



# Membership Terms & Conditions

The Home Improvement Consumer Protection Scheme

**VERSION 3**

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## **HICS Code of Practice**

### **KEY FACTS DOCUMENT**

As part of your HICS Membership you are required to abide by the Terms of Membership.

This document is a short summary of the Terms but is not a substitute for the full Terms of Membership, which you should also read.

#### **What do I need to do?**

- Register all Jobs on the Portal;
- Promote your membership by using the point-of-sale and marketing materials provided to you by us from time to time or such other methods as we reasonably require from time to time;
- Notify us of any significant changes to your business activity or anything which We may reasonably deem could have an adverse effect on it;
- Maintain adequate financial resources and responsible accounting practices for maintaining Your business as a going concern;
- Provide Us with information, which is always correct, accurate and complete and to not mislead Us or misrepresent to Us in any way;
- Not bring the Scheme into disrepute;
- To cooperate with us and the Alternative Dispute Resolution (ADR) Provider with the resolution of disputes; and
- to comply with all Data Protection Laws.

You must comply with the requirements of consumer law which includes:

- Supplying goods of a satisfactory quality
- Carrying out services with reasonable care and skill
- Providing cooling-off periods as required
- Not committing any misleading, aggressive or unfair trading practices

#### **What will HICS do for me?**

- Provide assistance with the resolution of complaints about You, including the provision of access to ADR for all Jobs undertaken throughout Your Membership;
- Secure, for the benefit of your consumer, a Deposit Protection Policy;
- Secure, for the benefit of Your Consumer, an Insurance-Backed Guarantee;
- Provide sales and marketing support materials;
- To comply with all laws applicable to the Scheme.

### **Other important points to note**

- We may at any time terminate your membership if we have concerns over your financial stability.
- You must not take deposits in excess of 25% of the contract value.
- You shall maintain adequate and effective means of resolving complaints about you and/or any job You have undertaken (including any action or default by any agents, lead generators, sales personnel, installers or sub-contractors working on Your behalf).
- You must co-operate with us and our appointed complaint handlers and Ombudsman in resolving any complaint.
- HICS Operates a Membership Review Panel, which can at any time assess suitability of membership .

### **Where to get more information**

Please contact us on 0333 323 2655 for more information.

## Clause A

### The Scheme, the Parties and the Term

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- A1 The **Scheme** operates on the basis of the **Membership Terms & Conditions**. **Membership** includes the **HICS Application Form** and the **Schedule of Fees & Charges** which shall form the legally binding contract between the parties HICS and **You**, the legal entity in which you entered the **Scheme**.
- A2 The parties are:
- (a) **You, Your, The Member** means the legal entity in which you entered the **Scheme**.
  - (b) **We, Our, Us** means **the Home Improvement Consumer Protection Scheme Ltd (HICS)**, whose company number is **09507751** and whose registered office is at Centurion House, Leyland Business Park, Centurion Way, Farington, Leyland, PR25 3GR. **We** administer and provide the **Scheme**.
- A3 **We** may contact **You** for any purposes under These Membership Terms & Conditions by, but not limited to email, phone, letter.
- A4 **You** can contact **Us** for any purposes under These Membership Terms & Conditions by, but not limited to, email, phone, letter.
- A5 **Membership** shall come (or be deemed to have come) into force on the **Effective Date** and shall continue in force indefinitely thereafter unless and until it is terminated by either party in accordance with the terms of these Membership Terms & Conditions.

## Clause B

### Definitions

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- B1 The provisions of the Interpretation Act 1978 shall have effect for the purposes of interpreting the provisions of these Membership Terms & Conditions.
- B2 Any Schedules and Appendices to these Membership Terms & Conditions shall form part of these Membership Terms & Conditions as if set out within its main body. New Schedules and Appendices may be added to these Membership Terms & Conditions from time to time and shall take effect from the date added.
- B3 If any provision or part-provision of these Membership Terms & Conditions becomes for any reason illegal, invalid, ineffective, inoperable or otherwise unenforceable by law, it shall be modified to the minimum extent necessary to make it valid, legal and enforceable without affecting the validity and enforceability of the remainder of these Membership Terms & Conditions. If such modification is not possible, the relevant provision or part-provisions shall be severed and deemed to be deleted from these Membership Terms & Conditions and the validity and enforceability of the remainder of these Membership Terms & Conditions shall not be affected or impaired thereby.
- B4 No failure or delay by a party to exercise any right or remedy provided under these Membership Terms & Conditions and/or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- B5 The following words or phrases are used throughout these Membership Terms & Conditions, which means this document (which can change from time to time) that details your relationship with us and your customers, and unless the context dictates otherwise, shall have the following meanings:

<i><b>Term</b></i>	<i><b>Definition</b></i>
<i>ADR</i>	means alternative dispute resolution.
<i>ADR Provider</i>	means the organisation determined in accordance with Clause M2.
<i>Annual Fee</i>	the fee payable by <b>You</b> to <b>Us</b> in consideration of <b>Your Membership</b> as detailed in clauses D6 and D7.
<i>Business Day</i>	means any day that is not a Saturday, Sunday or public holiday in England.
<i>Consumer</i>	means <b>Your</b> retail customer, in the UK.
<i>Decision Maker</i>	means the person or body charged with making a decision under the terms of these Membership Terms & Conditions.
<i>Decision Notice</i>	means a final decision made by <b>Our Decision Maker</b> and which is notified to <b>You</b> in writing.
<i>Deposit Protection Policy</i>	means an insurance backed policy obtained by <b>Us</b> from the marketplace to provide the <b>Consumer</b> with the protection of a deposit that they have paid to <b>You</b> , subject to relevant policy limits, in the event that <b>You</b> cease to trade.

<i>Effective Date</i>	means the date on which the <b>HICS Membership Terms &amp; Conditions Acceptance Form</b> is signed.
<i>Ex-Member's Tariff</i>	means the tariff on which <b>You</b> shall be put by default in the event of <b>Your Membership</b> being terminated or ceasing for whatever reason.
<i>FCA</i>	means the Financial Conduct Authority or any superseding body from time to time
<i>HICS Application Form</i>	means the form which <b>You</b> completed, and which is headed as such.
<i>Insurance-Backed Guarantee</i>	means an insurance backed policy obtained by <b>Us</b> from the marketplace to provide the <b>Consumer</b> with the protection of the <b>Product</b> and workmanship guarantee provided by <b>You</b> in accordance with Clause F5, subject to relevant policy limits, in the event that <b>You</b> cease to trade and are unable to honour the guarantee.
<i>Intellectual Property</i>	Means patents, rights to inventions, copyright and related rights, rights in software, trade marks (including Licensed Logos), business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.
<i>Job</i>	any and all contracts which <b>You</b> enter into with a <b>Consumer</b> during the <b>Term</b> .
<i>Job Value</i>	the value of a <b>Job</b> calculated by reference to the amount which the <b>Consumer</b> is due to pay to <b>You</b> .
<i>Licensed Logos</i>	the intellectual property which <b>We</b> provide to and authorise <b>You</b> to use in accordance with the terms of <b>Your Membership</b> as set out in our <b>Schedule of Standard Licensing Terms</b> .
<i>Loss or Losses</i>	means charges, claims, costs, damages, demands, expenses, liabilities and losses.
<i>Membership</i>	means <b>Your</b> membership of the <b>Scheme</b> .
<i>Membership Review Panel</i>	Means the panel which make determinations in relation to <b>Your Membership</b> , comprised in accordance with Clause M3.
<i>Minded To Notice</i>	means a preliminary view of the nature of a proposed decision.

<i>Personnel</i>	shall take the meaning given to it in the <b>HICS Application Form</b> .
<i>Portal</i>	<b>Our</b> job registration portal through which <b>You</b> shall register <b>Jobs</b> in accordance with Clause E.
<i>Principal Obligations</i>	means those of <b>Your</b> obligations, which are set out within Clause C1.
<i>Products</i>	the products or classes of retail products which <b>We</b> authorise members to sell to consumers under the <b>Scheme</b> and which <b>We</b> confirm that <b>You</b> are recognised to provide under the <b>Scheme</b> .
<i>Schedule of Fees and Charges</i>	means the document provided by <b>Us</b> as amended from time to time which sets out the fees and charges applicable to the <b>Scheme</b> .
<i>Scheme</i>	means the Home Improvement Consumer Protection Scheme (HICS).
<i>Term</i>	means the period of <b>Your Membership</b> during which <b>You</b> remain subject to the Membership Terms & Conditions (as amended from time to time) and/or <b>Your Membership</b> continues.
<i>Trading Terms</i>	shall take the meaning given to it in Clause I7.
<i>We, Us, Our</i>	means HICS.
<i>You, Your, the Member</i>	means the party specified as the Member whose details are set out in the <b>HICS Membership Agreement Acceptance Form</b> .



## Clause C

### Principal Obligations

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- C1 This Clause sets out **Your** Principal Obligations under these **Membership Terms & Conditions**, which are provided only as a summary to the main provisions of **Your Membership**. **You** are bound by these Membership Terms & Conditions and therefore anything which has not been set out within this Clause shall not be deemed to fall outside of **Your** obligations to the **Scheme** and under **Your Membership**. **Your** Principal Obligations are:
- (a) to register all **Jobs** on the **Portal** throughout the **Term**;
  - (b) to promote **Your Membership** by using the point-of-sale and marketing materials provided to **You** by **Us** from time to time or such other methods as **We** reasonably require from time to time;
  - (c) to notify **Us** of any significant changes to **Your** business activity or anything which **We** may reasonably deem could have an adverse effect on it;
  - (d) to maintain adequate financial resources and responsible accounting practices for maintaining **Your** business as a going concern;
  - (e) to provide **Us** with information, which is at all times correct, accurate and complete and to not mislead **Us** or misrepresent to **Us** in any way;
  - (f) not to bring the **Scheme** into disrepute;
  - (g) to cooperate with **Us** and the **ADR Provider** with the resolution of disputes; and
  - (h) to comply with all Data Protection Laws.
- C2 This Clause sets **Our** Principal Obligations under these Membership Terms & Conditions of Membership, which are provided as a summary only. **We** are bound by the **Membership Terms & Conditions** and therefore anything which has not been set out within this Clause shall not be deemed to fall outside of **Our** obligations. **Our** principal obligations to **You** are to:
- (a) provide assistance with the resolution of complaints about **You**, including the provision of access to **ADR** for all **Jobs** undertaken throughout **Your Membership**;
  - (b) secure, for the benefit of **Your Consumer**, a **Deposit Protection Policy**;
  - (c) secure, for the benefit of **Your Consumer**, an **Insurance-Backed Guarantee**;
  - (d) provide sales and marketing support materials in accordance with Clause J and to provide reasonable assistance with **Your** sales training and advice;
  - (e) to comply with all laws applicable to the **Scheme**.

## Clause D

### Membership Terms & Conditions

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- D1 **You** have agreed to join the **Scheme** and agree to be bound by and comply with these Membership Terms & Conditions (previously known as Membership Terms & Conditions & Membership Agreement) setting out the terms and conditions applicable to being a member of the **Scheme**. The **Membership Terms & Conditions** and any documents referred to in it form the entire agreement between the parties which supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between them, whether written or oral, relating to its subject matter. **You** acknowledge that in entering into the **Membership Terms & Conditions**, **You** do not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the **Membership Terms & Conditions**. **You** agree that **You** shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Membership Terms & Conditions.
- D2 **Membership** of the **Scheme** is by invitation only and **You** are therefore not permitted to assign, transfer, charge, grant rights to any other person or trade **Your Membership** with any other person. In the event that **You** are subject to a change of control or **You** sell **Your** business, **You** must contact **Us** to determine the steps required to continue to recognise **You** where there is a change of control or to recognise the new owner in the event of a business sale, in either case in accordance with Clause P4.
- D3 **You** acknowledge that the purpose of the **Scheme** is to provide consumer protection and accordingly **You** hereby consent to the jurisdiction of the **Scheme** to the full extent permitted by the terms of these Membership Terms & Conditions, as amended from time to time. In very limited circumstances, a court of competent jurisdiction may apply public law principles to the relationship between **You** and **Us**, but to the extent permitted by law, such action is expressly excluded and the relationship between **You** and **Us** shall be determined in accordance with the provisions of the **Membership Terms & Conditions**.
- D4 For the avoidance of doubt, in accordance with **Our** Articles of Association, **You** are designated as a "Trade Member" of the Scheme and **You** are invited to participate in the **Scheme**, which is subject to **You** having passed the accreditation process. **You** are not an "Executive Member" of the **Scheme** (or us) and **You** have no rights to elect the board, administer the **Scheme**, ourselves or any committee, sub-group or working party set up by the **Scheme** or **Us**. **You** are not a legal member of **Us** (or the **Scheme**) for the purposes of the Companies Act 2006.
- D5 Nothing in these Membership Terms & Conditions is intended to, or shall operate to, create a partnership or joint venture 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 of or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

- D6 The **Effective Date** shall be no longer than 14 days from payment of the **Annual Fee** to **Us**. Following receipt of the **Annual Fee** in cleared funds, **We** will issue **You** with a Membership Pack, which will include **Your** Membership Certificate. **Your** Membership Certificate will be valid for a period of twelve months from the **Effective Date**. **You** shall display the Membership Certificate in a prominent and public place at **Your** principal place of business. **You** shall display a copy of the Membership Certificate at each of your trading premises and a copy (either in paper or electronic form) shall be carried by all sales personnel employed by **You** or acting as **Your** agent. **You** shall identify **Your** membership of the **Scheme** on **Your** websites. The **Annual Fee** shall be as set out in the Schedule of Fees and Charges (as varied from time to time).
- D7 **We** shall issue an invoice for the **Annual Fee** approximately one month in advance of each anniversary of the **Effective Date** (and each anniversary thereafter). You shall pay the **Annual Fee** as specified in the invoice. Subject to these Membership Terms & Conditions remaining effective and **You** paying the **Annual Fee** in advance of the applicable anniversary as mentioned in the clause above or as otherwise specified within the invoice, the **Scheme** will issue **You** with a Renewal Membership Certificate.
- D8 These Membership Terms & Conditions and any variation to them shall have effect throughout the **Term** and for any period afterwards where they are expressed to continue. They shall apply particularly to, but not be exclusively restricted to **Your** responsibilities and commitments in respect of:
- (a) any contractual obligation accepted by, or affecting, **You** and any of **Your** customers; and
  - (b) any work contracted and carried out by **You** (including any subsequent remedial or warranty work and/or any related tortious matter); and
  - (c) any matter of complaint or claim in tort raised by a member of the public about or resulting from its dealings with **You** during the duration of the Membership Terms & Conditions.
- D9 At the end of the **Term** any of the Membership Terms & Conditions which are intended to apply after **Your Membership** ends shall continue to apply and **You** shall be bound to those obligations.
- D10 **We** permit **You** to sell the **Products** to **Consumers** under the terms of the **Scheme**. **We** may from time to time provide **You** with one month's notice in the event that **Products** are to be added to or removed as **Products**.
- D11 **You** must maintain adequate financial resources and responsible accounting practices for maintaining **Your** business as a going concern. **Your** attention is drawn to Clause R, which provides permission for **Us** to share data and information with third parties including credit reference agencies to, among other matters, verify that **You** are maintaining **Your** business as a going concern.
- D12 If **We** have cause for concern about **Your** financial stability, **We** may take action at **Our** absolute discretion to terminate **your Membership** in accordance with Clause P, in the event that:
- (a) **Your** creditworthiness reaches a critically low level (scoring less than 25 out of 100, as provided by **Our** nominated credit reference agency); or
  - (b) **You** indicate to **Us**, in express terms, that **You** intend to cease to trade or threaten to cease to trade; or

- (c) **You** enter any composition or arrangement (whether formal or informal) with **Your** creditors; or
  - (d) **You** become the subject of a voluntary arrangement within the meaning of Section 1 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof; or
  - (e) **You** become unable to pay **Your** debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof; or
  - (f) a receiver manager, administrator or administrative receiver is appointed in respect of **You** or any undertaking, assets or income or a substantial part thereof; or
  - (g) a winding up resolution of **You** is passed or any petition is presented to any Court for **Your** winding up or **You** are ceasing or threatening to cease to carry on **Your** business; or
  - (h) if **You** are convicted of any crime committed in the course of any trade or business that attracts a fine in excess of £500, or any period of imprisonment for any **Personnel**; or
  - (i) If **You** or any **Personnel** are charged with an offence for any crime committed in the course of any trade or business.
- D13 **You** shall not bring **Us** or the **Scheme** into disrepute.
- D14 **You** shall ensure that all of **Your Personnel**, Agents and Sub-Contractors shall be fit and proper persons for discharging their responsibilities under the Membership Terms & Conditions.

## Clause E

### Job Registration

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- E1 **You** shall notify **Us** of every **Job**, subject to the provisions of Clause E5, by using the **Portal**.
- E2 **We** shall provide the person nominated by **You** with instructions, a username and password on how to access and use the **Portal**.
- E3 **You** shall notify **Us** of every new **Job** within 2 Business Days of **You** entering into a contract with a **Consumer**. Please note a contract is formed when you agree to undertake any work not just when a written agreement is entered. **We** may charge you a late registration fee for any **Job** that you register on the **Portal** beyond 2 **Business Days** in accordance with **Our Schedule of Fees & Charges**.
- E4 **You** must notify **Us** of the completion date of **Your** installation via the **Portal** within 2 days of completion upon which date, **Your** Guarantee period for the Job shall commence on the completion date.
- E5 The following jobs are exempt from the requirement for **You** to notify **Us**:
- (a) **You** are not required to notify a **Job** to **Us** if the total net (excluding VAT) value of the **Job** does not exceed £300 unless **You** are proposing to self-certify the **Job** under the terms of the Building Regulations 2010 (through a Competent Person Scheme) in which case there is no lower limit for the **Job** value; or
  - (b) **You** are not required to notify a **Job** to **Us** if it is at a property that is that is overseas (including the Channel Islands or Isle of Man) – i.e. **You** are only required to notify **Us** of **Jobs** that are in England, Wales, Scotland or Northern Ireland; or
  - (c) **You** cannot use the **Portal** to notify a **Job** to **Us** if it is installed at a property on the fourth story or above (i.e. blocks of flats) – if **You** are proposing to self-certify such a **Job** under the terms of the Building Regulations 2010 (through a Competent Person Scheme) **You** must contact **Us** directly to arrange for the registration of the **Job**; or
  - (d) **You** are not required to notify a **Job** to **Us** if it is not provided to a **Consumer**.
- E6 For the avoidance of doubt, the purpose of **Job** registration by **You** is so that **We** can calculate the fees due for the performance of **Our** obligations under these Membership Terms & Conditions as a whole, including insurance protection, complaint and dispute resolution, the **Scheme** intellectual property and **Our** member services. Any representations made to **You** regarding what **Jobs** **You** may or may not register are superseded by the terms of these Membership Terms & Conditions.

E7 **You** are reminded that **Membership** is considered an approval, endorsement or authorisation by **Us** of **You** and, therefore, it may be a criminal offence under the Consumer Protection from Unfair Trading Regulations 2008 to fail to comply with the terms of these Membership Terms & Conditions. In addition, if **You** deliberately or dishonestly fail to comply with the requirements of this Clause, **You** are depriving **Your Consumer** of access to the protection afforded by the **Scheme**, thus exposing them to a risk of Loss, which could be considered to be fraud by a court of competent jurisdiction.

E8 **You** shall ensure that **We** have the ability to lawfully process the data about customers and to share this with third parties for the purposes of the **Scheme**. **You** shall inform the **Consumer** **You** will share information with **Us** which **We** will process on the basis of our legitimate interest. **You** will confirm **We** may process data for:

- (a) registering **Jobs**;
- (b) monitoring **Your** compliance with the **Scheme**;
- (c) obtaining insurance cover; and the overall management of the **Scheme**.

**You** confirm that **We** may contact **Consumers** directly.

Cancellation of Jobs (Clause E9 – E10)

E9 **You** may cancel the registration of any **Job** by using the **Portal** provided:

- (a) the **Job** to which the registration relates was cancelled in accordance with the **Consumer's** consumer rights to change their mind and cancel the Job;
- (b) **You** notify **Us** within 10 **Business Days** of the cancellation of that **Job**.

Providing the notification is received within 10 **Business Days** then upon cancellation, **You** will receive a credit towards the registration of **Your** next **Job**. No credit will be applied for any cancellation received later than 10 **Business Days** following the registration.

E10 If **You** make a mistake with a registration, **You** should contact **Us** as soon as possible to notify **Us** of the error. **We** will use reasonable endeavours to rectify the mistake, including where appropriate, at our sole discretion, cancellation of the **Job** registration and issue **You** with a credit towards the registration of **Your** next **Job**.

E11 **We** shall, on receipt of **Your** registration of a **Job**, secure a **Deposit Protection Policy** up to and not exceeding 25% of the total **Job Value** or £50,000 whichever is the lower amount. The **Deposit Protection Policy** is secured regardless of whether or not any deposit is taken and is mandatory. **We** shall send the relevant **Deposit Protection Policy** documentation directly to the **Consumer**.

Insurance Backed Guarantees (Clause E12)

E12 **We** shall, on **Your** registration of the completion of a **Job**, secure an **Insurance-Backed Guarantee** in accordance with **Your** approved guarantee period as set out in relation to each respective **Product** in Clause F. This policy is mandatory. The relevant **Insurance-Backed Guarantee** policy documentation will be sent directly to the **Consumer**.

## Clause F

### Licences, Insurances and Guarantees

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- F1 **You** agree at all times throughout the **Term** and for such period as **We** direct thereafter, to hold insurance, with an insurer authorised to provide insurance policies covering risks in the UK, in respect of the matters set out in these Membership Terms & Conditions which shall for the avoidance of doubt include the following policies carrying at least the minimum amount of cover specified for **Your** type of business by statute or as shown below, whichever is the higher:
- (a) a policy of Public Liability Insurance providing a minimum of £2m of cover; and
  - (b) if you employ any person, a policy of Employers Liability Insurance providing a minimum of £5m of cover.
- F2 **You** shall provide a copy of **Your** insurance policies as required by Clause F1 and F2 to **Us** at each renewal date of the insurance throughout the Term. **You** shall notify **Us** of any changes to **Your** insurance policies within 5 Business Days, by sending a copy of **Your** revised policy to **Us** in the manner **We** confirm to **You**.
- F3 If **You** sell, arrange or discuss any finance options with **Consumers**, **You** must hold the appropriate authorisation from the FCA (or be an appointed representative of a party who does) which **We** must be able to verify on the FCA's Financial Services Register. If **You** cease to be authorised (or an appointed representative).
- F4 **You** must provide every **Consumer** with a guarantee for the **Products** that they have purchased and **Your** workmanship which must consist of:
- (a) a guarantee, and does not exceed any maximum requirements **We** may specify generally or specifically to **You**, for the **Product** and workmanship for a period shown for that **Product** in **Your Membership**; and
  - (b) any manufacturers' guarantee for each and all of the component parts of the **Product(s)** that **You** are supplying.
- F5 **You** acknowledge that, notwithstanding the additional protection afforded by the existence of a manufacturers' guarantee, **You** maintain primary responsibility for ensuring that any **Product** defects are rectified. Where a manufacturer is unable or unwilling to honour the terms of their guarantee, **You** are responsible for honouring the terms of **Your** own **Product** and workmanship guarantee for the duration of its cover. **You** hereby warrant that **You** will provide **Us** with access to any relevant manufacturers' guarantees and authority to deal on **Your** behalf with any manufacturer where **You** are unable to do so given **Your** reasonable endeavours.
- F6 **Your** tariff and fees, as set out in the **Schedule of Fees and Charges**, are reflective in part, of the approved guarantee period. If **You** provide **Consumers** with guarantees in excess of **Your** approved guarantee:
- **You** agree and acknowledge that **We** may not be able to obtain cover for **You** for any **Loss** arising out of such excess guarantee and that **Your** Consumer would not have cover for any claims made by them during any excess period.

## Clause G

### Data Exchange

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G1 This guidance sets out the **Our** procedures that govern the transfer, both outgoing and incoming, of data sets between **Us** and a **Member**.

G2 In order to help us operate in an effective and secure manner, **We** require **You** to provide us access to **Your** data pertaining to Product installations.

G3 This data can be transferred using the following methods;

- **Member** to send **Us** data - this needs to be in a structured format and will be agreed during the membership onboarding process.
- **Member** completing job registrations on the portal we provide.
- **We** collect data from the **Member** - **We** will log onto the **Members** IT system and extract the relevant details.

G4 Information required from **You** will include, but is not limited to;

- File format
- Server DNS/IP Address
- Login credentials
- Data collection frequency

G5 **We** will ensure relevant Data Protection legislation is adhered to as part of any data exchange.



## Clause H

### Licence of Intellectual Property Rights

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- H1 **We** permit **You** to operate **Your** business under the trading styles and business names approved by **Us**. You agree not to carry out any business other than under the approved trading styles and business names. **We** will permit **You** to use the **Licensed Logos** and include reference to **Your Membership** of the **Scheme** on the basis of the **Membership Terms & Conditions**. **We** may from time to time notify **You** that a trading style, business name and/or **Licensed Logos** are to be added to or removed from the approved/permitted list.
- H2 **We** grant to **You** a non-exclusive, non-transferrable license, on the terms set out in this Clause I and to use **Our Intellectual Property** in the **Licensed Logos** for use in connection with **Your Membership** and in particular the marketing of the **Products** and services to the general public. **You** shall not alter, deface or modify the **Intellectual Property** in any way, nor shall **You** seek to create any derivative, developed or improved rights (**'Improvements'**). In the event that any Improvements are created then ownership of these shall automatically vest in **Us**.
- H3 For the avoidance of doubt all ownership rights vesting in **Our Intellectual Property** shall remain **Our** exclusive property (or where applicable, the third party from whom the right to use the **Intellectual Property** has derived). **We** make no warranties as to the validity or enforceability of the **Intellectual Property**, nor do **We** warrant that it does not infringe the rights of any third party.
- H4 **You** shall promptly give **Us** notice in writing if **You** become aware of any infringement or suspected infringement of the **Intellectual Property** or any other rights relating to **Your Membership**. In respect of any matter that falls within this Clause H:
- (a) **We** shall, at **Our** absolute discretion, decide what action to take in respect of the matter (if any) and shall conduct and have sole control over any consequent action that **We** deem necessary save that **You** shall be required to provide any assistance to **Us** (including the use of **Your** name in, or being joined as a party to, proceedings) with any action to be taken by **Us** under this Clause;
  - (b) **We** shall pay all costs in relation to that action (unless any action is wholly or partly attributable to **Your** acts or omissions in which case the indemnity at Clause S shall apply); and
  - (c) **We** shall be entitled to 100% of all damages and other sums that may be paid or awarded in **Our** or **Your** favour as a result of that action.
- H5 **You** shall, within 3 calendar months from the **Effective Date**, ensure that **You** display the **Scheme** logo on all customer-facing documents, stationery, websites, vehicles and all radio, TV, on demand, social media or internet commercials.
- H6 On termination of **Your Membership**, **You** agree that **You** shall either destroy or pass up to **Us** all information and materials belonging to **Us** or carrying **Our Intellectual Property**, or otherwise remove references to **Our Intellectual Property** from any and all of **Your** materials. Upon written request from **Us**, **You** shall warrant that **You** have complied with the provisions of this Clause.

- H7 This Clause H is intended to survive the termination of **Your Membership**. **You** shall, within 20 Business Days from the date of termination, ensure that **You** remove any of **Our Intellectual Property** on all customer-facing documents, stationery, websites, vehicles and all radio, TV, on demand, social media or internet commercials. For any **Job** that **You** enter into after the termination of **Your Membership** **You** are reminded that it is an offence to claim membership of the **Scheme** when **You** are no longer a member
- H8 **You** agree to only use the trading styles and business names (or any branding or name) only when approved by **Us** and subject to its registration with **Us**. In the event that any trading style, business name or branding of yours causes **Us** any **Loss** **You** agree to fully indemnify **Us** against the same.

## Clause I

### Your Promotion of the Scheme

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- I1 You shall ensure that Your relevant administrative staff are trained in the use of the Portal and have undergone induction training about the Scheme.
- I2 **You** shall ensure that all customer facing personnel, including any third-party sales staff (e.g. anybody engaged in the sales process for or on **Your** behalf) shall receive training which will include information on selling methods, consumer rights, cancellation rights and identifying and dealing with vulnerable customers.
- I3 **You** shall also provide all of **Your Consumers** with information about how to complain to **You** and, if they are unable to resolve their complaint with **You**, how to complain to **Us**.
- I4 **You** shall not explicitly or implicitly claim to represent **Our** views or those of the **Scheme** without the written consent of **Our** board.
- I5 **You** shall not use material to publicise the **Scheme** which is not in accordance with the brand guidelines for the **Scheme** that **We** shall supply to **You** from time to time.
- I6 **You** shall not explicitly or implicitly represent to any person that the **Scheme** shall provide any protection or service that it is not obliged to provide under the terms of the **Membership Agreement**. In this regard, **Your** attention is specifically drawn to:
- (a) the limits on deposit protection **We** will obtain for the benefit of the **Consumer**;
  - (b) the maximum guarantee protection **We** will arrange;
  - (c) eligibility to access to **Our** complaints handling services; and
  - (d) eligibility to access **Our ADR Provider**.
- I7 **You** must provide all **Consumers** with contractual terms and conditions, product and workmanship warranty wording and cancellation rights wording that is agreed by **Us**. In this regard, **You** can either use:
- (a) the model documents provided to **You** by **Us** from time to time; or
  - (b) **Your** own documentation approved by **Us** at **Your** expense; (**'the Trading Terms'**).

## Clause J

### Marketing and Support

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J1 Without prejudice to **Your** obligations as set out in Clause J above, **We** shall:

- (a) be responsible for driving overall brand building marketing for the **Scheme**; and
- (b) provide **You** with information on the advertising and promotion carried out by **Us** and any updated, modified or developed **Intellectual Property** for **Your** use; and
- (c) supply, at **Your** expense, any:
  - i. promotional and advertising material that is already in use by **Us** or any other member at **Our** absolute discretion; and
  - ii. new promotional and advertising material at **Our** absolute discretion.

## Clause K

### Complaint Handling

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- K1 This Clause K is intended to survive termination of **Your Membership**.
- K2 **You** shall maintain adequate and effective means of resolving complaints about **You** and/or any **Job You** have undertaken (including any action or default by any agents, lead generators, sales personnel, installers or sub-contractors working on **Your** behalf).
- K3 Where **You** are unable to resolve a complaint about **You** and/or any **Job You** have undertaken or, at **Our** sole discretion in any other circumstances, **We, or our appointed complaint handlers** may accept a complaint about **You** and/or any **Job** and to seek a resolution of that complaint if it relates to a **Job** undertaken during the **Term**. At **Our** sole discretion, **We** may offer assistance to resolve a complaint for one of **Your Consumers** where **You** have entered into a **Job** at any time but **We** are under no obligation to do so and **You** may be charged a fee (which **You** agree to pay) as set out in the **Schedule of Fees and Charges** for **Our** services in this regard. **We** will not accept a complaint relating to a **Job** undertaken outside of **Your Membership** if it is not linked to **Your Membership**.
- K4 At **Our** sole discretion, **We** may refuse to accept a complaint if, in **Our** opinion, it is frivolous, vexatious or repetitive.
- K5 **You** have a duty to cooperate with **Our** complaint handlers. In particular, **You** must respond to **Our** enquiries within a maximum of 5 **Business Days**, provide **Us** with supporting materials and evidence and such other reasonable assistance as may be necessary to resolve the complaint.
- K6 **We** do not decide as to who is in the right or who is in the wrong (see Clause M: Alternative Dispute Resolution where a determination may be made), but **Our** experienced complaint handlers and mediators will assist **You** to try to reach a fair resolution with the **Consumer**. On reaching an agreed settlement, **We** will provide **You** with a written record of that settlement, signed by both parties, and give **You** and the **Consumer** a reasonable period of time to implement the requirements of that settlement.
- K7 **You** are required to implement the terms of a settlement agreement within the reasonable time allocated to such implementation.
- K8 **You** agree not to commence any claim in a court against a **Consumer** whilst **Our** complaint handlers are attempting to seek a resolution, without **Our** consent (save where required to protect against the imminent expiry of any limitation period).
- Charges for Complaint Handling - (Non-Members) (Clause L10)
- K9 **We** will not charge any fees to the **Consumer** for using **Our** complaint handling and mediation services. **We** will not charge **You** any fees for using **Our** complaint handling and mediation services provided **You** maintain **Your Membership**. After the expiration of **Your Membership**, **You** will be charged fees for complaint handling and mediation services in accordance with the **Schedule of Fees and Charges**.
- K10 **We**, at **Our** sole discretion, may determine that it is necessary to appoint an expert specialist to assess **Your Product** or workmanship. **You** have a duty to cooperate with **Our** expert specialist. In particular, **We** expect **You** to respond to **Our** expert specialist's enquiries in a reasonable timescale, provide them with supporting materials and evidence and such other reasonable assistance as may be necessary to provide an informed opinion on **Your Product** or workmanship

## Clause L

### Alternative Dispute Resolution

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- L1 This Clause L is intended to survive termination of **Your Membership**.
- L2 **We** shall, as part of the **Scheme**, maintain a contract with a suitably qualified provider of **ADR**. The **ADR Provider** shall be an approved **ADR** entity in accordance with the provisions of the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. **Our** current **ADR Provider** is:
- Dispute Resolution Ombudsman, Premier House, 1-5 Argyle Way, Stevenage, SG21 2AD
- You** can view their terms of reference at [www.disputeresolutionombudsman.org](http://www.disputeresolutionombudsman.org). **We** may appoint an a replacement **ADR Provider** at any time and are not obliged to provide any notice of such change. Details of the current **ADR Provider** are available on request.
- L3 Where **We** are unable to resolve a complaint between **You** and **Your Consumer** (or elect not to consider the complaint), **We** may, at **Our** sole discretion, refer the complaint to **Our ADR Provider** if it relates to a **Job** that was completed or undertaken during the **Term**. In addition, **Our ADR Provider** may, at its sole discretion, accept a complaint directly from **Your Consumer** where **You** have issued **Your** final response to the complaint or at least eight weeks has elapsed since the complainant first brought **Your** attention to the complaint if it relates to a **Job** that was completed or undertaken during the **Term**. Complaints within the terms of this Clause are within the compulsory jurisdiction of **Our ADR Provider**. **You** agree to be bound to submit to this jurisdiction.
- L4 **Our ADR Provider** may refuse to accept a complaint if, in their opinion, it is frivolous, vexatious or repetitive.
- L5 **You** have a duty to cooperate with **Our ADR Provider**. In particular, **You** shall respond to their enquiries in a reasonable timescale, provide them with supporting materials and evidence and such other reasonable assistance as may be necessary to consider the complaint. In addition, **We** may provide our **ADR Provider** with any relevant information about **Our** attempts to resolve the complaint, including, if appropriate, the report of any expert specialist.
- L6 **Our ADR Provider** is entirely independent of **Us**. They will reach an independent and impartial determination on how to resolve the dispute between **You** and **Your Consumer**. **Our ADR Provider** will provide **You** and **Your Consumer** with notice of their interim determination and if it is accepted by both parties it will be a final award. If it is not accepted by both parties, **Our ADR Provider** will proceed to make a final award.
- L7 **You** are legally bound to comply with the **ADR Provider's** interim determination if both parties agree or any final award. **Your Consumer**, is not legally bound to comply (unless they have agreed to an interim award), but in any subsequent court proceedings relating to the dispute, **We** will provide a copy of an interim or final determination of **Our ADR Provider** to the court.
- L8 **You** are required to implement the terms of a final award within the time allocated to such implementation by **Our ADR Provider**.
- L9 **You** agree not to commence any claim in a court against **Your Consumer** whilst **Our ADR Provider** is considering the matter, without the consent of **Our ADR Provider** (save where required to protect against the imminent expiry of any limitation period).

- L10 **We** will not charge any fees to **Your Consumer** for using **Our ADR Provider**. **We** will not charge **You** any fees for the use of **Our ADR Provider** exercising their compulsory jurisdiction, provided **You** maintain **Your Membership**. After the expiration of **Your Membership**, **You** will be charged fees for using our **ADR Provider** in accordance with the **Schedule of Fees and Charges**. **You** may be charged a fee as set out in the **Schedule of Fees and Charges** for **Our** services and those of the **ADR Provider** if exercising their voluntary jurisdiction.
- L11 In relation to any disputes between the parties to the **Membership Terms & Conditions**, each Party irrevocably agrees that, prior to the commencement of any action before the courts, any dispute or claim that arises out of or in connection with the **Membership Terms & Conditions** or its subject matter or formation (including non-contractual disputes or claims) shall:
- (a) first be dealt with by senior managers from each party meeting to discuss the matters in dispute within 20 **Business Days** of one party notifying the other of a dispute;
  - (b) (if the dispute cannot be resolved at the meeting held in accordance with Clause L11(a) be settled under the Rules of Arbitration by one or more arbitrators appointed by joint agreement of the parties to the **Membership**, or, if agreement cannot be gained the Arbitrator will be appointed by the Centre for Dispute Resolution.

## Clause M

### Monitoring and Audit

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- M1 **We** shall maintain a fair, proportionate and risk-based monitoring and auditing regime over **Your** activities and the activities of other members of the **Scheme**.
- M2 **You** have a duty to cooperate with **Our** monitoring and auditing regime, including any contractors that **We** use. In particular, **You** shall respond to any enquiries in a reasonable timescale, provide supporting materials and evidence and such other reasonable assistance as may be necessary to assess **Your** compliance. In addition, **We** may provide **Our** monitoring and auditing contractors with any relevant information about **You**, including, if appropriate, the report of any expert specialist.
- M3 **We** shall select the most appropriate methods of monitoring and auditing based upon the risks that **You** present. For the avoidance of doubt, **We** would tend to consider the following risks as presenting a need for more enhanced monitoring and auditing methods:
- (a) if **We** have received a disproportionate number of complaints, feedback or concern about **You** from Consumers or persons representing Consumers, or the individual complaints, feedback or concerns about **You** are very serious, or **You** fail to respond to our complaint handling staff in a timely and courteous manner;
  - (b) if **You** have a low credit rating score;
  - (c) if **We** receive information that may indicate that **You** may be about to cease to trade;
  - (d) if **You** have a higher than average amount of deposits on risk, or are taking deposits in excess of 25%;
  - (e) if **You** have a longer than average contract to completion time;
  - (f) if **You** have a higher than average contract value for the product type supplied;
  - (g) if **You** have lower than average levels of customer satisfaction;
  - (h) if **We** have information or concerns about whether or not **You** are properly registering **Jobs** on the **Portal** in accordance with Clause E;
  - (i) if **We** are notified of any significant concerns about **Your** business by any governmental, statutory or non-statutory oversight bodies or any other Code Sponsor;
  - (j) if **You** fail to implement any awards by **Our ADR Provider**; or
  - (k) if **We** have outstanding matters of non-compliance from prior monitoring, disciplinary or auditing activity.



M4 The methods of monitoring and audit available to **Us** include, but are not limited to:

- (a) **We** may determine to appoint a contractor to undertake any aspect of **Our** monitoring and auditing regime.
- (b) **We** will communicate the results of **Our** monitoring and auditing of **You** within 40 **Business Days** or by placing information on the **Portal**. **Our** monitoring and auditing provide an assessment of **Your** current state of compliance. **We** do not provide **You** with a 'pass' or 'fail' but **We** continuously assess **Your** levels of compliance.
- (c) **We** may assess **Your** compliance systems as:

**RED** – Indicates one or more corrective action which must be taken within **7** days, these corrective actions include but are not limited to the following risk areas:

- significant consumer detriment
- bringing the scheme into disrepute

**AMBER** – Indicates one or more corrective action which must be taken within **28** days, these corrective actions include but are not limited to the following risk areas:

- breaching these Terms & Conditions

**GREEN** – Indicates a compliant audit where a proposal or suggestion for improving business processes, systems or procedures that would enhance compliance. This would be likely to include adding clarity to marketing collateral, improving business training or professional development, improved efficiencies, enhancing a business process.

M5 If **You** are categorised as RED or AMBER **We** will contact you to arrange time scales for corrective actions and set up a monitoring programme against these. Where corrective actions have not taken place, you may be placed into the Membership Review Process.

M6 In addition, **You** agree and acknowledge that **We** may undertake from time to time and at **Our** sole discretion;

- (a) credit reference checks;
- (b) checks against any publicly available information;
- (c) checks against any governmental or certification agency databases;
- (d) mystery shopping exercises; and
- (e) such other routine market surveillance or monitoring as is commensurate with Clause M1.

## Clause N

### Discipline and Sanctions

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- N1 **You** consent to be within the jurisdiction of the **Scheme** disciplinary and sanctions provisions as set out in this Clause N.
- N2 The **Membership Review Panel** may consider your **Membership** should you breach of any terms of the **Membership Terms & Conditions** which **We** deem to be sufficiently serious at **Our** absolute discretion and any continuous or series of breaches of any of the Membership Terms & Conditions.
- N3 The **Membership Review Panel** shall consist of at least two members of **Our** senior management and/or audit and risk teams and shall be formed and meet as necessary to determine matters relating to member applications, conduct under the **Scheme**, **Members** behavior and any other matter relating to the **Scheme** or **Your Membership**. **Our Membership Review Panel** is intended to address issues quickly and provide a means for the effective management of risks to the **Scheme**. All final decisions of the **Membership Review Panel** shall be confirmed in writing within 10 Business Days of making a determination. For the avoidance of doubt, it is not independent of the **Scheme**.
- N4 **The Membership Review Panel** shall be empowered to consider any allegation of a breach of the Membership Terms & Conditions referred to it by **Us** (for any reason at **Our** sole discretion), or **Our ADR Provider** (for failure to implement a remedy).
- N5 The **Membership Review Panel** shall be empowered to take such action as it considers appropriate in the circumstances to achieve ongoing compliance and adherence to these **Membership Terms & Conditions**, this includes, but is not limited to:
- (a) the issue of a formal warning;
  - (b) a requirement for **You** to take additional measures (either temporarily or permanently) as a condition of continued **Membership**;
  - (c) a requirement to change, modify or establish an operating practice as a condition of continued **Membership**;
  - (d) a requirement to provide remedies to an identified group of consumers (but not an individual case – that is a matter for **Our ADR Provider**) as a condition of continued **Membership**;
  - (e) a requirement to implement a remedy as directed by **Our ADR Provider** as a condition of continued **Membership**;
  - (f) a requirement to pay a financial penalty up to 10% of **Your** turnover;
  - (g) termination of **Your** membership.
- N6 The **Membership Review Panel** shall not, unless in the public interest it determines otherwise, publish its final decision. However, **We** may share its final decision with:
- (a) any complainant connected with the issue being considered;
  - (b) any trading standards authority;
  - (c) any relevant governmental or certification agency relating to the issue being considered.

## Clause O

### Variation

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- O1 Save to the extent set out elsewhere in these Membership Terms & Conditions or where agreed between the authorised representatives of the parties in writing, these Standard Terms of Membership may only be varied in accordance with this Clause O.
- O2 Save to the extent set out elsewhere within these Membership Terms & Conditions, **We** may vary the contents of the following provisions with immediate effect without the provision of any notice of the change to **You**:
- (a) Clause L2 (Appointed ADR Provider);
  - (b) Any change required as a result of any changes to primary or secondary legislation.
- We** shall provide details of any changes (particularly in relation (d)) where **We** deem this appropriate.
- O3 **We** may vary the **Schedule of Fees and Charges** by giving **You** at least one months' notice.
- O4 Any change to **Your** legal entity would require the termination of **Your Membership** and a new application for **Membership** in the name of the new entity will need to be made.
- O5 Any other change to the **Membership Terms & Conditions** may be made by **Us** on providing 30 days notice of the change to members generally. The change will apply to **Your Membership** 30 days from the date on which **We** send the notice to **You**. Any change to terms which are particular to **Your Membership** may be made by **Us** by providing **You** with 30 days written notice. The period for notice shall begin on the date **We** send the notice. You may only make a change to **Your Membership** with **Our** agreement. Any change to the terms which would have applied to **Your Membership** but for its termination shall apply to any continuing obligations as if made to **Your Membership**.

## Clause P

### Termination

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- P1 **Your Membership** may be terminated only in accordance with this Clause P.
- P2 Either party may give three months' notice in writing to terminate the **Membership** without reason and, at the conclusion of that period of notice, the **Membership** shall be immediately terminated.
- P3 **We** may terminate **Your Membership** with immediate effect in any of the following circumstances:
- (a) in the event that **You** breach any of the provisions specified in Clause C as the Principal Obligations or any other breach which **We** reasonably deem to be material;
  - (b) in the event that **You** repeatedly breach any of the terms of these Membership Terms & Conditions or **Your Membership** such that **We** deem to **Your** conduct to be such that **You** have no intention to act in accordance with it;
  - (c) if any of the events in Clause D12 (relating to matters of solvency, administration and insolvency) occur;
  - (d) if **We** are notified by the underwriter of **Our Deposit Protection** or **Insurance Backed Guarantees** that they are unable to continue to provide cover or have cancelled any cover relating to **Your** business;
  - (e) if a determination is made under Clause N by the **Membership Review Panel** to expel **You** from the **Scheme**;
  - (f) if **We** are ordered to expel **You** from **Membership** by:
    - I. a court of competent jurisdiction;
    - II. a statutory or quasi-statutory oversight body for **Your** sector;
    - III. any oversight body; or
    - IV. **Our** primary trading standards authority.
- P4 **You** may terminate **your Membership** with immediate effect in any of the following circumstances:
- (a) In the event that **We** become unable to fulfil **Our** obligations set out in Clause C Principal Obligations to **You**; or
  - (b) In the event that **We** repeatedly breach any of the terms of these **Membership Terms & Conditions** such that **You** deem **Our** conduct to be such that **We** have no intention to act in accordance with it; or
  - (c) If **We** enter any composition or arrangement (whether formal or informal) with **Our** creditors; or
  - (d) If **We** become the subject of a voluntary arrangement within the meaning of Section 1 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof; or
  - (e) If **We** become unable to pay **Our** debts within the meaning of Section 123 of the Insolvency Act 1986 or any statutory modification or re-enactment thereof; or
  - (f) If a receiver manager, administrator or administrative receiver is appointed in respect of **Us** or any undertaking, assets or income or a substantial part thereof; or

- (g) If a winding up resolution of **Us** is passed or any petition is presented to any Court for **Our** winding up or **Our** ceasing or threatening to cease to carry on **Our** business; or
- (h) If You do not accept a change of terms made in accordance with Clause O5.

P5 The effect of termination is as follows:

- (a) Clause K (Complaint Handling), Clause L (Alternative Dispute Resolution), Clause W (Payment of Fees) and any other clause required to continue after **Your Membership** ends shall continue to have effect after termination of these **Membership Terms & Conditions** for the entire length of **Your** maximum guarantee period plus any further period required to give effect to the requirements of the clause;
- (b) Clause N (Discipline and Sanctions) shall continue to have effect after termination of these Membership Terms & Conditions for a period of twelve months, but only in relation to any disciplinary or non-compliance action commenced during the **Term** so as to enable **Us** to complete any outstanding disciplinary matters and, notwithstanding a notice of termination of the **Membership** from **You**, the **Membership Review Panel** may nevertheless proceed to make a final decision to expel **You** from the **Scheme** and publish that accordingly; and
- (c) any other Clause which is expressly stated to or by implication should remain in force following termination.

P6 Termination or expiry of **Your Membership** shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the **Membership Terms & Conditions** which existed at or before the date of termination or expiry.

P7 Following termination of the **Membership**, **You** shall be placed on the **Ex-Member's Tariff** as set out in the **Schedule of Fees and Charges**.

## Clause Q

### Agreement and Cooperation with Advisory Bodies

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Q1 **You** have a duty to cooperate with any consumer advisory bodies, including trading standards, who are involved in resolving complaints. Nothing in this Clause shall compel **You** to answer any question under caution (in accordance with the Police and Criminal Evidence Act 1984) nor to provide any information if to do so may incriminate **You**.

## Clause R

### Data Protection and Information Security

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"We", "us" or "the Scheme" refers to HICS

"You" or "their" refers to the individual/s whose data HICS may process

R1 **We** will use **your** data if **you** are an individual or an individual in a partnership to administer the **Scheme**. This is part the **membership** and is necessary to meet the obligations of the **Scheme's** agreement with **you**. **We** will also use the data of **your** employees for the purposes of the **Scheme**. **You** must inform your employees that **we** may use **their** data. This is part of **our** legitimate interest in administering the **Scheme**.

Further details about how we will use your data can be found on our website:

<https://www.hicsscheme.org.uk/privacy-policy/>

#### Disclosure of your information

R2 **We** may provide information on **you** and your employees to third parties which may include:

- The Insurer
- Fraud Agencies
- Credit Reference Agencies
- Certification Agencies
- Regulatory Authorities
- Consumer protection organisations and consumer codes

Where **we** provide data to a third party, **we** will ensure that if they process data for **us**, an agreement is place for this. Some third parties may receive data from **us** that they will process, for legitimate purposes.

#### Your Requirements

R3 **You** shall not, except as directed by an authorised person representing **Us**, provide to any person, including other members of the **Scheme**, any information concerning:

- The content of your **Membership**
- Confidential information belonging to **us, a customer, client or contractor**

When you have been provided any personal data by a client, contractor or the scheme, you must ensure you protect that data and ensure it is only used for legitimate purposes.

Both **you** and HICS undertake to comply with the requirements of the applicable data protection laws.

For more information regarding data protection requirements, the link to our privacy policy can be found here:

<https://www.hicsscheme.org.uk/privacy-policy/>

## Clause S

### Liability and Indemnity

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S1 Nothing in these Membership Terms & Conditions shall limit or exclude either party's liability to the other for causing death or personal injury by their negligence, any fraud or fraudulent misrepresentation or wilful default and any other matter in respect of which it would be unlawful to exclude or limit liability.

S2 Subject to clause S1 and to the extent permitted by law:

(a) **We** shall under no circumstances whatsoever be liable to **You**, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any Losses arising under or in connection with **your Membership**, which are:

- I. loss of profits;
- II. loss of sales or business;
- III. loss of agreements or contracts;
- IV. loss of anticipated savings;
- V. loss of or damage to goodwill;
- VI. loss of authorisation, accreditation or approval by any other body;
- VII. loss of use or corruption of software, data or information; or
- VIII. any other indirect, special or consequential loss; and

(b) **Our** total liability to **You** in respect of all **Loss** arising under or in connection with the **Membership, Agreement** whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the fees which **You** have paid to **Us** in cleared funds in the year leading up to the date on which that liability arises.

S3 **You** shall indemnify, keep indemnified and hold harmless **Us** against any **Loss** arising out of or in connection with **Your** breach of **your Membership**, otherwise in contract, tort (including negligence), breach of statutory duty or otherwise as a result of any other act or omission of **You** under or in connection with **your Membership** and whether such Loss is of a direct nature or for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;
- (f) loss of authorisation, accreditation or approval by any other body;
- (g) loss of use or corruption of software, data or information; or
- (h) any other indirect, special or consequential loss.



## Clause T

### Notices

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- T1 A notice or any other communication given in accordance with **your Membership**:
- (a) shall be in writing (in English);
  - (b) be sent by any of the methods and to the details set out in accordance with Clauses A3 and A4 for **You** and **Us** respectively; and
  - (c) shall be deemed to have been received in accordance with Clause T2 if prepared and sent in accordance with this Clause.
- T2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt (or at the time the notice is left at the proper address);
  - (b) if sent by pre-paid first-class post or other next **Business Day** delivery service, at 09:00 am on the second **Business Day** after posting or at the time recorded by the delivery service; or
  - (c) if sent by email, at 09:00 on the next **Business Day** after transmission.
- T3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- T4 A decision maker for **Us** may send **You** a '**Minded To Notice**' and may provide **You** with a reasonable opportunity to make representations to **Us** about that proposed decision as set out in the '**Minded To Notice**'.
- T5 A '**Decision Notice**' shall represent **Our** final decision on its subject matter (subject to any rights of appeal). For the avoidance of doubt, any correspondence, discussions or negotiations antecedent to a '**Decision Notice**' shall not form any part of that '**Decision Notice**' unless specifically referenced therein.

## Clause U

### Miscellaneous

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- U1 Neither party, provided that it has complied with the provisions of Clause U3, shall be in breach of the **Membership Terms & Conditions**, nor liable for any failure or delay in performance of any obligations under the **Membership Terms & Conditions** arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ('**Force Majeure Event**'), including but not limited to any of the following:
- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
  - (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
  - (c) terrorist attack, civil war, civil commotion or riots;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
  - (f) fire, explosion or accidental damage;
  - (g) loss at sea;
  - (h) adverse weather conditions;
  - (i) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
  - (j) any labour dispute, including but not limited to strikes, industrial action or lockouts; and
  - (k) interruption or failure of utility service, including but not limited to telecommunications services, electric power, gas or water.
- U2 In the event of a Force Majeure Event, the corresponding obligations of the other party will be suspended to the same extent.
- U3 Any party that is subject to a Force Majeure Event shall not be in breach of the **Membership Terms & Conditions** provided that:
- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
  - (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
  - (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Membership Terms & Conditions in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- U4 If the Force Majeure Event prevails for a continuous period of more than 1 month, either party may terminate the **Membership** by giving 10 Business Days written notice to the other party. On the expiry of this notice period, the **Membership** will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the **Membership Terms & Conditions** occurring prior to such termination.
- U5 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 the **Membership Terms & Conditions**.

## Clause V

### Rights of Third Parties

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- V1 Save as provided for in this Part X, a person who is not a party to the **Membership Terms & Conditions** shall not have any rights under or in connection with it.
- V2 Any oversight body, whose logo or intellectual property is permitted by virtue of the terms of any applicable licence, may enforce the terms of these Membership Terms & Conditions insofar as it relates to the protection of their intellectual property.
- V3 Any insurer, whose policies are procured to underwrite deposit or insurance backed guarantee, may enforce the terms of these Membership Terms & Conditions insofar as **You** have provided information upon which a decision to underwrite a policy that **You** know to be false or do not believe to be true.

## Clause W

### Payment of Fees

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- W1 This Clause W is intended to survive termination of **your Membership**.
- W2 **You** shall pay **Our** fees when they become due.
- W3 The **Schedule of Fees and Charges** lists **Our** fees. **Our** fees are subject to variation in accordance with Clause O3.
- W4 **We** will provide **You** with an invoice for any fees due (showing **Our** VAT registration details and amounts where relevant).
- W5 **You** agree that **We** may collect fees due by means of a continuing authority by e-payment. **We** may collect any fees due to **Us** by this method or, in default, by issuing **You** with a demand for payment together with details of **Our** payment details. **We** currently utilise a payment processing service for these purposes and such collections shall be made in accordance with its then current terms and conditions, available for inspection via **Our** website and which **You** hereby acknowledge that **You** have read, understood and agree to.
- W6 **We** may take legal action against **You** for recovery of any unpaid fees and any other contingent losses incurred by **Us** as a result of **Your** acts and/or omissions.
- W7 The Late Payment of Commercial Debts (Interest) Act 1998 applies to the **Membership Terms & Conditions** and, as such, **We** may charge default fees and claim interest for late payments at a rate of 8% above the current Bank of England base rate.
- W8 **You** shall pay any and all fees due to **Us** without any set off, abatement, counterclaim or other similar deduction and notwithstanding the presence of any dispute between the parties. **We** may at any time and without notice to **You**, set off any liability of **Ours** to **You** against any liability of **Yours** to **Us**, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises or has arisen under These Membership Terms & Conditions.
- W9 **You** are not permitted to withhold, delay or set off any fees due to **Us** by reason of any dissatisfaction **You** may have regarding any award by **Our ADR Provider** or any final decision.

## Clause X

### Governing Law and Jurisdiction

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- X1 **Your Membership** and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.
- X2 The parties irrevocably agree that, subject to Clause L13, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with **your Membership** or its subject matter or formation (including non-contractual disputes or claims).

## Appendix A

### **Consumer Law**

As a member of HICS/HICS you are expected to meet the requirements of consumer law. A requirement under our code of practice is that you shall ensure that all customer facing personnel, including any third-party sales staff (e.g. anybody engaged in the sales process for or on Your behalf) shall receive training on consumer protection legislation including consumer rights.

Although this is not intended to be a list of every piece of law that you must follow, you need to ensure that you are meeting the minimum levels of consumer law.

**Note:** *This information is provided in good faith and should only be considered as guidance. Only a court can interpret any legislation with any statutory authority.*

### **Consumer Rights Act 2015 (CRA)**

This covers what a consumer can expect from you, and what they are entitled to if things go wrong.

- You must carry out services using reasonable care and skill. This means that the consumer has a right to expect the work to be carried out professionally, on time and to a satisfactory standard.
- Goods supplied should be of a satisfactory quality and as described. Any goods you supply should be free from minor defects, safe and durable for a reasonable length of time. If goods supplied are faulty the consumer can reject the goods within 30 days for a refund or ask for a repair or replacement.
- For service only contracts, where no goods are supplied the consumer can request that you come back and correct any faults, which is known as repeat performance. In some cases, the consumer can claim a price reduction where repeat performance is impossible or cannot be carried out within a reasonable time and without causing significant inconvenience.
- For mixed contracts where there is a goods and a service element the goods elements of the contract attract the rights and remedies associated with goods, and the services elements attract the rights and remedies for services.
- The Consumer Rights Act 2015 applies an additional rule where goods are to be supplied and installed as part of the same contract. In this case, if the goods are installed incorrectly, not only can the consumer treat this as a breach of the requirements for services, they can also treat it as a breach of the requirements for goods.
- You are responsible for addressing any consumer claims under the Consumer Rights Act 2015. A consumer can have a guarantee or warranty but this an addition to their usual consumer rights.

### **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCR)**

The CCR states the information that is required before a consumer enters into contract with you. This includes but is not limited to descriptions of the goods or services, your trading identity and details of any memberships you hold. The CCRs also state the circumstances in which the consumer can cancel the contract.

If you sell at a distance over the phone, online, from a catalogue or face-to-face in the consumers home, then you will in most circumstances be required to provide a cooling-off period of 14 days. These are considered either 'off premises' or 'distance' contracts. A consumer can decide to have work done within the cooling-off period but they must provide you with written permission.

'On premises contracts' that are made in store do not require a cooling-off period, although you may wish to offer a cooling-off period.

If you visit a consumer in their home and leave a quotation (or send one to them later), allowing them to decide and enter into a contract when they are ready to do so, will be entering into an 'on-premises contract'. This means that you will not be required to provide a cooling-off period.

Also, no cooling-off period is required for the supply of goods that are made to the consumer's specifications or goods that are clearly personalised.

### **Consumer Protection from Unfair Trading Regulations 2008 (CPRs)**

This places a general duty on businesses to trade fairly. It prohibits unfair commercial practices, misleading and aggressive practices. Also included is a list of 31 banned practices that are always considered unfair.

The CPRs apply before, during and after sale.

The CPRs outlaw practices which are misleading (whether by action or omission) or aggressive, and which cause or are likely to cause the average consumer to take a different decision.

A non-exhaustive list of practices which may breach the CPRs:

- Misleading prices
- Claiming false membership or accreditation by a public or private body
- Restricting a consumer's rights

### **Where can I get further information on consumer rights?**

- [www.businesscompanion.info](http://www.businesscompanion.info) is a free Government backed website aimed at supporting businesses.
- Consider investing in a good quality training course on consumer law.
- Speak to HICS.

## Appendix B - Job Registration Data Requirements

In order to help us operate in an effective and secure manner, our preferred process will be for you to provide us access to your data pertaining to Product installations.

This data can be transferred using the following two methods;

- Member to send us data - this needs to be in a structured format and will be agreed during the membership onboarding process.
- We collect data from the Member - We will log onto the Members IT system and extract the relevant details.

Information required from you will include, but is not limited to;

- File format
- Server DNS/IP Address
- Login credentials
- Data collection frequency

We will ensure relevant Data Protection legislation is adhered to as part any data exchange.

Where the above is not possible you will be required to register jobs through our Job Registration Portal.

The data required is as follows

### **Customer Details:**

#### Policy Holder Name/s:

Title  
Forename  
Surname  
Email  
Mobile  
Landline

#### Installation Address:

Line 1  
Line 2  
City  
County  
Postcode

Document Dispatch Address: (if different from installation address)

### **Installer Details:**

Installer Contract Reference:  
Contract Signed Date:  
Salesperson:

Deposit Amount Taken:  
Deposit Payment Method:  
Contract Value:

### **Product Details:**

Product Make:  
Product Model: