event, all Leads shall be entered on to the System, no later than 7 days from the date the Lead was obtained. The Referrer warrants that all information entered onto the System by or on behalf of the Referrer shall be complete and accurate. In the event that any Leads are entered onto the System after the 7 day period, Npower reserves the right to reject such Leads and for the avoidance of doubt, if such Leads are rejected, Npower shall not be obliged to pay the Referrer for such Leads.
- 4.4 The Referrer acknowledges that once a Lead has been allocated to an Installer, the Installer shall be entitled to accept and/or reject (regardless of whether a survey of the Customer Premises has been carried out or not) the work resulting from the Lead at its entire discretion and further, the Referrer acknowledges that Npower shall not be liable to the Referrer for any payment in the event that the Installer does not accept any or all of the work

resulting from a Lead. If the Installer accepts the said work, the Installer shall contact the householder of the Customer Premises using the contact details contained within the Lead.

- 4.5 The Referrer agrees and acknowledges that any Carbon Dioxide Savings to be achieved from the installation of Measures as a result of the Leads are wholly exclusive to Npower for the purposes of recording Npower's obligation under the Order and that the Referrer shall execute and deliver any such documents and perform any such acts as may be required to give effect to this clause 4.5 and shall not do anything to prevent or limit the transfer of such Carbon Dioxide Savings to Npower.
- 4.6 The Referrer shall use its reasonable endeavours to ensure that all Leads obtained by the Referrer pursuant to this Agreement shall result in the installation of Measures for Priority Group Customers and Super Priority Group Customers in the proportions set out in Schedule 2 or as may be amended by Npower upon notice from time to time.
- 4.7 During the generation of Leads, the Referrer shall not:-
- 4.7.1 knowingly or recklessly make any false statement regarding the Measures or their availability nor otherwise engage in any conduct which, in Npower's reasonable opinion, could affect or reduce Npower's ability to claim the Carbon Dioxide Savings from the installation of the Measures, or is prejudicial to the goodwill or reputation of or may bring into disrepute Npower or its business or the marketing of insulation or energy or carbon dioxide efficiency or energy supply products or services generally by it;
- 4.7.2 give any warranty or promise or make any representation or incorrect or false statement in respect of the Measures, their installation or in relation to the funding, cost or payment of such Measures;
- 4.7.3 hold itself out, or permit any person to hold themselves out, as being authorised to bind Npower in any way or do any act which might reasonably create the impression that it is so authorised save in accordance with this Agreement;
- 4.7.4 use npower's logo, brand or images without prior written approval from Npower in accordance with clause 11.
- 4.8 In obtaining the Leads, the Referrer shall comply with the provisions of the Code of Conduct set out in Schedule 5 (as may be amended from time to time by Npower upon notice).

## **5. REFERRAL FEE**

- 5.1 Subject to clause 5.8, Npower shall pay to the Referrer the Referral Fees for each Measure that has been installed in a Customer Premises by one of the Installers (on Npower's behalf) as a result of a Lead obtained in accordance with this Agreement during the Term and where the Customer is either in the Priority Group or the Super Priority Group, up to the Referral Cap.
- 5.2 At the end of each Month, provided that the Referrer has completed its obligations set out in clause 4.3, Npower shall, using the System, calculate the number of Measures that have been installed and completed during each Month of the Term as a result of a Lead. Using the figures set out in Schedule 2 and based on whether the Customers whom have received the completed Measures that Month are in the Priority Group or the Super Priority Group, Npower shall calculate the total amount of Referral Fees payable by Npower for that Month pursuant to this Agreement and shall issue a report to the Referrer ("the Request for Invoice Report") stating the said amount due and shall issue a purchase order number. No Referral Fee shall be paid for Measures that have been installed for Customers who are in the Non-Priority Group.
- 5.3 Upon receipt of the Request for Invoice Report and the purchase order number provided pursuant to clause 5.2, the Referrer shall invoice Npower for the said amount notified to it by Npower.
- 5.4 Npower shall pay all invoices received from the Referrer within 60 days of receipt of the invoice. The time for payment is not of the essence.
- 5.5 In the event that Npower disputes any invoice in good faith, it shall be entitled to withhold payment of the disputed amount pending resolution of the dispute but will pay the undisputed amount in accordance with the terms of clause 5.4. The provisions of clause 5.7 shall not apply to any disputed amounts except, if the dispute is finally resolved in the Referrer's favour. Clause 5.7 shall apply to any period after the dispute has been finally resolved.

- 5.6 All sums payable under this Agreement are exclusive of VAT which shall be charged (if applicable) at the relevant rate and added to the sum in question and payable by Npower within 60 days from receipt of a valid VAT invoice from the Referrer.
- 5.7 If payment is not made when due under clause 5.4 the Referrer may charge interest at 2% per annum above the base rate of HSBC Bank plc at the time on all unpaid amounts.
- 5.8 The Referrer shall not be entitled to a Referral Fee where:-
- 5.8.1 the Lead has been rejected by the Installer (for whatever reason);
  - 5.8.2 the installation work relating to the Lead has not been completed (for whatever reason);
  - 5.8.3 the installation work relating to the Lead and/or the scheme carried on by Npower for the provision and installation of Measures has been rejected by Ofgem or any approval provided by Ofgem in relation to the said installation and/or scheme has been subsequently withdrawn ;
  - 5.8.4 the Leads relate to Measures for loft insulation where the existing depth is greater than 60mm;
  - 5.8.5 the Lead relates to a property that is not a privately owned or privately rented property;
  - 5.8.6 consent has not been provided in the circumstances set out in clause 8.7;
  - 5.8.7 the Lead relates to a Customer who is in the Non-Priority Group;
  - 5.8.8 the Referral Cap has been reached;
  - 5.8.9 the Lead relates to a Customer Premises in which the details of the Measure installed for that Customer Premises have already been entered onto the System as a result of sales leads by Npower, the Installers or any other installer who has contracted with Npower for the provision of Measures.
- 5.9 All additional costs, expenses and other outgoings associated with the Referrer's activities under this Agreement are the responsibility of the Referrer.
- 5.10 The Referrer agrees and acknowledges that:
- 5.10.1 the obligation of Npower to provide any payments to the Referrer under this Agreement is strictly subject to approval (and continued approval) by Ofgem of the scheme carried on by Npower for the provision and installation of Measures and subject to the existence of Npower's obligations under CERT;
  - 5.10.2 payment of the Referral Fee is dependant upon the Installer and the Customer accepting and completion of the installation of the Measures in the relevant Customer Premises.
- 5.11 The Referrer acknowledges that Npower has made and makes no representation and gives no warranty as to the amount of Referral Fees which may be earned by the Referrer under this Agreement.
- 5.12 In the event that the Referrer submits to Npower duplicate or incorrect information relating to Leads and as a result of such duplication or incorrect information, the Referrer receives a duplicate payment or an incorrect payment from Npower, such duplicate or incorrect payment shall be refunded immediately by the Referrer or, in Npower's absolute discretion, deducted from any subsequent payment due to the Referrer from Npower pursuant to this Agreement.

## **6. LIABILITY**

- 6.1 Subject to clauses 6.2 and 6.3, the total maximum liability of Npower in respect of any claim arising out of or in connection with this Agreement during the Term (whether in contract, tort (including negligence) or otherwise), will be limited in aggregate to the amount of Referral Fees paid by Npower in accordance with this Agreement in the preceding six (6) months of the term of the Agreement.
- 6.2 Neither party shall have any liability under or in connection with this Agreement in respect of:-
- 6.2.1 loss of profits, loss of contract or loss of goodwill (whether direct, indirect or consequential); or
  - 6.2.2 any consequential or indirect loss

howsoever arising.

6.3 Notwithstanding any other provision of this Agreement, neither party excludes or limits its liability for:-

6.3.1 fraud or fraudulent misrepresentation;

6.3.2 death or personal injury caused by its negligence;

6.3.3 breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 (as amended); or

6.3.4 any other liability which cannot lawfully be limited or excluded.

## **7. REPORTING, SYSTEM ACCESS AND IT SECURITY**

7.1 The Referrer shall provide to Npower a report at the end of each calendar month which shall set out all Leads obtained by the Referrer during the previous month, together with the details set out in Schedule 4.

7.2 Where authorised by Npower in advance, Npower may provide the Referrer with remote access to the System to enable the Referrer to fulfil its obligations set out in clause 4.2 and 4.3 and elsewhere in this Agreement. All authorised connectivity or attempted connectivity to Npower's computing systems shall be only through Npower's security gateways and/or firewalls, and in conformity with Npower's information technology security policies.

7.3 The Referrer shall use the remote access only to comply with its obligations set out in this Agreement. Npower may terminate the Referrer's access to the System at any time without notice to the Referrer. However, the Referrer will not be liable for any failure to perform its obligations to the extent caused by Npower's termination of access to the System without a reasonable basis.

7.4 Npower may monitor, record and analyse any access to, or data stored on the System at any time without notice to the Referrer. The Referrer consents to this monitoring, recording and analysis, and the Referrer shall ensure that all persons obtaining access to the System through the Referrer are advised of and have consented to this monitoring and recording.

7.5 The Referrer shall be responsible for all systems that the Referrer uses to access the System and any other of Npower's systems. The Referrer shall ensure that its systems include up-to-date anti-viral software reasonably acceptable to Npower to prevent viruses from reaching the System and any other of Npower's systems through the Referrer's systems. The Referrer shall prevent unauthorised access to the System through the Referrer's systems. Further, the Referrer shall ensure that any computer used by it (and its personnel) to remotely access the System will not simultaneously access the Internet or any other third party network while logged on to the System.

7.6 The Referrer shall immediately notify Npower of any actual or threatened security breach in or unauthorised access to the System. The Referrer shall cooperate fully with Npower to investigate any security breach or unauthorised access.

7.7 Access to the System may involve access to software or other technology licensed from third parties. The Referrer shall comply with all restrictions applicable to that software and technology.

7.8 The Referrer shall not transmit nor permit the transmission of any unlawful, discriminatory, threatening, libellous, defamatory, obscene, scandalous, inflammatory, pornographic or profane material through the System.

7.9 The Referrer shall not remove from the System or retain a copy of any data or information obtained from, or as a result of access to the System unless that removal or retention is reasonably necessary to perform its obligations set out in this Agreement.

7.10 The Referrer shall not access, and shall not permit any of its personnel to access the System without Npower's express written authorisation. Such written authorisation may subsequently be revoked by Npower at any time in its sole discretion. Further, any access shall be consistent with, and in no case exceed the scope of, any such authorisation given by Npower.

7.11 The Referrer shall comply, and cause its personnel to comply, with Npower's information security policies and procedures, including Npower's applicable information technology control policies. Npower shall provide a current copy of its internal information security policies and procedures to the Referrer upon the Referrer's request. The Referrer, and its sub-contractors, if approved by Npower, shall substantially comply with ISO/IEC 17799 (Information Technology - Code of Practice for Information Security Management).

- 7.12 The Referrer shall promptly notify Npower of any security-related or other changes that may affect the ability of the Referrer to comply with its obligations with respect to Npower's information security policies and procedures.
- 7.13 During the period in which the Referrer is required to access the System, the Referrer agrees to employ anti-virus procedures when appropriate, which will include use of an industry-recognised virus-scanning program. In the event that the Referrer finds a virus, it will immediately notify Npower. The Referrer will also scan all diagnostic diskettes used by it to ensure that such diskettes are virus-free.
- 7.14 In no event will the Referrer, its agents or employees or anyone acting on its behalf, disable or interfere, in whole or in part, with the System or any of Npower's software, hardware, systems or data owned, utilised or held by Npower without the written permission of Npower, whether or not the disablement is in connection with any dispute between the parties or otherwise. The Referrer understands that a breach of this provision could cause substantial harm to Npower and to numerous third parties having business relationships with Npower.

## **8. DATA PROTECTION**

- 8.1 The ownership of all rights in all databases, lists, and any other information supplied by Npower to the Referrer or generated or obtained by the Referrer or Npower during the obtaining of Leads including, without limitation, any information and data contained in a Lead ("the Data") shall vest in Npower. The Referrer shall be entitled to use the Data only for the purposes of this Agreement, subject always to the provisions of this Agreement and the Data Protection Act 1989 ("the DPA") and shall not under any circumstances use the Data for any other purpose whatsoever.
- 8.2 The Referrer shall ensure that it and its employees, sub-contractors and agents treat all Data strictly confidential, will keep it safe and shall notify Npower immediately if it comes to its attention that the Data (or any part thereof) has been used without Npower's authority.
- 8.3 The Referrer shall provide all Data collected by the Referrer to Npower on Npower's request from time to time, together with such further information as Npower may request in order to fulfil its reporting obligations under the Order and in connection with CERT.
- 8.4 The Referrer agrees and acknowledges that Npower is the data controller (as defined in the DPA) and the Referrer is the data processor (as defined in the DPA) in respect of any personal data (as defined by the DPA) contained within the Data.
- 8.5 To the extent that the Data contains any personal data (as defined by the DPA), the Referrer undertakes that:
- 8.5.1 it shall ensure that, prior to or upon collection of any personal data, the data subject (as defined by the DPA) has been made aware of Npower's (and the Installers') access to and use of their personal data;
  - 8.5.2 it shall process the personal data strictly in accordance with the DPA, all other relevant laws and Npower's instructions from time to time;
  - 8.5.3 only such of its employees, sub-contractors, agents who may be required to assist it in meeting its obligations under this Agreement shall have access to the personal data and all such personnel used in connection with the performance of this Agreement have undergone instruction in the law of data protection and in the care and handling of personal data;
  - 8.5.4 it shall assist Npower with all subject information requests which may be received from the data subjects of the personal data;
  - 8.5.5 it shall not disclose the personal data to a third party in any circumstances other than at the specific written request of Npower;
  - 8.5.6 it has appropriate operational and technological processes and procedures in place to safeguard against any unauthorised access loss destruction, theft, use or disclosure of the personal data;
  - 8.5.7 it will allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the auditors of Npower in order to ascertain compliance with the DPA and the terms of this Agreement;
  - 8.5.8 it will not transfer any personal data outside the countries of the European Economic Area, without and only to the extent of any express written consent of the relevant data subject and Npower (which may be refused at Npower's sole discretion); and

- 8.5.9 it will, as soon as practicable, notify Npower of any notice or communication concerning the DPA received from any person (including any data subject or caller) or any regulatory authority (including the Information Commissioner or its successor) and co-operate fully with Npower in relation to all relevant matters.
- 8.6 In relation to personal data (in whatever form) collected by the Referrer and intended to pass to Npower pursuant to this Agreement, the Referrer shall:-
- 8.6.1 ensure that the personal data can be lawfully processed, in the manner anticipated by this Agreement, by itself (as collecting party) and by Npower (as receiving party), whether acting as data controller, joint data controller, data controller in common or as data processor;
- 8.6.2 agree, with Npower, before sending or processing the personal data, to use a secure means of transferring such personal data.
- 8.7 The Referrer shall ensure that Customers and/or data subjects to whom the Leads relate to are notified of Npower's (and the Installers') access to and use of their personal data as permitted by this Agreement and that such notification is given at the time of collection of any such personal data. Customers and data subjects shall be made aware by the Referrer that, where they have provided their consent, Npower and/or one of the Installers shall contact them to discuss and/or arrange the installation of Measures. The Referrer shall obtain such consents from each Customer and data subject (as applicable) and shall retain evidence of such consents in accordance with clause 9.1 and shall supply to Npower, upon request, evidence of such consent. The Referrer shall not submit to Npower any Leads where the Customer or data subject has not provided their consent to be contacted by Npower or an Installer for the purpose set out in this Agreement and no such Referral Fee shall be payable for any such Lead.
- 8.8 The Referrer shall ensure that it obtains the prior written consent of Npower prior to appointing an agent, sub-agent, contractor or third party to assist in the performance of the Referrer's obligations under this Agreement. The Referrer shall procure that such agent, sub-agent, contractor or third party enters into a written agreement with the Referrer such written agreement to impose the same obligations to comply with the DPA as set out in this clause 8.
- 8.9 The Referrer hereby agrees to fully indemnify and keep fully indemnified Npower (and its group companies, directors, officers and employees) immediately on demand against any loss (including loss of profits, reputation and goodwill), liability, damage, expense, claim, fine, demand, proceeding, charge, expense or cost directly or indirectly suffered or incurred by Npower (or its group companies, directors, officers and employees) as a result of a breach of this clause 8 either by the Referrer or by the any of the Referrer's employees, agents, sub-agents, contractors or sub-contractor.
- 8.10 The Referrer hereby agrees that Customers shall be entitled to enforce the rights and obligations imposed on the Referrer under this clause 8 of this Agreement.
- 8.11 Upon expiry or termination (howsoever caused) of this Agreement, the Referrer shall deliver to Npower (not keeping any copies thereof except for the purposes of clause 9) all the Data in its possession and any other information and materials and equipment supplied by Npower to the Referrer or generated whilst carrying out its obligations set out in this Agreement.
- 8.12 This clause 8 shall continue after termination or expiry of this Agreement.

## **9. AUDIT**

- 9.1 Without prejudice to any reporting requirements contained in this Agreement, the Referrer shall keep and maintain until six years after this Agreement has terminated or expired, the consents referred to in clause 8.7 and records to the satisfaction of Npower showing complete and accurate details of all Leads obtained and all correspondence received and sent by the Referrer in connection with the collection and generation of Leads. The Referrer shall permit Npower and/or its representatives (on 14 days prior written notice) to have access to those records at any time (whether during or after the Term) during normal business hours as may be required by Npower in connection with this Agreement. This clause 9 shall continue after termination or expiry of this Agreement.

## **10. TERMINATION**

- 10.1 Npower and the Referrer shall each be entitled forthwith to terminate this Agreement at any time by written notice to the other party if:

- 10.1.1 the other party commits any material breach of any of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 4 weeks after receipt of written notice giving full particulars of the breach and requiring it to be remedied; or
- 10.1.2 by either party if the other party enters into any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (except for the purpose of amalgamation or reconstruction) or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of its business or it ceases to pay its debts or becomes unable to pay its debts within the meaning prescribed by the Insolvency Act 1986 (as amended).

10.2 Npower shall be entitled to terminate this Agreement:-

- 10.2.1 at any time with not less than 1 Month's written notice to the Referrer;
- 10.2.2 forthwith upon notice to the Referrer where a person (or persons acting together) take a controlling interest in the Referrer's share capital (for this purpose, a 'controlling interest' being either:
- (a) the ownership or control (directly or indirectly) of more than 30% of the Referrer's voting share capital or the share capital of the Referrer's Holding Company; or
  - (b) the ability to direct the casting of more than 30% of the votes exercisable at the Referrer's general meetings or those of the Referrer's Holding Company on all, or substantially all, matters;
- 10.2.3 forthwith in the event that CERT has expired or terminated or Npower is no longer under any obligation to achieve carbon dioxide savings under the Order;
- 10.2.4 forthwith upon notice where the Referral Cap has been reached;
- 10.2.5 forthwith upon notice where all or any of the contracts between Npower and the Installers have expired or terminated (howsoever caused);
- 10.2.6 forthwith in the event that the Referrer (or any of its employees, agents or subcontractors) has in the reasonable opinion of Npower, harmed or prejudiced the name, business or goodwill of Npower or any group companies of Npower.

10.3 On expiry or termination (howsoever occurring) of this Agreement:

- 10.3.1 the Referrer shall not submit on to the System details of any further Leads and no Referral Fees shall be payable by Npower for any Leads obtained after the expiry or termination of this Agreement. Any Referral Fees from Leads submitted on to the System before the expiry or termination of this Agreement due after such expiry or termination shall be subject always to the Referral Cap and the terms of this Agreement relevant to such payment which shall continue for such purpose until the said payments have been made;
- 10.3.2 Npower shall terminate the Referrer's access to the System;
- 10.3.3 the Referrer shall (not keeping any copies thereof except for the purposes of clause 9) return to Npower all information, materials and data (including personal data, as defined by the Data Protection Act and any promotional or marketing materials referred to at clause 11) in its possession or control and obtained during the course of obtaining Leads and/or supplied by Npower to the Referrer and shall ensure that any copies of such information, materials and data (including personal data) is securely destroyed or deleted (as appropriate) in accordance with Npower's instructions and the Referrer shall provide Npower with such evidence as Npower shall reasonably require to demonstrate that the Referrer has complied with this clause 10.3.3;
- 10.3.4 the licence granted in accordance with clause 11.6 shall cease.

- 10.4 Expiry or termination of this Agreement will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights and liabilities of any party at the date of termination or expiration nor the coming into or continuation in force of any provision which the parties expressly or by implication intend to come into or continue in force. Without prejudice to the foregoing, the following clauses (without limitation) shall survive termination: 3.2, 4.5, 5.6, 5.9 – 5.13 (inclusive), 6, 7.4, 7.9, 7.10, 8, 9, 10.3, 10.4, 12, 13.5 – 13.13 (inclusive), 14.1, 14.4, 14.6 – 14.13 (inclusive), 14.15.

## **11. MARKETING AND PROMOTIONAL MATERIAL**

- 11.1 To promote the installation of Measures and obtain Leads, the Referrer shall use the promotional material provided by Npower. No marketing or advertising shall be carried out without Npower's prior written approval.
- 11.2 In the event that the Referrer wishes to produce additional promotional material than those referred to in clause 11.1 or carry out any additional marketing or otherwise use Npower's logo, name or branding, the Referrer shall first obtain the prior written approval of Npower and Npower may accept or (without any liability) reject any additional promotional materials, marketing or use of its logo, name and/or branding proposed by the Referrer. Npower reserves the right to request amendments to be made to the promotional materials. The payment of any cost of such additional promotional material and/or marketing shall be agreed in writing between the parties.
- 11.3 The Referrer shall use the contact details set out in Schedule 3 to obtain any approval required to be obtained from Npower by the Referrer pursuant to this clause 11.
- 11.4 All Intellectual Property Rights and all other rights contained within any of the promotional material created by Npower and/or pursuant to this clause 11, save for any name or logo of the Referrer, shall vest in Npower.
- 11.5 The Installer acknowledges that title to all Intellectual Property Rights provided or made available to the Referrer by Npower under this Agreement is and remains at all times exclusively the property of Npower and that the Referrer has no right to use, disclose, copy or otherwise dispose of or deal with the same except in accordance with any express or implied authority under this Agreement, and further, that any such authority (including the licence granted pursuant to clause 11.6) shall immediately cease on expiry or termination of this Agreement whatever the cause of termination.
- 11.6 Npower hereby grants to the Referrer during the Term, a non-exclusive, non-transferable, royalty-free licence to use and reproduce Npower's logo for the purpose of carrying out its obligations under this Agreement, such use to be at all times in accordance with this Agreement and subject always to the prior written approval of Npower.
- 11.7 The Referrer shall not be permitted to use any other materials which refer to Npower in any way, including, without limitation, either by name or logo without the prior written approval of Npower, who shall be permitted in its absolute discretion to refuse to approve any such material. The Referrer shall comply with any reasonable directions given by Npower in relation to the representation of its logos.
- 11.8 The Referrer shall not use any other logo, mark, name or other wording confusingly similar to Npower's business and trading names and the logos of Npower.
- 11.9 Subject to the licence set out at clause 11.6 above, nothing in this Agreement transfers to the Referrer or any other person any rights, title or interest in any of Npower's logos or any other Intellectual Property Rights of Npower or its group companies or any goodwill associated thereto.

## **12. CONFIDENTIALITY AND FREEDOM OF INFORMATION**

- 12.1 Neither party shall issue any press release or any other public document containing, or make any statement containing or otherwise disclose to any person who is not a party or a representative or adviser of such party information relating to or connected with or arising out of this Agreement or the matters contained in it, including information relating to the business or affairs of the other party ("Confidential Information") without obtaining the previous written approval of the other party to its contents and the manner of its presentation and publication or disclosure (such approval not to be unreasonably withheld or delayed). Such obligation shall not apply to any information which is or becomes generally available to the public other than as a result of disclosure by either party, its representatives or advisers in breach of its obligations in this Agreement.
- 12.2 Without prejudice to the previous paragraph, information regarding the Referral Fee and the information provided to Npower under the reporting requirements on the Referrer are commercially sensitive and strictly private and confidential. If any request is made of the Referrer to disclose such information, the Referrer shall not do so without notifying Npower and shall to the extent permitted by law refuse to disclose such information.
- 12.3 Npower acknowledges that the Referrer may have responsibilities under the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with the Referrer (at the Referrer's expense) so far that it is able to enable the Referrer to comply with its obligations under the FOIA and EIR.

- 12.4 The Referrer shall notify Npower of any Request for Information (as defined by the FOIA) which relates to any information provided by or concerning Npower including (without limitation) any arrangement that the Referrer has with Npower or its business as soon as reasonably practicable, and in any event, within 2 Working Days of receipt of such Request for Information.
- 12.5 In no event shall the Referrer respond to a Request for Information without first notifying Npower and discussing any obligation to disclose such information.
- 12.6 The Referrer shall consult with Npower regarding the disclosure and application of any exemption and in considering whether to disclose information under a Request for Information shall:-
- 12.6.1 consider each exemption under the FOIA which permits the Referrer to refuse to provide any information and apply it to the fullest extent lawfully possible to each Request for Information;
  - 12.6.2 act in good faith and in the best interests of Npower when considering its obligations to disclose any information under a Request for Information;
  - 12.6.3 take into account the views and any representations that Npower has in (a) disclosing such information or objecting to such disclosure (b) the exercise of any exception which permits the Referrer to refuse to disclose any information;
  - 12.6.4 notify Npower within 24 hours (and in any event prior to any such disclosure taking place) of any decision to disclose or not to disclose such information under a Request for Information, together with details of how the Referrer has arrived at its decision;
  - 12.6.5 provide Npower with an opportunity to appeal against any decision that the Referrer has made and notified to Npower under sub-clause 11.6.5 and the Referrer shall consider any such objection and shall carry out further consultation with Npower before any actual disclosure is made.
- 12.7 This clause 12 shall continue after termination or expiry of this Agreement.

### **13. REFERRER'S PERSONNEL**

- 13.1 Where Npower has requested it, the Referrer will ensure that all of its personnel (including employees, sub-contractors and agents) ("Personnel") have been vetted and screened in such manner as Npower may reasonably require and, when requested, have signed a letter of confidentiality addressed to Npower.
- 13.2 The Referrer shall make it clear in writing to all of its Personnel that no contract of employment, contract of services or contract for services is formed between them and Npower.
- 13.3 In relation to all of the Referrer's Personnel, the Referrer shall use its best endeavours to satisfy Npower that it has:-
- (a) confirmed the identity of all of its Personnel;
  - (b) checked all relevant formal qualifications stated to be held by such Personnel;
  - (c) checked at least 2 of the references supplied by any Personnel;
  - (d) where required by law, fulfilled the requirements to obtain Criminal Records Bureau disclosures, and/or Independent Safeguarding Authority checks, and/or Compliance with Financial Service Authority requirements.
  - (e) where required by law, ensured that all relevant Personnel are under a contractual duty to disclose any spent or unspent criminal convictions and to inform Npower as soon as is reasonably practicable if, during the term of this Agreement in which they are involved in the provision of any services pursuant to this Agreement, they are charged with any criminal offence and/or if they are convicted of any criminal offence;
  - (f) ensured that, if any Personnel does not have a UK or EU passport, that such Personnel has the right to work in this country.
- 13.4 In the event that Npower discovers that the Referrer is in breach of clause 13.3, the Referrer agrees that it will repay to Npower any costs that it has reasonably sustained as a consequence of the breach by the Referrer.
- 13.5 All losses, damages, costs, claims, liabilities and expenses (including all legal and other professional fees and expenses) ("Liabilities") relating to the employment of any of the Referrer's Personnel in respect of the period

from the Commencement Date up to and including the Expiry Date or if earlier, the date of termination of this Agreement are to be borne by the Referrer.

- 13.6 The Referrer will indemnify and keep Npower and any new provider of the services pursuant to this Agreement (a "New Service Provider") indemnified against any Liabilities transferred to, imposed upon or incurred by Npower and/or any New Service Provider, in each case to the extent arising out of or in connection with the employment of any of the Referrer's Personnel in respect of the period from the Commencement Date to the Expiry Date or if earlier, the date of termination of this Agreement.
- 13.7 If any of the Referrer's Personnel makes any claim (whether successful or not) at any time prior to termination and/or expiry of this Agreement that they have become an employee of, or have rights against, the Purchaser by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "Regulations") or otherwise, the Referrer will indemnify and keep Npower indemnified against any Liabilities transferred to, imposed upon or incurred by the Referrer in each case to the extent arising out of or in connection with any such claim.
- 13.8 The Referrer will provide Npower with such information as it may lawfully from time to time request about the Referrer's Personnel dedicated to the work covered by this Agreement. Such information shall include but shall not be limited to their number, length of service, age, terms and conditions of employment, any claims they have made against the Referrer and any liabilities of whatsoever nature the Referrer may have in respect of them. This information may be supplied in anonymised form.
- 13.9 The Referrer represents and warrants to Npower, subject always to the provisions of the Data Protection Act, that:
- 13.9.1 it shall in good time disclose in writing to Npower all material information concerning all employment contracts and remuneration, any actual or potential disputes, claims or demands, all collective bargaining and other agreements with trade unions and all agreements relating to the employment of the Referrer's Personnel, including, but not limited to, profit sharing, stock option and redundancy pay arrangements, motor car arrangements, bonus schemes, education/training/travel arrangements, accrued leave entitlements, personal accident schemes and health schemes;
- 13.9.2 the Referrer's Personnel will be all those persons engaged in the provision of any of the services pursuant to this Agreement and shall include all those persons temporarily absent from work for any reason; for example, maternity leave, sick leave or holiday;
- 13.9.3 copies of the terms of employment for the Referrer's Personnel shall be provided to Npower (upon Npower's request) and that, so far as it is able, all such terms shall be complete and accurate in all respects;
- 13.9.4 all salary, pay and other remuneration due to the Referrer's Personnel have been or will be paid in accordance with the terms of their employment and no payments shall have failed to be made in respect thereof; and
- 13.9.5 it shall notify Npower of any salary or pay increase awards outstanding, pending implementation or otherwise deferred in respect of the Referrer's Personnel;
- 13.10 The Referrer undertakes that during any notice period to terminate this Agreement and/or within 3 months of its expiry it shall not, save with the prior written consent of Npower:
- 13.10.1 withdraw or permit the withdrawal of any of the Referrer's Personnel engaged wholly or mainly at that time in the provision of the any of the services pursuant to this Agreement (the "Relevant Referrer Personnel") from the provision of such services;
- 13.10.2 alter in any material respect the terms and conditions of employment of any of the Relevant Referrer Personnel (including, without limitation, any increase in salary, wages or other emoluments (whether pursuant to a general review or otherwise) where the effect of such increase would be to increase the annual salary, wages or other emoluments of any Relevant Referrer Personnel to an annual level above the market rate paid to such personnel across the relevant industry);
- 13.10.3 assign any member of the Referrer's staff (not already engaged in the provision of the any of the services pursuant to this Agreement) to the provision of the said services; or
- 13.10.4 engage new employees who would become Relevant Referrer Personnel except to replace

Relevant Referrer Personnel who have left the Referral's employment.

- 13.11 Following the termination (for whatever reason) and/or expiry of this Agreement the Referrer will indemnify and keep Npower and any New Service Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any act or omission of the Referrer prior to the termination and/or expiry of this Agreement in respect of any the Referrer's Personnel for which Npower and/or any New Service Provider is liable by reason of the Regulations.
- 13.12 If, as a result of the application of the Regulations, the contract of employment of any employee of the Referrer shall have effect, following the expiry of and/or termination of this Agreement as if originally made between Npower and/or any New Service Provider and that person ("Outgoing Employee"), Npower and/or any New Service Provider may terminate the contract of employment with such Outgoing Employee and the Referrer shall indemnify and keep Npower and any New Service Provider indemnified against all Liabilities incurred in respect of any such dismissal. The Referrer shall also indemnify and keep Npower indemnified against all Liabilities incurred by Npower arising out of or in connection with any claim (whether successful or not) made by an Outgoing Employee (whether or not such person is dismissed by Npower).
- 13.13 New Service Provider may enforce the terms of this Clause 18 subject to and in accordance with the terms of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### 14. GENERAL

- 14.1 This Agreement constitutes the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement.
- 14.2 No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 14.3 The Referrer shall not assign or sub-contract any portion of this Agreement without the prior written consent of Npower which shall not be unreasonably withheld. Sub-contracting any part of this Agreement shall not relieve the Referrer of any obligation or duty attributable to it under this Agreement. Npower shall be entitled in Npower's absolute discretion to assign Npower's rights and obligations under this Agreement to any company within its group.
- 14.4 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 14.5 Any notice or other communication given or made under or in connection with this Agreement shall be in writing and sent by hand, post or fax.
- 14.6 Any notice or other communication shall be addressed as in clause 14.7 and, if so addressed, shall be deemed to have been duly given or made as follows:
- 14.6.1 if sent by hand, upon delivery at the address of the relevant party;
  - 14.6.2 if sent by registered or recorded post, 48 hours after posting;
  - 14.6.3 if sent by fax, upon actual legible receipt thereof, provided that a hard copy is sent in accordance with clause 14.6.2.
- 14.7 The relevant addressee, address and fax number of each party for the purposes of this Agreement, subject to clause 14.8 are:

##### **Npower**

Address: Oak House, Bridgwater Road, Warndon, Worcester WR4 9FP  
Attention:  
Fax No: 01905 340730

##### **Referrer**

Address: {}  
Attention: {}  
Fax No: {}

- 14.8 Either party may notify the other party of a change to its name, relevant addressee, address or facsimile number for the purposes of clause 14.7.

- 14.9 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). Although the parties hereby agree and acknowledge that this Agreement is intended to relate to the supply of services only and that the relationship between the parties is not to be one of an agent and a principal and that the Commercial Agents (Council Directive) Regulations 1993 (the "Regulations") do not apply to this Agreement, if but without prejudice to the foregoing, by operation of law at any time it is considered by any lawful authority that the Regulations apply, the Referrer shall only be entitled to receive an indemnity (not a compensation) payment from Npower for loss of agency or otherwise upon the termination of this Agreement pursuant to and strictly in accordance with clauses 17(3), (4), (5), (8) and (9) and clause 18 of the Regulations.
- 14.10 No waiver of any term, provision or condition of this Agreement shall be effective except to the extent made in writing and signed by the waiving party and no omission or delay on the part of either party in exercising any right, power or privilege under this Agreement shall operate as a waiver by it of any right to exercise it in future or any other of its rights under this Agreement.
- 14.11f any provision of this Agreement is or is likely to become, in the reasonable opinion of Npower, void or unenforceable either under the Competition Act 1998 or EC Treaty Articles 81 or 82 either party may, by notice to the other, require the other to enter into discussions to vary this Agreement so that it does comply with the relevant law or if no agreement can be reached within 90 days (with both parties acting reasonably) either party may terminate this Agreement immediately on notice to the other.
- 14.12 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
- 14.13 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 and enforceable.
- 14.14 This Agreement may be executed in any number of counterparts, each of which so executed shall be an original, but together shall constitute one and the same instrument.
- 14.15 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and it is irrevocably agreed that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

|  |  |                                     |  |
|--|--|-------------------------------------|--|
| Signed for and on behalf of Npower Limited by: |  | Signed for and on behalf of [ ] by: |  |
| Name:  |  | Name:                               |  |

**SCHEDULE 1**

**MEASURES**

Cavity Wall Insulation

Loft Insulation where the existing depth is less than 60mm.

SAMPLE

**SCHEDULE 2**

**REFERRAL FEE**

|  | <u>Priority Group Referral Fee</u> | <u>Super Priority Group Referral Fee</u> |
|--|------------------------------------|--|
| <u>Installed Cavity Wall Measure only</u>  | <u>£10</u>                         | <u>£40</u>                               |
| <u>Installed Loft Insulation Measure only (where existing depth is less than 60mm)</u>             | <u>£10</u>                         | <u>£40</u>                               |
| <u>Installed Cavity Wall and Loft insulation Measures (where existing depth is less than 60mm)</u> | <u>£20</u>                         | <u>£80</u>                               |

Where existing loft insulation is greater than 60mm, no payment will be made.

For Leads relating to Customers living in social housing, no payments will be made.

Referral Cap: £23,000

### SCHEDULE 3

**For the:**

i) Approval of using the npower name, brand, logo & imagery

The following needs to be contacted.

Name : [ ]

E-mail – [ ] @npower.com

Or such other contact details as Npower may notify to the Referrer from time to time.

SAMPLE

# SCHEDULE 4 INFORMATION

The screenshot shows a Microsoft Internet Explorer browser window displaying a web form titled "Job Maintenance - Microsoft Internet Explorer provided by RWE npower". The address bar shows the URL "https://www.npowersme.com/JOBMAINT.ASPX".

The form is divided into two main sections: "Applicant" and "Property".

**Applicant Section:**

- TITLE: Not Selected (dropdown)
- FIRST NAME: [Text Input]
- INITIAL: [Text Input]
- SURNAME: [Text Input]
- EMAIL: [Text Input]
- BUILDING No / NAME: [Text Input]
- POSTCODE: [Text Input] with a "Search" button
- ADDRESS: [Text Area]
- PHONE HOME: [Text Input]
- PHONE WORK: [Text Input]
- FAX: [Text Input]
- DATE OF BIRTH: [Date Picker]
- AGE GROUP: Not Selected (dropdown)
- NOTES AND ACCESS: [Text Area]

**Property Section:**

- ELECT SUPPLIER: Not Selected (dropdown)
- GAS SUPPLIER: Not Selected (dropdown)
- HEATING: Not Selected (dropdown)
- PROPERTY TYPE: Not Selected (dropdown)
- LOCAL AUTH: Not Selected (dropdown)
- MARKETING CODE: Not Selected (dropdown)
- MEDIA CODE: Not Selected (dropdown)
- CORE SUPPLY: [Text Input]
- YEAR BUILT: 0 (text input)
- SPECIAL NEEDS:
- OWNERSHIP: Owner Occupied (dropdown)
- CORRESPONDENCE TO: Applicant Only (dropdown)
- CONTACT TIME: No Preference (dropdown)
- SECURITY PASSWORD: [Text Input]

The Windows taskbar at the bottom shows the Start button and several open applications, including Internet Explorer, with the system clock displaying 13:39.

## SCHEDULE 5

### CODE OF CONDUCT

#### Code of Conduct for All Staff Visiting Customer Premises

Supplying energy to domestic and business properties requires that people working directly for and through an agent of energy companies need to enter customers' homes. Employees who visit customers' premises undertake a comprehensive training programme and, in the case of sales agents, adhere to the strict AES code of practice on face to face marketing of energy supply.

In support of this the Energy Retail Association has drawn up a code of practice for all staff visiting customers' premises. This will apply to all meter readers, energy efficiency advisers, debt collection agents and anyone else working for or on behalf of energy suppliers.

The code will set standards for procedures in selection of staff and training as well as for conduct on the doorstep and in the customers' home. The code will complement suppliers' current practice and is intended to provide peace of mind for consumers and guidance for employees.

#### **1. Recruitment**

##### 1.1 Application

1.1.1 Members will set up appropriate procedures for the selection of staff employed or engaged in roles the principal duties of which involve contact with customers of energy services.

##### 1.2 Selection / Interview

1.2.1 Members will ensure that they only engage suitable candidates to engage in or oversee an activity with or for private customers. As an intrinsic part of the recruitment process, Members must:

- take into account the knowledge and skills of the individual in relation to the knowledge and skills required for the role and
- take reasonable steps to obtain sufficient information about the individual's background
- take into account previous relevant activities and training.

##### 1.3 Criminal Record Check

1.3.1 Members will give due regard should to the Rehabilitation of Offenders Act and previous criminal convictions.

1.3.2 Members will undertake a criminal record check before any person in their employ engages in or oversees an activity in or for private customers in their home.

##### 1.4 References

1.4.1 Members will give due regard to the checking of references in assessing the appropriateness of the individual to the requirements of the role.

1.4.2 Employees or their agents must provide proof of NI number (or temporary NI number), proof of address, proof of the last 5 years employment history and two references.

1.4.3 Referees must not be related to the applicant. Business referees must not be from the same company.

1.4.4 If a sales agent ceases to represent the Member, a copy of his or her records will be retained by the Member for a minimum period of three years.

#### **2. Training**

##### 2.1 Version controlled documentation

2.1.1 Members must ensure that persons acting on their behalf, either directly or indirectly, receive training to an established and accredited standard. This will:

- take into the knowledge and skills necessary to fulfil the role.
- take into account changes in the market and to products/services, legislation and regulation.
- reflect consumer ethnicity and diversity.
- provide guidance on the recognition and treatment of vulnerable consumers.
- be compliant with relevant equal opportunities employment legislation.
- include a probationary period for all new recruits.
- be continuously effective and up to date.

##### 2.2 Tested and recorded

2.2.1 Members and their agencies will only permit a person to engage in or oversee any activity if:

- the person has been assessed as competent in that activity *or*
- the Member has taken steps to ensure that the agent has adequate knowledge and skills to act whilst under supervision. If the sales agent has not been assessed as competent, the Member must ensure that the individual is appropriately supervised until assessed as competent in that activity.

2.2.2 Members assessment procedures will be linked to a recognised, verifiable, standard of competence. This must include:

- a probationary period for all new recruits.
- defined monitoring procedures to ensure consistency of training delivery.

### 2.3 Updated and monitored

2.3.1 At intervals appropriate to the circumstances, the Member must determine the training needs of employees and organise appropriate training to address these needs

2.3.2 Quality monitoring of all individuals must be undertaken and a Programme of refresher training and new techniques/skills training where standards or performance is not being met.

2.3.3 Training materials and standards will be regularly reviewed, audited and revised by Members in line with best practices.

2.3.4 Members will maintain systems for monitoring a person's competence and retain records of levels of competence achieved. A Member will make and retain records of:

- the criteria applied in assessing continuing competence; and
- how the employee continues to be competent.

2.3.5 A Member should ensure that maintaining competence for an employee takes into account:

- technical knowledge and its application;
- skills - their application and development; and
- changes in the market and to products, legislation and regulation.

### 2.4 Compliance and adherence to this code and relevant legislation

2.4.1 A Member must have appropriate arrangements in place to ensure that an employee who has been assessed as competent to engage in or oversee an activity maintains competence.

## **3. Third Parties**

### 3.1 Contractually obligated to requirements of code

3.1.1 Where a Member contracts with a third party for the provision of persons to engage in or oversee an activity with or for private customers. the Member must ensure that all recruitment, training and sales activity carried out by the third party complies with this Code.

### 3.2 Compliance with code

3.2.1 This extends to all components of the Code, including consumer complaints about a third party's activity being handled in an equivalent way to the Member's own procedures.

### 3.3 Audit and monitoring of 3<sup>rd</sup> party

3.3.1 The Member will ensure that the Code Administrator has access to the third party for monitoring compliance.

## **4. Agent Conduct**

- **On the doorstep**

### 4.1 Appearance

4.1.1 Behaviour and Appearance – An individual undertaking activity on behalf of the Member will be considered to be the public face of the Member and shall adopt the highest standards of behaviour and appearance (e.g. trainers and/or jeans are not appropriate). Common courtesy will at all times be afforded to all consumers, and other members of the public.

### 4.2 Identification and verification

4.2.1 An individual undertaking activity on behalf of the Member shall carry at all times an Identity Card, and as soon as possible on making contact, automatically present the card (unprompted) and state their purpose for calling. The identity card must clearly display the relevant Members name, the individual's name and photograph, an expiry date for validity of the card, an issue number and a telephone contact number for a consumer to readily check the identity of the caller. Members and its agents shall rigorously control the issue, use and redemption of the Identity Cards.

### 4.3 Visiting Hours

4.3.1 Members and their sales agents must only make sales calls on consumers at reasonable times recognising that what is regarded as reasonable can vary in different locations and in different types of households.

### 4.4 Password Schemes

4.4.1 Visits to domestic customers may include passwords or security details which are used to gain entry to premises. Such details shall remain restricted information and not be divulged to any third party.

- **If the agent needs to enter your property**

### 4.5 Access

4.5.1 Access should be obtained only when a responsible adult is present and has consented to the visit. Individuals must exercise the utmost discretion and avoid access under any circumstances that would be considered inappropriate e.g. consumer is not appropriately attired. If the identity of the individual is challenged, time must be Npower Referrer agreement - non exclusive

allowed for proper verification to take place before proceeding further, giving the consumer the appropriate contact number to facilitate this.

#### 4.6 Sheltered housing

4.6.1 Contact will be made with the warden or other person in authority before making any approach to the residents.

#### 4.7 Vulnerable Consumers

4.7.1 Members must ensure that all individuals undertaking activity on their behalf are properly briefed and aware of a Members consumer policy and obligations with regard to vulnerable customers.

4.7.2 Where, during the course of the visit, a consumer is deemed to be vulnerable, this must be reported to the Member concerned. Individuals must not exploit a person's inexperience, vulnerability, credulity or loyalties.

### **5. Complaint and Dissatisfaction Handling**

#### 5.1 Documented process

5.1.1 Members' internal procedure for capturing and handling consumer Complaints must include complaints where access to the property is required. All staff and third party agents who deal directly with consumers regarding visits to customers' properties must be made aware of this procedure, and be able to inform consumers when requested of how complaints can be made.

5.1.2 Members' complaints procedures must set out how consumers may complain and what further steps are available if they believe their complaint has not been dealt with satisfactorily, including referral to energywatch if appropriate.

5.1.3 A full and accurate record of each complaint must be retained and used for the purposes of managing agent performance and competence as well as for improving Members' procedures. This must include as a minimum:

- The root cause of the consumer dissatisfaction.
- A description of how the consumer complaint was resolved.
- Where appropriate, a description of how the Members' compensation policy was applied and the level of payment(s) made to the consumer to facilitate resolution.

#### 5.2 Timescales for investigation

5.2.1 Members must treat all complaints seriously, particularly where Complaints relate to the behaviour of the individual undertaking the activity. Where complaints are received from consumers are about serious behavioural issues, these must be investigated the same day in line with the companies disciplinary procedures and immediate action taken to suspend individuals from duties until the complaint is investigated.

5.2.2 Members must deal with all other complaints promptly and normally within a maximum of 10 working days. If the complaint is complex or cannot reasonably be dealt with within 10 working days of receipt, then it should be acknowledged promptly and an explanation of when resolution can be reasonably expected should be given to the consumer.

#### 5.3 Documented Disciplinary process

5.3.1 Reasons for complaint must be categorised into three groupings, each grouping indicating the severity of the complaint. This will be used as a framework for identifying poor agent performance and the consequent action to be taken when/if the complaint is found to be proven after investigation.

5.3.2 Category 1 - Gross misconduct, refers to complaints of a magnitude that if substantiated will result in the dismissal of the individual employed to undertake work on behalf of the supplier and involvement, where appropriate, of the Police. The Member will review other visits to property made by the individual and consider whether action is required to correct any earlier incidents of misconduct.

5.3.3 Category 2 – Misconduct, refers to complaints about the behaviour of the individual during the visit which Members are not prepared to tolerate as it falls outside the norm of what is deemed acceptable. Complaints of this nature will normally result in a disciplinary sanction, which if repeated, may result in dismissal of the individual.

5.3.4 Category 3 – Competence, refers to complaints about the general competence and behaviour of the individual undertaking activity on behalf of the supplier or the consequence of poor procedures, where either coaching or retraining is the most appropriate measure. Complaints of this nature will normally result in a review by the Member of its procedures

### **6. Controls**

6.1 Members will put in place controls that allow them to demonstrate:

- That all staff and third party agents have met the recruitment and training procedures
- A prompt investigation will follow any complaint, or other concerns, involving staff or third party agents where access to property is required.
- An appropriate process for resolution of complaints, including, if necessary the involvement of external parties e.g. police.

SAMPLE