

Date: 16<sup>th</sup> May 2019

**TrustMark (2005) Limited**

TML

**Elmhurst Energy Systems Limited**

Operator

# Operator Licence Agreement

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**THIS AGREEMENT** is made this 16th day of May 2019.

**BETWEEN:**

**TRUSTMARK (2005) LIMITED** Company Registration Number 5480144 whose registered office is at The Arena Business Centre, The Square, Basing View, Basingstoke, Hampshire RG21 4EB (the "**TML**"); and

**ELMHURST ENERGY SYSTEMS LIMITED**, whose registered office is at Unit 16 St Johns Business Park, Lutterworth, Leicestershire. LE17 4HB (the "**Operator**").

**WHEREAS:**

- (A) TML has the right to operate the TM System and assess applicant Scheme Operators to establish whether they and their quality schemes meet the necessary criteria to be approved as part of the TM System.
- (B) The Operator has applied to TML for approval of it and its quality scheme and, having assessed both, TML is willing to approve the Operator and its scheme.
- (C) It is a condition of participation in the TM System that the Operator enters into this Agreement which, inter alia, grants the Operator the right to use (and to sub-license its members to use) the Trade Marks, subject to the terms and conditions set out in this Agreement.

**WHEREBY IT IS AGREED** as follows:

**1. Definitions**

- 1.1 The following expressions which are frequently used in this Agreement shall have the meanings attributed to them below. Other less frequently used expressions are defined in the body of the Agreement:

***Expression***

***Meaning***

**"Scheme"**

the "The Elmhurst Energy Systems, TrustMark" quality scheme operated by the Operator in respect of the Trade Sectors that has been assessed by TML against specific criteria in relation to the provision of building services, as

	detailed in the Core Criteria, and subsequently approved by TML as meeting those criteria;
<b>“Brand Identity Guidelines”</b>	such branding guidelines as may from time to time be issued by TML (as amended from time to time by TML in its sole discretion), the current form of which is set out at <a href="http://www.trustmark.org.uk">www.trustmark.org.uk</a> ;
<b>“Core Criteria”</b>	such core criteria that quality schemes must satisfy before they are designated as a Scheme, as may from time to time be issued by TML (as amended from time to time by TML in its sole discretion), the current form of which is set out at <a href="http://www.trustmark.org.uk">www.trustmark.org.uk</a> ;
<b>“Master Licence Agreement”</b>	the Master Licence Agreement entered into between the Secretary of State for Business, Innovation and Skills and TML dated 2 <sup>nd</sup> April 2014;
<b>“Scheme Operator Licence Agreement”</b>	the standard form of sub-licence to be entered into by the Operator and the Registered Firms, the current form of which is set out in Schedule1;
<b>“Registered Firms”</b>	bodies participating in the Scheme;
<b>“Regulations”</b>	the regulations governing the use of the TM System which shall initially comprise of the Core Criteria and the Brand Identity Guidelines, but which shall be supplemented by the TM Regulations;
<b>“TM Regulations”</b>	the regulations governing the use of the Trade Marks as made available for public inspection by the Patent Office on registration of the Trade Marks and as may be amended from time to time in accordance with the Trade Marks Act 1994;
<b>“Territory”</b>	the United Kingdom of Great Britain and any other country as approved by TML;

<b>“Trade Marks”</b>	the certification trade mark(s) detailed in Schedule 2;
<b>“Trade Sectors”</b>	those trade sector(s) detailed in Schedule 3A;
<b>“TM System”</b>	a scheme to encourage the adoption of agreed minimum service standards for firms in the [building services sector], and implement them by approving compliant quality schemes run by any suitable industry organisation for their members;
<b>“Wind-down Period”</b>	is a period of three (3) months commencing on the date of the termination of this Agreement.

1.2 In the interpretation of this Agreement:

- (a) masculine includes the feminine and the singular the plural and vice versa and obligations undertaken by more than a single person including a company or firm are joint and separate obligations;
- (b) the headings, sub-headings and marginal notes are included for the purpose of ease of reference only and shall not affect the construction or interpretation of this Agreement;
- (c) any reference to a person shall include natural persons and partnerships, firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted;
- (d) the Schedules and Recitals form part of this Agreement and shall take effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules and Recitals;
- (e) unless the context otherwise indicates, references to Clauses, Recitals and Schedules are to Clauses of, and Recitals and Schedules to, this Agreement;
- (f) references in this Agreement to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. Grant of Licence and Duration

2.1 Subject to the Operator's compliance with the terms and obligations set out in this Agreement, TML hereby grants to the Operator a non-exclusive licence to:

- (a) use the Trade Marks within the Territory to promote the TM System; and
- (b) sub-license the Registered Firms to use the Trade Marks within the Territory in relation to TM System,

provided that all such use is limited to the Trade Sectors and is in accordance with the Regulations.

2.2 This Agreement shall come into effect on the date hereof and continue in force thereafter until terminated in accordance with the provisions of this Agreement.

## 3. Operation of the Scheme

3.1 As regards the general operation of the Scheme, the Operator shall:

- (a) Compliance: ensure that operation of the Scheme complies in all respects with the standards, regulations and other provisions specified in the Regulations and shall at all times preserve the reputation and integrity of the TM System
- (b) Registered Firms' Database: at all times maintain and update with changes as necessary a database (the "**Database**") of all Registered Firms providing a search facility to meet consumer's requirements. The Operator shall ensure that the public is able to search the Database for Registered Firms offering services in a relevant sector and/or to check whether a firm claiming to be registered is a Registered Firm. In this regard the Operator will comply with the procedures detailed in Schedule 3B. TML shall have access to the Database at any time. The Operator shall comply with the provisions of any relevant laws concerning data protection and privacy to ensure that the Database can be accessed by the public;
- (c) Complaints: notify TML promptly in writing of any situation in which the reputation of the TM System, the Trade Marks or TML may be adversely affected and provide, at no cost to TML, all reasonable assistance requested by TML to alleviate such situation and co-operate fully with TML, also at no cost, in facilitating TML's investigation and resolution of any complaints received about the TM System;
- (d) Conduct: not engage in any activity or practice which may be reasonably

anticipated to cause an adverse impact on the reputation of TML or the TM System;

- (e) Promote Awareness: will promote awareness of the TM System amongst consumers and the trade and work with the Registered Firms, other approved Scheme Operators, stakeholders and partners, as appropriate, to encourage them to make similar efforts to promote awareness in the TM System;
- (f) Reviews: submit itself to the monitoring arrangements set out in Schedules 3C and 3D to provide TML with an annual review of the Scheme's operation and annual monitoring statistics, together with such other information as shall be reasonably requested by TML from time to time for the purpose of TML evaluating whether the Operator is complying with the terms of this Agreement. TML and the Operator shall agree quarterly periods ("**Quarter Periods**") based on the Operator's financial year. Within one calendar month of the end of each Quarter Period the Operator shall provide TML with a report detailing the following, which from time to time, may be amended:
  - (i) the number of Registered Firms in its Scheme as at the end of the relevant Quarter Period;
  - (ii) the number of complaints received at the end of the relevant Quarter Period;
  - (iii) details of any cases of infringement of the Trade Marks that have come to the Operator's attention during the relevant Quarter Period and all action taken.

3.2 The Operator shall be responsible for ensuring that the Registered Firms enter into and comply with the terms of their Registered Firm Sub-Licence and the Operator shall:

- (a) Registered Firm Sub-Licences: ensure that, prior to any Registered Firm making use of the Trade Marks such firm enters into a Registered Firm Sub-Licence with the Operator;
- (b) Treatment of Registered Firms: deal fairly and honestly with all Registered Firms making appropriate and timely disclosure to them of all relevant matters before they become a Registered Firm and to handle all complaints from them speedily and fairly;
- (c) Quality: ensure satisfactory measures are in place to check that all Registered Firms are fulfilling their duties and obligations as contained in the relevant Registered Firm Licence and that the reputation of TML and the TM

System is maintained. In particular, make all reasonable efforts to ensure that Registered Firms utilise the Trade Marks in accordance with the Brand Identity Guidelines and do not market themselves to consumers in ways that misrepresent the Trade Sectors in which they are licenced to use the Trade Marks. In the event that any of the Registered Firms are not fulfilling such duties and obligations the Operator shall either ensure their compliance without delay or terminate their Registered Firm Licence without delay in accordance with the procedures set out in the Scheme's disciplinary procedures. TML may, as a result of a Registered Firm being expelled from another approved scheme within the TM System or for any other reasonably appropriate reason, request that the Operator takes appropriate action against the Registered Firm in accordance with the Scheme's disciplinary procedures.

#### **4. Financial Obligations**

- 4.1 In consideration for the rights granted under Clause 2 the Operator shall pay to TML an application fee and an annual levy based on the number of Registered Firms.
- 4.2 TML shall be entitled (without prejudice to any other right or remedy it may have) to charge the Operator interest on all overdue payments at a rate of four per cent (4%) per annum above the base rate of the Bank of England in force from time to time from the date the payment became due until actual payment is made (irrespective of whether the date of payment is before or after any judgment or award in respect of the same).

#### **5. Use of the Trade Marks**

- 5.1 The Operator shall use the Trade Marks in accordance with the terms of the Regulations. TML shall notify the Operator of any changes to the Regulations within a reasonable period of such changes being made. In the event that any changes are made to the Brand Identity Guidelines, the Operator shall notify the Registered Firms of such changes within a reasonable period. The Operator shall at all times preserve the reputation and the integrity of the Trade Marks and shall not change any aspect of the Trade Marks.
- 5.2 The Operator shall only make use of the Trade Marks for the purposes authorised in this Agreement and, in particular, shall not use the Trade Marks in any way which would tend to allow them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the Scheme, the TM System or TML.



- 5.3 The Operator may use the Trade Marks accompanied by other Trade Marks (whether registered or not) provided the Trade Marks are sufficiently distinguished from the surrounding and adjacent text, as provided for in the Regulations.
- 5.4 The Operator shall not, by virtue of this Agreement, obtain or claim any right, title or interest in or to the Trade Marks except the rights of use as are specifically set out in this Agreement, and hereby acknowledges and agrees that the benefit of all such use shall at all times ensure, as between TML and the Operator, to TML. The Operator shall not make any claim or representation or do any act which might indicate that the Operator has any right, title or interest to ownership or use of the Trade Mark other than as is permitted in this Agreement.
- 5.5 The Operator shall not adopt or use any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, the Trade Marks, or unfairly competes with the Trade Marks. The Operator shall not at any time, whether during or after termination of this Agreement, apply anywhere in the world to register any trade marks identical to or so nearly resembling the Trade Marks as to be likely to deceive or cause confusion.
- 5.6 Except as expressly provided for herein, the Operator shall not in any connection (without the prior written consent of TML) make use of TML's name or any other trade mark, design, copyright or other intellectual property of TML.
- 5.7 TML does not give any warranties regarding the Trade Marks or their use.
- 5.8 TML reserves the right to substitute, add to and/or withdraw those trade marks and other indicia which comprise the Trade Marks at the date of execution of this Agreement if the Trade Marks can no longer be used or if TML, in its sole discretion, determines substitution of different marks will be beneficial to the TM System. In such circumstances, the use of substituted marks shall be governed by the terms of this Agreement, and the Operator will not be eligible for any compensation for such substitution.
- 5.9 The Operator expressly understands and acknowledges that:
- (a) as between TML and the Operator, TML is the owner of all right, title and interest in and to the Trade Marks and the goodwill associated with and symbolised by them;
  - (b) the Trade Marks are valid and serve to identify the TM System and those who are authorized to operate under the TM System;
  - (c) during the term of this Agreement and after its expiration or termination, the Operator will not directly or indirectly contest the validity of, nor take any other

action which tends to jeopardise the ownership of, or TML's right to use and to license others to use, the Trade Marks; and

- (d) the Operator's use of the Trade Marks pursuant to this Agreement does not give it any ownership interest or other interest in or to the Trade Marks.

## **6. Infringement of the Trade Marks**

- 6.1 The Operator shall, in conjunction with the relevant Trading Standards Officers, conduct all proceedings relating to the Trade Marks and shall take all necessary action (including litigation, arbitration or compromise) in respect of any infringement or alleged infringement of the Trade Marks or passing off or any other claim or counterclaim brought or threatened in respect of the use of the Trade Marks by any Registered Firm or firm claiming to be registered with the Scheme. The Operator shall report promptly to TML in writing all proceedings taken by Trading Standards Officers relating to infringement or misuse of the Trade Marks of which it becomes aware.
- 6.2 In the event that the Operator does not take such necessary action or in the event that the infringement or alleged infringement is not within the jurisdiction of the Trading Standards Officer or not pursued by the Trading Standards Officer, TML or its nominee shall have the right (but not the obligation) to itself take such action at its own cost and the Operator will provide all assistance as TML or its nominee reasonably requires at the Operator's cost.

## **7. Maintenance of the Trade Marks**

- 7.1 The Operator undertakes not to do or permit to be done any act which would or might jeopardise or invalidate the registration of the Trade Marks nor to do any act which might assist or give rise to an application to remove the Trade Marks or which might prejudice the right or title of the proprietor to the Trade Marks.
- 7.2 The Operator shall on request give to TML or its authorised representative any information as to its use of the Trade Marks which TML may reasonably require and will render any assistance reasonably required by TML or its authorised representative in maintaining the registration of the Trade Marks.

## **8. Confidentiality**

- 8.1 Both parties shall keep confidential details of all communications of a confidential nature that take place between the parties, including any disputes that may arise between them, except to the extent that such disclosure is necessary for the operation of the TM System, is required for the purposes of preparing and publishing the Regulations or is required by the Secretary of State for Business, Innovation and Skills.

## **9. Copyright**

- 9.1 The copyright and all other rights in the text of the Regulations and all other documents supplied by TML (the "**Copyright Material**") shall, as between TML and the Operator, be TML's property.

- 9.2 For the purpose of this Clause

the Copyright Material will be deemed to include the Copyright Material as originally provided to the Operator together with all additions and amendments thereto from time to time.

## **10. Termination**

- 10.1 TML may terminate this Agreement by immediate written notice to the Operator in the event that:
- (a) the Operator ceases or threatens to cease to carry on business or the operation of the Scheme;
  - (b) the Operator ceases to be a member of TML;
  - (c) the Operator goes into liquidation or an administrative receiver or receiver and manager or administrator is appointed for the Operator or its assets or the Operator enters into a voluntary arrangement with its creditors or suffers any similar insolvency process or process which affords the Operator protection from its creditors;
  - (d) the Operator undergoes a change of control within the meaning of the term as set out in section 1124 of the Corporation Tax Act 2010 unless, prior to such change of control, the Operator has obtained TML's prior written consent for such change (such consent not to be unreasonably withheld or delayed);
  - (e) the Operator challenges the validity of the Trade Marks or any of them;

- (f) TML shall, for any reason, cease to have the right to grant licences in respect of the Trade Marks and, for the avoidance of doubt, the Operator shall not be eligible for any compensation in such circumstances;
- (g) TML decides to withdraw its approval for the Scheme in accordance with the disciplinary process as set out in Clause 10.2 below.

10.2 If TML becomes aware of any instance where the Operator is in non-compliance of any of the terms of this Agreement, including:

- (a) failure of the Scheme to adhere to the requirements of the Regulations;
- (b) persistent misuse of the Trade Marks;
- (c) bringing the TM System and/or the Trade Marks into disrepute;
- (d) failure to pay the prescribed fees;

TML will give written notice (the “**Non-Compliance Notice**”) to the Operator requiring it to investigate the non-compliance and report to TML within fourteen days of such Non-Compliance Notice detailing the measures that have been taken to remedy the non-compliance. Where TML is not satisfied with such actions or proposals it will give notice that it is entering a disciplinary process setting a time limit by which the issues involved must have been resolved. If, at the end of this specified period, the Operator has not resolved the issue to TML’s satisfaction it may formally notify the Operator of its withdrawal of approval for the Scheme and terminate this Agreement forthwith. For the avoidance of doubt, the Operator shall be entitled to appeal against TML’s decision pursuant to the terms of the appeals route detailed in the Regulations.

10.3 The Operator may terminate this Agreement upon six (6) months’ written notice to TML in the event that the Operator no longer wishes to participate in the TM System provided that in such circumstances there shall be no additional wind-down period but instead the six months’ notice period shall be deemed to be the Wind-down Period for the purposes of clause 11.

10.4 Termination of this Agreement shall be without prejudice to any existing rights and/or claims that TML may have against the Operator, and shall not relieve the Operator from fulfilling the obligations accrued prior to such termination.

## 11. Consequences of termination

- 11.1 In the event of termination of this Agreement howsoever arising in order to protect the reputation of the TM System and ensure its continued operation the Operator and TML shall enter into the Wind-down Period.
- 11.2 During the Wind-down Period TML and the Operator will co-operate with each other to ensure either the orderly winding down of the use of the Trade Marks in relation to the Scheme. After the Wind-down Period:
- (a) the Operator shall within such period of the end of the Wind-down Period as the parties shall agree (or as TML may direct if agreement is not reached within seven days of the end of the Wind-down Period (the "**Post Termination Period**") cease use of the Trade Marks. During the Post-Termination Period (i) the Operator's operation of the Scheme shall be in accordance with the terms of this Agreement and (ii) the Operator shall not enter into any further Registered Firm Licences without TML's prior written consent;
  - (b) the Operator shall during the Wind-down Period terminate all of the Registered Firm Sub-Licences that it has entered into with Registered Firms and shall take such steps as TML requires to ensure such termination;
  - (c) the Operator shall, within the Post-Termination Period, as directed by TML, either destroy or deliver to TML (or its nominee) all stationery, signs and other material bearing the Trade Marks then in its possession.
  - (i) after the Post-Termination Period, the Operator shall not purport to be an operator of the Scheme or otherwise associated with TML.
- 11.3 All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after termination.
- 11.4 Subject to the provisions of this Clause 10 the Operator shall do nothing after the expiry or termination of this Agreement which might lead any person to believe that the Operator is still licensed to use the Trade Marks or is in any way connected with the TM System or TML.

## **12. Waiver and Remedies**

- 12.1 No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this Agreement, or the granting of time by either party, shall prejudice affect or restrict the rights and powers of that party under this Agreement nor shall any waiver by either party of any breach of this Agreement operate as a waiver of or in relation to any subsequent or any continuing breach of this Agreement.

## **13. Entire Agreement**

- 13.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and each party confirms to the other that it has not entered into this Agreement on the basis of or in reliance on any representations or warranties made or given by the other party its servants or agents and that nothing in this Agreement shall seek to exclude any liability for fraudulent misrepresentation.

## **14. Variation**

- 14.1 No amendment or other variation to this Agreement shall be effective unless it is in writing is dated and is signed by a duly authorised representative of each party.

## **15. Force Majeure**

- 15.1 In this Agreement, "force majeure" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented.
- 15.2 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 15.3 If either party is prevented from performance of its obligations for a continuous period in excess of [one] month, the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that the rights and liabilities which accrued prior to such termination shall continue to subsist.

## **16. No Partnership/Agency**

- 16.1 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).

## **17. Further Assurance**

- 17.1 The Operator shall at the reasonable cost and expense of TML do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as TML may from time to time reasonably require for the purpose of giving TML the full benefit of the provisions of this Agreement.

## **18. Severance**

- 18.1 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.
- 18.2 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.
- 18.3 The parties agree, in the circumstances referred to in Clause 18.1 and if Clause 18.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this Agreement shall be suspended while an attempt at such substitution is made.

## **19. Notices**

- 19.1 Any notice or other communication given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or fax or e-mail to the address and for the attention of the relevant party set out in Clause 19.2 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery, 48 hours from the date of posting;
- (c) in the case of fax or e-mail, at the time of transmission.

provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day. For the purpose of this Clause, "**Business Day**" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

19.2 The addresses and email addresses of the parties for the purposes of Clause 19.1 are:

(a) **For TML:**

Address: TrustMark, Arena Business Centre, The Square,  
Basing View, Basingstoke RG21 4EB

For the attention of: Philip A Mason

E-mail Address: pmason@trustmark.org.uk

(b) **For the Operator:**

Address: Unit 16 St Johns Business Park, Lutterworth,  
Leicestershire. LE17 4HB

For the attention of: Dawn Wilkinson

E-mail Address: Dawn.wilkinson@elmhurstenergy.co.uk

or such other address or email address in the United Kingdom as may be notified in writing from time to time by the relevant party to the other party.



19.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in Clause 19.2 (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or that the notice was transmitted by fax to the fax number or by e-mail to the e-mail address] of the relevant party set out in Clause 19.2 (or as otherwise notified by that party hereunder).

## **20. Assignment and Sub-licensing**

20.1 This Agreement is personal to the Operator. The Operator must not assign, novate, sub-licence or transfer all or any part of its rights or obligations under this Agreement, save where expressly permitted to do so herein.

20.2 TML may assign, transfer and novate the benefit and burden of this Agreement and may delegate any of its obligations under this Agreement.

## **21. Rights of Third Parties**

21.1 The parties to this Agreement do not intend that any term hereof shall be enforceable by a third party (as defined in the Contracts (Rights of Third Parties) Act 1999 (the "Act") under the provisions of the Act.

## **22. Inadequacy of Damages**

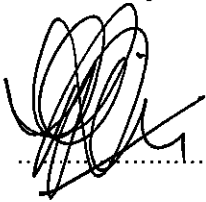
22.1 Without prejudice to any other rights or remedies that TML may have, the Operator acknowledges and agrees that damages alone would not be an adequate remedy for any breach by the Operator of the provisions of this Agreement and that accordingly TML shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this Agreement.

**23. Governing Law and Jurisdiction**

23.1 This Agreement shall be governed by and construed in accordance with the laws of England and the parties for this purpose hereby submit to the jurisdiction of the Courts of England.

**IN WITNESS** whereof the parties hereto or their duly authorised attorneys or representatives have set their hands the day and year first above written.

**SIGNED** by the said **TRUSTMARK (2005) LIMITED:**



.....

Title: Head of Compliance

**SIGNED** by the said **ELMHURST ENERGY SYSTEMS LIMITED:**



.....

Title: MD .....

## **Schedules**

Schedule 1	Registered Firm Licence Agreement
Schedule 2	Trade Marks
Schedule 3	Brand Identity Guidelines
Schedule 3a	Trades sectors
Schedule 3b	Access to membership data
Schedule 3c	Independent Review
Schedule 3d	Management Information Statistics
Schedule 3e	Licence Clause/s

## Schedule 1 - Registered Firm Licence Agreement

**DATE:**

**BETWEEN:**

- (1) [INSERT NAME OF THE SCHEME OPERATOR] of [ ADDRESS ] (“we”, “us”, “our”); and
- (2) [INSERT NAME OF MEMBER] of [ ADDRESS ] (“you” “yours”, “yourself”).

**AGREE:**

1. We grant you a non-exclusive licence to use the trade marks in relation to our Scheme in accordance with the TrustMark Brand Identity Guidelines, provided that such use is limited to the [Insert Trades] trade sectors and is subject to this Agreement. Your right to use the trade marks will continue until this Agreement is terminated in accordance with paragraph 4 below.
2. You must comply with the TrustMark Brand Identity Guidelines and at all times preserve the reputation and integrity of the TrustMark Scheme. You must not engage in any activity or practice which may result in public criticism of us, our Scheme or the TrustMark Scheme.
3. You must comply with our Scheme rules and/or the code of practice and the current TrustMark Core Criteria.
4. In consideration of this licence, you must actively promote awareness of the TrustMark Scheme amongst consumers and the trade.
5. We may terminate this Agreement (without, for the avoidance of doubt, you being eligible for compensation) by immediate written notice to you if:
  - (a) our Scheme ceases to be part of the TrustMark Scheme and/or ceases to have the right to use the trade marks;
  - (b) you cease to participate in our Scheme;
  - (c) you go into liquidation or an administrative receiver or receiver and manager or administrator is appointed for you or your assets or you enter into a voluntary arrangement with your creditors or suffer any similar insolvency process or process which affords you protection from your creditors;
  - (d) you commit a breach of this Agreement and, following our disciplinary processes, we conclude that this licence should be withdrawn;
  - (e) you challenge the validity of the trade marks or any of them.
6. Termination of this Agreement will not affect any existing rights and/or claims that we may have against you, and will not relieve you from fulfilling your obligations which accrued prior to termination.
7. If for whatever reason this Agreement terminates, to protect the reputation of the TrustMark Scheme and ensure its continued operation:
  - (a) you must immediately cease use of the trade marks
  - (b) you must not purport to be associated with the TrustMark Scheme
8. Both the Secretary of State and TML may enjoy the benefit and enforce the terms of [this Agreement] [Clause 6] in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
9. The Schedules form part of this Agreement and any reference to this Agreement includes the Schedules.

**IN WITNESS** to the above the parties have signed below on the date written above.

**SIGNED** by or on behalf of [INSERT NAME OF SCHEME OPERATOR]:

**SIGNED** by or on behalf of [INSERT NAME OF MEMBER]:

.....

.....

## Definitions

1.1 The following expressions which are frequently used in this Agreement shall have the meanings attributed to them below:

<i>Expression</i>	<i>Meaning</i>
“Brand Identity Guidelines”	such branding guidelines as may from time to time be issued by TML (as amended from time to time by TML in its sole discretion);
“Our Scheme”	the “[ <i>insert name of scheme</i> ]” quality scheme operated by us;
“Secretary of State”	the Secretary of State for Business, Innovation and Skills of 1 Victoria Street London SW1H 0ET;
“trade marks”	the certification trade mark(s) detailed in Schedule 2;
“TML”	TrustMark (2005) Limited (Company Registration No 5480144) whose registered office is at The Arena Business Centre, The Square, Basing View, Basingstoke, Hampshire RG21 4EB
“Trust Mark Scheme”	a scheme to encourage the adoption of agreed minimum service standards for firms in the building services sector, and implement them by approving compliant quality standards

## 2. Use of the Trade marks

2.1 We make no warranties about the trade marks and reserve the right to substitute, add to and/or withdraw those trade marks and other indicia which comprise the trade marks if they can no longer be used. In such circumstances, you must use any substituted marks in accordance with the terms of this Agreement, and you will not be eligible for any compensation for such substitution.

## 3. Infringement of the Trade marks

3.1 If you learn of any unauthorised use of the trade marks or if you become aware that the trade marks are being used in a way which is not consistent with the TrustMark Brand Identity Guidelines or of any action detrimental to the trade marks, you must immediately notify us in writing

3.2 You may not bring proceedings relating to any infringement of the trade marks and any decision to bring or defend any proceedings whether for infringement or otherwise in relation to the trade marks is at our sole discretion.

3.3 You must fully cooperate with us and such other parties as we reasonably require, in any infringement proceedings.

## 4. Assignment and Sub-licensing

4.1 This Agreement is personal to you. You must not transfer all or any part of your rights or obligations under this Agreement

4.2 We may assign, transfer and novate the benefit and burden of this Agreement and we may delegate any of our obligations under this Agreement

## Schedule 2 – The Trade Marks

Trade Mark	Application No	Classes	Date of Application
TrustMark	2391436	37,40,44	10.05.2005

### Class 37:

Building construction, maintenance and repair; cleaning services; installation of air-conditioning apparatus, boilers, burglar alarms, conservatories, drains, electric wiring and equipment, insulation, fire alarms, stair lifts, heating equipment, irrigation devices, kitchen equipment, sanitation, telephones and telecommunications cabling, windows and glazing; maintenance and repair services relating to all the aforesaid; roofing, plumbing, damp-proofing services; plastering and rendering; paving and other hardscaping services; fencing; painting and decorating; joinery, carpentry; scaffolding services.

### Class 40:

Timber treatment services.

### Class 44:

Gardening, landscape gardening and tree surgery and consultancy.

Together with any additional or substitute trade marks, which TML shall from time to time deem suitable or necessary.

### **Schedule 3 – Brand Identity Guidelines**

The current TrustMark Brand Identity Guidelines are available for Scheme Operators and Registered Firms to view on the TrustMark website: [www.trustmark.org.uk](http://www.trustmark.org.uk)

### **Schedule 3A – Approved Trades**

Retrofit Assessors  
Retrofit Coordinators

### **Schedule 3B – Access to membership data**

Via Website

### **Schedule 3C – Independent Review**

By TrustMark or their appointed representative

### **Schedule 3D – Management Information**

Provide management information statistics as and when required by TrustMark

### **Schedule 3E – Licence Clause/s**

#### **Interim Audit:**

Elmhurst Energy Systems Limited to be the subject of a TrustMark Scheme Operator audit after 6 months of the Scheme(s) entering into live operation.

#### **Retrofit Assessor Scheme Cost Model:**

To be reasonable, and to encourage this new sector to become established, a submission charge for Retrofit Assessors at the rate of 50 pence (excluding VAT) per completed lodgement of each dwelling Retrofit Assessment will be made; payable via Elmhurst Energy Systems Limited. On a monthly basis, Trustmark will invoice Elmhurst Energy Systems Limited for the total amount of Retrofit Assessments made by their TrustMark Registered Retrofit Assessors in the preceding month.

To protect Trustmark and to cover direct costs, this will be underwritten by a minimum charge from TrustMark to Elmhurst Energy Systems Limited of £2000 (excluding VAT) payable directly upon the scheme becoming live and at intervals thereafter not exceeding 12 months.

This cost model will be jointly reviewed after 12 months of your Scheme going-live and no later than 1<sup>st</sup> July 2020. The basis of this review will be to ensure that the cost model is consistent and fair with regard to other scheme participants yet remains within a context of this sector.

#### **Retrofit Coordinator Scheme Cost Model:**

The charge and rules for lodgement by the Retrofit Coordinator is still under development but is expected to be established as the following:

A payment of £10 (excluding VAT) and as reviewed by TrustMark from time to time, will be made to TrustMark by the Retrofit Coordinator before work commences and in order to gain an electronic token for use in the supply chain for the purpose of the respective access/lodgement to the Data Warehouse. *(continued over leaf >>>)*

The charge and token will allow up to 6 measures and associated data to be lodged for the dwelling that the token relates to and will be valid for a period of 6 calendar months.

This cost model will be jointly reviewed after 12 months of your Scheme going-live and no later than 1<sup>st</sup> July 2020. The basis of this review will be to ensure that the cost model is consistent and fair with regard to other scheme participants yet remains within a context of this sector.