

**DATED XXXX**

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**AGREEMENT**

between

**Portsmouth Water Limited**

and

**XXXXXX**

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This deed is dated **XX** 2021

#### Parties

- (1) **PORTSMOUTH WATER LIMITED** incorporated and registered in England and Wales with company number 02536455 whose registered office is at PO Box 8 West Street Havant PO9 1LG (**PW**)
- (2) **XXX**

#### BACKGROUND

- (A) PW has agreed to provide subsidies in respect of the cost of replacement oil tanks to be undertaken by **XXX** for a customer of PW.
- (B) The parties agree on the terms set out in this Agreement which shall be executed as a deed.

#### Agreed terms

### 1. Definitions

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

Contract Price:	the total price (including VAT, if applicable) stated in an Customer contract;
Customer:	a third party who owns a property within a Source Protection Zone confirmed by PW;
Customer Contract:	a contract between <b>XXX</b> and a Customer for the supply and installation of a replacement oil tank at a property within a Source Protection Zone together with the provision of services and/or supply of goods ancillary thereto and which has been approved by PW in accordance with the Process;
Losses:	liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses);
Process:	the process set out in the Schedule attached to this Agreement subject to such amendments thereto as PW may hereafter prescribed from time to time;
Scheme:	the scheme for the payment of a subsidy by PW in relation to a Customer Contract;
Source Protection Zone:	areas designated by PW as such in proximity to groundwater sources used by PW from time to time;
Subsidy Payment:	the amount payable by PW to <b>XX</b> in respect of a Customer Contract being 50% of the Contract Price up to but not exceeding £2,500 per Customer Contract;

## 2. Customer contract

- 2.1 Any contract for the supply of services or goods by **XX** to or on behalf of a Customer shall be between **XX** and the Customer only and on such terms as **XX** and the Customer may agree. PW shall have no liabilities to the Customer in relation to any Customer Contract.
- 2.2 In quoting, negotiating, concluding and performing each Customer Contract, **XX** shall:
- (a) charge the Customer in accordance with its usual and customary pricing structure for the type of services and goods to be supplied pursuant to such Customer Contract;
  - (b) perform the services (to be provided in relation to a Customer Contract) with the best care, skill and diligence in accordance with best industry practice;
  - (c) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the services and/or supply of goods pursuant to any Customer Contract;
  - (d) provide PW with such information about the Customer Contract and the goods and services to be provided thereunder as PW may require;
  - (e) act in good faith in its dealings with PW in relation to the subject matter of this Agreement;
  - (f) not incur any liability or obligation (in relation to a Customer Contract) on the part of PW to a Customer or any other third party;
  - (g) not do anything which may harm the good name or reputation of PW.

## 3. Subsidy

- 3.1 Provided that **XX** has complied in all material respects with the terms of this Agreement (including but not limited to the Process), PW shall pay the Subsidy Payment to **XX** when it falls due for payment in accordance with the Process, subject at all times to clause 3.2 below. For the avoidance of doubt, PW shall not be liable to pay a Subsidy Payment for any Customer Contract unless it has been approved by PW in accordance with the Process.
- 3.2 The maximum aggregate amount payable by PW to GR in relation to the Scheme shall not exceed the Scheme Cap and PW shall not be obliged under this Agreement or otherwise to pay any amount in excess of the Subsidy Cap.

## 4. Indemnity

- 4.1 **XX** shall indemnify PW against all and any Losses suffered or incurred by PW arising out of or in connection with:
- (a) any claim demand or proceedings made against PW by a third party (including a Customer) arising out of or in connection with a Customer Contract, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Customer Contract by **XX**, its employees, agents or subcontractors;

- (b) any claim demand or proceedings made against PW by a third party (including a Customer) for death, personal injury or damage to property arising out of or in connection with a Customer Contract, to the extent that the claim is attributable to the acts or omissions of **XX**, its employees, agents or subcontractors.
- (c) **XX**'s breach or negligent performance or non-performance of this Agreement;
- (d) the enforcement of this Agreement by PW against **XX**.

4.2 This indemnity shall apply whether or not **XX** has been negligent or at fault save to the extent that a claim under it results from any wilful misconduct or fraud on the part of PW.

## 5. Confidentiality

5.1 Each party undertakes that it shall not at any time disclose to any person the terms of this Agreement (**confidential information**), except as permitted by clause 5.2.

5.2 Each party may disclose the confidential information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the confidential information comply with this clause 5; or
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

5.3 No party shall use any confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement or this deed.

## 6. Further assurance

At its own expense, each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

## 7. Third party rights

No one other than a party to this Agreement (or their successors and permitted assignees) shall have any right to enforce any of its terms.

## 8. No partnership or agency

8.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

8.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**9. Counterparts**

- 9.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 9.2 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**10. Governing law**

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**11. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**SCHEDULE**  
**THE PROCESS**

1. Customer to contact Portsmouth Water (PW) to register interest in scheme or OFTEC registered technician to contact Portsmouth Water to check eligibility of client for scheme
2. PW to confirm eligibility and log contact on spreadsheet
3. PW to send confirmation email/letter to customer
  - a. Outline process
  - b. Request customer arrange an initial tank inspection to be undertaken their chosen OFTEC registered technician
4. The chosen OFTEC technician to undertake the heating oil tank inspection. The technician will use their expertise to assess if the heating oil set up poses a risk to groundwater (i.e. at risk of causing a leak/spill). If replacement works are required a quotation should be created for Portsmouth Water's approval.
5. The findings of the inspection are to be reported to Portsmouth Water and if required include a quotation for the works.
6. PW to approve quoted works (if satisfied) and send confirmation to technician and customer
7. Customer to approve quoted works
8. OFTEC technician to arrange the works and notify PW of the date work commencement
9. Upon completion of work PW Ltd to undertake a follow up (call or email) with the customer to confirm works are complete
10. Following confirmation from PW, OFTEC technician to invoice PW to a value of 50% of the cost of quoted works, up to a maximum of £2,500
11. The remaining 50% will be paid directly to the engineer from the customer
12. Invoice processed and OFTEC technician paid

Executed as a deed by  
**PORTSMOUTH WATER  
LIMITED** acting by

Catchment and Environment  
Manager,  
in the presence of:

.....  
[SIGNATURE OF MANAGER]

.....  
[SIGNATURE OF WITNESS]

NAME:

ADDRESS:

OCCUPATION:

Executed as a deed by  
**XX** acting by

**a director (or manager)**,  
in the presence of:

.....  
[SIGNATURE OF  
DIRECTOR]  
Director

.....  
[SIGNATURE OF WITNESS]

NAME:

ADDRESS:

OCCUPATION: