

Draft version

Date



Memorandum of Understanding

between

(1) CAMBRIDGE CITY COUNCIL

and

(2) THE ENERGY SAVING PARTNERSHIP LIMITED

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THIS AGREEMENT is dated the _____ of _____ 2011

PARTIES

The parties to this memorandum of understanding ("MOU") are:

- (1) Cambridge City Council of the Guildhall, market Square, Cambridge CB2 3QJ ("the **Authority**"), and
- (2) Energy Saving Partnership Limited (Company Number: 03304194) whose registered address is at 12-13 Ship Street, Brighton, East Sussex BN1 1AD ("**ESP**")

BACKGROUND

- (A) Under the terms of this **MOU** the parties will share and exchange Confidential Information obtained from the HeatSeekers Programme.
- (B) The Authority will provide permission for ESP and the Agent to use its Trademarks and provide all necessary consents and approvals (where appropriate) together with support and assistance in relation to identifying the areas in the Territory to survey and any other such assistance required for the successful completion of the HeatSeekers Programme.
- (C) The intention and purpose of this MOU is to provide a framework for the working relationship between the parties so as to enable both parties to help achieve relevant energy savings and relevant carbon emissions reduction targets. The MOU is also intended to promote the development of a direct, open and consultative relationship between ESP, the Agent and the Authority.
- (D) The MOU is confidential to the parties and the Agent and their advisors and is subject to various legally binding confidentiality obligations as set out below together with any other confidentiality obligations that continue to exist. Both parties agree to the strict rules of confidentiality and acknowledge the legally binding nature of such confidentiality obligations. Confidential Information can only be disclosed to third parties in certain set circumstances as set out below.
- (E) The Authority acknowledges that the Agent invented HeatSeekers and has also made significant financial investment not only in HeatSeekers but also in the resources to ensure delivery of the Services (in conjunction with any Authorised Local Professionals) to the Agreed Standards pursuant to the HeatSeekers Programme.

1 DEFINITIONS & INTERPRETATIONS

1.1 In this document the following terms shall have the following meanings unless the context otherwise requires:-

Affiliate means the holding company of or subsidiary company of a party or any company which is a subsidiary company of any subsidiary of such holding company;

Agreed Standards means a good quality level of Service and workmanship linked with reference to any recognised industry standards (including but not limited to checks such as CRB) to ensure the integrity of the Authority, ESP and the Agent;

Agent	means Mark Group Limited (Company Number: 01304470) whose registered address is 70 Boston Road, Beaumont Leys, Leicester LE4 1AW;
Authorised Local Professionals	means a person or business authorised by ESP to engage in the provision of the Services;
Complaints	means any fact or matter brought to the attention of either party by a Consumer in relation to the Services or the HeatSeekers Programme which indicates dissatisfaction of the Services or the HeatSeekers Programme;
Confidential Information	shall mean any information, any formulas, technology, practices, processes, methods of production, documentation, data and other business or other information, such as sales information and financial data, whether technical or non-technical, verbal or written, and product samples and specifications which is disclosed to a party by the other under or via connection with this MOU (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such);
Consumer(s)	means a person belonging to a Home who uses, has used, is or may be contemplating using the Services provided by the Agents or Authorised Local Professionals;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
HeatSeekers	means the thermal imaging vehicle and other such equipment in the vehicle which uses a fully automated trigger Global Position System in order to assess and carry out thermal scans/surveys of a Home in order to identify ways of reducing Home energy wastage;
HeatSeekers Programme	shall have the meaning as set out in clause 2;
Home(s)	means those homes in selected targeted area(s) agreed between ESP and the Authority;
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, moral rights, trade marks (including the Trademarks) and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar

or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Nominated Officer means an individual from one party who has been nominated by that party (and such nomination has been communicated to the other party) in order to make decisions and respond to questions from the other party;

Requests for Information shall have the meaning as set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations 2004;

Services means any service, product or other offer made or provided to Consumers in conjunction with the HeatSeekers Programme;

Surveyor means a professional person or business who promotes the face to face analysis, offer and technical surveying service to the Consumers in support of the HeatSeekers Programme;

Territory means the areas agreed with the Authority for the purpose of the HeatSeekers Programme;

Trademarks shall mean a trademark and/or trade name, image, branding and or other corporate logo;

Website means the website www.homeheatseekers.co.uk;

- 1.2 Unless stated otherwise in this MOU this MOU will not be legally binding on either party.
- 1.3 The parties agree to keep the operation of this MOU under review and will consult when necessary with a view to improving its operation. The MOU may only be amended with the agreement of both parties.
- 1.4 Any reference in this MOU to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.5 Any reference to a clause shall be construed as a reference to a clause to this MOU unless expressly stated to the contrary.
- 1.6 Unless the context otherwise requires, words importing the singular include the plural and vice versa, references to any gender include every gender.

2 TERM AND CONTRACT

- 2.1 This MOU shall take effect on the date stated at the start of this MOU and it is intended that the working arrangement set out in this MOU shall remain in force subject to clause 2.2, until [INSERT DATE] unless it is otherwise terminated in accordance with clause 14, or otherwise lawfully terminated.
- 2.2 The parties may seek to extend the duration of this MOU and the terms of this MOU will during any such extension, continue (subject to any variation) to apply.

- 2.3 This MOU will be monitored and reviewed by the parties on a regular basis and may be modified anytime by the agreement of the parties.
- 2.4 Unless stated otherwise this MOU is not intended to create binding contractual or legal obligations on the parties, it is a statement of shared intention to work together in the spirit of co-operation for reducing carbon emissions.
- 2.5 The Authority acknowledges that no form of monetary consideration is involved between the Authority and ESP.
- 2.6 This MOU supersedes any previous memorandum of understanding or letters of intent agreed between the parties, or any such predecessors of the parties.

3 THE HEATSEEKERS PROGRAMME

- 3.1 The HeatSeekers Programme is based around a thermal survey taken by HeatSeekers which can take thermal images of Homes in high volumes in order to analyse the thermal efficiency of such Homes.
- 3.2 HeatSeekers presents a compelling proposition for a Consumer in assessing whether his or her Home is a thermally efficient one and allows the Consumer to see visible details of how he or she can reduce their carbon footprint and the potential cost savings to be made as result of improving the thermal efficiency on his or her Home.
- 3.3 HeatSeekers will not be able to take images of individuals and will not breach any known privacy laws or obligations relating to the Home or Consumer.
- 3.4 HeatSeekers has been developed by the Agent and the Agent has invested significant amounts of time and money into HeatSeekers and the supporting resources in order to ensure the demand for anticipated Services that Consumers may seek can be met. HeatSeekers is currently pending a patent application and all Intellectual Property Rights in relation to HeatSeekers and Confidential Information taken from HeatSeekers belong to the Agent.
- 3.5 ESP and the Authority will meet in order to determine the Territory for the HeatSeekers Programme. The parties will also agree the duration of the HeatSeekers Programme in the Territory and any schedule or timetable or works to be performed either by ESP, the Agent or Authorised Local Professionals.
- 3.6 Once the parties have agreed the Territory and the local area within the Territory to be surveyed, a HeatSeekers vehicle displaying the Trademarks and associated livery of the Authority will undertake a survey of the agreed area in the Territory probably in the period between October and March subject to suitable weather conditions for HeatSeekers to operate in. Once such survey has taken place the Authority will be able to access the details of that survey on the Website strictly for the Authority's own non commercial use. For the avoidance of any doubt any information on the Website is ESP and/or Agent Confidential Information and will be subject to the legally binding confidentiality obligations as set out in this MOU at clause 11.
- 3.7 The HeatSeekers Programme will commence with the initial survey taken by HeatSeekers, an analysis will then be carried out on the Homes surveyed by ESP. The Agent through a Surveyor will then make a house call to the Consumer

explaining the outcome of the survey. With the Consumers permission a full and more detailed survey will then take place followed by booking any relevant Services and thereafter performance of such Services by the Agent or Authorised Local Professional.

- 3.8** Third parties will be invited into the HeatSeekers Programme only with the strict consent of ESP, the Authority and the Agent and no party is to enter into negotiations with any third party with respect to the HeatSeekers Programme without the written consent of all parties.
- 3.9** The overall objective of the HeatSeekers Programme is to promote jointly the need to reduce carbon emissions and home energy costs. In order for that to be successful, this MOU will be underpinned by effective working relationship, networking and mutual trust between the parties.
- 3.10** The Nominated Officers for both parties and any other senior members of both parties will meet periodically, as necessary, to discuss issues of common interest which may include, for example, any further additional services that may be provided by the Agent or Surveyor, agreeing any Authorised Local Professionals, collaborating with each other for future programmes, projects or studies.

4 FUNCTIONS AND RESPONSIBILITIES OF THE AUTHORITY

- 4.1** The Authority will:
 - 4.1.1** not participate in any other project, study or programme the same as or similar to the HeatSeekers Programme during the period of this MOU.
 - 4.1.2** support and cooperate with ESP during the HeatSeekers Programme by following and abiding by the terms of this MOU.
 - 4.1.3** provide any necessary support and assistance to ESP, its Agent and any Authorised Local Professionals in the performance of the Services.
 - 4.1.4** provide or procure any necessary consents for the Agent, ESP, Surveyor and/or the Authorised Local Professionals to use the Authority's Trademarks during the period of this MOU and the performance of the Services.
 - 4.1.5** provide an electronic copy of their Trademarks to ESP, the Agent and/or the Authorised Local Professionals to allow the HeatSeekers Programme and Services to be promoted to Consumers (whether by ESP or the Agent) in any Consumer facing literature, vehicle displays or other such exposure during the performance of the Services by the Agent and/or Authorised Local Professionals.
 - 4.1.6** provide any guidelines, pantone colour scheme and any other requirements relating to the display of any Trademarks by ESP, its Agent and/or the Authorised Local Professionals in any Consumer facing literature, vehicle displays or other such exposure.
 - 4.1.7** where upon request confirm to all Consumers and any external bodies, organisations, or companies (subject to clause 6) that the Agents and Authorised Local Professionals are the only officially recognised contractors to provide the Services in accordance with the HeatSeekers Programme.

- 4.2** The Authority agrees to provide all necessary consents for ESP or the Agent to display hyperlinks and other such electronic links on any website (owned, licensed by ESP or the Agent) or other electronic information portal so that Consumers may link directly to the Authority's website.
- 4.3** The Authority will ultimately be responsible for costs in respect of all media and public relations work relating to the HeatSeekers Programme that is initiated by (or connected to) the Authority.

5 FUNCTIONS AND RESPONSIBILITIES OF ESP

5.1 ESP will:-

- 5.1.1** take a role in actively promoting and thereafter implementing the HeatSeekers Programme and the Services to Homes in the Territory whether through the Agents, Authorised Local Professionals or otherwise.
- 5.1.2** arrange for every such interested Consumer to be visited by a Surveyor from the Agent to discuss the Services to be provided to the Home.
- 5.1.3** where requested by a Consumer arrange a technical survey of his or her Home, to be carried out in accordance with the HeatSeekers Programme.
- 5.1.4** to ensure that any Services performed by the Agent or Authorised Local Professionals meet any Agreed Standards.
- 5.1.5** to comply with all applicable laws and regulations concerning the conduct of its business and procure the Agent and Authorised Local Professionals to do the same.
- 5.1.6** maintain such policies of insurance as are necessary to cover their liability with respect to any personal injury or death or any loss or injury or damage to any property arising out of or caused by the performance of its obligations under this scheme, and procure the Agent and Local Authorised Professionals to do the same.
- 5.1.7** upon request from the Authority forward a copy of any insurance policy/certificate ESP has pursuant to clause 5.1.6.

6 SERVICES

- 6.1** The majority of the Services will be performed by the Agent due to the investment made by the Agent into HeatSeekers, personnel, materials, machinery and other such resources.
- 6.2** ESP will also refer Services to Authorised Local Professionals where the Authority can demonstrate Agreed Standards can be met through use of such Authorised Local Professionals. For the avoidance of all doubt ESP shall in its absolute discretion determine whether to accept any nomination made by the Authority in respect of Authorised Local Professionals.
- 6.3** Subject to the terms of this MOU the Services shall be performed on a contractual basis between the Consumers, the Agent and/or Authorised Local Professionals and ESP shall have no obligations to the Consumers. Services for Consumers will

be performed on the Agent's or Authorised Local Professionals standard terms and conditions of services.

- 6.4** Any additional or bolt on services other than those specified within the HeatSeekers Programme can be requested by the Authority or Consumer at any point and the Agent will endeavour to accommodate the same. Such services will be subject to the Agents standard terms and conditions.

7 PUBLICITY

- 7.1** Strictly subject to Confidential Information obligations set out below neither party shall make any press announcements or publicise the MOU or any part thereof in any way, except with written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 7.2** A party will refer all enquiries and communications from the press and other media to the other party's Nominated Officer and both parties Nominated Officers shall work together in order to sign-off any press announcements or publicity.
- 7.3** All information provided to the media and publicity concerning the activities under this MOU and those of either party in connection with this MOU must be approved in writing by each party in advance.
- 7.4** Neither party will (subject to consents provided in this MOU) use or adapt the Trademarks of the Authority or any Intellectual Property Rights of ESP without prior written consent.
- 7.5** Neither party will remove deface, alter or adapt any signs, notice boards, plaques or other media/information data sites (including internet and intranet sites) without express permission in writing from the other party.
- 7.6** A party will not be responsible for costs relating to publicity, awareness, marketing campaigns or other such media unless that party has agreed in writing to such an expense prior to such marketing being undertaken.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1** All Intellectual Property Rights in HeatSeekers, HeatSeekers Programme and any Confidential Information, specifications, instructions, plans, data, drawings, databases, patterns, models or other material:
- 8.1.1** furnished to or made available to the Authority by ESP or the Agent shall remain the property of ESP or the Agent;
- 8.1.2** for the Authority for use, or intended use, in relation to this MOU or any other such agreed purpose shall belong to ESP and the Authority shall not, and shall procure that its employees, servants, agents, suppliers and sub-contractors (including but not limited to the Authorised Local Professionals) shall not, without prior approval, disclose any such Intellectual Property Rights which the Authority may obtain under this MOU except information which is in the public domain.
- 8.2** The Authority shall at the request of ESP afford to ESP all reasonable assistance for the purpose of contesting any claim or demand made or action brought against

ESP or the Agent for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of this MOU.

- 8.3** The provisions of this clause 8 are legally binding and shall apply during the continuance of this MOU and indefinitely after its expiry or termination.

9 TRADEMARKS

9.1 ESP acknowledges that the Authority's Trademark shall be and remain the exclusive property of the Authority.

9.2 ESP shall do nothing during or after the termination of this MOU which would adversely affect the validity or enforceability of the Trademark.

9.3 Upon the expiration or termination of this MOU ESP shall (and shall procure the Agent) to cease any and all display of the Authority's Trademark. ESP also agrees not to register or use any trademark or trade name confusingly similar to the Authority's Trademark nor to use or register any package designs or advertising copy of other indicia of origin associated with the Authority's Trademark.

9.4 ESP will immediately bring to the notice of the Authority any improper or wrongful use in the Territory of the Trademark where ESP is aware of such use.

9.5 The Authority shall, at the request of ESP, execute such registered user agreements or licences in respect of the use of the Authority's Trademark by ESP or the Agent or Authorised Local Professionals in the Territory as ESP may reasonable require.

10 DATA PROTECTION

10.1 The parties shall (and shall procure that any of its Agent, staff) comply with any notification requirements under the Data Protection Act 1998 ("**DPA**") and both parties will duly observe all their obligations under the DPA which arise in connection with this MOU.

10.2 Notwithstanding the general obligation in clause 10.1, where the parties are processing personal data (as defined by the DPA) as a data processor the parties shall ensure that they have in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

10.3 The provisions of this clause 10 are legally binding and shall apply during the continuance of this MOU and indefinitely after its expiry or termination.

11 CONFIDENTIAL INFORMATION

In consideration of the respective functions and responsibilities of the parties hereunder:-

11.1 Each party hereby acknowledges that any and all Confidential Information, data or advice received by it in whatever form from another party whether before or after the date of this MOU relating directly or indirectly to the HeatSeekers Programme is of a strictly confidential nature.

- 11.2** Each party undertakes not to disclose any Confidential Information except in accordance with this MOU; provided that the foregoing provisions of clause 11.1 and the other provisions of this MOU shall not apply to Confidential Information which:-
- 11.2.1** at the time of disclosure is already in the possession of the party to whom it has been disclosed; or
 - 11.2.2** is at the time of its disclosure in the public domain; or
 - 11.2.3** subsequent to its disclosure is lawfully acquired by the party to whom it has been disclosed; or
 - 11.2.4** falls into the public domain otherwise than through any breach of the terms of this MOU on the part of the party to whom it has been disclosed.
- 11.3** Each of the parties undertakes not to use Confidential Information for any purpose other than the HeatSeekers Programme.
- 11.4** Confidential Information supplied or disclosed by a party shall remain the sole and exclusive property of the disclosing party and nothing in this MOU shall operate to transfer ownership of the Confidential Information to the other party.
- 11.5** A party receiving Information (the "**Receiving Party**") shall not disclose Confidential Information to any third party whatsoever without the prior written consent of and subject to such terms and conditions as may be required by the party disclosing the Confidential Information save:-
- 11.5.1** to the Receiving Party's and its Affiliates' respective officers, directors or employees further disclosure to whom is required for the purposes of this MOU;
 - 11.5.2** to any professional consultant or Affiliate provided an acceptable confidentiality agreement has been signed by such professional consultant or Affiliate;
 - 11.5.3** to the extent required by an applicable law provided that written notice of any such further disclosure is given to the party disclosing the Confidential Information as soon as practicable;
 - 11.5.4** in response to a lawful subpoena or other legal process binding on the Receiving Party provided that written notice of any such further disclosure is given to the party disclosing the Confidential Information as soon as practicable; or
 - 11.5.5** in response to the legal obligation to, or binding request or direction of, any government department or government regulatory agency, provided that written notice of any such further disclosure is given to the party disclosing the Confidential Information as soon as practicable.
- 11.6** Each of the Parties shall:
- 11.6.1** ensure that its officers, directors, employees, Affiliates, and professional consultants to whom any Confidential Information is further disclosed shall be made aware of and bound whether directly or indirectly by the provisions of this MOU;

11.6.2 take all reasonable steps to ensure that such persons, Affiliates and professional consultants, comply with the provisions of this MOU.

and the parties shall, and shall ensure that their Affiliates, and professional consultants shall, at the written request of the party originally providing the Confidential Information, forthwith return any Confidential Information provided to that party in a written or other permanent form together with any copies thereof.

11.7 The parties acknowledge that no warranty is given or implied as to the accuracy of any Confidential Information supplied.

11.8 The parties shall not, and shall procure that their Affiliates and professional consultants shall not, make any announcements or press releases in respect of the arrangements between the Parties or any other matters related thereto except as may be mutually agreed by the Parties.

11.9 The provisions of this clause 11 are legally binding and shall apply during the continuance of this MOU and indefinitely after its expiry or termination.

12 FREEDOM AND SECURITY OF INFORMATION

12.1 ESP acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall assist and cooperate with the Authority (at the Authority's expense) to enable the Authority to comply with these information disclosure requirements.

12.2 ESP shall (and shall procure that the Agent shall):

12.2.1 transfer any Request for Information to the Authority as soon as practicable after receipt;

12.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

12.3 ESP or the Agent will have no obligation to forward any commercially sensitive information to the Authority and ESP shall be responsible for determining at its absolute discretion what constitutes commercially sensitive information.

12.4 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of this MOU, the parties undertake to maintain good quality security systems.

12.5 The parties will immediately notify each other of any breach of security in relation to Confidential Information and all data obtained in the performance of this MOU and will keep a record of such breaches. The parties will recover such Confidential Information or data however it may be recorded.

13 PREVENTION OF CORRUPTION

13.1 ESP shall (and shall procure the Agent) not to offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or

execution of this MOU or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to this MOU or any such contract. ESP acknowledges the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

- 13.2** ESP warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Authority by ESP or on ESP's behalf.

14 TERMINATION

- 14.1** Either party may withdraw from this MOU by giving 90 days notice in writing to the other party.

- 14.2** Either party may withdraw from this MOU by giving 30 days written notice to the other party in the event that either party is in breach of its functions/obligations/responsibilities under this MOU and fails to remedy such breach (if capable of remedy) within 14 days after receiving written notice from the other party

- 14.3** The Authority shall be entitled to withdraw from this MOU upon giving ESP 30 days prior written notice or immediately, at any time if:-

14.3.1 ESP or the Agent shall have offered or given or agreed to give to any person any gift or consideration of any kind inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to this MOU or any contract with the Authority (whether with or without the knowledge of ESP); or

14.3.2 in relation to this MOU or any contract with the Authority, ESP or person employed by ESP or acting on its behalf shall have committed any offence under the Prevention of Corruption Act 1889 to 1916 or have given any fee or reward of which is an offence under Section 117(s) of the Local Government Act 1972; or

14.3.3 ESP, the Agent, Authorised Local Professional shall have solicited or accepted any gratuity, tip or any form of money taking or reward collection or charge for any part of the Services other than normal industry standard charges or awards made in connection with the Services.

15 COMPLAINTS

- 15.1** ESP will deal promptly and courteously with any Complaints received from a Consumer regarding any problems arising from Services performed by the Agent or Authorised Local Professionals.

- 15.2** ESP shall ensure that the Agent or Authorised Local Professional shall rectify any defects in the Services or any inadvertent damage to the Consumers Home that occurs during the Services within a reasonable period of time of being reported.

- 15.3** ESP will where requested by the Authority provide details of any Complaints received and the action taken as a result.

16 DISCRIMINATION

16.1 ESP shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing ESP shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re enactment thereof.

16.2 ESP shall take all reasonable steps to secure the observance of clause 16.1 by the Agent, Local Authorised Professionals, all servants, employees or other agents of ESP and all suppliers and sub-contractors employed pursuant to this MOU.

17 ENVIRONMENTAL & SAFETY REQUIREMENTS

17.1 ESP shall procure that the Agent and/or the Authorised Local Professionals will whilst performing the Services conserve energy, water, wood, paper and other such resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and environment.

17.2 ESP shall procure that the Agent and/or the Authorised Local Professionals shall comply with any health and safety measures implemented by the Authority and communicated to ESP.

18 PARTNERSHIP

18.1 The parties agree that nothing in this MOU is intended to or shall constitute a partnership, joint venture or similar relationship between the parties who are in all respects independent, and neither party shall have the power to obligate or bind the other in any manner whatsoever.

18.2 This MOU is intended to serve only as a mutual expression of the parties intentions with respect to the HeatSeekers Programme and unless stated otherwise is intended to be a legally binding contract or commitment.

18.3 Neither party has any authority whatsoever to act as an agent or representative of the other, nor has either any authority or power to contract for, or create or assume any obligation or liability in the other's name or on behalf of the other or otherwise bind the other in any way for any purpose, nor shall either party hereto represent to any third parties it possesses any such authority to bind the other party.

19 FURTHER ASSURANCE

The parties shall promptly execute and deliver all such documents and do all such things as may from time to time be reasonably necessary for the purpose of giving full effect to the provisions of this MOU.

20 WAIVER

No failure by the parties to exercise or delay in exercising any provision of this MOU constitutes a waiver of such provision or shall prevent any future exercise in whole or in part.

21 APPLICABLE LAW

This MOU shall be construed in accordance with and governed by the law of England and Wales and both parties hereby irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to resolve any controversy or claim of whatever nature and to settle any dispute arising out of or relating to this MOU or any alleged breach of it.

22 ASSIGNMENT

22.1 The agreements reached between the parties pursuant to this MOU shall continue for the benefit of their respective successors and assigns.

22.2 Neither party shall assign delegate or sub-contract the whole or any part of this MOU or any of its rights or obligations under it without the prior written consent of the other party.

23 NOTICES

Any notice or other communication given under this MOU will be in writing and will be delivered personally or sent first class post or by facsimile to the recipient's address set out at the start of this MOU or to any other address which the recipient has notified in writing to the sender.

Each party hereby confirms its agreement to the terms contained in this MOU.

SIGNATURES

[] Authority

Energy Savings Partnership Ltd.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Mark Group Limited

By: _____

Name: _____

Title: _____