

MEMORANDUM OF UNDERSTANDING

between

The Health and Safety Executive (HSE)

and

The Health and Safety Executive for Northern Ireland (HSENI)

ON THE PROCUREMENT AND OPERATION OF THE GAS SAFE REGISTER

THIS MEMORANDUM OF UNDERSTANDING is dated 15/1/2018

1. Introduction

- 1.1. This document forms a Memorandum of Understanding (MOU) made between the Health and Safety Executive (HSE) and HSE Northern Ireland (HSENI). It outlines how both parties will work together on the procurement and subsequent contract management of a provider to operate the Gas Safe Register.
- 1.2. HSE is an executive non-departmental public body sponsored by the Department for Work and Pensions. HSE is the lead body responsible for the promotion and enforcement of health and safety at work standards in England, Scotland and Wales.
- 1.3. HSENI is an executive non-departmental public body sponsored by the Department for the Economy. HSENI is the lead body responsible for the promotion and enforcement of health and safety at work standards in Northern Ireland.
- 1.4. HSE and HSENI are each a body corporate with separate legal identities.
- 1.5. The Gas Safe Register ("the Register") is the official list of qualified and registered gas engineers in the United Kingdom, Isle of Man and Guernsey, appointed by the relevant Health and Safety Authority for each area. The Provider's role will include maintaining the Register, inspecting engineer's competency while on the Register and investigating reports of illegal gas work.
- 1.6. This MOU sets out the following:
 - a. principles of the working relationship;
 - b. the respective roles, responsibilities and obligations the Parties have;
 - c. warranties, undertakings and indemnities provided by the Parties;
 - d. termination; and
 - e. dispute resolution.
- 1.7. The Parties agree that this MOU shall not be legally binding.
- 1.8. In entering into this MOU HSENI confirms that it does not require ministerial sign off to do so, or to participate in HSE's procurement and subsequent contract management of a provider to operate the Register as provided for in this MOU.

2. Principles

- 2.1. The Parties agree to adopt the following principles when carrying out their respective roles in relation to the MOU throughout the period of the Services Concession Agreement (SCA):
 - (a) **collaborate and co-operate.** Establish and adhere to the governance arrangements set out in this MOU to ensure that activities are delivered and actions taken as required;
 - (b) **be accountable.** Take on, manage and account to each other for performance of the respective roles, responsibilities and obligations set out in this MOU;
 - (c) **be open.** Communicate openly about major concerns, issues or opportunities arising from this MOU;
 - (d) **learn, develop and seek to achieve full potential.** Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
 - (e) **adopt a positive outlook.** Behave in a positive, proactive manner;

- (f) **adhere to statutory requirements, best practice and respect each other's statutory corporate commitments.** Comply with applicable laws and standards including EU procurement rules, data protection; freedom of information legislation, health & safety and sustainability commitments;
- (g) **act in a timely manner.** Recognise the time-critical nature of the services being provided and the goods being delivered and respond accordingly to requests for support;
- (h) **manage stakeholders effectively;**
- (i) **deploy appropriate resources.** Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in the Agreement; and
- (j) **act in good faith to support compliance with these principles.**

3. Objectives of the MOU

The purpose of this MOU is to record the arrangements made between HSE and HSENI in respect of the procurement of a Provider and the subsequent contract management of the SCA.

4. Definitions

4.1. In this MOU (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Contract Manager"	means HSE's nominated representative under the SCA, whose roles and responsibilities shall be as set out therein
"Delegated Actions"	means any actions that the Contract Manager may delegate to HSENI from time to time under the SCA
"Delegated Contract Manager"	means the nominated representative from HSENI who has the authority to carry out Delegated Actions on behalf of HSENI
Gain Share Governance Board (GSGB)	means the board of that name established to evaluate options and make recommendations to the Health and Safety Executive Management Board on how the gain share funding arising under the SCA should be spent.
"HSENI Services"	means the Services designated as such under the SCA to be provided to HSENI as a Service Recipient under the SCA.
"NI Data"	means data about engineers and businesses registered with a NI address, and data about gas work carried out in NI
"Provider"	means the provider that may be appointed by HSE to provide the Services to HSE and to provide the HSENI Services to HSENI under the SCA following the procurement exercise.
"SCA"	means the Services Concession Agreement between HSE and the Provider
"Services"	means the concession services provided by the Provider under the SCA
"Service Recipient"	means HSENI receiving the HSENI Services

5. Roles and responsibilities

5.1. HSE will:

- 5.1.1. lead the procurement process to select the Provider;
- 5.1.2. establish a project board to oversee the procurement process;
- 5.1.3. procure the Services;
- 5.1.4. consult with HSENI throughout the procurement process and throughout the term of the SCA on any changes that could impact on the HSENI Services;
- 5.1.5. share procurement and contract management plans, data and information with HSENI;
- 5.1.6. use its discretion in deciding whether to enter into the SCA following the procurement process;
- 5.1.7. direct the Provider to share appropriate information (at individual business/engineer level to support enforcement, and high-level trends to support strategic decision making and service delivery oversight) with HSENI; and
- 5.1.8. lead and organise mid-year and annual SCA reviews with the Provider.

5.2. HSENI will:

- 5.2.1. participate in the procurement process to the extent requested by HSE;
- 5.2.2. nominate a representative to the project board which is to be established for the purposes of the procurement process and which shall be established by HSE;
- 5.2.3. nominate a representative to contribute to development of the tender specification and to be part of the evaluation team;
- 5.2.4. throughout the procurement process and throughout the term of the SCA, raise any concerns with HSE in a timely manner;
- 5.2.5. accept HSE's choice of Provider and abide by any decisions taken by HSE throughout the procurement process and in respect of the SCA;
- 5.2.6. properly perform all Delegated Actions which may include management of HSENI Services, and which may at HSE's discretion be subject to change from time to time; and
- 5.2.7. participate in mid-year and annual SCA reviews, as arranged by HSE, between HSE and the Provider.

6. HSE commitments

- 6.1. HSE shall designate all engineers who are included in the Gas Safe Register carrying out work in relation to a gas fitting or service pipework to be maintained by the Provider as members of an approved class of persons under the Gas Safety (Installation and Use) Regulations 1998, regulation 3(3) prior to the commencement of the SCA.

6.2. HSE will:

- 6.2.1. provide HSENI with reasonable notice of any change to the SCA proposed by either HSE or the Provider which may impact the HSENI Services; and
- 6.2.2. take reasonable account of any comments from HSENI in relation to the proposed change to the SCA when considering whether or not to approve or propose the change.

7. HSENI commitments

- 7.1. HSENI shall designate all engineers, who are included in the Gas Safe Register carrying out work in relation to a gas fitting or service pipework, to be maintained by the Provider as members of an approved class of persons under the Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004, regulation 3(3).
- 7.2. HSENI shall take reasonable steps to provide comments or notification in a timely manner to the Contract Manager in relation to any matters arising in this MOU or from/under the SCA.
- 7.3. HSENI shall take all reasonable steps to ensure that any NI Data is transferred to the Provider as directed by HSE.

8. Scope of agreement

Management

- 8.1. HSE will be the contracting party to the SCA with the Provider and will manage the SCA on its own behalf and for the benefit of HSENI with the exception of any Delegated Actions (which may be withdrawn by the Contract Manager (always acting reasonably providing HSENI with reasonable notice wherever possible and taking reasonable account of any representations by HSENI) at any time.
- 8.2. HSE may, from time to time, request assistance from HSENI in respect of the management and operation of the SCA and HSENI will use reasonable endeavours to co-operate accordingly.
- 8.3. HSENI will escalate all issues or disputes that arise in connection to the HSENI Services in accordance with the procedures set out in this MOU.

9. Variation to HSENI services

- 9.1. HSENI may request a variation to the HSENI Services at any time.
- 9.2. HSE has the right, in its sole discretion, to refuse any request made pursuant to Clause 9.1.
- 9.3. HSE will consult with HSENI in respect of any other variation which could have an impact on HSENI's receipt of the HSENI Services and will take reasonable account of any views expressed by HSENI.

10. Gain Share Funds for Distribution

- 10.1 HSENI will nominate a representative to participate on the Gain Share Governance Board.
- 10.2 HSENI shall abide by any decision taken by the Gain Share Governance Board.

11. Gas Safe Charity

- 11.1 HSE agrees to propose the Gas Safe Charity invites HSENI to nominate a trustee to the executive board of the Gas Safe Charity.

12. Warranties and undertakings

- 12.1 HSENI represents, warrants and undertakes that:

12.1.1 it shall act as stated in the MOU and in the spirit of mutual trust and co-operation, carry out such duties and obligations as may be required under the Delegated Actions with reasonable skill, care and diligence;

12.1.2 it will monitor the Provider's compliance in respect of and in connection with the HSENI Services and the Provider's obligations under the SCA and escalate any relevant issues to the Contract Manager;

12.1.3 it will be responsible for identifying any new service requirements that may be required and notify the Contract Manager accordingly.

- 12.2 HSE represents, warrants and undertakes that:

12.2.1 upon HSENI's reasonable request, HSE will as soon as reasonably practicable exercise its rights under the SCA (insofar as it considers it reasonable to do so) to seek rectification of breaches, to the extent that they impact upon HSENI and HSENI shall indemnify HSE against all costs (including legal costs) and expenses incurred by HSE in doing so.

13 Termination

- 13.1 This MOU will automatically terminate six months after the expiry or earlier termination of the SCA.

14 Consequences of termination

- 14.1 In the event that HSE, without HSENI's agreement or due to no fault or omission of HSENI:

14.1.1 terminates the SCA; or

14.1.2 or terminates the HSENI Services in whole or in part;

HSENI will not be liable for any resultant costs, including redundancy costs and termination payments, arising under the SCA.

15 Dispute resolution

15.1 Disputes between the Provider and HSENI

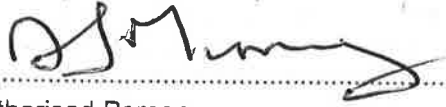
- 15.1.1 Where any dispute arises between the Provider and HSENI in respect of the SCA which cannot be resolved by HSE using the dispute resolution procedure in the SCA, HSE may commence legal proceedings against the Provider on behalf of HSENI with HSENI's agreement.

- 15.1.2 HSENI shall indemnify HSE for any costs arising out of or in connection with any alternative dispute resolution process or arising out of or in connection with any legal proceedings commenced pursuant to 15.1.1 (including any costs or expenses incurred by HSE and any liability for any Provider costs and expenses).
- 15.1.3 HSE will account to HSENI for any costs or expenses recovered.
- 15.1.4 Where legal proceedings are commenced pursuant to 15.1.1, subject to 15.1.5, HSE will use all reasonable endeavours to enforce its rights against the Provider and pass on to HSENI the benefit of any remedies obtained.
- 15.1.5 HSE, acting reasonably, shall have the right to discontinue and/or settle proceedings for whatever reason.


15.2 Disputes between HSE and HSENI

- 15.2.1 In the event of a dispute between HSE and HSENI, the following escalation route will apply:
- 15.2.2 in the first instance to Contract Manager and Delegated Contract Manager for discussion and resolution as soon as reasonably possible; and
- 15.2.3 if the matter is not resolved under Clause 15.2.1, escalated to the HSE Band 2 contract management team leader and the relevant HSENI Principal Inspector for discussion and resolution as soon as reasonably possible; and
- 15.2.4 if the matter is not resolved under Clause 15.2.2, escalated to HSE's Head of Operational Strategy and HSENI's Deputy Chief Executive for final resolution.
- 15.2.5 If at any time a dispute is having a serious effect on the HSENI Services or the Services (as appropriate), the Parties will use reasonable endeavours to expedite the process.
- 15.2.6 Notwithstanding the process of escalation, HSE and HSENI may refer the dispute to their respective Chief Executive for resolution at any time.

SIGNED by
HSE
acting by an Authorised Person

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HSENI
acting by an Authorised Person

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